



**OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA**

**Special Report of Investigation**

**Conducted into the “Circumstances Surrounding the Procurement of Ethanol for and on behalf of the Government of Jamaica and, in particular, the award of certain Government Contracts to Infinity Bio-Energy and JB Ethanol”.**

**Petroleum Corporation of Jamaica (PCJ)/Petrojam Ethanol Limited**

**Ministry of Mining and Energy**

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## **INTRODUCTION**

On September 14, 2009, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to Sections 15 (1) and 16 of the Contractor General Act, initiated an Investigation into the circumstances surrounding the Procurement of Ethanol, for and on behalf of the Government of Jamaica (GoJ) and, in particular, the award of certain Government contracts to Infinity Bio-Energy and JB Ethanol.

Section 15 (1) of the Act provides that

*“...a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters –*

- (a) the registration of contractors;*
- (b) tender procedures relating to contracts awarded by public bodies;*
- (c) the award of any government contract;*
- (d) the implementation of the terms of any government contract;*
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.*

Section 16 of the Contractor General Act expressly provides that *“An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted”.*



The OCG's decision to commence a formal Investigation into the subject matter was as a result of, *inter alia*, the following:

1. A review by the OCG of certain disclosures and representations which were alleged to have been made before a formal sitting of the Public Administration and Appropriations Committee (PAAC) of Parliament on September 9, 2009, as are outlined in (a) a letter from the Clerk to the PAAC, Ms. Tracey Cohen, which was dated September 10, 2009, addressed to the Contractor General and received on September 11, 2009, and (b) an article which appeared in the September 13, 2009, edition of the Sunday Gleaner newspaper which was entitled: "*The People's Business Eyebrows raised over questionable ethanol purchase Appropriations Committee wants probe*".
2. A preliminary review by the OCG of certain official documentation and correspondence which related to the referenced matter and which the OCG had obtained from Dr. Jean Dixon, the former Permanent Secretary in the then Ministry of Energy. This review was conducted as a result of a Preliminary Enquiry which was being conducted by the OCG in November 2008, into the dismissal of Mr. Ian Moore as the Chairman of the PCJ Board of Directors, as a result of his involvement in purchase of Ethanol for the E10 Programme. There were allegations that Mr. Ian Moore acted outside of his responsibilities as a Board Chairman and outside of his responsibilities under the Public Bodies Management and Accountability Act.
3. A preliminary review by the OCG of certain formal written representations which have been made to the OCG by (a) Dr. Jean Dixon, and (b) particular GoJ Officials to the National Contracts Commission (NCC), regarding the said matters and the formal written responses of the NCC, which were dated November 6, 2008 and December 4, 2008, respectively, in relation to same.



The stated Gleaner article which was dated September 13, 2009, and which was entitled ***“Eyebrows raised over questionable ethanol purchase Appropriations Committee wants probe”*** reported, *inter alia*, the following:

*“THE PUBLIC Administration and Appropriations Committee of Parliament wants Contractor General Greg Christie to conduct an investigation into the circumstances surrounding the purchase of a shipment of dehydrated ethanol by the Petroleum Corporation of Jamaica (PCJ) from Infinity BioEnergy.*

*It has been revealed that the shipment of ethanol was obtained without a signed contract, and at a cost significantly higher than world market prices at that time.*

*Group managing director of the PCJ, Dr Ruth Potopsingh, last week, disclosed that the shipment of ethanol purchased from the Brazilian company last year was priced at US\$2.31 per gallon, 14 cents more than the US\$2.17 per gallon on the world market at that time.*

*The shipment contained 5,200 cubic meters (1,385,224 million gallons) of dehydrated ethanol.*

*This meant that the PCJ spent some \$17 million more for the ethanol than the world market price.*



**Eyebrows were also raised during the committee sitting when Dr Potopsingh conceded that the ethanol was procured without a signed contract...**

### **THE TECHNOCRATS**

*Chairman of the parliamentary oversight committee, Dr Wykeham McNeill, raised concerns about the transaction during a committee meeting where government officials were invited to make a presentation on the work of the energy ministry...*

*The committee was informed that former PCJ chairman, Ian Moore, had been in discussion with Infinity BioEnergy about the price, quantity and other aspects of the deal.*

*“Unfortunately, a series of emails was exchanged between the chairman and Infinity BioEnergy, which then gave rise to an obligation to take (the shipment),” explained senior legal counsel at the PCJ, Glenford Watson.*

### **DIVESTMENT DEAL**

*He said the country had been in negotiations with Brazilian firm to sell the government-owned sugar*



*factories and it was felt that the divestment would have been closed before, “we had need for the shipment. If we had closed, we would have been obliged to take from Infinity BioEnergy”.*

***Watson said even though the divestment deal between the Government and Infinity BioEnergy fell through, the correspondence by emails between the former chairman and the company had committed the PCJ to purchase the shipment of ethanol.***

***The PCJ legal counsel further explained that advice was sought from the solicitor general, who reportedly argued that based on emails exchanged, the Government was obliged to take the shipment.***

*He said a second shipment from the company was rejected after it became clear that Infinity BioEnergy would no longer be able to purchase the local sugar factories.*

***Quizzed about the procurement process to acquire the shipment of ethanol, Dr Potopsingh told the committee that the PCJ had applied for a sole source through the Office of the Contractor General and this had been approved.***

***COST THE CHAIRMAN HIS JOB***



*Potopsingh said this was based on the fact that the country was in negotiations with Infinity BioEnergy...*

*“It is our understanding that it cost the chairman his job,” said Phillip Paulwell, opposition member of parliament and former energy minister.*

*Watson replied. “Yes, but we mitigated and stopped one of the shipments”...<sup>1</sup> (OCG’s Emphasis)*

The OCG notes that the aforementioned newspaper article suggested that Dr. Potopsingh had indicated that approval for the use of the Sole Source Procurement Methodology was obtained from the OCG. **(The OCG advises that this particular approval falls within the remit of the National Contracts Commission (NCC) and is not a function of the OCG. In this regard approval was actually sought from the NCC and not the OCG.)**

The OCG received a letter from Mrs. Heather E. Cooke, Clerk to the Houses of Parliament (Gordon House), which was written on behalf of Dr. Wykeham McNeil, Chairman of the Public Administration and Appropriations Committee (PAAC), dated September 14, 2009. Attached to same was a copy of the Hansard which detailed the “...*deliberations by the Committee at its meeting on Wednesday, September 9, 2009...*” and which bore even date. The following represents extracts from the referenced Hansard:

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<sup>1</sup> Gleaner article which was dated September 13, 2009, and which was entitled “*Eyebrows raised over questionable ethanol purchases*”



*“Mrs. Potopsingh: The fact is that the agreement between the Government at the time and Infinity Bio Energy was that they were going to be bringing in finished product.*

*Mr. Paulwell: This wasn't in the Heads of Agreement. My understanding of the relationship that was being pursued was that Bio Infinity was to take over the Petrojam Ethanol Refinery to use the raw material from the sugar cane industry, which would be presented to the refinery as wet ethanol, and that refinery would process it to give you the finished product; not for Bio Infinity to take its products from Brazil to Jamaica.*

*Mrs. Potopsingh: You are correct but concerning the E10 project, that was the agreement, the Government's E10 project that it would be finished product that would be brought in...*



*Mr. Vernon:*

*...The Heads of Agreement did in fact speak to, that's with Bio Infinity, local feedstock, but it was anticipated and acknowledged that it would have taken some time before you would be able to produce local feedstock. So there was in the Heads of Agreement a time frame within which certain products could have been imported.*

*Mr. Paulwell:*

*Yes, but so too the Government could have acknowledged at the time that there were other producers of ethanol, Jamaica Broilers is there, you have the Rockfort plant in my own constituency, that could have in the short term, they are producers; they are taking the raw material and drying it. And I would think that you would prefer if you are giving a price differential you would give it to a Jamaican company and you would purchase the finished*



*product here rather than importing it from Brazil.*

*Mr. Vernon: As you pointed out, it was against the way we anticipated that the transaction would have gone, and it had certain consequences...*

*Mrs. Potopsingh: Chair, just for correction. I think I said 5,000 gallons, but it was 5,000 cubic meters.*

*Chairman: How do you translate that, because you were giving us a price per gallon.*

*Mrs. Potopsingh: For the number of gallons 1,385.2 gallons.*

*Chairman: So you are looking at about five million gallons or more.*

*Mrs. Potopsingh: Sorry, sir. It's 5,200 cubic meter that would convert to 1,385,224 gallons....*



*Mr. Paulwell: And the differential there was about 15 cents.*

*Mrs. Potopsingh: Seventeen.*

*Mr. Paulwell: That is a significant amount of money.*

*Mrs. Potopsingh: Fourteen cents, sir.*

*Mr. Paulwell: US cents.*

*Mrs. Potopsingh: Yes.*

*Mr. Paulwell: That's a significant...*

*Dr. Guy: My brief question was: Was the Petrojam Ethanol Plant facility up and running at the time that we purchased the quantum of finished product from Bio Infinity?*

*Mrs. Potopsingh: I don't believe so.*

*Chairman: ...This negotiation, I think the reason why all of this has come about is because there were*



*huge losses last year, we were trying to break down the areas in which those losses were incurred. But in terms of that shipment, what was the method of procurement,...-how do you normally procure your ethanol? Is there a process that you go through to get it to ensure what the best price is; and in this case where we actually did not get the best price, what was the method used then, and have you had any queries from the Contractor General about that?*

*Mrs. Potopsingh: We had applied for sole source and we did get the grant.*

*Chairman: Based on, applied for sole source based on...?*

*Mrs. Potopsingh: I believe it was based on the fact that we were in negotiations with Bio Infinity and in keeping with Heads of Agreement, I believe so.*



*Mr. Paulwell: So you are saying that you had gotten special dispensation from the Contractor General's [sic] office to do this.*

*Mrs. Potopsingh: Sole source, yes.*

*Mr. Paulwell: Having regard to what was happening internationally and that we could access ethanol on the world market.*

*Mrs. Potopsingh: As I said when the contract was made that was the price at the time.*

*Chairman: Those documentation what we would do is – based on what has come out in this meeting we will ask the Clerk to contact the Contractor General and see whether we can see how the process- if we can verify the process and just check how it was done on that occasion, because obviously, significant losses were incurred at the time.*



*So we will ask them to re-look at the process.*

*Mr. Vernon:*

*If I may offer one final bit of clarity. At the time of the negotiations with Bio Infinity, whilst that was proceeding, it was felt that we would have closed the negotiations with Bio Infinity, that's the Heads of Agreement, the divestment, before we had need for any shipment; so that we were obliged – if we had closed we would have been obliged to take from Bio Infinity. So on that basis the Chair, the then Chair of Petrojam was- PCJ, sorry was in discussion with Bio Infinity as to the price, the quantity and other issues that we would take the shipment at, bearing in mind by then we would have concluded the divestment to Bio Infinity. However, and I will say it, unfortunately a series of emails were exchanged between the*



then Chair and Bio Infinity  
which then gave rise to an  
obligation to take. So even  
though the deal fell down there  
was this obligation, which the  
Solicitor General and all  
agreed, that based on the e-  
mails exchanged, the  
Government was obliged to  
take. So that's why I say we  
took the first shipment under  
obligation. By the time it  
became clear that Agreement  
would not have been  
consummated we were able to  
advise them that no agreement  
will be consummated, so the  
second shipment would not  
be....

Chairman:

But even more so, there is a  
need to look into this matter.  
From what you have said every  
Ministry has accounting  
officers and each agency also  
has its accounting officers who  
are the ones who- the  
technocrats are supposed to be



*the ones doing the negotiation and getting the best prices for the people of Jamaica. In this case we have a situation where we clearly did not get the best price, for whatever reasons, and what is being pointed out to us is that the process was hijacked-maybe that's a strong word but not far from. And the fact of the matter is – and that a series of e-mails may have committed the country and out of this the country has incurred some huge losses. So if that is the case even more so there is a reason for us to look into the matter. And as I said before, we are going to ask the Clerk to just communicate with the Contractor General to re-look at that transaction...*<sup>2</sup> (OCG Emphasis)

The OCG, by way of a letter which was dated September 14, 2009, informed Dr. Wykeham McNeil, Chairman of the PAAC, of its decision to launch a formal investigation into the subject

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<sup>2</sup> Extracts from the Hansard of the Houses of Parliament Public Administration and Appropriations Committee Meeting, which was held on September 9, 2009.



matter, in light of (a) the newspaper article of September 13, 2009, (b) the extracts from the referenced Hansard of the Parliament of Jamaica, dated September 9, 2009, (c) the review of official documentation and correspondence which were received from Dr. Jean Dixon, former Permanent Secretary in the then Ministry of Energy, and (d) the review of the formal written representations which were made by certain GoJ Officials to the NCC regarding the said matters.

The September 14, 2009 letter was also copied to Mr. James Robertson, the former Minister of Energy and Mining (MEM), Mr. Clive Mullings, former Minister of Energy, Mrs. Hillary Alexander, Permanent Secretary in the MEM, Dr. Jean Dixon, the then Permanent Secretary in the Ministry of Energy, Mr. Ian Moore, the former Chairman of the PCJ, Dr. Ruth Potopsingh, the then Group Managing Director of the PCJ, and the Hon. Shirley Tyndall, the former Chairman of the NCC.

The information that was contained in the above referenced documents, alluded, *inter alia*, to (a) a lack of transparency; (b) a lack of fairness; (c) a breach of the applicable GoJ Public Sector Procurement Procedures; (d) mismanagement; and (e) a breach of the applicable Public Service administrative and accounting procedures.

These allegations and inferences, amongst others, raised several concerns for the OCG, especially in light of the perceived absence of adherence to the Government contract award principles which are enshrined in Section 4 (1) of the Contractor General Act.

Additionally, the OCG was guided by the recognition of the very important responsibilities which are imposed upon Public Officials and Officers by, *inter alia*, the Contractor General Act, the GoJ Procurement Procedures, the Financial Administration and Audit Act (FAA Act), the Public Bodies Management and Accountability Act (PBMA), as well as the Corruption Prevention Act.



Overview of the events which led to the OCG's Preliminary Enquiry into the Matter

Prior to the initiation of an investigation into the subject matter, the OCG, during its routine monitoring operation, conducted a Preliminary Enquiry, pursuant to Section 4 of the Contractor General Act, into, *inter alia*, (a) the procurement process(es) which was/were employed by the then Ministry of Energy, for the E10 project, which commenced on November 1, 2008; and (b) the dismissal of Mr. Ian Moore, former Chairman of the PCJ Board of Directors, and the circumstances surrounding same.

It is to be noted that the referenced Enquiry was prompted by several media reports which revealed that the services of Mr. Ian Moore, the former Chairman of the PCJ Board of Directors, was terminated by the then Minister of Energy, Mr. Clive Mullings.

Upon review of several media reports, it was alleged that Mr. Moore's dismissal was as a result of the purchase of the two (2) shipments of Ethanol from Infinity Bio-Energy Limited, without the Board of Directors' approval.

By way of an article that was published in the Jamaica Gleaner on November 12, 2008, which was entitled "***PCJ board chairman fired***", the following, *inter alia*, was reported:

***"The chairman of the Petroleum Corporation of Jamaica (PCJ), Ian Moore, has become the latest official to be fired since the Bruce Golding administration took office..."***

*Moore...was fired by Energy Minister Clive Mullings one year after being appointed to head the 10-member PCJ board.*



### ***Refused to provide reasons***

*Yesterday, Mullings refused to provide information on the reasons for his decision, but promised that the details would be released following a board meeting this afternoon.*

*"I can't speak about it today because I haven't spoken to the members of the board about it yet, as at least two of the members are off the island," Mullings told **The Gleaner**.*

*But the energy minister made it clear that he was less than satisfied with the performance of Moore.*

***"Whatever happens has to be consistent with one's responsibilities as a member of a board. It is a question of how you discharge your responsibilities and under the Public Bodies Act, there are some things you have to do and you have to be consistent with that," Mullings added.***

*However, he scoffed at claims that there was acrimony between him and Moore.*



*"That is not how I operate and any claim that my decision was based on personal issues is rubbish," the energy minister said.*

### ***Not on speaking terms***

*Mullings was responding to Opposition Spokesman on Energy, Phillip Paulwell, who claimed that the minister and the former chairman were not on speaking terms.*

*"It has been known in industry circles that Mr Mullings did not enjoy the best of relationships with Mr Moore," Paulwell said, as he queried whether this led to Moore's firing.*

*Efforts to reach Moore for a comment were unsuccessful, but he has received the backing of at least one board member.*

### ***Surprise, disappointment***

*The board member who asked not to be named expressed surprise and disappointment at the minister's decision.*



*"He (Moore) has really been putting his all into it and treating it like a full-time job. It is very unfair to him," the board member said.*

*But other sources close to the PCJ claimed that Moore's very intimate involvement could have influenced the minister's decision.*

***According to the sources, Moore was operating like an executive chairman although he was appointed to perform in a non-executive role.*** (OCG Emphasis)

*This is believed to have ruffled feathers at the PCJ and the energy ministry with persons expressing concern about his mode of operation.*"<sup>3</sup>

In a second article that was published in the Sunday Herald, which was captioned "***Mullings caught in sour sugar deal***", dated November 16, 2008, it was reported, *inter alia*, as follows:

***"It appears the energy minister Clive Mullings' decision to fire chairman of the Petroleum Corporation of Jamaica (PCJ) Ian Moore for overstepping his authority could be sacrificed as a fall guy if the Infiniti [sic] Sugar deal turns sour.***

***Moore, the Sunday Herald understands, bought two shipments of corn based-ethanol from infiniti [sic]***

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<sup>3</sup>Jamaica Gleaner article which was published on November 12, 2008 and which was entitled article "***PCJ board chairman fired***".



**Bio Energy Limited at above market prices without the board's consent.**

**This is contrary to the heads of agreement to purchase the sugar factories, which stipulates that Infiniti [sic] should sell Jamaica the fuel at 65 per cent of the ex- refinery price.**

**Sources say the cost of the first shipment was lower than the second shipment used to produce the E10 petrol although the price of the commodity fell in the global commodities market. This could impact on the price of the fuel seen as part of government's energy policy cheaper and cleaner petrol to the market.**

Reports from Friday's meeting between Infiniti [sic] and the Development Bank of Jamaica officials are that the company is insisting to purchase all the ethanol instead of the joint venture company, as was stated in the heads of agreement. If they are able [sic] convince government, it would mean a loss of 25 per cent revenue to the government.

*Denied purchase*

*The Sunday Herald learnt that Moore, who is a close ally of Prime Minister Bruce Golding, denied that he made the purchase when asked by the minister and*



*gave the impression that the purchase was made by the director in charge of the E10 rollout.*

*Minister Mullings, according to sources, objected to and threatened to dishonor the deal, as the more expensive corn-based ethanol would cost taxpayers more, and it breached the heads of agreement. But Infiniti [sic] threatened to sue the PCJ and insisted that the former chairman gave them a commitment.*

*Sunday Herald sources also pointed out that **Infiniti [sic] contended that heads of agreement did not apply in this context because it was a one-off deal and although Mullings countered saying that if this was so, it would have been better if the PCJ bought the fuel from JB Ethanol Limited. But Infiniti [sic] would not relent.** (OCG Emphasis)*

*It was not clear if Moore's dismissal impacted on negotiations, but sources say that some members of the Jamaica Labour Party (JLP) administration are hopping mad with the minister because of his decision to fire the chairman, said to be one of its most powerful financial backers. And party insiders say, Mullings could be sacrificed as a fall guy if the sugar deal turns sour.*

*Pauwell's call*



*Efforts to contact the minister were futile but opposition spokesman on energy, Phillip Paulwell is calling on the minister and the government to say whether there is a connection between the firing of Moore and the price and kind of ethanol used at the E10 launch. Paulwell also wants to know how much it would cost the taxpayer to keep the price of E10 at \$2 below the price of 87-octane fuel.*

*The opposition spokesman on energy is also raising questions about the lack of transparency surrounding the divestment of Petrojam Ethanol and the country's sugar assets to Infiniti [sic], whose stock fell by 92 per cent during the last year to 40 pence on the London Stock Exchange (LSE) because of its limited and poor earnings track record.”<sup>4</sup>*

Having regard to the foregoing media articles, it was also suggested, *inter alia*, that Mr. Ian Moore, former Chairman, PCJ, was not performing in accordance with his responsibilities as a ‘non-executive member’ of the PCJ Board of Directors and pursuant to the “*Public Bodies Act*”. Further, it was reported that Mr. Moore was the Public Officer who was responsible for committing the GoJ to the purchase of two (2) shipments of Ethanol from Infinity Bio-Energy, without the consent of the PCJ Board of Directors, and which was indicated as being above market prices.

Having regard to the foregoing allegations a decision was taken by the OCG to undertake a Preliminary Enquiry into the matter. The Findings of this Preliminary Enquiry was one of the factors which lead to the OCG to the launch a full-fledged Investigation into the matter.

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<sup>4</sup> Sunday Herald article which was entitled “*Mullings caught in sour sugar deal*” and which was dated November 16, 2008.



## **TERMS OF REFERENCE**

The primary objective of the OCG's investigation is to determine, *inter alia*, the following:

1. The particulars of the contract award activities of the PCJ and any other Agency of Government, in particular, the awarding of contracts for the supply of Ethanol to the entities, Infinity Bio-Energy and JB Ethanol, and whether the circumstances which surrounded the award of such contracts, to the referenced entities, complied, *inter alia*, with the following:
  - a. The Contractor General Act, 1983, and, in particular, whether the award of the contracts were impartial, based upon merit and were premised upon circumstances which did not involve impropriety and/or irregularity;
  - b. The applicable Government of Jamaica Public Sector Procurement Procedures;
  - c. The Financial Administration and Audit Act;
  - d. The Public Bodies Management and Accountability Act; and
  - e. The Corruption Prevention Act.
2. To determine whether the alleged confirmations by way of email correspondence between Mr. Ian Moore, former Chairman of the PCJ Board of Directors and the entity, Infinity Bio-Energy, had committed the GoJ, through the PCJ, to award contract(s) and, in particular, the shipment(s) of Ethanol for the E10 Programme.
3. To determine the connection between the award of contract(s) by the PCJ to Infinity Bio-Energy and those which were awarded by the Petrojam Ethanol Limited (PEL) to JB Ethanol, in relation to the divestment of the sugar assets.



### *Specific Objectives*

1. To identify the procurement process and/or any other process which was employed by the respective Agency(ies) of Government in the award of the referenced contracts to Infinity Bio-Energy and/or JB Ethanol;
2. To ascertain the extent of Mr. Ian Moore's involvement in and/or association with the facilitation, recommendation and/or award of any GoJ contract to Infinity Bio-Energy and/or JB Ethanol;
3. To ascertain the extent, if any, of the involvement of any other Public Officers/Officials of the PCJ/MEM and/or any other Government Agency, in informing and/or influencing the recommendation for and/or approval of the award of contract(s) to Infinity Bio-Energy and JB Ethanol;
4. To determine whether the process(es) which led to the award of contract(s) to Infinity Bio-Energy and JB Ethanol were fair, impartial, transparent and devoid of irregularity or impropriety; and
5. To determine whether there was any evidence of a conflict of interest on the part of any GoJ Public Official/Officer in the purchase of Ethanol by the PCJ.



## **JURISDICTION**

The OCG relied on the provisions of Section 2 of the Contractor General Act, which provides, *inter alia*, as follows:

*“government contract” includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods and services;*

*“public body” means-*

- (a) Ministry, department or agency of government*
- (b) A statutory body or authority;*
- (c) Any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy the company.*

Consequent upon same, the OCG’s powers to monitor and investigate the award of Government contracts by the then Ministry of Energy, which later became the Ministry of Mining and Energy, and is now the Ministry of Science Technology Energy and Mining, are further provided under Sections 4, 15 and 16 of the Contractor Act, which states, *inter alia*, as follows:

*“Subject to the provisions of this Act, it shall be the function of a Contractor-General, on behalf of Parliament --*



- a. *to monitor the award and the implementation of government contracts with a view to ensuring that*
- 
- i. *such contracts are awarded impartially and on merit; the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity;*
- ii. *without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof..”*

Section 15 (1) of the Act provides that

*“... a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters –*

*(a) the registration of contractors;*

*(b) tender procedures relating to contracts awarded by public bodies;*

*(c) the award of any government contract;*

*(d) the implementation of the terms of any government contract;*

*(e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*

*(f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.*



Section 16 of the Contractor General Act expressly provides that “*An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted*”.

Additionally, the OCG was guided by the expressed provisions which are contained in Section 21 of the Contractor General Act. Section 21 specifically mandates that a Contractor General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, evidence of a breach of duty, misconduct or criminal offence on the part of an officer or member of a Public Body and, if so, to refer same to the competent authority to take such disciplinary or other proceedings as may be appropriate against that officer or member.

The OCG notes that based upon the fact that the PCJ Board acts on behalf of and in the interest of the PCJ, in terms of the its approval of certain GoJ contracts, they also fall within the remit of the OCG’s investigation.



## **METHODOLOGY**

1. The OCG, in the conduct of its investigation, requisitioned several Public Officials/Officers, former and present.

Prior to the launch of its investigation, a preliminary Requisition/Questionnaire, which was dated December 8, 2008, was sent by the OCG, to Dr. Jean Dixon, former Permanent Secretary in the PCJ, regarding the procurement of Ethanol by the PCJ for the production of E10 Fuel. The information received informed the OCG's Preliminary Enquiry.

2. A formal investigation was launched and additional Requisitions/Questionnaires were directed to Mrs. Hillary Alexander, Permanent Secretary in the MEM, Mr. Ian Moore, former Chairman of the PCJ, dated September 24, 2009, respectively, amongst other relevant Public Officials/Officers, former and present.

In particular, Requisitions/Questionnaires were directed by the OCG to the following Public Officers/Officials:

1. The following Public Officials were required to provide written responses to formal Requisitions which were directed to them by the OCG:
  - a. Mr. Clive Mullings, former Minister of Energy;
  - b. Dr. Ruth Potopsingh, former Group Managing Director, PCJ;
  - c. Mrs. Hillary Alexander, Permanent Secretary, MEM;
  - d. Mr. Ricardo Neins, General Manager, PEL; and
  - e. Mr. Ian Moore, former Chairman of Board, PCJ.



2. A Follow-up Requisition/Questionnaire, requesting clarification on certain issues, was directed by the OCG to the following persons:

- a. Mr. Ricardo Neins, General Manager, PEL; and
- b. Dr. Ruth Potopsingh, former Group Managing Director, PCJ.

The Findings of the OCG's investigation are based upon an analysis of the statements and the documents which were provided by the respondents who were requisitioned herein.



## **FINDINGS OF FACT**

### *The Genesis of the Agreement for the Interim Supply of Ethanol for the E10 Programme*

1. A Heads of Agreement (HOA) was signed on June 27, 2008, between the GoJ and Infinity Bio-Energy. The HOA contained a condition under Clause 3.1(h)(iii), which stipulated the “*signing a five (5) year Off-Take Agreement with Newco, by which the GOJ agrees to accept from Newco, hundred per cent (100%) of the fuel ethanol required to fulfil the mandatory mix in Clause 3.1(h)(iv) at a price of 65% of the gasoline price sold ex-refinery.*”<sup>5</sup> Newco was to be owned 75% by Infinity Bio-Energy and 25% by the GoJ. Pursuant to Clause 3.1(h)(iii), it was agreed that Infinity Bio-Energy would supply the required Ethanol at 65% of the ex-refinery price of gasoline.

The HOA also included the acquisition of the assets of Petrojam Ethanol Limited (PEL) by Infinity Bio-Energy and the termination of a Joint Venture Agreement with PEL and COIMEX, as a condition precedent pursuant to Clause 4.1(b)(v). The HOA provided that the completion of the divestment of the sugar industry assets to Infinity Bio-Energy should be completed by September 30, 2008. If this was finalized as scheduled, the supply of Ethanol would have been from Newco for the launch of the E10 Programme.

2. There were, however, delays in the implementation agreements, in particular, the Off-take Agreement, which emerged from the HOA and, as such, the divestment was delayed to December 31, 2008. In the interim, supplies of Ethanol were needed to facilitate the Roll-Out of the E10 Programme, which the GoJ intended to introduce on November 1, 2008. In this regard, discussions were held by the Sugar Cane Industry Privatisation Implementation Team (SIT) regarding the source of the Ethanol for the E10 Programme.

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<sup>5</sup> Response from Mr. Ian Moore, former Chairman of the PCJ Board, which was dated October 22, 2009.



*The Award of Contract to Infinity Bio-Energy for the Supply of Ethanol*

3. On October 2, 2008, the SIT, in a meeting, which also included representatives from Infinity Bio-Energy, had discussions regarding the purchase of Ethanol for the E10 Programme. It was decided that the Ethanol would be purchased from Infinity Bio-Energy and it was indicated by Infinity that they would need a confirmation by October 3, 2008 to guarantee that the Ethanol would be delivered between October 15 and 29, 2008. It was indicated that Infinity Bio-Energy would supply 10,000 cubic meters which would be split into two (2) shipments. In the meeting, Mr. Sergio Thompson-Flores of Infinity Bio-Energy advised that he would forward the draft agreement/contract which highlighted the terms that were discussed with Mr. Ian Moore, the former Board Chairman of the PCJ.
4. On October 3, 2008, Mr. Moore received an email from Infinity Bio-Energy with a draft agreement/contract. Mr. Ian Moore having received this email replied to same and agreed to the terms outlined.
5. Mr. Moore, in his representations to the OCG, indicated that he “...was asked by the Minister, Hon. Clive Mullings M.P., to join the meetings held by the SIT to ensure that any delay in Divestment as a result of the PCJ or its subsidiaries should be resolved.”<sup>6</sup> However, the OCG’s Investigation does not reveal that Mr. Moore was ever asked to enter into negotiations, confirm or commit to the supply of Ethanol for the E10 Programme.
6. The October 3, 2008 emails between Infinity Bio-Energy and Mr. Ian Moore, were not found to have been forwarded to and/or brought to the attention of any other Public Official/Officer and/or any other representative of the SIT, for them to be scrutinized before the decision was made to accept the terms of the proposal made by Infinity Bio-Energy. In fact, at the meeting of October 2, 2008 it was indicated that Mr. Christopher Bovell was the Lawyer who would be involved in the process. Mr. Moore received the

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<sup>6</sup> Mr. Ian Moore’s response to the OCG’s Requisition which was dated October 22, 2009. (Response #1)



email with the draft agreement at 18:10 p.m. on October 3, 2008, and Mr. Moore accepted the terms of the said agreement twenty minutes later at 18:30 p.m. on October 3, 2008.

7. Prior to the referenced email, on October 3, 2008, at 5:46 p.m., Mr. William ‘Bill’ Saunders, the then Chairman of the E10 Roll-Out Team, sent an email to Mr. Sergio Thompson-Flores under the subject: ‘Ethanol Requirement’. In this email, it was found that Mr. Saunders advised that there was the requirement for 5000 cubic meters of Ethanol on or about October 24<sup>th</sup> 2008, for the initial roll-out of the E10 Programme. Further, Mr. Saunders confirmed a commitment to ensure that a formal Purchase Order would follow in due course.

The OCG notes that this email was also copied to Mr. Ian Moore, Mr. Aubyn Hill the Chairman of the SIT, Mr. Christopher Bovell representing the SIT from Dunn Cox, Mr. Winston Watson of the PCJ, Dr. Ruth Potopsingh, Former Group Managing Director, PCJ, Mr. Ricardo Neins Manager, PEL, Mr. Douglas Levermore, DBJ Secretariat, Ms. Stephanie Muir of the SIT, and Mr. Wilfred Bagaloo representing Infinity Bio-Energy from (PCW).

8. The discussions Mr. Ian Moore had with Infinity Bio-Energy, by way of the above stated email correspondence of October 3, 2008, led to the confirmation of one (1) shipment of Ethanol from Infinity Bio-Energy, without the ratification of the then PCJ Board of Directors.

*Au contraire*, it was during the deliberations of a Board Meeting which was held on October 17, 2008, in which Mr. Ian Moore advised Board members of the following:

- a. That Mr. William Saunders had “*triggered according to Infinity, a commitment...*” for the purchase of Ethanol, which he had agreed to but indicated that he questioned the need for the Letter of Credit.



- b. That he had come to realize that conversations with Infinity Bio-Energy were being taken as “Agreements”.
- c. That there was a fundamental difference with Infinity Bio-Energy concerning the price of ethanol and that this difference, as well as others required the involvement of the Board.
- d. That the major disagreement in pricing resulted from the Heads of Agreement which specified 65% of the ex-refinery price inclusive of tax. Mr. Moore indicated that he, as well as others, such as the General Manager of Petrojam, were of the view that the price did not include taxes. He noted that the divergent views regarding the price resulted in a difference in Purchase Orders for the Ethanol of approximately US\$400,000.00.

The OCG finds Mr. Moore’s assertion to be insincere and disingenuous, especially considering the fact that the email correspondences between Mr. Moore and Infinity Bio-Energy on October 3, 2008, were the only emails which could be considered an agreement or contract of a binding effect. In fact, it was indicated in the SIT on October 2, 2008, that the draft contract/agreement would have been sent to Mr. Moore by Infinity Bio-Energy.

The OCG wishes to note that the email with the draft agreement/contract, as well as the email that contained Mr. Moore’s confirmation of the proposed terms, were never copied or forwarded to any member of the PCJ, GOJ or the SIT.

More implicitly, based on Mr. Moore’s revelations in the referenced Board Meeting, he was cautioned not to participate in any further discussions with Infinity Bio-Energy, except through or with the SIT.

In fact, the Minutes indicated that *“A word of caution was extended by Director Dixon who said that both the Contractor General and the Auditor General would be watching this*



*transaction. She expressed the view that the interim supply should not be sole sourced from Infinity as the price would not be competitive. Both the SDT and Infinity should be advised of the procedure by which a supply of ethanol could be obtained by the PCJ, that is to say by the invitation of limited tenders. The Board agreed.”<sup>7</sup>*

9. In the Board Meeting of October 17, 2008, it was stated by Mr. Moore, in his then capacity as Chairman, that “...Infinity regarded the email by Director Saunders as a commitment and as a result he confirmed that PCJ was in the process of preparing a LC.” This supports the then Minister’s assertion that Mr. Moore had led the Board to believe that it was Mr. William Saunders who had confirmed the purchase from Infinity Bio-Energy.
10. Mr. William Saunders did in fact confirm the need for the Ethanol. However, Mr. Ian Moore was found to be solely involved in the negotiations with Infinity Bio-Energy and was the person who ultimately confirmed the terms and conditions for the supply of the Ethanol from Infinity Bio-Energy.
11. The escalated cost for the Ethanol was brought to the attention of the then PCJ Board, by way of a Memorandum, dated October 16, 2008, which was sent to Mr. Ian Moore from the then Group Financial Officer, Mr. Nigel Logan. The Memorandum, detailed, *inter alia*, the following:
  - *“The price quoted by Infinity Bio Energy is \$US650.00 per cubic metre. This is higher than the price included in the Heads of Agreement which states that the price should be 65% of the ex-refinery price. In their calculations regarding their pricing, Infinity advised that they used the*

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<sup>7</sup> Extract from the Minutes of the PCJ Board of Directors dated October 17, 2008.



*Net Fuel Cost which includes the SCT of \$7.356, as a comparison to determine their price. The company has agreed to accept a price which is 65% of the Net Fuel Cost (Ex-Refinery +SCT).*

- *A condition of the Letter of Credit will be that the initial payment will be the amount which represents 65% of the ex-refinery price while the remaining \$7.356 will be paid in three equal installments commencing in April 2009.”<sup>8</sup>*

It was based upon the foregoing that the October 17, 2008 Board Meeting was called, as the unexpected price difference needed to be approved by the Board. Mr. Logan was in the process of creating the Letter of Credit but required the Board’s approval for the noted difference in price.

12. The Board Meeting Minutes of October 17, 2008 revealed that the then PCJ Board of Directors did not approve any recommendation or decision to purchase the ‘one-off’ shipment of Ethanol from Infinity Bio-Energy and was never involved in the negotiation with Infinity Bio-Energy.

In point of fact, the Board Minutes of November 24, 2008 reported that certain members had no knowledge of the events which led to the decision to purchase Ethanol from Infinity Bio-Energy. It is to be noted, however, that the said Minutes also reported that “...*the matter was brought to the Board. However, some members of the Board were not aware...as they were unable to attend the Special Board Meeting held on October 17, 2008 to discuss same.*” Notably, however, the OCG has not seen any evidence to indicate that

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<sup>8</sup> Memorandum dated October 16, 2008, from The Group Chief Financial Officer Mr. Nigel Logan Mr. Ian Moore, and copied to the Chairman, PCJ Finance Committee and the Group Managing Director,



the Board members were involved in the process prior to the October 3, 2008 confirmation by Mr. Ian Moore, apart from Mr. Williams Saunders' email of October 3, 2008, which was copied to some Board members.

In this regard, the commitment to purchase from Infinity Bio-Energy was communicated by Mr. Ian Moore and deliberated upon in the PCJ Board Meeting of October 17, 2008. However, these discussions would have occurred subsequent to the commitment which was already made by Mr. Ian Moore, by way of the emails of October 3, 2008. It is also important to reiterate that in the stated Board Meeting of October 17, 2008, Mr. Moore was advised to recuse himself from the process and not to participate in any further direct discussions with Infinity Bio-Energy except through the SIT.

13. The Board's position in the October 17, 2008 meeting was that the subject 'one-off' shipment could not be purchased from Infinity Bio-Energy in pursuance of the HOA, as completion of the HOA had not occurred.
14. An Opinion was sought from the then Solicitor General regarding whether there was in fact a contract between the GOJ and Infinity Bio-Energy for the purchase of Ethanol.

The Opinion from the Solicitor General stated that there was a contractual agreement between Infinity Bio-Energy and the GoJ. It was opined that the parties discussed the arrangements and agreed on the terms of the transaction on October 3, 2008. It was also revealed that on October 21, 2008, by way of an email correspondence from Mr. Eric Fonseca of Infinity Bio- Energy to Mr. Ian Moore, Mr. Fonseca confirmed a proposal put forward by Mr. Moore. The OCG, upon reviewing the email correspondence found that Mr. Fonseca made mention of the October 3<sup>rd</sup> confirmation by Mr. Ian Moore and indicated that same was still in place and that *"...all obligations, conditions and price must be performed as agreed before by both parties until the above proposal is confirmed by you and*



*reconfirmed by us and it is contingent on the terms for both shipments being confirmed.”<sup>9</sup>*

The OCG found that Mr. Ian Moore re-confirmed on October 22, 2008.

The Opinion of the Solicitor General also outlined that the emails which were sent by Mr. Ian Moore represented a ‘commitment’ to purchase the Ethanol from Infinity Bio-Energy. The stated email of October 21, 2008 outlined, *inter alia*, a Letter of Credit in the proposed amount of US\$3.2M. The OCG found that an email of October 30, 2008 enclosed the Letter of Credit which detailed all the material terms for the issue of same.

The Solicitor General opined that the agreement for the second shipment of Ethanol from Infinity Bio-Energy was not completed as the delivery price was to be stipulated in the Off-take Agreement which had not materialized. Therefore, the Government was not obliged to take the second shipment. In the premise, only one (1) shipment of Ethanol was purchased from Infinity Bio-Energy.

15. Notwithstanding, and although the negotiated price was not considered to be the most competitive, Mr. Moore was of the opinion that the PCJ was able “...*to reduce the price they were claiming to US\$609.53 for the first shipment and US\$628.58 per c.m. for the second shipment. This was better than the floor of US\$650.00 per c.m. that Infinity tried to introduce.*”

Mr. Moore’s assertion that the PCJ was able reduce the price was in fact correct, the Memorandum of October 16, 2008 from Mr. Nigel Logan indicated that the price quoted by Infinity Bio-Energy was \$650.00 per cubic metre, however the price which was paid for the ethanol on January 6, 2009 was US\$609.53 per cubic metre. The OCG however notes that the cost for the ethanol was above the market as was revealed by Dr. Ruth Potopsingh at the Meeting of the PAAC on September 2009.

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<sup>9</sup> Email correspondence from Mr. Eric Fonseca to Mr. Ian Moore and copied to Mr. Sergio Thompson-Flores, dated October 21, 2008.



16. The procurement procedures were not employed. In point of fact, Mr. Moore advised the OCG that there was no reference to the Government of Jamaica Handbook of Public Sector Procurement Procedures (GPPH) because his understanding was that “...*this was not necessary as the SIT and PCJ were implementing the HOA which had been approved by Cabinet and signed by the Prime Minister.*”<sup>10</sup>
17. Mr. Ian Moore, as Chairman of the PCJ Board of Directors, acted outside of his remit and without the collective responsibility of the Board. In point of fact, the then Minister advised the OCG that at no time did Mr. Moore “...*advise anyone that it was he who confirmed the purchase of not one, but two shipments while at the same time leading all concerned, including the Board, to believe that it was Director Saunders who confirmed the purchase.*” Further, the then Minister advised that Mr. Moore “*had no authority to negotiate and conclude agreements.*”<sup>11</sup>
18. The then Prime Minister, the Hon. Bruce Golding, by way of a Special Meeting on October 29, 2008 with key Government stakeholders, addressed (a) the supply of Ethanol and (b) the status of the sugar divestment negotiations. In the said meeting, the Prime Minister gave a directive for the PCJ to undertake the purchase of Ethanol from Infinity Bio-Energy subject to the condition that it was “...*a one-off arrangement without prejudice to the Heads of Agreement or Off take Agreement, that the differential price shall not exceed US\$200,000.00 and that the minimum quantity to be purchased not be less than 5000m3.*”<sup>12</sup>

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<sup>10</sup> Response from Mr. Moore, former Chairman of the PCJ Board of Directors, to OCG’s Requisition, which was dated October 22, 2009. Response #13

<sup>11</sup> Response from Mr. Clive Mullings, then Minister, Ministry of Energy, dated October 18, 2009. Response #5

<sup>12</sup> Letter from Mr. Douglas Saunders to Dr. Ruth Potopsingh, former PCJ Grouping Managing Director, which was dated October 31, 2008, and which was copied to the Hon. Bruce Golding, then Prime Minister, Mr. Clive Mullings, the former Minister of Energy, and Mr. Ian Moore, former PCJ Board Chairman.



19. The then Prime Minister also instructed the PCJ to open a Letter of Credit as committed for the single shipment of Ethanol from Infinity Bio-Energy. This approval was subject to the 'commitment for purchase' which was to be confirmed by the then Solicitor General.

The Application for the Letter of Credit was communicated by Mr. Nigel Logan, then Chief Financial Officer, PCJ, to Mr. Eric Fonseca of Infinity Bio-Energy, on October 30, 2008. Same included the material terms and cost of US\$3.2M.

20. The Ministry of Energy, based on a recommendation from the PEL, sought the endorsement of the NCC to utilize the Sole Source Procurement Methodology to contract the services of Infinity Bio-Energy to supply 15,000 cubic metres of Hydrous Ethanol on November 24, 2008. This proposed procurement had received endorsement from the NCC, under cover of letter dated December 4, 2008. There is no evidence to suggest that this procurement was materialized.

The OCG, however, notes that only 5,250 cubic meters of Ethanol was eventually taken from Infinity Bio-Energy.

21. PEL had no direct involvement in the procurement of Ethanol from Infinity Bio-Energy, except in the provision of expertise to the PCJ on quality, shipping arrangements and storage options. Storage was also provided by PEL.
22. The cost of the Ethanol was US\$609.53 per cubic metre, as was noted by Mr. Moore, and the shipment was received on December 31, 2008. The payment was made on January 6, 2009, and the names of the persons who authorized payment were Dr. Ruth Potopsingh and Miss Wahkeen Murray, Acting Corporate Secretary.



23. Further to the US\$3.2M which was agreed to be paid to Infinity Bio-Energy, an additional cost of US\$35,311.25 was incurred by the GoJ in the form of fees, outside of the direct cost. This cost was found to be associated with acquiring the shipment/supply of Ethanol.
24. The OCG has seen no evidence of an approval received from the PCJ Procurement Committee. This was further confirmed by Mrs. Hillary Alexander who indicated to the OCG that she had not been in receipt of any recommendation or otherwise from the PCJ Procurement Committee in regard to the contracts awarded to JB Ethanol and/or Infinity Bio-Energy.
25. That Mr. Mullings intervened, in his capacity as the then Minister of Energy, on the basis that he was “...alarmed at the expensive nature of the purchase from Infinity.” The former Minister indicated that being advised of the preparation of a Letter of Credit, he found that the purchase of Ethanol was over and above what could be procured from other sources at least by half a million US dollars.
26. Mr. Ian Moore confirmed that he was “...directly involved in negotiations with Infinity for the supply of the 10,000 c.m. to the GOJ for the E10 program.” He, however, indicated that this was because the SIT had requested the PCJ to execute the commitment made by the GOJ in the HOA. He stated that because the divestment process was not complete Infinity Bio-Energy was used to supply the Ethanol.
27. **The OCG found that Mr. Moore, having committed the GoJ to the purchase of Ethanol from Infinity Bio-Energy, which was above market rates, had proposed and made attempts to implement deferring full payment of the escalated cost for the Ethanol until the use of the E-10 fuel became mandatory. This in effect, based on the information contained in an email dated October 15, 2008 from Mr. Ian Moore to**



**Mr. Aubyn Hill, would have effectively concealed the true price of the Ethanol from the Jamaican consumer with a view of recovering the total cost over the three (3) month period when movement in prices would be less easily detected.** (OCG Emphasis)

28. It was Mr. Glenford Watson, then Legal Officer, PCJ, who had brought to the attention of Mr. Clive Mullings, Mr. William Saunders, the then Solicitor General, amongst others, the issue of the escalated cost for the Ethanol which was to be purchased from Infinity Bio-Energy.

The OCG noted that this took place before Mr. Moore informed the Board, in its Meeting of October 17, 2008, that “...an email was sent to Infinity by Director Saunders that triggered, according to Infinity, a commitment for the product. He further advised that he sent a subsequent email agreeing that the ethanol was required but questioning the need for a Letter of Credit (LC).”<sup>13</sup>

29. Due to Mr. Moore’s involvement in the commitment of the Ethanol from Infinity Bio-Energy to the GOJ, he was terminated from his position as Chairman of the PCJ’s Board by the Mr. Clive Mullings, the then Minister of Energy, by way of a letter dated November 10, 2008.

In this letter, Mr. Mullings advised that your “...position is that of a non-executive Chairman and does not allow for the daily involvement in the affairs of the PCJ in the capacity of an executive officer. The functions are, in main, restricted to the chairing of Board of Directors as the members go about their task of giving directions to the PCJ in accordance with the policies of the Government.

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<sup>13</sup> Meeting of the PCJ Board of Directors dated October 17, 2008.



*Unfortunately you have consistently ignored this advice and, most recently, you have entered into contractual relations on behalf of the PCJ without any authority or permission to do so. Arising from the said transaction the PCJ is now committed to contractual terms which are less than favourable to its interest.*

*..I am no longer confident of your ability to effectively serve as the Chairman of the PCJ and consider it necessary to terminate your appointment as Chairman and member of the PCJ Board of Directors pursuant to Clause 7 of the Schedule to Petroleum Act...”*

*The Award of Contracts to JB Ethanol for the Supply of Ethanol*

30. Five (5) contracts were awarded to JB Ethanol for the supply of Undenatured Anhydrous Fermentation Fuel Ethanol. This total amount of Ethanol supplied to PEL was 6433 cubic meters.

31. The Limited Tender Procurement Methodology was utilized by PEL for the purchase of the ‘interim supplies’. The methodology was approved by the NCC on November 6, 2008, to invite four (4) companies to submit quotations for the supply of the required Ethanol for the production of E10 gasoline.

However, as a result of cost, and in an effort to avoid delays, amongst other things, the PEL decided to tender for interim supplies from only local suppliers. The OCG found that only two (2) suppliers were invited to submit a tender, namely: JB Ethanol and Jamaica Ethanol Processing Company Limited (JEPCO).

32. The contract(s) which were awarded to JB Ethanol, were considered to be procurement of items on the commodities market. In the premise, they were exempted from the procurement procedures, pursuant to Section S-1000 of the GPPH November 2008.



Notwithstanding, the PEL sought permission, through the then Ministry of Energy, on October 21, 2008, to utilize the Limited Tender Procurement Methodology to invite companies to submit quotations for the supply of anhydrous ethanol for the production of E10 gasoline.

33. The NCC, by way of its letter dated November 6, 2008, stated that it considered the matter on October 22, 2008, and endorsed the request of the Ministry of Energy to invite the four (4) listed companies to submit quotations.
34. A Request for Quotation was only sent to two (2) local Suppliers, namely JB Ethanol and JEPCO. JB Ethanol was selected based on best price and availability.

The decision to restrict the purchase to only local Suppliers was, among other things, on the basis that (a) relatively small volumes of Ethanol was required and (b) there was an absolute necessity to avoid any further delays due to shipment or any other factors. This was also compounded by the fact that the deadline for finalization of the agreements with Infinity Bio-Energy regarding the divestment of the GoJ assets, at time, was scheduled to be expired on January 31, 2009.

35. Due to the issues regarding the ‘one-off’ transaction with Infinity Bio-Energy, JB Ethanol supplied the first shipment of Ethanol for the E10 Programme. This was delivered on November 12, 2008. A shipment was also received on November 28, 2008.
36. The procurement of Ethanol by PEL was discontinued when the parcel purchased from Infinity Bio-Energy, by the PCJ, was delivered between December 31, 2008 and January 1 2009. The OCG found that the shipment of Ethanol from Infinity Bio-Energy lasted until April 2009. In the premise, PEL was again required to procure interim supplies.



37. JB Ethanol delivered a total of 6433 meter cubes of Ethanol to PEL on the following dates:

- November 12, 2008;
- November 28, 2008;
- December 19, 2009;
- April 9, 2009; and
- May 4, 2009.

38. The OCG found that steps were taken by PEL to ensure that the purchases of Ethanol from JB Ethanol were competitive and value for money was obtained.

39. The OCG notes that PEL commendably followed the Limited Tender Procurement procedures despite the fact that Section S-1000 of the GPPH (November, 2008), stipulated that Petrojam Limited is not subject to the procedures contained in the GPPH and that Petrojam's internal regime would apply to spot procurement of Petroleum Products.



## **OUTLINE OF BODY OF FACTS**

### **OCG's Preliminary Enquiry**

The OCG, by way of a letter which was dated December 8, 2008, addressed to Dr. Jean Dixon, in her then capacity as the Permanent Secretary in the Ministry of Energy, requested the following documentation regarding the procurement of E10 fuel by the PCJ:

*“An Executive Summary outlining:*

- I. How the referenced product was acquired and a statement outlining the basis of the agreement(s) for purchase, along with a copy(ies) of the document(s) or agreement(s) which forged the business arrangement(s);*
- II. The approval process;*
- III. The frequency of purchase;*
- IV. Procurement details: vendor, price, volume and specific description of each purchase;*
- V. The impact of each purchase on the ex-refinery price of E10 fuel; and*
- VI. The ex-refinery price of 87-Octane fuel for the comparative refinery period of E10 fuel...*

*Copies of all correspondence, approval letters/memoranda, Minutes of Board meetings where the issue was discussed and any other supporting documents substantiating references made in the*



*Executive Summary should be included in your response... ”<sup>14</sup>*

Dr. Jean Dixon, under the cover of a letter which was dated January 6, 2009, submitted her response to the foregoing questions posed along with supporting documentation inclusive of several email correspondence, which revealed, *inter alia*, the following:

1. The GoJ launched the E-10 – 87 (10% Ethanol, 90% gasoline) on November 1, 2008. The then Permanent Secretary advised that a Heads of Agreement (HOA) was entered into between the GoJ and Infinity Bio-Energy for the establishment of a Joint Venture Company (“NEWCO”) to own and operate certain sugar and Ethanol related assets and provided for NEWCO to supply the Ethanol required for the E-10 project, pursuant to an Off-take Agreement. The OCG was advised that arising from representations made by Infinity Bio-Energy, discussions were had with respect to amending the HOA to allow for Infinity Bio-Energy to be the supplier of the ethanol instead of NEWCO.
2. Subsequent to the signing of the HOA, a number of other related agreements were to be finalized including the Off-take Agreement. The OCG was advised that the Agreement was not finalized within the time-frame anticipated and pending same, Petrojam Ethanol Limited was requested to ensure the availability of ethanol supplies for the production of E-10 fuel.
3. Permission was sought by the then Permanent Secretary on October 21, 2008 and received from the NCC to utilize the Limited Tender Procurement Procedures to invite four (4) Suppliers to submit quotations to supply 3000 cubic meters of anhydrous ethanol. The OCG found that JB Ethanol was selected as the preferred Bidder to provide the required interim supplies.

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<sup>14</sup> Letter from the OCG to Dr. Jean Dixon, former Permanent Secretary, Ministry of Energy, Mining and Telecommunication, which was dated December 8, 2008.



4. The NCC considered the request, as outlined in No. 3 above, on October 22, 2008 and approved same on even date for the PCJ to invite the four (4) recommended Suppliers. However, the approval was found to have been communicated to the Ministry of Energy on November 6, 2008.
5. Mr. Ian Moore, former Board Chairman, was integral in the negotiations with Infinity Bio-Energy.
6. Email correspondence presented the ‘acceptance’ of a “Business Confirmation” between the former Chairman, Mr. Ian Moore, and Infinity Bio-Energy, on October 3, 2008. The OCG found that based on the said correspondence the then Prime Minister requested of the then Solicitor General to review same and provide an Opinion as to whether there is a binding agreement for the supply of the Ethanol and payment for same.
7. Email correspondence from Mr. Eric Fonseca of Infinity Bio-Energy to Mr. Ian Moore, dated October 3, 2008, highlighted the fact that an offer was made for the supply of two (2) parcels of 5000 cubic meters of Fuel Grade Ethanol (denatured anhydrous) at a price per the Off-take Agreement. It was proposed that the first parcel would arrive between October 21-31, 2008 and the second between January 15-30, 2009. This offer was found to have been accepted by Mr. Moore on the said date.
8. Mr. Glenford Watson, by way of an email dated October 16, 2008, to Mr. Clive Mullings, then Minister, Ms. Jean Dixon, then Permanent Secretary, Mr. Douglas Leys, former Solicitor General, et. al., stated certain concerns with respect to an email correspondence from Mr. Ian Moore to Mr. Aubyn Hill, dated October 15, 2008 captioned “*Ethanol Floor Price*”. Mr. Watson indicated that with respect to the proposal to (a) pay only \$3.1M on receipt of cargo and (b) defer the \$300,000 until April 1, 2009 after the ethanol mandate, he was of the opinion, *inter alia*, that “...*this deferred cost to consumers...*” and in addition he stated that



*“...to hide these costs from the consumers and, then, piled them on when the use of ethanol becomes mandatory cannot be a sound or prudent way for us to proceed. The likely backlash from consumers, when they realized that we were less than candid with them about the cost of the E-10 and the price they would be required to pay, is one of several reasons why we ought not to adopt this approach.”<sup>15</sup>*

9. That by way of an email correspondence dated October 28, 2008, from Mr. Ian Moore to Dr. Ruth Potopsingh and the PCJ Board, copied to Mrs. Patricia Sinclair-McCalla, former Permanent Secretary in the OPM, Mr. Moore advised, *inter alia*, that he had a conversation with the then Prime Minister on October 24, 2008 in which he was instructed to “...place the one off order of 10,000m<sup>3</sup> of Ethanol to be delivered in 2 shipments of 5,000 m<sup>3</sup> from Infinity Bio with no precedents for the off take agreement.”<sup>16</sup>
10. Further, by way of an email dated October 15, 2008, the OCG found that discussions were being held with Infinity Bio-Energy and representatives from the PCJ namely: Mr. William (Bill) Saunders, Dr. Ruth Potopsingh, Mr. Nigel Logan and Mr. Dwight Lewis with respect to (a) finalizing the orders, and (b) the Off-take Agreement, amongst other proposals/recommendations.
11. The Ministry was not aware of any approval being granted for the “Business Confirmation” or any direct approval from the purchasing of the ethanol from Infinity Bio-Energy.
12. That attempts by the former Chairman to have the PCJ issue a Letter of Credit, as a guarantee of payment for the Ethanol was objected to by the then Minister, Mr. Clive Mullings, and did not receive the approval of the Board.

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<sup>15</sup> Email dated October 16, 2008, from Mr. Glenford Watson to Mr. Clive Mullings, then Minister, Ms. Jean Dixon, then Permanent Secretary, Mr. Douglas Leys, former Solicitor General, et. al.,

<sup>16</sup> Email dated October 28, 2008, from Mr. Ian Moore to Dr. Ruth Potopsingh and the PCJ Board, copied to Mrs. Patricia Sinclair-McCalla, former Permanent Secretary in the OPM.



In light of the foregoing, it was deemed necessary to launch a full-fledge investigation into the process(es) which was/were employed by the PCJ and any other Government Agency, and the circumstances which surrounded the award of contract(s) to Infinity Bio-Energy Limited and JB Ethanol.

The OCG, during the conduct of its investigation, requisitioned several Public Officials/Officers, former and current, in the Ministry of Energy, the PCJ and the PEL, as it regards the subject award of contracts for the supply of Ethanol in 2008 into 2009.



## **Public Officers/Officials involved in the Procurement and/or Supply of Ethanol**

The OCG requisitioned Dr. Ruth Potopsingh, the former Group Managing Director, PCJ, Mr. Clive Mullings, the former Minister of Energy, Mrs. Hillary Alexander, Permanent Secretary in the former MEM, Mr. Ian Moore, former Chairman of the Board of Directors, PCJ, and Mr. Ricardo Neins, General Manager, PEL.

By way of the respective statutory Requisitions, which were dated September 24, 2009 and February 5, 2010, the following question was posed to the aforementioned Public Officers:

*“What is/was the extent of your official and/or personal involvement in the award of any contract to Infinity Bio-Energy and JB Ethanol for the production and/or supply of ethanol to the Government of Jamaica for use in the production of E10 gasoline? Please provide a comprehensive statement to this question.”<sup>17</sup>*

Dr. Ruth Potopsingh, in her response to the OCG’s Requisition, which was dated October 8, 2009, indicated, *inter alia*, as follows:

*“I did not negotiate or conclude the award of contracts to Infinity Bio-Energy and/JB Ethanol for the production and or/supply of ethanol to the Government of Jamaica for use in the E-10 gasoline.*

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<sup>17</sup> OCG’s Requisitions dates September 24, 2009 to Dr. Ruth Potopsingh, Mr. Clive Mullings, Mrs. Hillary Alexander, Mr. Ian Moore and to Mr. Ricardo Neins, dated February 5, 2010.



*However, my involvement in the process of securing ethanol for the E-10 project related to:*

- 1. Participating in meetings at the Governmental level to resolve various issues related to the importation of ethanol for the Government's E-10 programme.*
- 2. On instruction, authorizing the Letter of Credit to purchase 5,250 cubic metres of denatured ethanol in favour of Infinity Bio-Energy.*
- 3. Obtaining approval from the NCC through the Ministry of Energy for the sourcing of ethanol through the limited tender method.*
- 4. In addition, Petrojam Ethanol Limited (A wholly owned subsidiary of the PCJ) sought and received approval for the supply of ethanol through the sole source method to engage the services of Infinity Bio-Energy.”<sup>18</sup>*

Mr. Clive Mullings, in his response to the OCG's Requisition, which was dated February 5, 2010, indicated, *inter alia*, that he “... had no personal or official involvement in the award of any contract to Infinity Bio-Energy and JB Ethanol.”<sup>19</sup>

Mr. Ricardo Neins, in his response to the OCG's Requisition, which was dated February 19, 2010, indicated, *inter alia*, as follows:

*“My involvement in the procurement of Ethanol for use in the production of E-10 gasoline has always been in an official capacity as General Manager of*

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<sup>18</sup> Dr. Ruth Potopsingh's response to the OCG's Requisition, which was dated 2009 October 8 (Response # 1)

<sup>19</sup> Mr. Clive Mullings' response to the OCG's Requisition, which was dated 2009 October 8 (Response #1)



*Petrojam Ethanol Limited. I have never had any personal involvement in these transactions. The Government launched the E10 – 87 (10% ethanol, 90% gasoline) on November 1, 2008. The Heads of Agreement (“HOA”) between the Government of Jamaica and Infinity Bio-Energy Brasil Participacoes S/A (“Infinity”) for the establishment of a Joint Venture Company (“NEWCO”), to own and operate certain sugar and ethanol related assets, provided for NEWCO to supply the ethanol required for the E-10 project. Arising from representations made by Infinity, the parties discussed amending the HOA to allow for Infinity instead of NEWCO to be the supplier of the ethanol to be used in the production of E-10 fuel.*

**Subsequent to the signing of the HOA, the parties entered into discussions towards the finalization of a number of related agreements. The agreements were not finalized within the time-frame anticipated and pending said finalization and completion of the HOA, PEL being the producer and supplier of ethanol in the PCJ group of companies was requested to ensure the reliability of ethanol supplies to Petrojam Limited (Petrojam) for gasoline blending as necessary until the agreements with Infinity could be finalized and implemented.** As a result, a request by the parent company, PCJ for the limited tender procurement methodology to be applied for the selection of a



supplier of anhydrous ethanol for the E-10 program was approved by the National Contracts Commission (NCC). The approved suppliers were:

1. Infinity Bio-Energy (of Brazil)
2. COIMEX (of Brazil)
3. Jamaica Broilers Ethanol Limited (JB Ethanol)
4. Jamaica Ethanol Processing Company Limited (JEPCO)

**Taking into consideration [sic] critical nature of the ethanol supply to the petroleum market and in particular the relatively small volumes required and the lead time and cost to have this imported from Brazil or other countries, coupled with the absolute necessity to avoid any delays due to shipping or other factors, the tender for the interim supplies were restricted to the local suppliers of the product.** A copy of the letter of approval from the National Contracts Commission is attached for reference... Procurement of ethanol by PEL using the abovementioned procurement methodology was discontinued when a shipment was received from Infinity Bio-Energy on behalf of the PCJ on January 1<sup>st</sup>, 2009. PEL provided storage and handling services for the distribution of this volume to Petrojam Limited for E10-87 gasoline blending.



**The deadline for finalization of the agreements with Infinity Bio-Energy and the Government of Jamaica expired on January 31, 2009.** The inventory of ethanol remaining in storage from the parcel procured from Infinity Bio-Energy lasted until April 2009 at which time PEL was again requested to procure ethanol for blending of E-10 gasoline. PEL was in the process of procuring hydrous ethanol for processing at its dehydration facility in order to have fuel grade anhydrous ethanol ready for sale. Delays in the tendering process however, resulted in PEL not being able to procure the hydrous ethanol in time to process same for distribution to the trade. **PEL was again forced to employ the interim short term procurement methodology through the already approved local suppliers. Selection was done on the basis of least cost and availability.**

**Petrojam Ethanol Limited was not directly involved in the procurement of ethanol from Infinity Bio-Energy. PEL, being the foremost Government authority on fuel grade ethanol production and procurement, provided advice on quality, shipping arrangements and storage options to the PCJ in their decision making, but was not involved in the final decision or negotiations involving price, quantity or quality of the product purchased by the PCJ. PEL**



**became directly involved by providing storage for the product after procurement was completed by the PCJ.**<sup>20</sup> (OCG Emphasis)

Of note, Mr. Ricardo Neins, in support of his aforementioned response, also provided to the OCG a copy of a letter which was dated November 6, 2008, from Ms. Shirley Tyndall, former Chairman, NCC, to Dr. Jean Dixon, former Permanent Secretary, Ministry of Energy, which was captioned **“Re: The Supply of Ethanol for Local Blending of Gasoline.”** The referenced letter stated, *inter alia*, as follows:

*“Please refer your letter dated 2008 October 21, regarding the captioned matter.*

*The National Contracts Commission (NCC) considered the matter at its meeting held on 2008 October 22 and endorsed the request of the Petroleum Corporation of Jamaica (PCJ) to utilize the Limited Tender Procurement Methodology to invite companies to submit quotations for the supply of anhydrous ethanol for the production of E10 gasoline.*

*The companies recommended are as follows:*

1. *Infinity Bio-Energy*
2. *COINMEX*
3. *The Jamaica Broilers Group*
4. *Jamaica Ethanol Processing Limited*<sup>21</sup>

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<sup>20</sup> Mr. Ricardo Neins’ response to the OCG’s requisition, which was dated February 19, 2010 (Response #1)

<sup>21</sup> Letter from Ms. Shirley Tyndall, former Chairman, NCC, to Dr. Jean Dixon, former Permanent Secretary, Ministry of Energy, which was dated November 6, 2008.



Mr. Ian Moore, in his response to the OCG's Requisition, which was dated October 22, 2009, indicated, *inter alia*, as follows:

*“My official involvement in the procurement of ethanol by the Government of Jamaica (GOJ) for the production of E10 gasoline was as Chairman of the Petroleum Corporation of Jamaica (PCJ). PCJ was responsible for the roll-out of the E10 gasoline program on behalf of the Ministry of Energy, and work on this program began in the second quarter of 2008. Quite separately to the E10 program the GOJ through the Ministry of Agriculture, the Development Bank of Jamaica (DBJ) and the Sugar Cane Industry Implementation Team (SIT) were involved in the divestment of GOJ's sugar industry assets. I had nothing to do with the divestment of the sugar assets.*

***Infinity Bio-Energy (Infinity) was selected by the SIT and approved by the GOJ in early 2008 to be the purchaser of sugar industry assets, and a Heads of Agreement (HOA) was signed between the GOJ and Infinity on the 27<sup>th</sup> day of June, 2008. The HOA in clause 3.1 (h) (iii) stipulated that the ethanol for the E10 program should be supplied by Newco. Newco was to be owned 75% by Infinity and 25% by GOJ.***

***The HOA provided that the completion of the divestment of the sugar industry assets to Infinity***



should be completed by the 30<sup>th</sup> September, 2008. If this had taken place as scheduled the supply of ethanol would have been from Newco for E10 roll-out which was scheduled for October 31, 2008. However, the divestment was delayed to 31<sup>st</sup> December, 2008, which date was after the E10 program roll-out. This delay gave rise for the need of the interim shipment of ethanol to supply the start of the E10 programme.

I was asked by my Minister, Hon. Clive Mullings M.P., to join the meetings held by the SIT to ensure that any delay in the Divestment as a result of PCJ or its subsidiaries should be resolved. One of the assets being divested as part of the sugar industry assets was Petrojam Ethanol Ltd. (PEL), which was wholly owned by PCJ. This was a very complex and disputed issue between persons who did not want PEL to be included in the divestment, and the GOJ who insisted that it was an essential part of the divestment and that the divestment of PEL should go through. This delay necessitated an interim shipment of ethanol and I became directly involved at this time. I actually became involved shortly before the end of September when it was known that the completion date would have to be re-scheduled. I was not involved in any way in the negotiations leading up to the delay in completion of the HOA. One of the issues to be



determined at that time was where to obtain the ethanol required for the start of the E10 programme as it could not be purchased from Newco as provided in the HOA. Infinity proposed that they should supply the ethanol to start the E10 programme as the whole feasibility of the divestment was based on the acquisition of PEL by Newco and the supply of ethanol from Infinity to Newco for the E10 programme as agreed in the HOA.

It was the SIT that made the decision to purchase the interim shipments from Infinity under the terms of the HOA. It was further decided that it was the PCJ that would execute the transaction, and this led to my involvement in the completion of the transaction with Infinity. There were discussions between the SIT, PCJ, Petrojam, PEL and GOJ representatives as to the quantity that would be required for this interim period. After lengthy discussions between all the parties representing the GOJ and Infinity it was agreed to purchase from Infinity two (2) shipments of approximately 5,000 cubic metres (c.m.) each over a 6 month period beginning in October to supply the E10 programme roll-out which was to begin on 31<sup>st</sup> October, 2008. The Chairman of the E10 program, Mr. Bill Saunders, sent out an e-mail at 5:46 p.m. on 3<sup>rd</sup> October, 2008 to the CEO of Infinity, Mr. Sergio Thompson-Flores, confirming the order of 5,000 c.m.



of ethanol to be supplied on or about October 24, 2008. Mr. Thompson Flores asked his commercial manager to send the commercial terms to me which he did via email. On seeing the email confirmation sent by Mr. Bill Saunders I in turn confirmed the terms by email at 6:30 pm.

It should be noted that in my e-mail the price was stated to be “as per Off-take Agreement”. This was a reference to the price in the HOA between Infinity and the GOJ. No price was set by me at this time.”<sup>22</sup>  
(OCG’s Emphasis)

Mrs. Hillary Alexander, Permanent Secretary, MEM, in her response to the OCG’s Requisition which was dated October 22, 2009, stated, *inter alia*, as follows:

*“I had no official or personal involvement in the award of any contract to Infinity Bio-Energy and JB Ethanol for the production and/or supply of ethanol to the Government of Jamaica (GOJ) for use in the production of E10 gasoline or for any purpose whatsoever.*

*I was appointed Permanent Secretary of the Ministry of Energy and Mining (MEM) on September 1, 2009 and had no involvement with MEM or any entity*

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<sup>22</sup> Mr. Ian Moore’s response to the OCG’s Requisition which was dated October 22, 2009 (Response#1)



*involved in the award of any contract for, or procurement of, ethanol.”<sup>23</sup>*

**Having regard to the foregoing disclosures above. The OCG deems it prudent to reiterate the following key points:**

1. That Dr. Ruth Potopsingh, former Group Managing Director, PCJ, categorically stated that she was neither involved in the negotiations or conclusions of the award of contracts to Infinity Bio-Energy or JB Ethanol.

Dr. Potopsingh, however, advised that she participated in meetings to resolve various issues relating to the E10 programme; authorized the Letter of Credit for the purchase of Ethanol from Infinity Bio-Energy; and obtained approval from the NCC to utilize the requisite procurement methodologies for the sourcing of Ethanol.

2. That Mr. Clive Mullings, former Minister of Energy, and Mrs. Hillary Alexander, Permanent Secretary, then MEM, advised the OCG that they had no personal or official involvement in the award of contract to Infinity Bio-Energy or JB Ethanol. In point of fact, Mrs. Alexander was appointed as Permanent Secretary in the MEM on September 1, 2009, after such award of contracts.
3. Mr. Ian Moore stated that his involvement in the procurement of Ethanol was based upon his responsibility as Chairman of the PCJ Board of Directors.
4. Mr. Moore indicated that the selection of Infinity Bio-Energy was undertaken by the Sugar Cane Industry Implementation Team (SIT) and approved by the GoJ, in early 2008, to be the purchaser of the sugar industry assets.

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<sup>23</sup> Mrs. Hillary Alexander’s response to the OCG’s Requisition which was dated October 22, 2009. (Response #1)



5. That he, Mr. Ian Moore, was not involved in the divestment of the GoJ's sugar assets.
6. That the HOA was signed between the GoJ and Infinity Bio-Energy on June 27, 2008. He highlighted Clause 3.1(h)(iii) in the HOA, which he stated “...*stipulated that the ethanol for the E10 program should be supplied by Newco...*” It was further explained that Newco was to be owned 75% by Infinity Bio-Energy and 25% by the GoJ.
7. Mr. Moore indicated that the HOA had provided that the completion of the divestment of the sugar assets to Infinity Bio-Energy was to be completed by September 30, 2008.
8. That the divestment was delayed to December 31, 2008 and gave rise to the need for an interim shipment of Ethanol for the commencement of the E10 programme. He indicated that it was at this time that he became involved in the process.
9. That Mr. Moore, was not involved in the negotiations leading up to the delay in the completion of the HOA and that it was Infinity Bio-Energy which had proposed to supply the Ethanol to start the E10 Programme. He further advised that it was the SIT which had made the decision to purchase the interim shipments from Infinity Bio-Energy under the terms of the HOA.

It must be noted, however, that Mr. Ian Moore indicated in his response that it was Mr. Clive Mullings, former Minister of Energy, who had requested of him to join the meetings held by SIT to ensure that any delays in the divestment be resolved.

10. That it was decided that PCJ would execute the transaction for the stated interim shipments.



11. That it was after discussions which were had with the GOJ, SIT, Petrojam, PEL and the PCJ, it was decided that two (2) shipments of approximately 5,000 cubic meters each, would be purchased over a six (6) month period, beginning on October 31, 2008.
  
12. Mr. Moore indicated that the Chairman of the E10 Programme, Mr. William (Bill) Saunders, sent an email on October 3, 2008, to the CEO of Infinity Bio-Energy, Mr. Sergio Thompson-Flores, which confirmed the order of the 5000 c.m. of Ethanol “... *to be supplied on or about October 24, 2008*”. Further, Mr. Moore testified that he had also been in receipt of the commercial terms via an email from Infinity Bio-Energy.
  
13. Mr. Moore indicated that upon seeing the email confirmation which was sent by Mr. Saunders, he, Mr. Moore “...*in turn confirmed the terms by email at 6:30 pm.*”<sup>24</sup>
  
14. That Mr. Ricardo Neins, General Manager, PEL, indicated in his response that PEL was not directly involved in the procurement of Ethanol from Infinity Bio-Energy. He advised that “*PEL, being the foremost Government authority on fuel grade ethanol production and procurement, provided advice on quality, shipping arrangements and storage options to the PCJ in their decision making, but was not involved in the final decision or negotiations involving price, quantity or quality of the product purchased by the PCJ. PEL became directly involved by providing storage for the product after procurement was completed by the PCJ.*”<sup>25</sup>

Further, Mr. Neins, in his response, informed the OCG of, *inter alia*, the following:

1. That PEL spearheaded the procurement of ethanol from JB Ethanol Limited, for use in the production of E10 gasoline within the approved framework. Mr. Neins indicated that this

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<sup>24</sup> Mr. Ian Moore’s response to the OCG’s Requisition which was dated October 22, 2009. (Response # 1)

<sup>25</sup> Mr. Ricardo Neins’ response to the OCG’s Requisition which was dated 2010 February 19. (Response #1)



was as a result of the termination of agreement with the previous Ethanol supplier to PEL, which was undertaken in order to facilitate the HOA Agreement, between the GOJ and Infinity Bio-Energy. This, Mr. Neins indicated, caused PEL to be without ethanol inventory.

2. That the NCC, by way of a letter which was dated November 6, 2008, had endorsed a request from the PCJ to utilize the Limited Tender Procurement Methodology to invite companies to submit quotations for the supply of anhydrous Ethanol for the production of E10 Gasoline. The companies which were recommended to submit quotations were Infinity Bio-Energy, COINMEX, the Jamaica Broilers Group and Jamaica Ethanol Processing Limited.
3. That in order to maintain storage of Ethanol, PEL approached the local Ethanol companies for interim supplies, for which the selection was undertaken upon the basis of least cost and availability.

Of note, Mr. Neins added that *“Taking into consideration [sic] critical nature of the ethanol supply to the petroleum market and in particular the relatively small volumes required and the lead time and cost to have this imported from Brazil or other countries, coupled with the absolute necessity to avoid any delays due to shipping or other factors, the tender for the interim supplies were restricted to the local suppliers of the product”*.<sup>26</sup>

4. That a sales contract which was dated November 28, 2008 was promulgated between PEL and Jamaica Broilers Ethanol Limited for the supply of Undenatured Anhydrous Fermentation Fuel Ethanol, at a price of *“...USD 2.15...per US gallon measured at 60 degrees F...”*

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<sup>26</sup> Mr. Ricardo Neins response to the OCG’s Requisition, which was dated February 5, 2010. (Response #1)



5. That, by way of a commercial invoice from JB Ethanol Limited, which was dated December 4, 2008, a total of US\$859,348.55 was approved for payment.

It is instructive to note that the rationale for inviting only two (2) companies to submit tenders, despite the fact that the NCC endorsed four (4) Suppliers, was (a) based on a decision to utilize only local suppliers to tender for the interim supplies of ethanol and (b) due to the cost, time and the volume required.



## **The Agreements for the Production and/or Supply of Ethanol to the GoJ**

The OCG, by way of Statutory Requisitions, dated September 24, 2009, to Mr. Clive Mullings, Mrs. Hillary Alexander, Mr. Ian Moore and Dr. Ruth Potopsingh, and its Statutory Requisition dated February 5, 2010, to Mr. Ricardo Neins, posed the following questions:

*“Are you aware of any written Heads of Agreement, Summary(ies), Report(s) or Brief(s) which include(s) information with regard to the production and/or supply of ethanol to the Government of Jamaica by either Infinity Bio-Energy and/or JB Ethanol? If yes, please provide a copy of same and provide an Executive Summary detailing the following:*

- i. The core obligations of the Government of Jamaica in regard to the sourcing and acquisition of ethanol from either Infinity Bio-Energy and/or JB Ethanol;*
- ii. The core obligations of Infinity Bio-Energy and/or JB Ethanol in regard to the production and/or supply of ethanol to the Government of Jamaica;*
- iii. A description of the product which was to be produced and/or supplied to the Government of Jamaica, i.e. a finished product, raw material etc.;*
- iv. Details of any price schedule for the production and/or supply of ethanol to the Government of Jamaica by Infinity Bio-Energy and/or JB Ethanol ;*



- v. *A timeline detailing the milestone deliverables as agreed upon between the Government of Jamaica and Infinity Bio-Energy and/or JB Ethanol;*
- vi. *Any other particulars which are pertinent to the production and/or supply of ethanol by Infinity Bio-Energy and/or JB Ethanol for use by the Government of Jamaica.*<sup>27</sup>

Mr. Ian Moore, in his response to the OCG's Requisition, which was dated October 22, 2009, indicated the following:

- (i) *“As stated above the obligation of the GOJ to purchase ethanol from Infinity is continued in clause 3.1 (h) (iii) of the HOA dated 27<sup>th</sup> June, 2008 between the GOJ and Infinity.*
- (ii) *There was to be an Off-Take agreement the GOJ and Newco pursuant to the HOA, but this was not finalized up to when I ceased being Chairman of PCJ. This Off-Take agreement was intended to supply the entire E10 and E25 programs with ethanol, initially for a period of five (5) years.*
- (iii) *The product to be supplied was anhydrous ethanol to be blended with gasoline to produce E10 and subsequently E25 gasoline for sale to the public through the existing distributors.*
- (iv) *The price schedule that was agreed was the “65% of the gasoline price for sold ex-refinery” set out in the HOA.*

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<sup>27</sup> The OCG's dated September 24, 2009, to Mr. Clive Mullings, Mrs. Hillary Alexander, Mr. Ian Moore and Dr. Ruth Potopsingh, and its Statutory Requisition dated February 5, 2010, to Mr. Ricardo Neins.



- (v) *The milestone deliverables set out in the HOA were E10 to commence by October 1, 2008 phased in by April 1, 2009, and E25 to commence July 1, 2009 for vehicles compatible with E25.*
- (vi) *I do not know of any other particulars pertinent to the production/ supply of ethanol by Infinity to the GOJ.”<sup>28</sup>*

Mr. Clive Mullings, in his response to the OCG’s Requisition, which was dated October 8, 2009, stated, *inter alia*, as follows:

*“Under the HOA between the Government of Jamaica and Infinity Bio-Energy clause 3.1 (h) (iii) of the agreement, obliges Jamaica to sign a five year off-take agreement with Infinity to accept 100% of the fuel requirements to fulfil the mandatory E10 mix by October 1, 2008. The HOA also included the acquisition of the assets of Petrojam Ethanol Limited by Infinity and the termination of the joint venture agreement between PEL and COIMEX as a condition precedent pursuant to clause 4.1 (b) (v) . Infinity was to supply the Ethanol at 65% of the ex-refinery price of gasoline pursuant to clause 3.1 (h) (iii). It was based on this clause that E10 was priced. It was also emphasized that the anhydrous ethanol was for E10 to be supplied by Infinity. Under the heads of agreement pursuant to clause 3.1 (h)(iv) the GOJ was to pass*

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<sup>28</sup> Mr. Ian Moore’s response to the OCG’s Requisition, which was dated October 22, 2009.(Question #4)



*laws or regulations for 25% ethanol mix by July 1 2009.*<sup>29</sup>

Dr. Ruth Potopsingh, in her response to the OCG, which was dated October 8, 2009, provided the following documents:

1. A copy of the Heads of Agreement between the Government of Jamaica and Infinity Bio-Energy Brasil Participacoes S/A of 27<sup>th</sup> June, 2008; and
2. A copy of an agreement entitled “*FIVE-YEAR ETHANOL OFF-TAKE AGREEMENT By and between Infinity Bio-Energy Brasil Participacoes S/A As Seller And Infinity Jamaica Ethanol & Clean Energy Limited As Intermediary And Petroleum Corporation of Jamaica As Buyer*”. It should be noted that the document contained a proposed effective date of January 2009. Further, it is to be noted that Dr. Potopsingh indicated that this agreement was not concluded.

Mr. Ricardo Neins, in his response to the OCG, which was dated February 19, 2010, indicated, *inter alia*, as follows:

“Executive Summary

- i) *The Heads of Agreement (“HOA”) between the Government and Infinity Bio-Energy Brasil Participacoes S/A (“Infinity”) for the establishment of a Joint Venture Company (“NEWCO”), to own and operate certain sugar and ethanol related assets, provided for NEWCO to supply the ethanol required for the production of E-10 gasoline locally. The negotiations were between Infinity Bio-Energy and the*

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<sup>29</sup> Mr. Clive Mullings’, response to the OCG’s Requisition, which was dated October 8, 2009 Response #4



*Ministry of Agriculture represented by the Sugar Enterprise Team.*

- ii) Arising from representations made by Infinity, the parties discussed amending the HOA to allow for Infinity instead of NEWCO to be the supplier of the ethanol to be used in the production of E-10 fuel. Subsequent to the signing of the HOA, the parties entered into discussions towards the finalization of a number of related agreements. The agreements were not finalized within the time-frame anticipated and pending said finalization and completion of the HOA, PEL was therefore requested to ensure the availability of ethanol supplies to Petrojam Limited for the production of E-10 gasoline.*

*The anhydrous ethanol for this phase of the E-10 launch was acquired by the limited tendering methodology, approval which was granted by the NCC, pursuant to which two local producers of ethanol were asked to provide quotations for the required volume of ethanol and the supplier who provided the lower of the two quotations was selected to supply the ethanol.*

- iii) PEL was required to source Anhydrous Fuel Grade Ethanol for distribution to Petrojam Limited to be used for blending E-10 gasoline. This is considered a finished product for PEL, but is a raw material for*



*Petrojam Limited as it is further mixed with gasoline blend stock to produce E-10 gasoline.*

*iv) The product was bought on a spot market basis to meet the requirements of Petrojam Limited. On each occasion, procurement was based on the lowest price offered and availability from the approved entities. The quantities purchased and delivered are as follows:*

<i>Vendor:</i>	<i>JB ETHANOL</i>
<i>Date delivered &amp; Price:</i>	<i>November 11 – US \$879,347.00 (US \$2.20 per US gallon)</i>
	<i>November 30 – US \$859,348.45 (US \$2.15 per US gallon)</i>
	<i>December 22 – US \$627,000.00 (US \$2.09 per US gallon)</i>
	<i>April 7-8, 2009 – US \$1,118,128.00 (US \$2.20 per US gallon)</i>
	<i>May 4-5, 2009 – US \$211,355.83 (US \$2.10 per US gallon)</i>
<i>Volume:</i>	<i>November 11 – 399,717 US gallons</i>



*November 30 – 399,620 US  
gallons*

*December 22 – 300,215 US  
gallons*

*April 7-8, 2009 – 508,240 US  
gallons*

*May 4-5, 2009 – 97,399 US  
gallons*

*Description: Anhydrous Undenatured Fuel  
Grade Ethanol*

*v) There was no established or agreed timeline for delivery of the interim supply of ethanol sought by PEL on behalf of the Government of Jamaica. The product was bought on a spot market basis to meet the requirements of Petrojam Limited.*

*vi) None.”<sup>30</sup>*

Mrs. Hillary Alexander, in her response to the OCG, which was dated October 22, 2009 indicated, *inter alia*, as follows:

**“Infinity Bio-Energy**

*I have been advised that there was a Heads of Agreement, executed between the GOJ and Infinity Bio-Energy, which was related to the supply of ethanol to the GOJ by infinity Bio-Energy.*

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<sup>30</sup> Mr. Ricardo Neins’ response to the OCG’s Requisition, which was dated February 19, 2010. (Response#4)



*I do not have in my possession, and is unable to provide, a copy of any such Heads of Agreement.*

*Executive Summary*

- (i) I have been advised that the core obligation of the GOJ in relation to the sourcing and acquisition of ethanol from infinity Bio-Energy, through a Joint Venture company comprising of the GOJ and Infinity, was the execution of an Off-take Agreement between the GOJ and Infinity Bio-Energy, whereby the GOJ would over a period of five years, purchase from the Joint Venture company 100% of the ethanol required by the GOJ for use as fuel ethanol.*
- (ii) The core obligation of Infinity Bio Energy was to sell to the GOJ, through the Joint Venture Company, the ethanol required by the GOJ for use as fuel ethanol over a period of five years.*
- (iii) I have been advised that the Heads of Agreement allowed for the purchasing of anhydrous ethanol (raw material).*
- (iv) I have been advised that the ethanol was to be purchased by the GOJ at a price of 65% of the ex-refinery price of gasoline.*
- (v) I have not been advised of any such milestone deliverables.*



(vi) *I have not been advised of any such particulars.*

**JB Ethanol**

(i) *I have been advised that, pursuant to contracts between JB Ethanol and Petrojam Ethanol Limited, JB Ethanol was obliged to accept three shipments of ethanol to Petrojam Ethanol Limited.*

(ii) *I have been advised that the core obligation of JB Ethanol was to supply three shipments of ethanol to Petrojam Ethanol Limited.*

(iii) *I have been advised that the product to be supplied was anhydrous ethanol (raw material).*

(iv) *I have been advised of the following price schedule for the supply of anhydrous ethanol by JB Ethnaol:*

*October 17, 2009 -US\$879,347.00 @ US\$2.20 per US gallon*

*November 26, 2009 –US \$859,348.45 @ US 2.15 per US gallon*

*December 15, 2009 – US\$627,000.00@US2.09 per US gallon*

(v) *October 17, 2009 – 399,717 US gallons*



*November 26, 2009-399,620 US gallons*

*December 15, 2009 -300,000 US gallons*

*(vi) I have not been advised of any other particulars.*”<sup>31</sup>

The OCG notes that this response was similar to that which was provided by Dr. Potopsingh, particularly, as it regards the price schedule and quantity of the goods to be delivered.

Having regard to the foregoing, the OCG found that the draft HOA stipulated that the GoJ would have been obliged to accept the proposed fuel requirement from Infinity Bio-Energy; however, this did not materialize as the Off-Take Agreement was not completed.

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<sup>31</sup> Mrs. Hillary Alexander’s response to the OCG’s Requisition, which was dated October 22, 2009. (Response #4)



## **Knowledge of the award of contracts to Infinity Bio-Energy and JB Ethanol**

The OCG, in its investigation, sought to ascertain from key Public Officials at the PCJ/MEM, their knowledge of the award of contracts to Infinity Bio-Energy and JB Ethanol for the production and/or supply of Ethanol to the GoJ, for use in the production of E-10 gasoline.

In this regard, the OCG, by way of its statutory Requisitions, which were dated September 24, 2009, to Dr. Ruth Potopsingh, Mr. Clive Mullings, Mr. Ian Moore and Mrs. Hillary Alexander, and to Mr. Ricardo Neins on February 5, 2010, posed the following question:

*“What is the extent of your knowledge of the award of contracts to Infinity Bio-Energy and JB Ethanol for the production or otherwise and/or supply of ethanol to the Government of Jamaica for use in the production of E10 gasoline? Please provide a comprehensive statement to this question.”<sup>32</sup>*

Mr. Ricardo Neins, in his response to the OCG’s Requisition, which was dated February 19, 2010, indicated, *inter alia*, as follows:

*“As a result of the termination of agreement with the previous ethanol supplier of PEL in order to facilitate the agreement under the HOA between the Government of Jamaica and Infinity Bio-energy, PEL was without ethanol inventory to facilitate the E10-87 roll out which commenced on November 1 2008. Consequently, Petrojam Ethanol Limited (PEL)*

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<sup>32</sup> OCG’s Requisitions which were dated September 24, 2009, to Dr. Ruth Potosingh, Mr. Ian Moore, Mrs. Hillary Alexander and Mr. Clive Mullings and OCG’s Requisition which was dated February 5, 2010 to Mr. Ricardo Neins. (Question #2)



*spearheaded the procurement of ethanol from Jamaica Broilers Ethanol Limited for use in the production of E-10 gasoline within the approved framework. PEL then went to the approved local suppliers Jamaica Broilers Ethanol (JB Ethanol) and Jamaica Ethanol Processing Co. (JEPCO) and solicited quotations to supply the small interim quantities. The procurement details, including: vendor, price, volume and specific description of each purchase are below.*

*Vendor: JB ETHANOL*

*Date delivered*

*& Price: November 11 – US \$879,347.00  
(US \$2.20 per US gallon)*

*November 30 – US \$859,348.45  
(US \$2.15 per US gallon)*

*December 22 – US \$627,000.00  
(US \$2.09 per US gallon)*

*April 7-8, 2009 – US  
\$1,118,128.00 (US \$2.20 per US  
gallon)*

*May 4-5, 2009 – US  
\$211,355.83 (US \$2.10 per US  
gallon)*

*Volume: November 11 – 399,717 US  
gallons*



November 30 – 399,620 US  
gallons

December 22 – 300,215 US  
gallons

April 7-8, 2009 – 508,240 US  
gallons

May 4-5, 2009 – 97,399 US  
gallons

*The table below (Table A) details the selection criteria  
for the purchases.*

**TABLE A. ETHANOL PURCHASED FOR E-10 BLENDING  
PROCUREMENT DETAILS**

REQUEST FOR QUOTATION				SELECTION		DELIVERY		
CONTRACT DATE	VOLUME REQUESTED (US GAL)	RFQ SENT TO	UNIT PRICE QUOTED (US\$/GAL)	COMPANY	BASIS	VESSEL NAME	BOL DATE	QUANTITY DELIVERED (USG)
7-Nov-08	400,000	JB ETHANOL	2.20	JB ETHANOL	Best price	CT CORK	12-Nov-08	399,717
		JEPCO	2.50					
28-Nov-08	400,000	JB ETHANOL	2.15	JB ETHANOL	Best price & availability	CHEM SUN	29-Nov-08	399,620
		JEPCO	None					
19-Dec-08	300,000	JB ETHANOL	2.125	JB ETHANOL	Best price	CLIPPER TROJAN	22-Dec-08	300,215
		JEPCO	2.25					
6-April-09	500,000	JB ETHANOL	2.20	JB ETHANOL	Availability	LODESTAR GRACE	7-Apr-09	508,240
		JEPCO	None					
4-May-09	100,000	JB ETHANOL	2.10	JB ETHANOL	Availability	Tanker RTW	5-May-09	91,683
		JEPCO	None					



*These purchases were executed to ensure continuity of the E-10 program and availability of the E10-87 gasoline blend. The price of the ethanol acquired in all cases was based on the most competitive quotation in the local market and availability of the product. Each purchase was approved by the Chairman of PEL prior to the execution of a sale agreement with the successful bidder.*

***As stated before, procurement of ethanol by PEL was discontinued when the parcel purchased from Infinity Bio-energy by the PCJ was delivered on January 1<sup>st</sup>, 2009. The deadline for finalization of the agreements with Infinity Bio-Energy and the Government of Jamaica expired on January 31, 2009. The inventory of ethanol remaining in storage from the parcel procured from Infinity Bio-Energy lasted until April 2009 at which time PEL was again requested to procure ethanol for blending of E-10 gasoline. PEL was in the process of procuring hydrous ethanol for processing at its dehydration facility in order to produce fuel grade anhydrous ethanol ready for sale. Delays in the tender and approval process however, resulted in PEL not being able [sic] procure to the hydrous ethanol in time to process same for distribution to the trade. PEL was again forced to employ the previous procurement method by approaching the two approved local***



**ethanol companies. Selection was done on the basis of least cost and availability.**<sup>33</sup> (OCG Emphasis)

Dr. Ruth Potopsingh, in her response to the OCG's Requisition, which was dated October 8, 2009, indicated, *inter alia*, as follows:

**"In respect of the contract with Infinity Bio-Energy, I was requested by the former Chairman of the PCJ Board, Mr. Ian Moore to co-sign an Application for a Letter of Credit to NCB in relation to the purchase of denatured ethanol from Infinity Bio-Energy Brazil in the amount of approximately US \$ 3.2 million. Upon advice of the then Minister of Energy, Clive Mullings, this Application was cancelled. Another Application dated October 31, 2008 was prepared and I did not sign as I needed documentary evidence that all requisite approvals had been given.** (OCG Emphasis)

*The ethanol was required for the Government's E-10 Programme. The Government launched the E10 – 87 (10% ethanol, 90% gasoline) on November 1, 2008. The Heads of Agreement ("HOA") between the Government and Infinity Bio-Energy Brazil Participacoes S/A ("Infinity") for the establishment of a Joint Venture Company ("NEWCO"), to own and operate certain sugar and ethanol related assets,*

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<sup>33</sup> Mr. Ricardo Neins' response to the OCG's Requisition which was dated February 19, 2010. (Response #2)



provided for NEWCO to supply the ethanol required for the E-10 project, pursuant to an Off-Take Agreement.

Several meetings at the Government level were held to discuss the purchase of ethanol from Infinity Bio-Energy. The Opinion of the Solicitor General was sought and it was established that a contract was in fact made through a “Business Confirmation” e-mail communicated between the then PCJ Chairman, Mr. Ian Moore and Mr. Eric Santos, International Manager of Infinity Bio-Energy as well as a copy of the Application for the Letter of Credit communicated by Mr. Nigel Logan of the PCJ to Mr. Eric Santos of Infinity Bio-Energy and to which the certain terms were amended/negotiated. (OCG Emphasis)

*In respect of JB Ethanol the contracts were handled by Petrojam Ethanol Limited.*”<sup>34</sup>

Mr. Clive Mullings, in his response to the OCG’s Requisition, which was dated October 8, 2009, indicated, *inter alia*, as follows:

*“The Government of Jamaica introduced E10-87 (10% Ethanol, 90% Gasoline) program on November 1, 2008. Anhydrous Ethanol for the blending was to be*

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<sup>34</sup> Dr. Ruth Potopsingh’s response to the OCG’s Requisition, which was dated October 8, 2009 (Response # 2)



*supplied by Infinity Bio-Energy under the Sugar Industry Divestment Heads of Agreement (HOA) between Infinity and the Government of Jamaica. As the implementation agreements of the HOA were still incomplete, interim supply arrangements were necessary. Petrojam Ethanol Limited (PEL) was requested by me to ensure the reliability of ethanol supplies to Petrojam Limited for blending until an agreement was reached with Infinity. As a result a request for the limited tender methodology to be used for the selection of the ethanol supplier was approved by the National Contracts Commission (NCC) for four suppliers, namely:-*

- *Infinity Bio-Energy*
- *COINMEX*
- *JB Ethanol Limited*
- *Jamaica Ethanol Processing Limited*

*Since the launch of the E10-87 gasoline blend, three shipments of ethanol had been sourced from one local supplier to ensure continuity and availability of the E10 blend while a first shipment from Brazil from Infinity Bio- Energy was being arranged for delivery. It should be noted that Petrojam Ethanol Limited processes hydrous ethanol by drying it out to produce anhydrous ethanol for export to the United States under the Caribbean Basin Initiative. The HOA that*



*stipulated dry ethanol also known as anhydrous ethanol raised serious concern firstly as to storage as that was only available for wet alcohol and both could not be commingled. The second concern was that the importation of anhydrous ethanol could adversely affect the Caribbean Basin Initiative as the United States of America Customs could view the importation of anhydrous ethanol as a means of circumventing the dehydration process which is critical for qualification and access under the Caribbean Basin Initiative. In order to accommodate the stipulation of anhydrous ethanol in the HOA, storage had to be created for this importation and therefore the stocks of wet hydrous ethanol were depleted to accommodate the shipment from Infinity Bio- Energy. It should also be noted that the stipulation of anhydrous ethanol in the HOA by the sugar divestment team was done without the benefit of any input from Petrojam Ethanol Limited as to the implications of such a stipulation as they were not a part of that team. The stock of ethanol having been almost depleted and the supply of anhydrous ethanol not being available, interim arrangements were entered into and a limited tender methodology was approved and employed to prevent stock out.”<sup>35</sup>*

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<sup>35</sup> Mr. Clive Mullings’ response to the OCG’s Requisition, which was dated October 8, 2009. (Response # 2)



Mr. Mullings' representation of the nature of the procurement and contract awards was similar to that which was given by Mr. Ricardo Neins. However, the OCG noted that Mr. Mullings was only able to provide information on the first three (3) supplies from JB Ethanol.

Of note, Mrs. Hillary Alexander, in her response to the OCG's Requisition, which was dated October 22, 2009, stated, *inter alia*, that she had "...no personal knowledge of award of contracts to Infinity Bio-Energy and JB Ethanol of the production or otherwise and/or supply of ethanol to the Government of Jamaica for use in the production of E10 gasoline."<sup>36</sup>

Further, Mr. Ian Moore, in his response to the OCG's Requisition, which was dated October 22, 2009 indicated, *inter alia*, that "...my only knowledge of contracts for the supply of ethanol to GOJ was by Infinity. I know nothing of the production or supply of ethanol by JB Ethanol."<sup>37</sup>

Having regard to the foregoing disclosures above. The OCG deems it prudent to reiterate by summary the following key points:

1. Mr. Ricardo Neins, informed the OCG, that PEL, in facilitating the E10-87 roll out which was to commence on November 1, 2008, was without ethanol inventory.

It was on this basis that PEL spearheaded the procurement process and approached approved local suppliers in an effort to solicit quotations to supply 'small interim' quantities.

2. Mr. Neins advised that the procurement of Ethanol by PEL was discontinued when the parcel which was purchased from Infinity Bio-Energy was delivered on January 1, 2009. It is to be noted that the deadline for the finalization of the agreement between Infinity Bio-Energy and the GoJ expired on January 31, 2009.

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<sup>36</sup> Mrs. Hillary Alexander's response to the OCG's Requisition, which was dated October 22, 2009 (Response #2)

<sup>37</sup> Mr. Ian Moore's response to the OCG's Requisition, which was dated October 22, 2008. (Response #2)



3. That the purchases of Ethanol from JB Ethanol were approved and awarded by the PEL.
4. Dr. Ruth Potopsingh advised that in respect of the contract with Infinity Bio-Energy it was the former Chairman of the PCJ, Mr. Ian Moore, who had requested of her to “...*co-sign an Application for a Letter of Credit to NCB in relation to the purchase of denatured from Infinity Bio-Energy Brazil in the amount of approximately US\$3.2 million.*”<sup>38</sup>

The OCG was also informed that upon the advice of the former Minister of Energy, Mr. Clive Mullings, the referenced Application was cancelled and that another application which was dated October 31, 2008, was prepared. Dr. Potopsingh, however, informed the OCG that she did not sign the second application upon the basis that she “...*needed documentary evidence that all requisite approvals had been given*”.<sup>39</sup>

In addition, Dr. Potopsingh indicated that several meetings at the Government level were held to discuss the purchase of Ethanol from Infinity Bio-Energy. In this regard, the Opinion of the Solicitor General was sought and it was established that a contract was in fact made through a “*Business Confirmation*” e-mail communicated between the then PCJ Chairman, Mr. Ian Moore and Mr. Eric Santos International Manager of Infinity Bio-Energy as well as a copy of the Application for the Letter of Credit communicated by Mr. Nigel Logan of the PCJ, to Mr. Eric Santos of Infinity Bio-Energy and to which the certain terms were amended/ negotiated.”<sup>40</sup>

5. That Mr. Clive Mullings, former Minister of Energy, advised, as at his response on October 8, 2009, that three (3) shipments of Ethanol were sourced from a local supplier (JB Ethanol) while a first shipment from Infinity Bio-Energy was being arranged for delivery.

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<sup>38</sup> Dr. Ruth Potopsingh’s response to the OCG’s Requisition, which was dated October 8, 2009.( Response #2)

<sup>39</sup> Dr. Ruth Potopsingh’s response to the OCG’s Requisition, which was dated October 8, 2009. (Response #2)

<sup>40</sup> Dr. Ruth Potopsingh’s response to the OCG’s Requisition, which was dated October 8, 2009 (Response #2)



6. That based upon representation from Mr. Neins, Ethanol was procured from JB Ethanol on the following dates:

- i. November 7, 2008;
- ii. November 28, 2008;
- iii. December 19, 2008;
- iv. April 6, 2009; and
- v. May 4, 2009.

Of note, the OCG found that a Request for Quotation was sent to two (2) potential local Suppliers, namely: JB Ethanol and JEPCO, in which JB Ethanol was selected. The *'Procurement Details'* provided by Mr. Neins represented that a total volume of 1,700,000 US gallons were requested over the period. However, a total volume of 1,699,475 US gallons were delivered. The information also indicated that selection was based upon either best price or availability or both.

7. Mr. Neins indicated that the Ethanol was procured from JB Ethanol "*...as a result of the termination of agreement with the previous ethanol supplier of PEL in order to facilitate the agreement under the HOA between the Government of Jamaica and Infinity Bio-energy, PEL was without ethanol inventory to facilitate the E10-87 roll out which commenced on November 1 2008. Consequently, Petrojam Ethanol Limited (PEL) spearheaded the procurement of ethanol from Jamaica Broilers Ethanol Limited for use in the production of E-10 gasoline within the approved framework.*"<sup>41</sup>

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<sup>41</sup> Mr. Ricardo Neins' response to the OCG's Requisition which was dated February 19, 2010 (Response #2)



## **Contractual Agreements between the GOJ, Infinity Bio-Energy and/or JB Ethanol**

The OCG sought to ascertain (a) the dates upon which the GoJ engaged Infinity Bio-Energy and/or JB Ethanol and (b) what goods/services the said companies were contracted to provide to the PCJ.

By way of its Requisitions, dated September 24, 2009, to Dr. Ruth Potopsingh, Mr. Clive Mullings, and Mrs. Hillary Alexander, the OCG asked the following question:

*“When were the services of Infinity Bio-energy and/or JB Ethanol contracted by the Government of Jamaica? What goods, works and/or services were Infinity Bio-energy and/or JB Ethanol contracted to provide? Please provide an Executive Summary listing all contractual agreements, if any, which were entered into between the Government of Jamaica and Infinity Bio-Energy and/or JB Ethanol. The summary should detail:*

- i. The date of the signing of all contractual agreements listed;*
- ii. The name(s) of the entity(ies) and/or individual(s) and the title(s) of the individual(s) who initiated contact prior to the consummation of each of the listed agreements/contracts, the circumstances relating to same, as well as the date on which such interactions took place;*



- iii. *The name(s) and title(s) of the Government of Jamaica official(s)/representative(s) who negotiated and concluded the agreements/contracts;*
- iv. *The name(s) and title(s) of the Infinity Bio-Energy and/or JB Ethanol official(s)/representative(s) who negotiated and concluded the agreements/contracts;*
- v. *The terms and conditions of each of the agreements/contracts;*
- vi. *The total pecuniary value of each agreement/contract which was consummated between the Government of Jamaica and Infinity Bio-Energy and/or JB Ethanol;*
- vii. *Any other particulars that are pertinent to the agreement(s)/contract(s) which was/were entered into between the Government of Jamaica and Infinity Bio-Energy and/or JB Ethanol.*<sup>42</sup>

Dr. Ruth Potopsingh, former Group Managing Director, PCJ, in her response to the OCG, which was dated October 8, 2009, stated the following:

*“In respect of Infinity Bio-Energy –*

1. *A “Business Confirmation” between the former PCJ Chairman, Ian Moore and Eric Santos, International Manager, Infinity Bio-Energy on October 3, 2008.*
2. *The Application for Documentary Credit. See e-mail dated October 24, 2008 with attachments from Mr. Nigel Logan to Mr. Eric Santos.*

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<sup>42</sup> OCG’s Requisitions which were dated September 24, 2009 to Mrs. Hillary Alexander, Dr. Ruth Potopsingh, Mr. Clive Mullings, Mr. Ian Moore and to Mr. Ricardo Neins, dated February 5, 2009.



*Other persons involved in the contractual arrangements were Mr. William Saunders, then Chairman of Petrojam Ethanol Limited and Mr. Nigel Logan, Group Chief Financial Officer.*

*It should be noted that only one parcel was taken by PCJ on December 31, 2008. The second parcel was not taken due to issues relating to the completion of the agreements in the HOA, the Off-Take Agreement, storage and price related issues. Please see the following letters:*

- a. Letter dated February 26, 2009 to Mr. Douglas Leys Re Purchase of Ethanol/Petrojam/Infinity Bio-Energy.*
- b. Letter dated March 26, 2009 from Mr. Douglas Leys Re Purchase of Ethanol/Petrojam/Infinity Bio-Energy.*
- c. Letter dated April 7, 2009 to Stuart Maron Chief Commercial Officer, Infinity Bio-Energy.<sup>43</sup>*

Mrs. Hillary Alexander, Permanent Secretary, in her response to the OCG's Requisition, which was dated October 22, 2009, indicated, *inter alia*, as follows:

**"Bio-Infinity**

**I am advised that the services of Infinity Bio-Energy were contracted on or about October 3, 2008, as per**

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<sup>43</sup> Dr. Ruth Potopsingh's response to the OCG's Requisition, which was dated October 8, 2009.



**the opinion of the Solicitor General. I am advised that Infinity Bio-Energy was to provide fuel grade anhydrous ethanol.** (OCG Emphasis)

Executive Summary

*I am advised that based on the opinion of the Solicitor General, e-mails exchange between the PCJ and Infinity Bio-Energy, in particular a 'Business Confirmation' constituted the contractual agreements between the Government and Bio- Infinity [sic].*

*There was also heads of Agreement, executed on June 29, 2008 between the GOJ and Infinity Bio- Energy for the divestment of the GOJ owned sugar assets.*

*In relation to the specifics...please see copy of opinion (unsigned) dated November 5, 2008, from the Solicitor General; and copies of e-mails exchanged with Infinity Bio-Energy... The opinion summarized the bases on which the Solicitor General concluded that there were contracted arrangements between the PCJ and Infinity Bio-Energy and the names of the individuals who, in the opinion of the Solicitor General negotiated or participated in said transaction.*

JB Ethanol



*Please see response to question 4 in relation to JB Ethanol.*

*I am advised that the negotiations were undertaken between Mr. Ricardo Neins and Management team of JB Ethanol. I have not received any information and I am unable to say who initiated contact or who negotiated on half of JB Ethanol.”<sup>44</sup>*

Mrs. Alexander, in support of her response, provided the OCG with the following email correspondence:

1. Email dated October 3, 2008, which was sent to Mr. Ian Moore, former Chairman of the PCJ Board of Directors, from Mr. Eric Fonseca of Infinity Bio-Energy, on October 3, 2008, at 18:10 (6:10 p.m.), and which was copied to Mr. Sergio Thompson-Flores and a Mr. Stuart Maron. The referenced email was under the subject “*Business Confirmation*” and stated, *inter alia*, as follows:

*“Dear Mr. Moore,*

*As per our conversation It’s [sic] following below our final agreement;*

**Business Confirmation:**

**Buyer:**

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<sup>44</sup> Mrs. Hillary Alexandra’s response to the OCG’s Requisition, which was dated October 22, 2009. (Response # 5)



**PETROJAM LIMITED**, a company duly organization and existing under the laws of Jamaica, with registered offices at 96 Marcus Garvey Drive, Kingston 15 in the Parish of Saint Andrew, Jamaica;

**Seller:**

**INFINITY BIO-ENERGY BRASIL PARTICIPACOES S.A.**, a Brazilian company with its headquarters in the city of Soa Paulo, State of Soa Paulo, at Rua Funchal, 418,24<sup>th</sup> Floor or other company owned Infinity Bio- Energy to be declared until October 6<sup>th</sup> 2008.

**Product:** Fuel grade Ethanol, denatured anhydrous

**Quantity:** Two parcels each being 5000cubic meters +/-5% at Sellers option

**Price:** As per our Off-take Agreement

**Delivery:** CFR Kingston, Jamaica

**Arrival Kingston timing:** First parcel October 20-31, 2008; second parcel January 15, 2009-Jananury 30, 2009.

**Payment terms:** 3 business days after NOR at Kingston

**Credit Terms:** Buyer will provide Standby Letter of Credit from a bank an in a form agreeable to Seller. First L/C to be received by October 7, 2008. Second L/C to be received by January 10 2009



*All other terms per Seller's standard terms and conditions.*"<sup>45</sup>

2. Email dated October 3, 2008, which was sent to Mr. Ian Moore from Mr. Eric Fonseca, at 18:43 PM, under the subject, "*RES: Business Confirmation*", the following was stated:

*"Dear Ian,*

*Thank you to confirm the LC Payment.*"<sup>46</sup>

It is instructive to note that although Mr. Eric Fonseca sent three (3) emails to Mr. Ian Moore on October 3, 2008, the OCG has not seen any correspondence from Mr. Ian Moore responding to the referenced emails.

Further, the OCG has evidenced an email thread which was sent from Mr. Eric Fonseca, dated October 3, 2008, at 4:15 PM, to Mr. Ian Moore, under the caption "*ENC: Business Confirmation*". However, the contents of the email were missing.

The OCG notes however that based on documentation provided to the OCG by Dr. Ruth Potopsingh and Mr. Ian Moore himself, an email was sent on October 3, 2008 at 4:15 by Mr. Ian Moore in reply to the Mr. Eric Fonseca's October 3, 2008, at 18:10 (6:10 p.m.) email. The email stated as follows: "*Eric we agree to the terms set out below except that we would prefer open credit instead of the LC. We will pay in 7 days*"<sup>47</sup>

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<sup>45</sup> Email dated October 3, 2008, which was sent to Mr. Ian Moore, former Chairman of the PCJ Board of Directors, from Mr. Eric Fonseca of Infinity Bio-Energy, which was copied to Mr. Sergio Thompson-Flores and a Mr. Stuart Maron.

<sup>46</sup> Email dated October 3, 2008, which was sent to Mr. Ian Moore from Mr. Eric Fonseca.

<sup>47</sup> Email dated October 3, 2008, which was sent from Mr. Ian Moore, to Mr. Eric Fonseca of Infinity Bio-Energy.



3. Email, dated October 21, 2008, at 7:55 PM, which was sent from Mr. Eric Fonseca to Mr. Ian Moore, under the caption “proposal”. The following was stated in the referenced email:

*“Dear Ian,*

*As per your phone conversation with Mr. Thompson we understand your proposal as follows.*

***Volume = 5250m<sup>3</sup>***

***Price=609,53***

***Letter of Credit Amount=U\$3,200,000.00***

***Shipment date= to be confirmed***

***Payment terms: 3 business days after NOR at Kingston***

***Credit Letter=to be issued immediately***

*The proposal does not replace the business confirmation sent previously on October 3<sup>rd</sup>, 2008 and confirmed by yourself at the same date.*

*Be informed that the proposal above will not be valid until we receive your written agreement on terms, price and conditions described above.*

*The business confirmation sent to you on October 3<sup>rd</sup>, 2008 still in place and all obligations, conditions and price must be performed as agreed before by both*



*parts until the above proposal is confirmed by you reconfirmed by us and it is contingent on the terms for both shipments being confirmed... ”<sup>48</sup>*

Further, Mrs. Alexander, in support of her response, provided the OCG with a copy of the Opinion from the Attorney General’s Chambers, which was dated November 5, 2008. The referenced Opinion was under the signature of Mr. Douglas Leys, the then Solicitor General, and addressed to the Hon. Bruce Golding, former Prime Minister of Jamaica. The referenced letter was captioned **“Re: Purchase of Ethanol/Petrojam/Infiniti[sic]-Bio ”**, and indicated, *inter alia*, as follows:

*“I have been asked to provide a legal opinion, as it relates to the price to be paid for the purchase of 10,000 cubic meters of anhydrous ethanol (ethanol) by the Petroleum Corporation of Jamaica (PCJ) from Infinity Bio-Energy (Infinity Bio).*

Background

**The parties over the past couple of months have been involved in negotiations for the divestment of the sugar industry in Jamaica,** which includes certain sugar estates and accompanying assets. One of the terms of the agreement has to do with the purchase of ethanol by the Government from Infinity Bio, once they assume control of the sugar estates. **The parties have agreed in an off-take agreement that the purchase price would be 65% of the ex refinery price for gasoline in Jamaica.** (OCG Emphasis)

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<sup>48</sup> Email was sent from Mr. Eric Fonseca dos Santos to Mr. Ian Moore on October 21, 2008, at 7:55 p.m.



In order to facilitate PCJ who require 10,000 cubic meters of ethanol prior to the completion of the agreement for the privatization, the parties made an arrangement for the purchase of ethanol. It appears from the documentation that the parties agreed that this was a one-off transaction, which would have no impact on the privatization and by extension, the price formula agreed in the off-take agreement. This is reflected in an email dated October 24, 2008 from Eric Fonseca of Infiniti-Bio [sic] to Ian Moore of PCJ. There he said inter alia

“This purchase of two shipments of ethanol is not a precedent for the off-take arrangements and does not reflect the terms that would be required to satisfy the spirit of the Heads of Agreement...” (OCG Emphasis)

The parties accordingly, discussed the arrangements for the supply of the ethanol foresaid and in email correspondence between them, the parties agreed on the terms of the transaction on October 3, 2008. What is material to this opinion is the price to which the parties agreed. The correspondence shows that the price agreed was “as per off take agreement”. The off take agreement was one of the documents which would facilitate the purchase of ethanol by the Government from Infinity Bio once the privatization



was completed. The price agreed was 65% of the ex refinery price of gasoline. (OCG Emphasis)

### The Issue

Infinity Bio has stated that it will be able to supply the ethanol needed but it can only do so at a price of US\$2.31 per gallon as at October 3, 2008. The ex refinery price which was the formula to be used to determine the price as at the said date was US\$2.12 per gallon. The narrow issue between the parties is the price to be paid for ethanol. The parties have also agreed that payment method would be by way of letter of credit. **The value of the letter of credit is stated to be US\$2,940,281.45 if the ex-refinery price used is at October 3, 2008 as aforesaid and US\$3,200,000 if the price suggested by Infinity Bio is used as at the said date.** (OCG Emphasis)

Having regard to the discrepancy in pricing, there was apparently some discussion between the parties concerning the price at which the ethanol was to be supplied by Bio-Infinity. There is uncertainty here, as the correspondence does not show how these discussions unfolded. What is however salutary is that the parties discussed the amount in which the letter of credit was to be opened. **On the 21<sup>st</sup> October 2008, there was an email from Mr. Eric Fonseca of Infinity**



**Bio to Mr. Ian Moore of Petrojam. This email was in effect confirming a proposal put forward by Mr. Moore, which referred to the letter of credit and the amount in which it was to be established. This amount was stated to be US\$3.2m.** I have not seen any response from Mr. Moore to this email. There was further correspondence between the parties on this issue. **There was an email of the 30<sup>th</sup> October, 2008, from Mr. Nigel Logan of Petrojam to Mr. Eric Fonseca attaching the application for the letter of credit, which contained all the material terms for the issue of the letter of credit. This included the amount of US\$3.2m.** (OCG Emphasis)

**There was apparently some discussion surrounding the application for the letter of credit, which resulted in some of the terms being altered.** These amendments were confirmed in writing but interestingly, none of the amendments included the price which was stated at US\$3.2m as aforesaid. On November 4, 2008, Filipe Antonioli of Infinity Bio wrote Mr. Logan of Petrojam to ascertain whether he had any news on the amendments. Mr. Logan replied on the same day stating that he had no news and was awaiting instructions. It is these circumstances that I have been asked to provide a legal opinion on what is the agreed price between the parties. (OCG Emphasis)



The Law

It appears to me that having regard to the correspondence I have seen between the parties that they have arrived at an agreement on price. This price was in the amount of US\$3.2m which is the price that Infinity Bio had stated to be the agreed price. The parties in discussions had obviously arrived at this price and up to the time of the application for the letter of credit was completed, this was not amended. In these circumstances, it is difficult for Petrojam to insist on a price other than what parties had agreed. It cannot now revert to the formula of the ex-refinery price, when it is clear that the parties had in subsequent discussions, abandoned this formula for the purposes of the one-off transaction. (OCG Emphasis)

This is supported by the discussions which ensued between the parties, as well as the fact that a copy of the application for the letter of credit was sent to Infinity Bio with the price stated as US\$3.2m. Legally, it would be a breach of arrangements for Petrojam to renege on this agreement. It would also be a show of bad faith on the part of Petrojam if it were to revert to formula of 65% of the ex refinery price. This is not desirable where the parties intended to enter into a long term relationship. (OCG Emphasis)



*There was one other issue that was raised in the discussions which preceded the issue of this opinion. The question raised was whether this one-off transaction would now put at risk, the formula established by the parties for the supply of ethanol pursuant to the off-take agreement. The fact that the parties agreed to this as a one-off transaction would not jeopardize the formula. This one-off transaction must be seen without prejudice to what the parties have already agreed in the formula. **It would therefore be legitimate from Petrojam to hold Infinity Bio to the formula they have agreed to in the off-take agreement.** (OCG Emphasis)*

#### Conclusion

*Based on the foregoing, I am of the view that:*

- (1) Albeit the parties had initially agreed that the price for the ethanol was 65% of the ex-refinery price, that agreement was modified in later discussions. The amended price would now be US\$3.2m. There was nothing from Petrojam to demonstrate that it had disagreed with this latter price. Petrojam also confirmed its willingness to pay this price when it sent a copy of the application for the letter of credit to Infinity Bio, which contained this price. It would be a breach of contract for the Petrojam to now renege the agree price of US\$3.2m.*



(2) *Because this is a one-off transaction as agreed between the parties, it cannot affect the price formula which the parties have agreed to in the off-take agreement. This transaction must be seen as without prejudice to the formula for the price agreed in the off-take agreement.*

*I so advise*<sup>49</sup>

In light of the foregoing opinion from the Solicitor General, the OCG accepts and adopts the reasoning that there was a contractual agreement between Infinity Bio-Energy and the GoJ. The parties discussed the arrangements and agreed on the terms of the transaction on October 3, 2008. Also, on October 21, 2008, via email correspondence from Mr. Eric Fonseca of Infinity Bio- Energy to Mr. Ian Moore, then Chairman of the PCJ Board, that Mr. Fonseca confirmed a proposal put forward by Mr. Moore. The OCG, upon reviewing the email correspondence found that Mr. Fonseca made mention of the October 3<sup>rd</sup> confirmation by Mr. Ian Moore and indicated that same was still in place and that “...all obligations, conditions and price must be performed as agreed before by both parties until the above proposal is confirmed by you and reconfirmed by us and it is contingent on the terms for both shipments being confirmed.”<sup>50</sup>

The opinion also outlined that the emails which were sent by Mr. Ian Moore represented a ‘commitment’ to purchase the Ethanol from Infinity Bio-Energy. The stated email of October 21, 2008 outlined, *inter alia*, the Letter of Credit in the proposed amount of US\$3.2M. The OCG found that the email of October 30, 2008 enclosed the Letter of Credit which detailed all the material terms for the issue of same.

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<sup>49</sup> Letter which was dated November 5, 2008, from Mr. Douglas Ley, Solicitor General, Attorney General’s Chambers to Hon. Bruce Golding, Former Prime Minister of Jamaica.

<sup>50</sup> Email correspondence from Mr. Eric Fonseca to Mr. Ian Moore and copied to Mr. Sergio Thompson-Flores, dated October 21, 2008.



It is instructive to reiterate that Mr. Ian Moore, in his response to the OCG's Statutory Requisition, which was dated October 22, 2008, indicated, *inter alia*, as follows:

*"I only know of the agreement between Infinity and the GOJ to supply 10,000 c.m. of ethanol in 2 shipments of approximately 5,000 c.m. each. The original order for this was the e-mail of 3rd October, 2008 from Mr. Bill Saunders to Infinity. This was subsequently followed up by confirmation to Infinity of the same date and by various draft Letters of Credit which specified the terms and conditions. The last Letter of Credit was not finalized until after I ceased being Chairman of PCJ. The last draft Letter of Credit that I agreed was sent by e-mail dated 22<sup>nd</sup> October, 2008 from me to Infinity in response to their e-mail of October 21, 2008 to me..."<sup>51</sup>*

Mr. Moore, in his response to the OCG, indicated that the original order to purchase the shipments of Ethanol was made by Mr. William Saunders and Infinity Bio-Energy, by way of an email of October 3, 2008, to which he followed-up by confirmation on even date.

The OCG reviewed the contents of the email correspondence from Mr. William Saunders to Mr. Sergio Thompson-Flores of Infinity Bio-Energy, dated October 3, 2008, 5:46 PM, which was copied to Mr. Aubyn Hill; Mr. Christopher Bovell, Mr. Winston Watson, Dr. Jean Dixon; Mr. Glenford Watson; Mr. Ian Moore; Dr. Ruth Potopsingh; Mr. Ricardo Neins, et.al, under the subject "*Ethanol Requirement*". The aforementioned email stated as follows:

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<sup>51</sup> Mr. Ian Moore's response to the OCG's Statutory Requisition which was dated October 22, 2008. (Response # 5)



*“Dear Mr. Thompson-Flores,*

*I am sending you this email in my capacity as chairman of the E-10 Roll-Out Team, **to confirm the requirement of 5000 cubic meters of anhydrous fuel ethanol needed on or about October 24, 2008,** for the initial roll out of Jamaica’s E-10 gasoline program. (OCG Emphasis)*

*May I also confirm our commitment to ensure that a formal purchase order, originating from the selected agency of Government, will follow in due course.”<sup>52</sup>*

The OCG also found it prudent to conduct a review of several other email correspondence and letters between Mr. Moore and representatives of Infinity Bio-Energy. These are as follows:

1. Email correspondence from Eric Fonseca Hintz dos Santos, which was dated Tuesday, October 21, 2008, 7:58 PM, to Mr. Ian Moore, and copied to Mr. Sergio Thomson-Flores and Mr. Marcos Nogueira, under the subject “*proposal*”. This email was detailed above.
2. Email from Mr. Ian Moore which was sent on Wednesday, October 22, 2008, 12:30 PM, to Mr. Eric Fonseca Hintz dos Santos, and which was copied to Mr. Sergio Thompson-Flores, Mr. Marcos Nogueira and Mr. Aubyn Hill under the subject “*RE: proposal.*” The email correspondence stated, *inter alia*, as follows:

**“Sergio, this confirmation of 10,000 m3 to be split into 2 shipments is a one off arrangement and**

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<sup>52</sup> Email correspondence from Mr. William Saunders, Chairman, E10 Roll-Out Committee, to Mr. Sergio Thompson-Flores of Infinity Bio-Energy, dated October 3, 2008.



**supersedes any previous order and will not be a precedent for the long term off take agreement.**

(OCG Emphasis)

*In addition infinity will drop the claims set out in his email of 17 October to Chairman Hill and is without prejudice to all other outstanding issues*

***Please see terms and conditions below***

***Product:*** Fuel grade Ethanol, denatured anhydrous

***Quantity:*** Two parcels each being 5250 cubic meters

***Price:*** USD 609, 53 & 628, 58 per cubic meter respectively

***Delivery:*** CFR Kingston, Jamaica

***Arrival Kingston timing:*** First parcel TBD; second parcel January 15, 2009-January 30, 2009.

***Payment terms:*** 7 business days neither after NOR at Kingston

***Credit Terms:*** Buyer will provide Standby Letter of Credit from a bank and in a form agreeable to Seller. First L/C to be prepared immediately. Second L/C to be received by January 10, 2009".<sup>53</sup>

The emails above revealed that Mr. Moore played a significant role in the arrangements for the supply of Ethanol from Infinity Bio-Energy. In fact, he was the individual who was in negotiations with Infinity Bio-Energy and was the person who eventually confirmed the order for the purchase of the ethanol. Although Mr. Saunders did in fact send an email confirming the need for Ethanol his

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<sup>53</sup> Email from Mr. Ian Moore which was sent on Wednesday, October 22, 2008, 12:30 PM, to Mr. Eric Fonseca Hintz dos Santos, and which was copied to Mr. Sergio Thompson-Flores, Mr. Marcos Nogueira and Mr. Aubyn Hill.



email did not constitute an agreement as it did not speak to the terms of the transaction. Based on the evidence presented, Mr. Moore's account of his involvement in the matter was more than the account given to the OCG. He accepted the terms of the agreement which was sent to him by Infinity Bio-Energy on October 3, 2008.

Further, in the email of October 22, 2008, Mr. Moore was found to have set out certain terms and conditions and confirmed the order for 10,000 cubic meters to be split in two (2) shipments of Ethanol which he explained to be a one-off arrangement and which would supersede any previous order.

In October 22, 2008 email the actual price of the ethanol was outlined as "609,53 & 628,58 per cubic meters respectively".

Based upon the foregoing, Mr. Moore by accepting the terms and conditions bound the GoJ to the final order with Mr. Eric Fonseca Hintz Dos Santos of Infinity Bio-Energy. However, Mr. Moore is correct in his assertion that the letter of credit was not finalized until after her ceased being the Chairman of the PCJ.

*The Solicitor General's Opinion regarding the Second Shipment of Ethanol*

The OCG found that although the original order of Ethanol was 10,000 cubic meters and was to be divided into two (2) shipments, the Solicitor General, who was requested to prepare an Opinion, determined that the GoJ was not obliged to take the second shipment, as proposed in the email of October 3, 2008 and later re-confirmed in the email of October 22, 2008.

The OCG made note of the following letter which was dated February 26, 2009, that was sent to Mr. Douglas Leys, the then Solicitor General, from Dr. Ruth Potopsingh, the former Group Managing Director, PCJ, which indicated, *inter alia*, as follows:



***“Re: Purchase of Ethanol/Petrojam/Infinity Bio-Energy***

*We refer to your letter of November 5, 2008 addressed to the Honourable Prime Minister on the captioned matter.*

*The Petroleum Corporation (PCJ) received the first shipment of denatured anhydrous ethanol in the amount of 5000 cubic meters on December 31, 2008 from Infinity Bio-Energy. The amount of US\$3,090,746.26 was paid to Infinity Bio for this shipment. Shortly after receiving the first shipment of ethanol the PCJ received a request via e-mail dated January 8, 2009 from Eric Fonseca Hintz dos Santos of Infinity Bio-Energy informing the PCJ that as per business confirmation dated October 3<sup>rd</sup> they still have 5000 cubic meters of ethanol to be shipped in January and that a second Letter of Credit needs to be opened until January 10, 2009. However, this was not done as the 5000 cubic metres is sufficient for the E10 Programme for approximately three months. Furthermore, we have a storage problem.*

*Given the adverse position the PCJ has been put in regarding pricing and continued depressed prices for ethanol on the world market, we are seeking your opinion as to whether the PCJ is obliged to take the remaining 5000 cubic metres of denatured anhydrous*



*ethanol and at the price indicated in the business confirmation of October 3<sup>rd</sup>...*

*Your earliest response would be greatly appreciated.”<sup>54</sup>*

In response to the abovementioned letter, Mr. Douglas Leys, then Solicitor General, by way of a letter dated March 26, 2009, to Dr. Ruth Potopsingh, former Group Managing Director, which was entitled “*Re Purchase of Ethanol/Petrojam/Infinity Bio-Energy*”, stated the following:

**“Re: Purchased of Ethanol/PCJ/Infinity Bio-Energy**

*I refer to above captioned matter and your letter dated February 26, 2009. In your letter you have asked for my opinion on the following facts.*

***The Facts***

*The Petroleum Corporation of Jamaica (PCJ) received the first shipment of denatured anhydrous ethanol in the amount of 5000 cubic metres on December 31, 2008 from Infinity Bio-Energy. The amount of US\$3,090,746.26 was paid to Infinity Bio for this shipment. Shortly after receiving the first shipment of ethanol, the PCJ received a request via e-mail dated January 8, 2009 from Eric Fonseca Hintz dos Santos of Infinity Bio-Energy, informing the PCJ that as per business confirmation dated October 3<sup>rd</sup> they still have*

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<sup>54</sup> Letter which was dated February 26, 2009, from Dr. Ruth Potopsingh, former Group Managing Director, PCJ to Mr. Douglas Leys, former Solicitor General.



*5000 cubic meters of ethanol to be shipped in January and that a second Letter of Credit needs to be opened until January 10, 2009. However, up to the time of writing this has not been done as the 5000 cubic metres was sufficient for the E-10 Programme for approximately three months. Furthermore, there was a storage problem at PCJ.*

*In addition to the above, world market prices for ethanol are falling. There are some additional facts which were not mentioned in your letter aforesaid which were mentioned in a previous opinion to the Hon. Prme [sic] Minister by way of letter dated November 5, 2009, which I think is also pertinent to this opinion. They are as follows. In order to facilitate PCJ who required 10,000 cubic metres of ethanol prior to and pending the completion of the agreement for the privatization of the ethanol plant between the Government of Jamaica and Infinity Bio, the parties made an arrangement for the purchase of ethanol. It appears from the documentation that the parties agreed that this was a one-off transaction, which would have no impact on the privatization. It is clear from the documentation that the parties intended that there should be a formula to determine the price at which the ethanol would be delivered. This is reflected in an email dated October 24, 2008 from Eric Fonseca*



*of Infiniti-Bio [sic] to Ian Moore of PCJ. There he said inter alia:*

*“This purchase of the two shipments of ethanol is not a precedent for the off-take arrangements and does not reflect the terms that would be required to satisfy the spirit of the Heads of Agreement.”*

*The parties accordingly, discussed the arrangements for the supply of the ethanol aforesaid and in email correspondence between them, the parties agreed on the terms of the transaction on October 3, 2008. What is material to this opinion is the price to which the parties agreed. The correspondence shows that the price agreed was “as per off take agreement”. The off take agreement was one of the documents which would facilitate the purchase of ethanol by PCJ from Infinity Bio once the privatization was completed. The price agreed was 65% of the ex refinery price of gasoline. It is now an acknowledged fact that the privatization did not materialize.*

*The first shipment was completed and a price agreed on by way of letter of credit was paid. The price set out in that letter of credit was an ex-refinery price of US\$3.09m aforesaid. This was the subject opinion dated November 5, 2008 in which I concluded that the parties when they agreed on the terms of the Letter of*



*Credit they agreed the price to be paid in the said Letter of Credit.*

### ***The Issue***

*The issue for the determination in this opinion is whether the PCJ is obliged to take the remaining 5000 cubic metres at the price agreed in the business confirmation, that is a price to be determined “as per off take agreement.”*

### ***Analysis***

*The central issue is to ascertain the price at which the ethanol was to be delivered. The business confirmation stated that the ethanol was to be delivered at a price which was to be bench marked against the price as per off-take agreement. The off-take agreement was that agreement which the parties had indicated would govern their relationship when the privatization was completed. At the time, the parties were working in earnest to finalize the privatization agreements. It is a fact that the terms of the privatization were never agreed. There was therefore no off-take agreement.*

*Since there was no off-take agreement there is no bench mark against which the price can now be set to take delivery. Unlike the previous occasion where the*



*parties had agreed to the price in the letter of credit there is no agreement here.*

*The parties would be forced to revert to the original business confirmation in which it was stated that the price to be paid was “as per off-take agreement”. The fact is that there is now, as there was then, no off-take agreement as privatization did not materialize. There is thus no agreed formula for determining a price. Similarly, unlike the previous transaction where the parties had settled and agreed a price of US\$3.09m in the letter of credit, **there is no discussion or documentation in this instance which would evidence any agreement on price. In the circumstances, one is forced to come to the conclusion that as regards the second shipment of ethanol there has been no agreement on price. This is still subject to negotiation.** (OCG Emphasis)*

### ***Conclusion and Summary***

*Based on the foregoing I am of the view that:*

- (1) The price at which the parties intended to benchmark the delivery price of ethanol was set out in the business confirmation, that is as per off take agreement.*
- (2) The off take agreement was part of the privatization agreement which never materialized.*



- (3) *Since there is no off take agreement, the formula for determining the delivery price is void of uncertainty.*
- (4) *The parties will have to negotiate a new price or formula.*
- (5) *Unlike the conclusion in my previous opinion which had stated that the parties had agreed the terms of the Letter of Credit, which included the price and which superseded the formula in the off take agreement, no such conclusion can be drawn here.*
- (6) *There is no documentation or discussion to evidence the fact that the parties have agreed on a price for delivery.”<sup>55</sup>*

Further, the OCG found that by way of a letter, which was dated April 7, 2009, and which was sent by Dr. Ruth Potopsingh, former Group Managing Director, PCJ, to Mr. Stuart Maron, Chief Commercial Officer, Infinity Bio-Energy Brasil Participacoes SA, the following, *inter alia*, was stated:

*“In response to your e-mail of March 25, 2009 regarding the remaining quantity of dehydrated ethanol, please be advised that Petroleum Corporation of Jamaica will be unable to take a further shipment.*

***You will recall that the business confirmation stated that the ethanol was to be delivered at a price which was to be benchmarked as per Off-Take Agreement. The Off-Take Agreement was part of the***

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<sup>55</sup> Letter dated March 26, 2009, from Mr. Douglas Leys former Solicitor General to Dr. Ruth Potopsingh, former Group Managing Director, which was entitled “*Re Purchase of Ethanol/Petrojam/Infinity Bio-Energy.*”



**Privatization Agreement which never materialized, therefore a new price or formula would have to be negotiated.**

**However, we are unable to negotiate a new price/formula for this shipment as there are no storage facilities for the remaining quantity of the product at this time.** (OCG Emphasis)

*We thank you for your understanding and hope that in the future we will have other business opportunities. Best wishes.*<sup>56</sup>

In light of the foregoing, the Solicitor General opined that the agreement for the second shipment of Ethanol from Infinity Bio-Energy was not completed as the delivery price was to be stipulated in the Off-take Agreement which was not materialized. Therefore, the Government was not obliged to take the second shipment. In the premise, only one (1) shipment of Ethanol was purchased from Infinity Bio-Energy.

#### Former Minister's Account of the Contractual Agreements

Mr. Clive Mullings, former Minister of Energy, in his response to the OCG's Requisition, which was dated October 8, 2009, indicated that "*All relevant documentation which is attached in response to Question 3 contains all the requested information to this question*"<sup>57</sup>

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<sup>56</sup> Letter, which was dated April 7, 2009, and which was sent by Dr. Ruth Potopsingh, former Group Managing Director (PCJ), to Mr. Stuart Maron, Chief Commercial Officer, Infinity Bio-Energy Brasil Participacoes SA

<sup>57</sup> Mr. Clive Mullings' response to the OCG's Requisition which was dated October 8, 2009. (Response # 6)



Amongst the supporting documentation provided to the OCG by Mr. Mullings, the OCG received a copy of the Minutes of the Special Meeting of the Board of Directors which was convened on October 17, 2008.

The Minutes recorded that Mr. Ian Moore, former Chairman of the Board, Mr. William Saunders, former Chairman of the E10 Programme, Mr. Glenford Watson, the then Legal Officer, Dr. Ruth Potopsingh, Group Managing Director and Dr. Jean Dixon, the then Permanent Secretary were present. Of note, Mr. Ian Moore, in his opening remarks, indicated that the purpose of the meeting was to address the first shipment of ethanol for the E10 Programme.

The referenced Minutes outlined the discussions had during the Board meeting as follows:

#### **“ETHANOL FOR E10 PROGRAMME**

*The Chairman indicated that the first shipment of ethanol for the E10 programme needed to be finalised. He noted that when the volumes were identified it was recognized that the volume of ethanol required necessitated the ordering of two 5,000 cubic metres shipments. He further noted that after a meeting with Infinity Bio-Energy (Infinity) and the Sugar Divestment Team (SDT) the PCJ was being urged to place an order with Infinity. **The Chairman stated that an email was sent to Infinity by Director Saunders that triggered, according to Infinity, a commitment for the product. The Chairman further advised that he sent a subsequent email agreeing that the ethanol***



**was required but questioning the need for a Letter of Credit (LC).** (OCG Emphasis)

*The Chairman informed the meeting that there was a fundamental difference with Infinity concerning the price of the ethanol. This difference, as well as others, required the involvement of the Board. **He noted that in discussions with Infinity he has come to realize that conversations with Infinity were being taken by them as agreements.*** (OCG Emphasis)

*The Chairman noted that the major disagreement in pricing resulted from Heads of Agreement (HOA) which specifies this to be 65% of the ex-refinery price of (87 Octane) gasoline. He informed the meeting that Infinity was of the view that the ex-refinery price includes tax. However he, as well as others such as the General Manager of Petrojam Limited (Petrojam), were of the view that the price did not include taxes. He noted that the divergent views regarding the price resulted in a difference in the Purchase Orders for the ethanol of approximately US\$400,000.00.*

*He informed the meeting that the urgency regarding the finalization of the shipment of ethanol had arisen because Infinity had indicated that on the basis of the order received, a shipment of the ethanol was already committed for delivery to Jamaica for which they were*



incurring cost. **Infinity further indicated that it would incur losses of US\$1 million if the PCJ did not accept the shipment and as such PCJ would have to bear that cost.** (OCG Emphasis)

*The Chairman noted that the matters to be decided by the Board were:*

- 1. Whether the PCJ or Petrojam should be procuring the ethanol for the E-10 Programme.*
- 2. Whether a Letter of Credit should be issued.*
- 3. The price to be paid for the ethanol.*

*Director Dixon indicated that the HOA sets the frame work for the PCJ to conduct any business in relation to ethanol. ---She noted that the question as to whether Infinity or Newco should be selling the ethanol to Petrojam was to be settled. She further noted that Infinity has argued that there was an error in the HOA and that Infinity should have been reflected therein as the supplier of the ethanol and questioned whether these proposed changes were settled. Director Watson noted that the HOA called for Newco to be the supplier, and as far as he was aware, the AG's office never expressed any intent to deviate from Newco as supplier as set out in the HOA.*

*Director Saunders noted that the HOA was prepared by Infinity's lawyers who were careful in what was*



*agreed and questioned how infinity could now claim that there were mistakes or misunderstanding in relation to the supplier and the price. He further questioned “What other misunderstanding they were going to raise?”*

*The Directors agreed that any change to the HOA would have to be ratified by the Cabinet and by Parliament and until the amendments to the HOA were ratified by both, the PCJ has to comply with the present HOA,*

*Director Watson suggested that if the issues with Infinity are not resolved then a supply of ethanol could be obtained from Petrojam Ethanol Limited (PEL). However, Director Saunders pointed out that a decision was taken by PEL to have the tanks empty as at October 31, 2008. He further advised that prior to this, he had suggested to Infinity that PEL would supply ethanol for the Roll Out. Infinity’s response was an emphatic no, as they said this would be a breach of the HOA. COIMEX [sic] was therefore allowed to take two shipments from PEL instead of the single shipment previously contemplated (which would have left product in tank). The decision to have COIMEX [sic] take the two shipments had left the tank empty and as such there was no ethanol available from PEL.*



*Director Watson stated that small volumes could be purchased however if the volumes were to be purchased from Infinity it ought to be a one off purchase and should not be purchased pursuant to the HOA. As a consequence the price at which the ethanol is to be purchased cannot be determined in accordance with the HOA and has to be a competitive one. Further such purchases must be made in accordance with Government of Jamaica (GoJ) procurement procedures.*

**Director Watson noted that there has been a mistaken view that the GoJ is obliged to purchase the ethanol from Infinity for the E-10 roll out. However, this was not so as the various obligations under the HOA do not come into effect until completion, which includes the finalization of an Off-take Agreement. As a consequence, prior to completion, the HOA did not oblige PCJ to purchase the interim shipment of ethanol from Infinity.** (OCG Emphasis)

*The Directors agreed that PEL could purchase ethanol on the open market or from Infinity provided such purchases were made in accordance with the Government's procurement guidelines and not pursuant to the HOA.*



**It was noted that despite accusations that the PCJ has not been co-operative, it was not advisable for PCJ to have discussions with Sergio Thompson Flores of Infinity outside of the SDT. The Chairman agreed.** (OCG Emphasis)

*Director Saunders informed the meeting that Sergio (Infinity) has claimed that an order for ethanol was received from him via email sent on October 3, 2008. Director Saunders denied that that the e-mail sent by him constituted an order for ethanol. In support, he read to the meeting the email which stated that “as Chairman of the E-10 Roll out Committee am confirming that 5,000 cubic metres of ethanol will be required for the initial roll out programme and I will use my best endeavors to see that the appropriate government agencies issues a purchase order for that amount”.*

*Director Dixon recollected that the Infinity representative who normally attended the E-10 Committee meetings, but had been absent from all meetings over the last few weeks, had stated that they had ethanol in Brazil earmarked for the Roll Out but were incurring storage costs as the GoJ had not settled on storage in Jamaica. The representative went on to say that the matter of the storage of the ethanol to be received was the GoJ’s problem. The Directors*



*noted that this was before Infinity received confirmation on the volumes.*

*The Chairman noted that Infinity claimed storage costs in Brazil, but the volumes they spoke to him about were coming from Houston.*

**Director Dixon went on to caution the Chairman, on a personal note and the same was supported by the Board, “to step back from this one”. The Board advised the Chairman not to participate in any further direct discussions with Sergio/Infinity except through or with the Implementation team. The Chairman agreed.** (OCG Emphasis)

*The Chairman restated that Infinity was claiming that the email from Director Saunders was a confirmation to order the ethanol. Following which he issued a confirmation of the volumes but questioning the need for a LC.*

*Director Dixon recommended, and the Board agreed, that the Chairman should say to the Negotiating Team that once the terms and conditions for the Off-take Agreement and all other conditions under the HOA have been satisfied PCJ will, if necessary, offer a LC for the purchase of the ethanol.*



*The Chairman responded that Infinity was claiming that they were incurring costs. The Board questioned the veracity of this claim, especially in light of previous remarks made by the Infinity Representative, who made similar claims even in the absence of a commitment by the GoJ to purchase this alcohol. The Board cautioned the Chairman not to be constrained by any claim made by Infinity.*

*Concerning the question of who should purchase the ethanol, the board agreed that PCJ would be the most convenient company as it may be easier, subject to the approval of the PCJ Board, for PCJ to do so versus Petrojam because of the part ownership of Petrojam by the Venezuelan Government. It was further stated that PCJ could be responsible for the purchase provided however there was an agreement between PCJ and Petrojam.*

*The Chairman again reminded the Board that Infinity regarded the email by Director Saunders as a commitment and as a result he confirmed that PCJ was in the process of preparing a LC. However the outstanding issue was the price. He went on to explain that Infinity was basing their price on 65% of the ex-refinery price including tax.*



*Director Watson re-stated the Board's position that this one-off shipment could be purchased from Infinity provided however it was not purchased in pursuance of the HOA, as completion had not occurred. As such the purchases had to be on basis of competitive quotes and in occurrence with GoJ's procurement procedures.*

*The Chairman again disclosed that Infinity is claiming a \$1 million exposure that would be the GoJ's liability if this shipment was not taken. He went on to disclose that during discussions with Sergio (Infinity) that non purchase of the ethanol would result in the sugar divestment deal being off and further that the Off-take Agreement, the Power Purchase Agreement and PEL were the components that the acquisition of an insolvent business possible and as such was the resources of funds Infinity required for realization of the Sugar divestment.*

*It was suggested that consideration be given to a "Plan B" for a supply of ethanol from other sources so as not to compromise the roll out of E-10. The view was expressed that failure to take the ethanol from Infinity should not be seen as the deal breaker and that provided the GoJ finalises the errors alleged by Infinity in the HOA, the PCJ would be willing to facilitate the purchase of the ethanol from the relevant party.*



*Director Saunders, as Chairman of PEL, advised that PEL recognizing the urgent need for ethanol obtained competitive quotes which would be US\$500,000 cheaper, for a cargo of 5,000 cubes, than Infinity's quote.*

***The Group Managing Director Potopsingh was directed to request permission from the NCC to do a limited tender for the volumes required for the E10 programme, until the Off-take Agreement has been finalized. It was suggested that local producers of dry ethanol should be included in the limited tender as their quotes would not include shipping costs. This would be a stand-by arrangement in case there was no timely settlement and finalisation of the amendments to the HOA and related contractual documents.*** (OCG Emphasis)

*In order to quickly source ethanol for the Roll out Director Saunders suggested that PEL could borrow 3,000 cubes which would allow time to reconcile differences with Infinity. This amount would be returned from the quantity purchased under limited tender or from supplies under the pending contractual arrangements with Infinity.*

***In light of the views being expressed by Infinity that an order was placed by the PCJ and that it was***



incurring cost for that order, Director Watson expressed a preference for an arrangement which would involve Infinity for the reason that this could help to maintain amicable relationships, in view of the divestment discussions, and avoid further moves by infinity to file claims against the PCJ. He suggested that instead of taking the limited tender approach, the NCC should be asked to approve of direct contracting with Infinity under which Infinity could be asked to provide a quote, which could be accepted if found to be competitively priced.

A word of caution was extended by Director Dixon who said that both the Contractor General and the Auditor General would be watching this transaction. She expressed the view that the interim supply should not be sole sourced from Infinity as the price would not be competitive. Both the SDT and Infinity should be advised of the procedure by which a supply of ethanol could be obtained by the PCJ, that is to say by the invitation of limited tenders. The Board agreed. (OCG Emphasis)

The Board also directed that a letter to the SDT be prepared stating that PCJ was offering its full support in the preparation of an Off Take Agreement PCJ would facilitate procurement from the contracting



party. Director Watson was requested to assist in drafting this letter for the Chairman.

The Board also directed that an email be sent to Sergio (Infinity) by the Chairman, and copied to the Chairman of the SDT. The Board dictated the e-mail as follows:

*Sergio, I have been advised that to date there has been no amendment to the HOA and I am obliged to comply with the provisions stated therein. Consequently, until completion has been achieved we are unable to transact directly with Infinity or to transact on any other terms and conditions other than those stated in the HOA. In these circumstances I am directing your most recent proposal to the Sugar Divestment Implementation Team and further communication on the matters addressed will be undertaken through the Team but I expect to remain a part of the process.*

**The Chairman informed the meeting that on Thursday October 16, 2008 he spoke to the Prime Minister who advised him to “stick to the HOA, 87 ex refinery 65%”. The Chairman further stated that Sergio agreed to this but insisted that the 65% ex refinery price includes tax...**<sup>58</sup> (OCG Emphasis)

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<sup>58</sup> Minutes of Special Meeting of the Board of Directors, PCJ, which was convened on October 17, 2008, in which Mr. Ian Moore former Chairman of the Board, Mr. William Saunders, former Chairman of the E10 Programme, Mr. Glenford Watson, the then Legal Officer, Dr. Ruth Potopsingh, Group Managing Director and Dr. Jean Dixon, the then Permanent Secretary were present.



Having regard to the foregoing Meeting Minutes, the OCG found the following deliberations to be of interest:

1. That Mr. Moore highlighted that it was Director Saunders, according to Infinity, who had triggered a commitment for the purchase of the Ethanol via email correspondence. Of note as well, Mr. Moore indicated that he sent an email agreeing that the Ethanol was required, however, he had questioned the need for a Letter of Credit. The OCG, however, wishes to highlight that Mr. Moore's email to Mr. Eric Hintz dos Santos which was dated October 3, 2008, at 18:30, under the subject "*Business Confirmation*" indicated the following: "*Eric we agree to the terms set out below except that we prefer to open credit instead of the LC. We will pay in 7 days.*" **This email in fact agreed to the terms set out in the agreement and not simply as Mr. Moore would have us understand that he only sent an email agreeing that the Ethanol was required.** (OCG Emphasis)

The OCG also wishes to reiterate that the Business Confirmation email dated October 3, 2008 at 18: 10, from Mr. Eric Hintz dos Santos to Mr. Ian Moore stated the following:

*"Dear Mr. Moore,*

*As per our conversation It's [sic] following below our final agreement;*

**Business Confirmation:**

**Buyer:**

**PETROJAM LIMITED**, a company duly organization and existing under the laws of Jamaica, with



registered offices at 96 Marcus Garvey Drive,  
Kingston 15 in the Parish of Saint Andrew, Jamaica;

**Seller:**

**INFINITY                      BIO-ENERGY                      BRASIL**  
**PARTICIPACOES S.A.**, a Brazilian company with its  
headquarters in the city of Soa Paulo, State of Soa  
Paulo, at Rua Funchal, 418,24<sup>th</sup> Floor or other  
company owned Infinity Bio- Energy to be declared  
until October 6<sup>th</sup> 2008.

**Product:** Fuel grade Ethanol, denatured anhydrous

**Quantity:** Two parcels each being 5000cubic meters  
+/-5% at Sellers option

**Price:** As per our Off-take Agreement

**Delivery:** CFR Kingston, Jamaica

**Arrival Kingston timing:** First parcel October 20-31,  
2008; second parcel January 15, 2009-Jananury 30,  
2009.

**Payment terms:** 3 business days after NOR at  
Kingston

**Credit Terms:** Buyer will provide Standby Letter of  
Credit from a bank an in a form agreeable to Seller.  
First L/C to be received by October 7, 2008. Second  
L/C to be received by January 10 2009

All other terms per Seller's standard terms and  
conditions."<sup>59</sup>

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<sup>59</sup> Business Confirmation email dated October 3, 2008 at 18: 10, from Mr. Eric Hintz dos Santos to Mr. Ian Moore.



Interestingly, it was Mr. Saunders' email of October 3, 2008, 4:46 p.m. which indicated that Ethanol was required; the email was under the subject "*Ethanol Requirement*" stated as follows:

*"Dear. Thompson –Flores,*  
*I am sending you this email in my capacity as chairman of the E-10 Roll-Out Team, to confirm the requirement of 5000 cubic meter of anhydrous fuel ethanol on or about October 24, 2008, for the initial roll out of Jamaica's E-10 gasoline program.*  
*May I also confirm our commitment to ensure that a formal purchase order, originating from the selected agency of Government, will follow in due course."*

The foregoing email from Mr. Saunders was copied to Mr. Aubyn Hill, Mr. Christopher Bovell, Mr. Winston Watson, Dr. Jean Dixon, Dr. Ruth Potopsingh, Mr. Ricardo Neins, a D Levermore, a Mr. S Muir and Mr. Wilfred Baghaloo.

The above email threads highlight the fact the confirmation for the purchase of ethanol was done by Mr. Moore. The OCG is of the considered view that none of the emails from Mr. Moore, which confirmed the purchase of Ethanol was copied to any other GOJ/PCJ representative.

2. Mr. Moore's notation that *"...in discussions with Infinity he has come to realize that conversations with Infinity were being taken by them as agreements."*

This OCG finds this assertion to be to be insincere and disingenuous, especially considering the fact that there were email correspondences between Mr. Moore and Infinity Bio-Energy



on October 3, 2008. In these emails, discussions were had regarding arrangement for the supply of Ethanol. In an email with the subject matter, Business Confirmation, from Mr. Eric Fonseca the price, which was stated “*as off take agreement*”, the payment terms, the time of arrival of the shipment, and the credit terms were outlined, this was subsequently agreed to by Mr. Moore via email.

3. Director Watson had noted that there has been a mistaken view that the GoJ is obliged to purchase the Ethanol from Infinity for the E-10 Roll Out, in which he indicated should not be the case as the various obligations under the HOA do not come into effect until completion, which includes the finalization of the Off-take Agreement. He also stated that as a consequence, the HOA would not oblige the purchase of the Ethanol from Infinity.
4. Mr. Moore indicated that he spoke with the then Prime Minister on October 16, 2008, one (1) day before the Board meeting, where he was advised to stick with the HOA 65% ex-refinery price. It was reported that Infinity Bio-Energy had agreed to that price, however, the price included tax.

Following the aforementioned meeting, an email, dated October 25, 2008, 12:12 PM, was sent from Mr. William Saunders to Mr. Ricardo Neins, Mr. Winston L. Watson and Mr. Ian Moore, stating, *inter alia*, the following:

*“All,*

*I have already expressed my view on this shipment to  
Mr. Moore.*

- 1) *We only agreed to a single shipment of 5000 cubic meters as this was the volume discussed in cabinet and further this was the volume covered in my email as the requirement for the E10 roll out*



- 2) *Locking two shipments at the price agreed will effect the final price of E10*
- 3) *There is no reason why the Supply agreement between Infinity and Newco cannot be concluded long before we complete the use of a single shipment*
- 4) *The date of arrival is too late for us to use in the E10 launch. Hence I authorized Ricardo to obtain an interim supply from one of our producing colleagues.*
- 5) *The difference in price for the single shipment between our purchase and from Infinity was in excess of 0.5 million US. The difference between their price and the 65% price was \$200,000. For twice the volume this difference becomes much more extensive, especially in an environment of falling mogas prices.*

*I cannot support the extra shipment.*

*The late delivery of the current shipment makes a mockery of Infinity's claim to have the material in tank in Brazil.*

*Furthermore if this shipment is corn alcohol from the USA then it will make a mockery of the E10 promotional campaign as well as the ministers statements.*



*Ricardo, please make absolutely certain of the origin and feedstock of this shipment.*<sup>60</sup>

**For this stance Mr. Saunders must be commended.**

*Termination of Mr. Ian Moore's Appointment as Chairman of the PCJ Board of Directors*

The former Minister, Mr. Clive Mullings, in his response to the OCG, dated October 8, 2009, provided the OCG with a copy of a letter dated November 10, 2008. The referenced letter was addressed to Mr. Ian Moore, the then Chairman PCJ, from Mr. Clive Mullings, the then Minister of Energy, under the subject, "***Re: Chairman of the Petroleum Corporation of Jamaica***" and stated, *inter alia*, as follows:

*"Reference is made to our several discussions of the role to be played by the Chairman of the Petroleum Corporation of Jamaica (PCJ) Board of Directors in the management of the corporation.*

***As repeatedly advised, the position is that of a non-executive Chairman and does not allow for the daily involvement in the affairs of the PCJ in the capacity of an executive officer. The functions are, in the main, restricted to the chairing of the Board of Directors as the members go about the task of giving general directions to the PCJ in accordance with the policies of the Government.***

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<sup>60</sup> Email which was dated Saturday, October 25, 2008 12:12PM from William Saunders to Ricardo Neins; Winston L. Watson; Ian Moore.



**Unfortunately you have consistently ignored this advice and most recently, you have entered into contractual relations on behalf of the PCJ without any authority or permission to do so. Arising from the said transaction the PCJ is now committed to contractual terms which are less than favorable to its interest.** (OCG Emphasis)

Given of the foregoing circumstances, please be advised that **I am no longer confident of your ability to effectively serve as the Chairman of the PCJ and consider it necessary to terminate your appointment as the Chairman and member of the PCJ Board of Directors, pursuant to Clause 7 of the Schedule to the Petroleum Act.** (OCG Emphasis)

Notwithstanding the above, there are aspects of your involvement in the operations of the PCJ for which I am obliged to say thanks.<sup>61</sup>

Based upon the content of the aforementioned letter, the OCG found that Mr. Moore was repeatedly advised that his role was a non-executive one, and as such, he was not to be involved in the affairs of the PCJ as an executive officer. In the premise, Mr. Moore's appointment was terminated on the basis that he ignored the stated advice and "...entered into contractual relations on behalf of the PCJ without any authority or permission to do so."

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<sup>61</sup> Letter which was dated November 10, 2008 , to Mr. Ian Moore, Chairman, Petroleum of Jamaica from Mr. Clive Mullings, Minister of Energy.



Consequent upon Mr. Moore's termination, the OCG found a letter, dated December 14, 2008, from Mr. William Saunders, Director, PCJ, to Mrs. Kathryn Phipps, Chairman (Acting), PCJ, which was under the caption "*Comments on Draft Off-Take Agreement*". The letter stated, *inter alia*, as follows:

*"I wish to have these comments recorded in the minutes of Emergency Board Meeting on Monday, December 15, 2008 at 5:00 pm, convened to discuss the 5 year Off-take Agreement with Infinity Bio-Energy.*

***As Chairman of Petrojam Ethanol Lt. (PEL), I have attended at least two meetings at Jamaica House, at the invitation of the Prime Minister (PM), to discuss progress of the pre-conditions agreed in the Heads of Agreement (HOA) between GOJ and Infinity. On each of these occasions the PM has berated the board and management of PEL for lack of cooperation, or enthusiasm in expediting certain critical conditions of HOA, thus delaying the divestment process. On each of these occasions, speaking for the board and management of PEL, I have categorically denied these accusations. However, I cannot deny the fact that we have been advising our Minister. The Hon. Clive Mullings, of some of the implication in the HOA that are inimical to Jamaica's interests. Among these is Infinity's mandate to renegotiate the agreed pricing mechanism for fuel grade ethanol as well as the supply source. Perhaps when coupled with those***



**concerns expressed by others, our actions may have been interpreted as being unsupportive of the sugar divestment process.** (OCG Emphasis)

Quite to the contrary, we have always supported government's efforts to divest the sugar industry. Not recognized, is the fact that **there were a number of commitments in the HOA that were made without the knowledge or agreement of PEL's Board or Management.** These have been difficult to fulfill in the time frame agreed, as well as being very expensive to achieve. In all cases Infinity were advised of the difficulties, they even agreed to some of the approaches and were kept informed at all stages. (OCG Emphasis)

**Speaking as a Board Member of PCJ, although I support government's efforts to divest the sugar industry, I cannot recommended or endorse any contractual obligation that I believe would not serve the best interests of Jamaica.** For this reason I cannot support any scheme whereby such divestment imposed on the energy consuming public the need to pay a premium on energy price to in effect cross subsidize sugar. (OCG Emphasis)

**Infinity is now asking for a 15% premium on the price of all fuel ethanol they supply. This is**



**significantly more than the price fixed in the HOA which is 65% of ex-refinery price of gasoline; and which price basis was used in the current pricing mechanism for E10. If accepted, the result will be higher gasoline prices.** (OCG Emphasis)

*In addition Infinity want [sic] exclusivity on all fuel ethanol required in Jamaica, including supplies to those marketing companies who wish [sic] to blend their own E-10 requirements. Hence there will never be the opportunity for competition. Infinity will control these prices. Furthermore the Off-take Agreement stipulates a minimum volume that, if not taken must be paid for. This deprives government of any incentive for fuel conservation.*

*These are only a few of my reservations.*

*I want to go on record as not supporting PCJ to be government's intermediary in this transaction. This will place two intermediaries between Petrojam who will use the product and Infinity the supplier. I believe that this arrangement should be between Petrojam and "Newco" In reality Petrojam will manage and operate the entire transaction as PCJ has neither trained staff nor experience to manage this operation. Under these conditions what is the role of PCJ?"<sup>62</sup>*

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<sup>62</sup> Letter from Mr. William Saunders, Director, PCJ, to Mrs. Kathryn Phillips, Chairman (Acting), PCJ, dated December 14, 2008.



The OCG notes that based upon the foregoing letter from Mr. William Saunders, discussions were had with the then Prime Minister to discuss the progress of the pre-conditions agreed in the Heads of Agreement between the GoJ and Infinity Bio-Energy. The document highlighted that the then Prime Minister berated the PEL Board and Management with respect to, *inter alia*, not expediting certain critical conditions of the HOA, which was indicated as delaying the divestment process.

The OCG accepts that by this time Infinity Bio-Energy had already (a) increased the premium on the price of all the Ethanol supplied to 15% which was more than the fixed price contained in the HOA; and (b) requested exclusivity on all fuel Ethanol required. Having regard to these facts, amongst others, Mr. Saunders, remained steadfast and indicated that he supported the Government's efforts to divest the sugar industry, but however, posited that he was not able to recommend or endorse any contractual obligations which he believed would not serve the best interest of Jamaica.



## Contractual Agreements for the Purchase of ‘Interim Supplies’ from JB Ethanol

Dr. Ruth Potopsingh, former Group Managing Director, PCJ, in her response to the OCG, dated October 8, 2009, stated that “*In respect of JB Ethanol, Mr. Ricardo Neins, General Manager, Petrojam Ethanol Limited negotiated and concluded the agreements with authorization from the Chairman of PEL, Mr. William Saunders.*”<sup>63</sup>

The OCG identified an email correspondence which was sent to JB Ethanol regarding the supply of Ethanol, dated October 17, 2008. The email was sent from Mr. Ricardo Neins, to Mr. Ian Parsard and Mr. Christopher Levy et.al, and copied to Mr. Winston L. Watson, under the subject “*Ethanol SWAP*” and stated, *inter alia*, as follows:

*“...As per our discussion on Friday October 17, 2008, we are hereby seeking your assistance for the supply of **anhydrous ethanol** to be used in the launch of our local E10 gasoline blending programme starting November 2008. The requirement is approximately 250,000 gallons per month.*

*Please indicate your ability to supply approximately **500,000 gallons** to Petrojam Ethanol on a swap basis via one of the following options:*

- 1. To load full volume at your port on a ship destined to Florida USA between November 5<sup>th</sup> and 10<sup>th</sup>.*
- 2. To load via trucks in smaller quantities on a daily basis as required starting November 1<sup>st</sup>.*

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<sup>63</sup> Dr. Ruth Potopsingh’s response to the OCG’s Requisition which was dated October 8, 2009. (Response #5)



*We definitely prefer option 1 providing the volume will be available to load on the selected vessel. Kindly inform us by Tuesday October 21<sup>st</sup> of your ability to assist indicating the latest date for re-delivery of the supplied volume.”<sup>64</sup>*

It is instructive to note that the OCG observed that the same information in the email above was sent to JEPSCO on even date.

The OCG also observed a letter from the NCC, dated November 6, 2008, from Ms. Shirley Tyndall, Chairman, NCC, to Dr. Jean Dixon, former Permanent Secretary, Ministry of Energy, which indicated, *inter alia*, as follows:

***“Re: The Supply of Ethanol for Local Blending of Gasoline***

*Please refer your letter dated 2008 October 21, regarding the captioned matter.*

*The National Contracts Commission (NCC) considered the matter at its meeting held on **2008 October 22** and endorsed the request of the Petroleum Corporation of Jamaica (PCJ) to utilize the Limited Tender Procurement Methodology to invite companies to submit quotations for the supply of anhydrous ethanol for the production of E10 gasoline.*

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<sup>64</sup> Email which was dated October 17, 2008, 6:41 PM from Mr. Ricardo Neins to Mr. Ian Parsard, and Mr. Christopher Levy and copied to Mr. Winston L. Watson, under the subject “Ethanol SWAP”.



*The companies recommended are as follows:*

- 1. Infinity Bio-Energy*
- 2. COINMEX*
- 3. The Jamaica Broilers Group*
- 4. Jamaica Ethanol Processing Limited”<sup>65</sup>*

It is instructive to note that the former Minister of Energy, Mr. Clive Mullings, provided the OCG with a copy of three (3) Sales Contracts for “*Fuel Grade Anhydrous Ethanol*” between JB Ethanol Limited and PEL. The referenced contracts were dated November 7, 2008, November 28, 2008 and December 19, 2008, respectively.

By way of an email dated December 16, 2008, from Mr. Williams Saunders to Mr. Ricardo Neins, under the subject “*RE: ADDITIONAL ETHANOL SUPPLY FOR10*”, the OCG found that the purchase of additional Ethanol was authorized as follows:

*“Ricardo,*

***Having cleared this with the minister I authorize you to proceed with this purchase.** Further to our conversation today regarding same, please send me a note, copy to the GMD and Chairman Phipps requesting that PCJ purchase this cargo, perhaps using of the \$300 million grant provided earlier. Emphasize that we are not asking for these funds to be returned however since PCJ was given the authority to sole source EtOH by the NCC, we are asking that they*

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<sup>65</sup> Letter which was dated November 6, 2008 from Ms. Shirley Tyndall, Chairman NCC.



*purchase this cargo and un-sell to Petrojam. PEL will function as expediter and will provide storage etc.”<sup>66</sup>*  
(OCG Emphasis)

The OCG, by way of its statutory Requisition, dated February 5, 2010, posed the following questions to Mr. Ricardo Neins, General Manager, PEL:

*“Please provide an Executive Summary listing all contractual agreements, if any, which were entered into between the Government of Jamaica and Infinity Bio-Energy and/or JB Ethanol. The summary should detail:*

- i. The date(s) of the signing of all contractual agreements listed;*
- ii. The name(s) of the entity(ies) and/or individual(s) and the title(s) of the individual(s) who initiated contact prior to the consummation of each of the listed agreements/contracts, the circumstances relating to same, as well as the date on which such interactions took place;*
- iii. The name(s) and title(s) of the Government of Jamaica official(s)/representative(s) who negotiated and concluded the agreements/contracts;*
- iv. The name(s) and title(s) of the Infinity Bio-Energy and/or JB Ethanol official(s)/representative(s) who negotiated and concluded the agreements/contracts;*

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<sup>66</sup> Email correspondence from Williams Saunders to Mr. Ricardo Neins, dated December 16, 2008,



- v. *When were the services of Infinity Bio-energy and/or JB Ethanol contracted by the Government of Jamaica?*
- vi. *What goods, works and/or services were Infinity Bio-energy and/or JB Ethanol contracted to provide?*
- vii. *The terms and conditions of each of the agreements/contracts;*
- viii. *The total pecuniary value of each agreement/contract which was consummated between the Government of Jamaica and Infinity Bio-Energy and/or JB Ethanol;*
- ix. *Any other particulars that are pertinent to the agreement(s)/contract(s) which was/were entered into between the Government of Jamaica and Infinity Bio-Energy and/or JB Ethanol.*<sup>67</sup>

Mr. Ricardo Neins, in his response to the OCG's Requisition, which was dated February 19, 2010 stated, *inter alia*, as follows:

*“Executive Summary*

- i) *The dates of the signing of the contracts between Petrojam Ethanol Limited and JB Ethanol to purchase ethanol for the E-10 launch are as follows: **November 7<sup>th</sup>, 2008; November 28, 2008 and December 19, 2008. Additional contracts were signed on April 15<sup>th</sup>, and May 6<sup>th</sup>, 2009.***
- ii) *Subsequent to the signing of the HOA, the parties, the Ministry of Agriculture represented by the Sugar Enterprise Team (SET) entered into discussions with*

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<sup>67</sup>OCG's Requisition to Mr. Ricardo Neins, General Manager, PEL, which was dated February 5, 2010. (Question #5)



*Infinity Bio-Energy towards the finalization of a number of related agreements, including the Off-Take Agreement. The agreements were not finalized within the time-frame anticipated and pending said finalization and completion of the HOA, **PEL was requested to ensure the availability of ethanol supplies to Petrojam Limited for the production of E-10 fuel.** The parcels purchased from JB Ethanol were done within this framework. Mr. Ricardo Neins, acting in the capacity of General Manager of Petrojam Ethanol Limited initiated contact with JB Ethanol after securing the necessary approvals. (OCG Emphasis)*

- iii) Mr. Ricardo Neins, acting in the capacity of General Manager of Petrojam Ethanol Limited.*
- iv) Mr. Ian Parsard, Vice President, Finance and Corporate Planning, Jamaica Broilers Group Limited.*
- v) The services of JB Ethanol were contracted on the following dates: **November 7<sup>th</sup>, 2008; November 28, 2008 and December 19, 2008. Additional contracts were signed on April 15<sup>th</sup>, and May 6<sup>th</sup>, 2009.***
- vi) The services of JB Ethanol were contracted to supply Anhydrous Udenatured Fuel Grade Ethanol*
- vii) See Appendix A*
- viii) November 11 – US \$879,347.00 (US \$2.20 per US gallon)*  
*November 30 – US \$859,348.45 (US \$2.15 per US gallon)*



*December 22 – US \$627,000.00 (US \$2.09 per US gallon)*

*April 7-8, 2009 – US \$1,118,128.00 (US \$2.20 per US gallon)*

*May 4-5, 2009 – US \$211,355.83 (US \$2.10 per US gallon)*

*ix) None*".<sup>68</sup>

In light of the foregoing, the OCG found that five (5) sale Contracts were entered into between the PEL and JB Ethanol for the purchase of interim supplies of Ethanol during the period in which the finalization and completion of the HOA was pending.

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<sup>68</sup> Mr. Ricardo Neins' response to the OCG's Requisition, which was dated February 19, 2010. (Response #5)



## **Procurement Methodology for the Award of Contracts**

The OCG requisitioned Mrs. Hillary Alexander, Permanent Secretary in the then MEM, and Dr. Ruth Potopsingh, former Group Managing Director, PCJ, dated September 24, 2009, and posed the following question:

*“For each of the contractual agreements which has been listed in the Executive Summary in Question #5, please detail the procurement methodology which was employed in the award of each such contract. Please provide the following, where possible, in support of your response:*

- i. A copy of the tender document, request for proposal and/or letter of invitation to tender which was issued by the Government of Jamaica and/or anyone acting on its behalf;*
- ii. A copy of the quotation(s) and/or bid(s) which was/were submitted by each of the bidders;*
- iii. A copy of PCJ’s tender evaluation report for each of the respective contracts which were awarded;*
- iv. A copy of PCJ’s Procurement Committees’ written recommendation and/or approval, in each instance, to undertake the contracting of the goods/works and/or services which were to be provided by Infinity Bio-energy and/or JB Ethanol.*
- v. A copy of the transmittal form and any other documents which were sent to the National Contracts*



*Commission (NCC) requesting the endorsement of the referenced contracts;*

- vi. A copy of all correspondence from the NCC regarding the referenced contracts.”<sup>69</sup>*

Dr. Ruth Potopsingh, in her response to the OCG’s requisition, dated October 8, 2009, pointed the OCG to the fact that the procurement process with respect to JB Ethanol was undertaken by the PEL and advised of an approval from the NCC in relation to Infinity Bio-Energy.

Mrs. Hillary Alexander, in her response to the OCG’s Requisition, which was dated October 22, 2009, provided the following information to support the facts stated above:

*“Infinity Bio-Energy*

*I am advised that the Sole Source procurement methodology was applied... Please note that I have not received any recommendation from PCJ’s Procurement Committee or otherwise.*

*JB Ethanol*

*I am advised that the Limited Tender methodology was applied.... I am advised that, given the small quantities of ethanol required on the dates indicated, for the initial phase of the E-10 project it would have been impractical and uneconomical for the ethanol to be shipped from overseas. Consequently, only the two*

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<sup>69</sup> OCG statutory Requisitions to Mrs. Hillary Alexander and Dr. Ruth Potopsingh, which were dated September 24, 2009 and to Mr. Ricardo Neins which was dated February 5, 2010.



*local supplies were invited to bid quotations. Please note that I have not received any copy of recommendation(s) of PCJ procurement committee.”<sup>70</sup>*

Mrs. Hillary Alexander also provided the OCG with a letter from Mr. Ricardo Neins, General Manager, PEL, which was addressed to Dr. Jean Dixon, the former Permanent Secretary in the Ministry of Energy, dated November 19, 2008. The letter stated, *inter alia*, the following:

*“Petrojam Ethanol Limited (PEL) is requesting your endorsement to contract the services of Infinity Bio-Energy to supply 15,000 cubic metres (3,962,580 US gallons) of hydrous ethanol (feedstock) for an estimated amount of ...(US\$6,750,000,00) on a sole source basis. This interim supply is necessary to meet the processing requirements of PEL for the supplies of ethanol to Petrojam Limited for the local E10 gasoline blending and to continue the business of export to the USA under CBI.*

*Approval for Sole Source is requested for the following reasons:*

- 1. Since November 12, 2008 the PEL dehydration plant has been out of feedstock for production as the previous as the previous feedstock supply agreement expired.*

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<sup>70</sup> Mrs. Hillary Alexander’s response to the OCG’s Requisition which was dated October 22, 2009. (Response #6)



2. *Re-supply of feedstock is now pending the transfer of PEL assets as part of the Sugar Cane Industry Divestment between the Government of Jamaica and Infinity Bio-energy.*
3. *As the acquisition of PEL assets by Infinity Bio-energy is imminent, supply and processing of any new batch of feedstock by PEL is likely to occur during the transition of ownership stage of the agreement.*
4. *The interim feedstock supply price is to be representative of the current market where 3-4 proposals will be solicited from selective suppliers and Infinity Bio-energy match the most competitive price.*
5. *If Infinity Bio-energy is the selected supplier they agree to share the cost of the feedstock 50/50 with PEL and in-turn share the profits in the same proportion.*

*As a result of the above, **it is recommended that Infinity Bio-energy be the preferred supplier of feedstock to re-start the production operation at PEL.** **This will allow for a smoother transition of ownership** as Infinity Bio-energy would have gained first-hand knowledge of the operation. PEL also stands to benefit through the sharing of the business risk 50/50 with Infinity Bio-energy.”<sup>71</sup>(OCG Emphasis)*

The OCG also evidenced a letter from Dr. Jean A. Dixon, former Permanent Secretary in the Ministry of Energy, to Ms. Shirley Tyndall, former Chairman, NCC, which was dated November

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<sup>71</sup> Letter from Mr. Ricardo Neins, General Manager, PEL, to the former Permanent Secretary in the Ministry of Energy, Dr. Jean Dixon, which was dated November 19, 2008.



24, 2008. The letter sought to request of the NCC an endorsement for a recommendation from PEL to utilize the Sole Source Procurement Methodology in engaging the services of Infinity Bio-Energy to supply 15,000 cubic metres of Hydrous Ethanol.

By way of a letter, which was dated December 4, 2008, from Ms. Shirley Tyndall, then Chairman, NCC, to Dr. Jean Dixon, then Permanent Secretary, Ministry of Energy, under the subject, “*Petrojam Limited- The Procurement for the Supply of Hydrous Ethanol*”, the following, *inter alia*, was stated:

*“Please refer to your letter of **November 24, 2008**, regarding the captioned matter.*

*The National Contracts Commission (NCC) considered the matter at its meeting held on **December 03, 2008** and endorsed the request of the **Petrojam Ethanol Limited (PEL)** to utilize the Sole Source Procurement Methodology to enter into a contract with **Infinity Bio-Energy** in the sum of **Six Million, Seven Hundred and Fifty Thousand United States Dollars (US\$6,750,000.00)**, to supply 15,000 cubic meters (3,965,580 US gallons) of hydrous ethanol to meet the processing requirements of Petrojam Ethanol Limited for blending of the local E10 gasoline.*

*The NCC’s endorsement is subject to Petrojam ensuring that value for money is obtained.”<sup>72</sup> (OCG Emphasis)*

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<sup>72</sup> Letter which was dated December 4, 2008, from Shirley Tyndall, Chairman, NCC, to Dr. Jean Dixon, Permanent, Secretary, Ministry of Energy.



The OCG, in its statutory Requisition to Mr. Ricardo Neins, which was dated February 5, 2010, also posed a similar question in an effort to determine the procurement methodology which was utilized in the award of each contract to JB Ethanol, as follows:

*“For each of the contractual agreements which has been listed in the Executive Summary in Question #5, please detail the procurement methodology which was employed in the award of each such contract. Please provide the following, where possible, in support of your response:*

- i. A copy of the tender document, request for proposal and/or letter of invitation to tender which was issued by the Government of Jamaica and/or anyone acting on its behalf;*
- ii. A copy of the quotation(s) and/or bid(s) which was/were submitted by each of the bidders;*
- iii. A copy of Petrojam Ethanol Ltd.’s tender evaluation report for each of the respective contracts which were awarded;*
- iv. A copy of Petrojam Ethanol Ltd.’s Procurement Committees’ written recommendation and/or approval, in each instance, to undertake the contracting of the goods/works and/or services which were to be provided by Infinity Bio-energy and/or JB Ethanol.*
- v. A copy of the transmittal form and any other documents which were sent to the National Contracts*



*Commission (NCC) requesting the endorsement of the referenced contracts;*

- vi. A copy of all correspondence from the NCC regarding the referenced contracts.”<sup>73</sup>*

Mr. Ricardo Neins, in his response to the OCG’s Requisition, which was dated February 19, 2010, indicated, *inter alia*, as follows:

- i. The tender process was executed under Section S-1000 exclusion #9 of the GOJ Public Sector Procurement Procedures. Exclusion #9 of Section S-1000 relates to “Procurement of items on the commodities market”. **PCJ also solicited and received approval from the NCC to procure the ethanol needed through limited tender, the approval letter naming the entities through which the product could be procured.** This list of entities was comprised of two local entities (including JB Ethanol Limited) and two Brazilian entities. The suppliers listed were:*

- 1. Infinity Bio-Energy (Brazil)*
- 2. COIMEX [sic] (Brazil)*
- 3. Jamaica Broilers Ethanol Limited*
- 4. Jamaica Ethanol Processing Co. Limited*

*Given all considerations however, particularly the relatively small volumes required and the difficulty*

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<sup>73</sup> OCG’s statutory Requisitions to Mrs. Hillary Alexander and Dr. Ruth Potopsingh, which were dated September 24, 2009 and to Mr. Ricardo Neins which was dated February 5, 2010.



*and cost to have this volume shipped from Brazil coupled with the absolute necessity to avoid **any delays due to shipping or other factors**, the tendering was restricted to the local suppliers of the product. The two local entities were invited to quote and the selection of the supplier was done on a least cost basis. JB Ethanol was selected from the two local suppliers based on price and availability. Please see Table A above which provide full details of the transactions.*

- ii) See attachments*
- iii) The two local entities were invited to quote and the selection of the supplier was done on a least cost and product availability basis.*
- iv) Not applicable*
- v) Not applicable*
- vi) See attachments”<sup>74</sup>*

Having regard to the foregoing, the OCG found the following to be of significant importance in relation to the procurement process employed in the award of contracts:

1. Though the December 4, 2008 letter from the NCC indicated that the NCC endorsed the request for the purchase of 15, 000 cubic meters of ethanol from Infinity Bio-Energy. The OCG has seen no evidence to indicate that 15,000 cubic meters of Ethanol was ever purchased by the PCJ. The only purchase from Infinity Bio-Energy which was 5000 cubic meters which was confirmed by Mr. Ian Moore. The OCG also wishes to note that this

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<sup>74</sup> Mr. Ricardo Neins, response to the OCG’s Requisition which was dated February 19, 2010. (Response #6)



request to NCC for the PCJ to utilize the Sole Source Methodology to engage Infinity Bio Energy was done after Mr. Moore accepted terms and conditions of the proposed agreement which was sent by Infinity Bio-Energy. Therefore the terms of the agreement was accepted prior to the NCC's endorsement. **What this means is that the GoJ was already committed to purchasing the ethanol from infinity so even if the NCC had not endorsed the procurement, the GoJ was still bound to accept this shipment from infinity Bio-Energy.** (OCG Emphasis)

2. The OCG has seen no evidence to confirm that an agreement was finalized between the PEL and Infinity Bio-Energy with respect to the recommendation to the NCC, and its endorsement of December 4, 2008, for the supply of 15,000 cubic meters of Hydrous Ethanol.

It is to be noted, that Mr. Neins, did not make mention of this proposed procurement. However, Mr. Neins explained the circumstances surrounding PEL being without inventory as a result of the facilitation of the E10 Roll Out, in which he explained that interim supplies which were required and that same were procured from JB Ethanol.

Based on the timeline of events, and the justifications provided by the former Permanent Secretary, in the letter of November 24, 2008, the OCG notes that the proposed procurement was stated as being deemed necessary in the anticipated acquisition of PEL assets by Infinity Bio-Energy.

3. The Limited Tender Procurement Methodology was endorsed by the NCC, under cover of letter dated November 6, 2008, and was utilized to procure the required Ethanol from JB Ethanol.



4. Mr. Neins advised the OCG that the selection of the preferred Supplier to supply the requisite Ethanol was based on “...*least cost and product availability basis.*”
5. That the tender process which was undertaken by the PCJ was executed under Section S-1000 of the applicable GoJ Procurement Procedures (2008).
6. The OCG has seen no evidence of approval from the PCJ Procurement Committee. This was further confirmed by the testimony of Mrs. Hillary Alexander who indicated that she has not been in receipt of any recommendation or otherwise from the PCJ Procurement Committee in regard to the contracts awarded to JB Ethanol and Infinity Bio-Energy.

It is of importance to note that the proposed procurement for 15,000 cubic meters of Hydrous Ethanol to be purchased by way of the Sole Source Procurement Methodology, and which received the endorsement of the NCC, was a separate transaction from the ‘one-off’ commitment of the shipment of 5000 cubic meters of Ethanol that was confirmed by Mr. Ian Moore and Mr. William Saunders of the PCJ via email correspondence with Infinity Bio-Energy.

Further, based on the compendium of facts the OCG has not evidenced any endorsement from the NCC for the one-off transaction.

Further, and having regard to the Opinion of the Solicitor General, the one-off transaction mentioned above, was not a precedent for the Off-take Agreement and was not to be considered a reflection of the terms that would have been required to satisfy the spirit of the Heads of Agreement had it been completed.



## **The Contract Award Process**

Based on the body of facts, the OCG deemed it prudent to ascertain whether anyone had (a) intervened in the process(es) and/or (b) given any directives with respect to the award of contracts to Infinity Bio-Energy and/or JB Ethanol.

In this regard, the OCG requisitioned the former Minister of Energy, Mr. Clive Mullings, and the former PCJ Board Chairman, Mr. Ian Moore, on September 24, 2009, respectively, and posed the following questions:

*“Did you, in any way, intervene in and/or give instructions in regard to the contracts to Infinity Bio-Energy and JB Ethanol for the production or otherwise and/or supply of ethanol to the Government of Jamaica for use in the production of E10 gasoline?  
If yes, please provide:*

- i. Details of the nature of your intervention and/or the instructions which were given by you;*
- ii. If any instructions were given, please state the name(s) and title(s) of the person(s) to whom the instructions were given;*
- iii. Your reason(s) for giving the instructions and/or intervening in the process;*
- iv. The date(s) on which you intervened and/or gave instructions regarding the matter;*
- v. The authority under which the instructions were given and/or the intervention was made;*



vi. *The ensuing results of such intervention and/or the instructions which were given by you.*<sup>75</sup>

Mr. Clive Mullings, in his response to the OCG's Requisition, which was dated October 18, 2009, stated, *inter alia*, as follows:

- (i) *Yes, I intervened when I got a call from the Permanent Secretary Dr Jean Dixon that a Letter of Credit was being prepared by the Chief Financial Officer for the purchase of ethanol from Infinity for an amount over and above what could be procured from other sources by at least half a million United States dollars.*
- (ii) *I summoned the group Managing Director Dr. Potopsingh and the Chief Financial Officer Mr. Nigel Logan and enquired whether this was authorised by the Board of the Petroleum Corporation. When I was told that it was not I immediately directed that a Board meeting be convened to deal with this matter.*
- (iii) *I intervened in matter because I was alarmed at the expensive nature of the purchase from Infinity.*
- (iv) *I cannot recall the exact date of my intervention.*
- (v) *The authority under which the instructions were given was in my capacity as Minister of Energy having portfolio responsibility.*
- (vi) **As a result of my intervention a meeting was called by the Prime Minister** *and included the Chairman of the Board, Mr Ian Moore, the Permanent Secretary,*

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<sup>75</sup> OCG's Requisition to Mr. Clive Mullings, former Minister, MEM, and Mr. Ian Moore, then PCJ Chairman, on September 24, 2009.



*Dr Jean Dixon, Dr Ruth Potopsingh of the PCJ, the Solicitor General, Mr. Douglas Leys and Legal Officer Mr Glenford Watson. I cannot recall who else was present. At that meeting I enquired of Dr. Potopsingh as to who had concluded the negotiations for the purchase of shipment of ethanol. I was told that it was Mr Ian Moore. I then demanded all correspondence relating to the negotiations. Mr Moore sent me emails where he confirmed not one shipment of 5000 cubic meters but two shipments amounting to 10000 cubic meters with the price of the second shipment being higher than the first shipment which itself was high. In addition Mr Moore was asserting that Director William Saunders had made a commitment to purchase 5000 cubic meters. (OCG Emphasis)*

*I indicated that based on the emails I saw:*

*On October 3 at 4:15 p.m. Mr. Moore received an email from Infinity making reference to an earlier conversion (Business Confirmation) where he was asked to confirm the terms.*

*At 4:45 p.m. on October 3, Mr Saunders wrote an email confirming that 5000 cubic metetrs would be required but no specific price was discussed or agreed by him.*



*At 6:30 p.m. Mr Moore sent an email agreeing to the terms of Business Confirmation.*

**At no time did Mr. Moore advise anyone that it was he who confirmed the purchase of not one, but two shipments while at the same time leading all concerned including the Board, to believe that it was Director Saunders who confirmed the purchase.** Subsequently, the Solicitor General gave his advice on Mr. Moore's emails with Infinity and opined that they represented a contractual obligation on the part of PCJ. As a result I wrote to Mr. Moore and exercised my powers under the Articles of Association of PCJ indicating my loss of confidence in him and terminated his position. **It should be noted that Mr. Moore was not an Executive Chairman and had no authority to negotiate and conclude agreements.**<sup>76</sup> (OCG Emphasis)

It is instructive to note that Mr. Ian Moore, in his response to the OCG's Requisition, which was dated October 22, 2009, indicated, *inter alia*, as follows:

*"The SIT requested PCJ to execute the commitment made by the GOJ in the HOA to have Newco purchase ethanol required for the E10 program. **As a result of this I was directly involved in negotiations with***

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<sup>76</sup> Mr. Clive Mullings', former Minister of Energy, response to the OCG's Requisition dated October 18, 2009. (Response #5)



**Infinity for the supply of the 10,000 c.m. to the GOJ for the E10 program.** *It should be noted that in the HOA it was Newco that was to supply the ethanol to the GOJ but this was changed to Infinity as the Divestment of the sugar industry assets had not been completed and Newco had not yet come into operation.”<sup>77</sup> (OCG Emphasis)*

The OCG reviewed the contents of a letter from Mr. Douglas Saunders Cabinet Secretary, to Dr. Ruth Potopsingh, former PCJ Grouping Managing Director, which was dated October 31, 2008, and which was copied to the Hon. Bruce Golding, then Prime Minister, Mr. Clive Mullings, the former Minister of Energy, and Mr. Ian Moore, former PCJ Board Chairman. The referenced letter, under the caption “Authorization of One-off Ethanol Shipment”, stated as follows:

*“I refer to your telephone request for confirmation of the above-captioned subject as expressed at a meeting of 29 October 2008.*

*As you are aware, on Wednesday, the 29<sup>th</sup> of October 2008, the Prime Minister (HPH) convened a special meeting of the key government stakeholders concerning the supply of ethanol for the E10 programme and the status of the sugar divestment negotiations.*

*You will recall that during this meeting, at which both the Chairman of the Petroleum Corporation of*

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<sup>77</sup> Mr. Ian Moore’s response to the OCG’s Requisition which was dated October 22, 2009. (Response #6)



*Jamaica and yourself were in attendance, among other senior government officials and the Minister of Energy; HPM reiterate the authorization for the Petroleum Company of Jamaica to undertake the purchase of ethanol from Infinity Bio-Energy of Brazil for use in the E10 programme, subject to the conditions that this is a one-off arrangement without prejudice to the Heads of Agreement or Off take Agreement, that the differential price shall not exceed US\$200,000.00 and that the minimum quantity to be purchased not be less than 5000m3.*<sup>78</sup> (OCG Emphasis)

Further, the OCG found that a second meeting was convened with the Prime Minister on November 7, 2008, with respect to the Letter of Credit. Also, by way of a letter dated November 10, 2008, Dr. Ruth Potopsingh informed Mr. Nigel Logan, former Group Financial Officer, PCJ, that she had received instructions to “...prepare a Letter of Credit in favour of Infinity Bio Brasil for the purchase of fuel grade Ethanol, denatured anhydrous made from sugar cane or its molasses at 20 degree C, volume being 5,250 cubic meters in the amount of US\$3,207,875.00.”<sup>79</sup>

Dr. Potopsingh also indicated, in the referenced letter, that the Prime Minister had instructed that the Letter of Credit “...is to be opened as committed.” The letter also revealed that (a) the Prime Minister was to have sought endorsement from the Cabinet on November 10, 2008, (b) the then Solicitor General had confirmed that the e-mails amounted to a contractual agreement and that (c)

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<sup>78</sup> Letter from Ambassador Douglas Saunders, Cabinet Secretary to Dr. Ruth Potopsingh, former PCJ Grouping Managing Director, which was dated October 31, 2008, regarding meeting of October 29, 2008 convened by the then Prime Minister, the Hon. Bruce Golding.

<sup>79</sup> Letter dated November 10, 2008, from Dr. Ruth Potopsingh to Mr. Nigel Logan, former Group Financial Officer, PCJ. This letter was also copied to the Hon. Douglas Saunders, Cabinet Secretary, Dr. Jean Dixon, former Permanent Secretary in the Ministry of Energy and Mr. Ian Moore, former Chairman PCJ Board.



Mr. Richard McDonald had been given the responsibility to oversee the storage facilities for this product, as deliveries were to be made between December 19 and 21, 2008.

Having regard to the foregoing disclosures above. The OCG deems it prudent to reiterate by summary the following key points:

1. That Mr. Mullings intervened, in his capacity as the then Minister of Energy, on the basis that he was “...alarmed at the expensive nature of the purchase from Infinity.” The former Minister indicated that being advised of the preparation of a Letter of Credit he found that the purchase of Ethanol “was over and above what could be procured from other sources at least by half a million US dollars.”
2. The former Minister indicated that he was advised by Dr. Ruth Potopsingh, in a meeting which was convened by him, that it was Mr. Ian Moore who had concluded the negotiations for the purchase of the shipment of Ethanol.
3. The former Minister further informed the OCG that Mr. Ian Moore did not advise anyone, including the Board of Directors, that it was he who had confirmed the purchase of two (2) shipments and led all to believe that it was Director Williams Saunders who had confirmed the purchase.
4. Mr. Ian Moore confirmed that he was “...directly involved in negotiations with Infinity for the supply of the 10,000 c.m. to the GOJ for the E10 program.” He, however, indicated that this was because the SIT had requested the PCJ to execute the commitment made by the GOJ in the HOA. He stated that because the divestment process was not complete Infinity Bio-Energy was used to supply the Ethanol.



5. That the former Prime Minister, the Hon. Bruce Golding, had given a directive for the PCJ to undertake the purchase of Ethanol from Infinity Bio-Energy subject to the condition that it was “...a one-off arrangement without prejudice to the Heads of Agreement or Off take Agreement, that the differential price shall not exceed US\$200,000.00 and that the minimum quantity to be purchased not be less than 5000m3.”



## **Approval for the Procurement of Ethanol**

The OCG, by way of its statutory Requisitions to Mr. Ian Moore, Mrs. Hillary Alexander, Dr. Ruth Potopsingh and Mr. Clive Mullings, which were dated September 24 2009, and to Mr. Ricardo Neins, on February 5, 2010, posed the following question:

*“Are you aware of the names and titles of the Officers/Officials and/or Employees of the PCJ and/or anyone acting on its behalf, if any, who, in each instance, (a) recommended, (b) influenced and/or (c) approved the procurement of ethanol which was to be provided by Infinity Bio-Energy and/or JB Ethanol, at any time, to the Government of Jamaica? If yes, please provide the name(s) and title(s) of all Officers/Officials and/or Employees of the PCJ and/or anyone acting on its behalf, if any, who, in each instance:*

- i. Recommended the procurement of ethanol which was to be provided by Infinity Bio-Energy and/or JB Ethanol, at any time, to the Government of Jamaica;*
- ii. Influenced the procurement of ethanol which was to be provided by Infinity Bio-Energy and/or JB Ethanol, at any time, to the Government of Jamaica; and/or*
- iii. Approved the procurement of ethanol which was to be provided by Infinity Bio-Energy and/or JB Ethanol, at any time, to the Government of Jamaica;*
- iv. Please provide full details of the circumstances*



*surrounding how the named individual(s) a) recommended, (b) influenced and/or (c) approved the procurement of ethanol which was to be provided by Infinity Bio-Energy and/or JB Ethanol, at any time, to the Government of Jamaica.”<sup>80</sup>*

Mr. Ian Moore, in his response to the OCG’s Requisition, which was dated October 22, 2009, indicated, *inter alia*, as follows:

*“The decision to purchase ethanol from Infinity was not (a) recommended (b) influenced, and/or (c) approved by PCJ. **This decision was made by the SIT on behalf of the GOJ as an important part of the sugar assets divestment.** The HOA was approved by the Cabinet and signed by the Prime Minister. It was then decided by the SIT and the GOJ that the PCJ should be the purchaser of the ethanol as it was for the E10 program. Also it was felt that Petrojam would not be the appropriate entity to purchase the ethanol as Petrojam is owned 49% by the Government of Venezuela.”<sup>81</sup>*

Mr. Clive Mullings, in his response to the OCG’s Requisition, which was dated October 8, 2009, indicated, *inter alia*, as follows:

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<sup>80</sup> OCG statutory Requisitions which were issued to Mr. Ian Moore, Mrs. Hillary Alexander, Dr. Ruth Potopsingh, which were dated September 24, 2009, and to Mr. Ricardo Neins, on February 5, 2010.

<sup>81</sup> Mr. Ian Moore’s, response to the OCG’s requisition, dated October 22, 2009. (Response #7)



- 1) That it was Mr. Ricardo Neins, General Manager, Petrojam Ethanol Limited and Mr. William Saunders, Chairman, Board of PEL, who had recommended the procurement of Ethanol which was to be provided by Infinity Bio-Energy and/or JB Ethanol.
- 2) That it was Mr. Ian Moore, former Chairman of PCJ, who had influenced the procurement of Ethanol which was to be provided by Infinity Bio-Energy and/or JB Ethanol to the GOJ.
- 3) That Mr. Ian Moore, former Chairman of the PCJ Board, had approved the procurement of Ethanol which was to be provided from Infinity Bio Energy without authority so to do.
- 4) That Mr. Ian Moore had confirmed, through emails dated October 3, 2008, the purchase of two (2) shipments of 5000 cubic meters each. Mr. Mullings also indicated that the said shipments, were each at agreed prices above market, with the second shipment being more expensive than the first. The former Minister reiterated that Mr. Moore had no authority to do so.

Of significant note, and according to Mr. Mullings, Mr. Moore was “...asked to join the Sugar Divestment Team to liaise with the Team as discussions were being made without the PCJ having an input and Petrojam Ethanol Limited is one of its subsidiaries. His role was one of information only as he had no authority ostensible or otherwise to enter into any negotiations and in fact the Board of the PCJ asked him to step back from the process out of an abundance of caution.”<sup>82</sup>

Dr. Ruth Potopsingh, in her response to the OCG’s Requisition, which was dated October 8 2009, indicated, *inter alia*, as follows:

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<sup>82</sup> Mr. Clive Mullings’ response to the OCG’s Requisition which was dated October 8, 2009.



*“The purchase of ethanol from Infinity Bio-Energy was pursuant to the Heads of Agreement, the Business Confirmation and the Application for a Letter of Credit. As previously noted Mr. Ian Moore the then Chairman of PCJ concluded this agreement. Other persons were Mr. William Saunders and Mr. Nigel Logan. I am aware that Mr. Aubyn Hill, Chairman of Sugar Divestment Committee and Mr. Wilfred Baghaloo were involved in the discussions relating to the Application of a Letter of Credit and volume of ethanol respectively. Based on correspondence, Mr. Dwight Lewis, Coordinator for the E-10 Project and formerly of the PCJ, may have also been involved in the discussions. (OCG Emphasis)*

*Petrojam Ethanol Limited obtained approval from the NCC to use the Sole Source Procurement Methodology to obtain 15000 cubic metres of ethanol from Infinity Bio-Energy.*

*In relation to JB Ethanol, Petrojam Ethanol was requested to ensure adequate supplies of ethanol for the E10 launch in November 2008. Petroleum Corporation of Jamaica obtained approval from NCC for limited tender for this procurement.”<sup>83</sup>*

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<sup>83</sup> Dr. Ruth Potopsingh’s response to OCG’s Requisition which was dated October 8, 2009.



It is to be noted that Mrs. Hillary Alexander, Permanent Secretary, PCJ, in her response to the OCG's Requisition, dated February 19, 2010, indicated, *inter alia*, as follows:

1. That the services of Infinity Bio-Energy were contracted on or about October 3, 2008, as per the opinion of the then Solicitor General for the 5000 c.m. shipment of Ethanol.
2. That based upon the opinion of the then Solicitor General, and email exchanges between the PCJ and Infinity Bio-Energy, in particular regard to the stated 'Business Confirmation', a contractual agreement would have been constituted between the GoJ and Infinity Bio-Energy.
3. That the Heads of Agreement was executed on June 29, 2008, between the GoJ and Infinity Bio-Energy for the Divestment of the Government-owned sugar assets.
4. That the negotiations were undertaken between Mr. Ricardo Neins and the management team of JB Ethanol.
5. That, as it regards Infinity Bio-Energy, Mrs. Alexander confirmed that the Sole Source Procurement Methodology was applied, and that she had not been in receipt of any recommendation from the PCJ's Procurement Committee or otherwise.
6. That as it regards JB Ethanol, the OCG was again able to confirm that the Limited Tender Procurement Methodology was applied and that only two (2) local Suppliers were invited to submit quotations. Mrs. Alexander also advised that she had not been in receipt of any recommendation from the PCJ's Procurement Committee.

Mr. Ricardo Neins, in his response to the OCG's Requisitions, which was dated February 19, 2010, indicated, *inter alia*, as follows:



*“Mr. William V. Saunders, Chairman of the Board of Directors of Petrojam Ethanol Limited and Mr. Ricardo Neins, acting in his capacity as General Manager of Petrojam Ethanol Limited committed the GOJ to the procurement of anhydrous fuel grade ethanol from the JB Ethanol only. The contracts between JB Ethanol and PEL were signed by the General Manager of PEL. The circumstances surrounding the procurement of ethanol in this manner from JB Ethanol are as follows:*

*Subsequent to the signing of the HOA between the Government of Jamaica and Infinity Bio-Energy, the Ministry of Agriculture, represented by the Sugar Enterprise Team (SET), entered into discussions with Infinity Bio-Energy towards the finalization of a number of related agreements, including the Off-Take Agreement. The agreements were not finalized within the time-frame anticipated and pending said finalization and completion of the HOA, PEL was requested to ensure the availability of ethanol supplies to Petrojam Limited for the production of E-10 fuel during the interim period.*

*The deadline for finalization of the agreements with Infinity Bio-Energy and the Government of Jamaica expired on January 31, 2009. The inventory of ethanol*



*remaining in storage from the parcel procured by the PCJ from Infinity Bio-Energy lasted until April 2009 at which time PEL was again requested to procure ethanol for blending of E-10 gasoline. PEL was in the process of procuring hydrous ethanol for processing at its dehydration facility in order to have fuel grade anhydrous ethanol ready for sale. Delays in the tendering process however, resulted in PEL not being able to procure the hydrous ethanol in time to process same for distribution to the trade. PEL was again forced to employ the previous procurement method by approaching the two approved local ethanol companies. Selection was done on the basis of least cost and availability.”<sup>84</sup>*

In cross-referencing the foregoing information with previous responses received from key Public Officers/Officers, the OCG has noted the following:

1. Mr. Moore indicated that the decision was made by the SIT to purchase Ethanol from Infinity Bio-Energy.
2. On the other hand, Mr. Mullings indicated that the recommendation for the procurement of Ethanol was made by Mr. Ricardo Neins, General Manager, PEL, and Mr. William Saunders, Chairman, Board of PEL. He also added that Mr. Ian Moore, former Chairman of the PCJ Board, approved the procurement of Ethanol from Infinity Bio-Energy, without authority so to do.

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<sup>84</sup> Mr. Ricardo Neins’ response to the OCG’s Requisition which was dated February 19, 2010.



3. Dr. Ruth Potopsingh confirmed that Mr. Ian Moore, then Chairman of the PCJ Board, concluded the Agreement with Infinity Bio-Energy. She also inferred that Mr. William Saunders and Mr. Nigel Logan were also involved with the agreement. Further, Dr. Potopsingh disclosed to the OCG that Mr. Aubyn Hill, Chairman of Sugar Divestment Committee and a Mr. Wilfred Baghaloo were involved in the discussions relating to (a) the Application of a Letter of Credit and (b) the required volume of Ethanol. She advised that based upon correspondence, Mr. Dwight Lewis, Coordinator for the E-10 Project and formerly of the PCJ, may have also been involved in the discussions.
  
4. Dr. Potopsingh added that the PEL obtained approval from the NCC to use the Sole Source Procurement Methodology to obtain 15,000 cubic metres of Ethanol from Infinity Bio-Energy. This information was confirmed by NCC on its database of endorsed contracts for the year 2008. In relation to JB Ethanol, PEL was requested to ensure supplies of Ethanol for the E-10 launch in November 2008. She added that this engagement was executed by the PCJ, which obtained approval from NCC for the use of Limited Tender Procurement Methodology.
  
5. Mr. Neins indicated that both himself and Mr. William V. Saunders, in his capacity as the Chairman of the Board of PEL, had committed the GOJ to the procurement of Anhydrous Fuel Grade Ethanol from only JB Ethanol.

Having regard to the foregoing, the OCG found that Mr. Ian Moore, confirmed and/or committed the GoJ to purchasing the shipment of Ethanol from Infinity Bio-Energy, while Mr. Ricardo Neins, along with Mr. William Saunders, had committed the GoJ to the purchases from JB Ethanol.



## **Authority to Enter into Agreement(s) with Infinity Bio-Energy and/or JB Ethanol**

The OCG in its effort to have a full understanding of the circumstances which led to the approved purchases of Ethanol, in conjunction with account(s) received revealing the involvement of Mr. Ian Moore and Mr. Saunders, amongst others, also requested information to confirm the individuals with the requisite authority to approve or commit the GoJ to the subject contract awards.

Having regard to the foregoing, the OCG, by way of its statutory Requisition to Mr. Ian Moore, Dr. Ruth Potopsingh and Mrs. Hillary Alexander, which were dated September 24, 2009 and to Mr. Ricardo Neins, which was dated February 5, 2010, also asked the following question:

*“Are you aware of the name(s) of the person(s) who was/were authorized to commit the Government of Jamaica to any purchase/contractual agreement with Infinity Bio-Energy and/or JB Ethanol for the supply of ethanol? If yes, please provide the name(s) and title (s) of the person(s) who was/were authorized to commit the Government of Jamaica to any purchase/contractual agreement with Infinity Bio-Energy and/or JB Ethanol for the supply of ethanol.”<sup>85</sup>*

Mr. Ian Moore, in his response to the OCG’s requisition, which was dated October 22, 2009, indicated as follows:

*“The SIT was authorized by the Cabinet to enter into the HOA which authorized the purchase of ethanol for the E10 program. The actual purchase was executed*

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<sup>85</sup> OCG’s statutory Requisition to Mr. Ian Moore, Dr. Ruth Potopsingh and Mrs. Hillary Alexander, which were dated September 24, 2009 and to Mr. Ricardo Neins, which was dated February 5, 2010.



*by PCJ as mentioned above. Mr. Aubyn Hill was the Chairman of the SIT and I was Chairman of PCJ as explained above. Mr. Bill Saunders who was Chairman of the E10 program roll-out committee was authorized by the SIT to confirm the purchase of 10,000 c.m. of ethanol from Infinity, which he did on October 3, 2008. It should be noted that his e-mail referred to 5,000 c.m. as he was of the opinion that this was the amount authorised. It was subsequently confirmed that there were to be 2 shipments of approximately 5,000 c.m. each.”<sup>86</sup>*

Mrs. Hillary Alexander, in her response to the OCG’s Requisition, which was dated October 22, 2009, indicated as follows:

**“Where contracts are entered by the PCJ, I am advised that the Group Managing Director is authorized to execute the relevant documents.** Please note also Sub-section 9(3) of the First Schedule of the Petroleum Act, which states that:

*“All documents, other than those required by Law to be under seal, made by, and all decisions of, the Corporation may be signified under the hands of the Chairman, or any other member authorized to act in that behalf, and the secretary.”*

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<sup>86</sup> Mr. Ian Moore, in his response to the OCG’s Requisition, which was dated October 22, 2009. (Response #8)



**In case of contracts made by Petrojam Ethanol, I am advised that the General Manager of Petrojam Ethanol is authorized to execute relevant documents.**<sup>87</sup> (OCG Emphasis)

Dr. Ruth Potopsingh, in her response to the OCG's Requisition, which was dated October 8, 2009, indicated as follows:

*"In relation to Infinity Bio-Energy, the PCJ Board of Directors authorized the Group Managing Director, Dr. Ruth Potopsingh subject to the requisite approvals from the appropriate levels of government. She was authorized to commit the Government of Jamaica to any purchase/contractual agreement with Infinity Bio-Energy.*

*In relation to JB Ethanol, the Board of Petrojam Ethanol subject to requisite approvals from the appropriate levels of government authorized Mr. Ricardo Neins, General Manager.*<sup>88</sup>

Mr. Clive Mullings, in his response to the OCG's Requisition, which was dated October 8, 2009, indicated that *"Mr. Ricardo Neins, General Manager of Petrojam Ethanol Limited..."* was the person authorised to commit the GoJ to any purchase or contractual agreement with Infinity Bio-Energy or JB Ethanol for the supply of Ethanol. Mr. Mullings also indicated that this would be *"after proper procurements procedures were complied with."*<sup>89</sup>

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<sup>87</sup> Mrs. Hillary Alexander's response to the OCG's Requisition, which was dated October 22, 2009. (Response #8)

<sup>88</sup> Dr. Ruth Potopsingh's, response to the OCG's Requisition, which was dated October 8, 2009. (Response #8)

<sup>89</sup> Mr. Clive Mullings' response to the OCG's Requisition which was dated October 8, 2009. (Response #8)



Mr. Ricardo Neins, in his response to the OCG's requisition, which was dated February 19, 2010, indicated that *"Mr. William V. Saunders, Chairman of Board of Directors of Petrojam Ethanol Limited and Mr. Ricardo Neins, acting in his capacity as General Manager of Petrojam Ethanol Limited committed the GOJ to the procurement of anhydrous fuel grade ethanol from the JB Ethanol only. The contracts between JB Ethanol and PEL were signed by the General Manager of PEL."*<sup>90</sup>

Having regard to the foregoing, that Mr. Ricardo Neins confirmed that it was he who had signed the contracts entered into with JB Ethanol. It is to be noted that Mr. Neins in his capacity as General Manager of Petrojam Ethanol Limited has the authority to do so.

Having regard to the foregoing responses, the OCG found that Mr. Ricardo Neins and/or Mr. William Saunders were authorized to commit the purchase of Ethanol on behalf of the PEL, while the Group Managing Director of the PCJ, Dr. Ruth Potopsingh, was the person authorized to approved the purchase of Ethanol for contracts entered into by the PCJ. **Hence, the authorization to approve the purchase of Ethanol should have been received from Dr. Ruth Potopsingh, in her capacity as the Group Managing Director and not Mr. Ian Moore.** (OCG Emphasis)

Based upon the foregoing, Mr. Saunders was authorized to commit the purchase of Ethanol, but merely informed Infinity Bio-Energy of an intention to purchase the Ethanol. However it was Mr. Ian Moore who agreed to the terms of the agreement without the authority to do so.

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<sup>90</sup> Mr. Ricardo Neins' response to the OCG's Requisition which was dated February 19, 2010. (Response #8)



## **Total Volume of Ethanol Purchased and Delivered**

The OCG found it prudent to confirm the total volume of Ethanol which was supplied to the GoJ. In this regard, the OCG, by way of its statutory Requisitions to Mr. Clive Mullings, Dr. Ruth Potopsingh and Mrs. Hillary Alexander, dated September 24, 2009, and to Mr. Ricardo Neins, dated February 5, 2010, posed the following question:

*“Please provide the total volume of ethanol which was supplied to and received by the Government of Jamaica, in each instance, from either Infinity Bio-Energy and/or JB Ethanol. Please provide answers to the following questions and, where possible, please provide documentary evidence in support of your response:*

- i. State the unit cost per cubic metre for each shipment of ethanol which was received by the Government of Jamaica;*
- ii. Please detail the date on which each shipment/supply of ethanol was received by the Government of Jamaica;*
- iii. The terms and conditions of payment for each shipment of ethanol;*
- iv. The date(s) payment was made in each instance for each shipment;*
- v. The name(s) of the person(s) who authorized*



payment.”<sup>91</sup>

Mrs. Hillary Alexander, in her response to the OCG’s Requisition, which was dated October 22, 2009, indicated, *inter alia*, as follows:

*“I am advised that, in respect of Infinity Bio-Energy, the total volume purchased was 5,250 cubic meters at 20 degrees centigrade of anhydrous ethanol.*

- i. Unit cost: US\$609.53 cubic metre*
- ii. Date shipment received: December 31, 2008*
- iii. Terms and conditions for payment: The shipment was to paid as follows:*
  - a. Establishment of Standby Letter of Credit*
  - b. Payment was expected by wire transfer within five business days of receipt of the shipment.*
- iv. Date payment was made: January 6, 2009*
- v. Names of persons who authorized payment: Dr. Ruth Potpsingh,[sic] Group Managing Director and Miss Wahkeen Murray, Acting Corporate Secretary, PCJ.*

*In respect of JB Ethanol I am informed by Petrojam Ethanol Limited as follows:*

*Vendor: JB Ethanol*

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<sup>91</sup> OCG’s Requisitions to Mr. Clive Mullings, Dr. Ruth Potopsingh and Mrs. Hillary Alexander, dated September 24, 2009, and to Mr. Ricardo Neins, dated February 5, 2010.



*Price:*                    *October*            *17,*            *2009-*  
*US\$879,347.00 @ US\$2.20 per*  
*US gallon*

*November*            *26,*            *2009-*  
*US\$859,348.45 @ US\$2.15 per*  
*US gallon*

*December*            *15,*            *2009-*  
*US\$627,000.00 @ US\$2.9 per*  
*US gallon*

*Volume:*                    *October 17, 2009-399,717 US*  
*gallons*

*November 26, 2009-399,620 US*  
*gallons*

*December 15, 2009-300,000 US*  
*gallons*

*Description: Anhydrous ethanol derived from sugar  
cane molasses.*<sup>92</sup>

Dr. Ruth Potopsingh, in her response to the OCG's Requisition, which was dated October 8, 2009, provided the same information, as above, in relation to the total volume of Ethanol which was supplied to, and received by the GoJ, from either Infinity Bio-Energy and/or JB Ethanol.

Mr. Ricardo Neins, in his response to the OCG's Requisition, which was dated February 19, 2010, provided, *inter alia*, the following information:

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<sup>92</sup> Mrs. Hillary Alexander's, response to the OCG's Requisition dated October 22, 2009. (Response #11)



**“TABLE B. ETHANOL PURCHASED FOR E-10 BLENDING**  
**PROCUREMENT DETAILS**

REQUEST FOR QUOTATION				SELECTION		DELIVERY		
CONTRACT DATE	VOLUME REQUESTED (CUBIC METRE)	RFQ SENT TO	UNIT PRICE QUOTED (US\$/m <sup>3</sup> )	COMPANY	BASIS	VESSEL NAME	BOL DATE	QUANTITY DELIVERED (m <sup>3</sup> )
7-Nov-08	1,514	JB ETHANOL	581.18	JB ETHANOL	Best price	CT CORK	12-Nov-08	1,513
		JEPCO	660.43					
28-Nov-08	1,514	JB ETHANOL	567.97	JB ETHANOL	Best price & availability	CHEM SUN	29-Nov-08	1,513
		JEPCO	None					
19-Dec-08	1,136	JB ETHANOL	552.12	JB ETHANOL	Best price	CLIPPER TROJAN	22-Dec-08	1,136
		JEPCO	594.87					
6-April-09	1,893	JB ETHANOL	581.18	JB ETHANOL	Availability	LODESTAR GRACE	7-Apr-09	1,924
		JEPCO	None					
4-May-09	379	JB ETHANOL	554.76	JB ETHANOL	Availability	Tanker RTW	5-May-09	347
		JEPCO	None					

- i. *Table B above details the cost per cubic meter and volumes in cubic meters of the interim supply of ethanol purchased from JB Ethanol.*
- ii. *The dates on which the shipments were received by PEL on behalf of the Government of Jamaica are shown in Table B above.*
- iii. *Payment terms were Free-On-Board (FOB) Port Esquivel, due and payable three working days after presentation of documents (invoice, bill of lading, surveyors report). Final settlement was in United States dollars (US\$).*



- iv. *1<sup>st</sup> Purchase: November 18, 2008*  
*2<sup>nd</sup> Purchase: December 10, 2008*  
*3<sup>rd</sup> Purchase: December 31, 2008 (paid in JA\$)*  
*4<sup>th</sup> Purchase: April 20, 2009*  
*5<sup>th</sup> Purchase: May 15, 2009*
- v. *1<sup>st</sup> Purchase: Ricardo Neins – General Manager - PEL*  
*2<sup>nd</sup> Purchase: Ricardo Neins – General Manager - PEL*  
*3<sup>rd</sup> Purchase: Hugh C. Hines – Acting General Manager - PEL*  
*Winston L. Watson – General Manager – Petrojam/ Director - PEL*  
*4<sup>th</sup> Purchase: Ricardo Neins – General Manager – PEL*  
*5<sup>th</sup> Purchase: Ricardo Neins – General Manager – PEL*<sup>93</sup>

Having regard to the foregoing, the OCG found that 5,250 cubic metres at 20 degrees centigrade of Anhydrous Ethanol was purchased from Infinity Bio-Energy, while 6433 meter cubes of Ethanol were delivered by JB Ethanol.

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<sup>93</sup> Mr. Ricardo Neins' response to the OCG's Requisition, which was dated February 19, 2010. (Response #11)



## **Additional Cost Incurred by the Government of Jamaica**

The OCG found there were costs incurred by the Government outside of the direct costs which were associated with acquiring the shipment of Ethanol from Infinity Bio-Energy.

This was highlighted in a Memorandum dated October 16, 2008, from Mr. Nigel Logan Group Chief Financial Officer to Mr. Ian Moore and copied to the Chairman, PCJ Finance Committee and the Group Managing Director. This document was submitted to the OCG by the former Permanent Secretary in the Ministry of Energy, Dr. Jean Dixon during the conduct of the OCG's Preliminary Enquiry into the matter. The email stated *'inter alia'* as follows:

### ***“Background***

*The Government of Jamaica has executed a Heads of Agreement with Infinity Bio Energy for the purchase of the assets of the Sugar Company of Jamaica along with Petrojam Ethanol Ltd. Claus 3.1 (h) (iii) of the contract states that:*

*“singing of a five (5) year Off-Take Agreement with Newco, by which the GOJ agrees to accept from Newco, one hundred percent (100%) of the fuel ethanol required to fulfill the mandatory mix in clause 3.1 (h) (iv) at a price of 65% of the gasoline price sold ex-refinery;”*

*The Long Term Ethanol Off-Take Agreement to purchase ethanol from Infinity Bio Energy of Brasil has been drafted but has not been signed. The Off-*



*Take Agreement should have been executed between Petrojam and Newco but instead it may be signed between Petrojam (or PCJ) and Infinity subject to further negotiation regarding the terms.*

### ***The Request***

*Infinity Bio Energy is no ready to send the first shipment and has requested a letter of credit for sale of 5,250 cubic metres of anhydrous ethanol.*

*In reviewing the various documents I have noted the following regarding this transaction.*

- *The price quoted by Infinity Bio Energy is US\$650.00 per cubic metre. This is higher than the price included in the Heads of Agreement which states that the price should be 65% of the ex-refinery price. In their calculations regarding their pricing, Infinity advised that they used the Net Fuel Cost which includes the SCT of \$7.356, as comparison to determine their price. The company has agreed to accept a price which is 65% of the Net Fuel Cost (Ex-Refinery +SCT).*
- *A condition of the Letter of Credit will be that the initial payment will be the amount which represents 65% of the ex-refinery price while the remaining*



*\$7.356 will be paid in three equal installments commencing in April 2009.*

### ***PCJ Conditions of Letter of Credit***

*Conditions to be attached to the LC should include amongst other things:*

- 1. Parcel Size – 5,000 cubic meters +/-5% at Seller's option=5,250 cubic meters*
  - a. Priced at 65% of the 87 ex-refinery for the 87 octane (including SCT) on the date of the order*
  - b. Utilize PCJ Policy for Forex values on the relevant dates*
- 2. Accumulate any variance caused by the SCT until after April 2009 and pay this to the Seller in 3 equal installments over the 3 subsequent months*

*Please note that this is a one-off transaction. All future and subsequent ethanol procurement arrangement shall be subject to a fully executed off-take agreement which should come into place by then.*

### ***Approval Needed***

*I now seek the approval of the Board of Directors to establish Letter of Credit in favour of Infinity Bio Energy in the sum of US\$3,308,810.68 (Three Million Three Hundred and Eight Thousand Eight Hundred*



*and Ten United States Dollars and Sixty Eight Cents)...”<sup>94</sup>*

The referenced memorandum outlined that the price of the ethanol quoted by Infinity Bio-Energy was higher than the price included in the HOA, in this regard permission was needed from Board to establish a letter of credit for this transaction.

In the forgoing regard, the OCG, by way of its statutory Requisition to Mr. Ian Moore, Dr. Ruth Potopsingh and Mrs. Hillary Alexander, dated September 24, 2009, and to Mr. Ricardo Neins, dated February 5, 2010, sought to ascertain whether there were any additional cost which were incurred by the GoJ, through the PCJ and/or PEL.

Dr. Ruth Potopsingh, in her response to the OCG’s Requisition, which was dated October 8, 2009, indicated, *inter alia*, as follows:

*“The costs incurred by the Government of Jamaica and/or the PCJ outside of the direct costs which were associated with acquiring each shipment/supply of ethanol which was obtained from Infinity Bio-Energy were as follows:*

*Application Fee for Letter of Credit: US\$19,222.50*  
*Bank Confirmation Fee: US\$16,090.75*  
*US\$35,313.25”<sup>95</sup>*

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<sup>94</sup> Memorandum dated October 16, 2008, from The Group Chief Financial Officer Mr. Nigel Logan Mr. Ian Moore, and copied to the Chairman, PCJ Finance Committee and the Group Managing Director,

<sup>95</sup> Dr. Ruth Potopsingh’s response to the OCG’s requisition, which was dated October 8, 2009.



Mrs. Hillary Alexander, in her response to the OCG's Requisition, which was dated October 22, 2009, provided a similar response to that provided by Dr. Ruth Potopsingh.

Mr. Ian Moore, former Chairman, PCJ, in his response to the OCG's Requisition which was dated October 22, 2009, indicated he was not aware of any outside costs. He further stated that "*There were discussions on rental for storage tank(s), but I do not know if these were ever required.*"<sup>96</sup>

In an effort to determine whether there were any additional costs regarding the shipments of Ethanol by JB Ethanol, the OCG requisitioned Mr. Ricardo Neins. Mr. Neins, in his response to the OCG's Requisition, which was dated February 19, 2010, indicated that "*...no additional cost was incurred for procurement of ethanol from JB Ethanol.*"<sup>97</sup>

Having regard to the foregoing, the OCG found that both Mrs. Alexander and Dr. Potopsingh indicated that US\$35,313.25 represented additional costs in the form of fees associated with acquiring Ethanol from Infinity Bio-Energy. Based upon the evidence presented the OCG has not seen any evidence to indicated that any additional cost was incurred in relation to the purchase of Undenatured Anhydrous Fermentation Ethanol from JB Ethanol.

*Price of Ethanol from Infinity Bio-Energy Compared to Ethanol from other sources on October 3, 2008.*

Dr. Ruth Potopsingh submitted a document comparing the prices of Ethanol as at October 3, 2008, which is the date on which Mr. Ian Moore committed the GoJ to the purchase of Ethanol to Infinity Bio-Energy. For the quantity of Ethanol which was purchased (5,250 cubic metres), the price as per the Heads of Agreement (65% of Ex-refinery Price) would have been US\$2,940,261.45. Infinity Bio-Energy's Original Price (Value of Letter of Credit) was US\$3,412,500.00. The price as per Infinity's pricing was US\$3,200,000.00 (this was the price which was eventually paid by the GoJ

<sup>96</sup> Mr. Ian Moore's response to the OCG's Requisition which was dated October 22, 2009.(Response# 11)

<sup>97</sup> Mr. Ricardo Neins', response to the OCG's requisition, which was dated February 19, 2010.(Response #12)



for the Ethanol from Infinity Bio-Energy. The New York (NY) PLATTS (CIF NY) price was US\$3,005,936.68. The Market Santos price was \$3,144,459.90, while the Proposed Source price was US\$3,116,754.62.

Having examined the price comparisons, all the other prices on that date were lower than Infinity Bio-Energy's final price except for the Infinity's original price. The most significant difference were the price per the HOA and the NY PLATT price. The final price from Infinity which was US\$3,200,000.00, this was closest to the Santos Price of US\$3,412,500.00

Having regard to the information contained in the reference table. The Ethanol could have been purchased at a lower rate than what it was purchased for on October 3, 2008 as the NY PLATT price was US\$3,005,936.68 which was US\$194,063.32 lower.



## **Possible Deference of Escalated Costs to Consumers**

By way of an email which was dated October 16, 2008, at 10:59 PM, which was captioned, 'Ethanol Floor Price', from Mr. Glenford Watson to Mr. Clive Mullings, Dr. Jean Dixon, Mr. Douglas Leys and a "C Lewis" of the Attorney General's Office, and which was copied to Mr. William Saunders, the following was stated:

*"...I am restricting circulation, for now, of this mail as it was forwarded to me confidentially.*

*I am very concerned and do believe the protocol for advancing GOJ's position, to Infinity, needs to be tightened. **It is clear that representations/positions, which have not be [sic] agreed to or signed off by GOJ reps, are being advanced to Infinity, without the benefit of full discussion or the implications thoroughly assessed.** In this regard, note the proposals at 1, 2 & 3 below.*

*In relation to 1, my understanding is that **the Chairman of PCJ intends to place an LC for the benefit of Infinity whilst the HOA speaks to the GOJ purchasing from NEWCO. There is significant financial implications to purchasing the ethanol from infinity instead of Newco; and, hence the reason infinity wants to alter the HOA in this regard. Not only will GOJ be deprived of revenue that could have be [sic] earned by GOJ as a partner in NEWCO, the***



**cost of shipping, transportation and handling charges (of ethanol) will also pass to GOJ and, ultimately, to the consumers, directly and adversely impacting on the price for the ethanol.**

**With reference to 2 & 3, this deferred cost to consumers is in addition to proposed deferred costs associated with the rental of the tank. To hide these costs from the consumers and, then, piled them on when the use of ethanol becomes mandatory cannot be a sound or prudent way for us to proceed. The likely backlash from consumers, when they realized that we were less than candid with them about the cost of the E-10 and the price they would be required to pay, is one of several reasons why we ought not to adopt this approach.** (OCG Emphasis)

*I remain of the view that a deal that's fair to Infinity need not be a burden to the GOJ.*<sup>98</sup>

The OCG found that the following emails were enclosed in Mr. Glenford Watson's email outlined above:

1. Email from Mr. Ian Moore to Mr. Aubyn Hill, which was dated October 15, 2008, under the subject "Ethanol Floor Price". This email stated, as follows:

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<sup>98</sup> Email correspondence from Mr. Glenford Watson to Mr. Clive Mullings et.al, which was dated October 16, 2008, which was captioned, 'Ethanol Floor Price'.



*“Aubyn, I have had a lengthy discussion with Sergio and his team and on my side I had Ruth, Bill Saunders, Dwight Lewis and Nigel Logan.*

*We discussed 2 issues:*

- 1) the initial order (5000 cubes) which we wanted to finalize*
- 2) the off take agreement*

*Both these items involved the floor and ceiling pricing*

*We had placed an order on October 3<sup>rd</sup> and according to his calculations at the floor pricing the order would be about 3.4 million dollars our calculations show us a price of 3.1 MM. When analyzed the ambiguity is that the HOA does not stipulate*

- a) ex refinery on 87 octane or 90 octane*
- b) whether tax is a part of the ex refinery price or not*

*With our calculation we did a worst case hence the 3.4 vs. the 3.1*

*Here is the proposal*

- 1) Do the LC for 3.4*
- 2) Pay only the 3.1 on receipt of cargo*
- 3) Defer the 300k until April 1 2009 after the ethanol mandate*



**The impact to the consumer if take back at full value  
would be 68 cents per liter over 3 months**

*I am recommending that we do this and move on with the remainder of the negotiation.*

*This decision has to be made tomorrow and I need your approval to do so and or your approval to run this by the PM in your absence.”<sup>99</sup>*

2. An undated email from Mr. Aubyn Hill to Mr. Ian Moore. This email was apparently in response to the October 15, 2008 email above, and stated the following:

**“Ian; Be careful how you move away from the 65%  
ex-refinery price of gas as the price of anhydrous  
ethanol THAT WAS PROPOSED by SERGIO and  
APPROVED BY CABINET AND PARLIAMENT  
and sign by the PM.** *If we have change what is in the  
HOA we will have to repeat the approval process  
outlined above. Such a change could open up the HOA  
to become a political football. Of course, the PM  
makes the call [sic] an issue such as this. I suggest that  
you check with Chris Bovell and Stephanie Moore  
(both lawyers who were intimately involved in the  
negotiations and drafting of the HOA) and get their  
opinions before you seek a decision from the PM.  
Regards Aubyn. (OCG Emphasis)*

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<sup>99</sup> Email from Mr. Ian Moore to Mr. Aubyn Hill, which was dated October 15, 2008.



*Sent from Blackberry.*”<sup>100</sup>

3. The OCG also examined another email, which was dated October 16, 2008, at 2:38 PM, from Mr. William Saunders to Mr. Glenford Watson, Mr. Clive Mullings, Dr. Jean Dixon, Mr. Douglas Leys and a “C Lewis” of the Attorney General’s Chambers. This email was apparently in response to the above-mentioned October 16, 2008, at 10:59 PM, from Mr. Glenford Watson, and stated as follows:

*“All,*

*Please be advised that my involvement in the discussions with Sergio were limited to a statement made as follows*

- 1) The HOA speaks to 65% of the ex-refinery price which is clearly defined. The price excludes tax. This is the price approved by Cabinet*
- 2) Any deviation from this price can only be made by Cabinet.*
- 3) Minister Mullings made a commitment that E-10 would be sold at a lower cost than MTBE gasolines. Any price adjustment to ethanol would have implications to this commitment. **I wish to go on record as disassociating myself with negotiations or discussions to reach a price compromise and would only do so if so instructed by my Minister.** (OCG Emphasis)*

*I left the room and proceeded home.*”<sup>101</sup>

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<sup>100</sup> An undated email from Mr. Aubyn Hill to Mr. Ian Moore. This email was apparently in response to the October 15, 2008.



Based upon the foregoing, the OCG found that Mr. Moore, having committed the GoJ to the purchase of Ethanol from Infinity Bio-Energy, which was indicated as being above market rates, had proposed and further tried to implement deferring full payment of the escalated cost for the Ethanol until the use of the E-10 fuel became mandatory. **This in effect, based on the information above, would effectively conceal the true price of the Ethanol from the Jamaican consumer with a view of recovering the total cost over the three (3) month period when movement in prices would be less easily detected.** (OCG Emphasis)

The OCG found that this was detected by Mr. Glenford Watson, then Legal Officer, PCJ, and brought to the attention of Mr. Clive Mullings, Mr. William Saunders, the then Solicitor General, amongst others.

The OCG noted that this took place before Mr. Moore informed the Board, in its Meeting of October 17, 2008, that “...an email was sent to Infinity by Director Saunders that triggered, according to Infinity, a commitment for the product. He further advised that he sent a subsequent email agreeing that the ethanol was required but questioning the need for a Letter of Credit (LC).”<sup>102</sup>

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<sup>101</sup> Email correspondence from Mr. William Saunders to Mr. Glenford Watson, Mr. Clive Mullings, Dr. Jean Dixon, Mr. Douglas Leys and a “C Lewis” of the Attorney General’s Chambers, which was dated October 16, 2008.

<sup>102</sup> PCJ Minutes of Special Meeting of the Board, dated October 17, 2008.



## **Measures to Ensure Compliance with GPPH**

In relation to the award of contracts to JB Ethanol and Infinity Bio-Energy, the OCG sought to determine whether certain provisions of the November, 2008 GOJ Public Sector Procurement Procedures would be applicable. This is buttressed by the fact that the former Minister, Mr. Clive Mullings, had indicated to the OCG that he intervened when he learned that a Letter of Credit was being prepared for the purchase of Ethanol from Infinity Bio-Energy for an amount over and above what could be procured from other sources by at least half a million United States dollars.<sup>103</sup>

The OCG requisitioned Mr. Ian Moore, Dr. Ruth Potopsingh, and Mrs. Hillary Alexander, by way of letter dated September 24, 2009, and Mr. Ricardo Neins on February 5, 2010, and posed the following question:

*“What measures and/or steps were taken to ensure that the requirements of the Government Procurement Procedures Handbook (GPPH) were adhered to in the procurement of any and all goods, works and services which were provided by Infinity Bio-Energy and/or JB Ethanol? Please provide documentary evidence, where possible, in support of your response.”*

Mr. Ian Moore, in his response, that was dated October 22, 2009, indicated, *inter alia*, as follows:

*“There was no reference to the GPPH because my understanding was that this was not necessary as the SIT and PCJ were implementing the HOA which had*

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<sup>103</sup> Mr. Clive Mullings', response to the OCG's Requisition which was dated October 18, 2009. (Response #5)



*been approved by Cabinet and signed by the Prime Minister.* ”<sup>104</sup>

Mrs. Hillary Alexander, in her response to the OCG’s Requisition, which was dated October 22, 2009, made referenced to a previous response, in which she indicated, *inter alia*, as follows:

1. That for the award of contract with Infinity Bio-Energy, she had not been advised as to any steps taken to ensure that the price of Ethanol from Infinity Bio-Energy was competitive and within market rates; and
2. That for the award of contract with JB Ethanol, “...*the purchases from JB Ethanol were undertaken in accordance with the Limited Tender methodology, as permitted by Government procurement’s guidelines. I am advised that Mr. Ricardo Neins, General Manager of Petrojam Ethanol, managed this process.*”<sup>105</sup>

Mr. Ricardo Neins, in his response to the OCG’s Requisition, which was dated February 19, 2010, indicated, *inter alia*, as follows:

*“There was no procurement of goods, works or services from JB Ethanol. The procurement was for a commodity, anhydrous fuel grade ethanol. As such, the provisions of Sections S-1000 of the GPPH which applies to commodity procurement was applied which excluded the transactions from the procurement guidelines. Please refer to the GPPH Section S-1000 exclusion #9.”*<sup>106</sup>

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<sup>104</sup> Mr. Ian Moore’s response to the OCG’s Requisition, which was dated October 22, 2009. (Response #13)

<sup>105</sup> Mrs. Hillary Alexander’s response to the OCG’s Requisition, which was dated October 22, 2009. (Response #17)

<sup>106</sup> Mr. Ricardo Neins’ response to the OCG’s Requisition, which was dated February 19, 2010. (Response #18)



It is instructive to note that Section S-1000, Clause III – Exclusions of the GPPH provides, *inter alia*, that the procurement of items on the commodities market are not subject to the procedures.

Dr. Ruth Potopsingh, in her response to the OCG’s Requisition, which was dated October 8, 2009, indicated that “*Permission was sought and received from the National Contracts Commission for the procurement of ethanol from Infinity Bio-Energy and JB Ethanol...*”<sup>107</sup>

Having regard to the foregoing, the OCG deems it prudent to reiterate by summary the following key points:

1. In relation to the supply of Ethanol from Infinity Bio-Energy, Mr. Moore indicated that there was no reference to the GPPH.
2. With regard to purchases from JB Ethanol, Mr. Neins, General Manager, PEL, indicated that the procurement was for a commodity anhydrous fuel grade Ethanol and, as such, fell under the exemptions provided under Section S-1000 of the applicable GPPH.
3. That based on evidence from Dr. Ruth Potopsingh: (a) no steps were taken to ensure competition in the price of Ethanol from Infinity Bio-Energy, and (b) the Limited Tender Procurement Methodology was utilized for purchases from JB Ethanol to invite companies to submit quotations for the supply of Ethanol from JB Ethanol for the production of E-10 gasoline. NCC endorsement was received with regard to the procurement of ethanol from JB Ethanol.

In addition, Section S-1000 of the GPPH November, 2008 – “*SPECIAL CONDITIONS FOR COMMERCIAL ENTITIES*” - provides as follows:

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<sup>107</sup> Dr. Ruth Potopsingh’s response to the OCG’s Requisition, which was dated October 8, 2009. (Response #18)



***“Petrojam Limited***

*Petrojam’s internal procurement regime will apply to the following:*

- I. *Spot Procurement of Petroleum Products, Crude Oil, LPG, and Freight*
- II. *Procurement of LPG, MTBE and Freight*
- III. *Tank Cleaning and Repairs*
- IV. *Use of Pre-Approved Contractors List - Petrojam may use its pre-approved contractors list for the selection of contractors by limited tender for specific work on the Refinery, provided that: the list is large enough to allow for competition; these contractors also become registered with the NCC; and Petrojam will advertise annually for additional contractors to be pre-approved.*<sup>108</sup> (OCG Emphasis)

The OCG finds that Section S-1000 of the GPPH November, 2008, which was enforced by the PEL for the purchase of Ethanol from JB Ethanol was in keeping with the rules, in spite of the fact that they were exempted from doing so.

The OCG’s considered view is that the ‘Business Confirmation’ of October 3, 2008, between Infinity Bio-Energy and the PCJ was not undertaken pursuant to the applicable GPPH.

It is to be noted that NCC’s endorsement was sought by the PCJ to utilize the Sole Source Procurement Methodology for the purchase 15,000 cubic meters of Ethanol from Infinity Bio-Energy. The NCC’s decision of December 4, 2008, advised the Ministry of Energy that its endorsement was subject to *“Petrojam ensuring the value of money is obtained.”*

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<sup>108</sup> Section S-1000 of the GPPH (November, 2008).



The OCG notes that this endorsement was sought and obtained approximately two (2) months after Mr. Ian Moore agreed to the purchase of 5,000 cubic meters of ethanol from Infinity Bio-Energy. The OCG has not seen evidence to indicate that 15,000 cubic meters of Ethanol was ever obtained by the PCJ from Infinity Bio-Energy. The evidence indicate that only 5000 cubic meters of Ethanol was purchased from Infinity Bio-Energy during the period under review.

As to whether value for money was obtained, the OCG wishes to reiterate that Mr. Ian Moore in his initial agreement with Infinity Bio-Energy agreed to a price as “*per the off-take agreement*”. The commitment was made without discussing the actual cost of the ethanol. The agreement was essentially made by Mr. Ian Moore on the assumption of what the cost would actually be. It was in the re-confirmation of the purchase which was done on October 22, 2014, by Mr. Moore via email, that the actual cost was outlined. This was done after it was realized that Infinity Bio-Energy in its calculations, had included taxes to the cost stipulated in the Off-take Agreement.



## **Communication between Infinity Bio-Energy and Mr. Ian Moore**

Having regard to several responses and the well-reasoned Opinion from the then Solicitor General, Mr. Douglas Leys, which was adopted by OCG. The OCG accepts as a fact that the commitment of the GOJ to the purchase of Ethanol from Infinity Bio-Energy was made by Mr. Ian Moore. **The OCG's notes however that Mr. Saunders had sent an email which indicated that he was confirming the requirement for Ethanol, however his email did not constitute an order for Ethanol or an agreement to purchase the ethanol, it was a mere invitation to treat.** (OCG Emphasis)

In light of this, the OCG sought to have a better understanding of the email exchanges and other forms of communication, between Mr. Ian Moore, former Chairman of the PCJ Board, and representatives from Infinity Bio- Energy.

In this regard, the OCG, in its statutory Requisition of September 24, 2009 to Mr. Ian Moore, posed the following question:

*“Did you, at any time prior to, during and/or after the consummation of any agreement between the Government of Jamaica and Infinity Bio-Energy and/or JB Ethanol, make contact and/or exchange correspondence with representatives of either of the named companies? If yes, please answer the following questions:*

- i. The capacity in which you acted when such contact was made and/or correspondence exchanged;*



- ii. *The date(s) on which contact was made and/or correspondence exchanged;*
- iii. *The name(s) and title(s) of the representative(s) of Infinity Bio-Energy and/or JB Ethanol with whom contact was made and/or correspondence exchanged;*
- iv. *A summary of the particulars of the discussions which ensued at each point of contact;*
- v. *A summary of the correspondence which was exchanged between yourself and representatives of Infinity Bio-energy and/or JB Ethanol;*
- vi. *The name(s) of all other Government of Jamaica Official who were aware of your having made contact with and/or having exchanged correspondence with representatives of Infinity Bio-energy and/or JB Ethanol.*<sup>109</sup>

Mr. Ian Moore, in his response to the OCG's Requisition, which was dated October 22, 2009, indicated as follows:

*"I exchanged e-mails correspondence and telephone conversations with representatives of Infinity, as well as attending meetings with them and the SIT together in Kingston.*

- i. *I was acting in the capacity of Chairman of PCJ.*

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<sup>109</sup> OCG statutory Requisition to Mr. Ian Moore, former Chairman, PCJ, which was dated September 24, 2009.



- ii. **The dates of the e-mail correspondence telephone conversations and meetings were between the period 2<sup>nd</sup> October to 10<sup>th</sup> November according to my records and recollection.**
- iii. **The persons at Infinity with whom I had contact with were Sergio Thompson-Flores and Eric dos Santos.**  
(OCG Emphasis)
- iv. *The discussion centered around resolving the ambiguity of price of the ethanol in the HOA, whether or not it had to be produced from sugar-cane, or a mixed tank which might contain ethanol from corn or other products, some other minor terms of the Letter of Credit, and provision of the Letter of Credit itself. Also the claim by Infinity that PCJ would have to reimburse them a charge of approximately \$1.4 million United States Dollars if PCJ went back on its commitment to purchase the ethanol.*
- v. *Minister Clive Mullings, Hon. Prime Minister Bruce Golding, Permanent Secretary Dr. Jean Dixon, Dr. Ruth Potopsingh, Mr. Aubyn Hill, Mr. Bill Saunders, Mr. Winston Watson, Mr. Ricardo Neins, Mr. Glen Watson, Mr. Nigel Logan.*<sup>110</sup> (OCG Emphasis)

In light of the foregoing, the OCG found that the representatives of Infinity Bio-Energy with whom Mr. Moore primarily communicated with were Mr. Sergio Thompson-Flores and Mr. Eric dos Santos and they were the persons with whom a proposal was confirmed.

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<sup>110</sup> Mr. Ian Moore, response to the OCG's Requisition, which was dated October 22, 2009. (Response# 10)



With reference to the several email correspondence between Mr. Ian Moore and representatives of Infinity Bio-Energy revealed, **the OCG finds as a fact that Mr. Moore's discussions were outside of his power and authority as the then Chairman of the PCJ Board.** (OCG Emphasis)

**Afortiori, Mr. Moore's committed the GoJ to a purchase which was considered by the then Minister to be above market value. This, therefore, questions whether value for money was obtained.** (OCG Emphasis)

It is instructive to note Sections 6 and 17 of the Public Bodies Management and Accountability Act which provides that *"Every board shall-*

- (a) take such steps as are necessary-*
  - (i) for the efficient and effective management of the public body;*
  - (ii) to ensure the accountability of all persons who manage the resources of the public body;*
- (b) develop adequate information, control, evaluation and reporting systems within the body;*
- (c) develop specific and measurable objectives and performance targets for that body;*
- (d) advise the responsible Minister on matters of general policy relating to the management of the body."*

Pursuant to Section 17(1) *"Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties – (a) act honestly and in good faith in the best interest of the public body..."*



## **Measures to ensure that the Price of Ethanol was Competitive**

The OCG sought to ascertain whether steps were undertaken to ensure that the price of Ethanol which was obtained from Infinity Bio-Energy and/or JB Ethanol was in fact competitive and within market rates.

Having regard to the foregoing, the OCG, in its Statutory Requisitions to Mr. Ian Moore, Dr. Ruth Potopsingh and Mrs. Hillary Alexander, which were dated September 24, 2009, and to Mr. Ricardo Neins, dated February 5, 2010, asked the following question:

*“What measures and/or steps were taken to ensure that the requirements of the Government Procurement Procedures Handbook (GPPH) were adhered to in the procurement of any and all goods, works and services which were provided by Infinity Bio-Energy and/or JB Ethanol? Please provide documentary evidence, where possible, in support of your response.”*

Mr. Ian Moore, in his response to the OCG’s Requisition, which was dated October 22, 2009, indicated, *inter alia*, as follows:

*“The price of the ethanol was originally set out in the HOA approved by Cabinet, however the HOA was ambiguous. The first draft of the Off-Take Agreement from Infinity was dated 2<sup>nd</sup> October, 2008 and sent to me by e-mail dated 8<sup>th</sup> October, 2008...”*



*There were amendments suggested by the Ministry of Energy's legal officer (Mr. Glen Watson) in the draft sent to me. The proposal sent by Infinity stated-*

***“Market Price”** shall mean sixty five percent (65%) of gasoline price sold ex-refinery in Jamaica, leaded octane 90, as listed and made public by Buyer in its site (<http://www.pcj.com/admin/viewrefpricegrid.asp>) current at the Shipment Date adjusted in accordance with the Price Formula set out in Schedule 2 attached hereto;*

*This presented 2 problems for executing entity-*

- (a) The octane level was not specified in the HOA;*
- and*
- (b) The draft off-take agreement from Infinity used the PCJ website as reference and that price included the Special Consumption Tax (SCT)*

*The SIT claimed the ambiguity in its favor and Infinity claimed it in theirs. Infinity claimed that this should include SCT as this was the price quoted by PCJ on its web-site and should be calculated on 90 Octane. The SIT countered and said the HOA price was not intended to include the SCT and that it should be calculated on 87 Octane. It is this ambiguity that opened up the discussion on price by me as pricing had already been decided on in the HOA and would have been final but for the ambiguity. Discussions took*



*place over a period of time and Infinity even tried to introduce a floor and ceiling pricing due to the volatility in the market and wanted a floor price of US\$650 per c.m. We were able to reduce the price they were claiming to US\$ 609.53 for the first shipment and US\$628.58 per c.m. for the second shipment. This was better than the floor of US\$650.00 per c.m. that Infinity tried to introduce. Because of the email for Bill Saunders of October 3<sup>rd</sup> which I further confirmed, Infinity claimed that they had started the delivery process. During the 19 days it took to resolve the price issue Infinity asserted that they were in danger of being in breach with storage facility managers and sent to us a claim of charges amounting to USD 1.4 million if the shipment issues were not resolved. The alternatives would have been to-*

- a) agree to negotiated price which did not prejudice the HOA (which we chose);*
- b) not agree and incur the charges they were claiming;*  
*or*
- c) not agree and fight the charges if we did not go through with the order.*

*Also it was very important that this contract be finalised as part of the overall sugar assets divestment to Infinity.*



*Also it was very important that this contract be finalized as part of the overall sugar assets divestment to infinity”<sup>111</sup>*

Mr. Moore, in his aforementioned response, attached a copy of the “*draft minutes of meeting of the SIT dated 2<sup>nd</sup> October, 2008*” of the Sugar cane Industry Privatisation Implementation Team, in which the following discussion, *inter alia*, ensued:

1. The schedule for E10 roll out – It was advised that the Schedule would be useful to (a) allow Infinity to be better able to plan and make necessary preparations for the roll out e.g. the chartering of the ship at the lowest price and also to ensure that the product is available, and (b) provide the indicative amount of Ethanol for the monthly roll out of E10.
2. That the E10 Roll-Out was to commence on November 1, 2008. It was discussed that at this date “...100 Service Stations would be ready and that by December 2008, 200 Service Stations would be available/equipped to sell E10.”

Deliberations were had with respect to the required volume of Ethanol and the date of shipment. It was discussed that the IBE had broken down the shipments in two “...of 5,000 cubic meters.” It was further stated, *inter alia*, that “...the first shipment can be guaranteed in Jamaica between 15-29 October 2008, he also indicated that this would only be possible if IBE gets the affirmative, definitive confirmation by tomorrow (03 October 2008). He further advised that second shipment will come at a later date.” The possibility of this date was discussed.

3. Mr. Thompson-Flores advised that he would forward a draft agreement/contract which highlighted the terms that were discussed and would forward the same to Mr. Moore. Mr.

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<sup>111</sup> Mr. Ian Moore, response to the OCG’s Requisition, which was dated October 22, 2009. (Response# 12)



Flores also “...sought clarification by reiterating the point that the date is/has been set for 24 October 2008, he advised that he would call his team in Brazil tonight (02 October 2008) and make the necessary preparation from their end. He also indicated that the contract will need to be defined, affirmed and agreed on by tomorrow (03 October 2008) because he is committed to what was discussed and he expects that all the parties present would abide and honour what was agreed on because he does not want to be in the position where he has to be cancelling shipments etc.” (OCG Emphasis)

4. It was stated by Mr. Flores that “... clear objectives of the HOA was that the provider of the Ethanol would be infinity Brazil and there was an error made when the HOA was being drafted where by a “search & replace’ of the document was done and where ever the name Infinity was found it was replaced with NEWCO and in this case the name Infinity was to remain and not be changed to NEWCO.” He also stated that “...back to back option could be explored however we should be careful not to create a situation where there is an additional tax burden or an increase in the product price which in turn would add no value to anybody.”
5. It was discussed that the lawyer to be involved in the process was Mr. Christopher Bovell.
6. Deliberations were had with respect to the future plan for the E10 Programme and the transition to the E25.
7. Mr. Moore raised the point that “...there is still a disagreement in terms of who the importer of Ethanol would be, as the HOA clearly states that it would be NEWCO buying from Infinity. He further advised that from PCJ’s point of view they would prefer that it be NEWCO, providing the NEWCO can purchase directly from Infinity without having a cost added on.” He also advised that “...in this case what would happen is that the tank



**rental would be to NEWCO, NEWCO would then truck to Petrojam and all these cost along the way would be built-up and this could be classified as a back to back operation.**

The Minutes reported that **“...Mr. Moore further indicated that the competing idea was that Infinity would sell Ethanol to NEWCO and the tank becomes a rental by Petrojam, Petrojam would be responsible for the trucking to the consumer and all this is expected to encompass the 65% ex-refinery price, he clearly stated that his scenario was not practical.”** (OCG Emphasis)

8. With respect to the tanking, Mr. Moore advised that *“...the tanking cost would be J\$150,000.00 for the 5 months.”* In responding to how the cost would be recouped, Mr. Moore advised that *“...this recommendation would be subject to verification of the numbers, he advised that it would be US\$0.03 cents per litre for E10 multiplied by J\$72.00 (present exchange rate) this would give you a total of \$21.000 and this is the amount to be recouped.”*

It is instructive to note that Mr. Saunders had advised that *“...he was not sure that Mr. Moore was the person responsible to make that decision and the decision should come from the Ministry.”* Mr. Moore responded by indicating that *“...he was not making a decision he was making a recommendation that would be put forward to the Ministry.”* Mr. Saunders was not in agreement with the recommendation as *“...he was of the opinion that NEWCO should stand the cost.”* Mr. Aubyn Hill sought comments from the PCJ Group in this regard.

9. It was stated by Mr. William Saunders that *“...Minister Mullings had made a commitment that the price of E10 would be less than the price of 87. He then further analysed the price/rational for which ethanol would be sold. He indicated that at the end of the day the Government will be forgoing \$700 Million of tax revenue per year if there was no tax on ethanol, therefore Infinity needs to be flexible on the pricing for at least the first period of*



*the roll out until April 2009 so that Ethanol can be supplied to the public at a cheaper price.”*

10. Mr. Thompson- Flores had summarized his major concerns and advised the meeting that “...as at today’s date until April 2009 the situation exist where Petrojam has to find a price whereby E10 can be offered to consumer at a price that is lower than 87. He also advised that IBE is faced with the situation where there is an exchange rate differential, he indicated that the 65% agreed in the HOA today does not work and does not make the business viable. He suggested that there needs to be minimum price that will allow IBE to achieve a P&L income and also a deferred payment system whereby NEWCO would purchase the Ethanol now and pay at a later date in the future, so that Ethanol can be offered to the consumer at a lower price.”<sup>112</sup>

In attendance at this meeting were the follow individuals:

Mr. Aubyn Hill – Chairman, Sugar Cane Industry Privatization Implantation Team (SIT)

Ambassador Derick Haven- (SIT)

Mr. Ian Moore-Chairman (PCJ)

Mr. Serigo Thompson-Flores - CEO Infinity Bio-Energy (IBE)

Mr. Joao Carlos Reis - Infinity Bio-Energy

Mr. Winston Watson- PCJ

Mr. Ricardo Neins- PEL

Mr. William Saunders - PCJ

Mr. Douglas Livermore- DBJ Secretariat

Mr. Peter Goldson – IBE (MFG)

Ms. Hillary Reid- IBE (MFG)

Mrs. Andrea Scarlett-Lozer- IBE (PWC)

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<sup>112</sup> Mr. Moore in his aforementioned response attached a copy of the “draft minutes of meeting of the SIT dated 2<sup>nd</sup> October, 2008” of the Sugar cane Industry Privatisation Implementation Team.



Mrs. Janice Causwell – SIT (DunCox)

Mr. Christopher Bovell - SIT (DunCox)

Mr. Darren Singh – IBE (PWC)

Mr. Wilfred Bagaloo IBE (PWC)

The foregoing extracts of the October 2, 2008, Minutes stated that Mr. Thompson Flores indicated that he could guarantee that the first shipment of Ethanol would be delivered between October 15-25, 2008, if Infinity Bio- Energy gets an affirmative and definitive confirmation by October 3, 2008. Further, he indicated that the second shipment would have come at a later date. This proves that there was an intention to purchase Ethanol from Infinity Bio-Energy and that the members of the SIT where all aware.

The foregoing extracts of the October 2, 2008, Minutes stated that Mr. Thompson Flores indicated that he could guarantee that the first shipment of Ethanol would be delivered between October 15-25, 2008, if Infinity Bio- Energy gets an affirmative and definitive confirmation by October 3, 2008. He indicated that the second shipment would have come at a later date. This proves that there was an intention to purchase Ethanol from Infinity Bio-Energy and that the members of the SIT where all aware. There was no indication regarding who should send the email commitment, however based on information received by the OCG regarding the individual who had the authority to commit the purchase of the Ethanol, Mr. William Saunders, the Chairman of the E10 Programme would have been the person with the authority to do so, with the final approval of Dr. Ruth Potopsingh as the Group Managing Director of the PCJ “...*subject to the requisite approvals from the appropriate levels of government...was authorized to commit the Government of Jamaica to any purchase/contractual agreement with Infinity Bio-Energy.*”<sup>113</sup>

Though he did, in fact, send an email indicating that the Ethanol would be purchased, same did it not constitute a final agreement.

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<sup>113</sup> Dr. Ruth Potopsingh’s response to the OCG’s Requisition which was dated October 8, 2009. (Response #8)



Based upon the fact that Mr. William Saunders was the Chairman of the E10 Programme it would be expected that he would be integral in the purchase of the Ethanol. Mr. Saunders did, in fact, send an email indicating that the Ethanol would be purchased; same did it not constitute a binding agreement.

In this regard, the OCG found that the decision to purchase the Ethanol from Infinity Bio- Energy was indeed taken by the SIT with representatives of Infinity Bio-Energy present as well as Mr. Moore representing the PCJ, however, it was Mr. Moore who made the decision to accept the terms sent by the Infinity without consultation with any other member of the team.

**The OCG notes that there was no effort, on the part of Mr. Moore, to ensure that the prices were competitive prior to him accepting the terms which were forward to him by Infinity Bio-Energy.** (OCG Emphasis)

Further, in explaining the steps taken to ensure that the Ethanol purchased was based upon competition and was within market rates, Dr. Ruth Potopsingh, in her response to the OCG's Requisition, which was dated October 8, 2009, indicated, *inter alia*, that with respect to JB Ethanol "...Mr. Ricardo Neins was responsible for ensuring competitive pricing..." and as it regards Infinity Bio-Energy, "...based on the Business Confirmation a price of \$2.31 per gallon was agreed. Analysis of the prevailing market prices at the time indicated that the negotiated price may not have been considered the most competitive..."<sup>114</sup>

Mr. Ricardo Neins, in his response of February 19, 2010, advised the OCG of the following steps which were undertaken:

*"The steps taken were as follows:*

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<sup>114</sup> Dr. Ruth Potopsingh response to the OCG's Requisition, which was dated October 8, 2009. Question #17)



1. *Price quotes were received from the two local entities that were capable of delivering the product to required specification and within the timeframe to meet the E10-87 gasoline supply requirements*
2. *The quotations were compared and the least cost quote was selected. The process included comparisons to prevailing prices in the USA and Brazil for the commodity.*
3. *Negotiations for price reductions, as necessary, with the selected supplier followed*
4. *Approval of Board of Directors through the Chairman*
5. *Approval by General Manager for the price and supplier”<sup>115</sup>.*

Mrs. Hillary Alexander, in her response, which was dated October 22, 2009, indicated, *inter alia*, as it regards Infinity Bio-Energy, that she had not been advised as to any “...step taken to ensure that price of ethanol from Infinity Bio-Energy were competitive and within market rates.” <sup>116</sup>

On the other hand, Mrs. Alexander explained that it was Mr. Ricardo Neins who had managed the process for JB Ethanol and as was previously indicated “...the purchases from JB Ethanol were undertaken in accordance with the Limited Tender methodology, as permitted by Government procurement’s guidelines.”<sup>117</sup>

It is, however, to be noted that Mr. Moore had indicated that with respect to the purchase of Ethanol from Infinity Bio-Energy “We were able to reduce the price they were claiming to US\$609.53 for the first shipment and US\$628.58 per c.m. for the second shipment. This was better than the floor of

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<sup>115</sup> Mr. Ricardo Neins response to the OCG’s Requisition, which was dated February 19, 2010. (Response #17)

<sup>116</sup> Mrs. Hillary Alexander’s response to the OCG’s Requisition which was dated October 22, 2009.(Response #17)

<sup>117</sup> Mrs. Hillary Alexander’s response to the OCG’s requisition, which was dated October 22, 2009. (Response #17)



*US\$650.00 per c.m. that Infinity tried to introduce.*<sup>118</sup> Notwithstanding, this does not provide any certainty with respect to whether the rates were competitive in the market at the time.

The OCG wishes to reiterate that this claim by Mr. Moore was made after he accepted and bound the GOJ to the terms conditions of Infinity Bio Energy's proposal.

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<sup>118</sup> Mr. Ian Moore's, response to the OCG's Requisition which was dated October 22, 2009. (Response #12)



## **Other Information Pertinent to the Investigation**

In order to ascertain whether any of the requisitioned individuals had any other information which was pertinent to the investigation, the OCG, in its Requisitions to Dr. Ruth Potopsingh, Mr. Ian Moore, Mrs. Hillary Alexander, Mr. Clive Mullings, dated September 24, 2009, and to Mr. Ricardo Neins, dated February 5, 2010, asked the following question:

*“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”<sup>119</sup>*

Mr. Ian Moore, in his response to the OCG’s Requisition, which was dated October 8, 2008, indicated, *inter alia*, the following:

- *“The decision to sell the sugar industry assets to Infinity was decision of Cabinet of the GOJ.*
- *The decision to purchase through PCJ was that of the SIT.*
- *The price agreed to was derived from the HOA and I negotiated a lower price than the initial floor price of \$650 U.S. per c.m. proposed by Infinity down to an agreed price of US\$609.33 per c.m. for the first shipment.*

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<sup>119</sup> OCG’s rRequisitions to Dr. Ruth Potopsingh, Mr. Ian Moore, Mrs. Hillary Alexander, Mr. Clive Mullings, which were dated September 24, 2009, and to Mr. Ricardo Neins, dated February 5, 2010.



- *Failure to agree on a price would have led to a 1.4 million (U.S.) charge to Infinity which they would have passed on to PCJ. **It was my responsibility to protect the PCJ from incurring such a charge without obtaining the product.** Further, failure to agree could also have caused the break-down of divestment agreement between the GOJ and Infinity. It was made very clear by the GOJ and the SIT that the GOJ ownership of part of the sugar industry was costing the GOJ billions of Jamaican dollars each year. See attached email from Mr. Sergio Thompson-Flores to Mr. Aubyn Hill dated October 17, 2008 and Mr. Hill's reply dated October 19, 2008 together...*
- *Relating the price of the ethanol to loss of \$7.7 billion (Jamaican) of Petrojam is completely erroneous as Petrojam suffers no loss on the price as it passes the cost on the distributors and public. Even if that were true a Jamaican \$17 million over payment would be less than one half of a percent or 0.2% making the conclusion or relationship illogical.*
- *It is also incorrect to assume that there is indeed any loss on the transaction as the persons alleging were ones not wanting to include PEL in divestment even though it was made clear that the GOJ's sugar industry assets could not be sold with only loss making assets. Therefore they chose*



*“New York Platt’s price” as a reference point to make the point that a higher price was paid but they could have used “FOB Santos price” and difference would have been much less. **The proof of the pudding is that PEL themselves in that same period bought ethanol from JB Ethanol at prices above the New York Platt’s Price.** So why use that as a reference price in one instance and then buy higher than this index if the reference price is indeed available?*

- ***It is also disingenuous to use price at October 31, 2008 when the commitment was actually made from October 3, especially when oil or ethanol prices were very volatile shortly after the collapse of Lehman Bros in September 2008.** No one could accurately predict what would happen to oil/ethanol prices in the future...<sup>120</sup> (OCG Emphasis)*

Based upon the foregoing, Mr. Moore asserted that Petrojam suffered no loss as the cost was passed on to the distributors and the public has significant implications. Though the PCJ might not have incurred a significant loss in the purchase of ethanol from Infinity Bio-Energy, the fact is that the cost may have been passed on to the public. This could be argued as being potentially unfair as the Jamaican consumers would have had to bear the additional cost because of the mistakes of the PCJ. It is important to reiterate that this issue was also highlighted by Mr. Glenford Watson in his email of October 16, 2008 email to Mr. Clive Mullings, Dr. Jean Dixon, Mr. Douglas Leys, a C. Lewis, where he highlighted the fact Mr. Moore’s email of October 15, 2008, proposed the deferring of the

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<sup>120</sup> Mr. Ian Moore, in his response to the OCG’s Requisition, which was dated October 22, 2009. (Response # 21)



addition cost and passing off to the consumers. He also argued that this would not be prudent and that there might be a likely backlash from customers.

**The OCG, therefore, considers Mr. Moore’s arguments as having no weight. The attempt or intention of passing on additional cost is underhanded and goes against one of the PCJ’s core values, which is its commitment to integrity by respecting relationships with colleagues, customers and others with whom they do business, and as such always act honestly, morally and ethically.**<sup>121</sup> (OCG Emphasis)

The OCG also wishes to note that Mr. Moore argued that:

- *“The price agreed to was derived from the HOA and I negotiated a lower price than the initial floor price of \$650 U.S. per c.m. proposed by Infinity down to an agreed price of US\$609.33 per c.m. for the first shipment.*
- *Failure to agree on a price would have led to a 1.4 million (U.S.) charge to Infinity which they would have passed on to PCJ. It was my responsibility to protect the PCJ from incurring such a charge without obtaining the product. Further, failure to agree could also have caused the break-down of divestment agreement between the GOJ and Infinity.”*<sup>122</sup>

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<sup>121</sup> PCJ’s Web Site.

<sup>122</sup> Mr. Ian Moore’s response to the OCG’s Requisition which was dated October 22, 2009. (Response#21)



The OCG wishes to highlight that Mr. Moore agreed to the price as per the HOA's Offtake Agreement on October 3, 2008, despite the fact that Infinity Bio-Energy's agreement did not include the actual calculated cost for the product. It was after his commitment it was realized that the price he was expecting to pay was different from the price Infinity Bio-Energy calculated, as taxes were included in Infinity Bio-Energy's calculations. **In this regard, Mr. Moore is disingenuous in arguing that he managed to negotiate a lower price for the Ethanol. The fact is that no price negotiations took place prior to him accepting the Agreement issued to him by Infinity Bio-Energy on October 3, 2008 he accepted the terms and conditions proposed by Infinity Bio-Energy without requiring any clarification as to what the actual price would have been.** (OCG Emphasis)

The OCG was also provided with an email correspondence of October 17, 2008, from Mr. Sergio Thompson-Flores which was sent to Mr. Aubyn Hill, under the caption "VERY URGENT", and which was copied to Mr. Ian Moore. The referenced email stated, *inter alia*, as follows:

*"...I believe what has happened in the offtake agreement over the last few weeks is leading to a braking [sic] point in our ability to move forward with the whole divestment process and is leaving me increasingly insecure about whether the business environment is one in which we can operate.*

*There is no doubt in our mind that the spirit of the HOA was that the offtake agreement was such that it would generate a stable source of cash flow to Infinity in order to help finance the loss making investment in the sugar assets. Now we are not only not being given the assurance of the minimum price that was the spirit of the offtake, but we are also being denied the basis*



*on which the 65% of the gasoline was negotiated, in other words, a price based on the only price that anyone can buy gasoline from petrojam, which is the price with taxes. Furthermore, at the time the calculation was made on the basis of 90 octane, although the blend at 10% will be 88.8 octane and with 25% it will be 91.6. In other words an average higher than 90 octane.*

*Furthermore:*

- a) We are incurring losses with the port facility we have under lease and have not being [sic] using because of the dehydration being delayed now almost 4 months*
- b) Because we are no [sic] able to ship ethanol in time from Brazil we structured a transaction to redirect ethanol we had available in a port in Houston. We formally submitted a proposal that was formally accepted. If we have to wash out that transaction the loss is US\$1.4 million and we will have to bill PCJ for that and for the costs of the port, and*
- c) Finally, under the terms being proposed we would incur a loss of US\$ 500 thousand, plus the port costs we have been carrying, which would add another US\$350 thousand*
- d) On the flip side if PCJ and the GOJ adhered to the spirit of our agreement PCJ and the GOJ would have no loss and we had even agreed to differ part of the*



**payment in order to allow for a reduction of the price of gasoline.** (OCG Emphasis)

*I am at end of my rope. Having this the first transaction, which I only advanced on with a formal confirmation from PCJ end up with a proposal that we take a US\$750 thousand loss is ludicrous. Being presented with the bill for the marketing campaign of the launch of E-10, when we had agreed explicitly from the beginning that PCJ would pay the cost, is insulting, not because of the money, but because it is one more confirmation that at the end of the day, whatever we agree is ignored and we are presented with a new bill to pay, in one way or another. I am confident that I have done all I can and know that you and Ian have done the same, but I don't see how we can overcome the fact that these first baby steps are showing us that we are so far apart. And if we can't solve the off-take, or even one shipment, I can only imagine what it will be like to solve all the challenges ahead.*

*My deadline for solving this shipment is Monday morning. If we cannot solve by then I run the risk of being presented with the bill for the wash-out which I will then forward to PCJ. If that happens I think all the positive momentum on my side is lost and we will have to start discussing how to unravel. Without resolving*



*the shipment by the way and therefore headed for an impasse on the divestment, we have to review the marketing week and the use of our name, car etc.*

*I hope it does not come to that, but after having been told several times over the past two weeks that we had closed the off-take and the LC is going to be issued and nothing having been resolved in the two weeks since I was in Jamaica, there is nothing more I can do.*

*We need to speak urgently... ”<sup>123</sup>*

Mr. Aubyn Hill, responded to Mr. Sergio Thompson-Flores, via email on October 19, 2008, and stated, *inter alia*, the following:

*“Sergio:*

*There is too much in this email that is not in the HOA. You say PCJ won't lose money on the price change you are proposing, but I hear differently from Ian. Sergio please remember that 65% or ex-refinery cost of gas was your proposal for the cost of anhydrous ethanol.*

***This is the first time I'm hearing about an LC; none was mentioned in negotiations or the HOA. However, PCJ may be able to make that call. The order for the***

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<sup>123</sup> Email correspondence of October 17, 2008, from Mr. Sergio Thompson-Flores, which was sent to Mr. Aubyn Hill, and copied to Mr. Ian Moore.



**E10 ethanol import was sent to Infinity by Bill Saunders before you left Jamaica and Ian Moore had PCJ confirm it shortly after.** (OCG Emphasis)

*Your comment about the Jamaican business environment is really quite unnecessary-especially when you keep changing the goal posts.*

*Frankly, I don't believe these issues can be settled in a telephone conversation...We need to have a final face-to-face to try and settle the outstanding issues-according to our agreements. You are scheduled to come to Jamaica this week, can you tell us what day that will be since only you can reach a settlement on these issues?*

*I detect the frustration in your mail. The frustration is mutual and at some point the GOJ may have to make the call as to whether [sic] the deal is worthwhile given all the costs that are being piled on and the endless set of change which are proposed. Like you, many of our highest officials and technocrats have invested heavily in this deal. We still do want to arrive at a mutually beneficial conclusion. On your visit this week let us make a concerted effort to tie up the loose [sic] ends”<sup>124</sup>*

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<sup>124</sup> Email correspondence from Mr. Aubyn Hill to Mr. Sergio Thompson-Flores, dated October 19, 2010.



Having regard to the foregoing October 19, 2008 email, the OCG has taken note of the fact that Mr. Aubyn Hill indicated that it was Mr. Ian Moore who confirmed, the order which was sent to Infinity Bio-Energy by Mr. William Saunders.

The OCG also wishes to highlight the statement from Mr. Aubyn Hill in the abovementioned email of October 19, 2008 to Mr. Sergio Thompson Flores: **“This is the first time I’m hearing about an LC; none was mentioned in negotiations or the HOA.”** Based on the OCG’s review of the October 3, 2008 which contained the agreement which was agreed to by Mr. Moore it was indicated the *“Buyer will provide Standby Letter of Credit from a bank in a form agreeable to the Seller. First L/C to be received by October 7, 2008. Second L/C to be received by January 10, 2009”*, Based upon the foregoing, the OCG questions the reason Mr. Moore did convey this information to the then Chairman of the SIT Mr. Aubyn Hill.

The OCG wishes to highlight that this section of the Report is based on additional information Mr. Moore presented to the OCG in his response to the OCG’s Requisition and in defense of this actions. The additional information has, however, highlighted the fact that, Mr. Moore committed the GOJ to the purchase of Ethanol from Infinity Bio-Energy without consultation with the PCJ Board of Directors the SIT or any other person to the purchase of Ethanol for and on behalf of the GoJ.

Additionally, the OCG notes that Mr. Moore indicated that he negotiated a lower cost for the Ethanol than what was proposed by Infinity, however, he did not present any documentation to substantiate this claim.



## **Role of the Procurement Committee of PCJ and Petrojam Limited**

The OCG sought to ascertain whether (a) Petrojam Limited had a Procurement Committee in place, within the fifteen (15) month period of July 1, 2008 through to September 22, 2009, when the contracts were awarded, and (b) the names and titles of the members of the said Procurement Committee within the said period up to September 30, 2009.

In this regard, the OCG requisitioned, Dr. Ruth Potopsingh and Mrs. Hillary Alexander on September 24, 2009 and Mr. Ricardo Neins on February 5, 2010, to provide the requisite information:

Dr. Ruth Potopsingh, in her response to the OCG's Requisition, which was dated October 8, 2009, indicated, *inter alia*, as follows:

*"Yes. The Procurement Committee was comprised as follows:*

*July 1, 2008 to February 28, 2009*

<i>Mr. Richard McDonald, Deputy Group Managing Director</i>	<i>Chairman</i>
<i>Ms. Kathryn Phipps, Member, Board of Directors</i>	<i>Member</i>
<i>Mrs. Ashlyn Malcolm, Group Internal Auditor</i>	<i>Member</i>
<i>Mr. Henoy Russell, Financial Controller</i>	<i>Member</i>
<i>Miss Fay Archer, Administrative Manager</i>	<i>Member</i>
<i>Mr. Godfrey Perkins, Special Projects Officer</i>	<i>Member/Secretary</i>

*March 1, 2009 to April 30, 2009*

<i>Mr. Richard McDonald, Deputy Group Managing Director</i>	<i>Chairman</i>
<i>Ms. Kathryn Phipps, Member, Board of Directors</i>	<i>Member</i>
<i>Mrs. Ashlyn Malcolm, Group Internal Auditor</i>	<i>Member</i>
<i>Miss Fay Archer, Administrative Manager</i>	<i>Member</i>



*Mr. Godfrey Perkins, Special Projects Officer      Member/Secretary*

*May 1, 2009 to May 31, 2009*

*Mr. Richard McDonald, Deputy Group Managing Director      Chairman*  
*Ms. Kathryn Phipps, Member, Board of Directors,      Member*  
*Mrs. Ashlyn Malcolm, Group Internal Auditor      Member*  
*Mr. Nigel Logan, Group Chief Financial Officer      Member*  
*Mr. Godfrey Perkins, Special Projects Officer      Member/Secretary*

*June 1, 2009 to July 31, 2009*

*Mr. Richard McDonald, Deputy Group Managing Director      Chairman*  
*Mrs. Ashlyn Malcolm, Group Internal Auditor      Member*  
*Mr. Nigel Logan, Group Chief Financial Officer      Member*  
*Mr. Godfrey Perkins, Special Projects Officer      Member/Secretary*

*August 1, 2009 to August 31, 2009*

*Mr. Richard McDonald, Deputy Group Managing Director      Chairman*  
*Mrs. Ashlyn Malcolm, Group Internal Auditor      Member*  
*Mr. Nigel Logan, Group Chief Financial Officer      Member*  
*Dr. Gavin Gunter, Senior Geologist      Member*  
*Dr. Gary Jackson, Manager, Centre of Excellence for      Member*  
*Renewable Energy (CERE) Mr. Godfrey Perkins, Special Projects Officer*  
*Member/Secretary*

*September 1, to September 30, 2009*

*Miss Kathryn Phipps, Chairman, Board of Directors      Chairman*  
*Mr. Andrew Warwar, member, Board of Directors      Member*  
*Mr. Don Creary, member, Board of Directors      Member*  
*Mr. Richard McDonald, Deputy Group Managing Director*  
*Member*



<i>Mr. Nigel Logan, Group Chief Financial Officer</i>	<i>Member</i>
<i>Dr. Gavin Gunter, Senior Geologist</i>	<i>Member</i>
<i>Dr. Gary Jackson, Manager, (CERE)</i>	<i>Member</i>
<i>Mr. Godfrey Perkins, Special Projects Officer</i>	<i>Member/Secretary</i>

*\*Dates are rounded from beginning to end of months.*<sup>125</sup>

Mrs. Hillary Alexander, in her response to the OCG's Requisition, which was dated October 22, 2009, provided a similar response to that which was provided by Dr. Ruth Potopsingh.

Mr. Ricardo Neins, in his response to the OCG's Requisition, which was dated February 19, 2010, indicated that *"No Procurement Committee was in place during the specified period"*<sup>126</sup>

It is instructive to note that the OCG also required of Mr. Neins to indicate, in the instance that the PEL did not have a Procurement Committee, the reason for operating without same. Mr. Ricardo Neins, in his response to the OCG's Requisition, which was dated February 19, 2010, indicated, *inter alia*, as follows:

*"Procurement oversight was normally provided by Petrojam Limited's procurement committee. However, due to the nature of the purchase and the fact that the Petrojam Limited Procurement committee does not represent purchases relating to raw material or product for the operation of the plant, the provisions of Section S-1000 of the GOJ Procurement Guidelines was adopted. The criteria for procurement being least cost and availability; it was not deemed necessary to*

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<sup>125</sup> Dr. Ruth Potopsingh's, response to the OCG's Requisition which was dated October 8, 2009. (Response # 13)

<sup>126</sup> Mr. Ricardo Neins', response to the OCG's Requisition which was dated February 19, 2010. (Response #13)



*adhere to the regular procurement procedures at Petrojam.”<sup>127</sup>*

Having regard to the foregoing, the OCG found that there was a Procurement Committee in place at the PCJ, during the referenced period, and that Petrojam Limited’s Procurement Committee would normally have oversight for PEL. The award of contract to JB Ethanol did not receive approval from the Petrojam Procurement Committee on the basis that, and as provided by Mr. Ricardo Neins, the purchases were undertaken pursuant to Section S-1000 of the applicable GoJ Procurement Procedures, which would have exempted the contract award from the procurement procedures.

Further, the OCG was not provided with any information to suggest that the PCJ’s Procurement Committee had endorsed the ‘one-off’ purchase of Ethanol from Infinity Bio-Energy.

Pursuant to Section S-2040 of the GPPH (November 2008), contract awards for goods and services above the threshold of \$1,000,000.00 are required to receive the endorsement of the Procurement Committee.

It is to be noted, however, that the OCG, upon review of the Minutes of the Meetings of the PCJ Board of Directors, found that the subject matter was discussed and deliberated in several meetings; however, and based on the circumstances which prevailed regarding the purchase of Ethanol from Infinity Bio-Energy, the OCG has not seen any evidence to suggest that the Procurement Committee was convened by the PCJ to endorse any of the decisions taken.

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<sup>127</sup> Mr. Ricardo Neins, response to the OCG’s Requisition which was dated February 19, 2010. (Response #14)



## **Minutes of the PCJ Board of Directors**

The OCG, having reviewed the Minutes of Meetings of the PCJ Board of Directors, for the period July 1, 2008 through to September 30, 2009, found that the PCJ Board of Directors were required to ratify the decisions taken with respect to the E-10 Roll Out.

Further, notwithstanding the fact that endorsement of the purchases of Ethanol was not brought before the PCJ Procurement Committee, or any other Procurement Committee, the OCG found that the decision to purchase Ethanol from Infinity Bio-Energy was not brought before the PCJ Board until after Mr. Ian Moore had committed to the purchase. The following extracts from the Minutes detailed below reveals same:

*Extract from the Minutes of the Board of Directors - September 29, 2008*

### **“E10 ROLL OUT**

*The GMD stated that the E10 programme was proceeding apace. She asked the Board for a grant of \$5 million to Petcom to assist that company with its preparations for the E10 Roll-out. The Board by unanimous decision approved the grant of \$5 million to Petcom for the purpose of the E-10 Roll-out. The question was raised as to whether there was any understanding that the PCJ would pay the storage cost of ethanol to Infinity Bio-energy. The Chairman said that there was no such understanding. He said that the storage cost would be US0.3c per litre. The meeting was warned of the implications of the importation of*



*anhydrous ethanol into Jamaica because the USA would be watching to see if anhydrous ethanol was being transshipped to that country through Jamaica.*

*The Board was requested to ratify the expenditure of \$15 million on public education and the promotion of E10. The GMD indicated that two contracts were issued to date for a motor rally and an entertainment package. The Board gave its approval.”<sup>128</sup>*

*Extract from Minutes of the Board of Directors - November 24, 2008*

**“GROUP MANAGING DIRECTORS REPORT**

- a) *Purchase of Ethanol - The GMD made reference to the report submitted by email to the Board regarding the authorization of the Letter of Credit for the purchase of anhydrous ethanol. She noted that a Board resolution was required for the establishment of the facility for the Letter of Credit. She informed the meeting that arrangements were being made by Infinity to ship 5000 cubic metres of denatured anhydrous ethanol to Jamaica. However, the matter of storage is proving problematic as the cost to store the ethanol over a six month period will amount to approximately US\$1.6M. She noted that this cost, when added to the excessive amount already being paid for the ethanol, would negate the purpose of E10*

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<sup>128</sup> Minutes of the Meeting of the PCJ Board of Directors - September 29, 2008



*programme to provide the ethanol at a lower cost to the consumer.*

*She indicated that another option for receiving the ethanol was presented to the Sugar Implementation Team by the General Manager of PEL who indicated that it was possible for PEL to accept denatured anhydrous ethanol and bypass it to a storage tank. She noted however that there were serious policy, storage and contamination concerns with this option and cost associated with this option was approximately US\$500,000. A further option was to organize a swap of the denatured anhydrous ethanol.*

*In response to an enquiry as to whether it was the PCJ's responsibility to purchase the ethanol, the GMD advised that the PCJ's was responsible because it made the arrangement to purchase same.*

*Director Saunders indicated that:*

- (1) he was opposed to using PEL's facility for denatured anhydrous alcohol and the same was communicated to the General Manager of PEL. He noted that he would only reconsider his position if he obtains a policy directive either from the PCJ Board or Ministry of Energy.*
- (2) he was initially of the view that the PCJ was responsible for purchasing the ethanol. However, after*



*reading the Heads of Agreement which states that the responsibility for supplying the GOJ rests with Newco, he is now of the view that it is not PCJ's responsibility.*

- (3) in his capacity as Chairman of the E10 Roll Out Committee, he was asked to indicate to Infinity the quantity of ethanol required for the E10 programme. In an email to Mr. Sergio Thompson-Flores of Infinity he confirmed that 5000 cubic metres would be required for the E10 Roll out and indicated that he would use his best endeavours to have the appropriate government agency issue a Purchase Order for same.*
- (4) a decision was taken by PEL to sell the ethanol as it is more feasibly for PEL to sell it and import hydrous ethanol for processing which is required for the E10 Programme. He further indicated that buyer had been found for the ethanol.*
- (5) Mr. Thompson-Flores by an email dated November 24, 2008 (a copy of which was circulated to the meeting) advised PEL that denatured ethanol from Houston was no longer available. Instead, un-denatured anhydrous ethanol would be shipped from Brazil and should be received at PEL. Director Saunders informed the meeting that anhydrous ethanol could be received at PEL at its receiving tank which designed for wet ethanol then transferred into the anhydrous tank.*

*Director James reminded the meeting that he had advised the Board that no consideration should be*



*given to importing anhydrous ethanol into Jamaica as it is not in the best interest of the country or the region to do so. He noted that this advice was also shared with the Minister. He expressed the view that the most feasible approach is to import wet ethanol, process it at a PEL and pass it on to Petrojam.*

**Director Charles indicated that he had no knowledge of the events leading up to the decision to purchase ethanol from Infinity and that the decision to do so was not taken by the Board. He expressed the view that decisions seem to be taken elsewhere and reported to the Board by Directors who are privy to the meeting and/or a part of the negotiation team. Director Hadeed endorsed the view of Director Charles.** (OCG Emphasis)

*It was noted that although the PCJ Board was not originally involved in the decision, certain events have led to its involvement. As such steps will have to be taken by the Board to address the issues that have arisen therefrom.*

*Director Saunders noted that the matter was brought to the Board. However, some members of the Board were not aware of the matter as they were unable to attend the Special Board Meeting held on October 17, 2008 to discuss same. **He further stated that at that***



meeting the former Chairman was given, by the members present, specific and clear instructions as to how to proceed one of which was not involved in the transaction with Infinity. (OCG Emphasis)

*The GMD indicated that a review of the emails that passed between the former Chairman and Infinity reveals that a business transaction had been consummated on October 3, 2008. This she noted was confirmed by the Solicitor General.*

*Director Dixon expressed concern with the fact that business was being conducted on behalf of state-owned entity via email. She recommended that correspondence via this method cease and all correspondence be formalized. Further, one person should be chosen to communicate on behalf of the GOJ or the Corporation.*

*Director Saunders recommended that cargo of ethanol be traded and that anhydrous ethanol be imported for processing at PEL and for use in the E10 programme, until PEL has been sold and acquired by infinity. The Board agreed in principle that the ethanol be traded provided a cost analysis is prepared and submitted to the Board outlining the quantity, prices the difference and/or the cost involved in trading the ethanol versus*



*receiving storing consuming the ethanol as delivered by Infinity.*

*The Board recommended that:*

- *the email from Infinity be submitted to the Solicitor General to determine whether the contract had been breached by Infinity.*
- *the Prime Minister and Minister of Energy be advised of the recent development regarding Infinity and that a [sic] copies of the email from Infinity be submitted to them.*
- *any further communication with Infinity be conducted through the Solicitor General.*

**B) Letter of Credit-** *Board approval was sought for securing a Letter of Credit facility from the RBTT Bank of Jamaica Limited in the amount of US\$3.3M for a period of ninety (90) days to satisfy the Corporation's obligation to purchase the fuel grade ethanol from Infinity. The meeting was advised that the application or facility fee for securing the Letter of Credit would be 0.5% plus GCT. The Board resolved that:*

1. *the Corporation DO BORROW from the RBTT Bank of Jamaica Limited (hereinafter called the bank) the sum of Three Million Three Hundred Thousand United*



*States Currency (US\$3,300,000.00) (hereinafter called the principal sum) in the form of a Standby Letter of Credit Facility.*

- 2. The Corporation do repay the Principal Sum of the Standby Letter of Credit with any interest thereon and upon such terms and conditions stipulated in the Commitment Letter dated the 19<sup>th</sup> day of November, 2008.*
- 3. Repayment of the Standby Letter of Credit be secured by Hypothecation of Certificate of Deposit in the amount of US\$3,800,000.00 in the name of Petroleum Corporation of Jamaica.*
- 4. Any other agreement, documents or instrument necessary to give effect to the Standby Letter of Credit be executed by any two Directors or a Director and the Corporate Secretary under the Corporation seal.*

*The Board directed that the request for the borrowing be submitted to MOFPS for approval.”*

*Extract from Minutes of the Board of Directors - December 17, 2008*

*“Off-Take Agreement-The GMD informed the meeting that the Off-take Agreement is being pursued in the context of the sugar divestment. The PCJ has been asked to review the Agreement and have been working with a technical and legal team which included representatives from Petrojam, PEL and the*



*PCJ. She noted that the legal services of Mr. Raold Henriques were engaged in the matter. She informed the meeting that the draft Agreement has been referred to the Solicitor General for comments. The Chairman noted that her major concern with the Agreement was the fact that PCJ was being asked to include in the Agreement certain provisions on the assurance from the Chairman of the Sugar Divestment Team that there is going to be a proposed amendment to the Heads of Agreement (HOA) between the Government and Infinity Bio-Energy (Infinity).*

*The rationale for PCJ being involved in this agreement was questioned and the view expressed that the Agreement should be among Newco, Infinity and Petrojam. Concern was also expressed that the Agreement does not guarantee that Jamaica will continue to produce sugar and that jobs will be saved, as under the Agreement Infinity can import ethanol or grow corn instead of sugar if it so desires. Further the motoring public is being asked to subsidize the sugar industry.*

*The GMD informed the meeting that she was advised by the Prime Minister that the Off-Take Agreement was one of the agreements necessary to facilitate the completion of the HOA. The Agreement is in respect of the importation of ethanol for governments E-10*



*programme. Questions were raised as whether the PCJ or Petrojam should be entering into the Agreement. The GMD noted that due to time constraints as well as the fact that approval would be difficult with Petrojam being 49% owned by PDVZSA, it was felt that the most suitable company in the Group would be PCJ.*

*Director Saunders tabled a letter from himself dated December 14, 2008 commenting on the Off-take Agreement...*

***Supply of Ethanol-** Director Saunders reported that the E-10 being used was not supplied by Infinity. Infinity has now decided to sell anhydrous ethanol from Brazil. However, as the ethanol would not arrive in Jamaica before the end of December 2008 and PEL is likely to run out of ethanol before then, PEL is sourcing 1.5 million gallons from Jamaica Broilers at a cost of US\$707,000. It was noted that as PEL had no money to purchase the ethanol, a request was being made for PCJ to purchase the ethanol. The Board recommended that PEL should make the request to purchase the ethanol of Petrojam.”*



Extract from the Minutes of the Board of Directors - January 26, 2009

*“Supply of Ethanol- Director Saunders reported that Infinity is insisting that PCJ take the second shipment of ethanol at the price paid for the first shipment (US\$610m3). He noted that when compared to the current price, PCJ is likely to lose between US\$805,000-1,000,000. In response to enquires whether PCJ had to take the second shipment by the end of January 2009, it was noted that based on the contractual agreement the first shipment was to be taken in November 2008. The spirit of the agreement was that the second shipment would be taken when first shipment was near completion which would be in January 2009. However, as the first shipment was not received until December 2008, the PCJ is not in a position to receive the second shipment. Director Watson informed the meeting that it was brought to his attention two (2) days after the first shipment was received Infinity wrote to request a Letter of Credit for second shipment. He therefore recommendation that Infinity be informed that PCJ was not ready for the second shipment and the Letter of Credit should not be opened.”*



Extract from the Minutes of the Board of Directors - March 27, 2009

*“J\$300M PEL Grant- Director Saunders requested that the J\$300M less approximately the J\$27M which was spent for the E-10 rollout programme, be placed in an escrow account. He noted that the money was needed by PEL to construct a tank to improve the efficiency of distribution of dry alcohol. It was pointed out that the tank would not necessarily be owned by PEL but rather PCJ. The view was expressed that the monies were already in an account and should remain there. It was suggested that expenditure regarding E-10 programme be submitted to the Board, as the need arose for approval.”*

The OCG conducted a comprehensive review of the Minutes of the Meeting of the Board of Directors of October 17, 2008, which was previously mentioned in the report of investigation.

The OCG notes the following from the abovementioned Minutes:

1. That during the meeting of October 17, 2008, the Chairman of the then PCJ Board of Directors, Mr. Ian Moore, indicated that an email was sent to Infinity Bio-Energy by Mr. William Saunders that *“triggered according to Infinity, a commitment for the product”*. Mr. Moore further informed the meeting that subsequent to the referenced email which was sent by Mr. Saunders, he (Mr. Moore) sent a subsequent email agreeing that the Ethanol was required, but he questioned the need for a Letter of Credit.



Mr. Moore also informed the Meeting that Infinity Bio-Energy is claiming that the email from Director Saunders was a confirmation to order the Ethanol. He added that there was a fundamental difference with Infinity Bio-Energy concerning the price of Ethanol and that he has come to realize that conversations with Infinity Bio-Energy were being taken, by Infinity, as Agreements.

In the said meeting, Mr. Moore noted that there was a disagreement with Infinity Bio-Energy regarding the price of Ethanol. He noted that the HOA specified 65% of the ex-refinery price of 87 octane gasoline and that Infinity Bio-Energy was of the view that the ex-refinery price includes tax. However, the General Manager of PEL, and others, were of the view that the price did not include taxes. It was said that the diverging view regarding the price resulted in a difference in the Purchase Orders for the Ethanol of approximately US\$400,000.00.

The Minutes also noted that Director Dixon cautioned the Chairman not to participate in any further direct discussions with Sergio/Infinity Bio-Energy, except through or with the Implementation Team. Mr. Moore agreed with this suggestion.

2. In the meeting of the November 24, 2008, the Board recommended that (a) the emails be submitted to determine whether the contract had been breached by Infinity Bio-Energy, (b) the then Prime Minister and then Minister of Energy be advised of the recent development regarding Infinity Bio-Energy and that copies of the respective emails be submitted to them. It was agreed that any further communication with Infinity Bio-Energy should be conducted through the Solicitor General.

In addition, the OCG noted that a few Directors indicated having no knowledge of the events which led to the decision to purchase Ethanol from Infinity Bio-Energy, in which it was explicitly stated that that decision was not taken by the Board.



3. The meeting of December 17, 2008 indicated that the PCJ, which had been working with a Technical and Legal Team, had been asked to review the Off-take Agreement, which included representatives from Petrojam, PEL and the PCJ.
  
4. The meeting of January 26, 2009, indicated that Infinity Bio-Energy was insisting that the PCJ take the second shipment of Ethanol at the price that was paid for the first shipment. Director Saunders noted that the PCJ was likely to lose between US\$805,000-1,000,000. It was noted that based on the Agreement, the first shipment was to be taken in November 2008. Enquires were made as to whether the PCJ had to take the second shipment by the end of January 2009, in which it was discussed that the second shipment, in the spirit of the Agreement, had to be taken near the completion of the first shipment.

It is instructive to reiterate, however, that in keeping with the Solicitor General's Opinion, only one (1) shipment was agreed upon; as it was opined that there was "...*no documentation or discussion to evidence any agreement on price...*"<sup>129</sup> with respect to the second shipment of the remaining 5000 cubic metres of Ethanol.

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<sup>129</sup> Opinion received from the then Solicitor General, Mr. Douglas Leys, dated March 26, 2009.



## **CONCLUSIONS**

Based upon the responses which were received from the named Public Officials/Officers, former and present, detailed herein, the OCG has arrived at the following considered Conclusions:

1. The basis upon which Ethanol was purchased from Infinity Bio-Energy and JB Ethanol arose out of delays which existed in the divestment of the sugar assets and the need for an interim supply of Ethanol for the Launch of the E10 Programme on November 1, 2008. With regard to the referenced divestment, a Heads of Agreement (HOA) had been signed on June 27, 2008, between the GoJ and Infinity Bio-Energy. The HOA contained a condition under Clause 3.1(h)(iii), which stipulated: *“signing a five (5) year Off-Take Agreement with Newco, by which the GOJ agrees to accept from Newco, hundred per cent (100%) of the fuel ethanol required to fulfil the mandatory mix in Clause 3.1(h)(iv) at a price of 65% of the gasoline price sold ex-refinery.”*<sup>130</sup> Newco was to be owned 75% by Infinity Bio-Energy and 25% by the GOJ. Pursuant to Clause 3.1(h)(iii), it was agreed that Infinity Bio-Energy would supply the required Ethanol at 65% of the ex-refinery price of gasoline.
2. The deadline for the finalization of the Agreements with Infinity Bio-Energy and the GoJ was scheduled to expire on January 31, 2009. Though the Off-take Agreement was not yet signed and was not in effect, the SIT decided that the interim supply of Ethanol needed for the E10 Programme would be purchased from Infinity Bio-Energy; this was evidenced by the Minutes of the SIT on October 2, 2008, where representatives from Infinity Bio-Energy were also present.
3. Further to the SIT’s meeting of October, 2, 2008, Mr. Ian Moore the former Chairman of the PCJ Board on October 3, 2008, confirmed the terms of a proposed agreement which was sent to him directly from Mr. Eric Fonseca Hintz dos Santos of Infinity Bio-Energy. No

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<sup>130</sup> Response from Mr. Ian Moore, former Chairman of the PCJ Board, which was dated October 22, 2009.



other GOJ representative was copied on this email only Mr. Sergio Thompson-Flores and Mr. Stuart Maron who are both representatives of Infinity Bio-Energy. Prior to the foregoing emails between Mr. Moore and Infinity, Mr. Williams Saunders, the Chairman of the E10 Programme did in fact send an email on the said date October 3, 2008 to Infinity Bio-Energy confirming the GoJ's mere intention to purchase the ethanol from Infinity Bio-Energy. Mr. Saunders was however, not copied in the email containing the proposed agreement from Infinity and Mr. Moore's response which indicated that he agreed to the terms of the agreement. In this regard, Mr. Saunders confirmed that the Ethanol would be purchased. However, he did not confirm the terms of the Agreement.

4. There was a 'misunderstanding' regarding taxes in the proposed price of the Ethanol by Infinity Bio- Energy, which was recognized by Mr. Moore. The issue arose in light of a difference in the ex-refinery price outlined in the HOA and what was presented on the Purchase Order. The difference totaled US\$400,000.00. In order to resolve that difference, Mr. Moore's proposal was to defer the payments for the extra cost and pass on the additional charges to the consumers when the E10 Programme became mandatory.
5. As a result of the price issues with Infinity Bio-Energy, Mr. Moore took the matter to the PCJ Board and attempted to mislead the Board into thinking that it was the email from Mr. Saunders which resulted in Infinity claiming that there was an Agreement with the GoJ. The only emails which could be considered an agreement were the ones between Mr. Moore and Infinity. The Agreement was drafted by Infinity Bio Energy and accepted by Mr. Moore. This was also confirmed by the Solicitor General who opined that there was indeed a contract, as Mr. Moore accepted the terms set out by Infinity Bio-Energy on October 3, 2008.
6. Outside of the "*Business Confirmation*" which was confirmed by Mr. Ian Moore, the GOJ was not obliged to purchase the 'interim supply' of Ethanol from Infinity Bio-Energy, under



the terms of HOA. This conclusion is supported by the fact that certain terms and conditions of the HOA and, in particular, the 'Off-take Agreement' were not finalized. If Mr. Ian Moore did not accept the terms of the agreement sent to him by Infinity Bio-Energy the GoJ would not have been obliged to accept any Ethanol for Infinity Bio-Energy. In fact, the Ethanol could have been purchased from local suppliers of Ethanol, which was eventually done when the issues regarding the purchase of Ethanol from Infinity Bio-Energy arose. The additional ethanol for the E10 programme was purchased from JB Ethanol on the basis of price and availability.

7. In light of the commitment of the '*Business Confirmation*' by Mr. Ian Moore, in his then capacity as Chairman of the PCJ Board of Directors, arising from several email correspondence of October 3, 2008, and the re-confirmation of the proposal by him on October 22, 2008, the GoJ was committed to pay a price of US\$3.2 million to Infinity Bio-Energy.

Based upon the fact that the Off-take Agreement was not in effect, it was not mandatory to purchase the Ethanol pursuant to the said Agreement. This was highlighted by Mr. Glenford Watson PCJ Board Member.

8. Mr. Moore, having already committed the GOJ to the purchase of Ethanol from Infinity Bio-Energy, re-confirmed the order for 10,000m<sup>3</sup> to be split into two (2) shipments as a one-off arrangement, which supersedes any previous order. It was also outlined in Mr. Moore's re-confirmation that the order would not be precedent for the long term Off-take Agreement.
9. The GoJ was not obliged to take the second shipment, as proposed in the email of October 3, 2008 and later re-confirmed in the email of October 22, 2008. This was based upon the Opinion of the Solicitor General that the agreement for the second shipment of Ethanol from



Infinity Bio-Energy was not completed as the delivery price was to be stipulated in the Off-take Agreement which had not materialized. In this regard only one (1) shipment of ethanol was purchased from Infinity Bio-Energy.

The cost of the Ethanol was US\$609.53 per cubic metre, and was received on December 31, 2008. The payment was made on January 6, 2009, and the names of the persons who authorized payment were Dr. Ruth Potopsingh and Miss Wahkeen Murray, Acting Corporate Secretary.

10. There is no evidence to suggest that the GoJ had obtained value for money in purchasing the shipment of Ethanol from Infinity Bio-Energy. This is buttressed by position of the then Minister, Hon. Clive Mullings, who indicated that Mr. Moore had confirmed the purchase of two (2) shipments at an agreed price above market value. This was also highlighted in the PAAC Chaired by the Dr. Wykeham McNeill on September 14, 2009. In the meeting it was indicated by Dr. Ruth Potopsingh that the price differential was \$0.14 cents per gallon of Ethanol. There is no evidence to suggest that any attempt was made to ensure that the cost of the Ethanol was reasonable. Mr. Moore did not make an effort to consult with anyone regarding the cost of the Ethanol. He was also negligent in assuming what the cost would be instead of discussing the actual cost of the Ethanol with Infinity Bio-Energy. It was after the issue of cost issue arose that he began to question whether the emails between himself and Infinity Bio- Energy could be considered a contract.
11. Infinity Bio-Energy did not send the agreement to the team that was present at the Meeting of the SIT on October 2, 2008, where the purchase of Ethanol from Infinity Bio-Energy was discussed. The email was only sent to Mr. Ian Moore, although it was Mr. Saunders who sent the original email confirming that Ethanol was required and that the relevant documentation would be prepared in short order. Mr. Moore upon receiving the proposed agreement from Infinity Bio-Energy did not forward the email to the SIT, the PCJ or the



Lawyer who should have been involved in the process for their scrutiny before accepting the terms of the contract.

12. The former Minister advised the OCG that Mr. Moore's position on the SIT by the former Minister's position that Mr. Moore "...was one of information only as he had no authority ostensible or otherwise to enter into any negotiations..."<sup>131</sup> Mr. Moore did not have the authority to authorize and commit the GOJ to the purchase of Ethanol. In point of fact, by his own admission, he was requested by the former Minister, the Hon. Clive Mullings to join the meetings held by SIT to ensure that any delay in the Divestment as a result of the PCJ or its subsidiaries would be resolved.

13. Mr. William Saunders, in his capacity as the Manager of the E10 Programme, was the person authorized to conduct the purchase of Ethanol and Dr. Ruth Potopsingh, the Group Managing Director of PCJ was the person authorized to conduct the final approval of the purchase of Ethanol on behalf of the PCJ. In this regard, the OCG concludes that the decision of the PCJ to purchase the 'one-off' transaction from Infinity Bio-Energy should have been undertaken by the then Group Managing Director, as the Accountable Officer and one which was ratified by the Board of Directors collectively and not by Mr. Ian Moore, who the OCG concludes was acting outside of this power and authority.

In point of fact, Dr. Potopsingh advised the OCG that she "*did not negotiate or conclude the award of contracts to Infinity Bio-Energy and/ JB Ethanol for the production and/or supply of ethanol to the Government of Jamaica for use in the E-10 gasoline. However, my involvement in the process of securing ethanol for the E-10 project related to:*

1. *Participating in meetings at the Governmental level to resolve various issues related to the importation of ethanol for the Government's E-10 programme.*

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<sup>131</sup> Hon. Clive Mullings' response to the OCG's Requisition which was dated October 8, 2009. (Response# 9)



2. *On instruction, authorizing the Letter of Credit to purchase 5,250 cubic metres of denatured ethanol in favour of Infinity Bio-Energy...*”
14. The actions of Mr. Ian Moore, in finalizing the ‘one-off’ transaction with Infinity Bio-Energy, without (a) the authority of the then PCJ Board of Directors, (b) the knowledge of the then Minister of Energy and (c) the then Group Managing Director, was improper and a blatant bypass of the PCJ’s approval process.
15. Mr. Ian Moore acted outside of his authority in committing the GoJ to the purchase of Ethanol from Infinity Bio-Energy, as his position was that of a non-executive Chairman and does not include involvement in the daily affairs of the PCJ.
16. The decision by the PEL to award the five (5) contracts to JB Ethanol was pursuant to Section S-1000 of the then applicable Government of Jamaica Handbook of Public Sector Procedures November 2008.<sup>132</sup> Even though not required to utilize the GoJ procurement procedures, the PEL sought the permission of the NCC to invite potential suppliers to submit quotations and the lowest responsive bidder was awarded the contract. In this regard, the PEL ensured that value for money was being obtained in the purchase of Ethanol.
17. The award of contracts to JB Ethanol and the ‘one-off’ transaction from Infinity Bio-Energy were separate procurements spearheaded by different Public Bodies, that is, the PCJ and the PEL, respectively. Notwithstanding, both contract award processes were undertaken in an effort to obtain Ethanol for the E10 Roll-Out Programme. The supplies from JB Ethanol were required subject to the finalization of the divestment negotiations between the GoJ and Infinity Bio-Energy.

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<sup>132</sup> On the basis that the supply of Ethanol pertained to the “*procurement of items on the commodities market*”, and was exempt from the procurement procedures.



It is to be noted that PEL, which was responsible for the supply of Ethanol from JB Ethanol, was found not to be directly involved in the one-off transaction with Infinity Bio-Energy. This is supported by Mr. Ricardo Neins' response to the OCG which advised, *inter alia*, that "...PEL, being the foremost Government authority on fuel grade ethanol production and procurement, provided advice on quality, shipping arrangements and storage options...but was not involved in the final decision or negotiations involving price, quantity or quality of the product purchased by the PCJ."<sup>133</sup>

18. Mr. Moore's actions was not in keeping with good corporate governance and is in breach of Section 17 (1) of the Public Bodies Management and Accountability Act, which states that: *Every director and officer of a public body shall, in the exercise of his power and the performance of his duties-*

*(a) act honestly and in good faith in the best interests of the public body; and*

*(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer."*

19. Mr. Moore was terminated from his appointment as Chairman of the PCJ's Board of Directors by Mr. Mullings, for committing the PCJ to "...contractual terms less than favourable to its interest."<sup>134</sup> He was terminated pursuant to Clause 7 of the Schedule to the Petroleum Act.

The termination letter did not make mention of Mr. Moore's breach of section 17 of the Public Bodies Management and Accountability Act, nevertheless the letter highlighted the fact that Mr. Moore did not act in the best interest of the Public Body.

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<sup>133</sup> Mr. Ricardo Neins' response to the OCG's Requisition which was dated February 19, 2010 (Response #1)

<sup>134</sup> Minister Clive Mullings' Letter of Termination to Mr. Ian Moore, which was dated November 10, 2008.



20. There is no evidence to suggest that there was any conflict of interest on the part of any Public Official/Officer in the award of contract to Infinity Bio-Energy and/or the negotiation process for the divestment of the sugar assets.



## **RECOMMENDATIONS**

Section 20 (1) of the Contractor General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore of the results of that Investigation and Make such **Recommendations as he considers necessary in respect of the matter which was investigated.***” (OCG’s Emphasis)

1. The OCG recommends that all Permanent Secretaries, Heads of Agencies, Public Officers, Accounting and Accountable Officers, pay keen attention to their responsibilities in the award of Government contracts. This is of utmost importance to ensure that all contract award processes are closely monitored to deflect from any occurrence which may affect the completion of a process.
2. The OCG recommends that Boards of Directors, and as in this instance, particular reference made to the Chairmen of Boards, should ensure that decisions taken on behalf of a Public Body, specifically in relation to the award of any Government contract, are in keeping with the power granted to them pursuant to the Public Bodies Management Act (PBMA).

The OCG is of the considered opinion that no serving member of any Board should act single-handedly, and make any decisions and/or enter into any discussions, negotiations, agreements, or otherwise, outside of its inherent collective responsibility.

3. The OCG respectfully recommends that all Appointees of the Board of Directors of Public Bodies are fully made aware of their responsibilities and obligations, and that such serving members further apprise themselves of the provisions of the PBMA and the established guidelines under the Corporate Governance Framework for Public Bodies and all other applicable legislations.



4. The OCG recommends that no serving member of any Board, particularly non-executive members, should act in a manner which challenges the operational authority of the Minister, Accounting Officer or any other Accountable Officer within a Public Body, without being granted the requisite permission by such Authority to make decisions on its behalf or that which is ratified by the collective efforts of the Board.
  
5. The OCG recommends that in the award of Government contracts, irrespective of the procurement methodology being utilized and where such contracts are above the \$1.5 million monetary threshold, such contracts should be subject to the scrutiny of the respective Procurement Committee, as a part of its standard due diligence process.