

**MEMORANDUM OF UNDERSTANDING
BETWEEN HYDRO-QUÉBEC,
ACTING THROUGH ITS DIVISION HYDRO-QUÉBEC DISTRIBUTION (“HQD”), AND
TRANSCANADA ENERGY LTD. (“TCE”)
(TOGETHER, THE “PARTIES” OR INDIVIDUALLY A “PARTY”)
RESPECTING THE TEMPORARY SUSPENSION OF ELECTRICITY PRODUCTION AT TCE’S
BÉCANCOUR GENERATING STATION
OCTOBER 31, 2007 (“MOU”)**

I. CONTEXT

1. HQD has advised TCE that the electricity produced at TCE’s Bécancour generating station (“**Bécancour**”) will contribute, along with other supply contracts, to cause excess supply above HQD’s system requirements during the calendar year 2008 and possibly calendar year 2009.
2. HQD has advised TCE that, if HQD purchased the electricity produced at Bécancour in 2008 in accordance with the terms of the Electricity Supply Contract concluded between HQD and TCE dated June 10, 2003 (“**ESC**”), HQD would have no option but to sell large quantities of electricity on the export market.
3. HQD has therefore requested TCE to consent, subject to the approval of the Régie de l’énergie (“**Régie**”), to the temporary suspension of all electricity production at Bécancour during the calendar year 2008 and possibly calendar year 2009 (“**Suspension**”).
4. The Parties have discussed the principles and certain terms and conditions of such Suspension, set forth in this MOU.

II. PRINCIPLES

5. The purpose of the Suspension is to assist HQD in achieving a more appropriate overall supply and demand balance in their portfolio during calendar year 2008 and possibly calendar year 2009.
6. TCE should not suffer any economic loss in consenting to the Suspension.

III. AGREEMENT

7. The detailed terms and conditions of the Suspension shall be set forth in a formal agreement incorporating the terms hereof to be negotiated in good faith and concluded by the Parties not later than 1 December 2007 (“**Agreement**”), failing which, this MOU shall be null and void and of no further effect. In such a case, the Parties shall have no remedy for breach other than in connection with sections

32 to 36. Any final decision to conclude the transactions contemplated in this MOU would require approval by the executives and/or Boards of the Parties, as the case may be.

8. The Agreement shall not amend the ESC but shall be supplementary to it. The Agreement shall suspend the application of certain provisions of the ESC as specified in the Agreement.
9. The entry into force of the Agreement shall be conditional upon its approval by the Régie. HQD shall, forthwith upon the conclusion of the MOU, apply to the Régie for approval of the MOU and subsequently the Agreement. HQD shall pay the legal fees and expenses associated with such application. If TCE is required to intervene in such regulatory proceedings, HQD shall pay TCE's legal fees and expenses in connection therewith.
10. If the Régie fails to approve the MOU or Agreement by 7 December 2007, or approves the Agreement on terms not satisfactory to either Party, the Agreement shall be null and void and of no further effect.
11. The Agreement shall be conditional upon the receipt by TCE, not later than 31 December 2007, of either:
 - 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 Bécancour in order to permit the operation of the auxiliary boilers for the production of steam during the Suspension period, or;
 - proper authorization from MDDEP permitting TCE to operate the auxiliary boilers for the production of steam during the Suspension period.

IV. APPLICATION

12. The Suspension shall apply, in the first instance, during calendar year 2008 only.
13. The Suspension shall apply during a second calendar year 2009 only if requested by HQD, provided such request is received by TCE not later than 1 July 2008, based on a review by HQD as to whether similar benefits of Suspension are evident for calendar year 2009. In such case, the Parties shall, subject to the approval of the Régie, extend the term of the Agreement for calendar year 2009. It is expressly understood and agreed that the Agreement shall only cover the period 2008 and possibly 2009. Any further suspension of energy deliveries at Bécancour, if deemed necessary, shall be renegotiated between the Parties and shall expressly not be an extension of the Agreement.

V. **COMMERCIAL TERMS**

14. Unless otherwise specified, all dollar amounts appearing in this MOU are expressed in Canadian currency.

A. **Continued Capacity Payment**

15. During the Suspension, HQD shall continue to pay ICE on a monthly basis the amount for capacity set forth in Section 16.1 of the ESC, [REDACTED]. The amount for capacity for calendar year 2008 is approximately [REDACTED] million.

B. **Energy Payment**

16. [REDACTED] If energy is not produced at Bécancour TCE will therefore suffer a loss of earnings. To compensate ICE for such loss, during the Suspension for calendar year 2008, HQD shall pay ICE an amount equal to [REDACTED] million dollars (the "Energy Payment"). Such Energy Payment amount shall be subject to review by an independent third party to establish the basis for calculation [REDACTED]

[REDACTED] The purpose of such review shall be to provide HQD with comfort as to the merits and reasonableness of the Energy Payment, but shall not provide HQD with the confidential and proprietary operating data of ICE or its steam customers.

17. If HQD exercise its option for the Suspension of Bécancour in 2009, the Energy Payment for 2009 shall be established using the same principles as mentioned in section 17 [REDACTED]

C. **Replacement Steam Production**

18. During the Suspension, steam production for TCE's steam host will have to be replaced via the use of Bécancour's auxiliary boiler system. HQD shall pay to ICE, on a monthly basis, [REDACTED] costs associated with producing such replacement steam production using the auxiliary boilers. [REDACTED]

19. As of September 19, the costs associated with boiler operation are estimated by TCE to be [REDACTED] million for calendar year 2008. TCE shall provide each month, detailed invoices and back up to HQD associated with the auxiliary boiler operations.
20. 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 estimation, HQD shall bear the risk associated with these variations. Thus, if the [REDACTED] cost differs from [REDACTED] million, HQD shall pay any excess or benefit from any savings.
21. At HQD's option, TCE shall provide HQD the option of executing a fixed price gas swap agreement in order to allow HQD manage the expected cost associated with the estimated fuel use for auxiliary boiler operation. Notwithstanding the possible use of such option by HQD, [REDACTED] costs for auxiliary boiler operation as noted herein shall continue to be paid by HQD. Therefore such gas swap agreement, if executed between TCE and HQD, shall operate independently of this Agreement.

D. Natural Gas

22. During the Suspension, HQD shall pay TCE, on a monthly basis, the value of the fixed component of the GMI distribution tariff and the fixed component of the ICPL transport tariff from Dawn to GMI EDA.
23. TCE shall grant a credit in favour of HQD in respect of the market value of unutilized firm transportation on TCPL that is held by TCE in regards to Bécancour. As of September 19, this credit applicable to calendar year 2008 is estimated at [REDACTED] million. A definitive estimate shall be made as of the day the Agreement is executed, and TCE 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.
24. Should the GMI distribution tariff be affected as a result of the Suspension, HQD shall indemnify TCE for such GMI distribution rate increase approved by the Régie and imposed on TCE (whether during or after the Suspension period), provided that such rate increase is directly attributable to the Suspension.
25. In order to specifically capture such rate impact, as part of its request for approval of the Agreement, HQD will ask the Régie to identify, from the enforcement of the Agreement, the future GMI distribution rate increases imposed on TCE and attributable to the decrease in natural gas volume resulting from the Suspension.
26. Alternatively, if the Régie refuses to undertake or is otherwise unable to provide such information to ascertain the impact on GMI rates, if any, of the Suspension, then HQD will reimburse TCE for any increase in the fixed portion of the GMI distribution tariff beyond a benchmark designated as the CPI

(Consumer Price Index), subject to the following conditions:

- (a) The CPI cap protection to rate changes will expressly expire after four (4) years following the end of the Suspension;
- (b) [REDACTED]
- (c) During the Suspension period, HQD shall pay to TCE the actual cost related to the fixed component of the GMI distribution tariff. Upon resumption of generation at Bécancour, the price paid for the gas distribution shall revert back to [REDACTED];
- (d) For a 4-year period from the resumption of generation at Bécancour, HQD shall pay TCE the excess, if any, of the increase in the GMI distribution tariff relative to the CPI; and
- (e) Such CPI cap protection, as described herein, if any applies, shall be paid [REDACTED] in the final month of each contract year under the ESC for the applicable period (Suspension period plus four (4) years).

E. Substitution Rights

- 27. As compensation for TCE's loss of existing substitution rights under Section 7.5 of the ESC during the Suspension, TCE shall have the right, from the resumption of electricity generation and for a 3-year period per each year of Suspension, to increase the substitution of the generation at Bécancour from another source, by an incremental amount equal to 0.339 TWh per year (the "Incremental Substitution Period"). For further clarity, if the Suspension is limited to calendar year 2008 only, then the Incremental Substitution Period shall be three years and if Suspension includes 2009 then the Incremental Substitution Period shall be six years.
- 28. To take account of the fact that TCE's ability to substitute will be affected by the increased volumes noted in section 28, TCE shall be permitted to substitute energy from outside of Quebec under Section 7.5 of the ESC upon resumption of energy production but only to a limited extent and only during the Incremental Substitution Period. In order to protect HQD's access to interconnection facilities, TCE'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.
- 29. Any power delivered by TCE to HQD as substituted energy under the ESC from

outside Quebec as noted herein shall not be subject to incremental transmission expenses levied by HQD or TransEnergie. For further clarity if the energy is delivered by TCE to the interconnection of the TransEnergie system ("HQT") with an adjacent control area then it shall be considered as a viable and complete delivery of energy under the ESC.

F. Lay-Up and Resumption

30. At the end of each year of Suspension, HQD shall pay ICE, a fixed amount of [REDACTED] million, as compensation for certain lay-up and return to service costs at the Bécancour facility.
31. The availability and scheduling provisions of the ESC shall be suspended during the first 30 days after the resumption of operation of Bécancour following the end of the Suspension. 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.

VI. GENERAL

A. Confidentiality

32. Neither of the Parties, without the consent of the other Party, will divulge or communicate to any person or entity or exploit for any purpose whatsoever any Confidential Information disclosed to it by another Party or any Confidential Information obtained or produced in relation to Bécancour or the ESC.
33. "Confidential Information" means any information ordered not to be disclosed by the Régie in its decision D-2003-146 relating to the ESC 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, 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 or Bécancour.
34. 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.
35. 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

36. The content and timing of any press releases and announcements regarding any of the matters provided for in this MOU 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

37. 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 HQD to:

Address: 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 ICE to:

Address: 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 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

38. This MOU contains the entire agreement between the Parties with respect to the subject matter hereof and supercedes any and all prior understandings, correspondence or memoranda of understanding between the Parties.

E. Counterparts

39. This MOU 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 MOU.

F. No Partnership

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

G. Governing Law

41. This MOU shall be governed by and construed in accordance with the laws of the Province of Québec.

TRANSCANADA ENERGY LTD.**HYDRO-QUÉBEC****Through its division Hydro-Québec
Distribution**

Alexander J. Pourbaix
President

André Boulanger
President

John Cashin
Assistant Secretary

LEGAL	
CONTENT	