‘RISK’ IS INDISPENSABLE TO SUCCESS, BUT… HAVE A “RISK-BASED STRATEGY”

2006 Energy

RISK-BASED STRATEGY

Body Shop: Building Strategies

- Develop a Risk-Based Strategy to manage:

  1) PROJECT DEVELOPMENT RISKS
  2) OPERATIONAL OPPORTUNITIES
  3) CONTRACTUAL AGREEMENTS

- And, ...TAKE CONTROL...

Backstopping Risk

I'll tell you that:

"It's not all about insurance", but..

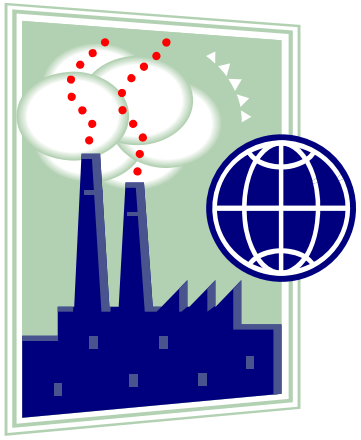
The insurance marketplace is what drives this assessment...

WHAT HAS CHANGED?

Body Shop: Building Strategies

- ENERGY IS NO LONGER A COMMODITY…
- WHY DO WE ACT LIKE IT IS…?
- …AND, IT'S NOT ALL ABOUT 'HEDGING'.

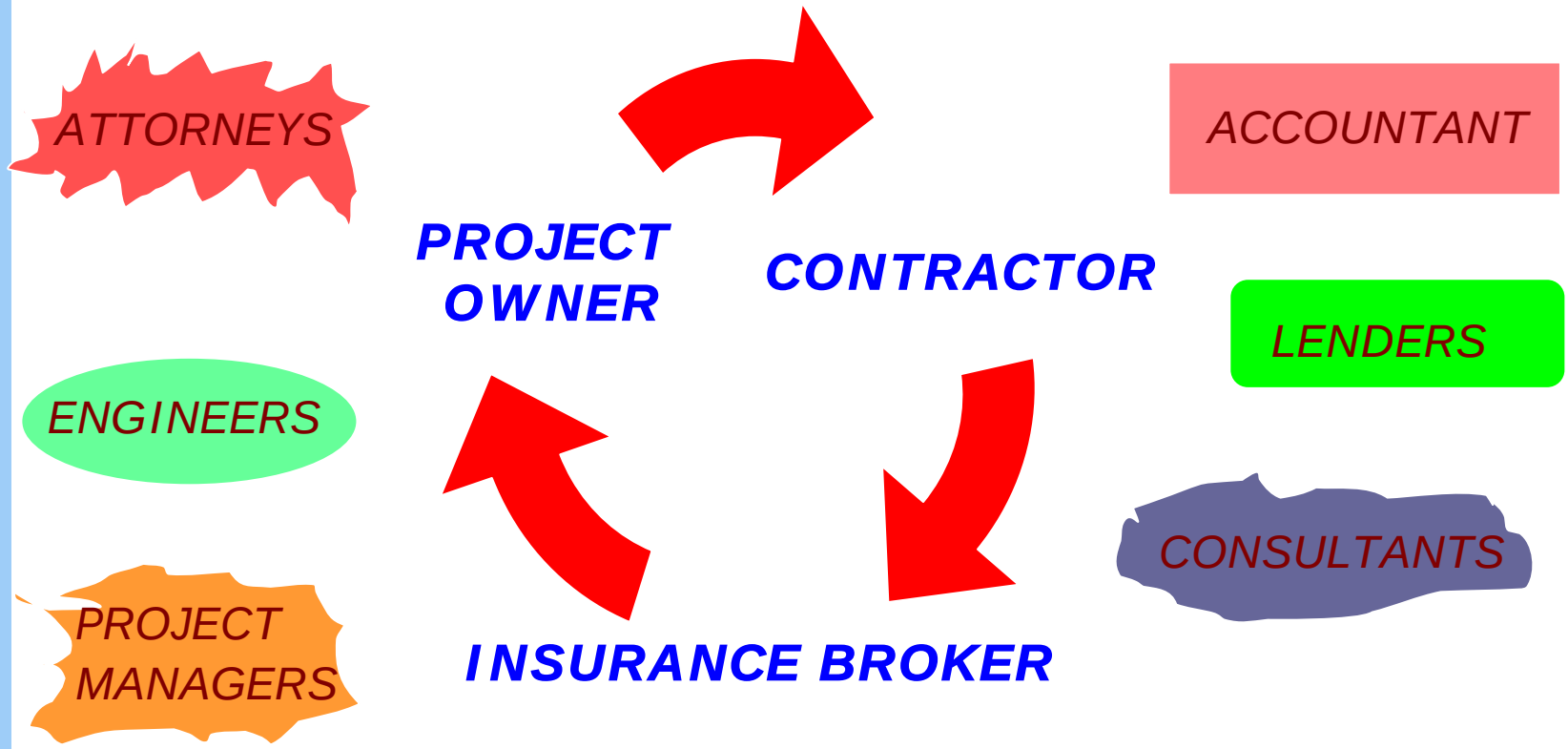
PROJECT RISKS



The Key Players, and the "Inner Circle"…

Body Shop: Building Strategies

- DURING PROJECT DEVELOPMENT &
- OPERATIONS & MAINTENANCE



WHO'S YOUR BROKER?

Body Shop: Building Strategies

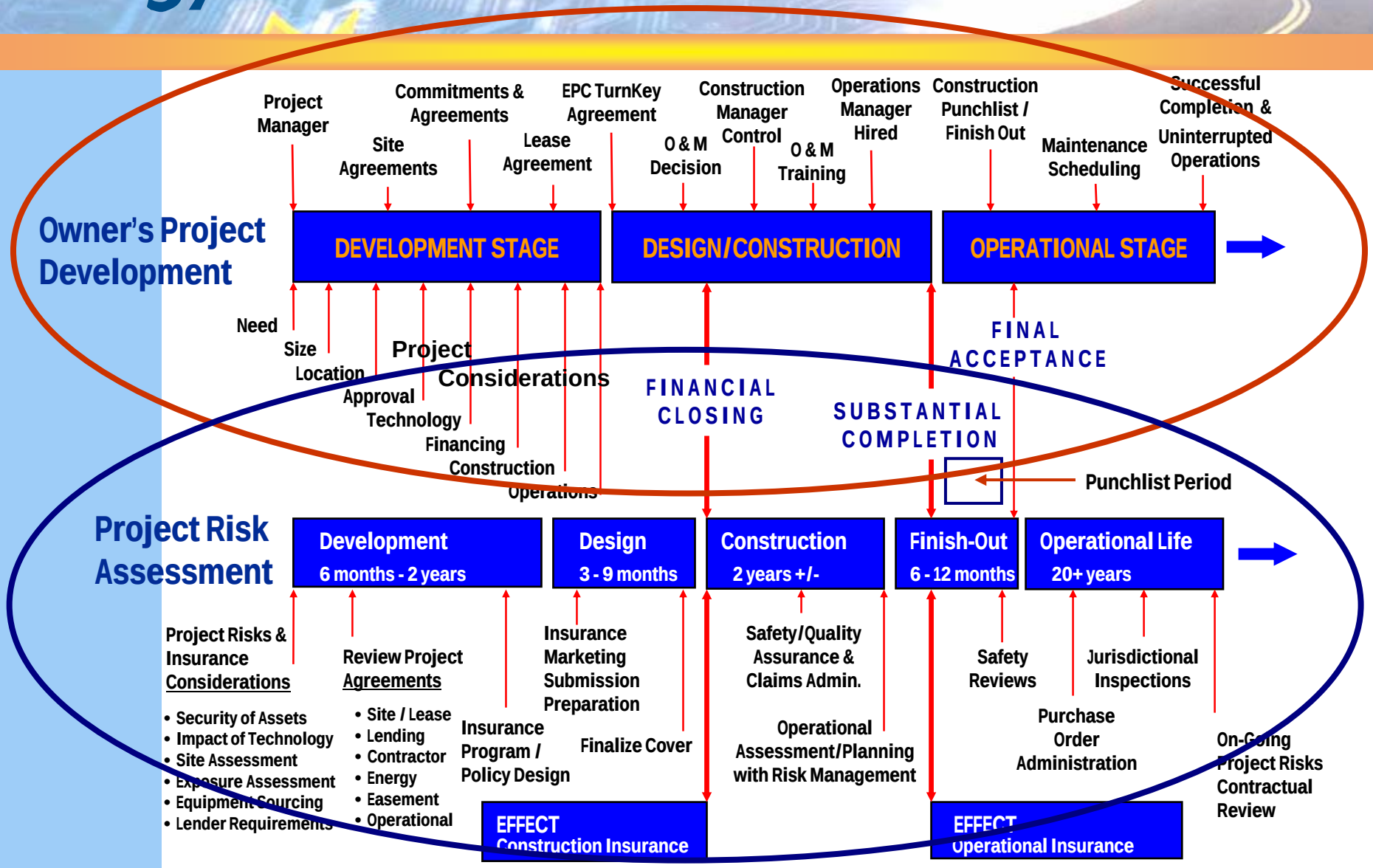
- **DOES YOUR INSURANCE BROKER UNDERSTAND…**
  - "PROJECT DEVELOPMENT"
  - CONTRACTUAL RISK
  - PROJECT PARTY DYNAMICS
  - HOW TO BE THERE AT THE 'GET-GO'
- CHOOSE A BROKER WITH THE HEART OF A '**TEACHER**', <u>NOT</u> A HEART OF A 'SALESMAN'

WHAT IT'S **NOT** ABOUT; WHAT IT **IS** ABOUT…

Body Shop: Building Strategies

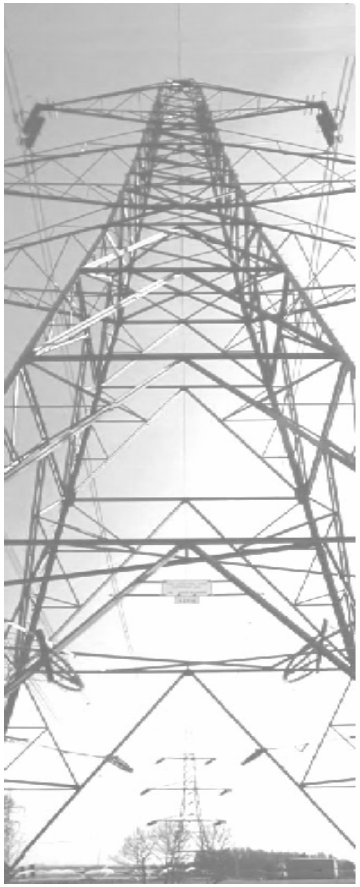
- IT IS **NOT** ABOUT THE INSURANCE.
- IT **IS** ABOUT THE RISK.
- **CONTRACTUAL RISK**…!
  - INDEMNITIES
  - FORCE MAJEURE
  - PERFORMANCE & LD'S
  - REPAIR & MAINTENANCE
  - CAPTURE OF FUNDS TO RECOVER
  - DELAY IN START-UP / BUSINESS INTERRUPTION / CONTINUITY OF OPNS.
- **CONTROL** OF THE RISK IS THE KEY.

Correlation of Project Risk Timelines



Body Shop: Building Strategies

OPERATIONAL OPPORTUNITIES



ONCE IN A 'BLUE MOON'

Body Shop: Building Strategies

- G8 Summit
  - TRANSPARENCY
  - PREDICTABILITY
  - STABILITY
- NERC
- USERO
  - July 20, 2006 Press Release

-ALL SUPPORT A NEW PARADIGM-

NERC Approved as the United States Electric Reliability Organization

OPPORTUNITY TO CHANGE THE LANDSCAPE

Body Shop: Building Strategies

- CREATE SUSTAINABLE CONTINUITY OF ENERGY
- ACHIEVE FIRM DELIVERY, BACKED BY INSURED OPTIONS
- STRATEGIC DEPLOYMENT OF NEGOTIATED EXCESS CAPACITY
- TRANSMISSION & DISTRIBUTION – OPEN REGULATION ('0' Profit)

GOAL: A REPLACEMENT ENERGY MODEL with A SUPPLY OBLIGATION

What Power Companies Do

Body Shop: Building Strategies

- Insure their ‘Revenues’ for:
  - Delay in Start-up
  - Business Interruption
  - Extra Expense
- Insure their ‘Assets’ for:
  - Material Damage
  - Equipment Failure
  - ...“All Risks”

What the Power Purchaser Should Do…

- Mandate Performance from the Power System…!

- How..?
- A change in how YOU PURCHASE will change how the POWER SYSTEM INSURES, and allows EACH to achieve its goals:

CONTINUITY & PROFITABILITY

A 'NEW' CONCEPT

- **FIRM DELIVERY**
  - Contractually negotiated Power Purchase Agreement (Fixed Cost, Long-Term, Non-Dependent upon a single Generating Facility)

- **INSURED OPTIONS**
  - Replacement Energy backstopped by Contingent Insurance (In lieu of traditional Business Interruption purchased by Generating Facilities)

CONTRACTUAL 'AGREEMENTS'

HIGGINBOTHAM & ASSOCIATES

RISK SERVICES ASSESSMENT & REVIEW

AGREEMENT FOR REVIEW: **Lease Agreement for Higginbotham Corp Client**

AGREEMENT PARTIES: **LANDLORD: Commercial Realty Company**
TENANT: Higginbotham Corp Client

REVIEW DATE: **Current**

The review of this lease is prepared to allow for proper arrangement of necessary insurances and to offer suggestions as to occasions on which insurance issues may surface.

Of utmost importance is a provision in this lease that seems to place the Tenant in a position of 'default', and cannot be cured. Simply put, it is an 'insurance requirement' that cannot be complied with, since it is not commercially available in the insurance market.

ARTICLE XII – LIABILITY

Section 12.04 – On Line 5 of this Section, the wo

non-cancellable with respect to Landlord" shoul

The comments made regarding other Sections of the Lease are made in view of the condition in Section 3.02 that "this instrument shall be fully binding", and from all appearan

expect the Landlord to enforce its terms….

ARTICLE VI - USE

Section 6.01 – *"Tenant, at its own expense: will comply with all Federal, State… laws, ordinances…and regulations applicable to the Leased Premises."* We question, in absence of any reference to, and indemnity from the Landlord as respects prior Environmental matters, if the Tenant might be held responsible for the consequences and clean up of prior Environmental problems. We would prefer that the Tenant not be held responsible for prior acts, incidents, or issues.

Section 6.03.A – This section states that the Tenant will *"occupy and use"* the *"entire Leased Premises"* at least 6 days a week, and that except for the conditions in "6.03.B", the Landlord will not allow another 'competing business' to open in the Shopping Center. Section 6.03.B states that if an *"Event of Default"* has not occurred, the Landlord will agree to allow The

IN REVIEW OF THIS DOCUMENT, HIGGINBOTHAM & ASSOCIATES, INC IS NOT ATTEMPTING TO PROVIDE LEGAL ADVICE, AND IS REVIEWING THE REFERENCED CONTRACT OR AGREEMENT ONLY AS RESPECTS POSSIBLE INSURANCE-RELATED IMPLICATIONS. HIGGINBOTHAM & ASSOCIATES, INC RECOMMENDS THAT YOUR CONSULT YOUR LEGAL COUNSEL AS RESPECTS ANY BUSINESS, LEGAL OR CONTRACTUAL CONSEQUENCES OF THE COMMENTS OR RECOMMENDATIONS CONTAINED HEREIN.

2

3

4

THE GLUE – THE CORNERSTONE – THE FOUNDATION

POWER AGREEMENTS… RISK & OPPORTUNITY

Body Shop: Building Strategies

- <u>OPERATIONS & MAINTENANCE</u>
  - AGGRESSIVELY NEGOTIATE THE AGREEMENT TERMS
  - FORCE MAJEURE – DEFINE 'FM' PRECISELY – <u>X</u> Equipment Failure
  - LIABILITY FOR CONSEQUENTIAL LOSS & DAMAGES (Mission Critical)
  - CONTRACTOR'S CONTRACTUAL LIABILITY INSURANCE… (Key)

Take the Opportunity to <u>Get It Right</u>.

A Confident Partnership

- Other Subjects that should be discussed:
  - Builders' Risk Insurance – Why it doesn't pay for 'repairs'
  - Why the Owner should 'Control' the Builders' Risk Insurance
  - Liability Insurance – Who should be 'insured'?
  - Architects & Engineers – Do you want to pay for their 'loss'?

Get ‘er done…

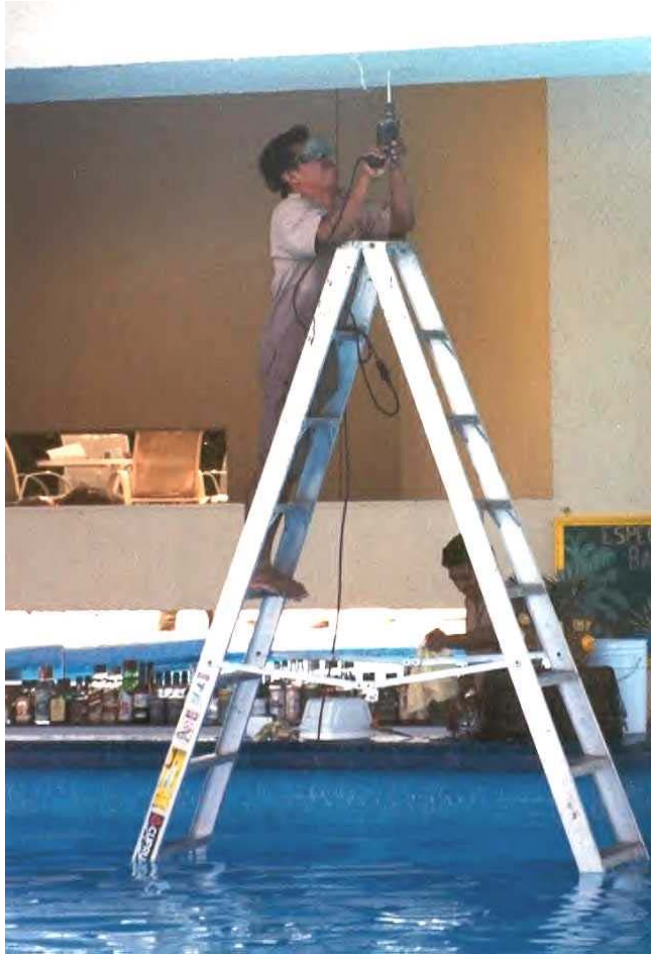
THIS CAN’T BE

‘LARRY, THE CABLE GUY’?

THEY TOLD ME TO GET A ‘BUCKET TRUCK’…

IS THIS THE ‘GROUND’ WIRE?

Can you say: ‘GFI’…



NOTICE THE SAFETY GOGGLES.

GREAT ATTENTION TO DETAIL.

NO NEED TO GET MY NEW RUBBER-SOLE, INSULATED WORK BOOTS WET;

SO, I TOOK THEM OFF…

Where there's a will…

THE PINNACLE OF SUCCESS…

AN ENGINEERING MARVEL…

O&M…WHAT ELSE CAN WE SAY?

RISK-BASED STRATEGY

For:

- PROJECT DEVELOPMENT RISKS
- OPERATIONAL OPPORTUNITIES
- CONTRACTUAL AGREEMENTS

RISK-BASED STRATEGY

Body Shop: Building Strategies

- Some STRATEGIES are better than others...
- HOW'S YOURS...?

TAKE CONTROL.

George Owens
Senior Vice President
Higginbotham & Associates, Inc.
12720 Hillcrest Rd, Suite 450
Dallas, Texas 75230
214-346-4441
gowens@higginbotham.net