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Tuesday 4 June 2013

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Mardi 4 juin 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Tuesday 4 June 2013

Mardi 4 juin 2013

The committee met at 0831 in room 151.

MEMBERS' PRIVILEGES

HON. LAUREL BROTEN

Le Président (M. Shafiq Qadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochaine présentatrice, l'honorable Laurel Broten.

Ms. Broten, welcome to the justice policy committee. I invite you to please be sworn in by the Clerk.

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

Hon. Laurel C. Broten: I do.

Le Président (M. Shafiq Qadri): Merci, madame Broten. Comme vous le savez, vous avez cinq minutes pour vos remarques introductives. Je vous invite à commencer maintenant.

Hon. Laurel C. Broten: Merci. Good morning, everyone. I'm pleased to be here to answer questions this morning with regard to the knowledge and information I have relevant to the Greenfield South power generation station, which I will refer to as the Mississauga gas plant.

I'm proud to be part of a government that has recognized that a better method for selecting power plant sites must be used in the future.

As Premier McGuinty said at the time, "We take responsibility for not getting this right the first time. And we're currently developing better guidelines on choosing sites."

And as Premier Wynne said during her testimony before this committee, "What I know is that we need a better process, both on the siting of plants and making sure that there is community input and the process is transparent from the beginning...."

On April 12, 2005, the Ontario Power Authority entered into a clean energy supply contract for the Mississauga gas plant. This would have resulted in a 280-megawatt natural gas plant in Mississauga, not far from my riding of Etobicoke-Lakeshore.

As you know, from June 2005 to October 2007, I served as Minister of the Environment. During the time I served as Minister of the Environment, I had no involvement with the Mississauga gas plant.

On July 16, 2008, the then Minister of the Environment, John Gerretsen, denied the requests to elevate the Mississauga gas plant project to an individual environmental assessment.

After that decision, four years passed with no activity on the project until late May 2011, when the city of Mississauga issued a building permit. The fact that the Mississauga gas plant might be constructed after years of dormancy was shocking to my community and was very concerning to me, as their MPP.

In or around June 2011, on behalf of my community, I wrote to the Minister of the Environment and the Minister of Energy, and I requested that the government review Greenfield's environmental assessment, given the change in the makeup of the area of the proposed plants. That's one of the documents that I provided you today.

On June 8, the Minister of the Environment requested that Greenfield provide an updated assessment of its anticipated emissions, and how they would comply with requirements under the Environmental Assessment Act. As the Etobicoke Guardian wrote at the time, "Wilkinson said the ministry decided to review" the proposed plant "after hearing from Etobicoke-Lakeshore MPP Laurel Broten about a new set of condominium towers that now stand on the Etobicoke side near the site." Again, I've provided that to you.

Shortly after Minister Wilkinson's decision to request additional environmental assessments, the city of Mississauga passed a resolution requesting a full review of the plans for the Mississauga gas plant. In addition, city of Toronto councillors Peter Milczyn and Mark Grimes, who represent wards 5 and 6 in my riding of Etobicoke-Lakeshore, tabled a motion with Toronto council requesting a review of the decision.

In June, I also received written concerns from the president and CEO of Trillium Health Centre, Janet Davidson. Again, I've provided you with all of these documents.

As you can hear, my community was expressing significant concerns on the proposed construction of the Mississauga gas plant. I listened to my community and approached this issue like any other issue of concern being expressed by my constituents. I listened, looked for solutions, and advocated on their behalf. As their elected representative and a mother raising a family in the community as well, I shared their concerns, and I took their concerns back to the government.

When the election campaign began in the fall of 2011, the process of environmental review was under way, and I was very hopeful that the review would lead to a positive resolution for my community. After receiving a number of questions and concerns from members of the Etobicoke–Lakeshore community about my position regarding the Mississauga gas plant, I wrote to the residents of my riding reiterating my opposition to the Mississauga plant on September 19, 2011. Again, I've provided that document to you. I responded to their concerns in that regard.

On September 24, 2011, it was announced that a re-elected Ontario Liberal government would find a new location for the proposed power plant. On September 27, I wrote once again to the residents of Etobicoke–Lakeshore to inform them of this announcement, and I've provided a copy of that letter to you.

During the campaign, both opposition parties were opposed to the Mississauga gas plant. I really want to be clear: All parties were in agreement that the Mississauga gas plant should not be built on this site. Every party in the Legislature made the same commitment to Ontario voters.

In fact, Simon Nyilassy, my PC opponent, distributed a campaign flyer that said: "The only party that will stop the Sherway power plant is the Ontario PC Party." Again, I've brought you a copy of that document.

I'm really proud of my track record as MPP for Etobicoke–Lakeshore over the past almost 10 years. I've worked hard to make sure that my riding is a great place to raise a family, go to school, or to work. Just as I have advocated on behalf of my community regarding many projects and investments, I advocated on their behalf regarding the relocation of the Mississauga gas plant.

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

Before I open the floor, I'd just like to remind all members of the committee to please observe parliamentary decorum. We have not only a minister of the crown but also a sitting MPP.

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you, and welcome, Minister.

Hon. Laurel C. Broten: Thank you.

Mr. Victor Fedeli: I want to open up by reading—almost a year ago, former Finance Minister Dwight Duncan was at the estimates committee, and the member from Timmins–James Bay, Mr. Gilles Bisson, was questioning him at estimates. I guess there's an expression, "If we only knew then what we know now." I think that's really kind of where I want to go.

I want to read this because it's not so much what he said, although what he said was interesting and critical; it was that he was so much more nuanced. We didn't understand what those subtle words meant; we just didn't know. Gilles asked him an innocent question; the minister gives an answer, but it's couched. You'll see this. We didn't recognize—

Hon. Laurel C. Broten: Can you just tell me when this took place?

Mr. Victor Fedeli: July 19, 2012. Estimates.

Hon. Laurel C. Broten: Thanks.

Mr. Victor Fedeli: It was really quite interesting, and the date is important. I was going to tell you the date afterwards. Let me just read it; it'll just take me a couple of minutes to read these. It starts off with Mr. Bisson. I won't name who's going back and forth. It's Mr. Bisson and Mr. Duncan each time; there's nobody else interjecting here.

Mr. Bisson asks Mr. Duncan: "What financial compensation was provided to Eastern Power in order to secure their agreement in 2011 to cease the construction activities at the Mississauga gas plant?" What financial compensation?

The answer was: "The relocation amount of \$180 million." Of course, the answer was, to us, \$180 million. The words "relocation amount" were introduced; we'd never heard that before, and it really didn't mean anything at the time. We now know what that means.

"That's it? No more?"

The answer: "We put out the other \$10 million"—because we now know it went from \$180 million to \$190 million—"because that settlement made it easier to precipitate a settlement on the relocation cost, so one could indirectly say, yes, that that was part of it." Indirectly—we'll talk about that later, because the auditor directly puts that in the costs.

"Do you expect any more money to be spent in order to deal with this little cancellation?" The answer came back in the form of a question: "Cancellation or relocation?" To Gilles, to me, to anybody listening, it would've been the same thing. We didn't understand there was a difference, so Gilles, of course, says, "Relocation ... they're not building it anymore."

0840

"Not directly for the relocation," was his answer. "The other thing to bear in mind: On the relocation costs, there could be variances ... for instance, positive or negative. Those costs are agreed-to estimates. Oftentimes, there are variances on a project of that order of magnitude: It could come in at \$178 million; it could come in at \$182 million." He's talking about fractional variances here.

The question, then, was: "Is the government, beyond the \$180 million, expecting to have to pay for anything else in order to settle this particular issue with the constructor?" It's a simple question; are there going to be any other costs? His answer: "Not the relocation—" Again, Gilles or anybody on estimates would think that he's answered the question "no," but it's that subtle nuance that he's played: "Not the relocation—"

"What about any penalties?"

"—not that we're aware of," is the answer.

"Penalties in the contract—there was obviously a contract signed between—"

"The relocation costs, as I understand it—and these questions, again, would have to go to energy—the \$180 million covers all of those costs. It covers them all off." Again, he implies that that's everything, except he keeps throwing that word, "relocation," in there.

“So you’re not expecting anything else other than minor variances”—that’s the \$2 million each way—“over the \$180 million on Mississauga?” A simple question.

The answer: “On relocation, absolutely. Yes.” Again, that subtle—he’s asked a very simple question. We get an answer; it sounds like there are no more costs, but he threw that word, “relocation,” in there.

“Do you expect any additional claims on penalties?”

“No. The \$180 million should cover all of that. That was part of the comprehensive agreement.”

So this tells us a couple of things. Again, we certainly wish we would have known then what we know now: that he was very nuanced, but that tells us a very, very important story. He—Minister Duncan—knew what these subtle differences were. We didn’t, but what that proves is that the government knew all along that it was more than \$190 million, that there were indeed going to be additional costs. He couched it by masking it, calling it “relocation,” knowing we didn’t have a clue what he was talking about at the time.

He was chair of treasury board. You sat on treasury board, so I would ask you: What did you know about the costs, and when did you know?

Hon. Laurel C. Broten: Thanks for your question. There’s a lot of evidence that you’ve chosen to put forward that I’m not knowledgeable about—

Mr. Victor Fedeli: I read it directly, though, just so you know—from beginning to end, not selective. I read it non-stop, just so you know, Minister.

Hon. Laurel C. Broten: Okay. There are a number of questions in there, and I’m going to do my best to answer them for you. The first thing is, I do want to make a point that, at the community level, as MPP for Etobicoke–Lakeshore, my commitment to the community was with respect to relocation.

There is a distinction between relocation and cancellation, and I would suggest to you that that was a distinction that your own party made during the time of the election campaign. One of the documents that I provided to you was the flyer that Simon put out during the election campaign. If you can just take a look at it, it has, in big and bold at the top, “It’s back. ‘Dalton McGuinty, didn’t you just cancel a contract in Mississauga?’—

Mr. Victor Fedeli: Minister, I apologize—

Hon. Laurel C. Broten: “—Tim Hudak. Dalton McGuinty says, ‘No, we didn’t. No, we didn’t. No, we didn’t.’”

Mr. Victor Fedeli: Minister, I apologize. I’m just talking—

Interjection.

Mr. Victor Fedeli: But she’s answering something that I’m not asking her about. I’m talking about her time on treasury board. I’m trying to get to the financial aspect. I’m not interested in the riding side; I’m sure maybe some of my—

Hon. Laurel C. Broten: But you’re making an assertion, Mr. Fedeli, that—

Mr. Victor Fedeli: It has nothing to do with the riding activity.

Hon. Laurel C. Broten:—“relocation” and “cancellation” are terms that people didn’t understand the difference between, and I’m suggesting to you that there was broad knowledge that it was very different. Your party tried to accuse the Premier of backing away from our commitment to relocate the gas plant when he wouldn’t use the language, “We would cancel it,” and that’s because, with respect to relocation, you continue with the energy supply contract and there’s a view that that would be a less expensive route than the route Mr. Hudak was proposing, which was outright cancellation. I do want to make that statement because I think, at the community level and with respect to costing, those were different things.

As you said correctly, I sat on treasury board at the time. I think that you do have all of the treasury board minutes from in and around that period of time and you would know that at the May 17 treasury board meeting, when a negotiation mandate for the settlement with EIG came forward, I withdrew from treasury board for that meeting, so I had no knowledge with respect to the ongoing negotiations. And I did that because, as the MPP for the community, I had advocated on behalf of the relocation. It had been important work that I had done for my community. I didn’t think that I would come to that discussion with an open mind, and so I withdrew from the conversation. So in and around July 2012, I would have had very little knowledge with respect to the ongoing conversations.

I did know by August 15, 2012, when cabinet received the report back from treasury board approving the \$190 million and the resolution—I was participating in that conversation, but I wasn’t party to discussions about what costs might be. I had withdrawn.

Mr. Victor Fedeli: So let’s talk about that date, when the \$190 million was brought to cabinet. You were there.

Hon. Laurel C. Broten: August 15, 2012? Is that the date you’re referring to?

Mr. Victor Fedeli: You’re the one who gave us that date. Is that the first time that you would have acknowledged revisiting the committee—or the move, the cancellation? This is the first time you re-engaged in this—

Hon. Laurel C. Broten: I’ll tell you, I do not have a specific recollection of that conversation at a cabinet meeting on August 15, 2012, but in preparing to attend today, I did review meetings that I participated in and I know that cabinet received a report back on the treasury board order approving \$190 million that day and that I was in attendance. If you think back to August 2012, you might recall that I was very preoccupied with the files that I had responsibility for at that time.

Mr. Victor Fedeli: What other costs were discussed, other than the \$190 million?

Hon. Laurel C. Broten: As I said, I have no specific recollection of the conversation at that meeting. I can tell you, in preparing for today, I know that there was a report back from treasury board approving \$190 million, and it is only by informing myself in preparation for today’s committee that I’m aware of that knowledge at present.

Mr. Victor Fedeli: Do you remember any discussion whatsoever—you were in the room. Do you remember anything at all? Did you take notes, your personal notes, at that meeting at all?

Hon. Laurel C. Broten: As I've said, August 15, 2012, I was Minister of Education at the time. I was very engaged in my file responsibilities at the end of August, a critical time in this province with respect to education. I have no specific recollection of the conversation about Greenfield South, but I'm informing you because I informed myself about that meeting in anticipation of today.

Mr. Victor Fedeli: All right. So you're not going to tell us anything about Mississauga because you can't remember. Why don't we talk about Oakville, then? Do you remember much about Oakville?

Hon. Laurel C. Broten: I think that your premise that I don't remember anything about Mississauga is unfair. I've participated here today. I've provided you with a number of documents and I've relayed to you the information that I have with respect to how the cancellation came about, the conversations that took place in the community and the work that I did as MPP to ensure that my community's voice was heard. I brought you the documents that I have in my file.

Mr. Victor Fedeli: So if you can't remember anything about Mississauga from the August 15 meeting, why don't we talk about Oakville? Take us back to the beginning. As a cabinet minister, when did you first learn that the government was considering cancelling the gas plant in Oakville?

Hon. Laurel C. Broten: I really had no involvement with respect to Oakville. To the best of my recollection, I would have heard about the Oakville cancellation in the media.

Mr. Victor Fedeli: It wasn't discussed at cabinet?

Hon. Laurel C. Broten: I'm giving you my best answer. My best recollection is that I was informed about that cancellation in the media.

Mr. Victor Fedeli: You heard about the cancellation of the Oakville power plant in the media? That's your first time—

Hon. Laurel C. Broten: What's the time frame? Can you assist me on what is the time frame that that would have been made public?

0850

Mr. Victor Fedeli: Does anybody remember the precise date of the announcement of Oakville?

Mr. Peter Tabuns: September 30, 2009.

Mr. Victor Fedeli: Yes, I'm thinking—

Mr. Peter Tabuns: Within and around there.

Interjection.

Mr. Victor Fedeli: October 7? October 7, 2010.

Mr. Peter Tabuns: Oh, of the cancellation.

Mr. Victor Fedeli: Yes, the announcement of the cancellation. October 7, 2010—about a year before the provincial election.

You first heard of the Oakville cancellation in the media?

Hon. Laurel C. Broten: Yes, that's my best recollection.

Mr. Victor Fedeli: It wasn't discussed at cabinet?

Hon. Laurel C. Broten: I can tell you, in 2010, I would have been serving as Minister of Children and Youth Services, I believe, at the time. I would have been engaged in my own files and own subject area. I was not a member of treasury board, and my best recollection is that I was informed about the cancellation of the Oakville plant in the media. The Oakville plant was not directly relevant to my constituents. It was not a topic of conversation in my community.

Mr. Victor Fedeli: The minister or the Premier did not bring it to cabinet's attention?

Hon. Laurel C. Broten: I've answered the question the best that I can. The knowledge that I have, the best recollection about when I heard about the Oakville cancellation, is through the media and through an announcement that was made.

Mr. Victor Fedeli: That's fair. If you learned the Oakville cancellation from the media, when exactly was the cancellation first discussed subsequent to the decision being made?

Hon. Laurel C. Broten: I have to tell you that, as I prepared for today, and you can sense with my opening statement, I indicated that I was pleased to come here to talk about the Mississauga power plant. That's not to be someone who doesn't answer your questions, Mr. Fedeli, but in my involvement as an MPP, as a cabinet minister, the Mississauga gas plant was a much more relevant issue to me and my community. I had involvement with it. I think I have pertinent information to provide to this committee.

With respect to Oakville, as I've previously answered, the knowledge and information I have come from the media, and I really have had no other involvement with respect to Oakville and have no knowledge to assist the committee with.

Mr. Victor Fedeli: But you were a cabinet minister in former Premier McGuinty's cabinet. Are you saying they never talked about the Oakville cancellation in cabinet? The Premier didn't bring it up? This is quite a major financial commitment of the province of Ontario, the Liberal government. This was not discussed? You don't remember any discussions at all about Oakville in cabinet?

Hon. Laurel C. Broten: As I've indicated, I have no recollection specifically with respect to conversations around Oakville. I did not sit at treasury board at the time. I would have been engaged in the files that I had responsibility for as Minister of Children and Youth Services, as the minister responsible for women's issues.

Mr. Victor Fedeli: Premier Wynne testified that her involvement with the Oakville cancellation began in July 2011, when she signed the cabinet minute authorizing the government to enter into arbitration with TransCanada. Are you saying that the Oakville cancellation wasn't discussed at cabinet in those nine months between the announcement in October and her signing the cabinet minute in July 2011?

Hon. Laurel C. Broten: What I'm saying to you is, I have no specific recollection of that conversation, and I was not one who signed that order in July 2011.

Mr. Victor Fedeli: Do you not think it was discussed at that point?

Hon. Laurel C. Broten: As I've said, I have no specific recollection. You may have notes and minutes of meetings, and you would have that information before you. If I were to review those, I guess I would have confirmation of what took place in terms of cabinet minutes, but I'm giving you the best information that I have in terms of my specific recollection.

The Mississauga gas plant I had specific involvement with as an advocate in my community, seeking to find a solution. I was working with Minister Wilkinson to identify to him why it was different now in my community than it had been previously.

With respect to the Oakville gas plant, I was aware of what had transpired through the media. I knew that it was an issue for my colleague Kevin Flynn and that it was relevant to him, but I have no specific recollection and was not involved, to the best of my knowledge, in participating in discussions.

Mr. Victor Fedeli: Minister Bentley said that the total cost of the Oakville cancellation was \$40 million. His quote was something along the lines of: "Over the next months and years, you're going to hear a lot of numbers thrown around, but let me tell you the total cost was \$40 million."

When did you first hear that there would be additional costs for the Oakville cancellation, over and above the \$40 million?

Hon. Laurel C. Broten: As I have previously indicated, Minister Bentley would have been the line minister responsible. He would have had the most direct knowledge with respect to the costing. He would have been receiving advice and information from his ministry, from the public service, from the OPA, and I would have relied on him in terms of information that he would have provided to cabinet. I'm not sure what date you're referring to that he was talking about with respect to that time frame in and around the \$40 million.

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

Mr. Victor Fedeli: When did you first learn, then, that it was more than \$40 million? You're still a member of cabinet. Cabinet regularly meets. This is a hot topic. When did you learn that \$40 million was only the sunk costs and that there are additional costs, as we learned with Mississauga? When did you learn that there were additional costs for the Oakville cancellation?

Hon. Laurel C. Broten: When did Minister Bentley indicate that he advised cabinet of that information?

Mr. Victor Fedeli: Well, he sticks with the \$40 million.

Hon. Laurel C. Broten: I'm asking you, what is the time frame that Minister Bentley indicated when he informed cabinet? Because if that transpired, that's when I would have received that information.

Mr. Victor Fedeli: When did you learn that it was more than \$40 million? That's what I'm asking. He's gone from there now.

Hon. Laurel C. Broten: Again, I can tell you that in and around the—

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

To the NDP side: Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Minister, for being here this morning.

Hon. Laurel C. Broten: My pleasure.

Mr. Taras Natyshak: When were you told that the Mississauga gas plant would be cancelled?

Hon. Laurel C. Broten: Again, I think it's important for this committee to recognize that our commitment, as a government, was that we would relocate the plant and that there is a distinction in terms of the language that we used with respect to relocation.

Mr. Taras Natyshak: So when were you told that you would relocate the plant?

Hon. Laurel C. Broten: In my chronology, you can recall that I said that we made an announcement on—September 24, I believe, is the date. I would have been informed the day before, I suspect.

Mr. Taras Natyshak: So on the 23rd.

Hon. Laurel C. Broten: Obviously, during an election campaign the days meld together somewhat. Obviously, I participated in the announcement. I would have been informed the day before.

Mr. Taras Natyshak: You're insistent that this entire process has been a relocation. There are no aspects of it that were ever cancelled? There was no cancellation at all within Mississauga? No clauses got cancelled?

Hon. Laurel C. Broten: I can tell you that my commitment to the community, as the MPP for Etobicoke—Lakeshore—was that my community did not want, nor did I want, a gas plant at that site.

As I indicated in my opening remarks, the issue sat very quiet and dormant for many years. Approvals might have been in place, but there was nothing happening on the site. Suddenly, on May 2011, a building permit was issued. My community and I were quite surprised that this was going to surface, and concern arose.

In and around that time, I wrote to Minister Duguid and Minister Wilkinson, and I raised the issue that, given that approvals were based on such historical information—this process started many, many years before—there was now the Dorothy Ley Hospice right beside there, extensive renewal of the Trillium Health Centre, and two large condominiums that were built.

Mr. Taras Natyshak: In hindsight, it didn't make any sense to site them there in the first place.

My next question is—

Hon. Laurel C. Broten: Well, I don't want you to put words in my mouth with respect to the approvals.

Mr. Taras Natyshak: I'm summarizing what you're saying and what we've heard as testimony before.

The Chair (Mr. Shafiq Qaadri): Mr. Natyshak—

Hon. Laurel C. Broten: No, but I think it's important—

Mr. Taras Natyshak: My apologies, Minister. I have to move on to my next question. I have to get through this series of questions in a short period of time, so I'm going to move you along.

Who called you with respect to the announcement? Which senior staffers during the campaign or campaign staff informed you on September 23 about that decision? Specific names would help.

0900

Hon. Laurel C. Broten: Sure. To the best of my recollection, the call came from Rod McDonald. You might know that Rod was our caucus relations person. Rod is an individual who regularly touched base with MPPs with respect to issues in their community. Certainly this was an issue in my community. I was advocating on behalf of my community—had been doing so since the beginning of June, when this surfaced again.

Mr. Taras Natyshak: Anyone else?

Hon. Laurel C. Broten: The call was from Rod McDonald, and I believe that Dave Gene was with him or participated in that call—

Mr. Taras Natyshak: Did you speak to them?

Hon. Laurel C. Broten: No, I spoke to Rod.

Mr. Taras Natyshak: Just Rod?

Hon. Laurel C. Broten: Yes.

Mr. Taras Natyshak: Okay.

Hon. Laurel C. Broten: A very brief call.

Mr. Taras Natyshak: Did they tell you when you as a candidate should make that announcement during your own individual campaign?

Hon. Laurel C. Broten: Obviously it was a coordinated announcement. This Mississauga gas plant was not in my community. You'll recall it was in the riding now represented by Ms. Damerla.

Mr. Taras Natyshak: So Rod would have told you when he anticipated you being able to make that announcement?

Hon. Laurel C. Broten: My best recollection is that I was informed that we would be in a position to make an announcement on the Saturday morning and that I would participate—

Mr. Taras Natyshak: Saturday would have been the 24th, the following day?

Hon. Laurel C. Broten: The Saturday was the 24th, yes.

Mr. Taras Natyshak: And was that organized through Rod? Was he the central director of that specific announcement? Everything was coordinated around Rod?

Hon. Laurel C. Broten: I don't have any specific information as to who controlled the announcement—

Mr. Taras Natyshak: But he was your—he was who you would touch base—

Hon. Laurel C. Broten: Despite my type-A personality, I make an effort during an election campaign not to run my own campaign and not to manage that type of issue. If I was told, "You're going to be in a position to make an announcement," I attended with my remarks to

respond to the concerns from my community at the time, and someone else had organized a venue and a space.

Mr. Taras Natyshak: Okay. So, again to summarize, as a candidate you're not making those types of decisions. You're listening to central—

Hon. Laurel C. Broten: Exactly.

Mr. Taras Natyshak:—central office?

Hon. Laurel C. Broten: No, no. What I'm saying is, in any—I think any candidate—and I know that you've been one, Mr. Natyshak. You are canvassing. You're going to various places. You have a campaign manager. I had a conversation with Rod McDonald. I was pleased that we would be able to make a clear commitment with respect to the relocation of the plant. I attended on the Saturday morning. Mr. Sousa was there; Ms. Cansfield, Ms. Damerla, myself. Mr. Delaney I don't believe was there. It was really those ridings where it had been an issue and those of us who had participated in public meetings. You might know that there had been public meetings in the community organized by a group called CHIP, and your candidate was Ms. Dionne Coley. She was active at those meetings and said that if she was elected, she would not have the gas plant built there—

Mr. Taras Natyshak: Thank you. My next question: Were you briefed on the costs prior to that announcement? I'm certain they would have given you some speaking notes about the terms of the relocation. Did you ask for any clarification on what the anticipated cost would have been?

Hon. Laurel C. Broten: The commitment that we made on September 24 was that, if re-elected, the Ontario Liberal government would find a new location for the proposed power plant, and that it not be located in Etobicoke and Mississauga and that it not be located close to schools, hospitals and homes. That is what I informed my community of by way of a letter of September 27. That's the announcement that I made—

Mr. Taras Natyshak: When pressed by the media about what the anticipated cost would have been, do you recall what your answer would have been?

Hon. Laurel C. Broten: Obviously we were making a commitment that if we were re-elected, we would pursue a certain strategy. We would seek relocation. The costs would have been required to be negotiated—

Mr. Taras Natyshak: To be determined.

Hon. Laurel C. Broten:—with Eastern Power at the time. I think it's really important—I know we are many years past, but I think it's really important for the committee to understand that this commitment that this gas plant should not be located behind Trillium Health Centre, behind Dorothy Ley Hospice and at that site was shared by every single individual who was seeking elected office in the community of Etobicoke-Lakeshore—

Mr. Taras Natyshak: I'd like to touch on that. I appreciate you bringing that back up because, just prior to this line of questioning, you'd mentioned that you were taking your directives from central office.

Hon. Laurel C. Broten: Don't put words in my mouth. I was not taking my directives from central office—

Mr. Taras Natyshak: You made it easier—it made it easier, on a campaign—

Hon. Laurel C. Broten: No. Listen—

Mr. Taras Natyshak: —to listen to your campaign manager—

Hon. Laurel C. Broten: As to where I should attend on a Saturday morning to make an announcement.

Mr. Taras Natyshak: But also as to what the announcements were coming—where they were coming from and who was issuing those directives. I mean, as a candidate, were you making policy on the fly? Did you expect that other candidates during that election campaign were also creating policy? Or would you agree that policy comes from central office, central campaign and campaign directors? Which one is it?

Hon. Laurel C. Broten: First of all, I was advocating on behalf of my community, and had been doing so for many months. I had been very, very clear—and I think I've provided you with correspondence that I wrote to my colleague ministers, correspondence that I wrote to my community—that this gas plant should not be located there in the present terms—

Mr. Taras Natyshak: Do candidates make policy or do campaign chiefs and campaign directors make policy?

Hon. Laurel C. Broten: I know what you're trying to get at, Mr. Natyshak.

Mr. Taras Natyshak: I would like to know.

Hon. Laurel C. Broten: You're trying to indicate that Ms. Coley did not make a commitment that the gas plant would not be there. That statement is entirely inaccurate. She did make that commitment. She participated at—

Mr. Taras Natyshak: She said that it shouldn't be there, should never have been located there in the first place.

Hon. Laurel C. Broten: She said that—no, I think that's what you want to say, or you're hopeful that she said. But she was campaigning door to door—

Mr. Taras Natyshak: I don't know what she said; I wasn't monitoring her. I'll take—

Hon. Laurel C. Broten: —in the community of Etobicoke–Lakeshore, she participated in meetings and she was very clear that the NDP would not allow that gas plant to be there. She was not being as specific in terms of splicing words as you or Ms. Horwath have since that time.

Mr. Taras Natyshak: I'll take you at your word; Minister, I will take you at your word.

Hon. Laurel C. Broten: But it was also not as relevant because my opponent in my riding is the Progressive Conservative Party.

Mr. Taras Natyshak: I will take you at your word, Minister. You were following her—she was your opponent—and I never monitored her, so I don't know what she said. But I do—

Hon. Laurel C. Broten: I think there are media reports of what she said, though.

Mr. Taras Natyshak: I do know as a candidate that I didn't make policy—

Hon. Laurel C. Broten: I would encourage you to inform yourself because I do think she made statements to the media, but I don't have those with me. But—

Mr. Taras Natyshak: Okay. Well, I would encourage you then to review statements made by Andrea Horwath during the campaign that categorically stated that we could not make a commitment to cancel a gas plant without fully knowing the costs.

Hon. Laurel C. Broten: Well, then Ms. Coley was not being accurate—

Mr. Taras Natyshak: And that has been acknowledged by the Premier, Ms. Wynne, who sat here and said, “Well, I understand that that was Andrea's position.”

Hon. Laurel C. Broten: I don't understand that that was Andrea's position.

Mr. Taras Natyshak: I would encourage you to review that historical reference as well.

Hon. Laurel C. Broten: I would equally encourage you to inform yourself—

Mr. Taras Natyshak: I'll move on to my next question.

Hon. Laurel C. Broten: —as to what Ms. Coley said to the community.

Mr. Taras Natyshak: Minister, you were—

The Chair (Mr. Shafiq Qadri): Colleagues, this is descending to the level of sitcom. Could we please observe parliamentary privilege?

Mr. Taras Natyshak: I take offence to “sitcoms”; they are wonderful, dramatic pieces.

Hon. Laurel C. Broten: Especially if they're filmed in Etobicoke–Lakeshore.

Mr. Taras Natyshak: They're informative. Seinfeld is a great show. Please.

Hon. Laurel C. Broten: Yes, Mr. Natyshak.

The Chair (Mr. Shafiq Qadri): Time and place, Mr. Natyshak; time and place.

Mr. Taras Natyshak: I'm moving on. I want to move to environmental approvals.

Hon. Laurel C. Broten: Sure.

Mr. Taras Natyshak: You were the Minister of the Environment from June 29, 2005, to October 30, 2007. When you were the Minister of the Environment, was your ministry asked to perform an individual environmental assessment? And by whom were you asked?

Hon. Laurel C. Broten: I think it's important for me to give a little bit of an explanation of that process.

Mr. Taras Natyshak: At the beginning, were you asked?

Hon. Laurel C. Broten: I know Mr. Tabuns was my critic at the time and I know that he would know this. How decision packages and how processes within ministries work is that the minister is the ultimate decision-maker on whether something would get bumped-up for an individual EA. That is the decision that Minister Gerretsen made in 2008, that he denied the bump up to an individual EA. As you are the decision-maker and sit

as the decision-maker, it's critically important for a minister in that role not to fetter their discretion, not to inform themselves about anything before the entire decision-making package comes forward—

Mr. Taras Natyshak: Do you recall the medical officer of health of Toronto requesting—?

Hon. Laurel C. Broten: Can I finish? Can I please finish?

Mr. Taras Natyshak: Well, I'm not getting an answer, yes or no.

Hon. Laurel C. Broten: What I'm telling you is that no decision package would have come forward in the ministry until such time as the OMB process had concluded. That did not conclude until during the election campaign and after the next election campaign—in fact, the appeal period for the OMB decision was about the 29th, I think, when we were first informed that the city of Mississauga would not appeal that decision.

Mr. Taras Natyshak: Did you receive a request from the medical officer of health from the city of Toronto to bump up the EA on the Mississauga project?

Hon. Laurel C. Broten: So, as I'm indicating to you, all of those requests would have been held; answers would have been provided—

Mr. Taras Natyshak: For how long?

Hon. Laurel C. Broten: —by the Ministry of the Environment within the bureaucracy until such time as the decision package could be complete and a minister could analyze whether or not an individual EA would be granted.

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Mr. Taras Natyshak: How long did that process—

Hon. Laurel C. Broten: That did not take place until—

Mr. Taras Natyshak: Until Mr. Gerretsen took over?

Hon. Laurel C. Broten: —October 29 or 30, in and around that period of time. That is when, to the best of my knowledge, the appeal period for the OMB decision concluded.

Mr. Taras Natyshak: The request went in January 23, 2006.

Hon. Laurel C. Broten: During the time that I was Minister of the Environment, there was no decision package that came forward. Minister Gerretsen made that decision in July—I believe it was not until July 16, 2008.

Mr. Taras Natyshak: Minister, did you receive a request from the city of Toronto? You did, to bump it up—

Hon. Laurel C. Broten: So, as I indicated to you—

Mr. Taras Natyshak: —and no decision was made until 2009?

Hon. Laurel C. Broten: In 2008.

Mr. Taras Natyshak: In 2008, under Minister Gerretsen?

Hon. Laurel C. Broten: That's right, and that's because the process is such that a package needs to be complete before it comes up for decision. There was a lengthy challenge before the OMB.

Mr. Taras Natyshak: So despite—

Hon. Laurel C. Broten: No decision came in on the OMB until October 4, 2007.

Mr. Taras Natyshak: Okay. Fair enough.

Hon. Laurel C. Broten: And the appeal period lasted until almost the end of that month.

Mr. Taras Natyshak: Fair enough. Despite the challenges at the OMB, despite the request to intervene through the ministry, your government decided to take the approach to negate all of those, I guess, legislative channels and legal channels and to enter into negotiations, regardless of what processes were being undertaken. So the OMB process was negated in respect to what the government was doing through the back side, attempting to negotiate or making the decision to eventually negotiate.

You were presented, or cabinet was presented, with options—legal options, legislative options—and negotiated settlements. Were you aware that the decision had been made to, you know, forgo those legal and legislative options and take on the position to negotiate, also under the context of keeping these entities whole and ensuring that as the process rolled out, the government would be cognizant in keeping those companies whole? Were you aware that that was the final decision, and did that play any part in blocking the EA process? Because eventually you knew or there were signals that you were going to go into a negotiated settlement.

Hon. Laurel C. Broten: I think you're very confused as to what transpired, so I'm going to just go back and try to assist you.

Obviously, the approvals came forward many years before, and that process continued because the city of Mississauga did have that land zoned appropriately. It was acceptable under that zoning that a power plant be constructed there. That being said, it was very, very quiet for many years. I think, to the best of my knowledge, that was because what we were hearing in the community was that Eastern Power or Greenfield, the entity, did not have financing. So then May 2011, apparently they secure financing—it's not something that I'm knowledgeable about, but that must have been what happened—the city issues a building permit under their circumstance, and then we are suddenly, “Okay, what is taking place?”

While that all happened, yes, there were processes that were proceeding before the Ministry of the Environment. Those issues were sitting in the Ministry of the Environment; correspondence was going out from the ministry saying, “The minister hasn't decided. We know that you've asked for an individual EA.” I did not see that correspondence, as I said. You do not review files that are not complete and not ready for your decision.

Mr. Taras Natyshak: Were you responsive—

Hon. Laurel C. Broten: Minister Gerretsen did make a decision in July 2008 that he would deny the bump-up, and I think that is public correspondence. I have a copy of that. I could give that to you.

Mr. Taras Natyshak: Okay. Is that because he knew that you were already engaged in proceedings to enter into negotiations?

Hon. Laurel C. Broten: You'd have to ask Minister Gerretsen—

Mr. Taras Natyshak: I'd like to.

Hon. Laurel C. Broten: —but I have his complete decision here.

Mr. Taras Natyshak: Were you responsive to—

Hon. Laurel C. Broten: And I think it's important, though—

Mr. Taras Natyshak: Minister, thank you. I appreciate your clarification.

Hon. Laurel C. Broten: I mean, he's the Minister of the Environment, and he made that decision with respect to the individual EA.

Mr. Taras Natyshak: I appreciate your clarification. I'm going to move on to the next question.

Hon. Laurel C. Broten: Sure.

Mr. Taras Natyshak: Were you responsive to individual community members, as the Minister of the Environment, on their concerns, prior to the election?

Hon. Laurel C. Broten: You know that when you are sitting in a ministerial role, you have to be concerned about taking that work into your constituency office, so while I was Minister of the Environment, I did not participate in conversations with my community with respect to the individual EA bump-up request—

Mr. Taras Natyshak: No, but just about their concerns about the location and the siting of it.

Hon. Laurel C. Broten: No. I think it's really critical, when you're the Minister of the Environment and you're making the decisions about whether you would allow a bump-up of an individual EA—you have responsibility to make that decision based on the documentation that the Ministry of the Environment prepares for you as a decision-making package. You are essentially sitting in a judicious capacity making that decision.

Mr. Taras Natyshak: That would explain the fact that prior to being elected, the now finance minister, Charles Sousa, wrote a letter to his constituents that stated that prior to being elected, he requested a full environmental assessment, an EA, on the site, given the close proximity to homes, the railway line, the Etobicoke Creek and the hospital. So he would have written to you, as minister, and now you're explaining to me that your, I guess, deep involvement in the file would have prohibited you from answering citizens like the now Minister Sousa.

Hon. Laurel C. Broten: I have no specific recollection of a letter from Mr. Sousa, but neither would I have been responsible for the management of the correspondence in the Ministry of the Environment.

The other correspondence that I am aware of was responded to by individuals within the ministry on my behalf, as minister, indicating I had not made a decision and that a decision would be forthcoming. As you know from the history, that decision was not forthcoming until Minister Gerretsen, because the decision package would not have been complete during the time that I was Minister of the Environment.

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

Mr. Taras Natyshak: Ultimately, we're finding out that there were other pathways to cancellation that didn't involve relocation, that didn't involve negotiated settlements, that came before you, as minister, in different capacities. Regardless of the timeline, had they been acted on, in retrospect, it would and could have saved us a lot of money.

Hon. Laurel C. Broten: You have to give me specifics with respect to that because—

Mr. Taras Natyshak: Well, the EA process—

Hon. Laurel C. Broten: But the EA process—

Mr. Taras Natyshak: The contention at the OMB—

Hon. Laurel C. Broten: Minister Gerretsen made a decision. As you know, what I—

Mr. Taras Natyshak: In hindsight, that certainly would have saved us more money. It could have saved us an entire boatload of money in fulfilling the process rather than taking the approach to a negotiated settlement.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak, Ms. Broten. I'll have to intervene there. Apologies for offending your sense of genre there, Mr. Natyshak.

Mr. Del Duca?

Mr. Steven Del Duca: Good morning, Minister.

Hon. Laurel C. Broten: Good morning.

Mr. Steven Del Duca: Thank you very much for joining us today.

Hon. Laurel C. Broten: My pleasure.

Mr. Steven Del Duca: I want to start by asking, when you were invited to testify here before our committee today, was that the first invitation that you received?

Hon. Laurel C. Broten: Yes, it was—on Thursday of last week. And is today not Tuesday?

Mr. Steven Del Duca: I think it is Tuesday.

Hon. Laurel C. Broten: It was a quick turnaround.

Mr. Steven Del Duca: It was a very quick turnaround.

As I'm sure you know, you're not the first member of the government to appear before this committee at first invitation—including Premier Wynne, former Premier McGuinty, Minister Duguid, Minister Chiarelli, former Minister Bentley. What do you think that says about our government's approach to this particular file? Would you think that says we're being open and transparent?

Hon. Laurel C. Broten: I know, from my perspective, it meant for me, when I was asked to participate last Thursday and come today—I wanted to come because I want to give the best knowledge and information that I have about the Mississauga gas plant to this committee. It obviously involved refreshing my memory with respect to these issues, which are now long past in some instances.

I know that all of my colleagues and myself, Premier Wynne included, are making our best efforts to come to answer questions so that the public can have the information that they require and need, and so that the opposition is in a position to get the information they're seeking with respect to the relocation of, in my instance—directly

relevant to my community—the Mississauga gas plant, because it was important to the community.

It was an extensive topic of conversation during the election campaign, by all three parties, who heard from individuals in our community that they were very concerned about a gas plant being located on a site which could not have, at the time, under our new rules, even allowed one wind turbine to be on that site, with respect to setbacks. But historic rules with respect to gas plants were allowing that gas plant to be there, and it caused me concern as the MPP; it caused me concern as a mother raising children in that community.

Mr. Steven Del Duca: I think you would know, as well, that our government has taken several steps, as I said earlier, to be as open and as transparent as possible with respect to these two relocations. In fact, it was a government motion that significantly expanded the scope of this committee to deal not just with the matter of privilege but also the broader issues regarding siting and relocation of gas plants generally.

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I think you might also know that government members on this committee have voted in favour of numerous document production motions, and this committee has received around 130,000 documents from the government so far, including 30,000 documents from the Premier's office.

Given this context, given this openness, what do you think about allegations that the opposition have put forward regarding—that this has been some sort of cover-up, or there is some sort of cover-up?

Hon. Laurel C. Broten: I think that all individuals who are privileged to serve in elected office, whether opposition members serving as MPPs and critics, or government members serving as MPPs and cabinet ministers or parliamentary assistants, all come here to represent our community, to advocate on behalf of our community and to make things better for the people that we represent.

Certainly in the almost 10 years that I've been elected, I'm really proud of the track record that I have in Etobicoke–Lakeshore. We've seen investments in Humber College, in Trillium Health Centre, in the Dorothy Ley Hospice and in new schools. The film and television industry is succeeding in Etobicoke because of our tax credits. All of those things are part of the role of an MPP.

I come here today to talk about the role that I had as a member of provincial Parliament in advocating for my community, this time not with respect to something that the community desired but something that the community did not desire, and to advocate on their behalf and to bring their concerns to my government. That's what I did, and that is something that I know all MPPs know, at its heart, is the role of an MPP: to advocate on behalf of your community.

Mr. Steven Del Duca: On that point, advocating on behalf of your community, I know that both in your opening statement and in response to some of the questions from folks on the other side, you've talked a fair bit

about that. Could you perhaps go into a little bit more detail, or elaborate, with respect to the reasons for your opposition to the siting of the Mississauga plant, and specifically describe a little bit more the interactions you had with local residents, community groups, municipal council and those who were opposed to the plant?

Hon. Laurel C. Broten: Sure. As I said, it kind of took us all by surprise, at the end of May 2011, that a building permit was issued by the city of Mississauga. In and around June 10, 2011, I wrote to Ministers Wilkinson and Duguid. I did so after I tried to analyze—"Okay, what's happening here? Why is this taking place?"—and digested the concerns and looked for a solution.

What I raised with them was that although consultations had taken place and were part of the environmental assessment process, there had not been any consultations for many, many years at that point in time. By 2011, basically, the documents would have been put forward with respect to an environmental assessment many years before.

During that time, we had seen many new residents move into the community. In fact, we had had two new large towers, which actually are across the street from my constituency office right on Evans, called the Sherway towers. They had been constructed, and individuals in those towers were not aware that there was going to be a gas plant essentially behind the Trillium Health Centre on the Mississauga side. That's the issue that I raised with my colleagues.

You'll know that in some of the documents that I've provided, Minister Wilkinson said he would review, after hearing from me about the new condominiums, and that he would take an opportunity to see—you know, things had really changed, as the fact that we have living in buildings and they're quite a bit taller than anything that was there before. That was a critical part of the evidence that I brought forward to indicate that we needed to have another look at the circumstance here.

Mr. Steven Del Duca: Right. Thank you for that. I'm sure—in fact, I'm quite sure—that by now you've heard some of the critics, particularly on the other side, allege that the Mississauga plant was cancelled, essentially, in order to save the seats of some local Liberal MPPs, including yours. So let me ask, especially if you're going to compare various margins of victory that you've had over the years: Do you think your seat was at risk prior to the Liberal Party making its commitment? Do you think your seat needed saving?

Hon. Laurel C. Broten: I take every election campaign seriously, but I have to say I was really proud of the success that I had in the last election campaign. If I look at my results from the various campaigns, my plurality in 2003 was 5,126 votes; I received 44.16% of the vote. In 2007, plurality was 6,736, and I received 45.99% of the vote. In 2011, my plurality was 9,464, and I received 51.02% of the vote. I worked hard for my community. I advocated on their behalf on this and many issues. This was something that was of concern to my constituents. I advocated on their behalf. I did look back

to remind myself of the volume of correspondence that I had received on this issue: about 50 letters. People were concerned, and I was concerned. I was advocating, but with a plurality of 9,464 votes and 50 letters, this was not an issue that was going to cause me to lose my seat.

But was it an issue that was of concern of my constituents? Absolutely. Do I take it as my responsibility to advocate on their behalf? For sure.

Mr. Steven Del Duca: Terrific. So, based on all of that, it's pretty clear that by the time the 2011 election rolled around, the residents in your community were pretty clear that they understood where you stood on this particular issue, because you'd been such a strong advocate for them on this particular issue.

I believe that you already tabled a document from your local PC opponent, Mr. Nyilassy. Forgive me if I'm mispronouncing his last name. Just out of curiosity, had he ever approached you about his opposition to the plant prior to the 2011 election? Did he show up to any of the public meetings?

Hon. Laurel C. Broten: Yes, I have tabled a document that Simon would have dropped at the door, saying it's back. Mr. Nyilassy did not participate in any of the public meetings that were held. There was a big one during the election campaign. He did not participate in that. I know that the lack of involvement of any PC candidate in that public meeting was raised by the organizers. It caused them significant concern with respect to the disengagement of the PC candidates on this issue.

I do want to say that Mr. Nyilassy and I had a respectful campaign, one to the other. As an example, I think of the strength of support that I have in the community. Mr. Nyilassy came to see me at my victory party on election night, and I know that that's a challenging thing to do, because I've had to do that, go to someone else's victory party. He gave me the nicest compliment that I could have ever received, which is, "Your community really loves you." We had a respectful campaign. I know that he dropped this flyer at the door, but I did not have any direct discussions with him about the gas plant.

Mr. Steven Del Duca: What about any other members of the PC caucus? Did any of them tell you about any issues that they had with the Mississauga plant prior to the 2011 election?

Hon. Laurel C. Broten: Well, I know that Mr. Hudak came to an event, and I was aware of this. I know this from media reports that I have both reread and knew at the time. He stood in front of the plant on the morning of October 5, I believe. "'It's done, it's done,' Hudak said Wednesday morning of the plant, as workers busied themselves on the construction project behind him." He was committed to that being done.

That was really the resurgence of communication by PC candidates. Mr. Hudak came very late in the game. They did not participate in the public meetings, but they did drop voice mail. I believe there was a robocall that was dropped. They dropped this flyer and another flyer in the community and, I think, tried to take advantage of the Premier's distinction that he made during the debate that

he didn't cancel the plant, and that's because our commitment was one of relocation.

Mr. Steven Del Duca: Now, that notion, that concept, of PC leader Hudak and their party showing up fairly late in this process does certainly line up with testimony that we've heard here at this committee. For example, I'd like to read a quote from Steven Thompson from the Coalition of Homeowners for Intelligent Power, who said, "Obviously, the Conservatives didn't have a problem, through the meetings that we had with Mr. Yakabuski—he didn't see a problem with the plant. He didn't see a problem with the location of the plant.

"So there's sort of a contradiction going on here...."

He also said, "Then, all of a sudden, because there's an election, we get Mr. Hudak actually coming to the table and saying, 'Oh, we're going to help you.'" That's the end of Mr. Thompson's quote.

So, from your perspective, when Mr. Hudak and the PCs argue that they opposed the Mississauga plant from the very beginning, doesn't it seem to you that they are kind of rewriting history a little bit?

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Hon. Laurel C. Broten: As I indicated, there was no participation of PC candidates in any of the public meetings, and I have been informed that Mr. Yakabuski—I'm familiar with Mr. Thompson. I do know the narrative that you've just put forward, that Mr. Yakabuski was accepting and supportive of the plant.

What I know is that during the election campaign, Mr. Hudak made it very clear that he would cancel the plant, that it would be done. He criticized the Premier for using the language of relocation which, as I've indicated in my testimony, is the perspective that we advanced in the view that that is how you relocate that plant, but you do it at the most efficient cost possible, because you continue with the supply contract that Eastern Power would have had, and Greenfield power would have had, to generate electricity into the marketplace. By the end of the campaign, which I think is the critical juncture, every single party had committed that this gas plant should not be there. I don't believe that Mr. Hudak has tabled his costing. He made that same commitment and, in fact, said that it would be relocated.

Ms. Coley participated in numerous public debates with me and was a participant at the CHIP meeting, which is the coalition that you made reference to, and made her commitment that she did not support this plant, that it would not be built there.

At the end of the day, in terms of the community of Etobicoke-Lakeshore, there was no disagreement that this plant should not be there. We made the commitment that if we were re-elected, we would relocate it. Those negotiations were pursued once we were re-elected and were in a position to deliver on that commitment, and it was the commitment that all the parties made.

Mr. Steven Del Duca: Right. With respect to the NDP candidate from your riding, Ms. Coley, I know that—at least, from my impression of some of the questioning that you had earlier from Mr. Natyshak, he tried

to draw, from my perspective, a bit of a distinction between perhaps what their local candidate was saying and what their party leader was saying.

But just to be clear on this one: From the standpoint of your constituents, would they have expected that the commitments made by Ms. Coley during the election campaign would have actually been an accurate reflection of the NDP's position?

Hon. Laurel C. Broten: Absolutely.

Mr. Steven Del Duca: So the idea that they very clearly, both here today and previous to today, have been trying to distance themselves from the commitments made by both their MPPs, frankly, and also candidates during the 2011 election regarding the Mississauga power plant—do you think your constituents would be surprised to learn that when pressed on this issue, Ms. Horwath emphasized that there is a “difference between a candidate and a leader”?

Hon. Laurel C. Broten: I believe so. Ms. Coley was not running as an independent. She was running as an NDP candidate. That was clear on her signs and in her literature. She was participating at meetings, as were other NDP candidates from Mississauga. I don't remember their names; they were not my opponents in the election. But it was consistently expressed by NDP candidates who participated that they did not want this gas plant to be built there. There was no distinction being drawn, as I understand Ms. Horwath is doing. I have no recollection that Ms. Horwath attended in my riding of Etobicoke–Lakeshore during the election campaign, where she would have had the opportunity herself to make that distinction. Her voice on the ground in Etobicoke–Lakeshore was Ms. Coley.

Mr. Steven Del Duca: Okay. Anything else you want to add at this point?

Hon. Laurel C. Broten: No.

Mr. Steven Del Duca: Great. Thanks, Mr. Chair.

The Chair (Mr. Shafiq Qadri): Thank you. The government yields its time to Ms. MacLeod on the PC side—10 minutes.

Ms. Lisa MacLeod: Thanks very much, Chair. That was very entertaining. I really appreciated being able to watch that.

I have a couple of quick questions—Minister, it's good to have you here—just some really basic things, and I'll list through them and if you can just say yes or no, that would be great.

Have you been the MPP for Etobicoke–Lakeshore since 2003?

Hon. Laurel C. Broten: Yes, I have.

Ms. Lisa MacLeod: Cabinet minister since 2009?

Hon. Laurel C. Broten: I was a cabinet minister between 2005 and 2007 and since 2009 forward, yes.

Ms. Lisa MacLeod: Right. Treasury board since 2011?

Hon. Laurel C. Broten: I have been on treasury board since after the last election, yes.

Ms. Lisa MacLeod: 2011—and now you're the vice-chair of treasury board, right?

Hon. Laurel C. Broten: Yes, I am.

Ms. Lisa MacLeod: Okay. That's important information. Was Simon Nyilassy or Ms. Coley ever an MPP?

Hon. Laurel C. Broten: No.

Ms. Lisa MacLeod: Did either of them serve as Minister of Environment? Were either of them ever on the treasury board of cabinet?

Hon. Laurel C. Broten: No, they were never elected.

Ms. Lisa MacLeod: They weren't elected.

Hon. Laurel C. Broten: I've been successful in the last three elections, yes.

Ms. Lisa MacLeod: Okay. In the last three elections, who formed a government?

Hon. Laurel C. Broten: I'm very proud to say that it is the Liberal Party that has formed the government in the last three elections, and I've been pleased to serve as a member of that government.

Ms. Lisa MacLeod: Okay. That's pretty important, because when I listen to Mr. Del Duca and I listen to your responses to my friend Mr. Natyshak, you seem to blur the lines and get a little confused in thinking that those two candidates actually were in any role of decision-making when they weren't—

Hon. Laurel C. Broten: But I think, Ms. MacLeod, that you need to distinguish between an election campaign, when we are all back seeking the support of our voters, we wear a certain hat; right? You continue the role as—

Ms. Lisa MacLeod: It's clear that your Liberal government wore a certain hat when they decided to cancel the power plants in the middle of an election.

Hon. Laurel C. Broten: Can I finish my—

Ms. Lisa MacLeod: I have 10 minutes. You've been here for an hour and a half. I've got some questions for you—

Hon. Laurel C. Broten: I'm going to finish my statement, though, which is about, during an election campaign—

Ms. Lisa MacLeod: We appreciate that, but—

Hon. Laurel C. Broten:—candidates are equal; right?

The Chair (Mr. Shafiq Qadri): Ladies—

Ms. Lisa MacLeod: We do know, for example, that she was still a cabinet minister at the time. She was still on treasury board—

The Chair (Mr. Shafiq Qadri): I'd invite both of you to ask the question and answer it, and I'd appreciate not just drive-by questions or drive-by answers.

Ms. Lisa MacLeod: Thanks very much. I have 10 minutes. I have asked for simple yeses and noes and I was given that. You can check Hansard as well as anybody.

In any event, we do know that you were on treasury board, and we do know that you were in cabinet. You do indicate that you knew, a day before the cancellation, that this was going to happen in the middle of an election. Can you tell me who informed you? Was it the Liberal campaign or was it another member of the government,

or was it somebody who served in government and was also a member of the Liberal campaign?

Hon. Laurel C. Broten: I already answered that question when Mr. Natyshak asked it. As I indicated, I received a telephone call from Rod McDonald. That's who I spoke to. I also believe that Dave Gene was in the room or perhaps on the line, but my conversation was with Rod McDonald.

Ms. Lisa MacLeod: And what was Dave Gene doing at the time? Was he speaking on behalf of the government and the Premier, or was he speaking on behalf of the Liberal campaign?

Hon. Laurel C. Broten: As I indicated, my conversation was with Rod McDonald, who was an individual within our party who—

Ms. Lisa MacLeod: I asked you about David Gene.

Hon. Laurel C. Broten: But I've said to you that I did not speak to David Gene—

Ms. Lisa MacLeod: But he was in the room, so what was he acting as—a Liberal campaigner or a government official?

Hon. Laurel C. Broten: We were during an election campaign, so everyone was part of the campaign.

Ms. Lisa MacLeod: Okay. That's good to know. There was no distinction between the Liberal government and the Liberal campaign team. I think taxpayers would like to know a little bit more about that.

Interjection.

Ms. Lisa MacLeod: Well, taxpayers are on the hook for \$1.2 billion, thanks to your government. Let's be perfectly clear. I'll just respond to your silly heckles.

As Minister of the Environment, you approved the siting of the plant with no opposition—

Hon. Laurel C. Broten: That's not accurate.

Ms. Lisa MacLeod: But you said that when you were talking to Mr. Del Duca, and I invite you, as I've invited the Chair, whose riding is right beside yours, to review the Hansard. I think that's rather important.

I want to go back to an exchange between Peter Wallace and—

Hon. Laurel C. Broten: Ms. MacLeod, I do want to—

Ms. Lisa MacLeod: —Mr. Vic Fedeli several weeks ago regarding a July 2011 walk-around. We've established that you were in cabinet, that Simon Nyilassy and Ms. Coley were never in government, but you were in cabinet in July 2011. Mr. Wallace said, "I believe there's a good chance this would not be the first time." What he was referring to "as the first time" was a July 2011 walk-around being the first time the cancellation came to cabinet. We also know from several other people that this information would have come to cabinet before then. So there was no way that this information on what the cancellation costs would be would have only come to cabinet in July 2011. Can you remember, as Minister of the Environment or minister who was sitting at the cabinet table in any capacity, this information coming to cabinet?

Hon. Laurel C. Broten: I'm going to try to do my best to answer your questions, Ms. MacLeod, and not

aggravate you with my answers, but July 2011 was prior to any announcement being made. As I've done my best to indicate to this committee, in June 2011, when this construction surfaced at the end of May, my community was surprised. I was concerned. I began advocating on behalf of my community for the Mississauga gas plant to be relocated, that it should not be built behind the Dorothy Ley Hospice, which is, for your information, a palliative care hospital where people go to die, behind the renewed construction of the Trillium Health Centre—

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Ms. Lisa MacLeod: So why would you agree to the siting of it, with that information that you surely would have known as a local MPP? Why would you have agreed to it in the first place?

Hon. Laurel C. Broten: I'm not sure where you're getting your information.

Ms. Lisa MacLeod: As Minister of the Environment; I mean, this is Mississauga—

Hon. Laurel C. Broten: I've tried to do my best to explain—

Ms. Lisa MacLeod:—and then I've asked you about Oakville—

Hon. Laurel C. Broten: Okay.

Ms. Lisa MacLeod:—but you've just led me back to asking—

Hon. Laurel C. Broten: I'm doing my best to answer your questions, Ms. MacLeod, but you're talking about both Mississauga and Oakville at the same time. So let's talk about—

Ms. Lisa MacLeod: Well, that's because taxpayers want to know.

Hon. Laurel C. Broten: Let's talk about Mississauga. As I've said, during my time as Minister of the Environment, Greenfield South Power, Eastern Power—they've had a number of different names—issued a notice of completion of the environmental review, and a number of requests were made for individual environmental assessments.

As I explained to Mr. Natyshak, that decision package did not come forward to me as minister, because during the entirety of that time, the matter was before the OMB. The OMB decision was made at the beginning of October 2007. The appeal period was completed at the end of October 2007. I was no longer Minister of the Environment past October 2007. A decision was made by the new Minister of the Environment, Minister Gerretsen, in July 2008. That is the extent of the period of time that it took the Ministry of the Environment to complete the reviews that they undertake in order to make sure that a minister sitting in the seat of a decision-maker has the information they need to make that decision, and you do not review or make any decisions prior to the completion of that package.

Ms. Lisa MacLeod: Okay, thanks. So you were in cabinet. Let's go back to Oakville and the cancellation. Presumably, at the time, the Minister of Energy or a senior official in the OPS—did they categorically state at any time that the cost would be \$40 million?

Hon. Laurel C. Broten: As I indicated to Mr. Fedeli, I was very focused on my own line responsibilities. I was not Minister of Energy and I was not Minister of the Environment; I was Minister of Children and Youth Services and minister responsible for women's issues, and then following—

Ms. Lisa MacLeod: But certainly you had an obligation. It's in your own region.

Hon. Laurel C. Broten:—Minister of Education and Minister of—

Ms. Lisa MacLeod: I mean, Oakville is not that far from Etobicoke.

Hon. Laurel C. Broten: You know, as I indicated, I was very focused on the Mississauga gas plant—

Ms. Lisa MacLeod: So you weren't fulfilling your obligation as a cabinet minister—

Hon. Laurel C. Broten:—because that was relevant to my community.

Ms. Lisa MacLeod:—in terms of keeping up with the issues?

Hon. Laurel C. Broten: The Oakville gas plant was not something that was being raised by my constituents. It was not a file that I was involved with. As I answered to Mr. Fedeli—

Ms. Lisa MacLeod: So it's safe to say that if you don't have an interest in it—

Hon. Laurel C. Broten:—I was informed about the cancellation of the gas plant in Oakville in the media.

Ms. Lisa MacLeod:—if it doesn't interest you in your cabinet portfolio or in your riding, you just don't pay attention as a member of cabinet?

Hon. Laurel C. Broten: If you have information that you would like to pose to me, something specific, rather than conjecture—

The Chair (Mr. Shafiq Qadri): You're driving Hansard insane by the double-talk.

Hon. Laurel C. Broten:—you can feel free to do that.

Ms. Lisa MacLeod: Did you first hear that there would be an additional cost for the Oakville cancellation at any time before 2011?

Hon. Laurel C. Broten: As I indicated, I have no specific recollection with respect to the costing of the Oakville gas plant. I was focused on my own responsibilities. If you have something specific and you'd like to identify it for me—

Ms. Lisa MacLeod: Well, certainly.

Hon. Laurel C. Broten:—re a cabinet meeting that I was a participant in, that I should be aware of—

Ms. Lisa MacLeod: I've been here, and I've questioned Premier Wynne on a number of occasions—

Hon. Laurel C. Broten:—I'm happy to take a look at that.

Ms. Lisa MacLeod: But I think it was quite clear that this was raised in cabinet. The sunk costs were raised in cabinet.

Hon. Laurel C. Broten: If you would like to point to something specific that you are basing your statement on, I'm happy to review that—

Ms. Lisa MacLeod: You're being very evasive, and I think that that's quite problematic. I think that for you—

Hon. Laurel C. Broten:—but if you continue to use conjecture, I will not be able to answer your questions.

Ms. Lisa MacLeod: But the problem is, Minister, whether it's Oakville or Mississauga, you were a cabinet minister sitting at the table. You're now on treasury board. You're refusing to answer questions—

Hon. Laurel C. Broten: That's absolutely not the case, Ms. MacLeod.

Ms. Lisa MacLeod:—you're talking above me—

Hon. Laurel C. Broten: I've come here today to answer your questions.

Ms. Lisa MacLeod:—as you are right now, when I'm trying to actually use my 10 minutes of time to make a point.

Hon. Laurel C. Broten: I've indicated when I recused myself from treasury board decisions—

Ms. Lisa MacLeod: I think that the problem we've got, Minister, is that you're refusing to acknowledge information that you've had. You're refusing to come clean here at committee today, and you're refusing to give answers to the very people you claim to represent—

Hon. Laurel C. Broten: If you have something specific that you'd like to direct me to—

Ms. Lisa MacLeod: Well, I specifically asked you about the \$40 million.

Hon. Laurel C. Broten:—I'd be very happy to answer your questions.

Ms. Lisa MacLeod: I've specifically asked you about when you knew and what you knew. You've been refusing to do that.

Hon. Laurel C. Broten: I've answered all of your questions with respect to the Mississauga gas plant.

Ms. Lisa MacLeod: I've asked you why you sited the plants in Mississauga as Minister of the Environment when you were the MPP and you had the answers—

The Chair (Mr. Shafiq Qadri): Thank you, Ms. MacLeod. I think all members of the committee thank you for your contribution.

We now move to the NDP. Mr. Tabuns.

Mr. Peter Tabuns: Minister, what did Rod McDonald say to you when he called you on September 23? What were his words?

Hon. Laurel C. Broten: I don't have a specific recollection of his words. I can tell you the gist of them.

Mr. Peter Tabuns: Tell me the gist of them.

Hon. Laurel C. Broten: Sure. It was that we would be in a position to publicly communicate that, if we formed government, we would relocate the Mississauga gas plant.

Mr. Peter Tabuns: And did he say what development allowed this to happen?

Hon. Laurel C. Broten: No. I certainly had been a strong advocate for my community since the beginning of June, indicating that we needed to re-examine this—that a single wind turbine would not be allowed to be sited in that land space with respect to the setbacks—and

it caused me and my community great concern that a gas plant would be there, but—

Mr. Peter Tabuns: Minister, I understand, because I listened to your testimony. What did he say to you?

Hon. Laurel C. Broten: He said that I would be able to participate in an announcement with my colleagues on the Saturday morning and that we would be in a position to make it clear that we would relocate the gas plant.

Mr. Peter Tabuns: And that was it?

Hon. Laurel C. Broten: Yes.

Mr. Peter Tabuns: You've noted that Dave Gene was part of this call. How did you intuit that he was somehow part of this call?

Hon. Laurel C. Broten: To the best of my recollection, Mr. McDonald said, "I'm here with Dave Gene," or "Dave Gene is on the line." Whether they were physically present together, I don't have that information.

Mr. Peter Tabuns: But you didn't hear him speak; you just had Mr. McDonald—

Hon. Laurel C. Broten: I had a conversation with Mr. McDonald.

Mr. Peter Tabuns: Okay. You were the Liberal voice on the ground in your riding in the 2011 election.

Hon. Laurel C. Broten: Absolutely.

Mr. Peter Tabuns: And you were saying, "I will oppose this gas plant." As I understand it, your Premier and the leader of your party was supporting this gas plant publicly up until, I guess, September 24, so there was—

Hon. Laurel C. Broten: No, I don't think that's the case. I think—

Mr. Peter Tabuns: No? When did your Premier say this plant was a bad idea?

Hon. Laurel C. Broten: There are media reports in and around June. I'm just searching for them. If I can't find it quickly I don't want to use up your time. I would get that for you.

Mr. Peter Tabuns: So in June, the Premier was saying this plant was a bad idea and he let the construction continue?

Hon. Laurel C. Broten: In June and around that period of time there was a media report that indicated the Premier thought that there was concern about this plant. So I think he was hearing me and was hearing my colleagues Mr. Sousa and Donna Cansfield. We were all surprised by the receipt of the beginning of a construction and of a building permit from the city of Mississauga at the end of May, and we were engaging directly. I was working with Minister Wilkinson, writing to him—

Mr. Peter Tabuns: I actually don't need that information. As far as most of the world would have known—and my guess is the reporters sitting at the table behind you would have known—that the Premier supported the construction of this gas plant because he wasn't taking any public action to stop it. In fact, for most of the world, we found out that the Liberals were going to stop this gas plant September 24. So you were campaigning against the gas plant during this election and, as far as the rest of the world knew, the Liberal Party and the Premier supported this gas plant up until that announcement.

Hon. Laurel C. Broten: I'm trying to do my best to find that—

Mr. Peter Tabuns: Or he was allowing construction to go forward while he opposed it.

Hon. Laurel C. Broten: Well, the construction, as you know, was not something that the province would have been involved with—

Mr. Peter Tabuns: Oh, no, they were very involved with it.

Hon. Laurel C. Broten: The building permit would have been issued by the city of Mississauga. The zoning was by the city of Mississauga.

Mr. Peter Tabuns: Yes, but the contract was with the province of Ontario. At the time, the leader of this province was a certain Liberal, a Mr. McGuinty. So, you were campaigning against the plant that your Premier was proceeding to have built at the time. Is that correct?

Hon. Laurel C. Broten: As I've indicated to you, the building permit was issued by the city of Mississauga. The zoning was by the city of Mississauga. You know, as someone that has been active in the environmental community, that Minister Wilkinson—

Mr. Peter Tabuns: So, should we hold Hazel responsible?

Hon. Laurel C. Broten: —was undertaking a review with respect to the approvals, and that review was ongoing.

Mr. Peter Tabuns: Yes, you're saying that Mississauga issued building permits etc. They didn't have a contract to build a plant; they didn't initiate the construction of the plant. Your government initiated construction of the plant and supported the construction of the plant until, very shortly before an election campaign, senior campaign staff contact you and say, "You know, you can say we're not going to build this thing anymore."

Hon. Laurel C. Broten: I've done my best to answer you.

Mr. Peter Tabuns: I just want to point out that your position on the ground and the position of your Premier were very different in the course of this campaign up until September 24. Correct?

Hon. Laurel C. Broten: Well, as I have indicated, there were media reports in June where the Premier indicated we might need to take another look at this. That was in and around the time that I was raising issues of concern to my colleagues Minister Wilkinson and Minister Duguid. It was all very new when, at the end of May, the building permit was issued, as I've done my best to inform you about. There was a period of time where this sat very, very dormant—

Mr. Peter Tabuns: Oh, I'm well aware.

Hon. Laurel C. Broten:—where it was the view that this construction would not happen.

Mr. Peter Tabuns: But I don't need that information. You are aware that the contract with Greenfield was amended in March 2009?

Hon. Laurel C. Broten: You can inform me of that, and you have. That was not something that I would have

been directly advised or informed of at the time. I don't have a specific recollection of that.

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Mr. Peter Tabuns: Do you think Ontario would have saved a lot of money if in March 2009, instead of doubling the amount of funds that were going to be paid to Greenfield—which by the way, mind you, then made it viable for them to get financing even if it was financing from Cayman Islands and Luxembourg—if we'd not renegotiated in 2009, don't you think we would have saved a lot of money?

Hon. Laurel C. Broten: You know, I'm not knowledgeable enough about those specific details of the contract to answer your question in that regard.

Mr. Peter Tabuns: Do you think we would have saved a lot of money if this had been stopped before construction started? Or before financing was obtained—even more to the point.

Hon. Laurel C. Broten: As I've said, my commitment to my community was that in May, towards the end of May 2011, when it became clear that this would begin—and I think it's really important for those who don't live in the Etobicoke-Lakeshore-Mississauga vicinity to understand—nothing was happening. The site was dormant.

Mr. Peter Tabuns: Yes. You have said that.

Hon. Laurel C. Broten: There was the issuance of a building permit and construction started, and immediately upon that time I raised issues with Minister Duguid and Minister Wilkinson.

Mr. Peter Tabuns: You have said that.

Hon. Laurel C. Broten: Obviously, during that election campaign, which began, your candidate on the ground, Ms. Coley, as well as the Progressive Conservative candidate—everyone agreed that this gas plant should not be constructed there.

Mr. Peter Tabuns: You opposed the gas plant. Ms. Coley opposed the gas plant. Your Premier supported the gas plant; in fact, he let it go forward.

If we listen to Hazel McCallion, Mayor McCallion's sworn testimony here was, "It would've been a lot cheaper to deal with this if it had been stopped before construction started." Do you agree with the mayor?

Hon. Laurel C. Broten: I think hindsight is always 20/20—

Mr. Peter Tabuns: No, no, no. Lots of people can understand that a shovel in the ground means a higher price tag. You don't think that in advance you would have known that it would've been cheaper to stop before—

Hon. Laurel C. Broten: I can tell you that I was extremely disappointed that Greenfield or Eastern Power continued with the construction once we made it clear that if we were re-elected, we would not allow that plant to be there. That was consistent with every other party—

Mr. Peter Tabuns: I'm not actually interested in that.

Hon. Laurel C. Broten:—and so, as you would know, a great deal of work took place after that fact.

Mr. Peter Tabuns: But I'm not interested in that testimony, in fact.

Do you agree the Mississauga gas plant was too close to schools, roads, railway lines and the hospital?

Hon. Laurel C. Broten: Yes.

Mr. Peter Tabuns: Charles Sousa said in a letter to his constituents, "Prior to being elected, I requested a full environmental assessment on this site, given the close proximity to homes, railway lines, the Etobicoke Creek and the hospital." Your government, your Minister of the Environment, didn't seem to agree. Don't you think he should've conducted an assessment? Don't you think Mr. Gerretsen should've had a full, individual environmental assessment, given what you've had to say, what Mr. Sousa had to say and what most people would observe from looking at a map?

Hon. Laurel C. Broten: I think I'll allow the decision that Minister Gerretsen issued in July 2008 to speak for itself.

Mr. Peter Tabuns: Did you agree with his decision in 2008, given you were the member for Etobicoke-Lakeshore?

Hon. Laurel C. Broten: Minister Gerretsen was the decision-maker in July 2008.

Mr. Peter Tabuns: I asked if you agreed, not whether he—

Hon. Laurel C. Broten: He put forward an extensive decision. That decision stands for itself.

Mr. Peter Tabuns: Did you agree with it? Now just a second. You're an educated person. You've held this portfolio. Did you agree with his decision to not do a full environmental assessment?

Hon. Laurel C. Broten: I don't know what decision I would have made if I was in that circumstance. I was never in that circumstance.

Mr. Peter Tabuns: You don't have to evade the question; you know the answer. Did you agree with it? You opposed this plant.

Hon. Laurel C. Broten: Listen, I think that you, as someone who understands administrative law—the decision-maker is the decision-maker. Minister Gerretsen made the decision in July 2008. I raised concerns in June 2011 that I believed the realities of the community had changed significantly, that towers had been built, that Dorothy Ley Hospice had been built, that Trillium Health Centre had been renovated, and that I thought those reviews need to take place again.

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

To the government side: Mr. Delaney.

Mr. Bob Delaney: Minister, as you are no doubt aware, in May 2012, last year, the estimates committee passed a motion by Mr. Leone that asked for all correspondence within a specific time frame in the Ministry of Energy, from the Minister of Energy and from the Ontario Power Authority, related to the Oakville and Mississauga gas plants. At the time the motion was passed, there were complex and sensitive negotiations ongoing with both companies. We've asked many witnesses at

this committee the very same question, which is, what would have happened if, as the estimates committee was at the time demanding, commercially sensitive information had been made public before the negotiations were finalized? Every single witness has responded that it would have put the province at a huge disadvantage because its negotiating position would have been prejudiced. You're a former litigation lawyer. Do you agree with that?

Hon. Laurel C. Broten: Well, as somebody who has negotiated many agreements, I certainly would not view that I would be in a good bargaining position if those with whom I was negotiating knew my negotiating parameters. If that is the content of documents, then it would cause me great concern that that would have been released to those with whom we were negotiating.

Mr. Bob Delaney: Part of the committee's job is to review the opposition allegations of contempt against Mr. Bentley around the disclosure of these sensitive documents. When we asked Mr. Bentley about the very difficult position that he was in, in terms of disclosing documents versus protecting the public interest, Mr. Bentley testified—and I'll use his words—that “producing the documents and discussing our ongoing negotiations at that time would have significantly hurt our ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario. Having said that, I always intended to produce the documents. It was a question of when, not if.” I'm wondering if you could share with the committee some of your views on the allegations made by the opposition that Mr. Bentley acted in any manner other than in the public interest.

Hon. Laurel C. Broten: I certainly know Minister Bentley well. He was my seatmate in the Legislature during that period of time. I know that in all instances he was acting in the best interest and putting forward what he believed to be the most appropriate course of action. Each of us, in our roles as cabinet ministers, takes full responsibility for the work that we are doing; we rely on each other with respect to the knowledge and judgment that we bring forward on our specific files. I know that Minister Bentley was someone who was diligent, did his homework and knew his files.

Mr. Bob Delaney: Thank you. I think we're all in agreement that the Mississauga gas plant was not properly sited. In fact, all three parties committed to the people of Mississauga that they would not build the plant, if elected.

Minister Chiarelli recently announced that the Ontario Power Authority and the Independent Electricity System Operator would be reporting back with their recommendations on a new planning process for energy infrastructure siting. This report will also consider recommendations from this committee. So in that vein, and given your experience, do you have any other recommendations to share with the committee on how future sites for energy infrastructure should be selected?

Hon. Laurel C. Broten: Thanks very much. I think it's really important for all of us to think back to the fact

that this process by which Minister Gerretsen made a decision in July 2008, and then which ultimately sat dormant until 2011, was based on application materials that came in in 2004. I think we've learned a lot in our province since 2004. We've revised the way we would site wind turbines, as an example, with certain setbacks. I know myself, as Minister of the Environment during that period of 2005 to 2007, I fully refreshed and revised all of our emission standards under regulation 41. We made a lot of changes during that period of time.

Also, communities change. I think what we've learned, especially in fast-growing metropolitan areas like my riding and like yours, Mr. Delaney, is that's important that we are always touching base with what's happening in the community. Is it still a field there? Is it still commercial land, industrial land? Or is it a place where people live? I think, to some extent, that is what I tried to raise with Minister Wilkinson and Minister Duguid at the time, saying that the community had changed a lot since 2004. So if you were basing your decision on information that was available in 2004 about what that community looked like, it looked a lot different now. I think that would be something that I would suggest we need to do.

I think it's also really important, as we committed to on that day of September 24, that a gas plant would not be close to schools and hospitals. Children should not go to school at the doorstep of a natural gas plant, and someone who might have health issues should not be in their hospital bed beside a gas plant. Those, for me, were important issues that I raised to Ministers Duguid and Wilkinson, and I would suggest, as a government and as a society, that we give consideration to that, with respect to how we site natural gas plants. We need them and they should be close to us, but we should be conscientious about where we locate them.

Mr. Bob Delaney: Thanks. There's been a little bit of rapid-fire exchange back and forth. Is there anything else you would like to add to your testimony today that you didn't get a chance to add?

Hon. Laurel C. Broten: Sure. Thanks very much. I think it's really important to understand that it surprised everyone, at the end of May or the beginning of June, that this was going to come to fruition and a plant would be constructed. Listen, in hindsight, I think we can all look back and say “would have, could have, should have”; it would have been different. The reality is that the communities were unified in their perspective that was advanced in and around June, July, August, September and October that this gas plant shouldn't be here. Those who were seeking to be elected in the community also had a unified voice. Not always, as I said. I don't know what Mr. Nyilassy was perhaps saying at the doorstep; I was not there. But I did not know of anything he was saying, and he did not participate in the public meeting.

But surely, by October 5, when Mr. Hudak said, “It's done,” and he stood in front of the Mississauga gas plant, it was very clear that the leader of the PC Party would have cancelled the Mississauga gas plant. Ms. Coley,

who represented Ms. Horwath in our community, was absolutely clear that the gas plant should not be built. So all of us were advocating and raising issues of concern to our community and were essentially making the same commitment to Ontarians: If we were elected, we would find a pathway forward where the Mississauga gas plant would not be built. We were the ones who were elected, we found that pathway forward, and I know that my community and the residents of Etobicoke–Lakeshore and beyond are pleased that there is no gas plant being built in Mississauga.

Mr. Bob Delaney: Just to reiterate one more point that you made earlier, your PC opponent didn't attend all-candidates meetings.

Hon. Laurel C. Broten: I certainly have the recollection of attending many meetings with Ms. Coley. Whether Mr. Nyilassy attended any, I don't have a specific recollection. What I do know is that he certainly did not attend the meeting that was put forward by CHIP, and I don't think he attended any others where we would have spoken about this issue.

Mr. Bob Delaney: Indeed, it seemed to be the case throughout Mississauga that many PC candidates avoided all-candidates meetings.

Thank you, Chair. I think we're done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thank you, Minister Broten, for your presence and testimony. You are respectfully dismissed.

The committee is recessed till this afternoon, unless there are any further issues right now? Fine. The committee is recessed.

The committee recessed from 1003 to 1500.

ONTARIO POWER AUTHORITY

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy officially to order once again. We are here with our first presenter of the afternoon: Mr. Jim Hinds, chair of the Ontario Power Authority. Welcome, Mr. Hinds.

Mr. Jim Hinds: Thank you, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): I'd like you to be affirmed by the Clerk.

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

Mr. Jim Hinds: I so swear.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Hinds, I'm going to offer the floor to Mr. Tabuns eventually, but you have your five-minute opening address.

Mr. Jim Hinds: Thank you, Mr. Chair. My name is Jim Hinds. I've been chair of the OPA since December 9, 2010. From June 2005 until December 2010, I served as a director and as chair of the board of the Independent Electricity System Operator. I also have a federal government appointment as an Ontario representative to the Canadian Securities Transition Office, a group under-

taking to construct a national securities regulator in Canada. Until I retired in 2003, I worked for two decades as an investment banker.

The board of the OPA is responsible for managing and supervising the management of the business and affairs of the OPA. At its creation in late 2004, OPA was given a mandate in three broad areas: electricity system planning, procurement of new electrical generation of all types, and conservation programs.

The OPA advises the government on electricity policy. The OPA does its job primarily by acting upon the authority provided by directives and letters issued to it by the Ministry of Energy. Since its inception, the OPA has received 64 directives and more than 11 letters. That's an average of about one a month.

In the intervening eight years, OPA has played a central role in the improving electricity supply situation in the province. This successful effort has involved many others: the Ministry of Energy, IESO, the Ontario Energy Board, Hydro One, Ontario Power Generation, private power generators, the local distribution companies and the customers themselves.

I'd like to address three issues. The first is the role of the OPA board; the second is the provision of documents and information to legislative committees; and finally, some suggested lessons learned.

The role of the board: In the case of both gas plants, the board of the OPA received a decision to relocate the plants with some dismay, having seen the plant proposals develop over five years. Although I was not a member of the board at the time of the decision to cancel the Oakville plant, I know that in both cases the board decided that in light of the lack of government, political and community support for the gas plants in their initially proposed locations, it was in the best interests of the electricity system to accept the decision to renegotiate the contracts with the counterparties and to relocate the plants if this could be done on commercially reasonable terms for the ratepayer. Ultimately, this was achieved.

The document disclosure issues: The OPA board has identified and continues to identify lessons learned from the document disclosure. One of the lessons learned is that full compliance with the disclosure order within the time frame specified by the estimates committee was unachievable. We have made every effort to be as transparent and accountable as possible. We have and will continue to review our processes so that future document searches are based on best practices. Nevertheless, the scope of requests needs to be clearly defined upfront, and the timelines have to be realistic.

The second lesson learned is that the public interest requires a better way for us to deal with the disclosure of sensitive matters to the Legislature. On a daily basis we deal with matters of commercial sensitivity, matters in litigation, and matters covered by solicitor and client privilege. All three principles are at the foundation of our business dealings with electrical generators and customers in the province. The first witness before this committee proposed some practical and workable solutions to

this problem, and we have subsequently attempted to provide some solutions ourselves. Together, I believe that we can and must find a better way to do this that allows the committee to do its work but which better protects the public interest.

Lessons learned from the cancellation and relocation decisions: There are probably many lessons to be learned from these episodes, but I would suggest two. First, we need to realign planning and siting functions with current system conditions. Siting and building generation when there's a supply crisis like 2004 through 2007 is one thing; doing it when supply is in good shape is quite another. I do not think it is a coincidence that the two cancelled gas plants were the last two of 17 facilities to be built up to now. As long as the electricity costumers of the province expect to be able to flip the switch and have the lights go on whenever they want, the generation has got to go someplace and the transmission has got to get it to the local distribution companies so they can get it to their customers.

On May 6, 2013, the Minister of Energy asked OPA and the IESO to consult on the development of regional energy plans in the siting of large energy infrastructure and to make recommendations by August 1, 2013. We are actively working on this file.

Second, we need to reconsider the standards for transparency with respect to the electricity system. As an outcome of the proceedings of various committees, a vast amount of information has been put and continues to be put into the public domain. When the dust settles on the committee process, OPA will need to revise its information and communications practices and protocols. The issues remain the same: trading off greater transparency against the rights to privacy and commercial confidentiality. But I believe that the line has shifted, and we should treat it as an opportunity to educate the ratepayers and the citizens of the province about the excellent electricity system in Ontario, which it has been my pleasure to serve.

Thank you for the opportunity to speak.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Hinds. Thanks for your precision timing.

I offer the floor to Mr. Tabuns, who has the floor for 20 minutes in total.

I'd just inform members of the committee that instantaneously, once the bells ring, the committee will be recessed for the vote. For those of you who would like to avoid a summer election, I'd invite you to attend that.

Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, I appreciate your incentive for paying attention to the bells.

Mr. Hinds, thank you for being here this afternoon.

You talked about the role of the OPA board with regard to the gas plants decision. How independent do you consider the OPA to be?

Mr. Jim Hinds: It's a difficult question to answer, but the starting point for the answer is that the OPA was created by statute, the Electricity Act. The Electricity Act charges the organization with a whole bunch of different

objects, grouped broadly into the categories I mentioned in my opening remarks. The statute, in fact, creates the board, and the board serves underneath that.

There are a lot of mechanics inside that statute that deal with how the government relates to the OPA. The two principal ones, I mentioned before, are directives and letters. The OPA receives its work, if you will, primarily from directives issued to it by the Ministry of Energy. Those directives are issued to the organization; the board plays a role in implementing those directives.

Mr. Peter Tabuns: So why do you exist when the Ministry of Energy could sign contracts for the crown directly?

Mr. Jim Hinds: I was not present at the creation of the OPA in the Legislature, but I gather it was discussed at great length there about the need to create a separate crown agency or the desirability of creating a separate crown agency to achieve the objectives of the Electricity Act.

Broadly speaking, if I can just offer a personal opinion, I think there was, at the time of the OPA's creation, a fairly significant supply crisis in the province. I think it was felt that there was a need to get new generation commissioned quickly. I think it was felt that in order to do that, creating a credible counterparty that had a strong credit rating and could go out and contract with as many different sources of energy as could be put together in the time frame—I think those were some motivating reasons for doing it as a separate agency.

Mr. Peter Tabuns: Okay. Do you believe the Ontario Power Authority board has a responsibility to protect ratepayers?

Mr. Jim Hinds: I believe that our responsibilities, again, are spelled out in the Electricity Act. I think we have some responsibilities, clearly, to the province and to the political system in terms of the taxpayers and also the citizens. In that, I'm thinking particularly of the green energy—the carbon dioxide emission reduction part of what we do. But I think one of our key responsibilities at the OPA is to make sure we get the best value for the ratepayer that we can, within the confines of the various directives we get. There are different ratepayer aspects to every directive that we get.

Mr. Peter Tabuns: Was the Ontario Power Authority legally obliged to cancel the Mississauga gas plant or the Oakville gas plant?

Mr. Jim Hinds: I will not be able to answer that question as a fees-paid, practising lawyer, so I'll give you the perspective I would have as chair of the board. The contract that both counterparties—TransCanada and Eastern Power—had was with the OPA. My understanding of the circumstances was that once those counterparties had that contract, the government could not unilaterally cancel it. There had to be some action taken by the government through legislation, and I think there were various options that were looked at. The other option was to attempt to get us, the OPA, the counterparty, to engage in renegotiation discussions with the two proponents.

So in fact, the way it worked out—and again, I’d have to defer to a lawyer—I don’t know that the contracts were ever cancelled. I believe they were successfully renegotiated. So I suspect that legally the original contracts were fine. It’s just that a lot of things changed as a result of the renegotiation.

1510

Mr. Peter Tabuns: Who specifically told you, as chair of the Ontario Power Authority, that these contracts had to be renegotiated?

Mr. Jim Hinds: I don’t think I was ever told specifically by anybody that they had to be renegotiated, but I think it was the sense of the board that it was beneficial to do so. There were some obvious outcomes to each situation, one of which—again I’ll speak to Mississauga on this one because I was actually on the board at the time. There is the legislation outcome, where it could be brought to the House and then getting into areas I don’t know, but presumably legislation could be passed that would terminate the contractual rights of the counterparty. The other one was essentially, what do we do with where we are right now? Should we sit down with the plant counterparty and try to figure out how we can put this plant in a different location, different place? Or there would have been, I guess, the option of doing nothing and having the counterparty sue us and dealing with it as a litigation matter in court.

Mr. Peter Tabuns: With regard to Mississauga—you weren’t there for the Oakville cancellation?

Mr. Jim Hinds: That’s correct.

Mr. Peter Tabuns: What was the reason given to you for the cancellation, or the “relocation,” to use your language?

Mr. Jim Hinds: Well, as I recall, there was a promise made in the middle of the election or just leading up to the election—in 2012?

Mr. Peter Tabuns: In 2011.

Mr. Jim Hinds: In 2011. There was a promise made by the Liberal campaign that they would cancel and relocate the plant. That was, I think, around the 27th of September, 2011. There was a lot of commentary in the media, and the other parties stated their positions on the issue. Then the election happened on October 6, 2011. And then, fairly quickly thereafter, it moved into a mode where we had to deal with it.

Mr. Peter Tabuns: So did the government of the day ever come to you and say, “We’re cancelling this plant because of X,” or “We’re cancelling it because we’ve done an environmental assessment, and we’ve realized that it’s a tragic environmental mistake”?

Mr. Jim Hinds: I personally never got that type of discussion. In terms of the organization, I can’t speak to how it was communicated. It was fairly apparent what the issues were. I think the beginning of the discussion started shortly after the election when there were questions that happened because I think the plant proponent continued to try to build. Cement trucks were continuing to show up, and the level of political anxiety, I would say, at that point, increased substantially.

Mr. Peter Tabuns: Well, I have my own interpretation of what the factors were that were fairly apparent. Could you be more specific about what the fairly apparent factors were that led to the cancellation?

Mr. Jim Hinds: Again, I express my opinion as just a person reading the newspaper. I think it was a lot of community opposition in the immediate vicinity of the proposed plant and some concerns from adjacent communities about airshed quality.

Mr. Peter Tabuns: Those had been concerns for years.

Mr. Jim Hinds: Yes.

Mr. Peter Tabuns: What crystallized action on this?

Mr. Jim Hinds: Well, I don’t think it’s an accident that it was in the course of an election—

Mr. Peter Tabuns: No, I don’t think so either.

Mr. Jim Hinds: So I guess the community opposition found an audience in the political decision-makers to push their point forward.

Mr. Peter Tabuns: I would agree. I would say it was no surprise that it was a decision made during an election. There were votes to be taken and votes to be lost. The government made the decision on that basis.

In the end, how was it communicated to you that this plant had to be stopped and relocated?

Mr. Jim Hinds: Well, in terms of communications to me personally, I received a phone call on late Friday night, the 26th, from Mr. Morley, Chris Morley, who was a volunteer on the Liberal campaign, giving me a heads-up—

Mr. Peter Tabuns: Pretty senior volunteer, yes.

Mr. Jim Hinds: Yes. Formerly, before the campaign, he’d been the Premier’s chief of staff.

Mr. Peter Tabuns: Yes.

Mr. Jim Hinds: He was giving me a heads-up that this was going to be made part of the Liberal campaign sometime in the future—campaign promises. I thanked him for the call. I appreciated the heads-up.

Mr. Peter Tabuns: This was a few days before the public announcement?

Mr. Jim Hinds: This was the night before.

Mr. Peter Tabuns: The night before. Can you remember in any greater detail what he said to you?

Mr. Jim Hinds: It was a fairly short phone call. He was just giving me literally a heads-up that this was going to be in their campaign materials. When I got that, I consulted with the people at the OPA and asked them what the significance was and what our reaction would be. The OPA began to prepare their thoughts for this plan.

I must say, we have a lot of things on the go, and I was not intimately familiar with the details of this plant. We have 17 different gas contracts going on. We have something like 20,000 contracts. I just didn’t have a high degree of personal knowledge on that, so I wanted to get educated on it.

Mr. Peter Tabuns: So Chris Morley gives you a quick call the night before the announcement was made, and he didn’t say why it was being cancelled? Or did he?

Mr. Jim Hinds: No, he did not.

Mr. Peter Tabuns: He just said “you should be aware”—

Mr. Jim Hinds: Heads-up; you should be aware.

Mr. Peter Tabuns: Okay. When was the next time you were contacted by someone senior in either the Liberal election machine or the Liberal government?

Mr. Jim Hinds: There was no further contact to me personally during the period until after the election—

Mr. Peter Tabuns: I’ll stop you there for a moment— if not to you personally, to others on the board or the senior management prior to the election?

Mr. Jim Hinds: I don’t know about others on the board, and I have no knowledge of contact at the OPA itself.

Mr. Peter Tabuns: Okay. Then let’s go to the post-election period. I interrupted you, and I just wanted to make sure I had covered off that period. The post-election period?

Mr. Jim Hinds: Yes. In the post-election period, there was a lot of activity going on at the OPA trying to assess what this was and what was going on and what our legal options and remedies were. The next contact I had directly myself from a senior—I believe we actually had a board meeting in the intervening time; I would have to check the dates, to bring the board up to date on what was going on, to try to figure out the strategy on what we wanted to do. The next call that I received was from Mr. Jamison Steeve. I have to check the date. It was on Friday, November 18, 2011.

Mr. Peter Tabuns: And what was he calling you about? What did he have to tell you?

Mr. Jim Hinds: He was calling to ask me the status of the discussions between the OPA and the developer with respect to getting them to stop construction or getting them to get to an agreement on how we would resolve this issue. My response to him—I was actually in an airport at the time. I said, “I’m boarding a plane, and you should communicate with our chief executive.” When I landed, I subsequently checked with our chief executive, and that communication had gone through.

Mr. Peter Tabuns: By this point, had the Minister of Energy directed the OPA to cancel the contract?

Mr. Jim Hinds: The Minister of Energy I don’t believe was entitled to direct the OPA to cancel—again, I’ll defer to a lawyer on this, but I think because we had the contract already, I think that limited the options that the minister could pursue. What was done instead was an exchange of letters, where the minister sent the OPA a letter dated October 24. I sent the minister back a letter dated November 10, and then the minister sent another letter dated November 14. All these dates are in 2011. I think Mr. Bentley’s testimony characterized it as an exchange between the minister and the OPA, which went along the lines of, to paraphrase former Minister Bentley, “Start to work to renegotiate this contract.” My letter back to him was correctly characterized as, “Who’s going to pay for this?” His letter back to me he characterized

as, “We’ll talk about it.” That’s what that exchange of letters was about.

Mr. Peter Tabuns: Okay. Were you briefed by legal staff on your responsibilities in this situation and your authority to resist or to be compelled by the minister?

1520

Mr. Jim Hinds: I don’t have a specific recollection, but I’m pretty sure that OPA lawyers were all over giving us advice on this.

Mr. Peter Tabuns: Going back, were you around for the renegotiation of the contract for the Mississauga plant in 2009?

Mr. Jim Hinds: No, I was not. I was the chair of the IESO at that time.

Mr. Peter Tabuns: As the chair, later, of the OPA, you’d be aware that it was the Liberal government of Ontario that instructed the OPA to execute the contract with the Oakville gas plant and for the Mississauga gas plant?

Mr. Jim Hinds: I’m sorry, I’m not personally aware of that.

Mr. Peter Tabuns: Who would you assume would have told the OPA to execute those contracts?

Mr. Jim Hinds: I’m not going to speculate. In fairness, Mr. Tabuns, when I got involved I took the facts as I saw them and the facts that I needed to know. I’m not familiar with the history and I would only be speculating if I went back and did that. It didn’t seem to have any bearing on the facts that we faced at the time we had to deal with this.

Mr. Peter Tabuns: I believe they do, because in fact there’s one body that directs, but I’ll leave your answer as is.

Who do you believe, between the OPA and the government of Ontario, is responsible for listening to the community when they set forth their concerns about a plant or an installation?

Mr. Jim Hinds: Well, the OPA is under statutory obligation to the stakeholder and so I think that in any aspect of the work that we do, we try to develop a strategy for stakeholdering. Having said that, the OPA is under the obligation to make sure that there’s enough supply of electricity for the lights to go on, and so we have a job to do.

Ultimately, in the case of these two gas plants, I think that there is clearly a political, community, governmental imperative where these communities can reach through to their duly elected representatives, and that creates a dynamic that affects us.

Mr. Peter Tabuns: So when the government asks you to site a plant, do you expect that ultimately the government will do the read of the political response to this and ultimately take the decision necessary to reflect the democratic will of the community?

Mr. Jim Hinds: Typically, we don’t site a plant. Typically, what happens is that a need is identified and a directive is issued by the minister to procure power. I think in these circumstances the procurement of Mississauga was done in 2004. It was before the OPA was

created, so the OPA's involvement was an assignment of that contract or that procurement. But I think in Oakville's case, the directive read to procure power in the SWGTA, the southwest GTA, which OPA—again, my understanding was that they set up a process where independent power developers or people who wanted to build the plants would submit proposals, and then the TransCanada proposal at the Oakville site was selected. But that was TransCanada's site selection.

Mr. Peter Tabuns: As you're describing it, effectively the site selection is privatized. An area is designated for power generation. A private company finds a site, comes back to you and says, "We've got a site. We can provide power at this price." You don't site and you aren't actually responsible for the community consultation then.

Mr. Jim Hinds: Well, I think, Mr. Tabuns, you were right on the way that those large gas plants were procured, but we procure a lot of other different types of generation.

Sometimes the siting is inherent; when you're putting a hydro dam on a river, the river is where the river is. Sometimes when you're doing a conversion—for example, I'm thinking of the Atikokan conversion. You're converting a plant that's at a location to biomass; the plant is where it is. There are some other exigencies like that. So I wouldn't say the privatization of all the things that we do in terms of power generation—but in respect of the way that these large gas plant procurements were managed, the answer to your question is yes.

Mr. Peter Tabuns: Okay. Did you ever have briefings on the renegotiation of the Mississauga contract in 2009 between the OPA and Greenfield power?

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

Mr. Jim Hinds: Sorry, and—

Mr. Peter Tabuns: Between the OPA and Greenfield power—sorry, Eastern Power developers.

Mr. Jim Hinds: In 2009?

Mr. Peter Tabuns: Yes.

Mr. Jim Hinds: I wouldn't have any knowledge of that. I was not on the board at the time.

Mr. Peter Tabuns: Do you know—no, you wouldn't know.

Interruption.

Mr. Peter Tabuns: I think that may be us.

The Chair (Mr. Shafiq Qaadri): You have 40 seconds, Mr. Tabuns. Use it well.

Mr. Peter Tabuns: In the time after you were appointed chair, did you have discussions with members of the government about the Oakville cancellation and the arbitration?

Mr. Jim Hinds: Yes.

Mr. Peter Tabuns: Remind me again when you were appointed.

Mr. Jim Hinds: I was appointed on December 9, 2010.

Mr. Peter Tabuns: So prior to the end of the negotiation period between you and TransCanada, prior to the arbitration—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Thank you, Mr. Hinds. The committee is recessed till post-vote.

The committee recessed from 1526 to 1538.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I welcome you to the committee once again. We resume. Thanks, Mr. Hinds, for your patience.

I offer the floor now to the government side. Mr. Delaney: 20 minutes.

Mr. Bob Delaney: Thank you, Chair. Good afternoon, Mr. Hinds. Thanks for coming today. I'm going to start off with a few questions about the relocation of the Oakville plant.

The committee received minutes from an Ontario Power Authority board meeting on October 7, 2010—I'll let you find it—the day that the Oakville plant announcement was made. In the notes, it states, "Mr. Andersen further advised that the Ontario Power Authority had concluded that the latest information gathered on the current status of the electricity system supported the decision. When the need for this plant was first identified four years ago, there were higher demand projections for electricity in the province. Since then, changes in demand and supply, including successful conservation efforts and more than 8,000 megawatts of new, cleaner power, had made it clear that the plant was no longer required."

In essence, if I understand this correctly, the OPA confirmed that a power plant was no longer necessary in the Oakville area due to changing demand. Is my interpretation correct?

Mr. Jim Hinds: Yes. I will put the caveat on there that I was not on the board at the time of the decision, but having taken reasonable efforts to inform myself of the circumstances around that with my fellow board members, yes.

Mr. Bob Delaney: And that also a transmission solution was, at that time, 2010, possible.

Mr. Jim Hinds: In respect of the Oakville need itself, correct.

Mr. Bob Delaney: Exactly. In terms of the costs associated with relocating the Oakville plant, we're all aware that the memorandum of understanding and the backgrounder for that agreement were made public on September 24. These documents outline the sunk costs and the gas turbine costs, but what they didn't provide were estimates for items such as gas management charges or the savings from the lower net revenue requirement. Our understanding is that this was because those numbers were not available at that time. Is that also correct?

Mr. Jim Hinds: Yes, I think that is also correct. The broad categories of the costs were known at the time—the costs you identified. The costs that were specifically known at the time that the MOU was released were the sunk costs. The others were costs to be determined and to follow.

Mr. Bob Delaney: Then all information that was available at that time in terms of both costs and savings was provided as requested and made public, correct?

Mr. Jim Hinds: Yes. I can't speak for how the government chose to communicate, but in terms of how it went from the OPA outbound, yes.

Mr. Bob Delaney: Okay. Well, that was the question.

Since then, though, we've seen some updated numbers from the Ontario Power Authority. One document dated March 20 of this year, 2013, which has been provided to the committee shows the OPA's estimates for the Oakville relocation to be between \$33 million and \$136 million. As well, when Colin Andersen testified before the committee, he provided two new numbers, one from the OPA and another from an independent review. Could you enlighten us as to why it is that the numbers keep changing?

Mr. Jim Hinds: The numbers keep changing because we learn new facts. At the time when you have to make a decision, sometimes you don't have all the facts. As you do more work, you get more facts and you update your numbers.

I think that collapsing the time series the way you did is difficult, because you have to look back from when the decision was originally endorsed by the board. The MOU was released on the 24th of September 2012, and then a succession of things happened. The first thing that happened that was very significant to the calculation of the numbers is, we stopped being adverse in interest to TransCanada. They had an agreement at that time. Many of the numbers that required the OPA to finalize required the agreement of TransCanada and required their active co-operation. We needed them to tell us what the new plant would look like. We needed them to tell us what the site looked like. We needed to go out to Hydro One. We couldn't make any of those moves until TransCanada was satisfied that they had an agreement with us. As far as I understand, the actual signing of those documents tailed off for months after the 24th of September 2012—the actual execution of those legal documents.

Then a vast amount of work began to try to identify and narrow the ranges of the costs in those broad parameters. I think where it got to in the end is the document that Mr. Andersen spoke to the committee about, which is dated April 29, 2013, which tallies to the end of the relocation cost of \$310 million, of which the \$40 million was the sunk and the delta of the difference. The \$270 million was a long litany of those other costs. And I think it's fair to say that there are still going to be lots of changes in those numbers as they move forward.

Mr. Bob Delaney: So to collapse that down a bit, although it's not the optimal way to estimate the cost of the project, you gave a response based on the best information that you had at the time you were asked.

Mr. Jim Hinds: Perhaps I could put it a different way. If you ask a weather forecaster for a weather forecast, you get a weather forecast. You don't get guaranteed delivery of a sunny day; you get the best judgment of a professional at the time that that person has to make that judgment of what it's going to be.

Mr. Bob Delaney: All of us this spring in Ontario are perfectly familiar with that analogy.

To talk a little bit more about the Oakville relocation and the possibility of litigation around it, I want to ask you a little bit about the decision to renegotiate with TransCanada Energy to find an alternative to the Oakville plant. From the documents that I've seen and the testimony that we've heard so far, it's clear that the best path forward for both the OPA and the government was to renegotiate an alternative site with TransCanada Energy—TCE—rather than to rip up the original contract. Would that square with your observation?

Mr. Jim Hinds: Yes, it would square with my observation. The manifestation of how that played out varied tremendously throughout the course of the dispute.

Mr. Bob Delaney: Okay.

Mr. Jim Hinds: I would just make one admonition: I'm not sure where this phrase "rip up contracts" comes from. This contract was not cancellable, according to its terms. I think "rip up contracts" is perhaps a non-legal expression for "ignore your legal obligations," which, by the way, we being a contracting entity that has 20,000 contracts, is not something that we take lightly.

Mr. Bob Delaney: If the government or the OPA had walked away, ripped up the contract, abrogated the agreement, would it be accurate to say that there was a significant risk of litigation, with the potential being extensive damages awarded against the crown?

Mr. Jim Hinds: Again, I'm not counsel, but certainly the answer to that is yes, and then the admonition also being that if that was done in a way that showed disregard for contractual rights, there's also, as I recall from the lawyers, an opportunity that we could get sued for punitive damages in addition to that.

Mr. Bob Delaney: So in essence the path chosen was one that at the time, with the information you had, was deemed to be optimal in terms of prudence.

Mr. Jim Hinds: Yes. And from an electricity system point of view, I think you put your finger on it before when you referred in the minutes to the demand situation in Oakville. Oakville still needed the power, so the demand situation in the province, including Oakville, was such that we still wanted the plant. The plant had to go somewhere. So the fact that it wasn't situated near where the consumers were is one thing; the transmission solution enabled it to be located somewhere else. But fundamentally, electrons still had to be made someplace. So as our system planners looked at the situation, the plant had to go somewhere.

Mr. Bob Delaney: Let's talk a little bit about some of the Mississauga costs. The government relied on the OPA's approach when it announced its original costing figures on Mississauga. We've previously tabled with the committee an email between Colin Andersen and Minister Bentley's chief of staff on July 13, 2012, three days after it was announced that the Mississauga plant would be relocated to Lambton.

The email to Mr. Andersen states, "As discussed previously we were relying on the OPA to provide the accurate and complete calculations of relocation costs. The relocation costs and the breakdown that were provided is what we are assuming is still correct."

“Can you pls confirm and double check the calculation to ensure that [the] 180”—I guess, referring to \$180 million—“remains accurate.”

Mr. Andersen replied, “The OPA stands by the \$180m figure, which reflects monies expended. It reflects costs as we know them.”

Although it may be belabouring the obvious, did the government depend on the OPA to provide cost details on the Mississauga relocation?

Mr. Jim Hinds: By the way, I’m not a party to that email, so I will take it as read. Again, in my role as chair of the board, other than being briefed on the conversations about costs, I don’t have an intimate knowledge of them.

But I would go back to the same comment that I made with respect to TransCanada, because the issues are quite similar. There are costs that were known at the time the agreements were signed to relocate, and then there were going to be other costs, other categories of costs. We knew they would exist. We just didn’t know what they would be and what the net would be. I think Mr. Andersen, in his testimony, used the metaphor of a Polaroid picture. With respect to those other costs, that was an apt metaphor.

Mr. Bob Delaney: So it would be accurate, then, to say that the Ministry of Energy was relying on all of you at the OPA to do your best work and to provide them with your best estimate of the costs.

Mr. Jim Hinds: I think that’s fair.

Mr. Bob Delaney: Okay, thank you. What we’re very clearly grappling with is that the cost calculations are very complex, which reflects the fact that the whole process in terms of renegotiating a contract, introducing relocations—that, as well, was relatively complex. I would think that one of the things that added to the complexity was the need to maintain some sort of a positive relationship with the proponents through the whole process. If the positive relationship wasn’t there, would the probability or the danger of litigation be higher?

1550

Mr. Jim Hinds: I’m going to answer the question in an oblique way. We from time to time have disputes with our contract counterparties. Some of these disputes are quite minor in nature, some of these disputes are quite significant, and I would classify these two as quite significant, in the sense that the counterparties had felt that their contracts were being breached. Once that started, and once the arbitration and litigation processes started, I don’t think that the OPA felt particularly like they needed to have a joyful, beneficial, conversational relationship with these two counterparties. We all knew what was going on. These people were well advised, they were well motivated, they were well prepared, and we didn’t know whether we were going to litigation or not with them; it was always a default option. I don’t think, in respect of these two individual counterparties, that our feelings for each other at the time had much bearing.

Our broader concern was the relationship with counterparties generally. From the stakeholding that I did at the time around these two individual people,

talking to the broader stakeholding community, the broader stakeholding community was concerned for respect for contracts. In their view, they didn’t see that these two plants’ proponents had done anything wrong. They’d just won an ability to go build a plant, and they diligently applied themselves to doing what they contracted to do, so the broader counterparty community was quite concerned about the way that these plant proponents were treated.

I think that at the end of the day, because the plant proponents agreed to the relocation, they agreed to the renegotiation, they’ve got their projects and they’re off diligently doing their work, we managed to acquit ourselves with the counterparty community generally as to Ontario still being a good place to do business.

Mr. Bob Delaney: So then the long and the short of it is that if you’re in the business of power generation and you’ve got to work with those who provide electricity, it’s pretty important to maintain good relationships in general with those entities.

Mr. Jim Hinds: Yes. To put a number on that, it’s been advertised that we’ve spent \$50 billion on the Ontario electricity upgrade system since 2005. You know, \$37 billion of that \$50 billion is under OPA contracts, so that’s a lot of money and that’s a lot of different projects. So it’s important to be mindful of the fact that the providers of capital are out there, and they’re on the other end of the contracts.

Mr. Bob Delaney: From your perspective as chair, did the OPA balance its responsibility to ratepayers with their responsibility to provide reliable energy to the system?

Mr. Jim Hinds: In respect of the decisions in—sorry, more clarity on that?

Mr. Bob Delaney: Yes, okay. Throughout this particular process, where clearly you were asked to engage in complex negotiations in a very public way, in your opinion did the OPA balance its responsibility to the ratepayers with a responsibility to provide reliable energy to the Ontario grid?

Mr. Jim Hinds: Yes, I think we did. Was it ideal? No. Could it have been done better throughout this process? Yes. I don’t want to make light of the fact that these relocation decisions cost a lot of money.

Mr. Bob Delaney: No, I don’t think anybody does, nor is there any inference—

Mr. Jim Hinds: But in the circumstances, given the hand that we were dealt, the role we were trying to look after for ourselves was, could we make a commercially reasonable deal in each of these cases to relocate these plants? Yes, I think we acquitted ourselves.

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

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

Mr. Bob Delaney: Four and a half minutes; okay.

In that remaining time, let’s talk a little bit about some of the document disclosure. I’d like to ask you a bit about the document search process in response to the estimates committee request for correspondence related to these

two gas plant relocations. At a news conference at Queen's Park in February, you stated that the OPA is in the business of producing power, not documents. What I would take from that—and I appreciate the spirit in which you made it—is that the document search process was quite a departure in terms of normal activities within the OPA. Is that kind of what you meant?

Mr. Jim Hinds: Yes, that's right. And I meant that—yes, and I think I said electricity.

Mr. Bob Delaney: Yes. Okay. I think you acknowledged a number of times during your news conference that because it was such a significant departure from your normal activities and such a massive undertaking, that in fact there were errors and omissions.

Mr. Jim Hinds: I'm sorry; I missed that.

Mr. Bob Delaney: Okay. I'm sorry. During your news conference, I think you may have acknowledged a number of times that because that document search was such a significant departure from your mainstream activities and the scope of it was so large, there were some errors and omissions in the documents provided.

Mr. Jim Hinds: Yes, there were. I would also mention that in my role as chair of the board, we did not have an involvement in that document review and selection process. Our role was truly the typical role of a board, which is oversight. So in our subsequent analysis of what happened during the disclosures, we had a chance to look back through and find that out, and there were a number of missed search terms, there were a number of missed—I've forgotten what they call them; basically employees who had closed down their email boxes and had to go back. So there were lots of those kinds of—the general nature of the errors that were made were of that ilk.

Mr. Bob Delaney: Right. But from your vantage point, again as a member of the board, would it be accurate, then, in looking at the efforts of OPA, to say that the organization's best efforts were made to accurately and fully respond to the document request from the committee?

Mr. Jim Hinds: Yes, the best efforts were made, and in good faith.

Mr. Bob Delaney: At the news conference, you were asked about the opposition's assertions that there had been some sort of orchestrated cover-up by the government, and at the time, to use your words, you said, "I don't think a 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 that has to do with the government. This is all us." That remains true to this day, that there was no orchestrated effort to withhold documents?

Mr. Jim Hinds: Yes, that remains true. I would mention, though, in particular, since you're quoting from my transcript—I brought a copy—that was the second question in. The purpose of the press conference at that time was to talk about the third disclosure, which was 54 documents.

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

Mr. Jim Hinds: Later on in the press conference, there was a more fulsome discussion about the second

disclosure and others, and what I said in that case was that "we have to review our practices in protocol. That is absolutely clear," from our point of view, "things got messed up; things got miscommunicated and we have to review our interactions on the document stuff for sure." The subtle difference with my second statement is that it also deals with what I think you talk about as the Jesse episode, which is some subset of documents that didn't get disclosed by the OPA that were disclosed by the ministry.

So again, recognizing that's an important issue, I just thought I'd respond that way.

Mr. Bob Delaney: No, it is an important issue, and I thank you.

Chair, I think I'll stop there and pick up it—

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

Mr. Fedeli: 20 minutes.

Mr. Victor Fedeli: Thank you, Mr. Hinds, for being here. I have a packet of documents distributed to you; it has your name on the top with a yellow mark through it.

I want to direct you to document 1, the first page. It starts off—I've highlighted a few points for you. This is a Friday, April 15 document. Do you have that one?

Mr. Jim Hinds: Yes, I do.

Mr. Victor Fedeli: Okay. It says, "Can you please set up a call Monday morning with the above group and also include Craig, Deputy Minister Lindsay, Sean Mullin and Jim Hinds." This is from JoAnne Butler. So you're on a call—I presume you were on that call. This is—

Mr. Jim Hinds: Actually, Mr. Fedeli, I don't recall that call.

Mr. Victor Fedeli: You don't recall the call?

Mr. Jim Hinds: No, I don't recall the call, but I do recall a meeting that I had with Mr. Mullin, Mr. MacLennan and Mr. Jamison Steeve. It would have been three or four days after that.

Mr. Victor Fedeli: After that?

Mr. Jim Hinds: After that.

Mr. Victor Fedeli: So this would have been Friday the 15th. When was that meeting, then?

Mr. Jim Hinds: I would have met with them on the 18th. It was, I believe, the 18th.

Mr. Victor Fedeli: Monday the 18th?

Mr. Jim Hinds: I can't recall, but the reason I calibrate it is off a board meeting that we had on the 21st. So I would have met with them before that board meeting.

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Mr. Victor Fedeli: Okay—

Mr. Jim Hinds: So in answer to your question, I suspect I was absent; I couldn't make the phone call that's referred to here.

Mr. Victor Fedeli: I understand. This is fine, the fact that you met with him on the 18th. On the 21st, I believe—I'm going to go by memory here for a moment; you'll know as well as I would—there was a counter-offer to TransCanada. This is the \$712-million one.

Mr. Jim Hinds: Yes.

Mr. Victor Fedeli: Did you discuss that with Jamison Steeve at that meeting, or Craig MacLennan or the other names that you mentioned? Was that discussed in that meeting?

Mr. Jim Hinds: In my meeting? No, it was not. The purpose of my meeting with them, at my request, was to find out what was going on from their point of view with TransCanada.

Mr. Victor Fedeli: And what did they tell you?

Mr. Jim Hinds: Not very much. I came out of that meeting unclear that they were in active discussions with TransCanada at all. I know that leading up to the board meeting on the 21st of April, staff had been greatly concerned about the interactions that were happening between TransCanada and the Premier's office. We'd had two prior board meetings, I believe on March 12 and March 29, but those dates may be wrong—but there was a sequence of three board meetings. I undertook to ask the gentlemen involved if—basically try to find out what was going on. Was TransCanada talking to them? I came out of that meeting without a clear understanding that TransCanada was.

Mr. Victor Fedeli: Was it your understanding that TransCanada had been offered to be “made whole”?

Mr. Jim Hinds: That understanding was what I got from staff. There was some language used around the early part of the discussion about “made whole.” I never knew where that was sourced. Where I based most of my understanding of the TransCanada situation on was a letter dated October 7, 2010, from Mr. Andersen to TransCanada Energy, where perhaps more precise language was used. The language was, “As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the contract.”

Mr. Victor Fedeli: Flip over a couple of pages then to document 2. About halfway down you'll see it says—this is from Jennifer Wismer; it's May 31. Actually JoAnne Butler is at the top of this particular document. You're copied on that. Down about in the middle, it says, “This meeting is still tentative as we are waiting to hear back from Sean Mullin as to his attendance. We should know in 20 minutes or so.” Do you know if that meeting did occur?

Mr. Jim Hinds: I do not.

Mr. Victor Fedeli: Do you know if you attended a meeting with Sean Mullin?

Mr. Jim Hinds: No, I did not.

Mr. Victor Fedeli: You did not or you don't know?

Mr. Jim Hinds: I did not attend.

Mr. Victor Fedeli: You did not attend.

Mr. Jim Hinds: On May 31?

Mr. Victor Fedeli: No, this email is on May 31.

Mr. Jim Hinds: Oh. And what—

Mr. Victor Fedeli: It says JoAnne Butler, May 31. It's to Jennifer Wismer, Carolyn Calwell, Halyna Perun, Jim Hinds, David Lindsay and Rebecca Dunning, and it says “Mike Lyle”—the subject is a confidential meeting at 9 a.m. Did you attend that meeting?

Mr. Jim Hinds: I don't believe that I did.

Mr. Victor Fedeli: Is there any way you can ascertain whether you attended that meeting, or if you figure at this point you didn't, you didn't?

Mr. Jim Hinds: I could ask some of the other invitees to the meeting. I could ask them, so I'll undertake to get an answer to—

Mr. Victor Fedeli: Will you undertake to ask them if the meeting did occur without you, and if so, who the attendees were? I'd appreciate that. Thank you.

Over on document 3, there's a little bit of a discussion on arbitration; I've highlighted the few points. It talks about, “What are the commercial reasons why the board would opt for arbitration rather than litigation? If there are none or if they are inadequate, would the board require a directive to enter into arbitration?” Did you ever get a directive to enter arbitration?

Mr. Jim Hinds: I can't recall specifically whether we did or we didn't. This was an email that I sent after reviewing materials at the request of the OPA staff to have an emergency board meeting.

Mr. Victor Fedeli: You didn't like this one, though, did you? I see that you were “struck by the stark concession,” it says, in the recitals. You were giving up too much?

Mr. Jim Hinds: I would go back to the second line of the email, Mr. Fedeli, and quote myself as saying, “I have no expertise in arbitration so treat the following comments accordingly.” And I stand by that. I have no expertise in arbitration.

Mr. Victor Fedeli: You felt that was a stark concession?

Mr. Jim Hinds: In the recitals of the legal defences which might have been available against TCE.

As I recall the board meeting where some of my concerns were addressed, and the board discussed them, there was a fulsome discussion of what those legal defences might have been. I think that, at the end of the day, the board did a business judgement, looked at that and decided that the benefits of arbitration outweighed the strengths of any legal defences that we might have had. I think a lot of that goes back to the seventh letter, that line talking about the “anticipated financial value of the contract.”

Mr. Victor Fedeli: Okay. Flip over to document 4. It's the second page. It's called “2/6.” Do you see that one? It's from the Ministry of Energy.

Mr. Jim Hinds: Yes.

Mr. Victor Fedeli: At the end of the second line, it talks about how the province and the OPA “have agreed to divide between themselves responsibility for the payment of any award.” What does that mean?

Mr. Jim Hinds: I don't know, Mr. Fedeli. This is the first time I've seen the agreement. But it's countersigned by David Lindsay. It's dated August 5, 2011.

Mr. Victor Fedeli: So they've agreed to divide the responsibility. It goes down a little bit to say that the OPA “acknowledged that TCE is entitled to reasonable damages” and “anticipated financial value.”

Go the last sentence, then: “The crown and the OPA agree that it is appropriate to reach agreement on which components of damages should be allocated to the crown and which should be allocated to the OPA.” Now do you know what I’m talking about?

Mr. Jim Hinds: Yes. I think this is probably a manifestation of a discussion about taxpayer/ratepayer—

Mr. Victor Fedeli: Yes, exactly what it is.

Mr. Jim Hinds: —which was an issue for the board.

Mr. Victor Fedeli: It’s an issue for the board. Tell us a little bit about why that’s an issue for the board.

Mr. Jim Hinds: It’s because one of the interests that the OPA protects very strongly is the interest of the ratepayers of the province, because many of the activities that we engage in cost money, so that money indirectly—actually, fairly directly flows through to the bills.

Mr. Victor Fedeli: Okay.

Mr. Jim Hinds: In this case, a decision was made to cancel and relocate a plant. There were going to be costs to that. The question is, who pays: the ratepayer or taxpayer?

Mr. Victor Fedeli: Okay. On that very point, the fact that this is a letter from the government, from the Ministry of Energy, to you, they acknowledge here that they need to divide the costs. It’s very plain: “have agreed to divide between themselves” and OPA. Then, at the bottom, it says that the money’s allocated to the crown and allocated to OPA. The sunk costs of \$40 million, who was that allocated to?

Mr. Jim Hinds: In the end, the sunk costs of \$40 million were allocated to the government, so they were allocated to the taxpayer.

Mr. Victor Fedeli: Yes, they were. So back in August 2011, the fact that the government is saying that they’re going to divide the costs between themselves and you, does this not acknowledge that there are indeed two sets of costs, ratepayer and taxpayer?

Mr. Jim Hinds: There’s nothing in that letter that says anything about sunk costs.

Mr. Victor Fedeli: No, no, I understand that. No, I respect that.

Mr. Jim Hinds: But the concept of the allocation of some costs of the cancellation being borne by the ratepayer and some costs of the cancellation being borne by the taxpayer—it looks like this letter is a manifestation of that.

Mr. Victor Fedeli: I agree with that. Does this not acknowledge that the government would have knowledge that there are going to be two sets of costs: one for them and one for you? At the beginning of the letter and at the end of the letter. This is a letter from the government. It says they’re trying to figure out how much they’re going to pay and how much you’re going to pay.

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Mr. Jim Hinds: Mr. Fedeli, I haven’t seen the letter, I wasn’t a signatory to it and I wasn’t a recipient of a copy of it. I think what I would say is that in order for the OPA board to do its work and to try to move forward with resolving and relocating the plants, the OPA board felt

strongly that there needed to be a discussion about who was going to bear the costs of cancellation—

Mr. Victor Fedeli: So you haven’t seen that letter.

Mr. Jim Hinds: What I would say is that this is an acknowledgement of the fact that there needed to be a conversation about who was going to pay for this.

Mr. Victor Fedeli: So you haven’t seen this letter?

Mr. Jim Hinds: No.

Mr. Victor Fedeli: You have not seen this August 5 letter?

Mr. Jim Hinds: That’s correct.

Mr. Victor Fedeli: It’s from the Ministry of Energy to Colin Andersen, the CEO of Ontario Power Authority.

Mr. Jim Hinds: Yes. So I’m very sure Mr. Andersen would have reported, in his report to the board, that we had some—he would have characterized this letter in a way that would have said, you know, we have an agreement to have a discussion about the allocation of the costs of cancellation.

Mr. Victor Fedeli: Go to page 6 of 6, then, and we’re still on document 4. Now we’re at a resolution of the board of directors of the Ontario Power Authority, of which you’re the chair. The first bullet point: “an agreement for the arbitration” etc., “in accordance with the parameters described in” this letter of “August 5, 2011 presentation to the board of directors.” So the board did indeed see this letter. The next bullet says: “an agreement with Her Majesty the Queen in right of Ontario addressing the division of liability”—they’re back to that split again.

Were you away for this particular presentation to the board?

Mr. Jim Hinds: No, we had a telephone board meeting to do this. I was present at that board meeting—

Mr. Victor Fedeli: Okay. So you’re voting. You made a resolution. This is, “Be it resolved that.” You acknowledge this August 5 letter that, sadly, you mention that you haven’t seen, but you’ve gone ahead with a resolution based on that letter, and now you’ve decided on how to split up the costs.

Mr. Jim Hinds: I don’t think there was a decision made on how to split up the costs. I think the decision—

Mr. Victor Fedeli: But there was a decision on a division of liability. You’ve decided on what to do about this letter at that board meeting, according to your own resolution of the board of directors.

Mr. Jim Hinds: It’s not—

Mr. Victor Fedeli: You don’t need to protect them. You don’t need to protect the government. We can talk about this.

Mr. Jim Hinds: I’m sorry?

Mr. Victor Fedeli: We can talk about this August 5 letter. It’s here; it’s in your board that you’ve seen this letter. So we can talk about this, the division of liability. You can do that.

Mr. Jim Hinds: Yes, I’d like to.

Mr. Victor Fedeli: Have you seen that letter or not, do you think?

Mr. Jim Hinds: I have not seen the letter.

Mr. Victor Fedeli: Yet you voted a resolution on it.

Mr. Jim Hinds: A resolution of a board often contains cross-references to vast legal documents, because management needs to be delegated the authority to—

Mr. Victor Fedeli: It's not a vast legal document. It's a simple letter that says, "We're going to divide the two."

Mr. Jim Hinds: You should have seen the arbitration agreement.

Mr. Victor Fedeli: I'm sure there are other agreements. I know that you're in the business of producing paper.

This is a simple letter, but you're voting on what to do about it here. So my point is that both you and the government knew there were costs going to be attributed to both of you.

Mr. Jim Hinds: I think that's fair.

Mr. Victor Fedeli: That's fair. That's fair.

Go to document 6, if you would, please. In those minutes from that August 5 meeting—this is John Zych:

"Jim Hinds' issue with the minutes of August 1, 3 and 5 was not that they were incorrect in any respect but that they dealt with the proposed arbitration of the ... dispute, a fact that we had agreed to keep silent." It goes on to say that you wanted to keep that fact confidential.

What was it you didn't want out, or why?

Mr. Jim Hinds: My recollection of my concern at the time was that TransCanada was a publicly traded stock and that there had been a number of questions in their regular quarterly earnings conference calls about the status of the Oakville generating station.

We have agreements with TransCanada about keeping things confidential, and I wanted to make sure that we didn't inadvertently put somebody in the position of insider-trading this thing.

Mr. Victor Fedeli: We've had other sworn testimony that says that it was the request from the government to keep that out of the public eye. Is that part and parcel of this, or are you independent in that—

Mr. Jim Hinds: I have no idea. All I was concerned about at the time was the inadvertent release of non-material public information.

Mr. Victor Fedeli: So it's back to that August 5 meeting, where we talked about that letter.

I want you to jump towards the end here now. We're at PC doc 12, and it's a meeting of the board of directors. This is your board; it says you were present. We received all of your board minutes—and this will be just a little disjointed for a moment.

Page 2 of 5, down in the middle: "Michael Lyle discussed changes that management was recommending to the" Ontario Power Authority's "agreement with TransCanada Energy ... for the arbitration of its dispute" etc. This had been going on now for weeks, months; we're at the arbitration stage, okay? This is January 18, 2012.

All the way through—in fact, earlier in the discussion, Mr. Delaney had said to you, "The plant was no longer required. We don't need the power." You talked about, in your opening letter, that it would have been needed, in the crisis from 2004 to 2007—but "doing it when supply

is in good shape is quite another." But Mr. Delaney talked about the fact—I have a quote here—that "the plant was no longer required" as the reason that you were cancelling the plant. This is Oakville now. This was just a few minutes earlier, in his question to you.

I've read your board minutes from top to bottom. Nowhere in them does it ever talk about a relocation of a plant. It's all about cancelling the Oakville plant. It's all about arbitration. And all of a sudden, if you go to page 5 of 5 on document 12—now we're into February 15. So we've gone from January 18 all the way up to there. Nowhere, not even one time, does it say "relocation" or "new plant." It's always arbitration versus litigation. It's always cancellation. In this February 15 document, for the first time ever, I saw the words—well, I'll read it: "Mr. Michael Killeavy advised the board that the OPA, Greenfield South Power Corp. and Ontario Power Generation were negotiating a plan to (a) relocate ... and (b) potentially"—

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

Mr. Victor Fedeli: Thank you. "Mr. Amir Shalaby reported that the OPA was engaged in multi-track discussions ... for Greenfield South and the Oakville" generation. That's the first time we'd ever seen "find new locations" for Oakville. That's February. Not once did we ever see that before—

Mr. Jim Hinds: Mr. Fedeli, I'd have to review the minutes. But in deference to the fact that you're short on time, what I'd suggest is, go back to the minutes of April 19, 2011, where we talk about the \$712 million offer and the proposal; and also the minutes before that, where there's talk about relocating the plant to Kitchener-Waterloo as a peaker. So I think—

Mr. Victor Fedeli: But as a peaker plant; I understand that. But we're now talking about building a 900-megawatt plant, as far away from Oakville as you can, when Mr. Delaney has just finished saying that the plant was no longer required. I'm trying to get—

Mr. Jim Hinds: Relocation—I can speak with confidence about—

Mr. Victor Fedeli: But I'm trying to get from—how did we get from, "We no longer need the power"—

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

Mr. Tabuns: 10 minutes, beginning now.

Mr. Peter Tabuns: Mr. Hinds, maybe I've missed something in all of this. The OPA, the board, cancelled the Mississauga plant, but it doesn't appear that, legally, you had to do that. Am I misunderstanding this? Legally, did you have to cancel that plant? Were you compelled?

Mr. Jim Hinds: I think that the board heard the government's change of policy with respect to the location of the Greenfield plant. It watched the political, governmental and community processes unfold, and, having seen that, it made a decision, given that we were the plant counterparty: Do we go to litigation or do we try to engage in discussions to relocate the plant?

Mr. Peter Tabuns: Or do you just leave it as is?

Mr. Jim Hinds: As I said in my opening remarks, we accepted the government's decision, and then we moved

to the next mode, which was defending against litigation or attempting to renegotiate the contract.

Mr. Peter Tabuns: So the government made its decision, and you had an option to accept or not accept their decision?

Mr. Jim Hinds: Yes.

Mr. Peter Tabuns: Did you have anyone in your board say that this was going to cost an awful lot of money?

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Mr. Jim Hinds: Well, I can't recall the specific board conversations. The way that governance works is that minutes speak for the board. I think that all the directors would have been concerned that this was going to cost a lot of money, and the question would be who was going to pay for it. I think that the genesis of that discussion—sorry, the upshot of that discussion was an exchange of letters between Minister Bentley and the OPA, addressing those very issues.

Mr. Peter Tabuns: What was the legal status of those letters?

Mr. Jim Hinds: Well, I am not a lawyer. I don't think the OPA could sue the government. But I think they were the basis for a discussion on and an acknowledgement by the government that there were going to be costs to the cancellation, and that those costs were going to have to be shared between the ratepayer and the taxpayer. I think we took it as an acknowledgement and proceeded to pick up our tools and try to do the best job we could in very difficult circumstances.

Mr. Peter Tabuns: So in the end, you took that letter as your legal direction.

Mr. Jim Hinds: I think in the end, we decided that we wanted to try to relocate the plant. We had a role to play in that relocation, being the contract counterparty, and we had some vital interests to represent, namely the ratepayer interest and the system interest in getting the plant in a good location. So we continued to move along in the discussions and the negotiations involved in relocating the Greenfield plant.

Mr. Peter Tabuns: Have you ever started a plant with just a letter from the minister, saying, "I'd like a plant"?

Mr. Jim Hinds: Well, we've started plants and processes for them with directives. But this is an unusual situation.

Mr. Peter Tabuns: I agree.

Mr. Jim Hinds: This isn't a normal course of business. A significant problem has arisen with respect to a contract counterparty, where there is already cement and iron in the ground. We're trying to work through a difficult situation to get a resolution that's the best that's possible in the circumstances.

Mr. Peter Tabuns: When we were looking at documents from the Ministry of Energy, they indicated that as of March 2011—this is six months before the plant was cancelled—the OPA and Greenfield agreed to a new operational date, the third quarter of 2014. Do you know if, in the spring of 2011, you had any inkling that this plant was going to be cancelled?

Mr. Jim Hinds: No, I didn't. I can't recall precisely, but there were regular updates to the board on almost all the files that we work on at some point in time, usually delivered through the chief executive's remarks. So I can't say for sure that it wasn't raised that there was some ambiguity in the timeline or whatever. I just don't recall.

Mr. Peter Tabuns: But to the best of your recollection, as of the spring of 2011, you thought this plant was going to go forward.

Mr. Jim Hinds: That would be correct.

Mr. Peter Tabuns: And then this morning, Minister Broten said that in June 2011, the Minister of the Environment said that he was going to be reassessing the environmental factors related to this plant. Was that something that was visible to you and your board, that would give you an inkling that this plant was in trouble?

Mr. Jim Hinds: I don't recall a specific reference to that.

Mr. Peter Tabuns: Prior to the call from Chris Morley the day before the public announcement, did you have any inkling that this plant was in trouble with the government of Ontario?

Mr. Jim Hinds: No, though I would say I did have a call with Mr. Morley in late July 2011 in respect of, I think, other energy matters. Mr. Morley asked me if the plant was still needed. I recall the conversation because I went back to the OPA to check, and the answer I was given was, "The plant is still wanted." So I phoned back to Mr. Morley and delivered that answer: "We want the plant."

Mr. Peter Tabuns: What's the difference between "want" and "need" in this circumstance?

Mr. Jim Hinds: It's probably not different than in any other circumstance. All I could speak to was the OPA's position, which is we wanted that plant. It was well located, we thought, near the users of electricity. It was quite advanced in its construction. We wanted that plant in that location.

When the decision was made not to put the plant in that location, we still wanted the plant on the system. So that gave us impetus for trying to renegotiate successfully a relocation of the plant.

Mr. Peter Tabuns: Okay. Just a few other questions here. The settlement offers made to TransCanada after things came apart with the Kitchener–Waterloo plant—so we're now talking about the spring of 2011. The OPA made two offers, I believe, to TransCanada Enterprises. Do you remember those offers?

Mr. Jim Hinds: Yes. I would be careful about the use of the word "offer"; offer is something that typically can be accepted. The discussions and the proposals around those offers were not capable, inherently, of being accepted; they were proposals.

So there was a series of three board meetings that we had in March and April where we were trying to grapple with this file—what's going on here; who's talking to who; issues that have been asked already of me in committee: you know, what does "make whole" mean, what does "financial value of the contract" mean.

As the board and management tried to grapple with where we were, there was some active discussion with TransCanada—the discussions with TransCanada, as far as I understood, were being done by OPA staff, and TransCanada was being largely non-responsive. So I think there was a series of proposals that were talked to, or about, to TransCanada to try to get them to react to, and one of them was a KW peaker—

Mr. Peter Tabuns: Right, which fell away.

Mr. Jim Hinds: Well, it fell away for two reasons. I think the first is that it didn't look like it would deliver enough value to TransCanada for what they thought they might have been owed. Now, I'm using this advisedly because I never talked to TransCanada.

The other reason the KW peaker fell away was because of some siting concerns. It wasn't clear to the board that this siting for the proposed KW peaker was going to be an easy thing to accomplish. The concern was that if it did move forward a couple of years and then subsequently failed, where would that leave us in this dispute with TransCanada?

The proposal that was referenced in the board materials, I think it was April 19, was looking at various different options and damages claims: Let's see if we can at least agree—

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

Mr. Jim Hinds: —on an overall number between TransCanada and us to see how far apart we are. In the end, we never did.

Mr. Peter Tabuns: Okay. I just want to go back quickly to the question of consultation with regard to Mississauga and Oakville. We touched on it, but I just want to be clear. Once they've made a proposal and you've accepted the proposal, really, any public consultation is irrelevant? Is that not the case?

Mr. Jim Hinds: Oh, I think the process shows quite the contrary. I think that what actually unfolded shows that—and it's an area, by the way, I'm not expert in, in terms of municipal off-siting, environmental action. I think that all of those things, that's when the action starts.

Mr. Peter Tabuns: That's a very expensive way to do a process. You sign a contract which ties you into very substantial penalties if you violate it, and then—not consultation in this case—public response drives an agenda. It puts us—

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

To Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. Last round, Mr. Hinds. Just to follow up on some comments during your discussion with Mr. Fedeli regarding the contract that the two of you were discussing: That document was generated August 5, 2011, right?

Mr. Jim Hinds: I'm sorry, is this the letter—?

Mr. Bob Delaney: This will be his—

Mr. Jim Hinds: PC doc—

Mr. Bob Delaney: PC doc number 4.

Mr. Jim Hinds: Sorry, give me a moment. Mr. Delaney, it appears to be a letter dated August 5, 2011, to Colin Andersen, from David Lindsay, countersign.

Mr. Bob Delaney: And the date of the relocation was the end of September of that year?

Mr. Jim Hinds: This would be the relocation of Oakville?

Mr. Bob Delaney: Of Oakville.

Mr. Jim Hinds: Yes, I think September 30.

Mr. Bob Delaney: Okay. That's all. Thanks.

Just to talk a little bit about commercial sensitivity now. Many of the documents that we're talking about were produced as a result of that motion passed in the estimates committee in May 2012. At the time that the requests were made, you were obviously aware that some sensitive commercial negotiations were ongoing with both Eastern Power and TransCanada.

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Mr. Jim Hinds: Yes.

Mr. Bob Delaney: Okay. In fact, Colin Andersen wrote to the committee on May 30 in response to the motion. The letter in part says, "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. Such disclosure is likely to significantly prejudice the position of the OPA and the province in the ongoing, highly commercially sensitive negotiations and in the current litigation."

Would it be fair to say that potentially releasing documents to the public at that point of time may have increased the costs to Ontarians and that the OPA and the Ministry of Energy would then have had a responsibility to protect taxpayers while also balancing that with the need to be open and transparent?

Mr. Jim Hinds: Yes. I would think that's more than fair to say. I think Auditor General McCarter had used a poker metaphor, so I'll pick it up. At that particular time of estimates, we were in commercial negotiations with Greenfield to try to relocate the plant. They had their set of cards; we had our set of cards; the government had its set of cards. In effect, that disclosure order would have said—it's like a dealer walking into a room and saying, "Put your cards on the table."

Our frank assessment of our strengths and weaknesses of our case, our frank assessment of the strengths and weaknesses of their case—all of that would have been visible to a party that we were engaged in litigation with, and we wouldn't have seen anything from them. It was a very potentially dangerous situation for us on behalf of the ratepayers and the government on behalf of the taxpayers.

Mr. Bob Delaney: Okay. Thank you. I'm just asking the Clerk to pass around a copy of a letter the committee received this morning from TransCanada Energy in regard to confidential information. They state—that's the part at the bottom that's highlighted in yellow: "If bidders in such processes cannot be confident that their sensitive information will be kept private, they may become reluctant to participate in future processes resulting in a loss of competitiveness and higher prices for Ontario taxpayers."

Those are their concerns from the other side of the equation. You've expanded a little bit on that. Would you care to elaborate on the release of confidential information through this committee and what consequences that might have for Ontario taxpayers?

Mr. Jim Hinds: Sure. They were actually two different issues, Mr. Delaney. The first issue was the actual impact on the taxpayer and ratepayer of disclosing our negotiating situation in a litigious environment. This issue raised by the TransCanada letter which I'm just reading—the highlighted section which you read is a slightly different issue which is equally valid in our view, which is that people prepare their business plans and they accept our proposals based on an assumption that we're going to hold things secret. We enter into confidentiality agreements with these people. Whether that relates to the way they finance their projects or that relates to the engineering design of the turbines or relates to other proprietary techniques that they may have in providing power, at the end of the day they feel that if they respond to our request for proposals and it's a competitive price, they're not going to find all of their information out there in the public realm. They believe in that and they rely on that. So we guard that very jealously.

Mr. Bob Delaney: Okay. Thanks. You're correct. Those were two different negotiations, but it was interesting that the same point was being made by both the OPA and by the proponent, albeit in different circumstances, but both felt the need that when commercially sensitive information is exchanged, it has to be contained at least for the period at which the information is sensitive or the contract is being negotiated.

Several witnesses have testified before the committee regarding the meetings between the Premier's staff and TransCanada Energy. Their testimony seems to line up with notes that we've seen from interviews with you and your colleagues on the file. For example, Jamison Steeve told us, "My discussions with TransCanada were exploratory in nature." Sean Mullin confirmed, "We were not authorized to ... and we did not engage in" any negotiation. Chris Breen from TransCanada confirmed that they were not negotiating directly with the company.

We also know that no offers were made and no deals were reached during these meetings. The former deputy to the Minister of Energy, David Lindsay, testified, "I don't think they actually had a deal.... why were we going through all this process?" Is that your recollection as well? Did they stay within those parameters?

Mr. Jim Hinds: Mr. Delaney, they did not make me aware of those parameters, so I did not know they had those parameters in my meeting with them. But I saw no behaviour from them in that meeting that was inconsistent with what they said. I did not see evidence of close engagement between the Premier's office staff or any of the people in the meeting that I was in and TransCanada.

My take-away from that, as Chair of the OPA board, was probably that TransCanada was playing a divide-and-conquer strategy at that particular point in time: If they heard something from the OPA that they didn't like,

that they were probably pretending or bluffing a bit. They had access to different people. I treated that as a distinct material possibility and one of the—I think you saw from that, the engagement was, "Okay, well, let's find out how far apart we are from these guys." In any event, the negotiations went nowhere and we ended up in arbitration.

Mr. Bob Delaney: Okay. Thank you. I think we're almost wrapped up. I'd just like to ask you about Minister Chiarelli's request that the OPA and the Independent Electricity System Operator work together to develop recommendations on improving the siting process moving forward. Of course, this review is going to reflect any recommendations made by this committee. Can you give me some of your thoughts on how this review might take place and any recommendations you might have from your observations thus far to the committee as we undertake that review?

Mr. Jim Hinds: I don't want to prejudge the very good work that the OPA staff is probably already going on this and hasn't yet had time to inform the board chair of, so I will make these comments in a personal capacity. Please accept them in that capacity only.

We have a disconnect. We don't have a consistent pattern of municipal planning that provides for electrical generation and transmission. You can go to a municipality and say, "Show me your plan." Some have it in there; some don't. That's a problem for us, who are trying to keep the lights on for everybody.

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

Mr. Jim Hinds: That's a problem for us. We're trying to keep the lights on for everybody. We need to know that we can get electrons to people, even in those municipalities where there's absolutely no provision for electrical generation or transmission. I think one of the things I'd like to see out of this process, just in my personal opinion, is trying to reconcile that, trying to come up with an overall energy plan for the province. We've had several of them and they've worked very well. They need to be updated with, how does that actually play out for people in the municipalities who want to flick their switch on the wall and have electrons come out on the hottest day in the summer and the coldest night in the winter?

Mr. Bob Delaney: Thank you very much, sir.

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

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Mr. Hinds, we are now going to switch from Oakville entirely to Mississauga here, where, in this particular case, there was an intention to relocate.

On document 7—although you don't really need to follow it, I'll just read a couple of points from it—it talks about how the OPA received a letter from the Ministry of Energy talking about the government's intention to relocate the plant. Then it goes on to say: "The letter is not a directive under the Electricity Act, 1998 and as such, while it is a statement of the government's intention to relocate the plant, it is not legally binding."

I know Mr. Tabuns started to talk to you about this, but I want to spend a bit of time on this. Why did you do it, then? Why did you go ahead and cancel and relocate the plant when you had no legal obligation to do such a thing?

Mr. Jim Hinds: Well, I think the OPA generally implements the policy of the government of the day in respect of electricity, so I think our bias is to try to be helpful in doing that.

I think in this particular case, if we had said, “No, we don’t want to be involved in this,” I think that there were only a couple of other options, one of which was legislation. I guess the Legislature could have gotten together and passed a bill, and I guess that bill would have been required to speak to the damages.

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In our experience, given that we deal with so many contracts and so many people, the last time I recall that happening was Bolivia, when they nationalized the tin mines. It’s difficult, given that we want to keep a good reputation in the global community and we want to keep capital flowing into Ontario for these projects. If you’re in the same food group as Bolivia, it’s not a good thing.

Mr. Victor Fedeli: Bolivia, because they cancelled contracts?

Mr. Jim Hinds: It was the tin mines. They nationalized the—

Mr. Victor Fedeli: No, I understand that, but I don’t quite get the parallel there. We’re not talking about going ahead and cancelling. I’m talking about why you did it when you aren’t legally obligated to.

Mr. Jim Hinds: Yes, because we thought that in the interest of trying to keep capital flowing that we wanted—and we also, frankly, had our obligation to make sure that the contract counterparty was treated fairly. We did nothing wrong.

Mr. Victor Fedeli: Who is your fiduciary duty to, the Liberal Party or the ratepayers of Ontario?

Mr. Jim Hinds: As a director, our fiduciary duty is to the OPA. The OPA, under the Electricity Act, has a variety of different objects. As I mentioned at the outset, depending on the question that we’re asked, our duties can shift a little bit. In terms of things involving environmental consequences, we actually have a duty, I think, to the citizens of the province.

But in respect to the cost matters—

Mr. Victor Fedeli: I appreciate that you have that. It says in your opening letter that you’ve received 64 directives and 11 letters, but you had no directive to do this.

Mr. Jim Hinds: Well, we received the original directives on an assignment. We received an assignment of the original Mississauga south plant from the person who procured it, which is the Ministry of Energy. I think that happened in 2005 when the OPA was created. The ministry had done a procurement before the OPA existed, so they assigned the contract over. We had assumed the role of contract counterparty there, so I’m not sure whether that came originally as a directive or whether it was just a straight contractual assignment.

Mr. Victor Fedeli: In that briefing note it says: “This letter is not a directive ... and ... it is not legally binding.”

If you go to page 2 of 2—who’s Michael Costello, by the way? I don’t know who that person is.

Mr. Jim Hinds: He’s a valued director on the OPA board. He’s the chair of my finance and audit committee.

Mr. Victor Fedeli: He says: “I’d appreciate understanding why a directive cannot be issued to cancel/move this project when we ... have ... directives in a wide variety”—why wouldn’t the government give you a directive?

Mr. Jim Hinds: To the best of my recollection—and again, I would defer to Mike Lyle, who’s the lawyer here—once the procurement had been initiated, I don’t think that a government directive can be issued to us to terminate the progression of the procurement once it’s contracted. In other words, I don’t think it was legally available. I think that we were the contract counterparty and had to go with it.

Mr. Victor Fedeli: If you go to document 8, the next page, third line down:

“The OPA was subsequently directed to enter into a contract” etc., etc.

I’m going to whip through about four pages here. I’m just working on the changing of wording.

Page 2 of 2, the third last line of the second last paragraph: “The government supports the OPA’s decision to terminate the contract...” It’s a draft from Minister Bentley; it never made it into the—go two more pages now into document 9, 2 of 2.

This is the final letter now: “The government supports the OPA’s decision to not proceed with the contract...” They hung this on you. Was it your decision not to proceed with the contract, or were you told not to proceed with the contract?

Mr. Jim Hinds: I’m sorry, I’m missing the subtleties of the drafting. I’m just working with the final documents.

Mr. Victor Fedeli: Was it your decision? So it was the OPA’s decision—it’s all on you?

Mr. Jim Hinds: I think it’s an accurate statement of what we were just talking about, which is that I don’t think the government mechanically could direct us or terminate the contract.

Mr. Victor Fedeli: So it was your choice, then. You’re the guy. You chose—

Mr. Jim Hinds: We were the contracted counterparty, and we weighed the different decisions as a board, and we decided that renegotiation was a better option than legislation.

Mr. Victor Fedeli: It used to say that. It used to say “negotiate an arrangement to relocate the plant or ... contract.”

This is the sentence that was put in: “The government supports the OPA’s decision to not proceed with the contract...” So it was your decision, then. You decided that, not the government.

Mr. Jim Hinds: No. I mean the government made a decision that they did not want the plant to proceed.

Mr. Victor Fedeli: Then why do you think they said you did it? It's a letter to you from the minister: "The government supports the OPA's decision to not proceed with the contract..." Is that misleading?

Mr. Jim Hinds: I think if you read the paper, it was the government's decision, and if you read the testimony of the former Premier, it was the government's decision not to proceed with the plant. I think, as mentioned, the government did not have the legal ability to terminate a contract once a directive had been issued or once the original procurement, in this case, had been done.

Mr. Victor Fedeli: So I want you to whip over to document 11, then, down at the bottom. This is from Steve Orsini in finance: "Vapour Lock-Mississauga ... Recover \$270 million from the rate base." Do you have any idea what he's talking about?

Mr. Jim Hinds: No, though that number looks—

Mr. Victor Fedeli: Yes, if you take the delta, right?

Mr. Jim Hinds:—suspiciously like the difference between \$310 million of costs in the OPA note dated April 29, 2013, and the \$40 million in sunk costs. I can't speak to that, but that number looks the same as that calculation would be.

Mr. Victor Fedeli: Yes, I felt the same way: \$310 million minus \$40 million equals \$270 million, so I'm going to have to ask them. This document isn't even a month old; this is one of the documents we recovered that talks about different things that are coming up. One of them is:

"Jim Hinds, Colin and Serge

"—Meeting today to discuss NRR."

Did you have that meeting?

Mr. Jim Hinds: No, I did not.

Mr. Victor Fedeli: It says, "Highest NRR that the board can live with." Do you know anything about what they're talking about here? This document isn't even a month old.

Mr. Jim Hinds: No, I don't.

Mr. Victor Fedeli: Okay. Then it says, "Prichard, Hinds and Colin are meeting tomorrow to deliver a message that we need an agreement for a relocation." Do you know what that is?

Mr. Jim Hinds: No idea. Are the dates on these right? Because around that kind of time, about 2012, would have been when there was a discussion—

Mr. Victor Fedeli: I'm telling you there are other things in this document, which you don't have there, that tell me this is a very recent document—incredibly recent—and the date is May 7, 2013.

Mr. Jim Hinds: "Greenfield is doing their due diligent and may not get financing"?

Mr. Victor Fedeli: That ties into the next article I have, today's Sarnia Observer, where it says, "Company Considering Two Sites in St. Clair..."

I've got to ask you: Is there a problem? Greenfield haven't picked a site now? Is there a problem with the site?

Mr. Jim Hinds: No. The deal with Greenfield, as finally negotiated with Greenfield, gave Greenfield the

option to search for a different site. But at the end of the day, Greenfield had the ability to build their facility on lands provided by Ontario Power Generation.

Mr. Victor Fedeli: There's an article in the Sarnia Observer today saying that they're still looking at sites.

Mr. Jim Hinds: It may well be. As I recall, they had at least a year from the time of signing the settlement and the renegotiation to make that determination. It might, in fact, have been longer.

Mr. Victor Fedeli: It says here, "Greenfield is doing their due diligent"—spelled wrong—"and may not get financing." Do you have any idea about "Prichard, Hinds and Colin are meeting tomorrow..."?

Mr. Jim Hinds: I have no idea, as I said. Rob Prichard was a lawyer at Torys who was engaged in the Greenfield matter around this time in 2012. Subsequent to the solution or the resolution of Greenfield, I don't think Torys has been involved—

The Chair (Mr. Shafiq Qadri): Thank you. Mr. Fedeli, regrettably your time has expired.

Mr. Hinds, I thank you for your presence before the committee. You are respectfully dismissed.

COMMITTEE BUSINESS

The Chair (Mr. Shafiq Qadri): There's a bit of an issue here. It may not be coherently stated, but here goes.

You have been in receipt of numerous documents, the last round of which was a USB key, one per caucus, distributed last time. We have also received, now, 13 boxes from the Ministry of Finance. We had, as you know, previously agreed to undertake to keep confidential documents within those, confidential.

By courtesy of the Premier's office, cabinet office and the OPA, in this whole cascade of documents, the confidential ones are singled out: These ones are confidential, these ones are non-confidential. The ones that have been received from the Ministry of Finance, because of time pressures, are not singled out, meaning confidential is mixed with non-confidential.

The Clerk would like to (a) receive direction, (b) not be the one responsible for separating them, and (c) send them back to finance, saying, "Separate them." That would include the 13 boxes we have just received recently and the USB stuff you got last time.

Interjection.

The Chair (Mr. Shafiq Qadri): I'm not going to repeat this.

Mr. Peter Tabuns: Sorry, no, the last sentence.

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The Chair (Mr. Shafiq Qadri): I don't know what the last sentence was. It just came out as is.

Yes, Mr. Yakabuski?

Mr. John Yakabuski: Okay, so I wasn't listening completely—

The Chair (Mr. Shafiq Qadri): That is a well-established tradition, Mr. Yakabuski.

Mr. John Yakabuski:—but that's not completely unusual either.

So finance sent them over unsorted, because there was a time commitment to get them to us by a specific date?

The Chair (Mr. Shafiq Qadri): Yes, because it was two weeks.

Mr. John Yakabuski: Okay. So did they not make an attempt to contact the committee and say, “We’re having a problem sorting. Can we get a new directive?” No.

The Chair (Mr. Shafiq Qadri): There’s no such thing. You can’t do a mid-flight directive.

Mr. John Yakabuski: You can’t?

The Chair (Mr. Shafiq Qadri): No—

Mr. John Yakabuski: Well, Captain Kirk could.

The Chair (Mr. Shafiq Qadri): Pardon me?

Mr. John Yakabuski: Well, Captain Kirk could. I’m sure Bob Delaney could; he’s done moon flights. So the problem is, now we’ve got the documents, but they’re not sorted.

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

The Clerk of the Committee (Ms. Tamara Poman-ski): I just want to go on the record. Okay. There’s a bunch of documents, so you received a bunch last week, right? And the folders, the ones that said “Confidential”—easy. Figure it out.

Mr. John Yakabuski: It’s the finance ones that are not sorted.

The Clerk of the Committee (Ms. Tamara Poman-ski): The finance ones are not sorted. Since last week, I have received 13 boxes from the Ministry of Finance, again not sorted, with the “Confidential,” plus I’ve also received OPA documents. They’re all confidential, so that’s easy to sort out.

First off, we need direction in terms of if you wanted to still keep those ones confidential from last week, because the committee decided to wait on it—

The Chair (Mr. Shafiq Qadri): Our recommendation to the committee, so you don’t have to belabour this further, is that the Ministry of Finance 13 boxes be sent back to finance, and the USB keys—anyway, you keep the USB keys; we don’t care about that—the information on it gets sorted and then re-sent to us.

Mr. Victor Fedeli: That’s a little bit of putting the toothpaste back in the tubes.

The Chair (Mr. Shafiq Qadri): Tube.

Mr. Victor Fedeli: Tubes. For instance, one of the documents that I used today had a line about one of those confidential pieces. I covered it, had the document copied with that piece covered—

The Chair (Mr. Shafiq Qadri): You redacted it.

Mr. Victor Fedeli: I had to. I honoured the—reluctantly redacted, because we took an honour here. You said we can have that material on our honour, so I did cover the line about the topic.

The Chair (Mr. Shafiq Qadri): Understood.

Mr. Victor Fedeli: My concern is, those are widely printed—

The Chair (Mr. Shafiq Qadri): Sure, and we commend you for your conscientiousness, but for you to duplicate that on-the-fly redaction—

Mr. Victor Fedeli: We’re going to miss something.

The Chair (Mr. Shafiq Qadri):—for, by the way, 50,000 documents or whatever it is, is probably not going to be feasible.

Mr. Victor Fedeli: Yes.

The Chair (Mr. Shafiq Qadri): Mr. Tabuns wants the floor.

Mr. Peter Tabuns: Well, just so that I can separate out the two matters. The toothpaste that is still in the tube—the boxes from the Ministry of Finance that you have received—I’m in concurrence that they should be sent back so that the confidential matters—

The Chair (Mr. Shafiq Qadri): Fine. Done. Is that the will of the committee? Mr. Yakabuski?

Mr. Peter Tabuns: If I can finish my statement, sir.

The Chair (Mr. Shafiq Qadri): Sure.

Mr. Peter Tabuns:—sent back so that the confidential documents can be separated and so that we get a key with the confidential documents and one with the non-confidential documents.

The Chair (Mr. Shafiq Qadri): Or they may be sent to you in hard copy, one or the other.

Mr. Victor Fedeli: Well, there’s 50,000.

Mr. Peter Tabuns: Yes. I would say it’s better to have a USB stick, just simply in terms of searching through. But are you referring, as well, to the two keys that we received previously?

The Chair (Mr. Shafiq Qadri): Are we referring to the two keys—

The Clerk of the Committee (Ms. Tamara Poman-ski): We are, but let’s deal with one thing at a time here, Mr. Tabuns. Let’s deal with the ones that I have not even given to you yet.

Mr. Peter Tabuns: Correct.

The Clerk of the Committee (Ms. Tamara Poman-ski): Mr. Tabuns, you want them sent back and you want them separated?

Mr. Peter Tabuns: Yes.

Mr. Victor Fedeli: They’re not being redacted. We’re going to get all of those documents. Just one will be marked “Confidential” and one won’t be, and we’ll decide—

The Chair (Mr. Shafiq Qadri): That’s right.

Mr. Peter Tabuns: And they will be, hopefully, kept in a separate file folder so it is easy to identify them, and not marked as confidential and mixed through.

The Chair (Mr. Shafiq Qadri): Yes, that’s the will of the committee.

Comments from the government side?

Mr. Victor Fedeli: So that’s on this one?

The Chair (Mr. Shafiq Qadri): The 13 boxes.

Mr. Victor Fedeli: We’re talking about only the one topic, right?

Mr. John Yakabuski: The ones we haven’t got yet.

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

Mr. Bob Delaney: On the matter of the boxes that we have not got yet, I very much concur with my colleagues: They should go back to finance with precisely those instructions to sort it out and give us some organized—

The Chair (Mr. Shafiq Qadri): Okay, so that's done. Any other issues?

Mr. Victor Fedeli: Yes. The topics that they had identified as confidential: Can I read those topics? That's not confidential, is it, the letter that we received?

The Clerk of the Committee (Ms. Tamara Poman-ski): The letter, no. It's a transmittal letter. No.

Mr. Victor Fedeli: So in that transmittal letter, it talks about four topics. I don't have it here. It's up in my office, but I know it was Ring of Fire, it was Cisco, it was the Samsung deal and one more.

Mr. Peter Tabuns: Ford.

Mr. Victor Fedeli: Ford.

The Chair (Mr. Shafiq Qadri): Ford Canada.

Mr. Victor Fedeli: Ford Canada. So are those the topics on these additional 13 boxes, or are those topics identified as well?

Mr. Bob Delaney: I'd like to know the answer to that, too.

The Clerk of the Committee (Ms. Tamara Poman-ski): It was on the letter that I—let me double-check.

Mr. Victor Fedeli: Yes. I'd left those up because we ran; I had to take everything out of there.

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes. Cliff's Resources, Ring of Fire, green energy investment agreement, Ford Oakville plant, Cisco Systems—that's per the letter from finance on May 31.

Mr. Victor Fedeli: I would be fine, with the documents we have not received yet, for them to take those back, segregate those, but return all, including those, right? But those will be in our confidential file, so that we can preview and make our own decision on the confidential ones eventually. Is that what we're talking about?

Mr. John Yakabuski: Yes.

Mr. Peter Tabuns: Yes.

Mr. Victor Fedeli: On the 13.

The Chair (Mr. Shafiq Qadri): Would you prefer that the Ministry of Finance does that or the Clerk?

Mr. Victor Fedeli: Oh, no, that's got to be done by the ministry.

The Chair (Mr. Shafiq Qadri): All right.

Mr. Victor Fedeli: So that's one. What else did you say you had?

The Clerk of the Committee (Ms. Tamara Poman-ski): We received documents from the OPA, and they're all confidential. So we need direction on that.

Interjections.

Mr. Victor Fedeli: Well, I'm not sure about that one, because everything we got from them they wanted confidential.

Mr. Peter Tabuns: I would ask that we hold that one over to Thursday. I would like to talk to my House leader before we make a decision on that.

The Chair (Mr. Shafiq Qadri): This in reference to the [*inaudible*]

The Clerk of the Committee (Ms. Tamara Poman-ski): No, the OPA ones I didn't distribute.

Mr. Victor Fedeli: We don't have those documents.

The Clerk of the Committee (Ms. Tamara Poman-ski): No, you don't have those.

Mr. Victor Fedeli: We need concurrence.

Mr. Bob Delaney: I think again we have some concurrence on that in both cases. I think it would be prudent to hear from the provider of the documents why they are confidential and what are the ramifications of releasing the documents? It would at least give the committee some frame of reference with which it can make an intelligent decision on the confidentiality of documents.

Mr. John Yakabuski: Well, the committee has already ordered them to release the documents. When we receive the documents, that's when we'll make the determination as to how we're going to deal with them.

Mr. Bob Delaney: You don't understand what I'm asking.

Mr. John Yakabuski: That's what we've done with the confidential documents we've received in the past.

Mr. Steven Del Duca: It's not disagreement—

Mr. Bob Delaney: That's not what I'm saying.

Mr. Steven Del Duca: [*Inaudible*] they provide some guidance as to why they believe they're confidential, not that they—we can still make the determination, right?

Mr. Bob Delaney: Yes.

Mr. Steven Del Duca: Yes. Some advice from them as to why they think—

Mr. John Yakabuski: Fine, fine. But—

The Chair (Mr. Shafiq Qadri): All right. Though I cannot precisely identify the will of the committee, if the most recently stated will of the committee is the will of the committee, I'll accept it.

Mr. Victor Fedeli: What is that?

The Chair (Mr. Shafiq Qadri): Well, that's what I can't quite figure out.

Mr. Victor Fedeli: The will of the committee was that we wait till the next meeting to talk about the OPA docs.

Interruption.

The Chair (Mr. Shafiq Qadri): The electricity is gone now, too.

Mr. Bob Delaney: Well, Chair, in that vein, we're all members of provincial Parliament and we have a responsibility as a committee, first and foremost, to protect the public interest. I think what the essence of the discussion here is that, as members of the Legislative Assembly, we have to be trusted to ensure that sensitive information stays sensitive.

Mr. Victor Fedeli: Yes, we'll get to that.

Mr. John Yakabuski: That's not the debate here.

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

Mr. Peter Tabuns: Since we're working through these, for the OPA documents I'd like to hold that decision over till Thursday. If someone from the OPA wants to be here to answer questions we may have, it's probably a useful thing—we may or may not.

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

Mr. John Yakabuski: If I can condense or give you what I think the will of the committee is, it's that the

documents we have not seen yet from the Ministry of Finance, which the Clerk is in possession of, be returned and sorted by them.

Mr. Victor Fedeli: We did that.

Mr. Peter Tabuns: We did that.

Mr. John Yakabuski: That's right. The documents from the OPA we're going to leave until Thursday to make that decision. That's the will of the committee, as far as I know.

The Chair (Mr. Shafiq Qaadri): Fine.

Mr. Bob Delaney: All right?

The Chair (Mr. Shafiq Qaadri): Now the previous USBs: Shall we figure that one out?

The Clerk of the Committee (Ms. Tamara Poman-ski): No, we haven't.

The Chair (Mr. Shafiq Qaadri): All right. The previous USBs that you have already received are still unsorted.

Mr. John Yakabuski: They're ours.

Mr. Rob Leone: They're ours.

Mr. Rob Leone: We won't be sending them back.

Mr. Victor Fedeli: But we've taken them in confidence.

Mr. John Yakabuski: That's right. Everything we did, the committee—

Mr. Steven Del Duca: You don't want them sorted?

Mr. Victor Fedeli: We will, but in the meantime the ones that we got, we've got.

The Chair (Mr. Shafiq Qaadri): Yes, that's fine.

Mr. John Yakabuski: We're not sending back anything we have.

Mr. Victor Fedeli: We have no intention of sending anything back that we have.

The Clerk of the Committee (Ms. Tamara Poman-ski): I just need direction: Did you want them to be kept confidential, and if they're going to be, how long? Do you know what I mean? I need direction for my office, in terms of when we exhibit stuff and everything. You can defer it and then committee can decide later, but just in terms of further on, I will need direction from the committee on these documents.

Mr. Victor Fedeli: I'm going to suggest, if I can—and I'm just going to do this on the fly—that we ask finance to reissue those, sort it for us, right? Because we're going to want them sorted eventually.

Mr. John Yakabuski: On a key.

Mr. Victor Fedeli: On a key, right? That will also help us in identifying what is confidential or not. The ones that we already have will be—I mean, you can't put that toothpaste back in the tube.

Mr. John Yakabuski: That's right. The reality of keeping the ones we have—we'll know if what we get back from finance is all of the documents.

Mr. Victor Fedeli: Yes, but I'm not worried about that. So it will have to be on our honour. We'll have to continue on our honour that we won't release the sensitive information, and it'll just have—but it's going to be wider than the MPPs, then. It's going to have to be. I

don't make photocopies, 50,000 of them. Somebody's going to have to hit the printer—

The Chair (Mr. Shafiq Qaadri): Are you content?

The Clerk of the Committee (Ms. Tamara Poman-ski): No, I'm not. I'm confused. Sorry; I'm confused.

Mr. Bob Delaney: Would it be helpful to outline some of our options in a subcommittee meeting on this particular—

Mr. Victor Fedeli: Well, we have to move on this. We've got documents floating.

Mr. Bob Delaney: Okay.

Mr. Victor Fedeli: There are documents being printed as we speak. I caught one, saw a word—I saw one of those four confidential documents was in one sentence. I think it's incumbent upon ourselves to make sure that we don't publicly release those documents.

The Chair (Mr. Shafiq Qaadri): So let this incubate for 48 hours until our next meeting on Thursday. Is that suitable?

The Clerk of the Committee (Ms. Tamara Poman-ski): Okay. Before you leave, I need to reconfirm that we're on the same page here. So the documents that I've received from the Ministry of Finance—that was 13 boxes that I have not sent to you. I'm going to be requesting for them to be sent back and they can split them up: confidential versus non-confidential.

The Chair (Mr. Shafiq Qaadri): Yes.

The Clerk of the Committee (Ms. Tamara Poman-ski): The other documents that I received from the OPA that are all confidential—we're agreeing to stand that down until Thursday for a decision.

The Chair (Mr. Shafiq Qaadri): Which means they're not released to you.

The Clerk of the Committee (Ms. Tamara Poman-ski): No, I have them. I'm not giving them—the previous documents I gave to you from Cabinet Office, the Premier's office and then the Ministry of Finance ones, the ones that weren't sorted, we're going to stand down and decide on what to do with those—confidentiality until Thursday. Agreed?

Mr. Peter Tabuns: Fine.

Mr. Victor Fedeli: Understanding that while there are some marked “confidential,” there was some of that confidential material—headlines—interspersed.

The Clerk of the Committee (Ms. Tamara Poman-ski): The Ministry of Finance ones were, yes.

Mr. Victor Fedeli: Oh, yes. So as long as we acknowledge that that is out there.

The Chair (Mr. Shafiq Qaadri): Fine. Do we need to specify the time of sorting done by finance?

Mr. Peter Tabuns: One week?

Mr. Victor Fedeli: Well, that's what got us in trouble the first time.

Mr. Peter Tabuns: That may well be true, but—

Mr. Steven Del Duca: Why don't you make it two?

Mr. Victor Fedeli: Peter, I've got to be honest. We're going through 50,000 that we already have; we can live with another week.

Mr. Peter Tabuns: Fine.

The Clerk of the Committee (Ms. Tamara Poman-ski): They said they would be done—

Mr. Peter Tabuns: Then I'm happy to go with two weeks on the sorting.

The Chair (Mr. Shafiq Qaadri): Two weeks?

Mr. Victor Fedeli: That's why they didn't sort them is because they only had a short—

Mr. Peter Tabuns: No, they got them all. They've done the preliminary search already.

Mr. Victor Fedeli: That's a good point.

Mr. Peter Tabuns: It will be three weeks, will it not?

Mr. Victor Fedeli: Well, do you want to go in a week, then?

Mr. Peter Tabuns: I'll go with two.

Mr. Victor Fedeli: All right. We'll go with two.

The Chair (Mr. Shafiq Qaadri): Is it the will of the committee, two weeks returned?

Mr. Rob Leone: Are we meeting in two weeks?

Mr. John Yakabuski: I have no idea.

Mr. Bob Delaney: We're fine, Chair, with two weeks.

The Chair (Mr. Shafiq Qaadri): Fine. Mr. Leone?

Mr. Rob Leone: I was just going to ask: Are we meeting in two weeks?

Interjections.

The Chair (Mr. Shafiq Qaadri): All right. I think this very fruitful discussion has come to its natural end. The committee is now adjourned.

The committee adjourned at 1704.

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