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**Official Report
of Debates
(Hansard)**

Tuesday 12 June 2012

**Journal
des débats
(Hansard)**

Mardi 12 juin 2012

**Standing Committee on
Estimates**

Ministry of Energy

**Comité permanent des
budgets des dépenses**

Ministère de l'Énergie

Chair: Michael Prue
Clerk: Valerie Quioc Lim

Président : Michael Prue
Greffière : Valerie Quioc Lim

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ESTIMATESCOMITÉ PERMANENT DES
BUDGETS DES DÉPENSES

Tuesday 12 June 2012

Mardi 12 juin 2012

The committee met at 0900 in room 151.

COMMITTEE BUSINESS

The Chair (Mr. Michael Prue): I call the meeting to order. When the committee adjourned at the last meeting, we were considering Mr. Moridi's amendment to Mr. Leone's motion. That's motion number two. People have it in front of them on the members' desks. When we left off the last time, Ms. MacCharles had the floor. It's back to you.

Ms. Tracy MacCharles: Thank you, Chair, and good morning.

First, I'd like to call a point of order. Standing order 60(e) says, "No estimates shall be considered in the committee while any matter, including a procedural motion, relating to the same policy field is being considered in the House." Therefore, I do not believe this meeting should proceed.

We have a precedent, Chair, that on April 24, the Standing Committee on Social Policy was not able to meet for an organizational meeting because a bill of the same policy field was being considered in the House.

Further, the agenda and schedule of the meeting clearly states that the purpose of the meeting is the consideration of the Ministry of Energy's estimates. The estimates have been referred to the committee by the House and there is no way to separate the current motion from the consideration of estimates. My understanding is that the dismissal of the minister was a voluntary act and not founded in the standing orders. The critic for the NDP has also cancelled his leadoff speech in the House on Bill 75 to attend the ministry's estimates at committee.

The Chair (Mr. Michael Prue): I anticipated this and we went to the clerk's department, who told us that what your motion is is not correct. So we're just trying to find out exactly what you're saying. We were told that we cannot have estimates with the minister here, but we can do procedural matters, which is what is before us.

Ms. Tracy MacCharles: Well, it's our view that—

The Chair (Mr. Michael Prue): So you're going to have to be very specific, because the Deputy Clerk has told us in no uncertain terms that we are to proceed today.

Mr. Michael Harris: Chair—

The Chair (Mr. Michael Prue): Just hold on. Could you be specific, because we're trying to look up what section you're citing.

Ms. Tracy MacCharles: We believe that it can't proceed because it would be ruling against the precedent that I was trying to outline, Chair, which is section 60(e) of the standing orders.

Mr. Grant Crack: Chair, Bill 75 is before the House at this particular point.

The Chair (Mr. Michael Prue): Yes, we realize that. And the precedent that was stated was Bills 13 and 14, which were on the same subject matter for social policy.

Ms. Tracy MacCharles: Can I continue with my point of order?

The Chair (Mr. Michael Prue): Wait a minute. You have a point of order. You quoted a section of the standing orders at the beginning. We're trying to verify. What section?

Ms. Tracy MacCharles: Right. 60(e).

The Chair (Mr. Michael Prue): 60(e).

Ms. Tracy MacCharles: It says that "No estimates shall be considered in the committee while any" other "matter, including a procedural motion, relating to the same policy field is being considered in the House." In this case, as Mr. Crack says, it's the energy bill, Bill 75.

I have further information on my point of order, Chair, if I may.

The Chair (Mr. Michael Prue): I'm willing to hear further argument on this, but I think that that is a confusion of what this actually states.

Mr. Harris, you have—

Mr. Michael Harris: My only discussion to this point of order is that, as per our agenda dated Tuesday, June 12—

Mr. David Zimmer: Chair, I didn't hear.

Mr. Michael Harris: Sorry. As per our agenda, dated Tuesday, June 12, our item number one is a motion by Mr. Leone that we're dealing with here in committee and not item number two. I would assume that we're able to continue the business of the committee on the motion put by Mr. Leone.

The Chair (Mr. Michael Prue): That point of order is not well taken. We are dealing with the amendment to Mr. Leone's motion.

Mr. Michael Harris: Amendment.

Ms. Tracy MacCharles: May I continue on my point of order?

The Chair (Mr. Michael Prue): On the point of order, yes.

Ms. Tracy MacCharles: Thank you. I'd like to read from Hansard from the estimates meeting of May 15, where the Chair, Mr. Prue, said, "This meeting is resumed. I have asked the clerk to see whether or not the motion is in order and to consult with the clerks' department on my behalf, as the Chair. I am not sure that it is in order, but the clerks' department on my behalf, as the Chair. I am not sure that it is in order, but the clerks' department needs additional time to look at it.

"Considering the hour, I think it is appropriate at this point we adjourn till this afternoon. The first order of business this afternoon will be my ruling on this."

Followed by Ms. Teresa Piruzza: "Chair, if I can just clarify—I'm sorry—as you're talking about this afternoon, if we're actually sitting this afternoon. I need that clarified. I understand that there's an opposition motion this afternoon with respect to this area, energy. I'm reading from standing order—'Estimates Considered by Standing Committee'—60(e): 'No estimates shall be considered in the committee while any matter, including a procedural motion, relating to the same policy field is being considered in the House.'

"So I'd like to clarify whether we are indeed actually sitting this afternoon, given the opposition motion that's coming forward this afternoon."

Followed by the Chair's comment, Mr. Michael Prue: "Again, I'm not sure whether this is impacted. We will ask the clerks, as well. So the committee will meet at approximately 3:45 this afternoon to rule on both of these. It may indeed be a short meeting, or it may be till 6 o'clock."

Followed by Mrs. Teresa Piruzza: "I understand it's with respect to energy, and that would clearly be related to this meeting."

Followed by the Chair (Mr. Michael Prue): "That is quite possible. I'm not sure whether the standing order is as broad as that, but we will check that out."

Mr. Peter Tabuns spoke next. "Just a point of information: Ontario Power Authority and TransCanada Energy, with respect to a gas plant in Mississauga—actually TCPL was in Oakville, and it was Greenfield that had the power plant in Mississauga. You've reversed the locations.

"Mrs. Teresa Piruzza: Yes, and 'gas plan' should be 'gas plant.' I had just brought that up to the clerk, as well. So we'll clarify that, as well. Thank you.

"The Chair (Mr. Michael Prue): I am going to recess at this point till 3:45. I will rule on those two points of order at 3:45, and if the committee then continues—well, it will either continue or recess at that point.

"The committee recessed from 1020 to 1558."

"The Chair (Mr. Michael Prue): The meeting is called to order.

"This morning, prior to the recess, Ms. Piruzza raised a point of order relating to whether or not this committee could sit this afternoon. In making her point of order, she referred to standing order 60(e). I have had an oppor-

tunity over the period since the recess until now to consider 60(e) and what exactly was before the House this afternoon.

"At first blush, it appeared to me that the NDP opposition day motion was related to a finance matter. However, in reading what the motion actually says, it is quite clear that there is an involvement of the Ontario Energy Board. Therefore, in considering Ms. Piruzza's point of order, it appears to me quite logically now that it is in order, what she is saying, and that it is well-founded."

The next part, Chair, is very important, and I'm quoting again from the May 15 session:

"Standing order 60(e) states, 'No estimates shall be considered in the committee while any matter, including a procedural motion, relating to the same policy field is being considered in the House.' In fact, it is the same policy field because of the inclusion of the words relating to the Ontario Energy Board. The item to be debated in the House this afternoon is Ms. Horwath's opposition day motion, and it is, in fact, related to the Ontario Energy Board. Therefore, her point of order is well made and well taken, and therefore there is no other option at this time in order to follow the rules, the standing rules, than to adjourn this meeting until tomorrow at 3:45.

"Just before adjourning the meeting, the first item on the meeting tomorrow morning will be the motion that Ms. Piruzza has also filed. I will rule on that at that time. It is not appropriate to rule on it now, in that we cannot sit now. Therefore, I will adjourn the meeting until tomorrow at 3:45. Meeting adjourned."

Chair, for these and other reasons, we feel the meeting can in no way be allowed to proceed and that the Chair would be indeed ruling against the precedent if the meeting was allowed to proceed.

The Chair (Mr. Michael Prue): I have listened to the arguments, but I am not persuaded because—

Mr. David Zimmer: Chair?

The Chair (Mr. Michael Prue): Yes.

Mr. David Zimmer: I want to speak to the point of order.

The Chair (Mr. Michael Prue): All right. Go ahead.

Mr. David Zimmer: There was some reference—I think you made the comment earlier that a distinction between today's proceeding and the one referenced earlier by her was that the minister was not here for some reason and that that somehow changed the context of this meeting.

0910

But I would submit that the minister was here and the deputy was here, and that they are still here, because the ruling of the Chair last Thursday was that, as a courtesy to the minister and to the deputy minister so they didn't have to sit at the table while we were arguing these very matters, you excused them in the sense that they could leave the room but they were required to be within 15 minutes. So they could be down here in the lounge having coffee or downstairs, but they are still before the committee, as it were. I just wanted to sort out that distinction, if there's any suggestion that they're not phys-

ically here right now. They are down the hall or upstairs or wherever they are, on 15 minutes' notice.

My second point that I would make is that the situation today is clearly the same as the situation was on May 12. There was a motion on the floor at that time as well, and there's no difference between the events of the 12th and the events of today.

Lastly, I just want to emphasize again rule 60(e), because it says, "No estimates shall be considered in the committee"—no estimates in the committee—"while any matter," and then if there's any confusion about what is included in "any matter," it goes on—"while any matter, including a procedural motion, relating to the same policy field is being considered in the House."

So we have "any matter." We have a matter before us, and it further fits the definition because it's "any matter," and specifically, rule 60(e) says, "including a procedural motion." Obviously, the drafters of the rule wanted to make it quite clear. If they didn't want to make it quite clear, they would just say "any matter," and leave it up to the Chair of the committee to interpret "any matter." But they go on—comma—and they specifically set out and define, "including a procedural motion," and that's clearly what we have today. This procedural motion obviously relates to the same policy field that is being considered in the House.

For those three reasons:

(1) The minister is before this committee, albeit he's out in the hall, and he was not relieved or dismissed from the committee. It was merely as a courtesy to him, to accommodate the witness. The minister is here; the deputy is here.

(2) It's the same matter that we dealt with on the 15th, for which my colleague has gone through the precedent ruling in some detail.

(3) And then this matter of the ruling: I've gone through the standing orders, and I rarely have seen a matter defined so precisely. For the last time: "No estimates shall be considered in the committee while any matter"—and the rules did not want to leave it up to the discretion of the Chair or leave any doubt on this question about what was included in "any matter," so they put a comma there and put another phrase, "including a procedural motion," and a comma.

Clearly, the matter ought not to proceed, for the reasons that I've outlined and have been more elaborately outlined by my colleague Ms. MacCharles.

The Chair (Mr. Michael Prue): Mr. Harris on the same point of order.

Mr. Michael Harris: I guess I'll draw Mr. Zimmer's attention to the actual wording of standing order 60(e). It says: "including a procedural motion, relating to the same policy field" that is being considered in the House, not in committee.

The government is clearly using another stall tactic to address the amendments of the initial motion. This is a procedural matter here in committee that we're dealing with today. The Chair actually, as per the last meeting, ordered the minister and the deputies to stand down, to

allow this committee to address and deal with the amendments of the motion. So I say we get on with that and, Chair, hopefully you'll make your ruling.

Mr. David Zimmer: Chair, one final point, just briefly: I just want to get clearly on the record and put clearly before the Chair and members of this committee that this is, I think, the governing paragraph from the Chair's ruling on the previous matter that we were discussing. I quote from the last paragraph of that ruling: "Just before adjourning the meeting, the first item on the meeting tomorrow ... will be the motion that Ms. Piruzza has also filed. I will rule on that at that time. It is not appropriate to rule on it now, in that we cannot sit now. Therefore I will adjourn the meeting until tomorrow at 3:45. Meeting adjourned." The reason the Chair felt it was "not appropriate to rule on it now, in that we cannot sit now" was that the matter was before the chamber.

The Chair (Mr. Michael Prue): Well, I have listened to all the arguments, and I anticipated this. We had a long discussion with the Clerk's office yesterday. The Clerk quite rightly pointed out that, notwithstanding—and the circumstances were very different the first time than what is being described. The circumstances were that we were in estimates. We were listening to the minister and the senior staff who were here, and we could not listen to them because there was a procedure in the House. There was a motion, but the motion was dismissed because it was, in my view, not a legal motion, which I ruled on the next day.

What we have today is a motion which is before us. We do not have the staff and the ministers, and we are today in a procedural matter. According to the Clerk's office, this is a procedural matter and not a matter of estimates. Therefore, rule 60(e) does not apply. That is the best advice they gave me.

A plain reading of the rule says that no estimates shall be considered. This committee is not considering estimates today. We are considering only, at this point, the amendments to the motion which is before us. It goes on to state—and I think Mr. Harris' reading is clear, and that is the advice I received from the Clerk's office as well—that, "shall be considered in the committee while any matter, including a procedural motion, relating to the same policy field is being considered in the House." We are not considering estimates, and the Clerk was very clear: We are not considering estimates. Our job today, until such point as it is finished, is to deal with the motion and the amendments before us. If we finish, then it would not be possible to call the minister, notwithstanding there's a 15-minute bell for him to show up, because there is a matter before the House and we would be back into estimates.

I cannot find that the challenge is correct, and I am going to rule that we continue and that we have a matter before us, which is amendment number two, made by Mr. Moridi. Ms. MacCharles, you have the floor.

Mr. Grant Crack: Mr. Chair?

The Chair (Mr. Michael Prue): Yes.

Mr. Grant Crack: Before she starts, could we have a 20-minute recess to get an interpretation of your ruling?

The Chair (Mr. Michael Prue): No, you cannot. That is not a matter for which a 20-minute recess can be granted. You may have a recess if there is a vote. If you want a vote, you can ask for a 20-minute recess by vote.

Mr. Grant Crack: Thank you.

Ms. Tracy MacCharles: Mr. Chair, I respectfully appeal your ruling.

The Chair (Mr. Michael Prue): All right.

Mr. Grant Crack: Then, Mr. Chair, can we have a 20-minute recess?

The Chair (Mr. Michael Prue): Okay. I just wanted to get the wording correct because this is slightly different than most rules of procedure. The question has to be put: Shall the Chair's ruling be appealed to the Speaker? That's the vote. All those in favour—

Mr. Grant Crack: No, could we have a 20-minute recess to determine that, sir?

The Chair (Mr. Michael Prue): Okay, now you have a vote; now you can have a recess. Twenty minutes—it's now 9:20.

The committee recessed from 0920 to 0941.

The Chair (Mr. Michael Prue): I call the meeting back to order. I trust everyone has had their 20-minute consultation. We will now have the vote and the wording again, Mr. Clerk? Shall the decision of the Chair be appealed to the Speaker?

All those in favour of the motion? Opposed? I'm not going to rule against myself, so the motion is defeated.

I understand, Mr. Zimmer, you have another point of order.

Mr. David Zimmer: Yes, I do, Chair. I want to bring in a point of order. As a courtesy to you, I gave you a heads-up as to what it was. We will be asking—I say this with the greatest respect—that the Chair of this committee recuse himself and that the Vice-Chair of the committee stand in for these reasons. I will be brief on this.

Let me first refer to O'Brien and Bosc talking about points of order. That's at page 1050, chapter 20:

"A point of order can be raised at any time during a meeting where a member is of the opinion that the standing orders or a committee rule has been breached, or the member believes that usual practice has not been followed. The proceedings under way are temporarily suspended while the point of order is addressed. Every point of order must be considered by the Chair, who determines whether or not the point of order has merit. Generally, the Chair makes an immediate decision on a point of order. However, where the point of order requires greater reflection or more extensive research, the Chair can take the matter under advisement and render a decision at a later time."

Now, the reason why—

Mr. Michael Harris: What standing order is this? Are you referring to a standing order?

Mr. David Zimmer: No, that's a textbook on parliamentary procedure that we commonly use around here called O'Brien and Bosc.

Mr. Michael Harris: Page number?

Mr. David Zimmer: Page 1050, chapter 20.

O'Brien and Bosc: I became familiar with it in great detail because a former member of provincial Parliament for Welland, Peter Kormos. This was his bible on procedural issues, and I learned a lot from Peter and from O'Brien and Bosc.

Anyway, here is the heart of the matter: The Chairs of the committees have a special role to play, and it's a role that requires great independence, impartiality and thoughtfulness and fairness to all political parties represented at the committee. And—really important—the Chair must convey a sense, if you will, to the public at large that the Chair of the committee, whatever committee it is, is dealing with all matters procedurally and substantively in a fair, independent, unbiased way. That's how Chairs of committees maintain the confidence of the House and the confidence of the public.

I want to quote from a Canadian Press release dated June 12, which deals with the issues of the cancelled gas plants in Mississauga and Oakville, in which the NDP energy critic, Michael Prue, spoke about and addressed the issues that are substantively before this committee. So it's not a procedural matter that I'm raising; it's a substantive matter having to do, in legal terms, with judges having to be very careful to avoid the appearance of a predetermined view or the appearance of a bias. I do make these remarks quite respectfully of the Chair.

Sorry, I said the Canadian Press of June 12; it's June 1, 2012. I have a copy here. I can give you copies, but I'll read it into the record and ask the Chair to rule on it:

"NDP Wants Auditor to Probe Cost of Cancelled Gas Plants in Mississauga, Oakville," the Canadian Press, Toronto.

"Ontario's Auditor General should be called in to investigate the potential cost to taxpayers of the Liberal government's decision to cancel gas plants in Oakville and Mississauga, the New Democrats said Friday.

"The Liberals cancelled a planned 280-megawatt gas power plant in Mississauga just days before last year's election, after scrapping another one in nearby Oakville the year before."

This is what gives rise to the appearance of a predetermined view or a bias, and it's for that reason that the point of order is asking the Chair to recuse himself and turn the matter over to the Vice-Chair:

"The plants were cancelled to save Liberal seats, but the government won't say how much it expects to pay in penalties for its decisions, complained NDP energy critic Michael Prue.

"I think it is an embarrassment"—

Interjection.

Mr. Michael Prue: I'm not the energy critic, nor did I make this statement. But go ahead.

Mr. David Zimmer: I'm just quoting from the Canadian Press story. This is out in the public domain. That gives rise to the—

Mr. Rick Nicholls: Point of order, Chair.

The Chair (Mr. Michael Prue): We have a point of order here.

Mr. David Zimmer: I'll be through this in a couple minutes.

It quotes Michael Prue:

“I think it is an embarrassment because they were in such desperate shape they were willing to sacrifice the people of Ontario’s money in order to secure those seats,” said Prue.”

Michael Prue goes on:

“It worked politically, but I think in terms of economics and doing the right thing, it was not.”

“The Progressive Conservatives said anyone could have predicted there would be expensive lawsuits after the Liberals decided to reverse course and scrap power plants that were well into their construction....”

The gist of the matter is that statement, which is a statement about substantive matters that we’re dealing with here at this committee, the statement as quoted in the Canadian Press: “I think it is an embarrassment because they were in such desperate shape they were willing to sacrifice the people of Ontario’s money in order to secure those seats,” said Prue.

“It worked politically, but I think in terms of economics and doing the right thing, it was not.”

Surely in any proceeding such as this, the whole system is predicated on the Chair, when dealing with procedural matters and substantive matters, when coming to the Chair’s role, has to be really above reproach or above the appearance of a view that prejudices one side or favours another side. I say with the greatest of respect, Chair, that for those reasons and to ensure the integrity of the work this committee has to do on this substantive matter that you recuse yourself and turn the chair over to the Vice-Chair.

I think some of my colleagues want to speak to this point of order also.

The Chair (Mr. Michael Prue): Mr. Nicholls.

Mr. Rick Nicholls: I appreciate the history lesson from my honourable colleague, but I personally feel and believe that we have gone way right—or maybe perhaps, if I could say, way left—of the initial motion. Therefore, going back to the amendment, I would like to move the question. I call the question, sir.

The Chair (Mr. Michael Prue): I can’t entertain that at this point. We have a point of order here, and I have to deal with that first.

Mr. Harris, on the point of order.

Mr. Michael Harris: Yes, on the point of order, these folks should have called this earlier if they felt he wasn’t impartial. The Chair has presided over this committee now for several weeks. You’re referencing a June 1 date. It’s several weeks ago. They’re simply picking and choosing when they want to bring up points of order such as this. If they felt that he wasn’t impartial, this would have come up a long time ago, so I move that you make a decision or ruling on this point of order and immediately get on with the business of the committee and addressing the amendments before this committee.

The Chair (Mr. Michael Prue): Any other points of order?

Ms. Tracy MacCharles: Chair, I don’t want to extend this unnecessarily, but I think Mr. Zimmer has really

summed up what I call a perception issue. I think perceptions and actions go hand in hand, as we are representatives of this Legislature. I think that’s where he’s coming from, and it is indeed, with all due respect to the Chair. Thank you.

The Chair (Mr. Michael Prue): Any others?

Mr. Michael Harris: Rule.

Mr. Peter Tabuns: Let’s rule.

The Chair (Mr. Michael Prue): No, no. I’m going to take a few-minute recess to consider this. We’ll come back at five after 10.

The committee recessed from 0952 to 1001.

The Chair (Mr. Michael Prue): Call to order. The meeting is resumed.

I have had an opportunity to consider the request on the point of order that I recuse myself, and I decline to do so. I do so because, first of all, I don’t think that I have prejudiced in any way this committee. I am not sure from whence the quote came. I do not remember making it. I am not the energy critic of the NDP; Mr. Tabuns is. Even if I had made it, it was certainly not in the context of this committee; it was within the context of the wider frame around here. I am therefore not going to recuse myself.

I would suggest for the committee members that should such a challenge be made in the future, it should be in a timely manner. It should be done at the beginning of a set or procedure. We’re going to the Ministry of Finance on the next occasion after we finish the Ministry of Energy—if that ever, indeed, happens—and I am the finance critic. I am sure that someone will find something that I have said in my past experience to the Ministry of Finance. So if that is the intent of any member of the committee, then please do so at the commencement, when we start finance, not halfway through the proceeding.

So I will not recuse myself, and Ms. MacCharles, you have the floor.

Ms. Tracy MacCharles: Thank you, Chair. Again, with the utmost of respect, I request to appeal your ruling.

Mr. Grant Crack: Mr. Chair, can we have a 20-minute recess to discuss the appeal?

The Chair (Mr. Michael Prue): You are appealing my ruling that—I don’t know whether that’s appealable. It’s a point of order and I’ve taken it. You’re appealing the ruling of the Chair—

Ms. Tracy MacCharles: Yes.

The Chair (Mr. Michael Prue): —that I not recuse myself?

Ms. Tracy MacCharles: Correct, with all due respect.

The Chair (Mr. Michael Prue): And to whom are you appealing?

Ms. Tracy MacCharles: The Legislature itself and the Speaker of the House.

The Chair (Mr. Michael Prue): I’m trying to think: How did I give a ruling? I just said I would not recuse myself.

Mr. David Zimmer: On a point of order: I asked you to recuse yourself, with respect, Chair. You ruled on my

point of order. Your ruling on my point of order that you recuse yourself was—you declined. You ruled against me on that point of order. Ms. MacCharles wants to appeal your ruling on my point of order.

Mr. Grant Crack: And then a 20-minute recess, Mr. Chair.

The Chair (Mr. Michael Prue): I'm just trying to think. This is getting beyond bizarre. It really is. It's getting beyond bizarre.

Mr. Clerk, any comment on this?

Mr. David Zimmer: Chair, if I may, by analogy: By analogy sometimes, in judicial or quasi-judicial proceedings—

The Chair (Mr. Michael Prue): Which this is not.

Mr. David Zimmer: I said by way of analogy.

The Chair (Mr. Michael Prue): Okay. Just hold on for a second.

The clerk has advised me that there was no motion made that is appealable. Therefore, since there's no motion that is appealable, there can be no request for a 20-minute recess. There is no motion before this committee.

Mr. Bill Walker: Mr. Chair?

The Chair (Mr. Michael Prue): On a point of order? No? I have to recognize Ms. MacCharles. She has the floor.

Ms. Tracy MacCharles: I just want to be clear on the record. What I'm appealing is the point of order made by Mr. Zimmer. I believe my colleague has asked for a 20-minute recess.

The Chair (Mr. Michael Prue): You cannot have a 20-minute recess unless there's a motion on the floor to be voted upon. There is no motion on the floor that can be voted upon.

Ms. Tracy MacCharles: So I take it, Chair, that I should proceed to continue to discuss the amendment—

The Chair (Mr. Michael Prue): That is what I am asking.

Ms. Tracy MacCharles: —if I'm following the procedure. Okay.

Just to be clear, I have the floor on amendment 2.

I move that the motion be amended by deleting the words "that the Standing Committee on Estimates asked questions of the Minister of Energy on May 9, 2012, about the Oakville and Mississauga power plants. The minister refused to provide specific answers, citing the answers would be, and I quote, 'commercially sensitive.'"

In terms of the rationale and why I support this amendment—which is what I believe I'm to speak to now—and as pointed out by the Chair on several occasions, it is within ordinary practice and parliamentary tradition for individuals appearing before committees to raise issues of privilege and confidentiality in response to questions asked by committee members. Including this language in the motion—this is Mr. Leone's original motion, going back to that—could leave the impression that the minister violated parliamentary tradition and practice, and that is why I am supporting this motion.

As I was starting to talk a bit about last week, it's our view and my view that the minister in no way refused to answer questions put to him. He answered each and every one. There are circumstances, and we believe this is the case as well, where the minister's answer was due to the extremely sensitive nature of the information regarding the ongoing negotiations and litigation involving these two facilities.

I talked to the committee last week about an example in my own riding where misinformation was communicated and how I'm continuing to deal with the impact of that, encouraging the committee to keep that in mind. When misinformation or premature information gets circulated, it can be very disruptive to communities. So again, I guess what I want to emphasize is that it is within ordinary practice and parliamentary tradition for individuals appearing before the committee to raise issues of privilege and confidentiality.

At the very least, I ask that the language in the motion, as referred to in the amendment, be deleted on the basis that it is misleading and a mischaracterization of the minister's answers here on, I believe it was, May 9, 2012. He didn't refuse to answer questions. To the contrary, he was upholding his responsibility to this Legislature and the government and as an MPP and a member of the executive council.

So it's for those reasons, Chair, I do support this amendment, again emphasizing that we have a collective responsibility, as elected representatives, to ensure that information is managed properly, that we don't intentionally or unintentionally create adverse impacts in any of our communities, any of our ridings in the province. Government is confusing and complicated enough, and that's why I think we all have to work together in a non-partisan way when we make decisions of this magnitude, so as to not create undue confusion or complications about information, and especially when we're talking about negotiations and litigation involving the two facilities in question that the minister could not release certain facts on. So I strongly encourage all members of this committee to consider that and respect ordinary practices and parliamentary traditions on matters of this regard.

I am concerned that the language in this motion could leave the impression that the minister violated tradition and practices, which is clearly not the case, in my view. Thank you, Mr. Chair.

The Chair (Mr. Michael Prue): Further debate? Mr. Zimmer.

Mr. David Zimmer: The amendment asks that the motion be amended by deleting the words in the main motion: "that the Standing Committee on Estimates asked questions of the Minister of Energy on May 9, 2012 about the Oakville and Mississauga power plants. The minister refused to provide specific answers, citing the answers would be, and I quote, 'commercially sensitive.'"

In fact, as I said the other day, the minister in fact did respond substantively to the matters here and disclosed what he could disclose, and with respect to certain

matters raised the question of privilege and exercising his discretion to protect sensitive commercial negotiations which, if that information was put forward by the minister now in a public domain, would adversely affect the negotiations, possibly and probably to the detriment of a successful conclusion to the negotiations which would be fair and, indeed, advantageous to the people of Ontario.

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So the way it stands now, the main motion which this seeks to amend tries to create the impression that the minister was asked certain questions and basically gave the committee the finger and said, “I’m not going to deal with this request for information,” when in fact that’s not the case. As I referenced the other day, the minister responded in a letter dated May 30 addressed to the committee. He addressed the letter to the Chair, and I know that all committee members have a copy of the letter, and I do want to put it into the record.

“Dear Mr. Prue:

“I am writing in response to the May 16, 2012 estimates committee motion brought forward by MPP Robert Leone under standing order 110(b) directing the Minister of Energy, the Ministry of Energy and the Ontario Power Authority (OPA) to produce all correspondence in any form, electronic or otherwise”—

Mr. Bill Walker: Point of order.

The Chair (Mr. Michael Prue): On a point of order, Mr. Walker.

Mr. Bill Walker: It seems that we are regurgitating the same information over and over, and I would suggest respectfully that, pursuant to standing order 23(c), this repetition is purposely obstructing us getting to the actual amendment vote, and I would ask that you rule that we carry on to the vote.

The Chair (Mr. Michael Prue): If I could just find out from Mr. Zimmer: Is it your intention to read that entire three-page document? If that’s what it is, then I think the point is well taken. If you’re just going to quote a line or two from it, then please go ahead and do so.

Mr. David Zimmer: I intend to quote a line or two of it and then add my commentary, perhaps, on that line or two that I quote. Essentially, the point that I’m trying to get across is that on any fair reflection of this six-page letter, the minister responded fairly, substantively and comprehensively to the request, except that piece where he exercised his discretion as a minister of the crown to do what he deems best in the interest of the—

Interjection.

The Chair (Mr. Michael Prue): Just hold on. I’m not going to allow the point of order at this time. Please continue, Mr. Zimmer.

Mr. David Zimmer: Thank you. So the first part of the letter just refers to the Oakville and the Mississauga situations. The minister says in the letter that he respects the authority of the committee and so forth and so on. He talks about some technical aspects of the litigation and so on. He confirms that the minister made an extensive search of the relevant and requested correspondence, that

they did in fact find correspondence and documents. But that’s when the minister, with respect to that correspondence dealing with the Oakville and Mississauga issue, exercised his discretion by saying—and this is the nub of the matter: “Disclosure of these documents is anticipated to have a negative impact on resolution of these files in the light of ongoing, confidential discussions, as well as litigation, in these files.”

Mr. Rick Nicholls: Point of order, Chair.

The Chair (Mr. Michael Prue): On a point of order, Mr. Nicholls.

Mr. Rick Nicholls: I believe that our colleague across the way has already made reference to this particular letter before. I also don’t believe that he’s speaking to the amendment. He is actually speaking to the motion. Right now, it is my belief that we’re debating the motion at hand. Therefore, I would ask that we call for the vote.

The Chair (Mr. Michael Prue): I can’t interrupt a speaker. When it’s your turn, you can ask to call for a vote at any point when you are recognized. I don’t have any other speakers after Mr. Zimmer, but he has the floor, and he has to be allowed to finish.

Mr. Zimmer, the point that—please try to get as close as you can to talking about the amendment which was put forward by your colleague Mr. Moridi. That’s the issue before us, not the main motion at this point. It’s the amendment.

Mr. David Zimmer: All right. Then I go back to the amendment because that—the main motion says, in effect, “Minister, we asked you for such and such and you didn’t give it to us. Now we are specifically saying that we want all of this correspondence and so on.” The minister has addressed that matter. He addressed that matter in his letter of May 30, which is a comprehensive answer to the matters requested by the committee, albeit with the narrow piece that there are certain documents and email correspondence and so on surrounding the negotiations which anybody, any right-thinking person who’s involved in any kind of negotiations, whether it’s settling a business dispute between two business partners or sorting out a settlement in a divorce proceeding or a car accident—but where two parties are trying to resolve their differences.

The one party, in this case, is a private sector entity, the contractors and so forth in building the plants at Oakville and Mississauga. The other side is the government. So the private sector people, if this amendment is not allowed and the main motion goes through as crafted, and if that motion is successful and the minister is ordered to release those confidential documents and so on around the negotiation—the bottom line effect is that the private sector company, which can keep its negotiation position and what it intends to do and how it intends to play out the negotiation, what its ultimate goal in the negotiation is, what it would like to achieve in terms of the damages and the finances, if any, keeps that private, and so the other side has no idea what their strategy is, how they’re going to approach this negotiation.

You contrast that with the government position, where the government position—if the main motion is not

amended by this amendment and it goes ahead and down the road the minister is required to produce all that confidential information, then the private sector side of things has an enormous advantage because they know what the other side is trying to achieve. They know the other side's strategic plan in the negotiation. They know the other side's tactical plan of the negotiation.

Just by way of analogy, imagine this: You've got two armies and they're about to start a battle. There's some referee to the battle, like the Chair or this committee. These two sides are in a battle and somebody says to the one side in the battle, "Okay, you release your battle plans to the other side. The other side, you can keep yours secret." That's a bizarre situation, and it's unfair to the party that has got to release their plans.

I know it's an analogy, but we've got the same situation here. There's the potential, given these power plants and the sums of money involved and all of that sort of stuff, that there may well be huge consequences if one side has to lay out their negotiating plan and the other side doesn't.

Whatever your view is of how it came about that the plants were closed and all of that business—which is, there are political positions there that all parties have—the fact is, on a going-forward basis, we are desperately trying—all parties are: the private sector, the government, the municipalities—everybody is trying to reach a settlement that's fair to all the parties. To get one party to unilaterally disclose its position gives the other side such an enormous advantage that, in my submission, if this committee were to order the minister and the ministry to disclose its strategic and tactical position, the members of this committee—and I'm reluctant to say this but it has to be said—would be doing a great disservice to the members of the Ontario public, to taxpayers' dollars. Fast-forward ahead: Supposing the motion, unamended, goes through—

The Chair (Mr. Michael Prue): I just noticed the time. It's 10:20. I will cede the floor back to Mr. Zimmer when we return this afternoon. But I did promise Ms. MacCharles she would have at least an extra five minutes to get upstairs.

Ms. Tracy MacCharles: Thank you, Chair. I appreciate it.

The Chair (Mr. Michael Prue): We are going to recess now until this afternoon, but I would remind members that there is a subcommittee meeting here at 11:30, or as soon after question period as you can get here. The purpose is to discuss possible dates for the subcommittee to meet over the summer, because we have to get our work done in estimates.

Recessed.

Mr. David Zimmer: Chair, or Clerk, can we leave our papers here?

The Chair (Mr. Michael Prue): Absolutely.

The committee recessed from 1021 to 1557.

The Chair (Mr. Michael Prue): I call the committee to order. When the committee broke just this morning, we were in debate. Mr. Zimmer has the floor.

Mr. David Zimmer: Thank you, Chair. How much time do I have left, Chair?

The Chair (Mr. Michael Prue): Approximately eight minutes.

Mr. David Zimmer: Thank you.

I was just highlighting—I mean, I made the point that what the opposition is trying to say here is that the minister is improperly resisting this committee's request for information, which the committee says it has a right to hear, to have, and that the release of that information by the minister trumps any concerns that the minister has; and further, that the minister has, in a very cavalier way, snubbed his nose at this committee. I want to point out, Chair, that in fact—and you have it before you and I won't read it all into the record again; I did that the other day, most of it—the minister released a five-page, detailed letter, in which it's clear from any reasonable reading of the letter that he's not snubbing this committee, he's not just cavalierly dismissing the committee's request and sort of holding up or trying to shelter behind this idea of privileged documents because he doesn't want the other side to see the documents, but he lays out a very detailed and cogent argument as to why.

The gist of the argument—and I come back to the points that I made this morning—is that the minister has an obligation and the ministry has an obligation and the government has an obligation to conduct these negotiations with the commercial interests representing the power plants in Mississauga and Oakville, which we are not proceeding with, in such a way as to get the best possible exit deal, if you will, for the Ontario taxpayers.

I used that analogy this morning—and in fact, I had a call at my office about this over the noon hour—about two entities about to start a battle, army A and army B, and what a scandal that would be if somebody ordered army B to release its battle plans to army A, and that led to the defeat of B. That's a very dramatic analogy, but it's exactly what we're facing here, because those commercial interests out there would love to know. And any of you members opposite, members of this committee, that have been in any business negotiations or any other complex negotiations and you're trying to figure out what the other side is thinking, what they're going to do, what they want, what they're prepared to give up and so on, whether it's a business negotiation, a labour negotiation, a negotiation with an ex-wife over family assets, you want to be very careful about what you disclose, how you disclose it and the manner in which you disclose it.

In summary, I say this to the members of the opposition, quite directly, on the record—on the Hansard record—I say this to Michael Harris, Progressive Conservative representing Kitchener–Conestoga; I say it to Rob Leone, Progressive Conservative representing Cambridge; I say it to Rick Nicholls, Progressive Conservative representing Chatham–Kent–Essex; and I say it to Peter Tabuns, NDP member representing Toronto–Danforth: If you vote against this amendment and, indeed, as this whole matter proceeds before this committee, if the end result is that the minister is forced to

release that information—that sensitive commercial information—to this committee and that jeopardizes the government of Ontario, the Minister of Energy, the officials at the Ministry of Energy, if it jeopardizes their negotiation position and places them in a weaker position vis-à-vis these large commercial entities out there that are private sector, profit-driven—their strategy is to get the most out of the government as a result of the cancellations of these deals.

If you force the minister to release that information, then, in effect, you are going to have blood on your hands, if you will, because the government is going to end up in a weaker negotiating position. A vote against this committee will put Ontario taxpayers at a disadvantage. The consequences of weakening Ontario's position could be immense. The only winner—the only people that are going to come out on the plus side of this thing, if these documents are released, are the commercial interests; certainly not Ontario taxpayers.

I say this to members of the opposition: Think very carefully about how you vote on this. Do you want your voting record in Hansard, as reflected in the votes in this committee, to show that you voted to disclose sensitive commercial information that jeopardized Ontario's negotiating position and has ended up costing Ontario significantly more than it would cost if the minister was allowed to, in a very sensitive way, negotiate this to get the best deal for Ontario? Do you really want that on your hands or your voting record? Do you really want your constituents in the riding of Kitchener–Conestoga, in the riding of Cambridge, in the riding of Chatham–Kent–Essex, in the riding of Toronto–Danforth to know that the members that they sent to this Legislature to represent the interests of Ontario, to get the best possible deal for Ontario; that those members—Kitchener–Conestoga, Cambridge, Chatham–Kent–Essex, Toronto–Danforth—jeopardized Ontario's negotiating position and placed the province, the minister, the ministry in a weaker position than they would have been in? I think for members of the opposition to allow that to happen is scandalous.

Thank you, Chair.

The Chair (Mr. Michael Prue): Okay. I have, first of all, Mr. Tabuns, and then Mr. Harris.

But before I recognize them, I want all members here to realize that the motion made by Mr. Leone is to be sent to the Speaker. The Speaker then has to make a determination if there's a prima facie case, and then the debate is allowed to take place in the House. The debate ought not to be here. We are here in order to do the estimates, so I'm trying desperately to steer people down the road. We have 80 hours left of estimates and we're not getting any of those estimates done.

I have Ms. MacCharles down third. First of all, I have Mr. Tabuns, then Mr. Harris, then Ms. MacCharles.

Mr. Peter Tabuns: I'm prepared to vote in favour of the motion and ask that we proceed to a vote.

The Chair (Mr. Michael Prue): So—

Mr. Peter Tabuns: Sorry, to this amendment that was—

The Chair (Mr. Michael Prue): To the amendment.

Mr. Peter Tabuns: Yes.

The Chair (Mr. Michael Prue): So you're calling the previous question.

Mr. Peter Tabuns: I am.

The Chair (Mr. Michael Prue): All right. We have a motion to call the previous question. All those in favour of calling the previous—

Mr. Grant Crack: Twenty-minute recess, Mr. Chair. I think that's in order.

The Chair (Mr. Michael Prue): It is in order, if you need a 20-minute recess. They've already indicated they're going to vote for it.

Mr. David Zimmer: I think it's important so that the Conservative members know; we now know the NDP position. Conservative members should think very carefully about this and, in my submission, follow the lead.

Interjection.

The Chair (Mr. Michael Prue): No, they put their hands up to vote, but if you need 20 minutes to confirm that you're going to get four votes from the other side along with your own vote—if you really need that, then you can have it. You need it?

Mr. Grant Crack: Yes, sir.

The Chair (Mr. Michael Prue): All right.

Interjection.

The Chair (Mr. Michael Prue): I can't deny him. It is in the standing rules.

Mr. Bill Walker: I was next on the speakers' list.

The Chair (Mr. Michael Prue): I know, but it is the standing rules. He was first. He moved the previous question. There is a request; he has the right to ask for it. Although I do not understand the need, he has it, and we're recessed for 20 minutes.

The committee recessed from 1605 to 1625.

The Chair (Mr. Michael Prue): Okay, we're going to call the meeting back to order. Just so it's clear for the record, what Mr. Tabuns was intending to do is to call the question, not on the whole thing, which would mean that no more amendments could come forward, but just on this particular amendment.

We have the amendment before us. I trust that everybody has had 20 minutes to think it through. All those in favour of the amendment? This is the amendment by Mr. Moridi. Opposed? That's carried unanimously.

On to the next amendment. The next amendment is submitted under the name of David Zimmer.

Mr. Rick Nicholls: Can you hold on for a few seconds?

Ms. Tracy MacCharles: Sure.

Interjections.

Mr. Rob Leone: Mr. Chair, I have a question.

The Chair (Mr. Michael Prue): I'm just waiting for the clerk to come back. I think we need to have him here, in case.

Interjections.

The Chair (Mr. Michael Prue): Here is the clerk.

You have a question.

Mr. Rob Leone: Mr. Chair, my question is with regard to—I'm wondering if we could at least know the number of potential amendments that we're going to be seeing from all parties on the main motion and, at the very least, if we could see all of those amendments in advance before we proceed with doing this one by one. I'm hopeful that we could do that and, again, in the interests of time and resources, and given the fact that we have a number of other ministries that are coming after the Ministry of Energy, that we at least have in front of us all the amendments that are moving forward. I don't think that's an unreasonable request, a request that—

The Chair (Mr. Michael Prue): It is not. That's a point of privilege, and it's well taken. I would ask the clerk to submit—there are a total of eight amendments, and we have dealt with two. There are six more. It's my understanding that they've all been placed by the Liberal members. I see the first two have David Zimmer's name on them. The others are not signed, but I'm assured somebody is going to move these.

Mr. Rob Leone: I'm wondering, Mr. Chair, if we could limit the debate—this is a question; I don't know if it's possible—on all these amendments and do it at the same time, as I suspect we're going to hear much of what we've heard over the last little while.

The Chair (Mr. Michael Prue): There can only be one request at a time. That is a motion that could be made if somebody wants to make it, that debate on this amendment is limited to half an hour or something, but I'm not going to tell you what to do.

Mr. Rob Leone: Can I move that motion?

The Chair (Mr. Michael Prue): That is within the rights of the committee.

Mr. Rob Leone: Can I move a motion, Mr. Chair, to limit debate on each amendment to 15 minutes?

The Chair (Mr. Michael Prue): This is a debatable motion, so if you move this, it is debatable all by itself.

Mr. Rob Leone: I'm moving it.

The Chair (Mr. Michael Prue): All right. We have a motion moved to limit debate on each of the remaining six amendments to 15—

Mrs. Teresa Piruzza: So what are you asking? He just said “on this amendment”?

The Chair (Mr. Michael Prue): Each of the remaining. There are six amendments. We're going to have them distributed, first of all. Let's distribute them first and make sure that everybody has them.

Interjections.

The Chair (Mr. Michael Prue): I think, in order to allow the clerk an opportunity to collate these and give them out, we'll take a five-minute recess.

The committee recessed from 1630 to 1641.

The Chair (Mr. Michael Prue): The meeting is resumed. Everybody now has the amendments that have been filed, amendments 3 through 8. Mr. Leone has moved that—go ahead, Mr. Leone.

Mr. Rob Leone: Thank you, Mr. Chair.

Mrs. Teresa Piruzza: Chair, I have a point of order, please.

The Chair (Mr. Michael Prue): A point of order on his motion?

Mrs. Teresa Piruzza: On his motion.

The Chair (Mr. Michael Prue): On a point of order, then.

Mrs. Teresa Piruzza: While we were out there discussing the motion, we all had a bit of a different understanding with respect to what the motion was, so I believe in order to ensure that we all have the same understanding of what Mr. Leone's motion is, I think we need to see it in writing. I'm requesting that we see the motion in writing.

The Chair (Mr. Michael Prue): I think that's more than reasonable. Mr. Leone, if you could explain it first and then take a few minutes to write it out.

Mr. Rob Leone: Sure, no problem. Well, Mr. Chair, the reason why I moved the motion is because I think that there's a sense of frustration that a motion that is not even—the original motion, I should say, that's supposed to send this motion to committee—that's what we're voting on—is being delayed due to the tactics that we're seeing on the governing side. The reason why I initially proposed to move the motion was to suggest that the government is just wasting time.

I think we need to move the process forward. We know that this is going to go the House eventually, whenever it gets debated and so on.

Mr. Chair, I'm going to withdraw the motion, and I just wanted to provide that rationale on record, in Hansard, as the member for Willowdale likes to say. I'm going to withdraw that motion, but I do want to restate the position and the intent of that motion, which is to say, “Let's get going here. This is something that the Chair himself cannot rule on. He's just sending this to the House for the Speaker to rule on.”

Mr. David Zimmer: Chair, a point of order. If the motion is being withdrawn, then—

The Chair (Mr. Michael Prue): The motion is being withdrawn. There's nothing further to discuss on the motion. It's done.

Interjections.

The Chair (Mr. Michael Prue): As to the reasons for withdrawal, he's made his statement. We now have motion 3, and Mr. Zimmer, this is in your name.

Mr. David Zimmer: Ms. MacCharles is going to—

The Chair (Mr. Michael Prue): It needs to be read into the record.

Ms. Tracy MacCharles: I'll do that, Chair. Thank you. This is amendment number 3 to the motion, Standing Committee on Estimates, submitted by David Zimmer, MPP, Willowdale, June 6, 2012.

I move that the following section of the proposed motion, “furthermore, that the committee recommends to the House that the Minister of Energy be compelled to provide the Standing Committee on Estimates, without delay, the documents and information it ordered pursuant to standing order 110(b) and, if the minister refuses, that he be held in contempt of Parliament for breach of privilege” is amended to read, “furthermore, that the com-

mittee recommends to the House that the Minister of Energy be compelled to provide the Standing Committee on Estimates the documents and information it ordered at such time as the ministry anticipates that producing such materials would no longer have a negative impact on these matters with respect to relevant confidentiality, privileges or commercial sensitivities, pursuant to standing order 110(b) and, if the minister refuses, that he be held in contempt of Parliament for breach of privilege.”

The Chair (Mr. Michael Prue): What has been read into the record is not what I have in front of me.

Ms. Tracy MacCharles: Amendment 3?

The Chair (Mr. Michael Prue): Maybe I have an old one.

Interjection: It was changed.

Ms. Tracy MacCharles: Is it changed? I apologize. I'm just reading the one I have, and I think it's the one Mr. Zimmer has.

The Chair (Mr. Michael Prue): Perhaps the clerk could tell us—

Ms. Tracy MacCharles: I don't know what's been handed out.

Interjection: This is what's been handed out.

Interjections.

The Chair (Mr. Michael Prue): I'm advised by the clerk that the copy that was moved is different from the one that was filed; therefore, he is required to make copies of the one that is now moved. We will take another couple of minutes' recess while he makes copies and distributes them.

Mr. Rob Leone: Mr. Chair, can we move to—

The Chair (Mr. Michael Prue): No. We have to deal with them in the order in which they were filed. This one has been moved, so we just have to make sure that everybody has a copy in front of them.

Mr. David Zimmer: So we're dealing with—

The Chair (Mr. Michael Prue): I just want to recess for a minute or two.

The committee recessed from 1646 to 1650.

The Chair (Mr. Michael Prue): Meeting resumed. We now have all received a copy of the correct amendment and it has been read into the record. Discussion? Ms. MacCharles, you have the floor, if you want to discuss—

Ms. Tracy MacCharles: Thank you. This amendment 3, while it may appear similar or the same as amendment 2, is somewhat different when you look at the wording. I, of course, support this amendment to the motion. It really provides a different level of emphasis in the amendment in that, “the documents and information ordered at such time as the ministry anticipates that producing such materials would no longer have a negative impact on these matters with respect to relevant confidentiality, privileges or commercial sensitivities.”

Again, I shared with the committee today and last week my concerns about the ongoing damage I'm dealing with about incorrect material that was distributed in my riding about—

Mr. Rob Leone: Point of order.

Ms. Tracy MacCharles: —relocation of a gas plant, and furthermore—

The Chair (Mr. Michael Prue): Sorry, I have a point of order. Mr. Leone.

Mr. Rob Leone: Again, Mr. Chair, I think we should stick to the reasons why these words should change, and not what happened in the last election campaign. I think we're repeating and being excessively repetitive, according to standing order 23(c), and I hope that the Chair can rule on that.

The Chair (Mr. Michael Prue): Yes, I can. I think your point is well taken, but I'm going to give some latitude to Ms. MacCharles. But really, in all of these amendments, we need to try to confine ourselves to why the amendment is in order and why the changes are necessary to properly reflect what has been put forward in the main motion. If you could do that, we could certainly move along much more quickly.

Ms. Tracy MacCharles: Yes, of course, Chair, and I appreciate the advice. I also recognize, too, that it is the government's right to submit amendments and have them debated, so I will get to—and continue to get to—the point here. As I said, it's somewhat different, but I think this is a timing difference in this particular amendment to the motion.

This is very important and I won't bring up what happened in the election again, but I will talk about the fact that where I live, my riding, is an energy belt, so to speak. It's a nuclear capital, and I'm very concerned that if we don't have amendments such as this accepted, then it puts, really, a sense of nervousness into not just the nuclear energy sector out in the region of Durham where I live—and I represent part of that—but also the renewable energy players, all the start-ups that come together to bring balance to how we provide energy to Ontarians. I think it's very important that we allow the ministry to anticipate what that right timing is vis-à-vis the negative impacts.

Again, it's similar to the last one about confidentiality, privileges or commercial sensitivities. I've sat in rooms full of people hosted by the board of trade in this sector who are, quite frankly, going to drive energy forward across the GTA on behalf of our province. If there is any inkling that confidentiality and privileges could be breached, it's going to set a precedent that would be unacceptable to the sector, whether it's nuclear, renewable or other. It's going to have a chilling effect.

Quite frankly, we're at a time right now when we need to be, I think, appropriately careful as we move forward. We cannot have concern on behalf of the sector that material is going to be released inappropriately and that there will be violations of proprietary information, confidential information and so on.

Some of these businesses, quite frankly, are in the infancy stage of becoming a real player in energy in Ontario. I think they need confidence from us as a government that we are providing leadership, we are providing safe carriage of information, and we are proactively leading this so as to not cause concern, to not cause

companies to be skittish and back away. I think that's why this motion—sorry, this amendment to the motion; I've got to get my language right—is very, very important. Those are some of the reasons I support it. I know first-hand because I sit with these people. I sit with the business leaders throughout Durham and the other players that want to come to Ontario and be a player in this sector.

That's why, Chair, I respectfully submit that this motion is required and that we must debate this amendment separately from other amendments.

The Chair (Mr. Michael Prue): Mr. Harris.

Mr. Michael Harris: Oh, I was just going to say thank you for your input on this amendment, but I'd like to call the question on it.

Mr. David Zimmer: Further debate over here.

The Chair (Mr. Michael Prue): You're calling the question—

Mr. Michael Harris: On the amendment.

The Chair (Mr. Michael Prue): On the amendment.

Interjection.

The Chair (Mr. Michael Prue): Well, it's not debatable. Is it a point of order that you have?

Mr. David Zimmer: Sorry, Chair, I—

The Chair (Mr. Michael Prue): Calling the question is not debatable. Either vote for it or vote against it. If it's defeated, then I will recognize you next. He's not calling the whole question; he's calling the question only on the amendment. Can he even do that?

Mr. David Zimmer: No—

The Chair (Mr. Michael Prue): Just hold on.

I have been reminded, and it is correct, that the rules in the House state that if the question is put, it is on the main motion; it is not on the amendment.

Mr. David Zimmer: Sorry, Chair, I didn't hear that.

The Chair (Mr. Michael Prue): It is on the main motion, not on the amendment. So then I have to think, when I hear that, whether or not there has been sufficient debate. Since the amendment has only had one person speak to it, I would recognize the next speaker.

Mr. David Zimmer: Thank you, Chair. Here's the irony of the opposition, if they're going to vote against this amendment. On the one hand, the opposition has said to the minister, "Give us all of these documents and information, the supporting materials on what's going on, on the negotiations on the Oakville and Mississauga plant."

Then, the minister responds in his letter of May 30—and I don't have to go into that in detail; I've done that already. In the letter, he makes his detailed and cogent arguments saying, in effect, "Look, the information that you want is of such a nature that it's not appropriate at this time to release it because of these sensitive commercial negotiations" and so on. When you read the letter through carefully he recognizes the authority of the committee, and he recognizes the responsibility of members of all parties to effectively do their work at estimates and get the information that they need to further the work of the committee and further their roles as MPPs. He lays

out the argument on why he can't release it at this time. It's not a refusal; it's a qualified response saying, in effect, "I'll release it when it's appropriate to do so and I can release it in such a way as to not injure the interests of Ontarians and Ontario taxpayers."

What this amendment does is, it really gets to the nub of the minister's response in his letter of May 30, because the amendment says, "Furthermore, the committee recommends to the House" and so on. The amendment that we want is, "at such time"—referring to the release of the information that the minister wants, at this time, to hold in abeyance—"that doing so is no longer anticipated to have a negative impact on the public interest in resolving these matters in the light of maintaining privilege and confidentiality." So the amendment quite specifically reinforces what the minister has already said in his letter. He says, in effect, "Yes, the committee's got a right to that information at a point in time when it's not going to do any harm to Ontarians, and I, as a minister of the crown, have a responsibility to make that judgment call."

1700

The irony here is that if we vote in favour of this amendment, we are reinforcing the minister's position, which you can distil from reading his letter: "Yes, I've got the information. It's not that I don't want to release it; it's that I don't want to release it now because we are in the midst of these sensitive negotiations."

I would like to think that the opposition parties would support this amendment, because the amendment does two things. It ensures that they will get the information that they require, and then they'll get it in a way, in a manner, and at a time that does not in any way jeopardize the interests of Ontario taxpayers.

This amendment, in effect, if you will, is a win-win for everybody. It's a win for the opposition parties. They get the information at a time and in a manner that doesn't jeopardize Ontario's negotiating position, so that must be good for opposition members. What member of whatever party would want to be seen to be jeopardizing the interests of Ontario's taxpayers?

It seems to me, in effect, that this amendment is the best of all possible worlds, and all parties should vote against it because it provides a mechanism and a time to get the information in a manner that doesn't do any harm to Ontarians.

The Chair (Mr. Michael Prue): Thank you. Mr. Leone.

Mr. Rob Leone: Again, I think that these amendments are speaking to the same points. It's becoming pretty repetitive in this committee, and I hope that this is going to exhaust the kinds of things they're going to be saying on an ongoing basis on this.

Those are basically the comments I want to make on it. I hope that we can proceed through all these amendments in a much more timely fashion, without delay, so that we can finish the Ministry of Energy and get through all the ministries that we have here, period.

The Chair (Mr. Michael Prue): Further debate? Ms. Piruzza.

Mrs. Teresa Piruzza: I'm pleased to be back, sitting at the committee of estimates. I've not been at the last couple of meetings, so I was a bit surprised that we're still kind of going over the motion and the different elements of it, only because, when we discussed this when I was here, we were quite clear in terms of needing to ensure that we protect our interests and protect Ontario's interests.

We've spoken a number of times with respect to the sensitivity of all the documents. The motion that we have in front of us here, amendment number 3, is really making it very clear that, as a government, we won't release any documents that will have a negative impact on the province. I think that's quite clear, and that should have been in the original motion that was brought forward.

Frankly, we're all here to protect the interests of Ontario, and we need to be very clear. The minister did provide his response, and he had the same wording in his response as well, that some of these documents can't be released right now. I frankly can't believe that the opposition members would consider it appropriate to release any documents that might jeopardize our interests. That's still quite surprising to me.

Again, we're here to protect our interest. We're here to protect our legal interest, and with such sensitive information that may come forward, I think we need to protect that. That's the response that the minister did provide to the original request for information, in terms of ensuring that we protect ourselves, that we don't release any information that may be sensitive.

Again, that wording belongs in the motion. I don't think it takes away from what Mr. Leone might be saying in terms of trying to get his information. It's that you have to wait till it doesn't have any negative impact on us, and that's frankly—

Ms. Tracy MacCharles: Timing.

Mrs. Teresa Piruzza: That's right. It's all in the timing, as my colleague here is indicating. It's the timing in terms of when the documents may be released and when would be the appropriate time for them to be available. Frankly, at this point, it's not the right time. That would be my consideration in terms of the amendment that's being brought forward right now, this amendment number 3.

The Chair (Mr. Michael Prue): Further debate? Mr. Crack.

Mr. Grant Crack: Thank you, Mr. Chair. For 11 years, I had the privilege of serving as the mayor of a municipality in eastern Ontario, the township of North Glengarry, which was formerly Alexandria. Mr. Chair, I know that you were a mayor as well, so I'm sure that you dealt with a number of issues that required confidentiality as well.

At that particular point, we would have been dealing under a creation of the province of Ontario, which is called the Municipal Act. Under the Municipal Act, municipalities can deal with legal issues, personnel issues, negotiations, and disposal and acquisition of property in a

confidential manner until such time as there's some conclusion to each and every one.

With all due respect to the line of questioning from the opposition, I think it's quite legitimate that you're entitled to ask for the information, but at the same time, as a mayor and having responded to a number of constituents and also responding to the press, I always ensured that any response I gave did not compromise any of the negotiations or the position of the municipality. I would think, at the Ontario government level, if they've created a Municipal Act that would reflect the issues I've just talked about, it would speak to the same thing when it comes to the Oakville and Mississauga plants.

When you get into these types of negotiations, it's always important to note that, as a government or as a mayor and a council, you always try to get the best deal possible for your taxpayers and/or your ratepayers. As such, you don't compromise those negotiations. I think Mr. Leone's motion has gone too far, and as such, we have a number of amendments that we're going to be putting forward here. We think they're important, because it's our obligation, our responsibility, to ensure that we do get that best deal and that we respect—it's a matter of respect, Mr. Chair—the taxpayers and ratepayers of the province of Ontario.

The Chair (Mr. Michael Prue): Seeing no further debate, we have a motion before us.

All those in favour of the motion, please signify.

Mr. Grant Crack: Could we have 20 minutes, Mr. Chair? I need a 20-minute recess.

Mr. Peter Tabuns: They actually had their hands up.

The Chair (Mr. Michael Prue): Well, I saw one hand go up, and then I saw Mr.—

Mr. Peter Tabuns: There were two.

Mr. Grant Crack: No.

Mr. Peter Tabuns: The vote was in process.

Mr. Grant Crack: We need a 20-minute recess, Mr. Chair, with all due respect.

The Chair (Mr. Michael Prue): I'm going to grant the 20-minute recess, but we're going to come back and vote on this. We're adjourned for 20 minutes.

The committee recessed from 1708 to 1728.

The Chair (Mr. Michael Prue): Everyone is here and it's within 30 seconds; we'll call the meeting back to order. We now have a vote on motion 3.

All those in favour, please indicate. All those opposed? Again, it's a 4 to 4 vote.

I have some difficulty with this one in that it's changing the words "without delay" to a very nebulous time frame at which time "the ministry anticipates that producing ... materials would no longer have a negative impact on these matters" etc.

I think it's just too open-ended. Had it have been clearer I might have supported it, but this is just leaving it that the minister may never have to report, and I think that the estimates committee has the right to ask for the material with some obligation that it will be forthcoming.

So I'm going to cast my vote in the negative. The motion fails.

We're on to number 4. It's in nobody's particular name. Oh yes, it's in David Zimmer's name.

Mr. David Zimmer: Yes. So, you want me to read it into the record, Mr. Chair?

The Chair (Mr. Michael Prue): Please.

Mr. David Zimmer: Okay. Thank you. I move that the last sentence in the last paragraph of the motion is amended to say, "furthermore, that the committee recommends that the Minister of Energy provide the Standing Committee on Estimates the documents and information it requested, pursuant to standing order 110(b) using the prescribed process as outlined in the Freedom of Information and Protection of Privacy Act R.S.O. 1990, Chapter F31."

The Chair (Mr. Michael Prue): Okay, before you proceed, I have discussed this with the Clerk's office and my own reading of the bill. This is out of order. It is out of order for the reason that, first of all, 110(b) prescribes no limits on what the committee can ask for. It said, "Except when the House otherwise orders, each committee shall have power to send for persons, papers and things." It does not say going through freedom of information or anything else. Also, I requested information as to whether or not the Freedom of Information and Protection of Privacy Act applies to committees or the House; I was told no.

So it's clearly out of order.

Mr. David Zimmer: Well, surely I can argue that it—I can now make an argument. You've made a ruling without hearing, without debate.

The Chair (Mr. Michael Prue): There is no debate. I have consulted. It's clear from the standing rules. I checked it with the Clerk's office, and it's clearly out of order on their advice. I think the rationale that they gave was correct.

You are prescribing limits to this committee that it does not have set out in the standing order. You can't do that.

Mr. David Zimmer: With the greatest respect, then, Chair, I want to appeal your ruling.

The Chair (Mr. Michael Prue): All right. My ruling has been appealed.

Mr. Grant Crack: We'll need a 20-minute recess, Mr. Chair, to discuss the ruling.

The Chair (Mr. Michael Prue): All right, then. He is within his rights to ask for a 20-minute recess on the appeal. We stand recessed until 10 to 6.

The committee recessed from 1730 to 1750.

The Chair (Mr. Michael Prue): The meeting is resumed. The question before the committee at this point is, shall the decision of the Chair be appealed to the Speaker?

All those in favour? All those opposed?

I will not appeal my own decision, so that is defeated.

Mr. David Zimmer: Just for the record, Chair, are you voting against it?

The Chair (Mr. Michael Prue): Yes, I am voting. I am voting not to appeal.

Mr. David Zimmer: Okay, I just thought that should be clearly reflected on this.

The Chair (Mr. Michael Prue): Yes.

Mr. Michael Harris: So we're on amendment 5?

The Chair (Mr. Michael Prue): We're on amendment 5.

Mr. Michael Harris: It appears to be nameless.

The Chair (Mr. Michael Prue): Yes, it is nameless at this point. Is somebody taking carriage of this motion?

Interjections.

Ms. Tracy MacCharles: Okay. Amendment 5, including the Chair's ruling on May 16. Amendment 5, June 12, 2012.

I move that the following paragraphs be added before the last paragraph:

"The minister's response was in accordance with a ruling of the Chair made on May 16, 2012, regarding the minister's ability to protect the interest of the province in these proceedings. The chair ruled:

"I would have to rule, in my opinion, that this motion is in order, because the committee has the right to ask for documentation, as Mr. Leone has pointed out in his counter-argument. They have the right to ask for the documentation. The minister has the right to decline either giving that documentation or giving voice to that documentation during his answering of the questions."

May I continue, or one of my colleagues?

The Chair (Mr. Michael Prue): Surely.

Ms. Tracy MacCharles: So if I could speak to this amendment to the motion, Chair, amendment 5, including the Chair's ruling on May 16: It's clear to me that the opposition members are seeking to endorse, advocate and lobby for a prejudicial report against the Minister of Energy. The report that the opposition are lobbying for would be taken as a substantive and damaging position against the minister that would only serve the political needs of the opposition, and not in the best interests of our province.

This motion would send a report to the Legislature and to the Speaker that would have a prejudicial ruling on the following items: the committee compels the documents, irrespective of the sensitive nature of the materials; and if the minister does not bend to the committee's wishes, even though he is following the ruling of the Chair, that there may be a breach of privilege.

Next, the opposition have clearly outlined what they believe needs to be in this report; however, it does not provide the full and complete picture. Our amendment, therefore, seeks to ensure that the report back to the Legislature and the Speaker contains all the relevant and pertinent information that has seized this committee thus far.

I think one of the biggest pieces of information that has governed this committee and the minister's actions is the ruling of the Chair. I will remind folks that the Chair has ruled that the minister has the right to decline documents. In the same way, the Chair has ruled that the opposition members have the right to ask any and all questions about these matters.

In this case, the minister, in his response to the motion that was passed on May 16, 2012, thought it was in the best interests of the province to file the response that he filed—which, I might add, was in line with the Chair’s ruling.

While some would say it’s frivolous and the opposition is simply playing political games, any report back to the committee should contain facts. Now the opposition has clearly stated what facts they want to include in the report, namely, the full motion that was passed on May 16 and an excerpt of the minister’s response. It’s only fair and responsible that this motion contain a detailed outline about other facts that need to be included as not to prejudice or unjustly bias anything that goes before the Legislature.

In this vein, Mr. Chair, it’s important to note that the context to which the minister responded to the committee be a tenet of this motion as well as a principle of the report from this committee. Anything less than that would clearly demonstrate that the committee is not interested in presenting the facts on what we consider to be a very serious and unfounded charge, or charges, against the minister. Rather, they are out to hold a trial on the floor of the Legislature and besmirch the good name of the minister for political benefit, which would be most unfortunate, Mr. Chair.

I thank you for allowing me to make my comments—and that we do have, I hope, a fulsome debate on our amendment to the motion. Thank you.

The Chair (Mr. Michael Prue): Mr. Leone, then Mr. Zimmer.

Mr. Rob Leone: Mr. Chair, I think the motion should be ruled out of order. I don’t believe that inserting a quote from—I don’t know who this is being attributed to, with the word “I”—certainly not anything I said; I believe it might have been something that you said, Mr. Chair, which is a ruling that you already made on the original motion. So I think this whole motion—this entire amendment; sorry—is out of order.

The Chair (Mr. Michael Prue): No, I can’t rule it out of order. I do find it unfortunate, but I can’t rule it out of order. I should state again, so that everybody understands: The motion that has been made by Mr. Leone is for the Speaker to decide. The Speaker will have access to everything that has been said in this committee from the first minute we sat down until the end of the estimates period dealing with this minister and this ministry. It will be up to the Speaker to make that determination, not me. And if I have erred—I hope not, but if I have—I was trying to be fair to all parties. I find it unfortunate that it needs to be within the body of the complaint, but it is a legitimate motion that can be made and I’m going to allow it to go forward.

Ms. Tracy MacCharles: Thank you, Chair.

Mr. Rob Leone: Mr. Chair, again, this is being inserted into a motion in which Mr. Leone—myself—moves the motion. So I’m moving the motion, and I also, apparently, would have to be stating, “I would have to rule, in my opinion, that this motion is in order, because

the committee has the right to ask for documentation....” I just don’t understand how they can insert another thing that I did not say into this entire motion.

So that’s just my beef with the amendment.

The Chair (Mr. Michael Prue): If I could state, Mr. Leone, this amendment is amendable, because you can amend an amendment. And you can amend that to read, “The Chair stated: ‘I would have to rule, in my opinion....’” if you want, so that it’s clearer.

Mr. Rob Leone: I’m not moving that amendment.

The Chair (Mr. Michael Prue): Okay, well—

Mr. Rob Leone: I’m voting against this amendment.

The Chair (Mr. Michael Prue): All right. Okay, so, then Mr. Zimmer, I have you down next.

Mr. David Zimmer: In view of the hour—there’s only a minute or—

The Chair (Mr. Michael Prue): I’d like you to use up every single minute, because we have 80 hours left to go.

Mr. David Zimmer: Well, let me just, for the record, draw attention to the amendment—the first paragraph—because I think it is quite clear, just addressing Mr. Leone’s concern.

That the following paragraphs be added before the last paragraph:

“The minister’s response was in accordance with a ruling of the Chair made on May 16, 2012, regarding the minister’s ability to protect the interest of the province in these proceedings. The Chair ruled”—paraphrasing: The Chair, in effect, said—not in effect; the Chair said, to put it in layman’s language: “Look, the members of the committee have the right to ask the minister for documentation and to answer questions and all of that sort of stuff.” And that was entirely correct. Then the add-on, to complete the ruling, was, it then bounces back to the minister, and the minister has the right to decline to answer or decline to give the documents.

If this is going to work its way up to the Speaker, I think it’s very important that the motion going forward clearly point out, as the opposition have in their main motion, that in their view, thus and thus happened and the minister refused to answer; but that in fairness—and it’s a question of fundamental fairness—the motion fully reflect exactly what happened on May 16, and that is that the questions were put to the minister, the minister declined, then there was a kerfuffle and the Chair’s ruling, getting right to the heart of this matter. And in my judgment, in my view, the ruling was entirely correct.

Look, the members, the MPPs of the committee, have the right to ask questions, have the right to demand production of documents, and the Chair of this committee or indeed other committee members ought not to interfere with that right.

Those questions were put to the minister and the minister, in accordance with the Chair’s ruling that the minister had the right to decline to produce or answer questions, availed himself of that ruling; and, pursuant to the ruling, declined, for the reasons set out in his extensive letter of May 30, wherein, among other things, he gave a very detailed response and answer as to why he

was taking up the protection of the Chair's ruling that the minister had the right not to answer questions or produce documents if the minister said, in his judgment, it was prejudicial to Ontarians.

What's going on here, then—

The Chair (Mr. Michael Prue): If I could stop you at that juncture, I think it's past 6 o'clock—

Mr. David Zimmer: All right, I'll pick it up next time.

The Chair (Mr. Michael Prue): If you wish to continue on the next occasion?

Mr. David Zimmer: Yes.

The Chair (Mr. Michael Prue): All right. We will notate the amount of time used and the amount left.

Mr. David Zimmer: Thank you.

The Chair (Mr. Michael Prue): All right. It now being past 6 of the clock, this meeting is adjourned until tomorrow at approximately 3:45. Meeting adjourned.

Interjection.

The Chair (Mr. Michael Prue): I have to put the meeting back into order. I've given the wrong time. It will be the afternoon right after routine proceedings, so that would more than likely be 2-ish.

Don't we go to—is tomorrow different? It's Wednesday, yes. Yes. See? You got me all confused. Tomorrow's Wednesday, not Thursday; I was right the first time. It's 3:45. Okay.

The committee adjourned at 1802.

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Ms. Tracy MacCharles (Pickering–Scarborough East / Pickering–Scarborough-Est L)

Mrs. Teresa Piruzza (Windsor West / Windsor-Ouest L)

Mr. Todd Smith (Prince Edward–Hastings PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. Bill Walker (Bruce–Grey–Owen Sound PC)

Mr. David Zimmer (Willowdale L)

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