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Official Report of Debates (Hansard)

Tuesday 14 May 2013

Journal des débats (Hansard)

Mardi 14 mai 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

Tuesday 14 May 2013

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**COMITÉ PERMANENT
DE LA JUSTICE**

Mardi 14 mai 2013

The committee met at 0829 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy of the Parliament of Ontario to order.

MR. TIM HUDAK

The Chair (Mr. Shafiq Qaadri): I'd like to welcome our next presenter, the honourable Tim Hudak, leader of Her Majesty's official opposition. Mr. Hudak, I'd invite you to be sworn in by our Clerk.

The Clerk of the Committee (Ms. Tamara Pomaski): 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. Tim Hudak: I do.

The Chair (Mr. Shafiq Qaadri): Mr. Hudak, I believe you're very familiar with the protocol here. You have five minutes for your opening address, and then rotation by questions. I'd invite you to please begin now.

Mr. Tim Hudak: Yes, I have spent some quality time in committee over the years. Thank you for the invitation, Chair, and the kind words.

Members of the committee, I appear here this morning out of respect for this committee and its important mandate to get answers to some very serious questions: Why were large power plants forced on communities in Mississauga and Oakville that didn't want them? Why were the contracts unexpectedly ripped up by the Liberal government, and at what cost to taxpayers? Then who ordered the documents to be hidden from the public eye to cover up these decisions to protect members of the Liberal Party?

The Liberals themselves profess that this was no mistake. It wasn't policy-related; they say themselves, including Premier Wynne, that it was a strictly political decision. That means, Chair, that the Liberals made deliberate decisions to sign these contracts and then rip them up, no matter the cost. They made deliberate decisions to orchestrate a massive cover-up of relevant documents and the true cost to taxpayers.

This included, quite frankly, a shameful closure of the Ontario Legislature for four months to prohibit this com-

mittee from doing its important work. The only logical conclusion to draw from this ongoing pattern of behaviour is that if Kathleen Wynne and the Liberal government get away with this, they'll do it again.

The insinuation that anyone other than the Liberal Party is responsible for this fiasco is an insult to the intelligence of every Ontarian. It's a betrayal of the people who are now on the hook for hundreds of millions of dollars to save a handful of Liberal seats in the last election.

The sad reality is, the deeper we dig, the more troubling the revelations. I fear that we've only begun to scratch the surface. This reinforces my view that the best and only way to get the answers taxpayers deserve is through a judicial inquiry. Just as the public interest was well served by the Gomery inquiry in the federal sponsorship scandal, so too the interests of the Ontario taxpayer will be best served by a judicial inquiry into Liberal behaviour. A judicial inquiry led by a new government would have the authority to uncover exactly how this scandal happened, who was responsible, and if any of the money can be recouped. If criminal wrongdoing is found, those accountable should be prosecuted to the fullest extent of the law. We have heard weeks of contradictory testimony, selective memories and revelations of missing documents and purged emails. Sadly, it has become clear that the only way to get some witnesses to tell the truth is the potential for jail doors to start slamming shut behind them.

In closing, I had come to the conclusion some time ago that to restore hope to this province, to get Ontario back on track, to bring more jobs to Ontario, we must change the government that leads this province.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hudak, for your introductory remarks. I now offer the floor to the government.

Just before I do, I would encourage all members to please observe parliamentary decorum, not only for all witnesses but in this particular case, as we have a sitting MPP before us.

Mr. Del Duca, 20 minutes.

Mr. Steven Del Duca: Thank you very much, Mr. Chair. Good morning, Mr. Hudak.

Mr. Tim Hudak: Good morning, Mr. Del Duca.

Mr. Steven Del Duca: It's great to see you here before this committee, I guess, after the third time or so

that you were invited to appear. I hope you weren't up too late last evening celebrating your Bruins' big victory.

Mr. Tim Hudak: It was a very good game of hockey, and the Leafs have lots to be proud of as well. A good young team; I think they'll make a big playoff run next year.

Mr. Steven Del Duca: That's great. I'd like to start by showing a short video for the committee. I believe I need unanimous consent to do so.

The Chair (Mr. Shafiq Qaadri): You need majority consent. Do we have majority consent for this particular video? It seems that you do not have such, Mr. Del Duca. You may continue.

Mr. Steven Del Duca: I am quite sorry to hear that. I'm not quite sure why the folks on the other side would not want us to show the video.

I understand that we do have documents that are being passed out to members of the committee. I'd like to call your attention to PC doc 1, if you have a chance to take a look at it. This is a document that shows a picture that was taken of your October 5, 2011, campaign announcement at the site of the Mississauga power plant. In response to a question about what you would have done if you had won that 2011 election and inherited that site, you announced very clearly that it would be "done, done, done."

So I think it's pretty clear that during the 2011 election campaign you made a promise to cancel the Mississauga power plant if you were elected. Is that correct?

Mr. Tim Hudak: Well, let's be clear about this, Mr. Del Duca, because I think folks understand what you're trying to do here. Let's talk about some background on this issue. The PC Party had never supported forcing gas plants into Mississauga or Oakville. In fact, Chair, as I think members of the committee are well aware, that's a PC policy dating back to the 1990s, when we faced a similar concern and then-Energy Minister Jim Wilson said that no, we wouldn't put a gas plant in Mississauga, an unwilling host community. That's been our consistent position for—what?—15 to 17 years.

Now let's get this straight. It was the Liberal government, Mr. Del Duca, that decided to force gas plants into Oakville and Mississauga. It was a Liberal government that decided then to cancel the plants and rip up those contracts, at an extraordinary cost to taxpayers that we still don't even know to this day, Chair, just how much we're on the hook for for the cancellation of these gas plants. And it was you who decided in the campaign—who were pro the gas plant and then changed your mind against it.

Our position has been absolutely clear: We've been against the forced implementation of gas plants in those communities for 15 to 17 years. Quite frankly, Chair, the result of that was that the cost to the taxpayer would have been zero, because we wouldn't have contracted to build those gas plants in the first place.

Mr. Steven Del Duca: I appreciate your version of the background, but I guess there are a couple of things that I'm trying to get really clear. First of all, in the Missis-

auga case, when a local community group that was opposed to that particular plant had the opportunity to meet with your energy critic, Mr. Yakabuski, he said very clearly to them that he didn't see a problem with the plant. They certainly took that to mean that he was speaking on behalf of your party and your caucus.

So to go back to my original question—I just want to make sure that I understand clearly—when you told the people of Mississauga and, frankly, the people of Ontario during that 2011 election campaign that if you were elected, that plant would be "Done, done, done," I am correct in saying that you were going to cancel that plant and relocate that if you were elected.

Mr. Tim Hudak: We never would have built these plants in the first place—

Mr. Steven Del Duca: That's actually not what I'm asking, though.

Mr. Tim Hudak: —we have a long-standing position, Chair—

Mr. Steven Del Duca: Just to be clear, I want to know—if you had been elected.

Mr. Tim Hudak: —the member says "my version of the background." These are actually the facts and our consistent position. I know, Mr. Del Duca, what you're trying to do here.

Mr. Steven Del Duca: Just looking for an answer.

Mr. Tim Hudak: When I was helping to get some cash to get ready for university, I worked as a lifeguard for a little while; a great summer job. One of the things we always talked about was called the "drowning man syndrome." Basically, it was something to watch out for. If somebody is going down, they're about to drown, they try to take anybody down with them. That's clearly what's happening with the Liberal committee members here. They made a deliberate decision to force these gas plants into communities. They made a deliberate decision to cancel the gas plants at any cost to taxpayers and then a deliberate decision to try to cover that up; I mean, tens of thousands of documents buried. I see you nodding, Mr. Del Duca—

Mr. Steven Del Duca: No, I appreciate the biographical sketch.

Mr. Tim Hudak: That's why I've come to this conclusion, Chair.

Mr. Steven Del Duca: Thanks very much for that history. Let me go on to an interview that you did with Steve Paikin—

Mr. Tim Hudak: The conclusion that's reached, I think, is a very important conclusion—

The Chair (Mr. Shafiq Qaadri): I would appreciate if both of you would allow each other to both pose the question and answer the question.

Mr. Tim Hudak: I'll wrap up and I'll give Mr. Del Duca his next question. I think the important conclusion here is that with these types of tactics by the Liberals, who are trying to turn this committee into some kind of circus, it is clear—and I'm sad to say this, Chair—that the only way we'll actually get answers is to have a full judicial inquiry, that the threat of jail doors slamming

behind those who are not answering these questions, hopefully that will get some truth from the Liberal members.

Mr. Steven Del Duca: Speaking of tactics, let's talk about the interview you did with Steve Paikin—who I think is in the room with us here today—this past February 28, where you said, “With respect to Mississauga, I mean, you're right.... I said, given those circumstances, then we wouldn't build the plant.” You have PC document 1 as well, where we have highlighted text, if you can take a moment to take a quick look at it. It's a flyer from the election. I'm not sure if you're going to take a chance to take a look at this particular document. I'm wondering if you could actually read the highlighted text that we have on this document that appears here, if I could ask you to read that to the committee.

Mr. Tim Hudak: Come on, Mr. Del Duca. This should be a serious—

Mr. Steven Del Duca: Mr. Chair, it's a request to read—

Mr. Tim Hudak: Chair, respectfully, I've had the chance to serve. It's been an honour to serve for 18 years in this Ontario Legislative Assembly. I've had a chance to sit on that side of the committee, on that side of the committee. I had a chance to sit in your chair as well. I respect the work that the committee has been charged to do. I respect the fact that you're all elected members. And I hope that your goal here is to get to the bottom of why the Liberals cancelled the plants, what the true costs were to taxpayers and why there is a deliberate decision then to cover that up. Respectfully, Mr. Del Duca, trying to turn this into some kind of circus by asking me to read documents, that's not going to be helpful to get true answers for taxpayers on why your government cancelled these plants and covered it up.

0840

Mr. Steven Del Duca: I can understand why you don't want to read it, but I've asked the witness, Mr. Chair, as has happened with other witnesses who appeared here—

The Chair (Mr. Shafiq Qaadri): And he has denied your request, which is his right.

Go ahead.

Mr. Steven Del Duca: Okay. I'll read it for you and for the folks who are watching. This is a flyer that was passed out during the 2011 election campaign, and the highlighted text that you are unwilling to read for us says, “The only party that will stop the Sherway power plant is the Ontario PC Party. On October 6, vote Ontario PC.”

Your local candidate's name is on it, your party logo is on it, your party website is on it, phone number, a whole bunch of stuff on there that makes it very clear this is something that was at least portrayed or put out there as speaking on behalf of your party, your caucus, yourself regarding cancelling the Mississauga power plant.

So again, I would just ask you to clarify for us: If you had been elected in October 2011, would you have gone forward with the power plant in Mississauga or would you have cancelled it?

Mr. Tim Hudak: Again, Chair, in answer to this question, it has never been the position of the PC Party to support gas plants in Mississauga or Oakville. We would take a very different approach when it comes to energy supply in the province. Quite frankly, Mr. Del Duca, there's only one party that said they would build the plants and then cancelled them, and that's the Liberal Party, not knowing—I think you actually did know—the cost to taxpayers. I think you have tried to cover this up, and then you refused to release documents.

Our position has been perfectly consistent. Why would we build a plant that we had opposed? Why would we build a plant when there were environmental concerns or energy concerns? If you ask me, would I continue building a Liberal power plant under those circumstances, of course not.

Mr. Seven Del Duca: So why would your energy critic, Mr. Yakabuski, say he had no problem with the plant? Was he wrong at the time? Are you wrong now? Look, I'm new here so I just want to make sure I understand this clearly. He said something to a local community group very clearly. He said he was okay with it—

Mr. John Yakabuski: Point of order: Mr. Del Duca can allege what he wants that someone may have said. I have never in front of this committee—

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, points of fact and truth—

Mr. John Yakabuski: I'm saying that I did not say that.

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca, please continue.

Mr. Steven Del Duca: Thanks very much, Mr. Chair.

To be clear, for folks who are watching, it's not my allegation; it's the folks who live in the community in Mississauga who had the terrific opportunity to meet with Mr. Yakabuski prior to the election. He was the one who told them, in their words, that he didn't see a problem with the plant. You're telling us today that your party never would have gone down that path. I think folks watching can understand that the evasiveness that's going on here, the lack of clarity, is being done for very specific reasons.

Interjection.

Mr. Steven Del Duca: Let me move on, if I can. It's also true that the PC Party, during that election campaign, paid to send robocalls to voters in the area to highlight your promise to cancel the power plant. Is that correct?

Mr. Tim Hudak: I had hoped to have a chance to respond to your earlier comments, saying that somehow we weren't consistent from the 1990s. Again, Mr. Del Duca, there are very serious questions that need to be answered by this committee. For example, why did the Liberal government agree to pay Eastern Power \$40 million for contracts for staff without even the proper receipts, including a \$100,000 EA?

I'm disappointed that you are not using your time to actually get those relevant questions for the taxpayers. Why did the Liberal government decide to spend millions of dollars to pay Eastern Power for the property in

Mississauga and then allow Eastern Power to actually keep that property and potentially sell it off? That's clearly a rip-off of taxpayers, and I'd hope Liberal members would be asking those types of questions as opposed to what another party might have done.

Let me point out an important thing here, Chair. The member, Mr. Del Duca, says that we were opposed to the plant, but every day in the Legislature, Mr. Milloy says we were supportive of the plant. You can't have it both ways. Nor do I find, quite frankly—the bottom line here—that any of this is entirely helpful to getting answers on why the Liberals cancelled these plants and the cost to taxpayers. I wish we would spend our time on something that will get answers for taxpayers on what actually happened.

Mr. Steven Del Duca: Okay. You wouldn't actually answer the question about robocalls, so I'm not going to go back to that one in terms of asking whether the robocalls took place. We all know they took place. In fact, I have a script here—

Mr. Tim Hudak: Again, with respect, Mr. Del Duca—

Mr. Steven Del Duca: It's PC doc 3, if I can read it to you. I'll read the script to you, actually, if you don't mind. This script says, "Hi there. This is Geoff Janoscik, your Mississauga South Ontario PC candidate. I'm calling about the ... power plant that the Liberal government decided to build in your backyard. I'm against this power plant, and as your MPP, I will fight to stop the power plant from being built."

So it's very clear from the text of this particular script that the PC campaign was very clearly and very aggressively coming out during the campaign against the plant. I guess the question to you that I would have at this point is: With respect to that decision within the PC campaign structure, who was the mastermind around this decision? Who were, to use a phrase I've heard here before, the henchmen?

Mr. Tim Hudak: Good, cheap theatre, Mr. Del Duca, in terms of what you're trying to do, and that's obscure what the real issues here are before the committee. I know what you're trying to do. I've had a chance to—

Mr. Victor Fedeli: McGuinty, Wynne, Duncan, Sorbara.

Mr. Steven Del Duca: As party leader, did you approve of the decision? Did you—

Mr. Tim Hudak: Sorry, I think there was a question, Mr. Del Duca, that you asked. It's a fair point. You asked me who the masterminds were. I hope the committee gets to the bottom of this, but, you know, clearly Dalton McGuinty; clearly Kathleen Wynne played a very key role in the cancellation of the power plants—

Mr. Steven Del Duca: In your campaign—Dalton McGuinty and Kathleen Wynne played a role in your campaign?

Mr. Tim Hudak: I suspect that Charles Sousa, the finance minister, was probably also involved. But here's the point that I made. I appreciate Mr. Del Duca reminding me of this important point. We don't actually know. I

do believe that the testimony we saw here from Premier McGuinty and Premier Wynne was rather evasive and strained the bounds of credibility. I think that's regrettable, particularly from a sitting Premier who said she'd be different. But I think, importantly, we have had—and members of the committee would know far better than I—contradictory testimony from the Liberals. We've heard about deleted emails, ongoing missing documents, the things have been redacted—the technical term for blacked out.

I am concerned that despite the good efforts of committee members who seem to be interested in the real points, they will never get to the bottom of this. I want to reiterate my view, Chair, that I think the only way to get real answers to taxpayers, like questions like Mr. Del Duca asks, like, "Who were the masterminds behind this?"—I think Mr. Del Duca would be better served by a judicial inquiry that will actually compel testimony. The threat of people going to jail if they don't give truthful testimony: Maybe that will rattle enough cages; it will actually get answers on behalf of taxpayers. I'm not going to give up on that. A government I lead will bring in a judicial inquiry to actually get the answers for taxpayers.

Mr. Steven Del Duca: Thanks, Mr. Hudak. When you made that absolute and unwavering commitment to the people of Mississauga; when you said, as the video would have shown, as the document shows, that if you had been elected the plant would have been "done, done, done"—just out of curiosity, did you know how much that promise would have cost?

Mr. Tim Hudak: I'll reiterate this point and then I'll ask Mr. Del Duca back the question if he's interested in answering it.

We've opposed the forced placement of those plants from the beginning. You can't cancel a plant that has never been contracted in the first place. So the answer to your question is, quite frankly, zero. There would have been no cost because a PC government would not have built those plants in the first place.

I think a more important question, Mr. Del Duca, if you're actually serious about what this committee is supposed to do; if you're thinking instead of trying to please those in the Premier's office and trying to stand up for Vaughan constituents—I wouldn't mind one question from you, saying: How much does this actually cost and why did your party decide to cover it up?

I'll do my best to give those answers, sir. I know you see my face in the Legislature. I wasn't part of the Liberal campaign team; I wasn't part of the Liberal Party. I might respectfully suggest that your questions on how much it costs are better directed to your colleagues.

Mr. Steven Del Duca: At that specific point in time, when you made that commitment, when you sent your candidates to tell the people of Mississauga that that power plant would not have been built, would have been cancelled if you had been elected—at that precise moment during the campaign, and with the greatest of respect with a yes or a no answer, if possible, did you

know how much that campaign commitment that you made would have cost?

Mr. Tim Hudak: Of course. The answer is zero; we would not have put the plants—

Mr. Steven Del Duca: At that particular moment—at that particular point in time.

Mr. Tim Hudak: We would not have put the plants in the first place, and therefore the—Chair, I think it's pretty clear. If you don't build the plants, there's no cost of cancelling those plants.

I think Mr. Del Duca understands this and I know he's trying to divert what looks like a trail directly to the Premier's office and Premier Wynne's involvement in this as well. So I understand the tactics he's trying to employ, but the cost of cancelling a plant that was never built—zero. There's only one party that actually decided to build the plants—that's the Liberal Party. We don't know the cost to the taxpayers as a result of those politically motivated decisions as of yet. Perhaps a judicial inquiry will help us get that answer as well.

Mr. Steven Del Duca: I wasn't here at that particular point in time, but I do remember the campaign. I followed it fairly closely. I know that you made a big deal, as party leaders do from time to time, talking about making sure your campaign commitments, your platform etc. is completely costed and that the costing is transparent.

So again, I would ask: Do you have any information on the costing or the estimates or anything like that your party would have done? Any background work? Any due diligence whatsoever during that election campaign when you decided to go out so clearly and tell the people in Mississauga, and your candidates did as well—robocalls, flyers, campaign events, photo ops—when you made that campaign promise, like all the other ones that you had in various versions of Changebook, when you made all those promises, they were allegedly costed. I'm just wondering, on this particular promise that you made to the people of Mississauga, again, if I could, with the greatest of respect, get a yes or no answer, did you have any kind of costing done around that promise?

Mr. Tim Hudak: The answer is yes, and the cost is zero. I don't know if I can be even more clear; if you don't build a plant in the first place—a PC government would not have built that plant—

Mr. Steven Del Duca: Well, I'm a little bit confused, because again, as I said earlier, your energy critic, Mr. Yakabuski, and your party were on record as being supportive of building the power plant. So when you made the commitment—

Mr. Tim Hudak: Maybe I can ask, Chair: I think that there's an important concern here. The reality is—

The Chair (Mr. Shafiq Qadri): I'd invite you to both, please, allow each other to finish your comments.

0850

Mr. Tim Hudak: Thank you, Chair. The reality is, what's this committee supposed to be here for? I understand the game Mr. Del Duca is playing. I equated it earlier to the drowning man syndrome: if you're going

down and your party is going underwater, you just try to grab on to whatever you can and pull them with you. They tried to do it with the Ontario Power Authority. They tried to do that with the civil service. They tried to do it with the other two parties.

I thought, Chair, that this committee was about getting answers to what actually happened instead of asking hypothetical questions about what may have happened. Mr. Del Duca can persist in these questions; I just wish that if he were focusing on what taxpayers care about, he'd ask questions about how much this cost when the Liberals made this decision and why there was a cover-up of documents.

I know Mr. Del Duca has been here for a relatively short time. You did say—you're right—you weren't here in 2011.

Mr. Steven Del Duca: Eight months.

Mr. Tim Hudak: I appreciate that, but I think members of all parties would agree that it was a travesty that these documents were hidden from the public and that Premier McGuinty, supported by Premier Wynne, decided to shut down the Legislature for four months simply to prevent this committee from doing its important work.

I'm happy to answer Mr. Del Duca's questions; I just wish he'd be asking about what is pertinent to the mandate of this committee and to what taxpayers actually want to know: How much did it cost to cancel those gas plants?

Mr. Steven Del Duca: In terms of pertinence, let's talk about this. Which energy experts did you consult prior to making the decision during the campaign in 2011 to cancel the Mississauga power plant?

Mr. Tim Hudak: I think that since it's been a long-standing PC policy, it would have come about from decisions made by government, which would have had advice from those who work in the energy field, including civil servants. It just seemed to be perfectly clear: If Mississauga didn't want a power plant, why would you force it on that community? That's why we decided not to put that power plant there. So I guess my question back to Mr. Del Duca is, if Mississauga was opposed to the plant, why did the Liberal government try to force it there in the first place?

Mr. Steven Del Duca: If Mississauga was opposed to the plant, why did your energy critic say you guys were okay with the plant?

Mr. Tim Hudak: Again, maybe you and Mr. Milloy—

Mr. Steven Del Duca: Was he freelancing?

Mr. Tim Hudak: Maybe you and Mr. Milloy have to get your stories straight. One person in the House says that we were opposed to the plant; you're saying that we were in favour of the plant. I'm actually the PC leader. I served in cabinet when Jim Wilson was energy minister and subsequently. I can assure you—and you can check the record—that it's been a long-standing PC position, which I have endorsed as leader, not to force these gas plants into communities that don't want them.

Similarly, we have that position when it comes to wind turbines in the province and your feed-in tariff program. I think it's inadvisable, at the least. I think it's a significant breach of democracy to force them into those communities' local decision-making. Our position has been perfectly consistent on this—

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

Mr. Tim Hudak: —across the board. I guess, Mr. Del Duca, the question that I wouldn't mind hearing from you is, why did you choose to force those plants into unwilling host communities and then rip up the contracts?

Mr. Steven Del Duca: It's fair to say, I guess, from all of what we've heard over the last 19 minutes or so, that you didn't consult any particular energy experts—

Mr. Tim Hudak: In fact, I think, Chair, with respect, I said the opposite.

Mr. Steven Del Duca: —that you weren't quite sure what your critics were doing. Mr. Yakabuski clearly was flying without a net when he was talking to the people in Mississauga around what you opposed or didn't oppose, that you sent candidates out there to say certain things and put together promises on the fly that didn't have any costing. I think that's fair to say.

What I'm taking from the last 18 or 19 minutes of fairly fantastic skating that you've been doing with respect to evading my questions is that there was no costing done, you didn't know what your critics were doing, and you were making promises on the fly. You're not even admitting whether you were going to fulfill those promises or complete those promises if you got elected. I'm not quite sure if you were lying to the people of Mississauga or what the case was—

Mr. John Yakabuski: Objection, Chair. He will withdraw the—

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

To the PC side, Mr. Fedeli.

Mr. Victor Fedeli: I'm waiting for the objection to be—

The Chair (Mr. Shafiq Qaadri): Thank you. I think we've dealt with that, Mr. Fedeli. I'd appreciate it if you'd please continue.

Mr. Victor Fedeli: Thank you very much. Did you want to finish any thoughts?

Mr. Tim Hudak: Sure. Thank you, Mr. Fedeli. When the member for Vaughan talks about candidates saying things that the government didn't say, about changing their mind on the fly, about cancelling contracts, isn't he actually describing what the Liberals chose to do? I do hope this committee will succeed in its purpose and find out how much it actually cost taxpayers and who ordered the burial of the documents.

Thanks for the time, Mr. Fedeli. Just a statement: I hope that members of the committee—I know the NDP has a somewhat similar view, and I appreciate that—will endorse a call for a judicial inquiry at the end of this. I think there is a frustration that the Liberals have been far from co-operative in actually getting the answers on those essential questions.

Mr. Victor Fedeli: Thank you very much. I wanted to take a moment; I've only got two questions, which I promise I'll eventually get to. I just wanted to talk a little bit about the why, the costs and the cover-up. I think if you have followed what we've seen here in the last couple of months, I want to take a moment and talk about what we've learned so far. The Liberals, according to Premier Wynne, made a political decision to cancel the two gas plants. This was designed purely to save five Liberal seats in the run-up to the 2011 election. The gamble—I've used the expression, "they rolled the dice"—was that they would win those five seats, thanks to cancelling the gas plants, and form a majority government.

Now, luckily for Ontario—sadly for the Liberal Party, but very luckily for Ontario—they missed that majority by one seat. That meant the opposition parties now have the opportunity in committee to get to the bottom of various Liberal scandals, including Ornge. That's why we have Ornge hearings today, because we have a Liberal minority. That's why we're here today, talking about this gas plant scandal. They rolled the dice and they lost. To me, this kind of scheming is not what Ontario wants, and I'm truly hoping that you can talk later about the non-confidence vote of this scandal-plagued government.

I want to talk for a moment about the costs. You will recall that we heard this \$180 million, which was quickly turned into \$190 million, which the Auditor General told us is really \$275 million. Then we've heard this \$40-million number on the cancellation of Oakville that the Liberal Party has stuck to. Yet we've had energy experts put it at \$800 million. The OPA vice-president, if you add her numbers up, put it at \$991 million. The official OPA number today is \$310 million. Regardless of the number, it's not \$40 million, the number that Premier Wynne has stuck to.

My first question to you is, do you know how much this Liberal gas plant cancellation scandal cost the taxpayers of Ontario?

Mr. Tim Hudak: No. I guess we have some view from the Auditor General's report with respect to the Mississauga cancellation, as you described, Mr. Fedeli. We're pending an investigative report from the Auditor General in August or September with respect to the Oakville cancellation; we'll have a broader picture.

The thing I regret, though, is that Liberal members, instead of trying to get answers to those questions, are trying to obfuscate. They're trying to throw mud to see if something sticks. I know they have their marching orders; I just don't think it's in the interests of taxpayers in the province of Ontario to try to get away from the essential questions; as you said, how much this actually cost. I hope that we will get that answer. I'm not going to give up on it, and if it takes a full judicial inquiry to get that answer, I'll do it.

Mr. Victor Fedeli: My next question—these are the same two questions I ask virtually every single witness who's here. When we got this first tranche of 36,000 documents, we went through, and I remember the shock

of my fellow caucus members and the staff, who found so many blank pages and so many redacted documents. And then you read a message that is a reply to Fred but there is no original email from Fred—we knew there were hundreds, and then it seemed like thousands, of missing documents, just flat-out not there; so, blank documents, redacted documents, missing documents.

We've since received a second tranche of 20,000 documents, and a lot of the holes were filled in. We've learned that the OPA was instructed to remove those documents in a cheeky way where they didn't quite say "Oakville" or "Mississauga"; they may have said "SW GTA" for "southwest GTA" and this type of thing. Obviously, they either lawyered up or they just felt downright guilty at removing those documents—physically removing them; they were part of what they originally had. So they turned over 20,000 more documents.

Since that time, we've received hundreds—thousands, actually—of additional documents, all documents we were entitled to in the first place. So they're kind of filling in. We've heard sworn testimony that people have erased their hard drives, have deleted their emails and deleted the deleted files. We now have evidence of people—this is a letter from the cabinet office: "Confirmed during the processing of an earlier request and subsequent appeal that the email accounts of the Premier's former chief of staff, the former principal secretary and the former deputy director of policy no longer existed." We also have a document from the government that says the paper and electronic records are to be transferred to the custody of the Archives of Ontario when they're five years old. These were deleted before they had a chance to even be seen by us. There's a horrendous cover-up here.

My second question to you, Mr. Hudak, is: Do you know who ordered the cover-up?

0900

Mr. Tim Hudak: No, I don't. Taxpayers deserve to know. Quite frankly, members of all three parties deserve to know who ordered the cover-up of these documents, the deletion of documents, the disappearance of documents. The media need to know.

I use the term—and this reminds me of why it's accurate—this crosses the line into corruption. When they're deliberate decisions by the Liberals to eliminate documents, to hide them from the taxpayers who pay the bills, that crosses the line into corruption and reinforces my view that if the Liberals get away with this, they'll do it again.

The Chair (Mr. Shafiq Qaadri): I just advise all members to please observe parliamentary decorum and language.

Mr. Victor Fedeli: Can you repeat your last sentence, Mr. Hudak?

Mr. Tim Hudak: The Liberal Premier, Premier Wynne, and members have described it as a political decision, which means it was a calculated and intentional decision to cancel those plants no matter what the costs, and I do believe they knew the range of costs. Then they

decided to cover up the documents. My concern here, Chair, is that if they do it for Mississauga and they do it for Oakville, and they intentionally made those decisions, that tells me they'll do it again if they can get away with it.

Certainly, when a government crosses that line in their thinking, when there's that intent to put the Liberal Party's interests ahead of anyone else's, you have to ask yourself: Do they any longer maintain the moral authority to govern this province? There's too much at stake.

Mr. Victor Fedeli: Thank you very much, Mr. Hudak. I'm going to turn the questioning over to Mr. Yakabuski.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, the floor is yours.

Mr. John Yakabuski: Thank you very much, Chair, and thank you, Mr. Hudak, for joining us this morning.

We heard over and over again the laudable claim by Premier Wynne that things were going to be different and that she was going to ensure that this committee would have access to all of the information that we could possibly need or require to get all of the answers and get to the bottom of this scandal. Who made the decisions to cancel the power plants? Why were they made? Under what circumstances? Who made the decisions to cover up documents? When was the information known to the Liberal cabinet? Those were supposed to be the issues that this committee was going to get to the bottom of on behalf of the people of Ontario, working through this Legislature.

Can you give me any insight as to why Premier Wynne has refused to reveal when she knew what the additional costs would be to cancel the gas plants? She has verbalized this refusal 130 or more times. She makes this claim that she wants this committee to work, she makes this claim that she wants the Legislature to get on with finding all the facts around Mississauga and Oakville, yet she has refused at least 130 times to reveal to the committee and to the people of Ontario when she knew that there would be more than the sunk costs of \$40 million at Oakville, for example. Mr. Hudak, can you give us any insight as to why she would continue to refuse to divulge or reveal that information?

Mr. Tim Hudak: Listen, I wish I could. Quite frankly, I had expected better from Kathleen Wynne. She said she was going to be different, she said she was going to turn a corner, but as you can see by her refusal to answer basic questions, her testimony in this chair a number of weeks ago was highly evasive. As I said—I'm trying to use parliamentary language, Chair, trying to be polite with respect to the work of the Chair—it strained the bounds of credibility; I think that fits the parliamentary language.

Then this has been exacerbated by the fact that it seems to be the goal of the Liberal members to turn this into some kind of game. The mandate of this committee, if I understand—and Chair, you can correct me if I'm mistaken—is to find out what the Liberals did and not what other parties may have done. It looks like the Liberal members of this committee are trying to treat this

as some kind of game. I think taxpayers want answers; it looks like the Liberals want to create chaos.

Mr. John Yakabuski: Well, it is clear, Mr. Hudak, that that's precisely what the Liberals want to do. This committee has been given its mandate. It has been charged with its responsibilities. It is about trying to find out who made those decisions to cancel this power plant, who made the decisions to withhold documents and what the costs—the true costs, the real costs—to the people of Ontario are going to be. The exercise that the Liberals seem to be willing or wishing to engage in has nothing to do with that mandate whatsoever.

It is rabble-rousing and game-playing of the lowest kind, because it's drawing in people who had no involvement in the decision to site these plants, sign contracts to build these plants and then, in the midst of the construction of one of them and just prior to the construction of another, tear up those contracts and say, "We're going to relocate them," at a cost we know today at the very least—\$585 million is the lowball cost, as presented by the OPA and the Auditor General. When we get the Oakville cost, it could be even more.

Various witnesses, including Colin Andersen, CEO of the OPA; Shelly Jamieson, the former secretary of cabinet; Peter Wallace, the current secretary of cabinet; David Lindsay, the former Deputy Minister of Energy; Serge Imbrogno, the current Deputy Minister of Energy; and David Livingston, former chief of staff to Dalton McGuinty, confirmed that the cabinet was fully aware long before they claimed there would be significant buckets of costs, over and above what they claimed were the total costs of cancelling these power plants and relocating them.

What do you think they're hiding, and why, when you make these kinds of commitments to this committee as a government, do they continue to try to block the work of the committee in finding and getting to the bottom of this scandal?

Mr. Tim Hudak: I mean, that's probably a good question for the Liberal members of the committee: why they're engaging these tactics. I'll give you my best answer on this. Mr. Yakabuski raises the testimony of Colin Andersen of the Ontario Power Authority and other leading civil servants who basically said one thing: that the Liberals knew the costs of cancellation were far higher than they were saying publicly. Then you have Liberal politicians who come here and say the opposite. So, again, Chair, trying to stick with proper language, somebody is not being honest with taxpayers.

The taxpayers themselves can choose who they believe, whether it's the civil servants or the Liberal politicians. But I think, based on the behaviour of the Liberal members here today, it's pretty clear who is not being honest with taxpayers on how much the plants cost. When you hear the Ontario Power Authority, the Ministry of Energy and others say one thing very clearly about who knew the costs and when, and the fact that the costs were far higher than the Liberals said publicly, I think taxpayers can draw their own conclusions about who's telling the truth: the Liberals or the civil servants.

Mr. John Yakabuski: Thank you very much, Mr. Hudak. I have no more questions.

The Chair (Mr. Shafiq Qaadri): The PC yields its time?

Mr. John Yakabuski: Yes.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll move to the NDP side. Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Thank you, Chair, and thank you, Mr. Hudak, for being here this morning.

Mr. Hudak, were you a member of the Liberal government that commissioned, cancelled and relocated the Oakville and Mississauga gas plants?

Mr. Tim Hudak: No, I was not.

Mr. Peter Tabuns: Fine. Did you generate any of the documents related to the cancellation or relocation of the gas plants that were provided by the government?

Mr. Tim Hudak: No, I did not.

Mr. Peter Tabuns: Did you have anything to do with document production for the estimates committee?

Mr. Tim Hudak: I did not.

Mr. Peter Tabuns: Mr. Hudak, we appreciate your attendance; you respected the committee. You are irrelevant to this inquiry, with no disrespect.

Mr. Tim Hudak: I won't take that personally, Peter.

Mr. Peter Tabuns: And I have to say I think it's an abuse of the committee and an abuse of power to have you here this morning. We know what we need to find out. Bringing you in is simply an attempt by the Liberals to try to confuse what's before us.

Thank you for your time. Hopefully we will not waste time like this in any other circumstances.

0910

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

To the government side: Mrs. Cansfield.

Mrs. Donna H. Cansfield: Thank you very much for coming and speaking to us. I would like to ask a couple of questions. I remember when I first came in, in 2003, and I was in the Ministry of Energy as the conservation person, I met with Steve Gilchrist, and we went over the proposal that you had presented as a government around moving forward on energy, so I know you're a supporter of renewable energy, even way back then.

But I do have a question that I think I've asked virtually every witness, because it's probably one of the most difficult, and really, Mr. Hudak, you alluded to it yourself, and that is the siting of renewable energy or in the issue of power plants, and the real challenge that we have here in southern Ontario where most of the population—96% of the population—of this province resides, and of course that's where the power is needed.

We have suffered for years with transmission issues that I think we can all take responsibility for, every government, for many decades. But people still need to turn the lights on, so there has to be some way that we can work with people, find a process to engage in some way around the siting of either renewable energy or the gas plants. I'd be really interested in hearing your thoughts on how you think we can go about doing that.

Mr. Tim Hudak: I appreciate that, Mrs. Cansfield, and I appreciate the tone of the question as well. You've certainly sat in that chair yourself as Minister of Energy, so you know that these decisions are complex. I won't name names, but I remember under the PC government that certain ministers would take up smoking so they could avoid being the Minister of Health. Similarly, I've seen some who will try to avoid being the Minister of Energy in the future. It has significant challenges.

I just think your first recourse when it comes to setting up plants should be to look for willing host communities, and I think that's regardless of the power source, whether it be gas plants—and the consistent position we've held with gas plants as well as with renewable energy when it comes to wind and solar particularly. I think that's first and foremost.

You could probably develop a framework for municipalities and ensure that there are ways that municipalities would more likely be willing host communities, and that's an important discussion I think we could have outside of this committee process, because communities have taken them in the past and they do bring jobs. But certainly forcing them into Mississauga and Oakville was the wrong path, and I know that you did express that in June 2011, yourself.

The other thing I'd say is that one of the reasons why we have so many gas plants coming into the province has been as a result of the rapid expansion of wind and solar power. As you know as a former minister, you can't really base a power system on when the sun shines and the wind blows; you need gas backup. As a result, there has been a greater demand for gas plants in the province.

Listen, I think we have tremendous potential when it comes to lower gas prices as a result of the Marcellus shale finding. I think that has been a game changer. But I think two things need to be done—I'll give you three, in terms of helpful advice.

One, I don't think we need the Ontario Power Authority. I think that was a bureaucracy that was supposed to be there for a short term that ballooned into a rather mammoth bureaucracy. As part of that, we've got to make sure that politicians aren't getting their fingers on the day-to-day operations. I think that's been damaging to business confidence in our province for future investment. Three, I think you should always look for willing host communities. Fourth, I just think when you add on power supply to our province, it should be done on a competitive tendering basis so that you get the best technology at the best value to taxpayers at the end of the day.

So the future of energy I would build, if I do have that honour of serving on the government side of the House again, would be around the workhorses in our system: nuclear, hydroelectricity and natural gas. Other renewables would play an important role, but they do need to be added on when we need the power, and secondly, in willing host communities. I suspect you'd have a similar point of view on that.

Mrs. Donna H. Cansfield: Thank you very much.

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

Mr. Steven Del Duca: I want to talk a little bit about this concept of a judicial inquiry, a judicial review, whatever it is that you're musing about proposing now. I have to admit I was a little bit surprised yesterday afternoon to hear, through media reports, through social media, and to hear you say it again this morning, that you're interested in pursuing some sort of, I guess, kind of loosely defined judicial inquiry, public inquiry or whatever the right terminology is. I'm a little bit confused by that approach, I have to admit: demanding a public inquiry that your party and you initially opposed into a decision that you actually clearly supported, from the record.

So, with respect to that, again, being a relative newcomer here to this place, I can remember not that long ago hearing very loudly and clearly from senior members of your caucus, some of whom are in the room today—Mr. Leone, when he said back on January 30, "The cost of a public inquiry is excessive; we don't believe that that's necessary." Rod Jackson, your caucus member from Barrie, January 31, just the next day, said that "items or issues like this should be dealt with through the legislative committees like we originally were supposed to, then we wouldn't have to have an inquiry that would cost millions of dollars." Again, Mr. Leone on January 30: "We were in the midst of a contempt motion that the committee was going to investigate regarding the cancellation of the Mississauga and Oakville gas plants. We believe that's where this discussion has to take place."

I can't imagine your caucus colleagues, I assume speaking on your behalf and on your caucus and party's behalf, being any more clear not that many days ago about why a public inquiry or a judicial inquiry or whatever you'd like to call it wasn't necessary. In fact, in their words, it was excessive in terms of spending money, it was a waste of money, and we should be dealing with these items through legislative committees like we've been doing over the last number of weeks.

It strikes me that this, on the eve of your appearance before our committee here today, is nothing but a desperate attempt at a game or a channel changer, taking people's focus away from the fact that, as I said at the conclusion of my first round of questioning, you were flying by the seat of your pants through that 2011 election campaign when it came to making commitments to the good people of Mississauga, telling them one thing and now here today you're saying something that seems to be completely different. I'm a little bit surprised to hear that you would want to go down the path of a public inquiry, I have to admit. Maybe that's standard operating procedure from folks, but it strikes me as something that's completely bizarre.

So going back to the other questions that I was talking about earlier—

Mr. Tim Hudak: Chair, I think Mr. Del Duca did raise some important concerns, and I wouldn't mind an opportunity just to respond.

Mr. Steven Del Duca: So with respect to when you made your commitments around wanting to relocate Mississauga and Oakville—

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca, if you'd like to pose your question, he'd be quite willing to answer.

Mr. Steven Del Duca: I'm about to get to my questions.

With respect to the decisions you were making during the campaign, prior to the campaign, since the campaign, about which direction you would want to move in with respect to relocating Mississauga and Oakville, just out of curiosity, who did you consult with at the Ministry of Energy before making those commitments?

Mr. Tim Hudak: Terrific. So a series of points there that hopefully, Chair, I'll have the opportunity to respond to—

Mr. Steven Del Duca: I just want to know who you consulted with at the Ministry of Energy. Just a name—anyone.

Mr. Tim Hudak: I always look for a—

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca, let the witness please answer.

Mr. Tim Hudak: I always look for that opportunity to use that classic line, "There you go again," but maybe I'll save that one for a future debate.

Let me respond. You do ask, Mr. Del Duca—I'm glad that we caught your attention with respect to a judicial inquiry. You're right that the NDP had proposed a public inquiry and we had not supported that. We think a judicial inquiry—which is different under the law—would be a more appropriate measure to take. I do commend my colleagues in the NDP; at least they're trying to get answers, and that is a mechanism to get answers. They've been consistent in that fact. I do wish that the Liberals would be a little bit more serious about getting answers for taxpayers instead of indulging in what you call channel changers. But let me tell you—I'll make my pitch to you and hopefully I'll win you over. But by the look on your—

Mr. Steven Del Duca: In this pitch, are you going to name who you talked to at the Ministry of Energy? I'm just curious—or the OPA?

Mr. Tim Hudak: By the look on your face, I'm not sure I'm going to get an answer to my question. But let me try.

Mr. Steven Del Duca: Anyone at the OPA?

Mr. Tim Hudak: So a judicial inquiry—think of it this way. I mean, this is like we saw with Justice Gomery in the sponsorship scandal. You have a judge who can compel testimony—and we think this is actually in the better interest of taxpayers, too, than a full public inquiry. The judge can compel testimony. He can force testimony before the committee, and, as I said, if people perjure themselves or they refuse to give answers, then obviously they could spend time behind bars.

Mr. Steven Del Duca: Thanks very much for that answer. So going back to my original question, if I could—

Mr. Tim Hudak: I just think when I see, Chair, that the members of the committee—

Mr. Steven Del Duca: No, I accept that answer. That's fine.

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

Mr. Steven Del Duca: Just out of curiosity, if I can ask: anyone at TransCanada that you'd spoken to before making your commitments?

Mr. Tim Hudak: It just seems sensible to me that if this—

Mr. Steven Del Duca: Eastern Power?

Mr. Tim Hudak: —is not working, then a judicial inquiry can get us answers. It may be, like I said, the threat of jail doors closing that will compel truthful testimony.

Mr. Steven Del Duca: So anyone at the Ministry of Energy, OPA, IESO, TransCanada, Greenfield—any names at all? Is there one name that you can actually give to this committee about who you might have spoken to to demonstrate responsible due diligence before you made your campaign commitment? Just one name. I mean, it shouldn't be too much to ask.

0920

Mr. Tim Hudak: Sure. I do understand, again, the game that you're playing here and you're trying to distract attention from the issues before the committee, but, as I've said, we have talked to a lot of people in the last 15 or 17 years—

Mr. Steven Del Duca: Just one name.

Mr. Tim Hudak: —including Ms. Cansfield—

The Chair (Mr. Shafiq Qaadri): Thank you. To Mr. Yakabuski: The floor is yours; 10 minutes.

Mr. John Yakabuski: Thank you very much, Mr. Hudak. Did you want to finish your—

Mr. Tim Hudak: Yes, thank you. I'm sorry, Chair. Thanks for the time, Mr. Yakabuski.

We've talked to a number of people over the years, the last 15 to 17. That's why we came to the conclusion that it's unwise to try to force these gas plants into unwilling host communities. I suspect Ms. Cansfield, by the constructive tone of her questions, would probably agree with that. There may have been Liberals who share that position. I suspect there probably are; too bad it's in hindsight.

But I think that across the board, from companies to the Ministry of Energy to those working in the agencies, they would probably agree that the best approach will be to try to find willing host communities for power supply.

Mr. John Yakabuski: Thank you, Mr. Hudak.

I actually want to pick up on Mr. Del Duca there and his fixation with the inquiry questions. I think the fact that this committee has failed to be given the opportunity to fulfill its mandate because of the blocking by the Liberal Party, the Liberal government, by Premier Wynne's office sending down her orders to the committee on the way they would conduct themselves and behave here—it's clear that the committee structure itself, which we believe had some tremendous potential, is not functioning the way it should just by the fact of what the Liberals are doing. It makes it even more compelling that somehow we have another vehicle to

actually get to the bottom of what has gone on here, because at every turn, Mr. Del Duca and his friends on the committee have done everything they can to block us from getting to that information. The witnesses who have appeared, those who are either members of the Liberal Party government—

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, I'd just also invite you to not attribute negative motives and observe parliamentary decorum, please.

Mr. John Yakabuski: Thank you very much. Members of the Liberal Party who have testified here have certainly done everything they can to avoid and evade answers.

On the testimony of the various witnesses, Mr. Hudak—the David Livingstons, the Shelly Jamiesons, the Peter Wallaces, the Colin Andersens; JoAnne Butler, who came here from the OPA and talked about buckets and buckets of costs—that the government would have been fully aware—Premier Wynne, other members of the cabinet. Is there any reason to believe that those testimonies are not completely truthful? Is there any reason to believe that they would have any motive to mislead this committee? Who has the motive to mislead this committee, I guess would be a good question.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, “mislead” is a little too colourful for the committee.

Mr. John Yakabuski: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Hudak.

Mr. Tim Hudak: Well put. I think you've done a good job, Chair. Shame on you, Mr. Yakabuski, for using that kind of language.

Mr. John Yakabuski: Admonished once again.

The Chair (Mr. Shafiq Qaadri): The committee endorses your reprimand.

Mr. Tim Hudak: Let me say this to you, because I know some either in the room—and they may be watching or they'll be briefed on it. I've known Shelly Jamieson for a long time. I've known Peter Wallace for a long time. Certainly, I've known the CEO of the Ontario Power Authority in his previous capacity at the Ministry of Finance. I think these are hard-working, responsible civil servants. I have had the opportunity to work with them both on the government side and on the opposition side. I think they're trying to do their best under the circumstances that were compelled upon them.

I do believe, from what I've heard so far, that there was significant political interference in the decision-making of the bureaucracy. First of all, that's regrettable. It sends a chilling signal across the civil service, and at the end of the day, when your motive is to try to cover up Liberal responsibility, culpability, and you try to erase the fingerprints of the Liberal Party on this, that puts the taxpayer on the hook for substantial bills.

So when you ask the question, Mr. Yakabuski, Colin Andersen, Shelly Jamieson, Peter Wallace—I believe them. I think they are extremely competent, hard-working civil servants who are doing their best under very extraordinary and unfortunate circumstances foisted upon them.

Mr. John Yakabuski: Thank you very much, Mr. Hudak. I'm going to pass the questions over to Mr. Fedeli.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. You know, I stick with the same theme with virtually everybody who has come and sat in front of us. I like to talk about the costs and the cover-up. I'll ask you the first side of it then, again: Do you think the Liberal government has been honest about the true cost of the two cancellations, Mr. Hudak?

Mr. Tim Hudak: Well, look, I think taxpayers, people watching at home, Ontarians, will make that decision based on the facts that are presented and based on the approach that parties will choose at the committee. I think if those who are watching at home today would see two parties taking a very responsible approach and calling this out for what it is—I don't know if I'd use the language, Mr. Tabuns, that I'm irrelevant, but at least I'm trying my best to answer questions.

One party seems to be engaged in trying to turn this into chaos as opposed to trying to turn it into a way of getting answers for taxpayers who had the bill forced upon them. I'll leave that to taxpayers to decide, but I think that the themes emerging from this committee are pretty clear.

Mr. Victor Fedeli: From the costs, I'd like to go to the cover-up side. Do you think the Liberal decision to hide the full cost and cover up their involvement in this scandal is worthy of a vote on whether the government remains or maintains the confidence of this House?

Mr. Tim Hudak: I do, and I appreciate the question. Let me reinforce why I think that this is important. I mean, clearly, Chair, when it comes to deliberate decisions that have been described as such by the Premier herself, by the former Premier and others—there were deliberate decisions to cancel the plants to save Liberal seats, and it seems that no matter what the cost.

Subsequent testimony from the civil service has revealed that the Liberals knew all along the costs were far higher than they had said publicly. And then there was the cover-up—I don't know how else you could describe it—of tens of thousands of documents and documents that we have never seen. This is important, because taxpayers are actually going to have to pay these bills. They should be made public, but there seems to be an orchestrated campaign to cover those up. I believe that crosses the line into corruption.

Look, I know some members of the media have said, “What do you mean by ‘corruption’?”

The Chair (Mr. Shafiq Qaadri): Mr. Hudak, once again, parliamentary language would be welcome.

Mr. Tim Hudak: Okay. If this isn't corruption, I don't know what is, and that's why I think that we need to actually have a—

Interjection.

The Chair (Mr. Shafiq Qaadri): A point of order, Mr. Delaney.

Mr. Bob Delaney: Chair, the witness is free to say what he wishes; however, the committee is still bound by

the standing orders, and a member may not make an allegation against another member.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. The point is well-taken. I think it blossoms to the general point of parliamentary language, decorum and non-attribution of negative motives.

Please continue, Mr. Hudak.

Mr. Tim Hudak: Let me just cut to the chase then. That's why we brought forward what's called a confidence motion, a want of confidence motion, in the Legislature, that basically says, if the government is willing to make these types of decisions to put the Liberal Party interests ahead of those of the taxpayer, with a jobs crisis and a debt crisis in our province, do they still maintain the moral authority to govern this province?

You either think, Chair, this is a big deal, the cancellation of the gas plants and the subsequent cover-up, or you think it's simply the cost of doing business under a Liberal government. I think taxpayers and Ontarians as a whole would like to see an up or down vote, a yes or a no on that question. I hope we do see that confidence motion called in the assembly before we recess for June.

Mr. Rob Leone: Mr. Hudak, I just have one final question, very similar to that question. We started in the estimates committee about a year ago asking a very simple question: "How much did the Oakville and Mississauga cancellations cost, and where in the estimates would we find those costs?" That answer was evaded then, and I think we still don't have the answers today.

So, given the fact that we've been at this for more than a year, do you think that this warrants this Legislature to continue to have confidence in this government?

Mr. Tim Hudak: Well, I mean, if the vote gets called, clearly, I will vote for a want of confidence in this government. Clearly, I have reached a conclusion that if we actually want to get Ontario back—if we want to build the kind of Ontario that's strong, that's prosperous, that restores hope to those who are losing hope in this great province—I think of the 600,000 of our friends, our neighbours, our relatives, who are out of work, and they're losing hope. They're blaming themselves, when in reality, they should blame the decisions the government has made that put them into that situation.

If we truly want to get Ontario back on track, that's a leader in jobs and spends within its means, we need to change the team that leads this province. We actually need to change the government to get Ontario back on top and firing on all cylinders again.

Mr. Rob Leone: Thank you, Mr. Hudak, for coming today.

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

To the NDP: Mr. Tabuns.

Mr. Peter Tabuns: I think we've wasted enough time, Mr. Chair.

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

Mr. Hudak, I'd like to first of all thank you for your presence and your testimony today, and the shared

responsibility of occasionally restraining Mr. Yakabuski. On behalf of the committee and the people of Ontario, I thank you in your capacity as leader of Her Majesty's loyal opposition, a post that you have held since June 27, 2009. Thank you.

Mr. Tim Hudak: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): You're respectfully dismissed.

Committee is recessed until this afternoon.

The committee recessed from 0930 to 1502.

ONTARIO POWER AUTHORITY

The Chair (Mr. Shafiq Qaadri): Colleagues, I call to order the meeting of the Standing Committee on Justice Policy. I invite our first presenter of the afternoon to please come forward: Mr. Michael Killeavy, director, contract management, of OPA. Mr. Killeavy, welcome to the committee, and I invite you to be sworn in.

The Clerk of the Committee (Ms. Tamara Pomaski): 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. Michael Killeavy: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Killeavy. I invite you to begin your five-minute opening address.

Mr. Michael Killeavy: Okay, Thank you. My name is Michael Killeavy, and I am the director of contract management at the Ontario Power Authority, reporting to JoAnne Butler. I am responsible for managing over 17,000 contracts at the OPA, including 15,000 microFIT contracts.

Prior to joining the OPA, I was vice-president and managing consultant at Knowles Consultancy Services Inc. for 10 years. Prior to Knowles, I was a project manager at the regional municipality of Niagara.

I have a bachelor of applied science degree from the University of Toronto, a master of engineering, and a master of business administration degree from McMaster University, and a law degree from Nottingham Law School in the United Kingdom. I have been a professional engineer for 25 years, working both in the public and private sectors.

While at Knowles, I worked for the Ministry of Energy, Infrastructure Ontario, the government of Manitoba and the federal government as well as many private sector clients, including underwriters at Lloyd's of London. I was also one of three consultants at Knowles retained as the fairness adviser in the summer of 2008 to monitor the fairness of the procurement process for the Oakville gas plant. The fairness report was delivered in September 2009. I later applied for a position at the OPA through a competitive process and joined the OPA in November 2009.

As the director of contract management, I was responsible for the management of the Mississauga and Oakville contracts along with thousands of other contracts we administer. I played a role with respect to the

relocation negotiations for both plants, reporting to JoAnne Butler. I also worked for the Auditor General's office in providing information for his audit of the cost of the relocation of the Mississauga plant. I continue to work with them for the audit of the cost of the relocation of the Oakville plant. I have also conducted internal OPA calculations relating to the costs associated with the relocation of the two plants.

It has been suggested to this committee that the OPA's cost estimates have changed. As Colin Andersen stated in his evidence, the costs of relocation of both plants are estimates which are dependent on assumptions and information that becomes available over time. Because of this, numbers can and do change. Similarly, the Auditor General made it clear that his audit of the costs of the relocation of the Mississauga plant is an estimate.

The OPA has been very clear that \$40 million and \$190 million in sunk costs associated with both plants are numbers which are just one part of the relocation costs.

In addition to these sunk costs, there are site-specific and system costs and savings. Some of them would need to be spent regardless of where or how the plants were relocated. Some site-specific costs cannot be estimated with precision until detailed engineering work is done over the ensuing years. Such costs would include transmission connections and gas connections, for example.

System costs include things like line losses, upgrades to transformer stations and replacing transmission lines. These costs were triggered when the decision was made to relocate the plants outside the Toronto area. These additional system costs are also dependent upon estimates and timing of expenditures required to do the work. Another significant cost item related to Oakville is the cost of buying replacement power based on demand in 2017 and 2018.

Adding to the complexity, there are savings associated with paying for power later and discount rates which must be applied to a 20-year stream of payments in order to account for the time value of money. These are the types of issues that have been discussed with the Auditor General.

These cost estimates, over and above sunk costs, will continue to be refined over time. The committee now has the benefit of the Auditor General's report for Mississauga and the OPA's best current estimate of Oakville costs, along with the work of NERA, an independent expert.

Finally, I wish to emphasize one other point. It has been suggested that the OPA failed in its responsibility to alert Ontarians or the government to the fact that cancelling and relocating the two gas plants would result in costs beyond sunk costs of \$40 million and \$190 million. Mr. Andersen and other witnesses have already testified that the OPA made government officials aware that additional costs would be incurred in the categories I have described. These costs cannot be known with certainty at this point in time.

I am now prepared to answer your questions.

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

To the NDP side, Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Chair. Mr. Killeavy, thank you for coming in here today.

Mr. Michael Killeavy: You can call me Michael.

Mr. Peter Tabuns: Fair enough. The package of documents that you should have before you—the last page, number 12—

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: You wrote to lawyer Rocco Sebastiano at Osler, Hoskin. In February 2011, you asked: "When might we get your opinion on whether residual value of a project might reasonably be considered as damages for a breach of contract?"

"We need to meet with" TransCanada "next week to 'negotiate' alleged loss of profit...." What was his response to your question?

Mr. Michael Killeavy: The response to the question was that—my recollection is that he thought that the terminal value, which would be the value of the contract past the 20-year term, could potentially be ahead of damages. It is possible we could be liable for that as well.

Mr. Peter Tabuns: The next document I want to have you look at is number 7 in this package. It's an email from you to JoAnne Butler. Can you walk us through this document? Do you have it there?

Mr. Michael Killeavy: I do, yes. So this would have been in November 2010.

Mr. Peter Tabuns: Correct.

Mr. Michael Killeavy: We had been meeting with TransCanada and it wasn't really clear to us exactly what sort of replacement project we were supposed to be negotiating with them as compensation for Oakville.

Mr. Peter Tabuns: Okay.

Mr. Michael Killeavy: It wasn't clear to us.

Mr. Peter Tabuns: And when you said, "What are we building?" you got "blank looks all around"?

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: You're talking about the Trans-Canada people.

Mr. Michael Killeavy: I believe so, yes. The problem that we had is that they kept telling us that they had a promise to be kept whole—

Mr. Peter Tabuns: Right.

Mr. Michael Killeavy: And we didn't really know what that meant.

Mr. Peter Tabuns: And did anyone clarify what that meant?

Mr. Michael Killeavy: No.

Mr. Peter Tabuns: Ever?

Mr. Michael Killeavy: No.

Mr. Peter Tabuns: You say in here the government was—that things were going too fast: "Gov't has ... promised an agreement ... by 15 December ... far too soon. We don't even know what we're building yet."

Mr. Michael Killeavy: That was what TransCanada had told us, was that they had apparently a commitment to have an agreement by the 15th of December 2010.

1510

Mr. Peter Tabuns: Did this undermine your capacity to get a good deal for ratepayers?

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: Can you tell us the direction you were getting from the government on this?

Mr. Michael Killeavy: I never really had very many dealings directly with the government. It would have been people like Colin Andersen and JoAnne Butler who would be dealing directly with the government. I would be dealing with them; they would be my superiors.

Mr. Peter Tabuns: Okay. So any message that was coming to you from the Liberal government was being filtered through them, by them to you?

Mr. Michael Killeavy: Correct. I'd be one step removed.

Mr. Peter Tabuns: When Ben Chin was talking about government decision-making in here, can you describe what he was talking about? You've got the second line, "Ben seems to think this will be a determining factor in the government decision."

Mr. Michael Killeavy: My understanding at the time was that whatever deal that would be negotiated with TransCanada would have to be acceptable to the government.

Mr. Peter Tabuns: Ah. Okay. All right. This "making TCE whole" approach: No one ever explained it?

Mr. Michael Killeavy: No. It wasn't clear what it meant.

Mr. Peter Tabuns: Did you ever go back to Colin Andersen and say, "Can you get clarity from the government on what we're talking about here?"

Mr. Michael Killeavy: I think I probably went to JoAnne Butler with that. Yes.

Mr. Peter Tabuns: And what did she say?

Mr. Michael Killeavy: I don't believe we ever did get an answer as to what that meant.

Mr. Peter Tabuns: Okay. Technical and cost information: Did you provide technical and cost information to the ministry at their request?

Mr. Michael Killeavy: Sorry, what are you referring to now?

Mr. Peter Tabuns: Sorry; it's another question for you.

Mr. Michael Killeavy: Oh. Not me directly. I would provide information to JoAnne Butler, Colin Andersen and Michael Lyle, and they would be the ones that would be liaising directly with the government. At my level, I really didn't deal with the government directly.

Mr. Peter Tabuns: Were you ever in a position where the OPA was not forthcoming with the government, with the minister and the ministry, about costs and problems you were encountering?

Mr. Michael Killeavy: I don't really have any direct knowledge. My understanding was that we would provide information and that that information was communicated.

Mr. Peter Tabuns: In document 6, Deb—

Mr. Michael Killeavy: Deb Langelaan, yes.

Mr. Peter Tabuns: Langelaan?

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: Thank you. She emailed you a spreadsheet in October 2010 estimating that TransCanada Enterprises' sunk costs could already be as high as \$130 million. That's more than three times higher than we've been talking about with the \$40 million. Did you update these estimates over time?

Mr. Michael Killeavy: This particular estimate was very early on. This would have been October—

Mr. Peter Tabuns: Yes. It was October 19, 2010.

Mr. Michael Killeavy: I think that this spreadsheet was actually something that we had prepared. I think this is an internal OPA spreadsheet that we prepared. I don't think this came from TransCanada. This was us trying to estimate exactly what the sunk costs were going to be. Ultimately, the sunk costs were actually quite a bit lower than the \$130 million. At that point in time, I believe they were around \$37 million.

Mr. Peter Tabuns: Okay. From the time the government announced it was cancelling the Oakville generating station until a new arrangement was reached, was the OPA paying TransCanada any fees?

Mr. Michael Killeavy: I'm sorry; paying them—

Mr. Peter Tabuns: Paying any money out to TransCanada?

Mr. Michael Killeavy: No.

Mr. Peter Tabuns: Document 3—

Mr. Michael Killeavy: Three?

Mr. Peter Tabuns: Yes.

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: You had an email exchange with Kristin Jenkins outlining a possible response to cost questions. The suggested response was, "The Ontario Power Authority is continuing discussions with TransCanada, the company selected to develop the Oakville plant. A number of options are being explored to ensure the outcome is in the best interest of Ontario ratepayers. A specific dollar figure is not available right now." You respond, "But we aren't in discussions with TCE."

Can you explain? Is that because the government was having discussions?

Mr. Michael Killeavy: Sorry, can you just—I'm just trying to orient myself on the email. Oh, I do see. This is September 21, 2011, at 5:10.

Mr. Peter Tabuns: Yes.

Mr. Michael Killeavy: Yes. At that point in time, we really were not discussing anything with them. That's correct.

Mr. Peter Tabuns: So why was it suggested that you would say that discussions were ongoing?

Mr. Michael Killeavy: I don't know. I believe that at this point in time, Infrastructure Ontario was talking with them.

Mr. Peter Tabuns: And the OPA was completely out of the picture.

Mr. Michael Killeavy: Yes—well, I wouldn't say that they were completely out of the picture. I believe that JoAnne Butler was in more or less regular contact

with Jonathan Weisstub from Infrastructure Ontario, who was the person leading the initiative from Infrastructure Ontario's end of things. So there would have been some contact, but we weren't actually at the table with Infrastructure Ontario when they were talking to Trans-Canada.

Mr. Peter Tabuns: And you weren't talking to Trans-Canada in any way?

Mr. Michael Killeavy: I believe at that point in time we weren't.

Mr. Peter Tabuns: Because you've got here: "Colin talked to Alex last week to set up a call next week."

Mr. Michael Killeavy: That would be Alex Pourbaix.

Mr. Peter Tabuns: Yes.

Mr. Michael Killeavy: Colin and Alex Pourbaix may have been in contact, but from about—it would have been just after the plant was cancelled by the government. It would be early October 2010 through to about the spring of 2011. We were having regular meetings with TransCanada to discuss the parameters around a replacement project, and we were thinking about building a peaking plant in the Kitchener-Waterloo area.

Mr. Peter Tabuns: Right.

Mr. Michael Killeavy: So there was a team of people from the OPA—my colleague Deborah Langelaan and some other people who work with us—meeting with the team from TransCanada. We used to meet more or less on a weekly basis, but those meetings basically stopped in the spring, probably around May 2011.

Mr. Peter Tabuns: So at this point you just had sporadic contact with them.

Mr. Michael Killeavy: Correct.

Mr. Peter Tabuns: It was Infrastructure Ontario that was actually dealing with TCE.

Mr. Michael Killeavy: That is my understanding, yes.

Mr. Peter Tabuns: Do you know if anyone from cabinet was engaged in discussions with TCE at this point?

Mr. Michael Killeavy: I don't know.

Mr. Peter Tabuns: All right. Document 5, page 3.

Mr. Michael Killeavy: Is that the presentation?

Mr. Peter Tabuns: That's the winding up of the Oakville generating station contract. It's a slide deck.

Mr. Michael Killeavy: Yes. This is the matrix showing the different proposals?

Mr. Peter Tabuns: Yes. The quantum comparison.

Mr. Michael Killeavy: Right.

Mr. Peter Tabuns: So were you involved in either of these counter-proposals?

Mr. Michael Killeavy: I think I helped put them together, in fact.

Mr. Peter Tabuns: And who instructed these to go forward?

Mr. Michael Killeavy: My understanding, again—not dealing directly with the government, it's my understanding from JoAnne Butler that it was Craig MacLennan who had asked us to put together—we called it a second counter-proposal. What had happened was, TransCanada had made a proposal to settle—and you'll

see that in the far left column—on March 10. We then made a counter-proposal towards the end of March, on the 28th, and then my understanding was that TransCanada was quite upset, that they didn't think that there was enough financial value in that counter-proposal and went to the government and complained about the fact that they weren't getting anywhere with us. And that basically led to the instruction coming to submit a second counter-proposal that had a little bit higher financial value.

Mr. Peter Tabuns: And Craig MacLennan was the person who instructed the OPA to go forward with the second counter-proposal?

Mr. Michael Killeavy: I don't have any direct knowledge. Craig didn't tell me; my understanding was that he told JoAnne Butler, and JoAnne Butler told me to start working on the second counter-proposal.

Mr. Peter Tabuns: Okay. How did the staff at the OPA feel about being directed to send in the second counter-proposal?

Mr. Michael Killeavy: Well, we were surprised because we thought that based on the analysis that we had done, the counter-proposal that we made on March 28 offered TransCanada fair value. So we were quite surprised.

Mr. Peter Tabuns: If you were offering them fair value and they weren't interested, would you have gone forward with that second counter-proposal?

Mr. Michael Killeavy: Probably not.

Mr. Peter Tabuns: So there was an awful lot of pushing from the Premier's office for you—

Mr. Michael Killeavy: I don't know if it was the Premier's office. It was put to me as it was government writ large. I don't know exactly who it was.

Mr. Peter Tabuns: Okay. In January 2011, you had discussions with the Auditor General?

Mr. Michael Killeavy: January 2011? I don't believe so. Not the Auditor General of Ontario, no. Oh, maybe one of my colleagues—this is when the Auditor General was doing the renewables audit?

1520

Mr. Peter Tabuns: I would have to double-check, but I believe they actually came to you and asked why this contract was cancelled and what the costs were.

Mr. Michael Killeavy: Yes, I think I do recall. I believe what happened was, they were in doing an audit on the renewable energy program. They were actually situated in our building, and while they were there, they came and they asked me and I believe my colleague Deb Langelaan why the contract had been cancelled.

Mr. Peter Tabuns: And what was the answer you gave the auditor?

Mr. Michael Killeavy: It was just a government decision to cancel the contract.

Mr. Peter Tabuns: End of story.

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: In document 11—this is a memorandum from JoAnne Butler to Deborah Langelaan—

Mr. Michael Killeavy: No, from Deborah Langelaan to JoAnne Butler.

Mr. Peter Tabuns: Oh, sorry, right—the other way around. Thank you. There's a note that Ontario Power Authority and TransCanada Enterprises "met with the Premier's office on January 13, 2011 to discuss strategy for approaching city of Cambridge." Do you know who was in that meeting?

Mr. Michael Killeavy: I don't, no.

Mr. Peter Tabuns: Did you have any reports of the content of that meeting from your colleagues?

Mr. Michael Killeavy: I don't recall.

Mr. Peter Tabuns: Okay. With regard to the Oakville contract, when was the public consulted about the siting? Was it before or after a contract had been signed?

Mr. Michael Killeavy: During the RFP process, proponents were required to do some public consultation, so there probably would have been some initial consultation by TransCanada, and I'm thinking it would have been maybe in the spring or summer of 2009.

Mr. Peter Tabuns: And do you have any recollection of the outcome of that consultation?

Mr. Michael Killeavy: When I talked to TransCanada initially, what they told me, basically, was that when they initially conducted the stakeholding, there wasn't really a lot of interest. It was only once the contract had been awarded that things kind of got stirred up.

Mr. Peter Tabuns: Is it your assumption that the company proposing the site takes on the risk for ultimately not being able to build if they encounter legal and political impediments?

Mr. Michael Killeavy: Correct. That's the model that we use, yes.

Mr. Peter Tabuns: And the contract that the OPA had with TCE said that the Ontario Power Authority wouldn't be responsible for lost profits in case of cancellation.

Mr. Michael Killeavy: Correct. You're referring to section 14(1) of the contract.

Mr. Peter Tabuns: Yes.

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: But as we went through these documents—the OPA was told, effectively, to abandon that, was it not?

Mr. Michael Killeavy: Well, there was a letter sent on I believe it was October 7, 2010, from the OPA to TransCanada, promising—basically relaying to them that the government had made a decision to cancel the project, that the contract would be cancelled, and that TransCanada would receive the financial value of the contract.

Mr. Peter Tabuns: And those words were not ones that the Ontario Power Authority would have used; they were directed to put those in there. Is that correct?

Mr. Michael Killeavy: It's my understanding from talking to Michael Lyle, who was our general counsel, that this was something that had been discussed between TransCanada and the government, and then, basically, the OPA was given the task of drafting a letter with TransCanada.

Mr. Peter Tabuns: Just to be clear: You would never have said that in a letter of agreement otherwise.

Mr. Michael Killeavy: That's right.

Mr. Peter Tabuns: Did you have an estimate of the value of those profits at that time?

Mr. Michael Killeavy: At that time, I didn't have a very good estimate at all.

Mr. Peter Tabuns: Did you have a range?

Mr. Michael Killeavy: If you look through the contract, there is the exclusion clause, section 14(1), that excludes consequential damages, including lost profits, so that would bring it down to zero. I think I had to do once a very quick back-of-the-envelope calculation, and I came up with—it was basically the value of the payments that we would have made. It would have been around a billion dollars.

Mr. Peter Tabuns: And did the government ask for that number?

Mr. Michael Killeavy: I don't know if they did or not.

Mr. Peter Tabuns: But you were not asked to provide that number further up the chain.

Mr. Michael Killeavy: I think there was an email exchange between myself and one of the internal lawyers at the OPA, and I think maybe our general counsel and JoAnne were also copied on that.

Mr. Peter Tabuns: So your general counsel, JoAnne and—

Mr. Michael Killeavy: Sorry, JoAnne Butler and Michael Lyle, the general counsel. They may have been copied on the email; I don't recall.

Mr. Peter Tabuns: And in that email, you said that if we put this in, the risk of potential expenditure is in the billion-dollar range?

Mr. Michael Killeavy: The question was asked of me: What is an estimate of the profits from the Oakville contract? I gave it in that context, as opposed to, "If you put this in, this is the exposure."

Mr. Peter Tabuns: Right. Okay. Were you involved in the final memorandum of understanding negotiations?

Mr. Michael Killeavy: I was supporting those negotiations. I wasn't actually at the table; I was sitting in my office and basically acting as a resource person if somebody needed something looked up or somebody wanted something calculated.

Mr. Peter Tabuns: So were you asked to calculate or give ranges for the cost beyond the simple sunk costs? The gas management fee—

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

Mr. Michael Killeavy: That's right, yes. We were asked to provide some estimates on that.

Mr. Peter Tabuns: And those would be passed on to the team or passed on to at least the OPA participant on the team?

Mr. Michael Killeavy: Correct.

Mr. Peter Tabuns: I know my time is going to be too short on this one. I'll start and then I'll pick up.

Document 1 contains emails between you and JoAnne Butler.

Mr. Michael Killeavy: Document 1?

Mr. Peter Tabuns: JoAnne Butler is asking about the cost modelling for the project. She indicates that you were able to reverse engineer costs in the past. Did you do a variety of estimates for the MOU team on transmission losses, on hookup costs—

Mr. Michael Killeavy: Are you talking about document number 1?

Mr. Peter Tabuns: Yes. In that, simply, you've said here that you've had experience—at the bottom of that page—in modelling the costs and working out the numbers.

Mr. Michael Killeavy: At this point in time, December 15, 2011, we would have been working on modelling the—

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

To the government side: Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair. I'm just going to pick up where Mr. Tabuns left off: the letter that was sent from the OPA to TransCanada Energy on October 7.

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: Who signed it?

Mr. Michael Killeavy: Colin Andersen.

Mr. Bob Delaney: Who wrote it?

Mr. Michael Killeavy: I believe it was drafted collaboratively with TransCanada and OPA.

Mr. Bob Delaney: Okay. So that language was—did you sign off on that?

Mr. Michael Killeavy: Did I sign off on it?

Mr. Bob Delaney: Yes. Did you—

Mr. Michael Killeavy: No.

Mr. Bob Delaney: Were you okay with it?

Mr. Michael Killeavy: I didn't sign off on it, no.

Mr. Bob Delaney: Talking about the value of the contract, you said earlier—I just want to make sure I understand this—that you had heard about the value of the contract from Michael Lyle, who was told by Kristin Jenkins, who apparently was talking to the government.

Mr. Michael Killeavy: I don't—

Mr. Bob Delaney: When you were discussing with Mr. Tabuns—

Mr. Michael Killeavy: About the financial value of the contract?

Mr. Bob Delaney: Yes.

Mr. Michael Killeavy: That was a back-of-the envelope calculation that we did at that point in time.

Mr. Bob Delaney: Okay. So at that time, you had no first-hand knowledge of it.

I understand, correct me if I'm wrong, that both contracts were ultimately renegotiated.

Mr. Michael Killeavy: Correct.

Mr. Bob Delaney: It would be inaccurate to say they were torn up.

Mr. Michael Killeavy: Correct.

Mr. Bob Delaney: In other words, there was never a suggestion that the contracts would be abrogated.

Mr. Michael Killeavy: That's correct.

Mr. Bob Delaney: Thank you. The OPA went this route, we've heard in previous testimony, because it would have been more expensive to just rip up the contracts rather than to engage in litigation or to—well, for example, former deputy minister David Lindsay said that paying costs and getting no electricity would not be a good business decision. Would you agree with that?

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: When the OPA chose to renegotiate over tearing up the contracts, was there a concern about maintaining good relationships with these energy suppliers?

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: Would you categorize the renegotiations in the case of Mississauga as difficult and complex?

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: Had construction started at Mississauga before the negotiations got under way?

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: Did that add to the pressure to get a deal as soon as possible?

Mr. Michael Killeavy: It certainly did.

Mr. Bob Delaney: When the Auditor General testified before the committee, he confirmed that the longer the delay to halt construction, the higher the sunk costs would be.

Mr. Michael Killeavy: That's correct. Our internal estimates were that they were probably spending between \$5 million and \$6 million a month at that point in time.

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Mr. Bob Delaney: All right. So the Auditor General said at the time that basically you would be putting money into the ground, and for almost no reason, and then you would have to reimburse the suppliers?

Mr. Michael Killeavy: Correct.

Mr. Bob Delaney: Was it therefore important from your vantage point to get a deal with Greenfield as soon as possible to minimize the sunk costs?

Mr. Michael Killeavy: It certainly was.

Mr. Bob Delaney: All right. I have a few questions about Oakville. Earlier, Chris Breen from TransCanada Energy was here to testify.

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: He told the committee about all the channels they would have used to deliver on their obligation to build the plant, and he said they were confident that they, TCE, would eventually get the bylaws passed by the town of Oakville overruled by the Ontario Municipal Board, the Ontario Superior Court, Divisional Court or whatever court they needed to go to. So if Trans-Canada Energy had successfully overturned the bylaws and the building permits were issued, in the case of Oakville, would the sunk costs have been higher if the decision were made to cancel the plant after construction had started?

Mr. Michael Killeavy: I think that's a fair statement, yes.

Mr. Bob Delaney: Okay. So in other words, the goal was to renegotiate on a new plant rather than to write a cheque and walk away with no electricity produced?

Mr. Michael Killeavy: That was the plan, yes.

Mr. Bob Delaney: Okay. I understand from Colin Andersen and JoAnne Butler's testimony before this committee that the cost estimates—and I think, in your own opening statement, you said so as well—for both relocations are complex and difficult to calculate. Correct?

Mr. Michael Killeavy: They are.

Mr. Bob Delaney: For how long did the auditor's office work with you on the Mississauga file?

Mr. Michael Killeavy: On the Greenfield South file?

Mr. Bob Delaney: On the Mississauga gas plant file.

Mr. Michael Killeavy: I believe they were working with us probably from the fall of 2012 till the spring of 2013. So roughly six months or so.

Mr. Bob Delaney: Okay. Why did it take the auditor and his office that long to come up with those calculations?

Mr. Michael Killeavy: I don't really know. You'd have to ask the Auditor General.

Mr. Bob Delaney: In July 2012, when the Mississauga relocation was finalized, the cost was announced initially at \$180 million and then at \$190 million.

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: We tabled an email last week before the committee where Colin Andersen confirmed to both the chief of staff and the deputy minister that the cost was, in fact, \$180 million. Is that correct?

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: Okay. Mr. Andersen testified, "We did provide them with the numbers. That is what you would expect." So does that mean that the numbers the government had been using were those provided by the OPA?

Mr. Michael Killeavy: I'm sorry. I'm not sure I follow the question.

Mr. Bob Delaney: You've confirmed that OPA provided the chief of staff and the deputy minister with the \$180-million number. Colin Andersen testified—and I'll use his words—"We did provide them with the numbers. That is what you would expect." My question, then, is, were the numbers the government had been using those provided by the OPA?

Mr. Michael Killeavy: I believe so, yes.

Mr. Bob Delaney: Okay. In terms of the difference between the auditor's findings and the original estimate, would it be accurate to say that the Auditor General provided a more long-term assessment by estimating both costs and savings during the span of the 20-year anticipated life of the plant?

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: Okay. Talking about the costs associated with relocating the Oakville plant—and again, we know that the government did rely on the OPA's approach when it announced its original costing figures. In the OPA's background from September 24, the OPA talks about a \$40-million sunk cost, as well as \$210

million for gas turbines, and that there would be additional cost for gas management but also significant savings from a lower net revenue requirement. Does that all ring a bell?

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: Okay. Colin Andersen testified that while additional costs and savings were identified in the memorandum of understanding, there were no numbers attached because they were still—and I'm going to use his words—"to be determined," because, as he said, "more work had to be done." As a preamble, he then went on to say "It's true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized...." So at the time of the September 24 deal announcement, was that the information that was available to you?

Mr. Michael Killeavy: I'm sorry; you're asking me, did we know the sunk costs were going to be \$40 million?

Mr. Bob Delaney: Well, let's do it again. Colin Andersen said that at that time there was more work to be done. Colin Andersen also said, "The \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized...." So at the time of the September 24 announcement of that particular deal, was the information made available at the time that which you knew? Did you make public the information that you knew at the time?

Mr. Michael Killeavy: I believe that we communicated to the government that the sunk costs were going to be \$40 million for Oakville. That was the cost associated with developing the plant.

Mr. Bob Delaney: Okay. Thank you. Since then, we know that the numbers have been evolving and changing, and you and others have said so.

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: In the past month, we've heard different numbers. Mr. Andersen provided us with the OPA's latest estimate a couple of weeks ago as well as an estimate from an independent report. The OPA produced a document on March 20 which estimated the costs for Oakville to be between \$33 million and \$136 million. Does this speak to the complexity of calculating these numbers?

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: Talk to me a little bit about some of the factors in the complexity. This is a wide variation: between \$33 million and \$136 million.

Mr. Michael Killeavy: Correct. I actually do have a handout that explains the differences between those two cost estimates. Can I distribute it?

Mr. Bob Delaney: Sure. The Clerk will distribute it for you, and perhaps we'll come back to it either in this round or in the next round.

Mr. Michael Killeavy: Sure.

Mr. Bob Delaney: While the Clerk's doing that, we'll talk a little bit about document disclosure. With regard to the document disclosure motions passed by the estimates

committee in May 2012, who oversaw the document search and disclosure process at the OPA?

Mr. Michael Killeavy: I don't know. I wasn't involved in that process at all.

Mr. Bob Delaney: Would it have been someone from your legal department?

Mr. Michael Killeavy: It could have been, yes.

Mr. Bob Delaney: How many people could it have been?

Mr. Michael Killeavy: I don't know. I don't get involved. Whenever there's a FIPPA request or a request from someone for documents, I'm just asked, "Where are your documents?" And I tell them, "They're on such and such a drive" or wherever they are. I don't manage that process.

Mr. Bob Delaney: Okay. How big is the legal department?

Mr. Michael Killeavy: I don't know, there's about six or seven lawyers.

Mr. Bob Delaney: The OPA had three separate document disclosures. Your chair, Jim Hinds, said in a news conference following the third release of documents that mistakes had been made but that the search had been done in good faith. He said that the OPA is in the business of producing power, not documents. What I think we can take from that document search process—it's fair to assume that that was quite a departure in terms of your normal course of activities at the OPA.

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: At the same news conference, when asked about opposition attacks that this was all a government cover-up, Mr. Hinds responded, and I'll use his words, "I don't think cover-up is the right way to describe it. We messed up some search terms, and we're trying to get them cleaned up, so I'm not sure what this has to do with the government. This is all us." Would you agree that there was, in fact, no orchestrated cover-up?

Mr. Michael Killeavy: I would agree with that, yes.

Mr. Bob Delaney: Okay. Again, I'm going to ask an agreement on this: The subsequent document disclosures don't show any evidence of a cover-up, but actually just show the inherent difficulties in responding to such a large-scale request. Correct?

Mr. Michael Killeavy: I believe so, yes.

Mr. Bob Delaney: Okay. What can you tell me just about the complexity of searching for documents? What was there in that that you had not done before?

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Mr. Michael Killeavy: I don't actually do the searches for the documents, so I really don't know.

Mr. Bob Delaney: All right. Kristin Jenkins, Colin Andersen and Michael Lyle have all testified before the committee that the OPA was responsible for its own document search and had the final sign-off on what was provided to the Clerk. Mr. Andersen told us, "When all was said and done, it was our decision." So I'm asking you, would you agree that as an independent agency, it was ultimately your responsibility to decide what was provided to the Clerk of this committee?

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: Okay. As legal counsel, would you have provided advice that went into that final decision?

Mr. Michael Killeavy: I'm not legal counsel with the OPA.

Mr. Bob Delaney: Okay. Was it your role to give an opinion as to whether or not the package complied with the committee's request?

Mr. Michael Killeavy: As I've said, I wasn't involved in the document disclosure at all.

Mr. Bob Delaney: Would anyone have counted on you for legal advice?

Mr. Michael Killeavy: No. I'm not a lawyer, so they wouldn't have, no.

Mr. Bob Delaney: That's fine. I'm just exploring it. That's good.

The committee talked at length about a meeting between a Ministry of Energy civil servant and the OPA's VP of communications and an OPA lawyer. We learned that the staff person from the Ministry of Energy had no authority to direct your staff or the OPA's document search. Mr. Andersen has said that it was a meeting to—and he used the words—"compare notes." We know that Ms. Kulendran was very clear in that meeting that it was up to the OPA to make sure you followed up and did your own due diligence on these documents. She testified that "throughout the meeting, I reminded Ms. Jenkins ... that while we were discussing potentially not relevant documents, it was their obligation"—

Mr. John Yakabuski: Point of order, Chair.

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

Mr. John Yakabuski: Chair, Mr. Delaney has been told at least half a dozen times—

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, it does not sound like a point of order. If you're disappointed with this line of questioning, I'd suggest you remedy that on your own time.

Mr. John Yakabuski: The witness has testified innumerable times that he had nothing to do with the document search, yet he keeps asking him about the document search.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Delaney.

Mr. Bob Delaney: Let's start over from the top. Ms. Kulendran was very clear in that meeting that it was up to the OPA to make sure that the OPA followed up and did its own due diligence on those documents, and she testified here that "throughout the meeting, I reminded Ms. Jenkins ... that while we were discussing potentially not relevant documents, it was their obligation to return and discuss with" their "management and their senior legal counsel to make the decisions about what they felt was responsive and relevant."

Apparently that's exactly what happened. Ms. Jenkins testified after the meeting that she did speak directly with Mr. Andersen and legal counsel on what was considered responsive. So were you the legal counsel she spoke with?

Mr. Michael Killeavy: No.

Mr. John Yakabuski: He said he's not legal counsel.

Mr. Michael Killeavy: I'm not legal counsel with the OPA.

Mr. John Yakabuski: How many times do you have to be told, Bob?

Mr. Bob Delaney: Mr. Lyle was here to testify last week, and he seemed to indicate he didn't have much of a role.

Mr. Michael Killeavy: I'm sorry; I didn't hear you.

Mr. Bob Delaney: Mr. Lyle was here to testify last week.

Mr. Michael Killeavy: Yes.

Mr. Bob Delaney: And he indicated that he didn't have much of a role. So if neither of you provided that advice, who did?

Mr. Michael Killeavy: I don't know. I wasn't involved in the process. I don't know.

Mr. Bob Delaney: Okay. Did someone from your legal department provide that advice?

Mr. Michael Killeavy: Again, I don't know. I'm not involved in document searches. I can't really help you, I'm sorry.

Mr. Bob Delaney: Okay. No, I understand. I'm asking the questions, and you're giving me an answer.

I think, then, that it's fair to say that if legal advice was given—and we know that the OPA therefore must have been comfortable with its disclosure package—it must be fair to say that there was no deliberate attempt to withhold documents, something I think we've previously agreed on, and that each disclosure would have been done either due to a miscommunication or because search terms were missed. Would that be an accurate encapsulation?

Mr. Michael Killeavy: Again, I wasn't involved in the process, so I really can't answer.

Mr. Bob Delaney: All right. Let's leave it at that, then.

What have I got in the way of time, Chair?

The Chair (Mr. Shafiq Qaadri): Three minutes—less than.

Mr. Bob Delaney: Let's talk a little bit about commercial sensitivity.

Mr. Michael Killeavy: Okay.

Mr. Bob Delaney: Many of the documents we're talking about were produced as a result of a motion passed by the estimates committee in May 2012. At the time the requests were made, were you aware that sensitive commercial negotiations were ongoing with Eastern Power and TransCanada Energy?

Mr. Michael Killeavy: What was the date again, please?

Mr. Bob Delaney: May 2012.

Mr. Michael Killeavy: Yes. I was one of the ones doing them.

Mr. Bob Delaney: Mr. Andersen wrote to the committee on May 30 in response to the motion. He said that while "The OPA respects the authority of the committee and its interest in receiving this information," there are

also some serious concerns that he and, presumably, the OPA had about the release of the documents before negotiations were finalized. The letter states, "The provision of correspondence to the committee related to these two matters would disclose material which is legally privileged and has been provided by other parties in confidential, without-prejudice negotiations." He goes on to talk about that. Is it fair to say that releasing documents to the public at that point in time had the potential to increase the cost to Ontarians?

Mr. Michael Killeavy: I think that's a fair statement, yes.

Mr. Bob Delaney: Okay. Did the OPA and the Ministry of Energy have a reasonable responsibility to protect taxpayers while also being open and transparent?

Mr. Michael Killeavy: I believe that's correct. Whenever we're conducting the negotiations, we're always trying to keep a very close eye on the costs and keep the costs to the ratepayer as low as possible. If documents had been disclosed, it could certainly prejudice our position in any negotiations.

Mr. Bob Delaney: Okay. In the time remaining, could you walk me through some of the thinking at the time?

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

Mr. Michael Killeavy: Through the time about the—

Mr. Bob Delaney: Some of the thinking at the time with regard to disclosure—

Mr. Michael Killeavy: Well, my understanding at the time was that a lot of the communications dealt with were privileged communications of our legal counsel. Obviously, if we're negotiating with someone, we really don't want them to be knowing what we're talking to our lawyers about, in particular. That would be a significant concern. We don't want them to understand how well we understand their costs, for example. That might be something that could be disclosed in those documents. It could certainly injure our negotiating position at the negotiating table.

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

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

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Welcome, Mr. Killeavy. Thank you for being here today.

Mr. Michael Killeavy: You can call me Michael.

Mr. Victor Fedeli: I'm sorry?

Mr. Michael Killeavy: You can call me Michael.

Mr. Victor Fedeli: Thank you. I will.

You have the documents that I have provided? Okay. On document 1, it's between you and Susan Kennedy and JoAnne Butler, and you're talking about Craig MacLennan. He wants an estimate of TransCanada's SWGTA costs.

Mr. Michael Killeavy: Southwest GTA.

Mr. Victor Fedeli: "SWGTA" is southwest GTA?

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Thank you. It says, "Mike says to call Craig directly." Did you make that call to Craig MacLennan? Do you remember that?

Mr. Michael Killeavy: I honestly don't recall if I did or not.

Mr. Victor Fedeli: That's fair. So this was in September 2010. Were you aware at the time that Oakville was being cancelled—at the time of this email?

Mr. Michael Killeavy: Not in September, no.

Mr. Victor Fedeli: Not in September. When would you have become aware that Oakville was being cancelled?

Mr. Michael Killeavy: It would have been—my recollection was the day prior to the letter being sent.

Mr. Victor Fedeli: So go to my doc 2, then. It's a fun one between you and Corinna Bellomo. She says, "Mr. Killeavy, I lost our bet!! I owe you a Starbucks!!" What was your bet?

Mr. Michael Killeavy: I think we probably were having a bet as to what was going to be happening with the plant.

Mr. Victor Fedeli: And she lost the bet; you won the bet.

Mr. Michael Killeavy: I guess I did.

Mr. Victor Fedeli: Did you believe that the plant would be cancelled?

Mr. Michael Killeavy: At what point in time?

Mr. Victor Fedeli: At that point in time.

Mr. Michael Killeavy: At that point in time? I think at that point—

Mr. Victor Fedeli: When you made the bet with her.

Mr. Michael Killeavy: When I made the bet, I don't think I—I knew about it the day before, but prior to that, there had been a lot of closed-door meetings, and I kind of was connecting the dots that something was up.

Mr. Victor Fedeli: You sensed something at that point.

Mr. Michael Killeavy: I sensed that something was up.

Mr. Victor Fedeli: Okay. Document 3: Again, Craig MacLennan is in there. This is April 15. This is from you to Sean Mullin, Craig MacLennan, all the familiar names.

Mr. Michael Killeavy: No, it's from Michael Lyle.

Mr. Victor Fedeli: It's from Michael Lyle to all these familiar names, including you. This is April 15. He's talking about a draft letter with respect to mediation and arbitration. So you're familiar, then, with Craig MacLennan?

Mr. Michael Killeavy: I have met him on several occasions, yes.

Mr. Victor Fedeli: On several occasions.

Mr. Michael Killeavy: On other files, not just—he was the—

Mr. Victor Fedeli: How often would you have communicated with him, Sean Mullin and Jamison Steeve?

Mr. Michael Killeavy: I've never talked to Jamison Steeve or Sean Mullin, ever.

Mr. Victor Fedeli: Okay. So only Craig MacLennan.

Mr. Michael Killeavy: I would have talked to Craig MacLennan occasionally when I filled in for JoAnne Butler. He was the minister's chief of staff, and I would

sometimes go to meetings on other files and speak with him then.

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Mr. Victor Fedeli: Okay. Go back to the NDP doc 6, and that is that chart, again. It was the winding up of Oakville, on April 20, 2011. It was a couple of pages in—four pages in, actually. The replacement project comparison—this one here.

Mr. Michael Killeavy: That one?

Mr. Victor Fedeli: No, the one after that.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: So Mr. Tabuns asked you about TCE's proposal and OPA's first counter-proposal and OPA's final counter-proposal. He asked you who directed you, and you said it was the government, and when asked whom, you said it was Craig MacLennan.

Mr. Michael Killeavy: No. I think what I said was, I understood from JoAnne Butler that it was Craig MacLennan.

Mr. Victor Fedeli: You understood from JoAnne Butler—

Mr. Michael Killeavy: Correct.

Mr. Victor Fedeli: —that it was Craig MacLennan. What makes you understand that?

Mr. Michael Killeavy: She told me.

Mr. Victor Fedeli: Okay. She told you that it was Craig MacLennan that instructed OPA. This is the Ministry of Energy personnel—

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: —that told you to make a proposal and a counter-proposal.

Mr. Michael Killeavy: The OPA was negotiating with TransCanada. We made the proposal at the end of March. The subsequent one to that was the one that we were instructed to put to—

Mr. Victor Fedeli: So you made the March proposal of around \$600 million—

Mr. Michael Killeavy: That's right.

Mr. Victor Fedeli: And JoAnne Butler told you that OPA was instructed by Craig MacLennan to make the \$712 million—or the counter-proposal.

Mr. Michael Killeavy: That's what she told me, yes.

Mr. Victor Fedeli: Okay. Would it surprise you, then, if I read you sworn testimony from Craig MacLennan—when I asked him, "Were you aware of the \$712-million offer that was made to TransCanada that they eventually rejected?", his answer was, "I couldn't recall it." Would that surprise you? Your eyes—you've raised your eyebrows on that one.

Mr. Michael Killeavy: Yes, I'd be surprised.

Mr. Victor Fedeli: When I said, "When the decision to move from Oakville to the new Lennox site—you say you don't know about the \$712 million ... you do recall reading about that number." And he said: "More recently ... yes." He was talking about reading it in the Globe and Mail. I said, "We know that TransCanada turned down \$712 million," and Craig MacLennan, under oath, said that he had been screened off the file, so that he could

only talk about numbers from back then, before he was screened off.

Do you recall the last time he was involved in negotiations?

Mr. Michael Killeavy: I don't recall the date, no.

Mr. Victor Fedeli: You don't recall the date? That's fair. Would it surprise you, in his sworn testimony, that he said he wasn't part of the negotiations?

Mr. Michael Killeavy: For which file? Which one? Greenfield or TransCanada?

Mr. Victor Fedeli: Now I actually have to look that up. I had asked him if he was involved in the \$1.4-billion number, so I'm guessing that's the Oakville one.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: He said that no, he wasn't. I reminded him that his name is on one of the documents. And then, when I said, "Your name's on a document, so I'm sure you now will recall the document," he said, "Yes, I now recall that document." So I guess this is the Oakville one.

Mr. Michael Killeavy: Right.

Mr. Victor Fedeli: So would you consider him part of the negotiations in any aspect of Oakville?

Mr. Michael Killeavy: He wasn't part of the OPA negotiating team with—

Mr. Victor Fedeli: No, I understand that.

Mr. Michael Killeavy: Again, my understanding from talking to JoAnne is that he did have some involvement. I don't know the extent of the involvement, though.

Mr. Victor Fedeli: We'll have to check back with her. That'll be a good question for her on a follow-up. I think your raised eyebrows pretty much answered the question for me.

I'm back to that \$712 million still. You don't need to refer to it. But I would ask you, why did you make that second counter-proposal in April of \$712 million?

Mr. Michael Killeavy: As I was explaining to Mr. Tabuns, TransCanada had made a settlement proposal to us in early March 2011. We rejected it and we made a counter-proposal towards the end of March. My understanding, then, was that TransCanada was very upset, that they didn't think that our counter-proposal had sufficient financial value for them, and they went and they complained to the government.

Mr. Victor Fedeli: I'm sorry; after proposal 1, TransCanada went and complained to the government?

Mr. Michael Killeavy: In early March, they made a proposal to us. We rejected it. We made a counter-proposal to them—

Mr. Victor Fedeli: Yes, \$600 million.

Mr. Michael Killeavy: Yes. They did not like that counter-proposal. My understanding, again, talking with JoAnne and Colin Andersen, is that they went to the government and they complained about it.

Mr. Victor Fedeli: So are you testifying that the government then instructed you to make a higher bid or a different proposal?

Mr. Michael Killeavy: Again, talking to JoAnne Butler, it was my understanding that Craig MacLennan had instructed us to make, in effect, a richer—

Mr. Victor Fedeli: A richer settlement, which is why you made the \$712-million offer?

Mr. Michael Killeavy: Yes, a proposal.

Mr. Victor Fedeli: A proposal? And it was subsequently rejected as well?

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Did she say anybody else had directed her, from the government, other than Craig MacLennan?

Mr. Michael Killeavy: No.

Mr. Victor Fedeli: Why did the OPA board go along with that directive?

Mr. Michael Killeavy: I don't know. You'd have to talk to the board.

Mr. Victor Fedeli: Oh, you know we will be. Do you understand that there's no legal authority for the government to dictate what the OPA should or could be doing?

Mr. Michael Killeavy: Well, there is directive power to enter into procurement contracts under the Electricity Act. Are you talking about cancelling a contract?

Mr. Victor Fedeli: I'm talking about cancelling the contract.

Mr. Michael Killeavy: That's my understanding.

Mr. Victor Fedeli: That they don't have—

Mr. Michael Killeavy: They have no legal authority. That's my understanding.

Mr. Victor Fedeli: So you don't know yourself why—there was no chit-chat in the building about the fact that the board has approved this?

Mr. Michael Killeavy: Not that I'm aware of, no.

Mr. Victor Fedeli: Okay. I'm looking at document 4. Mine appear to be a bit out of order, but it's 7/8, I would say.

Mr. Michael Killeavy: This is the board of directors?

Mr. Victor Fedeli: Yes, you'll see it's PC doc number 4, 7/8. "The Premier's office and the Ministry of Energy had verbally directed the Ontario Power Authority to send another proposal to TransCanada Energy...."

I have to read through a "draft" stamp, so it's kind of hard. It might say something like "in" or "with an effective financial value in the amount of \$712 million on account of all of TransCanada Energy's ... claims," sunk costs etc., etc.

Mr. Michael Killeavy: Okay.

Mr. Victor Fedeli: So are you familiar—had you ever seen this document before?

Mr. Michael Killeavy: These are minutes to—

Mr. Victor Fedeli: These are board minutes of the meeting of the board of directors of April 20.

Mr. Michael Killeavy: I don't specifically recall seeing them before, no.

Mr. Victor Fedeli: Page 6/8—do you go to these board meetings?

Mr. Michael Killeavy: Occasionally I would, yes. Whenever there were issues around Greenfield South or

TransCanada or any other contractual-related matters, I would go to the board, yes.

Mr. Victor Fedeli: This one might be one you were at—page 6/8. It talks about members of staff in attendance—

Mr. Michael Killeavy: Oh, I was there.

Mr. Victor Fedeli: —so I'm not really sure if you were there for the whole day, that minute or that hour. They talk a little bit about the meeting and how the meeting was constituted. Then they get into the Oakville generating station.

It says here, “Ms. Butler advised the board ... that representatives of TransCanada ... had recently met with representatives of the office of the Premier ... and ... the Ministry of Energy to express its concerns over the ... proposal....”

Then we get into the counter-proposal and then it says, again, “The Premier’s office and the Ministry of Energy ... verbally directed the Ontario Power Authority....”

It goes on, down at the bottom, the second-last paragraph: “Mr. Andersen advised the board members that the Ontario government did not have the legal authority to dictate....”

It goes on to talk about Mr. Hinds summarizing the position of the board members—“ought to ... settle” this—“and the value of the counter-proposal, as instructed by the government of Ontario, of \$712 million.” And the board agreed.

Basically, the board takes it on the advice of the vice-president, Ms. Butler, who said, “I have been told by the government to make this \$712-million proposal.” Is that how this would have happened, according to the board minutes?

Mr. Michael Killeavy: That’s my understanding, based on what it said, yes.

Mr. Victor Fedeli: Okay. Mr. Andersen swore under oath—first of all, you have also confirmed that the OPA told the government there were more costs than sunk costs.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: You have said—I think it’s in your opening statement; you have also reiterated that. Mr. Andersen—I asked him two questions. One of the questions was, “Who in the government knew?” He said, “Everybody.”

Do you agree with Mr. Andersen that all the people in the circle of the government that we’re dealing with knew that there were costs above the \$40 million and the \$190 million in sunk costs?

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Mr. Michael Killeavy: I have no direct knowledge of that, but that’s what I’ve been told.

Mr. Victor Fedeli: So you would believe that they’d know \$40 million wasn’t it?

Mr. Michael Killeavy: I believe that’s correct, yes.

Mr. Victor Fedeli: And you’d know that \$180 million and then subsequently \$190 million wasn’t it?

Mr. Michael Killeavy: Wasn’t the—

Mr. Victor Fedeli: Wasn’t the final number.

Mr. Michael Killeavy: That’s right, yes. The \$180 million was always the costs that were going to be—

Mr. Victor Fedeli: Yes, until they topped up the \$10 million of 15—as the story goes.

Mr. Delaney said to you, were the numbers being used by the government provided by the OPA, and you said yes. I’d also ask you then, would the numbers not being used by the government also have been provided by the OPA? That’s the addition to the \$40 million and the addition to the \$190 million?

Mr. Michael Killeavy: I’m sorry. I’m not following the question.

Mr. Victor Fedeli: Mr. Delaney asked you a question: Were the numbers being used by the government provided by the OPA? And you said yes, they were.

Mr. Michael Killeavy: They were.

Mr. Victor Fedeli: That’s the \$40 million and the \$190 million. I’m talking to anything above \$40 million and anything above \$190 million. I ask you a similar question—half tongue in cheek, by the way—were the numbers not being used by the government also provided by the OPA? The fact that there’s more than \$40 million.

Mr. Michael Killeavy: I don’t know.

Mr. Victor Fedeli: There were more costs than \$40-million costs? There were more costs in addition to the \$40 million?

Mr. Michael Killeavy: There would be site-related costs and system-related costs, yes.

Mr. Victor Fedeli: Okay. And you would have given that information to the government?

Mr. Michael Killeavy: I would have given the information to Joanne Butler and Colin Andersen. I presume they would have passed it on to the government.

Mr. Victor Fedeli: Okay. I want to go on to Mississauga on what you’ll find—I think we can jump over document 5 because you covered that plenty of times. We can go into document 6.

There was an option presented in document 6, a “directed dispatch” option. Do you know what is being referred to by that?

Mr. Michael Killeavy: Oh, yes. Very early on—this is Greenfield South. Very early on—

Mr. Victor Fedeli: We’re now on Mississauga.

Mr. Michael Killeavy: Yes. Very early on, we were exploring some options for what we could possibly do with the plant, and I believe I had the idea of letting them finish construction of the plant and then just directing them not to operate it because it will—

Mr. Victor Fedeli: Okay. So why were you looking at options? Who would have directed you to look at options for Mississauga?

Mr. Michael Killeavy: It probably would have been JoAnne Butler and Colin Andersen.

Mr. Victor Fedeli: In document 7, the next one from JoAnne Butler to you, Michael, she says, “My nausea just got worse ... see you in a little bit.” What happened that day on Tuesday, November 15?

Mr. Michael Killeavy: Sorry. The thing is—it’s stapled upside—

Mr. Victor Fedeli: That's okay. Document 7, "My nausea just got worse ... see you in a little bit." What would have happened? There was a conversation between Greg Vogt and Colin Andersen. What would have happened there?

Mr. Michael Killeavy: I don't know.

Mr. Victor Fedeli: In the next email, a little later in the afternoon, where your advice from Jesse Kulendran—she's giving you advice, Jesse Kulendran?

Mr. Michael Killeavy: Who?

Mr. Victor Fedeli: Kristin Jenkins is writing to Jesse Kulendran and copying you.

Mr. Michael Killeavy: Oh, okay.

Mr. Victor Fedeli: "—based on legal advice, 'terminated' has been changed to 'is not proceeding.'" Did something happen in the contract that went from termination—

Mr. Michael Killeavy: I think that it was probably some sort of a press document where they were saying that the OPA was terminating the contract, but there is actually no right to terminate the contract.

Mr. Victor Fedeli: Why do you say there's no right to terminate the contract?

Mr. Michael Killeavy: There's only rights to terminate the contract under certain conditions.

Mr. Victor Fedeli: Like force majeure?

Mr. Michael Killeavy: Well, typically, it would be like a supplier admitted fault. They breached an obligation, have incurred it, and that had not happened.

Mr. Victor Fedeli: Okay. So this is November 15. Now, I don't mean to embarrass you. You have colourful language in your emails.

Mr. Michael Killeavy: Sorry, which one?

Mr. Victor Fedeli: Document 9. Now, I won't repeat your language and I know you won't either.

Mr. Michael Killeavy: It's very unparliamentary, I understand.

Mr. Victor Fedeli: It's okay that it's unparliamentary, but there's a problem somewhere.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Somebody kind of took care of your "entire something weekend."

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Because "the something MOF will not pay him \$15m."

Mr. Michael Killeavy: Right.

Mr. Victor Fedeli: Tell us about the \$15 million. And I don't mean to be colourful in there, but it was just kind of fun to see that in your email.

Mr. Michael Killeavy: I think it's just a sign of how frustrating it was at that point in time—

Mr. Victor Fedeli: I can imagine that this is frustrating. So somebody expected the Ministry of Finance to pay Eastern—Keele Valley \$15 million?

Mr. Michael Killeavy: What had happened is when I first met with Greg Vogt on the site—

Mr. Victor Fedeli: You have about two minutes.

Mr. Michael Killeavy: —he was insisting that in order to begin talks to permanently cease construction, he wanted his lawsuit at Keele Valley settled.

Mr. Victor Fedeli: Okay. So we're back to that.

Mr. Michael Killeavy: He was claiming \$20 million. We were eventually able to negotiate him down to \$15.4 million.

Mr. Victor Fedeli: We understand the \$15.4 million—"the so-and-so MOF will not pay him \$15m," and they never did.

Mr. Michael Killeavy: That's right.

Mr. Victor Fedeli: They ended up coming up with \$10 million.

Mr. Michael Killeavy: Correct.

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

Mr. Victor Fedeli: This side deal for \$5.4 million, are you aware of that?

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Were you aware that those were additional costs to the government above and beyond the \$180 million, which then turned into \$190 million—\$10 million from this made it \$190 million.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Were you aware, then, that there was still that additional \$5.4 million owed to him?

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Would the government have been aware of that?

Mr. Michael Killeavy: I don't know.

Mr. Victor Fedeli: Okay. Our emails from Rocco Sebastiano and others show, of course, that they were imminently aware of that extra \$5.4 million at the time they said, "This is it: \$190 million."

In addition to the \$5.4 million that we've proved, you knew that there were still other monies above and beyond the \$190 million—above and beyond this \$5.4 million?

Mr. Michael Killeavy: Again, are talking about payable to Eastern Power or associated with relocation of the project?

Mr. Victor Fedeli: Somebody had to write a cheque to somebody—

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

Mr. Victor Fedeli: I'll pick it up.

The Chair (Mr. Shafiq Qaadri): To the NDP side, Mr. Tabuns.

Mr. Peter Tabuns: I'm just going to go back to the work that you did on the memorandum of understanding with TransCanada Enterprises. You would have been asked to look at various elements of that memorandum of understanding, and if I understand correctly, you acted as a resource to do number crunching so you could tell people the range of costs. Is that correct?

Mr. Michael Killeavy: There were other people involved besides me, but I was one of the people, yes.

Mr. Peter Tabuns: You were one of them.

Mr. Michael Killeavy: Mm-hmm.

Mr. Peter Tabuns: So you would have looked at the cost for gas delivery and management, which was one of the—

Mr. Michael Killeavy: Actually, there was someone else in our clean energy procurement section who had that expertise, so that person looked at it.

Mr. Peter Tabuns: And they did do a calculation, to your knowledge?

Mr. Michael Killeavy: It was a very rough calculation, yes.

Mr. Peter Tabuns: And the capital costs for gas hookup?

Mr. Michael Killeavy: Again, a similar-type estimate, yes.

Mr. Peter Tabuns: And connection costs?

Mr. Michael Killeavy: I don't know; I'm not sure.

Mr. Peter Tabuns: And line losses?

Mr. Michael Killeavy: That would have come later.

Mr. Peter Tabuns: That would have come later.

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: In the team that was working on the memorandum of understanding—

Mr. Michael Killeavy: Yes?

Mr. Peter Tabuns: —there was knowledge of the sunk costs—the \$40-million figure we've all been using—and knowledge of ranges for a variety of other costs as well.

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: And there's no reason those costs would not have been shared with the government at the time.

Mr. Michael Killeavy: I don't know of any reason why they wouldn't be, but I don't know if they were or not. I don't know.

Mr. Peter Tabuns: Okay. We've been, as you're well aware, going through this ongoing issue of when the government knew that \$40 million was a minimal part of the cost and not the maximum cost. What you and others have indicated is that there was clear awareness that there were a variety of costs; \$40 million wasn't the end of the cost when we signed off on the memorandum.

Mr. Michael Killeavy: Correct.

Mr. Peter Tabuns: On another matter, and it's document 9 in the NDP bundle, you wrote to Susan Kennedy, JoAnne Butler and Michael Lyle.

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: You write, "Could we put an 'out' option ... that states that if we can't negotiate an agreement with TCE that is in the best interests of the ratepayer, we don't need to conclude an agreement at any cost?" Can you explain?

Mr. Michael Killeavy: I was concerned at the time that, if we had received a directive that basically said, "Negotiate a contract with TransCanada Energy," that would basically give them quite a lot of leverage because my hands would be tied. I would have to negotiate a contract, and it could potentially be a very expensive contract. So what I had asked for in the directive is that, basically, there be some sort of option whereby if we

didn't think it was in the best interest of the ratepayer to proceed with a contract, that we wouldn't have to actually negotiate that contract.

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Mr. Peter Tabuns: And what was the outcome of that?

Mr. Michael Killeavy: I believe we did actually insert the out clause into the directive, but the directive was never issued.

Mr. Peter Tabuns: Okay. And just going back—I should have followed up. Those other buckets of costs—do you have knowledge of those numbers for the gas delivery and management, the capital costs for hookup and connection costs?

Mr. Michael Killeavy: We have estimates at this point in time.

Mr. Peter Tabuns: Do you have them available to you, personally, right now?

Mr. Michael Killeavy: If you go to the \$310-million cost estimate, they'd be in there. They'd be line items in there.

Mr. Peter Tabuns: At the time that you did these rough estimates, when the memorandum of understanding was done, do you have recollection of the range of costs that were identified at that point?

Mr. Michael Killeavy: I don't.

Mr. Peter Tabuns: Okay. Were you involved in the Ontario Power Authority's response to the Auditor General on the Mississauga plant?

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: Had you done a calculation prior to the Auditor General's work on the full cost of the Mississauga cancellation and relocation?

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: And were those assessments made available to the ministry, if they were interested in them?

Mr. Michael Killeavy: I believe they were.

Mr. Peter Tabuns: You believe they were?

Mr. Michael Killeavy: I believe they were.

Mr. Peter Tabuns: Okay. The Mississauga plant: The initial contract was signed in 2004.

Mr. Michael Killeavy: Correct.

Mr. Peter Tabuns: No construction started until 2011. When I looked at the Oakville contract, there was a provision that after a certain length of time with non-performance, the contract could be considered void. Was there any similar provision in the Mississauga contract?

Mr. Michael Killeavy: I believe there was, yes.

Mr. Peter Tabuns: Why was it not exercised?

Mr. Michael Killeavy: Are you talking about termination after an event of force majeure?

Mr. Peter Tabuns: Yes, and after an extended period of non-performance.

Mr. Michael Killeavy: Yes. It's really tied to pushing the milestone date for commercial operation out—I believe it's more than 24 months—and that had not yet occurred. So the right actually wasn't triggered.

Mr. Peter Tabuns: So what was the commercial operation date supposed to be?

Mr. Michael Killeavy: I believe the commercial operation date was July 2014.

Mr. Peter Tabuns: So why did the Ontario Power Authority renegotiate the contract in 2009 with Eastern Power?

Mr. Michael Killeavy: That predated my joining the OPA by several months, but I understand that at the point in time they had actually experienced a number of delays in permitting. Costs had gone up, and they were able to make a successful argument that they should be compensated for the increased costs.

Mr. Peter Tabuns: But when they sign those contracts, they assume the risk, do they not?

Mr. Michael Killeavy: Yes.

Mr. Peter Tabuns: So why did we essentially let them off the hook?

Mr. Michael Killeavy: I don't know.

Mr. Peter Tabuns: Did you find the fact that they had difficulty getting financing unusual?

Mr. Michael Killeavy: I only found that out after the fact. I did find it a little bit unusual, yes.

Mr. Peter Tabuns: Did many other projects have trouble getting financing?

Mr. Michael Killeavy: It happens from time to time.

Mr. Peter Tabuns: What's the average cost of financing for these power plants?

Mr. Michael Killeavy: I don't know. We don't really get involved in the financing aspect of it. We don't vet the financing; we don't preapprove the financing. So we really wouldn't have any knowledge of that.

Mr. Peter Tabuns: But when someone presents a request or a proposal, surely they show that they can get financed.

Mr. Michael Killeavy: They demonstrate their ability to get financing, but they don't actually have to disclose the costs of financing.

Mr. Peter Tabuns: So that's entirely up to them. You don't do an assessment as to whether or not this is a viable business deal.

Mr. Michael Killeavy: That's right.

Mr. Peter Tabuns: Why on earth would you commit Ontario's power supply to companies that may not be viable?

Mr. Michael Killeavy: Well, the model that we use is that we rely on private sector partners to design, develop, arrange the financing and construct and operate the facilities.

Mr. Peter Tabuns: And if they don't?

Mr. Michael Killeavy: We do have completion and performance security in the contract, which is forfeit if they don't fulfill their contractual obligations.

Mr. Peter Tabuns: One of the things I found unusual in the Auditor General's report was that this company was paying 60% interest per annum—

Mr. Michael Killeavy: Sixty per cent?

Mr. Peter Tabuns: Yes.

Mr. Michael Killeavy: No, they weren't paying 60%. It's 14% compounded quarterly. I think it worked out to be about 14.7% compounded annually.

Mr. Peter Tabuns: The Auditor General says that the OPA asked two law firms to review the deal, and he reports, "Both felt there was a good chance a court would opt to set the award at a 60% interest rate on the actual amount of \$59 million drawn for the six-month period."

Mr. Michael Killeavy: That was in relation to the cancellation of the credit agreement with EIG, the lender in the United States. They had demanded \$60 million, which was the drawn principal, which we always said we would pay. On top of that, in November 2011, they had demanded a yield maintenance amount, which is effectively a break fee for breaking the contract, of \$168 million, which would certainly be above the criminal rate of interest in Canada of 60%. That related specifically to the cancellation of the credit agreement; it wasn't the annual interest rate.

Mr. Peter Tabuns: I'll take your word for it. I read it differently, but I'll take your word for it.

Don't you find, though, that even at 14%, that's way outside what people were borrowing at?

Mr. Michael Killeavy: At that time, yes.

Mr. Peter Tabuns: Didn't that indicate to you that there were substantial problems with this corporation?

Mr. Michael Killeavy: You pay more for financing if the lenders think that you've got a riskier project, typically.

Mr. Peter Tabuns: This would have been a very risky project, in fact.

Mr. Michael Killeavy: Typically, financing for projects—my understanding is 6% or 7%. It's quite a bit higher.

Mr. Peter Tabuns: Did you know, prior to the government saying that the cost—

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

To the government side: Mr. Delaney.

Mr. Bob Delaney: Just a few things to clarify, Mr. Killeavy. A few times you've said that you're not a lawyer. Is that correct?

Mr. Michael Killeavy: That's right.

Mr. Bob Delaney: Why is there LLB behind your name?

Mr. Michael Killeavy: I have a law degree, but I'm not a member of the bar.

Mr. Bob Delaney: That's what I wanted to know. In other words, you have a law degree, but you're not practising law.

Mr. Michael Killeavy: That's right.

Mr. Bob Delaney: When you were talking with Mr. Fedeli, you were talking a little bit about this \$712-million offer. What year was this discussed?

Mr. Michael Killeavy: Pardon me?

Mr. Bob Delaney: What year was this discussed?

Mr. Michael Killeavy: It would have been April 2011, I believe.

Mr. Bob Delaney: Okay. Mr. MacLennan wrote to Colin Andersen on July 13, 2012, a year and a bit later, and he says—and I'll read his email. It says:

"Hi Colin,

“As discussed previously we were relying on the OPA to provide the accurate and complete calculations of relocation costs....”

“Can you pls confirm and double-check the calculation to ensure that [the] 180 remains accurate.”

Colin Andersen replied, “The OPA stands by the \$180M figure.”

Does that mean that the province relied on the OPA for this number?

Mr. Michael Killeavy: The \$180 million was the cost of what was not going to be repurposed. I guess they would have, yes.

Mr. Bob Delaney: Okay. Mr. MacLennan then said that he wasn’t aware of the value of the offer. What was that \$712 million for, anyway?

Mr. Michael Killeavy: Sorry, what are we talking—we’re talking about the second—

Mr. Bob Delaney: Yes, I’m just trying to sort out what this \$712 million was all about.

Mr. Michael Killeavy: I’d have to go back to the chart and refresh my memory, but it would have included payments for sunk costs, payments for foregone profits—let’s see if I can find it here; I’m trying to find that chart. Payments for the gas turbines, that sort of thing would have been built into that second counter-proposal.

Mr. Bob Delaney: So that’s kind of like apples and oranges when discussing it in relation to that \$180-million or \$190-million figure, isn’t that correct?

Mr. Michael Killeavy: Yes. The \$712 million is basically—it would be a proxy for the damages that they would be owed for the breach of the contract. The idea back in the spring of 2011 was to find them a replacement project that would provide them with the financial value of the Oakville project.

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Mr. Bob Delaney: Oh, okay.

Mr. Michael Killeavy: So it’s not a relocation cost; it’s completely separate.

Mr. Bob Delaney: Oh, I see. In other words, that would have included the value of a new power plant. It wasn’t an offer to write a cheque for \$712 million.

Mr. Michael Killeavy: That’s right. It would be to find a replacement project that would be worth that value.

Mr. Bob Delaney: Okay. All right. So perhaps the reason that Mr. MacLennan wouldn’t have been familiar with it is because it wasn’t a cash-value offer. It wasn’t what he was in there talking about; correct?

Mr. Michael Killeavy: It was never, “Write them a cheque for \$712 million.” It was, “Find them a project.”

Mr. Bob Delaney: Tremendous. Thank you.

There have been some suggestions, I think, that the Premier’s office staff were negotiating with the company.

Chair, just to put it on the record: Jamison Steeve, formerly of the Premier’s office, said, “My discussions with TransCanada were exploratory in nature....”

Sean Mullin, who also worked in the Premier’s office, said, “We were not authorized to ... and we did not engage in” any negotiation.

From TransCanada Energy, Chris Breen said they were “certainly not negotiating in the sense of fine-detail dollars and cents,” so, very clearly, no offers were made and no deals were reached during these meetings.

David Lindsay, the former Deputy Minister of Energy, said, “I don’t think they actually had a deal. If they had a deal, why were we going through all this process?”

Chair, on that note, I think we have pretty much covered our agenda, and we’re finished.

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

To the PC side: Mr. Fedeli?

Mr. Victor Fedeli: In document 6 from the NDP, there’s a Day-timer from August 22, 2012. It says, “re Debrief”—it’s at 2:30 in the afternoon with CA, KJ, ML—I presume you’re ML—and ZM—

Mr. Michael Killeavy: No, that’s Michael Lyle.

Mr. Victor Fedeli: That’s Michael Lyle?

Interjection.

Mr. Victor Fedeli: Oh, that’s that Michael.

Mr. Michael Killeavy: I’m MK.

Mr. Victor Fedeli: Oh, you’re MK. Where are you in here?

Interjection.

Mr. Victor Fedeli: Okay.

My question on this is, you’ve heard from Mr. Delaney, and you’ve also likely heard from other witnesses, that there was a document dump—the first set of 36,000 documents.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: We have learned from sworn testimony that about 4,000 documents were purposely pulled out, but subsequently put in a second document dump of 20,000. Both Kristin Jenkins and Michael Lyle have sworn under oath here that they were instructed to take those documents out. Do you know anything whatsoever about the removal and subsequent replacement, two weeks later, of documents?

Mr. Michael Killeavy: No, I wasn’t involved in document disclosure at all.

Mr. Victor Fedeli: Okay. So in our number 12, right at the end—it’s a freedom-of-information request, and you’re involved in the freedom of information.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Is that something you would generally have done?

Mr. Michael Killeavy: I would be involved in the sense that I would be somebody who may have documents that are related to the search, so they would ask me, “Produce what documents you have, or show me where they are stored on the network drive”—that type of thing.

Mr. Victor Fedeli: Okay. So in this particular case of the documents, there’s no reason to continue to ask you what you knew about the removal of 4,000 documents and their subsequent replacement?

Mr. Michael Killeavy: I’m sorry; I can’t help you. I wasn’t involved in that process.

Mr. Victor Fedeli: That's fair, Michael. That's quite fair.

I want to just quickly talk about where we left off, the \$15.4 million. We heard the number was \$180 million—"That's it; you're not going to hear any more"—and a week later, they added \$10 million. We know that \$10 million was part of the \$15.4 million.

There's an email, document 10, from you to Kevin Dick and JoAnne Butler; you're chatting a little bit about this \$5.4 million. It was decided to pay the \$5.4 million through a NUG contract.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: So they were asked—or you were asked, I guess—"Is the NUG needed?" and your answer—somebody's answer—in another email is, "No, we don't need the NUG," but you decided to hold your nose and manage it for four years.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Is that generally what you can say about that \$5.4 million: that it was a side deal paid for power—that never did come, by the way—that was viewed not to be needed?

Mr. Michael Killeavy: That's right. The context was that they were not going to engage in discussions that would permanently stop work unless they got the full—

Mr. Victor Fedeli: Unless you gave them that side deal, the \$15.4 million. The government didn't want us to know it was \$15.4 million, so they made it \$10 million and then made you do a side deal for \$5.4 million—we've had sworn testimony—so that it doesn't show up on the books.

Mr. Michael Killeavy: Actually, I think the primary concern that I had with it being made public was that we were in negotiations with other contract counter-parties at the same time. If it became widely known that we were settling the OEFC's lawsuits for them, I was afraid the floodgates might open, and we might have to settle a whole bunch more lawsuits.

Mr. Victor Fedeli: So done as a side deal for \$5.4 million—I've got to tell you, I asked about that side deal in the Legislature day after day, week after week. Nobody ever admitted to me that it was indeed a side deal until we heard from the auditor.

You've also said that you talked to the government about more than the sunk costs. Did you make it clear to the government, or did the OPA make it absolutely clear to the government, that there are or were more costs than just the sunk costs?

Mr. Michael Killeavy: Again, I don't deal that much directly with the government, but it is my understanding, if you're talking with people like JoAnne Butler and Colin Andersen they—

Mr. Victor Fedeli: So when did you know, Michael, that there were additional costs to both the \$40 million and the \$190 million?

Mr. Michael Killeavy: I think we probably all knew at the time that the deals were cut that there would have been additional costs. We just didn't know what the

value would be. We just hadn't done enough analysis to determine them.

Mr. Victor Fedeli: So you would never have said, "It's \$40 million total. That's it. There's no more costs," or "\$190 million total; it's never going to be a penny more"?

Mr. Michael Killeavy: I would never have said that, no.

Mr. Victor Fedeli: You would never have said that. If you were asked, "Are there any penalties attached to that \$190 million?" you would not have said no?

Mr. Michael Killeavy: Penalties attached to it?

Mr. Victor Fedeli: We're talking about the \$150 million paid out, the termination penalty to—

Mr. Michael Killeavy: EIG?

Mr. Victor Fedeli: Yes, the EIG.

Mr. Michael Killeavy: I lost your question; I'm sorry.

Mr. Victor Fedeli: You would never have said to somebody: "There's no additional costs. There's no penalties. There's no other costs coming. There's no other charges coming. This is it; it's \$190 million"?

Mr. Michael Killeavy: I don't believe so.

Mr. Victor Fedeli: Okay. When you were negotiating that MOU—

Mr. Michael Killeavy: Well, I was supporting the negotiations.

Mr. Victor Fedeli: So who was around the table from your side? I think we had sworn testimony that there was—the ministry, it said here, and maybe Infrastructure Ontario. I forgot whose sworn testimony that was.

Mr. Michael Killeavy: Yes. I was actually sitting in my office while they were doing the negotiations.

Mr. Victor Fedeli: So who would have been there? Andersen, Butler and Lyle from the OPA?

Mr. Michael Killeavy: And my colleague Darryl Yahoda, director of clean energy.

Mr. Victor Fedeli: What's his name?

Mr. Michael Killeavy: Darryl Yahoda.

Mr. Victor Fedeli: Darryl Yahoda.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: Okay. And who from the ministry would have been there?

Mr. Michael Killeavy: There was an assistant deputy minister by the name of—I believe his name was Michael Reid.

Mr. Victor Fedeli: Yes, we have that. Halyna Perun?

Mr. Michael Killeavy: Halyna Perun, I believe, was there as well, yes.

Mr. Victor Fedeli: Anybody else from the ministry?

Mr. Michael Killeavy: Not that I'm aware of, no.

Mr. Victor Fedeli: And was Infrastructure Ontario there?

Mr. Michael Killeavy: I believe so. It would have been Jonathan Weisstub and Bert Clark, I believe.

Mr. Victor Fedeli: Jonathan Weisstub and Clark—

Mr. Michael Killeavy: Bert Clark, the new CEO of Infrastructure Ontario.

Mr. Victor Fedeli: Bert Clark. Okay.

Mr. Michael Killeavy: I believe he was there as well.

Mr. Victor Fedeli: Okay. This is sort of the rapid round here, just tying up some loose ends.

Do you believe that these cancellations were due because there were changes in the power demand in Ontario? Or do you think, as the Premier has sworn under testimony, that they were politically motivated?

Mr. Michael Killeavy: I believe they were political decisions.

Mr. Victor Fedeli: When the government announced the cost of cancelling the plant at Mississauga, we've heard sworn testimony from the Auditor General, who said the OPA had already spent \$245 million at that point. It was around July—was it July 2012?

Mr. Michael Killeavy: That's correct, July 2012.

Mr. Victor Fedeli: The OPA would have already spent \$245 million. Would anybody outside of the OPA be aware that that settlement was made and that that cheque was written or that there were cheques written?

Mr. Michael Killeavy: I don't know.

Mr. Victor Fedeli: You don't know that? Okay. The \$125-million break fee—there are cabinet documents that talk about a \$125-million break fee—I think it's "break-up fee." It was \$40 million in sunk costs but \$125-million—basically a penalty for TransCanada. Are you familiar with that?

Mr. Michael Killeavy: No. Sorry, I'm not.

Mr. Victor Fedeli: You're not familiar with that number? Okay—

Mr. Michael Killeavy: The \$40 million in sunk costs, I am, but not the \$125-million break fee.

Mr. Victor Fedeli: Not the \$125 million.

Mr. Michael Killeavy: No, I'm not.

Mr. Victor Fedeli: So you would not have seen any cabinet documents that we received recently that said there was a \$125-million break fee; that if the deal didn't go through by December, they get \$125 million?

Mr. Michael Killeavy: I wasn't aware of that, no.

Mr. Victor Fedeli: You're not aware of that deal that was arranged with TransCanada?

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

Mr. Michael Killeavy: I'm only aware of the \$40-million sunk costs figure.

Mr. Victor Fedeli: Okay. The difference between the ratepayer and the taxpayer: When I asked that question of David Lindsay—like, you raised your eyebrows; he sunk his head. Because the \$40-million sunk costs was payable by the taxpayer. The rest, the unknown number yet in Oakville, will be payable through OPA, we presume, by the ratepayer.

Mr. Michael Killeavy: Yes, correct.

Mr. Victor Fedeli: The Mississauga \$190 million is paid by the taxpayer.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: The remainder is now paid by the ratepayer.

Mr. Michael Killeavy: Yes.

Mr. Victor Fedeli: There are some documents—they're too detailed to go into, to be quite frank—that talk about the ultimate cost to the ratepayer—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli, and thanks to you, Mr. Killeavy, for your presence and your testimony. You're respectfully dismissed.

Gentlemen and ladies, we will take a five- to 10-minute recess.

The committee recessed from 1632 to 1643.

MS. REBECCA MacKENZIE

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Committee is back in session. I would welcome our next presenter, Rebecca MacKenzie, chief of staff, government House leader. I invite you to be affirmed, Ms. MacKenzie.

The Clerk of the Committee (Ms. Tamara Pomaski): 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?

Ms. Rebecca MacKenzie: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacKenzie. Your five-minute opening address begins now.

Ms. Rebecca MacKenzie: Thank you, Chair, committee members. Good afternoon. My name is Rebecca MacKenzie and I am currently the chief of staff to the government House leader.

I thought it would be helpful to this committee to provide a brief history of my employment at Queen's Park and a quick outline of my roles and responsibilities.

I started at Queen's Park in September 2010 as a senior communications assistant to the Minister of Community and Social Services. I held the same position beginning in October 2011 for the Minister of Community Safety and Correctional Services. In both ministries, I was responsible for day-to-day interaction with the media and coordinating messaging. I edited and approved ministry communications projects like Web copy, bulletins and communications plans. I also drafted speeches, press releases, letters to the editor, statements and other communications materials.

In February 2012, I had the privilege of joining the Premier's office as special assistant, issues management. I continued in that role until October 22, 2012, when I was promoted to the position of manager of issues management.

For a brief period in the fall of 2012, I spent time at the Ministry of Energy. I will discuss this period in more detail in a moment.

The issues management office breaks down responsibilities by ministry file. During my tenure in that office, I held, at various times, the health, education, labour, government services, consumer services, community safety and correctional services, Attorney General, community and social services—bear with me—children and youth services, northern development and mines, natural resources, municipal affairs and housing, and the transportation-infrastructure files. At no point did I have responsibility for the energy file.

In both positions, I was involved in daily question period briefings with the Premier. This involved identifying issues arising from daily media stories and preparing notes for the Premier for question period.

I also supervised the work of the legislative assistants in the various ministries I was responsible for, and regularly attended planning and communications rollout meetings with those ministries.

At the beginning of December 2012, I took an unpaid leave of absence to work on Sandra Pupatello's leadership campaign as her director of communications.

I was hired to my current position on March 4 of this year.

I believe that I have been called to committee to discuss my responsibilities for my brief tenure at the Ministry of Energy last fall. From September 24 to October 5, I provided communications support to the minister's office. During this period, the minister's office was very busy and also understaffed. There were two reasons for this. It was obviously a very busy time given the volume of documents released and the media interest in them. And number two, the minister's office had had a number of staff members move on to other opportunities, both in government and outside, and had not yet filled those positions.

The Premier's office had flagged that they were short-staffed during such a busy time and particularly needed help with communications functions. I was asked to assist.

The work that I did while at the Ministry of Energy was virtually identical to the work I conducted while at the Ministries of Community and Social Services and Community Safety and Correctional Services. I worked on a number of different communications materials. For example, I can recall working on a speech that then-Minister Bentley was presenting to German solar power stakeholders, a Ministry of Energy press release on solar power, a communications project that was being sent out with energy bills, and some ministry Web copy.

The only involvement I had with any materials related to the cancellation of the Mississauga and Oakville gas plants was to review and edit the questions and answers and key messages that went out to caucus after the documents were released.

With that, I'm pleased to answer any questions that the committee may have.

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

Beginning with the PC side, Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Ms. MacKenzie. Thank you for being here. May I call you Rebecca?

Ms. Rebecca MacKenzie: Absolutely.

Mr. Victor Fedeli: Thank you.

You spoke quickly and I missed a couple of notes. September 24 to October 5, you were doing communications with the Ministry of Energy.

Ms. Rebecca MacKenzie: I was.

Mr. Victor Fedeli: Where were you seconded to do that? I missed that.

Ms. Rebecca MacKenzie: I was in the Premier's office doing issues management at the time.

Mr. Victor Fedeli: From February—

Ms. Rebecca MacKenzie: I started in the Premier's office in February 2012.

Mr. Victor Fedeli: Yes, until?

Ms. Rebecca MacKenzie: Until October—well, I was promoted within the Premier's office on October 22 and I was there until December 4 when I commenced a leave of absence.

Mr. Victor Fedeli: December 4 2012.

Ms. Rebecca MacKenzie: That's right.

Mr. Victor Fedeli: I really appreciate you being here. Thank you very much. It's likely that those two weeks where the September 24 announcements were made—that we'll probably get around to that a little bit more than the other areas.

The estimates committee that Mr. Leone was leading requested the power plant documents in the spring of 2012. Where were you working in the spring of 2012?

Ms. Rebecca MacKenzie: In the Premier's office.

Mr. Victor Fedeli: And your title at the time?

Ms. Rebecca MacKenzie: Special assistant, issues management.

Mr. Victor Fedeli: Okay, so you were the issues management person in the Premier's office. Who did you answer to at the time?

Ms. Rebecca MacKenzie: My direct supervisor was the manager of issues management. His name was John O'Leary.

Mr. Victor Fedeli: John O'Leary. Was he your boss at the time?

Ms. Rebecca MacKenzie: Yes, he was.

Mr. Victor Fedeli: And who did he answer to?

Ms. Rebecca MacKenzie: Because there was a change in chief of staff to the Premier within that period, various people at different points—I don't want to speculate on exactly what the chain of command was.

Mr. Victor Fedeli: That's fair.

Who did you work with? Who worked either with you, for you, worked under you?

Ms. Rebecca MacKenzie: Within the issues management shop?

Mr. Victor Fedeli: Yes.

Ms. Rebecca MacKenzie: So it was John and myself, and then a third individual joined our office in the summer of 2012.

Mr. Victor Fedeli: And who's that?

Ms. Rebecca MacKenzie: Her name is Lauren Ramey.

Mr. Victor Fedeli: Lauren?

Ms. Rebecca MacKenzie: Yes.

Mr. Victor Fedeli: And her last name?

Ms. Rebecca MacKenzie: Ramey.

Mr. Victor Fedeli: Ramey. Summer of 2012. Okay.

And you don't know who in the Premier's office that your boss answered to.

Ms. Rebecca MacKenzie: It would have changed at different points, because there was a structural change. David Livingston had a different structure than the previous chief of staff.

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Mr. Victor Fedeli: Did he work for David Livingston at one point in time? Did John O'Leary work for him at one point in time?

Ms. Rebecca MacKenzie: I don't believe that was the direction of command, no. There would have been other people in between those two levels.

Mr. Victor Fedeli: Okay. In your capacity as issues management in the Premier's office, when did you become aware of Mr. Leone and the estimates committee request for power plant documents? When would that first have come across your desk?

Ms. Rebecca MacKenzie: I can't recall the exact date. You know, we have regular meetings with the House leader's office. Someone would have at some point mentioned to me that there was a committee request.

Mr. Victor Fedeli: Okay. I'm just going to ask—

Mr. Rob Leone: Sorry, I was just going to ask—approximately, do you have a time, or a month maybe?

Ms. Rebecca MacKenzie: I recall that the request came in May 2012, I believe, but I can't recall when I was specifically aware of it.

Mr. Rob Leone: Do you have an idea of when issues management would have taken this file from, say, the Minister of Energy's office?

Ms. Rebecca MacKenzie: As I mentioned in my opening statement, the energy file was not mine. I wouldn't have been immediately alerted or anything like that, because it wasn't my file.

Mr. Rob Leone: Would John O'Leary know?

Ms. Rebecca MacKenzie: I can't speculate on that.

Mr. Victor Fedeli: We're around May 2012 when the estimates committee first began looking for documents. When did this become a bigger issue in the Premier's office?

Ms. Rebecca MacKenzie: What do you mean by "a bigger issue"?

Mr. Victor Fedeli: I'll try to use parliamentary language here. This is the biggest—I won't say "scandal," Chair. This is the biggest issue—bigger than Ornge, bigger than eHealth. This is a big deal in Ontario today. It became a big deal some time ago. You were the issues manager in the Premier's office. When did this become a major priority in the Premier's office?

Ms. Rebecca MacKenzie: That's not entirely correct. I was part of the issues team—

Mr. Victor Fedeli: Which part? That it's the biggest—

Ms. Rebecca MacKenzie: Again, it wasn't my file. As I stated in my opening statement, the reason we divide files up like that is because there are a lot of issues going on, on any given day, so you don't really have the capacity to work on all of those files at the same time. There just aren't enough hours in the day. So I would not

have been involved in sort of tracking what was going on with that issue.

Mr. Victor Fedeli: So there's you, Lauren Ramey and John O'Leary?

Ms. Rebecca MacKenzie: At various points over my time in the Premier's office.

Mr. Victor Fedeli: So if you weren't involved with the largest issue in provincial politics and in the Premier's office at that time, who would have been, then?

Ms. Rebecca MacKenzie: My recollection is that at various times, both John and Lauren had that energy file. There would have—

Mr. Victor Fedeli: So it wasn't you; it was them. And that's fair.

Ms. Rebecca MacKenzie: It wasn't my file; I had other files. There would have been, of course, other people in the Premier's office who may have had involvement, but I can't speculate on who exactly was involved in any meetings or anything like that with that file. I wasn't present.

Mr. Victor Fedeli: So who in the Premier's office would have been tasked with managing the discussion of the document disclosure?

Ms. Rebecca MacKenzie: I can't speculate on that, because I wouldn't have been there. I don't want to speculate on a meeting or emails that I was not part of.

Mr. Victor Fedeli: Who was the staff lead in the Premier's office on the whole document issue?

Ms. Rebecca MacKenzie: I don't recall that there would have been one person responsible for that.

Mr. Victor Fedeli: Would there have been a team involved in managing this biggest issue in Ontario history?

Ms. Rebecca MacKenzie: I think with anything that comes up in the Premier's office, there are people who are involved on a communications front, on a policy front, but I can't comment specifically on this case.

Mr. Victor Fedeli: Did you have anything to do with the documents whatsoever?

Ms. Rebecca MacKenzie: As I mentioned in my opening statement, I did do a copy-edit of the questions and answers and key messages that went out to our caucus members after the documents were released. Other than that, no.

Mr. Victor Fedeli: So in order to prepare a copy-edit, would you have seen the documents?

Ms. Rebecca MacKenzie: No.

Mr. Victor Fedeli: Would you have any idea what was in the documents?

Ms. Rebecca MacKenzie: No.

Mr. Victor Fedeli: How do you prepare copy or edit copy then?

Ms. Rebecca MacKenzie: Well, the copy was already provided. It was a copy-edit in the true definition of the word—typos, phrasing, that sort of thing.

Mr. Victor Fedeli: Who would have written that copy that you edited?

Ms. Rebecca MacKenzie: I don't know who the original author would have been. It was given to me by

the director of communications of the Ministry of Energy when I was over at the Ministry of Energy, and I'm not sure who had it before that.

Mr. Victor Fedeli: Okay. I'll just turn it over to Rob for a moment.

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

Mr. Rob Leone: So you mean to tell me that issues management didn't have a read of the documents that were disclosed? Is that what you're suggesting?

Ms. Rebecca MacKenzie: I'm telling you that I did not read the documents and I was not involved in the document disclosure process.

Mr. Rob Leone: Did you say on October 22, you were promoted to issues manager? Is that what you're saying?

Ms. Rebecca MacKenzie: That's right.

Mr. Rob Leone: Would you have at that time tried to identify the steps which previous issues managers would have taken on this file? You don't start the job of issues management blank; you actually have to know the issues and the history of the issues to understand exactly where we're going—where the government's going to go on these issues. Would that be fair enough to say?

Ms. Rebecca MacKenzie: I'm sorry, I don't totally understand what the question is.

Mr. Rob Leone: Well, you've been promoted on October 22 to issues manager. You're the issues manager for the Premier's office. To become the issues manager in the Premier's office—obviously, you have some experience with the issues, but you would have to have some idea of the chronology of all the issues that are before the government, this one being, obviously, a major one by October 22.

If that's the case, would you have been briefed on the chronology of this issue, and by whom would you have been briefed?

Ms. Rebecca MacKenzie: I think I would have been aware—I am aware now certainly of sort of the timeline of when documents were released. On October 22, the Premier had resigned and the House was prorogued, so I wasn't involved in daily question period briefings with Premier McGuinty. There wasn't as much involvement with the document disclosure process because we weren't briefing him on a daily basis, and we had kind of already gone through that.

Mr. Rob Leone: Who did you take over from on the 22nd?

Ms. Rebecca MacKenzie: From John O'Leary.

Mr. Rob Leone: John O'Leary. Did you and John O'Leary have a conversation about issues management prior to his departure?

Ms. Rebecca MacKenzie: Yes, and the whole time we worked together.

Mr. Rob Leone: Okay.

Mr. Victor Fedeli: I need to go back. There are three people who manage the issues. This is the single largest issue—I will use the word “scandal” this time, Chair—this is the biggest scandal in our lifetime in the province of Ontario's politics, and you didn't know anything about it?

Ms. Rebecca MacKenzie: I wasn't involved in document production or disclosure—

Mr. Victor Fedeli: No, no, I asked you, did you not know anything about this? There were only three people in your office: you, Lauren Ramey and John O'Leary, and this is the single largest issue, and you're in issues management.

Ms. Rebecca MacKenzie: I'm sorry, what did you—

Mr. Victor Fedeli: What did you have to do with this issue? How did you manage this issue?

Ms. Rebecca MacKenzie: I was not involved in managing that issue. As I said in my opening statement, I had the health file, the education file. Thinking back to the fall of 2012, we were involved in teacher negotiations, in negotiations with the OMA, AMAPCEO, OPSEU. There were other issues that—

Mr. Victor Fedeli: Okay, let's jump to the 24th of September to the 5th of October. There is a communications nightmare over at the Ministry of Energy.

Ms. Rebecca MacKenzie: Oh, I wouldn't describe it that way.

Mr. Victor Fedeli: Oh, I would. This is the time when you were coming out to tell the public a whole bunch of things that aren't true. This is when you come out to tell the public \$40 million, \$180 million, all these numbers. This is when your caucus stood up and, one by one by one, including cabinet members, said, “You have all the documents,” when we know that they knew we didn't.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, you're really inching across the unparliamentary line, there.

Mr. Victor Fedeli: So what was your role from September 24 to October 5? What would your role have been in terms of communications, considering we know the messages now that were communicated and the validity of them? What was your role in those two weeks?

Ms. Rebecca MacKenzie: As I mentioned in my opening statement, if I can recall, they were short both a press secretary and a communications planner. I think they were also short a policy adviser. So it was really assisting with all the other work that that ministry does on a daily basis that they needed a lot of help with. I'm sure you can understand that there were a lot of media calls coming in, questions about—

Mr. Victor Fedeli: So what was your role on September 24 to October 5, with respect to the communications that came out of the Ministry of Energy?

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Ms. Rebecca MacKenzie: I assisted with press releases that were going out. I assisted with a speech that then-Minister Bentley was delivering. Again, that question and answer and the key messages for caucus, other website copy, communications materials that the ministry was tracking to deal with—

Mr. Victor Fedeli: So in Minister Bentley's speech and press release where he said, “You're going to hear a lot of numbers over the next while. There's only one number you need to know, and that's \$40 million, the total cost,” would you have been involved in that sentence, that part of it?

Ms. Rebecca MacKenzie: No.

Mr. Victor Fedeli: Not that one?

Ms. Rebecca MacKenzie: No. I believe I—

Mr. Victor Fedeli: But it is a press release, and it is a speech, but you weren't involved. You said you were involved in press releases and speeches, and this one came out during the time you were there. You had nothing to do with that one?

Ms. Rebecca MacKenzie: Right. I believe I already mentioned that my only involvement in any communications material related to the cancellation of the Mississauga and Oakville gas plants was that question and answer and those key messages.

Mr. Victor Fedeli: The key messages involved \$40 million and involved \$190 million. What was your involvement in those numbers, in promoting those numbers, or verifying those numbers or putting those numbers in a release or in a speech or on the website?

Ms. Rebecca MacKenzie: It was just that question and answer and those key messages.

Mr. Victor Fedeli: So in that question and answer and key messages, do you remember the \$40 million?

Ms. Rebecca MacKenzie: Yes.

Mr. Victor Fedeli: Do you now understand or then understand that \$40 million was not the total cost?

Ms. Rebecca MacKenzie: I'm sorry; I don't totally understand the question.

Mr. Victor Fedeli: Well, it cost a whole lot more than \$40 million to cancel the Oakville power station, yet in the press releases, in those key messages and in those talking points, they stick with \$40 million. Do you know why?

Ms. Rebecca MacKenzie: That was the number that we were given at the time, and I don't believe that there is a final number.

Mr. Victor Fedeli: Let's switch over to the \$180 million then. Are you familiar with that number?

Ms. Rebecca MacKenzie: Yes.

Mr. Victor Fedeli: Then, subsequently, \$190 million?

Ms. Rebecca MacKenzie: Yes.

Mr. Victor Fedeli: And you've now heard that that wasn't the final number either. Why would you have continued to use \$190 million?

Ms. Rebecca MacKenzie: At what point?

Mr. Victor Fedeli: In any of the discussions or any of the media. Why would you continue to use \$40 million and \$190 million?

Ms. Rebecca MacKenzie: I'll go back to what I've said a number of times. I was copy-editing a document. I didn't have a background in the energy file. I was not involved in negotiations.

Mr. Victor Fedeli: That's okay, by the way; neither did the person who sited the subsequent plan.

So let me ask you—

Ms. Rebecca MacKenzie: Sorry, if I can finish—

Mr. Victor Fedeli: Go ahead, finish.

Ms. Rebecca MacKenzie: I was performing a communications function, the same way that I did in two previous positions within Queen's Park. It was a task I

was very familiar with, and I copy-edited, probably made some small changes to phrasing. But I was not involved in the policy development or implementation, which was what those key messages and Q&As were talking about.

Mr. Victor Fedeli: In the communication from the cabinet ministers and member after member, we heard, "You have all the documents, 36,000." Who would have given you that information?

Ms. Rebecca MacKenzie: Sorry. Are we talking about when I was at the Ministry of Energy?

Mr. Victor Fedeli: You were there September 24, and on September 25, September 26, dozens of Liberal members stood up and made statements about the energy file.

Ms. Rebecca MacKenzie: Right.

Mr. Victor Fedeli: Repeatedly.

Ms. Rebecca MacKenzie: Mm-hmm.

Mr. Victor Fedeli: Who would have given them those talking points, or who would have written the talking points?

Ms. Rebecca MacKenzie: I can't speculate on that because I was at the Ministry of Energy at the time, so I wasn't involved in sort of—

Mr. Victor Fedeli: These are Ministry of Energy statistics that were being relayed.

Ms. Rebecca MacKenzie: They may have been using the Q&As or the key messages that were sent out. I—

Mr. Victor Fedeli: Did you write those Q&As and key messages?

Ms. Rebecca MacKenzie: I did not.

Mr. Victor Fedeli: Did you edit them?

Ms. Rebecca MacKenzie: I copy-edited them.

Mr. Victor Fedeli: You copy-edited them. When you're in the Premier's office, with the biggest file to hit in your lifetime, you didn't have anything to do with it. When you were at the Ministry of Energy, the two weeks that the file grew from next to nothing to the largest scandal in that ministry—that we're aware of at least—you have nothing to do with it there either?

Ms. Rebecca MacKenzie: I did not.

Mr. Victor Fedeli: So you're not familiar with the fact that the 36,000 documents that we received were not the total amount of documents, and that only a short time later we received 20,000 more documents?

Ms. Rebecca MacKenzie: I am aware of that fact.

Mr. Victor Fedeli: Were you aware then when you continued to copy-edit the 36,000 number? Did you know that 36,000 was not a true number?

Ms. Rebecca MacKenzie: No, I was not.

Mr. Victor Fedeli: I'm sorry?

Ms. Rebecca MacKenzie: Sorry; I was not aware that there were additional documents coming.

Mr. Victor Fedeli: Okay. You go ahead.

Mr. Rob Leone: Sorry, I have the mike on.

Dalton McGuinty stated in his testimony that he asks his staff to make sure that every number that he cites is not only checked but rechecked to verify that it is correct. Would you have been the one tasked, once you were the

director of communications—sorry, with issues management—the one to verify those numbers?

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

Ms. Rebecca MacKenzie: The Premier had pro-rogued the House and resigned as Premier when I stepped into the role as manager of issues management.

Mr. Rob Leone: So he wouldn't have asked you to triple-check numbers that the government would continue to use and that he continued to use? I think that we have Toronto Star articles that cite a number—numbers for the plant cancellations. He wouldn't have asked you then to triple-check those numbers?

Ms. Rebecca MacKenzie: I can't recall him asking that.

Mr. Rob Leone: Would you be responsible for triple-checking numbers when he uses them?

Ms. Rebecca MacKenzie: For question period? On files that I was responsible for?

Mr. Rob Leone: And when he goes out to the media.

Ms. Rebecca MacKenzie: Pardon me?

Mr. Rob Leone: And when he scrums in the media or takes interviews.

Ms. Rebecca MacKenzie: No, I wouldn't have been involved in fact-checking information for interviews.

Mr. Rob Leone: So who would?

Ms. Rebecca MacKenzie: I can't speculate on who exactly, but people who work in the Premier's press office would have had a process for that.

Mr. Rob Leone: They would have had a process for it, an identified process.

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

To Mr. Tabuns, or Ms. Fife. Welcome to the committee.

Ms. Catherine Fife: Thank you very much. "It's such a pleasure to be here," she says somewhat sarcastically.

Thank you very much, Rebecca, for coming before the committee. Going through your career here at Queen's Park, there are quite a few moves, but at any one point can you recall having a strong overview or at least even a brief overview of a brief about the Mississauga and Oakville cancellation?

Ms. Rebecca MacKenzie: No.

Ms. Catherine Fife: Never?

Ms. Rebecca MacKenzie: No.

Ms. Catherine Fife: When you were writing the press releases and speeches and question and answers—I understand the pace is quite fast—but at any one point did you feel the pressure to at least vet some of the facts that were contained within those documents?

Ms. Rebecca MacKenzie: Just to clarify, with the exception of that question and answer and the key messages, when I was at the Ministry of Energy, none of the other documents that I worked on had anything to do with the cancellation and relocation of either gas plant. They were other issues, and so they were much more about kind of phrasing and word use and sentence structure and sort of general communications principles that you want to have a good headline on the press

release when it goes out. They certainly weren't policy-heavy documents, and I wouldn't have been the only person involved in their production. I wasn't creating things from scratch; they were drafts created from an agency or from the ministry before they came to me for my review.

Ms. Catherine Fife: Okay. But as has been pointed out, this was a big issue, right? It was going to get bigger; I don't think people knew that at the time. But when the FOI request came in for additional information, did you participate at all in that process?

Ms. Rebecca MacKenzie: I did participate in the process. The first FOI, I believe, for the code words "Project Vapour," I did not have any responsive records for. In fact, the first time I heard that term was when I was given the FOI. I can't recall the exact date, but I did have responsive documents for the second FOI that came in, and I handed those over.

Ms. Catherine Fife: So what was the language around that FOI?

Ms. Rebecca MacKenzie: I can't recall. It had to do with sort of how the first FOI had been handled.

Ms. Catherine Fife: Okay. So it was more expansive, right? So then you did participate in that, and so you provided documents—

Ms. Rebecca MacKenzie: I participated in both, and I didn't have responsive—

Ms. Catherine Fife: For Project Vapour.

Ms. Rebecca MacKenzie: That's right.

Ms. Catherine Fife: Okay. Just to put it in the public record, were you involved at all—in any way, shape or form—in the cancellation of the Oakville and Mississauga gas plants?

Ms. Rebecca MacKenzie: I was not.

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Ms. Catherine Fife: From an administrative perspective, though, do you delete all of your emails and other documents on your computer?

Ms. Rebecca MacKenzie: I do not.

Ms. Catherine Fife: You do not. You archive them according to month, date?

Ms. Rebecca MacKenzie: I'm familiar with the records schedule for the Premier's office, and I follow it to the best of my ability.

Ms. Catherine Fife: Okay. Also according to your procedures, do you destroy all hard-copy letters or reports that you receive, or are they kept on file? Just for the record, can you clarify how long they are kept on file for?

Ms. Rebecca MacKenzie: I keep them on file. I will say, though, that the nature of my job in both communications and issues management positions is that the majority of the products I deal with are in draft form. They're also almost always held by a different ministry, the ministry that created them then follows that policy development as the holder of those documents. I don't keep things that are in draft form and in different points of development.

Ms. Catherine Fife: Also for the record: I think you've stated this, but are you aware of the requirements of the Archives and Recordkeeping Act?

Ms. Rebecca MacKenzie: I am.

Ms. Catherine Fife: And you adhere to those?

Ms. Rebecca MacKenzie: Yes. I haven't been here for five years.

Ms. Catherine Fife: And do you inform the staff—do you have staff, actually, that report to you?

Ms. Rebecca MacKenzie: I do.

Ms. Catherine Fife: And you would make sure that they are also—

Ms. Rebecca MacKenzie: Absolutely; actually, I was very pleased that last month there was a meeting for every political staffer. We reviewed the requirements around record-keeping.

Ms. Catherine Fife: Okay. Thank you.

Do you have any questions?

Mr. Peter Tabuns: I have no questions.

Ms. Catherine Fife: Thank you very much, Rebecca.

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

To the government side, Ms. Cansfield?

Mrs. Donna H. Cansfield: I just wanted to clarify a couple of questions, because every government does things a little bit differently. Since I'm a little bit more familiar with what happens around issues management, I thought that maybe we could help to have an understanding of how, in fact, this government works.

You joined the office, I guess it says, in February 2012, in issues management.

Ms. Rebecca MacKenzie: The Premier's office, yes.

Mrs. Donna H. Cansfield: And if I recall, you had how many files that you were looking after?

Ms. Rebecca MacKenzie: When it was just two of us in that office, we kind of split them right down the middle, so it would have been between a dozen and 15 files.

Mrs. Donna H. Cansfield: Right. As I recall, as a former minister, what would happen is that I or my staff would liaise with the issues management person, virtually every day, on whatever the issues were. Then you had to go in—and typically you went in on your own—to the Premier, to brief him on whatever that issue was.

Ms. Rebecca MacKenzie: That's right.

Mrs. Donna H. Cansfield: And so, that would happen with 10 or 15 files, then you would leave, then the next person would go in with their files. I think that's a really important issue to understand, how you manage issues, because they're complex and complicated and there are so many of them. It's not like you sit around all day, because in addition to that, is it correct that you also had to attend cabinet meetings sometimes on those issues?

Ms. Rebecca MacKenzie: Yes, anything from a caucus meeting to a cabinet meeting. There were two daily issues meetings with the legislative assistants that we were also responsible for leading.

Yes, there were a number of meetings. If you had an issue that was coming up, there were regular communica-

tions planning meetings and look-aheads. There are a couple of ministries, like I mentioned before, that have quite a heavy workload; you would have, whether it was weekly or biweekly, regular scheduled meetings that I would sit in on as well.

Mrs. Donna H. Cansfield: So I think it would be fair to say that you didn't have time for anybody else's issues.

Ms. Rebecca MacKenzie: No, I didn't.

Mrs. Donna H. Cansfield: You had enough of your own to deal with.

As I said, I know that each government does things a little bit differently, but I do know that this, in fact, is how Dalton managed things. He would call someone in, get briefed on a particular issue—or issues; whatever you had—and then you'd go off and the next individual—

Ms. Rebecca MacKenzie: I'll just clarify, Donna: We would frequently do the issues briefing—they were very brief—before question period, but we would often do them together, just to quickly go through things.

Mrs. Donna H. Cansfield: But they would be more at the 40,000-feet level, I would say.

Ms. Rebecca MacKenzie: Absolutely.

Mrs. Donna H. Cansfield: You don't have time to get into those details when you've got 23 ministers.

Ms. Rebecca MacKenzie: Yes, and I think that the Premier's Hansard from question period would reflect that sort of high-level approach.

Mrs. Donna H. Cansfield: I agree. How long do you think those briefings would last?

Ms. Rebecca MacKenzie: Depending on the Premier's schedule and depending on the number of issues coming up that day, they could be as short as five minutes. I can't recall them ever taking longer than 15.

Mrs. Donna H. Cansfield: So, typically you're in and you're out.

Ms. Rebecca MacKenzie: That's right.

Mrs. Donna H. Cansfield: There's not a strong opportunity—and they were a range of topics, but you would say that they were really high-level at the same time. I just think that's important—as I said, everybody has a different approach in how they deal with this, but certainly I recall spending a great deal of time with some of the issues I was dealing with, with the issues management folks, especially on certain files. So I just wanted to make sure that was sort of cleared up, what you were doing.

Laura, did you have some questions you want to ask?

Mrs. Laura Albanese: Well, I guess you sort of clarified more or less how the issues management work was done in the Premier's office. I would probably start maybe with the clarification of a few things. First of all, I know that you're appearing here after the first invitation? Is that clear, that you had received—

Ms. Rebecca MacKenzie: That's right, yes. I believe I was invited—last Thursday I had an invitation from the Clerk, and I responded the same afternoon.

Mrs. Laura Albanese: Then I think it's important to put on the record that you did respond voluntarily on

your first invitation since there have been some suggestions that some staffers have been refusing, so it's important to note that this is not the case. Were you surprised that you were called to testify at the committee?

Ms. Rebecca MacKenzie: I wasn't shocked, but I'm happy to have the opportunity to kind of clarify why I was at the Ministry of Energy for those two weeks. I appreciated a heads-up I received from one of my Conservative colleagues that morning, and I'm happy to be here.

Mrs. Laura Albanese: I would like to clarify the timeline a little bit. We heard from Minister Duguid that the decision to cancel the Oakville gas plant was made in the fall of 2010. Where were you working at that time?

Ms. Rebecca MacKenzie: I had just started at Queen's Park at the end of September, and I was working at the Ministry of Community and Social Services.

Mrs. Laura Albanese: One of the things we've also heard very often in this committee is that the commitment to relocate the Mississauga gas plant was made by all parties in September and October 2011. Your role during that time frame was?

Ms. Rebecca MacKenzie: I was living in Barrie, Ontario, at the time. I was the manager of the local campaign there. I'd moved to Barrie just before the start of the election, and I was there for the duration.

Mrs. Laura Albanese: So you had no involvement with either the Oakville or Mississauga decisions then?

Ms. Rebecca MacKenzie: No.

Mrs. Laura Albanese: The other questions that I had, always of clarification level: You were at the Ministry of Energy for a period of two weeks?

Ms. Rebecca MacKenzie: That's right.

Mrs. Laura Albanese: So you arrived after the document release of September 24?

Ms. Rebecca MacKenzie: I can't recall the exact hour of the day that I would have first showed up in that office, but it would have been decided; it had been decided prior to my arrival. It was certainly part of the reason that I was there that there had been an agreement reached, and the documents were going out. I didn't have an involvement in sort of the pre-release portion.

Mrs. Laura Albanese: You mentioned that other persons were really involved with the document disclosures and the related media interest in regards to that.

Ms. Rebecca MacKenzie: Yes.

Mrs. Laura Albanese: Can you give us a more detailed example of what you worked on during those two weeks?

Ms. Rebecca MacKenzie: Yes. It was something that I recalled, or I went back to recall when I was preparing my opening statement. I'm just going to refer back to that. There was a speech that Minister Bentley prepared—actually I learned that he speaks a little bit of German as I was preparing that speech because it was to German solar power stakeholders. There was a press release that went out on solar power from energy. There was a communications product about sort of lowering your energy use that I helped out with and some Web copy for the ministry.

Mrs. Laura Albanese: Okay. And after these two weeks, you returned to the Premier's office, correct?

Ms. Rebecca MacKenzie: That's right.

Mrs. Laura Albanese: Did you continue to provide support to then-Premier McGuinty while you were at the Ministry of Energy?

Ms. Rebecca MacKenzie: During the period that I was at the Ministry of Energy, the last weekend in September was the Liberal Party annual general meeting. I was in Ottawa, and I sat in on the Premier's media availability during that time, but I wasn't involved in sort of daily briefings with the Premier or my usual tasks that I would have done for the Premier during the time that I was at the Ministry of Energy.

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Mrs. Laura Albanese: Okay. That's it for this round for us, unless you have—

Mrs. Donna H. Cansfield: I just have a couple of other questions. I think one of the important comments that you made was—and again, I'll go back to my own personal experiences, but sometimes when speeches are written by other individuals they don't exactly reflect who you are as a person. Often I would ask someone to go over them, if nothing else to look at the Queen's English to make sure that I didn't sound like an idiot when I was giving the speech. Is that copy editing?

Ms. Rebecca MacKenzie: Yes, and also looking for typos and sentence structure. When I'm working on a speech I often read it out loud to myself to see how it sounds and I would have done the same thing for the one that I worked on with Minister Bentley.

Mrs. Donna H. Cansfield: And it would have been the same thing for the Q and As. Typically, a lot of that information comes from the ministry side, you get it, then you edit it in terms of copy editing, which is the Queen's English, the grammar, the flow, that sort of thing.

Ms. Rebecca MacKenzie: That's right.

Mrs. Donna H. Cansfield: So you're not necessarily involved in the writing of that material nor is it your job to verify the material; your job is to edit the material so that in fact it's readable and in what I call Canadian Tire language so people can understand it. I wanted just to put that in and say thank you very much.

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

To the PC side, 10 minutes. Mr. Fedeli?

Mr. Victor Fedeli: Thank you. I appreciate it. Did you ever discuss the documents with anybody at the Ministry of Energy or in the Premier's office?

Ms. Rebecca MacKenzie: Discuss them in what context?

Mr. Victor Fedeli: Any context.

Ms. Rebecca MacKenzie: I'm sure that there would have been conversations about newspaper stories and the like. Certainly everyone was aware that documents were going out, but I wasn't aware of the document disclosure process or the document production process, so I wouldn't have been able to discuss that in any detail.

Mr. Victor Fedeli: In your time at the Ministry of Energy would you have discussed this upcoming second

document dump that came, the 20,000 documents? Would that have been part of those discussions that you had?

Ms. Rebecca MacKenzie: At some point—I can't recollect the exact date—during my time at the Ministry of Energy, I was told that there was a possibility that there were more documents.

Mr. Victor Fedeli: Do you recall the date?

Ms. Rebecca MacKenzie: I don't. I believe it was at some point over that weekend, but I was in Ottawa. Someone mentioned it to me.

Mr. Victor Fedeli: What was the date of that weekend again?

Ms. Rebecca MacKenzie: The last weekend in September—

Mr. Victor Fedeli: The last weekend of September?

Ms. Rebecca MacKenzie: But I was back in the Premier's office by the time documents were released and—

Mr. Victor Fedeli: But you heard about the fact that there may be another document dump—

Ms. Rebecca MacKenzie: That there may be.

Mr. Victor Fedeli: On that last weekend of September before the public announcement? Would you have done any talking points for the Liberal Party during that September 24 to October 5 period?

Ms. Rebecca MacKenzie: No.

Mr. Victor Fedeli: Who would have been responsible for those? Who would have crafted the talking points where they were splitting hairs between "ratepayer" and "taxpayer" and \$40 million being the total when we now know that that wasn't accurate? Who would have written those talking points?

Ms. Rebecca MacKenzie: Sorry, talking points for whom?

Mr. Victor Fedeli: The cabinet ministers, the dozen caucus members who stood up and repeated these things.

Ms. Rebecca MacKenzie: This sounds similar to the question I answered in the last round.

Mr. Victor Fedeli: On September 24, 25 and 26, somebody wrote talking points for these people.

Ms. Rebecca MacKenzie: Right. I was in the Ministry of Energy. I don't know who it would have been.

Mr. Victor Fedeli: On September 23, who would have been writing talking points? Or on October 6, who would have been writing talking points for Liberal members?

Ms. Rebecca MacKenzie: I can't speculate because it could have been a variety of different people—

Mr. Victor Fedeli: Do you know why I'm pushing so hard on this point? Because there are so many inaccuracies in there. We're trying to get to the truth. Now, we have learned that the government knew that those numbers were wrong. They weren't the total. We now know that there were documents withheld during that time you were there. We've now learned from you that you were aware there may be more documents and subsequently there were. We're trying to find out who was writing these things and providing them to the

caucus members for them to stand up and repeat in the caucus when we all now know that they were incorrect.

Ms. Rebecca MacKenzie: I do not know the answer to that.

Mr. Victor Fedeli: You were sent by the Premier into the Ministry of Energy during that September 24 to October 5 period—

Ms. Rebecca MacKenzie: I wasn't sent by the Premier.

Mr. Victor Fedeli: Who were you sent by?

Ms. Rebecca MacKenzie: My direct supervisor asked me. I understand—

Mr. Victor Fedeli: And who was that?

Ms. Rebecca MacKenzie: John O'Leary. I understand that there was a conversation where my name was raised. I don't know who was involved in that conversation, but it wasn't a conversation that I had with the Premier at the time.

Mr. Victor Fedeli: So you were sent over there—was it to manage that crisis that was over there? These guys were in flux. Is this what I can expect from you as one of three people in issues management? Were you sent there to manage this issue?

Ms. Rebecca MacKenzie: I was chosen because of my background in communications. That was what had been identified as a gap in that office at the time.

Mr. Victor Fedeli: A gap in that office. Did you ever discuss the documents with Jamison Steeve, Sean Mullin or Craig MacLennan?

Ms. Rebecca MacKenzie: No.

Mr. Victor Fedeli: None of those people. Who on that last weekend in September would have said to you that there may be more documents coming?

Ms. Rebecca MacKenzie: I can't recall who told me.

Mr. Victor Fedeli: I want you to think about that for another minute or two while we finish up.

Was Chris Morley ever involved in the document request or the search?

Ms. Rebecca MacKenzie: I can't answer that because I wasn't involved in the document production or search.

Mr. Victor Fedeli: What about David Livingston? What was his extent of involvement in that?

Ms. Rebecca MacKenzie: For the same reason, I can't answer that.

Mr. Victor Fedeli: What degree of contact did you have with Ministry of Energy people in those two weeks that you were at the ministry during the crisis period?

Ms. Rebecca MacKenzie: Sorry; the minister's office or the ministry?

Mr. Victor Fedeli: Either.

Ms. Rebecca MacKenzie: I was physically situated in the minister's office. I think I went out for lunch with them a couple of times. The ministry—I had no involvement. I didn't deal with anyone in the ministry.

Mr. Victor Fedeli: Do you know who Ryan Dunn is?

Ms. Rebecca MacKenzie: I do.

Mr. Victor Fedeli: And did he have a role in the document search and disclosure?

Ms. Rebecca MacKenzie: He was the minister's issues manager at the time. But again, because I wasn't involved in the search and disclosure, I don't know what his exact role would have been.

Mr. Victor Fedeli: Did he order the documents to be withheld?

Ms. Rebecca MacKenzie: I can't speculate on that.

Mr. Victor Fedeli: Do you know who Andrew Forgione is?

Ms. Rebecca MacKenzie: I do.

Mr. Victor Fedeli: What role did Mr. Forgione play in the document search and disclosure?

Ms. Rebecca MacKenzie: For the same reason I can't comment on Mr. Dunn's involvement, I couldn't comment on Mr. Forgione's involvement.

Mr. Victor Fedeli: Have you ever spoken to Jesse Kulendran?

Ms. Rebecca MacKenzie: No.

Mr. Victor Fedeli: Do you know who she is?

Ms. Rebecca MacKenzie: I do because of these committee hearings.

Mr. Victor Fedeli: Okay. Do you know who at the Ministry of Energy would have given Jesse Kulendran her marching orders?

Ms. Rebecca MacKenzie: I don't.

Mr. Victor Fedeli: So you're telling us that you had no role in the handling of documents, the deletion of documents, the redaction of documents or the withholding of documents.

Ms. Rebecca MacKenzie: I did not.

Mr. Victor Fedeli: This was not your area. Do you know who ordered the document redaction?

Ms. Rebecca MacKenzie: I don't.

Mr. Victor Fedeli: Do you know who ordered the document omissions?

Ms. Rebecca MacKenzie: I don't.

Mr. Victor Fedeli: Do you know who ordered the OPA to remove documents, the ones that were subsequently replaced?

Ms. Rebecca MacKenzie: No.

Mr. Victor Fedeli: When you had your lunch with the minister, did you ever talk about—

Ms. Rebecca MacKenzie: The minister was not there, just people in the office. I think we went to the sandwich lady beside Rabba.

Mr. Victor Fedeli: That's fine. Did you ever talk about the \$40 million or the \$190 million numbers?

Ms. Rebecca MacKenzie: No.

Mr. Victor Fedeli: Did you ever talk about the fact that there were more documents about to be disclosed?

Ms. Rebecca MacKenzie: No.

Mr. Victor Fedeli: When you learned that on that weekend in September, do you remember yet who told you about that?

Ms. Rebecca MacKenzie: I can't recall.

Mr. Victor Fedeli: You can't recall.

Ms. Rebecca MacKenzie: It's possible I heard it from more than one person.

Mr. Victor Fedeli: You think there would be more than one person at a Liberal function who would have known weeks before the public that there were documents coming?

Ms. Rebecca MacKenzie: That there may be—

Mr. Victor Fedeli: And subsequently were. You don't recall who you would have spoken with you about that?

Ms. Rebecca MacKenzie: I'm sorry. I can't recall who it would have been.

Mr. Victor Fedeli: Okay. Did you ever work with Ryan Dunn?

Ms. Rebecca MacKenzie: I would have worked with him when I was at the Ministry of Energy—not directly, but we would have been in the same physical space.

Mr. Victor Fedeli: Did you ever advise the minister on which numbers to use?

Ms. Rebecca MacKenzie: No. I had very limited involvement with the minister when I was there.

Mr. Victor Fedeli: I keep asking about those numbers because we all know they were wrong. We all know that the Liberal members knew they were wrong when they continued to manage this issue. You were the issues manager, did you know those numbers were wrong when you were promoting them?

1730

Ms. Rebecca MacKenzie: I did not, no. Those were the numbers that I was given.

Mr. Victor Fedeli: By whom?

Ms. Rebecca MacKenzie: They were sort of in all the documents that I was shown. I wasn't involved in a discussion around—

Mr. Victor Fedeli: So you did see documents?

Ms. Rebecca MacKenzie: The question-and-answer and the key messages.

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

Mr. Victor Fedeli: And who wrote those key messages?

Ms. Rebecca MacKenzie: I mentioned that I can't speculate on that. I don't know who would have been the original author.

Mr. Victor Fedeli: You were the issues manager.

Ms. Rebecca MacKenzie: One of, yes.

Mr. Victor Fedeli: One of three in the office.

Ms. Rebecca MacKenzie: Yes, and—

Mr. Victor Fedeli: This is the biggest issue to hit the province in your lifetime, the biggest scandal to hit, and you're sitting there telling us you don't know anything about this issue. When you were sent over to the Ministry of Energy for those crisis two weeks—the biggest two weeks in that Ministry of Energy, when they were handling 56 documents; they themselves say, "This is the biggest thing to hit"—you didn't know anything about that either. You were the communications person in the biggest communications issue that ever hit.

Ms. Rebecca MacKenzie: I wasn't involved in the document production or disclosure.

Mr. Victor Fedeli: Well, I have reason to believe that you're much deeper involved in this particular scandal than you're letting on here.

Ms. Rebecca MacKenzie: So, Mr. Fedeli, I'm not sure if there's something that you want to share with me or—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. To Ms. Fife now, to the NDP side.

Ms. Catherine Fife: Thanks, Rebecca. This is quite a committee.

Just to review, you very clearly outlined that you had a protocol with regard to the Archives and Recordkeeping Act, that you were knowledgeable about it and the people in your office were knowledgeable about it. With that in mind, were you surprised to learn that Jamison Steeve, Chris Morley and Sean Mullin deleted emails? When you learned that they had actually done this, can you talk about your response to that?

Ms. Rebecca MacKenzie: I don't want to speculate on other people's document retention policies. I can really only speak to my own and the information that I share with the individuals in my office. I can share with you that I had quite a busy weekend at the office, because there is this additional committee request. I don't think I've ever spent quite so much quality time with my photocopier. My whole office went through the process of printing and searching and disclosing documents for this latest committee request.

Ms. Catherine Fife: But I'm not asking about other speculation. I'm asking you about your response. Were you surprised to learn that these other key people had deleted emails?

Ms. Rebecca MacKenzie: I think that within the record schedule there certainly are emails that don't need to be kept. I don't really want to comment on other people's practices.

Ms. Catherine Fife: Okay. But the Archives and Recordkeeping Act, is this not a standard? It's my understanding that this is a standard practice, and it's a standard protocol that we all have to adhere to because we work here at Queen's Park and at various ministries and in various capacities. Doesn't it seem that rules were broken? If this is a standard procedure, it does appear that when you delete emails, this is not in keeping with the record-keeping protocol.

Ms. Rebecca MacKenzie: I'm not a lawyer, but there is both the Archives Act and the Premier's office records schedule, and there are provisions within the Premier's office records schedule that provide instructions for which emails are appropriate to delete. So I would mention that.

I don't know which emails other staff members would have kept or deleted, so I can't comment on that.

Ms. Catherine Fife: Okay. With regard to the record-keeping protocol, though, who taught you about the record-keeping protocol? Was this part of your orientation into the ministry, for instance?

Ms. Rebecca MacKenzie: I can't recall who would have had that initial conversation with me. It's something that, perhaps, I discussed with a chief of staff or something. But I've always been aware of it.

Ms. Catherine Fife: Would Morley, Steeve and Mullin also have received a briefing around the Archives and Recordkeeping Act?

Ms. Rebecca MacKenzie: I don't know.

Ms. Catherine Fife: You can't comment on that.

Just to go back to the Q&As that you were editing, that you hadn't been briefed on, that's a difficult job, to edit something that you haven't been briefed on. Is that a common practice, that you just get a document and you're asked to copy-edit it?

Ms. Rebecca MacKenzie: Yes. I would say—I mean, for example, it would be very similar to when I started at community safety and correctional services right after the election. I certainly had no knowledge about those ministries when I first started. You just kind of dive in headfirst. There would have been communications products that I would have immediately started to deal with at that ministry—or at community and social services, when I started there—before having any kind of policy background or additional knowledge of the content.

Ms. Catherine Fife: But who fact-checked those documents before you got to copy-edit them?

Ms. Rebecca MacKenzie: The speech, for example—the first draft would have been produced by the ministry. I don't know what it would have been, but there would have been a fact-checking process before a copy of the speech would be given to the minister's office for review, and the same with a press release.

Ms. Catherine Fife: Would anybody have checked with OPA, for instance, about the numbers?

Ms. Rebecca MacKenzie: Oh, for the question-and-answer, the key messages?

Ms. Catherine Fife: Yes, the Q&A piece.

Ms. Rebecca MacKenzie: I don't know what the process for creating the draft that I saw would have been.

Ms. Catherine Fife: Okay. It seems to me that there are some inconsistencies around record-keeping. As the chief of staff, though, Mr. Morley would have been aware of the Archives and Recordkeeping Act, right?

Ms. Rebecca MacKenzie: I'm not Mr. Morley, so I can't answer that question.

Ms. Catherine Fife: It wasn't part of your orientation from the chief of staff when you came into that ministry?

Ms. Rebecca MacKenzie: When I came to the Premier's office or—

Ms. Catherine Fife: Yes, and energy.

Ms. Rebecca MacKenzie: There wasn't—I can't recall how I was briefed on it.

Ms. Catherine Fife: Okay.

Ms. Rebecca MacKenzie: I'll point back again, though—I think I said this previously—that the entire political staff has just gone through that training. That was something that was important for the new Premier's office, for everyone to be on the same page. There are certainly a lot of new people working at Queen's Park, so we did recently do that training, and I made sure that the staff in my office are well aware of their obligations.

Ms. Catherine Fife: This sounds like a progressive move, a good move, to do the training around archives and record-keeping. But to the best of your knowledge, that training hadn't happened in a comprehensive way then?

Ms. Rebecca MacKenzie: Sorry, previously?

Ms. Catherine Fife: Yes.

Ms. Rebecca MacKenzie: I don't know.

Ms. Catherine Fife: Okay. Do you have any questions?

Mr. Peter Tabuns: No.

Ms. Catherine Fife: Thanks, Rebecca.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Fife. To the government side, Mrs. Cansfield.

Mrs. Donna H. Cansfield: Thank you, Rebecca. I wanted to clear up—I think that there's some sort of a misunderstanding that you were sent from the Premier's office to manage some crises in energy. My understanding from your testimony is that you were actually sent from the Premier's office over to energy to help on the communications file, because they had a number of personnel who had left.

Ms. Rebecca MacKenzie: Yes, and that's my background, primarily.

Mrs. Donna H. Cansfield: And that is your background. So, in essence, you were just filling a gap. You weren't managing—if there was a crisis, it was just that you were doing the job of three people on all the other files other than—

Ms. Rebecca MacKenzie: That's right.

Mrs. Donna H. Cansfield: So I think it's really important to ask this question: Did you have any involvement, other than the Q&A copy-editing, on either of those gas plants?

Ms. Rebecca MacKenzie: I did not.

Mrs. Donna H. Cansfield: You did not. I think that's a really important statement: You did not.

I want to thank you. I mean, I know how difficult—when you've got so many balls that you're juggling, and people just make the assumption that everything that goes on around you, you know about. I can share with you, certainly, again from my own perspective, that that isn't always the case. I thank you for coming and sharing with us your perspective.

Ms. Rebecca MacKenzie: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. The government yields its time? All right. Thank you, Ms. MacKenzie, for your testimony. You're officially dismissed. Thank you.

We have now a number of motions. Mr. Tabuns, I invite you to enter yours into the record.

Mr. Peter Tabuns: I move that the Ontario Power Authority provide the Standing Committee on Justice Policy its estimates, projections or ranges for non-sunk costs created in contemplation of signing the MOU with TransCanada and this be provided within two weeks of this motion passing.

The Chair (Mr. Shafiq Qaadri): Thank you. The motion is in order as read. Any comments before we vote?

Seeing none, all in favour? All opposed? Motion carried.

Mr. Tabuns, the next move?

Mr. Peter Tabuns: I move that when witnesses are confirmed, that their profiles be provided to committee

members at least 24 hours prior to the witnesses appearing before the committee.

1740

The Chair (Mr. Shafiq Qaadri): That's fine. That's not the motion as written, but—

Mr. Peter Tabuns: Sorry.

The Chair (Mr. Shafiq Qaadri): —we certainly appreciate your editing or copy-editing as it were.

Mr. Peter Tabuns: I think the one I read out is a better one.

The Chair (Mr. Shafiq Qaadri): That may be the case, and no doubt is, but it's not the one I have which is before the committee.

Mr. Peter Tabuns: Ah.

The Clerk of the Committee (Ms. Tamara Pomanaski): Can you just repeat it?

The Chair (Mr. Shafiq Qaadri): Repeat it, Mr. Tabuns.

Mr. Peter Tabuns: Sorry. I can go to the one you have in your hand because I think the sense is the same.

I move that when witnesses are confirmed, that their profiles be provided to committee members with at least 24 hours' notice.

Are you a happy man, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): I don't know if Mr. Delaney's going to challenge the embedded ambiguity there or let it pass, but in any case—

Mr. Bob Delaney: May we offer a friendly amendment, to delete the word "that" before "their profiles"?

Mr. Peter Tabuns: Sure.

Mr. Victor Fedeli: I guess it depends on what the word "is" is.

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

Mr. Peter Tabuns: I think we have the sense.

The Chair (Mr. Shafiq Qaadri): All right. Those in favour of this motion? Those opposed? Motion carries.

Mr. Fedeli, you've got some motions as well?

Mr. Victor Fedeli: I do, sir.

The Chair (Mr. Shafiq Qaadri): They need to be distributed.

All right. Just before we do that, Mr. Parker has an issue with your somewhat ambiguous motion.

Mr. Victor Fedeli: The one that we already passed?

The Chair (Mr. Shafiq Qaadri): The one that we already passed, and now have to implement.

Mr. Jeff Parker: I'm not trying to quibble, Mr. Tabuns, or to impugn the work—

The Chair (Mr. Shafiq Qaadri): Impugn motive? Go ahead.

Mr. Jeff Parker: Sometimes we get confirmation maybe two hours before the—I believe this committee has a standing 24-hour deadline to confirm a witness and sometimes we get confirmation, say, 26 hours before, in which case we're working under a very short timeline for confirmation of the witness and being able to put out the information to meet with your instructions.

The Chair (Mr. Shafiq Qaadri): So we can form a motion for you to stay up all night. I mean, we have no issues with that.

Mr. Victor Fedeli: I think that's what we should be doing.

Mr. Jeff Parker: I'm actually not the one who prepares these, but the office does. So I want to get—

Mr. Victor Fedeli: Then what's your worry?

Mr. Peter Tabuns: No. If I can speak to this, I understand the time constraints you operate under. At our end, when we get them late, it makes it much tougher for us to prepare questions. I leave it to you and the Clerk to be creative, but we actually need this material 24 hours in advance.

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

Mr. Rob Leone: Can I just offer a suggestion?

The Chair (Mr. Shafiq Qaadri): Sure.

Mr. Rob Leone: We are all providing lists of witnesses in advance and perhaps some preparatory work, once you receive those lists, might allow you to meet the restrictions—if they are prohibitive or not, I'm not going to make a comment on—that the intent of that motion was there. I know it probably creates a little bit more work, but at the end of the day I agree with Mr. Tabuns that having some bios would be of good use to this committee.

The Chair (Mr. Shafiq Qaadri): A most reasonable suggestion, Mr. Leone. Fair enough. That motion's dealt with.

Mr. Fedeli, next motion?

Mr. Victor Fedeli: I'll read the longer of the two motions first, Chair.

I move that the Standing Committee on Justice Policy requests the following documents from the Ministry of Finance within two calendar weeks of the motion passing:

(1) All documentation and correspondence, electronic or otherwise, between January 1, 2010, and May 14, 2013, 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, and that the documents be provided in a searchable, electronic PDF.

The Chair (Mr. Shafiq Qaadri): Thank you. A motion before the floor: Comments before we vote, if any?

Seeing none, those in favour of this motion? Those opposed? Motion carries.

Mr. Fedeli, next motion.

Mr. Victor Fedeli: Thank you, Chair. I'm reluctant, but I'll read this anyway, Chair. Under duress, I will read this.

I move that the Standing Committee on Justice Policy meet on Thursday, May 23, 2013, from 9 a.m. to 1:35 a.m.—

Mr. John Yakabuski: No, 11:35.

Mr. Victor Fedeli: —to 11:35 a.m. and 1 p.m. to 5:05 p.m.;

That the Clerk of the Committee proceed with scheduling one witness per caucus and that the rotation of the three witnesses remains consistent with the hitherto established schedule.

The Chair (Mr. Shafiq Qaadri): The committee, and the Chair in particular, thanks you for this particular motion, Mr. Fedeli.

Mr. Victor Fedeli: Oh, I'm real thrilled to come from North Bay on that day.

The Chair (Mr. Shafiq Qaadri): Are there any comments before this—

Mr. Bob Delaney: Can you not do without the pleasure of our company for just one week?

Mr. Victor Fedeli: There's important work here, Mr. Delaney. We need to get to the bottom of this scandal at our earliest possible convenience.

The Chair (Mr. Shafiq Qaadri): I'll take that as the government's comment on this motion.

Are there any further comments before we move—

Mrs. Laura Albanese: Notice. Extra notice. It's a constituency week.

The Chair (Mr. Shafiq Qaadri): Fine. Those in favour of this motion? Those opposed? Motion carries.

Mr. Victor Fedeli: We also met on Easter week. We also met on March break.

The Chair (Mr. Shafiq Qaadri): Unless there's any further business before this committee—seeing none, committee is adjourned.

The committee adjourned at 1745.

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