



**Legislative Assembly
of Ontario**

Second Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 9 April 2013

**Journal
des débats
(Hansard)**

Mardi 9 avril 2013

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Tuesday 9 April 2013

Mardi 9 avril 2013

The committee met at 0832 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the meeting to order. As you know, justice policy is here dealing with energy infrastructures, particularly with gas plants. I think many of you know the drill by now, including our presenting witnesses.

CITIZENS FOR CLEAN AIR

The Chair (Mr. Shafiq Qaadri): I'd invite Mr. Frank Clegg to please be sworn in.

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?

Mr. Frank Clegg: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Clegg, chairman of Citizens for Clean Air. As you know, you have a five-minute opening address, followed by a rotation of questions. Please begin now.

Mr. Frank Clegg: Thank you. Good morning. My name is Frank Clegg and I'm the chair of Citizens for Clean Air. C4CA is a non-profit, non-partisan, grassroots organization of concerned citizens from Oakville and Mississauga that is opposed to locating power plants unreasonably close to homes and schools anywhere in Ontario. C4CA strongly opposed the construction of the Oakville generating station for three main reasons: health, safety and process. I'll take a moment to address our concern in these areas.

For context, Oakville is located in an area called the Clarkson airshed, a stressed airshed that already exceeds Ministry of the Environment guidelines for some air pollutants, including PM2.5. While natural gas is cleaner than coal, the proposed plant would have significantly added PM2.5 to our local airshed, compounding the existing problem in our region and compromising the health of local residents. Our region already has the highest rate of youth asthma in the entire province.

With respect to safety, the proposed site has no buffer zones to ensure the safety of residents. Many different sensitive infrastructures in Ontario have siting requirements or setbacks, including landfills, railways and wind farms, but not stand-alone natural gas power plants.

The health and safety risks inherent in natural gas power plants are very real. On February 17, 2010, an explosion at a not-yet-completed natural-gas-fired power plant in Connecticut killed six people and injured more than 20 others. The blast blew out windows and cracked the foundations of homes up to eight kilometres away. The proposed Oakville plant was 50% bigger than the Connecticut plant and it was to be built on a site one tenth the size. The Oakville plant would have been one of the largest proposed natural gas power plants in the country and would have been only 400 metres from the nearest home, 320 metres from the nearest school, 65 metres away from the closest office complex and only a few metres from one of the busiest railway lines in Canada—10,000 homes, 16 schools, five seniors' residences, eight daycare centres, all within just three kilometres of the site.

Our opposition to this project was supported by the town of Oakville, the region of Halton, Oakville candidates for the Liberal, PC, NDP and Green parties, and the parties themselves. C4CA was very pleased that all parties publicly committed to stop the construction of the proposed Oakville plant if they were elected. I also want to repeat our appreciation for the decision taken by the government to cancel the project.

Our experience clearly shows there are serious flaws in the procurement and siting process for natural-gas-fired power plants. The southwest GTA procurement process was mainly an engineering, finance and real estate exercise, with limited community involvement or engagement before the contract was awarded. This flaw was then amplified by the failure to properly identify and assess key risks relating to health, safety and environment before a 20-year, \$1.2-billion contract was awarded. It is difficult for us to understand or accept a procurement process where the risk assessment is conducted after the contract is awarded, particularly in an airshed already considered to be stressed by the Ministry of the Environment.

C4CA's ongoing work is being undertaken with the objective of ensuring that other Ontario communities do not have to experience what the town and the residents of Oakville had to go through. But the fact of the matter is, there is nothing today that would prevent a project like this from being built too close to an existing neighbourhood, whether you happen to live in Toronto, London, Kitchener, Ottawa or Oakville.

Bill 8, introduced by MPP Kevin Flynn, attempted to address the issue of buffer zones around natural gas power plants, but it died on the order paper, despite having all-party support.

A clear policy on siting of stand-alone natural gas power plants will (1) provide direction to planners such as the OPA; (2) provide certainty to communities and local governments; (3) address the legitimate health and safety concerns of residents; (4) level the playing field for power developers; and finally, (5) ensure consistency with siting policies and requirements for other types of sensitive developments, such as wind farms, railway corridors, landfills etc.

We urge the committee to focus on using the example of what happened in Oakville and Mississauga to create a legislative framework for siting future natural gas power plants.

Le Président (M. Shafiq Qadri): Merci, monsieur Clegg, pour vos remarques introductives. Nous commençons nos questions avec le gouvernement. Monsieur Delaney, vous avez 20 minutes.

Mr. Bob Delaney: Thank you for joining us today, Mr. Clegg. It's good to see you. As the chairman and the driving force for Citizens for Clean Air, would you tell us a little bit about the organization and how it came together, what you might still be doing, how you worked through that particular period regarding the gas plant?

Mr. Frank Clegg: The organization got started at a high school meeting. A couple of the residents in the area just sent out notices to the community and invited everybody to attend a local high school, where they presented the proposed plant—this was after the plant was announced, and so we all got together at that meeting, and people just signed up on volunteer sheets and picked a certain area they wanted to volunteer with. I knew both of the people who hosted the meeting and talked to them afterwards. We had a follow-up meeting, and we set up an executive team and then started a campaign that really was, as I said at the beginning, grassroots-related. We worked on getting street captains. We worked on getting volunteers and building awareness in the community, getting people informed and engaged, and just creating an awareness of where the plant was going to be, the limitations on the siting itself, the concerns of being so close to the homes and schools in the area. Really, that's how we came about.

Mr. Bob Delaney: In your five-minute opening, you had a pretty good synopsis of some of the drawbacks of the Oakville power plant. Were there any other points on that that you wished to make?

Mr. Frank Clegg: When the cancellation of the plant was announced, we were just starting to do some evaluations on the actual water vapour coming from the plant. The plant was going to be cooled by water coming out of Lake Ontario, and we were really starting to understand the implications of having that water vapour plume potentially going on the railway tracks or on the QEW nearby. I didn't talk about it because we really didn't finish that analysis.

0840

Mr. Bob Delaney: Okay. Given all of the issues that you looked into, did you think that both the town of Oakville and the government of Ontario made the right decision to relocate the power plant?

Mr. Frank Clegg: Yes, absolutely.

Mr. Bob Delaney: In the course of our discussions with some of the people who have come before the committee, one of the issues raised here has been the reference to various names of projects for the cancellation of the two plants. In the time that you spent at Microsoft, can you recall any of the project names that were used as different products such as Windows Office and perhaps Visual Studio went into development?

Mr. Frank Clegg: Well, there were projects—Cairo was one project that comes to mind. I haven't been there for eight years now. You're testing my memory. Cairo's probably the one that comes to mind most.

Mr. Bob Delaney: In other words, it was very common at Microsoft to assign project names to the development of a major project?

Mr. Frank Clegg: I would say every major project had a name.

Mr. Bob Delaney: Okay. Thank you.

Going back to some of the issues around the cancellation of the plant, there's a lot of different factors that go into determining where a power plant should be located, such as population forecasts, electricity demand, transmission availability, you know—we're on the same page on that. Would it be fair to say that sometimes these factors change and with a decision made at one point of time, sometimes it's appropriate to revisit that decision?

Mr. Frank Clegg: Yes.

Mr. Bob Delaney: Was that something that you talked about in C4CA?

Mr. Frank Clegg: Yes. We had referred to a document from the IESO that had been updated during the campaign to get the plant cancelled where it actually showed the forecast had changed significantly, showing less power being required in Ontario in general.

Mr. Bob Delaney: Was that one of the factors that C4CA took into account?

Mr. Frank Clegg: Well, that was part of the—one part of our messaging was that the plant isn't actually needed. So one of the alternatives that we proposed was to revisit the forecast, and you don't even need the plant.

Mr. Bob Delaney: Just for some scale, could you give us an estimate of the size of the local opposition against that proposed power plant in Oakville?

Mr. Frank Clegg: I guess the three best numbers would be the rally that we had here at Queen's Park: We had about 2,500 people who came down and protested the location. We had about 1,800 volunteers in the local community and we had recruited about 300 street captains. Our reach, though, in terms of just people who had signed up, or being able to contact them, we estimated to be over 50,000 people—

Mr. Bob Delaney: Wow.

Mr. Frank Clegg: —through our network and other—we had some associations in town that would forward our messages off and our emails off to other people. So we calculated the extended reach to be at least 50,000.

Mr. Bob Delaney: Mayor Burton brought in a few maps which he showed the committee to illustrate how close to residential and commercial areas that plant was. Do you recall an estimate of how many people would have been directly affected within, for example, a circle of, say, 500 metres, 1,000 metres and maybe 1,500?

Mr. Frank Clegg: I'm going by memory. I think within a kilometre—I know within three kilometres there was the 10,000 number that I referenced before. Within a kilometre I believe it was 1,000 homes, but that's just based on memory.

Mr. Bob Delaney: So it would be accurate to say that the residents of Oakville were very happy that the province listened to their concerns and made the decision to cancel the power plant?

Mr. Frank Clegg: Very much so.

Mr. Bob Delaney: Okay. Mayor Burton, when he testified before the committee on March 19, was asked about your organization. He said, and I'll use his words exactly, that he was "very impressed with the work of C4CA in winning promises to stop the power plant from every party." You touched on this in your opening remarks. Perhaps you can elaborate on the commitments of all three parties to cancel this particular plant in Oakville.

Mr. Frank Clegg: Well, we met with all the parties and all the candidates and were given commitments by every candidate in the Oakville area that they would support cancelling the plant.

Mr. Bob Delaney: In particular, do you recall what each of them may have pledged?

Mr. Frank Clegg: Well, I know that certainly Ted Chudleigh, who was the candidate MPP from north of Oakville, was very active in his support of cancelling the plant. During the plant battle—I'll use that word—PCs did not have a confirmed nominee but we met with two or three potential candidates, and each of them had said that they would support that. The NDP did not have a candidate at that time that I recall.

Interjection.

Mr. Frank Clegg: No, I don't think so. This was a year before the election, right? So you didn't have a candidate. From the Green Party, we had met with—I'm having a memory lapse—the Ontario leader for the Green Party, and he had been very vocal about supporting cancelling the plant.

Mr. Bob Delaney: So most of the meetings took place before the election of 2011 was really under way?

Mr. Frank Clegg: Our plant was cancelled a year before the election, so these meetings took place 12 to 23 months before the election.

Mr. Bob Delaney: And MPP Kevin Flynn, was he supportive?

Mr. Frank Clegg: Very much so.

Mr. Bob Delaney: Okay. Then it would be fair and accurate to say that regardless of what had happened in the 2011 election, a government by any of the three parties would have cancelled that plant based on the commitments given to you?

Mr. Frank Clegg: Based on the commitments given to us, yes.

Mr. Bob Delaney: Okay. What about at the federal level? Did the federal—either candidates or government—offer support for cancelling the power plant?

Mr. Frank Clegg: We tried to engage everybody in this. As you can imagine, when you're trying to do something like this you engage everybody. So we did try to get the federal government engaged but we were told that it was really more in the provincial jurisdiction, and so we were not successful in getting Health Canada or Environment Canada or anybody engaged at the federal level.

Mr. Bob Delaney: I'm just going to again get your reaction on another quote from Mayor Rob Burton. On September 25, 2012, he stated that—and I'll use his words again—"since all parties promised they would stop the power plant, I'm not sure (the cancellation) could have been done better or cheaper." When we asked him about this quote when he appeared at the committee, he said, "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." Would you agree with Mayor Burton's statements on that?

Mr. Frank Clegg: I think the issue was that when the plant was announced without having gotten community input and done the environmental assessment, I think that's when we got into a slippery slope. I can't predict whether somebody could have done a better job, but the fact that the plant was announced without the environmental assessment being done, then we were all in trouble.

Mr. Bob Delaney: Just to pick up on that, Premier Wynne has committed that there's going to be more local decision-making power in the siting of energy infrastructure. In your work with C4CA, do you have any advice to help ensure that the local voice is heard throughout the process of choosing where to site a generating station?

Mr. Frank Clegg: Yes, we do. Actually, there's a paper on our website that we presented and have been talking about—and why we've kept involved even after the plant was cancelled—that talks about siting criteria. It's just our suggestions and recommendations on how to proceed and how to include other factors and community involvement in the proper siting of power plants in Ontario.

Mr. Bob Delaney: What's the domain name on your website?

Mr. Frank Clegg: It's c4ca.org.

Mr. Bob Delaney: Ms. Cansfield, I think, has a question or two for you.

Mrs. Donna H. Cansfield: Thank you very much for appearing. I wanted to follow up on the issue that my

colleague raised around the consultation process. There are lots of ways to go about consultation, and I always am amazed that in this wonderful world of technology, we still sometimes don't get it right. But you've been very engaged in this process for some time. Obviously, there are some lessons to be learned in terms of process and how to reach out to people.

I think all of us have been in situations where, unless there's an issue, you don't usually hear from folks. Sometimes it's really hard to even get them out to meetings. How to engage them? I guess my question to you is, what are the lessons that you learned that would help us in the future require, if necessary, or make mandatory, a process of consultation that actually would be meaningful and fulfilling?

0850

Mr. Frank Clegg: I'm not an expert, but when we were going through the whole campaign with the power plant, we looked around North America and around the world, and we found this process in California where they set up a committee that actually goes out and evaluates proposed sites before they even go out for tender—just brief conversations with the individuals involved. It does take a little bit more time upfront, but that gives citizens an opportunity.

The thing I like about it from a business standpoint is that if you're a proponent and you already know that that site is going to have problems, then you can decide to use that site or not. I think if citizens are aware that that site is going to be evaluated by the government and it is going to be potentially part of the procurement process, and if that's known upfront, I think people would pay attention and would actually give proper feedback.

We were aware that there were these four sites, but it was kind of innocuous and everybody kept saying, "Well, that's not real." It wasn't clear to us that that was actually a very viable candidate and that if you had any issues, you'd better get on those issues sooner than you did. I think putting more structure around it and putting a formal process that's communicated and where everybody knows what's to be expected and they know that it's going to be a candidate would encourage people to take time out of their busy lives to give you input sooner.

Mrs. Donna H. Cansfield: That's an excellent idea, actually. I didn't realize that there was one set up in California. And it's made up of people from the government or a combination? Do you know? Or I guess it could be made up of—

Mr. Frank Clegg: I don't know the details. I do know there's representation from government for sure. I don't know if there is citizens' representation, but I do know that a big part of their mandate is to go out and get the community involved, as I say, before it goes to tender.

Mrs. Donna H. Cansfield: I guess the other question would be around the proponents themselves and a requirement that they in fact must engage in some consultation process in addition to—I mean, the siting is one thing, and then actually informing people of what's going on, truthfully. That's the other part. People really were

concerned that they couldn't access information; they weren't able to get what they wanted. I'm talking about individual people, much less organized groups like yourself.

Should there be some sort of formal requirement within the procurement process that states that consultation must take place and that it must be somehow meaningful, and that you have to have a track record of some sort of form of consultation?

Mr. Frank Clegg: To be fair to industry, I think you have to be very clear what they are supposed to do, and it should be very clearly laid out what's required. As I mentioned before, there is an environmental assessment that, I would argue, should be done. Some part of an environmental assessment should be done, certainly before the contract is awarded. You could argue that it should be done before the proposal is even submitted. I think it's fair to both citizens and to industry that we need to be clear on what's expected. But, yes, I do agree that there should be more clear criteria to the proponents on what they should communicate to the community and when and how they should participate or they should offer that information to the public.

Mrs. Donna H. Cansfield: I guess the same would be said around the environmental processes. I think it's been somewhat of a concern about the variety of types of environmental processes there are and who gets to determine what and when. I know there were challenges around one of the other plants on the bump-up—again, clear and coherent rules around siting of power plants, period, and environmental processes.

Should there be, from your perspective and the work that you've done, a multitude of different layers of this, or should it be far more prescriptive?

Mr. Frank Clegg: I think it should be very prescriptive. If it's a certain size of plant—the size that went into Oakville, quite frankly, in my opinion, should have a mandatory environmental assessment, period. You couldn't put a wind turbine on that site, for example. A wind turbine is less than two megawatts of power; this one was 975 and there was no environmental assessment. So, yes, there needs to be a lot stricter environmental assessments and there should be guidelines at certain levels, and big, humongous power plants should be at the top of the chart.

Mrs. Donna H. Cansfield: Well, that was one of the challenges, I believe, in one of the other plants as well. They sort of flew under the radar on an environmental assessment because of the size of the plant. So maybe there needs to be some more thoughtfulness around this whole siting process in terms of what the government requires, what the people require, what the clarity is, as you say. It's recognizing you need to be fair to both industry and to the municipalities that are affected and impacted, but in particular to the residents or to the businesses that are close by.

Mr. Frank Clegg: I agree.

Mrs. Donna H. Cansfield: So of all the things that have occurred in this, what's the best lesson learned?

Mr. Frank Clegg: The committee has an opportunity here, as I said in my opening remarks, to take this lesson and make sure it doesn't happen to another community. Today there isn't even a basic buffer zone rule for any power plant, so a buffer zone would be a very good basic step. There should be a revisiting of the process to site power plants in our province, and I think there's an environmental part of that—you mentioned industry before. When I talked to a couple of the industry folks involved in the California situation, they actually liked that process because, as I said, if they're going to bid site A versus site B, they know right upfront whether they should do it and what the problems are going to be. Nobody knows that today, and it certainly isn't fair to the citizens, but I would argue that it's not fair to industry either, because they don't really know what the rules are.

So my lesson learned is to say, let's figure out a way. Let's go look around the world and find out who's got the best siting criteria of anybody on the planet, and let's use that in our great province that we have. Then, the rules are right upfront and people know, and if citizens know that that site is being considered, then they can get organized and put presentations together and talk about their issues, and we can end up with meeting our power needs but not putting them near homes and schools.

Mrs. Donna H. Cansfield: What about the issue around transmission? What did you learn?

Mr. Frank Clegg: I did not go near the transmission. I started to, and I think I'm pretty smart, but it's really complicated, and there is no easy answer. We had a couple of engineers, and it is not an easy thing to solve. The reality is, you need to get the power from point A to point B, and I think I saved myself a lot of time and energy by letting somebody else deal with that. C4CA did not get into transmission lines.

Mrs. Donna H. Cansfield: That certainly is the challenge around siting, isn't it? Yes, you can look at having the sites that are appropriate, but then you must transmit that electricity from one place to the other. So you meet resistance of a different kind when you start looking at transmission and distribution. Yet, again, at the end of the day, we all want to keep our lights on and our TVs working and our stoves and whatever else we use.

It is a challenge, but within that siting process, as you say, maybe we can learn, because others obviously have gone through this in certain jurisdictions where they've had to deal with transmission in addition to—you can't bury everything.

Mr. Frank Clegg: No, you can't.

Mrs. Donna H. Cansfield: It's very expensive, and it's not that easy—

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Cansfield.

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Welcome, Mr. Clegg.

Full disclosure, Chair: In my former life as mayor of the city of North Bay and in Mr. Clegg's former life as the top man at Microsoft, we did attempt to engage in business together about 10 years ago. I just wanted you to

know that right upfront. And if I can say unabashedly, I'm a huge fan of Mr. Clegg's as well, with his wonderful work at Microsoft and his work with C4CA.

Thank you, Mr. Clegg, for your dogged work at C4CA. It's much appreciated.

You and Mr. Delaney spent a tremendous amount of time talking about the siting of plants. Actually, it reminds me of the trials and tribulations that the wind turbine people in rural Ontario are having with this current government as well. You brought out the California example, which is good food for thought here. It's obvious that something needs to be done.

Let me tell you how the alternative to Oakville was sited. This might come as quite a surprise to you, and certainly, without putting words in your mouth, might be found to be a disappointment to you. A week or so ago, we had Mr. David Livingston here, who, under oath, claimed he has absolutely no expertise in the energy sector and it was he who developed the five options, one of which, in Lennox, was actually chosen. There is a document—I don't need to share it; the committee has all had it before—I'm just going to refer lightly to it as plan A, plan B, plan C, plan D and plan E from this gentleman who, again, tells the committee, "I have no expertise in the energy sector." He's the one who created five options to site the power plant. Believe it or not, one of those options was indeed accepted, and that is where this power plant is now going to be sited.

0900

So I would ask you as a business person, if, in your mind, there's a proper way and perhaps an improper way to site plants in the future? Would you have a thought on that, knowing now how the plant that is being constructed actually ended up to be sited there?

Mr. Frank Clegg: I don't know anything about the Lennox plant. I have no knowledge of it. I did look on the map to see if there are homes and schools nearby, and there weren't, so that was okay.

As we talked about, the more open and transparent the process can be to everybody involved, I think the fairer it is for everyone, and I think the opportunity, quite frankly, is for a better decision. In my experience, sometimes the best solutions—if you give industry the opportunity to solve the problem and you give them a good set of guidelines and frameworks, sometimes they can come back with some creative solutions.

So I can't comment on the Lennox process, but I can comment on the opportunity, as I said before, that the committee has to—in my experience, sometimes the best work that I did for the government was for free in submitting—in replying to an RFP. So I'd encourage you that you can set the criteria, notwithstanding there are transmission issues and notwithstanding that there are zoning issues and there are all kinds of issues to deal with, and let industry come back and propose it, but again, it has to be open and transparent. It has to be full disclosure. The community has to know and has to be involved. I think that's an opportunity.

Mr. Victor Fedeli: I would agree on the open and transparent comment wholeheartedly actually, Mr. Clegg.

Sadly, the government is sticking to their story that the move from Oakville to Lennox is \$40 million. Actually, they kind of broke off from that a week or so ago and said, "Well, maybe it's going to be more." But in an open and transparent way, we did have two witnesses here. One is an energy expert who puts the cost of Oakville alone in the \$828-million range, and we did have a vice-president from the OPA, and when you add up her numbers, the move to this Lennox site is \$929 million—just Lennox alone. She's got turbine costs in there, transmission costs in there. Because of the location, there's gas delivery and management charges in there, and of course the sunk cost of \$40 million.

Would you acknowledge or concur that in business there's a fiscally responsible way to do things and a fiscally irresponsible way? Would that be a fair enough statement?

Mr. Frank Clegg: I think that's a fair statement.

Mr. Victor Fedeli: Thank you, Chair.

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

To Mr. Tabuns: 20 minutes.

Mr. Peter Tabuns: Thank you, Chair. Mr. Clegg, thanks for being here this morning. My understanding is that your organization—and maybe my understanding is incorrect; you will let me know—commissioned an energy study to see if this plant was indeed necessary. Is that correct?

Mr. Frank Clegg: No, we did not. No, there was no study. The only information that we used was the IESO report. So no, we did not, that I'm aware of. Let me put it this way: I didn't approve funding for that, so I don't think we did.

Mr. Peter Tabuns: That's entirely clear. Can you tell us which party proposed this plant?

Mr. Frank Clegg: The Liberal Party was in power at the time.

Mr. Peter Tabuns: Thank you. I don't have any further questions. I appreciate your help.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. The government side: Mr. Delaney, 10 minutes.

Mr. Bob Delaney: This should also be relatively concise. I notice that Mr. Tabuns and Mr. Fedeli are trying to do a little bit of finger pointing at the current government. We do know that all three parties had committed to cancelling this plant, and I'm just going to go over a little bit of ground that we've covered.

Mr. Clegg, you've talked about Mr. Chudleigh, who said, "The people of Oakville have told you they don't want the proposed power plant, and I agree with them."

Back on October 7, 2010, Mr. Tabuns told Inside-Halton, and I'll use his words, "I don't agree with the Oakville power plant." And on December 2, 2010, NDP MPP Michael Prue said, and I'll use his words, "I'm glad the people of Oakville hired Erin Brockovich and did all the things that they did in order to have this killed." Sometimes you're told, "When the horse is dead, dismount," so let's try to do that. It's pretty clear that the NDP were opposed to this particular power plant, right?

Mr. Frank Clegg: Yes.

Mr. Bob Delaney: Okay, good. Thank you.

On the PC side, Larry Scott, the provincial PC candidate in 2011, stated in 2009, and I'll use his words, "The correct way for this to go is not to be built," referring to the Oakville power plant. And in mid-October of that year, 2009, the federal Conservative MP for Oakville, Terence Young, had submitted 133 petitions opposing the proposed power plant. So it would again be accurate to say that the Conservatives, both federally and provincially, made their opposition clear?

Mr. Frank Clegg: Yes, quite.

Mr. Bob Delaney: Okay. Finally, to put a little bit of context around some remarks made by Mr. Fedeli, who asked you, for some bizarre reason, to comment on the testimony of Mr. Livingston: Just for the record, Mr. Livingston told the committee that he had had a 30-year career in banking, and especially in his latter days in banking—I'll use his words—"I was mostly involved with the development of strategy and doing mergers and acquisitions work, so I had a fairly broad background in negotiating agreements between private sector companies."

Just before we conclude, is there anything you wanted to say to us, Mr. Clegg?

Mr. Frank Clegg: I'm just going to repeat my appeal to the committee to do whatever you can within your powers to make sure this doesn't happen to another community in our province. That's my only ask. No other community should have to go through what we did. I think you have the opportunity to prevent it, and I really hope you do.

Mr. Bob Delaney: Okay. Ms. Cansfield, I think, has one concluding comment.

Mrs. Donna H. Cansfield: I just wanted to say thank you as well, and for the work that you have done. You know, it's sometimes difficult to get the message out around some of the challenges that are presented, and there are lots of challenges. You've identified those, and it's complex. But at the same time, you were able to meaningfully, and with good stats and with good science, I must say, get the message out to a lot of folks. That's very appreciated—and for my community as well, because we're in the same airshed. So it certainly helped us as well. I just wanted to say thank you.

Mr. Frank Clegg: Well, we try. Thank you.

Mr. Bob Delaney: Chair, we're done.

The Chair (Mr. Shafiq Qaadri): To the PC side: Mr. Fedeli, 10 minutes.

Mr. Victor Fedeli: Thank you, Chair.

This committee is here to find out the total cost of this gas plant cancellation and who ordered the cover-up of documents. Would you have any information to add to this committee on the total cost of the Mississauga and Oakville cancellation and/or who ordered documents to be covered up, redacted or withheld?

Mr. Frank Clegg: I do not.

Mr. Victor Fedeli: Thank you, Chair.

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

Mr. Tabuns?

Mr. Peter Tabuns: No further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns, and thank you to you, Mr. Clegg, for your presence and stewardship of the community interest. You are now officially dismissed.

Mr. Frank Clegg: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Before committee recesses, we do have an issue before this committee with regard to the report that is due, and Ms. Hindle will discuss that.

Ms. Karen Hindle: Good morning, members. As you know, the committee is required to report back in some form by May 21, 2013, so the procedural Clerk and I have prepared some questions that we would like you to consider with respect to the report. We're open to either discussing it immediately or coming back at a later date and discussing it.

Specifically, the questions deal with the form or the type of report that members would like to table in the House, whether it take the form of an interim report or a more final report, whether it would include recommendations and conclusions or just observations on the process thus far. There is also an opportunity for members to come up with an alternative format. We also would like to know whether the report should address simply the matter of compliance and non-compliance with the estimates committee's request for production and/or the costs associated with the cancellation and relocation of the Mississauga and Oakville plants.

The Chair (Mr. Shafiq Qaadri): I take it from the overwhelmed, uncaffeinated looks on the faces of my colleagues that they will need at least until this afternoon to decide these issues.

Ms. Karen Hindle: That's fine.

Interjections.

The Chair (Mr. Shafiq Qaadri): Or more—fair enough. Mr. Delaney.

Mr. Bob Delaney: Chair, in the interests of expediting that, may I suggest that we convene a meeting of the subcommittee to discuss that very topic?

The Chair (Mr. Shafiq Qaadri): We have a full committee meeting this afternoon, so that's—

Mr. Bob Delaney: I know, but in subcommittee we might be able to come to a consensus to bring back to the committee.

Mr. Rob Leone: I'm not going to be able to do that today.

Mr. Bob Delaney: Okay.

Mr. Peter Tabuns: I don't think we need to do it today—

Mr. Bob Delaney: I'm not proposing that it be done today, but I am saying that in order to get this dealt with and get it dealt with expeditiously, we convene a subcommittee at the earliest possible time to do that.

The Chair (Mr. Shafiq Qaadri): That's fine. Committee is recessed till this afternoon.

The committee recessed from 0911 to 1500.

MR. CRAIG MacLENNAN

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is now in session once again. Justice policy is here, as you know, on energy infrastructure, particularly with reference to the gas plants. We ask our second witness of the day to please come forward, Mr. MacLennan. I invite you to be sworn in by the Clerk.

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?

Mr. Craig MacLennan: I do.

The Chair (Mr. Shafiq Qaadri): Thank you. Five minutes of opening remarks, beginning now.

Mr. Craig MacLennan: Thank you.

I began in the office of the Minister of Energy in January 2010 and left approximately eight months ago. However, during my tenure in the office there was a period where I was absent from the office for approximately three months prior to election day in 2011.

As chief of staff, my duties included hiring staff—

The Chair (Mr. Shafiq Qaadri): Mr. MacLennan, if you could just speak a little louder or move closer to the mike or something.

Mr. Craig MacLennan: As chief of staff, my duties included hiring staff, supporting staff, advising the minister, taking meetings with stakeholders, and working with the energy agencies, the ministry and the Premier's office. I became more involved in the Oakville gas plant file in September 2010. I became more involved in regular meetings with the minister, the ministry, our deputy, the Premier's office and the OPA to become further briefed on the background information on the issue and also to support the then minister in his continued deliberations on the issue.

Following the decision of the Premier and the minister not to proceed with the gas plant, I took meetings, as needed, with the OPA, the minister, ministry officials and the Premier's office. As the secretary of cabinet also previously stated, a number of people were screened off the file two years ago; I was one of them.

I had also met with representatives of TransCanada three times, to my recollection. The first meeting I attended was just after they were given notice that the government would not be proceeding with the Oakville gas plant. Attending the meeting were myself, the minister and, I believe, our deputy minister. We also asked legal counsel to join us in the meeting to take notes. To my recollection, they discussed communications and requested that the minister not negatively position gas as a form of generation, that he not talk about it in a negative light.

The second meeting I attended was at TransCanada's request. Also participating in the meeting were my colleague from the Premier's office and the deputy minister of the time, and again we requested government legal

counsel to be present to take notes. Our deputy was the lead on the meeting and we all said very little, based on advice from legal. We listened and made no commitments. To my recollection, the primary issue was the lack of OPA's willingness to share their financial modelling with TransCanada to explain the numbers they were getting to. To my recollection, the parties were also very far apart in their negotiations.

My third meeting with TransCanada was with their director of government affairs. Prior to taking the meeting, I consulted with government legal counsel on behalf of myself and my colleague in the Premier's office who was also participating in the meeting. After significant advice and coaching from government legal counsel, my colleague Sean and I took the meeting with their government relations representative. We were instructed to make sure that the meeting was without prejudice. We did make that clear, and TransCanada did the same. To my recollection, at the meeting we heard them out but made no commitments. Following the meeting, we debriefed legal counsel on the contents of the meeting.

Changing now to the Mississauga gas plant, on the Mississauga gas plant, prior to my departure from the office of the Minister of Energy for three months prior to election day in 2011, I was involved in the initial briefings and information gathering on the issue when it first emerged in the media and when it was raised with us by caucus members as a concern of their local constituents. I was not, however, lead on the file in our office.

When I returned to the office following the election, I supported the new minister on the implementation of the campaign commitment. I did not lead the day-to-day happenings on the file, as I had deferred that to my then senior policy adviser. I was, however, aware of, and participated in, conversations on the issue in a supporting capacity.

Thank you. I welcome your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. MacLennan. We'll pass to the PC side. Mr. Fedeli, 20 minutes, as you know. Begin.

Mr. Victor Fedeli: Thank you very much, Chair. I just wanted to tie up some loose ends on some names. In your first meeting with TransCanada, you accompanied the minister, the deputy—yourself and legal counsel.

Mr. Craig MacLennan: Yes, sir.

Mr. Victor Fedeli: The second meeting, you were with a colleague.

Mr. Craig MacLennan: Sean Mullin, from the Premier's office.

Mr. Victor Fedeli: So your Premier's office colleague was at the second meeting—

Mr. Craig MacLennan: Yes, sir.

Mr. Victor Fedeli: —and with counsel?

Mr. Craig MacLennan: Yes, sir.

Mr. Victor Fedeli: And the third meeting was with your colleague from the Premier's office, Sean—

Mr. Craig MacLennan: Yes.

Mr. Victor Fedeli: —and counsel? Did you say there was counsel?

Mr. Craig MacLennan: No legal counsel, but we were coached by legal counsel in advance and debriefed afterward, at the end of the meeting.

Mr. Victor Fedeli: Well, keeping on that tone, were you coached by any legal counsel for today's hearings—

Mr. Craig MacLennan: No.

Mr. Victor Fedeli: —or any other counsel of any type?

Mr. Craig MacLennan: No.

Mr. Victor Fedeli: Okay. Thank you. It's come up earlier today.

Mr. Craig MacLennan: Oh, really?

Mr. Victor Fedeli: Yes.

You were with the minister's office when the estimates committee first asked for documents. Is that correct?

Mr. Craig MacLennan: I was, sir. Correct.

Mr. Victor Fedeli: Who made the decision on how the ministry would deal with the documents?

Mr. Craig MacLennan: The ministry made the decision on how to collect the documents. Is that what you mean?

Mr. Victor Fedeli: For instance, we received letters at the estimates committee saying they wouldn't release the documents. There was a two-month filibuster for the next period. There were discussions, obviously, on how to handle the Speaker's decision to force you to turn the documents over, the decision on which documents would be turned over and which documents would be withheld, and the decision ultimately to redact pages. Who made those kinds of decisions? Walk us through that discussion.

Mr. Craig MacLennan: Sure.

Mr. Victor Fedeli: What happened when you first heard, "You need to turn documents over," from then on kind of thing—just for a couple of minutes, please.

Mr. Craig MacLennan: Sure. We didn't really know what to do. There were ongoing negotiations on both gas plants, and a lot of the information was solicitor-client privileged. I wasn't lead on the file in my office, but I understand there were heavy consultations with government—

Mr. Victor Fedeli: By whom? I'm just trying to get some names here. Who would have had that heavy consultation?

Mr. Craig MacLennan: It would have been the minister—

Mr. Victor Fedeli: Talking to whom?

Mr. Craig MacLennan: My colleague Ryan Dunn.

Mr. Victor Fedeli: I'm sorry?

Mr. Craig MacLennan: My colleague Ryan Dunn.

Mr. Victor Fedeli: And Ryan Dunn is where?

Mr. Craig MacLennan: He was in the minister's office—he's no longer there now—consulting with legal counsel on how to respond to the committee's request. Ultimately, legal counsel, as I understand it, advised that it would be difficult to release these documents while negotiations were still under way. Ultimately, as I understood it, the minister accepted that legal advice.

Mr. Victor Fedeli: So you're saying it was legal counsel that told you not to turn the documents over.

Mr. Craig MacLennan: Yes, sir.

Mr. Victor Fedeli: Which legal counsel would that be?

Mr. Craig MacLennan: Ministry legal counsel. I don't know exactly which legal counsel. I imagine it would have been—you may want to ask the deputy. I believe he's right after me.

Mr. Victor Fedeli: Was this in writing, was this verbal, by phone, email?

Mr. Craig MacLennan: I'm not sure.

Mr. Victor Fedeli: Okay.

You began working with the minister in January 2010.

Mr. Craig MacLennan: Yes, sir.

Mr. Victor Fedeli: The scenario I want to walk us through here: Back in the initial decision to cancel Oakville, we then came across an amount of money, and I want to talk about that. Then there was a decision to cancel Mississauga, and I want to talk about that. Then there was a decision to withhold documents, and I want to talk about that. Those are kind of the three areas I want to chat with you about.

Mr. Craig MacLennan: Sure.

Mr. Victor Fedeli: Were you aware of the \$712-million offer that was made to TransCanada that they eventually rejected?

Mr. Craig MacLennan: I couldn't recall it. I saw it mentioned, I believe, in the *Globe and Mail*, and I honestly couldn't recall it. My assumption is that it occurred after I was screened off the file.

Mr. Victor Fedeli: Were you aware, then, of the discussion in September 2010—September 15, actually—where the OPA was talking about the sunk costs and the fact that they're going to need to be made to pay out the value of the contract, and that that 20-year lifetime could amount to \$1.4 billion? Were you aware of that number?

1510

Mr. Craig MacLennan: I believe I was aware of the sunk costs, which they had estimated at around \$15 million to \$40 million all along. They didn't have exactly what that would be. I don't recall the billion-dollar number.

Mr. Victor Fedeli: You don't recall a number of \$1.4 billion?

Mr. Craig MacLennan: I don't, sir, no.

Mr. Victor Fedeli: Okay. Do we have the documents passed out, shared, yet?

Interjection.

Mr. Victor Fedeli: I'm sorry? The witness has the documents?

If you look at PC document 1, it's an email chain that talks about the \$1.4 billion, and it says, "Craig is not happy with this range." Are you the Craig they're talking about?

Mr. Bob Delaney: Chair?

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

Mr. Bob Delaney: Chair, could we have copies of the documents in question, please?

The Chair (Mr. Shafiq Qadri): I'm sorry. Please continue.

Mr. Victor Fedeli: Are you the Craig that they're talking about when they say, "Craig is not happy with this range"—the \$1.4-billion number?

Mr. Craig MacLennan: Yes.

Mr. Victor Fedeli: Do you now recall that number?

Mr. Craig MacLennan: Yes.

Mr. Victor Fedeli: So you are aware of that \$1.4-billion number.

Mr. Craig MacLennan: I apologize for not recalling it earlier.

Mr. Victor Fedeli: Well, that's what the documents are for.

Mr. Craig MacLennan: Sure.

Mr. Victor Fedeli: When the decision to move from Oakville to the new Lennox site—you say you don't know about the \$712 million, but maybe you do—you do recall reading about that number. Is that more recently, or—

Mr. Craig MacLennan: More recently, sir, yes.

Mr. Victor Fedeli: I didn't bother bringing those documents because we've had them here so many days I can't actually recall the date of that one anymore.

But you do know about the \$1.4 billion.

Let's talk about some of the actual costs. All the public want to know—may I call you Craig? When I call you by your last name—we have a staffer here with almost the same name, and I'm going to use his name 10 times.

Mr. Craig MacLennan: Please do, Mr. Fedeli. It's fine.

Mr. Victor Fedeli: He has a different first name. I'll call you Craig; you call me Vic.

Mr. Craig MacLennan: Okay. Thanks, Vic.

Mr. Victor Fedeli: All the public wants to know is, how much did it cost and who ordered the cover-up? That's really all we need to find out. That's all we want to know.

So let's try to get to the cost. Let's see what you know about the cost. You've heard about the \$1.4 billion. We know that TransCanada turned down \$712 million—you have to take my word for that; I didn't bring that document. Let's talk about a little bit of the discussion, then, that has come out from energy experts and the documents that we have here: transmission lines at \$200 million; turbines at \$210 million; gas delivery and management at \$313 million to \$476 million; and the sunk costs of \$40 million. That adds up, if you take the high-end number, just in Oakville, to about \$929 million—a little less than the \$1.4 billion that you weren't happy with; I can see that.

Where do you come in in sussing out the number, the value, of the Oakville cancellation? I know you're not happy with \$1.4 billion; I can see that in the email. Where are you, then?

Mr. Craig MacLennan: Again, I was screened off the file two years ago. So what I can do for you, Mr. Fedeli, is talk about what numbers we were talking about back then.

Mr. Victor Fedeli: Okay. That's great.

Mr. Craig MacLennan: What we were talking about was the sunk costs. I believe that to be a very real—

Mr. Victor Fedeli: Plus, it says here. The sunk costs and the value of the contract—the lifetime contract of \$1.4 billion.

Mr. Craig MacLennan: From my knowledge, those were the only costs. Again, I think the auditor is going to give you a much better answer than I did.

One of the costs that also often gets thrown around as something associated with this would be the transmission costs. From my understanding with the OPA, what gave us comfort in green-lighting a plant, to relocate a plant, was not only had the supply needs changed in the area, but that planned transmission that was going to be done in the area could have been moved up closer to—

Mr. Victor Fedeli: So, you know, we hear two different stories from everybody. Some people say the supply needs changed. There's other emails here in a slide show. I didn't bring that one either; I didn't think I'd have to. It very clearly says we need the power. We hear two different stories from two different groups. Every day there's a rotating aisle here of "Yes, we needed the power; that's why we had to rebuild it" or "No, we didn't need the power; that's why we cancelled it." We're just trying to get to the facts.

One of the things in that \$1.4-billion email—you talk about trying to exercise force majeure, down at the bottom. "What is 'our' liability if FM is exercised....?" What were you trying to do there? You were trying to get out of paying something by claiming force majeure for a political cancellation, but that's another story for another day. What kind of money were you trying to get out of on that one?

Mr. Craig MacLennan: I think I was genuinely trying to understand what force majeure was to begin with.

Mr. Victor Fedeli: Well, it sure isn't a political cancellation. I think you and I both know that. Force majeure is floods and a hurricane—an act of nature, I think some people would call it. Is that not fair?

Mr. Craig MacLennan: Can I take a minute to read this?

Mr. Victor Fedeli: Yes, your name's on the document. It's an email you sent, so I'm sure you will recall the document.

I just want to jump, then, to another area. If we can't nail down the transmission, the turbines, the gas delivery, the sunk costs, we'll live with the other experts who told us that it's in the \$900-million range for Oakville alone. Who made the decision to sole-source the new plant to TransCanada without going to a bid? How was that decision made?

Mr. Craig MacLennan: Again, I was screened off the file, but I believe the minister would need to write a directive. That's my understanding.

Mr. Victor Fedeli: To sole-source that contract. In the time you were, before you were screened off, was there talk about a quid pro quo, "We'll cancel this, but we'll give you a sole-sourced contract"? Is the contract part of the payment?

Mr. Craig MacLennan: Again, I wasn't a part of the negotiations, but my experience with it was that the thought was that the plant could be relocated to an area that needed the power, and in Kitchener—

Mr. Victor Fedeli: And then given to the same contractor?

Mr. Craig MacLennan: Yes. The contract could be transferred over to a Kitchener-Waterloo-Cambridge area that the OPA had identified as in need of power, and the local utilities had also identified a need for power. But I—

Mr. Victor Fedeli: So you were sourced off that; you were screened from that.

Mr. Craig MacLennan: Yes.

Mr. Victor Fedeli: Let's then go to an area you were involved in more: Mississauga.

Mr. Craig MacLennan: Sure.

Mr. Victor Fedeli: Let's jump to this. Remember I told you, we're trying to find out how much both of them are and who was involved in the cover-up. Let's go to part 2, the Mississauga \$190 million. I want you to go to doc 2. I want to ask you, in your recollection—the first announcement that your minister made was \$180 million. What happened to change that from \$180 million to \$190 million? What happened?

Mr. Craig MacLennan: We were given the \$180 million number by OPA. When the number of \$180 million went out, even though the OPA had affirmed that these were the direct costs, there was a case to be made that there was an outstanding \$10 million that allowed the cessation of construction and the deal to be closed, if you will. I would say it would be an error in communications.

Mr. Victor Fedeli: That takes us from \$180 million to \$190 million. In this doc 2 are a bunch of documents. I don't expect you to read them all. But at the end of the day, there's what's called a side deal or a side letter that gives the proponent another \$5 million. Are you familiar with any of that deal that paid them \$5 million more?

Mr. Craig MacLennan: Not to my recollection, no, sir.

Mr. Victor Fedeli: You were the chief of staff in November—this is November 20, 2011.

Primarily November 2011 is around the time. You were the chief of staff, November 20, November 21?

1520

Mr. Craig MacLennan: Yes, sir.

Mr. Victor Fedeli: Okay.

Mr. Craig MacLennan: But we also didn't get involved in their negotiations.

Mr. Victor Fedeli: Somebody had to approve this side deal—this urgent, actually, side deal. Who, in your opinion, then, if I can just cover some of these—"The end result is a \$5-million"—I'm quoting—"adder" ... in

a non-utility generation”—a NUG as you and I would call it—“contract for power that is not needed”—and, in my news release I call it—“and we were not supposed to know about it.” You have no knowledge, to the best of your ability, of any of this extra \$5-million side payment?

Mr. Craig MacLennan: I don’t recall, sir. Again, I wasn’t lead on the file in my office.

Mr. Victor Fedeli: Okay. You’re the chief of staff here. You’re the top guy. So you have people, I presume, working under you who are doing these deals?

Mr. Craig MacLennan: They would have to bring it up to the minister is my assumption. If that was the process of the OPA in order to sign off on it, if they felt they couldn’t sign off on it, they would have to bring it up for a political—

Mr. Victor Fedeli: So you figure, to the best of your knowledge, the minister would have known of this \$5-million extra cost for the side deal as it’s written here?

Mr. Craig MacLennan: I think you’d have to ask him for certainty, but if the OPA felt that in doing a side deal they couldn’t execute it on their own, their recourse would be to naturally raise it with either the minister’s office or the minister directly.

Mr. Victor Fedeli: Okay. I just want to go back to your timeline again. When were you taken off the file?

Mr. Craig MacLennan: About two years ago this month.

Mr. Victor Fedeli: Give me the date, in your opinion.

Mr. Craig MacLennan: I believe it was April this week, two years ago.

Mr. Victor Fedeli: April 2011 you would have been taken off the file?

Mr. Craig MacLennan: Yes.

Mr. Victor Fedeli: What was the word you used? Swept?

Mr. Craig MacLennan: Screened.

Mr. Victor Fedeli: Screened off the file. Okay. You’re not familiar at all with the run-up to the \$712-million offer—

Mr. Craig MacLennan: I couldn’t recall it.

Mr. Victor Fedeli: —that was made to TransCanada in April 2011?

Mr. Craig MacLennan: I couldn’t recall it. I know there was a request that OPA made to TransCanada to go to government. I think there’s documents that testify to that. I know one of the meetings that I referenced in my opening was, I believe, one of those attempts to go to government, but I don’t believe we executed—during my tenure—on a side offer.

Mr. Victor Fedeli: Okay. Well, I wasn’t talking about the side offer now.

Mr. Craig MacLennan: Oh, sorry; bad language.

Mr. Victor Fedeli: I’m back on the TransCanada deal.

Mr. Craig MacLennan: A counter-offer, if you will.

Mr. Victor Fedeli: So you’re screened off the file—just tell me that one more time—around when?

Mr. Craig MacLennan: I believe April 2011.

Mr. Victor Fedeli: Do you know the date in April? I don’t mean to be petty, but there’s a lot—

The Chair (Mr. Shafiq Qaadri): About a minute left, Mr. Fedeli.

Mr. Craig MacLennan: Sorry, I don’t, sir.

Mr. Victor Fedeli: Let’s talk about the cover-up again. At the end of the day, who ordered the documents not to be turned over to the estimates committee?

Mr. Craig MacLennan: It’s my understanding that legal counsel from both the OPA and the ministry advised that it would undermine negotiations and recommended that they not be handed over, and it was ultimately the minister’s decision to accept or decline that.

Mr. Victor Fedeli: How much time is there?

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

Mr. Victor Fedeli: There’s not enough time to ask you the question; I’ll get back to you.

Mr. Craig MacLennan: Okay.

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

To Mr. Tabuns, 20 minutes.

Mr. Peter Tabuns: Thank you, Chair. Thank you, Mr. MacLennan.

Mr. Craig MacLennan: Thank you. You can call me Craig.

Mr. Peter Tabuns: I know, I know.

Mr. Craig MacLennan: We’ve known each other for a while.

Mr. Peter Tabuns: You noted that you were present at three meetings with TransCanada Enterprises—

Mr. Craig MacLennan: Yes, sir.

Mr. Peter Tabuns: —that notes were taken and in one instance you debriefed legal counsel.

Mr. Craig MacLennan: Yes, sir.

Mr. Peter Tabuns: Are those notes still in your personal possession?

Mr. Craig MacLennan: They would be in legal counsel’s personal possession. They took the notes, and I’m sure they’re here.

Mr. Peter Tabuns: Then I will make note to you, Mr. Chair, that I will bring forward a motion to secure those notes so that they’re available to this committee.

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

Mr. Peter Tabuns: You, in response to questions from Mr. Fedeli, were saying that you weren’t the lead on Greenfield South?

Mr. Craig MacLennan: Correct.

Mr. Peter Tabuns: Who was?

Mr. Craig MacLennan: There would be two leads: one before the campaign and one after. Before the campaign, it was my colleague Jon Feairs.

Mr. Peter Tabuns: Feairs?

Mr. Craig MacLennan: And I believe when I was away, the acting chief of staff was Andrew Mitchell, who also may have had dealings on the file. After the campaign, it was my colleague Chris Cheung.

Mr. Peter Tabuns: Chris Cheung?

Mr. Craig MacLennan: Yes, sir.

Mr. Peter Tabuns: Okay. I just wanted to get that out of the way.

You have documents before you, and the first one is “Ministerial Briefing, Southwest GTA Options” by the OPA. That’s February 2010.

Mr. Craig MacLennan: Yes.

Mr. Peter Tabuns: The contract with the OPA was signed at the end of September 2009—maybe the first week of October 2009. Within four months, the OPA and the ministry were trying to get out of the contract. People had been directed to look at options and say, “How do we get out of this?”

When you’re looking at cancelling a contract within four months, something is messed up badly. Who messed up? What happened?

Mr. Craig MacLennan: I was in the latter half of that. I wasn’t a part of the contracting of it. What we had heard from the community was significant backlash, and I wouldn’t say that our decision to not proceed with it got firmed up until much later, until we saw that—while we wanted to respect the needs of the community, it wasn’t until when we went through the long-term energy planning process that we found the plant wasn’t needed.

Mr. Peter Tabuns: I’ll come back to the long-term energy plan, but I find it quite something that within three to four months of signing a contract, you’re already looking for ways to get out of it. It says to me that there was a fundamental error made, and that was not discussed in your office? Was it not said, “How did we get into this? How do we get out of this?”

Mr. Craig MacLennan: There were significant discussions on how to get out of it and what our options available to us were, whether it was “Legislate a solution,” “Do nothing,” “Relocate”—I’m sure I’m forgetting a couple of other ones, but there were significant conversations in the office. To be upfront, I don’t think we questioned that it was signed as much as it was and it was done by our predecessor—all of our predecessors, and that we were kind of stuck dealing with something.

Mr. Peter Tabuns: At the time, in the options that were given to you, this was said: “Exiting the contract will take a long time if we try to minimize our costs. Conversely, if we repudiate the contract to make a quick exit, it will cost ratepayers millions in potential damages.” So you already knew at that point, within four months of signing the contract, that you were in trouble, that there was a course that you could take, but it would probably overlap with the coming election. Can you tell us about the conversations you had in the minister’s office about how saving ratepayers money would put you in an election with this issue still live?

Mr. Craig MacLennan: Again, my part in the discussions was based primarily on the supply needs in the area. It wasn’t an election issue for me in my advice to the minister. I can’t testify to what the minister’s decision-making was, what he weighed and what he didn’t weigh and what the pros and cons of those were. But my advice came together on a supply-need policy standpoint.

1530

Mr. Peter Tabuns: So supply needs change dramatically in four months?

Mr. Craig MacLennan: We learned through the long-term energy planning that they did change. Again, as I started with and said earlier, there was a big lead-up where we may have gotten these things but the OPA was still telling us that we needed the power in the area. Regardless of this, we felt a duty to keep the lights on. The air conditioning was growing; the houses were getting bigger and bigger. Again, it wasn’t until the long-term energy plan, when we realized a transmission solution could be found and the supply needs of the areas had changed, that we really made the decision—the minister made the decision.

Mr. Peter Tabuns: I’ll just go back for a second. As far as I know, even from the beginning the OPA knew that they had a choice of building generation or transmission lines.

Mr. Craig MacLennan: Correct.

Mr. Peter Tabuns: This wasn’t new. So you knew from the beginning that you had these choices.

Mr. Craig MacLennan: I would say they always knew that they would have to upgrade the transmission, so they would have to do two transmission lines. If I’m getting this correct—I’m sure someone from the OPA will correct me if I’m wrong—bring in transmission immediately was what they thought, and the supply needs were what they thought, but eventually upgrade as well. Based on their advice, what we found was that they didn’t have to do those transmission solutions immediately to bring power into the area, because the supply needs had changed, but that those out-year transmission solutions did still need to be done, and those could be brought up to meet the needs of the area.

Mr. Peter Tabuns: I’m going to just ask about a document that we’ve been looking for and you may be familiar with. Apparently on February 17, 2010, the OPA sought an external legal opinion on potential consequences of cancelling the Oakville generating station contract. Are you familiar with this document at all? No?

Mr. Craig MacLennan: February of what year; I’m sorry?

Mr. Peter Tabuns: February 17, 2010. It would be consistent with the OPA saying, “We’ve got a huge problem here. These are the options for getting out.”

Mr. Craig MacLennan: I may have seen it. I can’t recall right now. If you have it handy, I’m happy to look at it.

Mr. Peter Tabuns: No, I don’t. I’m asking you because I’m trying to determine its existence and location.

Mr. Craig MacLennan: Okay. Got it.

Mr. Peter Tabuns: James Girling in your legal service branch gave an opinion on August 27, 2010, saying the government didn’t have to clear the way for Trans-Canada Enterprises. It was running into all these problems with municipal bylaws, interim control bylaws. They had come to you. They asked for relief. They said, “Please overturn these municipal bylaws.” You were told

in August 2010 that the risk of legal action was low if you just left TransCanada to its own devices. That isn't the decision that was made.

Mr. Craig MacLennan: Correct.

Mr. Peter Tabuns: We got stuck, as legal counsel warned, with a very big bill. Why didn't you take the low-cost approach to dealing with this problem?

Mr. Craig MacLennan: I would say I wasn't the decision-maker on the file. As a staffer, all we can do is provide advice to ministers and Premiers and—

Mr. Peter Tabuns: It's very strange to me that a chief of staff would not be drawn in by a minister for a discussion on an issue as important as this. I don't think of you as being in a junior position. You had a lot of authority. Your advice would have been sought. Were you ever asked, "Gee, should I blow the bank, or should I take it easy on ratepayers in this decision?"

Mr. Craig MacLennan: I don't recall; I'm sorry, sir.

Mr. Peter Tabuns: From the testimony we got from Jamison Steeve, it appears that your office and you were dealt out of the negotiations with TransCanada Enterprises. Who was running the show on this deal? You came in very late in the game, according to your earlier testimony today.

Mr. Craig MacLennan: After we were screened off?

Mr. Peter Tabuns: No. Who was running the show in the summer of 2010 when the government was wrestling with this?

Mr. Craig MacLennan: On Oakville or Mississauga?

Mr. Peter Tabuns: On Oakville; sorry. I'm just asking you about Oakville at this point.

Mr. Craig MacLennan: I'm not sure.

Mr. Peter Tabuns: So, you're the chief of staff to the minister and you were out of the loop entirely on the negotiations that were going on with TransCanada Enterprises?

Mr. Craig MacLennan: After I was screened off, yes.

Mr. Peter Tabuns: No, you weren't screened off until after TransCanada said that it was going to proceed with legal action. So you were screened off much later than that. In the summer of 2010, you weren't even involved in negotiations.

Mr. Craig MacLennan: As I recall, negotiations began in October.

Mr. Peter Tabuns: The first meeting Jamison Steeve had with TransCanada Enterprises was June-July 2010.

Mr. Craig MacLennan: Right. I wasn't at those meetings.

Mr. Peter Tabuns: No, you weren't. Why, as chief of staff, were you not part of this process?

Mr. Craig MacLennan: I don't know.

Mr. Peter Tabuns: Were you aware that people were working around you, that your ministry was being operated by remote control?

Mr. Craig MacLennan: No.

Mr. Peter Tabuns: Okay. You've told us about your meetings with TransCanada Enterprises, so I know you were involved there. Were you ever made aware as to

whose decision it was that TransCanada Enterprises needed to be made whole in this process?

Mr. Craig MacLennan: I had heard after the fact that there was a meeting that took place where TransCanada thought they heard somebody say that or agree to that, but I wasn't at the meeting so I don't have any proof of that. I believe the proponent, TransCanada, used it as part of the negotiations, as was conveyed to me by folks at the OPA.

Mr. Peter Tabuns: So to your knowledge, it wasn't something that was conveyed to TransCanada by the government. It was a position put to the government by TransCanada?

Mr. Craig MacLennan: That was my understanding, and I don't know if anybody agreed to that. Again, I wasn't in the meeting, but there should be legal notes from that meeting. We sent legal counsel to that meeting as well.

Mr. Peter Tabuns: You say that the decision—the way was opened to cancelling this plant through the assessment done with the long-term energy plan. Who was the core leading the long-term energy plan?

Mr. Craig MacLennan: That's a good question. It was a collaborative process. We started by inviting the public for their input and then took regular meetings with just—similar to a budget process is how we set it up. So we invited bureaucrats in from the OPA, the ministry—

Mr. Peter Tabuns: Can I go back? I'm sorry; I didn't ask my question precisely enough.

Mr. Craig MacLennan: Sure.

Mr. Peter Tabuns: Which senior people in your ministry and the OPA led the process? Were you one of the leaders?

Mr. Craig MacLennan: I participated in many, many meetings on it, yes, sir.

Mr. Peter Tabuns: Who chaired those meetings?

Mr. Craig MacLennan: The minister did.

Mr. Peter Tabuns: The minister did. So you knew you had a problem in Oakville. When we've gone through the documents we've been given, I've never seen one saying, "Thank goodness, we finally figured out we don't need to build Oakville." When did it become apparent in the long-term energy plan process that you had an option?

Mr. Craig MacLennan: You should see a deck in the long-term energy process that says we don't—the supply needs of the area have changed and we can use a transmission solution. There should be a deck to that effect that was presented by the OPA. We were also, at the same time, comparing and trying to figure out what the best supply curve for the province would be. Were we expecting moderate supply, no supply growth or—sorry; demand—no demand growth, flat demand growth, moderate or excessive demand growth, and it fell out of that discussion.

1540

Mr. Peter Tabuns: So did you ever get an email saying, "Eureka, we're saved. The projections show that we don't have to do anything here"?

Mr. Craig MacLennan: No. It would have been a deck. It would have been a deck for discussion. As it was set up, it was a boardroom like this, and the OPA would come in and present, the ministry would come and present, and it was divided by issue. So one day we would deal with gas plants; one day it would be green energy, nukes. “How do we deal with all of this? What is our overall supply?” It was a very collaborative process. And then we had brought in the senior leadership from the OPG and the IESO and Hydro One to validate if everything made sense.

Mr. Peter Tabuns: You know, some of my colleagues around the table may have read every document. I don’t claim that, but I have scanned fairly quickly, and I don’t think I’ve seen anything that corresponds to what you’ve just outlined.

Mr. Craig MacLennan: It’s all in there.

Mr. Peter Tabuns: It’s all there?

Mr. Craig MacLennan: Sixty-nine pages—67 pages.

Mr. Peter Tabuns: And were you responsible for pulling together the documents that were to be presented at the demand of the estimates committee?

Mr. Craig MacLennan: Was I? No.

Mr. Peter Tabuns: Notes from Michael Barrack, TransCanada Enterprises counsel, indicate that your minister was in a meeting with TransCanada Enterprises’ Sean Mullin and David Lindsay. Notes indicate that Minister Duguid told TransCanada, “System’s changed. Energy plan by the end of the year at the latest,” and I think Mr. Fedeli has quoted this previously, to which TCE noted, “TCE responds angrily”—blew a gasket—“we already have a deal—go talk to your bosses.”

Why was your minister not kept abreast of what was going on in the discussions with TransCanada? Was there an obvious rift between the minister and the Premier’s office?

Mr. Craig MacLennan: No. So I would—do you have that note handy?

Mr. Peter Tabuns: I do not have it with me, no.

Mr. Craig MacLennan: Do you recall the date?

Mr. Peter Tabuns: It would have been in roughly early October 2010.

Mr. Craig MacLennan: I believe I was at the meeting as well. I believe it’s one of the meetings I referred to in my opening, and I don’t recall that as the discussion. It was primarily an issues discussion around how the minister would communicate gas in his communications when he made the statement. I’m not saying the legal notes are wrong. Sorry, what do they say? The minister—

Mr. Peter Tabuns: That the minister said that the system’s changed; energy plan by end of the year. TransCanada blew a gasket, said they already had a deal.

Mr. Craig MacLennan: I’m not sure what deal they’re referring to.

Mr. Peter Tabuns: I think an agreement with the Premier’s office that they’d be kept whole.

Okay: January 24, 2011, Susan Kennedy of the OPA wrote an email to her colleagues saying the directive being prepared for the OPA indicated that the MO, the

minister’s office, was dead set against any reference to costs.

The Chair (Mr. Shafiq Qaadri): About a minute, Mr. Tabuns.

Mr. Peter Tabuns: Okay.

Why was that?

Mr. Craig MacLennan: I’m not sure. Do you have the email that I could look at?

Mr. Peter Tabuns: I don’t, with me.

Do you know why your office didn’t want reference to costs in any directive to the OPA?

Mr. Craig MacLennan: On what date?

Mr. Peter Tabuns: In January 2011.

Mr. Craig MacLennan: It may have been because costs may not yet have been finalized; that would be my assumption. I can’t say for certain.

Mr. Peter Tabuns: The reference that I’m aware of is different from that, but when I get back to my 10-minute rotation, I’ll proceed.

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

To the government side: Mr. Delaney, 20 minutes.

Mr. Bob Delaney: Good afternoon, Craig. I just want to ask you a few questions about your role and involvement. We may cover some of the same ground you have covered before.

You began to serve as chief of staff at energy in January 2010 under Brad Duguid?

Mr. Craig MacLennan: Yes.

Mr. Bob Delaney: And when you left on your leave, it would still have been Brad Duguid as minister?

Mr. Craig MacLennan: Yes.

Mr. Bob Delaney: Then you briefly served under Minister Bentley, post-election 2011?

Mr. Craig MacLennan: Correct.

Mr. Bob Delaney: Okay. Thank you.

Talking in general about the role of chief of staff, what sorts of things does that entail?

Mr. Craig MacLennan: You’re responsible for hiring staff; making sure staff know what their responsibilities are; negotiating their wages with them; liaising with the deputy’s office and the ministry—as one point, I was always of the belief that my entire staff should feel comfortable liaising with the ministry as well—also, supporting staff and mentoring staff, helping them through their files, answering any questions they may have; advising the minister, being one of many people advising the minister at any given time; and also dealing with caucus members and supporting caucus members of all parties on information they’re looking for, and helping them through issues in their local constituencies.

Mr. Bob Delaney: So if one calls you chief of staff, the emphasized word is indeed “staff” rather than “chief”?

Mr. Craig MacLennan: That’s how I always felt, yes.

Mr. Bob Delaney: You mentioned earlier that taking meetings with stakeholders was a part of that. Was it a big part?

Mr. Craig MacLennan: It was, tremendous.

Mr. Bob Delaney: Is it normal, acceptable practice, indeed in this and other jurisdictions in this and other times, for the chief of staff to meet with stakeholders?

Mr. Craig MacLennan: Yes.

Mr. Bob Delaney: As chief of staff during that time period, were you aware of the local opposition in both Mississauga and Oakville to the power plants?

Mr. Craig MacLennan: Yes, very aware.

Mr. Bob Delaney: Since these were major issues at the time, would it then have made sense that as chief of staff, you would have been involved in helping to implement the decisions?

Mr. Craig MacLennan: Yes, but also gathering information about what was at issue, listening to the needs of the community.

I think you had Frank Clegg here earlier this morning. I had met with Frank a couple of times to listen to what his concerns were.

Mr. Bob Delaney: Okay. To your knowledge, can Ontario's Ministry of Energy overrule a city of Mississauga zoning decision?

Mr. Craig MacLennan: Probably.

Mr. Bob Delaney: To your knowledge, can the Ontario Ministry of Energy overrule a Mississauga or Oakville municipal bylaw?

Mr. Craig MacLennan: Probably.

Mr. Bob Delaney: Okay. How would you clarify your involvement in some of the meetings with the proponents of the Oakville power plant?

Mr. Craig MacLennan: I think I've been pretty clear, but thank you for the question. We listened to them when it was clear to us that the OPA had suggested that they go to us, and we said very little. We didn't want to get ourselves involved. From my standpoint, I didn't want to get involved in negotiations. That's about it.

Mr. Bob Delaney: Which others were aware that you would have been meeting with TransCanada?

Mr. Craig MacLennan: Our legal counsel.

Mr. Bob Delaney: Just the legal counsel?

Mr. Craig MacLennan: Legal counsel, our deputy, our ministry, the Premier's office and I believe the OPA through our legal counsel to their legal counsel. We expected them to give them notification or a heads-up. That was our hope.

1550

Mr. Bob Delaney: Okay. In your understanding, why were you, as the words have been used, screened out of the discussion?

Mr. Craig MacLennan: I was told that I was screened out to limit potential litigation testimony.

Mr. Bob Delaney: A few questions about Oakville—

Mr. Craig MacLennan: And I had no reason to fight with the Ministry of the Attorney General lawyers on that. I took that advice and was kind of happy to be off the file.

Mr. Bob Delaney: That was probably very wise.

What were some of the factors that went into the decision to cancel the proposed Oakville power plant?

Mr. Craig MacLennan: I think you'll want to ask that question to the decision-makers themselves, but I can provide my advice, if that's helpful. My advice was—again, I think you've heard me say this before—that we had changing supply needs in the area, a transmission solution could be found, force majeure wasn't necessarily a certainty, there was clearly a community that didn't want it and there was a good likelihood that it could be relocated to an area that needed it.

Mr. Bob Delaney: Okay. A recurring issue that's come up an awful lot with Oakville was the concern about the risks of litigation between TransCanada Energy and the town and the province. Was some of the discussion around efforts to see if there was an alternative to litigation?

Mr. Craig MacLennan: I don't recall. I think relocation is an alternative to litigation.

Mr. Bob Delaney: What were some of the risks that might have borne on the taxpayers if TransCanada Energy was successful in legal action against the province?

Mr. Craig MacLennan: The entire amount of their settlement, without any electrons at the end of the day resulting from it.

Mr. Bob Delaney: So there was a possibility that whatever costs have been incurred including sunk costs and other costs might have been even higher.

Mr. Craig MacLennan: Potentially.

Mr. Bob Delaney: The solution of renegotiating with TransCanada Energy to build a different plant—was that seen as a better alternative than terminating the existing contract and incurring the risk of litigation?

Mr. Craig MacLennan: Again, I've given you what my advice to my minister was. I think that's a better-placed question for the minister and the Premier.

Mr. Bob Delaney: There have been some suggestions that the province bore some of the costs and risks for TransCanada Energy because the company was concerned the project itself wouldn't move forward as a result of municipal opposition, which of course is complete speculation. Our understanding is that while the municipality had enacted bylaws to try and prevent construction, there was at that time no assurance—

Mr. John Yakabuski: Point of order, Mr. Chair?

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

Mr. John Yakabuski: Chair, we've been through 40 minutes of testimony in which the witness can't answer questions that quite likely he should have an answer to, yet—

The Chair (Mr. Shafiq Qadri): Mr. Yakabuski, though always entertaining, I don't believe that's a—

Mr. John Yakabuski: —Mr. Delaney is asking him to speculate on what he thinks the cost may have been when if he doesn't have the knowledge or can't answer questions on what he should have knowledge of, how can we expect him to have knowledge on—

The Chair (Mr. Shafiq Qadri): I thank you for your edification. Please continue, Mr. Delaney.

Mr. John Yakabuski: —that he knows nothing about.

Mr. Bob Delaney: Given that I hadn't even finished the question, I'm sure Mr. Yakabuski shouldn't speculate on what I was going to ask.

Just to recap, my understanding is that while Oakville had enacted some bylaws to try and prevent the construction, there was no assurance that these municipal bylaws either couldn't or wouldn't ultimately be overruled by the Ontario Municipal Board, which was seen as a possibility since that site had at the time been zoned industrial in the city's official plan. Does that ring a bell?

Mr. Craig MacLennan: Correct.

Mr. Bob Delaney: Okay. Then to ask: At the time, was it seen as prudent to negotiate with TransCanada Energy as early as possible rather than to leave it up to chance and speculate on the outcome of either litigation or a decision by the Ontario Municipal Board?

Mr. Craig MacLennan: Again, I think that's a question best posed to my minister or the Premier on the exact timing, but, yes, that does sound accurate.

Mr. Bob Delaney: Okay. Now, if the province had waited to intervene, as has occasionally been suggested, or if permits had been issued and construction started—I'm referring to Oakville—might the sunk cost of relocating the Oakville power plant have been much higher?

Mr. Craig MacLennan: Yes; correct.

Mr. Bob Delaney: Okay. Do you have any idea how much higher?

Mr. Craig MacLennan: It would have depended on how far along they were in construction.

Mr. Bob Delaney: Then we won't speculate anymore on that.

I'd like to ask a couple of questions regarding some of the motions and the document search exercise—a few questions around Mr. Leone's motion at estimates in May 2012 for correspondence related to the two gas plant relocations. I'm sure you're aware that some 56,000 documents were provided to the committee—that being the estimates committee—by both the Ministry of Energy and the OPA to comply with that request. It's familiar?

Mr. Craig MacLennan: Yes.

Mr. Bob Delaney: How come a number of document releases occurred?

Mr. Craig MacLennan: I would say that I was there for the first one but not for subsequent ones. I left the office, as you'll recall from my testimony, eight months ago. I believe the ministry was leading the search and the OPA was leading their search. As I understand it, they didn't necessarily search all the search terms that they should have or all the email boxes that they should have, which, I guess, is an honest mistake that they came forward with. I'm getting this second-hand through the media myself, to be perfectly honest.

Mr. Bob Delaney: Okay. Then let's focus on the one initial search that you were there for. The secretary of cabinet, the ministry staff and the OPA have consistently

stated that those searches were conducted in good faith. Is that your understanding?

Mr. Craig MacLennan: I believe they were, yes, sir.

Mr. Bob Delaney: Okay. Anything you want to tell us about those particular document searches?

Mr. Craig MacLennan: No, we had no impact on the document searches for the ministry and the OPA whatsoever.

Mr. Bob Delaney: We've heard numerous allegations that the different document releases occurred because of some form of undefined cover-up. What do you think of that allegation?

Mr. Craig MacLennan: I don't believe that to be fair, no.

Mr. Bob Delaney: Okay. Some discussion about the commercial sensitivity of the negotiations, then—Chair, how am I doing on time?

The Chair (Mr. Shafiq Qadri): About seven minutes—six minutes.

Mr. Bob Delaney: Okay; thank you. Based on your understanding of the discussions with the two companies to relocate the Oakville and Mississauga power plants, would it, in your opinion, be correct to describe the negotiations as commercially sensitive?

Mr. Craig MacLennan: Yes.

Mr. Bob Delaney: Why?

Mr. Craig MacLennan: Because you never want to put out in public your negotiating hand lest your counterparty negotiate you up to it.

Mr. Bob Delaney: In other words, to try to ensure that, from the vantage point of the province, we got the best possible deal for the Ontario taxpayer?

Mr. Craig MacLennan: Correct.

Mr. Bob Delaney: Okay. While the negotiations were ongoing, it was during that time that the request was made by the estimates committee for the production of correspondence related to these two plants by the Ministry of Energy, the Minister of Energy and the Ontario Power Authority. In your recollection, at the time, how significant would you think the risks might have been to these negotiations if commercially sensitive details, which you may or may not have known, were made public before the deals themselves had been signed and finalized?

1600

Mr. Craig MacLennan: Because I was screened off Oakville, I'll speak to Mississauga.

Mr. Bob Delaney: Okay.

Mr. Craig MacLennan: What Mississauga had was—there was an approved negotiating mandate, and the potential for the counterparty to negotiate up to the negotiating mandate that was approved by government would have been a risk to the negotiations.

Mr. Bob Delaney: Again, talking about some of the document production, when it came to responding to the motion, what was the overriding concern in responding to the motion at the time, from your perspective?

Mr. Craig MacLennan: From our perspective, it was tough. We wanted to be very responsive and respectful to

the committee, but legal counsel was advising us that that would put at harm the negotiations. I know the minister at estimates had said repeatedly, “When they’re done, I’m happy to share them. When they’re done, I’m happy to share them.” Unfortunately, that wasn’t acceptable, which is the committee’s prerogative. But ultimately, as was conveyed to me, based on legal advice, the minister decided to not release the documents to protect the people.

Mr. Bob Delaney: A few questions relating to the lead-up to the 2011 election: Were you paying close attention to the policies and the commitments of the three parties at the time, as related to these two gas plants?

Mr. Craig MacLennan: Yes.

Mr. Bob Delaney: Okay. Is it fair to say that all three parties had planned to cancel and/or relocate both the Mississauga and Oakville power plants?

Mr. Craig MacLennan: Yes, sir, that is what we had heard.

Mr. Bob Delaney: While he was here giving testimony, the mayor of Oakville, Rob Burton, told the committee that he had “won promises from all parties to stop the proposed power plant.” And with the Mississauga power plant, Mayor McCallion confirmed, and I’ll use her words, “I think all parties would have cancelled it.” We have in the House and in committee tabled transcripts and campaign literature and telephone scripts that highlight the commitments made by especially the opposition to either move or cancel the plants.

Does it surprise you to hear any backpedaling from either the PCs or the NDP in opposition to a commitment that they had made firm, should they form government?

Mr. Craig MacLennan: Yes.

Mr. Bob Delaney: How are we doing on time, Chair?

The Chair (Mr. Shafiq Qadri): About a minute and a half.

Mr. Bob Delaney: About a minute and a half?

Mr. John Yakabuski: You’re done.

The Chair (Mr. Shafiq Qadri): No, Mr. Yakabuski, he has about a minute and a half.

Mr. Bob Delaney: Well, I have a few more and I think I’m going to wait until my next rotation for those, so thank you, Chair.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney.

To the PC side, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. In the testimony with Mr. Delaney, you said there was a mandate. What was the approved negotiating mandate for Mississauga?

Mr. Craig MacLennan: You’d have to check—

Mr. Victor Fedeli: You were there. You said you couldn’t give them the approved negotiating mandate for Oakville because you were screened off, but there was an approved—a number, a high-end number, a top end.

Mr. Craig MacLennan: Sure.

Mr. Victor Fedeli: What was the top-end number in Mississauga?

Mr. Craig MacLennan: I don’t recall the number. It was a deck that went to—

Mr. Victor Fedeli: Okay. You don’t recall that one either.

On public accounts, when we’re doing the Ornge scandal, documents of a confidential nature are deposited with the Clerk and we can go in and look at those documents privately and confidentially, where they’re not made public. Was that not considered as an option for any of these documents? You immediately defaulted to hide the documents from them. Is that what happened?

Mr. Craig MacLennan: As it was explained to me, I believe the committee was also offered an in-camera review.

Mr. Victor Fedeli: I’m sorry? Well, I’ll pass that over to my colleague in a moment. You can have that out with him.

There’s a document 5; it doesn’t really matter. All it does is show that on Wednesday, April 13, you’re still there. You’re corresponding on confidential documents with other people—Halyna Perun—on speaking notes and whatnot on April 13. That’s a Wednesday.

Document 4 outlines that on Thursday, April 21—with the weekend in there; a few days later—the \$712-million contract was turned over and turned down. I know you told me you didn’t hear of the \$1.4-billion contract or number until I showed you the email. Are you telling me that on the 13th of April, when you were still working and on top of this file, and on the 21st of April, a few days later, a settlement offer was put together and presented and rejected, that you were not aware of a \$712-million number? Is that what you’re telling me?

Mr. Craig MacLennan: I believe that’s my recollection, sir.

Mr. Victor Fedeli: Well, look, I’m going to have to pass this on to my colleague. We have another Liberal witness, another chief of staff, Chair. Twenty-two times Mr. Livingston said, “I don’t recall,” and now you’re doing the same thing. I’m afraid the cover-up continues. I’ll pass this on to Mr. Leone.

Mr. Rob Leone: My questions are going to revolve around what happened in the estimates committee as your role of chief of staff.

Mr. Craig MacLennan: Sure.

Mr. Rob Leone: Now, you stated earlier in testimony that Minister Bentley decided to follow the legal advice to essentially issue a letter stating that he can’t release documents. Did you see that letter?

Mr. Craig MacLennan: I did, yes, sir. That’s my understanding of what happened.

Mr. Rob Leone: Okay. What was the range of potential options that you were considering with respect to the committee’s request?

Mr. Craig MacLennan: I believe, from my recollection, going to sign the committee in to review the documents in camera was the second option, something that I believe we got as an idea from the Afghan detainees scenario where individuals, if I recall correctly, were

almost sworn into cabinet for the day to review the documents.

Mr. Rob Leone: So why was that option not presented to the committee?

Mr. Craig MacLennan: I thought it was.

Mr. Rob Leone: It wasn't.

Mr. Craig MacLennan: Okay.

Mr. Rob Leone: What other options? Was there ever a potential of just releasing the documents that were requested?

Mr. Craig MacLennan: Yes. That would have been the other option, and I know—I'll let the minister speak for himself, but the legal advice was significant enough that that would compromise the negotiations and put the people at risk even more, and I know it was a difficult decision to risk a contempt charge as a lawyer and just hope that the resolution to the files would be coming soon, but there was unfortunately just that gap of time where the resolutions weren't coming.

Mr. Rob Leone: So, essentially, you were just trying to stall. Is that what I'm understanding?

Mr. Craig MacLennan: No.

Mr. Rob Leone: Or that was the minister's decision, to stall?

Mr. Craig MacLennan: No. I think if everything went right, we would have liked to have had the conclusion of the gas plant files reached sooner, so that you could have everything within the time that you requested it.

Mr. Rob Leone: So in the next course of action that the committee took, we then threw a motion together to essentially send a report back to the House with respect to the fact that we hadn't received documents that we had requested. That approach was met with significant filibuster on the part of Liberal members in the estimates committee. I'm wondering at what point in time did that Liberal strategy emerge and who decided to filibuster for almost two months on refusing to have this report going back to the House? Do you recall?

Mr. Craig MacLennan: Would that have been in September?

Mr. Rob Leone: We're talking about June, July actually.

Mr. Craig MacLennan: June, July?

Mr. Rob Leone: Yes.

Mr. Craig MacLennan: I stepped off to defer to the House leader's office, and my colleagues Ryan Dunn and Andrew Mitchell in the office.

1610

Mr. Rob Leone: Sorry, who?

Mr. Craig MacLennan: The House leader's office.

Mr. Rob Leone: Who in the House leader's office would have—

The Chair (Mr. Shafiq Qaadri): Ryan Dunn.

Mr. Craig MacLennan: No, Dave Phillips in the House leader's office.

Mr. Rob Leone: Dave Phillips? Ryan Dunn is Ministry of Energy, I believe.

Mr. Craig MacLennan: Yes. Parliamentary procedures are not my skill set, so I don't—

Mr. Rob Leone: Would the Premier's office have been involved at this time, understanding the full scope of what was about to happen? Do you know?

Mr. Craig MacLennan: It's my understanding that the House leader's office is a branch of the Premier's office.

Mr. Rob Leone: So they would have been fully engaged and immersed in this issue that was, "Should we proceed down the road of reporting back to the House as we did," and the prima facie breach would have been resolved and the Premier's office, through the House leader, would have been kept up to speed with what was going on?

Mr. Craig MacLennan: I can't say how well-briefed the Premier's office was by the House leader's office. I think you would want to ask them.

Mr. Rob Leone: At any point in time in your conversations with Minister Bentley, did he ever express to you a desire to just release all the documents so that he would avoid a contempt charge?

Mr. Craig MacLennan: Not to my recollection.

Mr. Rob Leone: He never expressed that desire?

Mr. Craig MacLennan: Not to me, but not to say he didn't express it to other people.

Mr. Rob Leone: Okay. Can you tell me what happened in your office about the summertime when this was all proceeding? You were obviously the chief of staff. In your briefings with the minister, what kinds of things were talked about with respect to what happened in committee, and who was present at these briefings? Did you talk about what happened in committee?

Mr. Craig MacLennan: With respect to the preparation?

Mr. Rob Leone: What was going on, the minister's response, prepping the minister for those meetings when he was there—essentially, what happened in the minister's office?

Mr. Craig MacLennan: I'll try to re-create that. In the lead-up to the estimates committee, binders were prepared, issue notes were prepared. Jesse Kulendran was brought in to prepare the estimates binders from the ministry side. I believe that the—

Mr. Rob Leone: Did you say that she prepared the estimates binder for the minister?

Mr. Craig MacLennan: Yes, sir.

Mr. Rob Leone: Interesting.

Mr. Craig MacLennan: Jesse had traditionally prepared the estimates binders for ministers in the past. I believe we weren't given much notice, so we suggested to the deputy that he bring someone in who knows what they're doing to prepare those issues notes.

Mr. Rob Leone: I know I don't have much time, so I'll ask one more question. Do you know if Chris Bentley ever stated to you that he was the stated fall guy for this scandal?

Mr. Craig MacLennan: No.

Mr. Rob Leone: He never expressed the desire or wish that someone else had been put in that position? He was the guy who really wanted to take the fall for the government?

Mr. Craig MacLennan: No, sir.

Mr. Rob Leone: Okay.

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

Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Mr. MacLennan, can you tell us when you finished your term as chief of staff to the Minister of Energy?

Mr. Craig MacLennan: About eight months ago.

Mr. Peter Tabuns: What date was that?

Mr. Craig MacLennan: That would have been late August.

Mr. Peter Tabuns: In 2012. Okay. Thank you.

You'll have an email in front of you. This is from Susan Kennedy to numerous staff in the Ontario Power Authority. Susan Kennedy is director of Corporate/Commercial Law Group. You'll see the third sentence down: "Having said that, I have been told by" the Ministry of Energy and Infrastructure "legal that the" minister's office "is dead set against any reference to costs, so we need to be prepared to deal with being told they won't do it."

This has come up in other correspondence we've seen: The bureaucrats are trying to get a directive from the minister's office acknowledging that there are costs that have to be addressed, and you won't do it. What was going on?

Mr. Craig MacLennan: As I think I alluded to when we first started off on this, it reads to me that we didn't know that—and looking at the timeline here—costs hadn't been finalized. So, I'm assuming this is a communications point in time?

Mr. Peter Tabuns: This is a process of asking the minister to issue a directive, and the minister's office, your office, being resistant to any recognition that there would be costs that would have to be addressed.

Mr. Craig MacLennan: I'm not sure, but I'll try and give you what I think this is in reference to. This may have been in reference to the initial negotiations on Cambridge.

Mr. Peter Tabuns: Yes, it could well be.

Mr. Craig MacLennan: And we may not have wanted to put costs in the directive, because the directive was the precursor to finalizing the negotiations, and we probably didn't want to set a number that would undermine the OPA's negotiations. Like, we wouldn't want the minister, in his directive, to say, "You've got to sign it at this NRR," because if there was a chance that they could get it lower, we wouldn't want to tie their hands that way. That's my assumption.

Mr. Peter Tabuns: I'll pass on that.

JoAnne Butler indicated that you and Sean Mullin were behind the \$712-million offer to TransCanada Enterprises to settle in March 2011. The OPA had already made an offer to TransCanada, which they re-

jected. In the context of the offer made by JoAnne Butler, you were effectively giving money to TransCanada worst-case scenario. Why were you doing that?

Mr. Craig MacLennan: Again, I believe I was screened off the file.

Mr. Peter Tabuns: No, you weren't.

Mr. Craig MacLennan: When did it occur?

Mr. Peter Tabuns: You were screened off at the end of April.

Mr. Craig MacLennan: Beginning of April.

Mr. Peter Tabuns: When TransCanada filed their 60-day notice that they were going to sue.

Mr. Craig MacLennan: Correct.

Mr. Peter Tabuns: The offers came before that.

Mr. Craig MacLennan: Then it would have been an offer signed off by the minister and the Premier. I truly don't recall it.

Mr. Peter Tabuns: So you had nothing to do with the \$712-million offer?

Mr. Craig MacLennan: I don't believe I would have come up with a number that was \$712 million. If I was on the file or actively participating on the file, what we would have asked the OPA to do was figure out a number that was within a commercially defensible range—again, maybe this is a question for the minister as well—and figure out what that number could be and was it something that could be defensible. We never directed them, to my knowledge, but if any direction was given, it wasn't me as a staffer giving it or Sean as a staffer giving it; it would have been with the knowledge of our minister or Premier.

Mr. Peter Tabuns: So either one of them would have directly talked to the OPA and said this is the deal you're going to offer?

Mr. Craig MacLennan: I don't think they would have picked the deal as much as the OPA would have picked the deal and the government would have green-lit it.

Mr. Peter Tabuns: As I read the documentation, the OPA made an offer and then were told, "This is where you have to go," the \$712 million, but from your testimony, you had nothing to do with that?

Mr. Craig MacLennan: The \$712 million sounds like a difficult number for a government to come up with. There has to be some rigour behind it that I'm assuming came from the OPA.

Mr. Peter Tabuns: The OPA did put that number together, but they referred to this as the government-instructed offer.

Mr. Craig MacLennan: Right.

Mr. Peter Tabuns: You're saying to us you had nothing to do with that?

Mr. Craig MacLennan: What I said to you was that I didn't recall having anything to do with it, because I had believed I was screened off the file, but if your timeline shows differently, then I would have been involved with the discussions on it.

Mr. Peter Tabuns: I'm going to go to the last question, because my guess is that my time is short. There

were no responsive documents from the minister's office when we made requests for documents, and yet I see copies of emails that you've sent to Halyna Perun. You talk about a variety of documents. You were in the minister's office. Why were there no responsive documents when this committee asked for documents from the minister's office as well as the ministry and the OPA?

Mr. Craig MacLennan: Sure. So I think, you know, you've hit it right there. You have many, many of my documents. By the sheer volume of documents that I get, I tend not to save emails, based on the capacity of my email account, but I know that the ministry legal counsel and the OPA does save them. I myself don't, and regularly delete emails.

1620

Mr. Peter Tabuns: And so, Jon Feairs, Andrew Mitchell, Chris Cheung and others all deleted their emails so that there's no paper trail? Did you ever communicate with people inside the minister's office, communications that weren't copied to the ministry?

Mr. Craig MacLennan: I'm not sure I understand your question.

Mr. Peter Tabuns: If you were to contact, say, John Feairs, send him an email—

Mr. Craig MacLennan: Or just walk down the hall to his office.

Mr. Peter Tabuns: Or do that. But a lot of people email, nonetheless. What's astounding to us is that the minister's office said, "We have no responsive documents." Jesse Kulendran here said she contacted your office; there were no documents. The minister's letter back had no reference to any minister's office documents. Are you saying that there were no documents kept in the minister's office about this matter?

Mr. Craig MacLennan: I'm saying to you that I didn't have any responsive documents. I regret that I didn't have any responsive documents. My colleague coordinated the search in the office. All I can speak to is what my work habit is, which is to keep a clean inbox. I always have worked that way. I don't know what my colleague's work habits are.

Mr. Peter Tabuns: So you archive nothing? Everything is gone?

Mr. Craig MacLennan: Correct. I don't know how to archive anything. I don't know what that means.

Mr. Peter Tabuns: So all the rest of your colleagues deleted all their emails, just as you did?

Mr. Craig MacLennan: I don't know. You'd have to ask them.

Mr. Peter Tabuns: Well, it seems that there was that habit, since everyone had no responsive documents. Were you not aware from, say, May 2012 that there would be great interest in documents and that deleting or destroying documents was something that would be problematic for this committee?

Mr. Craig MacLennan: I can also speak to the ministers' emails. Both ministers would email nothing. What you would get from them is a request to chat: "Hey, can you chat?" That was their work process. So I'm not

surprised that—I know the committee finds it hard to believe that Minister Duguid and Minister Bentley—

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

Mr. Craig MacLennan: —didn't have any emails—

Mr. Peter Tabuns: I'm not surprised by the ministers. The fact that no staff in the minister's office would have a single email that would be responsive makes no sense to me, particularly when everyone knew politically how explosive this was, how damaging it would be to withhold information. When you were asked by the committee and by the Legislature, what we were told was, it's just a blank slate, everything's gone, nothing responds. All we have left are the shadows of your emails that have been sent to other places. The central records seem to have been destroyed. How do you operate that way?

Mr. Craig MacLennan: It's always been my work habit to have a clean inbox. Even now, in my job, I don't deal with thousands and thousands of emails.

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

To the government side on the final rotation of Mr. MacLennan, or Craig, as he's affectionately known to the committee. Mr. Delaney.

Mr. Bob Delaney: Thanks, Craig. Do you recall the wording of the motion made by the estimates committee back in May 2012?

Mr. Craig MacLennan: I don't recall the exact wording, no.

Mr. Bob Delaney: It was correspondence and it was from the Minister of Energy, the Ministry of Energy and the OPA. Is it possible that some of the documents that Mr. Tabuns spoke to you about might legitimately fall outside the scope of the document request?

Mr. Craig MacLennan: I searched my email box anyways.

Mr. Bob Delaney: Okay. That's good.

Part of the committee's job is to review the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the Minister of Energy, the Ministry of Energy and the OPA. Based on your experience and perhaps your testimony this afternoon, do you have any advice or suggestions for the committee on these particular allegations that were brought to it?

Mr. Craig MacLennan: No.

Mr. Bob Delaney: Okay. So far, in your testimony, you've stated that you certainly weren't aware of a deliberate—and the word has often been used—"cover-up" of documents. You've also said that there was a solid argument for protecting solicitor-client privilege, that some of the commercially sensitive information in the documents may have prejudiced the taxpayers' best interests. Based on some of the things you've shared with the committee, do you feel that some of the allegations made against former Minister Bentley have any basis?

Mr. Craig MacLennan: I think Minister Bentley did what he thought was best for the people. I know it was a difficult thing and situation for him, and I respect him tremendously for putting his credibility at risk to make

sure that the documents came out when they could come out.

Mr. Bob Delaney: Okay. Just before we wind up, are there any closing points you want to add?

Mr. Craig MacLennan: No.

Mr. Bob Delaney: Chair, we're done. Thank you very much, Chris, for having come in.

Mr. Steven Del Duca: Craig.

Mr. Bob Delaney: I'm sorry. Craig.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thanks to you—actually Craig, but there you go—for your testimony and your presence.

Mr. Craig MacLennan: Thank you.

The Chair (Mr. Shafiq Qaadri): We'll take a five- or 10-minute recess with your indulgence.

The committee recessed from 1626 to 1638.

MR. SERGE IMBROGNO

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the committee to order.

Benvenuto, Signor Imbrogno. As you know the drill, first of all, we welcome you in your capacity as Deputy Minister of Energy and invite you to be sworn in by the Clerk.

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?

Mr. Serge Imbrogno: I do.

The Chair (Mr. Shafiq Qaadri): Molte grazie, Signor Imbrogno. You now have five minutes for your opening address.

Mr. Serge Imbrogno: I want to start by thanking the committee for the opportunity to make this opening statement.

I was appointed Deputy Minister of Energy effective April 2, 2012. Prior to this, I worked at the Ontario Financing Authority as assistant deputy minister of the corporate and electricity finance division. During my time as assistant deputy minister, I was involved in issues related to the relocation of the Oakville and Mississauga gas plants, including the Keele Valley litigation between Eastern Power and Ontario Electricity Financial Corp., and negotiation of potential joint ventures between TransCanada and Ontario Power Generation. As Deputy Minister of Energy, I was involved, along with the OPA and outside legal counsel, in the implementation of the decisions to relocate the plants pertaining to Greenfield South Power Corp. and TransCanada Energy Ltd.

Shortly after I started at energy, the ministry was asked to appear before the Standing Committee on Estimates starting May 9. A committee motion was passed on May 16 that directed the minister, the ministry, and the OPA to produce all correspondence that occurred between September 1, 2010, and December 31, 2011, related to the cancellation of the Oakville power plant, and between August 1, 2011, and December 31, 2011,

related to the cancellation of the Mississauga power plant.

The ministry used a document search process similar to the process that we follow during requests for information under the Freedom of Information and Protection of Privacy Act. This search included confidential, privileged and commercially sensitive information. Policy and legal staff reviewed the documents to make sure they were within the scope of the committee's motion. The ministry invested significant human resources to collect and organize responsive documents. Part of this work was to ensure that confidential information related to other files outside the scope of the motion was not inadvertently released. This necessitated redactions in some documents.

On May 30, the Minister of Energy responded to the estimates committee motion of May 16. No documents were provided as the minister cited concern over the disclosure of confidential, privileged and commercially sensitive information. Negotiations with Greenfield for the relocation of the Mississauga plant were occurring at the time and litigation with EIG, Greenfield's financier, was ongoing. Arbitration was under way with TransCanada on the Oakville file.

As members of this committee are aware, on July 11 and September 24, the Minister of Energy wrote to the Clerk and provided documents responsive to the motion of the estimates committee. The OPA provided its responsive documents on the same dates.

The ministry and the OPA conducted independent searches. However, because we were responding to the same committee motion as well as working together to achieve the relocation of the plants, we discussed and coordinated our respective approaches to document production.

The minister's office was responsible for conducting its own search of documents in relation to the committee motion. While we were not involved in their search, I was aware that the minister's office was looking at a set of their own documents, and that shortly before the release of documents on September 24 they ultimately concluded that they did not have any responsive documents. I was also aware that prior to the September 24 release, minister's office staff reviewed copies of ministry and OPA documents.

On September 28, when it came to my attention that the ministry's initial search may have omitted some correspondence. I immediately initiated a process for a further search. This search involved a broader list of individuals, including people who were no longer with the ministry, and also used a defined list of search terms to ensure consistency.

In the search leading to the October 12 release of documents, we provided the OPA with the list of search terms we were using, and the OPA provided us with its search terms, with the expectation that we would use the same terms for consistency. Again, significant human resources were applied to this search and this work took priority over all other matters at the ministry.

In my letter of October 12 to the Clerk, I apologized to the Speaker and to the members of the Legislative Assembly for the omission of the ministry documents. As stated in that letter, the omissions from the first search were inadvertent. The ministry's effort to respond to the committee's motion was, throughout the process, undertaken in good faith. I want to re-emphasize that we took the initiative on the second document search as soon as we were aware that documents may have been missed.

Prior to the release of the documents on October 12, I was made aware of an allegation—

The Chair (Mr. Shafiq Qaadri): With respect, Mr. Imbrogno, I will intervene there and offer the floor to the NDP. Monsieur Tabuns?

Mr. Peter Tabuns: Thank you, Mr. Chair, and thank you, Mr. Imbrogno. Thank you for being here and thank you for laying out this history.

I've got a few questions on your initial statement, and then I'll go to my main questions. You note on page 3 here that, "prior to the September 24 release, minister's office staff reviewed copies of ministry and OPA documents." What were they looking for, and what was the process of review?

Mr. Serge Imbrogno: My understanding is, the ministry's office was interested in preparing communication documents. So initially they went to the OPA to review their documents. I think they found that process cumbersome. They asked the OPA to copy the documents, keep the originals with the OPA and then have the copied documents brought up to the ministry so they could review them.

Mr. Peter Tabuns: Did they not notice, as we all did, that there were obvious gaps in the documentation in the process of this review?

Mr. Serge Imbrogno: I can't really answer what they—

Mr. Peter Tabuns: Okay. You were not made aware at that point that they noticed obvious gaps?

Mr. Serge Imbrogno: No.

Mr. Peter Tabuns: You note here that on September 28, it came to your attention that documents were missing. What brought it to your attention?

Mr. Serge Imbrogno: On September 27, I got an email from Colin Andersen saying that he needed to talk to me urgently. I was able to call him back later that evening and he said that the OPA, in their review, believe they had missed a few former employees and also that they had missed a search term while they were inputting into the software. So at that point, I called the office of the cabinet secretary to inform them, and Colin was going to launch a review to determine if there were more documents, how much of an issue it was. I also called the Premier's office; I called David Livingston to let him know as well.

The next day, when I came into the office, I asked my staff, who were coordinating our search, to review our process to determine whether we may have missed certain individuals or if there were any issues with our document search. They reported back to me that day that

they in fact felt that we had missed certain former employees as well and that we didn't search across all people consistently with our search terms. So, at that point, I instructed staff to begin a second search.

Mr. Peter Tabuns: And you told the office of the cabinet secretary, David Livingston?

Mr. Serge Imbrogno: It would have been Peter Wallace, the cabinet secretary, and the chief of staff for the Premier was David Livingston.

Mr. Peter Tabuns: Okay. And did you inform the Minister of Energy?

Mr. Serge Imbrogno: I would have informed the chief of staff on the 27th, I believe. On the 28th, when I discovered that the ministry search needed to be restarted, I called the minister that evening, I believe, and told him.

Mr. Peter Tabuns: Now, I'm going to have to check Hansard, but our experience in this period was that we were challenging the government on the documents, and they were telling us regularly that we should believe the minister, that we were overreaching, that we were engaging in hysterics and in fact everything had been provided. So by the 28th, the Minister of Energy knew that there were documents missing?

Mr. Serge Imbrogno: I think he would have known that we were launching our second search. I don't think at that time I would have told him that we had X number of pages missing, but he would have—

Mr. Peter Tabuns: No, you wouldn't have known at that point—

Mr. Serge Imbrogno: He would have known that we were launching a second search.

Mr. Peter Tabuns: Okay. I'll go on to my main questions, but that gives us a picture. You were contacted by the OPA who said, "There may be a problem here." You let the Premier's office know, both bureaucracy and chief of staff, and then within 48 hours the Minister of Energy knew. Do you know of any other ministers, or the House leader, who were brought in at that point?

Mr. Serge Imbrogno: No, I only spoke to the Minister of Energy directly.

Mr. Peter Tabuns: Okay. Peter Wallace said you informed him—"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...." What was the allegation that you informed Peter Wallace about?

Mr. Serge Imbrogno: It would have been after the release of the first set of documents. I got a call from Colin. It was after that first call that—before the release of the second set of documents. He said that the OPA noticed that we weren't following our own protocols, and I wasn't sure what he meant by that.

1650

I think the OPA was under the impression that our definition of correspondence was that if there was a responsive document or a term, whether it was in the correspondence or the attachment, the way we looked at

it was, both would be responsive. I think the OPA was under the impression that if the correspondence didn't have a responsive term in it, then the attachment wasn't part of a responsive document. I said that I didn't think that was the way we were doing it, and I think that's the impression they got from the meeting with Jesse. That's my understanding of what they thought was the way the ministry was doing it, but that's not, in fact, the way the ministry did it. I think, after they saw our documents when they were released, that's when Colin and I had that conversation.

Mr. Peter Tabuns: So it was Colin Andersen, the head of the Ontario Power Authority, who first raised this with you.

Mr. Serge Imbrogno: With me, yes. I believe so.

Mr. Peter Tabuns: Did you ever have communications with Kristin Jenkins on this matter?

Mr. Serge Imbrogno: No.

Mr. Peter Tabuns: Did you believe that something inappropriate occurred?

Mr. Serge Imbrogno: When Colin told me that, I talked to Jesse directly. I asked her if she had provided direction to the OPA to withhold any responsive documents. She said she did not. I talked to Colin again, and it was only Jesse and two other people in the room. I said to Colin, "Neither you nor I were in the room, so I can't say one way or the other." Then I informed the cabinet secretary's office at some point in time, just to tell him what the allegation was. My priority during that time was to finish the second search, and then we would deal with it after.

Mr. Peter Tabuns: Do you believe that Jesse Kulendran acted appropriately, or do you find yourself in a situation where you lack evidence one way or the other?

Mr. Serge Imbrogno: I have no reason to doubt Jesse. I think she was here under oath.

What I told all my staff was that when we were meeting with the OPA and there was a legal issue involved, we should make sure that legal staff were there, and if the legal staff can't make it, then we should cancel the meeting. I think a lesson was learned, for sure.

Mr. Peter Tabuns: Jesse Kulendran indicated she was seconded to your office. Who requested that secondment?

Mr. Serge Imbrogno: When estimates was launched on May 9, we were, I guess, given maybe a week or two's notice. From what I understand—I just started in April—Jesse had worked on the estimates binder previously. We needed to find someone who could move things quickly. I think the minister's office also suggested that Jesse had worked on the binder before, so it would be helpful to have her. I asked my staff as well. My EA at the time said Jesse had done a good job on the previous binder, so she seemed like the logical person to bring back.

Mr. Peter Tabuns: Was Jesse Kulendran doing work that in any way could be described as political?

Mr. Serge Imbrogno: No.

Mr. Peter Tabuns: One of the things that came up with a previous witness and which was puzzling to us when the documents came out last year was that there were no responsive documents whatsoever from the minister's office—not one. Not an email, not an Outlook diary entry; zero. Did you ever receive emails from the minister's staff, from the chief of staff, from issue managers, policy analysts, about these problems at Oakville and Mississauga?

Mr. Serge Imbrogno: I wasn't at the ministry during that time.

Mr. Peter Tabuns: Sorry. From the time that you became deputy minister, did the staff ever communicate to you through emails?

Mr. Serge Imbrogno: Yes, they did.

Mr. Peter Tabuns: And you became deputy minister—

Mr. Serge Imbrogno: April 2, 2012.

Mr. Peter Tabuns: They were using computers at that time and they knew how to use email. Did you find it surprising that there were no documents whatsoever from the minister's office relating to these two files?

Mr. Serge Imbrogno: The care and control of the ministry, the civil service side, was my domain.

Mr. Peter Tabuns: I understand that.

Mr. Serge Imbrogno: The care and control of the minister's office files and their search was their domain.

Mr. Peter Tabuns: I understand that.

Mr. Serge Imbrogno: And, you know, they would have done their search and determined they had no responsive documents, so—

Mr. Peter Tabuns: It's just that you've been around government for a while. You've probably dealt with a number of ministers in your time in different roles. Is it your experience that ministers' offices keep no written record of communications?

Mr. Serge Imbrogno: I've never worked at a minister's office. I know we have a certain retention of files, and whether they follow that protocol or not, Mr. Tabuns, I can't comment.

Mr. Peter Tabuns: But ministers' office staff have communicated to you in writing and by emails in the past?

Mr. Serge Imbrogno: Yes.

Mr. Peter Tabuns: Okay. It's not an unknown thing.

Have you met with the Auditor General about the Mississauga and Oakville files?

Mr. Serge Imbrogno: So, just a couple of things. The Auditor General's staff have met with staff within the ministry and asked us to provide them with documents, and so we provided the Auditor General's staff with those documents. I've met with the Auditor General at least once to provide comments on a draft report that he provided us, and I've talked to the auditor one or two times since then.

Mr. Peter Tabuns: And so he—

Mr. Serge Imbrogno: And, sorry, just on the Mississauga file; they had just started their review of the

Oakville files, so they were just in the process of collecting documents.

Mr. Peter Tabuns: Okay. I'm going to go to another issue. In the time that you were deputy minister, the agreement was signed with TransCanada Enterprises—sorry, the memorandum of understanding.

Mr. Serge Imbrogno: Yes.

Mr. Peter Tabuns: On March 19, I asked JoAnne Butler of the OPA about the gas transmission costs assumed by Ontario with regard to the agreement with TransCanada Enterprises and whether, “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. Butler responded, “They knew that. That was part of the memorandum of understanding, yes.”

Were you aware of those gas management and demand costs?

Mr. Serge Imbrogno: It is a complicated contract—

Mr. Peter Tabuns: I understand that.

Mr. Serge Imbrogno:—and there’s a lot of gives and takes within the negotiation.

Mr. Peter Tabuns: Yes.

Mr. Serge Imbrogno: So it’s important to know that there was an existing contract with a net revenue requirement that was built in. Within that would have been the proponents would have done the construction; they normally would do the gas management.

In the negotiations with TransCanada, because we didn’t know what the gas management costs would be at the new site, part of the negotiation was to pull out what we thought the cost would be from the existing contract and have it pass through from the OPA. So the negotiating strategy was to remove it from the existing contract, have it pass through in a new contract, and a net revenue requirement would be reduced. We didn’t know what the exact costs were in the new site. We tried to, as best we could, remove it from the NRR.

So, yes, we knew at the time that the gas management costs would be a pass-through to the OPA.

Mr. Peter Tabuns: Okay. So you understood that there were going to be costs involved with this new site that Ontario would be taking on that were in addition to the sunk costs that we were going to have to reimburse TransCanada for. Is that correct?

Mr. Serge Imbrogno: The \$40 million was our estimate of the termination at the time, what the sunk costs were that would be paid for by the Consolidated Revenue Fund. We knew that there would be other costs and benefits of relocating to a new site and those would be part of the obligation of the ratepayer.

Mr. Peter Tabuns: So in fact, you knew at that point that the cost to Ontario was going to be more than \$40 million.

Mr. Serge Imbrogno: Well, we knew there would be other costs in the system, other benefits as well, but we quantified that \$40 million as the responsibility of the taxpayer.

Mr. Peter Tabuns: Did you inform the minister that there were other costs that were going to come to be borne by the people of Ontario?

Mr. Serge Imbrogno: We did the best job we could to go through the contract and provide that information.

Mr. Peter Tabuns: So the minister would have understood that there is \$40 million at the core but there were other costs that were going to make themselves apparent. In fact, JoAnne Butler, if I remember correctly, quoted a net present value of somewhere in the \$300-million to \$400-million range. Is that a figure that you were familiar with?

1700

Mr. Serge Imbrogno: Not at the time. We didn’t know what the estimate would be at the new site. Just to be clear, Mr. Tabuns, there are other costs, but there are other benefits as well that would need to be taken into account on the ratepayer side.

Mr. Peter Tabuns: Right. So there was the cost of the \$221 million for the turbines; that was another cost that Ontario was going to take.

Mr. Serge Imbrogno: That’s correct.

Mr. Peter Tabuns: And there would be costs for transmission connection, which I haven’t seen a quantification for yet. The benefit side would be the reduction in the monthly payment?

Mr. Serge Imbrogno: That’s correct, and also pushing out the time. The initial contract would have come in at a time when we had enough capacity; we don’t really need the power, so we would have been making a monthly payment of that \$17,227 per month per megawatt to TransCanada for power that we didn’t need. By pushing it off to 2018, we would include that as savings as well.

Mr. Peter Tabuns: So the minister knew there were more costs to come?

Mr. Serge Imbrogno: I think the minister knew—I believe—that the \$40 million was the sunk costs paid for by the taxpayer, and there were other costs and benefits to the system that would be through the rate base.

Mr. Peter Tabuns: I’ve noticed, as I’ve gone back through Hansard, how very careful the minister and ministers have been, because they never talk about the total cost. They only talk about those sunk costs. They don’t talk about the gas management cost. I’m assuming that it was made very clear to them that there was more to this package than the sunk costs.

Mr. Serge Imbrogno: I think as part of the total system costs and benefits, but at the time, we didn’t have that number that JoAnne Butler provided the committee. We knew there would be a cost; we didn’t know what it was. But we took out the equivalent of the existing contract.

Mr. Peter Tabuns: When did you know what the cost was going to be?

Mr. Serge Imbrogno: Of that particular item?

Mr. Peter Tabuns: Yes.

Mr. Serge Imbrogno: I don’t think that’s finalized. I think that’s their best guess at this point. It will be finalized when all the engineering studies come in.

Mr. Peter Tabuns: When was that estimate made?

Mr. Serge Imbrogno: I'd have to go back. It wasn't the day of or the day after, but sometime after.

Mr. Peter Tabuns: Within a month?

Mr. Serge Imbrogno: Let me get back to you, because I don't want to put out an estimate.

Mr. Peter Tabuns: So, if, Mr. Chair, you could just note that we'd like the figures back from Mr. Imbrogno on that, that would be great.

The Chair (Mr. Shafiq Qadri): Yes, Mr. Tabuns. Noted.

Mr. Peter Tabuns: We've had real difficulty finding anyone who is actually responsible for all this. My colleagues can speak to that. Who did you see as being responsible for carriage of the Oakville file through the process of deciding to cancel and wrapping it up?

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

Mr. Serge Imbrogno: I think part of my answer will be that I've had two lives, one as assistant deputy minister. I would have worked alongside of Infrastructure Ontario and David Livingston on parts of the arbitration, with OPG and Infrastructure Ontario on trying to find joint ventures. Then I would have worked at the ministry trying to negotiate a relocation. All those different engagements—there were different leads on it. The arbitration, I believe, was an Infrastructure Ontario/David Livingston lead. When I was at the ministry, the relocation and renegotiating—the negotiating team would have been made up of Infrastructure Ontario, OPA and Energy, with our outside legal counsel.

Mr. Peter Tabuns: Sorry, who would be the persons? When you say "Infrastructure Ontario and Energy," who would be the persons who would represent those bodies?

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns. I need to intervene there.

Mr. Peter Tabuns: I'll be back.

The Chair (Mr. Shafiq Qadri): Famous words; we appreciate that.

Signor Del Duca, 20 minutes.

Mr. Steven Del Duca: Thanks very much, Mr. Chair. Thank you, Mr. Imbrogno, for being with us here today.

Mr. John Yakabuski: Could you turn that up?

Mr. Steven Del Duca: I don't know. Can we? Can you hear me?

Mr. Victor Fedeli: He's being sarcastic.

The Chair (Mr. Shafiq Qadri): He'd like you to mimic himself.

Mr. Steven Del Duca: The last time, I was too quiet for Hazel; that's why.

Now that everyone can hear me clearly, I want to talk a little bit about the document-request motion and the nature of the commercially sensitive negotiations around this. Specifically, about the motion that was passed in estimates in May 2012 for all the correspondences you mentioned—from the Minister of Energy, the Ministry of Energy and the OPA—related to the Mississauga and Oakville gas plants and within a specific date range: At the time that the request was made by that committee,

were negotiations ongoing with TransCanada and Eastern Power?

Mr. Serge Imbrogno: With TransCanada, we were in an arbitration process that was under way. With Greenfield we were in litigation with EIG. EIG had sued the province; EIG was suing Greenfield. OPA had identified Greenfield so OPA was also liable as well. The negotiations with Greenfield had begun on the relocation of the plant.

Mr. Steven Del Duca: So would you describe the negotiations and the process that was under way as commercially sensitive?

Mr. Serge Imbrogno: Yes, extremely.

Mr. Steven Del Duca: So you would say that the risks would have been significant if the commercially sensitive details had been made public before the deals were finalized?

Mr. Serge Imbrogno: Yes, and I think if the information potentially could be used by the other parties against us as we're trying to negotiate a deal with them—so it would have been information that, if it was in the public domain, could have been problematic.

Mr. Steven Del Duca: Given your experience and your expertise, could you try to quantify the risks for us? I mean, what would it mean for taxpayers if the OPA and the province's negotiating position was prejudiced because the company had access to confidential and privileged information? Can you give us a sense? Can you ballpark that?

Mr. Serge Imbrogno: It's hard to ballpark it, but we were being sued by EIG for I think \$300 million. So, to the extent that they were able to get information that may have made their case stronger could have put us at risk there. Again, negotiating with Greenfield, if they had information that they could have used to increase their leverage in negotiations, then they could have used that. So, it's hard to quantify, but they're fairly large risks to both the taxpayer and the ratepayer.

Mr. Steven Del Duca: Okay, thank you. I want to move on a little bit to the Ministry of Energy document search. I know you did address this a little bit in your opening statement, but in terms of the scope of the request in itself, in your experience have you seen a request of that kind of magnitude from a committee?

Mr. Serge Imbrogno: I think the whole request from the public accounts committee was new to the ministry, so we needed to take some time to understand the scope of the request and the requirements of the committee. We needed to understand how to search for that particular motion. We were also concerned about providing records that weren't responsive, so there was a lot of time and effort to work things out. I think the scale of it was probably not the usual for the ministry, with our usual FOI requests. The time frame as well would have been initially challenging as well.

Mr. Steven Del Duca: Okay. So, given that over 56,000 responsive records were ultimately produced in respect of that request, what kind of challenges would that kind of undertaking present for the OPS and for the

OPA? The kind of resources that would go into responding to such a request—can you give us a sense or elaborate on that a bit?

Mr. Serge Imbrogno: Yes, I would say as part of our second search we devoted significant resources. We basically shut the ministry down for that search period. I think part of our challenge was that we already had a set of documents that were released and we were searching on another set of documents. We didn't want to frustrate the committee by just putting out documents that were repetitive, so we took a lot of time to go through to make sure that what we were putting out was incrementally new. Because the second search was more broad, we captured a lot of information that was non-responsive. So a lot of the time and effort was spent with policy legal staff going through and determining what is responsive and what is non-responsive. We spent a lot of time with policy legal staff. Every time we made a redaction we had people sign off and made sure that they were comfortable with it. So that took a lot of time and effort, but the ministry basically worked 24/7, and that was the priority for the ministry.

1710

Mr. Steven Del Duca: Okay. On September 24, 2012, thousands of documents were provided to the committee in response to the motion. In his letter to the Clerk accompanying these documents, the then Minister of Energy, Chris Bentley, stated, "I've been advised by ministry staff that the documents attached to the letter comprise all documents responsive to the committee's request, regardless of privilege or confidentiality."

I'm just wondering: Can you confirm that at that time you believed, and Minister Bentley was told, that all responsive records had been tabled?

Mr. Serge Imbrogno: I think the ministry at that point had done a good-faith effort to search for the documents and provide all the responsive documents. That information would have been made available to the minister.

Mr. Steven Del Duca: Okay. Additional documents were tabled—this came up in your opening statement as well—by the ministry on October 12, 2012, and in your letter to the Clerk, you wrote, "No responsive information or documents were deliberately withheld from the September 24 package."

You've heard a bit of it, I'm sure, in the run-up to today and even today. The opposition alleges that more documents were turned over because of, as they say, as they allege in their words, a cover-up. But in your letter, you say that the ministry's search for documents was conducted in good faith, with every intention to comply with the committee's motion. Do you still stand by your statement?

Mr. Serge Imbrogno: Yes. The ministry made a good-faith effort on the release of the documents on September 24. When we realized that we may have inadvertently missed documents, we immediately launched a second search on the 28th. There was no delay in our launching that second search to make sure that all the

correspondence that we inadvertently left out was provided to the committee. In my second letter in October, like I say, we made that exhaustive effort to ensure that all the responsive documents were provided.

Mr. Steven Del Duca: Okay. Moving away from the Ministry of Energy documents search, I want to talk a little bit about the OPA's document search. I know that you've heard this as well—at least, I'm assuming that you've heard this as well. Accusations have been made that the ministry interfered with the OPA's document search, and in particular there's an internal OPA memo that has been widely circulating, alleging that Jesse Kulendran—a ministry employee, as you know—had directed OPA staff to withhold documents. I'm pretty sure you know that Ms. Kulendran appeared before this committee last Thursday, and I wanted to read you a quote from her testimony. This is the quote: "I did not direct the Ontario Power Authority to exclude documents. I do not have the authority to direct the Ontario Power Authority to exclude documents."

"The conversation on August 22 was about sharing observations that had been made through the minister's office's review of the documents, but it was not to provide any direction."

From the standpoint of seeking clarification, I want to know if you can confirm or stand by Ms. Kulendran's comments that she was not sent over to the OPA to tell them to exclude documents, nor did she, frankly, have the authority to provide the OPA with that sort of direction.

Mr. Serge Imbrogno: Just a couple of things on that: I never directed Jesse to go to the OPA and ask them to exclude documents. I never myself directed the OPA to exclude any documents. When I talked to Jesse about the allegations, she told me what she said to the committee: that she did not direct the OPA. I have no reason to not believe what Jesse has told the committee.

Mr. Steven Del Duca: But would she have had the authority, essentially, to give that kind of direction to the OPA? I'm just curious.

Mr. Serge Imbrogno: No. She was in a capacity of coordinating. She wasn't in a capacity of making a decision or providing anyone with direction.

Mr. Steven Del Duca: Right. Great. Again, as Ms. Kulendran testified, she provided the OPA with some ideas for additional search terms that they should be using to identify responsive records. She said that it looked like they had missed terms like "Oakville" and "Oakville generating station." Based on her testimony, then, it would appear that in fact she was actually trying to be helpful to ensure that the committee received all of the records that it was entitled to. Is that your sense of it as well, that it was helpfulness on her part?

Mr. Serge Imbrogno: I think our interaction with the OPA during the document search was to share with them what we were doing, to share as much as we knew about timing and when documents would be released. It was more of a sharing of information. So that seems to be consistent.

Mr. Steven Del Duca: In his letter to the Clerk on October 12, 2012, Colin Andersen, CEO of the OPA, stated, “It was always our intention to provide all responsive records and to respect the ruling of the Speaker...” To the best of your knowledge, has the OPA acted in good faith in response to the document production motion?

Mr. Serge Imbrogno: I have no reason not to believe Colin. I believe they acted in good faith. I haven’t seen anything to think otherwise.

Mr. Steven Del Duca: Do you think this entire process around the document search has been a bit of a learning process for those involved—for government, for those involved in this process?

Mr. Serge Imbrogno: I can speak for the Ministry of Energy. It’s definitely been a learning experience in terms of conducting a document search. I think we’ve learned from the second search that scoping out the process upfront would be better. If we were to do it again, I think a discussion with the committee outlining, “Here’s what we’re doing. Here’s the process we’re following. Here’s whose we’re searching. Here are the terms,” to make sure that the committee is onside with that—in terms of the document search, I think that’s one of our lessons learned.

Mr. Steven Del Duca: So, given that you’ve talked about how the ministry acted in good faith and you’re not in a position to not take others at their word, like Ms. Kulendran and others from the OPA, if any mistakes at all were made in this process, would you ascribe those mistakes to, perhaps, the sheer volume of the request or the shortness of the time frame? How would you—

Mr. Serge Imbrogno: Yes. I think part of the challenge was, we were—both the OPA and the ministry—doing many important things at the same time. Both Colin and I were engaged in discussions with Greenfield and TransCanada, trying to negotiate and land a contract in the best interests of the ratepayer and the taxpayer. At the same time, we were doing the regular work of the ministry and the OPA, and at the same time we were trying to respond to the committee request. I think all those things—a part of the problem was that we were probably stretched a bit. We tried to respond as best we could, in good faith, but there were challenges with everything that was going on with the ministry at the same time and the OPA.

Mr. Steven Del Duca: Okay, thank you.

I’d like to talk a little bit about the idea or the concept of the redactions. The opposition has been alleging that redactions are part of—as they say, again—some sort of cover-up, but in your October 12 letter to the Clerk, you did write, “The only redactions in the September 24 disclosure package and the documents attached to this letter pertain to information unrelated to the cancellation of the Mississauga or Oakville power plants that is unresponsive to the May 16 motion of the committee.” Just to clarify, do you stand by this particular statement, that only non-responsive material was redacted?

Mr. Serge Imbrogno: We had the committee motion. We had a date frame. We had a request related to the

Oakville-Mississauga cancellation, and it asked for correspondence. We reviewed that with policy legal to say, “Using our judgment, what falls within that ask?” and we did our best to only redact things that were outside of it.

I understand that the cabinet secretary has provided the committee with all our redactions, so that’s available for the committee to look at, and I think that will help you see in what cases we did redact things. I can think of examples where we have 10 items to brief the minister on; maybe one item was related to the gas plants and the other nine were related to other topics. In that case, the other nine would have been redacted, but that’s an example of the judgment we used.

Mr. Steven Del Duca: Thank you. I just have a couple of questions with respect to the Oakville relocation costs. We’re all aware that the Auditor General is currently looking into this and, I believe, is providing a report at some time in the near future, but I’m hoping you can clarify a couple of points for the committee.

Interjection.

Mr. Steven Del Duca: But I believe there’s also one forthcoming with respect to Oakville, last time I checked—

Interjection.

Mr. Steven Del Duca:—but thank you for your intervention.

Firstly, there is a question of transmission upgrades in the southwest GTA. In her testimony to this committee, JoAnne Butler from the OPA confirmed that transmission upgrades are needed in the southwestern GTA, with or without a new plant in the region. I’m just wondering: Do you agree with Ms. Butler’s assessment?

1720

Mr. Serge Imbrogno: My understanding is, by locating the Oakville and Mississauga gas plants where they were, that it allowed the OPA and the IESO to push out the date that you would have needed transmission upgrades. I think it would have gone from 2019 out to 2029. When the decision was made to move those plants to another location, it would have brought back that date, from 2029 back to I think 2018. I think that would be something to factor in.

Mr. Steven Del Duca: I also want to ask you about the gas management and turbine costs. In a backgrounder on the Oakville deal circulated on September 24, 2012, the OPA states that they assumed costs associated with the gas turbines as well as the gas management costs in exchange for a lower price for power that they were able to negotiate at the Lennox site. This would result in real savings from \$17,277 per megawatt per month to \$15,200 or thereabouts.

In terms of this particular deal with TransCanada, would you agree that it’s important to look not only at the costs but also at the savings that were negotiated on behalf of Ontario ratepayers for a lower price for power?

Mr. Serge Imbrogno: That was the real negotiation with TransCanada. We had a competitively bid procurement that yielded a net revenue requirement of \$17,227.

Part of the discussion, the negotiation with TransCanada, was, as we pulled out the costs of the turbines and we removed the gas management costs, what was the appropriate reduction in the net revenue requirement?

Mr. Steven Del Duca: How much time, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): It's 2.5 minutes.

Mr. Steven Del Duca: Thank you. Just really quickly, regarding campaign commitments and transition planning: During an election writ period, my understanding is that the OPS engages in a process of preparing for the incoming government, regardless of partisan stripe. Is that true?

Mr. Serge Imbrogno: I believe that's correct, yes.

Mr. Steven Del Duca: So I assume that the OPS would also be keeping an eye on the various campaigns and the commitments that were being made in the course of the election campaign in order to prepare in the best, most responsible way possible. But regardless of who wins the election, the OPS is then tasked with helping whatever party wins power to implement their campaign commitments. Is that correct?

Mr. Serge Imbrogno: Yes, that's correct.

Mr. Steven Del Duca: So there is nothing unusual about a process whereby a political party makes a commitment during an election campaign, and then that commitment is implemented by that party with the help of the OPS once elected, once in government—nothing unusual about that?

Mr. Serge Imbrogno: No, I don't see that as unusual.

Mr. Steven Del Duca: Okay, great. I think I'll end there, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Thank you. The government yields its time?

Interjection.

The Chair (Mr. Shafiq Qaadri): Fair enough. To the Conservative side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. Good afternoon, Mr. Imbrogno.

Mr. Serge Imbrogno: Good afternoon.

Mr. Victor Fedeli: Hang on one second.

Interjections.

Mr. Victor Fedeli: In your original opening statement—I too wanted to just ask a question about that, if I can locate it. You finished early, Mr. Del Duca. There we go. Thank you.

In your opening statement, you talked about the fact that on May 30, no documents were provided, as the minister cited concerns over the disclosure of confidential, privileged, and commercially sensitive information. Eventually, 56,000 documents were released. Are they all confidential, privileged and commercially sensitive?

Mr. Serge Imbrogno: I think at the time that was our best assessment.

Mr. Victor Fedeli: That there would be 56,000 commercially sensitive documents and no general documents?

Mr. Serge Imbrogno: I can't talk for the OPA. When we did our initial search, the relocation of the gas plants wasn't a ministry-wide initiative. It was very focused in

certain divisions, and certain people within those divisions worked on it. So our initial search would have been very focused, and my sense is it picked up most of the things that were confidential, solicitor-client-privileged.

Mr. Victor Fedeli: There's a note here that eventually the Minister of Energy wrote to the Clerk and provided documents, followed by the OPA providing documents. So are you saying that the ministry turned documents over to the Clerk?

Mr. Serge Imbrogno: Sorry, on which—

Mr. Victor Fedeli: Eventually. How did the Clerk get the documents that you're referring to? Did the ministry turn documents over to the Clerk?

Mr. Serge Imbrogno: The minister made his statement on the 30th, that we weren't releasing documents. Then the minister, on the 24th, wrote the letter to the Clerk.

Mr. Victor Fedeli: And what? Provided documents?

Mr. Serge Imbrogno: And provided documents.

Mr. Victor Fedeli: So the minister provided the documents to the Clerk.

Mr. Serge Imbrogno: I think physically, ministry staff would have delivered them, but I would say yes, the minister—

Mr. Victor Fedeli: Did the OPA also provide their documents to the Clerk or to the ministry to give to the Clerk?

Mr. Serge Imbrogno: The OPA provided their documents to the Clerk.

Mr. Victor Fedeli: Okay. So each of you provided documents to the Clerk.

On September 28, when it came to your attention that there was a further search that was needed, did you then add words like "Apple," "Banana," "Fruit Salad"? Were those words added in this particular search?

Mr. Serge Imbrogno: Just so I can answer your question—you have to understand, on the first search we provided staff with the committee motion and direction to search correspondence that included emails and attachments. We didn't give people specific search terms. In the second search, one of the issues—we realized that some people would have searched on Project Vapour, Vapour-lock; other people didn't. So in the second search, we decided, "Let's have a list of search terms that everyone can agree to." We shared our list with the OPA; they shared their list with us. From that—

Mr. Victor Fedeli: So there was a document that said, "Here are the search terms?"

Mr. Serge Imbrogno: Yes.

Mr. Victor Fedeli: Do we have that document?

Mr. Serge Imbrogno: I could provide that document.

Mr. Victor Fedeli: Okay. You'll undertake to have that document of the search terms.

On or around October 12, there was a third document delivery from the OPA. In that discussion, they talked about what took so long: "We had to take out privileged documents." That leads me to believe that there are still more documents coming, and I know that's a question I

will ask them. But in your opinion, then, after listening—I'm sure you did listen to that hour-long press conference that the OPA held, making a presumption I shouldn't. But when they state that there are privileged documents that were removed, does that imply there are still missing documents?

Mr. Serge Imbrogno: Sorry, Mr. Fedeli, I'm losing track of what—are you saying the OPA is saying they had—

Mr. Victor Fedeli: They had a one-hour press conference on the third document dump.

Mr. Serge Imbrogno: Right. So that would have been their February 21 or 22 release; I think the 22nd. My understanding is, the OPA has provided all documents.

Mr. Victor Fedeli: In that conversation, the CEO, the chair, the president—I can't recall which one—said, "What took so long was, we had to pull out the privileged documents." Would that lead you to believe there are still more documents that have not been turned over?

Mr. Serge Imbrogno: Just my understanding of my discussions with Colin is that when he alerted me to the fact that they may have forgotten a search term—I said we had agreed to a set of search terms—it sounded like they realized after the October 10 release—I think I got a call from Colin on October 18 saying that they may have inadvertently forgotten to put a search term in their software. Colin said that there were potential documents that he wasn't sure—they're doing a view now and they're also going to review whether there are any incrementally new documents. I think that's what took the time.

Mr. Victor Fedeli: Okay. We'll leave that question for the OPA, then.

Basically what I said earlier is, we're here to determine how much this gas plant cancellation cost, both for Oakville and Mississauga, and who ordered the cover-up. Why I say "cover-up" is because here we are, months later, and there are not two people in this room who could tell us how much it cost. That fact is still being covered up, so I am very free to continue calling this—as offensive as it may sound to you, there's a cover-up here because we still, to this minute, do not know how much the government spent on this scandal. So let's try to get to some of these numbers.

1730

I know that you weren't at the Ministry of Energy at this particular time, but your name, of course, Serge, is all over the documents from the finance side. Do you know about the \$712-million offer?

Mr. Serge Imbrogno: No.

Mr. Victor Fedeli: You don't know about that offer?

Mr. Serge Imbrogno: No.

Mr. Victor Fedeli: So it wasn't sent over to finance to approve. This is a number that somebody else has come up with that you're not familiar with.

Mr. Serge Imbrogno: I wasn't aware of that, but I can explain, when I was involved, the numbers that I did see.

Mr. Victor Fedeli: Please.

Mr. Serge Imbrogno: It would be an approximation of the sum costs. It would have been an approximation of the cost of the turbines and then it would have been an assessment of what the potential lost profits were over time.

Mr. Victor Fedeli: We'll get to those ones, then. You're a pretty senior guy at finance at the time, involved in this. Would you agree your name is in hundreds upon hundreds of these documents, both from finance and from energy?

Mr. Serge Imbrogno: Yes.

Mr. Victor Fedeli: So you do not know about a \$712-million offer either?

Mr. Serge Imbrogno: Not of an offer, but I'm aware when you add those up you could get close to \$700 million.

Mr. Victor Fedeli: No, it comes in more than that number.

Mr. Serge Imbrogno: But, just so I can clarify, in the lost profit, that would be a negotiation between TransCanada and the OPA, so—

Mr. Victor Fedeli: I fully understand that. I'm asking specifically about the \$712-million offer that was made to TransCanada that was rejected. This would have been on April 21 of that year, so that's not an area—

Mr. Serge Imbrogno: I don't recall that, but there were a lot of numbers out there and they may come close to that number, but I'm giving you a sense of what I understood at the time.

Mr. Victor Fedeli: Okay. I'm not going to walk you through all these documents; we'll talk about those later. The transmission at \$200 million, the turbines at \$210 million, the gas delivery and management at \$313 million to \$476 million, and the sunk cost of \$40 million add up to around \$929 million if you take the high end—\$800 million if you take the low end.

I want to direct your attention to PC doc number 2. This is way over my head. This is the southwest GTA gas-fired procurement; this is from you to the gang and it is very, very detailed.

It says: "TCE has been seeking recovery of ... out-of-pocket expenses (\$37 million)"—it came in at \$40 million, so we're pretty accurate there—"the cost of turbines for the project (\$210 million)"—nobody has disputed that number—"and its estimated financial value of OGS," the Oakville generating station.

Then we get into their estimate of OGS, and they put the value at \$503 million. That's before the \$210 million and before the \$40 million. They get into discount rates of 5.25%, this kind of thing.

If you go to the next page, you write:

"Consistency with previous estimates:

"While very preliminary analysis, the \$503 million and the \$385 million"—which is something else—"provided by TCE can be reasonably approximated using the net after-tax cash flow values in the spreadsheet," and then you get into a discount rate of five and a quarter. You came up with a number of \$504 million using that

discount rate; smaller numbers, if you use a different discount rate and a different term.

Are you telling us here that the value that TransCanada will be seeking is basically \$503 million plus \$210 million plus \$37 million at that time? Is that kind of where their starting point was back in December 2011?

Mr. Serge Imbrogno: I'm just trying to—

Mr. Victor Fedeli: I know it's being thrown at you.

Mr. Serge Imbrogno: The context of it, I think, is important.

Mr. Victor Fedeli: You prepared this document, I presume, or had it prepared. This is a document you originated. You're sending this.

You say:

"Hi,

"Attached are our initial comments on the TCE model.

"Serge."

It's strictly confidential and commercially sensitive. Is that where we are? Were we in the \$750-ish-million—

Mr. Serge Imbrogno: Just to give you the context for this as I go through it, this would have been part of the arbitration process with TransCanada. I believe they provided the OPA with pro forma statements. We didn't have the actual TransCanada model. What the OPA did, just going by memory, was I think they created their own financial model. They would have used the assumptions that they thought TransCanada was using. They then shared the model with the Ontario Financing Authority. We would have gone through that pro forma model and provided these comments.

Mr. Victor Fedeli: So your numbers came in fairly close to the numbers of TransCanada?

Mr. Serge Imbrogno: Using their assumptions, I think, and not really—

Mr. Victor Fedeli: Nobody's arguing with that number here. Nobody says—in fact, the comment is they can be reasonably approximated using the net after cash. Nobody in here says, "Wow, these are way out of line." I don't see that comment anywhere in here.

Mr. Serge Imbrogno: Based on the pro forma statements that TransCanada provided. I think we're commenting on the model; I don't think we're commenting on whether that was appropriate or not.

Mr. Victor Fedeli: So that's kind of the area that we're in.

Let me just jump to a little bit of the discussion from JoAnne Butler the other day. We're talking about this gas delivery, the fact that it dropped from \$17,000 and change down to \$15,000 and change. My comment on that: I asked her, "What is the contract today?" She said it was \$7,900 today, and I asked her, "What's the average NRR out there?" And it was, I'm going to guess at that number, \$12,700 or so, the average NRR. So basically we're trying to talk about a savings of NRR by having this \$17,000 drop to \$15,000, when in reality, under sworn oath, the average is \$12,000 and change, and today it's \$7,900. Show me how that can possibly be any savings. I mean, I understand savings from \$17,000 to \$15,000 if you make up the \$17,000 as a high number to start with.

Mr. Serge Imbrogno: The \$17,200 number was the last competitively procured gas plant. That would be the benchmark that seems appropriate to use. I think the average would take into account plants that were signed several years ago, so I think when you average it out, it might drop down. But I think part of it is the OPA's judgment about what they think, today, if you were to build the plant using this, is probably closer to the reality, given it was a competitive procurement.

Mr. Victor Fedeli: Earlier in one of your comments, you had said there's a lot of give and take in this industry. To me it appears—so far we've seen a lot of the give on the government's part and a lot of the take on the proponent's part.

I want to jump to this document that you have. It says "PC doc #2"; it was a news release that I had sent out. That's only the fancy part; it's the meat behind it. We're skipping over to Mississauga here now. This has been itching at me for quite some months since we first discovered this one and talked about it. This is this \$5-million side deal.

I'm going to just read you what I say in here. I say this in my news release, but it's backed up here in all the attachments. "OPA's JoAnne Butler asks lawyer Rocco Sebastiano specifically: 'Can you confirm that you have run by Carl the concept of the 10 mil upfront and the other five thru the NUG?' Sebastiano replies 'Yes I have.' He further states they were 'pushed for an upfront payment on the assignment of the contract to the OPA,' but 'we would have a problem accounting for an upfront payment.'"

Then they ask, "Is this NUG needed for the system?" They reply, "The NUG is not needed."

We understand the first announcement came out at \$180 million for Mississauga. Then we see the concept of the \$10 million upfront. That's the \$10 million that the finance minister told the energy minister to add because there was a \$10-million upfront payment. That changed it to \$190 million. Why is the other \$5 million through the NUG not in this Mississauga disclosure? Why hold back that \$5-million disclosure?

Mr. Serge Imbrogno: It is a bit of a complicated story because—

Mr. Victor Fedeli: It's a story.

Mr. Serge Imbrogno: It involves litigation that was ongoing with Ontario Electricity Financial Corp. for many years. That litigation came up at the same time that the situation with Mississauga was happening.

1740

I think there is a number of numbers to follow. The OPA had made a \$10-million payment to Greenfield related to the potential renegotiation with Keele Valley; I think part of that was \$5 million—if they negotiate on Keele Valley and they don't agree on terms, then Eastern Power would keep the \$5 million.

Mr. Victor Fedeli: So why wasn't that \$5 million reported?

Mr. Serge Imbrogno: Sorry; let me just finish. But also, the \$4.6 million—I think it was like \$5.6 million—

\$4.4 million—once the OEFC settled with Keele Valley, then they would pay back the \$4.6 million. In the discussions between OEFC and Eastern Power, it was, I think, decided that OEFC would settle for \$10 million, so once OEFC made that \$10-million payment, \$4.6 million went back to OPA.

Mr. Victor Fedeli: So it says, “Can you confirm that you have run by Carl the concept of the 10 mil upfront and the other five thru the NUG?” You’re saying today now there is no other \$5 million that is in the hands of the proponent?

Mr. Serge Imbrogno: The proponent would have had the \$10 million from OEFC and I think \$5.4 million—

Mr. Victor Fedeli: —\$5.23 million—

Mr. Serge Imbrogno: —from the OPA for that negotiation of the Keele Valley contract that didn’t go through.

Mr. Victor Fedeli: Very complicated, as you say. We’ll look forward to how the auditor deals with that one.

In closing, I would ask you: Who had the final say or authorized the costs on both Oakville and Mississauga? Who would have had the final say? Who signed off on these numbers?

Mr. Serge Imbrogno: We had a negotiating team, I think I mentioned, that it included the OPA—

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

Mr. Serge Imbrogno: —IO. The ministry was there. We would have brought forward to the treasury board what we thought the sunk costs were for the site, and that would have been paid through the Consolidated—

Mr. Victor Fedeli: But the MOU says that the government signed off on the MOU. The letter from JoAnne Butler also says that a memorandum of understanding was made public. There’s the \$40-million cost—“this included the extra costs to get gas”—she says there were other costs in the relocation in addition to the \$40 million, and that the government signed off on the MOU.

Mr. Serge Imbrogno: The MOU was an agreement in principle that would lead to definitive agreements that were signed on December 14, but the OPA board would have signed off on behalf of the ratepayer to say that the renegotiated—

Mr. Victor Fedeli: Did the minister know the full cost, the more-than-\$40-million full cost?

Mr. Serge Imbrogno: We would have informed the minister of all of the components of those costs.

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

To Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Mr. Imbrogno, I’m just going to go back to an earlier question about documents. You noted, and we discussed, that the minister’s office staff reviewed copies of ministry and OPA documents.

Mr. Serge Imbrogno: That’s correct.

Mr. Peter Tabuns: Who in the minister’s office did that review?

Mr. Serge Imbrogno: I know Ryan Dunn would have gone to the OPA to review the documents. I believe it

was Ryan Dunn in the minister’s office that would have reviewed the OPA documents at the ministry.

Mr. Peter Tabuns: And he reviewed the ministry’s documents as well?

Mr. Serge Imbrogno: Yes, as we compiled the documents, he would have reviewed those as well.

Mr. Peter Tabuns: Okay, so he was the key person in the minister’s office that would oversee this document review before they were released?

Mr. Serge Imbrogno: Well, we had a point person on the ministry side dealing with a point person on the minister’s side.

Mr. Peter Tabuns: And the point person on the ministry side was?

Mr. Serge Imbrogno: For part of it, it would have been Jesse dealing with the Clerk, coordinating within the ministry and getting any information from Ryan, and I would deal with Ryan directly, as well, if we got information about discussions between the government House leader’s office when documents would be released, that kind of thing, but Ryan was the point person from the minister’s office that all of the information would have flowed through.

Mr. Peter Tabuns: Okay. Just going back to a question that—Chair, you’ve changed.

The Vice-Chair (Mrs. Laura Albanese): I’ve changed—

Mr. Peter Tabuns: The question that I was trying to go through with you before I ran out of time: When we’ve had numerous people before us, no one seems to have been in charge. Was there a person in the Premier’s office or in the minister’s office who had carriage of the Oakville file—the person whom others would go to with questions, with clarifications, who would be driving the resolution from the government end?

Mr. Serge Imbrogno: I’ll just give a bit of how we set up the negotiating team. At the table, on the Oakville file, would have been Colin Andersen; Bert Clark from Infrastructure Ontario; we would have had a ministry legal person there as well—staff person; and we’d have had outside counsel representing the OPA, and outside counsel representing IO. They would have reported to me and I would have reported to the minister, or it would have been a direct report from the negotiating team to the minister. The minister would have given the direction on whether we were on the right page, we had the right strategy, and finally approved the final deal.

Mr. Peter Tabuns: So for that portion that you were involved with, it was very clear that it was the minister who was running the show.

Mr. Serge Imbrogno: On behalf of the government. Then we would take the negotiated deal and bring it through for approval, to treasury board, cabinet, on the portion that was the sunk cost. But I think, very much, the minister would have made the decisions on moving forward with the negotiations and finalizing them, based on the advice from the negotiating team and the deputy.

Mr. Peter Tabuns: Okay. One of the things we’ve come across very consistently is this proposal—in the

Oakville piece—that TransCanada had to be made whole. As I read the documents, that seems to have come out of the Premier's office. Do you know who was pushing this idea that TransCanada had to be made whole, that they would suffer no losses in this deal?

Mr. Serge Imbrogno: I don't know who made that commitment. When I became involved in the files, the arbitration agreement was drafted already in a particular way. So I'm not sure who made that particular commitment.

Mr. Peter Tabuns: Okay. With regard to Mississauga, the Greenfield South, I think the number that we're using is \$180 million or \$190 million in costs, paying off EIG, dealing with the incomplete construction, etc. Are there any other costs beyond that that we need to be aware of?

Mr. Serge Imbrogno: I think, just like the TransCanada plant, there are other system benefits and costs related to Greenfield. The \$190 million is very much the sunk costs related to the decision not to move forward with Greenfield.

Mr. Peter Tabuns: So can you tell us what the other benefits and costs are? Are we talking transmission lines that have to be put in place? Are we talking gas management again? Are we talking land cost? What is remaining for ratepayers to cover in this matter?

Mr. Serge Imbrogno: It's hard for me to answer that question because I've seen the auditor's report; I've commented on it; I know it's coming out on the 15th. So it's hard for me to answer that question without providing more details on what the auditor may be coming out with on the 15th.

But I would say in general, similar to Oakville, there are costs related to the new site; there are costs related to moving the site from the existing location. So there are similar types of system costs and also system benefits, where you're moving the date of the capacity contract several years out. So there are savings there from not having to make that payment for power that we don't need.

Mr. Peter Tabuns: Net, are there higher costs still to be paid?

Mr. Serge Imbrogno: I think, with the auditor's report coming out on the 15th—I've talked to the auditor, and he very much wants to be able to provide that update directly to the committee and to the House.

1750

Mr. Peter Tabuns: Out of consideration for the auditor and you, I'll press you no further. I look forward to interesting things in his report.

Can you expand on your opening comments? You said, "As Deputy Minister of Energy, I was involved, along with the OPA and outside legal counsel, in the implementation of the decisions to relocate the plants pertaining to Greenfield South ... and TransCanada...."

Can you tell me what you did with regard to Greenfield South?

Mr. Serge Imbrogno: It was very much the same role that I played with TransCanada. I wasn't directly on a

negotiating team, but I would get reports in from the negotiating team, brief the minister on progress or have the negotiating team brief the minister directly. That would have been my role: just to make sure that we were providing strategic advice to the negotiating team and briefing the minister.

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

The Chair (Mr. Shafiq Qadri): Two minutes.

Mr. Peter Tabuns: I've been told today that Eastern Power has still not decided on a site for their Sarnia plant. Do you have knowledge about this?

Mr. Serge Imbrogno: The agreement with Greenfield was that they had alternate sites that they could use. There was the OPG site, but I think there's another site two kilometres from the Lambton site that they could also develop. It was very much up to Greenfield to decide which of those two sites they wanted to move forward with.

Mr. Peter Tabuns: Let's see: It's about a year and a half. Is there any particular reason that you're aware of that they are not moving forward with their contract?

Mr. Serge Imbrogno: My sense was they are preparing to do the environmental assessment and maybe doing strategic analysis of the two sites: which is better for them. I haven't followed up on—

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

Mr. Peter Tabuns: So there's no obvious barrier that you've seen—

Mr. Serge Imbrogno: Not that I'm aware of, no.

Mr. Peter Tabuns: Were there previous problems with Eastern Power developers, in your dealings with them and the ministry's dealings with them at Keele Valley?

Mr. Serge Imbrogno: At Keele Valley—well, we had the outstanding litigation with them. I think the Keele Valley site was a landfill gas site. It had dwindling methane gas, so there were issues with their contract in terms of the economics of the contract. But other than the ongoing litigation, I don't remember any other issues.

Mr. Peter Tabuns: Were they any more problematic than any other private power contract that you were dealing with at the OEFC?

Mr. Serge Imbrogno: Well, we did have that outstanding litigation. We usually don't have outstanding litigation with a lot of our—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns. To the government side, to Mr. Del Duca: 10 minutes.

Mr. Steven Del Duca: Thanks, Mr. Chair. In the interest of full disclosure for the opposition, I have only one question, so you can be ready after this one is done, okay?

As I'm sure you're aware, Premier Wynne committed in her throne speech, and on multiple occasions since the throne speech, that her government—our government—is committed to incorporating more local decision-making in the siting of energy infrastructure.

She also expanded the mandate of this committee to provide the House with concrete recommendations on the siting of these types of plants in the future.

So I'm wondering, given your experience and your expertise, what would be your recommendations as to how future sites should be selected?

Interjection.

Mr. Serge Imbrogno: Yes. That's a tough question for me to answer. I know the ministry right now is looking at that issue as well, looking at—

Interjection.

Mr. Serge Imbrogno: We're looking at the issue of more municipal involvement in decision-making. So I think, just based on that, one of the outcomes would be more involvement of municipalities on siting in the first place. I think that would be one of the outcomes that would be appropriate.

Mr. Steven Del Duca: Great. Thank you very much for your testimony today.

Mr. Serge Imbrogno: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. To the PC side: to Monsieur Leone.

Mr. Rob Leone: Thank you, Mr. Chair. Mr. Imbrogno, I have a few questions that I'd like to ask. Through the course of your conduct as the deputy minister, when you are engaged in a process of trying to advise the government or the minister of potential options and you're engaging different stakeholders in the course of doing your work, is it normal for you to perhaps take notes of what happened with your discussions with various stakeholders?

Mr. Serge Imbrogno: It depends on the meeting. I usually jot down a few notes.

Mr. Rob Leone: So if you were tasked with, say, providing some options to a company that had a contract cancelled with respect to a gas plant cancellation and you were looking at different options associated with resiting said gas plant, would you believe that you would probably be taking some notes in terms of what were the discussions you had with that third party?

Mr. Serge Imbrogno: I think that would be reasonable, yes.

Mr. Rob Leone: So, in essence, we had a witness come forward who was party to some of these negotiations who stated that actually, in fact, no notes were taken in providing such advice to the government. Do you find that hard to believe?

Mr. Serge Imbrogno: I can just speak for myself. If I were in a similar meeting, I would have taken notes, or if I didn't take notes at the meeting I would have tried to remember what happened at that meeting and maybe put forward notes after.

Mr. Rob Leone: Okay. I'm going to ask you some questions with respect to some issues involving Jesse Kulendran, if you don't mind.

We have a memo that was leaked to us. I don't know who leaked it to us, but it was dated October 3, 2012, the subject of—I think you probably have seen this memo. I'm just going to read a portion of that for you.

It says this: "As you are aware, both Ziyaad and I have been clear that this is in fact what Jesse Kulendran told us to do at the meeting on" October 22, which, respectively, talks about the exclusion of attachments and correspondence. "After our meeting yesterday, I followed up with Ziyaad who reminded me that at the" October 22 "meeting, Jesse requested that we go page by page through OPA's non-privileged Oakville documents. During this page flip Ziyaad and I put Post-it Notes on the documents based on the direction Jesse was giving us during the meeting. These Post-it Notes have never been removed from the documents."

Have you seen these documents—

Mr. Serge Imbrogno: No.

Mr. Rob Leone: —that are being referred to in here?

Mr. Serge Imbrogno: Those would be the OPA documents.

Mr. Rob Leone: And therefore you would not have seen them?

Mr. Serge Imbrogno: No.

Mr. Rob Leone: Okay. We've also learned from Peter Wallace that there was an investigation—the fact that on October 22, Jesse attended a meeting. I think you stated in your testimony earlier today that, typically, when legal services or the legal branch requests a meeting, legal services typically attend, and that when legal services can't attend for whatever reason, typically that meeting is cancelled. Is that correct?

Mr. Serge Imbrogno: Just to be clear, going forward, I said that should absolutely be the policy. But I think it would have been ideal if that happened in that case, but it didn't.

Mr. Rob Leone: Okay. Now Mr. Wallace talked about a report that was conducted by the Attorney General's office. Were you aware of this report?

Mr. Serge Imbrogno: When I informed Peter that this allegation was made, we agreed that we would deal with it after the search was completed. What I understood from the secretary was that he was going to ask MAG lawyers to interview Jesse and to get her side of what happened. I think the intent then was to have the OPA do a similar process, and I think Colin hired external lawyers to talk to the two people at the OPA who were at the meeting. Then I believe the external lawyers from the OPA had a discussion with the Ministry of the Attorney General's internal lawyers to compare notes, basically.

Mr. Rob Leone: So that was the investigation, but did you see the report?

Mr. Serge Imbrogno: No. I'm not sure if there was a report or if it was a verbal update, but I haven't seen a report.

Mr. Rob Leone: And were you ever briefed verbally on what the conclusion of that report was?

Mr. Serge Imbrogno: Just at a very high level, that they didn't find anything that would suggest that Jesse was not telling the truth, but they didn't find anything that was conclusive either.

1800

Mr. Rob Leone: Okay. Now, in your opening statement, you talked about providing the OPA with a list of search terms that were used.

Mr. Serge Imbrogno: Yes.

Mr. Rob Leone: And I think Mr. Fedeli has asked for those search terms.

Mr. Serge Imbrogno: Yes.

Mr. Rob Leone: So I'm assuming these search terms were written down in some way, shape or form?

Mr. Serge Imbrogno: For the second search, because in the first search people were using different search terms, we wanted to make sure that everyone consistently searched on the same terms. So I think on the second search we had a list of 25 search terms between Mississauga and Oakville that everyone would have used, and we would have shared that list with the OPA.

Mr. Rob Leone: So there was a list of search terms.

Mr. Serge Imbrogno: Yes.

Mr. Rob Leone: Was there a process enumerated in terms of how to conduct that search?

Mr. Serge Imbrogno: For the second search, we tried to make sure that everyone followed a consistent process, so we would have outlined more of a plan for people to follow.

Mr. Rob Leone: Okay. And do you have knowledge of a list of people who would have been asked to perform said search with these search terms?

Mr. Serge Imbrogno: From the ministry side, we would have a list of everyone that we asked to search, and then we would have everyone that had responsive records.

Mr. Rob Leone: Would you be able to provide that list to this committee?

Mr. Serge Imbrogno: Sure. Do you want the list of the names or the number of people that we—

Mr. Rob Leone: Well, I'd like, actually, if you have the whole plan, to produce that plan, but I'm interested in the names as well as the search terms that were in fact provided.

Now, in the process of undergoing the document search—I know that you were in estimates with Minister Bentley when we were undertaking the discussion, so you were part of that, and I remember your testimony whenever we asked questions. Sometimes Mr. Bentley would, because you were new, answer the question on your behalf. But in the process of coming up with a document search and undertaking what the estimates committee has asked, were there any communications that you had with any political staff?

Mr. Serge Imbrogno: In terms of discussions with the minister or the minister's office?

Mr. Rob Leone: With respect to the request from the estimates committee to produce documents.

The Chair (Mr. Shafiq Qaadri): You requested a two-minute warning.

Mr. Rob Leone: Thank you.

Mr. Serge Imbrogno: We would have had discussions with the minister in terms of briefings on

what the public committee motion was about and what the obligations were.

Mr. Rob Leone: Did you have a meeting that would include perhaps the chief of staff to the minister in the process of doing this?

Mr. Serge Imbrogno: I would think the chief of staff would have been part of those discussions.

Mr. Rob Leone: Okay. How about the Premier's office? Do you think a representative of the Premier's office would have been involved in this as well?

Mr. Serge Imbrogno: Not when I was briefing the minister; I didn't—

Mr. Rob Leone: But in the course of the conversations that would happen in these meetings, would there be reference to the fact that the Premier's office was in fact requesting certain things to happen? Do you have any recollection of that?

Mr. Serge Imbrogno: The only thing I remember is just in terms of the timing, that there were what I understood discussions between the government House leader's office about the timing of releasing documents to estimates, but that's all that I—

Mr. Rob Leone: Did you have any conversations with Chris Morley?

Mr. Serge Imbrogno: No.

Mr. Rob Leone: David Livingston?

Mr. Serge Imbrogno: Not on document search, other than when I reported to David that the OPA told me on the 28th that they had missed certain files, and that was David that I talked to on that.

Mr. Rob Leone: Dave Phillips?

Mr. Serge Imbrogno: Well, I've seen Dave Phillips around as part of the government House leader's discussion, but I didn't talk to him directly.

Mr. Rob Leone: How about your conversations with anyone involving who actually made the decisions? I know we're trying to reflect—I don't have enough time to go through these questions, I don't think, but I guess a sense of some of the key decision-makers. What would your role have been with respect to the document disclosure?

The Chair (Mr. Shafiq Qaadri): The question will have to remain rhetorical, Mr. Leone. I thank you for your questions, and I thank you, Mr. Imbrogno, for your presence and your stewardship in your various capacities, latterly at the Ministry of Energy.

We have two motions before the committee, and I'd invite Mr. Tabuns, the said author, to enter into record. Mr. Tabuns.

Grazie, signore. You're officially dismissed.

Mr. Peter Tabuns: I move that any and all personal and legal counsel notes and documents from meetings and debrief meetings referred to by Craig MacLennan in his April 9, 2013, testimony to the Standing Committee on Justice Policy, following his meeting with Trans-Canada, be tabled as soon as possible with the Standing Committee on Justice Policy.

All members of the committee will remember Mr. MacLennan referred to I think it was three meetings in

which notes were taken and, in one instance, where he'd debriefed legal counsel. This motion refers to production of those notes.

The Chair (Mr. Shafiq Qaadri): Thank you. The motion is before the House floor for debate.

Mr. Rob Leone: The committee.

The Chair (Mr. Shafiq Qaadri): Before committee.

Before we continue, I'd just like to acknowledge the presence of two future members of Parliament, Shamsa Qaadri and Shafiq Qaadri Jr.

Interjections.

Mr. Peter Tabuns: Welcome.

Mr. Victor Fedeli: Recorded vote.

The Chair (Mr. Shafiq Qaadri): A recorded vote has been requested. Are there any comments on this particular motion before we vote on it? Fair enough.

Mr. Rob Leone: I have one comment.

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

Mr. Rob Leone: I'm surprised that the Liberals haven't asked for a 10-minute recess.

Interjections.

Mr. Victor Fedeli: We've got kids here.

Mr. Rob Leone: That's right.

The Chair (Mr. Shafiq Qaadri): Fair enough. If there's no further comments, I'll invite the vote.

Ayes

Delaney, Del Duca, Fedeli, Leone, Natyshak, Tabuns, Yakabuski.

The Chair (Mr. Shafiq Qaadri): None opposed. The motion carries.

Mr. Tabuns, your second motion.

Mr. Peter Tabuns: I move that all documents pertaining to estimates of transmission and gas management costs of the Oakville gas plant relocation in possession of the Deputy Minister of Energy's office be tabled as soon as possible with the Standing Committee on Justice Policy.

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

Mr. Peter Tabuns: Somewhat tortured English, but I think you understand what I'm getting at.

The Chair (Mr. Shafiq Qaadri): We'll take any language at this point, Mr. Tabuns.

Mr. Peter Tabuns: I'm so pleased.

The Chair (Mr. Shafiq Qaadri): Are there any comments before—yes, Mr. Delaney?

Mr. Bob Delaney: Just clarification: You were sort of changing a little bit of it on the fly.

Mr. Peter Tabuns: Yes, I was.

Mr. Bob Delaney: In possession of the deputy minister's office of the Ministry of Energy be tabled—

Mr. Peter Tabuns: Correct.

Mr. Bob Delaney: Okay. Fine.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Seeing none—

Mr. Steven Del Duca: Recorded vote.

Ayes

Delaney, Del Duca, Fedeli, Leone, Natyshak, Tabuns, Yakabuski.

The Chair (Mr. Shafiq Qaadri): None opposed.

If there's no further business—

Interjection.

The Chair (Mr. Shafiq Qaadri): We have one more motion, which is now being distributed—ably.

Mr. Steven Del Duca: I'm getting motion sickness.

The Chair (Mr. Shafiq Qaadri): That is a good line.

Interjection.

The Chair (Mr. Shafiq Qaadri): "Motion sickness": Let that be in Hansard under my name.

Mr. Peter Tabuns: I move that the OPA provide any and all reports from their legal counsel in respect of their internal investigation of the conduct of Jesse Kulendran and her role in the OPA's production of documents.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments?

Interjection.

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

Mr. Rob Leone: Just a question of clarification: You're saying all reports. Should we expand that to include all correspondence, simply because I've heard alluding to the fact that these reports were verbal?

Mr. Peter Tabuns: I have no problem saying "reports and correspondence."

Mr. Rob Leone: Okay.

The Chair (Mr. Shafiq Qaadri): Fair enough. The addition's been duly noted and entered. Are there any further comments before we vote?

Mr. Victor Fedeli: Recorded vote.

Ayes

Delaney, Del Duca, Fedeli, Leone, Natyshak, Tabuns, Yakabuski.

The Chair (Mr. Shafiq Qaadri): Thank you. The motion is carried.

If there's no further business, the committee is adjourned.

The committee adjourned at 1809.

CONTENTS

Tuesday 9 April 2013

Members' privileges	JP-175
Citizens for Clean Air	JP-175
Mr. Frank Clegg	
Mr. Craig MacLennan	JP-181
Mr. Serge Imbrogno	JP-195

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Présidente

Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

 Ms. Teresa Armstrong (London–Fanshawe ND)

 Mr. Bob Delaney (Mississauga–Streetsville L)

 Mr. Steven Del Duca (Vaughan L)

 Mr. Frank Klees (Newmarket–Aurora PC)

 Mr. Jack MacLaren (Carleton–Mississippi Mills PC)

 Mr. Rob E. Milligan (Northumberland–Quinte West PC)

 Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

 Mr. Jonah Schein (Davenport ND)

Substitutions / Membres remplaçants

Mrs. Donna H. Cansfield (Etobicoke Centre / Etobicoke-Centre L)

 Mr. Victor Fedeli (Nipissing PC)

 Mr. Rob Leone (Cambridge PC)

 Mr. Taras Natyshak (Essex ND)

 Mr. Peter Tabuns (Toronto–Danforth ND)

 Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Clerk / Greffière

Ms. Tamara Pomanski

Staff / Personnel

Ms. Elaine Campbell, research officer,
Legislative Research Service

Ms. Karen Hindle, research officer,
Legislative Research Service

Mr. Peter Sibenik, table research clerk,
Journals and Procedural Research Branch