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## **Official Report of Debates (Hansard)**

**Tuesday 23 April 2013**

## **Journal des débats (Hansard)**

**Mardi 23 avril 2013**

**Standing Committee on  
Justice Policy**

**Comité permanent  
de la justice**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
JUSTICE POLICY**

Tuesday 23 April 2013

**COMITÉ PERMANENT  
DE LA JUSTICE**

Mardi 23 avril 2013

*The committee met at 0830 in room 151.***SUBCOMMITTEE REPORT**

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the meeting of the justice policy committee to order. The first order of business is the subcommittee report. Mr. Fedeli.

**Mr. Victor Fedeli:** Standing Committee on Justice Policy, report of the subcommittee: Your subcommittee on committee business met on Monday, April 22, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013.

(1) That the Clerk of the Committee schedules an extra witness at the end of the committee hearings from the government's selection in the rotation.

(2) That the confirmation for the appearance of a witness shall be no less than 24 hours prior to a committee meeting.

(3) That the committee shall submit an interim report in both official languages to the House by May 21, 2013, pursuant to the order of the House dated February 20, 2013.

(4) That the interim report shall be a summary of testimony of witnesses up to May 2, 2013.

(5) That the interim report will be broken down by witnesses, as follows:

- a summary of testimony respecting the tendering, planning, commissioning, cancellation and relocation of the Mississauga and/or Oakville gas plants; and

- a summary of testimony respecting the Speaker's finding of a *prima facie* case of privilege.

(6) That the committee will meet outside of its regular meeting schedule for purposes of report writing.

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

I move that the subcommittee report be adopted.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Are there any discussion points before we move to adopt the subcommittee report as read? Seeing none, all in favour? All opposed? The subcommittee report is adopted.

**MEMBERS' PRIVILEGES****MR. SEAN MULLIN**

**The Chair (Mr. Shafiq Qaadri):** I'd now invite our first witness to please come forward, Mr. Sean Mullin, who will be affirmed.

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

**Mr. Sean Mullin:** I affirm.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Mullin. As you know, you have five minutes for your introductory address, and then a rotation of questions afterward. Please begin.

**Mr. Sean Mullin:** Thank you, Chair. My name is Sean Mullin. I joined the Office of the Premier as a policy adviser in November 2007. I left the government in October 2011, immediately after the conclusion of the provincial election.

From 2007 to 2009, I was responsible for finance and economic policy, which include working on projects such as the annual budget process. In November 2009, I became the deputy director of policy. Among other things, it added responsibility for energy policy to my portfolio.

In my capacity as energy policy adviser, I regularly met with outside stakeholders, including representatives from private companies, and I routinely interacted with staff from the Ministry of Energy, the minister's office and from various energy agencies, including the Ontario Power Authority.

In terms of my involvement with the matter before this committee, I participated in a series of meetings with TransCanada in the summer of 2010, along with my colleague Jamison Steeve. These meetings were conducted without prejudice, were exploratory in nature and occurred at TransCanada's request.

In October 2010, I participated in two meetings with TransCanada where Jamison communicated that, first, the government would not be proceeding with the Oakville gas plant, and second, that the government would prefer that TransCanada and the OPA enter into negotiations to mutually resolve the matter.

After the October 7 public announcement, from time to time in my capacity as energy policy adviser, I would receive high-level updates on the status of negotiations between the OPA and/or the ministry.

In April 2011, I participated in two meetings with representatives from TransCanada. The first was at their request and involved the minister's office, the deputy minister and legal counsel. We listened and made no commitments. The second was with TransCanada's director of government relations, along with my colleague Craig MacLennan. Prior to that meeting we consulted legal staff and received advice on how to conduct the meeting. The meeting occurred without prejudice, and after hearing from TransCanada we again made no commitments. After the meeting, we debriefed legal staff and ministry officials. At no point in this process did I direct the OPA to take a particular course of action as part of its negotiations, nor did I engage in any negotiations with TransCanada directly.

Later in April 2011, I was informed by Jamison that we'd been screened off the file because TransCanada had threatened litigation and there was a possibility we would be called to provide evidence or serve as witnesses. I subsequently met with lawyers from the Ministry of the Attorney General, answered any questions they had and provided them with any documents I had in my possession. This ended my involvement in the file.

My involvement with the Mississauga plant was very limited. I was aware that a campaign promise had been made during the campaign, but as I left the government immediately after the election, I was not involved in the implementation of that campaign commitment in any way.

Thank you, and I look forward to your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Mullin. To the NDP. Mr. Tabuns, you have the opening 20 minutes.

**Mr. Peter Tabuns:** I hope I have more than two minutes, Mr. Qaadri.

**The Chair (Mr. Shafiq Qaadri):** Twenty.

**Mr. Peter Tabuns:** Mr. Mullin, thank you for being here this morning. Why did you and Jamison Steeve meet with TransCanada in June of 2010?

**Mr. Sean Mullin:** A couple of things. First of all, in my capacity as energy policy adviser, and as I believe Jamison mentioned in his testimony as principal secretary, it was routine for us to meet with stakeholders across numerous industries and fields, including the energy industry. Secondly, I believe Jamison had spoken to the Premier before that meeting and gotten his okay to meet with TransCanada. And third, I would point out that it was at TransCanada's request. We were simply meeting with them to listen to them and hear what they had to say.

**Mr. Peter Tabuns:** Now, you'd met with them a number of times previous to this meeting, along with Jamison Steeve. Correct?

**Mr. Sean Mullin:** Previous to that meeting? The first time I met with TransCanada was when I took over the energy file. Through December and January of 2010, I met with stakeholders across the energy sector, and that was a meet-and-greet where I met with representatives from TransCanada.

**Mr. Peter Tabuns:** Well, in your testimony—in your notes talking with counsel John Kelly and Darrell

Kloeze, you note you first met with Pourbaix and Breen around Christmas of 2009. They said the local mayor was offside; their plans to invest in the local community fell apart quickly.

**Mr. Sean Mullin:** That's what I meant—so December or January 2010; that was the period where I was literally—I didn't know what to expect. They had requested a meeting. I was literally meeting everybody in the energy sector. I don't think the level of—it wasn't an issue that was really on my radar at that point, so it was—

**Mr. Peter Tabuns:** Was it on your radar after that meeting where they said this was falling apart?

**Mr. Sean Mullin:** I don't think they characterized it like that. It was mainly more about what TransCanada was about. I believe they said—you know, they indicated that they were having problems. It really escalated over the spring of 2010, and the June meeting was where it was clear that that was a meeting where they wanted to come in and talk about what the government could do in the circumstance.

**Mr. Peter Tabuns:** So you went into this meeting with them and Jamison Steeve knowing that this plant was in trouble, knowing that they'd been interested in you passing legislation to clear out the municipal barriers. It wasn't just a "How are you doing today?" meeting. You knew they had problems when they came in to see you.

**Mr. Sean Mullin:** In June 2010, absolutely, yeah.

**Mr. Peter Tabuns:** So why wasn't the Ministry of Energy included in these sessions?

**Mr. Sean Mullin:** I'm not sure who the Ministry of Energy was meeting with at that time, but they had requested to meet with Jamison. I was the energy policy adviser. Jamison asked me to participate in the meeting.

**Mr. Peter Tabuns:** Why wasn't the OPA included in these discussions, given they had the contract with Trans-Canada?

**Mr. Sean Mullin:** They asked to meet with Jamison, first of all. Secondly, I think some of the solutions that they were talking about, a legislative solution, would be beyond the scope of the OPA.

**Mr. Peter Tabuns:** In fact, from your earlier testimony to counsel, by June it was too late in terms of that session; you'd already passed that window. Correct?

**Mr. Sean Mullin:** A legislative session I guess in June would be too late. It doesn't mean it couldn't happen in the fall.

**Mr. Peter Tabuns:** Your earlier testimony seems to indicate that they knew that option was over. They weren't talking about the fall.

**Mr. Sean Mullin:** It was during the summer. The government was still—it was still a possibility. Whether the government was ever going to actually do a legislative option, I think that's for the decision-makers to figure out.

0840

**Mr. Peter Tabuns:** Your comment to counsel was, "Once we got through the legislative session, I think they realized the window of us passing legislation was over."

**Mr. Sean Mullin:** First of all, I'm at a bit of a disadvantage. I don't see what you're referring to. I don't—

**Mr. Peter Tabuns:** I have your notes of your interview with senior legal staff about what happened.

**Mr. Sean Mullin:** Right. I'm not saying I didn't say that. I'm just saying it's difficult for me to refer to that. In retrospect, a year later, I'm not sure what I was saying in terms of—I think you're going to have to point me to what you're referring to. I'm sorry.

**Mr. Peter Tabuns:** Well, I don't have a second copy of these, but I'm looking at the difference between what you're telling us now and what you've told counsel in the past.

Did you at this point let the Ministry of Energy or OPA know that TransCanada was going around them?

**Mr. Sean Mullin:** TransCanada was going around—sorry?

**Mr. Peter Tabuns:** Around the OPA and the Ministry of Energy.

**Mr. Sean Mullin:** I believe the Ministry of Energy knew, or the minister's office knew, that we were meeting with TransCanada. I wouldn't characterize that as going around. What we were doing was responding to a request for a stakeholder meeting.

**Mr. Peter Tabuns:** When TransCanada requested this meeting, did they deliver the request through you or through Jamison Steeve or someone else in the Premier's office?

**Mr. Sean Mullin:** I don't actually recall how that was set up. I know the request was to meet with Jamison.

**Mr. Peter Tabuns:** I understand that you took notes at a number of these meetings.

**Mr. Sean Mullin:** I believe so, yes.

**Mr. Peter Tabuns:** Are these notes in your possession?

**Mr. Sean Mullin:** No, I did not take any notes when I left. In fact, when I debriefed with counsel, anything related to the Oakville file I left with counsel at that time.

**Mr. Peter Tabuns:** Chair, at the end of rotations I'm going to be putting a motion to request the production of those notes for this committee.

Jamison Steeve in his notes indicated there were three points you and he were instructed to convey: (1) that the government would be issuing a minister's directive to the OPA that the government would not be proceeding with the gas plants in Oakville—this was in October; (2) a request that TransCanada consider not proceeding with litigation at that time so that (3) TransCanada and the OPA could enter into productive negotiations.

Who gave you those instructions?

**Mr. Sean Mullin:** I was made aware of those instructions from Jamison.

**Mr. Peter Tabuns:** So they were never given directly to you?

**Mr. Sean Mullin:** Jamison told me, and he was my boss, so I had no reason to doubt him.

**Mr. Peter Tabuns:** Okay. Do you know who gave him those instructions?

**Mr. Sean Mullin:** I know that Jamison had talked to the Premier. He testified to such an extent. I have no reason to believe that that didn't happen.

**Mr. Peter Tabuns:** When the meetings were taking place with TransCanada, did you have any indication how much it would cost to ensure that the plant in Oakville didn't proceed?

**Mr. Sean Mullin:** What I knew during that period was that there was a lot of uncertainty about the different options. What we didn't know was, if we were to have the OPA undertake negotiations to try and move the contract from Oakville to serve the needs of the Kitchener-Waterloo-Cambridge area, which is what I believe was under consideration, what the costs would be under that scenario.

**Mr. Peter Tabuns:** So your thinking was that you would just simply switch plants around.

**Mr. Sean Mullin:** The sunk costs were \$40 million, in that range. We knew that those would be a cost, but other than that, until the negotiations occurred and both sides were able to reach an agreement, we didn't know what the outcomes would be in that scenario.

**Mr. Peter Tabuns:** And when was the decision made to cancel the Oakville gas plant?

**Mr. Sean Mullin:** I believe it wasn't very long before the announcement. I believe it was the end of September, early October—probably the end of September.

**Mr. Peter Tabuns:** Sorry, say that again: by the end of September?

**Mr. Sean Mullin:** Yes. I don't know the exact date, but when Jamison told me that the decision had been made, there wasn't a lot of gap between meeting with TransCanada and then subsequently announcing it.

**Mr. Peter Tabuns:** Who made that decision?

**Mr. Sean Mullin:** I believe it was the Premier and the minister.

**Mr. Peter Tabuns:** When we look at the information that was given to us, notes of meetings between TransCanada and the minister—and people have heard this before; apparently, the minister said, "We're continuing to look at this," in his conversation with TransCanada, and, "We'll have word for you later this year."

The TransCanada representatives got very angry and said, "We already have a deal with the Premier's office." It doesn't appear that the minister was aware that anything was going on here.

**Mr. Sean Mullin:** I can't speak for the minister in that meeting. It's probably best to ask him later this afternoon.

**Mr. Peter Tabuns:** Were you present at that meeting?

**Mr. Sean Mullin:** No, I was not.

**Mr. Peter Tabuns:** Were you involved with the development of the long-term energy plan?

**Mr. Sean Mullin:** Yes, sir, I was.

**Mr. Peter Tabuns:** The government has been saying the long-term energy plan showed that it was no longer necessary to have a plant at this site, but that the demand for electricity in Ontario would require that kind of

power produced in the future. Who provided the base demand projections that you utilized?

**Mr. Sean Mullin:** Any type of demand forecasts were coming up through the ministry. Whether they were produced by the OPA or the IESO, I'm not sure. I think both of them would produce different demand forecasts.

**Mr. Peter Tabuns:** So did you actually see those documents?

**Mr. Sean Mullin:** It's quite possible I did. We were in briefings every day for months. I know that it was communicated to me by ministry officials and the OPA that the plant was no longer needed to meet the reliability demands in 2014.

**Mr. Peter Tabuns:** And do you have a sense of when you knew this?

**Mr. Sean Mullin:** It was sometime during the summer. The way I recall it is, up until sometime in early summer the issue was that the plant was needed for reliability concerns in the southwest GTA by 2014. That was the key thing, because while a transmission solution could have been a solution 10 years ago, by the summer of 2010 you could simply not build a transmission solution within a four- or five-year period. So 2014—the only solution to meet 2014 was a gas plant. Then what was changed was not that the gas plant couldn't be used or that a gas plant on that spot couldn't serve some of the needs of the system, but that it was no longer needed to be in place by 2014 in order to ensure the lights didn't go out in the Oakville area.

Now the option of going back to a transmission solution, which would take a longer timeline and potentially be as far out as 2019, could now be considered. That was what changed the circumstance, because now it wasn't an issue of local opposition versus, literally, the lights going out; it was local opposition versus the power could be used, but it doesn't necessarily have to be there anymore.

**Mr. Peter Tabuns:** Interestingly, as we go through the documents, on September 13, 2010, the OPA was briefing the Deputy Minister of Energy that the plant was still needed.

**Mr. Sean Mullin:** I can't speak to that exact document, but I would know that the OPA, while developing the long-term energy plan, until a decision was made would obviously incorporate that plant as part of its plans. It's not to say that that power couldn't be used—they wouldn't deviate from their planning until the decision was made by the government to cancel that plant.

**Mr. Peter Tabuns:** Jamison Steeve had some handwritten notes. I'm just going to ask the Clerk: Do we have those available?

*Interjection.*

**Mr. Peter Tabuns:** One is October 7—

*Interjection.*

**Mr. Peter Tabuns:** If you go to the fifth page—

0850

**Mr. Sean Mullin:** Okay.

**Mr. Peter Tabuns:** It's handwritten. These are Jamison Steeve's notes.

**Mr. Sean Mullin:** One, two, three, four, five—five from the front, or—?

**Mr. Peter Tabuns:** Five from the front.

**Mr. Sean Mullin:** Okay.

**Mr. Peter Tabuns:** You have a page of handwritten notes there?

**Mr. Sean Mullin:** Yes.

**Mr. Peter Tabuns:** The bottom paragraph—that's under "JS" and "SM," and I'm going to assume that that's Jamison Steeve and Sean Mullin. These are notes of meetings that you had with Alex Pourbaix at Trans-Canada: "Gov't will return to [TransCanada] before [long-term energy plan] is finalized with potential options for other gas plants." Why are you telling a private company what your gas plants are and sort of letting them choose amongst gas plants at this point?

**Mr. Sean Mullin:** I'm not exactly sure what this refers to. It could have been that the long-term energy plan was still coming together at that point.

**Mr. Peter Tabuns:** Yes, it hadn't been completed. It was being written. It was a plan that we didn't get any documents for in our document disclosure request, but one of the biggest power producers in Ontario is getting a sneak peek of what's actually going to be the plan in Ontario.

**Mr. Sean Mullin:** I don't think—

**Mr. Peter Tabuns:** Why?

**Mr. Sean Mullin:** If I recall, the only—first of all, this doesn't say that any particular plants were discussed here. Secondly, it was the intention of that meeting to say that we would like the OPA and TransCanada to come together after the announcement, to try and negotiate a solution.

One of those solutions would have been, potentially, a Kitchener-Cambridge-Waterloo plant. I don't believe that that long-term energy plan was the first time that plant was designated as a need. It was already out there in the public. The long-term energy plan was confirming that that plant was still needed, and if the government, through the OPA, had decided that that was an opportunity to move the contract over, then it was in the interests of ratepayers to have the OPA engage in those negotiations.

**Mr. Peter Tabuns:** Well, I'll just note—this is the paragraph above: "LTEP"—the long-term energy plan—"expected to be finalized by mid-November; will speak to gas supply needs in Nanticoke, KW, Sarnia-Lambton.

"Gov't will return to TC before [long-term energy plan] is finalized with potential options for other gas plants."

Why was a private company drawn into that planning? Why were they dealing with a document that wasn't public?

**Mr. Sean Mullin:** I don't think they were given any document in this meeting. There certainly weren't any documents—

**Mr. Peter Tabuns:** No, you're just saying you'll return to them with the long-term energy plan before it's finalized.

**Mr. Sean Mullin:** I don't think it says that they're getting a copy of the long-term energy plan. The inten-

tion was that the OPA would start to enter negotiations with them, and the one that seemed the most obvious candidate was Kitchener-Waterloo-Cambridge. The OPA already had a contract with TransCanada. The decision had come down to no longer proceed with the plant in that location, and the issue was, could it be a better deal for ratepayers to try and transfer that contract over instead of paying out a liability for no electrons whatsoever? No one could really give a completely accurate estimate of what that would be, and the only way to discover whether that was possible was to actually enter into those negotiations.

**Mr. Peter Tabuns:** Did you in any way shape the long-term energy plan so that you could provide TransCanada with another option?

**Mr. Sean Mullin:** No. This Kitchener-Waterloo-Cambridge plant, as I said, I believe was identified previous to the long-term energy plan. It literally reaffirmed that need, and I believe because it was there, it was the candidate that seemed appropriate.

**Mr. Peter Tabuns:** Is the second document circulated, Tamara?

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Just as we're doing that, I would just advise that if any documents need to be passed to the witnesses, it must come through the Clerk, Staff, nor indeed anyone, are not allowed, or not invited to, please, present things directly to the witnesses.

You have less than a minute, Mr. Tabuns.

**Mr. Peter Tabuns:** Well, I may not get everything out of this question in a minute, Chair.

But if you go to the third page of the document before you, which is from John Kelly: "Memo: TransCanada Energy and Ontario Power Authority file."

**Mr. Sean Mullin:** Yes.

**Mr. Peter Tabuns:** It's the fourth page—sorry, no, the third page. And it's the first paragraph. It's again this meeting with Duguid, Craig MacLennan and Dave Lindsay with TCE. It's clear that the minister and apparently—

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

Mr. Delaney, 20 minutes.

**Mr. Bob Delaney:** Okay. Thank you very much.

Sean, could you tell the committee a little more about your role as deputy director of policy to the Premier of Ontario?

**Mr. Sean Mullin:** Sure, I'd be happy to. As you know, the policy department of the Premier's office is one of the divisions within the Premier's office that helps provide advice to the Premier and cabinet on policy decisions that are facing the government. Some of the responsibilities, as I mentioned in my opening statement, involve meeting with ministries, meeting with ministers' offices, meeting with government agencies, meeting with outside stakeholders, be they industry associations or private companies, and then synthesizing that information and trying to be helpful in any way to decision-makers.

**Mr. Bob Delaney:** Earlier you said that, to use your words, "it was routine" to meet with stakeholders and probably communities. Do you want to expand on that just a little?

**Mr. Sean Mullin:** I would say 30% or 40% of my day, on average, was meeting with stakeholders. I had a number of different responsibilities, and there's a lot of people who have an interest in what goes on and what the province does and what the government of Ontario does. So it would be very routine for me to take a meeting—particularly when I was first getting up to speed on a file, taking over the energy file, for example—to meet with as many people as I can across the sector.

So I would listen. Many times, stakeholders would ask for policy changes, legislative changes. That doesn't mean that the government was able or even willing to satisfy the vast majority of those, but we're there to consider and pass on those types of information.

**Mr. Bob Delaney:** Well, as an elected member you have just one body, but often you have a number of different minds. So in that sense, it was normal for political staff to engage with stakeholders?

**Mr. Sean Mullin:** Absolutely. I would say it's a core part of our job.

**Mr. Bob Delaney:** Okay. In the course of your discussions, you would obviously have been aware that there was local opposition to both the Mississauga and Oakville power plants.

**Mr. Sean Mullin:** Absolutely, through the media but also through the tireless advocacy of the local member, Kevin Flynn.

**Mr. Bob Delaney:** Yes. Well, these were major issues at the time. So given that, it would make sense that former Premier McGuinty would keep himself informed through the proactive outreach of people such as you?

**Mr. Sean Mullin:** I think that's fair, yes.

**Mr. Bob Delaney:** Okay. The committee has already heard that you were involved in meetings with the proponents of the Oakville power plant. Is there any other clarification that we need on the scope and the depth of your involvement?

**Mr. Sean Mullin:** With respect to Oakville?

**Mr. Bob Delaney:** With respect to Oakville.

**Mr. Sean Mullin:** Not that I'm aware of.

**Mr. Bob Delaney:** Okay.

**Mr. Sean Mullin:** I mentioned in my opening statement that I was screened off the file in April 2011.

**Mr. Bob Delaney:** Yes, I know. I just want to make sure that we've covered all of the grounds. Again, just to cover it, you didn't negotiate directly with TransCanada Energy?

**Mr. Sean Mullin:** No. We were not authorized to, we had no intention to, and we did not engage in anything of that matter.

**Mr. Bob Delaney:** And you didn't make any specific offers to the proponent?

**Mr. Sean Mullin:** No, absolutely not.

**Mr. Bob Delaney:** There's been some discussion in some of the committee's deliberations around Trans-

Canada's demand to—and I'm going to use the expression—"be kept whole." What did you understand that that meant?

0900

**Mr. Sean Mullin:** I'm not quite surely exactly what that meant. I can say for certain that in the meetings that I participated in, we were very clear. Jamison was very careful to open up any meeting by saying, "This is occurring without prejudice. We are not here to, nor are we authorized to, enter into any negotiations," and in those two October meetings it was simply about delivering a message. So I can't speculate on why TransCanada, after the fact, were making those claims.

**Mr. Bob Delaney:** Was it more appropriate to engage in negotiations with TCE, from your vantage point, or would it have been more appropriate to have abrogated the deal, ripped up the contract, whatever colloquialism you like?

**Mr. Sean Mullin:** I think what was underlying the decision at the time was that it would be best to try and get the Ontario Power Authority—they were the experts in terms of being able to value the contract and have the commercial expertise—to try and engage in negotiations to see if transferring the contract to a different location and a different plant would be a better outcome. I think there was a range of estimates in terms of simply cancelling the plants and the potential litigation that would be involved, and if there was money paid out under that scenario, that would be money paid out with no electrons, whereas it was clear that there was a need at the time for a plant in the Kitchener-Waterloo area, and if the government, through the OPA, could satisfy that need by transferring the contract, it would be a way of minimizing costs but also serving another need within the system.

**Mr. Bob Delaney:** Okay. So I'm gathering that the consensus around you was that the better deal for Ontarians was to try to engage in negotiations regarding an alternative site, to let there be some benefit from the power produced there, as opposed to tearing up an agreement and paying out full damages with no supply being produced. Is that an encapsulation that's correct?

**Mr. Sean Mullin:** I believe that was the direction that I got from Jamison, and that's why it led to him indicating to TransCanada that the government would prefer, if they were interested, to try and enter into negotiations with the Ontario Power Authority.

**Mr. Bob Delaney:** So the thinking was that we should make our best efforts to avoid litigation with Trans-Canada Energy?

**Mr. Sean Mullin:** Yeah. Until those negotiations occurred, you would not know what was possible, right? If, under litigation, it was found against the province, then whatever damages would be paid would be paid for nothing, right? Whereas if through negotiations you were able to procure a plant elsewhere that was needed—you know, without undertaking that process with the experts at the Ontario Power Authority, you wouldn't know what was possible, and that, I believe, is why that course of action was pursued.

**Mr. Bob Delaney:** Okay. Just to get your take on the process of screening you out of meetings with the proponents, former secretary Shelly Jamieson was here, and I'm just going to read a few words that she told the committee:

"This decision was made because their earlier involvement with the proponents made them potential witnesses in threatened litigation resulting from the decision to cancel that particular contract. I felt this step was appropriate to protect their interests but, more importantly, those of the public service, should the matter result in litigation."

Does that encapsulate your understanding of why you were screened out?

**Mr. Sean Mullin:** Yeah, I believe so. So I heard from Jamison, who had said that the secretary had spoken to him, and I'm not a lawyer, but the way it was explained to me was that this was a fairly common practice when you could potentially be called to give evidence or be a witness. And so, when I was told that, I obviously complied and met with lawyers and debriefed.

**Mr. Bob Delaney:** Let's talk a little bit about the Oakville relocation for a couple of questions. One of the reasons cited was that through the process of putting together the long-term energy plan, it became clear that, due to changes in demand and supply, the plant was no longer needed. Now, you talked about that a little bit earlier. Did you want to expand on that a little bit?

**Mr. Sean Mullin:** Just to kind of reiterate what I saying, I think the key thing was—and I'm not sure if this committee has heard this specific level of detail, but this is what I remember from the conversation—it was no longer needed by 2014, and that was the date that made a gas plant necessary. Once we found out that the lights would stay on after 2014 without a gas plant in Oakville, then suddenly a transmission solution was now possible again. A transmission solution was possible in 1999, but it was not possible in the first half of 2010. Once the demand forecasts had changed, it was now possible to get by. So now the issue facing the government was not, "Keep the lights on or cancel or move a plant"; it was, "Yes, this plant could be useful, but it's not necessarily needed in this exact location versus the public opposition to it." That was, I think, a very different decision.

**Mr. Bob Delaney:** Okay. Actually, that's very helpful.

You talked a little bit about some of the local opposition to that plant, and again I'm talking about Oakville. We know Oakville passed some municipal bylaws, and we've heard some allegations that these municipal bylaws should have been enough on their own to stop the plant from being constructed. Any thoughts on that?

**Mr. Sean Mullin:** Well, what I remember from that issue was that there was a tremendous amount of uncertainty. So I think nobody could actually tell us—again, I'm not a lawyer, but in those conversations that summer no one could say with certainty that Trans-Canada would not be able to challenge this bylaw, would not be able to have the PM 2.5 bylaw overturned, would

not be able to have—the interim control bylaw I believe was an interim measure, but other things—so what that left was a lot of uncertainty about that course of action. If the government had simply said, “Well, I’m going to let this play out,” you could have the scenario where, two years later, TransCanada has those bylaws overturned and now some costs have risen, progress is made on the project, and then the government’s faced with, should they cancel a plant where costs have increased? So, I think that scenario had considerable risk as well.

**Mr. Bob Delaney:** And where you talk about the bylaws being overturned, we’re referring to an appeal to the Ontario Municipal Board?

**Mr. Sean Mullin:** It could have been. I’m not sure of the actual legal process for that and the PM 2.5, but I remember there being uncertainty from the perspective.

**Mr. Bob Delaney:** Right. And again for clarity, an act by the province had the ability to, in essence, legislate over Oakville’s bylaws?

**Mr. Sean Mullin:** That was one of the options that was presented to the government, but that would have involved—the government would have had to make the decision to do that as well.

**Mr. Bob Delaney:** Right. So in essence—I just want to try to encapsulate this again. We knew the power wasn’t needed by 2014. That was formerly but no longer the case for locating a gas plant in that area. Oakville had zoned the area industrial. There was a risk of litigation should Oakville, in essence, challenge its own zoning and the Ontario Municipal Board rule in favour of Trans-Canada Energy. And the challenge before the province was to find a negotiated solution before construction on the plant began and costs escalated. Is that accurate?

**Mr. Sean Mullin:** I think that encapsulates the issue.

**Mr. Bob Delaney:** Okay. Talking a little bit about Mississauga, in that case the Ontario Municipal Board did overturn the municipality’s appeal, and subsequently Mississauga issued a building permit for the construction of the plant. So that could very well have happened in Oakville had the province failed to intervene, and again, especially because this site was also zoned industrial. I’m just checking to make sure that this is clear. Is that your recollection?

**Mr. Sean Mullin:** With respect to Mississauga, I have very little familiarity and I don’t really know the—I’m not an expert on the Ontario Municipal Board, but what I did know was that there was no—speaking with the ministry, there was no one who was saying with absolute certainty, “There’s no way these things could potentially not be overturned”—if I got that out right.

**0910**

**Mr. Bob Delaney:** Earlier you said that rather than run the risks of quite substantially higher costs, subject to the outcome of litigation, your feeling and your advice was that we should try to negotiate a solution at the time, before costs escalated out of control, and you were advising that that was the responsible way of going forward.

**Mr. Sean Mullin:** I think that emerged as a consensus in terms of it certainly was worth an effort for the gov-

ernment to try and pursue that avenue. If through negotiations a deal wasn’t reached, you could always fall back to litigation.

**Mr. Bob Delaney:** In the case, again, of Oakville, as the proverbial shovel hadn’t gone into the ground, it’s reasonable to say that the sunk costs of relocating the Oakville power plant would have been much higher had the province waited or run the risk of litigation.

**Mr. Sean Mullin:** I believe that to be true. I don’t know at what rate they were accumulating, but I know that TransCanada was expending money. Even though they weren’t building, they were spending money on legal fees and whatever the case may be—planning costs, whatever.

**Mr. Bob Delaney:** Yes. Earlier, you spoke about a transmission solution, and in her testimony before the committee, JoAnne Butler from the Ontario Power Authority confirmed that transmission upgrades were needed in the southwest GTA, with or without a power plant in the region. You’ve got some experience on the file and you’re familiar with the development of the long-term energy plan. Would you agree with JoAnne Butler’s assessment and can you comment on it?

**Mr. Sean Mullin:** That’s how I remember it. I remember the issue was not whether transmission was going to be needed; it was how soon, I believe. The decision did have to move them up a couple of years, but it’s not a matter of never needing transmission. That was going to be needed there.

**Mr. Bob Delaney:** Right. So with or without the plants, we were going to spend money as a province upgrading the transmission infrastructure, no matter what?

**Mr. Sean Mullin:** That’s my recollection, yes.

**Mr. Bob Delaney:** Okay. A few questions then about Mississauga. I understand the limitations of your exposure on the file. In his report, the Auditor General talked about significant risks had the government ripped up the original agreement as opposed to negotiating a new deal. Based on your knowledge of the file—we’re going to come back to the same discussion we had in Oakville—cancelling the contract outright would have opened the province up to lawsuits, significant litigation costs and penalties. Do you want to just comment on that?

**Mr. Sean Mullin:** It’s really hard for me to comment on Mississauga. I wasn’t involved in any substantive conversations around a decision, or even any preparation. So, really, my knowledge of Mississauga is through the media over the last couple of months.

**Mr. Bob Delaney:** Okay, that’s fair enough. Let’s talk about it from just a slightly different angle, then. Had the province and the OPA abrogated the deal, ripped up the contract—whatever metaphor you choose—do you feel there would have been increased risks in terms of future negotiations of contracts with other suppliers?

**Mr. Sean Mullin:** Sorry, Mississauga or Oakville?

**Mr. Bob Delaney:** At this point I’m talking about Mississauga, but it can apply to Oakville. If either the government or the OPA, or both, had chosen to abrogate

either deal, in your opinion would we then, in future negotiations on other contracts with other suppliers, have faced a larger risk?

**Mr. Sean Mullin:** Again, it's difficult for me to speculate. I'm not an expert on contracts. I know the business community does look to the government to be treated fairly in general. I wouldn't necessarily disagree with what you're saying; I'm just saying I'm not an expert in that type of conversation.

**Mr. Bob Delaney:** Chair, how am I doing on time here?

**The Chair (Mr. Shafiq Qaadri):** A minute and a half.

**Mr. Bob Delaney:** A minute and a half? The next series of questions I have to ask you—there are a number of questions I need to string together, so I'm going to stop here and we'll pick it up in the next 10-minute round. Thank you very much, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the Conservative side, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much. Welcome. I know that we take you away from time in your normal life. What is it that you do today?

**Mr. Sean Mullin:** What do I do? I work with a number of small start-up technology companies.

**Mr. Victor Fedeli:** Thank you. There are notes here that the chronology of all of these events began on June 3, 2010.

**Mr. Sean Mullin:** What are you referring to?

**Mr. Victor Fedeli:** The John Kelly—

**Mr. Sean Mullin:** Okay. Yes.

**Mr. Victor Fedeli:** There are notes that this began on June 3, 2010, with a meeting between Chris Breen, yourself and Jamison Steeve. On page 2, it says, "They were told"—"they" being TransCanada—"that five politicians would make the decision." Do you see that in the second sentence on page 2? Can you name the five politicians?

**Mr. Sean Mullin:** I don't know exactly what that refers to. I know that the people who made the decision were the Premier and the minister.

**Mr. Victor Fedeli:** It says, "He met with Jamison Steeve ... and Sean Mullin.... They talked about the ... property.... They were told that five politicians would make the decision. There would be no civil servants involved." You were in the meeting?

**Mr. Sean Mullin:** Yes.

**Mr. Victor Fedeli:** Who were the five politicians who were named?

**Mr. Sean Mullin:** Again, there were no politicians named in that meeting.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Sean Mullin:** There were no politicians named in that meeting.

**Mr. Victor Fedeli:** Why would it say here, "They were told that five politicians would make the decision"?

**Mr. Sean Mullin:** I can't speculate why that's here. It could have been a euphemism. It could have been a transcription error—

**Mr. Victor Fedeli:** "Five politicians would make the decision" is a euphemism?

**Mr. Sean Mullin:** I mean "five" being a general number that is not specific.

**Mr. Victor Fedeli:** Okay, so they weren't specific. Which politicians were named to make the decision, then?

**Mr. Sean Mullin:** The politicians who made the decision were Premier McGuinty and the Minister of Energy at the time.

**Mr. Victor Fedeli:** And who was the Minister of Energy at the time?

**Mr. Sean Mullin:** Brad Duguid.

**Mr. Victor Fedeli:** Okay. Who advised them along the way if they made that decision?

**Mr. Sean Mullin:** Who advised?

**Mr. Victor Fedeli:** The Premier and Brad Duguid.

**Mr. Sean Mullin:** I assume Minister Duguid's staff advised him, and Jamison would have been the one having the conversations with the Premier.

**Mr. Victor Fedeli:** At this meeting with Trans-Canada, would costs have been discussed?

**Mr. Sean Mullin:** In July—

**Mr. Victor Fedeli:** This will be the June 3 meeting.

**Mr. Sean Mullin:** We never discussed—

**Mr. Victor Fedeli:** The scope of costs; was the scope of costs discussed?

**Mr. Sean Mullin:** TransCanada would come in and talk about their challenges and their problems, but it wasn't a negotiation back and forth.

**Mr. Victor Fedeli:** I understand. But would there have been a scope of dollars discussed?

**Mr. Sean Mullin:** I believe they may have talked about different options, but none of these options were ones that—

**Mr. Victor Fedeli:** I understand that. I'm talking about, would money have been discussed—not in terms of, "This is how much we require." Would dollars have been debated or discussed at all?

**Mr. Sean Mullin:** There was nothing being debated. No.

**Mr. Victor Fedeli:** So would any numbers have been suggested?

**Mr. Sean Mullin:** You know what? To be honest with you, TransCanada could have been referring to the work they were undertaking so far—

**Mr. Victor Fedeli:** And how much would that have been? What kind of numbers were thrown out?

**Mr. Sean Mullin:** I don't remember any numbers from that.

**Mr. Victor Fedeli:** You don't remember. So in your solicitor-client-privileged meeting with Sean Mullin, Dennis Brown, John Kelly and Darren Kloeze, it says here that you said "up to one billion dollars from Trans-Canada's viewpoint" was discussed. Now do you remember that?

**Mr. Sean Mullin:** Can you point me to the reference here?

**Mr. Victor Fedeli:** The DK notes of Mullin meeting—the one that my assistant handed to you. I'm not sure that you'd need notes to remember \$1 billion, but it is there.

**Mr. Sean Mullin:** I just want to make sure so I can answer your question as appropriately as I can.

**Mr. Victor Fedeli:** It's the one we've already had circulated.

**Mr. Sean Mullin:** Is there a page number?

**Mr. Victor Fedeli:** This is the—

**Mr. Sean Mullin:** This document here?

**Mr. Victor Fedeli:** Yes. Right at the top: "Introductions: You took over the file ... up to one billion dollars from TransCanada's viewpoint." Now do you remember discussing \$1 billion?

**Mr. Sean Mullin:** To the extent that I'm trying to understand what this refers to—I mean, this could have been the value of the contract that had been procured already.

**Mr. Victor Fedeli:** How early in the process did you become aware of this billion-dollar number?

**Mr. Sean Mullin:** I think everybody knew that the plant—the value of the plant, going forward—was going to cost ratepayers—

**Mr. Victor Fedeli:** No, I don't think that's what you're talking about.

**Mr. Sean Mullin:** —in that range.

**Mr. Victor Fedeli:** So you can't remember the five politicians who were going to make the decision, and I'll remind you of the billion dollars here that you're discussing.

**0920**

Let's go to page 2 of that John Kelly memorandum, second paragraph: "On July 3 TransCanada made a proposal to political staff...." You were there. "A call was made to Jamison Steeve and Sean Mullin...." What was the proposal from TransCanada on July 3?

**Mr. Sean Mullin:** So, again, as I referred in my opening statement, these meetings were exploratory, and TransCanada would come in and they would say, "Our first priority is always to build the plant in Oakville"—

**Mr. Victor Fedeli:** So what did they come in and say on this one? A proposal was made on July 3 to political staff. What was the proposal?

**Mr. Sean Mullin:** I'm trying to—

**Mr. Victor Fedeli:** What was the proposal?

**Mr. Sean Mullin:** I'm trying to answer that question.

**Mr. Victor Fedeli:** What was the proposal?

**Mr. Sean Mullin:** So, they would come in, and their first proposal would always be, "We'd like to proceed with Oakville, and if you can legislate a solution to that, that would be our preference." Then they would always—they would also include potential other options that they saw were possibilities. But the government always—so those meetings were always clear that, "We're not here to negotiate those or debate them." They would simply bring them forward as potential other places to put the plant, so to speak.

**Mr. Victor Fedeli:** On October 1, down in the bottom paragraph, there's another meeting here. You were there; Jamison Steeve was there.

**Mr. Sean Mullin:** I was at the meeting with Jamison, yes.

**Mr. Victor Fedeli:** "At that meeting was also ... Jamison Steeve and Sean Mullin...." You were there at the meeting?

**Mr. Sean Mullin:** Yes.

**Mr. Victor Fedeli:** It says here, "No one was there from the Ministry of Energy."

**Mr. Sean Mullin:** That's correct.

**Mr. Victor Fedeli:** That's correct?

**Mr. Sean Mullin:** Yes.

**Mr. Victor Fedeli:** It says here there was discussion about keeping TransCanada "as whole as possible," and it goes on to say, "TransCanada made it clear that they needed a letter to say they would be kept mostly whole regarding the contract. The quid pro quo was that TransCanada would lay low and work on alternatives." Who gave you direction?

**Mr. Sean Mullin:** So, first of all, as I said, there were no offers being made on our part in those meetings, and there were no commitments made in those meetings. I said that in my opening statement. I think Jamison was pretty clear when he was there as well.

The direction to Jamison was to inform TransCanada that the government was making a decision to no longer proceed with the plant there and to let them know that there was a preference to enter into negotiations with the Ontario Power Authority to try and resolve the issue.

**Mr. Victor Fedeli:** And what was the scope of money in your mind at this point in time that it was going to cost the taxpayer?

**Mr. Sean Mullin:** Again, as I spoke to before, the issue was, through a negotiated solution, we didn't really have an understanding of what could be possible. Only through negotiations were we going to be able to figure out what was possible under that scenario.

**Mr. Victor Fedeli:** So you've told us several times that the Premier and the minister were the ones who made the decision.

**Mr. Sean Mullin:** That's my understanding, yes.

**Mr. Victor Fedeli:** So go to the next page, about halfway down that first paragraph. They're talking about TransCanada. "They left this meeting at the Premier's office and said they would play ball" but needed this letter. That's referring back to that quid pro quo that they'd lay low. "Then they met with Mr. Duguid, McCallum," it says here, "and David Lindsay. Duguid appeared to be out of the loop altogether and thanked them for their co-operation and tell them he would be able to tell them more about what was going to happen with the Oakville plant by the end of the month." Then someone scratched out and put "year" here. This is the point where they were angry. We've heard the story many, many times here where they blew a gasket and said they "have a deal with the Premier's office and they told them to go check with" the Premier.

Now, this is the next—in my opinion, a very important statement. They're referring to TransCanada: "They are the ones who told Duguid that the Oakville plant was dead." So who's telling the truth here?

**Mr. Sean Mullin:** So, it's hard—

**Mr. Victor Fedeli:** Did the minister announce that the Oakville plant was dead or no, or did he learn it from TransCanada?

**Mr. Sean Mullin:** I think, one, Jamison was the one who told me that the Premier and the minister had made the decision. So I had no reason to doubt that.

**Mr. Victor Fedeli:** It goes down to the next sentence—just look at that little sentence down there that says, "Well apparently the ministry knew nothing about this discussion with the Premier's office at all."

**Mr. Sean Mullin:** I think the second thing would be, these are based on notes of TransCanada's perspective of a meeting that I wasn't a part of. And third, I think the best person to answer this is the minister, who's going to be here this afternoon—

**Mr. Victor Fedeli:** Oh, I'm sure he will be asked about this later on today.

Let's go back to the handwritten notes. I'm on page 5 from the front, the second page of handwritten notes, down at the bottom: "SM," Sean Mullin.

**Mr. Sean Mullin:** Okay.

**Mr. Victor Fedeli:** "[Government] will return to TC before LTERP is finalized with potential options for other gas plants."

Why did the government guarantee TransCanada the inside track?

**Mr. Sean Mullin:** First of all, there were no guarantees made in this meeting—

**Mr. Victor Fedeli:** "Gov't will return to TC before" it "is finalized." Why was TransCanada given the inside track?

**Mr. Sean Mullin:** What was being put forward was that the OPA would return to TransCanada in order to try and negotiate a solution. The issue was that it was publicly known that there was going to be a plant in Kitchener-Waterloo-Cambridge at the time, and TransCanada had a contract with the government that had been competitively procured for a plant in Oakville. One thing that could have been done was, sure, cancel that plant, pay out damages and then do a competitive procurement for the Kitchener-Waterloo plant.

The other option would be to say, "Is it possible to see if we can take this contract, which is already competitively procured, and transfer it over to Kitchener-Waterloo-Cambridge?" If that was a better deal for ratepayers, then I believe it was in the interest of the province to try and explore those negotiations.

**Mr. Victor Fedeli:** So we've got a minister who doesn't know anything about the deal and we've got a billion dollars being discussed in the Premier's office with nobody telling the minister the scope.

Let's jump down to some of the negotiations, then. In one of these documents—I can't quite recall which one; it won't matter—they talk about Nanticoke a lot. Why was Nanticoke taken out of the loop?

**Mr. Sean Mullin:** If I recall, the need for power was in Kitchener-Waterloo-Cambridge. As I testified earlier, there was no intention on the government's part to modify the long-term energy plan in order to suit the needs of TransCanada. TransCanada was coming in and saying, "Here are things that we could do," but those obviously weren't acceptable because—

**Mr. Victor Fedeli:** You do know that the plant ended up down around Kingston, right?

**Mr. Sean Mullin:** This all happened after me, so I can't really speak to that.

**Mr. Victor Fedeli:** I see; after you left.

Let's talk about the development of that \$712 million. Can you walk me through the development of that offer that went to TransCanada in April?

**Mr. Sean Mullin:** Sure. I'll have to give you some context. After October 7, once the announcement was made public, I was kept abreast of negotiations at a very high level. I think Deputy Minister Lindsay provided a really good description of that last Thursday when he said the OPA would inform the ministry—would not get into the commercial details of the negotiations. The OPA were the experts on that type of process, but they would keep the deputy minister and the minister's office and, from time to time me, informed of what was going on.

**Mr. Victor Fedeli:** Talk to me about the \$712-million offer.

**Mr. Sean Mullin:** I would have been aware that offers were going back and forth, but the issue of one, particularly the \$712 million, was not something that was familiar to me.

**Mr. Victor Fedeli:** Were you familiar that TransCanada rejected that offer?

**Mr. Sean Mullin:** I know that by the end, when TransCanada filed for litigation, they had rejected offers from the government, obviously. Yes.

**Mr. Victor Fedeli:** Were you aware of other offers, other than the \$712-million offer?

**Mr. Sean Mullin:** I was aware, generally, that offers were going back and forth.

**Mr. Victor Fedeli:** Did you ever hear the number "\$712 million"?

**Mr. Sean Mullin:** Not that I recall.

**Mr. Victor Fedeli:** You were never involved in the offer of \$712 million that went to TransCanada?

**Mr. Sean Mullin:** I wasn't involved in any direction on the negotiating strategy. If I was made aware of a particular offer, it would have been at a high level. I'm not saying I never saw \$712 million as a number; it's potential, but it's not something that—

**Mr. Victor Fedeli:** So you might have seen that offer?

**Mr. Sean Mullin:** It's possible that I was told about it.

**Mr. Victor Fedeli:** Quite possible, I would think.

**Mr. Sean Mullin:** But we didn't go into the details of any offer.

**Mr. Victor Fedeli:** I would think it's very possible. When were you screened off the Oakville file?

**Mr. Sean Mullin:** It would have been near the end of April. It was after TransCanada filed their notice of their intention to enter into litigation.

**Mr. Victor Fedeli:** Have you got an approximate date?

**Mr. Sean Mullin:** I tried to reconstruct this, but I don't have any documents. It would have been whenever—TransCanada filed a 60-day notice, and it was very shortly after that.

**Mr. Victor Fedeli:** So what's an approximate date?

**Mr. Sean Mullin:** Again, it would have been the last two weeks of April.

**Mr. Victor Fedeli:** April 2011.

**Mr. Sean Mullin:** April 2011.

0930

**Mr. Victor Fedeli:** I'm going to ask him to look at document 1.

While we're handing this document out, I'm going to read you an email from Halyna Perun. This is "Confidential and solicitor-client privileged." The subject is TCE. In the middle, it says, "Deputy Lindsay spoke to energy's chief of staff who then spoke to Sean Mullin. Sean has requested an analysis of options. He is apparently requesting that energy coordinate the development of options that would inform his office as to what could be put on the table in arbitration." It ends with, "He's worried that nothing will happen until it's 'too late.' He's looking for assistance to advance a discussion at least with the OPA to work up advice for PO's consideration."

This is June 6, two months after you were screened off the file. What were you requesting an analysis of options for at that point in time?

**Mr. Sean Mullin:** Honestly, this was—this could be a mistake. I—

**Mr. Victor Fedeli:** So the energy deputy of the Ministry of Energy has made a mistake?

**Mr. Sean Mullin:** It's quite possible my name was confused with somebody else. After I was screened off the file, I did not have any—I was very careful not to have any involvement. It could be that this is somebody in the Ministry of Energy referring to somebody else.

**Mr. Victor Fedeli:** Sean Mullin.

**Mr. Sean Mullin:** They routinely dealt with me on almost all energy matters, but not that one by that point, and so I can't speculate why they included me. It could have been that someone could have said, "PO is asking for this," and it got translated through that "PO" means Sean Mullin normally, but by that point I was absolutely not on that file. I was completely—

**Mr. Victor Fedeli:** Well, let's see if Chris Morley from the Office of the Premier of Ontario also made a mistake, because you're copied on—these are the documents, Clerk, that we received this morning, the big stack here. He doesn't necessarily need to refer to it.

There's a meeting with Chris, Deputy Minister Lindsay, Sean Mullin, Craig MacLennan and Andrew Mitchell. This would be July 11, 2011, and this came as a result of documents that relate to either the Oakville or Mississauga transactions. So were you still involved—

**Mr. Sean Mullin:** I'd honestly need to see that document. Those would be people I would meet with on a regular basis, on many, many issues, but by the—

**Mr. Victor Fedeli:** Well, the many, many issues, why they're in this package is because it's Cabinet Office: "In the interest of disclosure, we have included meeting records in the possession of Cabinet Office that relate to either Oakville or Mississauga transactions...." So did they make a mistake too?

**Mr. Sean Mullin:** It's very possible. If anybody—I don't even know if I was—

**Mr. Victor Fedeli:** A lot of mistakes going on in the Premier's office, according to you.

**Mr. Sean Mullin:** I can affirm that I was not participating in any meetings related to Oakville. Everyone was very careful.

**Mr. Victor Fedeli:** So Deputy Lindsay mentioning you, Sean Mullin, and then "Sean has requested," he's wrong, Halyna Perun is wrong and Chris—

**Mr. Sean Mullin:** This is not Deputy Minister Lindsay referring—

**Mr. Victor Fedeli:** Chris Morley is wrong, as well, here.

**Mr. Sean Mullin:** So can you point me to the actual page?

**Mr. Victor Fedeli:** It's page 8.

**Mr. Sean Mullin:** Page 8.

**Mr. Victor Fedeli:** There's a number 8 at the bottom. It's somewhere in there.

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

**Mr. Sean Mullin:** If someone had invited me inadvertently to a meeting, I would have refused to do so. So this says "meeting."

**Mr. Victor Fedeli:** "Shelly's boardroom on the sixth"—

**Mr. Sean Mullin:** I mean, there were lots of meetings going on.

**Mr. Victor Fedeli:** Yes, but the reason these are included in here is—and I'll read it again—"In the interest of disclosure, we have included meeting records in the possession of Cabinet Office that relate to either Oakville or Mississauga transactions, as well as meetings that did not include Deputy Gherson." That's why we have them here, because these are meeting minutes to do with Mississauga and Oakville.

**Mr. Sean Mullin:** But if you look at this document right here, there's absolutely nothing that says that's Oakville—

**Mr. Victor Fedeli:** Except the front page that says that's why they've sent this to us, because it is—

**Mr. Sean Mullin:** But they could have been overly—

**Mr. Victor Fedeli:** So they're wrong too?

**Mr. Sean Mullin:** They could have been overly cautious about—

**Mr. Victor Fedeli:** So there's a lot of people in that government that are wrong—

**Mr. Sean Mullin:** —trying to disclose things as much as—

**Mr. Victor Fedeli:** That's all I can think of, that Deputy Lindsay is wrong, Halyna Perun is wrong—everybody seems to be wrong here but you.

Thank you, Chair.

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

To Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Mr. Mullin, where we left off was the third page of this document.

**Mr. Sean Mullin:** Yes.

**Mr. Peter Tabuns:** John Kelly's of June 7, we're on page 3—TransCanada saying they had a deal with the Premier's office, and told the minister to go check with the Premier's office. Did you have a deal with TransCanada?

**Mr. Sean Mullin:** No. As I've said repeatedly, there was no deal made in that meeting. We weren't authorized to make a deal. The two points that were communicated to them were that the government has made a decision not to pursue the plant and that there was a preference to try and resolve it through negotiations.

**Mr. Peter Tabuns:** So did you or anyone in the Premier's office, following on these minutes, these notes, go to TransCanada and say, "Hey, guys, we actually don't have an agreement"?

**Mr. Sean Mullin:** These notes—this looks like it was from June 7. I was no longer on the file at that time.

**Mr. Peter Tabuns:** No. This is from the fall of 2010.

**Mr. Sean Mullin:** I personally was never aware of this transcription until this process started now. I think this was communicated to the government once litigation had started, and that was when I was taken off the file. I wouldn't have had an opportunity to even be aware that this is TransCanada's account of how those meetings went, to be honest, until this process with the committee started in the last couple of months.

**Mr. Peter Tabuns:** Can you tell us how you were prepared for today's testimony?

**Mr. Sean Mullin:** I read all the committee testimony on the web.

**Mr. Peter Tabuns:** And there was no one who briefed you or went through—

**Mr. Sean Mullin:** I didn't speak to anybody in the government. I didn't try and do any preparation. I didn't speak to legal counsel.

**Mr. Peter Tabuns:** Can you tell us when you were first told to start looking at options for cancelling the Oakville plant?

**Mr. Sean Mullin:** I believe Jamison spoke to the Premier before that first meeting with TransCanada. I don't think it was necessarily—the decision hadn't been made to cancel the plant, but it was more along the lines of, "What are we going to do in this situation? Is the government willing to pass legislation to override the local concerns, for example?" Those things were being considered throughout the summer. The decision was ultimately made at the end of September.

**Mr. Peter Tabuns:** Did you regularly delete your emails as part of practice in your office?

**Mr. Sean Mullin:** That wasn't my practice, no.

**Mr. Peter Tabuns:** Did you ever produce any hard-copy memoranda on these gas plants?

**Mr. Sean Mullin:** I never wrote any notes—no memos—as far as I'm aware of. I know I would participate in things like—I believe I edited the questions and answers, for example, that led to the day that the announcement was made; those types of things.

**Mr. Peter Tabuns:** It's interesting to us that apparently your emails were kept for a year after you left, and they were deleted shortly after this committee started asking for documents.

**Mr. Sean Mullin:** I can't speak to that.

**Mr. Peter Tabuns:** Were you given instructions to keep documents?

**Mr. Sean Mullin:** What I was told when I was being screened off the file was that I would be debriefed by lawyers and that I should bring my documents when I did that. I brought my file and provided that to them.

**Mr. Peter Tabuns:** Prior to being screened off, were you told that you were supposed to keep your records for archives, for record-keeping purposes?

**Mr. Sean Mullin:** Not specifically with respect to this file—

**Mr. Peter Tabuns:** No, I mean generally.

**Mr. Sean Mullin:** Broadly speaking, I think I understood that.

**Mr. Peter Tabuns:** And did anyone tell you that destruction of documents was illegal?

**Mr. Sean Mullin:** Not in those words.

**Mr. Peter Tabuns:** What did they tell you?

**Mr. Sean Mullin:** I don't remember someone saying—I knew that that was a policy of the government, I believe.

**Mr. Peter Tabuns:** Okay. After the October 7 announcement, did you have any further involvement with TCE from October 7 until you were screened off the file?

**Mr. Sean Mullin:** As I said, I met with them in April 2011. The first meeting was at their request. We had staff and ministry lawyers there. They presented and we simply listened.

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**Mr. Peter Tabuns:** And what did they present?

**Mr. Sean Mullin:** I believe they, at a high level, were presenting their opinion that their proposal, whatever it was, was acceptable. But it was getting into a level of detail—engineering issues that the two sides were arguing over—that quite frankly wasn't something that we were able to appreciate. That's precisely why we had the OPA undertake the negotiations. I think at this point, TransCanada had thought that the negotiations weren't going well and they wanted to meet with the government. We met and listened after talking to counsel, but that was the extent of that meeting.

**Mr. Peter Tabuns:** And did you have two meetings in that April?

**Mr. Sean Mullin:** Yes. Afterwards, Craig and I—I think Craig spoke to this in his testimony as well—met with the director of government relations.

**Mr. Peter Tabuns:** And who was that person?

**Mr. Sean Mullin:** Chris Breen. That was only after speaking to counsel to see if that was okay and making

sure that we conducted ourselves appropriately. We again made it clear it was without prejudice; we listened and didn't make any commitments.

**Mr. Peter Tabuns:** So what was Chris Breen telling you in that second meeting in April?

**Mr. Sean Mullin:** I think it was more just an update on where they were. At that point, I think it was very, very close, if I recall, to the litigation. I think it was more to simply say, if I recall, that TransCanada wasn't kind of bluffing about going to litigation. We listened. In the end, nobody was anticipating not letting that deadline pass, as I recall, and that deadline passed.

**Mr. Peter Tabuns:** Did you take notes in those two meetings in that April?

**Mr. Sean Mullin:** If I did, they would have been in my package, I believe. I'm not sure—if I did, they would have been in that package.

**Mr. Peter Tabuns:** Okay. We will try to get hold of those.

Jamison Steeve indicates in his interview notes that you're the person who would know what the Oakville generating station contract was worth to TransCanada.

**Mr. Sean Mullin:** This is the handwritten notes or the—

**Mr. Peter Tabuns:** No, Jamison Steeve. As you were interviewed by the Ministry of the Attorney General, he was also interviewed by the Ministry of the Attorney General.

**Mr. Sean Mullin:** Okay. So that's in this package.

**Mr. Peter Tabuns:** No, it's not in that package that you have.

**Mr. Sean Mullin:** Okay. Sorry.

**Mr. Peter Tabuns:** In his interview, he indicated that you were the person who would know the value of this contract to TransCanada.

**Mr. Sean Mullin:** Again, I'm not an expert on commercial contracts. I'd have to see specifically the reference that Jamison was referring to. I think I was more familiar than Jamison was, because he was at a higher level, but as I said, the issue during the summer of 2010 was of a lot of uncertainty about what outcomes would happen and what could be achieved under negotiation. So without seeing his reference exactly, I wouldn't want to speculate on that.

**Mr. Peter Tabuns:** Did you know what the contract was worth in terms of profit to TransCanada Enterprises?

**Mr. Sean Mullin:** I don't have a number. I think that was—

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

**Mr. Sean Mullin:** —part of the disagreement, because even the OPA would not know what assumptions and risk TransCanada had built into their financial model, for example, right?

**Mr. Peter Tabuns:** Did Shelly Jamieson sit down with you when she screened you off?

**Mr. Sean Mullin:** I was told by Jamison. He had said that he had had a conversation with Shelly.

**Mr. Peter Tabuns:** Did they warn you that you might be drawn into this legal vortex personally?

**Mr. Sean Mullin:** What they said was that it was possible, because we had met with them and because Craig had met with them, that we could be called as witnesses, and they wanted to make sure that we weren't involved going forward because if we were in subsequent meetings—once you're on the stand, you could be asked any question. So it would be about preserving the government's negotiating ability or preserving the government's position within litigation.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To Mr. Del Duca.

**Mr. Steven Del Duca:** Thank you, Mr. Mullin, for being here. I know that my colleague Mr. Delaney was asking questions in the first round. I just wanted to clarify or go over one thing really quickly. Can you remind us when you were screened off the file?

**Mr. Sean Mullin:** It would have been the last two weeks of April. I don't know a precise date, but it was very soon after the 60-day notice was issued. TransCanada had to provide a 60-day notice before filing a lawsuit. Once that was in place, the government started preparations for litigation. It was very shortly after that.

**Mr. Steven Del Duca:** That would have been the last two weeks of April 2011, right?

**Mr. Sean Mullin:** Yes, correct.

**Mr. Steven Del Duca:** After that point, then, you wouldn't have participated in any of the meetings, discussions, etc. regarding this?

**Mr. Sean Mullin:** Absolutely. If I had been inadvertently invited, I would have notified somebody and not attended that meeting.

**Mr. Steven Del Duca:** Thank you. I want to pick up a little bit from where Mr. Delaney left off regarding the Mississauga relocation.

I know he talked about the increased risks in terms of future negotiations if the government and the OPA had simply ripped up the deal in question. Based on that, clearly it was determined that the best route forward was to renegotiate regarding an alternative site. Now, the Auditor General talked about the OPA's weakened bargaining position because of the tight timelines to halt construction.

In her testimony, former cabinet secretary Shelly Jamieson testified about the importance of speed when negotiating a relocated deal with a company. She told this committee, "As long as construction was continuing and decisions were continuing to be made that cost money on a site where the government did not have any intent to have a gas plant, that also was a risk. So speed, to me, was important."

The auditor testified that the longer construction continued, basically you would be putting money into the ground. Would you agree that timing was an important factor, and that cancellation costs could have increased if construction had continued?

**Mr. Sean Mullin:** I think that was one of the things that was always taken into consideration, which was—when I referenced earlier the notion of the option of

simply letting it play out and hoping that TransCanada would fail, the risk associated with that would be that some costs would increase. Once I believe the Premier and the minister decided it was not appropriate to have that plan go forward, then it made sense to make that announcement as soon as possible and have the OPA start to negotiate as soon as possible.

**Mr. Steven Del Duca:** Okay. So the auditor also did testify, regarding the increasing media scrutiny of the construction, that it contributed to the pressure to get a deal done as soon as possible.

I guess I would say one can only imagine that adding to that pressure were the political games that were being played quite frequently by the opposition. I'm sure, for example, you heard or you're aware that the PCs held an event at which they inflated a big red elephant beside the construction site. They also circulated photos to the media a few weeks after the election showing that construction was still ongoing.

From your perspective, this type of pressure couldn't have been helpful to the negotiating position of OPA.

**Mr. Sean Mullin:** To be honest with you, I really wasn't involved in Mississauga. I can understand your argument, but I wasn't really involved in the Mississauga plant. I left government literally the day after the election and wasn't involved in any of those negotiations. I can certainly understand that that pressure would make it difficult to undertake negotiations.

**Mr. Steven Del Duca:** Thank you. I'm going to move now to the discussion around commercially sensitive information. I'm guessing that you're probably aware that in May 2011, the estimates committee passed a motion. Mr. Leone asked for all correspondence within a specific time frame in the Ministry of Energy and the OPA relating to the Oakville and Mississauga gas plants.

At the time this motion was passed, complex and sensitive negotiations were ongoing with both companies. In your view, what would it have meant if the OPA's and the province's negotiating position was prejudiced because the company had access to confidential and privileged information at that point?

**Mr. Sean Mullin:** I think it's really difficult for me to comment on this. That was a year after I had been taken off the Oakville file and six months after I had left the government. I know, having reviewed the testimony, that experts like the secretary of cabinet spoke to information coming out there in public—it would be very difficult to undertake negotiations and get the best deal.

I understand that argument. But to comment specifically at that point, I don't really have expertise to do so.

**Mr. Steven Del Duca:** You mentioned some of the testimony of some of the experts we've had here. For example, former secretary of cabinet Shelly Jamieson did testify when here, "It would have harmed the negotiations for sure. Nobody likes to negotiate and have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves. So I

would have been concerned about that in any negotiation." That's a quote from Shelly Jamieson.

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The Auditor General also responded, "It's like in poker. You don't show the people around the table your cards."

Do you agree with those comments?

**Mr. Sean Mullin:** Yes, they make sense to me.

**Mr. Steven Del Duca:** I want to talk a little bit about the fact that, as we've heard time and time again here at this committee, all three political parties committed to dealing with the plants in the same way. As a former Liberal staff person, I assume that you would have paid fairly close attention to the policies and commitments and ideas of both the PC and NDP parties. Is that true?

**Mr. Sean Mullin:** Generally, yes, and on the Oakville issue I was aware that no parties were really in favour of that going forward after we'd made the announcement.

**Mr. Steven Del Duca:** During his testimony here at this committee, the mayor of Oakville, Rob Burton, did tell us that he had "won promises from all parties to stop the proposed power plant."

With the Mississauga power plant, Mayor Hazel McCallion confirmed that she thought "all parties would have cancelled it."

We have transcripts, we have campaign literature and we have robocall scripts that highlight the commitments made by the opposition parties to move the plants. Does it surprise you that the opposition now seeks to effectively wash their hands of this issue and comes after the government for following through on the commitments that were made by all three parties?

**Mr. Sean Mullin:** I guess "surprised" is probably the wrong word. It is inconsistent, I guess, with what they promised at the time.

**Mr. Steven Del Duca:** Okay. Is there anything else you'd like to share with the committee today?

**Mr. Sean Mullin:** No. Thank you.

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

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Del Duca. To the Conservative side. Mr. Fedeli, 10 minutes.

**Mr. Victor Fedeli:** How much money did the Premier approve to settle the Oakville matter?

**Mr. Sean Mullin:** I never spoke to the Premier and I have no knowledge whether he approved a particular number. I know, going into negotiations, that the issue was uncertainty about the cost and only through the negotiations could both parties figure out what was possible.

**Mr. Victor Fedeli:** In one of the notes that we have in terms of the Attorney General investigation, somebody asked Jamison Steeve, "Did you make any offer of \$650 million?" And his answer is, "No, that would have required approval from the Premier." So would you concur that offers of \$650 million, or the \$750 million—that those numbers would have had to have been approved by the Premier before ever being made to TransCanada?

**Mr. Sean Mullin:** Without again seeing what that note exactly said, what I know is that Jamison did not

have permission in those meetings to negotiate, and so anything involving an offer, if it was done by Jamison and myself, would have absolutely required the Premier; and we had no intention at all of entering into those negotiations.

**Mr. Victor Fedeli:** Do you know, then, how much money, the upside limit, that the Premier approved in the negotiations with TransCanada?

**Mr. Sean Mullin:** Again, I don't have any knowledge of what the Premier approved and I don't believe that it was that level of detail. I think the Premier approved the OPA and TransCanada entering into negotiations to see what was possible. Whatever was going to come out of there would have had to come back to the government, absolutely, and that would have required a final approval; I don't disagree with that. But because that uncertainty exists, there wasn't an ability to kind of try and scope it out from the beginning.

**Mr. Victor Fedeli:** Did you provide the Premier or the Minister of Energy with information on the costs other than merely the sunk costs?

**Mr. Sean Mullin:** I didn't provide either of those people with any information about costs. The costs about sunk costs I received from the ministry.

**Mr. Victor Fedeli:** I'm going to read a whole bunch of pages from the Ministry of the Attorney General file here. You don't need them in front of you, necessarily. The starting one is Ben Chin, and he says, "We have some understanding that there were meetings on October 1 and 5 with TransCanada saying, 'You promised to keep us whole'"—I'm going to read about 10 of these, by the way, so you don't need to look for them. I'm going to read them in here. "You promised to keep us whole." Did Jamison or Sean say to you what their response was?" His next sentence was, "My understanding was that they agreed TransCanada should be kept whole." The next sentence is, "I was told that by Sean Mullin." The next page says, "I don't think any of us anticipated there was going to be a disagreement on what was going to be included in 'made whole.'" Down in the middle of that page it says, "If you have a contract with the government and have sunk costs in, you want to be kept whole in terms of your revenue from that contract. The question was, does that mean a net revenue stream over 20 years? The answer was, 'That's right.'"

When we get into Craig McLennan's Ministry of the Attorney General file, "They were always holding over our heads in meetings with the PO"—I presume that is the Premier's office. Would you acknowledge that PO is the Premier's office in this case?

**Mr. Sean Mullin:** That acronym is generally used.

**Mr. Victor Fedeli:** —"in meetings with the PO, they were promised to be kept whole and negotiations with the OPA were not going in that direction." He's saying to us here, Craig McLennan is saying—the meetings in the Premier's office where "they were promised to be kept whole." I don't know who this person is: "Barrack says they came away from a meeting at the PO with the promise that they would made whole. Any instructions

from the PO likely came from Ben Chin and possibly Colin. I believe Ben had a discussion with the PO and was told, 'Yes, that's what the instructions are.'"

A little later it says, "I see two scenarios: (1) a sole-source contract or (2) a competitive bid for Cambridge, but we would need an assignment," and they go on about the turbine assignment.

A little later he says, "But we were told we just had a meeting with the government of Ontario where they made a promise to be kept whole. I would have said that to Sean Mullin."

So in all of these discussions about being kept whole, the many that are here in the testimony to the Ministry of the Attorney General, how much do you think they were talking about when they talk about being "kept whole"? Do you think it is more than the sunk costs of \$40 million?

**Mr. Sean Mullin:** I can't speak to what they were interpreting by that, under "kept whole." What I can say—

**Mr. Victor Fedeli:** So you think that's an interpretation?

**Mr. Sean Mullin:** Sorry?

**Mr. Victor Fedeli:** You think the expression "being kept whole" is an interpretation?

**Mr. Sean Mullin:** I think there are lots of ways to interpret that. What I can say is—and again, Jamison referenced this in his testimony—the only mention of "kept whole" or "close to whole" in our meeting came from the CEO of TransCanada, and the way that they presented it was, you know, that would be, on their side, what they would be hoping for. We were very clear, and in fact our number one objective going into that meeting was to not make a commitment, even inadvertently. So, afterwards, whether they were claiming to other people in government that that commitment had been made, I can't speak to why they would do that, but—

**Mr. Victor Fedeli:** Well, all I can speak to is about the 10 examples that I have here of everybody saying that TransCanada is to be kept whole, that the Premier's office—PO—the Premier's office is saying they'll be kept whole. They've had it in a discussion from you where it says, "My understanding was that they agreed TC should be kept whole. I was told that by Sean Mullin." So are you saying here today that nowhere in your discussion with Ben Chin, another staffer that—you're shaking your head no.

**Mr. Sean Mullin:** No.

**Mr. Victor Fedeli:** You've never said this, even though he's—

**Mr. Sean Mullin:** No. So in my conversations—

**Mr. Victor Fedeli:** He says to the Ministry of the Attorney General, "My understanding was that they agreed TC should be kept whole. I was told that by Sean Mullin." Is he not right in this?

**Mr. Sean Mullin:** I don't believe he's correct, no.

**Mr. Victor Fedeli:** You don't believe Ben Chin is correct?

**Mr. Sean Mullin:** When I spoke to Ben over that period, and Colin, I was very clear to say, just so they were clear and that TransCanada didn't come back to them, that no commitments had been made and that there was no direction from the Premier's office in terms of—

**Mr. Victor Fedeli:** So Ben Chin wasn't correct. Craig McLennan, when he says, "They were always holding over our heads that in meetings with the PO they were promised to be kept whole," he's not correct either?

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**Mr. Sean Mullin:** That's TransCanada making that claim; that's not Craig saying that promise was made.

**Mr. Victor Fedeli:** And when they further say that Barrack, whoever he is, says they came away from a meeting with the PO with a promise that they would be kept whole, he's wrong too?

**Mr. Sean Mullin:** I believe he's a lawyer for Trans-Canada, who was acting on their behalf—

**Mr. Victor Fedeli:** But he's wrong too, then?

**Mr. Sean Mullin:** Well, he's representing their side, but that wasn't what happened in the meeting.

**Mr. Victor Fedeli:** In the testimony to the Ministry of the Attorney General: "Any instructions from the PO likely came from Ben Chin. I believe Ben had a discussion with the PO and was told, 'Yes, that's what the instructions are.'" He's wrong about that one too?

**Mr. Sean Mullin:** It's not what happened in the meeting.

**Mr. Victor Fedeli:** The meetings with Michael Lyle: When Michael Lyle was speaking with the Ministry of the Attorney General, he talks about a sole-source contract versus a competitive bid. Do you know what they mean by a sole-source contract? Is that language you do understand?

**Mr. Sean Mullin:** What I do understand was that the intention of the negotiation was to transfer the existing contract, which was done competitively, to a new location. Rather than paying out a lawsuit and at the same time doing a different open bid—if that was cheaper for the ratepayers, then that was a course of action that should be undertaken.

**Mr. Victor Fedeli:** So when Michael Lyle says, "But we were told we just had a meeting with the government of Ontario where they made a promise to be kept whole," he's not accurate either?

**Mr. Sean Mullin:** Again, that promise was not made.

**Mr. Victor Fedeli:** Did anybody—well, I'm not even sure where to go with this one. Everybody seems to be wrong.

Had you ever heard the expression "buckets of costs" before, from Shelly Jamieson?

**Mr. Sean Mullin:** I don't believe I talked to Shelly Jamieson about this file.

**Mr. Victor Fedeli:** Okay. Thank you very much; I'm not sure for what, though, Chair.

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

We have three motions before the committee. I'll entertain them in order of receipt. Mr. Tabuns, you may begin.

**Mr. Peter Tabuns:** I move that the demand projections for the SWGTA and the province as a whole that are cited as shaping the long-term energy plan and the Oakville decision be provided by the Minister of Energy as soon as possible.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Everyone is aware of this particular motion? You have copies, I presume?

If there's any discussion, it is to be had now.

Seeing none, those in favour of the motion, if any? Those opposed? Motion carried.

Mr. Tabuns.

**Mr. Peter Tabuns:** I move that the secretary of cabinet produce Sean Mullin's notes from any of his meetings with TransCanada Energy and provided to counsel in the debrief referred to by Mr. Mullin as soon as possible.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Discussion?

All in favour? All opposed? Motion carried.

Thank you, Mr. Tabuns.

Mr. Delaney, I believe this is yours.

**Mr. Bob Delaney:** I move that the Standing Committee on Justice Policy sit on Wednesday, April 24, 2013, from 3:15 p.m. to 5:45 p.m., and that Colin Andersen, CEO of the Ontario Power Authority, be invited to appear, if available, and be scheduled for 110 minutes, with 20 minutes for his opening remarks, followed by a total of 30 minutes for questions by all parties on a rotational basis, beginning with the government caucus.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. I'm just wondering about the timing. Does 110 minutes work out?

In any case, any discussion on this?

**Mr. Peter Tabuns:** Is there a particular reason that he needs to be called tomorrow rather than in a normal rotation as a witness? You have him on your list, don't you?

**Mr. Bob Delaney:** We were down a witness, and in the light of the letter from the Ministry of Energy dated yesterday, we thought we would call him.

**Mr. Peter Tabuns:** What was the ministry letter saying?

**Mr. Bob Delaney:** It's this one here, that I think you've got in your package.

**Mr. Peter Tabuns:** Might you just summarize it for us? Go ahead.

**Mr. Bob Delaney:** Okay. It basically says that to support the work of the committee, the OPA will be in a position to share their current estimate of longer-term costs and savings associated with the relocation of the Oakville plant. It's a question that both the PC Party and the NDP had been raising in the past, and perhaps we can get an earlier rather than a later update.

**Mr. Peter Tabuns:** Mr. Chair, my inclination right now would be to say, "Just add it to the normal rotation."

If you want to hold it down and reintroduce it this afternoon after I've had a chance to talk with folks, then you might have a better chance to pass it.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, will you stand down the motion?

**Mr. Bob Delaney:** Yes, Chair, we will stand it down until this afternoon.

**The Chair (Mr. Shafiq Qaadri):** That's fine. The other thing I would just advise—the other point to note here—is that Mr. Delaney has asked for 20 minutes of opening remarks as opposed to the usual five. There is a question of equity between all the various witnesses: another thing to consider.

The committee is recessed until this afternoon. Thank you.

*The committee recessed from 1005 to 1500.*

**The Chair (Mr. Shafiq Qaadri):** I call to order this meeting of the Standing Committee on Justice Policy. The first order of business is the motion stood down from this a.m. Mr. Delaney, I'd invite you, if you're going to move any amendments, to do so now.

**Mr. Bob Delaney:** No, Chair. I'm not sure if I had a chance to read the motion, but I will read it, and I will advise members that, as I read it, there will be a tiny change in the starting time, on advice of the Clerk.

I move that the Standing Committee on Justice Policy sit on Wednesday, April 24, 2013, from 3:30 p.m. to 5:45 p.m., and that Colin Andersen, CEO of the Ontario Power Authority, be invited to appear, if available, and be scheduled for 110 minutes with 20 minutes for his opening remarks, followed by a total of 30 minutes for questions by all parties on a rotational basis, beginning with the government caucus.

**The Chair (Mr. Shafiq Qaadri):** I thank you for reading it for a second time, Mr. Delaney, and I invite comments on this motion, if any, before we entertain the vote.

**Mr. Victor Fedeli:** I have an amendment.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, the floor is yours: your amendment to the main motion, please.

**Mr. Victor Fedeli:** I move an amendment to the Liberal motion re the OPA witness:

(1) Strike everything after "I move that the Standing Committee on Justice Policy"; and

(2) Add in, "invite Mr. Andersen, CEO of the Ontario Power Authority, to testify before the committee on Tuesday, April 30, 2013, which is the next available witness slot designated for a Liberal witness, and that Mr. Andersen be invited under the same conditions and time constraints as other witnesses."

**The Chair (Mr. Shafiq Qaadri):** Fair enough. I think everyone can appreciate the import of this particular amendment. Are there any comments before we entertain the vote?

**Mr. Bob Delaney:** Chair, I'd like a ruling as to whether or not this is in order, because other than saying, "I move that the Standing Committee on Justice Policy," which could in fact be a motion to do almost anything, the rest of it is a brand new motion. I would ask that this be out of order.

**The Chair (Mr. Shafiq Qaadri):** An exceptionally good question, Mr. Delaney. Answer forthcoming.

The motion is in order. Any further comments before we vote on it?

**Mr. Bob Delaney:** Only that this appears to be a ploy to ensure that our witness scheduled for that time slot, Tim Hudak, doesn't appear before the committee, in much the same way as, by some curious coincidence, no Conservative candidate has yet accepted an invitation to appear before the committee.

**Mr. Jim Wilson:** We'll deal with that later

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Any further comments? On the record, Mr. Wilson?

**Mr. Jim Wilson:** Yes, we'll deal with that later, I'd say to Mr. Delaney. It's completely irrelevant to this motion.

**The Chair (Mr. Shafiq Qaadri):** Any further comments before we entertain the vote?

All those in favour? All opposed? The amendment is carried, and I think that puts us in a bit of a logical bind here, because it essentially neutralizes the main motion.

**Mr. Bob Delaney:** That was my point.

**The Chair (Mr. Shafiq Qaadri):** It probably was the point, yes.

**Mr. Bob Delaney:** As that is an amendment, we still have to vote on the motion.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. Those in favour of the main motion—

**Mr. Bob Delaney:** Recorded vote, please.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote.

**Mr. Victor Fedeli:** Chair—

**The Chair (Mr. Shafiq Qaadri):** I know what you're going to ask, but we still vote; I'd just invite you to go through the exercise.

**Mr. Victor Fedeli:** Is that the proper procedure after an amendment that—

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Main motion vote; recorded vote.

All those in favour, if any? All those opposed?

All right, let's try that again. It is a recorded vote. I just refresh the committee's memory. We are now voting on the main motion as presented by Mr. Delaney. I would invite you to figure out what side of this particular main motion you're on. It's a recorded vote.

### Ayes

Albanese, Delaney, Del Duca.

### Nays

Clarke, Fedeli, Natyshak, Tabuns, Wilson.

**The Chair (Mr. Shafiq Qaadri):** The main motion is now officially defeated. The amendment, I guess, carries? Yes.

**The Clerk of the Committee (Ms. Tamara Pomański):** The amendment carries; the motion is lost.

**The Chair (Mr. Shafiq Qaadri):** Fair enough.

MR. CHRIS BENTLEY

**The Chair (Mr. Shafiq Qaadri):** I now invite our first witness, who will be sworn in by the Clerk.

**The Clerk of the Committee (Ms. Tamara Pomański):** 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. Chris Bentley:** I do.

**The Chair (Mr. Shafiq Qaadri):** On behalf of the committee here and Parliament and on behalf of the Legislature, I would like to welcome the honourable Chris Bentley to come before us and testify. As many of you will know, Minister Bentley held portfolios including Minister of Energy, Attorney General, Minister of Aboriginal Affairs, Minister of Training, Colleges and Universities, Minister of Labour, and, as he self-identifies on his Facebook page, he is a long-suffering Leafs fan, but we hope a fellow Qaadri will be able to remedy that over time.

Minister Bentley, you have five minutes in which to make your opening address. The Chair thanks you for the written version, and I invite you to please begin now.

**Mr. Chris Bentley:** Thank you, Mr. Chair. I regard it to be a great privilege and honour to have served the people of Ontario for almost a decade, including my time as Minister of Energy. I want to say clearly and directly that I've always worked as hard as I can, used my best judgment and acted in good faith in the best interests of the people I represent in all of my capacities. I may have made mistakes, like anybody could have, but I absolutely never did anything against the interests of those I represented.

I was appointed Minister of Energy on October 20, 2011. The OPA and TransCanada were already involved in an arbitration arising from the cancellation of the Oakville gas plant. The government had also committed during the 2011 election to cease construction on the Mississauga gas plant and relocate it. When I became minister, I acted quickly to ask the OPA to negotiate with Greenfield to stop construction of the Mississauga gas plant and, if possible, to relocate it.

The Mississauga and Oakville negotiations were challenging and slow. Neither was close to a conclusion in the spring of 2012. In addition, in March 2012, EIG, Greenfield's financier for Mississauga, sued in both Ontario and New York. The lawsuits did not go well from the OPA or Ontario's perspective.

I testified before the estimates committee between May and July 2012. The committee asked for certain documents about the Mississauga and Oakville gas plants. The advice I received, and my belief, was that producing the documents and discussing our ongoing negotiations at that time would have significantly hurt our

ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario. Having said that, I always intended to produce the documents. It was a question of when, not if.

Throughout the spring and summer of 2012, I was trying to reconcile two principles that appeared to conflict on this occasion: the financial interests of the people of Ontario and the respect for the privileges of this Legislature. I always hoped a resolution would be reached that could achieve both.

I gave our Mississauga negotiating team until the last day of estimates to reach an agreement, if possible. I would be reporting to the committee on the status of that matter regardless.

As you know, we reached an agreement on July 9. I held a press conference on July 10, and I wrote to the committee advising that the OPA and the ministry would be making some disclosure. Because of my continued concerns about the waiver of privileges, I asked the estimates committee in my July 11 letter to continue to respect the confidentiality associated with the documents by exempting them from disclosure.

Throughout the committee proceedings and after, I understand that various members of the Legislature attempted to negotiate a compromise, for example, similar to recent precedents in the federal House of Commons, but ultimately were unable to do so.

After the Speaker's ruling on September 13, 2012, I immediately rose in the Legislature and said that I would comply by the deadline of September 24. I told our negotiators that the documents would be released on September 21 and to try and conclude an agreement by that date, but waited when I learned on September 21 that the parties were very close to an agreement. They reached an agreement on September 24 in the early morning hours. As this committee knows, documents were disclosed and produced that day in accordance with the Speaker's ruling.

My direction to my staff and to the ministry throughout, and my expectation, was always to disclose every document responsive to the request, everything that was asked for.

#### 1510

By the 27th, I learned the OPA were concerned that they may have missed some documents and were going to do an additional search. A letter was filed with the Clerk on the 27th. On Friday the 28th, my chief of staff and the deputy minister advised me that the ministry may have inadvertently missed some responsive documents. I instructed my chief of staff and the ministry to conduct whatever searches were necessary. When it was later determined that ministry documents were missed, I again instructed my staff and the ministry to provide everything that was asked for. To the best of my knowledge, all of the relevant documents were disclosed and produced by October 12.

Let me be clear: I always intended that everything asked for would be disclosed. In my view, disclosing these documents to the public in the midst of highly

sensitive negotiations and court cases would have hurt the province's ability to limit costs and negotiate a favourable resolution, and would have cost the people of Ontario more. At the same time, I acknowledge the estimates committee's and the Legislature's right to demand disclosure of the documents, regardless of the sensitivities to the negotiations or the waiver of any privileges. When it became clear that no compromise was possible and the Speaker made his ruling, I said the documents were going out. I acted and have always acted in good faith and in the best interests of this province and its people.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bentley. I'd invite Mr. Del Duca to please begin the government's questioning—20 minutes.

**Mr. Steven Del Duca:** Thank you, Mr. Bentley, for being here today with us. Thank you also for your many years of exemplary service to the people of Ontario. Just before I begin with questions, is there anything else you'd like to add to your opening statement at all?

**Mr. Chris Bentley:** No, thank you.

**Mr. Steven Del Duca:** Okay. As you may know, we are now into the eighth week of hearings on this particular matter. We've heard testimony from 19 witnesses. Given your direct involvement with some of these issues and some of the accusations that had been made, we felt that it was really important for you to be given an opportunity to attend and speak to these issues, which is why we took the step, on this side of the table, to request your attendance here at committee. I want to confirm, though, just for the record, that you are here voluntarily; that there is no Speaker's warrant or anything else of that nature that's compelling you to be here today.

**Mr. Chris Bentley:** No, I'm here.

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

I think most members here are aware of your background and experience. I know the Chair of the committee did reference some of that in his opening. But for those who might be watching or reading through these proceedings, prior to your election in 2003, would you say you had a successful legal practice in the London area?

**Mr. Chris Bentley:** I practised law for almost 25 years in the city of London, and from time to time throughout Ontario.

**Mr. Steven Del Duca:** Terrific. And you were elected provincially to this Legislature by your constituents in London three times: 2003, 2007 and again in 2011. Is that correct?

**Mr. Chris Bentley:** That's correct. I was very fortunate to have been elected three times by the people of London West.

**Mr. Steven Del Duca:** And they were lucky to have you; that's for sure.

I think you mentioned this in your opening, so forgive me if I'm going over this territory again. Subsequent to the 2011 election, you were named the Minister of Energy, and at the time you were given the portfolio the decisions with respect to the relocation of the Mississauga and Oakville plants had already been made. Is that correct?

**Mr. Chris Bentley:** The decision with respect to cancelling the Oakville gas plant had been made and, as I understand, there were negotiations under way. The commitment was made during the campaign that if we were re-elected we would stop construction of the Mississauga gas plant and work to relocate it to another place, and that's what I inherited—both of those—when I became the minister.

**Mr. Steven Del Duca:** So is it fair to say that those relocations created a need to address some pretty complex contractual relationships between TransCanada, Greenfield and the OPA?

**Mr. Chris Bentley:** I think it would be fair to say that that was a very challenging time. You know, I think everybody in Ontario knows that if you rip up a contract without just cause, it's going to cost you money. If you rip up a big contract, it's going to cost you big money. And if you rip up a big contract that's already under construction, it's going to cost you big money with big complications. That really summarizes Oakville and Mississauga. There is no question that working through the issues that were occasioned by the determination not to proceed with the gas plants in Oakville and Mississauga—and you've heard lots of good reasons why they should not have gone there; lots of good reasons. Working through those contractual issues, the negotiations, was very, very challenging. There was a substantial amount of money at stake, after all. They were both 20-year power agreements, and the total payouts over 20 years would have been billions, up to almost \$5 billion over the 20 years under those contracts.

**Mr. Steven Del Duca:** Thank you. So I think it is fair to say, then, that you, at this point in time, did inherit what could be termed a pretty complex litigation file, if I could call it that.

**Mr. Chris Bentley:** They were complex in just about every way.

**Mr. Steven Del Duca:** I'd like to spend a couple of minutes talking a little bit about your preparation for your appearance at estimates committee back in May 2012. Can you take us through how you would have prepared for your appearance there?

**Mr. Chris Bentley:** I had a little over seven days' notice; I can't remember exactly how many days. Fairly consistent with the practice I recall in my other roles as a minister, a binder in preparation for estimates was prepared by the ministry, the public service side, and then we had discussions about the type of issues and the type of questions that might be asked. Obviously, one of the very significant issues was the state of the very complex, at this point in time, difficult and slow negotiations with respect to Oakville and Mississauga; the fact that Oakville was also in an arbitration proceeding, the fact that discussions were going on and lawsuits had been launched by the financier for Mississauga on both sides of the border, in I believe New York and in Ontario, both of which were serious complications. So as part of the preparation and the discussions, there were discussions

with lawyers, with legal staff, from both the Ministry of Energy and the Ministry of the Attorney General about what would happen if I was asked questions about those negotiations or about the confidential solicitor-client-privileged, commercially sensitive, some from third parties, documents that were part of the negotiations or part of the history here. The advice I received about the documents was that there were many that were solicitor-client, were privileged, were commercially sensitive, and that the effect of releasing documents or discussing the negotiations would be detrimental to the interests of Ontarians, meaning it could seriously affect the negotiations, the arbitration or the lawsuits and cost Ontarians significantly more.

**Mr. Steven Del Duca:** So based on that advice, you would have had—or did you have concerns about finding that balance, striking that balance between those competing interests?

**Mr. Chris Bentley:** Well, it was a very challenging situation. I was coming before a committee. The committee has the right to ask questions. We expected that they might start out on the first day by asking questions about the state of the discussions, in particular where we might end up with respect to costs. Now, at that point in time, neither case was close to a resolution—neither—so the costs could not be ascertained. But what could be ascertained is that having a public discussion about what I understood generally to be in the documents or about the negotiations could place the negotiations or the lawsuits or the arbitration at serious risk in terms of the cost to Ontarians, meaning we'd end up paying more.

**Mr. Steven Del Duca:** I think it's safe to say, certainly from my standpoint, that the concerns you've talked about here are extremely well founded.

Now, you may know that we've had a number of witnesses come before us at committee and testify under oath about these very issues, these very concerns. For example, former secretary of cabinet Shelly Jamieson had this to say about the potential release of confidential contractual information. I'm going to quote her here: "It would have harmed the negotiations for sure. Nobody likes to negotiate and have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves. So I would have been concerned about that in any negotiation." That's what Shelly Jamieson had to tell this committee.

Your former deputy minister, Serge Imbrogno, had this to say to us: "We were being sued ... for ... \$300 million." If "they were able to get information that" would "have made their case stronger" it would "have put us at risk there. Again, negotiating with Greenfield, if they" could have used this information to get "leverage in negotiations," it would have put us in a bad situation. "It's hard to quantify, but there were risks to the taxpayer." That's Deputy Minister Imbrogno's quote.

**1520**

When the Auditor General was here to testify, he acknowledged that similar issues arose when he testified

in public accounts. He said he would be reluctant to put this type of information into the hands of the parties at that time. He also likened it to not wanting to tip your hand.

So is it safe to say that these kinds of concerns expressed by these three neutral individuals do mirror the concerns that you had as well?

**Mr. Chris Bentley:** Well, absolutely. I vaguely recall that at one point when the auditor was invited to take on the Oakville matter before it actually concluded, he indicated that he would wait. But you'll have the exact wording about that.

Look, there was a lot at stake here. I was trying to reconcile the right of committees in the Legislature to have the material that they request—that's an important right—and the money at stake for the people of Ontario. These two principles should not conflict. On this particular occasion, they appeared to come together in an unhelpful way. I know part of the effort throughout a number of months was to find a way where the people of Ontario could have both. They should have both; they need to have both. We need to find a way that they have both.

I very much regret we couldn't find a way at that time. I know a number of efforts were made through the House leader's office and others, and others can speak to the details. But there should be a way.

It was never a question of if the documents were going out; they were always going out. It was a question of when.

**Mr. Steven Del Duca:** So, given that we have a number of neutral individuals—the people I mentioned before and quoted from before—given the concerns that you had, given that there were a lot of people saying that there were potentially serious risks associated with the release of information according to a schedule—you said a second ago, it wasn't a question of if; it was a question of when, but given that there was a big, aggressive push to release this information, let's say perhaps prematurely, did it surprise you at all during this process that the opposition parties frankly seemed to have no regard for protecting the public interest?

**Mr. Chris Bentley:** I wouldn't say that. I think—and I've said this publicly before—I respect all members and I respect the duty that all members have. I respect the duty that we all have to work as hard as we can in whatever role we have to serve the people of Ontario. I happened to be in a position where I was trying to reconcile our obligations and duties as members, or as ministers, and what I understood to be the very real risk to Ontarians, if we had a public discussion about negotiations that, in fairness, I wasn't able to speak about in detail. That is a very challenging and frustrating situation. I wish, over the course of months, we could've had an approach where the people of Ontario should have both.

I understood during the course of estimates from some of the comments that were made by the Chair of the estimates committee that I, in fact, was acknowledged to

have a responsibility to speak up for the interests of Ontarians and to protect them.

I understood from the motion as it was worded that it was, if the Speaker made a ruling, that only if I did not disclose would I face subsequent sanctions.

I understood there were discussions going on, and my hope—not that I would ever want to be there again—is that there would be a way that Ontarians can have both. Because in some way, in all ways, they actually deserve both.

**Mr. Steven Del Duca:** So you mentioned during your appearance at estimates, you talked about some of the discussions or rulings that the Chair of the committee at that time had brought forward. So I want to talk a little bit about those.

On a number of occasions during those proceedings, Mr. Prue, the member from Beaches—East York, the estimates committee Chair, made comments such as the following: “It would appear to me that Mr. Leone has the right to ask the question, but it is also abundantly clear to me that the minister can, as part of his answer, invoke his privilege as to what is happening in the lawsuit, and that can be his answer....

“So I would caution Mr. Leone—I’m going to allow him to continue, but I would caution him that the minister is well within the prerogative of his duties, if he feels it necessary to protect the government of Ontario’s position, to simply state so, and the line of questioning may not have the results you are hoping for, all right?” That’s the quote from estimates Chair Michael Prue. Did that give you a sense that the Chair was validating some of the concerns that you had?

**Mr. Chris Bentley:** I took from that comment, I took from the advice that I had received and I took from what I knew about the situation that there really was an interest that Ontarians needed protected; that I wasn’t able to speak in the type of detail that members wanted—far from it; that the financial interests of Ontarians were at risk, and it would have potentially cost them a seriously significantly greater amount of money. I took from that type of comment some support, that I was entitled to say what I was saying in response. Subsequent events may have shaken my confidence in that belief, but that’s what I took from that comment.

**Mr. Steven Del Duca:** In response to Mr. Leone’s document motion of May 16, 2012, again, the Chair of the committee, Mr. Prue, acknowledged the committee’s right to ask for the documentation, but then stated—and I’m going to quote him again because I think it is important:

“They have the right to ask for the documentation. The minister has the right to decline either giving that documentation or giving voice to that documentation during his answering of the questions....

“I would advise that I’m going to allow the motion to proceed, but I would also advise—and I think the minister, being a lawyer himself, knows full well that he may choose to answer the question in such a way as not to prejudice the province in any way, and I would expect him to do so.”

So again, not to belabour the point, but it surely must have seemed to you that the Chair was taking a similar approach to yours in terms of attempting to balance those competing interests that we’ve talked about today.

**Mr. Chris Bentley:** I took from the comments of the Chair, who was obviously in a challenging position, that I not only had certain rights, but obligations. We all have rights and we all have obligations.

I was attempting to the best of my ability to reconcile two very important principles: protecting the financial interests of the people of Ontario, which I honestly believed were at risk, given these lawsuits, sensitive negotiations which had not been going well in the arbitration; and the right of members to ask for what they want in the course of a committee proceeding. Those interests usually stand together. They almost invariably stand together. They need to stand together, but in this particular case, they seemed to come into some conflict. I was trying to find ways, and others were trying to find ways—others in particular—to reconcile those two at the time when I was doing what I believed to be right, and that was standing up for the financial interests.

**Mr. Steven Del Duca:** Is it fair to say that you were surprised or disappointed in terms of the course that things took during and following your appearance at estimates in terms of this matter being referred to the House?

**Mr. Chris Bentley:** Well, the whole proceeding has been very, very challenging and very difficult. There’s no question about that. It has been unlike anything I could ever have imagined, and it essentially sprang from my belief that I was acting in the interests of the people of the province of Ontario and the belief of other members that they needed to take certain steps, I gather in their belief, to protect those interests. It’s a very challenging situation. But throughout that period of time, the only reason I was doing what I was doing is because I honestly believed that the financial interests of Ontarians would be substantially worsened if we were to have the disclosure of material and the inevitable public discussion about where we were, where negotiations were, what our position was, what the risk was—all the details of the discussion, negotiation, the lawsuits in public at the same time we were at the table, trying very hard in these challenging situations to reach the best result.

Remember where we really started from with the cancellations. For me, the starting point with cancellations was: How big is the cheque that you have to write to the other side because you’re not proceeding with the contract? The whole goal of the negotiations was to limit the size of the cheque and to get them to take the right to produce power somewhere else in the province in a commercially reasonable deal.

Maybe not surprisingly, they weren’t going particularly well. We were bargaining hard, the OPA leading that, and they were bargaining hard, probably not particularly happy that the contracts that they had signed were not being proceeded with.

1530

**Mr. Steven Del Duca:** Okay. How am I doing for time, Chair?

**The Chair (Mr. Shafiq Qaadri):** One and a half minutes.

**Mr. Steven Del Duca:** I think I'll wrap up this portion here and come back with some other questions after the other two have had a chance. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. To the Conservative side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. Again, welcome back, Mr. Bentley. It's nice to see you today.

The Auditor General was here last week and talked to us about the true cost of the Mississauga gas plant cancellation to be a net of \$275 million. Who would have instructed you to use the \$180-million and then \$190-million numbers?

**Mr. Chris Bentley:** Thank you very much, and if I could just have a minute—I won't make it too long.

**Mr. Victor Fedeli:** We've been through that law many times together.

**Mr. Chris Bentley:** First of all, I want to say that I've reviewed the auditor's report—enormous respect for the auditor—and I accept his accounting.

**Mr. Victor Fedeli:** You coming tonight to his do?

**Mr. Chris Bentley:** I accept his accounting.

Can I tell you where I—how we got to the number that we go to?

**Mr. Victor Fedeli:** Actually, he talked about the fact that he's not really sure how you came up with \$180 million. He knows where the \$190 million—the extra \$10 million was. But I'd rather just stick to the facts.

**Mr. Chris Bentley:** Let me start there, then. What we had, when we were able to conclude the agreement on July 9—I reported it on July 10, the day before the last day of estimates. I reported it—what I asked for were the costs. You'll remember there was a press conference. You were at it; I think Mr. Tabuns was at it. I reported the costs in two different baskets. The first basket: \$180 million was money spent by the government of Ontario, the people of Ontario, and the OPA for engineering, construction work and to the financier that could not be used for anything else. You can call them sunk costs; you can call it lost money. We added \$10 million to that later in the week.

The bottom: there was another \$85 million that we spoke about, a different basket of costs, you'll remember, monies that we spent for turbines, monies we spent for design and engineering. We did not include that in the \$180 million. We said that the reason they weren't included in the \$180 million is because we had used those in the course of the negotiations to reach a commercially reasonable agreement. It's where I started before. For me, the cost to cancellation was how big is the cheque that you pay today for nothing because you're not proceeding with the contract and—

**Mr. Victor Fedeli:** But the \$85 million was in the \$180 million.

**Mr. Chris Bentley:** No.

**Mr. Victor Fedeli:** You had \$85 million plus \$88 million plus \$7 million equals—

**Mr. Chris Bentley:** No, no. There are two—just let me finish this. I think there are two \$85 millions that you're talking about.

So how big is the cheque that you pay today and get no value for Ontarians; and can you negotiate, limit the size, get value in a commercially reasonable agreement for them to produce power somewhere else?

When we reported the costs, there were two baskets: \$180 million, costs thrown away; and underneath that, on the same sheet, \$85 million. In fact, your colleague Mr. Nicholls, I think on the last day of estimates, asked me about it. He said, "Now, if you hadn't been able to repurpose the \$85 million"—I'm paraphrasing; I'm sorry—"in the new agreement, in fact, the \$85 million would have been added to the \$180 million, so you'd come up with \$265 million." I said, "But we've been able to repurpose. We've been able to use it in the negotiations—one of many factors in the negotiations—to reach a commercially reasonable deal."

As I say, later in the week—you're right—we added \$10 million to that, and we spoke to the no-interest loan. So, for me, what I reported was the money we were out of, no value, plus a commercially reasonable deal, and we spoke to some of the terms of that.

**Mr. Victor Fedeli:** Why didn't you include the extra \$5 million for that side—one of the 10 side deals that the auditor presented to us?

**Mr. Chris Bentley:** Was that—is that—

**Mr. Victor Fedeli:** That's the NUG contract for power that we didn't need that got cancelled for which they kept the \$5.4 million. It was a payment to them.

**Mr. Chris Bentley:** Yes. Later on that week—the Keele Valley had not been included in the \$180 million. Later on that week, I think it was Mr. Andersen, the head of the OPA, who indicated that that should have been in the list. To be frank, and in fairness to him, when we concluded the agreement on the 9th, I wanted to get as much information about costs out as I could, because I knew we were coming back two days later, on the 11th, so when we reported it on the 10th, we had the list, but we didn't have that in there.

**Mr. Victor Fedeli:** I asked you about that many times in the Legislature, but I never did get a good answer—I never did get an answer from you on that. I asked about that \$5.4-million side deal. I brought it to the Legislature, I had three press conferences on it, but nobody ever acknowledged that there really was a side deal—one of 10, as a matter of fact, as it turns out. The auditor told us there were 10 side deals done. One was that \$5.4-million gift to the proponent.

**Mr. Chris Bentley:** Mr. Andersen spoke about that after the last day or during that last week of estimates. I think it was after the—I don't know if it was on the Wednesday or the Thursday—about the fact that that should have been included.

When you say the others were side deals—

**Mr. Victor Fedeli:** That's the auditor's language.

**Mr. Chris Bentley:** I understand. There were a number of interim agreements made between the OPA

and Greenfield, because what we were doing at the beginning—we had made a commitment to stop and, if possible, relocate, but just because you become the government and you say “Stop” doesn’t mean they actually have to stop. There are a few challenges there.

**Mr. Victor Fedeli:** I’m quite certain there were.

**Mr. Chris Bentley:** You can tell them to stop, and they don’t have to stop. You can rip up the contract, and they don’t have to stop. You could bring an injunction application, and you don’t necessarily win, and they don’t have to stop. And you can introduce a bill in the Legislature, with all the complexities.

**Mr. Victor Fedeli:** In your July 11 testimony at the committee—I’m going to just read you a sentence: “We have announced an agreement between the Ontario Power Authority and Greenfield South Power to relocate the Mississauga gas plant. It will now be known, I suspect, in our conversations as the Lambton gas plant. The bottom-line cost of relocation is \$180 million”—period. It doesn’t go on to talk about any other side deals, any other information. You’ve announced many, many, many times in the Legislature that the bottom line—in fact, you used to call it the total cost—was \$180 million. Do you change that today?

**Mr. Chris Bentley:** The auditor has been very clear.

**Mr. Victor Fedeli:** I know the auditor has been very, very clear. I was asking about you.

**Mr. Chris Bentley:** I accept the auditor’s accounting. He’s the expert; I’m not. But what I have told you is how we came up with the \$180 million.

**Mr. Victor Fedeli:** So the auditor—

**Mr. Chris Bentley:** If I could just finish just this little part.

**Mr. Victor Fedeli:** Yes, please.

**Mr. Chris Bentley:** On the very day we spoke about \$180 million, we did say that there were other costs spent by the OPA, the people of Ontario, totalling \$85 million, which were not in the \$180 million, but they were part of the negotiation to reach the new agreement.

**Mr. Victor Fedeli:** The auditor, several times, both in his speech, in questions from the media, here in this committee, he volunteered that the language changed from—the wording that you first used was “total cost” to the wording changed to “cost to taxpayer.” When was the decision made to change the language?

**Mr. Chris Bentley:** I heard about that and I read a reference to that. So when we announced the agreement at the press conference on the Tuesday and I spoke about the two baskets of costs, all of which were money that had been spent, the bottom \$85-million part of the negotiation to reach a commercially reasonable deal, there had been no discussion with the Minister of Finance or the government about where that money was going to be paid from, the allocation between taxpayers and ratepayers. They knew it was coming, but we hadn’t actually had the discussion.

**Mr. Victor Fedeli:** So—

**Mr. Chris Bentley:** If I could just finish. I might have been asked in estimates about that. About a week later—

and I don’t remember whether he was testifying before his estimates committee or just before that—the Minister of Finance came out and said that \$190 million is being paid by the taxpayers, and that’s how the \$190 million became—

**Mr. Victor Fedeli:** Let me wrap this end of it up by bringing out—you said that you heard about it in the testimony. I can repeat it to you. It was David Lindsay’s testimony. I read an email from Murray Segal from the justice department. He says: “Spoke to Lindsay who spoke to Wallace. Idea is that Bentley need refer to taxpayer vs ratepayer as in OPA letter. By referring to that issue and the chat with cab colleagues, he protects himself re: assumption of final risk without now going to tb.”

**1540**

I asked Mr. Lindsay if he knew what that meant and his answer was three words, “Unfortunately, I do.”

Do you want to talk about the difference of referring to “taxpayer” or “ratepayer”?

**Mr. Chris Bentley:** Can you tell me when that was?

**Mr. Victor Fedeli:** November 11, 2011.

**Mr. Chris Bentley:** In 2011. There was a letter about that time, that once—I sent a letter to the OPA asking them, pursuant to our commitment, to speak with Greenfield, get them to stop, and negotiate a relocation. The OPA sent a letter back in November, I think, saying, “Who’s going to pay for this?” I sent a letter back to them, essentially in response, which was, “We’ll have a conversation.” My point was that at the time I announced the agreement in July 2012, we hadn’t had the conversation, and actually I heard about the conversation when I heard about the minister’s announcement about the—

**Mr. Victor Fedeli:** Well, Mr. Lindsay’s testimony of “Unfortunately, I do” is pretty telling.

I just want to segue quickly to Oakville—

**Mr. Chris Bentley:** To be clear, there was no agreement at that time.

**Mr. Victor Fedeli:** On September 24, when you were announcing the costs, you said, “Over the coming days and weeks you will read and hear lots of numbers.... The only accurate cost to taxpayers for this relocation is \$40 million.”

Do you stand by that \$40-million cost as the total cost of relocating Oakville?

**Mr. Chris Bentley:** Two points: First, I presented that agreement, which, you’re right, was concluded on the 24th, in exactly the same way I presented the Mississauga relocation. In other words, the monies that had been paid out which were not part of any renegotiated commercially reasonable deal, in that case, were much smaller; they were \$40 million. We had a commercially reasonable deal negotiated by the parties and the OPA. We did mention that there was \$210 million, I think, that the OPA was paying as part of this. Again—

**Mr. Victor Fedeli:** I’m not sure you mentioned it. We found that in the documents. I’m not quite certain that that was mentioned back then.

**Mr. Chris Bentley:** I thought it was in one of the early news reports.

**Mr. Victor Fedeli:** What I have is the documents from September 24, October 2, October 3. Day after day after day: The cost of it is \$40 million.

**Mr. Chris Bentley:** And if I could just conclude that—

**Mr. Victor Fedeli:** The Oakville case is \$40 million.

**Mr. Chris Bentley:** And if I could just conclude that: I presented it in exactly the same way. The out-of-pockets that were turned into no value were the \$40 million. The rest was a commercially reasonable deal. Remember, the whole goal here—

**Mr. Victor Fedeli:** But that's not what was said. It was that the total cost is \$40 million: "The only accurate cost to taxpayers for this relocation is \$40 million." Was it the cute word with taxpayer versus ratepayer again?

**Mr. Chris Bentley:** No, sir. What you had through the negotiations, fortunately, was a commercially reasonable deal delivering benefit to the people of Ontario for TransCanada to deliver power—different place, different terms of the agreement, but same megawatts. So we've been able to take—

**Mr. Victor Fedeli:** But that's a lot of work when you're asked the question and you say, "The only accurate cost to taxpayers for this relocation is \$40 million."

**Mr. Chris Bentley:** And the rest is being delivered over a period of 20 years through the agreement.

**Mr. Victor Fedeli:** I don't see that in that quote from September 24. I see it as being pretty definitive.

**Mr. Chris Bentley:** Meaning the agreement is for 20 years, negotiated in a commercially reasonable—

**Mr. Victor Fedeli:** Hindsight is so—we're lucky to have it. I have to tell you that.

**Mr. Chris Bentley:** But let me be clear about this. The auditor has taken a different approach than the one that we used to present Mississauga—

**Mr. Victor Fedeli:** Yes, he actually includes everything.

**Mr. Chris Bentley:** If he takes a different approach to Oakville, then he will come up with a different number, and it will be a higher number.

**Mr. Victor Fedeli:** So let me ask you: what was the total cost of the cancellation of the Mississauga power plant—period, the total cost.

**Mr. Chris Bentley:** Well, the auditor has spoken to that, right?

**Mr. Victor Fedeli:** And so you acknowledge that number?

**Mr. Chris Bentley:** The auditor is the expert on accounting, not me.

**Mr. Victor Fedeli:** So what's the total cost of the Oakville gas plant cancellation?

**Mr. Chris Bentley:** The auditor will provide you with it—

**Mr. Victor Fedeli:** But I'm asking you. You were the Minister of Energy. You signed off on these things.

**Mr. Chris Bentley:** The auditor will provide you with the number. As you heard, our approach was to take the big cheque we'd have to pay TransCanada for ripping up

the contract, negotiate it—limit it so that, at the end, we came up with the out-of-pockets that were of no value—

**Mr. Victor Fedeli:** It was a pretty simple question, though. Like, quite seriously—

**Mr. Chris Bentley:** —the out-of-pockets that were of no value in a commercially reasonable agreement. That's why it took so long—

**Mr. Victor Fedeli:** So I asked you the price of Mississauga, and you agree with the auditor, \$275 million. I ask you the price of Oakville, but it's a long, long sentence. Just what is the price of the gas plant cancellation in Oakville? There's a number. You were the Minister of Energy. What's the number?

**Mr. Chris Bentley:** And the auditor's going to give us that number.

**Mr. Victor Fedeli:** You can't tell us how much it was when you signed off as Minister of Energy?

**Mr. Chris Bentley:** I have told you how we thought of and presented the agreement. We did not go and—

**Mr. Victor Fedeli:** So you're sticking to the \$40 million?

**Mr. Chris Bentley:** No. I'm deferring to the auditor. We did not go and compare the relocated agreement to the original agreement in Mississauga.

**Mr. Victor Fedeli:** So I want to talk about the documents, then. We've talked about Mississauga. We've talked about Oakville. I want to talk about the documents.

I'm going to take a minute to read you a couple of snippets from Kristin Jenkins, who was here. This is her opening statement, so you would have seen that. This is a two-hour meeting with Ms. Kulendran. "She told us that the ministry was using a strict interpretation of the wording of the estimates committee motion and that this had been discussed.... She then told us how the ministry was specifically reviewing its documents to comply with the motion."

She told us that the documents "responsive to the estimates committee's motion" needed to be—and then she went on with the ones. But here's the ones she said we can't consider: "If not mentioned in the correspondence, the correspondence and any attachments were to be excluded, and SWGTA was not to be considered a proxy for Oakville."

Applying the ministry's approach had the effect of excluding relevant documents, as well as correspondence that only included the words "SWGTA." She went on to say that "Given that Ms. Kulendran had told us that this was the ministry's approach.... we resubmitted the documents" after they pulled between 4,000 and 6,000 documents out. However, they then learned that this was not what the ministry was going to be using. So, in effect, the OPA was asked—she claims the OPA was asked by the ministry to remove 6,000 documents that "may not have been responsive." How do you feel about that, her telling us that?

**Mr. Chris Bentley:** Well, let's be clear what my position and direction were from the beginning. My position and direction were that we had to be responsive

to the motion, provide the committee what you asked for—

**Mr. Victor Fedeli:** So you agree with taking out the documents, the SWGTA, because it could be—

**Mr. Chris Bentley:** No. I think it's important that I actually finish this part—that the ministry prepared the documents. They did the search. They decided what would be searched. I had nothing to do with any instructions to any member of the ministry; nor to the OPA; nor to Ms. Kulendran. My position throughout was, "Give the committee what they asked for, and be ready"—

**Mr. Victor Fedeli:** So who do you think told her that?

**Mr. Chris Bentley:** —“to go when the Speaker makes his ruling.”

**Mr. Victor Fedeli:** Who do you think told her to take those 6,000 documents out?

**Mr. Chris Bentley:** I'm not going to speculate because I had nothing to do with—

**Mr. Victor Fedeli:** Again, you're the minister. This is your ministry. She worked in the ministry and ordered the OPA to remove 6,000 documents. Now, subsequently the OPA had either a guilt pang or whatever, but they ended up putting the 6,000 back in—the second document dump. But in the first document dump, they were not there. So you're telling us that you did not direct the OPA to remove 6,000 documents?

**Mr. Chris Bentley:** Of course not.

**Mr. Victor Fedeli:** It wasn't you?

**Mr. Chris Bentley:** Of course not.

**Mr. Victor Fedeli:** Okay.

**Mr. Chris Bentley:** And it's interesting that in your earlier preamble you said that the ministry wasn't following that approach.

**Mr. Victor Fedeli:** Yes, that's what she said. She said—

**Mr. Chris Bentley:** I don't understand any of it.

**Mr. Victor Fedeli:** Well, she was told that the ministry's guidelines were one thing, but as it turns out in the end, it said—“Colin Andersen told me and Mike Lyle that the approach that Ms. Kulendran had told us to use was not in fact what the ministry had been using” and that in fact got Colin Andersen to reconfirm, and they went ahead and put those 6,000 documents back in, which is why we had the second document dump. That's what she's claiming here in her opening statement that she swore under oath.

**Mr. Chris Bentley:** What is very unfortunate is that they didn't all go out the first time.

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**Mr. Victor Fedeli:** I'm sorry?

**Mr. Chris Bentley:** What is very unfortunate is that they didn't all go out the first time.

**Mr. Victor Fedeli:** Well, I think we all feel the same way, and I'm glad you acknowledge that they weren't in the first document dump.

There's one document between you and—actually, it's one of the ones that was redacted. Do you know anything about the redacted documents?

**Mr. Chris Bentley:** Apart from the fact that—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** Thank you, Mr. Bentley. You've already been asked the total cost to Ontarians to cancel the Oakville gas plant. When you were given the MOU to sign with TransCanada, were you briefed on what this whole exercise would cost Ontarians?

**Mr. Chris Bentley:** No. I had a briefing about the memorandum of agreement that was about to be reached—subsequently reached—and that there were a number of elements to it. It was the part of a long, very difficult negotiation. In the course of the negotiation, there were good things for Ontario and the people of Ontario, meaning we got a benefit, and there were other things where the other side got what they wanted. But at the end of the day, we had a commercially reasonable agreement. I keep coming back to that end—

**Mr. Peter Tabuns:** Were—

**Mr. Chris Bentley:** I'll just finish this. For example, there was a lower net revenue requirement, but as the agreement states, there was the payment of turbines—about \$210 million—and there were other costs in there, a number of which hadn't yet been calculated but they would be going back and forth—but we had a commercially reasonable memorandum of agreement that was put up online. The payment, out of pocket, for Ontarians was the \$40 million that had—it was turned into no value because they were effectively costs you couldn't turn into any value in the negotiations.

**Mr. Peter Tabuns:** So, you were not told the total amount of money that was at risk or that the people of Ontario would be stuck with? Is that what you're saying to us?

**Mr. Chris Bentley:** There wasn't an expression in that sense. What we had throughout the negotiations—if I could, just for a minute—we started with the big cheque you pay today for no value whatsoever to TransCanada. There are a number of guesstimates as to what that might have been. Fortunately, we never got there. The whole goal of the negotiations was to limit the size of that cheque by having a negotiation to get the other side to agree to produce power at a different place, but not just any agreement—because we could have done that in a week—but on a commercially reasonable basis that delivered a benefit for Ontarians.

Now, you're right; that was a tough negotiation. They got some good things and they had some risks. It was a tough negotiation, but at the end of the day, my direction to the OPA is, “You can only reach an agreement if it's a commercially reasonable one and it's publicly defensible. You deliver a benefit to Ontario, to the system.” That's where we ended up.

**Mr. Peter Tabuns:** Mr. Bentley, who briefed you on the value of the MOU, the costs?

**Mr. Chris Bentley:** The terms of the MOU—I had briefings—I think it was the Friday before, and Mr. Andersen was there, along with a number of others—about the fact that we were approaching an MOU which would have a number of terms. I think on the Monday

morning that we had reached an MOU with a number of terms, that the out-of-pockets were \$40 million, that there were benefits in this MOU—good things for Ontario—but there were risks the other side had taken. So it was a back-and-forth negotiation, but you had an MOU that delivered power—would deliver power for 20 years of system benefit.

**Mr. Peter Tabuns:** So no one told you what the numbers were, and you didn't ask?

**Mr. Chris Bentley:** We had a discussion about the fact, and I knew about the fact that there had been a long give-and-take. So there were lots of discussions about the turbines, about what you do with the turbines, whether they can use the turbines in the new one—

**Mr. Peter Tabuns:** That's not what I'm asking you. I'm trying to understand that you signed off on a document worth hundreds of millions of dollars, and you can't tell me what obligations Ontario was taking on. Possibly, you didn't ask, but you are beating around the bush pretty heavily. Why don't you tell me? Were you told the value of the reduction in the monthly contract—

**Mr. Chris Bentley:** Yes.

**Mr. Peter Tabuns:** Okay, and were you told the net present value for that?

**Mr. Chris Bentley:** No.

**Mr. Peter Tabuns:** And didn't ask—

**Mr. Chris Bentley:** Sorry. The next present value in—the reduction in the contract is—

**Mr. Peter Tabuns:** The payment per megawatt of capacity per month.

**Mr. Chris Bentley:** Yeah. That was just a face value; that's not net present valued. But—

**Mr. Peter Tabuns:** And were you not told the net present value?

**Mr. Chris Bentley:** But—just give me a few seconds to actually answer your question.

**Mr. Peter Tabuns:** A few seconds, sure.

**Mr. Chris Bentley:** You raise the issue of the reduction in the net present value. The new contract: same number of megawatts, 975, but it will start later. So, of course, one of the issues to deal with is that the stream of payments they're getting is worth less—not worthless—worth less because of the effect of inflation.

**Mr. Peter Tabuns:** No, I hear you very clearly.

**Mr. Chris Bentley:** Let me just finish for about 30 more seconds.

There's the effect of inflation on the construction. There is the cost of the turbines. That's something that we bear. There were other issues about hooking up and being able to deliver the gas. I rely on the experts at the table to give me a review and to tell me at the end of the day if we have a commercially reasonable and defensible contract, and the answer is yes. They didn't have all the numbers—they still don't, I don't believe, have all the numbers—but they could say, on the basis of the back-and-forth negotiation, that we have a commercially reasonable agreement, and that's the basis on which we were able to proceed, because I wouldn't sign it unless we did.

**Mr. Peter Tabuns:** So you signed without being told the numbers and the scale of risk; that's what you're telling me. You don't have a number to give me.

**Mr. Chris Bentley:** I don't, and they still don't have a number with respect to some of the issues, like the one you've been talking about, the gas management cost.

**Mr. Peter Tabuns:** So we're still at \$40 million, in your mind?

**Mr. Chris Bentley:** No, we're not. There's a different approach and a different characterization to the cost of the cancellation. Now, my approach, the approach that we used, is not accepted by the auditor; he uses a different one. I accept that, but what we were starting from was, how big a cheque do we pay today for no value, how do you limit that cheque, and the way you limit is to see if you can get the other side to agree to a long-term power agreement on a commercially reasonable basis. And into that agreement are lots of back-and-forths, but as long as it's commercially reasonable in the eyes of the OPA and our negotiators, that's our guarantee that we've got something of value that you can rely on.

**Mr. Peter Tabuns:** I have to tell you—I'm going on to another question, but your response is completely evasive.

You were minister at the time the Mississauga gas plant issue was settled. Were you briefed on all of the costs?

**Mr. Chris Bentley:** The costs that I had were the costs that I presented in the summary sheet—

**Mr. Peter Tabuns:** This one?

**Mr. Chris Bentley:** That one—and the Keele Valley matter that was spoken about later in the week, and the fact that there was a no-interest loan for a period of time. And that's what I knew. I knew that we would step in and assist with financing if that was an issue. I knew that there was going to be the sale of land on a commercially reasonable basis, but the number had not been determined. I knew about the Mississauga site-specific costs yet to be finalized, so I didn't know what they were. But this really is what I got, and that's what we were speaking about, and I knew they—

**Mr. Peter Tabuns:** Who gave you this backgrounder? Who wrote this?

**Mr. Chris Bentley:** Well, we prepared the backgrounder on the basis of information, people in my office.

**Mr. Peter Tabuns:** Who is "we" when you say "we prepared this"?

**Mr. Chris Bentley:** My office, on the basis of information we got from the OPA about what the different costs were.

**Mr. Peter Tabuns:** And the OPA, according to the Auditor General, had already spent \$245 million by the time you made your announcement, so—

**Mr. Chris Bentley:** Well, with respect, if you actually add up the costs on this page, you've got \$180 million at the top and \$85 million at the bottom, so I'm at \$265 million. If you add \$10 million for the Keele Valley later in the week, that's \$275 million, and if you add in what-

ever factor you want to give with respect to the no-interest loan, you're over \$275 million. So, although the approach that we took was different than the auditor's, we stood up on day one and said, "Here's \$265 million worth of money we spent on this."

**Mr. Peter Tabuns:** So why did you say it was only \$180 million?

**Mr. Chris Bentley:** For the reasons I told you: that we'd been able to repurpose \$85 million in a negotiation to reach a commercially reasonable agreement. The auditor doesn't accept that approach, I understand, but at least you know that on day one—well, day two; the agreement was the day before—we were talking about \$265 million worth of money the people of Ontario had spent, \$85 million of which we had a different characterization for because it was part of this back-and-forth negotiation in reaching a commercially reasonable deal.

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**Mr. Peter Tabuns:** Well, the auditor says that what you got in terms of price reduction on the operations of that plant—the net present value is around \$20 million. So you spent \$80 million and you got \$20 million back.

When you were telling us "\$180 million," it was way off the mark. Why weren't you bringing those risks to our attention? We were getting stories about "bottom line," "no more than," and we had to press hard to get up to the \$190-million figure admission. Why were we not getting the whole truth from you at that point?

**Mr. Chris Bentley:** You always get the whole truth from me. That week what you had in your hand at the press conference was \$265 million worth of money out the door—our approach to how we presented the cost. The auditor, in his very thorough analysis, takes an entirely different approach. He adds up all the costs. He gives benefits for, yes, the net revenue requirement and the fact that there won't be power coming in at a time when we've got surplus baseload. He adds in a cost for the differential cost for sending the power from a generating station in Mississauga, which was not one that was part of any discussion that I remember. And there were a number of back-and-forths, as you see in the audit report, between the auditor and the OPA. But just as far as a suggestion that I was talking about \$180 million and there was \$240 million spent: Well, in fact, on day one, I've got \$265 million up in the window and by the end of the week we added \$10 million to that and a no-interest loan.

**Mr. Peter Tabuns:** And you kept saying it was 180 million bucks.

**Mr. Chris Bentley:** Because we took a different approach to this.

**Mr. Peter Tabuns:** Well, I'll point out one different approach. In your sheet here, you show \$88 million paid to EIG. The auditor said that it's \$149.6 million. That's a fair chunk. Where—

**Mr. Chris Bentley:** If you would just go to the bottom of the sheet, you'll see \$61 million was repaid to EIG in loan principal. It's already reflected in the dollar figures outlined above because some of it was spent on

materials and equipment that can be repurposed, while some of it was spent on materials that can't be. In other words, that's the principal that came in, not the penalties, and that's already reflected in the other figures.

**Mr. Peter Tabuns:** Yes, it doesn't reflect the penalties. It was \$149 million that was paid out—

**Mr. Chris Bentley:** No, the \$88 million is the penalty—the \$88 million was the settlement of the lawsuit in addition to repayment of the principal. I think it's important to note that what happened with the lawsuits that were going on at the time the estimates committee was asking for information—EIG sued in Canada and the US.

**Mr. Peter Tabuns:** Yes.

**Mr. Chris Bentley:** EIG brought a motion. We were supposed to win the motion, but EIG won the motion. So they were about five days away from taking over Greenfield and pursuing very substantial lawsuits in the States and in Canada. We got a negotiator down there who got them to hold off and negotiated a settlement, which was the \$88 million in penalties and the \$61 million or so in repayment. We dealt with that issue and then were able to reach a conclusion in Mississauga, for which a lot of money was paid up front—\$180 million or \$190 million, whatever figure you take, is a lot of money—but we also got a—

**Mr. Peter Tabuns:** It was \$245 million, actually, I'd say, from what the auditor told us.

**Mr. Chris Bentley:** But also it resulted in a commercially reasonable agreement. But you know, on day one—and I think you asked me questions about this as well on the last day of estimates.

**Mr. Peter Tabuns:** I probably did.

**Mr. Chris Bentley:** On day one, we got the numbers in front of you. If the auditor takes a different approach, I'm with the auditor. I'll always be with the auditors when they're doing what they're doing—always. But we did have the numbers in the window.

**Mr. Peter Tabuns:** And you were saying "\$180 million" to the Legislature, to the media and to any person who would come and ask. You would not admit the full figure. Did you note that EIG was charging 60% interest?

**Mr. Chris Bentley:** I didn't know what the terms were—

**Mr. Peter Tabuns:** It was 14% compounded quarterly. They were just inside the Criminal Code in terms of their amount.

**Mr. Chris Bentley:** And the lawyers took a look at that. I think one of the challenges when you stop a contract and effectively put an end to it is that you really take the other party and the contract as you find it. This was a tough one to take in many respects, but we dealt with that.

**Mr. Peter Tabuns:** Did you ever point out to the Premier, who was saying that this was \$180 million, \$190 million, that in fact it was \$245 million, in fact it was closer to \$260 million, \$270 million?

**Mr. Chris Bentley:** Well, I think, to be fair, I suspect that the Premier had access to the cost information that

we were using in the approach that we were taking—the then Premier, sorry.

**Mr. Peter Tabuns:** In response to an earlier question, you noted that the ministry provided documents and the OPA provided documents, but if you remember, the order was also that the minister's office provide documents, and your office didn't provide a single document. I assume there were computers. I assume there were file cabinets. Didn't you find it odd that not one document came from any of your staff on this matter?

**Mr. Chris Bentley:** My instructions were to provide what was asked for, to provide the documents responsive to the motion.

**Mr. Peter Tabuns:** You note the documents responsive were ministers, ministry, and the Ontario Power Authority. Not a single scrap came from the minister's office. I assume that your people were literate and were able to use a keyboard.

**Mr. Chris Bentley:** I understand that the appropriate searches of the staff computers and mine were done. Speaking only for myself, I do most of my business in person. I do most of it in meetings. I do, at best or at worst, by phone. Whenever you go to a meeting at the ministry, there are lots of people there. They keep copies of the records. They keep copies of the files. When I sent some of those letters that I referred to in the fall of 2011, I get a draft from the ministry, I sign it, and they send it out. My direction throughout was, "Give the committee what they ask for. Give them the documents that are responsive to the motion."

**Mr. Peter Tabuns:** You're aware that your former chief of staff, Craig MacLennan, deleted every email he had?

**Mr. Chris Bentley:** I'm aware now. I wasn't managing my staff's email accounts. That's not something that I did.

**Mr. Peter Tabuns:** No, I assume you weren't.

**Mr. Chris Bentley:** No, it's not something that I did.

**Mr. Peter Tabuns:** Was there anyone in your office who was responsible for seeing that your staff operated within the laws of Ontario with regard to records?

**Mr. Chris Bentley:** I always assumed that we were doing what the practice was, but I was not managing their accounts.

**Mr. Peter Tabuns:** Did you ever get emails from any of them?

**Mr. Chris Bentley:** Did I get emails from any of them?

**Mr. Peter Tabuns:** Yes.

**Mr. Chris Bentley:** Not on my ministry computer, no. I have a BlackBerry from my constituency, and from time to time I got emails there. Most of my work was done by phone, in person or in meetings.

**Mr. Peter Tabuns:** And did you have any sense, then, that your staff were destroying records as we went through this period?

**Mr. Chris Bentley:** No.

**Mr. Peter Tabuns:** How much time do I have left?

**The Chair (Mr. Shafiq Qaadri):** Two minutes.

**Mr. Peter Tabuns:** Two minutes. I'm going to go back to Oakville. The TransCanada deal puts us on the hook for about \$400 million worth of gas management costs, according the testimony of JoAnne Butler, who was here. That's a big chunk of cash. In fact, the reduction in monthly payments to TransCanada just kind of covers the cost of turbines, but it certainly doesn't address that. Did you not ever ask your staff or the OPA, "What is the value of the changes that we are being presented with in all this?"

**Mr. Chris Bentley:** A multi-part question: I thought our evidence was that they hadn't yet determined the cost. There was a range of \$300 million to \$475 million, but I'm sure—

**Mr. Peter Tabuns:** It was a range. That's correct.

**Mr. Chris Bentley:** I'm sure her evidence will come in at some point with an exact figure.

As I said before, there was a very complex negotiation. There were lots of figures back and forth. The direction that I had was, can we reduce the big cheque with a commercially reasonable and acceptable agreement? There were a lot of things back and forth in that—a lot. The gas management charges that you talked about is one that I've learned more and more about afterwards, but there were lots of back-and-forths. Although you're dealing with the same megawatts, you've got a different location, a different period of time, different construction costs, different risks on the part of TransCanada, different market opportunities—all sorts of different factors back and forth that they have to consider as opposed to just taking the cheque. So at the end of the day, there was a memorandum posted online—something that your party has often asked for, that we post these things—

**Mr. Peter Tabuns:** Yes, I looked at it today.

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**Mr. Chris Bentley:** And, if I could say, you were right—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Mr. Del Duca, 10 minutes.

**Mr. Steven Del Duca:** I want to begin by talking a little bit about the concept of document disclosure. Actually, I'd like to try and clarify something that came up in questioning a little bit earlier today from Mr. Fedeli. There was a discussion around Kristin Jenkins and allegations about the OPA's document search. I just wanted to say to you, Mr. Bentley, and for the record that those allegations were actually investigated by Secretary Wallace, and he found no evidence of wrongdoing. In fact, Deputy Imbrogno said he believed Ms. Kulendran's account of what happened.

Just so it's clear, under oath here at committee, Ms. Kulendran did say the following:

"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."

I just thought it was important to make sure that that was completely clarified.

With respect to the document disclosure, as I mentioned, the secretary of cabinet was here to testify, and he spoke about the scope of the production motion passed at the estimates committee in May 2012, and some of the difficulties that it presented with respect to compliance. Did you have any discussions with your deputy about the challenges of conducting such a large-scale search?

**Mr. Chris Bentley:** Well, I heard about the challenges of conducting a large-scale search from time to time. I wasn't involved in it. I've told you what my direction was and my position was. The ministry was conducting this. It was a massive undertaking, and it consumed, I understand, a lot of time from a lot of people over many months. Others said, from time to time, it was by far the largest that they had ever been involved in. It would be fair to say that, in my career, it was by many times the largest by many times, probably by hundreds of times, that I'd ever been involved in.

I've heard from time to time, from people where this type of document disclosure is done all the time, in the litigation field—civil litigation wasn't my field, but we often have a situation. Not to excuse it, but you often have a situation where you have an initial disclosure and a continuing disclosure.

**Mr. Steven Del Duca:** Right.

**Mr. Chris Bentley:** In fact, in the work that I did as a defence counsel, we were continually getting disclosure. It was one of the obligations, actually, that there would always be disclosure. The question was often not whether there would be more disclosure coming; the real question was, how late in the process would it actually come? So this was, I think, in the view of just about everyone, by far the largest anybody had ever seen.

I think, to be fair, a lot of people worked really hard in the ministry—and, I'm sure, at the OPA—to get it right. Boy—I think the secretary said that mistakes have been made, and that's clear, but I think best efforts were always being made. A lot of good, hard work was done. I'm sure they learned a lot; I'm sure we've all learned a lot. Gosh, I'm sure I've learned a lot, but they worked hard to get it done.

**Mr. Steven Del Duca:** And you believe that the ministry and the OPA acted in good faith?

**Mr. Chris Bentley:** Oh, always, always. I think both the ministry and the OPA were acting in good faith. I think they were putting a lot of work into it. It consumes a huge amount of time, and we're not a big ministry. We don't have thousands of employees. Not to excuse it, but David Lindsay, my former deputy, used to say something like, "We're small but mighty," and "small" might be the emphasis in this particular case—around less than 200 people who are managing the files which from day to day pop up in the Ministry of Energy, and there's always something happening in the Ministry of Energy.

**Mr. Steven Del Duca:** I want to talk a little bit about willing hosts. It seems to me that one of the things that has been a little bit lost in this entire discussion over the

last number of weeks here at committee is the positive impact on the communities where the plants will now be built. I'm wondering if you can briefly tell us a little bit about the reaction of those communities when the new sites were announced.

**Mr. Chris Bentley:** Certainly. And you're absolutely right: It was essential in this negotiation not just to get the financial terms right—that was crucial—but also to find a place that would actually take the plant. That seemed to have been a challenge in Mississauga and Oakville, and as we found—well, it seemed to have been a challenge.

We were able to reach an agreement for the transfer, the relocation, of Mississauga to Lambton. I spoke to Steve Arnold, who at the time was the warden as well as municipal official for that particular area, and he was delighted. He was absolutely delighted.

The OPG site, the Ontario Power Generation site, in Lambton has been generating power through a coal-fired facility for decades. They're concerned about the future of the coal-fired facility. They had a site. It was large enough. They're used to power; they're used to power generation. They were delighted. It was going to mean employment, long-term employment but also short-term construction employment.

I know there are some other sites in the area that Greenfield might be looking at, but certainly the fact that it was going there was great.

The relocation of Oakville—again, enormously challenging to find a site that would accept it, that you knew would likely accept it. When I phoned the municipal official—and I'm embarrassed; I don't remember his name right now. When I phoned him to tell him that we'd reached this agreement, he was very pleased—very pleased about the employment prospects. They'd had the Lennox facility there in eastern Ontario for many years. I think it's a 2,000-megawatt facility, gas- and oil-fired, and they've had that for decades. They have the employment, the community is used to it, so they were pleased. He was interested in how many more jobs were coming, so they were interested in the long-term jobs. They were also interested in the effect of construction activity in their particular area.

We might have spoken, in the different press releases about the agreements, about how many jobs were involved—several hundred, I thought, for each, of construction activity jobs.

**Mr. Steven Del Duca:** Thank you very much. I only have a couple of questions left, and I want to talk just a little bit about personal impact, and particularly the personal impact that all of this has had on you and has had on your family. I'm quite sure that it has been extremely difficult. We all know that you're an extremely well-respected litigator. You're a former Attorney General of this province. You've served, as I said at the outset, with distinction for many, many years. So I can only imagine that to hear members of the opposition raising the spectre repeatedly of jail time or law society proceedings against you—I can only assume that it has

been a very difficult experience for you and for your family. Can you elaborate a little bit about that?

**Mr. Chris Bentley:** You know, in all of the roles I've had, representing people, I've always tried to do the best I could. I've always acted in good faith, and I've stood up for them—not always with popular causes, but I always stood up for the people that I represent.

When you're a criminal defence counsel for several decades, you're not representing the most popular of causes—let's be clear. But I think it would be fair to say that this past year has been one of the most difficult I could ever imagine.

The sacrifices that families make in public life are enormous, far beyond what most people would even begin to think, but the sacrifice and effect that my family has had over the past year has been incredible. I'm sorry that I put them through that by effectively doing what I always wanted to do, which was to serve the people.

**Mr. Steven Del Duca:** Thank you. I guess at this point I would simply ask if you have anything else that you want to add.

**Mr. Chris Bentley:** No. Thank you very much.

**Mr. Steven Del Duca:** Thank you for being here today, and thank you for all of your service to the province of Ontario.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. To the PC side: 10 minutes, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. So, Clerk, the documents—document 1, PC doc 1.

While the Clerk is handing that document out, let me talk a little bit about the role of cabinet in all of this. When would you have gone to cabinet to discuss both the Oakville and the Mississauga deals that were negotiated?

**Mr. Chris Bentley:** Thank you very much.

**Mr. Victor Fedeli:** We'll get to that document shortly. I just want to talk about September, when deals were announced.

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**Mr. Chris Bentley:** Mr. Chair, in answering the question, I'll get the direction and the assistance if the questions go into cabinet discussions, because I don't think I can actually talk about those.

With respect to Oakville, I was aware that we made the announcement in October 2010. Obviously, there was general discussion about the community and about the member. My next direct recollection is that I was involved in the decision where the TransCanada matter was referred to arbitration.

**Mr. Victor Fedeli:** So we're back in July 2011. You weren't the energy minister then, but you were in cabinet.

**Mr. Chris Bentley:** That's right. I believe that was the date. It was around that date.

**Mr. Victor Fedeli:** That segues into the document that I sent you.

**Mr. Chris Bentley:** Is this number 1?

**Mr. Victor Fedeli:** This is number 1, PC doc 1.

**Mr. Chris Bentley:** There you go: You have my signature.

**Mr. Victor Fedeli:** I have your signature and Kathleen Wynne's signature and a few other signatures.

This came to cabinet. In the documents we received, in the second document tranche, they call this the "vapour minute."

**Mr. Chris Bentley:** I tended to refer to them as Oakville and Mississauga.

**Mr. Victor Fedeli:** I appreciate that. Thank you. That's kind of how I do as well.

Were there any financial numbers discussed with cabinet with respect to TransCanada? Was there any upside number given by cabinet, approval to go out and negotiate a deal?

**Mr. Chris Bentley:** I may be wrong, but my recollection is that the July 29 document was a walk-around.

**Mr. Victor Fedeli:** Was the then Premier aware of this?

**Mr. Chris Bentley:** I won't speak for the then Premier. I'm sure—

**Mr. Victor Fedeli:** Would he have been involved in the cabinet or the walk-around, or would he have authorized this walk-around?

**Mr. Chris Bentley:** My recollection is that mine was the first signature on the page on the walk-around. I was aware generally—not specifically, but generally—that there were efforts made with respect to TransCanada to get the discussions in some sort of frame, because generally speaking, there were threatened lawsuits. My deputy, Murray Segal, I believe was involved at the time in a number of different discussions. I understood that the joint decision to refer it off to arbitration was as a result of that.

**Mr. Victor Fedeli:** Virtually every person who has testified says that these cancellations, both of Oakville and of Mississauga, were political decisions. What instructions would Premier McGuinty have provided anybody? During cabinet meetings, or when you became the minister, were there any upside financial numbers given to you? If the Premier was the one who ordered the cancellation of Oakville, what numbers would have been discussed or bandied about?

**Mr. Chris Bentley:** Well, I never heard numbers from—

**Mr. Victor Fedeli:** Okay. So there were no numbers. There was no upside limit.

**Mr. Chris Bentley:** I took my role, when I became the Minister of Energy and I had one cancelled contract and had another that was about to be cancelled—to take that big cheque, however big that cheque is that you're going to have to pay, and make it as small as possible and, if you can, negotiate a commercially reasonable deal. And you're right: There was a lot riding on those decisions.

**Mr. Victor Fedeli:** When you became minister, I presume the OPA briefed you on the costs.

**Mr. Chris Bentley:** The OPA would have briefed me on the state of the negotiations, which at the time—with respect, which one are we talking about?

**Mr. Victor Fedeli:** Both. You became the minister, and both were—

**Mr. Chris Bentley:** If I could, the first order of business was, they're still building Mississauga. That's not what we'd like to have happen. How do we stop the building? And then how do we have negotiations with Greenfield about (a) stopping the building and (b) relocating the plant? So those were the first several weeks, and I spoke about that—

**Mr. Victor Fedeli:** So what numbers would they have given you? Were there any scope, any financial numbers attached to either?

**Mr. Chris Bentley:** If I could, there was a—

**Mr. Victor Fedeli:** Well, sadly, we don't have much time—

**Mr. Chris Bentley:** Sorry, okay.

**Mr. Victor Fedeli:** —so we've just got to get to the answers.

**Mr. Chris Bentley:** I didn't have exact numbers, but at one point, I had to call the Minister of Finance to let him know about the OPA letter, which was early November—November 10, 11; I can't remember—of 2011, where they were asking, "Who's going to pay?" I said, "A very rough estimate of risk here is \$200 million to \$500 million."

**Mr. Victor Fedeli:** On which plant?

**Mr. Chris Bentley:** That's on the Mississauga.

**Mr. Victor Fedeli:** So \$200 million to \$500 million was the known number? That's the first time we've heard that.

**Mr. Chris Bentley:** Well, not a known number—

**Mr. Victor Fedeli:** It was your estimate.

**Mr. Chris Bentley:** It's not my estimate; it's an estimate I got—

**Mr. Victor Fedeli:** From?

**Mr. Chris Bentley:** It turned out—

**Mr. Victor Fedeli:** From the OPA?

**Mr. Chris Bentley:** From the ministry. I assume they—

**Mr. Victor Fedeli:** From the ministry.

**Mr. Chris Bentley:** —got it through the OPA.

**Mr. Victor Fedeli:** So \$200 million to \$500 million. And what about Oakville?

**Mr. Chris Bentley:** But that turned out to be very, very, very rough.

**Mr. Victor Fedeli:** What about Oakville?

**Mr. Chris Bentley:** I didn't have an estimate about that. I could—

**Mr. Victor Fedeli:** When you were doing—

**Mr. Chris Bentley:** You can sort of—

**Mr. Victor Fedeli:** When you were doing the deal for Oakville, you didn't have an idea of what this thing would cost?

**Mr. Chris Bentley:** You asked when I started.

**Mr. Victor Fedeli:** Yes, so—

**Mr. Chris Bentley:** The 20-year contract was for about \$4 billion worth of payments over time, if my math is right. When you stop a contract like that, it doesn't take long to figure out that the number is pretty big.

When you figure that, as I subsequently learned, they're going to have turbines, which I learned later on were \$200 million, it's pretty easy to figure out—

**Mr. Victor Fedeli:** The number is pretty big, so what is it? If it's pretty easy to figure it out, what is it?

**Mr. Chris Bentley:** No, no. There wasn't one. There was no estimate because, as all the discussions and negotiations made clear—I mean, the OPA bargained hard. They fought the arbitration hard. That's why there was no deal for so long, because people wouldn't give in. They refused to give in.

**Mr. Victor Fedeli:** When the document ordeal, as we'll call it, first began, what were your orders from the Premier with respect to the documents?

**Mr. Chris Bentley:** I did not have orders from the Premier.

**Mr. Victor Fedeli:** Okay.

**Mr. Chris Bentley:** I made the decision on the basis of—

**Mr. Victor Fedeli:** We heard from Mr. Del Duca, but I do want to just finish that thought by saying, indeed, wherever the instructions came from, the OPA acknowledges they were short 6,000 documents pulled out in the first document dump, and that is indeed why they brought us a second batch of documents.

**Mr. Chris Bentley:** I think in fairness—

**Mr. Victor Fedeli:** Where the orders came from, we can continue to discuss that, but at the end of the day—

**Mr. Chris Bentley:** No, I think—

**Mr. Victor Fedeli:** At the end of the day, there were documents that were missing, so I just want to—

**Mr. Chris Bentley:** My recollection is that, in fairness, the OPA not only had 6,000 documents; there were also a number of—

**Mr. Victor Fedeli:** Yes, a very small amount of new people that—

**Mr. Chris Bentley:** —individuals they hadn't searched.

**Mr. Victor Fedeli:** Yes, that's a very small amount. They gave us the numbers, very specific, right down to the last number here. Those numbers that were pulled out of the first one were indeed returned in the second one.

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

**Mr. Victor Fedeli:** Thank you. So in summary, we know you agree with the auditor's number of \$275 million, even after sticking for so long to the \$180 million—your government continues to stick to that \$180 million, up to and including the day we heard. And you've acknowledged that Oakville is much higher—an unknown number, but higher than the bogus number of \$40 million that we're continuing to hear today.

One of your sentences was that you wish that all the documents would have been turned over the first time, and I add, as opposed to the 4,000 to 6,000 being removed in the first batch and returned in the second batch.

The public wants to know what the total cost is of this Liberal gas plant scandal and who ordered the cover-up. I'm not sure, Chair, that we got any further today in knowing either of the two numbers, except that they're

not \$180 million and not \$40 million, and there are documents still missing.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns, you have the floor.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. There were a number of side deals on Mississauga, which the Auditor General has referred to. Were there any side deals on Oakville that didn't show up in the memorandum of agreement?

**Mr. Chris Bentley:** When you say "side deals," they were a number of interim agreements between Greenfield and the OPA, where the OPA essentially agreed to pay costs that Greenfield was incurring as they went along.

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**Mr. Peter Tabuns:** No.

**Mr. Chris Bentley:** And that was their agreement to stop construction.

**Mr. Peter Tabuns:** No.

**Mr. Chris Bentley:** Can you refer me to which side deals you're talking about?

**Mr. Peter Tabuns:** The OPA paid \$4.4 million in legal fees and other professional fees. It gave an interest-free loan to Eastern Power for reconstruction of the re-located plant—

**Mr. Chris Bentley:** I made reference to that, yes.

**Mr. Peter Tabuns:** Pardon?

**Mr. Chris Bentley:** I made reference to that. That's something that we spoke about in the first week. The legal—

**Mr. Peter Tabuns:** Were there side deals—in other words—payments to TransCanada Enterprises that had nothing to do with the relocation itself but everything to do with coming to an agreement?

**Mr. Chris Bentley:** So you're talking—the auditor was talking about Mississauga, and you want to ask me about Oakville. Were there other side agreements? My information is that it's contained in the \$40 million and the memorandum of agreement, which was, as you know, turned into a final agreement. I'm not aware of side agreements other than that.

**Mr. Peter Tabuns:** No knowledge whatsoever?

**Mr. Chris Bentley:** I'm not aware of side agreements that aren't otherwise in the memorandum—

**Mr. Peter Tabuns:** Reflected in the memorandum of understanding—

**Mr. Chris Bentley:** —or the ultimate agreement, which was posted, I think in December.

**Mr. Peter Tabuns:** What was the maximum you were willing to spend to settle with TransCanada? How high was the sky?

**Mr. Chris Bentley:** Well, my preference was nothing. The result, whatever people account for the cost as, was a lot better than where we started, because where we started was a big cheque for nothing, payable today. But I didn't have a number. I refused to talk during the estimates committee about a number because as soon as you go out with a guesstimate or a number, everybody knows, and they start adding on to that. The OPA—

**Mr. Peter Tabuns:** You're outside estimates now. We're past it. The contract is signed.

**Mr. Chris Bentley:** What I thought the exposure was?

**Mr. Peter Tabuns:** Yes.

**Mr. Chris Bentley:** You mean what I thought the maximum exposure was? Depending on where you asked me in the process, because it evolved, it was around—

**Mr. Peter Tabuns:** Well, why don't you tell me from the beginning?

**Mr. Chris Bentley:** Well, when I became involved, I didn't really have a number, just that it was huge, somewhere between \$700 million and \$1 billion, which was not based on anything more than people's wish. As it evolved, it was probably maximum around \$700 million if you add in the cost of—that includes paying for the turbines—and \$750 million by the time—but remember, that's a cheque for nothing. There's no power station. There's no power being delivered. There's nothing. You pay them \$750 million, and you get nothing. That's why the negotiations were so crucial: to get something for the money.

**Mr. Peter Tabuns:** What was that \$750 million composed of?

**Mr. Chris Bentley:** As I say, that was the guesstimate if TransCanada got everything they wanted in the course of the arbitration. They would end up around \$750 million or more, something like that. That was the guesstimate. I sort of pulled that from different sources.

You'll appreciate, I think, Mr. Tabuns, that over the course of the negotiations and the discussions, we had the OPA, which had a much different view of life, thankfully, and we had TransCanada, which had a very complete view of life. They were apart for a long period of time, and that's why this took so long to actually reach an agreement.

In fact, we reached an agreement the morning the documents were going out. I essentially said about a month before, "If we're ever going to reach an agreement, now is the time. Get to it." I was going to have the documents go out on the Friday the 21st, but they said they were very close. I think it was in the early-morning hours that OPG finally had a board meeting and agreed that they would sell the land for commercial value where this power plant was going to go.

**Mr. Peter Tabuns:** What was the value of the profit that TransCanada wanted to have reflected?

**Mr. Chris Bentley:** You're best to speak to Mr. Andersen or somebody about that; I'm not the one. The contracts are enormously complicated. I'm not the expert on the contract. There are 1,000 different things that go into a 20-year contract to determine what their profits would actually be. What their rate of return was: Again, Mr. Andersen is the one, probably, to speak to.

**Mr. Peter Tabuns:** Going back to Mississauga then, you had two items here: cost of relocating the plant and minimizing the impacts, the \$85 million that was spent on things that could be repurposed. But you didn't have any idea that you were going to get a penny back on this at that point, did you? This was just a fiction. This was a very neat way of coming down to below \$200 million.

**Mr. Chris Bentley:** No, sorry. This is the summary of monies spent that we used at the press conference that you were at to tell you how much was spent and to tell you what we thought it was appropriate to say: the costs of cancellation, relocating here—\$180 million—and to tell you that in fact the people of Ontario had paid \$85.5 million, but we weren't adding that to the top, because that was part of the negotiation in getting the new agreement. It was repurposed.

**Mr. Peter Tabuns:** In fact, we were out \$260 million at that point, and you didn't know. In fact, we won't be paid back for over 20 years on part of that \$85 million. In fact, the value today is \$22 million. We're getting incremental payments for the next two decades. We're out. Even then, when you had paid out \$260 million, you were saying it was \$180 million.

**Mr. Chris Bentley:** I think what you're doing is taking a very complicated, long 20-year agreement and only speaking about parts of it. It was up to the energy experts and our negotiators at the table to, if they could, reach a commercially reasonable agreement that would deliver benefit to the people of Ontario. That's what we did. And you're right—day one, I said that part of the bargaining was the fact that we're paying for \$85 million worth of stuff. They went to the table along with all the other give and take in this agreement. You're right. You asked about the total—no, you asked about the summary sheet on that day, but Mr. Nicholls asked about the total. It was there. I'm not saying that I accounted for it in the way that the auditor would have—clearly I didn't; he has an entirely different approach—but we did say on day one we'd spent \$265 million and in week one we added \$10 million to that and the fact that there was a no-interest loan.

**Mr. Peter Tabuns:** So why did you say in the House that the cost to the people of Ontario was \$180 million?

**Mr. Chris Bentley:** Because that's what I believed from the beginning. But my accounting is not the auditor's accounting, and we're all going with the auditor's accounting.

**Mr. Peter Tabuns:** Well, I would say that the auditor's accounting is pretty standard accounting, frankly. He didn't do anything exotic. We questioned him in this committee. He used standard accounting practice. He took the numbers that he was able to find from the Ontario Power Authority. Tell me, is there another world of accounting that we should be familiar with?

**Mr. Chris Bentley:** I don't think I can assist you much more. I think I've spoken about the way that I saw the evolution from the big cheque to the final result. You're right: This result in Mississauga was reached July 9, not during the estimates committee proceedings until the very end. The result in Oakville was reached September 24, 2012, long after the estimates committee proceedings were done.

**Mr. Peter Tabuns:** And so within a day or so, we have the Minister of Finance, under questioning by MPP Gilles Bisson, saying that \$180 million, \$190 million—that's it; it's over, done; that's all—even though you

know there's tens of millions more that's at risk. Did you ever counsel the Minister of Finance to clear things up?

**Mr. Chris Bentley:** I think I probably answered that question for you a number of different times—and I appreciate that you have a different perspective on it—on how we presented the numbers. I also appreciate very much, as I've said over and over again—I have enormous respect for the auditor, who's done great work for the people of the province of Ontario. He's done a very thorough analysis. As I said at the beginning, his accounting is the accounting that we all take.

**Mr. Peter Tabuns:** Because I would say that it's standard accounting practice. He's done nothing but be straightforward with us. He's looked at the numbers. He asked those who had familiarity with the numbers what was spent, and he's presented a very clean, simple report—no magic. We pressed him on this. There was no magic in what he did. You could have said the same at the time: "It's \$180 million and a further \$85 million at risk. We don't know whether we'll be able to recover that." That wasn't the way it was presented to us. That wasn't the way it was presented to the people of Ontario.

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

We do have a small matter to deal with for committee members, but at the outset I would like to thank you, Minister Bentley, for your presence today, your testimony, for the five ministerial portfolios of which you were steward, for your nine years of service to the people of London West as their member of provincial Parliament, and would simply say that the Legislature is a poorer place for your absence. Thank you.

**Mr. Chris Bentley:** You're very kind. Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Committee is recessed for about five or 10 minutes or so.

*The committee recessed from 1640 to 1653.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. I call the meeting to order.

Just to remind folks: Before we adjourned, we had voted. We need to re-vote. There was a motion presented by Mr. Delaney. It was then amended by Mr. Fedeli. We voted on the non-amended motion. We need to vote for the amended motion.

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, sir.

**Mr. Bob Delaney:** It is not possible, procedurally, for two motions to be open at the same time. So, to follow the sequence of events, there was a motion to amend the original motion, and the amendment carried. Therefore, the only motion open at the time we last voted was the motion, as amended. It is not possible for there to have been two motions on the floor at the same time.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** You are brilliantly correct, as always, Mr. Delaney, and that's precisely what we're now proceeding to vote on: the motion, as amended.

**Mr. Bob Delaney:** But, Chair, that vote has in fact taken place.

**The Chair (Mr. Shafiq Qaadri):** Well, I think, as so many things are being interpreted today, I believe that that motion, as amended, needs to be voted on now.

**Mr. Bob Delaney:** Then may I just ask whether or not there is concurrence in the committee that what we voted on was the motion, as amended, and if we all concur that we voted on the motion, as amended, we need not vote on the motion again?

**The Chair (Mr. Shafiq Qaadri):** I think that's a little too touchy-feely, Mr. Delaney.

**Mr. Bob Delaney:** No, Chair—

**The Chair (Mr. Shafiq Qaadri):** I think I'd prefer to actually go and vote on the motion, as amended, formally, as is parliamentary procedure.

**Mr. Bob Delaney:** No, Chair, it is not too touchy-feely. In fact, it's very relevant, and I'm going to tell you why. Looking at the Hansard from March 5, in the House what was passed said, "That, pursuant to standing order 110(b), where the committee exercises its authority to send for persons, each party shall be entitled to an equal number of witnesses...." Chair, if we were to vote on the motion again, as amended, what we are asking the committee to do is to vote on a motion that not merely contravenes the order of the House but is in fact against the subcommittee report. That's not in order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, for your contribution. The motion is in order. As I said, the motion that we voted on previously was as unamended, and we should have voted on the motion as amended and—

**Mr. Bob Delaney:** But, Chair, how can it be in order if there cannot be two motions on the floor at the same time?

**The Chair (Mr. Shafiq Qaadri):** As I understand it, Mr. Delaney, there was a motion presented by you. It was amended. We should have voted on the motion, as amended; we voted on the motion without reference to the amendment. We are now remedying that.

**Mr. Bob Delaney:** But, Chair, that's not possible because there can only be one motion on the floor at a time. In order for your statement to be true there would have had to have been two motions on the floor at the same time.

**The Chair (Mr. Shafiq Qaadri):** During the vote previously taken in this committee this afternoon, two very crucial words were omitted. Mr. Fedeli's amendment carried. The committee was left to vote on the main motion, as amended. With the transcript reviewed, it was not stated "as amended" during the second vote. I'm required to re-put the question. As I understand it again, Mr. Delaney, it is one motion, as amended.

**Mr. Bob Delaney:** Well, Chair, I feel very strongly that, as amended, the motion before the committee—

**The Chair (Mr. Shafiq Qaadri):** That's fine. With due respect, Mr. Delaney, to your—I think the Chair has ruled. I believe that we are—

**Mr. Bob Delaney:** Then a 20-minute recess, Chair.

**The Chair (Mr. Shafiq Qaadri):** A 20-minute recess. *The committee recessed from 1657 to 1719.*

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the meeting back to order. As per protocol, we are now required, without any further debate or discussion, to call the motion for a vote.

So, shall Mr. Delaney's motion, as amended—"as amended" being the operative word—by Mr. Fedeli, carry?

**Mr. Peter Tabuns:** Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** There's no discussion, Mr. Tabuns. We need to vote on this.

**Mr. Peter Tabuns:** Well, then, I have to ask for a five-minute recess.

**The Chair (Mr. Shafiq Qaadri):** I understand we've already recessed once, and I believe that's all the recesses available on the same issue.

**Mr. Peter Tabuns:** Is that, in fact, the case?

**The Chair (Mr. Shafiq Qaadri):** Yes.

Once again, to be clear: A motion was presented by Mr. Delaney; it was amended by Mr. Fedeli; the amendment carried; we now need to vote on that motion, as amended.

Shall Mr. Delaney's motion, as amended by Mr. Fedeli, carry?

**Mr. Jim Wilson:** Recorded vote.

**Ayes**

Clark, Fedeli, Wilson.

**Nays**

Albanese, Delaney, Del Duca, Natyshak, Tabuns.

**The Chair (Mr. Shafiq Qaadri):** Thank you. That is defeated.

**HON. BRAD DUGUID**

**The Chair (Mr. Shafiq Qaadri):** I would now invite our next presenter to please come forward and to be sworn in.

**The Clerk of the Committee (Ms. Tamara Pomasinski):** 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?

**Hon. Brad Duguid:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Duguid, for your time, your patience and coming to us via the Ministry of Training, Colleges and Universities. Of course, members of the committee have your full biography and know of your other portfolios. I invite you to begin your five-minute opening address.

**Hon. Brad Duguid:** Well, thank you, Mr. Chair. I can see by your procedural wrangling at this committee why this committee gets such great TV ratings. It's very exciting to watch.

Thank you for the opportunity to appear before the justice committee today and to share with the committee members the information I know on the decision to cancel the Oakville power plant, as well as the Mississauga power plant.

I'll begin with the Oakville project, Mr. Chair. Opposition members have been trying in vain to turn an important decision not to pursue the building of a gas plant in Oakville into some kind of conspiracy drama, but after months and months of scrutiny, the release of thousands upon thousands of documents and unrelenting opposition rhetoric, what we're left with is a decision by the government supported vigorously by Tim Hudak, leader of the PC Party, and supported vigorously by Andrea Horwath, leader of the NDP party, and every member of every party in the Ontario Legislature. A lot of discussion has occurred about how the decision on the Oakville gas plant was made, and I'm pleased today to share with committee members, to the best of my recollection, my thoughts as the Minister of Energy responsible for making that decision.

Not long after taking on the post of Minister of Energy, I determined that there were some major challenges that needed to be considered with regard to the Oakville project. I asked the Premier if he would object to me putting some fresh eyes on the file, and he agreed. You see, there were a number of things that concerned me about this project. First, the community was not only adamantly opposed, they—led by Oakville MPP Kevin Flynn and Mayor Rob Burton—were making some valid points.

For instance, they pointed out that, under our restrictions for the placement of wind turbines, we could not put a wind turbine on this site, yet we were planning on building a gas plant that would be among the largest in North America—I believe producing about the same amount of megawatts as a nuclear reactor. Secondly, Mayor Burton and his council had adeptly used municipal bylaws to delay and potentially prevent this project from ever getting municipal approval to put a shovel in the ground.

What ultimately convinced me to recommend we not proceed with this project was information arising during the deliberations on the drafting of our long-term energy plan. We had come a long way from the Tory days, Mr. Chair, of being dependent on importing power. We had made progress in our efforts to increase generation and encourage conservation, and the fact is, the global economic slowdown had significantly lowered demand for power as well. When I discovered this plant was no longer needed in this region and the needs of this region could be met by a transmission solution, I reached the conclusion myself that going forward no longer made sense.

And so, we had a project that hadn't been started, that nobody in the community or, frankly, in this Legislature wanted, that was mired in what was an indeterminable municipal bylaw quagmire, and I was told that we didn't need to locate the plant in that area because demand had

shifted and other alternatives had been identified. On that basis, I recommended to the Premier and the government that we should not proceed any further with this troubled project. I stated these facts when I announced that the Oakville plant would be cancelled, and I hope it's of assistance in reminding committee of the reasons why cancelling the Oakville plant simply made sense.

The committee, I expect, will be interested as well in any involvement I may have had in the commitment during the election by the Ontario Liberal Party to cancel the Mississauga gas plant. I was Minister of Energy at the time of the election, but as Chris Bentley advised, the cancellation of this gas plant was a commitment made during the election by our party. I think it's relevant to add that this commitment was supported during the election, as well, by all party leaders and all parties.

I should inform the committee that, as Minister of Energy, there was some discussion before the election to consider the cancellation of the Mississauga plant. My advice at the time was not to cancel it. I did not recommend, nor was I ever asked by the Premier or cabinet, to take such action. However, once all three parties committed to cancelling the Mississauga gas plant during the election, I, like all of you here, supported the fulfillment of that election commitment.

I hope this statement, Mr. Chair, is helpful to committee. It is an honest and frank discussion of my involvement and views both on the Oakville and the Mississauga gas plants. I'm now absolutely pleased to respond to your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Duguid. I'll offer the floor to the PC side.

I would just also invite all the members of the committee to allow witnesses to answer as they see fit. I appreciate that you need to move your questions along. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair.

I found your opening statement to be quite revisionist to be compared to the documents that we have been looking at so far.

So let's start: Earlier today, we had Sean Mullin, who testified how he and Jamison Steeve held several meetings behind your back with TransCanada regarding the Oakville cancellation. Why do you think the Premier kept you out of the loop on that?

**Hon. Brad Duguid:** Mr. Chair, I appreciate the question, but the facts that the member has put forward toward the question, or behind the question, simply aren't the case. The Premier, I, my office and the Premier's office worked very closely together on all the files that we had with regard to energy, and there were many files going on at that time. There was never a time that the Premier's office would have done anything that was not being done in conjunction and in communications with my office, Mr. Chair.

**Mr. Victor Fedeli:** So, again, the revisionist discussion is quite different than the sworn testimony of several people—consistently sworn testimony of several people.

Document 2, which you're going to be receiving shortly—you're going to get a whole bunch of documents here—the sworn testimony that we have from several witnesses says that in the discussions with Trans-Canada, that TransCanada "blew a gasket" when they were talking to you when you interjected yourself in a meeting and were trying to tell them the way it was going to be. They said, "We already have a deal—go talk to your bosses."

Now we have notes from several people who were at the meeting, who all were witnesses with the Ministry of the Attorney General. We have sworn statements. Why do you think they told you that they already had a deal and that you should go talk to your bosses?

**Hon. Brad Duguid:** Mr. Chair, I'm pleased that the member would ask that question because I have heard that previous testimony at committee—

**Mr. Victor Fedeli:** You were probably there when you heard it.

**Hon. Brad Duguid:** —coming from the member's side, and they're referring to, I believe, an email that I believe was put forward by a bystander at that particular meeting.

**Mr. Victor Fedeli:** No, actually, Chair, that's not correct. I'm referring to sworn testimony of—

**Hon. Brad Duguid:** I'd very much appreciate it if the member would let me finish my sentence.

**Mr. Victor Fedeli:** —a meeting of Malliha Wilson, John Kelly, Halyna Perun, Carolyn Calwell, Michael Barrack and John Finnigan, to name a few, but the—

**Hon. Brad Duguid:** Who did the email come from?

**Mr. Victor Fedeli:** This is the sworn—

**Hon. Brad Duguid:** And who did the email come from?

**Mr. Victor Fedeli:** This is the typed testimony from the Attorney General. This isn't an email.

**Hon. Brad Duguid:** And who did the email come from that you're referring to?

**Mr. Victor Fedeli:** This isn't an email. I'm referring to the testimony, without prejudice, that was given to us by the Attorney General's office.

**Hon. Brad Duguid:** Well, do you want me to comment on the meeting so that I can clarify—

**Mr. Victor Fedeli:** Yes, I want to hear about what your bosses had to say—

**Hon. Brad Duguid:** Because I appreciate the opportunity to do this, but I would certainly appreciate the opportunity to comment in a fulsome way because I think that's very important.

**Mr. Victor Fedeli:** So you can't tell us, then, why you think the Premier kept you out of the loop?

**Hon. Brad Duguid:** No, I'm trying to answer your first question—

**The Chair (Mr. Shafiq Qaadri):** Gentlemen, we're all enjoying how this is degenerating, but I would appreciate if the question could be asked, and then the answer could be given relatively efficiently—

**Mr. Victor Fedeli:** Well, if we get an answer, we'll carry on.

**The Chair (Mr. Shafiq Qaadri):** And if we might dispense with the catcall overtures.

**Mr. Victor Fedeli:** So let me rephrase, then; I'll start fresh. Did you indeed go and talk to your bosses about the cancellation?

**Hon. Brad Duguid:** Mr. Chair, let me respond to the question, as I was trying to do—and I've been interrupted about four times now. I'll do my very best to respond.

1730

The meeting that the member is referring to was a meeting with the CEO of TransCanada. The meeting took place two days before we were about to make the announcement on Oakville. As a minister about to make an announcement on Oakville, I think it would be absolutely foolish of the member to think that I wouldn't be fully informed that I was about to make an announcement 48 hours later. In fact, I would have been in the process of drafting my speaking notes and preparing to answer media questions on that very announcement.

However, because this meeting had been scheduled with the CEO of TransCanada at the time, as a minister about to make an announcement, I was not in a position to be able to share with the CEO at that time what our decision was. I said to the CEO that we would get to a decision very soon. That was a cordial meeting. I recall nothing other than a cordial meeting with the CEO. At no time was I not advised or informed that we had made this decision, because I was making the announcement 48 hours later.

**Mr. Victor Fedeli:** We learned, under sworn testimony, not only that TransCanada blew a gasket at this meeting that you claim was cordial, but we also heard sworn testimony that it was indeed TransCanada executives who told you the plant was cancelled. We have sworn testimony to that. How do you react to hearing that disturbing news?

**Hon. Brad Duguid:** Considering I was about to make the announcement 48 hours after that meeting, the fact is, I was very aware that I was making that announcement. I was already preparing—

**Mr. Victor Fedeli:** And so were they, by the sounds of it.

**Hon. Brad Duguid:** —for the announcement. But I wasn't at liberty to get into any kind of detailed discussions at all or even inform, at the time, the CEO of when the announcement was going to be made—

**Mr. Victor Fedeli:** It's clear that—

**Hon. Brad Duguid:** It's a challenging position to be in sometimes, for a minister, when you're meeting with somebody and you know, within a certain period of time, that something's going to happen. But I wasn't at liberty at the time to disclose that to him. That may have been why—

**Mr. Victor Fedeli:** But they were at liberty to disclose it to you, as we have heard under sworn testimony. Clearly you didn't have any idea of what was being discussed between TransCanada and the Premier's office.

**Hon. Brad Duguid:** No, that's not true at all. Mr. Chair, that is absolutely false. That's not true at all.

**Mr. Victor Fedeli:** We have sworn statements. So you're saying that those many people who have provided that sworn statement—their statements are incorrect, is what you're saying to us here. Those Liberal staffers' statements under oath are incorrect.

**Hon. Brad Duguid:** I would suggest that the comments that I've made to you already on this issue stand. Those comments are that I was fully informed that we were going to make an announcement in 48 hours. I was making the announcement, so those comments would have been, if anything, misinformed. But I can tell you that there's no question that I was fully informed that we were making an announcement in 48 hours to cancel the Oakville plant.

**Mr. Victor Fedeli:** Well, they certainly weren't misinformed; they knew before you did.

Document 3 here is a photo that shows you at the Oakville announcement, flanked by none other than Charles Sousa and Kevin Flynn, the seat-saver participants. I want to direct your attention to the sentence here. There is also a quote from you in document 3. You say that officials have determined they no longer need the power, and in doc 4 you are quoted as saying, "Not only will the plant not be built in the GTA; it won't be built anywhere in Ontario."

Your Premier says, day after day in the Legislature, that this was a political decision. Are you now telling us it wasn't a political decision; that she's wrong and that it was a supply decision? Is that what you're telling us today?

**Hon. Brad Duguid:** Well, the Premier, referring to both the Mississauga and Oakville projects, indicated that it was a political decision.

**Mr. Victor Fedeli:** Okay, so it was a political decision.

**Hon. Brad Duguid:** I outlined in my opening statement the rationale behind the decision, so I guess my comment to you, Mr. Fedeli, would be right back at you. Your leader and your party fully supported the decision. What was the basis for your party supporting the decision?

**Mr. Victor Fedeli:** Yes, but this is your government that cancelled the Oakville gas plant. So you're now saying it was no longer a political decision, that it was indeed a—

**Mr. Steven Del Duca:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Del Duca.

**Mr. Steven Del Duca:** I know that at the beginning of the questioning of this witness, you asked the committee to deal with this in a certain way. This is a repeated pattern on the part of Mr. Fedeli, to not allow any of the witnesses today to answer questions, to constantly interrupt and, frankly, to try to mislead the committee—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. That is not precisely a point of order.

Mr. Fedeli, please continue.

**Mr. Victor Fedeli:** Thank you very much. I'll continue talking to the witnesses in the manner that I feel—

*Interjections.*

**Hon. Brad Duguid:** He was never like that when he was mayor of North Bay.

**Mr. Victor Fedeli:** What we're hearing from this witness, in the obviously political tone that he has decided to take with this committee—

**Hon. Brad Duguid:** He was polite then.

**Mr. Victor Fedeli:** You said, "Not only will the plant not be built in the GTA; it won't be built anywhere in Ontario," because a "natural gas plant is no longer required." Your Premier has said that it was a political decision. Are you now telling us the Premier is wrong, that it was a supply decision?

**Hon. Brad Duguid:** As I said in my opening statement, I determined very soon after becoming minister that there were challenges with this project. Yes, there was concern in the community, but there were some very valid points being made by MPP Kevin Flynn, for instance, by Mayor Burton, on whether this was the appropriate site for this project. So I brought fresh eyes to the project. I asked the Premier whether he would mind if I did that.

In going through our long-term energy plan, it came to my attention that we would no longer need the plant in that area, because demand had changed, and that a transmission solution was going to be adequate to deal with it.

Once I found that out, given that this project was in a bylaw quagmire and delayed a number of times, I reached the conclusion that this plant should not be built where it is, and that we should negotiate with Trans-Canada to put the plant somewhere else.

**Mr. Victor Fedeli:** Again, the revisionist wording is excellent, but you stated, "Not only will the plant not be built in the GTA"—

**Hon. Brad Duguid:** No, Mr. Chair, that is not revisionist wording in any way.

**Mr. Victor Fedeli:** Yes, it is. You said we don't need it there. You said "it won't be built anywhere in Ontario," period. So let me ask you a simple question: Why are you building a new plant? Why did you award this company a replacement plant if "it won't be built anywhere in Ontario" because we don't need the power? Why are you building a new plant?

**Hon. Brad Duguid:** Mr. Chair, this member has known me a long time, and I think he knows me as somebody who has been elected for close to 20 years now, both municipally and provincially.

**Mr. Victor Fedeli:** I want to know why you're building a new plant.

**Hon. Brad Duguid:** I've been known for a very long time—and he knows this—as somebody who's very straight up, a very ethical politician and elected representative. When he makes comments like that, frankly, Mr. Chair, I know he doesn't believe those comments because he knows me. I've known him before he got here.

**Mr. Victor Fedeli:** I don't believe you when you're saying "it won't be built anywhere in Ontario," and now

you're building one. I know you don't feel comfortable having to squirm around with that. It was either a political decision, as the Premier said, or it was supply, as you said. But why are we building a plant, then, if we didn't need the supply any longer? I don't understand that. Just square that up for us.

**Hon. Brad Duguid:** Well, the demand had changed. When I found out, during the deliberations on the long-term energy plan—

**Mr. Victor Fedeli:** Yeah, we heard that.

**Hon. Brad Duguid:** —that we no longer needed to build a plant in that location, given that it was in a quagmire of bylaw challenges; given that the community was very adamantly against it—

**Mr. Victor Fedeli:** Yeah, we heard that.

**Hon. Brad Duguid:** —given that there were some good reasons being put forward why that was not the best location; given that your members were lobbying me not to build the plant and were opposed to the plant; given, after I made the decision, your party and your leader, the NDP and their leader all supported the decision, I think that gives me some justification to believe that that was the right decision.

**Mr. Victor Fedeli:** So let me ask you: When did you first hear of the announcement about the cancellation in Mississauga?

**Hon. Brad Duguid:** This will take a little time to answer.

**Mr. Victor Fedeli:** Oh, I'm sure it will—

**Hon. Brad Duguid:** I received a call early in the campaign, and I was advised that there was an intention to announce the cancellation of the plant in Mississauga. I reiterated my views on that decision. As I understand it, there was a pause on that announcement. I wasn't privy to the discussions around it with the party, but there was no announcement made at that time.

Later in the campaign, toward the end of the campaign, I got a second call where I had been advised that they had decided to go ahead with the announcement.

**Mr. Victor Fedeli:** So you weren't privy to the discussion on the Mississauga announcement—the energy minister.

**Hon. Brad Duguid:** No. I was advised early in the campaign that there was an intention to make an announcement to cancel the plant. As I said, I expressed my views, which were known before the election, as Minister of Energy. There was a pause on the decision. In the last week of the campaign—or not in the last week; I think in the last days of the campaign; I have to look back at the date—I got a second phone call, which indicated they had decided to cancel the plant.

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**Mr. Victor Fedeli:** You said you weren't privy on Mississauga. Your underlings tell us you weren't privy on TransCanada. Let me ask you what you might know. Costs: Were you ever given any estimates? Did anybody ever think to call you with any estimates of what the cancellation of Oakville might be? Did they include you in that discussion?

**Hon. Brad Duguid:** Well, we knew what the value of the contract was, so we knew there were two choices. One would be to just cancel the contract—rip it up, I guess, if you want to say it that way. The value of the contract would very much have been something that would have been a potential cost. We determined that was not the proper way to go, that the best route to go would be a negotiated settlement not to cancel the contract but to move the plant, and we wouldn't know what the outcome of that negotiation would be before we got into that negotiation.

**Mr. Victor Fedeli:** So even though you said it won't be built anywhere in Ontario, you're negotiating to move the plant, you've just finished telling us. Were you given any idea of the volume of money we're talking about here?

**Hon. Brad Duguid:** Let me just go back to that and let me be very clear: If that comment is correct, and it may well be, that was an incorrect comment.

**Mr. Victor Fedeli:** That you made?

**Hon. Brad Duguid:** That's right, in terms of not moving the plant. So let me correct that. I've never seen that quote anywhere, but if it's there, I don't—

**Mr. Victor Fedeli:** It's the Toronto Star that quoted you.

**Hon. Brad Duguid:** I don't quarrel with that, but that was not actually accurate.

**Mr. Victor Fedeli:** The Toronto Star quoted you and the Metro quoted you—two different papers.

**Hon. Brad Duguid:** I'm happy to suggest that that may have been said in error. I don't recall saying it.

**Mr. Victor Fedeli:** Do you have any idea of the scope of dollars here that we're talking about?

**Hon. Brad Duguid:** As I said, this matter was going to go into a negotiation with TransCanada. We knew that there would likely be some costs; I think they've often been referred to as sunk costs. We determined that negotiation would be the best way to go, as opposed to cutting off the agreement, ripping the agreement up, where I think there would have been litigation and potentially a much higher cost. So until the negotiations actually were begun and gone through, no, you wouldn't know until you got into the negotiations where they were actually going to land.

**Mr. Victor Fedeli:** In the negotiations, on document 6, it says here—this is a slide, the last one:

“OPA was instructed by the government to make a second counter-proposal to the TCE proposal of 10 March 2011.

“This government-instructed counter-proposal to settle was submitted on 21 April 2011. It had an effective financial value of \$712 million.”

What can you tell us about this \$712-million offer that was rejected? They continue to call it—“On 29 April 2011 TCE rejected the government-instructed counter-proposal.” Three times it called it “government-instructed.” What can you tell us about that?

**Hon. Brad Duguid:** I think the best way for me to describe that would be—once the decision was made to

move the Oakville plant and renegotiate the agreement with TransCanada, my involvement in terms of those negotiations, by and large, directly, had ceased.

**Mr. Victor Fedeli:** Did you know about the \$712-million offer?

**Hon. Brad Duguid:** I don't recall being briefed on that at the time, but what I would say is this: What was happening and what normally happens in these negotiations—I've been involved in many of them in many different portfolios—is that the minister would be briefed on a regular basis as to how the negotiations are going. When it comes to the details of the negotiations, at that point in time, that information would be left to the parties to do the negotiating. When we got close—because you've got to remember this—

**Mr. Victor Fedeli:** Minister, you've got to appreciate my frustration here. We've had more than a dozen—

**Hon. Brad Duguid:** You can interrupt me if you want. I haven't finished my thought, but go ahead.

**Mr. Victor Fedeli:** But you told me you don't know anything about \$712 million.

**Hon. Brad Duguid:** Well, you've interrupted my thought now twice.

**Mr. Victor Fedeli:** You told me you didn't know. We've had 12 witnesses here all telling us that they don't know anything about it, yet it says it's a "government-instructed counter-proposal." Who in the government instructed them, then, if not the minister?

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

**Hon. Brad Duguid:** Let me—

**Mr. Victor Fedeli:** You can have the last minute. I will not say a word. All you can do is talk about—please talk about the \$712 million. Please satisfy us on that.

**Hon. Brad Duguid:** As minister, when you're in negotiations, when the information would come to you as to where those negotiations were at would be when they're close to an agreement. This agreement didn't take place till two years after we cancelled the Oakville plant, so we weren't even close to an agreement at this point.

**The Chair (Mr. Shafiq Qaadri):** It's mutually enforced silence.

**Mr. Victor Fedeli:** I don't know where he gets two years. My time is up. We're going to get a calendar out here.

**The Chair (Mr. Shafiq Qaadri):** You do have 30 seconds left if you want.

**Mr. Victor Fedeli:** I said I would give him the time to talk about the \$712 million. I'll use it by asking: Would you care to expand on who the "instructed by the government" comes from, then, if not you? Who?

**Hon. Brad Duguid:** Again, the ministry and the Premier's office—

**Mr. Victor Fedeli:** Ah, okay; now we're getting somewhere.

**Hon. Brad Duguid:** —would have involvement, likely. Ontario Power Authority would be the lead at the negotiations.

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

Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you very much, Mr. Chair. Minister, good afternoon.

**Hon. Brad Duguid:** Great to be here.

**Mr. Peter Tabuns:** I know you've been waiting to do this for a long time.

The line of questioning here—let me go back: You met with Alex Pourbaix and Mr. Girling from Trans-Canada on October 5.

**Hon. Brad Duguid:** Yes.

**Mr. Peter Tabuns:** You say it was a friendly meeting and that any comments that TransCanada was angry and blew a gasket were not your experience.

**Hon. Brad Duguid:** I certainly don't recall Mr. Pourbaix ever blowing a gasket.

**Mr. Peter Tabuns:** Fair enough. You were not forthcoming at that meeting that you were going to be making an announcement two days from then?

**Hon. Brad Duguid:** That's correct. I couldn't be, by virtue of the fact that it was information I didn't feel I should be sharing with anybody at that point.

**Mr. Peter Tabuns:** The same PC document shows that there were two meetings on October 5. If you'll go to page 2 of that document—do you have it before you?

**Hon. Brad Duguid:** I'm not sure.

**Mr. Peter Tabuns:** PC document number 2?

**Hon. Brad Duguid:** PC document number 1, PC document number 3; I seem to be missing number 2. I'm missing number 2, unfortunately.

**Mr. Peter Tabuns:** We can give you one of our spares.

Apparently immediately before your meeting—if you page through and go to the bottom, "October 5, 2010—2 meetings.

"First meeting—Girling (TCE), Pourbaix," Jamison Steeve and Sean Mullin. It's them talking about language that you would be content with in a cancellation, the kind of letter that you need, "Push on protecting value," "TCE needs a letter from OPA," "Letter required prior to announcement," "Must preserve value for TCE." In other words, TransCanada and the Premier's office are talking about conditions for cancellation.

You come to a second meeting, and you're very discreet and don't say anything about a cancellation because you don't want to give anything away. What this indicates to me is, the Premier's office was working around you entirely.

**Hon. Brad Duguid:** Well, what I would offer there is the fact that, as minister just in the process of preparing to make an announcement, it wouldn't have been appropriate for me to begin negotiations with the CEO of TransCanada at that meeting. So I had to be very discreet in how I approached what was before us.

At the same time, as I think has been testified to by at least one or two members of the Premier's office, I was in the process of preliminary discussions with Trans-Canada, really trying to feel out where this negotiation could go and, I think, trying to determine a confirmation that, indeed, TransCanada, like us, would prefer to avoid litigation. They were doing their work directly with

TransCanada, and I was aware that they were having discussions. I, as minister, meeting with the CEO of TransCanada, though, was not at liberty to disclose the fact that, 48 hours later, we were about to make an announcement. That's not to say that the CEO of TransCanada did not have some information that he may have obtained or may have received from the Premier's office, and that would have been fine. But as minister, I did not want to get on to that slippery slope of giving information to the CEO before it would be appropriate.

1750

**Mr. Peter Tabuns:** So the only thing that was not put on the table was that the public announcement was going to be made in a day or so.

**Hon. Brad Duguid:** That's correct. My comments to the CEO, as I recall, were that we planned to move to a resolution of this very soon—or something to that nature—I think within the month or something like that. I don't recall exactly what I said—it was two and a half years ago—but it was something to that nature.

**Mr. Peter Tabuns:** Were you aware through June and July that Sean Mullin and Jamison Steeve were meeting with TransCanada about the potential cancellation of this plant?

**Hon. Brad Duguid:** Yes, I was aware that the Premier's office was having some discussions.

**Mr. Peter Tabuns:** Did they tell you what they were telling TransCanada?

**Hon. Brad Duguid:** It would be difficult for me to be able to respond as to whether I knew of every meeting they were having. I knew they were having meetings; I would have been fine with that. They were feeling-out meetings, more or less—I think that's how both of those gentlemen described them—to determine if we could find an accommodation to move forward on a basis that was fair to TransCanada and fair to Ontarians.

**Mr. Peter Tabuns:** So you were looking for an accommodation before the long-term energy plan got discussed?

**Hon. Brad Duguid:** The long-term energy plan discussions began sometime in the spring, I believe. As I recall, my full involvement in the long-term energy plan was very extensive. I spent a lot of time on that file—in fact almost on a daily basis, I believe—through the August, September area. The long-term energy plan, though—there was work being done. It took some time, so probably in and about the same time there was work being done on the long-term energy plan.

I don't recall the exact time I learned, in looking into the long-term energy plan, that we would not need that plant to be located in that location any longer. I don't recall the exact date I would have learned that, but it would have been sometime between July and August, I would think.

**Mr. Peter Tabuns:** When I look at the records, it's sometime in August, September, but these things are a bit elastic in people's minds. It looks like the Premier's office was having serious talks with TransCanada about shutting things down. In fact, there's a note here about—I

think it's on the same page; no, it's page 1—July 15, handwritten notes of Chris Breen: "Ford not going to happen [reference to location of SWGTA plant].

"Will give you a decision ... next week."

In mid-July, were you asked about shutting down this contract?

**Hon. Brad Duguid:** I don't recall ever being asked about shutting down this contract by anybody. As I said in my opening statement, I approached the Premier very early on in my term as minister—likely even before the spring, in 2010—to suggest that we put fresh eyes on the file. So I had begun to look at these issues.

If you look at media accounts, I think the words I used—in fact, probably responding to questions from yourself—was that we were in a listening mode at that point, which was a shift, and a noted shift by yourself and the media, that we were looking at the files. So we were beginning to look at the file at that point.

We were looking at things like the delays that were taking place. I think there are one or two force majeures, which I know you have an interest in. I'd be happy to chat more about that later on. At that point, we were also looking at the long-term energy plan as we got into—it's hard for me to remember exactly when during that consideration, but we began consideration talking about the long-term energy plan probably toward the end of June or so, and carried it on through the summer. Then it became more intense in August or September. Regrettably, I don't know the specific day when I would have learned that, indeed, we don't need to build a plant there, that there was a transmission solution available.

**Mr. Peter Tabuns:** I understand from JoAnne Butler's testimony that there always was a transmission solution. You had one or the other. It wasn't as though the transmission solution was something that was a bright light that popped on in someone's head late in the process. No, you knew before you did the RFP that you could have a choice.

**Hon. Brad Duguid:** Well, I think Sean Mullin's testimony this morning, which I had an opportunity to hear, probably captured it pretty well. There were originally time concerns about when that energy would be needed to keep the lights on in the southwest GTA. At one time, it was seen as a very serious challenge for our energy system. But when the demand changed, for a variety of reasons, the opportunity for a longer-term solution presented itself, and the transmission solution, once again, was something that was considered viable again and adequate to address the challenge.

**Mr. Peter Tabuns:** You met with TransCanada around April 2010. Do you remember that meeting?

**Hon. Brad Duguid:** I know I did have other meetings with TransCanada. I don't recall the date, but go on and I'll try—

**Mr. Peter Tabuns:** Let's say March or April.

**Hon. Brad Duguid:** —and see if it comes back—

**Mr. Peter Tabuns:** So everyone is looking at the fact that you can't build this plant. You can't get a building permit. You can't operate under municipal bylaws. Why

did you folks start looking at ways to compensate TransCanada? They took a business risk; that's why they get paid the big bucks. It's a \$3-billion contract. You didn't want to take the risk; that's why you're privatizing power development. They took on a risk. They said, "Hey, this risk is turning sour. How are you guys going to help us?"

**Hon. Brad Duguid:** I know where you're going with that, and to be frank, when I was minister, I asked the very same questions that you were asking, and my mind was on that same train of thought. The challenge was, there were a couple of force majeures; I believe there were two.

**Mr. Peter Tabuns:** Yes, there were two.

**Hon. Brad Duguid:** There were delays, and the delays were mostly as a result of challenges getting the proper municipal approvals.

**Mr. Peter Tabuns:** Two approvals.

**Hon. Brad Duguid:** The fact is that the city of Oakville and the mayor and the council had done a pretty decent job tying this project up and delaying it. I did have some concerns as to whether this project would ever be able to get a shovel in the ground, given the challenges. I was advised—and I asked the same questions you did—by legal staff that that was uncertain, that there was no certainty as to whether they may be able to move forward or they may not.

But the kicker to me on this issue was the fact that the province always has the power—a lever that we don't use too often—to override the municipal bylaws. So what the legal staff had said to me was, that's the challenge. If this goes to litigation, at the end of the day, the province will likely be held responsible for not taking action, overriding the bylaws and allowing the project to go ahead. So the view of staff to me at that time was that it would present a pretty significant exposure to the city and that we had the ability to move forward with the project through that tool.

**Mr. Peter Tabuns:** You know, for my sins, I've read a lot of these legal opinions in the last while—

**Hon. Brad Duguid:** I pity you.

**Mr. Peter Tabuns:** —and I have never come across that one. So I'd ask, through the Chair, if you would come back to us and bring us that legal opinion showing that—if I understand what you're saying correctly—failure of the province to act by overriding the municipality could leave the province open to liability.

**Hon. Brad Duguid:** That was the advice that I was given. I didn't get—I didn't see a written legal opinion. That was the advice I was given from ministry staff.

**Mr. Peter Tabuns:** Who gave you that?

1800

**Hon. Brad Duguid:** I do not recall. It would be staff within a briefing, likely with the OPA, but again, it was a consistent view that was held by the ministry, by me, by my office and, I expect, the OPA. I would invite you, if you want to seek more legal advice on it, to invite experts who have a legal background, who could probably be more precise in their description, but that was the advice

that I received. That's why your train of thought, which I was absolutely in agreement with at the time as minister—I was going down that same path. That was the challenge. That was the reason why we would have had some liability according to that advice.

**Mr. Peter Tabuns:** How much time do I have left?

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

**Mr. Peter Tabuns:** Excellent.

I may well have missed it, but I have yet to come across a document that follows that line of reasoning. Generally speaking, the OPA seemed to feel that this plant was in trouble, that its value was dramatically diminished as a project because it had two huge hurdles to get over. Sean Mullin had been approached about a legislative solution. It didn't look like it was going to come forward; they had missed the spring session. We had the mayor of Oakville in here saying they were willing to go to the Supreme Court of Canada, which would be way outside the window of the validity of this contract. But you maintain that ministry lawyers told you that the province would be liable if it stood aside?

**Hon. Brad Duguid:** That was the advice I was given, yes.

**Mr. Peter Tabuns:** Would your deputy minister have told you this?

**Hon. Brad Duguid:** Again, you're talking about briefings that I would have had two and a half years ago. As you're aware, when a minister has a briefing, there's often a number of ministry staff. Often on these issues, I may have had even Ontario Power Authority staff there, and my own staff. So I don't recall precisely who would have given me that advice, but it was the advice that I was given as to why we would have really wanted to avoid litigation in many ways and come to a negotiated settlement with TransCanada.

**Mr. Peter Tabuns:** I'll come back to this, but I have a few other questions I want to get in in my remaining minutes here.

When we asked for documents from the OPA, the ministry and the minister's office, we got a lot of documents, except from the minister's office. We got zero. There wasn't a single document from any of the staff in the minister's office—not a hard copy, not emails, not get-well-soon-minister cards that had been sent from TCE, nothing. Is it credible that there were no documents whatsoever in the minister's office relating to these projects from the time that you were minister?

**Hon. Brad Duguid:** I don't know what documents would be pertinent that would have been in my office or in the possession of my staff. I can tell you that in all my days as minister—I don't tend to, for instance, talk about policy files on email. I would never do that. I—

**Mr. Peter Tabuns:** I'm sorry, Minister. I don't mean your personal emails, and I don't mean your personal correspondence. How many staff did you have as minister? You had a chief of staff. You probably had a policy analyst. You probably had a scheduler. Did you have five, 10, 15 people?

**Hon. Brad Duguid:** Somewhere around there. It would fluctuate from time to time, yes.

I understand your question, but I can't think of any documents that they would have in their possession that would be pertinent to the request. Most of the kind of documents that I would see flow through—and I see it through my own eyes, but most of the documents I would see flow through would be things like decks, and generally speaking, those decks are kept by ministry staff. So the documents that I would see would likely be in front of you, and the ministry would have been responsible for producing those documents.

**Mr. Peter Tabuns:** Okay. I'll pass. I have to think about that.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Ms. Albanese, 20 minutes.

**Mrs. Laura Albanese:** Thank you, Minister, for being here with us and being so patient this afternoon with the committee.

I'm just going to go through a few questions, just to clear the record, and you can go as fast or as slow as you would like, but I just need some clarity. I want to go back and ask you a couple of questions about Oakville. We heard that there were a number of contributing factors for relocating the Oakville power plant from the long-term energy plan, and when it became apparent and clear that, due to changes in demand and supply, the plant was no longer needed—but also there was community opposition. Would you agree with that? There were a number of factors, not just one or two?

**Hon. Brad Duguid:** There's no question. There were a number of factors; that, as well as the challenges with regard to municipal approvals that were—TransCanada was very challenged getting their municipal approvals through.

**Mrs. Laura Albanese:** Why was the plant procured in the first place?

**Hon. Brad Duguid:** That's a good question. I think sometimes we forget about where we were at the time when those plants were procured. I've got the date somewhere when this plant was procured, but it was somewhere around 2000—I think Mississauga would have been about 2004, and Oakville would have come later, in 2009.

When we took office, our energy system was in a very challenging state of affairs. We didn't have enough power to meet demand. We were importing power at a very significant cost. There hadn't been the investments needed in infrastructure for many, many years. So our infrastructure was beginning to deteriorate. In essence, when we came to office, we had to rebuild the energy system here in Ontario, which meant significant investments in transmission. In fact, I believe it's now over 5,000 kilometres of transmission—that's like putting transmission from one end of the country to the other. It also meant a huge build in terms of energy generation. I believe, now, we're up to 11,500 megawatts—which is a lot—of power that has been added in new-build projects in the province.

We also decided that as we rebuild the energy system, we want to be able to produce energy in a clean way. We

want to get out of dirty coal. We want to build a clean, reliable, modern energy system, and that's what we embarked on. So, at the time that these plants would have been procured, we were in a very aggressive build of energy generation. In fact, in many ways, for the first few years we were very close to the edge in terms of having enough power to keep the lights on in this province. That's why these investments were being made, and that's why it was really important at the time that these plants were being approved.

As the long-term energy plan points out, as time went on—and that was a long period of time—demand shifted. We had the global recession in 2009, and that had an impact on demand. Our conservation initiatives were beginning to kick in as well, and as companies began to rebuild and as advanced manufacturing began to come back in Ontario, it was coming back differently. A lot of the companies were rebuilding their plants, refurbishing their plants, requiring less power to produce the same amount of production—

**Mrs. Laura Albanese:** Yes, because these were not the only plants that the government was investing in.

**Hon. Brad Duguid:** No. In fact, in all we had, if I recall, 17 gas plants that were being built during that period of time. These are the only two that I would suggest were put in locations that were conceivably not appropriate.

**Mrs. Laura Albanese:** Let's go back to the location. So we know now that Oakville had passed municipal laws, and as we heard, there were some allegations even from some of the members of the opposition that these bylaws should have been enough to stop the plant from being constructed all on their own, but you said that that's not so.

**Hon. Brad Duguid:** No. I wish it were. As I said to my colleague Mr. Tabuns, at the time I looked at it, and I did sense that it was a challenge for the project, but there was absolutely no certainty that these bylaws would prevent the project from ever being built. It certainly had delayed it. There were two force majeures, if I remember, so it delayed it. It had the potential to be challenging for the project, but there was nothing for certain. That was the advice I was given certainly by the ministry and the advice we considered.

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**Mrs. Laura Albanese:** One recurring issue that has come up a lot, speaking about Oakville, was the concern that TCE would sue the government and that efforts were made to avoid a lawsuit, so I'm wondering if you could elaborate on what it would have meant for the taxpayers of Ontario if TCE took legal action against the province.

**Hon. Brad Duguid:** Well, there are a few points. First is, I think if we were not to have moved that plant, it would have been the biggest mistake, given that a lot of people believed that it wasn't in the right location, given the challenges in the local community, more so given the challenges with regard to the project, but when we found out we didn't need the power in the first place in that location, it just didn't make sense to move forward with

that plant in that location. So I think had we done nothing, that would not have been the best option. My confidence in saying that is the fact that every party in the Legislature supported the decision on Oakville, not to build.

So that left two choices, from what I've been advised. One choice was to rip up the contract. Well, we're talking about a \$1.4-billion value, I believe that contract had. That would have been a huge exposure to do that. It would have been an option, but I think the best option was the one we chose, and that was to negotiate the movement of the plant somewhere else and try to do it with the least cost possible.

**Mrs. Laura Albanese:** So that would have been the best possible outcome?

**Hon. Brad Duguid:** The best outcome in an unfortunate situation.

**Mrs. Laura Albanese:** You heard before, in her testimony to this committee, JoAnne Butler from the OPA confirm that transmission upgrades are needed in the southwestern GTA, with or without a new plant in the region. Based on your experience on this file and your familiarity with the long-term energy plan, do you agree with her assessment?

**Hon. Brad Duguid:** Well, I'm not an engineer, so when I get that kind of advice, I think it's wise to accept it as factual and good advice. You know, our transmission system across the province was in need of rebuilding, so I think the point being made there was that we were ultimately going to have to invest in transmission in that community in any event, so it was a case of potentially moving this up as a greater priority in terms of transmission/build projects.

**Mrs. Laura Albanese:** I want to ask you now, given that you have served both as Minister of Energy and Minister of Economic Development and Innovation—you mentioned earlier in your testimony that you are quite experienced with commercially sensitive negotiations. In your experience, what would happen if one party got access to confidential and privileged information about the other party? Would that affect the outcome?

**Hon. Brad Duguid:** I think there's been a number of experts that have come before the committee that have confirmed that—no question. I think that's common sense. If you're in a negotiation with another party and they get access to sensitive material that potentially may expose what maybe your bottom line may be or information that can see where the weak points in your negotiation are, you're giving them an advantage. The playing field has now been altered in that negotiation, and there's no question that had that happened in these recent negotiations, Ontarians would have certainly been impacted, and it would not have been good news for Ontarians.

**Mrs. Laura Albanese:** So, as you are aware, in May 2012, the estimates committee passed a motion put forward by Mr. Leone asking for all correspondence within a specific time frame in the Ministry of Energy and the OPA related to Oakville and Mississauga, and at

the time, as we heard from Chris Bentley earlier—during the time this motion was passed, complex and sensitive negotiations were going on. In your view, what would it have meant if the OPA and the province's negotiating position—do you think it would have been prejudiced if the company had access to confidential and privileged information?

**Hon. Brad Duguid:** Mr. Bentley is a man whom we've all known a long time. If there's a more ethical public representative in the province of Ontario, I suggest I probably haven't met one—a man of full integrity. I think it's actually quite sad, when you look at the treatment that Mr. Bentley had in this Legislature for trying to do what he testified earlier today he was trying to do, and that was to be able to protect the public interest, to protect the interests of Ontarians. I think it was a low point, frankly. I've been here for close to 10 years now, and I'd served here before as an assistant many years in the Peterson years. I think that was a low point for our Legislature, that others would question the integrity of a colleague who they know is a man of absolute dignity, of absolute integrity, who would not in any way do anything but what's in the public interest.

Minister Bentley was caught in a position where he had the committee asking for documents, and he was also being advised that those documents were sensitive and would impact negotiations and potentially cost the province additional costs. What he displayed, I think, was the ultimate integrity in making his best judgment. It's very sad to see the way he was treated in this Legislature.

**Mrs. Laura Albanese:** I guess that sums up your view of the contempt charges against Mr. Bentley.

**Hon. Brad Duguid:** I've been in politics a long time, and I know there's always drama involved in some of these things, but let's go back to what it is that we're talking about here. We're talking about two power plants, and as you brought up yourself, they're two out of 17 that we initially built in terms of gas plants, so two that we didn't get right, that we determined were in the public interest to cancel—one we made the decision on; the other one was made during an election campaign by all three parties. That's what we're talking about here.

All the political intrigue around this might be interesting to some, and certainly I take my appearance here very seriously. But when all the smoke and the rhetoric are cleared, that's what we're left with: two decisions to cancel two energy projects, certainly not the first infrastructure projects cancelled in the province. I hope they're the last, but sometimes mistakes are made at the beginning of a process when you go to site a plant or go to site a project. I think when that's identified, it's in the public interest for all of us to reconsider our positions.

The fact that every party agreed with the decisions that were made ultimately tells me that there's a lot of political rhetoric around this. But at the end of the day, the cancellation of two energy plants is what we're talking about.

**Mrs. Laura Albanese:** Just on that point, almost every witness who has testified at this committee has

confirmed that all three parties committed to cancelling both power plants. Oakville Mayor Burton told the committee that he “won promises from all parties to stop the proposed power plant.” Mayor McCallion from Mississauga told us, “I think all parties would have cancelled it....” We also have transcripts, campaign literature and robocall scripts that highlight these commitments from all parties.

Does it surprise you that the opposition parties are sort of—I don’t want to say “washing their hands,” in a way, of their previous commitments and sort of coming after our government for coming through with the very same commitments that they made during the election to the people of Oakville and Mississauga?

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**Hon. Brad Duguid:** I don’t know if I would use the word “surprise,” necessarily. I think at a certain point in time, though, the public would want all parties to recognize that these decisions were made.

We were in government, so we need to take responsibility for the decisions. I don’t know if my colleagues on the other side were surprised that I was very up front about my role in making the decision on Oakville and very up front about my position on Mississauga—because I thought I owed that to the committee, to be up front about my decisions there.

Certainly, we need to take responsibility, as government. We’re in government; no question. At the same time, the opposition, when they support a decision that we’ve made, ought not to come back later on, trying to find ways to pick away at that decision. Rather, accept the fact that we all agreed that this was the right decision to make, and move forward in the best way possible.

So I don’t know if “surprise” is the right word. Maybe “disappointed” would be a better word.

**Mrs. Laura Albanese:** Let’s go back. We’ve heard different testimonies. One of them was from Stephen Thompson, from Concerned Homeowners for Intelligent Power, who testified that he tried several times to get the Conservative Party to support their cause to stop the power plant from being constructed and that they only helped once the election was under way.

Prior to the election, did any member of the PC Party talk to you, in your capacity as Minister of Energy, about this power plant? Or was the first time that you heard them express their opposition during the election?

**Hon. Brad Duguid:** Are you referring to Mississauga or Oakville or both?

**Mrs. Laura Albanese:** I am referring to Mississauga.

**Hon. Brad Duguid:** The Mississauga gas plant was actually a fairly dormant issue, even in the community, for an extended period of time. Even up until when we made the announcement on Oakville, there hadn’t been a lot of activity there. It had been contracted, I think, back in 2004—I stand to be corrected—early on in our days as a government. It had been contracted way back.

It had a number of setbacks. Certainly, I don’t have all the details to go into the history of why that plant never moved. But there wasn’t a lot happening there, so it was

a fairly dormant issue. I didn’t hear much from any of the opposition on that issue, nor did I hear much from anybody until around the Oakville time. When we made the decision on Oakville, there started to be some more activity around that plant. Part of it may have been that they were awaiting some final approvals from the city of Mississauga that had been appealed. Again, I don’t want to get into too much detail on that, because I’d have to go back and check the records. But I think that was one of the reasons why that plant had not been generating a lot of interest until about that time, and then the interest started to pick up and members began chatting with me about some of the challenges there.

**Mrs. Laura Albanese:** So during the election is when you heard about the PC Party or you were approached by any member who spoke to you as Minister of Energy?

**Hon. Brad Duguid:** We’re in the Legislature together every day—

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

**Hon. Brad Duguid:** I wouldn’t be able to know for sure if a PC member or an NDP member had talked to me—or our own colleagues—in passing. I would suggest that I don’t recall any PC member talking to me about Mississauga before the election. But there may be somebody over there who did, and if that’s the case, I regret that I don’t recall that.

**Mrs. Laura Albanese:** Okay. Thank you, Minister.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Albanese.

To the PC side: Mr. Fedeli, 10 minutes.

**Mr. Victor Fedeli:** Again, Minister—look, I get that you don’t like hearing from these documents. They’re hurtful; I understand that. I do understand that, Brad. To hear—

**Hon. Brad Duguid:** Please let Hansard note that I’m laughing right now.

**Mr. Victor Fedeli:** Well, but to hear these people who are Liberal staffers talk the way they did about you—I understand that. All I’m going to say is—just let me warn you, I have one more. This is the document that was handed out by Mr. Tabuns, and it’s one that we were referring to as well. Let me just read you the first sentence and perhaps maybe the second one, because they kind of get to the gist of it. This is from John Kelly in the justice department, and he’s sent an email to Halyna Perun: “Halyna, I just returned a call from” Michael Barrack and John Finnigan, “counsel to TransCanada.”

**Hon. Brad Duguid:** I’m sorry, Mr. Fedeli. I can’t find where you’re at. It may be my eyesight—

**Mr. Victor Fedeli:** I’m at the first sentence.

**Hon. Brad Duguid:** Maybe I’m in the wrong document.

**Mr. Victor Fedeli:** Right at the top.

**Hon. Brad Duguid:** I can’t see that from there.

**Mr. Victor Fedeli:** That looks good.

“Halyna, I just returned a call from” Michael Barrack and John Finnigan, “counsel to TransCanada. In essence, they confirm that the govt. cancelled the contract and communicated that fact to TransCanada before the Min-

ister of Energy was advised.” This is again from the justice department telling us what’s going on in the Premier’s office. The next sentence says: “Apparently the chief of staff (or equivalent title) in the PO told one”—I’m sure it means “of”—“TransCanada’s senior people at the time they indicated the plant would not proceed that TransCanada would be ‘made whole’ as to damages.”

If you go to the next page, the big paragraph, I think this is going to get to the nub of what went on here, Minister. This is the paragraph that starts off with “I am not convinced.” This, again, is from John Kelly in the justice department talking to about a half-dozen other justice department people. These are his words:

“I think it could be argued that the govt. offered to make TCE whole when it terminated the Oakville plant (the ‘make whole’ being understood to be the net profits over the life of the contract) by finding another gas plant from which it could make the profits and in return, TCE promised not to sue, issue a press release or otherwise embarrass the govt....”

What we see here—what they allege—is, the Premier’s office cancels the TransCanada contract before they told you, and they’ve told TransCanada they’ll make them whole, and in order to save embarrassment or any press releases, they would let TransCanada build another gas plant. This is a billion-dollar decision to save embarrassment of the government. How would you react to what you’re seeing here? And I’m going to ask you: Would the Premier have approved of this? And then I’m going to ask you: Was cabinet aware of this motivation? Thank you.

**Hon. Brad Duguid:** Okay. I’ll try to keep track of those questions, and I promise not to be as hostile as I was in the first round.

**Mr. Victor Fedeli:** I’m only the messenger of these documents, Brad.

**Hon. Brad Duguid:** Let’s look at that first paragraph, because I think that’s important. There’s a suggestion in that first paragraph that somehow or another the Premier’s office had indicated to TransCanada that they had cancelled the contract without telling the minister.

**Mr. Victor Fedeli:** Yes.

**Hon. Brad Duguid:** Well, first off, the Premier’s office didn’t cancel any contract. It’s the Ontario Power Authority that would have to do that. They may have been communicating to TransCanada that our intention was to move forward with the cancellation of that contract. I was advised that that decision was made. I don’t recall the exact date I was advised, but I knew that was happening. Hence, I was preparing, when I met with TransCanada at that time—I think that’s why they’re referring to myself. When I met with TransCanada, I knew the cancellation was happening because it was within 48 hours of me making the announcement.

**Mr. Victor Fedeli:** Move on from there, then. We’ll give you that.

**Hon. Brad Duguid:** Thank you.

**Mr. Victor Fedeli:** What about the “made whole”? Do you think, Minister, they were promised to be made whole?

**Hon. Brad Duguid:** Well, again, I wasn’t in that conversation; I wasn’t in the room at that time. I did see earlier testimony about people projecting what their definitions may be of “made whole” and—

**Mr. Victor Fedeli:** Yes, I read it 10 times from 10 different people.

**Hon. Brad Duguid:** I wasn’t privy to that conversation, so I really can’t say.

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**Mr. Victor Fedeli:** Okay. So this is July 7 that John Kelly is saying his interpretation is that the Premier’s office said, “We’ll make you whole, and here’s how we’ll make you whole.” He says, “Here’s how we’ll make you whole: We’ll find you another gas plant to make the profits. In return, don’t embarrass the government.” Do you concur or do you dispute that that is the motivation why, even though we didn’t need the power—one wasn’t going to be built anywhere else in Ontario—they got a deal?

**Hon. Brad Duguid:** Well, again, I wasn’t privy to that discussion, but I’d certainly be happy to share with you what my view was at the time. We were in a challenging situation. We had a contract, and it was my view that the best way to move forward would be to negotiate the movement of the plant—

**Mr. Victor Fedeli:** I only have three minutes left, so I do have to—

**Hon. Brad Duguid:** Sure. But I think we have to recognize that there would have been some costs to TransCanada—

**Mr. Victor Fedeli:** So shortly after that email, on July 29, 2011—that’s that cabinet agenda, document 1 that I’ve shown you before, where you’ve signed it, Chris Bentley—oh, I’m sorry; it was Minister Bentley we showed this to earlier. So there’s document 1; it’s a cabinet agenda—

**Hon. Brad Duguid:** Okay.

**Mr. Victor Fedeli:** —and it’s signed by Cabinet Minister Bentley, Cabinet Minister Wynne and a couple of other signatures. Do you have that one?

**Hon. Brad Duguid:** I think I have it—document 1?

**Mr. Victor Fedeli:** Yes. Is that your signature down there?

**Hon. Brad Duguid:** My signature is on the second page.

**Mr. Victor Fedeli:** On the second page, right? You’re that second page.

**Hon. Brad Duguid:** Yes.

**Mr. Victor Fedeli:** Okay. Actually, if you go to the end, it says Wynne, Duguid, Bentley and Duncan were in that.

If you go back to the beginning, it says, “Authorizing the Ministry of Energy to....”—this is only a few days after this—“engage in settlement discussions with Trans-Canada ... to find commercial alternatives....” So now there’s a cabinet document tying in with what we’re saying. Is that what your instructions were, in your opinion, considering you were the energy minister at the

time—that you were to come up with a new plant for TransCanada? Is that the cabinet decision?

**Hon. Brad Duguid:** Well, actually, this decision would have been brought forward, as minister myself, to cabinet. It was the middle of the summer and cabinet wasn't meeting; time was of the essence, so cabinet made a decision, as we do sometimes in these circumstances—what we call a walk-around.

**Mr. Victor Fedeli:** We understand that. Minister Bentley explained that to us.

**Hon. Brad Duguid:** So, yes—

**Mr. Victor Fedeli:** You approved—"signified approval," it says; those four people—to engage in a settlement to find a commercial alternative for Trans-Canada—give them a new plant.

**Hon. Brad Duguid:** Yes. This was in response to TransCanada's request. They wanted to know that they were going to get to some form of settlement, so their request in the negotiations—

**Mr. Victor Fedeli:** One more quick question—

**Hon. Brad Duguid:** —was to go to arbitration. That was part of—

**Mr. Victor Fedeli:** One more quick question that I've got to ask before I get gavelled out. When you first started talking, you said you got a call that Mississauga would be cancelled. Who did that call come from?

**Hon. Brad Duguid:** To the best of my recollection, I think it was Sean Mullin, but I—to the best of my recollection. I don't want to say for sure, but to the best of my recollection—

**Mr. Victor Fedeli:** So somebody told you Mississauga was cancelled and—

**Hon. Brad Duguid:** No. They—

**Mr. Victor Fedeli:** —other people were claiming that—

**Hon. Brad Duguid:** Two conversations: The first was, they were going to cancel it. I let them know what my views were. They may have reconsidered, but they didn't cancel at the time, and then I got a second call that indicated they had decided to go ahead and cancel.

**Mr. Victor Fedeli:** So let's just talk—there was another document on October 1, where—these are handwritten notes—Sean Mullin and others: "Gov't will return to TC before the LSTEP is" finished "with potential options for other gas plants." I was asking the question earlier. Why did the government guarantee TransCanada the inside track?

**Hon. Brad Duguid:** They would never be guaranteed the inside track to the long-term energy plan. What I expect they would have been referring to is any future plans around gas plant growth, where there may be opportunities to—

**Mr. Victor Fedeli:** "Before the LSTEP is finalized with potential"—this is before it was finalized—

**Hon. Brad Duguid:** I heard your question, yes.

**Mr. Victor Fedeli:** I'm sorry?

**Hon. Brad Duguid:** I heard your question. No, they would never be given access to the—

**Mr. Victor Fedeli:** But this clearly states—Jamison Steeve, Sean Mullin etc. were there.

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

**Mr. Tabuns,** the floor is yours: 10 minutes.

**Mr. Peter Tabuns:** I'm going to follow on that question of the Mississauga cancellation, and then I'll go back to my regular run of questions.

**Hon. Brad Duguid:** Sure.

**Mr. Peter Tabuns:** You were called prior to a public announcement that Mississauga was going to be cancelled.

**Hon. Brad Duguid:** Yes. Well, I was called on two occasions during the campaign, and—

**Mr. Peter Tabuns:** Okay. And you were still Minister of Energy?

**Hon. Brad Duguid:** I was still Minister of Energy, but it was during the campaign—

**Mr. Peter Tabuns:** Were you called for advice or were you being called to be told?

**Hon. Brad Duguid:** I expect I was being called to get a reaction, but again, I wasn't making the call. I'd certainly be happy to elaborate a little bit on the call. It wasn't a long call. I was in the process, as you and probably everyone else were at the time, of knocking on doors. So I was right out in the street when I got the call. They advised that they were planning on making an announcement to cancel the Mississauga plant. I advised them, "You know that I'm not in favour of doing that." Frankly, it was my view that the energy file had actually been going well during the election and it wasn't a good time to bring it up. The announcement wasn't made at that time, and I don't know exactly why it wasn't made, other than I assume that my views were being considered.

Sometime later, I got another call, toward the end of the campaign—I don't remember the exact day—that indicated they were going to go forward with the announcement.

**Mr. Peter Tabuns:** Who called you the second time?

**Hon. Brad Duguid:** Both times, I believe it was the same person. I think it was Sean Mullin.

**Mr. Peter Tabuns:** I'm not sure he was still there at the time.

**Hon. Brad Duguid:** Well, he may have been on the campaign; right?

**Mr. Peter Tabuns:** Ah, okay.

**Hon. Brad Duguid:** Yes. It was somebody from the campaign. It wasn't from Queen's Park. I believe it was, but I just can't say for sure because I was kind of on the run at that time in the campaign.

**Mr. Peter Tabuns:** Although he had been an energy analyst in the Premier's office, he wasn't running the campaign. Who was he calling at the behest of?

**Hon. Brad Duguid:** Again, he was calling to inform me on behalf of the campaign. In terms of individuals he was calling on behalf of, I wouldn't know.

**Mr. Peter Tabuns:** You've said that you and the Premier made the decision to cancel the Oakville plant.

**Hon. Brad Duguid:** Yes. Premier McGuinty and I.

**Mr. Peter Tabuns:** Yes.

**Hon. Brad Duguid:** Ultimately, you know, with—yes.

**Mr. Peter Tabuns:** How many discussions did you go through before you decided to cancel this plant?

**Hon. Brad Duguid:** As I said, when I initially approached the Premier early on when I received the privilege of serving as Minister of Energy, it would have likely been February or somewhere around there, that year, asking him if he would mind if I put some fresh eyes on this project: “There seem to be problems here, and I think I ought to take another look at it.” There was a lot of time that passed between that time in February and, ultimately, the decision in October. Throughout that time, there was consideration of what our options might be, and there would have been some discussion going back and forth.

I wouldn’t say that the Premier and I discussed this issue on a regular basis. As things evolved, I would get back to him and advise where we were at in terms of—we were in a listening mode, as I said earlier, trying to get as much information as we could and determining the best route to go. This was not a decision taken lightly. This was a big project and we knew that it was going to be a challenge.

**Mr. Peter Tabuns:** We’ve been told that the Premier didn’t know what this would cost when he cancelled it. Did you know?

**Hon. Brad Duguid:** As I’ve said before, the challenge here is, it’s impossible to know what the costs would be until you finish the negotiations. Had we ripped up the contract, I would expect that the costs would have been somewhere around the value of the agreement. But we didn’t go that route. We wanted to negotiate the movement of the plant, which, as you see in the agreement, was a complex thing to do. So we wouldn’t have known what the outcome was going to be until we entered the negotiations, and they took a long time until we got to a final agreement.

**Mr. Peter Tabuns:** I’m going to switch to the Mississauga plant.

**Hon. Brad Duguid:** Sure.

**Mr. Peter Tabuns:** Prior to the cancellation of the Mississauga plant, were you aware that your ministry, in the spring of 2011, was looking at options for blocking it?

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**Hon. Brad Duguid:** I’m sorry; in the spring—looking for options—

**Mr. Peter Tabuns:** Of 2011, yes; options for blocking the plant’s construction.

**Hon. Brad Duguid:** In what year?

**Mr. Peter Tabuns:** In 2011.

**Hon. Brad Duguid:** In 2011. It’s hard to recall at that time what would have been looked at. As I said at the outset, I would have been approached on the Mississauga plant by colleagues who had challenges in their local

communities. I would have taken a look at what the options were with regard to Mississauga.

I don’t recall any formal discussion—I certainly never had direction from the Premier or cabinet—on that issue. So that may have just been—and it’s difficult for me to say—a result of questions we were asking around, “What are the options with regard to Mississauga?” But as I said, ultimately my advice at the time was not to cancel it.

**Mr. Peter Tabuns:** When you made that decision, looking at the long-term energy plan and saying, “Okay, the rate of demand growth in the southwest GTA has slowed down. We could get away with not building it here”—and then you decided to build it somewhere else in Ontario. At the same time, the rate of demand has been dropping about half a per cent a year since 2006. So why did you build it somewhere else?

**Hon. Brad Duguid:** If you look at the long-term energy plan, which I happen to have a copy of with me today. You’ve looked at it—

**Mr. Peter Tabuns:** Yes.

**Hon. Brad Duguid:** —because we’ve talked about it. There will be a period of time, as you know, when the nuclear units are being refurbished—something you’re not too favourable about. When they’re being refurbished, there will be a gap in power at some point in time, as outlined, I believe, in the long-term energy plan, so there will be a need to continue to build power as a result of that.

That said, there will still be a need for more energy projects. Now we’re at a point in time where it will soon be time to review our long-term energy plan. We’ll have to take another look at demand going forward. We’ll have to take another look to determine whether that gap is still as severe as it initially was. Certainly, at the time that these discussions were taking place, there was still going to be a projected need for more energy generation.

**Mr. Peter Tabuns:** So we’ve signed on, or the government has signed on, for a 20-year contract to cover a five-year gap, an eight-year gap? Does this make sense?

**Hon. Brad Duguid:** Well, when you look into the future, there’s that gap with regard to the nuclear units.

**Mr. Peter Tabuns:** Yes.

**Hon. Brad Duguid:** The other challenge will be when the electrification of transportation takes place—

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

**Hon. Brad Duguid:** —and the advent of the electric car comes into play in North America. There are very few people who don’t believe that’s going to be a serious energy challenge. So that’s longer term, but it’s within the planning period that we have to be conscious of.

**Mr. Peter Tabuns:** I’d just note, Chair, that at the end of the questions by the Liberal caucus, I have a matter I want to raise with the committee.

**The Chair (Mr. Shafiq Qaadri):** We look forward to it, Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Ms. Albanese, 10 minutes.

**Mrs. Laura Albanese:** Thank you, Mr. Chair. I just had one last question. Former Minister Bentley was here to testify earlier today, and you mentioned that you were able to listen in on part of his testimony. I just wanted to ask what you thought of the attacks of the opposition against—

**Hon. Brad Duguid:** I appreciate that question, and I understand; the opposition do have a job to do, and I recognize that. Their job is to critique government and critique us. I don't object to any of the questions that I had today.

I think where I have a challenge is when comments are made on personality, on attacking character. That's not my style of politics. In all the years I've been in power, I've tried to avoid that. I don't think that's ever been the style of our government. It is a style of some, and I would suggest we've seen that with the Hudak campaigns; we've seen it with the Harris campaigns; we've seen it with the Harper campaigns—character attacks as opposed to dealing with what we're really here for: the facts. You know, the simple fact is, we cancelled a couple of energy plants—big decisions. We did them for—certainly Oakville—the right reasons, and when it comes to Mississauga, it was something all three political parties agreed to do during the campaign.

I don't think there's a need for personal attacks, and I'm not suggesting—today at committee I didn't see too much of that. I was a little offended by some comments made about my own character in the beginning and probably should have reacted a little less vociferously, but that's my scrappy-Scarborough-kid nature that I just can't help myself sometimes.

But I think it's more so the treatment that Mr. Bentley went through. It was challenging I'm sure for him, having the accusations being made that he was hiding documents—ridiculous. This is a man of absolute integrity, a man of ethics, before he got into politics, during his time here and certainly afterwards. I know every member around this committee has a great deal of respect for Chris Bentley. I know they did even during that time. It's just a shame when the lights of Queen's Park and the rhetoric get the better of us, and we start attacking on the basis of personality. To me, as I said, I think that was one of the low points that I've seen at Queen's Park in all the years that I've been here as an assistant or followed Queen's Park or been here as a member.

**Mrs. Laura Albanese:** Thank you very much, Minister.

**Hon. Brad Duguid:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Albanese, and thanks to you, Minister Duguid, for your presence and testimony.

**Hon. Brad Duguid:** Thank you, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** We still have some committee business. We have a motion before the floor from Mr. Fedeli, and I invite you to present it.

**Mr. Victor Fedeli:** I move that the Standing Committee on Justice Policy requests the following documents from Cabinet Office and the Office of the Budget

and Treasury Board within two calendar weeks of the date of the motion passing:

(1) All documentation, electronic or otherwise, between January 1, 2010, and April 23, 2012, related to the cancellation and relocation of the power plants in Oakville and Mississauga, including but not limited to documents containing any and all proxy names or code names such as but not limited to SWGTA, Project Vapour, Project Vapour-lock, Project Apple, Project Banana and Project Fruit Salad.

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

Comments before we vote on this? Mr. Delaney.

**Mr. Bob Delaney:** Chair, just to look at the wording, may I please have a five-minute recess in the event that we have a question with the wording? I understand the intent of the motion. We just need a few minutes, please.

**The Chair (Mr. Shafiq Qaadri):** A five-minute, approximate, recess.

*The committee recessed from 1848 to 1859.*

**The Chair (Mr. Shafiq Qaadri):** All right. Thank you, gentlemen and ladies. We are now back in session.

We have Mr. Fedeli's motion before the floor. Are there any further comments before we—Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. I had a discussion with Mr. Fedeli. I'm wondering whether or not we can be specific, either in an amendment or in Hansard that we can refer to: Mr. Fedeli asks for the documents within two calendar weeks of the date of the motion passing, and experience has shown us that even with the best efforts—the timespan being asked for here is a very long one; it's two years and change—we've found that it's taking them longer to do that, even with their best efforts. So I would like to ask Mr. Fedeli whether or not we can agree on some amended wording that reflects the difficulty that witnesses have told the committee. That's one point.

Another point is that the motion asks for all documentation. I'm wondering whether or not the motion could be a little more specific on what "documentation" is. Again, that's just so the people who are looking for the responsive records can have a cohesive search term to look for.

I've pointed out to Mr. Fedeli that in the wording of the language, where he says "containing any and all proxy names or code names such as"—and here are the operative words—"but not limited to" and then he's got a number of search terms. The words "but not limited to" are at the very least redundant, and otherwise, if you're looking for it, you're saying, "But what is it that you mean?" I understand his intent is that if there were any other names, to include those other names, but in the interest of clarity and assisting in moving it forward, I'd like to ask whether or not we could take this motion and perhaps word it better to enable the government to be more responsive and to get to it within a reasonable time span.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. I might just advise that if Mr. Fedeli is willing

to do that, I don't think this is something that can be done on the fly. Presumably you might want to bring this up at our next committee meeting. That is an option.

**Mr. Victor Fedeli:** Thank you, Chair. I believe the motion should stand. I know that where we say "such as but not limited to" is a little bit of belts and suspenders, but I have found in the eight weeks here and in the many, many months preceding that we need that assurance. The Premier reminds us every day that documents will continue to be turned over. And this is a reasonable request of timing: two weeks. Day after day after day we've been asking for that and have wonderfully been receiving these documents, so I have no problem with it—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. I take that as a no to your request, Mr. Delaney.

**Mr. Victor Fedeli:** I guess the short version would have been just no.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. Any there any further comments before—yes, Mr. Delaney?

**Mr. Bob Delaney:** Chair, it does answer part of it, but one of the other parts I raised—two of the other parts I raised—are the "within two calendar weeks." I'm wondering whether or not Mr. Fedeli would consider either an expansion or some clarification that would allow for best efforts or subsequent releases or an interim report after two weeks if they haven't found everything or if they need more time—all circumstances that in the deliberations of the committee we've found have come to pass, with hard-working people doing their very best under very tight time lines.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Fedeli, "best efforts," "as able to," etc.?

**Mr. Victor Fedeli:** I'm happy with the way the motion stands, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Are there any further comments before we move to the—

**Mr. Bob Delaney:** Just one.

**The Chair (Mr. Shafiq Qaadri):** One more. Mr. Delaney.

**Mr. Bob Delaney:** The clarification over the word "documentation." Would Mr. Fedeli be able to, either in the motion or in a description before the committee, amplify what he meant by documentation, again in the interests of making the work of whoever is composing the search more doable?

**The Chair (Mr. Shafiq Qaadri):** Thank you. He doesn't seem prone to amplification, but I will ask. Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you, Chair. Was this approved by the Clerk? It's in order?

**The Chair (Mr. Shafiq Qaadri):** The motion is in order, yes.

**Mr. Victor Fedeli:** Then I'll let the motion stand. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. I take it there are no further comments? All those in favour of this particular motion? All opposed? Motion carried.

Mr. Tabuns, did you have one other further order of business?

**Mr. Peter Tabuns:** Yes, thank you very much, Chair. Mr. Delaney earlier today tried to bring forward a resolution regarding having Colin Andersen appear as a witness.

**The Chair (Mr. Shafiq Qaadri):** A motion.

**Mr. Peter Tabuns:** A motion; sorry. Thank you. The motion was defeated in the end. I would ask: Are you going to be bringing forward Colin Andersen as a witness in your next rotation?

**Mr. Bob Delaney:** My understanding is that the next witness that the government plans to bring forward is Mr. Hudak, and possibly Mr. Andersen as soon as possible thereafter.

**Mr. Peter Tabuns:** So what was the urgency in getting Mr. Andersen here tomorrow, if he just goes into your longer rotation?

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns, do you have a motion before the floor?

**Mr. Peter Tabuns:** No.

**The Chair (Mr. Shafiq Qaadri):** Then I would advise that this very intriguing conversation take place later.

**Mr. Bob Delaney:** I have no trouble with that, Chair.

**The Chair (Mr. Shafiq Qaadri):** Do you have a motion?

**Mr. Peter Tabuns:** No. I would just inform you, then, that we will be asking that Mr. Andersen appear before the committee on Thursday morning as our witness in place of the previously—

**The Clerk of the Committee (Ms. Tamara Poman-ski):** This Thursday morning?

**The Chair (Mr. Shafiq Qaadri):** Seven calendar days' notice is required, apparently.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Thank you. With your indulgence, the committee is now adjourned.

*The committee adjourned at 1905.*

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