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Jeudi 6 juin 2013

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés

Chair: Shafiq Qadri
Clerk: Tamara Pomanski

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 6 June 2013

Jeudi 6 juin 2013

The committee met at 0831 in room 151.

MEMBERS' PRIVILEGES

MR. ZIYAAD MIA

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy to order. As you know, we're deliberating on energy infrastructure.

I welcome our first witness, Mr. Ziyaad Mia, counsel of the OPA. Mr. Mia, I would invite 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 the truth, the whole truth and nothing but the truth?

Mr. Ziyaad Mia: I do.

The Clerk of the Committee (Ms. Tamara Poman-ski): Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Mia. As you know, you have a five-minute opening address, beginning now.

Mr. Ziyaad Mia: Thank you. Good morning. My name is Ziyaad Mia. I am counsel at the Ontario Power Authority and I work in the legal, aboriginal and regulatory affairs division. My responsibility at the OPA is primarily for aboriginal affairs, and I also work on planning and regulatory matters.

I obtained my law degree in 1994 and was called to the Ontario bar in 1996. I am a member of the Law Society of Upper Canada, and I received a master's degree in law in 2005.

I joined the OPA in 2005 in the electricity resources division, where I was responsible for negotiating electricity resource contracts. I joined the legal, aboriginal and regulatory affairs division in 2008.

In addition to my work at the OPA, I am active in a variety of other roles, both professionally, as an adjunct professor at Osgoode Hall Law School, and in the broader community as a member of Human Rights Watch, Canada, a member of the Animal Care Review Board of Ontario, and through work in various charities and community organizations.

As a lawyer, my professional obligations require me to maintain the privilege and confidences of my client, the OPA. The OPA has waived the privilege for the purposes

of my testimony at this committee today. You have that letter from our CEO, Mr. Colin Andersen.

Prior to joining the OPA, I worked in private practice, focused generally on energy law. I also worked for a period of time in the office of the mayor of Toronto.

With respect to the issues before this committee, I had no involvement in the procurement, cancellation or relocation of the Mississauga plant or the Oakville plant. I was involved from time to time in the response to the motion of the estimates committee of May 2012 under the direction and oversight of Michael Lyle, general counsel at the OPA.

Given my focus on aboriginal affairs, document disclosure was not part of my regular duties. I can confirm that the document disclosure request was, in my experience at the OPA, unprecedented in terms of size and scope. You're all aware of a meeting that took place on August 22, 2012, between staff of the OPA and Jesse Kulendran. I was in attendance at that meeting with my colleague Kristin Jenkins. The meeting took place in the boardroom of the Deputy Minister of Energy from approximately 10 a.m. until noon that day.

With that background, I'm happy to try to answer any questions that you may have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Mia. Before I offer the floor to the PC side, as counsel, I'm sure you're well aware, just with reference to your statement about the OPA's waived privilege, as you know, as a justice policy committee of Parliament, we trump that to begin with in any case. We thank you for the waiver.

Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. Good morning, Mr. Mia. We're very pleased to have you here today.

Your last paragraph was about the meeting between the staff of the OPA and Jesse Kulendran from the Ministry of Energy. Who all exactly was at that meeting?

Mr. Ziyaad Mia: Mr. Fedeli, Jesse Kulendran was there; Ms. Jenkins, who you've heard from, was at that meeting; and I was at that meeting.

Mr. Victor Fedeli: No one else was there?

Mr. Ziyaad Mia: No one else was at that meeting.

Mr. Victor Fedeli: To be blunt, we have a "she said, she said" going on here at the committee. One says one thing and one says the other. Can you tell us what transpired at that meeting right from the beginning? How

were you contacted to come, what were you required to do and what happened at that meeting, in your own words? Thank you.

Mr. Ziyaad Mia: I'll try to give you my best recollection of that day, as it was almost a year ago.

In the morning of August 22, 2012, I was at work. There was a voicemail that I checked, and that voicemail was from my boss, Mr. Lyle. He had indicated that there was a need to call Halyna Perun at the Ministry of Energy, who was the director of legal affairs there, and that there was a meeting that he needed someone to attend, and he was asking me to attend that meeting. He had some details: The meeting would happen at 10 a.m. at the ministry and I needed to call Halyna to get some details. That was the voicemail. I scribbled some notes down; I believe you have those notes.

I then proceeded to call Ms. Perun. I don't have the note in front of me, but I believe you have my written notes. She asked me to attend a meeting at the deputy minister's boardroom, fourth floor, Hearst Block, 10 a.m.; to bring our Oakville non-privileged documents with me; "We're going to meet with Jesse Kulendran to talk about the documents," and Halyna indicated that she would try to attend that meeting—essentially. It's not verbatim; those are my recollections from my notes, but that's essentially the substance of that discussion with Ms. Perun.

Following that—again, this is sometime early in the morning, around 9 a.m., and the meeting is to take place at 10 a.m. It was impressed on me that it was an important meeting to be there at 10 a.m. I tracked down Mike Lyle—he was in a meeting with Ms. Jenkins—just to find out some more details, because I didn't know what the requirements of the meeting were or what it was about, other than we needed to go to the Hearst Block and meet in that room and bring our documents. At that point, I found Mr. Lyle and spoke to him for a brief bit. He found Ms. Jenkins. She had agreed to come with me to the meeting. I grabbed the documents, some note-taking material, threw them into a bag and we—

Mr. Victor Fedeli: Just one question: Was Ms. Jenkins requested as well, or did you ask her to come along?

Mr. Ziyaad Mia: I don't remember the exact details, but at the end of the day, she accompanied me to go up to the ministry.

We hopped in a cab because it was urgent to get there, and we went up to the ministry at Hearst Block for that meeting. We went to the meeting in the deputy minister's boardroom. Ms. Kulendran—I didn't know Ms. Kulendran before that meeting. My only interaction with Ms. Kulendran were the two hours on that day. I haven't seen her since. We then proceeded to talk a little bit about the documents. Again, I have some notes from that meeting which I believe you all have, so those specifics I can speak to. For the general discussion at the meeting, I can give you my best recollection.

We discussed a bit about the motion and the approach to the documents. There were concerns that some of our

documents were not responding to the motion precisely. We brought our documents—

Mr. Victor Fedeli: Can you just repeat that sentence?

Mr. Ziyaad Mia: I don't know exactly if I can repeat the sentence to you—

Mr. Victor Fedeli: Your documents didn't—

Mr. Ziyaad Mia: Yes, and to my recollection—this is not a verbatim recollection, but the substance of it is that these documents were not meeting the requirements of what the motion was asking for.

She indicated to us, I believe, that it needed to be in the date range of that motion, it needed to be correspondence and it needed to reference the Oakville and Mississauga gas plants. We had the Oakville documents there, non-privileged. There was a stack of them. I believe Ms. Kulendran said it was half a banker's box. It would probably be accurate to describe it as such. We then walked through those documents, essentially. We had a bit of a discussion about some of the documents. The bulk of the meeting was walking through those documents, page by page.

Mr. Victor Fedeli: On a one-by-one basis?

Mr. Ziyaad Mia: Correct. I know there's a discrepancy in who asked for that. My best recollection is, Ms. Kulendran asked for that.

We had the documents there, and as you know, our documents are sorted by custodian, so—not that there were any documents of mine, but "Ziyaad Mia pile." So we'd pull up a pile, "JoAnne Butler," whatever it was, and we would then walk through those documents, page by page, and apply this approach to determine whether these documents were, in fact, responsive to that approach or not.

0840

Mr. Victor Fedeli: When you say "apply this approach"—I don't want to put words in your mouth, but does that mean pulling documents out?

Mr. Ziyaad Mia: We didn't physically pull documents out. At this stage, I'm at one side of the table, Ms. Kulendran is beside me—she has a copy of her own of the documents, an exact copy of the documents—and Ms. Jenkins is sitting across the table. Again, we were very rushed here because it was impressed on us that it's important to get this done and walk through this meeting.

I asked Ms. Jenkins to note—I don't know if I asked, but at some point we determined we'd better mark them with the sticky notes, the famous sticky notes. Ms. Jenkins was just writing on notes "no reference to Oakville" or "out." We took those instructions, and she applied them to some of the documents. I believe you have those, so you can see that.

Mr. Victor Fedeli: So these are on the documents—not on Jesse Kulendran's set of them, but on your set of them?

Mr. Ziyaad Mia: On the OPA set.

Mr. Victor Fedeli: On the OPA set, there are sticky notes that say, "This shouldn't be here because it doesn't say this," or—

Mr. Ziyaad Mia: Now, don't quote me verbatim, but I believe some of the sticky notes say "out" and some of them say "no reference to Oakville."

Mr. Victor Fedeli: Sadly, you are being quoted verbatim; you're being transcribed.

Mr. Ziyaad Mia: I know. But in terms of reflecting what is on those notes.

Mr. Victor Fedeli: I understand.

Mr. Ziyaad Mia: I mean, you can pull them up and we can look at them.

Mr. Victor Fedeli: No, I understand, Mr. Mia. Thank you. Please carry on.

Mr. Ziyaad Mia: Essentially, we walk through those documents, we apply those notes to them and then we have a discussion with Ms. Kulendran about what happens next.

Just to back up a little bit, in going up, I didn't know the full extent of what this meeting was about. I was asked to go to a meeting. There were some concerns about our documents. We go there. In going up, Ms. Jenkins and I had agreed we would just listen. This was a meeting to listen, to see what Ms. Kulendran had to say, and then neither I nor Ms. Jenkins had any authority to agree or disagree to anything at that meeting. We were to come back to brief our CEO, Mr. Andersen, and Mr. Lyle, our general counsel. In that sense, we came back—we ultimately came back to brief them, and that was what our role was at the meeting: Hear what she had to say, walk through the documents to be clear as to what their requirements were, and then we went back.

Ms. Kulendran indicated that a new set of documents based on this process needed to be generated by—she said end of day. At that point, this document thing was taking up a lot of resources at the OPA, as you can imagine, and, I'm sure, at the ministry; but at the OPA, it was consuming a lot of human resources. A lot of us were working very late. So I sort of sarcastically said, "What does 'end of day' mean to you? To me, it kind of means midnight around these days." And she said 5 o'clock; it needs to be back at 5 o'clock the same day.

Mr. Victor Fedeli: So she asked for a new set of docs to be generated. Is that what you said?

Mr. Ziyaad Mia: Based on what we had done, a new set of non-privileged Oakville documents needed to be returned to them by 5 o'clock that day. That's end of day, essentially.

Mr. Victor Fedeli: Not Mississauga; this is Oakville.

Mr. Ziyaad Mia: This is the pile we were working on.

Mr. Victor Fedeli: Okay. It's always Oakville. Carry on, then, please.

Mr. Ziyaad Mia: At that point, we gather up the documents, go back to the OPA. I believe Ms. Jenkins had sent an email asking for an urgent meeting with Mr. Andersen and Mr. Lyle. That was essentially set up. She also had just talked to her assistant, I think, just to get the ball rolling in case we were going to proceed.

Mr. Victor Fedeli: This is Jenkins's assistant? Or Kulendran's assistant?

Mr. Ziyaad Mia: No, at the OPA.

We come back—I don't know the exact time; I believe Ms. Jenkins has provided her calendar to you—and around 3 o'clock we have a meeting with Mr. Andersen and Mr. Lyle, where we discuss that meeting, what happened, what the request is, and there's some discussion—I don't have a note of that meeting, so my recollection is, we discussed what happened in the meeting. Then Mr. Andersen—he made his decision, I guess, based on that meeting and other things he may have done for his due diligence. He then decided to proceed to follow that screen.

Mr. Victor Fedeli: Okay, I want to stop here, just for one second. So you're saying that you and Ms. Jenkins got back to the OPA and you did indeed meet with Mr. Andersen and Mr. Lyle—the four of you, or were there others in the room?

Mr. Ziyaad Mia: To my best recollection, the four of us.

Mr. Victor Fedeli: And you and Ms. Jenkins told Mr. Andersen and Mr. Lyle, "Here's what happened." You repeated, basically, what you said there.

Mr. Ziyaad Mia: Essentially, yes.

Mr. Victor Fedeli: Mr. Andersen agreed, or decided to go ahead and make the changes to the documents.

Mr. Ziyaad Mia: He ultimately made that decision. He did not make that decision in the meeting or at the end of that meeting.

Mr. Victor Fedeli: What were his comments in the meeting? "I'll get back to you"?

Mr. Ziyaad Mia: I don't recall his exact comments. My memory of some of what he said, probably refreshed by reading his testimony, is that we had some back-and-forth about, "What is this approach? How is it working?" He may have asked some questions; we answered them. I don't know what other factors he took into account, but ultimately, as you know, he decided to follow that approach.

Then at some point—now, if you look at the time span of that day, we're looking at somewhere around 3 or 3:30. These documents need to be turned and returned at 5 p.m. So at some point after that meeting, he has made that decision. He didn't relay it back to me, so he must have relayed it, I'm assuming, to Ms. Jenkins, obviously, that we were proceeding. Then those documents were reproduced, reflecting that approach, and then delivered at 5 p.m.

Mr. Victor Fedeli: Okay. What happened after Colin Andersen ultimately made the decision to remove the documents that were suggested by Jesse Kulendran? I don't want to put words in your mouth. Is that what happened?

Mr. Ziyaad Mia: Essentially, once he decided that it was appropriate to follow that approach—

Mr. Victor Fedeli: Is that the nice way of saying he decided to remove the documents?

Mr. Ziyaad Mia: The way—I mean, there's—

Mr. Victor Fedeli: You can tell us.

Mr. Ziyaad Mia: We're trying, at stages, to be consistent. As you've heard, the OPA—I mean, we carry out the energy policy of the government of the day, and it's important to be consistent. In the sense that we're responding to a committee motion, we want some consistency. I believe you've heard it before. We want to apply a consistent approach: first, that there's some rationality in that approach, and second, there are also concerns in the sense that OPA represents Ontario's interests for ratepayers. We don't want to expose ourselves because, as you know, we're in negotiations on the file.

Mr. Victor Fedeli: Mr. Mia, because I've got seven minutes left with you, I want to jump to the crux here.

Colin Andersen, based on what you told him, decided to—and correct me if I'm wrong. Just interrupt or just cut in. Colin Andersen decided to remove documents from the original pile of OPA documents so that it would be consistent with the documents that the Ministry of Energy originally said they would be putting in, and as I understand it, it turns out that they didn't remove their documents. They left you to remove yours alone. Am I correct in that?

Mr. Ziyaad Mia: Essentially, Mr. Andersen heard what we had to say. We were under the impression that this was the ministry's approach to responding to the committee request and that's the approach they were taking.

Mr. Andersen decided that we would be consistent and have the same approach, so those documents were re-vetted to apply that approach—

Mr. Victor Fedeli: Can you just say “removed”? Re-vetted, approach—did they remove the documents?

Mr. Ziyaad Mia: Essentially, this approach was applied and a new set, what we believed to be responsive to that approach, was produced.

Mr. Victor Fedeli: Okay, let me ask in another way: When you say, “This approach was applied,” does that mean removing certain documents?

Mr. Ziyaad Mia: Some documents, the documents that are marked as “No reference to Oakville,” were not then sent back to the minister.

Mr. Victor Fedeli: Were they removed from your original pile?

Mr. Ziyaad Mia: They were removed from that pile.

Mr. Victor Fedeli: Thank you very much. But it turns out that the ministry didn't apply their same method, did they?

Mr. Ziyaad Mia: No. In hindsight, 20:20, we understand that to be the case. We did not know that at that time, and we did not know that for several—

Mr. Victor Fedeli: So they hung you out to dry, by the way. I mean, that's apparent today. I don't mean to be rude, and that's not the intent of this discussion. We're trying to find out—

Mr. Ziyaad Mia: I can't speak to anyone's intent, so I can't agree with that comment.

Mr. Victor Fedeli: That's fair. So they told you, “Look, we're going to remove documents that aren't cor-

respondence, that are attachments, that don't necessarily say either specifically the words ‘Oakville’ or ‘Mississauga.’” They told you they were doing that and asked you to do that as well. Am I correct in that assumption?

Mr. Ziyaad Mia: That was our understanding from Ms. Kulendran, that this was the ministry approach.

0850

Mr. Victor Fedeli: Okay. Yes, that's fair. So you went ahead, based on what they told you they were going to do, and you removed documents that weren't correspondence, documents that they felt didn't, specifically to the letter of some guidelines, meet that requirement. But they didn't do that; they left everything in theirs. You're the only one who took the documents out—

Mr. Ziyaad Mia: In hindsight, from what I know now, looking back, yes, they did not use that approach because that became apparent—I don't know the exact date, but that became apparent—

Mr. Victor Fedeli: So what made you go back later and actually give us all the documents that you originally pulled out? Was it because you realized the ministry hoodwinked you and they didn't take them out and left you hanging out there, or was there some other reason why you turned over 20,000 more documents later, the ones that actually met the fuller description?

Mr. Ziyaad Mia: Just as a preface, the OPA's intent at all times, through my experience, has been to comply in good faith with the request of the committee. And you've seen that we've produced thousands of pages of documents to you.

Mr. Victor Fedeli: It's the ones you didn't produce that we're more interested in.

Mr. Ziyaad Mia: Yes, and I'm trying to explain how we got there.

Mr. Victor Fedeli: Look, I believe you and I appreciate what you're saying. I believe that meeting took place; I believe you when you say you were instructed to remove documents that were not correspondence that didn't say “Oakville.” anything that said “SWGTA,” which is southwest GTA. You were instructed to take those documents out because they were “non-responsive.” Am I correct in that?

Mr. Ziyaad Mia: That's the essential effect of the approach. When you look at the documents—

Mr. Victor Fedeli: Even though those documents did have to do with the cancellation of the gas plant in Oakville, you were instructed to take that out because it didn't have the word “Oakville” in it. Am I correct in that?

Mr. Ziyaad Mia: Now, I can't speak to every particular document because there are various pages of documents in there, so I can't speak to each document.

Mr. Victor Fedeli: But you did go through each document?

Mr. Ziyaad Mia: We did go through it, but not to read the content of every word in the documents.

Mr. Victor Fedeli: I understand. Do you think the SWGTA documents that you removed did have to do

with the Oakville gas plant and that's why you did bring them back a couple of weeks later?

Mr. Ziyaad Mia: Certainly. Some of those SWGTA documents would have dealt with the topic of the Oakville gas plant and ancillary issues as well. It's not a cut-and-dried in that sense. If you look at some of those documents, there are specific things relating to the Oakville facility, but then, there are ancillary issues because we do power system planning. So there would be issues that are kind of related to the impact of cancellation or transmission options—so it may be embedded in—

Mr. Victor Fedeli: Yes. Mr. Mia, I want you to know I believe you. I believe every word you've said here.

Mr. Ziyaad Mia: I appreciate that.

Mr. Victor Fedeli: I believe Kristin Jenkins. I do not believe Jesse Kulendran. When she sat in that same chair as you did, she put her hand on the Bible and took an oath and then she proceeded to tell us something that never did happen. She made up a completely different version than both you and Kristin Jenkins have said to us. I don't believe that meeting took place for any other reason than you to be instructed to remove documents; I believe that.

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

Mr. Victor Fedeli: Thank you, Chair. I appreciate that.

I believe, when you say that you were instructed to remove documents that were non-correspondence, they were skirting the issue. But I also believe they left you out there, whether it was done by design or not. You went ahead and took the documents out and gave us a short version; they gave us the full pack—well, allegedly full pack. It turns out from the privacy commissioner there's lots of things that were deleted and destroyed. I don't believe you deleted or destroyed anything.

I will ask you now, only because the privacy commissioner was here yesterday: Did you delete any emails, Mr. Mia?

Mr. Ziyaad Mia: Personally?

Mr. Victor Fedeli: Personally.

Mr. Ziyaad Mia: I wasn't involved in the procurement, cancellation or running of the facilities or the arbitration, so I didn't have any relevant documents to begin with on those matters. And if I did, I wouldn't have deleted them. My normal practice is to keep records, because I need to do my business.

Mr. Victor Fedeli: Should that be the normal practice of all government employees and agency employees?

Mr. Ziyaad Mia: I don't think I'm in a—as I said, my—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Fedeli. Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Mia, thank you for being here this morning. I know I will be covering some of the ground my colleague has touched on, but I just want to go through this in a consistent way.

Jesse Kulendran came before us and said, "I did not direct them to remove any documents." By "them," I

gather she's referring to you and Kristin Jenkins. Is that true?

Mr. Ziyaad Mia: I'm assuming she's referring to us, and the OPA generally, I would assume.

Mr. Peter Tabuns: And just again, the documents she asked you to remove, identified as ones that shouldn't be coming forward—was there any consistency in the pattern that you saw?

Mr. Ziyaad Mia: Now, Mr. Tabuns, I haven't undertaken—I don't know if you have to go vote?

Mr. Peter Tabuns: Hopefully not.

Mr. Ziyaad Mia: Or is that the fire alarm?

I haven't undertaken any comprehensive review of those documents since that day. I haven't gone through to see if there is any pattern. To me, it was a narrow reading of the motion that was applied. There was no hunt for a particular document or anything in that sense. It was just, "Here's a reading of the motion; it's on the narrower side; apply that approach."

Again, this is my approach to it. If you apply that approach, you might get various things taken out. It wouldn't be the approach I would use if I was looking for some particular document.

Mr. Peter Tabuns: As a lawyer, were you skeptical of the directions she was giving you?

Mr. Ziyaad Mia: My role there was to hear what they had to say and go back and brief my boss and the CEO. That's exactly what Ms. Jenkins and I discussed going up to the meeting: that we didn't have the authority; we didn't fully understand, going there, what the meeting was about; and we didn't have the authority to make any decisions. So at that stage, we listened. I took my notes. We marked the documents so that we would have a record of what needs to be done if we do proceed. And then we went back, discussed with our CEO what transpired, and then he ultimately made the decision to proceed.

Mr. Peter Tabuns: Did you raise any questions with Jesse Kulendran about her interpretation of what documents were relevant and which weren't?

Mr. Ziyaad Mia: I did not because I didn't believe that it was my role at that meeting. It was to hear what they had to say and come back and report. I wasn't there in a role to either advise her or challenge her.

Mr. Peter Tabuns: The government was indicating, in this period, really extreme reticence to release documents. In fact, we were having quite a time in this committee trying to get at documentation. Whose goals do you think were being achieved by the interpretation that was being placed on which documents were relevant by Ms. Kulendran?

Mr. Ziyaad Mia: Mr. Tabuns, I'd love to help you. I have no—really, way beyond the scope of my capacity or knowledge because I wouldn't know why that approach was used. I didn't ask why that approach was used. Again, I don't know if it would have even been appropriate for me to have that discussion with her, but again, given the timeline of that day—we're looking at between 10 a.m. and 5 p.m. that all of this transpired. So

we went to the meeting. It was a very busy meeting; we had that meeting with her for a couple of hours. We went back; we had a little huddle about staff, just, if we were proceeding, how to marshal resources to get it done; and then briefed our CEO and then he made a decision and we moved on.

Mr. Peter Tabuns: Okay. Because when we look at it, what Jesse Kulendran was giving you seemed to have been a very different interpretation of the motion that came out of this committee, very different from what the Ministry of Energy was applying. What she was giving you was something that was much closer to the position that the Liberal politicians were adopting—a very, very narrow assessment. Would you agree that Ms. Kulendran’s goals were much closer to those of the Liberal political staff and politicians than of the civil service?

Mr. Ziyaad Mia: I really can’t speak to what Ms. Kulendran’s intent or goals were at that meeting or the outcome or what she intended to happen. It would be pure speculation, so I don’t know.

Mr. Peter Tabuns: Okay. Did Jesse ever indicate she was working on behalf of political staff rather than in her capacity as a civil servant?

Mr. Ziyaad Mia: My best recollection is, I did not hear that from her. Our understanding was that she was representing the ministry there. The meeting was called by Ms. Perun, who’s a civil servant, the director of legal affairs. It was held in the deputy’s boardroom, not in the minister’s office. Ms. Kulendran, I know in hindsight now—and Ms. Jenkins—I knew who she was—was involved in estimates committee prep for documents and whatnot. So in my mind, she was representing the ministry, clothed in authority to have this meeting. I had no reason to believe otherwise than that.

Mr. Peter Tabuns: So she didn’t give the impression she was working as a political staffer?

Mr. Ziyaad Mia: I didn’t get that impression.

Mr. Peter Tabuns: Okay. On October 3, 2012, Kristin Jenkins sent an email to Colin Andersen, copying you and Mike Lyle: “August 22 meeting with Jesse Kulendran on OPA’s Mississauga and Oakville power plant documents.” It’s PC document 1. Did you consult with Kristin Jenkins before she wrote her memo to Colin Andersen?

0900

Mr. Ziyaad Mia: I don’t recall if we consulted. I agree with the contents of this memo, and the second paragraph indicates that we had had a discussion about how that meeting went, because at this point it was more than a month prior to the date of this memo. So, at some point I’m sure we had a discussion about that meeting.

It’s helpful to have context here. The week of September 24 I was on vacation, as I kind of was having document withdrawal, and went out of the city to get a bit of fresh air, so I was not in the office. If there were things happening on the documents, I wasn’t there. At this point she probably would have spoken to me. I believe her testimony is—and I’ll rely on that—that on October 2, she had a discussion with Colin Andersen and

we realized that the ministry was taking a different approach. She then had followed up with me about, “Hey, what happened at that meeting?” I remember we went through a page-by-page walk-through, which is then helpful, and at some point we find those documents in all our documents.

So, I can’t recall if she consulted me on this, but I do agree with the contents of this memo.

Mr. Peter Tabuns: You do agree with the contents? Her language is somewhat stronger than you have used this morning. She notes that Jesse directed the OPA to exclude attachments—“Jesse directed us to exclude SWGTA.” Is this a more accurate record of what happened? It wasn’t just a friendly matchup of documents; you were being told, “Don’t bring this document forward”?

Mr. Ziyaad Mia: If I can be clear, just to correct the impression, if I’ve left the wrong impression—she has used the word “directed”—

Mr. Peter Tabuns: Twice.

Mr. Ziyaad Mia: These were instructions from Ms. Kulendran to us. We didn’t talk about ministry documents. We were there to talk about the OPA’s Oakville non-privileged documents, and we walked through those documents. Ms. Kulendran had indicated to us that this is the approach the ministry is using, and the effect—my best recollection is, I don’t know if she said that SWGTA is not out. But if you look at the documents and what’s out, that is effectively what happens. So, where there’s a reference to SWGTA and no Oakville reference, essentially, that falls within the narrow interpretation. You would then have the effect of the SWGTA in the correspondence then being pulled out. So the outcome is such that SWGTA is left out by that approach.

Mr. Peter Tabuns: So did Colin Andersen take it that these were directions from the government when you went back and briefed him in the afternoon?

Mr. Ziyaad Mia: Ms. Jenkins and I would have indicated to him that this is an expectation that the ministry would like to see applied to these documents, and that that’s the approach they’re using.

Mr. Peter Tabuns: Okay. Had you interacted with Jesse Kulendran before?

Mr. Ziyaad Mia: My only interaction with Jesse Kulendran was from 10 a.m. until noon on August 22, 2013.

Mr. Peter Tabuns: In total?

Mr. Ziyaad Mia: In total. I’ve probably spent more time thinking about it than the two hours themselves.

Mr. Peter Tabuns: The OPA got quite a lot of public criticism for what Jesse told you to do. Was there ever a desire to explain this on the part of the OPA, to say, “Hey, we were making best efforts and this person from the Ministry of Energy came in and clipped our wings and told us to pull back a whole bunch of documents”?

Mr. Ziyaad Mia: Well, if you can clarify—we’ve always tried to be straightforward and comply in good faith, from my experience at the OPA. When it became clear to us that there was an inconsistent approach used, I

believe you've seen we've moved quickly to disclose those documents that were not disclosed as a result of that approach. So, 6,400, approximately, additional pages were released. We've responded in that sense. We've tried to articulate that we've acted in good faith.

Mr. Peter Tabuns: I think I was unclear in my question, because I wasn't pointing out a shortcoming on the part of the OPA. You effectively were given instructions that put you in a very difficult position and caused public embarrassment and criticism. You have an explanation, in part, that you were told by the Ministry of Energy, "Hey, you're being far too open here. You need to cut back on what you're making public." Did the Ontario Power Authority ever think to say, "In fact, we were going to be far more open, but the Ministry of Energy said, "Let's get rid of these documents. Let's set these aside"?"

Mr. Ziyaad Mia: I appreciate the question. It wouldn't be my role to have made those decisions or those responses. That would be outside the scope of my duties, so I don't know how the responses to particular issues were dealt with. It is not within the scope of my duties.

Mr. Peter Tabuns: Okay. You're aware that the Ontario public service investigated Jesse's interference. Did they speak with you?

Mr. Ziyaad Mia: They did not speak with me.

Mr. Peter Tabuns: In the end, did you feel that Jesse Kulendran gave the OPA inappropriate direction?

Mr. Ziyaad Mia: I don't know if it's really for me to say it was inappropriate. On the scope of reading the motion, it's on the narrower side. In hindsight, obviously, now that I realize there was an inconsistent approach, certainly if that had come to our attention earlier, we would have resolved it earlier and avoided some grief. But I don't know if it was inappropriate.

Again, if our appreciation of it was that, "This is the ministry approach," and Ms. Jenkins and I were walked through that approach. We came back and briefed our CEO—as I've said, OPA's intent is to try to implement government policy as best we can, and we try to have a consistent approach. In that sense—

Mr. Peter Tabuns: I don't have an argument with that.

Mr. Ziyaad Mia: Yes. In that sense, given what I knew then, it was not inappropriate that we would try to do that and work with them. Hindsight is always 20:20. Yes, now we see that it's inconsistent, and I don't know any of the ministry's side of why there is an inconsistency or why Ms. Kulendran indicated those things to us. I can't speak to that, but certainly now that I look at it in hindsight, I wish there were more clarity.

Mr. Peter Tabuns: Okay. I'm going to go in a different direction here. You're currently involved in the FOI process for the OPA?

Mr. Ziyaad Mia: I have been involved from—because our FOI coordinator was on medical leave, and all hands on deck, so I was involved at some point last year.

Mr. Peter Tabuns: How long have you been involved with the FOI process for the OPA?

Mr. Ziyaad Mia: Last year, I was involved for several months—maybe five months, six months. I've been working on it a little bit now just because we're short on some staff.

Mr. Peter Tabuns: And were you involved in 2010 or 2011?

Mr. Ziyaad Mia: I was not.

Mr. Peter Tabuns: Okay. Were you involved in any requests for information about either the Mississauga or Oakville contracts?

Mr. Ziyaad Mia: In an FOI—

Mr. Peter Tabuns: Yes.

Mr. Ziyaad Mia: Not to my knowledge. We used our original search of the documents, as you know; we leveraged some materials that were gathered in an FOI request. I wasn't involved in that FOI request per se. I was involved on May 28 or thereabouts, when Mr. Lyle asked a number of his staff to assist in responding to the committee's request.

Mr. Peter Tabuns: In your experience, was there ever any internal pressure to limit document disclosure?

Mr. Ziyaad Mia: In my experience with the OPA? I can't say there has been.

Mr. Peter Tabuns: Do Ontarians have the right to access information from the OPA?

Mr. Ziyaad Mia: I believe in open access, personally. Again, my experience is that the OPA wants to act in good faith and in compliance with the law. It respects freedom of information. We certainly have staff in the process that we try to respond to FOIs—

Mr. Peter Tabuns: Do you believe it's properly carried through by that Ontario Power Authority?

Mr. Ziyaad Mia: In my experience, yes. It's a learning process, because this document disclosure process has certainly taught us a few lessons on large document discovery and disclosure, so yes.

Mr. Peter Tabuns: Did Ben Chin ever comment on the FOI process or request denials?

Mr. Ziyaad Mia: I had limited contact with Ben Chin other than casual contacts as a fellow employee in the OPA, so I can't say. I had no discussions with him about that.

Mr. Peter Tabuns: Mr. Chair, how much time do I have?

The Chair (Mr. Shafiq Qadri): Five minutes, Mr. Tabuns.

Mr. Peter Tabuns: Five minutes; okay.

Are you familiar with the Oakville and Mississauga gas plant contracts?

Mr. Ziyaad Mia: Not in any way other than very generally from what I know publicly and just having been in the OPA. I don't know any details about particular facilities.

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Mr. Peter Tabuns: Are you familiar with the risks of going into arbitration?

Mr. Ziyaad Mia: Generally? Again, I work in aboriginal and regulatory affairs; so I'm not a corporate lawyer, but generally I would understand the risks of being in an arbitration or in a litigation situation.

Mr. Peter Tabuns: Were you involved in any way in the renegotiation of the Greenfield contract?

Mr. Ziyaad Mia: I was not.

Mr. Peter Tabuns: Were you and the OPA aware of the community opposition to the Mississauga gas plant?

Mr. Ziyaad Mia: I was aware of it in the sense that it was publicly known.

Mr. Peter Tabuns: And the Oakville gas plant?

Mr. Ziyaad Mia: Yes, I was aware of that.

Mr. Peter Tabuns: What was the response within the OPA? What was your understanding of this rejection or resistance to these plants?

Mr. Ziyaad Mia: Again, if you could clarify your question. I wasn't involved in any of those projects, so other than what we see in our news clippings, that there are issues, opposition to the facilities—and then ultimately the facilities were cancelled. Obviously, I was aware of that in that it involves our agency.

Yes, we've signed contracts to build facilities. You're turning a ship; you're making some decisions. They are obviously large contracts, and they will then need to be changed or cancelled. Whatever the outcome would be taxing, but I wasn't directly involved in the procurement-relocation-cancellation issues, so I can't speak directly to that.

Mr. Peter Tabuns: Okay. Thank you, Mr. Mia.

Mr. Ziyaad Mia: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To the government side: Signor Del Duca.

Mr. Steven Del Duca: Thank you, Mr. Mia, for being here with us this morning and for answering our questions.

I know that a lot of territory has been covered by the members opposite regarding the meeting on August 22, but I want some additional clarity—I hope you don't mind—around some of the stuff.

I know it was discussed previously in response to some of the other questions. Obviously, the Ministry of Energy was conducting their own concurrent search alongside the OPA. Just to be clear, did it seem logical to you that the OPA and the ministry would touch base in terms of the search process in order to compare notes and ensure that the request of the committee was being met? Would that seem like a logical step to you?

Mr. Ziyaad Mia: As I've said in response to some of the other questions—and you've heard testimony from some of our staff—given our role in implementing policy, it's helpful to have a consistent approach in things, to be smooth in carrying out policy. And in this particular case, in responding to the motion, it was important to have a consistent approach.

The parallel issue was that there were negotiations ongoing with the counterparties to these contracts. Ontario and the OPA would potentially have a common

interest as well in protecting the broader Ontario interest with respect to those counterparties.

So yes, a consistent approach is generally important.

Mr. Steven Del Duca: Which would be consistent with what your CEO, Colin Andersen, did say in a press conference here at Queen's Park when he was discussing this particular topic. He said that "it's natural that we compare notes on what we are doing."

So you would agree again that Mr. Andersen was making an appropriate statement when he said it was important to compare notes and make sure that both the ministry and the OPA were following a similar approach with respect to the request. You would agree that, again, that makes sense.

Mr. Ziyaad Mia: In general, yes.

Mr. Steven Del Duca: Yes, logical sense. Okay.

I know there was some discussion regarding the issue of documents arising from that August 22 meeting that weren't disclosed at that particular point in time, but just so we have some clarity around that, the 700 or so documents that weren't disclosed post-August 22 were ultimately disclosed on October 12. In fact, in addition to the 700 documents that weren't initially disclosed, there were somewhere in the neighbourhood of 14,000 documents that flowed around October 12. Is that correct?

Mr. Ziyaad Mia: My best recollection—and a lawyer's not good with numbers, but I'll give it a shot—I believe on October 12, roughly just under 14,000 pages were disclosed. Roughly 6,400 of those pages were related to the outcome of the meeting of August 22. So ultimately, yes all those documents were released.

Mr. Steven Del Duca: Thank you for helping to clarify that.

Earlier, you talked to us a little bit about your role at the OPA and your reporting relationship. When Ms. Jenkins was here, she was asked if she reported directly to Ms. Kulendran and she said no. I just want to be clear on this: The same could be said for you. You don't report to Ms. Kulendran.

Mr. Ziyaad Mia: I report to Michael Lyle at the OPA.

Mr. Steven Del Duca: Thank you. Okay, fantastic.

When he testified here before this committee, Deputy Minister Imbrogno did state that Ms. Kulendran—and I'm quoting here—"was in a capacity of coordinating. She wasn't in the capacity of providing direction."

Ms. Kulendran herself told our committee, "I did not have the authority to direct the OPA."

Based on what you've told us so far and what we've heard previously, that would seem accurate: Ms. Kulendran did not have the authority to direct the OPA. Is that correct?

Mr. Ziyaad Mia: I believe you may have covered this ground in previous testimony. In the sense of under the law, under the Electricity Act—the formal authority to direct, because the OPA follows direction from the Minister of Energy—in that sense, as I believe Ms. Jenkins said—capital-D direction under the act—yes, Ms. Kulendran does not have the authority to direct the OPA. Only the Minister of Energy can direct the OPA.

Mr. Steven Del Duca: Okay. Not to belabour this point, but I do think it's important, given some of the suggestions that have been made by members on the other side: When Ms. Kulendran testified here before this committee, she did say to us, and I'm going to quote her again: "I did not direct the Ontario Power Authority to exclude documents. I do not have the authority to direct the Ontario Power Authority to exclude documents."

"The conversation of August 22 was about sharing observations that had been made to us through the ... review of the documents, but it was not to provide direction."

Then we had the deputy minister here, Mr. Imbrogno, about the allegations that had been put out by some of the members opposite. I quote him as well: "I never directed Jesse to go to the OPA and ask them to exclude documents. I never myself directed the OPA to exclude documents. When I talked to Jesse about the allegation, she told me ... that she did not direct the OPA. I have no reason to not believe what Jesse" has said.

So that's Jesse; that's the deputy minister. Then, of course, Secretary Peter Wallace launched an investigation into the allegations and found no evidence of wrongdoing. Ms. Perun told us, "I believe her."

In terms of making sure that—and I know this sounds like we're going over the same points over and over again, but I think it's really important, because there is certainly a lot of stuff that's being suggested by members opposite that strikes a bit of a different tone from the quotes that I've just provided to you.

I think there is one thing that we can agree on: that there was—let's call it a miscommunication. But all documents have now been disclosed, and Ms. Kulendran was not in a position to direct the Ontario Power Authority. Is that correct?

Mr. Ziyaad Mia: As I've said, she doesn't have the legal authority under the act to capital-D direct the authority.

But I want to be clear that at the meeting of August 22, Ms. Kulendran provided us with instructions and an expectation that the narrow reading of that motion, that approach, was the ministry approach to the documents, and that approach was expected to be followed by the OPA.

Now, as I have testified just earlier this morning, neither Ms. Jenkins nor I were in a position to agree or disagree with that, because we didn't have the authority to do that. We took that information back to our CEO. We discussed it with him; we explained to him what was required. He then took that information and then did his own due diligence and made a decision to then follow that approach.

So I'd have to disagree with Ms. Kulendran: That meeting was not about comparing notes. We did not look at ministry documents. We weren't asked for our opinions about ministry documents. We were looking at OPA's Oakville non-privileged documents, and Ms. Kulendran was giving us instructions as to how to apply those. Ms. Jenkins, in particular, was writing notes on them, based on that discussion.

Mr. Steven Del Duca: Great. Thank you, Mr. Chair. I think we're done with our round.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. To the PC side: Mr. Michael Harris.

Mr. Michael Harris: All right. Good morning.

Mr. Ziyaad Mia: Good morning.

Mr. Michael Harris: Were you uncomfortable about or did you have any misgivings as to what Ms. Kulendran was directing you to do?

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Mr. Ziyaad Mia: My best recollection is, I don't think I had any discomfort or misgiving at that meeting. We were there to listen to what she had to say and come back and report back to our CEO, which we did. As I've said, on the scope of reading that motion, it's on the narrower end. We probably would have explained that to our CEO, and then he ultimately would have made that decision.

Mr. Michael Harris: So at no time during that briefing were there any questions that you felt you needed to raise?

Mr. Ziyaad Mia: Again, our role in that meeting was to go there. We were asked to go. We agreed to just listen to see what was going to be said because, going up there, we didn't understand the full substance of that meeting. Because we weren't making a decision, it wasn't our role to have a discussion about it or challenge Ms. Kulendran. We recorded as best we could what she was asking us to do in terms of the OPA, and we took that back to our ultimate boss.

Mr. Michael Harris: Did you feel there was clarity after that meeting was—

Mr. Ziyaad Mia: What was required?

Mr. Michael Harris: Yes.

Mr. Ziyaad Mia: I felt there was clarity of what Ms. Kulendran was indicating to us was required from the ministry, yes.

Mr. Michael Harris: Whose version of events is more credible, in your opinion? Do you believe Kristin Jenkins or Jesse Kulendran?

Mr. Ziyaad Mia: With respect, I was the third person there, so I don't know it's for me to decide who's—I was in the room and I have my recollection, and my notes of that meeting as well, which I believe you have. My recollection is consistent with Ms. Jenkins'. So it's not that I agree with Ms. Jenkins. To my recollection, that is what transpired at that meeting.

Mr. Michael Harris: After that meeting, what further interactions did you have with regard to document production?

Mr. Ziyaad Mia: Again, given the volume of documents and the task at hand, there were a lot of people marshalled from different departments of the OPA to actually just apply human resources to get documents produced. So I was involved in working with those people to produce documents. Just getting them ready and produced was a task, so I was involved in that process. So, essentially, yes, just assisting in the document disclosure process.

Mr. Michael Harris: After the meeting, when was your next contact with Halyna Perun?

Mr. Ziyaad Mia: My next contact with Halyna Perun? I believe I sent—and this is just my best recollection. I believe I sent Ms. Perun an email on the afternoon of August 24, just indicating—because at that point we were producing the non-privileged documents for both facilities. This approach was applied to those documents, and they were expected to be then turned back to the ministry at end of day on August 24, which was a Friday.

At some point, we had flagged some issues about—you've heard them before from our previous witnesses—commercial confidentiality, putting counterparties at risk, because there's confidential information in there, commercially sensitive information, putting at risk Ontario's and the OPA's solicitor-client privilege; those sorts of issues. So I had sent an email on behalf of Michael Lyle—he wasn't available—indicating to Ms. Perun that we'd flagged some of these issues, that these sorts of things are in the documents because they're there, and we wanted to bring that to her attention that these are risks.

Mr. Michael Harris: What was her response to that email?

Mr. Ziyaad Mia: If I recall correctly, I believe she responded to me several days later indicating she'd had some discussion with Michael Lyle. Again, it's just my recollection: I think I had a question in there about the role of not this committee but I guess the estimates committee's request in terms of legal privilege and had she thought about that. She said that they're thinking about it, and we should think about it as well, essentially.

Mr. Michael Harris: Did you at all discuss with her the meeting of August 22?

Mr. Ziyaad Mia: Not that day. When it became apparent that there was a variance or discrepancy in the approach to the documents between the ministry and the OPA, I believe I gave her a courtesy call, because Ms. Perun is a government colleague. She's a lawyer. I did not want her thinking that I was casting any aspersions on her, that she'd set up this meeting and now there was some issue about that meeting. So I believe I did call her at some point, but I can't recall the full details of that.

Mr. Michael Harris: And what was her response to you about that—

Mr. Ziyaad Mia: I don't recall. It was colleague-to-colleague, just to say, "Heads up. You know what? I'm not pointing any fingers; I'm not pinning anything on you. It's just that this meeting, obviously, has caused us some grief now because there is a discrepancy in approach." That's essentially what was a courtesy call.

Mr. Michael Harris: Did you have any involvement with the subsequent document dumps?

Mr. Ziyaad Mia: If you can give me some more clarity on what—do you mean additional disclosures?

Mr. Michael Harris: Right.

Mr. Ziyaad Mia: As I said, I was involved—

The Chair (Mr. Shafiq Qadri): We appreciate the elevation of vocabulary.

Mr. Ziyaad Mia: Thank you. I'm a big fan of that.

Essentially, again, there was a lot of paper flying around, so I'm trying to recall. I was involved with many OPA employees in trying to produce documents. What has been called the first disclosure in September—I was involved in that, obviously, getting those documents together, and then there was another disclosure, I believe, in October. I probably would have supported some of that, and then there was a third disclosure. I don't believe I was involved in any way in the third disclosure.

Mr. Michael Harris: What advice did you provide Colin Andersen, Kristin Jenkins or anyone else at the OPA with regard to that?

Mr. Ziyaad Mia: As I've indicated, when we left the meeting with Ms. Kulendran, Ms. Jenkins and I—obviously, seeing the urgency of the matter, she emailed Mr. Andersen's assistant and set up a meeting, so we got a meeting at some point that afternoon. The four of us met—Mr. Andersen, Ms. Jenkins, Mr. Lyle and myself. We discussed the meeting and what transpired. I don't have a full recollection of all the details of that meeting, but I believe that Mr. Andersen has said that we had a discussion about the approach that was being taken by the ministry, as we understood it at that point, whether it was narrow or not, and then he took that information and ultimately made the decision. He did not make the decision there, but we discussed it, I'm sure, and the approach, and then he went and made the decision.

Mr. Michael Harris: And what were Kristin Jenkins's comments at that point?

Mr. Ziyaad Mia: I don't recall the details of that meeting because, again, that day was moving. I didn't take a note in that meeting.

Mr. Michael Harris: Was there anybody else? It was Colin Andersen and Kristin Jenkins. Was there anybody else attending?

Mr. Ziyaad Mia: Mr. Lyle, Michael Lyle. I believe he's testified to the committee previously.

Mr. Michael Harris: Why did the OPA redact documents before turning them over?

Mr. Ziyaad Mia: Again, it's my recollection of what happened, because a lot of things were happening. Some redactions were made for non-responsive—clearly, as all of us know, you'll have a briefing document or some document dealing with a number of projects because you will have status updates or whatnot, so there may be many issues on one document. One piece may be, say, Oakville, and then the rest of it is all sorts of other work we're doing, especially if it's commercially sensitive. As you know, the OPA contracts with a lot of counterparties, a lot of sensitive information, so we wouldn't want other counterparties' information out in the public realm because that would prejudice our commercial interests, so some of that was redacted. I believe there was some issue about banking information being redacted at some point because somebody astute flagged that we were disclosing documents—

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

Mr. Ziyaad Mia: —that had banking and financial information of counterparties. We didn't want that out in

the public, as you would know, because we're putting someone's bank account at risk and their financial interests.

Mr. Michael Harris: Right. Were those documents turned over to the Clerk first, or to the ministry?

Mr. Ziyaad Mia: I can't speak to the actual transfer of documents; I wasn't involved in that.

Mr. Michael Harris: Did you provide any advice with regard to the document redactions?

Mr. Ziyaad Mia: Again, it was a large group of people because of the tight timelines, so I was probably involved in assisting people to redact and doing some of it myself, because it was all hands on deck. At some point there were various of us involved. Most likely someone would have said, "What do you think about this plant X?" And if I was aware of it, I'd say, "Clearly this is not related to these facilities. That should be redacted."

Mr. Michael Harris: I see. Did Ms. Kulendran indicate who instructed her to have you remove the documents?

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Harris. Monsieur Tabuns, je passe la parole à vous.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Mia, thank you for your co-operation and your assistance today. You were very straightforward. We appreciate it.

Chair, I don't have questions. I do have a motion that I would like to have discussed when we end.

0930

The Chair (Mr. Shafiq Qadri): A motion would be advisable post the testimony.

Mr. Peter Tabuns: Correct. I just wanted to note it so that you didn't accidentally bring your gavel down.

The Chair (Mr. Shafiq Qadri): No accidents here, Mr. Tabuns. Thank you. To the government side.

Mr. Bob Delaney: Thank you, Chair. Don't worry, Peter; we wouldn't let you escape without your motion.

Okay, Mr. Mia, I think we're pretty close to done. In listening very carefully to the exchange back and forth—I just want to encapsulate it—in the document disclosure process, there were some errors and omissions. People seemed to have various versions about who said what to whom. But the bottom line is, if I understand you correctly, everyone acted in good faith to respond to the committee's request for documents, correct?

Mr. Ziyaad Mia: From my experience at the OPA and speaking for the OPA, because that's all I can really speak for, yes, that is correct. We tried to comply in good faith, and ultimately all the documents were disclosed.

Mr. Bob Delaney: We're speaking now nine months later—or nearly a year later, actually, since the motion from the estimates committee. If we remember the motion from the estimates committee, it asked for correspondence—I guess in legal terms, "correspondence" means something—and it asked for correspondence from the OPA, the Minister of Energy and the Ministry of Energy. If I understood what you were saying in response to the various questions, you were trying to, in your discussions, land on something clear, consistent and

complete on providing correspondence to respond to the motion, correct?

Mr. Ziyaad Mia: Correct. In the plain meaning of the word, "correspondence" would be, in this case, a letter; or in today's world, an email would be considered correspondence. If you read the motion, it's asking for correspondence related to the cancellation of the two facilities and within particular date ranges. I don't know them off-hand, but that was essentially what the motion was asking for.

Mr. Bob Delaney: Okay. With regard to whether documents were withheld because they either did or didn't respond to the motion at the time from the estimates committee last May, your chair, Jim Hinds, said in part, "We messed up some search terms, and we're trying to get them cleaned up, so I'm not sure what this has to do with the government. This is all us."

Mr. Ziyaad Mia: If I recall Mr. Hinds's testimony, he was referring particularly in that answer to the so-called third disclosure earlier this year. So in that sense, yes.

Mr. Bob Delaney: Okay. In his letter to the Clerk on October 12 of last year, 2012, Colin Andersen stated, "It was always our intention to provide all responsive records and to respect the ruling of the Speaker."

Just to conclude one last time, given the sheer volume of the documents requested and the fact that you were doing a lot of this work for the first time—I think one of your people, I can't remember who, said, "We are in the business of producing electricity and not ... documents." The OPA, in your experience, from the work that you saw and what you did, acted in good faith in response to the document production motion, right?

Mr. Ziyaad Mia: Correct. In my experience at the OPA with these matters, we have—as you know, there's a lot of paper involved, especially in today's world with electronic documents. It's not as easy as going to a room and saying, "Give me all of the Oakville documents. Go to this room or this filing cabinet"; there's a hunt for documents because many people are involved. So in that sense, yes, my experience with it—it was a large and complicated process, and we tried in good faith to comply at all times.

Mr. Bob Delaney: Mr. Mia, I think we've said all we need to say. Thank you so much for having come in today. Chair, I think we're done.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney, and thank you, Mr. Mia, for your presence. You are officially dismissed.

Mr. Ziyaad Mia: Thank you.

The Chair (Mr. Shafiq Qadri): Mr. Tabuns, you have the floor for your motion.

Mr. Peter Tabuns: I do, but before we go to my motion, Chris Morley is a witness. What success have we had contacting him to come before our committee?

The Clerk of the Committee (Ms. Tamara Poman-ski): I don't have it on me. I can find out.

Mr. Peter Tabuns: Do you know—

The Clerk of the Committee (Ms. Tamara Poman-ski): I don't have it on me. I can go get it.

Mr. Peter Tabuns: Have there been numerous attempts to get him before us?

The Clerk of the Committee (Ms. Tamara Pomanski): Yes, there would have been, but I can double-check and get back to you. I don't have—

Mr. Peter Tabuns: When you come back, could you also just fill us in on what it would take to get a Speaker's warrant to have him appear before this committee?

The Clerk of the Committee (Ms. Tamara Pomanski): Okay. Yes. All right.

Mr. Peter Tabuns: Okay. If you could circulate the motion.

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

Mr. Peter Tabuns: Thank you, Chair.

I move that when the House rises, the committee continue to meet on Tuesday's from 9 a.m. to noon and 1 p.m. to 2:30 p.m., to allow one witness to testify from each party, until the House returns on September 9, 2013, where the meeting schedule shall revert back to Tuesdays from 8:30 a.m. to 10:15 a.m. and 3 p.m. to 6 p.m. and Thursdays from 8:30 a.m. to 10:15 a.m.

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

Mr. Delaney.

Mr. Bob Delaney: In the vein of a helpful amendment, may I suggest that the apostrophe be removed from "Tuesday's"?

Mr. Peter Tabuns: Sir, I will accept that friendly amendment.

The Chair (Mr. Shafiq Qaadri): We were hoping for more there, Mr. Delaney, but—

Mr. Bob Delaney: We may not be quite done yet, Chair.

The Chair (Mr. Shafiq Qaadri): Fine. Any further discussions before we vote on this motion?

Mr. Peter Tabuns: No. I'd just like a recorded vote on it.

The Chair (Mr. Shafiq Qaadri): A recorded vote.

Mr. Victor Fedeli: Chair?

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

Mr. Victor Fedeli: I have an amendment that I'd like to move.

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Victor Fedeli: May I read it as it's being handed out?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Victor Fedeli: I move to amend the motion by adding the following after the word "Tuesdays": The addition is "of June and August".

The Chair (Mr. Shafiq Qaadri): Fine. So the intent is, no meetings in July?

Mr. Victor Fedeli: Yes. With the new 40,000 documents that we have, we want to spend considerable time looking through those documents.

With the new documents that we have, the 40,000 documents, as I was saying earlier today with our team, when we eventually got the original 56,000 documents, if we only knew then what we know now, the subtle nuances that were there, such as when former Finance

Minister Duncan was here, Chair, when he was talking about the little nuances that he placed in. We didn't understand why he put so much emphasis on those words. There are now 40,000 more documents to go through. We're going to need some time. Because we now understand what those nuances mean, we're going to have to pick through rather carefully.

The Chair (Mr. Shafiq Qaadri): We certainly support your request to take more time. In fact, we wish you'd take more time.

Mr. Peter Tabuns: Ever helpful, Mr. Chair; ever helpful.

I have to disagree with Mr. Fedeli on this. I think there's every reason for us to continue to meet through the summer. What we've suggested is a reduced schedule: not twice a week; once a week. I think that will leave ample time for people to comb through the documents and bring forward what's necessary.

I understand you'll bring forward the amendment.

The Chair (Mr. Shafiq Qaadri): Fair enough. Are there any further questions before we vote on the amendment to the motion? Seeing none—

Mr. Peter Tabuns: Recorded vote on the amendment.

Ayes

Albanese, Del Duca, Delaney, Fedeli, Leone.

The Chair (Mr. Shafiq Qaadri): Thank you. That amendment carries.

Mr. Peter Tabuns: You may want to ask for the cons, the nays, and have it recorded.

The Chair (Mr. Shafiq Qaadri): Yes, the nays, if any.

Nays

Natyshak, Tabuns.

The Chair (Mr. Shafiq Qaadri): Yes. As stated, the amendment, happily, carries in any case.

Now we'll move to the main motion presented by Mr. Tabuns.

Mr. Peter Tabuns: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Shall the motion, as amended, carry?

Mr. Victor Fedeli: This is which motion?

The Chair (Mr. Shafiq Qaadri): As amended.

The Clerk of the Committee (Ms. Tamara Pomanski): The main motion, as amended, carry.

The Chair (Mr. Shafiq Qaadri): No July.

Interjections.

The Chair (Mr. Shafiq Qaadri): Can we please do this again?

Shall the main motion, as amended, presented by Mr. Tabuns, amended by Mr. Fedeli, carry?

0940

Interjection.

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

Ayes

Albanese, Del Duca, Delaney, Fedeli, Leone.

Nays

Natyshak, Tabuns.

The Chair (Mr. Shafiq Qaadri): The motion, as amended, carries. Thank you.

Mr. Victor Fedeli: There's another motion from me, I thought. Do you have that, Clerk?

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes.

Mr. Victor Fedeli: May I read it while it's being handed out? The big long one.

Interjection.

Mr. Victor Fedeli: Hang on a second.

Mr. Peter Tabuns: We need to have it circulated.

Mr. Victor Fedeli: Yes, I'm just trying to figure out which one. I've got two here.

Interjection.

Mr. Victor Fedeli: Both? You've got both? We're going to ask for both eventually—

The Clerk of the Committee (Ms. Tamara Poman-ski): —which one right now?

Mr. Victor Fedeli: Whatever one you like. You tell me which one you're handing out, and I'll read it.

Interjection.

Mr. Victor Fedeli: All right. I move that the Standing Committee on Justice Policy request from the Premier's office and Cabinet Office the production of all electronic devices, including but not limited to compact discs, USB keys and external hard drives containing email correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants sent or received by the following individuals: Mr. David Livingston, Mr. Craig MacLennan, Mr. Sean Mullin, Mr. Jamison Steeve, Mr. Chris Morley, Mr. John O'Leary, Ms. Rebecca MacKenzie, Ms. Lauren Ramey, Ms. Laura Miller, Ms. Wendy McCann, Mr. David Phillips, Mr. David Gene, Mr. John Brodhead, Mr. Christopher Bentley, Minister Brad Duguid and Mr. Dalton McGuinty; and that the devices be provided to the committee within one calendar week of the date of the motion passing.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. I'm sure you appreciate the extremity of this. In any case, any further comments?

Mr. Bob Delaney: Chair, I think we are going to need a recess to discuss this. I'm not sure that this motion is within the committee's scope, so we would—

Interjection.

The Chair (Mr. Shafiq Qaadri): The motion, technically, is in order. But I—

Mr. Peter Sibenik: If I can just speak to it first, Mr. Chair. Standing order 110(b) says, "Except when the House otherwise orders, each committee shall have power to send for persons, papers and things." I would think that an electronic device is a thing. The standing

order is fairly broadly worded so that the committee has very wide latitude to institute an inquiry.

The concern that I do have with this particular motion, and I've just seen this myself, is that it addresses sitting members, in particular Mr. Duguid and Mr. McGuinty. I have a little difficulty wrapping my head around that. I'd almost want to think a little bit about that, perhaps over a recess. I'm not sure, but it's an issue that I do bring to the committee's attention. These are devices belonging to sitting members that the motion would request.

The Chair (Mr. Shafiq Qaadri): I would also just add a couple of issues. One, sitting MPPs, unless we, for example, get things like Speaker's warrants, I understand it are able to refuse attendance if they wish. I presume, naturally, that extends to their things—

Mr. Victor Fedeli: I would think that would be up to them—

The Chair (Mr. Shafiq Qaadri): Secondly, the mandate of the committee is specific with reference to energy infrastructure, gas plants, Mississauga, Oakville. General hard drives, general USBs etc. are likely going to encompass much, much more than that, and that really—

Mr. Victor Fedeli: But we're asking here "related to the cancellation and relocation" of Oakville and Mississauga.

The Chair (Mr. Shafiq Qaadri): Yes, but as you can appreciate, no one has an energy infrastructure hard drive alone. Understood?

Mr. Victor Fedeli: Well, we think there are energy hard drives alone. According to the privacy commissioner, they were put on USB sticks and were moved from the government—

The Chair (Mr. Shafiq Qaadri): All right. Fair enough. With all due respect, Mr. Fedeli, we are meeting, as you know, Tuesday. I think, because of the complexity of this, if you wouldn't mind—just stand down this motion until we process it on this side.

Mr. Victor Fedeli: May I speak directly to the—

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Victor Fedeli: Will you use that time between now and Tuesday, then, instead of the 20-minute recess now? Will you use that time to make your analysis of this?

Mr. Bob Delaney: We would very much like to—we would very much agree with the Chair. There are some very complex issues raised, not the least of which is identifying a device. Does that mean, for example, that any device ever touched by any of these people is within the committee's reach? How does one determine that? There are some—

The Chair (Mr. Shafiq Qaadri): Let me just mention: There's a little bit of discussion whether the motion is actually in order or not.

Mr. Bob Delaney: So I think we do need some time to think about this one, Chair.

Mr. Victor Fedeli: So, Chair, we are—

The Chair (Mr. Shafiq Qaadri): So we'll stand this one down with your—

Mr. Victor Fedeli: No, not necessarily, Chair.

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

Mr. Peter Tabuns: One of the concerns we have is that we don't want to see any further destruction of documents, and so the concern about a delay in this motion is that it gives opportunity to people to clean drives, clean hard drives etc.

The Chair (Mr. Shafiq Qaadri): Be that as it may, I need to also just apprise you of my role as Chair. If I allow this motion to carry without proper deliberation on behalf of the Clerk and the Parliament here, this then will set the precedent that any device touched, electronic or otherwise, is then callable by the committee. I don't think that that's either the desire or, by the way, the right of the committee.

As I say, as Chair, I'm going to reserve ruling on this.

Mr. Peter Tabuns: And I understand that you want to be very clear in your mind before you make a decision on that. And if we have a 20-minute recess for you to think about that?

The Chair (Mr. Shafiq Qaadri): I think it's going to take longer than 20 minutes, Mr. Tabuns. We're meeting again on Tuesday.

Yes?

Mr. Peter Tabuns: Mr. Chair, then there needs to be a very clear order, perhaps a motion, that those in possession of this material that is under consideration are ordered not to delete any files that relate to this matter.

Mr. Victor Fedeli: Chair, may I ask our legal opinion here: Can we resolve this in 20 minutes?

Mr. Peter Sibenik: I think what Mr. Tabuns is asking for is some kind of a preservation order so that—

Mr. Victor Fedeli: But I'm not speaking to that. I'm speaking about the original motion. Can we make an analysis in 20 minutes?

Mr. Peter Sibenik: No.

Mr. Victor Fedeli: Then I'll go back to Mr. Tabuns—
Interjections.

The Chair (Mr. Shafiq Qaadri): Fine. We'll need it in some kind of writing, then, I presume.

This motion is now deferred.

Mr. Victor Fedeli: Until Tuesday?

The Chair (Mr. Shafiq Qaadri): Yes, the ruling, until Tuesday.

The Clerk of the Committee (Ms. Tamara Poman-ski): Until the next meeting day.

The Chair (Mr. Shafiq Qaadri): Which is Tuesday.

Mr. Peter Tabuns: Can we recess for five minutes so that I can draft a preservation notice?

The Chair (Mr. Shafiq Qaadri): Fine. Fair enough—
a five-, 10-minute recess.

Mr. Victor Fedeli: I still have another motion. Can we deal with this other motion of mine?

The Chair (Mr. Shafiq Qaadri): Fine. Why don't we do that.

Mr. Victor Fedeli: Would you mind?

Interjection.

Mr. Victor Fedeli: My other motion, which will be handed out now.

I move that the Standing Committee on Justice Policy invite the Information and Privacy Commissioner of Ontario (IPCO) to appear before the committee as a neutral witness to present and discuss her special report entitled *Deleting Accountability: Record Management Practices of Political Staff* on Monday, June 10, 2013, from 8:15 to 10 a.m.; and

That if the IPCO is unable to attend on that day, that the Monday meeting be cancelled and she be invited to the committee on Tuesday June 11, 2013, from 8:15 a.m. until 10 a.m.; and

That the IPCO be permitted to make a 10-minute opening statement, followed by a total of 90 minutes of questioning split between all three parties on a rotational basis.

The Chair (Mr. Shafiq Qaadri): All right. So I'll allow the Clerk to make her comment.

The Clerk of the Committee (Ms. Tamara Poman-ski): With respect to this motion, just to let you know, because of next week, for meeting rooms, finance was probably going to sit next week, along with estimates, and they require this room. So we'll probably end up in another room, and we'll make adjustments accordingly, but live streaming may not be—it will be from a static camera etc. It's not as technologically advanced.

The Chair (Mr. Shafiq Qaadri): That's fine. There will be some people disappointed, no doubt, in any case.

Mr. Victor Fedeli: I'm fine with that. We understand and expect that.

The Chair (Mr. Shafiq Qaadri): Any comments before we entertain this motion? Fine.

Those in favour of this privacy commissioner motion? All in favour? All opposed? The motion carries.

The instructions and invitations, we should send immediately.

We are now recessed for five to 10 minutes.

The committee recessed from 0949 to 1015.

The Chair (Mr. Shafiq Qaadri): The meeting is in session. Mr. Tabuns, you have the floor for a motion.

Mr. Peter Tabuns: Thank you, Chair. I move that the Premier's office, the Cabinet Office, and all the individuals identified in Mr. Fedeli's motion dealing with electronic devices take all measures to preserve the electronic devices and the information contained in them until such time as Mr. Fedeli's motion is voted upon, and that the Clerk of the Committee so inform the individuals identified in the motion.

Mr. Chair—

The Chair (Mr. Shafiq Qaadri): Just before you continue, Mr. Tabuns, the version we have is different from the version you just read.

Mr. Peter Tabuns: This was the one I was handed by the Clerk.

Mr. Victor Fedeli: Mine is different too.

Interjections.

The Chair (Mr. Shafiq Qaadri): Different from Mr. Tabuns' or different from mine also?

Interjections.

The Chair (Mr. Shafiq Qaadri): That is creative motioning by the NDP, for which we commend you. How can you even do that? He just created this in the last five minutes; how are you going to get two versions?

Mr. Victor Fedeli: Yes, I think his was a version in his hand.

The Chair (Mr. Shafiq Qaadri): Both are fine. We'd just like one. I think I'm going to have to get you to—

Interjections.

Mr. Peter Tabuns: I will. That one is now withdrawn.

The Chair (Mr. Shafiq Qaadri): Feel free to read it again, please, Mr. Tabuns.

Mr. Peter Tabuns: I feel very free to read it again.

I move that the Premier's office, the Cabinet Office, and all the individuals identified in Mr. Fedeli's motion dealing with electronic devices take all measures to preserve the electronic devices and the information contained in them until such time as the committee decides otherwise, and that the Clerk of the Committee so inform the individuals identified in the motion.

Mr. Chair, I'd just like to say: If we had known last summer that there was large-scale destruction of documents going on, we would have issued preservation notices at that time. This may be a lesson for any of us dealing with this in the future: that preservation is a critical piece.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. I think we have motion concordance. Unless there are comments, we'll vote. All those in favour of Mr. Tabuns's motion? All opposed? The motion carries, and the individuals will so be informed.

Interjection.

The Chair (Mr. Shafiq Qaadri): A few things? Yes.

Mr. Peter Tabuns: Yes, we have a few things about records.

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes, and I have other things.

We have been in touch with the privacy commissioner's office. She's not available next week, but the assistant commissioner is available. Would you still want to meet and hear from the assistant commissioner next week?

The Chair (Mr. Shafiq Qaadri): Yes, but that's not the motion.

Mr. Victor Fedeli: I think we could make it for the next possible meeting date and provide the privacy commissioner with the dates that we're meeting and do it there.

The Chair (Mr. Shafiq Qaadri): Fine; accepted. So let's move on. Next.

The Clerk of the Committee (Ms. Tamara Poman-ski): Does everyone agree with that? All right.

The Chair (Mr. Shafiq Qaadri): I presume we are meeting next week, as I understand the House is in session. I don't think we've scheduled witnesses.

Mr. Victor Fedeli: We've all submitted our lists, right? So it's the NDP that's up?

The Chair (Mr. Shafiq Qaadri): Yes, but it's still undetermined when the House is sitting and so on.

The Clerk of the Committee (Ms. Tamara Poman-ski): So, as usual, for next Tuesday?

The Chair (Mr. Shafiq Qaadri): Fine; okay. Any other issues?

Mr. Victor Fedeli: What about my motion; what's happening with that?

The Chair (Mr. Shafiq Qaadri): This one?

Mr. Victor Fedeli: Yes.

The Chair (Mr. Shafiq Qaadri): The electronic device one?

Mr. Victor Fedeli: Yeah.

The Chair (Mr. Shafiq Qaadri): This is under consideration. It has been stood down, as you know.

Mr. Victor Fedeli: Okay.

The Clerk of the Committee (Ms. Tamara Poman-ski): Also, we have to decide about those confidential documents that you guys wanted to stand down until today. There was another letter—it's in your package—from the Ontario Power Authority. Remember, I'd mentioned there were documents that we decided were confidential and they were sealed and we're going to decide today what was going to happen to them.

The OPA sent us a letter identifying that apparently there are some that are confidential and not, and it was all just in one sealed envelope. Their recommendation was for the committee to review it in camera, or also, on page 2 of the letter, dated June 5, proposing that the committee would receive a new USB key within two weeks of June 4, identifying which documents were confidential and which ones weren't.

The Chair (Mr. Shafiq Qaadri): So they are undertaking to do the sorting that we've actually more or less, I think, asked them to do already?

The Clerk of the Committee (Ms. Tamara Poman-ski): We asked finance to do that. The OPA has offered to separate—

The Chair (Mr. Shafiq Qaadri): Before we get into the logic of this thing, shall we just do the same thing and say, "Please sort," and they give us—

Mr. Victor Fedeli: But we're getting both, right? We're still going to get both the confidential and the not, but the confidential is held until we decide? So they're going to do the sorting?

The Clerk of the Committee (Ms. Tamara Poman-ski): Is that agreed?

The Chair (Mr. Shafiq Qaadri): Yes, agreed.

Yes, Mr. Tabuns?

Mr. Peter Tabuns: We can see from the documents that were released to us from Cabinet Office and the Ministry of Finance that there are all kinds of rabbit holes you go down into when you start taking all these confidential documents—the documents that were released to us, the 41 boxes, the two USB sticks. Mr. Chair, it is not practical for us to pursue the course that we have been pursuing, and, frankly—

The Chair (Mr. Shafiq Qaadri): Sorry, what's not practical?

Mr. Peter Tabuns: To be holding those in confidence. I think they need to be made public so that we can pursue the investigation adequately. Before we go forward on that, I would move that those documents that had previously been released to committee be made public.

The Chair (Mr. Shafiq Qaadri): Two things: That overturns what we decided last week—

Mr. Peter Tabuns: Correct; it does.

The Chair (Mr. Shafiq Qaadri): And if that's the case, then we need that in writing.

Mr. Peter Tabuns: A five-minute recess?

The Chair (Mr. Shafiq Qaadri): I should also just mention that the documents have—we've already sent finance all those boxes to sort.

The Clerk of the Committee (Ms. Tamara Poman-ski): But they have the ones they've already received too. There are two different sets.

The Chair (Mr. Shafiq Qaadri): Fine. All right. A five- or 10-minute recess.

The committee recessed from 1021 to 1027.

The Chair (Mr. Shafiq Qaadri): Shall we move so we can make it to question period?

Mr. Peter Tabuns: I move that the documents previously released to the committee (44 boxes) by the

Ministry of Finance, Cabinet Office and Premier's office be made public.

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

Mr. Bob Delaney: Chair, I am going to have a great deal to say about this and I'm going to take a long time to say it. So if Mr. Tabuns wants to stand this down until Tuesday—I'm still going to object to it on Tuesday, but we're going to be here a long time if what we want to do is debate this motion.

Mr. Peter Tabuns: Then I am agreeable to standing down till Tuesday, given that in a few seconds we would have to rise anyway.

The Chair (Mr. Shafiq Qaadri): I will accept that, although—by the way, just to let you know, officially, the committee can meet where and when it wants, irrespective of question period or whatever.

Mr. Peter Tabuns: Useful information to have, Mr. Chair, but I think many of us may want to be upstairs.

The Chair (Mr. Shafiq Qaadri): Fair enough. I'll take it we'll defer this particular motion.

We are adjourned, probably till Tuesday next week.

The committee adjourned at 1028.

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