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**Official Report
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Thursday 18 April 2013

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Jeudi 18 avril 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 18 April 2013

Jeudi 18 avril 2013

The committee met at 0830 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, the justice policy committee is now in session. As you know, we're here to consider issues with regard to energy infrastructure, in particular gas plants.

MR. DAVID LINDSAY

The Chair (Mr. Shafiq Qaadri): I would invite our first witness, Mr. David Lindsay, to please come forward and to be sworn in.

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

Mr. David Lindsay: Yes, I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Lindsay. You have five minutes for an introductory address and then rotation by questions. Go ahead.

Mr. David Lindsay: Thank you very much, Mr. Chairman. I appreciate the opportunity to be before you today. Coming in this morning, I saw Janet at the gift shop and a number of familiar faces, so I feel like I've come home. Thank you very much for a chance to come back to Queen's Park.

I began my career here in this building as a junior political staff person in 1984. It was part of the Bill Davis administration at that time, so I've worked in opposition, I've worked in government, I've worked in the Premier's office, I've worked in line ministries; I've served as political staff and I've served as a public servant.

In 2006, at the request of the secretary of cabinet of the day, Tony Dean, and the Premier, I was asked to come back and serve as a deputy minister. I was very privileged and proud to serve eight cabinet ministers in the McGuinty administration. After almost a 30-year career in Queen's Park and the precincts of Queen's Park, I retired in March 2012, having worked with public servants, political people of different stripes and different backgrounds on many different issues.

While I might have retired from Queen's Park, I'm still passionate about the province and passionate about our political institutions. I like to think of myself as a

student of government, a student of the democratic process and a student of our parliamentary system.

The responsibility for decision-making rests with elected officials, and in the bureaucracy, the vernacular we use quite often and quite frequently is, "We'll have to check that with the decision-makers," or "We'll get approval from our decision-makers."

A professional non-partisan public service is incredibly valuable and incredibly important in our system of government. The public service offers its best professional advice and support to the government of the day. I experienced the most professional and non-partisan support from public servants when I was on the political side, and I hope I was able to provide quality professional, non-partisan support when I became a member of the public service.

The ethos or the character and fundamental values of the Ontario public service are something I've experienced from all sides over three decades at Queen's Park. It is an honourable profession undertaken by smart, dedicated and honourable people, and I was proud to call myself a member of the Ontario public service for a time.

I assume, for the purpose of today's committee deliberations, you are most interested in my time as Deputy Minister of Energy from June 2010 until my retirement in March 2012. Upon my retirement, I didn't keep any documents—they belong to the crown, they belong to the ministry—so they remained in the Ministry of Energy. Indeed, I didn't even keep a copy of my own Outlook calendar, so I'm at a little bit of a disadvantage when we get into specific dates and details. In trying to prepare for the committee today, thank heavens for the Internet. I used Google to try to brief myself on a little of a reminder on the chronology of things.

But having said all of that, my ethos as a public servant remains. I want to be as helpful to this committee as I can, so I look forward to your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Lindsay. To the Conservative side: 20 minutes. Mr. Fedeli.

Mr. Victor Fedeli: Mr. Lindsay, welcome. Thank you so much for your 30-year career. As a former mayor, we crossed paths many, many times. I've always appreciated your candidness and counsel and look forward to the same from you today. It's great to have you here.

I want to get right into it because our time is so limited. I'm going to start with Mississauga for about

half of this and then Oakville, so the first set of questions is going to be all about Mississauga.

Who notified you of the decision to cancel the Mississauga plant?

Mr. David Lindsay: In the Ontario public service, my boss is the secretary of cabinet, so that would have been Shelly Jamieson.

Mr. Victor Fedeli: And when was that?

Mr. David Lindsay: What was the election date?

Mr. Victor Fedeli: The 6th of October.

Mr. David Lindsay: So the announcement, I guess, was in September, in the middle of the campaign. We all read the newspapers, so we knew what was happening. We knew we're in election mode, so we don't take any action at this point; we'll see who the formal government is. It was the day after the election that the secretary phoned me and said one of the priorities of the Premier and priorities of the government was to deal with the Mississauga gas plant.

Mr. Victor Fedeli: Okay. What instructions were you given with respect to the cancellation?

Mr. David Lindsay: Well, because we had had some experience with the Oakville gas plant, we recognized it's a legally and financially complicated thing, so creating a team of people to work on it would be the first thing we would do, gather the appropriate information. The contract isn't with the government of Ontario, as the committee already knows; you've had all these presentations. The contract isn't with the government; it's with the OPA. We worked closely with the OPA to make sure the wishes of the decision-makers are being fulfilled.

Mr. Victor Fedeli: Were you given any instructions by Minister Duguid and then, after the election, Minister Bentley, any particular instructions with respect to the cancellation of the Mississauga plant?

Mr. David Lindsay: So we're talking about the Mississauga plant?

Mr. Victor Fedeli: We're talking about Mississauga for 10 minutes.

Mr. David Lindsay: No. The first instruction we heard came from the election announcement and the day after the election.

Mr. Victor Fedeli: So would you have received any subsequent instruction from either of the ministers?

Mr. David Lindsay: No. The new minister was briefed as he became the minister, and we were executing the decision that the Premier had requested coming out of the election campaign.

Mr. Victor Fedeli: Okay. Had you ever discussed the cancellation of the Mississauga power plant with either Premier McGuinty or now-Premier Wynne?

Mr. David Lindsay: I have not, no.

Mr. Victor Fedeli: There's a document that we have; it's called document 1—

Mr. David Lindsay: When I started here, I didn't need reading glasses.

Mr. Victor Fedeli: Document 1, right at the bottom, says, "Deputy Lindsay spoke of a 'negotiating mandate.'" We also heard that from Mr. Delaney yesterday in

addressing the auditor. It kind of was the first time I'd heard that expression, from Mr. Delaney: "We have here a negotiating mandate." What is that and who gave it to you or who set it? Right at the bottom, do you see it? "Deputy Lindsay spoke of a 'negotiating mandate.'" What does that mean? What was it, basically? What was it you wanted from Mississauga?

Mr. David Lindsay: Just give me a second here.

Mr. Victor Fedeli: Yes. The whole document is sort of unrelated to that. Just that expression "negotiating mandate" that we heard yesterday for the first time.

Mr. David Lindsay: Let me try to answer your specific question. A negotiating mandate, whether you're talking about negotiating a union agreement or a business contract, is, what's the objective you're trying to accomplish, how best can we accomplish that, and then how do we go about doing it? With respect to the Mississauga gas plant, what is it you want to do? Do you want to negotiate with the proponent? Do you want to bring in legislation to change it? What is it you're looking to do here?

Mr. Victor Fedeli: So was the mandate set? Not just, "What is it you want to do?" Was there a mandate that said, "Here is what you want to do: Get the best value," or, "Do the deal at any cost"? What was the mandate? There must be a mandate you worked under.

Mr. David Lindsay: Well, I think there's a lot of—I don't think; I know. There would be a lot exploring of, what are our options here? How best can we make sure—in the energy system, it's complicated for a number of reasons. You're trying to make sure the integrity of the electrons is maintained in the system, you want to maintain its best financial/fiduciary responsibilities, and the public good and the public interest. Those three buckets of things, you're trying to balance. The OPA has energy experts that manage the system and the electrons, working with Hydro One and the OPG, and then the finance guys have the expertise they bring. The negotiating mandate is to maximize all of those.

0840

Mr. Victor Fedeli: Document 2, if you flip over to the next one, is a cabinet minute. It's a Ministry of Energy cabinet minute, and it's from October 2011. Down at the bottom it says, "This report back would include recommendations as to what share, if any, of the cost would be appropriately borne by the government through the Consolidated Revenue Fund." Would this cabinet minute or something like this have gone to cabinet?

Mr. David Lindsay: It says "draft" on it, so whether this one went or another version of it, the question to be determined in that bullet point is how much is going to be on the tax base and how much is going to be on the rate base. So that discussion would have been prompted at the cabinet table by—whether this exact one or a similar one to it.

Mr. Victor Fedeli: It's the only one we have.

Mr. David Lindsay: Okay.

Mr. Victor Fedeli: To the best of my knowledge, this is the only one we have. There's 56,000 documents. The word "draft" there or not is not by design.

So what you're saying is, this would have gone to cabinet on or around October 2011, between October and December 2011, as it says here, "The Minister of Energy to report back to cabinet by December 2011 with the details of the discussions ... with Eastern Power." Are you telling me that cabinet would be involved in these discussions or made aware of these discussions because of this cabinet minute?

Mr. David Lindsay: They definitely would not be involved in these discussions.

Mr. Victor Fedeli: Not involved.

Mr. David Lindsay: It's between the Ontario Power Authority and the contractor and the contractee—

Mr. Victor Fedeli: So they would be made aware of these discussions?

Mr. David Lindsay: Yes, bring them back, either progress or success.

Mr. Victor Fedeli: Would you have any knowledge whether they'd be aware of the numbers that we're talking about?

Mr. David Lindsay: Probably not at that point—

Mr. Victor Fedeli: At this point.

Mr. David Lindsay: There are a lot of moving parts. We had lots of things we discovered throughout the process that changed assumptions. So that would have been just, "We'll keep you informed as we build this relationship."

Mr. Victor Fedeli: Yes, that's fair.

You talk about a "back pocket 'hammer.'" Do you know what you're referring to in terms of a back hammer?

Mr. David Lindsay: That's from your first document.

Mr. Victor Fedeli: Yes.

Mr. David Lindsay: Again, that's part of the negotiating mandate, what is it we can use. When you go into a negotiation, there's a challenge that if one side has either more knowledge or more information or they have you—to use the vernacular—over a barrel, so what is it we can do that gives us a good counterweight or counterbalance or a hammer—

Mr. Victor Fedeli: And what was your hammer, do you think, in this case? What did you have in your back pocket?

Mr. David Lindsay: Well, I don't recall specifically, but brainstorming lots of ideas. The business would obviously want to continue to do business with the government, so having tense, difficult relationships with the government means you're not going to have good, forward business. The government has the power to bring forward legislation to change things if negotiations aren't going well.

Mr. Victor Fedeli: So that's the bit of a hammer then, you think?

Mr. David Lindsay: For negotiating purposes. I would not be recommending that you go to that step, but you certainly need to know what your ability is in a negotiation.

Mr. Victor Fedeli: So you also thought the mandate should include a firm cap. What was the firm cap that you would have set, in your opinion, on Mississauga?

Mr. David Lindsay: I stand to be corrected. If someone shows me a minute that says I said it—

Mr. Victor Fedeli: Oh, I'm still on document 1, page 2. It says, "Deputy Lindsay asked what would be the back pocket 'hammer'—and if it's legislation—that should be addressed in the material for cabinet's consideration. He also thought the mandate should include a 'firm cap.'" This is from Halyna Perun.

Mr. David Lindsay: I found it. It's on the second page. I see it here, yes.

Mr. Victor Fedeli: Yes.

Mr. David Lindsay: Well, again, we were looking for, as we go into this transaction or this renegotiation of this transaction, what are the parameters we've got here?

Mr. Victor Fedeli: Did you ever receive a parameter? Did you ever receive a firm cap? You said you thought you should have a firm cap. Did you ever get one from anybody?

Mr. David Lindsay: I think it was recognized that we didn't have enough details to even come up with a firm cap. So I don't think it was a deliberate "No, you do not have a firm cap." That is not what we heard, but I think because there was not enough information, we couldn't arrive at one.

Mr. Victor Fedeli: Just skipping to Oakville just for one second, but I'll be right back on Mississauga. If you wanted a mandate and a firm cap and a back pocket hammer for Mississauga, would you have looked for or sought the same items for Oakville negotiations back then?

Mr. David Lindsay: In any negotiation—I had an opportunity to also be dealing on or about the same time with Samsung, renegotiating with Samsung. So looking for a negotiating mandate—What is it we're trying to accomplish? What are our parameters?—would be a standard thing you would be looking for.

Mr. Victor Fedeli: As we jump back to doc 2, the cabinet minute, basically the secretary of cabinet wanted folks to begin working on the material to take to cabinet to scope out a mandate. I'm still on this mandate. The materials would detail the sunk cost, the lost profits. Would you recall any advice sent to cabinet at that time in terms of sunk costs or lost profits?

Mr. David Lindsay: I apologize, but it's more than a year ago, so I don't have any specific details in my head.

Mr. Victor Fedeli: Okay.

Mr. David Lindsay: The Ministry of Energy would have worked closely and cooperatively with the Ontario Power Authority to try and help scope that out. What specifically was shared and how much we tried to maintain confidentially, I do not recall.

Mr. Victor Fedeli: Okay. On document 3, down at the bottom—this is from Halyna Perun again—"We have advised Deputy Lindsay that the Minister of Energy does not have clear legal authority to direct the OPA to take any significant commercial steps in relation to the contract."

Wasn't it regular practice for the OPA to take direction from and collaborate with the ministry?

Mr. David Lindsay: Yes, collaboration and working closely with the OPA professional body delivering the contracts for the energy system, certainly. Do they have legal authority to tell them what to do on one particular contract? I think that's the intent of that sentence, if I'm reading it correctly: Can the minister just tell them to change a contract they've signed? That would be my interpretation of what that means.

Mr. Victor Fedeli: Okay. So if a ministry staffer showed up telling the OPA staff how to search for the documents, would they follow that lead?

Mr. David Lindsay: Ministry staff—I'm not sure I understand the question.

Mr. Victor Fedeli: I'm asking you, if a Ministry of Energy staffer went over to OPA and told them how to search for documents, would the OPA, in your opinion, follow that lead?

Mr. David Lindsay: Public servants and professional people at the OPA try to be supportive and helpful of the government of the day, so they try to understand what they want to accomplish and try to help them. Taking direction on how to file documents and what documents to release is not normal practice.

Mr. Victor Fedeli: Not normal practice.

Mr. David Lindsay: No.

Mr. Victor Fedeli: Okay.

Document 4—this is from Murray Segal: “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 a chat with [cabinet] colleagues, he protects himself re assumption of final risk without now going to [treasury board].”

Do you understand what that sentence says and means?

Mr. David Lindsay: Unfortunately, I do.

Mr. Victor Fedeli: Can you explain that to the rest of us, then? Because I think we do too.

Mr. David Lindsay: Sure. Yes, because it is a practice, and my colleagues in the Ministry of Finance quote the particular clause in the finance act regularly—I forget the number, but it's a practice that the minister should not be committing the treasury or committing the taxpayers to money without having had treasury board approval.

If there were to be some costs, in changing a contract, to the Ontario Power Authority, under normal circumstances the costs incurred by the Ontario Power Authority are borne by the rate base. If it is determined that because some of these costs are due to a government decision and should not appropriately be on the rate base, then they would be borne by the taxpayers on the tax base. But because that hadn't been determined yet, Minister Bentley would not be committing the tax base, but the Ontario Power Authority were concerned they had a fiduciary responsibility to protect the rate base. So they wanted some assurance that that discussion would be allowed to take place at some point. So saying, “Yes, we'll be glad to have that discussion at some point,” is not necessarily committing anything from the treasury at

that moment in time. That's my interpretation of that sentence.

0850

Mr. Victor Fedeli: So the auditor basically alluded to the fact that this is how they got around spending \$275 million but only announcing \$190 million. He said that first they announced the total cost was \$190 million, and then they made a word change, that “the cost to the taxpayer was \$190 million (by the way, we found out the cost to the ratepayer was \$85 million more).” We believe that sentence talks to that: the difference between the taxpayer and the ratepayer. It may have been in a different context here, but that is how it resulted in the extra \$85 million being put on the bill of the ratepayer.

Mr. David Lindsay: I've been travelling a lot lately, so I have not had an opportunity to look at the auditor's report, so I can't speak to how he derived that split of money and how that works.

Mr. Victor Fedeli: He was here for an hour yesterday and confirmed that yet again.

Mr. David Lindsay: Okay.

Mr. Victor Fedeli: The “Bentley need refer to taxpayer vs ratepayer”: I think we now completely understand what that phrase means.

Mr. David Lindsay: Glad to be helpful.

Mr. Victor Fedeli: I'm sorry?

Mr. David Lindsay: Glad to be helpful.

Mr. Victor Fedeli: Well, when I asked you if you knew what that meant, “Unfortunately, I do” was pretty telling.

Mr. David Lindsay: It's not something I can talk about at a cocktail party.

Mr. Victor Fedeli: No, I would appreciate that you wouldn't want to.

Mr. David Lindsay: It's not a skill people value.

Mr. Victor Fedeli: On document 5—actually, I'm just going to skip—actually, I just want to talk about document 5. The Ontario Power Authority was thinking about putting—it says “forcing Greenfield into CCAA protection.” Do you know anything about that, David?

Mr. David Lindsay: I'm not a lawyer and not an expert on these things, but I think again, in the spirit of looking at all options and trying to create a best way to deliver the government's—the elected officials'—objectives while minimizing costs, they were looking at creative ways to do this, and—

Mr. Victor Fedeli: Was forcing them into bankruptcy protection—

Mr. David Lindsay: Well, it limits the liabilities. It puts a ring fence around things and you sort of freeze things at a moment in time. So it's a business tool that can be used to try and limit the costs—

Mr. Victor Fedeli: The auditor was pretty clear about what the liabilities turned out to be yesterday in his disclosure.

I'm going to switch to Oakville here. On document 6, Sean Mullin from the OPO, the Office of the Premier of Ontario, writes to you. Basically, you were clearly looped in with the Premier's office on the Oakville cancellation.

I would ask you, then, to the best of your recollection, David, how many meetings would you have attended with Sean Mullin, Craig MacLennan and Jamison Steeve regarding TransCanada or SWGTA, TC, TCA, all the names that they wanted redacted?

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

Mr. David Lindsay: I don't know how many meetings—not a lot; two or three. I became the deputy of energy and infrastructure in June. In early August, I was the beneficiary of heading up two ministries, and I had a brand new minister to brief. Minister Chiarelli, who now is the minister, was the Minister of Infrastructure. So I spent that month pretty well briefing him and helping him establish a new office. So my availability wasn't great in the early part, but by the time they got to—I'm checking my timeline that I've put together here—August, or October, pardon me, around October they were coming to the conclusion that they wanted to terminate the Oakville gas plant, so my involvement became more and more at that point.

Mr. Victor Fedeli: Okay, thank you.

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

Mr. Peter Tabuns: Mr. Lindsay, thanks for being here this morning.

I want to follow on two documents that Mr. Fedeli introduced, and then I'll go on to my questions. First, this cabinet minute.

Mr. David Lindsay: Yes.

Mr. Peter Tabuns: If I heard you correctly, this was advice to cabinet, talking about what should be charged to the tax base and what should be charged to the rate base. Did I understand you correctly?

Mr. David Lindsay: Yes. I wouldn't use the words "advice to cabinet." It was basically a heads-up to cabinet that there will have to be a discussion about how much goes to the tax base and the rate base. No determination had been made whether it was zero or 100%. It was, "We'll have to have a discussion about that and report back to you."

Mr. Peter Tabuns: Again, the split between the tax base and the rate base: Why would they be split over the two of them? You've spoken to that, but I just want—

Mr. David Lindsay: Yes. The Ontario Power Authority has a fiduciary responsibility to procure contracts at the best price they can to keep the cost of electricity down. The board of directors and the CEO take their responsibilities very seriously, and if the government makes a decision that will cost additional money, they'd want to understand that, "If you are going to cost more money than we otherwise would have been able to procure these electrons for, shouldn't that be on the tax base as opposed to the rate base?" They would position that—appropriately so—as a question of: "Where should these costs go?" The discussion would then ensue.

Mr. Peter Tabuns: Going on, then, to document number 4, there's a whole debate at the bottom of this document, effectively about communications. As I read it, the minister could have said, "Our costs are going to

be X, which the taxpayers are going to pay for, and there may well be other costs that have to be covered." The message we always got was, "There's one cost; that's what we're going to cover." What's recommended here is that there are known costs we're going to be taking on now and potentially costs that are yet to be determined that will be allocated elsewhere. Is that a fair interpretation?

Mr. David Lindsay: In its broadest sense, yes. What those specific numbers were, we didn't know at that point. It was too early; we hadn't done the due diligence. But there was an assumption that there would be costs that were clear and those that would have to be subject to negotiation and a negotiation between how much is on the rate base and tax base.

Mr. Peter Tabuns: Because, as I read it, if the minister stood up and said, "This is the cost," to be transparent, he could have said, "This is the cost that we've determined to date. There are other things that are under consideration. We don't have a final cost yet. We'll get back to you as that develops."

Mr. David Lindsay: I'm not sure what the question is, but the minister had—

Mr. Peter Tabuns: Do you think that would have been a more transparent way to present the reality?

Mr. David Lindsay: It would have had more detail in how we were going to develop those costs. I'm not sure, in the Legislature, the opposition politicians would have considered it any more transparent.

Mr. Peter Tabuns: I'll just say to you, if someone says to me, "These are the final costs," it's a very different message from, "These are the costs we've incurred to date. We know that there are other costs that will come in, and we will release them to you as we get them."

Mr. David Lindsay: If you were asking me if I thought, in the first month of our discussions with all our parties, that we knew what the final costs were, my answer would be no.

Mr. Peter Tabuns: No, I know you didn't, but in the summer of 2012, we around this table were told that the final cost was \$190 million, when it was pretty clear that (a) the costs were higher than that, and (b) there were costs, the value of which were still to be determined. It would have been far more helpful to say, "This is what we've spent to date. We expect there will be other expenses. We will bring those forward as we get them."

Mr. David Lindsay: I retired in March 2012, so as a citizen, that might have been an opinion I'd had.

Mr. Peter Tabuns: Fair enough. I appreciate your opinion as a citizen in these matters.

When you were first briefed about Oakville being cancelled—actually, could you tell me again when you were first made aware that Oakville was going to be cancelled?

Mr. David Lindsay: Again, I apologize; I didn't keep my Outlook calendar, so I can't give you a specific date. But I would have been aware that the minister's chief of staff and Sean Mullin and Jamison Steeve had been

meeting with the Oakville delegations and other people for a period of time. Knowing that they were considering their options would have been throughout the course of July and August. But when they'd made the ultimate decision that they wanted to proceed wasn't until into October/end of September, I believe.

I wasn't involved in the early-on discussions. I know they'd been considering it, and I know that we were asked some technical questions and we shared technical answers. But when they actually made the decision and when they were going to do it wasn't until—or I was not aware—until the end of September/beginning of October, I think.

0900

Mr. Peter Tabuns: Were you aware, at the time of cancellation, what the cost range, or the range of risk was, for ratepayers and taxpayers?

Mr. David Lindsay: We had some estimates. If you were to terminate a contract completely—which was not what was decided—then you would owe them the value of the contract. That was—I forget—\$500 million or \$600 million for a 20-year contract. But that was not the ultimate decision. Getting into the due diligence of how much it could have cost once all factors of moving the plant to another location plus the costs of getting out of the old site—we hadn't added those up, but we had rough orders of magnitude of each of those.

Mr. Peter Tabuns: The rough order of magnitude: Do you remember what the rough order of magnitude was?

Mr. David Lindsay: When we got all these pieces pulled together, I can't recall specifically, but over a period of time, as we pulled it together: What's referred to in the vernacular as the sunk costs of the site in Oakville, roughly \$40 million; the cost of, if you were to pay out the full value of the contract in the Oakville site, \$500 million or \$600 million—I'm going from memory here; and then whatever costs to acquire those electrons somewhere else if you're going to move the site to another location. Whether it was Kitchener-Cambridge-Waterloo or Nanticoke or wherever, there'd be costs to get the transmission lines and those kinds of things. There would be groupings of costs depending on decision points, so it's almost like a gating exercise. As you go through each decision, you figure out how much that piece of it is costing you.

Mr. Peter Tabuns: Were you aware of a cost range for cancellation of the Mississauga plant?

Mr. David Lindsay: Mississauga: Again, it would have been—I did read in the newspaper yesterday that my boss called them "buckets of costs." The groupings of costs that we were, again, ballparking with the help of the OPA would have been the cost of the construction that had already taken place on the site—so, what do you do with that?—and that was in the order of magnitude of \$180 million to \$200 million, and then whatever you do to acquire those electrons elsewhere would be additional costs, and that was not understood in any great detail in those first couple of weeks. It took time to go through all of that.

Mr. Peter Tabuns: At the time of cancellation—sorry, at the time that the announcement was made, there wasn't a calculation. What you're saying to me was, you actually got to know what the costs were after the announcement.

Mr. David Lindsay: That's correct, yes.

Mr. Peter Tabuns: Is that common, to make hundreds of millions worth of decisions without any previous costing?

Mr. David Lindsay: It would not be common, no. It's not unheard of, but not common.

Mr. Peter Tabuns: Fair enough. Did you ever have difficulty getting cost information from the OPA?

Mr. David Lindsay: The relationship with the OPA was always very positive and very professional, so we didn't have any difficulties. Are the costs difficult to ascertain? Yes. Did we have difficulty working with the OPA? No.

Mr. Peter Tabuns: So the OPA was very forthcoming. If they were looking at risks and costs, they kept you, as deputy minister, informed.

Mr. David Lindsay: They tried to be very respectful of confidentiality, and I didn't ask for details that they thought were inappropriate. Remember: It's a transaction between two parties, and they would share with me that "Generically, things are going well; generically, things aren't going well. They believe the cost of the turbine is this much; we believe it's that much. We're still far apart." So they were forthcoming, but they also tried to respect the confidentiality of negotiations. I consider it a positive relationship, to answer your question.

Mr. Peter Tabuns: Right, and they kept you in the loop.

Mr. David Lindsay: Yes.

Mr. Peter Tabuns: Who was directing the process on these files? I'll start with Oakville. When you thought of who the key decision-makers were moving things forward, who were the people?

Mr. David Lindsay: I began my opening comments by telling you what my reference is to decision-makers. The politicians, the elected officials, are the decision-makers. Who's directing how to get the work done to deliver the desires of the decision-makers, that's where the conversation starts to get fuzzy. So let me try and break that out.

Mr. Peter Tabuns: Sure.

Mr. David Lindsay: There's a term we use inside the bureaucracy called a four corners meeting. What that means is, you try to make sure that all parts of the machinery of government are represented. So a line ministry has responsibilities—whether it's correctional services or environment or energy—and has a minister and a deputy minister. The minister represents the political side and the deputy minister represents the bureaucratic side. Then we report to cabinet, and the head of cabinet is the Cabinet Office and the Premier's office. So there's your four corners. I report up as the deputy to the secretary of cabinet, and the minister reports to the Premier and his cabinet colleagues. The Premier and the

secretary of cabinet as his deputy work together, and I work with my minister.

So we got direction from the Premier and the Premier's office that they wanted to move the Oakville plant and then we worked with all of the team to deliver on that. So who was the decision-maker? The Premier and the elected government of the day. Who was helping to implement? It was the team with all their expertise: the Ontario Power Authority, the Ministry of Energy and the finance ministry when we were talking about financing. So we have a whole team of people working as a collective to deliver on the desires of the government.

I hope that answers your question without sounding too elliptical.

Mr. Peter Tabuns: No. It all goes back to the Premier's office is what you're saying to me. Shelly Jamieson didn't initiate this. You didn't initiate this.

Mr. David Lindsay: No.

Mr. Peter Tabuns: The minister didn't initiate this.

Mr. David Lindsay: No.

Mr. Peter Tabuns: It was the Premier who initiated this.

Mr. David Lindsay: The Premier and his political officials, yes.

Mr. Peter Tabuns: Right. In fact, was your minister kept in the loop on this?

Mr. David Lindsay: Not in great detail. Again, I tried to make sure that he was aware of negotiations, but we—again, in a confidential business negotiation, you don't want to have lots of people knowing lots of details. So I made sure I told my minister what was happening.

Mr. Peter Tabuns: So he was aware in the summer of 2010 that a potential cancellation was in the works?

Mr. David Lindsay: I would not have had that conversation. You recall I had Minister Chiarelli on the infrastructure side, so I was quite busy helping Minister Chiarelli get his office up and running. The officials in the Ministry of Energy were asked a number of questions on how to help create options and think things through, and as chief of staff, I would assume—again, think of that four corners—I would think the chief of staff would be working closely with his political colleagues, including his boss, the Minister of Energy.

Mr. Peter Tabuns: Okay. Did you have staff in the Ministry of Energy who, if asked, could have looked at the Mississauga situation or the Oakville file and given you an estimate of the range of costs? Did you have to rely on the OPA for these calculations?

Mr. David Lindsay: The interesting thing about the Ministry of Energy is that the entire complement of staff is about 135 or 145, and every single one of the agencies that work on the energy file on behalf of the ratepayers of Ontario has order-of-magnitude larger numbers of staff. The OPA is 200-plus. The Ontario Energy Board's larger than the ministry; Hydro One, OPG. So we would be excellent public servants in the Ministry of Energy, and they try their best to gather the information, but they really do rely on a good, co-operative relationship with the agencies that deliver the product. So we could do

some independent, back-of-the-envelope analysis, but it would be based on information we'd be getting from—Hydro One would share with us the costs of transmission lines; OPG would share the costs of alternative sources of energy; the OPA. So we could do it, but we wouldn't be doing it in isolation.

Mr. Peter Tabuns: So if you wanted to find out what the scale of risk was on cancellation of either of these plants, you would have turned to the OPA, and from what you've said earlier, the OPA was forthcoming with questions for analysis and keeping you informed of what was going on.

Mr. David Lindsay: Yes.

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Mr. Peter Tabuns: Shelly Jamieson testified that there were discussions about cancelling the Mississauga plant as early as the spring of 2011. Were you aware of those discussions?

Mr. David Lindsay: Not at the time. A little bit after, I did hear about them. I think it was a combination of summer vacations, to be fully transparent, but also, it was more a question of the environmental assessment process, as I understand it. Again, you would ask the environment folks, what could you do with an environmental assessment process? While officials—in those four-corner kinds of meetings—from the Ministry of Energy would probably be invited to participate and share their perspective from an energy perspective, it would be a question being asked of the Ministry of the Environment.

Mr. Peter Tabuns: So you were aware, then, that even in the spring of 2011, there were serious discussions going on about cancelling this plant.

Mr. David Lindsay: Yes. How serious they were, I don't know, but there were discussions, yes.

Mr. Peter Tabuns: Your ministry produced an extensive briefing on cancellation.

Do you know why the Liberals waited till the middle of the election campaign to cancel? Were you told?

Mr. David Lindsay: I definitely wasn't told. Anything I say would be speculation, so I don't know why. I don't know if they actually had considered it, rejected it and then revisited it, or if they had never dismissed the thought. I do not know what's inside the heads of those decision-makers.

Mr. Peter Tabuns: Well, you weren't told, and that's the answer that I need.

We've heard, and I've seen a memo indicating, that you had bi-weekly meetings with Colin Andersen. Did those go on throughout your time as deputy minister?

Mr. David Lindsay: Both of us had at that time busy schedules, so it was a standing commitment on our calendars that on occasion had to be cancelled or moved, but yes, we had a very good, cordial, regular working relationship. Colin is a colleague and we've worked together for many years.

Mr. Peter Tabuns: And can you tell us generally what you discussed in those meetings?

Mr. David Lindsay: Well, it would be more of—the word we would use would be “update.” So whether it was the green energy implementation of feed-in tariff transactions in the Green Energy Act and how that was going, a procurement of other energy, gas plants and things like that—there’s lots of things to update each other on as a professional courtesy, and that would depend on what was happening in any particular given week.

Mr. Peter Tabuns: We’ve been given the impression in the last while that the OPA has all kinds of information and somehow it doesn’t get through to anyone in the minister’s office. You never found a wall between yourself and the OPA on information.

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

Mr. David Lindsay: The way the question was asked is interesting. There are walls, sometimes on purpose, because of confidential contracts and things like that. But it was a good, professional relationship with the OPA, and where it was appropriate to share, they would. Again, that is at their discretion sometimes on contractual relationships or what they’re working on.

The flipside of that is, quite often, I found as deputy that the minister’s office staff would be phoning in to the agencies, gathering information that I wasn’t aware of. So there are lots of people, everybody’s phone number is on the website, and you can contact lots of people and share information up, down and all around. I think trying to be professional and not speak flippantly, the OPA would want to make sure they did their due diligence and were very exact in how they were communicating, as they professionally should, and sometimes—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Lindsay and Mr. Tabuns. To Mr. Delaney.

Mr. David Lindsay: —that was interpreted as not fast enough.

Mr. Bob Delaney: I’ll let him finish. Was there anything you wanted to finish in your remarks?

Mr. David Lindsay: The conclusion of my sentence was that because they would be diligent in making sure they were gathering the information appropriately, sometimes that was perceived as not responding fast enough.

Mr. Bob Delaney: Okay. I think that was a good point, and thank you for adding it.

Good morning, Mr. Lindsay. I want to thank you for being here today. A few questions just to make sure that we’re on the same wavelength here.

You’re aware that in May of last year, the estimates committee passed a motion requesting all correspondence within a specific time frame from the Minister of Energy, the Ministry of Energy and the OPA relating to the Oakville and Mississauga gas plants.

Mr. David Lindsay: I’m aware through the media. I had been retired by then, so my awareness is through the benefit of the fourth estate.

Mr. Bob Delaney: And at that time, again, you were aware that there were complex and sensitive negotiations ongoing between the OPA and the companies?

Mr. David Lindsay: Yes.

Mr. Bob Delaney: From your perspective and in your experience, what would it have meant for taxpayers if the OPA and the province’s negotiating position had been prejudiced because the companies on the other side had had access to confidential and privileged information?

Mr. David Lindsay: That would not be a good thing, either for the ratepayer or the taxpayer, whoever would bear the burden of those costs, because I think sharing information when you’re trying to do a negotiation, whether it’s this transaction or any other kind of negotiation—I think the vernacular is, keeping your cards close to your vest. You want to make sure you’re in the best position you can to negotiate a good deal. If the other side knows all your cards, it’s not a very good negotiation.

Mr. Bob Delaney: So, in effect, there would have been a significant risk to the taxpayer if all of those documents had been made public prior to the two deals being finalized?

Mr. David Lindsay: That they’d be made public? That’s correct.

Mr. Bob Delaney: Okay, thank you. I just want to talk a little bit about the negotiation process with Eastern Power to relocate the Mississauga power plant. The Auditor General talked about some of the significant risks had the government simply abrogated the deal rather than negotiating a new deal. Talk to me a little bit about some of the implications and the downsides of simply abrogating a signed deal.

Mr. David Lindsay: Oh, gosh. Again, I’m not a trained lawyer, so I may not be using the correct legal terminology, but if you have a contract and you don’t honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure, again, as a result of that loss of contract.

Mr. Bob Delaney: So in other words, not merely the terms negotiated, but possibly, over and above that, penalties and significant litigation costs?

Mr. David Lindsay: Well, that would all be subject to litigation, but the courts would decide if there were court costs to be allocated or the loss of other opportunities or any of those kinds of things. Again, I’m not a lawyer and I haven’t gone through that kind of process, but that would be a court case that the person who had their legal contract abrogated or not honoured would be able to go to the courts for lost costs and damages and those kinds of things.

Mr. Bob Delaney: So really just ripping up the deal was a bit of a non-starter as an option.

Mr. David Lindsay: A very interesting question. Again, I’m not a trained lawyer, but the power of the crown and the ability of the elected Legislature to pass legislation is, to go back to a word we were talking about earlier, a very large hammer. Having the Legislative Assembly determine what the scope of the costs or the compensation could be is an option, I understand. I stand to be corrected by legal counsel, but I understand you could do things by legislation that private sector companies can’t do.

Mr. Bob Delaney: Okay, all right. The Auditor General talked a little bit about what he perceived as the OPA's weakened negotiating position because of the tight timelines to halt construction. He referred numerous times, in his news conference and in his appearance here, to what it would take to get the company to—to use his words—“down tools.”

In her testimony, Shelly Jamieson talked about the importance of speed when negotiating a relocation deal with the company. She said to the committee that—and I'll use her words—“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.” Could you talk to me a little bit about timing as an important factor and your opinion on whether cancellation costs would have increased had construction continued?

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Mr. David Lindsay: If construction—sorry, I missed the last part.

Mr. Bob Delaney: Had construction on the Mississauga power plant continued.

Mr. David Lindsay: I'll break my answer out into a couple of component parts. One was the political pressure that the government was feeling. After the election, the Premier made clear his commitment to not have a gas plant there, and yet the construction continued. So there were articles in the newspaper, there was pressure to—“You said this was going to stop, and it hasn't stopped.” That would be what I'd call the political pressure on the government. They were asking us and the OPA to find a way to get this thing to stop as quickly as they could, so that's a political pressure.

Then, the point you raised is also the very practical: The more they're pouring concrete and the more they're putting money into the ground that we know we're not going to use, the more those costs increase. So, yes, there were two pressure points or two drivers to the need for speed in negotiation to down tools and stop this construction.

Mr. Bob Delaney: You've handled similar negotiations, or negotiations with private companies of an equivalent scope?

Mr. David Lindsay: The short answer is yes.

Mr. Bob Delaney: Okay.

Mr. David Lindsay: I was working on the Samsung deal around the same time that this was happening.

Mr. Bob Delaney: If the other side perceives political pressure to either do something or not do something, does that or can that affect the latitude that the government has to complete a deal? And if so, how?

Mr. David Lindsay: As I said in my opening statement, I like to think of myself as a student of the democratic process and a student of Parliament and a student of government, and the thing we have in Canada that they don't have in the United States is question period. Every transaction that the public sector engages in, with any private sector proponent, be it electricity or

highways or anything else, the private sector proponent invariably sees political pressure as a tool to use.

Mr. Bob Delaney: Okay. In your recollection, would all three parties, should they have formed government, have cancelled the Mississauga plant?

Mr. David Lindsay: In my recollection, would they have cancelled—I'm not sure I can answer that question. I have seen political parties make commitments in election campaigns that don't get followed through on.

Mr. Bob Delaney: Okay.

Mr. John Yakabuski: So have we.

Mr. Bob Delaney: All right. Faced with a government, regardless of who formed it, would it be normal for the civil service, during the campaign, to have kept track of commitments and to have been ready to implement the incoming government's commitments?

Mr. David Lindsay: The short answer is yes.

Mr. Bob Delaney: Okay. So, presuming that any other party had formed government with that as a commitment, can you see anything significantly different in the process of accomplishing that end—the cancellation of the Mississauga gas plant post-election?

Mr. David Lindsay: Again, getting direction from the newly elected government—whoever it is, whatever political stripe—they would ask us, “We would like to act on this promise. Please prepare how you would do that.” So, yes, that would be a standard process and protocol.

Mr. Bob Delaney: So then it would be normal for the incoming government to say to either the secretary of cabinet or a minister to the deputy, “This is what we would like to do,” and to have the public service say, “Premier or minister, this is how you can do it and these are the ways in which it can be done”?

Mr. David Lindsay: Again, the ethos of the Ontario public service is to serve the elected officials. Part of our responsibility is to give good advice, and part of our responsibility is to have execution of the decision to the best of our ability. What would probably happen in most policy commitments of a government is that we would say, “Here's what we hear you would like to do. Here's how it can be done. Here are the pros and the cons of doing it this way and here are the pros and the cons of doing it that way,” and then we get a decision back: “We like doing it this way. We're willing to accept these pros and we're willing to accept these cons.” That's how we would engage in the dialogue. We wouldn't say, “You asked us to do this. We'll go do it.” We try to maintain the dialogue with decision-makers all the way along.

Mr. Bob Delaney: Okay. So to move from the slightly hypothetical back to the practical: After the election, the OPA, I think we can agree, was in a bit of a difficult position in which they had no option but to negotiate and of course to get the best deal possible and, as we've discussed, as quickly as possible. From your experience, would you say that good-faith efforts were made to get the best deal possible?

Mr. David Lindsay: I was not there when they actually finally negotiated the deal. That happened after

my leaving in March, but I believe all the people involved would be working in good faith. The options presented to the government on how you could deal with it would have been presented to the government, and then they'd say, "We'd like to pursue this option. So, go do it."

Mr. Bob Delaney: From the vantage point of the OPA—and again I'll ask your opinion—do you think the OPA's bargaining position would have been significantly different if the government of the day had been either a PC or an NDP government?

Mr. David Lindsay: It depends on if they followed through and asked them to change the contract.

Mr. Bob Delaney: Right. And I'm making the assumption that a government of any of the three parties would say, "It's our intention to cancel this plant."

Mr. David Lindsay: I'm not sure how to answer the question, to be honest. No matter what negotiation you enter into, it will be tough. It could become political very quickly, and any time it becomes political, it compromises the negotiations of the people at the negotiating table. In any political environment, that's a factor that creates challenge for negotiators. That's why you try to maintain confidentiality.

Mr. Bob Delaney: Yes, exactly. A few questions about Oakville. One of the reasons cited for relocating the Oakville plant was that, in the process of putting together the long-term energy plan, it became clear that with the changes of supply and demand, the plant was no longer needed. Could you comment on that?

Mr. David Lindsay: That's a little bit of shorthand for a much more detailed and complex process.

Mr. Bob Delaney: Yes.

Mr. David Lindsay: As you recall, the economy started to change. The economy shrank. The use of electricity, the mix of our industrial base, started to shift, so where you needed the power and at how much started to move.

To say we did not need the plant is an interesting question. We did not need that much power at that location at that time. Did we still need power over the next number of years? Yes. Could we get it other ways? If you want to drive from here to Kingston, you can do it a number of ways: 401; Highway 2; you can take a plane, a train or a bus. There are lots of ways you can do it. If you then decide you only need to go from Toronto to Belleville, you still need to go in that direction; you just don't need to go that far. It's a more complicated answer than, "We didn't need the plant anymore." We didn't need those electrons at that time.

Mr. Bob Delaney: All right. So let's take a portion of that. In her testimony before the committee, JoAnne Butler from the OPA confirmed that transmission upgrades were needed in the southwest GTA area, with or without a new plant in the Mississauga or Halton area. Based on your experience on the file, would you agree with JoAnne Butler's assessment?

Mr. David Lindsay: The source of my knowledge on that comes from the OPA, and whether it's Amir Shalaby

or JoAnne Butler, they're the professionals and that's the source of my information. So, yes, I would agree with JoAnne Butler.

Mr. Bob Delaney: Okay, thanks. Again, just sort of parsing that Oakville situation a bit, a recurring issue that has come up a lot with regard to Oakville was a concern that TransCanada Energy would also initiate litigation with the government if we weren't able to renegotiate on a new power plant.

I understand that the best efforts were made at every level to avoid a lawsuit. I'm going to ask you a question similar to what I asked you before: What would the implications have been for taxpayers if the province and TransCanada Energy had had to litigate over this particular project?

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Mr. David Lindsay: The language we were using at the time was, if you simply throw this into a court proceeding, what happens is you end up paying whatever costs without getting any electrons. So is there a better way to resolve this? TransCanada is a reputable company and our electricity system needs good suppliers out there, so maintaining good relationships with suppliers was part of the consideration. Paying costs and getting no electricity would not be a very good business decision. So try to avoid litigation was the strategy and get maximum electrons for minimum cost was what we in the OPA were trying to do.

Mr. Bob Delaney: And just for clarification, when you said paying costs and not getting any electrons wouldn't be a good business strategy, you meant it from the perspective of both sides.

Mr. David Lindsay: I don't know, if I were the shareholder of TransCanada, I wouldn't necessarily see that as a bad deal. What do you mean by "both sides"?

Mr. Bob Delaney: In other words, you talked about the ongoing relationship. You said that TransCanada was a reputable supplier. Would that suggest that both sides would view a relationship with each other as part of an ongoing stream of business activity?

Mr. David Lindsay: Wanting to maintain good relations? Yes, I believe so.

Mr. Bob Delaney: Okay.

Mr. David Lindsay: I'm not inside the mind of TransCanada, but I would think that's good business practice.

Mr. Bob Delaney: Okay. I'd like to ask you about David Livingston's involvement in these negotiations as the head of Infrastructure Ontario. Shelly Jamieson told the committee that she personally asked him to help when negotiations broke down between the OPA and TransCanada. When asked why she chose Mr. Livingston to take this assignment, she said, "David Livingston comes to us from the private sector, but also in his job at Infrastructure Ontario, was used to dealing with publicly traded companies and understands that world and can present himself in that way." Would you agree that Mr. Livingston was well-suited to support these negotiations,

given his expertise and his portfolio of experience and skills?

Mr. David Lindsay: Yes.

Mr. Bob Delaney: Okay. Thank you.

On February 7, Premier Wynne wrote a letter to the Auditor General requesting that his office conduct a review of the Oakville relocation, and of course that review is under way. That, as we're both aware, has become a very politically charged review. Given the political environment—and you've see it from just about every vantage point—and the fact that the Auditor General is an independent officer of the Legislature, in your opinion, is he the best person to conduct this review?

Mr. David Lindsay: Of the Oakville gas plant?

Mr. Bob Delaney: Yes.

Mr. David Lindsay: Yes, I believe so.

Mr. Bob Delaney: Okay. Good.

In terms of future costs and savings associated with the Oakville relocation, the OPA's VP of communications, Kristin Jenkins, said yesterday that many variables had not yet been calculated. She said, and I'll use her words, that "at the time that the [memorandum of understanding] was signed, the exact"—

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

Mr. Bob Delaney: Actually, Chair, I'm going to hold that till the next round then.

The Chair (Mr. Shafiq Qaadri): For which we thank you. Mr. Fedeli, 10 minutes.

Mr. Victor Fedeli: Thank you, Chair.

I had asked you earlier about meetings with Sean Mullin, Craig MacLennan and Jamison Steeve and you said maybe two or three. Maybe I wasn't clear in terms of the scope. I've got email, document 6, from October 6, 2010. The content of the email is not important. It's from Sean Mullin to you, with a copy to Craig MacLennan, Jamison Steeve. Then I've document 8, which is now six months later, in April, that includes you, Sean Mullin and Craig MacLennan. So maybe I would have been more clear. Instead of just asking how many times did you meet, how much correspondence—I've got two right here within six months. Is there more? I know you answered you only met with them two or three times, but—

Mr. David Lindsay: I met with Sean Mullin on many occasions when we were doing the IPSP and other things. I think you were asking, did I meet with him on Oakville?

Mr. Victor Fedeli: Yes, this particular one is TransCanada, October 6, then TransCanada is April 11. I didn't bring a bunch of email; I didn't think I would really need to do that. Would you say that there was more regular contact between those six months or did I just pick the two extremes? And if I did, I apologize.

Mr. David Lindsay: I'm not sure how best to answer your question, but let me try. All my emails, all my Outlook, all my documents, reside with the Ministry of Energy, and I didn't take any of them with me. They're all there. I'd left by March of 2012, so anything that was in my email list that was brought up by the search is at your disposal.

Mr. Victor Fedeli: That's fair. So would you characterize—

Mr. David Lindsay: I don't think I had 56,000, but I obviously had two.

Mr. Victor Fedeli: You did have "communication," let's say, rather than the meetings: communication with Sean Mullin, Jamison Steeve and Craig MacLennan regarding TransCanada energy over a half-year period at least.

Mr. David Lindsay: I don't think I ever met with all three of those people to talk about Oakville in any one meeting. I've had many conversations with Sean Mullin on many things, as the energy policy person in the Premier's office, and the chief of staff to the minister, you meet with every day. Jamison Steeve and I maybe had two or three conversations, but I don't think we ever had a meeting where we were all together. I stand to be corrected on that, but I don't think so.

Mr. Victor Fedeli: Okay. Let me look at document 8, the telephone meeting that you had here with Sean Mullin, Craig MacLennan, David Lindsay—and a whole bunch of other names are going to come up. The conversation is about, "OPA and TransCanada are far apart." This is April 11, 2011; OPA and TransCanada are far apart.

We know that an offer was made to TransCanada—a settlement offer—of \$712 million. That was rejected on April 21. What would you be able to tell me about that offer?

Mr. David Lindsay: Unfortunately, I haven't been able to refresh my memory by looking at any documents. Again, that's more than a year ago. But I know the OPA had ongoing negotiations with TransCanada about the costs of the Oakville site. I think those were more circumscribed and clear than the cost of the turbines they had procured. What the market value of a turbine was versus what they paid for it was a point of debate, I know. And what they thought the value of the contract was to them as TransCanada and what the OPA thought they were going to be paying on their discount rate for the transaction—so there was three or four different pieces they were having disagreements over and not sharing—

Mr. Victor Fedeli: So do you remember this \$712-million offer?

Mr. David Lindsay: Do I remember the specific \$712-million offer? No, I do not. Do I know that they were offering back and forth? Yes.

Mr. Victor Fedeli: Do you remember the \$1.4-billion estimate? Do you remember seeing any paper on that?

Mr. David Lindsay: No. I'm not saying it doesn't exist, but I just don't recall it.

Mr. Victor Fedeli: Oh, it exists, yes. I just didn't bother to bring that one here again today. I've brought it so many times.

There's a TransCanada quote that, in a meeting with Minister Duguid—you were Minister Duguid's deputy minister, I presume.

Mr. David Lindsay: Yes.

Mr. Victor Fedeli: For his whole term? In April of 2011?

Mr. David Lindsay: Yes.

Mr. Victor Fedeli: So in the meeting with TransCanada—

Mr. David Lindsay: He was the minister longer than I was—he was there before I was deputy—is what I was pausing to think about.

Mr. Victor Fedeli: So TransCanada—the famous quote is that they “blew a gasket” when talking to Minister Duguid. They told him that they “already have a deal” done—“go talk to your bosses.” Who would Mr. Duguid’s boss be at that time?

Mr. David Lindsay: I go back to my four corners: The minister reports to the Premier and I report to the secretary of cabinet.

Mr. Victor Fedeli: So it seems somebody folded over one of those corners if TransCanada “blew a gasket” when talking to Minister Duguid. Were you aware at the time that TransCanada had already done a deal with Minister Duguid’s boss?

Mr. David Lindsay: No, and I pause particularly on the words “done a deal with.” I’m not sure what that means. I know they had discussions, but I don’t think they actually had a deal. If they had a deal, why were we going through all this process?

Mr. Victor Fedeli: That’s kind of what we’re asking—the same kind of thing. TransCanada said they had “a deal—go talk to your boss.”

You would keep—first Minister Duguid and then Minister Bentley—apprised of any negotiations and/or costs that you would’ve been aware of relating to the Oakville and Mississauga cancellations?

0940

Mr. David Lindsay: Periodic updates, minute details of estimates of values of turbines and things like that, no, I don’t think I would have gone into those kinds of details, but, yes, keep them apprised on progress of negotiations.

Mr. Victor Fedeli: Okay. But you were not aware of the deal that TransCanada said they had with the Premier’s office?

Mr. David Lindsay: No.

Mr. Victor Fedeli: Okay. Thank you.

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

Mr. Rob Leone: Mr. Lindsay, you stated that you take a lot of credence in what JoAnne Butler had and the information she provides you. She testified in this committee that she would assign the total costs as more than simply being sunk costs; there were other costs associated with the transaction. So you were aware that there were more than sunk costs associated with this?

Mr. David Lindsay: Yes.

Mr. Rob Leone: Now, would it be fair to say that if you knew that there were more than just sunk costs associated with these deals, the cabinet would know that there were more than sunk costs associated with the cancellations?

Mr. David Lindsay: Whether all of cabinet knew, I don’t know, but certainly the officials in the Premier’s office and the minister’s office would have known. I’ll go back to my four corners, yes.

Mr. Rob Leone: So it simply wouldn’t be credible if all we were told that the total costs would have been were simply the sunk costs; that they would have known that there were extra costs associated with it is essentially what you’re saying?

Mr. David Lindsay: Without knowing the caveats they would put on their sentences, I’m not sure I can give you a blanket yes or no to that.

Mr. Rob Leone: Well, you just stated that they knew that there were more than sunk costs.

Mr. David Lindsay: Yes.

Mr. Rob Leone: So we would infer that if they simply gave us the sunk costs, they were essentially excluding the other costs associated with the cancellation. That would be fair?

Mr. David Lindsay: I go back—

Mr. Rob Leone: There were more than just sunk costs, essentially?

Mr. David Lindsay: And if you get electrons for those other costs, if you get equivalent value on another site, then the sunk costs of how much it cost to get out of the site—that is a sunk cost. The cost of getting the electrons somewhere else from the same supplier is a cost of acquiring that electricity. I think that’s the difference in why they mentioned \$40 million as opposed to the other. Can we get the electrons at the same price or a comparable price somewhere else?

Mr. Rob Leone: Okay. Were you aware that political staffers were negotiating around the OPA and the Ontario public service on the second floor of this Legislative building with respect to TCE?

Mr. David Lindsay: Wow. Those specifics, no, I wasn’t aware. I knew they had asked us for some factual information because they were going to have meetings with stakeholders. Whether they were the Clean Energy Alliance of Oakville or the proponent or who they were was not always made clear to us.

Mr. Rob Leone: So three people were screened from talking to Oakville, you’re aware of that, and Shelly Jamieson told us they were screened because they made certain promises to TCE. Do you know what those promises were?

Mr. David Lindsay: No. We had the Attorney General do an investigation, and I understand from Shelly’s testimony that you guys have those documents. I’ve never actually seen them.

Mr. Rob Leone: So the Attorney General’s office would know what these promises were?

Mr. David Lindsay: Not the whole office, but the attorney would have.

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

To Mr. Tabuns.

Mr. Peter Tabuns: Mr. Lindsay, would you pass information on to the minister about substantive cost

information? The OPA says to you, “We paid out \$200 million so far on settling the Mississauga deal, and we’ve got other costs to come.” Would you have informed the minister?

Mr. David Lindsay: Do I recall a specific incident? No. But would it be my practice? Yes.

Mr. Peter Tabuns: Yeah. That’s what I would expect as well. I would expect my staff to keep me informed when I was spending a few hundred million bucks.

Mr. David Lindsay: I may not have said it with great comfort in my voice, but I would have explained that, “This is getting expensive, sir.”

Mr. Peter Tabuns: I’m pleased to hear that’s your practice.

Did you brief Premier Wynne on these matters after she took office?

Mr. David Lindsay: No. I left in March 2012.

Mr. Peter Tabuns: So you weren’t brought back to brief her in the transition period?

Mr. David Lindsay: Not so far.

Mr. Peter Tabuns: Fair enough.

Mr. David Lindsay: It’s happened before.

Mr. Peter Tabuns: I know. You have an extraordinary history.

On September 13, 2010, as we’ve been going through the documents, the Ontario Power Authority briefs the energy deputy minister that the plant in Oakville was still needed. Do you remember being—

Mr. David Lindsay: When was this?

Mr. Peter Tabuns: September 13, 2010, which was a few weeks before TransCanada Enterprises was told “adios.”

Mr. David Lindsay: Okay.

Mr. Peter Tabuns: Do you remember being briefed at that time?

Mr. David Lindsay: That the Oakville plant is still needed?

Mr. Peter Tabuns: Yes.

Mr. David Lindsay: So much water has gone under the bridge. I don’t recall that, but I can’t say that I wasn’t briefed to that effect.

Mr. Peter Tabuns: Okay. Up to the time of the cancellation, was it your belief that the plant was needed?

Mr. David Lindsay: Again, my answer would be similar to the one I gave to Mr. Delaney: that there is a need for electrons in the southwest GTA. Whether it has to come from that site and that plant at that order of magnitude—there’s many ways to drive to Kingston, fly to Kingston or take the train to Kingston is the analogy that I used. Is there still a need for electrons in the southwest GTA? Yes. Does it have to come from that plant? Not necessarily.

Mr. Peter Tabuns: And was the OPA, prior to the announcement of cancellation, trying to stop that cancellation from happening? Actually, there’s a prior question: Do you know if the OPA was aware that it was about to be cancelled?

Mr. David Lindsay: “Aware” is different from “suspecting.” I think there had been lots of media

speculation and there had been lots of inquiries, so one might speculate that something was coming, but would they have known? I wouldn’t think so. Political decisions are not decisions until they’re made.

Mr. Peter Tabuns: So was there any push from the OPA, prior to the cancellation, to try to keep the plant in place, to your recollection?

Mr. David Lindsay: Not to my recollection, but I think giving professional advice on the need for electrons in the southwest GTA would be their normal practice.

Mr. Peter Tabuns: Around the end of September, beginning of October, Jamison Steeve has told us that he was told to tell TransCanada that there would be a ministerial order to stop the Oakville plant. He noted in his testimony to us that he met with you to review the message to TransCanada Enterprises. Can you tell us what he told you in that meeting?

Mr. David Lindsay: Oh, gosh. Again, September/October of 2010 is a long time ago, and I do not recall the specific conversation, but again, I’d be speculating that the standard briefing would be to explain that we want to respect the integrity of the system, maintain a good business relationship, but we’ve decided that this site is not the best place for us right now, so we’d like you to talk to the OPA about looking at other alternatives. That’s a little bit of reconstruction from my memory, but that would be the type of advice that we’d probably be giving.

Mr. Peter Tabuns: The Mississauga plant, and the financing at 14%, did you have concerns that this was not a great business deal—or no, more to the point, that this was a risky business deal for Ontario?

Mr. David Lindsay: Well, when we first were made aware of it, which wasn’t until closer to Christmas of 2011, in late November—as more information unfolded from the discussions with the Mississauga proponents, we were made aware that it did sound like very large costs, and it did concern me.

Mr. Peter Tabuns: Did you find it very strange that a company with a guaranteed power contract had difficulty getting financing?

Mr. David Lindsay: Yes. I can’t tell you why they were having those difficulties—

Mr. Peter Tabuns: No, and I don’t know either.

Mr. David Lindsay: —but it did seem odd.

Mr. Peter Tabuns: Generally speaking, companies that got guaranteed power contracts with the OPA, did they have trouble getting financing?

Mr. David Lindsay: Not that I’m aware of.

Mr. Peter Tabuns: I apologize for jumping around, but I know my time is limited and there are a few bases I need to touch.

Mr. David Lindsay: I’ll try to keep my answers shorter.

Mr. Peter Tabuns: It’s noted in the documents released—energy, Oakville—that David Lindsay heard from Pat McNeil that the turbine valuation was suspect and asked for invoices. Do you have any recollection of

that? This is with regard to the TCE purchase of turbines for their plant.

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Mr. David Lindsay: The specific conversation with Pat McNeil I don't recall, but I think the concern that a number of us had, based on advice from JoAnne Butler that this is not the normal price of a turbine of this size—I said, "If I were getting an estimate on any of the renovations done in my home, I'd just ask for an invoice, so why can't we get that?" That was the question I asked a number of times.

Mr. Peter Tabuns: And did you ever get provided with that invoice?

Mr. David Lindsay: I never did get an answer, no.

Mr. Peter Tabuns: Tiffany Turnbull, in her testimony, said that you met regularly with Chris Morley regarding the gas plant cancellations. Did you brief him on the costs and risks that you were being informed of by the OPA?

Mr. David Lindsay: Rough orders of magnitude?

Mr. Peter Tabuns: Yes.

Mr. David Lindsay: Yes. It would have been a normal course of our briefings.

Mr. Peter Tabuns: Yes. I don't think you would have said, "Hey, we've got another 50 bucks here," but you might have mentioned, "This is \$100 million; this is \$200 million."

Mr. David Lindsay: Yes.

Mr. Peter Tabuns: So you did keep a very senior person in the Premier's office well aware of the scale of costs that you were encountering as you went along.

Mr. David Lindsay: Again, I go back to my earlier answer. If it's a cost that doesn't get anything for it, that's one way to value it. If this is the cost of getting these electrons somewhere else, what's the difference in this price versus what we would have gotten if we kept it in Oakville? That's a slightly different point.

Mr. Peter Tabuns: No, it is, but I'll note that so far, we've been told about \$40 million in sunk costs in Oakville. We have a contract with TransCanada in Napanee that pretty much mirrors what we would have gotten in Oakville except for one thing, and that's that Ontario takes on the cost and risk for gas management and distribution, which we've had variously calculated in the \$300-million to \$400-million range. We're getting electrons, but this is a cost we didn't have in Oakville. Those kinds of costs, incremental beyond what we would normally spend for those electrons: You would have conveyed that to your political masters.

Mr. David Lindsay: Here's where we get into the problem of when I retired and was no longer on the file. I left long before any of those details came into play. In the normal course of trying to figure out the full cost, you would factor those kinds of things in. But I wasn't there. I had long gone.

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

Mr. Peter Tabuns: No, I understand that. But from the time Mississauga was cancelled, you were meeting

with Chris Morley and you were keeping him abreast of substantive costs that were being incurred.

Mr. David Lindsay: Yes, but we've flipped now from Oakville to Mississauga again, so yes, I did inform on, "Here's what we've discovered." The lead in the cabinet office on that file—I go back to my four corners—would be Giles Gherson. Giles would have been part of our four-corner discussions.

Mr. Peter Tabuns: Right. And you kept him informed, just as you kept all the other political masters in this matter?

Mr. David Lindsay: Yes.

Mr. Peter Tabuns: That's what I needed to know. Thank you so much.

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

Mr. Bob Delaney: Just to pick up where you left off with Mr. Tabuns, would you expect that in his report on Oakville, the auditor would consider additional savings negotiated by the OPA for a lower price for power; for example, from the \$17,277 per megawatt hour per month at Oakville to \$15,000 at the Lennox site?

Mr. David Lindsay: I would assume that would be part of anybody's business calculation, yes.

Mr. Bob Delaney: Numerous times, you've mentioned that there's a need for electrons in the southwest GTA. In that context, setting aside the scenarios that involve generating capacity, would a transmission solution also be feasible?

Mr. David Lindsay: Yes.

Mr. Bob Delaney: I just want to pick up on something that has been discussed at various times in the committee, and that has been the subject of project names or code names or whatever you want to call them. In your experience, is this a method that has been used to either categorize or protect projects with sensitive information down through the years?

Mr. David Lindsay: Yes.

Mr. Bob Delaney: Can you remember any project names that, for example, precede our government in 2003?

Mr. David Lindsay: I don't remember exactly what they were, but I was involved in a Hydro One transaction at SuperBuild, and I'm sure we had a code name for that. Can I remember specific ones? No.

Mr. Bob Delaney: Okay, but you can remember them being used routinely.

Mr. David Lindsay: It's a practice that didn't start yesterday.

Mr. Bob Delaney: Okay. So what would be the goal of assigning a project name or a code name to a specific endeavour or to a legislative bill or to an arbitration process, given the circumstances?

Mr. David Lindsay: In the public sector and in the private sector, you always want to be cautious that something doesn't get left on the photocopier. Confidential information falls into the wrong hands, left in a taxicab or a subway, so making sure that you're not too explicit, if it falls into the wrong hands, is a security practice so that information doesn't get out to the wrong people.

Mr. Bob Delaney: You could use words like “prudent” or “due diligence” to describe the process of assigning a name to a project.

Mr. David Lindsay: Yes.

Mr. Bob Delaney: Okay, that’s good.

You worked pretty closely with Minister Bentley and Minister Duguid. At any time, did you work closely with former Premier McGuinty?

Mr. David Lindsay: Not on this file, no.

Mr. Bob Delaney: Okay. Considering Ministers Bentley and Duguid, would you describe the two of them as people of integrity who did the best they could to serve Ontarians?

Mr. David Lindsay: Yes, I would. And I like them as people, too.

Mr. Bob Delaney: I’m sorry?

Mr. David Lindsay: And I like them as people, too.

Mr. Bob Delaney: Oh, thank you. They’re both going to be here and I’m sure we’ll pass that along.

Mr. David Lindsay: Give them my regards.

Mr. Bob Delaney: I shall do. One is a very good hockey player; the other is not such a good hockey player.

Mr. David Lindsay: He could probably outrun him, though.

Mr. Bob Delaney: I’m their goalie. I notice these things.

I just want to conclude with kind of an open-ended question. Throughout this process, we’ve been asking people questions that pertain to the projects, questions that pertain to the process as we cancelled two infrastructure projects—and, indeed, a government of any party would have cancelled both infrastructure projects. Can you talk to us a little bit about what could be done to improve the decision-making in energy infrastructure?

Mr. David Lindsay: That’s an excellent question. I’m not sure that in the time we have we can resolve it, but I think people of goodwill want to do the right thing, and then every individual transaction has interests. Generically, everybody in the private sector says that we should not politicize the electricity system, but as soon as something doesn’t go their way, they come in and lobby the politicians. I think that no matter what the process is, we’re an open, democratic system, and transactional negotiations require confidentiality and a process, and the two processes don’t always match up. So I think we should constantly be trying to improve the way we do things, but simply to say we should not politicize the electricity system is, in my personal opinion, if you could permit me this, an oversimplification, because I’ve seen private sector people come in and use political connections, political conversations, when things didn’t go their way. When things go their way, they say, “Don’t interfere with the politics.” When things don’t go their way, they go political.

So I think that no matter what the system is, we have to recognize that we live in a democratic system. The electricity system plugs into every person’s home, and

we’ve got to respect fiscal responsibility, the integrity of the system, the mechanics of getting the electrons into homes and the environmental costs of what we do with generating that electricity. It’s a complicated process that I’m not going to be able to answer in a couple of minutes with you, but I think we should be constantly trying to improve it, yes.

Mr. Bob Delaney: I thought you had solved all of the world’s problems just before we started when we were kibitzing back and forth.

Mr. David Lindsay: Yes, Murray and I needed two more minutes.

Mr. Bob Delaney: If you had those two more minutes, would there be anything on the consultation process that you might be able to extemporize as a suggestion?

Mr. David Lindsay: I thought you might ask me about that. I think consultation and having people aware with full information is very important, but I’ve seen different processes, depending on the source of the electrons, being used by the same government. So my question back to you would be, if you want to have a new process for acquiring electricity into the system, would you be asking that question about all sources of electricity or just gas plants?

Mr. Bob Delaney: Okay. Mr. Lindsay, I think I’m going to wind it up there. In the event that our government ever asks me to sit in a corner office of any ministry, I do hope that I get someone like you. You’re the kind of person who gives the public service a good name. Thank you very much for having come in.

Mr. David Lindsay: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thanks to you, Mr. Lindsay. You’re officially dismissed.

We’ll entertain the two motions presented by Mr. Tabuns. I invite you to read them into the record.

Mr. Peter Tabuns: I move that the Ministry of Energy and Cabinet Office produce any and all briefing notes, including cost estimates, related to the spring 2011 discussions regarding the cancellation of the Mississauga gas plant.

The Chair (Mr. Shafiq Qaadri): Any discussion on this before we vote? Those in favour? Those opposed? Motion carried.

Next motion.

Mr. Peter Tabuns: I move that the minister’s office (energy) and Premier’s office produce all briefing notes, including cost estimates, related to the spring 2011 discussions regarding the cancellation of the Mississauga gas plant, and that a search be extended to Archives Ontario in the event documents were archived following staff departures.

The Chair (Mr. Shafiq Qaadri): Following discussion? Yes? Seeing none, those in favour? Those opposed? Motion carried.

If there’s no further business, committee is adjourned until Tuesday next week.

The committee adjourned at 1002.

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