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**Official Report
of Debates
(Hansard)**

Tuesday 19 March 2013

**Journal
des débats
(Hansard)**

Mardi 19 mars 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Tuesday 19 March 2013

Mardi 19 mars 2013

The committee met at 0832 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Dear colleagues, I call to official commencement the meeting of the justice policy committee. You can tell I'm not adequately caffeinated yet. In any case, I'd invite Mr. Tabuns to please move the subcommittee report.

Mr. Peter Tabuns: Thank you, Mr. Chair. Your subcommittee on committee business met on Wednesday, March 13, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013.

(1) That the Clerk of the Committee schedule one witness per each 95-minute time slot.

(2) That any changes to the witness lists must be sent to the Clerk of the Committee no less than seven calendar days prior to the date the witness is scheduled to appear. Following receipt of the changes, the Clerk of the Committee shall forward the revised witness list to the members of the subcommittee.

(3) Each party shall have no more than five names on their prioritized witness lists at any one time.

(4) That the Chair has the authority to determine approval of the reimbursement of reasonable travel expenses incurred by witnesses.

(5) That the Clerk of the Committee, in consultation with the Chair, be authorized to commence making any preliminary arrangements necessary to facilitate the committee's proceedings prior to the adoption of this report.

I move that the subcommittee report be adopted.

The Chair (Mr. Shafiq Qaadri): Thank you. Any comments? All in favour? All opposed? The subcommittee report is therefore carried as read.

Mr. Peter Tabuns: And Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Tabuns.

Mr. Peter Tabuns: I need to make two research requests: One, that we have biographies prepared by research for each witness to come before us, and a chronology of events in the case of the Oakville gas plant and the Mississauga gas plant.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

Do you need some clarification?

Ms. Karen Hindle: Mr. Tabuns, I just have a question of clarification. How far do you want to go with the timeline? Do you want to go up until the point that—

The Chair (Mr. Shafiq Qaadri): I'll tell you what: Why don't we decide that off the committee time. You're welcome to just—

Mr. Peter Tabuns: That's fine.

The Chair (Mr. Shafiq Qaadri): —consultation on that. That sounds like a debate and a half in itself.

MEMBERS' PRIVILEGES

MR. ROB BURTON

The Chair (Mr. Shafiq Qaadri): We have our first witness to please come forward, Mr. Rob Burton.

Before I do so, as you know, as you've just mentioned in the subcommittee report, Mr. Tabuns, all witnesses are invited to make a five-minute opening address. The honourable mayor of Oakville, Mr. Burton, has asked respectfully to have a 10-minute opening address. Don't ask me how we'll absorb the time, but is that suitable to the committee: 10 minutes? Speak now or forever hold your peace. I'll take that as agreement.

So, Mr. Burton, I'd invite you to please come forward and be affirmed. Please be seated. You're welcome to introduce your colleagues, but before doing so, you need to be sworn in, so I'd invite our Clerk, Ms. Pomanski, to do so.

The Clerk of the Committee (Ms. Tamara Pomanski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Rob Burton: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Burton. You are invited to introduce your colleagues, and your official 10 minutes—

Mr. Rob Leone: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Leone?

Mr. Rob Leone: Just for clarification, we all are going to have our same amount of time to ask questions of the witness?

The Chair (Mr. Shafiq Qaadri): Yes. I haven't processed quite that far, but I was planning on absorbing the 1.66 minutes each of the party, which was using up the five minutes mathematically, but if you can do without it, it will save time.

Mr. Rob Leone: I would not be in favour of the extra five minutes if that's the case—just to put that on record.

The Chair (Mr. Shafiq Qaadri): That's fine. Duly noted.

Mr. Burton, you have 10 minutes.

Mr. Rob Burton: Would you like me to introduce my colleagues first?

The Chair (Mr. Shafiq Qaadri): I would like you to inspire us all.

Mr. Rob Burton: Committee, I'm here with the chief administrative officer of the town of Oakville, the commissioner of planning and my chief of staff: Mr. Ray Green, Ms. Jane Clohecy and Mr. David Brennan.

This is my statement. We are here to share with you the town of Oakville's experience with the proposed TransCanada 900-megawatt power plant in Oakville. This proposed plant never got the municipal planning approvals that it needed to proceed to construction. Here's why: In March 2009, council passed an interim control bylaw. This gave town planning staff time to develop appropriate planning rules for council to enact for where power plants can go in Oakville. This is what an interim control bylaw is for: to enable good planning and hold back land uses you don't have rules for until you have the rules ready. This was six months prior to the Ontario Power Authority's September 2009 selection of TransCanada's proposal to locate a 900-megawatt power plant adjacent to residential neighbourhoods in southeast Oakville—and I do mean adjacent.

If you'll look at the graphic we've prepared, you'll see it was adjacent to more than 3,000 homes, nine schools, a hospital, a long-term-care centre, the QEW and the region's busiest commuter rail corridor, all within 1,500 metres of the site. The proposed site was closer to homes than the province allows a wind turbine. Turbines have to be 550 metres from homes etc. There are very real risks associated with being so close to a large gas-fired power plant. The explosion at a similar-sized power plant in Connecticut in February 2010 killed six people and injured 50 others. The explosion was so powerful, it knocked out windows six kilometres away. When I heard of the explosion, I said a prayer of thanks that Oakville council had acted to ensure that we could develop good planning rules to protect our homes and schools from such danger.

Just last year, a Via train derailed in Burlington on the same rail corridor on which the proposed power plant site was located. Not by any means was this the only train derailment in this busy rail corridor.

Oakville residents were astonished that anyone could put such a large and dangerous power plant so close to homes and schools. There was an overwhelming consensus in Oakville that, from a planning perspective, the proposed power plant site made no sense; from a community safety perspective, the proposed power plant made no sense; and from an air quality perspective, the proposed power plant made no sense.

Air quality was of particular concern in our area because the province had already identified our airshed

as a vulnerable, overtaxed airshed. There was no room in our airshed for the amounts of carcinogenic fine particulate matter, or what we call PM_{2.5}, that would be generated by this proposed power plant.

0840

The Municipal Act is quite clear. It is the responsibility of local government to protect environmental well-being and the health, safety and well-being of our residents.

For 18 months, council and I worked closely with our staff and our community to address the safety and planning concerns, and to highlight the need for provincial action to improve air quality in the Oakville-Clarkson airshed. Since there is no legislation in place to control PM_{2.5} emissions in Ontario, Oakville passed Canada's first municipal health protection air quality bylaw. We wanted to deal with the health concerns related to direct emissions of fine particulate matter and the precursor substances that become particulate matter.

This initiative was based on our well-documented and long-standing track record of concerns about local air quality. The health protection air quality bylaw does what no higher level of government has been willing to do: It regulates the emission of PM_{2.5}, and it remains in effect today.

Our citizens continue to look to our local government to take a leadership role in enhancing and protecting their health, safety and livability, even if that means we must, from time to time, challenge our provincial or federal counterparts.

Our citizens organized their own effort to ask the province to rethink the proposed power plant. Citizens for Clean Air, or C4CA, led the public opposition in Oakville to the plant. They worked diligently with Oakville MPP Kevin Flynn to bring the need for standards for the safe location of power plants to the attention of the public and the province. They won promises from all parties to stop the proposed power plant.

Oakville legislators at the local, regional, provincial and federal levels were all clear about this matter. Oakville council and staff worked to develop evidence-based rules to protect the health and well-being of our citizens through scientific, regulatory and planning research.

At last, in September 2010, council adopted an official plan amendment and a zoning bylaw amendment. These created land-use planning policy and required technical studies that applicants must provide to allow evidence-based assessment of any proposed power plant's suitability. These rules would permit power plants to locate in Oakville, if you care to make them safe and put them where they do no harm.

Then, in October 2010, the province announced the proposed power plant would not go ahead in Oakville. We were, and we are, very thankful for that decision. We believe that the costs to cancel the proposed power plant are far less than the health, safety and environmental costs it would have caused our community.

As local government, we did our duty under the acts of the Legislature that govern us. They require us to

respond in a way that is well researched, well documented, well reasoned and responsive to the concerns of the vast majority of our residents.

To quote the Ontario Municipal Board, when it upheld our interim control bylaw, we did exactly the right thing at exactly the right time and for exactly the right reasons.

Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mayor Burton.

We now have 30 minutes—or a 20/20/20-minute rotation followed by a 10/10/10-minute rotation, beginning with the government side. Mr. Delaney.

Mr. Bob Delaney: Mr. Del Duca will start off.

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca.

Mr. Steven Del Duca: Thank you very much, Mayor Burton, for being with us here today and for your thoughtful opening statement. I listened carefully to what you said in your opening.

I would begin by asking, do you believe the provincial government made the correct decision when it decided to relocate the Oakville gas plant?

Mr. Rob Burton: Yes, I do.

Mr. Steven Del Duca: You talked, obviously, about the great advocacy work and a lot of the stuff that the community and you and the council did in respect to pushing, from your perspective. Would you characterize the provincial government's decision as one in which the people of your community were listened to by the provincial government? Is that the perspective?

Mr. Rob Burton: The people of my community, in their organization and in their local government, worked hard to develop an evidence-based opposition to the power plant. We wanted to make sure that a fact-based set of arguments was available to help the government understand that it was the wrong place. We didn't want to appear NIMBY in any way. In fact, that's the reason I stressed in my statement that under the rules that we eventually were able to devise, you could still put a power plant in Oakville as long as it did no harm and as long as you took care to make sure that it was safe.

We were very pleased when the government listened to the evidence that we had assembled. Frankly, we're still, all across the town, very grateful.

Mr. Steven Del Duca: You did mention that a majority of your residents were opposed to the power plant. Any rough estimates as to what kind of percentage of your community was opposed?

Mr. Rob Burton: We had an 18-month process. We pride ourselves, in Oakville, on a public process with lots of public consultation. I don't remember a single delegation from a resident showing up at any of the many meetings arguing that we should have the power plant. I don't remember a single one. So, I would say the percentage would be 99.99%.

Mr. Steven Del Duca: Thank you. You mentioned in your opening statement, when you talked a little bit about the air quality issues, the studies and some of that stuff. Can you expand a little bit on that? Can you tell us a bit more about your perspective on the air quality impact?

Mr. Rob Burton: The sad truth about PM_{2.5}, aside from the fact I already alluded to, which is that its emission is not controlled, is that there is no safe level when it's carcinogenic. Our airshed is overtaxed, as the work of the province itself had shown. So, there was quite a concern. We were very impressed that the government heard that concern and appointed the Balsillie task force to investigate and prove up the facts of the airshed. They came up with a report with, I think, 18 recommendations, including one that said that the power plant's emissions could not fit into our airshed.

Mr. Steven Del Duca: Okay. Donna?

Mrs. Donna H. Cansfield: Thank you very much, Mayor, for coming in and chatting with us and sharing. One of the things that I think is very evident is that the siting is a really important issue. I was particularly impressed by that bylaw that you put in place dealing with PM_{2.5} and the fact that you put a health protection bylaw in. I don't think I've ever heard of another municipality doing that, and I wondered if in fact it could be a template—I'm in the same airshed. That whole airshed study that was done years ago by environment and then subsequently by Balsillie speaks to the whole issue around carcinogens. I wonder, when you looked at that bylaw, do you think that that kind of a bylaw could be applicable for other municipalities or even the OPA in terms of helping them in siting?

Mr. Rob Burton: Yes, I do. The province has been led by the Ontario Medical Association for many years—more than 13; it goes back to the 1990s—pointing out the health burden of air pollution in the province. They quantified the number of premature deaths from air pollution in Ontario. They've made that software available to municipalities. We've used it in Halton region on the health and social services side, which is part of our mandate in that part of our municipal corporation, to quantify that there's an excess death toll in Halton from air pollution of 330 a year. The death toll from pollution, not to speak of the illness toll but death, surely is something that commands our work and our attention—there's a penalty in death and illness all across, not just in Halton. There are thousands across Ontario.

We believe our response to the threats posed by that proposed power plant can and could be a model for others who face such a threat. But I want to stress that everyone in Oakville joins me in hoping that no other community ever has to face such a threat to their safety and well-being.

Mrs. Donna H. Cansfield: The lessons learned—because there's no one here that doesn't acknowledge that the plant should not have been built there. How do we move on and make sure that the lessons you've put in place—or the applications you've put in place because of what you did for 18 months. How can we, as a government, and how can the OPA learn from your experiences so that, again, we have proper siting? What do you think we could draw out of this that could make a significant difference to the OPA in terms of their contractual obligations for siting?

0850

Mr. Rob Burton: About half of the States have a method of siting gas power plants that involves objective, evidence-based public hearings. I used to believe that that would be the easiest way for Ontario to get this procedure on a sounder footing, but I recently heard that the Premier has suggested that instead she favours—if I understand this correctly—local energy supply plans, and each community would be able to decide for itself whether it wanted to host a power plant. I've had conversations with the leader of one of the opposition parties, who has assured me, again and again, that his policy would be, "We will only use willing hosts," I think was the expression that he used with me—Mr. Hudak did. To a degree, those two positions, from my perspective, appear to be very similar, so perhaps there's an agreement available there, and that might be easier and less cumbersome than copying and pasting the process that they use in the States.

When I first suggested the American model, it was suggested to me that that would prevent any power plants from being built anywhere, and I pointed out that the model I favour is California's, and they've built 50 of these things and they haven't had any of the trouble that we've had doing it. So we don't have to do it this way. We could do it a better way. I think either of these would be a better way. Frankly, some days I've felt any way would be a better way than we did it.

Mrs. Donna H. Cansfield: Thank you. So then did you also look at the whole issue around distributed energy, smaller plants in a variety of places as opposed to one large one, when you were giving some consideration, given your airshed? That's what they use in Europe a lot, the whole distributed energy process, as opposed to the big mega plants of 900 megawatts. Was that part of your consideration at all in your planning as you move forward with Oakville?

Mr. Rob Burton: I personally favour a much more distributed model that's heavy on green energy. My community has tried to be a leader in creating green energy projects, not just in Oakville but around the province. In the end, I believe that everybody in Ontario would like a government that respects local preference.

Mrs. Donna H. Cansfield: Thank you. I appreciate your candid comments.

The Chair (Mr. Shafiq Qaadri): Ten minutes.

Mr. Steven Del Duca: Mayor Burton, you mentioned in your opening statement that over the course of the 18 months there was a great deal of advocacy and outreach that you did with respect to talking to all levels of government. Can you elaborate a little bit on that, how you reached out to the various levels of government?

Mr. Rob Burton: Well, I can't really speak for C4CA, and I understand that you may be speaking to them. They certainly had an extensive program of outreach. The way we chose to work was to do our duty. We wanted to follow our responsibilities under the acts that the Legislature has given us, the Municipal Act and others, and we figured that the information that we

generated and the sound planning policies that we developed would be noticed and appreciated by the province, and indeed I do believe that the two main measures we took, the health protection air quality by-law, and I'll call it the do-no-harm planning rules, were noticed by the government in helping them come to a decision to stop the power plant.

Mr. Steven Del Duca: So in your conversations with politicians from other levels of government, I'm assuming you would have spoken to members of both provincial opposition parties?

Mr. Rob Burton: I did speak with anyone who would speak to me and I don't remember being turned down by anyone. I was very impressed with the work of C4CA in winning promises to stop the power plant from every party.

Mr. Steven Del Duca: I have a quote in front of me from June 1, 2010, from Ted Chudleigh, the Progressive Conservative member from Halton, and the quote says, "The people of Oakville have told you they don't want the proposed gas-fired power plant ... and I agree with them." Then on October 19, 2010, he said, "I was pleased when it was cancelled."

An additional quote: On October 7, 2010, NDP MPP Peter Tabuns told Inside Halton, "I don't agree with the Oakville power plant." On December 2, 2010, NDP MPP Michael Prue stated, "I'm glad the people of Oakville hired Erin Brockovich and did all the things that they did in order to have this killed."

Based on these statements and based on the work that you and your community did, do you think we can agree that all three provincial parties would have cancelled the Oakville plant?

Mr. Rob Burton: In Oakville, we certainly believed that we had those promises and that we could rely on them from all three parties. I want to say that I understood, in Mr. Tabuns's case, that he had a similar experience with another power plant at another time, so I felt that he had an extra reason to identify with us in our struggle. So yes, we felt supported by all parties.

Mr. Steven Del Duca: At the federal level, I do have a quote from a letter from Terence Young, the member of Parliament for Oakville, who happens to be a Conservative—a letter that was sent to the Premier at the time on October 15, 2009: "I enclose 133 petitions signed by Oakville residents opposed to the proposal; I have also received innumerable phone calls and emails from those who share these concerns. I have lived in Oakville for 27 years, four of those as MPP for Halton Centre, and have never seen an issue which has been of such concern to Oakville residents."

We also have a quote from Mr. Larry Scott, the Ontario PC candidate in the 2011 provincial election, agreeing with Mr. Young's opposition to the power plant. He stated clearly in 2009, "I think, the correct way for this to go is" for it "not to be built."

Ultimately, just to get this clear, this is not simply an Ontario Liberal Party issue; the Oakville power plant was opposed by all three parties at different levels of governments, from your experience. Is that correct?

Mr. Rob Burton: Yes, it is, and I alluded to that when I said that the legislators from Oakville at every level were united in opposing the power plant. Really, Oakville was very encouraged by the fact that all three parties were so responsive to our concern.

Mr. Steven Del Duca: Not to overburden you with quotes, but I do have one more, and it's actually from you. It's from September 25, 2012. You stated, "Since all parties promised they would stop the power plant, I'm not sure (the cancellation) could have been done better or cheaper." I'm wondering if you could tell the committee: Would you still agree with that statement?

Mr. Rob Burton: I do agree with that statement. Anyone who wishes to criticize the cost of cancelling it would do everybody a favour if they would explain how they would have done it differently. That would advance public consideration of the matter, I think, in a rational and evidence-based way.

I actually began my statement to you this morning—and I'll read it again: "This proposed plant never got the municipal planning approvals that it needed to proceed to construction." When it got any money, I was a little taken aback by that.

The Chair (Mr. Shafiq Qadri): Mr. Delaney.

Mr. Bob Delaney: Mayor Burton, what were some of the actions by the proponent in the matter of the construction of the power plant?

Mr. Rob Burton: I'm not sure how to answer that question.

Mr. Bob Delaney: Did they choose to oppose the decision of town council? Did they involve the Ontario Municipal Board? How did town council proceed in its dealings with the proponent?

Mr. Rob Burton: TransCanada appealed our interim control bylaw to the Ontario Municipal Board.

Interjection.

Mr. Rob Burton: Oh, but he's asking me about TransCanada.

Of course, the Ontario Municipal Board upheld our interim control bylaw.

Sorry, I'm distracted by the bells. I don't know how you guys manage it. It must be a tradition.

Mr. Bob Delaney: Yes, it isn't just a ringing in your ears.

Could you walk us through some of the things that happened around the appeal to the Ontario Municipal Board and what efforts Oakville town council had to make to make that point with the OMB?

Mr. Rob Burton: I really can't. It was, from our perspective, a fairly normal Ontario Municipal Board experience. We were well prepared. We had a solid planning basis for our actions. We were quite confident in the result, and the board upheld us.

0900

Mr. Bob Delaney: Okay.

Mr. Rob Burton: It was a ringing endorsement, I thought. That's why I like that quote—exactly the right thing, exactly the right time for exactly the right reason.

Mr. Bob Delaney: Okay. In the last two or three minutes, is there anything else you would like to add?

Mr. Rob Burton: No. I want to thank the Legislature for giving Oakville the opportunity to add what we can to your deliberations. I hope our facts have some use to you. The Legislature is the creator of the municipalities. You write the acts, we obey, and I hope you're pleased that we follow them.

The Chair (Mr. Shafiq Qadri): Thank you, Mayor Burton, and thanks to the government side. Now to the Conservative side, to Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Chair, and thank you very much, Mayor Burton, for joining us today.

Mayor Burton, in your office, is there a term known as the "mayor's magic carpet ride" and what does that mean?

Mr. Rob Burton: Well, I'm a man who likes a colloquial expression. We have a history in Oakville of difficulties with developers trying to do differently than our official plan provides for, differently than our community's vision for itself as codified in our official plan. So, to encourage developers to follow our plan, I often use the expression, "If you will conform to Oakville's vision and follow our official plan, we will give you the mayor's magic carpet for your application, and you will have a speedy and careful consideration of your application. If you don't, if you wish to quarrel with our vision or fight our plan, we'll try to make it as interesting for you as we can."

Mr. John Yakabuski: So only will they get the mayor's magic carpet ride if they comply with all of Oakville's decisions, not if they comply with the wishes of the mayor?

Mr. Rob Burton: It's an expression—look, I'm the servant of the people of Oakville. I'm the head of council and the CEO, as the act describes, and so I figure it's my duty to see to the implementation and carrying out of the will of council, which expresses the will of the people. That's my theory of government in a nutshell.

Mr. John Yakabuski: Okay.

Mr. Rob Burton: So I refer, when I talk about the mayor's magic carpet, only to—you know, business prefers certainty and speed; I was a businessman, and I think you've probably heard that from business people before. I want to give people the idea that if they will follow the will of the people, expressed through the official plan, as enacted by the council of the town of Oakville, that we'll be co-operative and everything will go well.

Mr. John Yakabuski: Thank you. Maybe we'd have to call it "Oakville's magic carpet ride."

Mr. Rob Burton: All right.

Mr. John Yakabuski: Your Worship, were you always opposed to the Oakville gas plant proposed by TransCanada from the get-go?

Mr. Rob Burton: I was always opposed to the proposed power plant. The first difficulty I had with it

was that the last 112 gas-fired power plants built in the United States under President George Bush were cleaner.

Mr. John Yakabuski: Were what?

Mr. Rob Burton: Cleaner. They had lower emissions—significantly lower emissions—and I couldn't understand why we in Ontario would be second-rate to that.

Mr. John Yakabuski: So you're saying, from the get-go, you were always opposed to the proposed plant in Oakville?

Mr. Rob Burton: Yes, as proposed.

Mr. John Yakabuski: When you were approached by proponents of the gas plant, either the Ontario Power Authority or TransCanada, did you immediately denounce the idea? Did you immediately express opposition to the plant?

Mr. Rob Burton: No.

Mr. John Yakabuski: No. Did you ever infer that you were open to the idea of locating the plant in Oakville?

Mr. Rob Burton: Yes. As a matter of fact, frequently throughout the 18 months, I tried to take pains to express the possibility that it could go in Oakville if it met the conditions that we were developing.

Given the heat of the subject, I don't think I was perfect in trying to withhold judgement at all times, but in the main I'm satisfied that I tried to be open to the possibility that they would meet our concerns.

Mr. John Yakabuski: And was there any quid pro quo offered to you from the proponents, should the plant be approved in Oakville, should the council give their blessing? Any offers to assist the city in any way?

Mr. Rob Burton: There was a discussion—now that you ask that question, I recall a conversation in which a reference was made to the possibility of a million and a half dollars of community benefits to be sprinkled somewhere in the community.

Mr. John Yakabuski: Was that made to you personally or was that made to the council?

Mr. Rob Burton: I don't actually recall it being made at council. The time I remember hearing it was in a meeting with me.

Mr. John Yakabuski: Right. Do you recall any of the enhancements that Oakville would have received as part of those discussions?

Mr. Rob Burton: No.

Mr. John Yakabuski: Was one of them a new container terminal?

Mr. Rob Burton: I don't recall that. What is a container terminal?

Mr. John Yakabuski: Well, you have a container terminal in Oakville now where containers of freight get stored.

Mr. Rob Burton: I'm not aware of one. Oh, you mean the truck yard on the other side of the railroad track? No, I don't remember an offer to build a new one of those.

Mr. John Yakabuski: No offer to build a new terminal. What about an idea to help Oakville purchase new buses? Was that ever discussed?

Mr. Rob Burton: We had a discussion about a concept called offsets where, in stressed airsheds in the United States, proponents remove the amount of pollution they're going to add by—in the San Francisco Bay area, for example, I heard of a power plant that, even though operating as cleanly as technology permitted, still was adding too much particulate matter to the air. So they bought up a bunch of school bus fleets and converted them to propane from diesel in order to reduce the particulate matter from the buses by the amount that the power plant was going to add.

That's a concept that the US EPA promulgates in an overtaxed or an out-of-compliance airshed, as they call it. But I don't remember TransCanada actually offering to do that.

Mr. John Yakabuski: Not offering to improve the bus fleet or lower the emissions of the bus fleet in Oakville?

Mr. Rob Burton: I don't actually remember that.

Mr. John Yakabuski: San Francisco is great, but was there an offer to reduce the emissions from the plant by a commensurate amount of your public transit vehicular fleet? And was that made to council or to yourself?

Mr. Rob Burton: I do not recall such an offer being made to me or to council. I do recall, during the 18 months, I said to the press that I thought they should, but I don't remember them offering to do it.

Mr. John Yakabuski: Any other enhancements offered by the proponent to the town of Oakville?

Mr. Rob Burton: No. The several different ways that you're illustrating to sell the power plant to the town, I don't remember actually being done. They probably should have—maybe they could have hired you.

Mr. John Yakabuski: So no offering to improve—to have additional street cleaning or highway cleaning in exchange for allowing the power plant to be located in Oakville?

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Mr. Rob Burton: I don't remember that either.

Mr. John Yakabuski: You don't remember that either. You don't remember them offering that? Or are you categorically saying it didn't happen?

Mr. Rob Burton: Reducing particulate matter from street shoulders was one of the recommendations of the Balsillie report, and I'm wondering if somehow these things have been confabulated together and misremembered. I have no recollection of these things happening. I don't remember any offers like that.

Mr. John Yakabuski: Do you recall any conversations, with respect to locating the plant in Oakville, with either TransCanada or the OPA, and can you tell us what might have been discussed that this committee wouldn't be aware of at this point, with respect to what kind of quid pro quo or deals might have made the plant acceptable to you for the town of Oakville?

Mr. Rob Burton: I did not receive any offers that would make it acceptable. When I pointed out that the last 112 gas-fired power plants licensed under George Bush were cleaner, neither of those entities offered to match or beat that.

Mr. John Yakabuski: So you received offers, but you didn't receive offers that would make it acceptable?

Mr. Rob Burton: No, no. They had an application for a given set of turbines, and they seemed determined to use that. I don't know where these offer stories come from.

Mr. John Yakabuski: Thank you very much. I'll turn it over to Mr. Leone.

Mr. Rob Leone: How much time do I have, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Nine minutes.

Mr. Rob Leone: All right.

Hello, Mr. Mayor. Can you tell the committee if you have any political advisers or staff who report directly to you?

Mr. Rob Burton: I have several staff who report to me.

Mr. Rob Leone: Do you expect your staff to obey your direction and the direction of Oakville city council? Or, as mayor, do you allow your staff to ignore directions of council?

Mr. Rob Burton: I'm not sure how to answer a question like that.

My personal style, both at YTV and as mayor of Oakville, has always been to establish a clear policy framework and to try to empower front-line people, and when they use their best efforts to apply the policy framework and make a mistake, to forgive and move on and use it as a learning experience.

To give you an example, at YTV our daily motto was Promote, Promote, Promote, and so if you, as an employee at YTV, made a decision that was consistent with that but we didn't like it, we wouldn't punish you for that. We would correct you, but we would move on, because you were following the prime directive, if you will.

Mr. Rob Leone: If you gave your staff an order to provide and produce documents for any reason, and your staff refused or did not or disobeyed that order, what would you do with that staff member? Would you fire them?

Mr. Rob Burton: I don't know that that would be a firing offence, unless I knew more about this hypothetical instance.

Mr. Rob Leone: How about if they did it three times?

Mr. Rob Burton: It would depend. I mean, was it available? Were there reasons why it couldn't be given? I don't really understand your question.

Mr. Rob Leone: Sir, we're at this committee because of, obviously, the cancellation of the Oakville gas plant. Part of the issue here is the cancellation and the costs, but the other part of the issue is the fact that the government has consistently disobeyed an order of a standing committee of this Legislature, and in doing so—this is the reason why we're actually calling you as a witness today.

If you were in our shoes asking for documents, and that hasn't been complied with, what would you do? That's what I'm asking.

Mr. Bob Delaney: Chair, point of order.

The Chair (Mr. Shafiq Qaadri): Point of order. Mr. Delaney.

Mr. Bob Delaney: Mr. Burton is not here to speculate; he is here to tell us what he knows.

The Chair (Mr. Shafiq Qaadri): That may be entirely true, but it's not a point of order.

Mr. Leone, continue.

Mr. Rob Leone: I'm asking, in the case of you and Oakville city council, if your CAO, who is sitting next to you, disobeyed that order, what would you do? Would you be mad? Would you be angry? Would you fire the person?

Mr. Rob Burton: First off, I guess I should say Oakville is a city, but we call ourselves a town and we act like a village. We try to treat people with respect, and, certainly, the first thing we would do is ask for an explanation. We would consider the explanation, and proceed accordingly.

Mr. Rob Leone: And if it consistently was refused, you wouldn't be angry about that, given that you repeatedly made the same request and it hadn't been complied with? You wouldn't be angry at all?

Mr. Rob Burton: I am not really a big fan of anger as a method of management.

Mr. Rob Leone: Really? That's good.

Mr. Rob Burton: It has never worked for me.

Mr. Rob Leone: Thank you for that. I'll leave that line of questioning.

In the weeks leading up to your testimony today, did you have any conversations with people in the Liberal Party or the Liberal government with respect to your testimony today?

Mr. Rob Burton: I can't hear you, sir.

Mr. Rob Leone: I said, in the lead-up to being called as a witness to this committee, did you have any conversations with any member of the Liberal Party or someone from the government or the OPA about your testimony today?

Mr. Rob Burton: I was told by members of the Liberal Party that I would probably be called. The first I heard that I would be called was when Oakville's MPP, Kevin Flynn, told me that I should expect to be called.

Mr. Rob Leone: Anybody else?

Mr. Rob Burton: No.

Mr. Rob Leone: No member of the government at all?

Mr. Rob Burton: No.

Mr. Rob Leone: Any conversation with political staff?

Mr. Rob Burton: No.

Mr. Rob Leone: What was the nature of your conversation with Kevin Flynn about the testimony you'd provide today?

Mr. Rob Burton: He told me to just tell our story.

Mr. Rob Leone: How many times did you have a conversation with Kevin Flynn?

Mr. Rob Burton: I speak to MPP Flynn frequently. We have a terrific partnership between the town of Oakville and our MPPs.

Mr. Rob Leone: Okay. In the lead-up to the cancellation of the Oakville plant in 2010, you were about to fight a re-election challenge, were you not?

Mr. Rob Burton: The municipal election was in late October 2010.

Mr. Rob Leone: Yes, but this was a potential election issue for you.

Mr. Rob Burton: I declared my candidacy for mayor in April 2010. The official campaign period began immediately after Labour Day on September 2010. The power plant, although it was certainly an item of public concern, was not a municipal election issue.

Mr. Rob Leone: So if the plant was not cancelled and had continued to be built, would you have run in that election?

Mr. Rob Burton: I believe so.

Mr. Rob Leone: Okay. Vic, you want to go?

Mr. Victor Fedeli: Oh, thank you very much.

The Chair (Mr. Shafiq Qadri): Mr. Fedeli, two and a half minutes.

Mr. Victor Fedeli: Thank you, Chair.

Good morning, Your Worship. When did you first hear that a gas plant was being planned for the village of Oakville?

Mr. Rob Burton: There was an RFQ issued by the Ontario Power Authority—I believe it was in 2008. That's how we became aware that there was a power plant intended for the southwest GTA area, which we were informed we were part of.

Mr. Victor Fedeli: So that's obviously the point when you told Mr. Yakabuski that you were not against the power plant at the beginning. So, when were you informed of the cancellation of the plant in Oakville?

Mr. Rob Burton: There was a news conference—I guess that's the name for it—called in Oakville on or about October 7 or October 6, in the first week of October. I don't remember the exact day—

Mr. Victor Fedeli: Of what year?

Mr. Rob Burton: Of 2010. It was in a local—
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The Chair (Mr. Shafiq Qadri): One minute.

Mr. Victor Fedeli: Thank you. So you heard of it at the public announcement is what you're saying.

Mr. Rob Burton: Oh. We went to this—

Mr. Victor Fedeli: At the press conference. You heard of the cancellation at the press conference.

Mr. Rob Burton: And we had no idea what to expect.

Mr. Victor Fedeli: By that time, you had become against the power plant. Did you or anyone in your office ever speak with any political staff from the office of the Minister of Energy before the cancellation of the gas plant in Oakville?

Mr. Rob Burton: We spoke to everybody we could to tell them of our opposition and to tell them of our con-

cerns about safety and our concerns about air quality. I don't recall any particular one.

Mr. Victor Fedeli: How much—am I done?

The Chair (Mr. Shafiq Qadri): Ten seconds.

Mr. Victor Fedeli: I'll let it go.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Fedeli. To Mr. Tabuns.

Mr. Peter Tabuns: Good morning, Mayor Burton. Thank you for coming here today. We appreciate it.

Can you tell us how many times you met or talked with the Premier, if indeed you did talk with him, prior to the contract being awarded to TransCanada?

Mr. Rob Burton: I was allowed to meet with the Premier once for 15 minutes at AMO.

I don't know how you experience—I mean, you ladies and gentlemen were with him longer than I. You had years; I had 15 minutes. But I was struck by the poker face that the Premier can manifest. I couldn't tell if we were registering anything at all. I couldn't tell whether we generated any sympathy. But he did, subsequent to that meeting, announce the Balsillie task force, which I took as a small ray of hope that some concern about the air quality danger was starting to take shape.

Mr. Peter Tabuns: This is prior to the award of the contract. You made it clear to the Premier that there were serious problems with the award of a contract for a power plant at this location.

Mr. Rob Burton: Yes. I repeated the George Bush story, hoping that a sense of provincial pride would ensue; you wouldn't build something dirtier than they would build. I didn't have enough time to say everything one might say, so I chose that and our concern about the already deadly level of air quality.

Mr. Peter Tabuns: So he was well aware there was a significant air quality problem in this region before a contract was awarded.

Mr. Rob Burton: I don't know if he was aware, but he certainly was told. "Aware" to me implies that he believed it, right? But yes, we brought that to his attention.

Mr. Peter Tabuns: He was told. The information was available to him.

Mr. Rob Burton: Yes.

Mr. Peter Tabuns: Did you have other contacts with members of the Premier's office or senior decision-makers at the OPA prior to the contract being awarded?

Mr. Rob Burton: Yes, I did.

Mr. Peter Tabuns: And, at each occasion, did you inform them that there was an air quality problem and that, in fact, your community fundamentally opposed this proposal?

Mr. Rob Burton: Yes, I did.

Mr. Peter Tabuns: So they were fully aware that politically, it would be problematic, and that in terms of impact on the public, it would be problematic.

Mr. Rob Burton: Yes.

Mr. Peter Tabuns: Were you surprised that they went ahead nonetheless?

Mr. Rob Burton: Yes. If you'd like some amplification, they had a public consultation at the very beginning of their process for the residents of Oakville. About 150 people came. This public consultation meeting was in Mississauga, but never mind; still 150 Oakvilleans managed to come, and 150 people gave them a very hostile reception. Perhaps the main point of the hostility was the air quality. So certainly they were aware.

Mr. Peter Tabuns: And prior to proceeding with this contract, I'm assuming you had discussions with MPP Flynn. From his behaviour in the House, I assume he opposed this from early on. Did you assume that he was taking the message back to his Liberal caucus that this plant should not go forward?

Mr. Rob Burton: I did assume that, and he told me that he did.

I'd just like to take you back to that public meeting. There was a very interesting exchange that took place at that meeting that evening that really captured the entire problem. The 150-or-so citizens who were complaining about the air quality issue frustrated the folks from the OPA. At one point, a senior officer of the OPA stood up and said to the audience, and I quote—I was there: "Look, the OPA is not in the business of protecting the environment. We're in the business of building power plants." I've always thought that that was a weakness to their approach.

Mr. Peter Tabuns: Who was that person from the OPA who made that statement?

Mr. Rob Burton: It was a vice-president. I don't remember his name.

Mr. Peter Tabuns: Okay. Can you tell us who in the OPA you met with before this contract was signed?

Mr. Rob Burton: I met with several vice-presidents and the president.

Mr. Peter Tabuns: So, Colin Andersen, the president; perhaps JoAnne Butler, one of the vice-presidents?

Mr. Rob Burton: Yes.

Mr. Peter Tabuns: That's correct? So, in your estimation, siting a plant here was a mistake? There was a health risk and there was a political risk?

Mr. Rob Burton: And a safety risk.

Mr. Peter Tabuns: And a safety risk. Nonetheless, the Liberal government of Ontario proceeded with this plant?

Mr. Rob Burton: Yes. It was exactly like we experienced in 2000-01, when the government of that time pushed through approvals for a similarly sized gas-fired power plant on Winston Churchill Boulevard on the edge of Oakville, which was a very frustrating experience too.

Mr. Peter Tabuns: So, if in fact they had not made this initial mistake, we would not be here today discussing the cancellation, would we?

Mr. Rob Burton: That would be much to be wished for.

Mr. Peter Tabuns: I felt the same way at the time and feel the same way today.

The cost that the province of Ontario is saddled with with this cancellation flows from a decision made

through the Liberal government to site this privately owned, large power plant in your community; correct?

Mr. Rob Burton: In my view, this flows from a very flawed process for siting or determining the location of power plants. I pray and urge all parties to put your best minds to the problem and come up with a better way that respects safety, health and local communities.

Mr. Peter Tabuns: Were you ever told how much it would cost to cancel this plant?

Mr. Rob Burton: No, sir.

Mr. Peter Tabuns: When you were urging the government—in the course of the period up to the fall of 2010, you were urging them not to proceed—did any authority ever come to you and say, "This is going to cost a lot of money"?

Mr. Rob Burton: No. In fact, I stressed that they never got their planning approvals, without which you can't—they didn't get their building permit. I didn't understand how they were eligible for costs, frankly; still don't.

Mr. Peter Tabuns: That's interesting. Have you had your lawyers look at that?

Mr. Rob Burton: Well, no. One of the essential rules of business is to only deal with what is yours; right? So we don't do your job. The job you give us to do is hard enough. I often say: Thank God I'm only the mayor of Oakville. I can't solve other people's problems.

Mr. Peter Tabuns: Your city called for an interim control bylaw because of your concern that a privately run plant would not have the same public health credibility as a publicly owned one. I came across that when I was reading the OMB decision the other day. Can you enlarge on that argument?

Mr. Rob Burton: It was our impression that the private proponent was, in our few meetings with them, callously indifferent to the health and safety concerns, and we assumed that the profit motive lay behind that indifference to our concerns.

I'm a big believer in public power. I don't like to criticize the Legislature, but when all parties came together to do what they did to Sir Adam Beck's vision, I think we made a mistake as a society. I thought we were much better served with public power.

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Mr. Peter Tabuns: You are aware that the NDP supports public power?

Mr. Rob Burton: I am, and glad to hear it, but I do know that the decision that was taken was taken with all-party consent.

Mr. Peter Tabuns: Sorry. The decision to proceed with this plant?

Mr. Rob Burton: No, the decision to abandon Sir Adam Beck's vision, back in the late 1990s.

Mr. Peter Tabuns: Not to my knowledge, but we'll have another day to discuss that, I'm sure.

Mr. Rob Burton: Sure.

Mr. Peter Tabuns: You've told us that you were informed the plant was being cancelled when you arrived at the press conference.

Mr. Rob Burton: Not even when I arrived. When it was announced by the minister—I didn't know what to expect when we went. There was quite a large—I mean, C4CA came out; I think all or most of council came. It was a pretty large—the media all came. I didn't know what they were going to say. I was hoping for something—anything; a delay, a study. When they announced the cancellation—I was pretty elated when I won the licence for YTV, but this was a higher level of elation. This was amazing.

Mr. Peter Tabuns: Subsequently, were you briefed by the minister, the OPA or the Premier's office about their reasons for cancellation? Were you individually briefed at any time about this cancellation?

Mr. Rob Burton: They gave their reasons at the press conference, and I was never personally briefed. I'm fine with that. I mean, I'm only the mayor. I have to know my limitations.

Mr. Peter Tabuns: Were you ever sent a written communication setting out the decision and the reasons for the decision?

Mr. Rob Burton: You know, I don't believe I was, but I don't actually recall. I mean, anything that came subsequently would be anticlimactic.

Mr. Peter Tabuns: Okay. Now, your city took a number of steps to try and block this plant from going forward. You had the interim control bylaw, the amendment to the official plan. You brought forward the PM_{2.5} bylaw. Were each of these contested legally?

Mr. Rob Burton: The interim control bylaw certainly was appealed to the Ontario Municipal Board. As I've said, we were upheld by the Ontario Municipal Board, saying that we did exactly the right thing at exactly the right time for exactly the right reasons.

That decision of the board was subsequently appealed, if I recall correctly, to the Court of Appeal, and subsequent events—the cancellation of the plant—overtook that, and that was abandoned.

Mr. Peter Tabuns: When that went to Court of Appeal—

Mr. Rob Burton: Oh, excuse me; I didn't answer the other question. I don't recall that being appealed—the OP changes and the zoning changes—and the health protection air quality bylaw was not appealed.

Mr. Peter Tabuns: Okay. So the only tribunal and court hearings related to your interim control bylaw?

Mr. Rob Burton: That's right.

Mr. Peter Tabuns: Which was upheld by the OMB, so it was in effect?

Mr. Rob Burton: Yes. An interim control bylaw is easily misunderstood, at least among residents. The Legislature created it, so you probably understand it perfectly. All it is is a delaying tactic to give you time to create rules which can be contested at the board if people don't like them. So it's a very well-set-up procedure of checks and counterchecks.

Mr. Peter Tabuns: Did you do, at any point, an energy study when you were defending your interim

control bylaw? Did you provide evidence of the need for or lack of need for this plant?

Mr. Rob Burton: No. I am aware, though, that C4CA did work on that front. I did see it at a public meeting where they exposed it to the public, and it did seem to be quite extensive. I don't know if you're calling them, but if you do, perhaps they could share that with you.

Mr. Peter Tabuns: Okay. Given the interim control bylaw that you passed, there was never a building permit issued to TransCanada, then?

Mr. Rob Burton: That's right.

Mr. Peter Tabuns: Is there a real possibility that no building permit ever would have been issued?

Mr. Rob Burton: They would have had to have changed their attitude towards the kind of plant they were trying to build, I think, to get a building permit. As proposed, I don't believe their plant would have gotten a building permit, I guess is what I'm trying to say.

Mr. Peter Tabuns: How much time do I have, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Five minutes.

Mr. Peter Tabuns: In the course of this process, was there a time when it was clear to you that the plant and the government's approach were clearly in trouble?

Mr. Rob Burton: No. My experience on the earlier power plant, under the previous government, where all objections were ridden over and all approvals were granted, had led me to be quite pessimistic about the possibility of it being stopped. Frankly, I never expected it to be stopped. I was flabbergasted. I don't remember ever being happier in my life.

Mr. Peter Tabuns: Did you see mounting opposition in your community to this proposal as time went by?

Mr. Rob Burton: The community was implacably opposed to this power plant.

Mr. Peter Tabuns: And did their mobilization gain momentum as time went by?

Mr. Rob Burton: Oh, yes. The number of people who would come out for the public meeting was astonishing. We have a fairly large council chamber. We had to set up huge overflow rooms in order for the public to participate. We have a large atrium that will accommodate maybe 400 people, and we used that as one of our spill-over rooms and managed to fill it, too, in addition to our council chamber. No, there was huge, huge interest and huge turnout—huge concern.

I remember—I'll never forget—running into a woman and her daughter when I was going to the grocery store. They saw me, and they were crying with fear and anxiety about this, because they lived so close to it. And I thought, "This has really gone too far when, as mayor, you encounter that in your streets."

Mr. Peter Tabuns: Mr. Mayor, do you think the right time to have stopped this plant was before the contract was signed with TransCanada or after?

Mr. Rob Burton: I believe that it should never have been located there. If you can find out how it got chosen to go there, you'll be doing everybody a service.

Mr. Peter Tabuns: Do you think it would have been better to cancel before they signed a contract?

Mr. Rob Burton: I'm assuming that the only reason they're eligible for any compensation is because somebody signed a contract with them. I don't understand why anybody would do that in the circumstances I've outlined, such as not getting their municipal approvals and so on.

I was frustrated during the process by the lack of access we had to—we couldn't read the contract, for example. I would hope that by now every member of the Legislature has had a chance to look at that. I don't think the process that was used was a proper and correct process in the public interest.

In a way, the OPA remark at the public meeting that, "We're not in the business of protecting the environment; we're in the business of building power plants," speaks to the attitude that, I think, runs through this mistake. I have a belief that what was going on was, people were given a narrow task and they had their deflector screens on full, and they were disregarding any disconfirming information and plunging ahead recklessly.

Mr. Peter Tabuns: And you're well aware that the OPA was not following the directives of an all-party committee but following the directives of the Liberal government?

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Mr. Rob Burton: Well, I understood the OPA to be an arm's-length agency of the Legislature. Certainly it was a majority government, and if there were direction going to the OPA, it's logical to me that it would be coming from the government. I absolutely agree with that.

Mr. Peter Tabuns: Fine.

Mr. Rob Burton: That can't surprise anyone. But I have remained confused as to just how long the arm is of this arm's-length relationship.

Mr. Peter Tabuns: Well, having read the emails, that arm is no longer there. It's held close to the chest—for your information.

The decision-makers you talked with: Did you talk to—

The Chair (Mr. Shafiq Qaadri): I need to intervene there, Mr. Tabuns.

To the government side: 10 minutes to Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair. Mayor Burton, you said in your remarks that Mr. Tabuns, to use your words, had an extra reason to identify with your struggles. You've mentioned how the town felt supported by all parties. Would you like to elaborate, particularly on the support Mr. Tabuns lent you in the drive to get the Oakville power plant cancelled?

Mr. Rob Burton: We enjoyed expressions of support from all parties, including Mr. Tabuns, and we appreciated the support of all parties. We were particularly encouraged by the strong statements that MPP Ted Chudleigh, who represents the northern third or so of Oakville, also made.

We worked as hard as we did because we were able to keep a sense of hope that the statements of support that we were receiving from our MPPs and from MPPs from other parties—that something might break our way.

Mr. Bob Delaney: Just a clarification question: The entity that made the siting decision for the proposed plant was the Ontario Power Authority, correct?

Mr. Rob Burton: That's my understanding.

Mr. Bob Delaney: Okay. Ms. Cansfield has some questions.

Mrs. Donna H. Cansfield: Thank you very much. I just wanted to follow up on a couple of questions that Mr. Yakabuski had. It's about the whole process around an official plan, and if I'm incorrect, you could maybe elaborate. But I think it's the responsibility of every municipality to, in fact, put a local plan together—representing the constituents in their jurisdiction—and that that official plan, once it goes through public scrutiny and the council, then go to the provincial government, where they have a look at it as well, that it conforms with public policy etc. That's correct, right?

Mr. Rob Burton: That is, and it's an underappreciated fact of our official plans that they come here for approval before they're then put out for people to appeal.

Mrs. Donna H. Cansfield: So in that plan—and I think it's actually the Municipal Act of 2001, which came out of the other government—is something called the local improvement charges. This is where if you engage a developer to participate in any development that fulfills the obligation under your official plan, they can and you can, under regulation 37, receive additional development charges that can go to anything you determine that is needed in your community. That's not unusual; that's very much a part of the Municipal Act. Is that correct?

Mr. Rob Burton: My understanding of section 37 is that it's an authorization that's only available to the municipality to use if we have provided clear rules in our official plan for how we would use it.

Mrs. Donna H. Cansfield: Correct, so—

Mr. Rob Burton: And—sorry.

Mrs. Donna H. Cansfield: I was going to say, so then it's not a quid pro quo; there's an actual process that's put in place once a plan has official sanction, it has gone through the development, it's approved by council. Then you can, if you choose, apply regulation 37.

Mr. Rob Burton: Yes. Under section 37, my understanding is that only if you set out rules that are clear enough to be followed can you engage the possible benefits under section 37. You have to sort of spell them out in advance so that people can read it and sort of calculate in advance what the quid pro quo is going to be.

The way we've done it is we've identified certain parts of town where we think the ideal density—and we only apply it to residential; I'm not aware of a way to apply it to other things. We set out areas of town where we prescribe what our community believes to be the correct level of density, and we set out in certain areas where there may be a possibility of being able to take

additional density—we identify those areas, and we identify basically the offsetting measures the developer will provide in order to allow that extra density to fit in the area. So it's very much a case of trying to make sure that the public infrastructure of the area is adequate to support the number of people that the developer wishes to put there.

Mrs. Donna H. Cansfield: So would it be safe to say you've put together a very above-board, transparent process dealing with these local improvement charges in regulation 37, and that in fact any developer who does business in the town of Oakville is quite aware of section 37 and knows exactly what the process is?

Mr. Rob Burton: What I would say is that we work very hard in Oakville to set up planning rules that are very clear so that people can successfully run their businesses with clarity and certainty of the process. In fact, over the last six and a half years that I've been mayor, it's been one of my main themes: to get what I call the rule of law in place so that there's no guess and there are no surprises and it's all clear and in front of you—all open, clear, fair and transparent.

Mrs. Donna H. Cansfield: Thank you. I think that the Premier has been very clear herself that that process is to be very local and locally driven. So I thank you, again, for your full response.

The Chair (Mr. Shafiq Qaadri): It's four minutes to the government side if you wish. Mr. Del Duca?

Mr. Steven Del Duca: I'm just wondering, Mayor, at any point in the course of the 18 months when you were sort of building the case locally for why the power plant shouldn't be built in Oakville, did you have any conversations or communication or correspondence with PC Party leader Tim Hudak?

Mr. Rob Burton: I met with Mr. Hudak. Mr. Hudak was kind enough to meet me, I think at least twice, but at least once—I actually believe it was twice. I have no complaints about those meetings. I took him to be expressing support for the path that the community was on.

Mr. Steven Del Duca: I guess I would wrap up by just saying that, as MPP Cansfield mentioned a second ago about Premier Wynne, in the government's recent throne speech, there was a statement that suggested or stated that we are committed as a government to more local decision-making in the siting of future energy infrastructure. I'm just wondering if that was a statement that you'd be happy to hear about.

Mr. Rob Burton: I was very happy to hear that. As I said earlier, I think that's a faster and easier way to move away from what I think was a very flawed process in choosing the location for the proposed power plant in Oakville. So, yes, I was happy with that.

Mr. Steven Del Duca: Great. Thank you very much.

Mr. Bob Delaney: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you to the government side. To the Conservatives, Mr. Fedeli. Ten minutes.

Mr. Victor Fedeli: Thank you very much, Chair. Thank you again, Your Worship, for being here.

I wanted to just pick up a little bit on where my colleague Mr. Leone was. You've heard, perhaps, in the news, some of these code names. Had you heard of any of these code names before? Had you ever heard of the code name "Project Vapour" before?

Mr. Rob Burton: No.

Mr. Victor Fedeli: Had you ever heard of "Project Apple"?

Mr. Rob Burton: No.

Mr. Victor Fedeli: "Banana"?

Mr. Rob Burton: No.

Mr. Victor Fedeli: "Fruit Salad"?

Mr. Rob Burton: No.

Mr. Victor Fedeli: So you can't shed any light on the secret code names that the Liberal government put on the cancellation of Oakville and Mississauga?

Mr. Rob Burton: No, I'm not privy to any of that.

Mr. Victor Fedeli: When you first heard the figure of \$40 million to cancel the Oakville plant—when did you first hear of that number?

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Mr. Rob Burton: My recollection is, I think I was in the Legislature one day when what I believe turned out to be the first batch of documents—somewhere around then is when I—

Mr. Victor Fedeli: Well, that's exactly where I'm going, actually. So, you do know there was a first batch of documents. You have since heard, of course, that there was a second batch of documents, and continued tranches of documents have been coming out. Were you aware at any point in time of any documents that we did not receive in the first batch? Do you have any light you can shed on the hidden files?

Mr. Rob Burton: No, sir. Well, actually, there is one thing—a little bit of light I could shed. Mr. Leone and you have put me in mind of a case where the council needed a document, and we didn't get it at first. I guess I'll tell the story by way of illustrating how we deal with that.

Mr. Victor Fedeli: I'm more interested, though, in the gas plant cancellation documents. Are you aware of any of the secret or hidden gas plant documents pertaining to Oakville or Mississauga?

Mr. Rob Burton: No.

Mr. Victor Fedeli: You have no understanding of those at all? So, you're not familiar, then, with who would have ordered the cover-up of those documents? You have no information to do with that at all?

Mr. Rob Burton: Well, the reason that I'm reluctant to believe that there was any intent to cover up is illustrated by the incident that happened in our town where we—

Mr. Victor Fedeli: Your Worship, I appreciate that, but I'm specifically talking about gas plant documents. Let me just ask you, then—I was finishing off earlier with my conversation about the political staff. Did you or anyone in your office ever speak with any political staff from the Minister of Energy's office, before or after the gas plant cancellation?

Mr. Rob Burton: I've already said yes. We spoke to everybody we could, and I'm sure we spoke to the people in that category.

Mr. Victor Fedeli: Was that when you were still in support of a gas plant in your municipality of Oakville, or is that when you were lobbying against it? Which would that have been, when you spoke specifically with—did you speak with the minister specifically about that, the Minister of Energy?

Mr. Rob Burton: You know what? I don't recall being in support of the power plant.

Mr. Victor Fedeli: You told Mr. Yakabuski that there was a period in time under circumstances when you supported the power plant. That's what you had said earlier.

Mr. Rob Burton: I took pains to say that I tried to keep an open mind and to not predetermine a decision on it, and I have trouble understanding that being taken as support.

Mr. Victor Fedeli: Back when he was talking—

Mr. Rob Burton: In my mind, there are three stops on the line. There's support; there's "wait and see"—neutral—"I haven't made up my mind"; and there's opposed. I was trying to be here believing that I was probably going to oppose it, because they were producing a plant that was worse than the last 112 under President George Bush, for Pete's sake—

Mr. Victor Fedeli: So, at the time—

Mr. Rob Burton: —but I was still, at that point, holding out the hope that some sense of pride would have them build a better plant. Alas, there was never any effort to do that.

Mr. Victor Fedeli: So when Mr. Yakabuski was talking about the plans to relocate the container terminal in exchange for allowing the power plant to be located in Oakville—you have no recollection of that?

Mr. Rob Burton: No. We've never heard of this. Can we ask where that comes from?

Mr. Victor Fedeli: Did you send any letters to the minister?

Mr. Rob Burton: I beg your pardon?

Mr. Victor Fedeli: Did you send any correspondence to the minister about cancelling the Oakville power plant?

Mr. Rob Burton: You know, I don't remember, but I hope so.

Mr. Victor Fedeli: If you will undertake, then, to table those letters with the committee, we'd appreciate that.

Mr. Rob Burton: Sure.

Mr. Victor Fedeli: Maybe within two weeks might be an adequate time frame.

Does the name Craig MacLellan ring a bell with you, Your Worship?

Mr. Rob Burton: Vaguely; I vaguely recall the name.

Mr. Victor Fedeli: Did you have any conversation or correspondence with him?

Mr. Rob Burton: Can you just—who is he?

Mr. Victor Fedeli: Former Minister Duguid's former chief of staff.

Mr. Rob Burton: I might have; I'm sure I must have spoken to him, if only to be invited to the event.

Mr. Victor Fedeli: So, would you undertake to turn over any correspondence with him if, indeed, there is any that exists?

Mr. Rob Burton: Sure.

Mr. Victor Fedeli: Thank you. Did you speak with any other political advisers to the Minister of Energy?

Mr. Rob Burton: None that I recall.

Mr. Victor Fedeli: Okay. Did you or anyone in your office ever speak with any political staff from the office of the Minister of Municipal Affairs and Housing about the Oakville gas plant, either before or after the cancellation?

Mr. Rob Burton: I don't know. I mean, I hope so. I don't recall.

Mr. Victor Fedeli: Do you recall speaking with the minister about it personally?

Mr. Rob Burton: You'd have to remind me who the minister was at that time.

Mr. Victor Fedeli: Did you, or anyone in your office, ever speak with any political staff from the Premier's office about the Oakville gas plant, before or after its cancellation? I'm picking up on where Mr. Tabuns was leaving off.

Mr. Rob Burton: I don't know if the gentleman I met with was "political staff"; I was just told that he was staff. But I did speak with a gentleman, subsequent to my meeting with the Premier, in which a discussion was held about—as a precursor discussion to the creation of the Balsillie task force.

Mr. Victor Fedeli: You have already said to Mr. Tabuns that you did speak with the Premier personally. Can you just remind me when that was?

Mr. Rob Burton: At AMO in 2010.

Mr. Victor Fedeli: August 2010, then?

Mr. Rob Burton: Yes, sir.

Mr. Victor Fedeli: Did you send any correspondence, any letters to the Premier regarding the cancellation of the Oakville gas plant before or after AMO, inviting him to AMO, asking for a submission at AMO, meeting him at AMO?

Mr. Rob Burton: I'm not sure. It's our custom, when we pass resolutions at council, to forward them to all and sundry, including the Premier, if appropriate. So, you know, in the absence of a more specific question, "probably" is the only thing I can tell you.

Mr. Victor Fedeli: Would you undertake, then, to turn over to the committee any and all correspondence with the Premier, even including council motions regarding the cancellation of the Oakville gas plant?

Mr. Rob Burton: Sure.

Mr. Victor Fedeli: Within two weeks? Is that fair?

Mr. Rob Burton: Sure.

Mr. Victor Fedeli: Does the name Jamison Steeve mean anything to you, or the name Chris Morley ring a bell with you?

Mr. Rob Burton: I've heard the first name, and I think I've heard the second name, but I don't remember ever meeting either gentleman.

Mr. Victor Fedeli: Do you have any correspondence with either of the gentlemen?

Mr. Rob Burton: I don't think so.

Mr. Victor Fedeli: Do you have any correspondence with anybody—any of the political advisers or the government—related to the cancellation of the Oakville gas plant that I haven't asked you for specifically today?

Mr. Rob Burton: I don't think so.

Mr. Victor Fedeli: There's no other correspondence other than perhaps the letters to the Premier, perhaps correspondence with the energy minister?

Mr. Rob Burton: I don't believe so.

The Chair (Mr. Shafiq Qadri): Thirty seconds, Mr. Fedeli.

Mr. Victor Fedeli: Will you offer to turn over all your emails, letters, correspondence, communications you've had with the provincial government, or the OPA, or the ADM level or higher, including the political staff? Would you undertake to do that within two weeks, any and all correspondence related to the Oakville gas plant to any and all people that I have mentioned?

Mr. Rob Burton: Sure.

Mr. Victor Fedeli: Thank you, Chair.

The Chair (Mr. Shafiq Qadri): I need to intervene here, Mr. Fedeli. To the NDP side, to Mr. Tabuns. Ten minutes.

Mr. Peter Tabuns: Thank you, Mr. Chair. Thank you for your patience today. Just to be clear—and I apologize if I'm repeating any questions—we'd understood from remarks you'd made earlier that you had met with political staff, either from the Premier's office, the minister's office, prior to the decision being made and between the time the contract was awarded and the time it was cancelled. Did, in fact, any of those meetings occur?

Mr. Rob Burton: I'm sorry. What's the question?

Mr. Peter Tabuns: Sorry. Did you, in fact, have meetings with political staff prior to this decision being made, and then prior to it being cancelled?

Mr. Rob Burton: I don't remember any meetings before the contract was issued or the announcement was made, but it's not impossible. We were really focused on our work at that time. Once the decision was made to put it in Oakville, we did seek to communicate our evidence to the government many times, and we had—I can remember the two meetings, one with the Premier and one with his aide, but I don't remember any others.

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Mr. Peter Tabuns: Okay. I'm going to go back to the building permit. You had been successful at the OMB with your interim control bylaw. You were challenged at a higher court. I'm assuming Oakville was prepared to go as far as it legally could to block a building permit from being issued. Is that correct?

Mr. Rob Burton: Oakville was prepared to go to the Supreme Court of Canada if they would hear the case. We've been there before, on another matter.

Mr. Peter Tabuns: Did you ever do a calculation as to how long such a legal process might take?

Mr. Rob Burton: We had a pretty good idea that it would be several years.

Mr. Peter Tabuns: Were you aware that there were force majeure clauses in the contract with TransCanada Enterprises that would have jeopardized this project if you would have been able to delay it long enough?

Mr. Rob Burton: I remember being very frustrated at not being able to see all of the contracts. No, I wasn't aware of what you're talking about.

Mr. Peter Tabuns: Okay. Your PM_{2.5} bylaw to reduce air pollution: In your opinion, TransCanada Enterprises could not have met that standard with the investment they were making. Is that correct?

Mr. Rob Burton: The project as proposed, I was advised by my technical staff, would not meet that bylaw.

Mr. Peter Tabuns: You may or may not be aware that, in correspondence that was released to us, TransCanada Enterprises was aware they couldn't meet that standard and were fearful that they would lose the project. In fact, the Liberal government looked at ways of getting around your bylaw.

Mr. Rob Burton: I wasn't aware of that.

Mr. Peter Tabuns: Okay. So there were two pathways that could have blocked this project from going forward: your bylaw on PM 2.5, and your interim control bylaw that could have gone to the Supreme Court of Canada. In both those cases, TransCanada would have lost the contract, and the government of Ontario would not have had to pay, under force majeure. Do you think that might have been a preferable outcome?

Mr. Rob Burton: I would greatly prefer that, as a taxpayer.

Mr. Peter Tabuns: So would I, Mr. Burton; so would I.

Just going back, can you tell us who on the Premier's staff you met with?

Mr. Rob Burton: Mr. Freeman, I believe.

Mr. Peter Tabuns: I'm sorry?

Mr. Rob Burton: Mr. Freeman.

Mr. Peter Tabuns: Mr. Aaron Freeman?

Mr. Rob Burton: Yes.

Mr. Peter Tabuns: Okay. Thank you for that.

In 2006, a bill was under consideration to amend the Municipal Act. At that time, MPP Kevin Flynn, talking about the ability to overrule municipal decision-making on the location of the power plant, said, "What we're saying is that in cases where the supply of energy is in jeopardy to the province of Ontario, to hospitals or to industry or to just plain old homes that want to have their lights on, there is an exemption power that exists to move that project forward. That's it in a nutshell."

At that time, Michael Prue, our member on the general government committee, opposed that. He let your citizens know this in a debate that took place when Mr. Flynn's private member's bill came forward on stopping the Oakville plant.

Mr. Prue was quoted as saying, with reference to that change: “That day was August 30, 2006, on a motion from the member from Oakville. That was motion number 94, dealing with section 23 of the Municipal Act, which took away every single right that every single citizen and every single municipality in this province had to question whether or not a plant like this was sited in their municipality. Do you all know that?”

Were you aware that it was Mr. Flynn who changed an act in order to give the provincial government power to override your planning?

Mr. Rob Burton: Actually, I was not aware of that event. At the time, I wasn’t mayor. That was before I was called to service as mayor. But because of my previous experience unsuccessfully fighting the Sithe power plant on Winston Churchill in 2000-01, I would have been opposed to that change.

Mr. Peter Tabuns: Okay. How much time do I have left, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): About three and a half minutes.

Mr. Peter Tabuns: Three and a half minutes.

As we see it, the government pursued a course of turning the development of power generation over to the private sector, which left them at risk, in a cancellation situation, of having to pay the profits for 20 years. That comes up time and time again in the documents. If they had followed a public power course, one which you endorse, the risk to the public, if a mistake is made, in cancellation is far less than if we have a private plant where we have to pay profit for 20 years.

This government, notwithstanding your warnings on health, on safety, and I assume on the political storm that would be created, went ahead and made a profound error. Then they compounded this error with a cancellation decision when, in fact, you were holding this plant off quite well, from what we can see in the records. I just want to be clear again, and I had asked you earlier on: Did this problem that we are dealing with today flow from the initial decision to proceed with this private power plant in your city?

Mr. Rob Burton: I think it flowed from a tragically flawed process for determining how to build and where to build power plants. It’s my hope that at some point, the Legislature will turn its mind to a fair, transparent and accountable process that respects local preference.

Mr. Peter Tabuns: Which government put this decision-making process in place?

Mr. Rob Burton: Which process?

Mr. Peter Tabuns: The one that you just said was flawed and caused the problems.

Mr. Rob Burton: I don’t actually know. The process that we engaged in in 2000-01 was just as bad and, at times, difficult to tell from the one we were working under this time. So I’m not really sure where the process came from; all I know is, everyone in the province would be better off if we had a better process.

Mr. Peter Tabuns: I assume the process that you dealt with was run by the Ontario Power Authority. Is that correct?

Mr. Rob Burton: That’s the one I’m complaining about.

Mr. Peter Tabuns: And you’re well aware that the Ontario Power Authority was set up by the Liberal government and directed by them.

Mr. Rob Burton: Yes, now that you remind me; yes.

Mr. Peter Tabuns: I don’t think I have any further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. And thanks to you, Mayor Burton, for your testimony and your presence, and thank your entourage as well.

We now have a subcommittee meeting. Our committee is recessed till—

Mr. Rob Leone: Chair.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Leone.

Mr. Rob Leone: I would move that we spend an extra five minutes with this witness.

The Chair (Mr. Shafiq Qaadri): Is there all-party agreement on this? Those in favour of five more minutes? Those opposed?

Mr. Bob Delaney: I’m sorry; I didn’t understand what question is asked here.

The Chair (Mr. Shafiq Qaadri): Mr. Leone is asking for five more minutes. I might just advise you as well, Mr. Leone: You have the opportunity of recalling this witness later.

Mr. Bob Delaney: Yes. No, he’ll need unanimous consent on that.

The Chair (Mr. Shafiq Qaadri): He has moved a motion. He’ll need a majority on that.

Those who would wish Mr. Burton to—

Mr. Steven Del Duca: That would be a minute and a half each?

The Chair (Mr. Shafiq Qaadri): That is an extremely good question. I presume you mean a minute and a half each, Mr. Leone.

Mr. Rob Leone: A minute and a—

The Chair (Mr. Shafiq Qaadri): Mr. Leone, I don’t think that was the intent of what you’re after. I would suggest once again that you withdraw your motion and perhaps reconfigure it more appropriately. How’s that?

Mr. Rob Leone: I was just hoping we could ask a very quick question rather than spending another hour and a half—

The Chair (Mr. Shafiq Qaadri): Mr. Leone, I’m going to have to intervene there.

This committee is recessed till 3 p.m. today.

The committee recessed from 1009 to 1502.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, I call to order once again in session the justice policy committee. As you know, we’re here to hear two witnesses this afternoon.

MR. PETER WALLACE

The Chair (Mr. Shafiq Qaadri): I’d invite Mr. Peter Wallace to please come forward. Welcome, Mr. Wallace, in your capacity as secretary of cabinet and clerk of the

executive council of Ontario. I'd invite you to please be affirmed before we begin the testimony.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Peter Wallace: I affirm.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wallace. As you know the protocol very well, no doubt having designed it, I would now invite the PC Party to please begin with—

Mr. Peter Tabuns: Does he not get an opening statement?

The Chair (Mr. Shafiq Qaadri): I'm sorry; quite right. Five minutes, please; opening statement.

Mr. Peter Wallace: I've designed many things, but not that.

Thank you. I am Peter Wallace, secretary of the cabinet and head of the Ontario public service. I've been a public servant since 1981 and have served in my current role since late 2011. Prior to this, I was Deputy Minister of Finance and secretary to the treasury board.

I appreciate the opportunity to appear today and speak to the role of the Ontario public service with respect to the matters before this committee. I have a broad understanding of the relevant events and processes. However, much of the actual work on these files has been carried out by others in the public service, and my knowledge is therefore indirect.

As is broadly accepted, public servants are responsible for implementing the policy direction of the government of the day. The political direction and desired outcomes with respect to the gas plants were both clear and accorded a high priority. These objectives included: suspension of activities at the initial sites; relocation; and the maintenance of commercial relationships with the proponents, including securing essentially equal investment and financial opportunities for those proponents in the electricity generation industry in Ontario.

The work by the public service and independent agencies took place in a complex and difficult environment. Among the contributing factors were: very complex commercial contracts with the proponents, as well as secondary linkages with their financial and other partners; actual and threatened litigation; the governance associated with the independent roles of the Ontario Power Authority and other agencies; and a timeline that exceeded two full years. The ministries involved in the implementation of the government's policy direction included energy, finance, Cabinet Office, attorney general, environment, municipal affairs and housing. The agencies involved included, as you know, the Ontario Power Authority, the Ontario Financing Authority, the Ontario Electricity Financial Corp., Ontario Power Generation, Independent Electricity System Operator and, of course, Hydro One. Throughout this time, various deputy ministers and officials worked in teams. We also included Infrastructure Ontario and external advisers to serve as

intermediaries between the public service, the Ontario Power Authority and proponents of the gas plant locations and sites.

The implementation process associated with the government's objectives necessarily involved extensive interactions between public servants, government ministers and the ministers' political staff. That direction centred on:

- seeking direction from the government ministers and advisers on the specifics of the proposed commercial transactions and the eventual settlements;

- securing and documenting cabinet policy and financial authorities—and this was often done under very tight time frames;

- securing policy directions from the government with respect to both the Ontario Power Authority and the Ontario Electricity Financial Corp.; and, of course,

- maintaining viable relationships between the government, the agencies, the proponents and others despite periods of strongly held differing views and perspectives.

I note as well that my predecessor took measures to impose a screen on further involvement by selected political staff in the Oakville matter after becoming aware of an early outreach by those staff to the proponent.

The public service acted appropriately in the implementation of policy direction.

I will now turn to the role of the public service in the production of documents.

The Ontario public service is experienced with the rules and practices associated with document disclosure. We have extensive experience associated with the discovery related to commercial and labour relations, litigation, freedom of information, judicial inquiries, and the role of the Provincial Auditor in the document production associated with his inquiries. However, the committee process associated with the production of records is a new factor in our environment. It is one that required some thought and additional research to understand. It also required some thought and additional research to understand how this new approach related to the existing procedural safeguards in place that covered critical constructs such as cabinet privilege, legal privilege, statutory privilege, and, of course, the contractual privileges associated with the production of documents related to third parties. This is a new approach to us and it did require some time to understand.

It is my belief that the Ministry of Energy acted in good faith in searching for and producing documents in their possession that they understood were responsive to the committee's request. The timing of these disclosures was of course affected by the views of the minister, as has been indicated by the minister of the day's letters to the committee and to the Legislature. The deputy wrote to the Clerk, explaining and taking responsibility for any deficiencies in the initial production of records—

The Chair (Mr. Shafiq Qaadri): Mr. Wallace, reluctant as I am to interrupt the secretary of cabinet, I will now need to turn the floor over to the Conservative side to—

Mr. Peter Wallace: Would it be possible for me to talk for another, say, two minutes?

The Chair (Mr. Shafiq Qadri): Is there all-party agreement?

Interjection: Yes.

The Chair (Mr. Shafiq Qadri): Please proceed.

Mr. Victor Fedeli: May I ask, Chair: Can we have a copy of your speech as well?

Mr. Peter Wallace: You can.

The Chair (Mr. Shafiq Qadri): Of course.

Two minutes.

Mr. Peter Wallace: I'm aware of several outstanding questions related to document disclosure, and this is why I asked for the indulgence of the committee to cover these what I believe to be important issues.

First, the use of code names for commercial transactions is routine in the Ontario public service. It covers essentially all major commercial transactions with which we have been engaged and which the province has undertaken. This practice was not specific to the gas plants transactions and has not been used, to my experience, by the public service with any intent whatsoever to obstruct legitimate requests for the production of documents.

I can confirm to this committee that it is my belief that there are other documents in possession of the Ontario public service which fall outside of the request by the committee to the Ontario Power Authority and the Ministry of Energy. Those documents will include those created and retained by the agencies and, of course, the ministries and offices I noted earlier.

I would also like to take a moment to address suggestions that a Ministry of Energy employee directed the Ontario Power Authority to withhold documents from disclosure. As head of the Ontario public service, I would be very concerned regarding any allegation of inappropriate behaviour by a public servant. I consider this to be a very serious matter and asked, in consequence, that the Ministry of the Attorney General undertake an investigation with a view to discovering the actual facts of the circumstances.

Ministry of the Attorney General counsel undertook such an investigation and reported back to me that the employee in question had a sincere belief that instructions were not made. However, the Ministry of the Attorney General counsel were not able to find any conclusive evidence to either support or refute the allegation. This was because the Ministry of Energy employee unfortunately attended a meeting in the absence of more senior staff or in the absence of counsel who had originally been intended to attend the meeting. She attended alone due to the unavailability of those.

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In that context, I am left with a lack of definitive information as to the actual consequence of—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Wallace. I appreciate the co-operation of members of the committee and now officially turn it to the Conservative side. As you know, you have 20 minutes.

Mr. Victor Fedeli: Thank you very much, Chair. Mr. Wallace, thank you for being here today. I want to start by saying thank you for three decades of public service.

I want you to look in the package that you were given. There's an item called exhibit A.

Mr. Peter Wallace: Has that been provided to me?

Mr. Victor Fedeli: Excuse me, to the Clerk: Does Mr. Wallace have the exhibits?

Mr. Peter Wallace: I'm happy to look at the item, but I do need to have it.

Mr. Victor Fedeli: Okay. So in exhibit A—it is a document where there is an email that you're copied on back on July 27, 2011. It's from David Livingston, formerly of Infrastructure Ontario, who later went on to become Dalton McGuinty's chief of staff. The subject line is, "Confidential advice to cabinet." It proposes, basically, a walk-around package on Project Vapour. Can you tell us, first of all, what "Project Vapour" was referring to?

Mr. Peter Wallace: Project Vapour was referring, in my understanding, to the cancellation and relocation of the Oakville plant.

Mr. Victor Fedeli: Oakville? Okay, thank you.

Who came up with the name "Project Vapour"?

Mr. Peter Wallace: I don't know.

Mr. Victor Fedeli: Okay. When was the term "Project Vapour" first used? When was the first time you would have heard of Project Vapour?

Mr. Peter Wallace: Very early on in the process of relocation. Typically, a project would acquire an understanding of the basic policy—

Mr. Victor Fedeli: So 2008 or—what year?

Mr. Peter Wallace: No, no. Shortly after the time in which the government announced its intention to relocate the plant or to cancel the contract—

Mr. Victor Fedeli: Got a rough date? Just a rough date?

Mr. Peter Wallace: I believe the date is 2010.

Mr. Victor Fedeli: So 2010. You don't know who came up with that, but you know that it would have first been—you first heard it around 2010?

Mr. Peter Wallace: I actually can't confirm when I first heard it.

Mr. Victor Fedeli: So who in your recollection would be privy to the Project Vapour documents that are in exhibit A?

Mr. Peter Wallace: This is material that was intended for—

Mr. Victor Fedeli: I'm sorry; you were at finance at the time.

Mr. Peter Wallace: I was at finance, but I'll answer to the best of my ability, looking at the material now for the first time.

Obviously, those included in the—

Mr. Victor Fedeli: Well, it's not the first time. You obviously saw it when the email came out.

Mr. Peter Wallace: Exactly.

Looking at this, obviously the individuals directly included in the material. This would have then been

shared with executive council office in cabinet office—so, essentially, the machinery of government function of cabinet office. It subsequently would have been made available to the ministers, so to cabinet, within the context of the policy decision.

I would understand this to have also been available to a relatively small number of officials, but officials involved in energy, finance and the Ministry of the Attorney General.

Mr. Victor Fedeli: So if this was issued on July 27, 2011, approximately when would this have gone to the executive council office or to ministers and the names you gave? Within a day, a week, a month?

Mr. Peter Wallace: Oh, very likely within a couple of days.

Mr. Victor Fedeli: A couple of days? Okay.

So what is a walk-around package, just in very, very quick terms for lay people like myself? What does “walk-around package” mean?

Mr. Peter Wallace: It’s pretty straightforward. We conduct cabinet meetings, and it has long been the tradition of the province of Ontario to conduct cabinet meetings on a weekly basis. From time to time, there are urgent decisions that are required in a time frame that is shorter than a weekly or bi-weekly cycle—and this is during the summer. Typically during the summer, cabinet meetings are held on a bi-weekly or sometimes monthly cycle.

So it would not be untypical at all that an urgent commercial or other matter comes up that—the cabinet secretary, working in conjunction with the Premier’s office, would find an opportunity to create a decision-making forum by cabinet. That could be a special meeting, or it could be an opportunity in which officials go individually to cabinet ministers, have a conversation with them and secure their consent for the cabinet minute under discussion.

Mr. Victor Fedeli: So it’s safe to say, in your own words, that this was something of an urgent nature; that’s why a walk-around—

Mr. Peter Wallace: Cabinet walk-arounds are typically reserved for items of an urgent nature.

Mr. Victor Fedeli: Okay. Which political staffers in the Premier’s office would have been involved with or knew or ought to have known or were aware of Project Vapour, based on the fact that this document was distributed to the names mentioned?

Mr. Peter Wallace: I can’t answer the question specifically in terms of the way you phrased the question.

Mr. Victor Fedeli: If we gave you a little time, could you give us a list?

Mr. Peter Wallace: No. If you gave me a little bit more of a general question, which is those who would have been involved more generally, as opposed to relating to the specific document—I can answer that question.

Mr. Victor Fedeli: But there is a specific document, and there’s a cabinet minute, back on the 27th of July. Based on that, would you be able to supply a list of people who were either present or involved with or knew

or ought to have known or were aware of Project Vapour, based on the fact that this—

Mr. Peter Wallace: At this particular point in time, the political involvement with Project Vapour from the Office of the Premier was a relatively small circle of individuals, likely including Chris Morley. I am not sure of the others who were involved at this point, in July 2011.

Mr. Victor Fedeli: Would you be able to retrace and make that list? Is that possible?

Mr. Peter Wallace: We could certainly give it some effort.

Mr. Victor Fedeli: Within two weeks, let’s say.

Mr. Peter Wallace: Yes.

Mr. Victor Fedeli: Okay, thank you. Then I guess I will expand that just slightly: To your knowledge, basically what past or present political staff in the Minister of Energy’s office would have also known or been aware of Project Vapour? I’m going to ask the same question for the Minister of Finance’s office, where you were. Could you—

Mr. Peter Wallace: You may want to ask the same general for the Office of the Premier as well.

Mr. Victor Fedeli: Then I will. Thank you; I appreciate that.

Mr. Peter Wallace: I do not know the Ministry of Energy’s staff at that time.

Mr. Victor Fedeli: Okay, that’s fair.

Mr. Peter Wallace: In the Ministry of Finance, it would have included the minister’s chief of staff. I do not have a recollection of others being involved.

Mr. Victor Fedeli: Supply that list to us to the best of your ability in a couple of weeks. We’re fine with that.

Mr. Peter Wallace: Sure.

Mr. Victor Fedeli: So prior to this document, July 27—and I know it’s tough to figure this next answer out—was Project Vapour, to your knowledge, raised at any other time at cabinet or a cabinet committee, prior to this document? It’s the first one I found, to be honest. Out of the 56,600 documents, it’s the one that seems to, in my opinion—are there others that would have been before July 27?

Mr. Peter Wallace: I don’t have that specific in front of me. But it would be very unsurprising to me if this was raised in a cabinet context prior to that.

Mr. Victor Fedeli: So you think this was the first time?

Mr. Peter Wallace: No, I do not believe this is—

Mr. Victor Fedeli: Oh, you do not think this is the first time?

Mr. Peter Wallace: I believe there’s a good chance this would not be the first time.

Mr. Victor Fedeli: Well, it’s the earliest document we were given. So are you suggesting there are more Project Vapour documents that we don’t have yet?

Mr. Peter Wallace: As I confirmed in my earlier remarks, there are additional documents associated with the cancellation and relocation of the gas plant that were not produced because the government produced—the

Ministry of Energy, for whom I can speak, produced those documents requested by the committee.

Mr. Victor Fedeli: So if this was going to go on that walk-around, would there have been a minister basically to sign off on it? Would it have been discussed at cabinet? How can we determine that?

Mr. Peter Wallace: There would have likely been a minister-signed submission. But the primary focus point is of any cabinet decision-making, and what fundamentally matters is the minute, which you have there.

Mr. Victor Fedeli: I don't have anything signed by a minister. Can you undertake to find that document for us?

Mr. Peter Wallace: I can.

Mr. Victor Fedeli: Thank you. Would there have been any report-back from the cabinet?

Mr. Peter Wallace: I need to make one other request of the committee through you.

Mr. Victor Fedeli: Please.

Mr. Peter Wallace: I cannot, in and of myself, waive cabinet privilege. These are core constructs that relate to the implementation of any government. The only way in which cabinet privilege can be raised is in response to a specific request that is legally unavoidable for me to comply with. That would, in all likelihood, be an order from this committee.

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Mr. Victor Fedeli: Okay. So I'll ask the Chair at the end of this session how we go about getting that so ordered, if that's okay.

At any point in time, did any officials, either within the ministry or the OPA, express any concern to you about political interference or involvement in this file? I heard you speak to it in your original presentation.

Mr. Peter Wallace: To be very clear, these files are inherently political. The cancellation and relocation of a gas plant is not an action undertaken autonomously by public service officials. This is an inherently political matter.

Mr. Victor Fedeli: Go to exhibit B, then, please, the next one. I think it's titled "Cabinet Minute." Is this indeed the cabinet minute?

Mr. Peter Wallace: It gives every appearance of being a cabinet minute, yes. This is July 29, 2011?

Mr. Victor Fedeli: A couple of days after that walk-around. So in two sentences, what's a cabinet minute?

Mr. Peter Wallace: A cabinet minute is the mechanism by which cabinet establishes the authority to manage or change a previously established policy or previously established financial allocation.

Mr. Victor Fedeli: Okay. This cabinet minute comes a couple of days after that cabinet briefing, then, I presume? We're on the same time. Does the fact that it says "Cabinet Minute"—would that imply or mean definitively that it went to the full cabinet?

Mr. Peter Wallace: It will have, at some point, been—all cabinet minutes are made available to the full cabinet. It has been a routine practice across all governments, particularly during matters of urgency or during

times of extended periods between cabinet minutes, such as during a summer period, for decisions to be made by a subcommittee of cabinet. For example—

Mr. Victor Fedeli: So how can I determine, then, who was at this cabinet meeting?

Mr. Peter Wallace: It would be possible to request the appropriate records.

Mr. Victor Fedeli: Again, through you, or we'll do that through the Chair?

Mr. Peter Wallace: Through the Chair, directing the production of documents.

Mr. Victor Fedeli: I kind of thought we did that when we asked, from the Speaker's order, for all the documents, but we'll get to that, sort of maybe at the end.

Mr. Peter Wallace: I believe that those were not directed to cabinet office. Those were directed to the Minister of Energy.

Mr. Victor Fedeli: Given the impact that this has had in the Ministry of Finance and the Ministry of Energy, can you tell us what you knew at the time, what all this was referring to?

Mr. Peter Wallace: The government had announced a policy, of which public servants became formally aware when the government was returned to—sorry, excuse me—had announced a policy to cancel and relocate the TransCanada Oakville plant. This was part and parcel of the process of reaching a settlement with TransCanada.

Mr. Victor Fedeli: Okay. Go to exhibit C, then. This is a document entitled "Project Vapour-lock." What's this one about, and how does it differ from Project Vapour? It's a different code name.

Mr. Peter Wallace: Project Vapour was the Oakville plant. Project Vapour-lock would be the slightly humorous additional name to refer to the cancellation and relocation of the Mississauga plant.

Mr. Victor Fedeli: Vapour-lock was Mississauga?

Mr. Peter Wallace: Yes.

Mr. Victor Fedeli: Okay.

Mr. Peter Wallace: That's my understanding.

Mr. Victor Fedeli: Okay. So it differs because it's a different closure of a different plant, in your opinion?

Mr. Peter Wallace: Yes.

Mr. Victor Fedeli: Okay. Under 3, it talks about the OPA and the government—it says, "OPA and government is also similar to the Vapour transaction." What does that actually mean? I'm not quite sure.

Mr. Peter Wallace: In both of these instances, the contract with the proponent was held by the Ontario Power Authority. The government was not a direct party to the transaction. I spoke, in my opening statement, about several of the complicating factors. One of the complicating factors is, the government was announcing a policy change with respect to a contract to which it was not directly a signatory. That contract was held by the power authority.

Mr. Victor Fedeli: Okay. So you're saying it wasn't the government; it was the OPA?

Mr. Peter Wallace: I am not saying any such thing.

Mr. Victor Fedeli: Okay. The last paragraph says—

Mr. Peter Wallace: I am saying the policy change was announced by the government, but the means to effect that policy change was through a contract that was the responsibility of the Ontario Power Authority.

Mr. Victor Fedeli: So, at the bottom, the last sentence says, “Next steps: Inform OPA that we have a letter from the minister asking them to immediately approach the company ... and inform OPA that we have retained (or asked them to retain) the lead negotiator.” Are you suggesting, then, that it’s the OPA driving this bus or the government driving the bus?

Mr. Peter Wallace: This is the government driving the bus.

Mr. Victor Fedeli: Okay. So, let’s go down to exhibit D. This is a memorandum to you from David Lindsay—a very heavily redacted document. This is likely one that I would have held up in the Legislature and said, “Blank, blank, blank.”

When you were the deputy at finance, you would have received this letter from then-Deputy Energy Minister David Lindsay. Now, the government has repeatedly said that it has tabled all of the documents, and given the Premier’s assertion and promise to be open and transparent, it would suggest that a document that is half blacked out is not necessarily complying with our Legislature. Would you agree or would you disagree with this?

Mr. Peter Wallace: I will speak to the role of the public service in this matter. The Ministry of Energy was provided with a document production order. The document production order required that we produce, at the Ministry of Energy—and I say “we” because I supervise them and take risk accountability and responsibility for their actions through the system of government that we enjoy. The request was specific to—there were records that were responsive; there were records that were not responsive. What I would understand from this, and what I will undertake to confirm to the satisfaction of the committee is that what was pulled out of this was material that was unrelated to the request—

Mr. Victor Fedeli: So, let me ask a question—

Mr. Peter Wallace: Now, whether or not it was wise to pull it out is a separate question—

Mr. Victor Fedeli: Okay, that’s fine.

Mr. Peter Wallace: —but it would be my understanding, my contention, that this was unrelated to that. This would have been other financial information related to the Ministry of Energy.

Mr. Victor Fedeli: So this specific document, from you to energy: Would you have redacted this before you sent it to energy, or would energy have redacted it before they gave it to us?

Mr. Peter Wallace: It would not have been, to the best of my knowledge, altered by the Ministry of Finance, but again, this is something I speak of only indirectly.

Mr. Victor Fedeli: So, to the best of your recollection, you did not cover this up? You did not order this document to be covered up? The fact that we have a document that is covered up would suggest that someone

else did it? Are you suggesting, then, it was the Minister of Energy’s office that did that as opposed to your office? Because it is from you to the Minister of Energy.

Mr. Peter Wallace: I appreciate the orientation of the question, and I will try and be helpful here.

Mr. Victor Fedeli: Thank you.

Mr. Peter Wallace: When we talk about covered up, I can only understand you mean the physical covering-up—

Mr. Victor Fedeli: No, you’re covering up the words that are underneath there.

Mr. Peter Wallace: Exactly.

Mr. Victor Fedeli: Somebody has covered up this document.

Mr. Peter Wallace: I understand that. My expectation—

Mr. Victor Fedeli: Was it you, when you sent it to the minister?

Mr. Peter Wallace: It certainly would not have been me that covered this up.

Mr. Victor Fedeli: It was not you that covered this up?

Mr. Peter Wallace: Of course I would not have covered up a document that was sent in 2011.

Mr. Victor Fedeli: Okay.

Mr. Peter Wallace: My understanding would be that there was non-responsive information associated with this. It was in accordance with the ordinary practices of document disclosure—

Mr. Victor Fedeli: But I’m going to check with the Chair at the end, again, on my third thing to check, which basically is: When we had the Speaker’s order—I’m new at this; I would have understood that this is not like an FOI. This is an order from the Speaker to turn over all documents in an unredacted form. We’ll get to that at the end.

Mr. Peter Wallace: And we’ll get to that. The only thing I will say here—

Mr. Victor Fedeli: Yes, please.

Mr. Peter Wallace: Remember that we were acting—it is my view; I believe it will be a sustained view—in the very best of faith on the basis of legal advice in an area in which things are emerging, in which public servants were trying to make difficult judgments not to withhold relevant information from the committee, but in order to protect the privilege and the advice we give to cabinet in other unrelated matters.

Mr. Victor Fedeli: So let me make it perfectly clear, then. When you turned this document, dated December 2, 2011, over to the Ministry of Energy, it was not redacted? Somebody after you has covered this document up.

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Mr. Peter Wallace: I’m afraid that your question is—

Mr. Victor Fedeli: It’s pretty simple.

Mr. Peter Wallace: No, it’s not, because you’re saying that I turned the document over.

Mr. Victor Fedeli: Yes.

Mr. Peter Wallace: The document was written to me from the Ministry of Energy. I never turned the document over to the Ministry of Energy.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli, and thank you, Mr. Wallace. I will now—

Mr. Peter Wallace: I apologize for that, but it's a fact.

The Chair (Mr. Shafiq Qaadri):—offer the floor to Mr. Tabuns.

Mr. Peter Tabuns: Mr. Wallace, thank you for your preparation and your being here today.

Just based on your opening points, the gas plant priorities—and we'll talk about them separately—Oakville, TransCanada enterprises: suspension, relocation and securing alternative arrangements. Who set those priorities?

Mr. Peter Wallace: These were matters that were of intense public interest. They were commonly covered in the media. They were the subject of intense if not daily questions in the gallery. They were part and parcel of question period. It would have been very broadly and commonly understood that the settlement of these matters was of some considerable importance to the government.

Mr. Peter Tabuns: I think I need you to be a bit more specific. The civil service did not set these priorities.

Mr. Peter Wallace: Clearly, the civil servants' role in this context is to implement the policy direction of the government.

Mr. Peter Tabuns: So when you say the government, these decisions and priorities were set by cabinet or set by the Premier's office?

Mr. Peter Wallace: It is, with respect, not easy and not a straightforward question to distinguish the role of the Premier's office and the cabinet in the context. They function in an integral way and have always functioned in an integral way as the government of the day. I as secretary of cabinet don't distinguish between the support I provide to different aspects of the government. We provide support for the government, always have, always will. That will include, of course, the Office of the Premier and Cabinet Office.

Mr. Peter Tabuns: So there would have been a document that would have gone to the head of the civil service at the time the decision was made setting out these three priorities. Correct?

Mr. Peter Wallace: No, no. That is not correct. There is typically not a written policy direction of that nature associated with these items.

Mr. Peter Tabuns: So this was passed on to you verbally?

Mr. Peter Wallace: At the time, I was not the secretary of cabinet. But this would have been, with respect, commonly understood.

Mr. Peter Tabuns: I may come back to it later, but I'll leave it for the moment.

The investigation of the Ministry of Energy staffer by the Attorney General's department: Because you were speaking very quickly, and I appreciate you tried to get a lot of information into a short time, can you tell us again

why you ordered that investigation and who carried it out? You expressed concern that the outcome was indeterminate; if you could tell us why it was indeterminate.

Mr. Peter Wallace: In early October 2012, I became aware of a view held by at least one person in the Ontario Power Authority that there had been inappropriate direction—I add the word “inappropriate”—that there had been direction to the power authority regarding a release of documents requested by a committee of the Legislature.

I'm the head of the public service. These requests from the Legislature are legally binding. We take them enormously seriously, and we make every effort to provide the appropriate advice and to comply with those.

If we were to have in fact had an individual ministry officer who was acting in a way that was inconsistent with the overwhelmingly clear policy direction from senior levels of the public service that we comply honestly, directly and with integrity with an order of this Legislature or with any other relevant legally binding order, that is of enormous concern to me.

I sought to determine whether or not there was obvious validity to this allegation. The mechanism for determining something like this is typically to launch a review or an investigation. In our world, the way you do that is generally by relying on the professional advice of the Ministry of the Attorney General. We approached the Ministry of the Attorney General on the public service side to look for their support. They appropriately assigned counsel to this file. Counsel conducted a series of interviews with the individual involved who was the subject of the allegation and individuals who were part of the process associated with this.

Counsel returned to me with a verbal report indicating that they had not been able to find any concrete evidence to substantiate the allegation, that the witness, the individual involved, appeared to be truthful, that she appeared not to have, in her own mind, offered specific and highly inappropriate direction to the power authority. But because this meeting was to take place with additional counsel, with additional more senior staff available, because they had not been available at that point in time, the meeting had still proceeded. There were no appropriate documentation notes or other things taken at that meeting that would corroborate or disprove the allegation.

In that sense, we were left with—the Ministry of the Attorney General was left with, I was left with—an inconclusive report associated with that. That is a subject of considerable concern to me because there is—and you will continue in your hearings, I have every expectation, to look at the behaviour of an individual public servant, and I remain exceedingly concerned with even the potential that a public servant would have acted in a way that was completely inappropriate from the context of our legal obligations, and in fact from the policies, procedures and practices of the Ontario public service.

Mr. Peter Tabuns: At this point, have you effectively closed the books on your investigation in this matter?

Mr. Peter Wallace: There is nothing more, I am led to believe by the Ministry of the Attorney General, for us to discover through the mechanisms we have available at this point. So “close the books” would be a specific piece of language that I would not endorse, but I would say that we have nothing left to find on the file at this point.

Mr. Peter Tabuns: The document production order that you refer to—could we have a copy of that document production order?

Mr. Peter Wallace: These are the requests from the committees of the Legislature. These are the May 16 and other relevant requests—

Mr. Peter Tabuns: And that’s the sum total of the request that’s passed on to staff—sorry; there is not another document beyond that saying “redact this section”?

Mr. Peter Wallace: No.

Mr. Peter Tabuns: They simply get the motions passed.

Mr. Peter Wallace: The order that I’m referring to is the production orders—May 16, and there may be other dates as well—passed by committee or committees of the Legislature seeking a subset of documents and requiring the production of those documents.

Mr. Peter Tabuns: One of the concerns that we’ve had trying to find documents through freedom of information is our lack of knowledge of code names. Are you aware of any use of code names as a way of evading freedom-of-information searches?

Mr. Peter Wallace: Absolutely not. The use of code names is, with respect, routine. Essentially, all government transactions that involve a commercial player use a code name. It’s also my experience in working with the private sector. They similarly have code names associated with transactions. These are not designed to evade in any format, are not used by the public service to evade in any way legitimate requests for the production of documents.

Mr. Peter Tabuns: Okay. Thank you. When you were Deputy Minister of Finance, you were briefed by David Lindsay about costs. One of the documents released by energy is a memorandum dated December 2, 2011, days before you joined—

Mr. Peter Wallace: May I have that document? I’m afraid that I can’t speak to things I don’t have.

Mr. Peter Tabuns: Give me a second. I think it’s the one that Mr. Fedeli produced for you—

Mr. Peter Wallace: This document? Yes. I got it.

Mr. Peter Tabuns: —saying there may be costs related to the relocation of the gas power plants in Mississauga and Oakville. Were you ever briefed fully on those costs?

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Mr. Peter Wallace: What this document is—we ask for quarterly reports. The Ministry of Finance asks for and receives quarterly reports from all ministries. So this is a very, very routine transaction. What the ministry is doing here is outlining all of the areas in which it may face budget pressures. It then notes at the end that there may be a budget pressure associated with the relocation

of the gas plants. It obviously doesn’t know the specific number. If it did know the specific number at that point in time or if it did know if that would be a budgetary impact, it would be an obligation of Mr. Lindsay to disclose that to me, give me an understanding of how that is; we would build that into the financial projections of the province. He’s simply using this document to indicate there’s a known unknown, if you will: There’s something that he knows that might happen, but he is unable to provide a context or a cost associated with it at the rest of—I would fully expect that the rest of the document deals with things that are utterly irrelevant to the gas plants, but simply goes through whatever other issues there are associated with the Ministry of Energy at the time.

I’ve undertaken to the committee already that I will confirm that that is in fact the case and that this was not redacted in error.

Mr. Peter Tabuns: So was there any verbal briefing that went along with that documentation?

Mr. Peter Wallace: I don’t recall any such, and this was relatively early in the settlement discussions. These were not settlements that were concluded until calendar 2012, and well into calendar 2012, with the final settlements and the final aspects of that being determined in, I believe, December of that year. So the costs were indeterminate, as would be the distribution of those costs.

Mr. Peter Tabuns: Okay.

In July 2011, a number of emails—and I don’t have them to present to you—indicate that you were part of a regularly briefed group of senior members of the government. What was your role in Project Vapour?

Mr. Peter Wallace: My role in Project Vapour in 2011 was that of Deputy Minister of Finance, and the Deputy Minister of Finance is, of course—the Deputy Minister of Finance has the usual controls over—the Deputy Minister of Finance and secretary to treasury board, and essentially what I would be working on, and, to be very frank, be vigilant about, is any cost implications as they related to the province’s books. So, obviously the Ministry of Finance would be concerned about value propositions, about other aspects, but the primary aspect is, we would be tracking and trying to understand any fiscal implications for the province.

We would also have a broader responsibility to understand, as we generally do, the development of policy across the government of Ontario, any precedents it sets, any other aspects, and particularly with respect to understanding any of the financial ramifications, present or future, associated with essentially any activity occurring.

Mr. Peter Tabuns: And when did your role end with Project Vapour?

Mr. Peter Wallace: I don’t know that we can speak of a formal end to the role of anybody with respect to Project Vapour. The final settlement occurred in late 2011.

Mr. Peter Tabuns: And so you were part of this team right through till the end—right through to the final settlement?

Mr. Peter Wallace: We had very clear policy direction from the government of Ontario to undertake a process in which, working with the contract holders, the Ontario Power Authority and others would achieve the government's policy objective of shifting the plant locations from their planned locations to new locations.

The government itself relies on the public service, as is very traditional, as is the way work is done, in order to undertake that. As a result of that, public servants, myself included, would have been, as you would expect us to be, involved in the implementation of the government's policy direction.

Mr. Peter Tabuns: Okay. I'm just following up on a previous question about the investigation of the processing of documents and their securing and provision to the legislative committee. I am assuming that your investigation arose from a document that was provided to the opposition party and which they used in a media conference. If I'm incorrect in that, please let me know, and, secondly, were there any allegations beyond what was provided in the email to the opposition and has previously been presented in the media?

Mr. Peter Wallace: The allegations are consistent with the documentation to which you refer, but my concerns did not arise from that documentation. My concerns arose from a conversation with the deputy of energy, in which he informed me of his recent knowledge that there was a belief from at least one staff member in the Ontario Power Authority that there had been inappropriate direction—that there had been direction, which I then took to be inappropriate direction—associated with that, but it did not stem from that document. I believe in fact it predated the release of that document.

Mr. Peter Tabuns: Could you please tell us the name of the person who raised these concerns about the handling of the documents?

Mr. Peter Wallace: I believe that the person referred to in this context was Kristin Jenkins, but my knowledge of this is indirect or second-hand, because I received this information from the Deputy Minister of Energy.

Mr. Peter Tabuns: And the name of the Deputy Minister of Energy at that time was?

Mr. Peter Wallace: Serge Imbrogno.

Mr. Peter Tabuns: Thank you.

One of the things that comes up pretty constantly in the documents when we look at the TransCanada Enterprises settlement was the concern that the province felt the need to make TCE "whole." Is it possible that making them whole meant that we would be overpaying for a plant, building a plant we may not have needed, building a plant in the wrong place? What did that mean?

Mr. Peter Wallace: I will confess some sympathy for TransCanada in this context. TransCanada followed up on an RFQ, pursued and put money at risk with respect to a legitimate project, attempted to bring that project to commercial completion, found that it was unable to do so, found that its valid contract was in a position in which it was unlikely to be fulfilled. The company took appropriate actions, in my view, to protect its shareholder

value. TransCanada is an important player in our energy economy. It's been a partner with Ontario Power Generation, it's a shareholder in Bruce, and it has other important roles in our energy economy.

The question of the precise balance and other aspects is, frankly, not a hypothetical one, not one on which I can speculate. I can say that given the circumstances, it was the role of the public service to work with the government of the day in terms of their policy direction, work with our other partners, the Ontario Power Authority and others, in order to secure the shifting of the power plant from its originally planned location to a new location. That necessarily incurred costs.

Mr. Peter Tabuns: But at one point, staff were looking at not moving a plant to Lennox but actually giving TransCanada another contract to build a plant in Kitchener-Waterloo-Cambridge, and they had a huge amount of difficulty making the numbers work. What, in your mind, as public servants, did making TCE whole mean?

Mr. Peter Wallace: I referred to this as directly as I could in my opening comments, and if you don't mind, I'll just refer back to that.

Mr. Peter Tabuns: No. If you can address it, that would be useful.

Mr. Peter Wallace: The policy objectives included, obviously, the relocation of the plant, but they also included maintenance of commercial relationships with the proponents—

Mr. Peter Tabuns: I'm sorry, Mr. Wallace. Can you speak more loudly?

Mr. Peter Wallace: Sorry—maintenance of commercial relationships with the proponents, including securing essentially equal investment and financial opportunities. So the construct was, in your language, to hold the enterprise as whole or essentially whole in that context. That was the policy direction from the government.

Mr. Peter Tabuns: So that meant that the total profit that they would expect to realize over the 20-year contract with the Oakville generating station is something that would be preserved in another contract?

Mr. Peter Wallace: It meant that we were giving them essentially an equivalent opportunity, and in fact the equivalent opportunity related not only to the profits but also the maintenance of their role in the production of gas-fired electricity in the province of Ontario.

Mr. Peter Tabuns: The first I understand. The second, why would we be concerned that we make sure they continue to be a major player in gas-fired power?

Mr. Peter Wallace: It was the government's policy, and we tried a number of efforts. You referenced Kitchener-Waterloo. There were also other aspects in which the public service—this is not a straightforward matter.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Peter Wallace: We have a contract that needs to shift, in which there is a broad public consensus that that contract needs to shift. There is a political direction. The implementation of that political direction falls to the

public service and our agency partners. We work in good faith to explore, “Can we work something out with Ontario Power Generation? Is there a need for generation in the Kitchener–Waterloo area that provides this? Can we look at some other location around other aspects?”

The prospect that ultimately settled as the best fit for TransCanada, the best fit for the agencies involved, was the shifting of the contract to Lennox.

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When provided with a set of circumstances and a policy direction, this is what public servants do. We work to the best of our abilities to implement that direction at the best value proposition available, ensuring that that is as close to the commercial equivalent as we could provide, that being the policy direction of the government.

Mr. Peter Tabuns: And did—

The Chair (Mr. Shafiq Qaadri): I’ll need to intervene there, Mr. Tabuns.

The floor goes to Mr. Delaney on the government side.

Mr. Bob Delaney: Mr. Wallace, thank you very much for being here with us today.

A lot of the questions I’m going to ask you, sir, are going to be ones of clarification. I just wanted to ask if you were aware of a government motion tabled with this committee on March 5 that would have directed a government-wide search of all documents related to the relocations of the Oakville and Mississauga power plants?

Mr. Peter Wallace: I’m aware.

Mr. Bob Delaney: The motion would have required all government ministries—

Mr. Rob Leone: Point of order, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Point of order, Mr. Leone.

Mr. Rob Leone: I believe that document that Mr. Delaney is referring to was ruled out of order.

Mr. John Yakabuski: It was never adopted by this committee.

The Chair (Mr. Shafiq Qaadri): You’re both correct. It was ruled out of order. Thank you.

Mr. Delaney?

Mr. Peter Wallace: In which case, can I clarify my answers? I’m aware of the conversation and the media reports of this issue. I’m obviously not aware of something that was not done.

Mr. Bob Delaney: Well, thank you. Minus paragraph 2, in fact, the motion was adopted, but whether it’s in order or out of order, I was merely asking whether the gentleman was aware of it.

The motion would then have directed you, as secretary of cabinet, to set out a detailed work plan, which would include parameters and processes to identify the responsive documents. At the time, were you prepared to act on that motion if it had been passed?

Mr. Peter Wallace: I had not seen the motion—so you’re asking me a very, very specific question. I’m obviously prepared to act on the basis of any instruction

provided to me by this committee. In that context, I’ll answer yes. But in terms of the specifics of the motion, since I don’t have them in front of me, and the way you’ve phrased the question, I can’t confirm it. I can only say that obviously I’m prepared to answer as you would expect, that I would respond appropriately to any request from the committee.

Mr. Bob Delaney: As my colleague opposite noted, that part of the motion did not pass.

I’d like to ask you a couple of questions just regarding the first effort to find documents that were responsive to the motion. The motion asked for correspondence. Can you speak very briefly to what, in the context of a document search, “correspondence” means?

Mr. Peter Wallace: I can’t.

Mr. Bob Delaney: If I were to say “correspondence” would be a subset or a completely enclosed part of a definition called “documents,” would that be accurate in your view?

Mr. Peter Wallace: This is something that I would not speculate on. These are matters that as public servants we would take seriously, and I would not answer such a question without first referring to counsel and reviewing that specifically.

Mr. Bob Delaney: No, that’s fine. Okay.

A few questions of clarification around the subject of code names. The use of code names in order to protect sensitive information, not only within government but within the private sector: I would assume that’s not a very new phenomenon?

Mr. Peter Wallace: It’s not a new phenomenon. It’s not always to protect sensitive information.

Mr. Bob Delaney: Okay. What are some of the other uses within government?

Mr. Peter Wallace: We use them to build teams. We use them to identify things by short form.

Mr. Bob Delaney: Okay. In your experience, have all parties who formed government used code names in some capacity? Or has the civil service, during administrations of all stripes, used code names in some capacity?

Mr. Peter Wallace: The public service has used code names throughout my experience in the province of Ontario, and that obviously covers, given the 31-odd years, a range of administrations.

Mr. Bob Delaney: What would be the goal of assigning a code name to a specific project, to a legislative bill, to an arbitration process or to some similar circumstance?

Mr. Peter Wallace: There are all sorts of reasons, one of which is just tradition, another of which is, we’re probably following up on long-standing private sector traditions of calling things by code names. They’re intended to prevent the inadvertent—not in response to a legally binding document production order, but an inadvertent—release of something. If you leave something on your desk, cleaners or others will see it. It’s often-times better to have used a code name in that context. But really the simplest explanation, the explanation that

comes most to mind, is that it's a shorthand. It's a short form, and it provides a catchy approach to a short form.

Mr. Bob Delaney: So to encapsulate, basically to protect the province's interests, be they financial or commercial, while, for example, negotiations and discussions are ongoing.

Mr. Peter Wallace: I think the idea that we would correlate the use of code names, which is a highly informal routine practice, with a more formal notion of protecting the province's interests—it's not inconsistent with the province's interests, but it's done more as a matter of routine and habit. It doesn't relate to any fundamental protection of the province's interests.

To be very frank, we don't go through and have a conversation, "Is this project sufficiently important to have a code name?" or anything like that. It's something that evolves organically from the process and is not particularly unusual or of any particular import.

Mr. Bob Delaney: Okay. I was actually just going to explore the instances of both the Oakville and the Mississauga gas plants. Are you aware of who suggested it, or was this something that evolved organically?

Mr. Peter Wallace: I don't have any insight into the origin of the names.

Mr. Bob Delaney: So you wouldn't know, for example, whether the code names in question originated within the OPS or the Ontario Power Authority.

Mr. Peter Wallace: I would not.

Mr. Bob Delaney: Okay; that's good. In your experience, was the use of code names reasonable for the kind of negotiations that were in progress regarding these two plants?

Mr. Peter Wallace: The use of code names: Whether or not it's reasonable is a judgment question that I find hard to answer. It was routine, and it's part of ordinary practice. To the extent that it has been something that is ordinary, I'd consider it to be reasonable or not in any form unusual.

Mr. Bob Delaney: Were code names in this particular instance used as a means to either block the release of information or deny information?

Mr. Peter Wallace: I can speak to the role of the public service specifically in this area. It would be my view and my knowledge that the government of Ontario by policy and by practice, the public service of Ontario by policy and by practice, will respond to legitimate requests of any document production order, including, of course, the document production orders associated with legislative committees. We would not be so foolish as to stand behind code words.

Mr. Bob Delaney: Let's just back up a little bit, then. Regarding the use of shorthand or code names, was it a reasonable measure at the time to protect potentially commercially sensitive information?

Mr. Peter Wallace: The protection of commercially sensitive information from truly inadvertent release in terms of documents left lying around or inadvertently left on a subway or something like that: It might be argued that the use of a code name—presumably there's some

historic origins to the practice associated with that. To be very frank, in my experience, and I'm not familiar with the exact origin of these code names or these processes, but there is not a conversation that starts and finishes, each time we begin a commercial transaction, around the code names. They either appear or don't appear. It's just part and parcel of the regular dialogue. There's not much thought or effort put into it.

Mr. Bob Delaney: There was a motion passed in the estimates committee in May 2012 to request correspondence from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority. I assume you're familiar with the motion.

Mr. Peter Wallace: I am.

Mr. Bob Delaney: At the time the request was made, were negotiations ongoing with TransCanada and Eastern Power?

Mr. Peter Wallace: Yes. The final settlements were not concluded until late 2012.

Mr. Bob Delaney: In your view, if details surrounding these negotiations had been made public before they were finalized—could you talk about what effect that may have had?

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Mr. Peter Wallace: The ordinary practices of disclosure associated with commercial discovery and other aspects, generally speaking, provide some element of protection of commercial interest and other constructs. The document production orders associated with government committees are, we have found out through legal advice, different and override the traditional statutory and other protections associated with that. Obviously, the release of information in other circumstances has different rules. When you release information under a different rule set, it engages potentially different responses.

Mr. Bob Delaney: Okay. I'd like to talk a little bit about the document search itself. In terms of the scope of the request, in your experience, have you ever seen a request of this magnitude from a committee?

Mr. Peter Wallace: I have extensive experience, and I need to think about that from my context. I do not recall one from a specific committee. We've certainly seen very extensive document production requests from others.

Mr. Bob Delaney: Okay. More than 56,000 responsive records were ultimately produced in respect of this request. Again in your opinion, how does the size of that response compare to other responses you've seen, whether it be in response to, for example, an FOI or otherwise?

Mr. Peter Wallace: It's my view that the Ministry of Energy and the deputy of energy have taken responsibility for the deficiencies in the original search but produced the documents that they felt were responsive to the request in good faith, and the resulting pile of documents—and I'm sorry for the informal language, but it was a very substantial level of disclosure.

Mr. Bob Delaney: Two related questions.

I'd like you to describe some of the challenges this type of undertaking might have presented for both the

Ontario public service and the Ontario Power Authority. Given that the committee requested the responsive records within “a fortnight,” what kind of difficulties would be encountered in meeting that timeline?

Mr. Peter Wallace: I apologize, but I can only speak to the Ministry of Energy.

Mr. Bob Delaney: That’s fine.

Mr. Peter Wallace: I cannot speak to the Ontario Power Authority with any certainty at all.

Document production requests ordinarily take place over a substantially longer period of time. The document production requests which we are most familiar with in this context are generally associated with commercial discovery and litigation. Document production requests are generally fairly burdensome. They imply a high duty on public servants in order to meet those requirements. Obviously, they need to be taken very seriously. We have an obligation to produce those records required but also an obligation to produce only those records that are responsive, not to produce other material or to maliciously comply by simply dumping inadvertent or vast amounts of irrelevant material on the table.

It’s quite challenging for public servants to review the full documentation record and make the appropriate judgments about what is included or not. That typically involves securing legal advice, trying to reach an understanding in the very best of faith about what’s included and what’s not.

That is not, to be very clear, a complaint. We as public servants understand the role of the Legislature and understand the legitimacy of the Legislature’s request. But it is something that requires some time and effort. It’s not by any means straightforward.

Mr. Bob Delaney: Okay. I’m sure you’re aware that there was more than one release of documents in relation to the committee’s request, the first of them being on September 4, 2012, last year. At the time, was it your understanding that all responsive records had been produced to the Clerk?

Mr. Peter Wallace: It’s not my understanding that that was the first release. My understanding is that there were earlier releases of material, but I could be wrong about—

Mr. Bob Delaney: Let me rephrase it, then. Were you satisfied that the Ministry of Energy had done their best to respond fully to the request made by the committee?

Mr. Peter Wallace: I’m satisfied that the Ministry of Energy responded to the request in good faith and worked appropriately to provide the documents requested by the committee.

Mr. Bob Delaney: Okay. Could you provide a bit more insight as to why more documents were released on October 12, 2012, and February 21, 2013?

Mr. Peter Wallace: It’s a question best identified to those who were close to the situation. But my understanding is that, inadvertently, there were elements left out of the original search that were related to people who, for example, had left the organization, aspects associated with that. As soon as the deputy became aware of these

errors, he moved to correct them and release the documents forthwith.

Mr. Bob Delaney: Was responding to this a bit of a learning process within OPS?

Mr. Peter Wallace: We’re still learning about these things.

Mr. Bob Delaney: That’s fine.

I’d like to talk to you a little bit about transition planning. During the writ period—correct me if I’m wrong—my understanding is that OPS engages in a process of preparing for the incoming government.

Mr. Peter Wallace: That’s correct.

Mr. Bob Delaney: So would it be reasonable to assume that the Ontario public service would be keeping an eye on the various campaigns and the commitments that each campaign would make?

Mr. Peter Wallace: We’ll certainly read the papers.

Mr. Bob Delaney: I’m sorry; could you elaborate on that?

Mr. Peter Wallace: We will keep track. As you state, we will keep track of the campaign commitments and evolving evolution of the political parties with a view to being able to work with whoever is invited by the LG to form the government, with a view to working with them and implementing their platform.

Mr. Bob Delaney: So in your 30-some-odd years of working with the OPS, you’ve seen several transitions where the OPS is then tasked with helping that party implement their campaign commitments, right?

Mr. Peter Wallace: Yes.

Mr. Bob Delaney: So there’s nothing unusual about a process where a political party makes a commitment during the campaign, and then that commitment is implemented by that party with the help of the OPS once they’re elected.

Mr. Peter Wallace: That is the routine and expected process, in my expectation.

Mr. Bob Delaney: Then given the degree to which you would monitor the coverage, the commitments—incoming Premier Wynne committed in her throne speech and on multiple occasions that her government would be committed to incorporating more local decision-making in the siting of such energy infrastructure projects as the two plants under consideration.

Mr. Peter Wallace: Mm-hmm.

Mr. Bob Delaney: Okay, that’s a yes?

Mr. Peter Wallace: The way you phrase it is awkward for me to say yes to because it’s “such as the two plants under consideration”; they’re not under consideration anymore. They’ve been relocated—

Mr. Bob Delaney: The two plants that were under consideration.

Mr. Peter Wallace: If they are examples of energy projects, then yes, I can confirm that.

Mr. Bob Delaney: Okay. I think we’re both doing our best to be as specific as we can here.

So you’re also, then, aware that the incoming Premier expanded the mandate of this committee to provide the

House with concrete recommendations on the siting of these plants in the future?

Mr. Peter Wallace: That is not something of which I am aware specifically.

Mr. Bob Delaney: Would you have any recommendations from your perspective and your recent experience on how future plants could be sited?

Mr. Peter Wallace: That's not an area I'm going to choose to speculate on. I apologize for that.

Mr. Bob Delaney: How am I doing on time, Chair?

The Chair (Mr. Shafiq Qadri): Two and a half minutes.

Mr. Bob Delaney: Are there any other comments you'd like to offer the committee?

Mr. Peter Wallace: No. I'm happy to proceed to the next round of questions. I've confirmed my fundamental belief that the government of Ontario public servants have acted appropriately and in good faith. I'd be happy to answer questions about the role of the Ontario public service.

The Chair (Mr. Shafiq Qadri): Mrs. Cansfield.

Mrs. Donna H. Cansfield: I just have a quick question. How many documents would you estimate are in the Ontario government?

Mr. Peter Wallace: Again, that's not something I'd be prepared to—

Mrs. Donna H. Cansfield: But there must be millions.

Mr. Peter Wallace: There will be a very substantial number of documents contained in the Ontario public service.

Mrs. Donna H. Cansfield: So it's not inconceivable that, when you're going through and looking for documents, the possibility exists that you might miss the odd one.

Mr. Peter Wallace: The experience we have had with commercial discovery, and it is a routine experience, is that commercial discovery, both where we are a recipient of documents and where we provide documents, is that there is oftentimes a process of rolling disclosure and that efforts in good faith typically, in fact, do not conclude with an initial disclosure, typically end up with an episode of additional disclosure. That's actually, in my view, generally an indication that the process is working and that people are working in good faith.

Mrs. Donna H. Cansfield: And I suspect that that's been in all governments, not just any particular one in your 31 years of experience.

Mr. Peter Wallace: Sure.

Mrs. Donna H. Cansfield: Thank you.

The Chair (Mr. Shafiq Qadri): Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair. We're done.

The Chair (Mr. Shafiq Qadri): Thank you to the government side.

To the Conservative side. Mr. Fedeli, you have now 10 minutes.

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Mr. Victor Fedeli: I'll just take a couple, Chair; thank you. The first document batch that we had, as Mr.

Delaney outlined, was earlier, in September 2012. The second batch of documents we received on October 12, 2012—October 12. You said that we may have received that because there were people's names missing, that type of thing. Am I correct in hearing that?

Mr. Peter Wallace: Yes. I think the original search may not have captured people who had left the ministry, other aspects like that. Again, this is indirect knowledge; this is something that you will have an opportunity to ask more direct questions of those directly involved.

Mr. Victor Fedeli: The first time we ever heard of Project Vapour was in that second batch of documents that we received for the first time on October 12. This is the first day that the PC Party, the NDP—anybody—received Project Vapour documents: October 12, 20,000 documents.

Yet in the Legislature, Kathleen Wynne on September 25—this is fully three weeks before Project Vapour documents, which we saw on October 12 but you all saw in September 2011—stood in the Legislature and said, "All of the documents that have been released are the documents that were available." This is what Kathleen Wynne said on September 25, three weeks before the Project Vapour documents were released.

The Honourable John Milloy said, on the same day, "So yesterday at noon, every single document that had been requested was released.... The documents have been produced.... The case is closed. The matter is done."

On that same day, the Honourable Deb Matthews said, "The Minister of Energy has complied with the request to release the documents.... The documents have been tabled. That work has been done."

On September 25, the Honourable Rick Bartolucci said, "All the documents associated to those gas plants were released."

This was repeated by a total of 30 members of the Liberal caucus, including several cabinet ministers. This was in September 2012, when we did not receive the Project Vapour documents publicly till October 2012, yet these people, the ones I mentioned, were all recipients of many—many—Project Vapour documents. I am saying to you that these people knew there were documents that were missing. They knew of that secret name, Project Vapour. They knew the secret code name Project Vapour-lock, yet stood in the Legislature three weeks before any—even one—of those documents were released and told us that.

I say to you as well, you said to us that you are satisfied the Ministry of Energy, the Minister of Energy, responded in good faith. But you, sir, as well, in July 2011, received Project Vapour documents. Here we are in 2012—

Mr. Bob Delaney: Chair—

The Chair (Mr. Shafiq Qadri): Just before anyone speaks, I'd just like to make it clear, Mr. Fedeli, that you are essentially accusing—which is your right, perhaps—substantial numbers of honourable members of this Parliament essentially of perjury. I just want that to be understood. And you're borderline out of order—

Mr. Victor Fedeli: What I am doing is repeating what they stated in the Legislature. I'm reading out of Hansard—

The Chair (Mr. Shafiq Qaadri): I will let you continue. You don't have to testify.

Mr. Victor Fedeli: I am reading out of Hansard—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney. Point of order?

Mr. Bob Delaney: I do have a point of order, Chair. The Speaker has already ruled on this matter.

Mr. Victor Fedeli: I appreciate that, but I'm referring to this particular witness now. I am saying that on July 27, 2011—

The Chair (Mr. Shafiq Qaadri): Just before we continue—Mr. Delaney, just to inform you that I will not accept that point of order, although there are elements of validity, because, from our agenda, we are open to consider all these issues.

Mr. Fedeli, I apologize for interrupting you. Please continue.

Mr. Victor Fedeli: No, I appreciate it. Look, we're all trying to get to the bottom of this.

We had 30 members of the Liberal caucus stand up and say that. Several of them were in cabinet at the time that Project Vapour documents were released. You're telling us who received Project Vapour documents back in July. You yourself received Project Vapour documents. You have basically said to us that you take it quite seriously to oversee the public service. I would ask you, why didn't you come forward and say, "There's a file called Project Vapour that you haven't got yet in that pile of 36,000 documents"? I'm asking you that question, and I'll be asking the same question of those other members.

Mr. Peter Wallace: I remind you, with reference to the lengthy preamble to the question—

Mr. Victor Fedeli: I'm sorry?

Mr. Peter Wallace: I remind you, with respectful reference to the lengthy preamble to the question, that I can only speak to those matters pertaining to the Ontario public service. You are asking a question about the role of the public service. I believe that you are offering a direct challenge to me, and let me offer you a very direct assurance that we provided, through the Ontario public service, documents that we understood were responsive to the request of the committee.

I believe you have a substantial business and commercial background. I believe you've understood and known some considerable business success. I believe you will understand as a legislator, as a parliamentarian, that it is the role of public servants to respond specifically to the specific requests of the committee. We responded specifically to the best of my ability, to the best of our ability. I have an opportunity to review with the deputy. I believe that he did not intentionally withhold or obstruct or in any way retard the efforts of this committee. There's no way he would do that.

Mr. Victor Fedeli: So did you turn Project Vapour documents over—

Mr. Peter Wallace: Now, to be very clear—to be very clear—we provided the information to which the committee asked and to which the committee was entitled. That was our fundamental objective, our fundamental goal in conjunction with that.

How that information is used and the interpretations that legislators, you and others, take from that—we do not owe you any obligation in terms of the interpretation of that information.

You ask a direct challenge to me—

Mr. Victor Fedeli: Yes.

Mr. Peter Wallace: If you had asked me at the time, you know, were there other things involved, I would have provided you with that direct answer. We were not asked that question. We were asked to produce the documents. We produced the documents. That is the role of the public service—

Mr. Victor Fedeli: So did you produce Project Vapour documents to the organization that you turned them over to?

Mr. Peter Wallace: We produced all of the relevant documents as we understood them to have been requested by the committee.

Mr. Victor Fedeli: Would that cabinet document with your name on it have been turned over?

Mr. Peter Wallace: The document request—

Mr. Victor Fedeli: In your opinion.

Mr. Peter Wallace: The document request, as I understand it, was to the Ministry of Energy. The Ministry of Energy would not have had, as I understand it, the specific document available—

Mr. Victor Fedeli: So there's a "Rick Jennings (Energy)." Would he be with the Ministry of Energy at the time, then?

Mr. Peter Wallace: He may or may not have had it, but if he did, and it was in his records, it should have been produced.

Mr. Victor Fedeli: I asked you earlier, would a minister have had to sign off on that? You don't think it was the Minister of Energy, then, who signed off on this energy plant?

Mr. Peter Wallace: The Minister of Energy would have, of course—the then Minister of Energy, yes.

Mr. Victor Fedeli: Okay. So again, we don't have these documents back when those 30 people stood up. So I'm asking you again, would you have turned over, in your opinion, the documents that had Ministry of Energy's people's names on them, would you have turned over those documents that said "Project Vapour" and details on TransCanada, named in here as TransCanada—would you have turned those documents over?

Mr. Peter Wallace: The relevant documents, if they fell into the set of documents requested by the public service, requested of the Ministry of Energy, should have been turned over, and it's my belief were turned over.

Mr. Victor Fedeli: From your office to the Ministry of Energy?

Mr. Peter Wallace: My office was not requested by the Ministry of Energy to produce any documents. The

requests, with respect, were to the Ministry of Energy. They were not requested for the Ministry of Energy to go to Cabinet Office to ask for documents—the only request for documents in the possession of the Ministry of Energy.

Mr. Victor Fedeli: So therein lies the rub with these code names, right? We asked for power plant documents. Because it's called Project Vapour, do you think they felt, in the first batch, until something got the better of them for the second batch, when all the Project Vapour files finally submerged—do you believe that?

Mr. Peter Wallace: Let me take a step back. With the indulgence of the committee, let me take a step back.

Mr. Victor Fedeli: I'm sorry?

Mr. Peter Wallace: With the indulgence of the committee, allow me to take a step back.

The Chair (Mr. Shafiq Qadri): I'll need to intervene there. I apologize. Now to the NDP side, Mr. Tabuns. Ten minutes.

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Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Wallace, did you want to just finish that statement?

Mr. Peter Wallace: I do.

Mr. Peter Tabuns: Then please—

Mr. Peter Wallace: Thank you. I appreciate the courtesy in this context.

The Ontario public service, of which I am privileged to be the head, has no interest in the concealment of information in this area. If it does, then we have made very serious mistakes and there should be serious consequences associated with that. We were required by law—emerging, complicated, difficult-to-understand law, but nevertheless by law as we understood it—to provide the production of a range of documents in response to the request. The request itself was very specific. It was to the Minister of Energy, to the Ministry of Energy and to the Ontario Power Authority. I can assure you that I'm not aware of any instance in which public servants withheld documents that were appropriately included in that search.

So from that standpoint we come to the committee with an effort to be helpful. If you want additional documents, additional requests, want to broaden the search terms, then there is an appropriate forum to direct public servants in order to obtain the broader information. The use of code words and other things should not and in my view did not obstruct the provision of information. What has been a barrier—and when we talk about “therein lies the rub,” what has been a barrier has been the specificity of the request. Because remember, we are trying to produce documents responsive to the request. That is at least part of the challenge. Remember that we work in an environment that requires us to get legal counsel, an environment where we take our responsibilities associated with disclosure very, very earnestly and directly. So in this context I speak of the role of the public service. We have been clear, in my view, have been working in good faith.

There is absolutely no doubt that we have made errors. There is absolutely no doubt that in the production of a large number of documents there were slip-ups. And these slip-ups were partly as a result of urgency, but partly as a result of people just not thinking things through. We've learned important lessons from that around our document search protocols, about how we treat people who are away on holidays, how we treat the files of those who have left, all of those other things. We'll continue to try and comply with all the legitimate document requests in the very best of faith.

My apologies for that—

Mr. Peter Tabuns: No, I understood that you wanted to make that statement. I appreciate the clarity.

I have some questions for you.

The relationship between the Ontario Power Authority and the government of Ontario—what does “arm's length” mean in the understanding of the civil service?

Mr. Peter Wallace: The governance of it is established by a series of formal and informal protocols, but the ordinary practice of the corporation is to act independently of the government of Ontario. Hiring, firing, staffing—all of those things are under the purview of the CEO, who is hired. The administration is overseen by the board.

Mr. Peter Tabuns: Does the government of Ontario have the ability to simply direct the OPA to do one action or another?

Mr. Peter Wallace: They do. By statute there is a provision that allows—and this is my recollection; you'll need to check this directly. My recollection is there is a directive-making power established in the legislation that allows the Minister of Energy to specifically direct the Ontario Power Authority.

Mr. Peter Tabuns: Maybe I've missed something here, but why do I consider them at arm's length if in fact I can drive them wherever I want to drive them?

Mr. Peter Wallace: It's a fairly common form of governance, and for many, many decades—this is common in virtually all forms of government. We have these enterprises that have a quasi-private, quasi-public purpose. The idea of the OPA was to allow it to be a credit-worthy counterparty to establish new sources of energy production, backstop that financially, and to allow it to operate on commercial terms. It is also an instrument of government policy. In order to, as I understand it by statutory design, allow it to have both of those functions, it is expected to function ordinarily on a commercial basis, but in specific circumstances if the government wants to provide it with a policy direction in which it would not operate on a commercial basis, it's available to the government to offer and then publish a specific policy direction associated with a specific action—

Mr. Peter Tabuns: Thank you for that.

Mr. Peter Wallace: —and that exists in that and a variety of other crown corporation mechanisms. It's fairly common.

Mr. Peter Tabuns: Okay. In your opening notes today, you said, “I note as well that my predecessor took

measures to impose a screen on further involvement by selected political staff in the Oakville matter after becoming aware of an early outreach by those staff to the proponent.”

Which political staff were reaching out to Trans-Canada enterprises, and what were they doing?

Mr. Peter Wallace: My understanding is that Shelly Jamieson and—I’m sorry, the other name is on the tip of my tongue; I’ll come up with it in a minute, and if I can’t, I’ll make sure it gets to you—were engaged in early outreach to the company. I don’t know the purpose of the outreach.

Interjection.

Mr. Peter Wallace: Sean Mullin. Excuse me.

Mr. Peter Tabuns: Okay. So, “impose a screen”—effectively, “Stop doing that.”

Mr. Peter Wallace: Yes. I think the specific concern Ms. Jamieson had was that there was threatened litigation and they might be a witness or a party—they might be included in the legal aspect and potentially open the government to additional exposure, and she wanted to ensure that that was limited.

Mr. Peter Tabuns: Okay. You’re familiar with the private power contracts for provision of power in the province of Ontario?

Mr. Peter Wallace: I’m certainly familiar with the basic constructs of them, yes.

Mr. Peter Tabuns: Can you tell us generally what rate of return is set for investors?

Mr. Peter Wallace: I’m afraid I don’t know that specifically.

Mr. Peter Tabuns: Okay. One of the things we encountered time and again, as we went through the documents, was the apparent risk that was run in these private power contracts: that if we were to terminate them, we may be stuck with paying not just for the physical losses of putting a foundation on a site, but 20 years’ worth of profits. How substantial was that risk in your mind in dealing with these two contracts?

Mr. Peter Wallace: I can’t speak to understanding the risk. What I can speak to is the policy direction provided to us by the government, which was to ensure the relocation of the plants on terms for the proponents that were similar to the original business proposition they had signed up for.

Mr. Peter Tabuns: So you were not involved at any point in assessing the risk of this or that course of action with regard to these plants?

Mr. Peter Wallace: Not me specifically.

Mr. Peter Tabuns: Were you familiar with the problems encountered by Eastern Power Developers in getting financing for the Greenfield South power plant?

Mr. Peter Wallace: Only retrospectively.

Mr. Peter Tabuns: Did you not find it unusual that a company with a guaranteed 20-year contract with a very substantial customer like the Ontario Power Authority wasn’t able to get financing?

Mr. Peter Wallace: I spoke earlier about the challenges associated with implementing the government’s

policy direction on this file, and I made reference in that context, maybe a touch too obliquely, to the challenges associated with the contracts themselves and then with the financial and other backers associated with that. I think it’s fair to say that those who were engaged in the relocation discussion found additional barriers to the relocation discussion associated with the financial backstop contracts that had been entered into by Greenfield, yes.

Mr. Peter Tabuns: And what were those additional barriers they encountered?

Mr. Peter Wallace: That the interest rates were high and that the provisions associated with it provided the financial backstop with a fairly high degree of recourse.

Mr. Peter Tabuns: And if these had been publicly owned and publicly financed, would we have faced the same sorts of barriers?

Mr. Peter Wallace: Obviously I can’t speculate about that.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Peter Tabuns: Really? You have not looked at a comparison between the public and private financing of power in your course in energy, finance and now in cabinet?

Mr. Peter Wallace: If you really want an answer, in my 31 years, I’ve also seen \$17 billion worth of unfunded liability coming out of Ontario Hydro and I’m not prepared to make a definitive proposition conclusion about the risk of public versus private power.

Interjection.

Mr. Peter Tabuns: No, no.

Did you have any involvement with the decision to pay for the cancellation of the Mississauga plant through general revenue rather than from hydro rates?

Mr. Peter Wallace: I understood the dialogue occurred and I may have had a peripheral involvement in the conversation, yes.

Mr. Peter Tabuns: And do you know why that decision was made—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. I’ll intervene there. The last round of questioning is to the government side, Mr. Delaney: 10 minutes.

Mr. Bob Delaney: Thank you very much, Chair. Just before I begin, I’d like to raise a brief point of order. After we’re finished with Mr. Wallace, may I propose just a five-minute break before we get on to the next witness?

Mr. John Yakabuski: That’s the first good motion you’ve made at the committee. We’re with you.

The Chair (Mr. Shafiq Qaadri): You have overwhelming support, Mr. Delaney. Please enjoy it.

Mr. Bob Delaney: Okay.

The second one is a point of privilege, Mr. Chair. I’d like to table with the committee a copy of Hansard from this committee, from March 5, where the government in fact moved a motion to do what Mr. Fedeli was asking Mr. Wallace about, which is to expand the document search government-wide. Though one paragraph on political parties was ruled out of order, the motion, minus

that one paragraph, was in fact put to a vote. As is very clear, all opposition members did vote against that motion. I just put that as a—

The Chair (Mr. Shafiq Qaadri): We accept your document. Ruling forthcoming later. Please continue.

Mr. Bob Delaney: Thank you very much.

Mr. Wallace, thank you for your time. In light of the questions that we've asked, I'd like to ask you just an open-ended question: Is there a point or a series of points that you would like to make to conclude your time with us here today?

Mr. Peter Wallace: No, I'm comfortable with the testimony I've provided. I've answered the questions.

Mr. Bob Delaney: Thank you very much, sir. I don't think we have any further questions. Chair, I believe we're done.

The Chair (Mr. Shafiq Qaadri): All right. Thank you, Mr. Delaney. Thank you to the government side.

I'd like to thank you, Mr. Wallace, for your presence, for your continued stewardship as secretary of cabinet and also for appearing before this committee from, no doubt, your otherwise free day. Thank you.

Mr. Rob Leone: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): We're in recess for five minutes, as agreed, and you may now speak to me.

The committee recessed from 1632 to 1644.

The Chair (Mr. Shafiq Qaadri): The committee is now back in session—as you know, deliberating all day.

I believe we have a motion from Mr. Fedeli. I'd invite you to please read it into the record, Mr. Fedeli.

Mr. Victor Fedeli: Pursuant to standing order 110(b), whereby each committee shall have power to send for persons, papers and things, the Standing Committee on Justice Policy hereby instructs the secretary of cabinet to produce by 11 a.m. on the fortnight from the passage of this motion, any and all documents, correspondence, emails, attachments, missives, notes or any communications without redaction outlined below related to the Oakville and/or Mississauga gas plants, including but not limited to any document under any circumstance hidden or covered by a code name and that the following be provided:

(1) List of names, titles and roles of all political staff in the Premier's office, the office of the Minister of Finance and the office of the Minister of Energy, past or present, who were involved with or had knowledge of the planning, spending, locating, cancelling and/or relocating of the Mississauga and/or Oakville gas plant matters;

(2) A list of the names of all ministers present during any and all cabinet meetings or cabinet committee meetings where either the Oakville or Mississauga gas plants were discussed, or where ministers were briefed, provided documents and/or where decisions were rendered;

(3) All documents ordered under the scope of the original document production order as issued by the Standing Committee on Estimates and that it be expanded to include, as defined above, all documents—with emphasis, "all documents"—regardless of status or privilege from the Office of the Premier, the cabinet office, the

Ministry of Finance and/or the office of the Minister of Finance without redaction or any alteration; and,

(4) That four sets of the above documents be printed in paper and delivered to the Clerk for distribution to each caucus of a recognized party, and that the fourth batch be turned over to the Library of Legislative Assembly; that the government provide all documents in searchable electronic format.

The Chair (Mr. Shafiq Qaadri): Before we entertain any comments, I'm going to have to recess the committee one more time in order to rule whether this is in order or not. So the committee is now in recess, most likely indefinitely.

The committee recessed from 1646 to 1700.

Mr. Victor Fedeli: Mr. Chair, I would like to withdraw the motion before the committee is back in session.

The Chair (Mr. Shafiq Qaadri): Thank you, ladies and gentlemen, for your endurance and patience. The motion is out of order.

Mr. Fedeli, I acknowledge your somewhat late but nevertheless noble attempt to withdraw the motion.

MS. JOANNE BUTLER

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward. J'ai le plaisir maintenant d'inviter JoAnne Butler to please come forward.

Ms. Butler, thank you for coming. Just before I read to you the protocol, I invite you to please be sworn in. Please be seated.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Ms. JoAnne Butler: Yes.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Butler. As no doubt you've seen the protocol, we'll have rotating time frames, 20/20/20, 10/10/10. You have at the outset, at the front end, five minutes in which to make an opening statement, and I invite you to please begin now.

Ms. JoAnne Butler: Thank you, Mr. Chair. I am vice-president of electricity resources for the Ontario Power Authority. My department is responsible for procuring generation sources, providing policy and analysis advice, and administering the contracts of electricity generators.

I graduated from the civil engineering program at Queen's University, and I have worked in the energy sector for 35 years.

Prior to joining the OPA in 2008, I was president of TransAlta Mexico, where I was responsible for the day-to-day operations during the construction, start-up and operation of its two Mexican gas-fired electricity generation plants. Before that, I was TransAlta's Calgary-based general manager for western operations and responsible for the operation of four new generation stations.

I also worked in the oil and gas exploration sector for Amoco Corp. for 21 years in Canada and abroad.

I am proud of the key role the Ontario Power Authority has played in stabilizing Ontario's electricity supply by procuring and overseeing new sources of generation. Since its inception in 2004, the OPA has contracted for 16 new natural gas facilities in Ontario, including the plants that are of particular interest to this committee.

I want to advise you, though, upfront that although many of my own documents have been disclosed to you, I have had no involvement in the document disclosure process at the OPA.

In my position at the OPA, I've been involved in the planning, procurement and relocation of the Oakville generating station and in the contract administration and relocation of the Mississauga plant.

On Oakville first: As a courtesy to the committee, I have provided the Clerk with a backgrounder on the procurement process for the Oakville generating station.

In August 2008, the Ministry of Energy directed the OPA to competitively procure a new gas-fired generation plant in the southwest GTA. As a result of this, the OPA signed a contract with TransCanada Energy on Sept. 30, 2009.

On October 7, 2010, the Minister of Energy announced that the plant would not proceed. We eventually determined that TransCanada had spent \$40 million in developing the Oakville plant to that stage. These are sunk costs and represent spending on goods and services that could not be used at a new location.

On September 24, 2012, the OPA and TransCanada agreed that TransCanada would develop a 900-megawatt natural gas station at the site of Ontario Power Generation's Lennox generating station in Napanee.

A memorandum of understanding, which was made public on September 24, stated that there would be other costs to the relocation in addition to the \$40 million in sunk costs. This included the extra costs to get gas to the plant in Lennox and for connecting the plant to the province-wide transmission system.

Given the uncertainty of some of these costs and the desire to lower risk for electricity customers, the OPA agreed to take on some of these costs directly. In exchange, TransCanada accepted a lower monthly payment.

The OPA has been clear since the time the decision was made to cancel the Oakville plant—and the relocation of the Mississauga plant that transmission is needed as a replacement in the west GTA sooner than originally planned. We also have been clear that there is a cost associated with advancing the schedule.

The contract with TransCanada Energy was finalized on December 14, 2012, based on a memorandum of understanding and a directive from the Minister of Energy.

To Mississauga: The Ministry of Energy procured the 200-megawatt Mississauga Greenfield South plant before the OPA was established, and we assumed responsibility for it in 2005. Construction began in May 2011.

Following the election in October 2011, the government instructed OPA to stop construction of the Greenfield South plant.

The OPA eventually determined that the sunk costs for the Mississauga facility were \$190 million. They are higher than the Oakville sunk costs because construction had started. As with the Oakville plant, there are other costs in addition to the sunk costs for relocating the plant.

On July 10, 2012, the Minister of Energy announced an agreement to relocate the plant to Lambton, near Sarnia.

The government was a party to the negotiations that resulted in the relocation of both power plants. In the case of the Oakville plant, it was represented by the Ministry of Energy and by Infrastructure Ontario. For the Mississauga plant, the government was represented by Ministry of Energy staff, and also hired a third-party negotiator.

Overall, the OPA did its job, and I will be pleased to answer—

Le Président (M. Shafiq Qadri): Merci beaucoup, madame Butler, pour vos remarques introductoires. Je passe la parole maintenant à M. Tabuns de la NPD. Vingt minutes maintenant.

Mr. Peter Tabuns: Thank you, Mr. Chair, and thank you, Ms. Butler, for being here this afternoon. I appreciate it.

For months, the Liberal government has said that the cancellation of the plant in Oakville cost \$40 million. Sometimes they're more careful: The former Minister of Energy said \$40 million in sunk costs and didn't go beyond that. Sometimes they're a bit looser: The former Premier said "\$40 million, we nailed it." Recently, Mr. Chiarelli has said "\$40 million: The number could be wrong; we relied on the OPA to do the contract analysis."

Can you comment on whether or not the government knew that there were more than \$40 million in costs associated with this cancellation?

Ms. JoAnne Butler: The OPA has been very specific that the \$40 million were sunk costs that could not be repurposed at a new site. The memorandum of understanding, which the government was a party to, also indicated that there were going to be additional costs. They were TBD at the time—

Mr. Peter Tabuns: TBD?

Ms. JoAnne Butler: —to be determined, because of some other engineering work that had to be done. But they were party to that memorandum of understanding and knew that there were going to be other costs associated with relocating the plants.

We'd also been very clear, and it was noted in their long-term energy plan, that if the generation solutions did not go ahead in the southwest GTA, we would need to bring forward the transmission solution from 2029 to 2019.

Mr. Peter Tabuns: And that cost, if I remember correctly, is around \$200 million, or that was the amount budgeted by the OPA.

Ms. JoAnne Butler: Well, our view is, you know, it's one or the other. Our view is, if you're going to a transmission solution, which is a perfectly acceptable way to increase the reliability, we've assumed the differ-

ential costs in moving that capital investment forward. And that's the number we're using as the cost of transmission.

Mr. Peter Tabuns: So the Minister of Energy—or the Ministry of Energy, if he has not yet been fully briefed—would have been fully aware that the costs were greater than \$40 million when the decision was made to cancel and relocate. Is that a fair statement?

Ms. JoAnne Butler: I can't comment on the briefings of the minister.

Mr. Peter Tabuns: The government was involved and saw the memorandum of understanding, the MOU?

Ms. JoAnne Butler: They were at the negotiating table, represented by Infrastructure Ontario, and they also had their own legal counsel, as well as the OPA.

Mr. Peter Tabuns: And who was the person at the negotiating table from Infrastructure Ontario?

Ms. JoAnne Butler: At the time of the contract, the memorandum and going forward to the contract, it was their CEO, Bert Clark.

Mr. Peter Tabuns: Okay. So it wasn't just the OPA that understood that \$40 million was only a part of the cost. The government understood, or at least Mr. Bert Clark and the Ministry of Infrastructure would have understood, that there was a lot more than \$40 million riding on this.

Ms. JoAnne Butler: Well, the government was a party and signed the memorandum of understanding, so they were aware of what was in the memorandum of understanding.

Mr. Peter Tabuns: Okay. Can you go through the number of elements that we have to factor in as costs to ratepayers or taxpayers in Ontario for this cancellation? Obviously, there were the sunk costs, and then there's the cost of building transmission lines that would not have been needed at this point if the plant had gone ahead. Were there other costs that we should be aware of?

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Ms. JoAnne Butler: So, the costs can be bucketed, as you've started out—yes, there were sunk costs. Yes, there were costs to the transmission system, to upgrade the transmission system, because the plants were moved to a new location. There were other costs that were very project-specific to the project: to connect its gas and to connect its electricity connection. There were other costs associated with gas services in the Napanee contract—

Mr. Peter Tabuns: Which contract? I'm sorry.

Ms. JoAnne Butler: The Oakville—now Napanee—contract, if you will.

Mr. Peter Tabuns: Okay.

Ms. JoAnne Butler: There were costs associated with us taking on the gas demand and management services—yes. They were all outlined in the memorandum of understanding.

Mr. Peter Tabuns: And the gas demand and management services: Do you personally have a net present value for that?

Ms. JoAnne Butler: Yes, we do.

Mr. Peter Tabuns: Can you tell us what that number is?

Ms. JoAnne Butler: Yes. Using a couple of different discount rates, we do have a range of numbers for that. Our estimation is \$319 million to \$476 million.

Mr. Peter Tabuns: So, in fact, that's consistent with the numbers that Mr. Bruce Sharp presented to us. He said somewhere in the mid \$300 million.

Ms. JoAnne Butler: I can't comment on his analysis.

Mr. Peter Tabuns: No. Sorry; more for my reference than yours, your figures have a range that is similar to his. The government would have been aware, given that they signed the memorandum of agreement, that these costs were going to be on the government's shoulders?

Ms. JoAnne Butler: They knew that. That was part of the memorandum of understanding, yes.

Mr. Peter Tabuns: Okay. What role did the government have in negotiating the TransCanada Enterprises agreement?

Ms. JoAnne Butler: Are you referring to the original one or the new one?

Mr. Peter Tabuns: The new one; sorry. From the date of cancellation, what was their role, their involvement, in the negotiations?

Ms. JoAnne Butler: There was no direct involvement with the government. After the cancellation of the plant, it was left to the OPA to come up with a new arrangement that would provide value to the electricity ratepayer and move forward with a new project. There was no direct involvement at that time.

Mr. Peter Tabuns: Okay. On October 18, 2010, you wrote to Michael Killeavy, saying "government has backed us into a corner ... doubt that we will be allowed to go to litigation so let's just get on with it and see what options they can put forward." Can you explain what corner they put you in and how they put you there?

Ms. JoAnne Butler: The government had been talking to TransCanada without, certainly, my knowledge and had made certain commitments around the contract. We were asked to look at those commitments and repurpose that into a valuable project for the ratepayer.

Mr. Peter Tabuns: And when we say "government," are we talking about the Premier's office? Are we talking about the Minister of Energy? Who, precisely, are you talking about when you refer to the government?

Ms. JoAnne Butler: The gentlemen that I was talking to—one was from the Premier's office and one was from the minister's office.

Mr. Peter Tabuns: And the one from the Premier's office was?

Ms. JoAnne Butler: Sean Mullin.

Mr. Peter Tabuns: And the one from the minister's office?

Ms. JoAnne Butler: Craig MacLennan.

Mr. Peter Tabuns: Okay.

Ms. JoAnne Butler: Or did I get those backwards? Sorry.

Mr. Peter Tabuns: I don't know if you got them backwards.

Ms. JoAnne Butler: Sean Mullin was from the Premier's office and Craig MacLennan was from the minister's office.

Mr. Peter Tabuns: Okay, fair enough.

On October 18, 2010, Deborah Langelaan, manager of contract management, wrote, "Last Friday afternoon JoAnne, Ben"—Chin—"and I met with representatives of TransCanada to discuss the repudiation of the SW GTA contract. It was the inaugural meeting and it went well. TCE indicated that their preference is to move the facility to another location and they suggested it was also the province's preference."

Can you explain why the government was negotiating with TransCanada before you were?

Ms. JoAnne Butler: No, I can't explain that.

Mr. Peter Tabuns: Okay. Is it standard practice for them to do this?

Ms. JoAnne Butler: Not—that was the first time I'd seen that happen in my tenure with the OPA.

Mr. Peter Tabuns: All right. And again, when you say "the province" in these matters, who are you talking about?

Ms. JoAnne Butler: Again, generally my counterpart is in the minister's office or the bureaucracy, the ministry.

Mr. Peter Tabuns: Okay. What was Ben Chin's role in all these discussions, given that he was doing communications?

Ms. JoAnne Butler: I can't comment on what Ben was doing or saying. I was not in those conversations. He was our VP of communications and stakeholder relations and government relations.

Mr. Peter Tabuns: But he was part of the group that, with you, met with TransCanada Enterprises?

Ms. JoAnne Butler: He was at some of the initial meetings, yes.

Mr. Peter Tabuns: And his role in those meetings was?

Ms. JoAnne Butler: I think in his role as vice-president of government relations and stakeholder relations, he wanted to be involved in where the negotiations were heading.

Mr. Peter Tabuns: On November 17, 2010, Michael Killeavy wrote to you, saying, "Gov't has I think promised an agreement with TCE by 15 December. This is far too soon. We don't even know what we're building yet. No one seems to know what the gov't promise of 'keeping TCE whole' means. Is it the profit earned at OGS or matching the rate of return? How do we reach agreement if we don't know what was promised?"

"This is really a mess. Far too many people involved and no one accountable for making decisions. We are going to get into trouble."

I asked Mr. Wallace earlier, and I need to understand what your thinking was, so I can understand what instructions you received. What did keeping TransCanada whole mean?

Ms. JoAnne Butler: We weren't quite sure because we weren't involved in the commitments, in the meetings

that commitments were made to TransCanada. Our assumption was that they wanted the financial value of their contract. But we shared Mr. Killeavy's concern about clarity and what we were supposed to do.

Mr. Peter Tabuns: Again, who was it who had met with TransCanada Enterprises and said, "We will keep you whole" with this?

Ms. JoAnne Butler: I do not know.

Mr. Peter Tabuns: Okay.

Did that put you in a very difficult bargaining position?

Ms. JoAnne Butler: Yes, it did.

Mr. Peter Tabuns: Did it mean that there was very little you could actually do to get a better deal for Ontarians?

Ms. JoAnne Butler: Not necessarily, no. Once the decision was made to not proceed with those projects, it was our responsibility then to parlay that into another commercially reasonable deal. That was where our efforts went.

Mr. Peter Tabuns: The comment "We are going to get into trouble": What sort of trouble were you and your colleagues concerned about at this time?

Ms. JoAnne Butler: The issue at that time was the quality of the information that we were receiving in order for us to do the work that we needed to do and to do our analysis. I suspect that comment was about—we're not going to be doing the proper job that we need to do, which is protect the interests of the ratepayer, check the veracity of the information and do our analysis.

Mr. Peter Tabuns: So, in other words, you didn't have the fundamental tools you needed to make sure we got the best possible deal for ratepayers in Ontario.

Ms. JoAnne Butler: At that time, we had serious concerns that we did not have the data that we required to—when we came forward under a situation like this or an auditor—that we could do what we needed to do and relocate that plant.

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Mr. Peter Tabuns: Okay. On January 26, 2011, you and Michael Killeavy—I'm sorry, am I pronouncing that name correctly?

Ms. JoAnne Butler: Yes.

Mr. Peter Tabuns: I am? Okay—discussed a meeting you were going to have with TransCanada. In an email, Mr. Killeavy said, in regard to the settlement discussions:

"Okay, I understand. The messages will be:

"(1) We know nothing of any express financial commitment to be included into the deal. TCE needs to go to the guys that allegedly made this deal to get instructions in writing to the OPA."

Who were the guys who allegedly made the deal?

Ms. JoAnne Butler: The conversations that TransCanada had with the government, wherever they were, prior to letting us know what those commitments were.

Mr. Peter Tabuns: And so you never knew who TransCanada was talking to or negotiating with?

Ms. JoAnne Butler: Honestly, no. I do not know.

Mr. Peter Tabuns: Did you ever get that express financial commitment in writing?

Ms. JoAnne Butler: No.

Mr. Peter Tabuns: On November 30, 2011, you emailed Michael Killeavy, who was director of contract management at the OPA, and you wrote:

“Mike, this is frightful ... as we have discussed in the past, I have a huge issue around overall governance. We hold the contract, and the gov. is making deals around us. Surely, our board must be starting to get uncomfortable with this. Is it not time to assign the contract to the gov. and let them get on with doing what they want since, as they keep telling us, it is mostly their nickel anyway.”

This was more than a year after the contract was cancelled. What were the circumstances that caused you to write this?

Ms. JoAnne Butler: Okay. It goes back to the very initial concerns that we had that we were not getting the data that we needed. A piece of paper, a pro forma, is not going to stand up to the integrity of an auditor or a committee. We needed to get information. We needed to get information that supported the financial outcomes and basic information about developing a power plant.

It ended up that the OPA and TransCanada deals did break off, and the government brought in Infrastructure Ontario. Infrastructure Ontario was then charged with—and we agreed that we would go to arbitration and let a third party determine the value. That quote was around, going to the arbitration agreement, and my concern in that quote was, even going forward in arbitration, they were still holding back documents and document disclosure. It was very concerning to me, because one of the fundamental tenets of arbitration is fulsome document disclosure.

Mr. Peter Tabuns: And when you talk about holding back on document disclosure, you’re talking about TransCanada at this point?

Ms. JoAnne Butler: Yes. We ultimately got them, but that quote was around, “We’ve been at this for a year now to get good data. We’re going to arbitration to get good data, and we’re still getting some resistance in terms of disclosing the documents.”

Mr. Peter Tabuns: So you were trying to deal with TransCanada, and if I read this correctly, at the same time the government was negotiating around you.

Ms. JoAnne Butler: At that point, Infrastructure Ontario was taking the lead in the negotiations with TransCanada. We were playing supporting roles in the planning—potential locations, engineering analysis, getting third-party, independent vetting of the data etc.

Mr. Peter Tabuns: And who at Infrastructure Ontario, which individuals, had carriage of this file?

Ms. JoAnne Butler: David Livingston was the lead on this file.

Mr. Peter Tabuns: All right. On September 21, 2011, again, Mr. Killeavy wrote to you regarding the Missis-sauga cancellation, saying, “It’s OGS all over again.” What did that mean to you?

Ms. JoAnne Butler: I think the government’s been very clear that they made the decision to cancel both

those plants, and they’ve been very clear as to why they cancelled those plants.

Mr. Peter Tabuns: So, effectively, it was the same experience you’d had. You were given responsibility to sign a commercial agreement with a generator. You proceeded with that, and without your involvement, a decision was made to cancel the contract, and you were simply told to go off in that direction?

Ms. JoAnne Butler: Well, there was a forewarning of it as an election promise. Then we got a letter from the minister that said to deal with Greenfield South.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Peter Tabuns: Okay. Michael Lyle, the OPA general counsel, wrote that it might be better to fudge who was actually engaged in ongoing negotiations with TCE by just starting with “discussions are ongoing”. Why would this have been necessary at that time?

Ms. JoAnne Butler: I don’t understand the context of that from—

Mr. Peter Tabuns: Fair enough. Emails around December 10, 2010, discuss a draft directive, in which Michael Killeavy asks, “Could we put an ‘out’ option in the directive that states that if we can’t negotiate an agreement with TCE that is in the best interests of the ratepayer, we don’t need to conclude an agreement at any cost?” What happened to that directive?

Ms. JoAnne Butler: So that directive never—

The Chair (Mr. Shafiq Qaadri): With apologies, I’ll need to intervene there, Mr. Tabuns.

Before I hand it over to the government side, just to let the committee members know: Unlike everything else in this place, this committee does not expire at 6 p.m. Mr. Delaney.

Mr. Bob Delaney: That’s comforting to know, Chair. Ms. Wong will begin our questions.

Ms. Soo Wong: Thank you very much for being here. Sorry for the delay. Mr. Chair, through you to the speaker here today: In your presentation, both your written and verbal presentation to us, on the first page, in the last paragraph you alluded to, “On October 7, 2010, the Minister of Energy announced that the plant would not proceed. We eventually determined that TransCanada had spent \$40 million....” Can you share with us who is the “we”?

Ms. JoAnne Butler: “We” is the Ontario Power Authority.

Ms. Soo Wong: Okay. The OPA, right?

Ms. JoAnne Butler: Yes.

Ms. Soo Wong: Okay, and it was the OPA. You as the vice-president made that determination, or was there a committee?

Ms. JoAnne Butler: TransCanada had given us their costs. We had them audited by an external party, and the amount of funds, the amount of money that could not be repurposed into a new location—which could be some engineering design, permitting, legal etc.—was determined to be \$40 million.

Ms. Soo Wong: Okay, all right. My next question, Mr. Chair, through you to the deputant, is with regard to

the OPA determining the site. I want to ask some clarification here. Can you share with the committee, with respect to—now, it's my understanding that there was a competitive bid for RFP. Can you also share with us the role of OPA in terms of determining the site of a natural gas plant?

Ms. JoAnne Butler: Yes, I can. In fact, I'd like to refer you to the document that I brought. I can go through this in an organized fashion. I can make it summary points.

I think fundamentally the need was identified through our integrated power system plan. There were three areas: reliability, there was growing demand, and there was an off-coal strategy. So we needed more megawatts to bring onto the system.

When that need was identified, the government directed us, on August 18, 2008, to procure a gas-fired power plant in the southwest greater Toronto area. The Ministry of Energy also said that we shouldn't consider Lakeview Generating Station as a site.

We have a two-stage competitive process. The private developers will look at that directive, and that directive gave a geographic area in which a power plant could connect. It basically said south Oakville, south Etobicoke, south Mississauga and between the Manby and Oakville transformer stations.

The private developers went out and looked for sites in those areas. When they put their bids in, they put their bids in with a specific site. When we look at those bids, we need to know that they have site control and they have site control to the transmission system.

There are also some criteria around municipal permits etc. The bid goes in, we put it in the financial model, and the combination of graded criteria and low cost basically determines who the proponent is, who the winner of that competitive procurement is, and the site goes along with it. The private developers find the sites according to a very specific geographical and specific electrical connection.

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Ms. Soo Wong: Thank you for sharing the process.

My second question, Mr. Chair, through you to the deputant: Am I correct to say that the OPA drove the process of determining the site?

Ms. JoAnne Butler: No. We identified an area of need in the greater Toronto area for reliability, for demand in the area that was growing and for capacity for off-coal. The minister, in the directive, specified a geographic area and an electrical connection line, basically, which we put in our bid documents. The private companies went out, took those parameters and went around and looked for sites that would fit into the bid document, that would give them a chance of succeeding and moving forward in the competitive procurement.

The Chair (Mr. Shafiq Qadri): Mr. Delaney.

Mr. Bob Delaney: Thank you for coming in. As you were involved in both gas plant relocations, is it safe to say that you were well aware of the costs of each deal?

Ms. JoAnne Butler: Not immediately, no. We had to work with the private companies to determine what their costs had been and what they had spent. We had to get information on that.

Mr. Bob Delaney: In terms of the Oakville power plant relocation, could you enlighten us a little bit on where the \$40-million sunk cost figure comes from?

Ms. JoAnne Butler: Yes. It comes from information from TransCanada which outlines invoices, bills etc., what it cost them to develop this project to the stage to where it was cancelled, which was basically in the trying to get approvals and planning stages.

Mr. Bob Delaney: Again, just for the purposes of clarification, what would be one or two examples of expenses that would be included in that \$40-million sunk cost figure?

Ms. JoAnne Butler: It could be legal expenses, looking at the planning, starting the environmental assessment work, public consultations, stakeholdering. They were out in the communities; it could have been going to try to have realtors—real estate land people, as they are called—going out and looking for those sites to ultimately where they got the site.

Mr. Bob Delaney: In the course of putting together the original set of parameters for the two plants, transmission upgrades were included. Were transmission upgrades necessary in any event?

Ms. JoAnne Butler: I can't speak for the first plant. It wasn't an OPA procurement. Could you ask your question again?

Mr. Bob Delaney: Okay. For the plant that you can speak for, transmission upgrades were part of the costs. Would transmission upgrades have been required in any event?

Ms. JoAnne Butler: Yes.

Mr. Bob Delaney: All right. So they would be separate and distinct from what we would term sunk costs. In other words, these are expenses that—one way or the other, in order to continue to reliably deliver electric power from the grid to consumers, transmission upgrades are required.

Ms. JoAnne Butler: It's in the long-term energy plan. It clearly says if generation is not going ahead in the southwest GTA, we need to move ahead with the transmission solution.

Mr. Bob Delaney: Could you talk a little bit about some of the savings that you negotiated from the lower costs of energy so that some of the other costs related to the Lennox facility would be offset by those savings?

Ms. JoAnne Butler: Yes. That was obviously to the benefit of the ratepayer. Ultimately, what happened was the best possible thing that happened. We put the plants on wheels, and we moved them somewhere else. The focus then was, "Okay, we still want to get a good deal for the ratepayer." The original prices were good. They were benchmarked and baselined against a competitive procurement, so we knew people had sharpened their pencils. We wanted to parlay that into a new good deal for the ratepayer. In the negotiation, because we were

taking on some of the gas demand management fees, because we were giving them an up-front cash payment on the turbines and paying for their sunk costs, we did get a lowering of what we call the net revenue requirement or the monthly payment—I think you’ve heard about that.

Mr. Bob Delaney: Every day on the way into Queen’s Park, I swear to God, I am stuck in traffic behind that power plant on wheels.

Could you talk a little bit about some of the savings for Oakville on the new arrangement?

Ms. JoAnne Butler: Yes. The original net revenue requirement for the Oakville plant was \$17,277. In the terms of the negotiation, that number was lowered to \$15,200.

Mr. Bob Delaney: Okay. To move on a little bit to the costs of relocating the Mississauga plant: Could you provide a little bit of explanation of where the \$190-million sunk-cost figure comes from?

Ms. JoAnne Butler: Yes, I can. It was a different environment in that one, because the plant was under construction. There was cement in the ground; there was iron being constructed. Quite a significant amount of material had been bought. The biggest sunk costs in that one were paying off the creditors, and the fact that there were other trade creditors who were involved in the construction of the plant—and equipment, too, that was going into the plant.

Mr. Bob Delaney: Okay. I just want to move quickly through a few other areas. I want to talk a little bit about the document search that you were asked to undertake. The original committee request for documents related to the two relocations: Would you categorize it as a large and involved undertaking for OPA?

Ms. JoAnne Butler: It’s not my area of expertise. I was involved in executive committee meetings with the rest of my peers. Yes, it was large and involved, and I believe that’s been—

Mr. Bob Delaney: Yes. On September 24, 2012, the OPA tabled about 27,000 pages with the Clerk in response to the committee motion for correspondence. At the time—at that time—was it your understanding that all responsive records had been produced to the Clerk?

Ms. JoAnne Butler: Again, you’re asking questions—I was busy trying to find a commercial deal to relocate the plant. In talks with my colleagues and my peers at the executive table, there was absolutely every effort to try and do what was asked of us.

Mr. Bob Delaney: Is a fortnight—two weeks—sufficient time for an undertaking of that scope?

Ms. JoAnne Butler: For the OPA, who is generally not in a position to be providing lots of documents like that—again, through my peers, it was a significant undertaking.

Mr. Bob Delaney: Is there any question about either the best efforts or the due diligence of the staff in doing their utmost to respond to the request?

Ms. JoAnne Butler: In my view, there is never any question about the work the OPA does—best efforts in responding to whatever we do.

Mr. Bob Delaney: On October 12, 2012, and February 21, 2013, the OPA tabled additional responsive records. Could you shed some light on why these additional releases occurred?

Ms. JoAnne Butler: Again, I was busy on other things. I believe there were other code words used. Again, I can’t categorically say.

Mr. Bob Delaney: That’s fine. We were just asking what you knew.

Ms. JoAnne Butler: Other code words, I believe, were used.

Mr. Bob Delaney: I think Ms. Cansfield has a few questions.

The Chair (Mr. Shafiq Qaadri): Ms. Cansfield?

Mrs. Donna H. Cansfield: Thank you very much. Part of the responsibility that we have here is to look at how we can improve things going forward. Through either the request for interest or the actual procurement process, one of the challenges is siting. We live in a province that’s a million square kilometres, and 96% of the population lives on 6% of the land mass, so we are going to have challenges around fitting energy of any description into such a concentrated population.

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In the process, do you actually look at some qualifications around the site or do you leave it up to the proponent? I’ll start with that.

Ms. JoAnne Butler: The siting, as I’ve said—it is the responsibility of the proponent to find a site that fits within the area we’ve asked them to fit it in. But one of the key elements of our bid documents, our proposal, is you have to meet every other environmental or planning standard that’s within the government. So if you want to move ahead with this plant, then you need to get all the planning approvals. If you want to move ahead with this plant from an environmental health and safety aspect, you need to get your environmental permits.

While we don’t specifically—we basically say, “You need to meet every law, rule and regulation that’s here that the government tells you to do, to build this plant.”

Mrs. Donna H. Cansfield: Then in that case, because we heard earlier from the mayor of Oakville that they certainly didn’t meet the official plan within the concept of the city of Oakville, and that they certainly weren’t going to get the permit—is the contract signed before these things are procured or is it signed after you have the assurance that they have met all of the qualifications required?

Ms. JoAnne Butler: The contract is signed when they’ve given us—basically, it’s a combination of our belief that they have enough financial wherewithal and abilities to be operational to build this plant, and they are the lowest cost.

Mrs. Donna H. Cansfield: So it really is more financial. Maybe one of the considerations going forward is that, in that process before a contract is signed, there should be some certainty that the proponent meets the requirements of, say, an official municipal plan, or that they could procure the required permits in order to pro-

ceed. Because you could meet the financial obligations, but if you can't meet the municipal obligations under the official plan, then you're in a conundrum because you've signed a contract that they may never be able to cure.

I'd be interested, and I'm sure—we need energy; we like our lights on. And there will be other situations where we need to do something, so have you thought about how we could make this process better? If we've run out of time, I can leave—

Mr. Bob Delaney: No, you've got four minutes.

Mrs. Donna H. Cansfield: I'm really interested in how we can improve the process as we move forward when we look at procurement in the future.

Also, the other issue is around public consultation—meaningful public consultation—and should that be actually written into any procurement process?

Ms. JoAnne Butler: I think you make some very valid points. I think siting is something that we do need to look at. There are many models around the world to develop electricity infrastructure. For example, in Mexico, where I was involved in building power plants, the government actually did go out and provide the site, and actually started the environmental approval. So when the developer came in, they had a lot less risk and therefore their price should be lower. It's all about balancing where the risk is and that price point that you want to have. Their model was, "We want the lowest price, so we want less risk built into that price, so we're going to get the site for you and we're going to start your environmental assessment."

The model we have in Ontario, which has successfully worked in the past, is that the risk of the site and finding the site is passed to the developer. The developer will decide—if siting becomes too risky for them, they're just going to price that into their price, and that's what we don't want, right? We don't want prices to go up either. So we need to find that balance of the bookends. Also, where we went laterally with the relocations of the plant was using existing government-owned land that was sited for generation. So any of those models can work.

I agree, the public consultation—we can look at other models. New York state has a model as well. So yes, there's no question that—

Mrs. Donna H. Cansfield: And I guess the last question is, in the case of Mississauga, the site actually was zoned commercial, industrial and electrical, so when the proponent purchased it, it was purchased under the official plan being zoned in that particular way. However, the siting on that particular parcel was suspect because it was 125 metres from the closest home. Again, does the OPA or can the OPA, in those kinds of circumstances, actually put in the contract or suggest in the discussions that you have to take these things into consideration?

The Chair (Mr. Shafiq Qaadri): One minute.

Mrs. Donna H. Cansfield: If you can't now, we can go back to this in the 10 minutes.

Ms. JoAnne Butler: No, I understand your point. We used the environmental permitting to determine the environmental health and safety standards that need to be

adhered to. Is there potentially something in there that the Ministry of the Environment could look at in determining those standards? Yes, but the rules in our procurements are that you need to meet what the ministry environmental standards are right now. If there's a view of potentially changing those in order to site infrastructure, then that absolutely could be looked at.

Mrs. Donna H. Cansfield: In the case there, they fell under, at 250 megawatts, a full assessment, because you had to be over 300. There's a good example. You're right; there have to be better processes maybe put in place. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Cansfield.

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Ms. Butler, for being here this afternoon, or this evening, as it's coming to.

I've sent over a package of documents. On the one item called page 1 up in the top right corner, there's a December 7, 2011, email to you from Infrastructure Ontario, and the subject is "Project Vapour." What is Project Vapour, in your opinion? What does it refer to? Not the email itself but just Project Vapour, the name.

Ms. JoAnne Butler: My knowledge of Project Vapour is, it was a word to describe the Oakville—

Interruption.

Mr. Victor Fedeli: Thanks. I appreciate that.

The Chair (Mr. Shafiq Qaadri): If whoever has the cellphone could either (a) turn it off or (b) answer it.

Ms. JoAnne Butler: Sorry; it's me.

The Chair (Mr. Shafiq Qaadri): Oh, sorry.

Mr. Victor Fedeli: You have a good poker face. Nobody in this room knew it was you, by the way. I thought it was Yak over here.

The Chair (Mr. Shafiq Qaadri): Ms. Butler, just to inform you that the Chair actually has the power to confiscate that cellphone, but I'll extend the courtesy.

Mr. Victor Fedeli: Let's give her a break.

The Chair (Mr. Shafiq Qaadri): That's fine. Go ahead.

Mr. Victor Fedeli: I'm going to turn mine on just so he can take it.

Ms. Butler—may I call you Ms. Butler? Is that fair?

Ms. JoAnne Butler: You can call me JoAnne.

Mr. Victor Fedeli: All right, JoAnne. When was the first time you heard of the name "Project Vapour"? What do you think, approximately?

Ms. JoAnne Butler: It was definitely after the project was decided to not go ahead. It was, I recall, a weekly call that my CEO had with a bunch of senior civil servants. I was not a party to the—the Meeting Maker.

Mr. Victor Fedeli: Is this back in 2010, or are we into 2011 yet at this point? If the closure was announced October 7, 2010, would the weekly calls have started before 2011? To the best of your recollection is fine.

Ms. JoAnne Butler: No. I think they would have probably started in 2011.

Mr. Victor Fedeli: And do you know who those calls were made to, the group of people you spoke of?

Ms. JoAnne Butler: I was not on the invitation list.

Mr. Victor Fedeli: Okay. That's fair.

You had started down a path when Mr. Delaney was speaking with you where you said you knew that other code words were used. What other code words were there, and what do you know that they inferred?

Ms. JoAnne Butler: Mostly, the code words were used for Meeting Makers.

Mr. Victor Fedeli: Project Vapour-lock—we heard earlier testimony.

Ms. JoAnne Butler: Vapour-lock: Again, I was not part of that group. I believe it was a group of senior civil servants. My boss, Colin Andersen, had various calls on Vapour-lock.

Mr. Victor Fedeli: Do you know what “Vapour-lock” referred to?

Ms. JoAnne Butler: Yes. It referred to Greenfield South.

Mr. Victor Fedeli: So, Mississauga.

Ms. JoAnne Butler: Mississauga.

Mr. Victor Fedeli: The Mississauga power plant.

Project Apple: Do you know what that refers to?

Ms. JoAnne Butler: Well, I know that “Apple,” “Banana” and “Fruit Salad” were project names that OPG used to—in the various iterations of where these plants would be located, OPG did get involved.

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Mr. Victor Fedeli: So, is Apple—do you know what location they were referring to? We're trying to put the pieces together, and no one has told us what “Apple” stands for. That may be a different project location? Do you know what it is?

Ms. JoAnne Butler: Actually, you are testing my memory here.

Mr. Victor Fedeli: That's okay. Do you know Banana, Project Banana?

Ms. JoAnne Butler: One was probably a relocation of the Oakville site and another was probably a relocation of the Mississauga site.

Mr. Victor Fedeli: Okay. And “Fruit Salad”? Any idea what that code word was for? I mean, that's okay. We get the idea.

Ms. JoAnne Butler: I think “Fruit Salad” might have been a combination or—

Mr. Victor Fedeli: Sounds like it, actually.

Laughter.

Mr. Victor Fedeli: No, it does. It legitimately does.

Look, who would know those—who can I ask who would definitively know that? I believe absolutely that you are not aware of what specifically “Apple” or “Banana” or “Fruit Salad” were. Who can I ask that question to eventually?

Ms. JoAnne Butler: Infrastructure Ontario would know.

Mr. Victor Fedeli: Infrastructure Ontario? Any particular person I can ask that question of, do you believe?

Ms. JoAnne Butler: I would ask their CEO.

Mr. Victor Fedeli: The CEO? Okay.

Last week—last week was it, already?—I think we had testimony from somebody, an electrical engineer named Bruce Sharp, who came up with a number, \$838 million. It's actually quite surprisingly close to some of the individual numbers you're mentioning. He, like you, said that there was a sunk cost, and I know there are documents that we have. TransCanada talked about their sunk cost at \$80 million to \$90 million, which you settled at \$40 million. They talked about \$1 billion in profit, and 8% to 9% would be reasonable—and I don't have any hesitation with that. There's \$40 million in sunk cost; everybody is happy with that.

Mr. Peter Tabuns: Understands it.

Mr. Victor Fedeli: Yes, not happy with it; happy with the answer.

Transmission solution: You had said that because the plant was cancelled, you needed transmission solution, which we all understand. Now Mr. Delaney asked you a question; I think you may have given him an answer that wasn't entirely to do with his question. He had asked, do we need a transmission solution, and your answer was, yes, of course. Then as he went on, then you clarified that the transmission solution is only because the Oakville plant was cancelled. Is that what you intended to say?

Mr. Bob Delaney: No.

Mr. Victor Fedeli: I'm not asking you, Mr. Delaney; I'm asking her. I'm asking JoAnne. She said that it's in the long-term plan, and you were satisfied with that answer. But she went on further to say that it is only because the Oakville site was cancelled. This is what I'm asking: Was transmission necessary at \$200 million or were you referring to the fact that page 34 which you spoke of, the long-term energy plan, says that because of the cancellation, a transmission solution to maintain reliable supply will be required?

I don't want to put any words in your mouth. Is that \$200 million only because the gas plant was cancelled?

Ms. JoAnne Butler: No. The transmission solution was pegged for 2029.

Mr. Victor Fedeli: I'm sorry?

Ms. JoAnne Butler: With the generation—first, we should say the conservation and generation solution was preferred in the timing that we had been talking about. It was also noted that ultimately, in 2029, there would be transmission still needed. What happened was, when the generation conservation solution went away, the date to have transmission in service to maintain that reliable supply was now moved up to 2018-19.

Mr. Victor Fedeli: Is that because the gas plant in Oakville was cancelled?

Ms. JoAnne Butler: Because both of them were moved, yes. When Oakville was moved, the planners got right in and said, “We need to look at the transmission solution.” When Greenfield South got moved, they were right there on it and they said, “Okay. Now what? What impact is that going to be?” But ultimately, it meant bringing transmission forward by a decade.

Mr. Victor Fedeli: Okay. You're absolutely clear to us about that now. I understand that.

So the \$200-million transmission solution: In your opinion, would that be part of the cost to cancel the Oakville plant?

Ms. JoAnne Butler: No.

Mr. Victor Fedeli: Okay. The \$319 million to \$476 million for gas management: is that, in your opinion, part of the cost?

Ms. JoAnne Butler: Yes.

Mr. Victor Fedeli: Again, Bruce Sharp's number of \$313 million for that very same topic is awfully close to your \$319 million to \$476 million. He talks also about the net revenue requirement, the NRR. Can you talk to us a little bit about what the net revenue requirement for Greenfield South was originally? Do you know that offhand?

Ms. JoAnne Butler: I believe it was in the \$7,000 to \$8,000 per megawatt per month range.

Mr. Victor Fedeli: I would concur that it was under \$8,000 per megawatt per month. What is the contract now?

Ms. JoAnne Butler: It's \$12,400 per megawatt per month.

Mr. Victor Fedeli: So the province talks about off-setting the turbine by dropping the price from \$17,000 to \$15,000, approximately. How do we talk about \$17,000 to \$15,000 as being a saving when the other was \$8,000, now moved to \$12,400? How does that get there?

Ms. JoAnne Butler: Okay. The Greenfield South plant was procured in a competitive competition by the government back in 2004. At that time, costs would have been lower, labour would have been lower, and cost of financing debt and equity might have been lower. That very much impacts on the competitive pricing that we get out of these procurements. You can't really compare 2004 dollars to 2012 dollars.

Mr. Victor Fedeli: So when you take the difference between your \$319 million to \$476 million and Bruce Sharp's \$313 million, if you take the high end of that, that would bring the total, in Mr. Sharp's math, to around \$991 million. Regardless if it's that number or not, it seems at real odds to \$40 million. Would you say without reservation that the government knew that \$40 million was not anywhere near the total cost of cancelling the gas plant?

Ms. JoAnne Butler: The government knew that \$40 million were the sunk costs that couldn't be repurposed in the new site. The government was also party to and at the negotiation also signed the memorandum of understanding with TransCanada which articulated clearly the costs that were going to be required, that we were going to pay going forward—

Mr. Victor Fedeli: So all in, the total cost, would you say without reservation that they would know that that's more than \$40 million—the cause and effect of cancelling the Oakville gas plant?

Ms. JoAnne Butler: Again, they signed the memorandum; they knew that we had other costs coming: gas interconnection, electricity interconnection etc.

Mr. Victor Fedeli: So on page 2, I talk about—I highlight it for you on page 2—the minister announcing that transmission investments will now be required to address those needs.

I want to jump to page 3. Again, we talk a little bit on page 3, which I have highlighted, about how the costs of the turbines would also have to be included; those costs would be passed on to the ratepayer via the global adjustment.

On 3B there's a chart here that talks about the costs in the \$700-million range. Is this page 3B just for Oakville? OPA's ceiling proposal—it's almost \$700 million. Is that just Oakville?

Ms. JoAnne Butler: Yes, it's just Oakville.

Mr. Victor Fedeli: Okay, on page 3C, it says, "OPA staff advised that province would be pleased if the following or a combination of the following criteria were achieved:

"—negotiated solution does not exceed \$1.2 billion...." Is that your understanding that that came from the province of Ontario—the government of Ontario?

Ms. JoAnne Butler: So this was a slide deck, I believe, prepared before the decision had been made about not pursuing the project.

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Mr. Victor Fedeli: About what?

Ms. JoAnne Butler: About cancelling the project.

Mr. Victor Fedeli: This was made before?

Ms. JoAnne Butler: You know, I have actually not seen this slide deck.

Mr. Victor Fedeli: It is an OPA slide deck?

Ms. JoAnne Butler: It is. It is.

Mr. Victor Fedeli: Okay. Well, we may get back to that at another date.

Ms. JoAnne Butler: Yes.

Mr. Victor Fedeli: Page 3D: Preliminary estimate of the potential liability is \$600 million to \$700 million. Is that also from the OPA?

Ms. JoAnne Butler: Yes.

Mr. Victor Fedeli: Okay. We'll skip over 3F and 3G, which relate to about a million dollars in legal costs. We'll come back to that another time. We'll slip over page 4. Our NDP friends have already talked about page 5.

Let's go to page 6, then. This says it's a government-instructed counter-proposal.

Ms. JoAnne Butler: Right.

Mr. Victor Fedeli: Can you tell me a little bit about who in the government is instructing you?

Ms. JoAnne Butler: As I said earlier, my dealings were generally with the minister's office. This would have come through more senior levels than my level. But, yes, we were instructed to go back to TransCanada and give them a counter-offer.

Mr. Victor Fedeli: Okay. So who is Robert Prichard? Do you know the name?

Ms. JoAnne Butler: Yes, I do.

Mr. Victor Fedeli: And what is his role in the Missis-sauga?

Ms. JoAnne Butler: Mr. Prichard was hired by the government to be the lead negotiator in the Greenfield South—

Mr. Victor Fedeli: He doesn't work for OPA?

Ms. JoAnne Butler: No.

Mr. Victor Fedeli: Okay. And who is David Livingston?

Ms. JoAnne Butler: David Livingston is—or was, at the time—the chief executive officer of Infrastructure Ontario.

Mr. Victor Fedeli: And what was his role in the Oakville cancellation?

Ms. JoAnne Butler: Mr. Livingston came in when the deals broke down between the OPA and TransCanada early in 2011. Again, we weren't comfortable that we were getting the right data. TransCanada had put in a proceeding against the crown; there was a litigation concern. The government brought in Mr. Livingston to take over more or less, be the lead in the negotiations with TransCanada and move forward on the settlement.

Mr. Victor Fedeli: And who did Robert Prichard report to? Do you know? He wasn't part of the OPA. He was hired externally?

Ms. JoAnne Butler: He was hired externally by the government.

Mr. Victor Fedeli: By the government, at their direction?

Ms. JoAnne Butler: Yes.

Mr. Victor Fedeli: So on page 8, there's an email here that says: "JoAnne Butler is on a call with Premier's office now." This would be April 14, 2011. This is from Halyna Perun. She says: "JoAnne Butler is on a call with Premier's office now."

Were you in frequent communication with the Premier's office, or can you tell us a little bit about this particular call from back in 2011?

Ms. JoAnne Butler: The only person I remember dealing with from the Premier's office was Sean Mullin, so Sean must have been on this call.

Mr. Victor Fedeli: The last name?

Ms. JoAnne Butler: Mullin.

Mr. Victor Fedeli: And who is Sean Mullin?

Ms. JoAnne Butler: He was in the Premier's office, I believe, on the energy file.

Mr. Victor Fedeli: So the Premier's office was interested in these files back in 2011. Can you tell us anything, any details, about your instructions from the Premier's office?

Ms. JoAnne Butler: The instructions basically were—the commitments that the government had made with TransCanada, prior to letting the OPA know, were basically outlined in a letter that the OPA wrote to TransCanada, because we held the contract, which basically said, "We're going to work together to come up with a new proposal, and that you would get the financial value of your contract."

Mr. Victor Fedeli: Okay. So was it a frequent-type arrangement where the Premier's office communicated

with you or you communicated with the Premier's office about TransCanada?

Ms. JoAnne Butler: It wasn't that frequent. We did have some meetings after the project was cancelled, in efforts to move forward and try and get to an appropriate solution. By basically April, the negotiations had more or less broken down between TransCanada and the OPA, so that was probably my last conversation.

Mr. Victor Fedeli: Okay. The energy minister—the current energy minister—talks about OPA driving the bus, and others here have talked about the energy ministry driving the bus or the government driving the bus. Who do you think ran the show here with respect to the cancellation?

Ms. JoAnne Butler: My dealings were generally with the minister's office. On the TransCanada file I did get to know Sean Mullin, and I knew he was from the Premier's office, but I could not comment on the ultimate decision-makers.

Mr. Victor Fedeli: There are other documents that we'll get to a little later that talk about—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: Oh, thank you—that talk about, "The government told us to do this," or the \$712-million settlement that was offered. Who would have directed that?

Ms. JoAnne Butler: It would have come through senior levels of the OPA. It would have been from the minister's office, probably, or generally we deal with the deputy minister or the minister's office. It would have come through more senior people in the OPA.

Mr. Victor Fedeli: So are you referring to the minister—which minister are you referring to, actually? Which energy minister are you referring to?

Ms. JoAnne Butler: At the time of the Oakville cancellation, it was Minister Duguid.

Mr. Victor Fedeli: Okay. The government-instructed counter-proposal that I spoke of: Again, do you have any names that you can attach to who from the government instructed the counter-proposal?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. To Mr. Tabuns with the NDP.

Mr. Peter Tabuns: Yes. Do you have any names, following on that question?

Ms. JoAnne Butler: I'm sorry?

Mr. Peter Tabuns: Do you have the names of government officials who were driving the counter-proposal, other than Sean Mullin?

Ms. JoAnne Butler: The other person I dealt with was Craig MacLennan.

Mr. Peter Tabuns: Okay. Fine. I just wanted to let the Chair know that I've asked Ms. Butler a number of questions from emails. I have these packaged, and I'll turn them over for the committee's use in a future review of this line of questioning.

A memorandum from Deborah Langelaan—my best guess—a few notes: "OPA met with Auditor General on January 17, 2011, and provided responses to the following questions: reason for signing the contract; reason for

cancelling the contract; when did the OPA and ministry decide the Oakville plant is no longer needed; and has it been determined what the penalty will be for terminating the contract.”

What was the reason that you understood for the cancellation of the contract?

Ms. JoAnne Butler: The government decided that they didn't want the project to go ahead.

Mr. Peter Tabuns: I've heard arguments made that it was cancelled because they concluded that air quality problems were substantial. Was that something that was presented to you as a reason for cancellation?

Ms. JoAnne Butler: I think the government has been very clear recently why they cancelled the projects.

Mr. Peter Tabuns: Do you know why they didn't want it to go ahead?

Ms. JoAnne Butler: You would have to get full clarity from them as to their reasons.

Mr. Peter Tabuns: Can you tell us: Do you know what answer was given to the Auditor General about why this contract was cancelled?

Ms. JoAnne Butler: After the project was cancelled, we did come out and say that the need in the southwest GTA—while it was still there, the timing of that need had changed. We also said, “But we're going to have to bring transmission.” The timing of the need had changed, was one of the reasons for moving the plant. Having said that, we needed to bring in a transmission solution.

Mr. Peter Tabuns: Was that a reason that you gave or that was given to you?

Ms. JoAnne Butler: The planners reassessed the planning environment in that area and said, “The need is still there; we're going to have that need, but the timing of the need has changed because of the economic downturn in 2008.” We made that very clear in any disclosures we'd had on the topic.

Mr. Peter Tabuns: In an email dated April 14—oh, sorry, it has been asked.

In your opinion, if there was a downturn in the economy and the power was no longer needed, why would we relocate a plant to produce power that was no longer necessary?

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Ms. JoAnne Butler: Well, that's a short-term view of a sector that needs a long-term view.

Mr. Peter Tabuns: Okay.

Ms. JoAnne Butler: We do need that capacity. We are moving off coal. Yes, economic situations change, and we need to be flexible enough to look at our plan and make sure we make the required changes in those plans, but ultimately, with the off-coal, and with the view that economies will turn up again, we do need those megawatts.

Mr. Peter Tabuns: So in fact you saw the plant as being necessary for the system, and you saw it probably as best located where it was proposed?

Ms. JoAnne Butler: Absolutely. It was put in the optimal location to solve a bunch of requirements: demand, off-coal and reliability.

Mr. Peter Tabuns: One of the approaches to this whole matter was to offer other locations to TransCanada Enterprises, and one of those was a plant in Kitchener-Waterloo-Cambridge.

Ms. JoAnne Butler: Right.

Mr. Peter Tabuns: Was a plant needed at that location?

Ms. JoAnne Butler: Actually, that is one of the high-growth areas, and a peaking plant, a smaller plant, was required, and it was noted in the plan as a requirement of that area.

Mr. Peter Tabuns: And is that still in the works to go forward?

Ms. JoAnne Butler: I'd have to confirm it with the planners, but I think we're looking at a more regional planning approach, and I think we have some transmission fixes for that area right now.

Mr. Peter Tabuns: All right. Eastern Power, Mississauga: My understanding was the contract was signed in 2005; it could have been 2004, as you noted. They had huge difficulty getting financing. Does your unit—do you have any information as to why they had difficulty getting financing?

Ms. JoAnne Butler: No. Again, when we ask the private sector to develop these plans, the risk of the site, their financing, getting all the permits is their risk, and so they have to do what they need to do to get financing. And I do know that one of the biggest costs of developing a power plant is the cost of financing.

Mr. Peter Tabuns: And so this particular project had financing that was very costly to wind up when the contract was cancelled. Can you tell us about that?

Ms. JoAnne Butler: Actually, we're not privy to any of those documents, any financing arrangements. Again, our job is to define the need. Our preference is competitive procurements. We make sure that the people involved in those procurements, certainly our latter ones, have the technical capability, the operational and financial worth to be in those procurements, and we bring a low-cost option.

We are the—we call it counterparty, but we are the other signatory to the contract in a 20-year power purchase agreement, and with that 20-year power purchase agreement, the private developer can go and look for the financing he needs to build his project.

Mr. Peter Tabuns: There was some indication in the emails that we reviewed that at one point there was consideration to try and shut down the Mississauga plant before construction started. Were you part of those discussions?

Ms. JoAnne Butler: No, I was not.

Mr. Peter Tabuns: Ah—

Ms. JoAnne Butler: No. Let me—over the time from when I started at the Ontario Power Authority, there were often questions coming over from the government—what sort of status, chronologies etc., but, no, I was not privy to any discussion that was leaning towards stopping the project.

Mr. Peter Tabuns: And did you have any indication in the summer of 2011 that this project was going to be cancelled?

Ms. JoAnne Butler: No.

Mr. Peter Tabuns: Were your planners or your staff at the OPA putting forward the idea that it should be cancelled?

Ms. JoAnne Butler: You're talking the summer of 2011?

Mr. Peter Tabuns: Yes.

Ms. JoAnne Butler: There might have been questions asked of the planning group, "Do we still need this plant?" etc. Our view was, it was competitively priced power, and there still was a need out there in Mississauga.

Mr. Peter Tabuns: Just following on a question Mr. Fedeli asked earlier, when this plant started under construction, it was \$7,000 per megawatt per month. With the cancellation and relocation, that adds about \$5,000 per megawatt per month to this plant's cost, does it not?

The Chair (Mr. Shafiq Qadri): One minute.

Ms. JoAnne Butler: You're missing a step in there, which I take full accountability for. We did amend and restate the contract in 2009 because the proponent had had a lot of difficulties with his environmental assessment and had been bumped up for many, many years, but what we wanted was to get the diesel component out of that power plant. So we did a negotiation where, "You take the diesel's proportion out. We don't need it. It's another environmental consideration that's not appropriate. Here's the deal that you get." So it was two-step process. When it was actually being constructed, the actual net monthly payment was \$12,900 per megawatt.

Mr. Peter Tabuns: Okay. Thank you. Thank you for your assistance today.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns.

To the government side: Mr. Delaney. Ten minutes.

Mr. Bob Delaney: Thank you, Chair. JoAnne, I'd just like to go through about a dozen things, most of which are clarification in nature, so they should be pretty quick.

Code names: You've dealt with organizations that have traditionally used code names in the past?

Ms. JoAnne Butler: No, I haven't.

Mr. Bob Delaney: Have you ever used code names at OPA yourself?

Ms. JoAnne Butler: No, I don't recall I have.

Mr. Bob Delaney: Okay. During the contractual organizations that the OPA was involved, did you actually oversee the contract management team at OPA?

Ms. JoAnne Butler: Yes, I am in charge of the contract management team at the OPA.

Mr. Bob Delaney: Okay. So that included the managing of the relocations of both the Oakville and Mississauga gas plants and conducting the negotiations with TransCanada Energy and Eastern Power?

Ms. JoAnne Butler: We were a party at the table, along with the government, yes.

Mr. Bob Delaney: How long did it take?

Ms. JoAnne Butler: Which one?

Mr. Bob Delaney: Answer the question for each one of them. The TransCanada Energy one: How long did that one take?

Ms. JoAnne Butler: We heard that the project was not going forward on October 7, 2010, and we actually signed the memorandum of understanding on September 24, 2012, and we actually, in that memorandum of understanding, agreed to hash out the terms going forward and commit to a contract by December 14, 2012, which we did.

Mr. Bob Delaney: Okay. And the Mississauga one?

Ms. JoAnne Butler: The Mississauga one: Construction stopped in the fall of 2011 and the contract was amended and restated at the beginning of July 2012.

Mr. Bob Delaney: Okay. Would it be reasonable to characterize the contract negotiations as complex?

Ms. JoAnne Butler: That would be very reasonable.

Mr. Bob Delaney: I'm sure. And if I were to use the word "sensitive," would that also be a reasonable description?

Ms. JoAnne Butler: I would say "complex and multi-party" would be my description of them.

Mr. Bob Delaney: Would it be reasonable to say that the negotiations would be commercially sensitive?

Ms. JoAnne Butler: We are very mindful of our duties, as contract managers, of the commercial sensitivity of our contracts.

Mr. Bob Delaney: Would there have been any significant risk to your negotiations if commercially sensitive details were made public before the deals were finalized?

Ms. JoAnne Butler: Yes, there would be. We believe there would be.

Mr. Bob Delaney: What kind of risks and what would the potential consequences be for both taxpayers and ratepayers?

Ms. JoAnne Butler: At the end of the day, it's all about a negotiation. If you're put in a position of weakness or if someone knows what your bargaining position is or where you're headed etc., it starts you off in a position of weakness. So in any negotiation, you need to at least start off on the same level playing field.

Mr. Bob Delaney: Okay. Just to try to draw a comparison: In 2002, the then Minister of Energy, Jim Wilson, in regard to confidential information on a lease agreement between OPG, Ontario Power Generation, and British Energy, acknowledged at that time that disclosure of financial and commercial information from Ontario Power—and I'll use his words—"may prejudice significantly the competitive position of the corporation or result in undue loss of gain to parties other than the corporation." Would that sort of encapsulate some of the issues that you were involved in at the time period of 2011?

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Ms. JoAnne Butler: I would agree that, yes, we wanted to make sure we had an equitable negotiating position.

Mr. Bob Delaney: Good. I think Mr. Flynn has a few questions. I thank you for your time.

The Chair (Mr. Shafiq Qaadri): Mr. Flynn.

Mr. Kevin Daniel Flynn: Thank you, JoAnne, for being here today. As you know—I wouldn't be telling you anything you don't know—the decision to locate the plant in Oakville was viewed quite negatively by my community when the announcement was made.

When the OPA came to the decision to locate the plant in Oakville, it claimed it came to that decision as a result of a competitive process, that it had been through an RFQ, an RFP process, and in order to ensure that everybody got treated fairly in the process, that a scoring system was used. There were criteria that needed to be met, and if you met those criteria you got scored appropriately. I wonder if you could just expand on sort of how that process works, because what's been left out of the conversation so far, I think, is that the Oakville site was one of four—

Ms. JoAnne Butler: That's right.

Mr. Kevin Daniel Flynn: —that were actually in the competition. Neither one of them, in my opinion, was a good site, but certainly in my own community it was felt that the Oakville site was the one that, if it was scored appropriately, would have ranked number 4 as opposed to number 1. So perhaps you can expand on the process and the criteria that are used.

Ms. JoAnne Butler: Sure. Again, back to the siting, we were directed by the government to site a plant in south Oakville, south Mississauga or south Etobicoke, along a certain electrical interconnection. We wrote that into our bid documents, which the private developers took and went out and started looking for sites that they thought would be appropriate for the connection and this bid.

One of the—I guess sort of mandatory—criteria in order even to get in the game was that you had to have site control and you had to have control of the private lands that would let you connect into the bulk electricity system. So when the documents came in, we made sure that that was a mandatory thing; they had to have that. Then—you're right—it did go into a relative ranking that was scored on—I can get you exactly what they are; and they might actually be in that sheet—how far along they were in the environmental approvals; how far they were along in the planning approvals; had they ordered their equipment; had they done stakeholder engagement? All those things. And they were all ranked. That spit out a score and that score was put beside a financial model, and it's the combination of that ranking and the price that the lowest cost would fall out. You could have a very—not the highest score in terms of those rated criteria but you could have a low price, and the combination of the two still was the lowest price, and therefore the bid was still won.

Mr. Kevin Daniel Flynn: I'm thinking back to the mayor's comments—the mayor of Oakville was here this morning, before you. I'm thinking back to his comments. It's possible that a project that did not have its municipal approvals could win this competition.

Ms. JoAnne Butler: Actually, at the stage of the game to when the proposals are submitted to be analyzed and determine who the winner was, it's quite common that they're not very advanced in those stages. It takes time—

Mr. Kevin Daniel Flynn: So it wouldn't score highly.

Ms. JoAnne Butler: It wouldn't score high, potentially, on the municipal planning side, but it might win because it had a lower price.

Mr. Kevin Daniel Flynn: Well, the ordinary people in my community, when they look at this process and they try to understand it, would see a project that had very little, if any, municipal approval, and would therefore conclude that there must have been a fairly high price differential in order to compensate for that. Do you recall the price differential or the cost differential between the first and the second plants?

Ms. JoAnne Butler: I don't know. I do know, though, that it was very, very competitive.

Mr. Kevin Daniel Flynn: Very competitive in the sense that all the projects were close to each other, or this one was clearly the winner?

Ms. JoAnne Butler: You're taxing my memory. I'll get you the details if you want, but I do believe the first three were fairly close, and there might have been one that might not have been. Again, it has been a while, but I can get that for you.

Mr. Kevin Daniel Flynn: It has been too long. One final question: The costs you talk about, beyond the sunk cost—I'm talking about turbines and the gas management—the impact of that, the reason for that negotiation, was to effect savings to offset the other costs. Is that right?

Ms. JoAnne Butler: Right.

Mr. Kevin Daniel Flynn: Is it fair to say that?

Ms. JoAnne Butler: I think it's fair to say that what we did, which was take a similar plant with a similar configuration and move it to another site and hash out the lowering of the monthly payment—in contrast with some of the other costs that we did say we were going to do—was absolutely the best solution.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. JoAnne Butler: In our minds, we did still get competitive pricing at that location.

Mr. Kevin Daniel Flynn: Fine, thank you. That's all I have, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Ms. Cansfield.

Mrs. Donna H. Cansfield: I have a very quick question. In fairness to the OPA, you inherited the Mississauga contract, because it was negotiated through the ministry earlier. But having said that, it was done in whatever it was—2003, 2004 or 2002; I can't remember. It's now 2011. That's a lot of years for a contract to drag out. At some point, you have to look at the whole issue of "fish or cut bait," right? How long does this go on before you say, "We re-evaluate. We don't need as much electricity. We don't need this contract. We need to deal with the fact that they can't procure the financing."

Maybe that's a discussion for another day, but something we need to look at is how we draw up those contracts.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Cansfield.

To the PC side: Mr. Leone, 10 minutes.

Mr. Rob Leone: Thank you, JoAnne. On page 6—Mr. Fedeli referred to documents that we've provided to you as a slide deck from the Ontario Power Authority. In that slide deck, three times, it says: "The OPA was instructed by the government"; "the government-instructed counter-proposal"; "the government-instructed counter-proposal." It seems like the OPA is trying to put the blame on the government for the decisions that have been made—

Mr. Victor Fedeli: The other way around.

Mr. Rob Leone: Right, the other way around; sorry. The government is, vice versa, trying to throw the OPA under the bus. Do you feel that the government is throwing the Ontario Power Authority under the bus for the decision that the government has made to reposition these plants and relocate them?

Ms. JoAnne Butler: No, I don't. The government made a decision. The government has explained why they made that decision. It was our job to take that decision and move it into good, commercial, reasonable electricity-generation projects—both of them—and I believe we've done that.

There's no question, there was some back and forth in the early days. I don't mind being told what to do. The government can tell me what to do any time they want. What we were reacting to were some of the decisions they made on how we were going to do it. We had the expertise to do it. We continue to have the expertise to do it.

There's no "under the bus." They have a job, we have a job, and we're doing that job.

Mr. Rob Leone: But the government is sticking to its \$40-million number because they suggest that's the number that you've given them. Is that the number that you've given the government?

Ms. JoAnne Butler: Again, we have been very clear with the government: The sunk costs are \$40 million. The government was at the table when we negotiated the deal. They had signed the memorandum of understanding. They understand schedule A and schedule B, which outline the costs that we will be picking up going forward. When the engineering gets done, when the site and the orientation of the equipment get done, we can fine-tune those prices.

I can't comment on how they choose to communicate the numbers.

Mr. Rob Leone: All right. In testimony today, you suggested that the OPA made every effort to comply with what the committee was asking. Now, you said that kind of—I took that as a point of interest, because I kind of tried to read between the lines of whether you think or feel that there was any political interference with your

ability to comply with what the committee was asking. Do you think there was any political interference from the government, telling the OPA how to comply with the order of the Legislature?

Ms. JoAnne Butler: Is that around the document disclosure?

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Mr. Rob Leone: It's around document disclosure.

Ms. JoAnne Butler: Again, that wasn't my responsibility, and I really kept out of it. When they asked me for my documents, I gave my documents, my emails—painfully, I gave my emails. I can't comment on that.

Mr. Rob Leone: We have a document from the Ontario Power Authority, and it was released in a memo that was actually leaked to us, and in that memo it suggested that the ministry staff now say that they do not—I'm quoting here. This is from Kristin Jenkins. Who's Kristin Jenkins, by the way?

Ms. JoAnne Butler: Kristin is our VP of communications at the Ontario Power Authority.

Mr. Rob Leone: She's the VP of communications. And do you know who Ziyaad Mia and Mike Lyle are?

Ms. JoAnne Butler: Ziyaad works in our legal group. He's a lawyer, and Mike Lyle is our chief legal counsel—VP of legal.

Mr. Rob Leone: Okay. This email was dated October 3, 2012. It was addressed to Colin Andersen. I'm going to quote a couple of lines from there. It says, "Ministry staff now say that they did not instruct OPA staff to exclude attachments to correspondence where the correspondence does not mention Oakville or Mississauga."

Then it goes on to suggest that, "As you are aware, both Ziyaad"—is that how you say the name?—"and I have been clear that this is in fact what Jesse Kulendran told us to do at the meeting on Aug. 22."

Can you explain what this memo is referring to, or do you have any knowledge?

Ms. JoAnne Butler: I do not have knowledge of that memo.

Mr. Rob Leone: Do you know who Jesse Kulendran is?

Ms. JoAnne Butler: I believe Jesse works in the ministry.

Mr. Rob Leone: In the ministry. And do you know what role she would have had in the disclosure of documents?

Ms. JoAnne Butler: No, I do not.

Mr. Rob Leone: All right. The questions that emerge from this document for us—it just appears that the Ontario Power Authority, which is supposedly an independent entity, was being instructed by officials in the Liberal government. Do you think that that in effect did happen, in your view?

Ms. JoAnne Butler: I don't know. Certainly I was not party or privy to any of that type of conversation.

Mr. Rob Leone: All right. In the days leading up to the 2011 general election, where you read media stories leading up to that that the Liberal Party, who was the government, was backing out of the contract that it

signed in the Mississauga gas plant scenario, you described that as “frightful.” That was part of something that we’ve talked about already. Do you view that that decision was reckless, in your mind?

Ms. JoAnne Butler: Again, the government needs to make the decisions that governments make. From a contract point of view, a contractual point of view or a commercial point of view, there was no reason to end that contract.

Mr. Rob Leone: All right. You also stated in your testimony today that you haven’t personally had anything to do with your own documents. You didn’t redact any of those documents.

Ms. JoAnne Butler: No.

Mr. Rob Leone: Did you feel at any time that those documents that you did provide should have been redacted in any way?

Ms. JoAnne Butler: No. Other than my visceral comments and gut reactions, no. We were just doing our job.

Mr. Rob Leone: All right. We have documented correspondence from April 14, 2011, where Halyna Perun from the legal services branch of the Ministries of Energy and Infrastructure sent an email to Michael Lyle that states, “JoAnne Butler is on a call with Premier’s office now.” I believe I have that document—

Ms. JoAnne Butler: Yes, it’s here. You had it here.

Mr. Rob Leone: Do you have that?

Ms. JoAnne Butler: Yes.

Mr. Rob Leone: What was that call about? Do you recall?

Ms. JoAnne Butler: I’m not going to say categorically what the call was about, but I do believe it was again trying to come to a resolution on moving the discussion forward in terms of finding a new site for the Oakville generating station.

Mr. Rob Leone: And who in the Premier’s office were you speaking to?

Ms. JoAnne Butler: Again, the only person that I met from the Premier’s office involved in the Oakville generating station was Sean Mullin.

Mr. Rob Leone: So it’s still Sean Mullin. And did he provide you with any directives on how to behave or act?

Ms. JoAnne Butler: No.

Mr. Rob Leone: Do you know if anyone else was on the call?

Ms. JoAnne Butler: I can’t remember that far back.

Mr. Rob Leone: Did you take any notes from the call?

Ms. JoAnne Butler: I can check.

Mr. Rob Leone: All right. Do you have any more questions, Vic?

Mr. Victor Fedeli: Is there time?

The Chair (Mr. Shafiq Qaadri): One and a half minutes.

Mr. Victor Fedeli: There are a couple of questions I didn’t get to in the first 10 minutes. It’s about legal fees and whether they were included in the cost. There is a mention from Michael Killeavy at OPA. You’re familiar with him?

Ms. JoAnne Butler: Yes.

Mr. Victor Fedeli: Okay. He says, “As we discussed last week, the OPA would like to retain Osler to advise us on the Greenfield South matter. You indicated that Osler was prepared to do so with the same team that’s working on the TCE matter and applying the same billing rates as the TCE matter.” That’s 3F, and 3G that I provided shows a contract—actually it’s called a “non-competitive (justification) explanatory memo” that says the estimated cost would be \$500,000. So this is a sole-sourced contract for \$500,000 to cover the Greenfield matter, and it suggests that it would be the same fee for doing the TransCanada. Would you confirm, then, that there would be roughly \$1 million spent in this period of time on those two exterior contracts? And are they included in the cost of cancelling the power plants?

Ms. JoAnne Butler: I can’t confirm the numbers for you but, yes, the legal fees were included in the costs.

Mr. Victor Fedeli: I’m sorry?

Ms. JoAnne Butler: I can’t confirm the number. I don’t know whether it’s a straight two times, but, yes, the legal costs have been included in the cost.

Mr. Victor Fedeli: Are they in the sunk cost for \$40 million?

The Chair (Mr. Shafiq Qaadri): I need to intervene there. At the outset I would just simply thank members of the committee for your patience and endurance. On our collective behalf, I’d like to thank you, Ms. Butler, for appearing before us on behalf of OPA, and I would suggest that you return that phone call.

The committee is now adjourned until Thursday, March 21, 8:30 a.m.

The committee adjourned at 1837.

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