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**Thursday 26 September 2013**

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**Jeudi 26 septembre 2013**

**Standing Committee on  
Justice Policy**

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON JUSTICE POLICY

## COMITÉ PERMANENT DE LA JUSTICE

Thursday 26 September 2013

Jeudi 26 septembre 2013

*The committee met at 1431 in room 151.*

### MEMBERS' PRIVILEGES

MR. BEN CHIN

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

I invite our first presenter to please come forward, live from Victoria, British Columbia, Canada, to be affirmed by our able Clerk. Welcome, Mr. Chin.

**Mr. Ben Chin:** Thank you, sir.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Hello, Mr. Chin; nice to see you.

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. Ben Chin:** I do so affirm.

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

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Chin. Just before we begin and I offer you five minutes for your opening address, I just respectfully ask my colleagues if we might keep points of order and heckles etc.—because we have some audio challenges today.

Mr. Chin, you have five minutes to make your opening address, to be followed by questions, in turn, by each party. Please begin now.

**Mr. Ben Chin:** Thank you, Mr. Chair. I won't take the entire five minutes, but I just want to say good afternoon, and before I start, I just want to apologize for not being able to be there in person, and I want to thank you for your understanding and for making these alternate arrangements.

My name is Ben Chin. I'm the former vice-president of communications at the Ontario Power Authority. I served in that role from April 2009 to February 2011. My responsibilities included internal and external communications, corporate marketing and external relations with partners, stakeholders, government—and that includes industry and, of course, communities as well.

I served in a supporting role at the OPA, alongside my former colleagues, and I do want to say this: that from the leadership there to the newest recruits that I had the privilege of working with, I witnessed an absolute commitment to public service every day on the job and to

uphold the organization's mandate and values, and that is to help build a more sustainable and reliable electricity system on the one hand, and to do so in a way that protects ratepayers, to make the system as affordable as possible, to seek out the lowest costs, the most cost-effective solutions, in the way that we implemented government's directives and broader public policy decisions regarding the Ontario electricity system.

The organization came to life at a time when Ontario was in darker days in terms of electricity, in the early 2000s, and I think played a key role in procuring power that was necessary in helping to foster a culture of conservation in Ontario and did so working well with its partner organizations and agencies, and of course, with the men and women who actually work every day to bring power to millions of Ontarians. So I consider it an extreme privilege to have had the opportunity to work alongside very skilled, highly qualified, ethical and dedicated people at the Ontario Power Authority. I'll always take that with me.

I want to thank you also, members of the committee, for sending me documents both yesterday and today, as some time has elapsed since 2010-11, and so it was a good reminder to me of some of the things that you may ask me about. Of course, I'm happy to answer all of your questions to the best of my ability and to the best of my recollections. Thank you.

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

We'll begin with Mr. Tabuns of the NDP. Mr. Tabuns, the floor is yours.

**Mr. Peter Tabuns:** Mr. Chin, good to see you again.

**Mr. Ben Chin:** Good to see you as well, Mr. Tabuns.

**Mr. Peter Tabuns:** In his testimony before us, Chris Breen from TransCanada testified that he came to talk to you in April 2010 about the Oakville project. He testified he wanted help to overrule Oakville zoning requirements that would have blocked construction of the plant. Can you tell us about that first conversation?

**Mr. Ben Chin:** I can't really recall, Mr. Tabuns, exact conversations, because we had many, and I certainly can't dispute Mr. Breen's testimony in terms of the dates and meetings. He's got better notes than I do, frankly, because of my move to British Columbia, and a lot of the notes I don't have anymore.

But I can say this: that TransCanada was quite concerned about the interim bylaw and were looking for

ways—I mean, perhaps not just in that conversation, but over a number of conversations, they expressed their concern about the interim bylaw and what could be done to overcome it to complete the project.

**Mr. Peter Tabuns:** Did they feel that that interim control bylaw and the other regulations put in place by Oakville would have blocked construction of the plant or delayed it substantially?

**Mr. Ben Chin:** My recollection is that they were proposing several different remedies; for instance, appealing it or perhaps asking the government to pass legislation.

**Mr. Peter Tabuns:** What did you offer to help him with?

**Mr. Ben Chin:** There wasn't anything I could help him with on that front—I'm neither a lawyer nor a legislator—so I was just merely staying in touch with him. You have to understand that I worked very closely with Chris Breen and with TransCanada for a period of time there. We had procured a contract with TransCanada to build the Oakville generating station, and we were both trying to get social licence in the community to build, to have the project go through, and so we were dealing with each other on a daily basis, and the interim bylaw was, frankly, an obstacle to that objective. I think that my recollection is, in terms of any legal proceedings or challenges to the interim bylaw, I had no opinion on that. That was for TransCanada to decide to do, and I think that they did pursue that route, as I recollect, and then the other is that in terms of legislation that they ought to speak directly with government about that, as that is sort of above my pay grade.

**Mr. Peter Tabuns:** And who did you put them in touch with?

**Mr. Ben Chin:** I believe it would have been both the minister's office and the Premier's office.

**Mr. Peter Tabuns:** And who in the minister's office and who in the Premier's office?

**Mr. Ben Chin:** It would have been Craig MacLennan, who was the chief of staff at the time in the minister's office, and Sean Mullin in the Premier's office.

**Mr. Peter Tabuns:** Okay. Chris Breen testified that he met with Brad Duguid on or about April 19, 2010, that the minister could see the problems facing the plant and suggested that TransCanada come back to him with alternatives, including another site. Would you have any reason to believe that Mr. Breen misrepresented the minister on that?

**Mr. Ben Chin:** No.

**Mr. Peter Tabuns:** And had you heard from the minister or the ministry that they were considering this plant was so damaged it wasn't going to go forward at that point?

**Mr. Ben Chin:** I don't know that it was quite that strong. I do think that they were asking us for advice and TransCanada for advice on alternatives.

**Mr. Peter Tabuns:** Even as early as April 2010?

**Mr. Ben Chin:** Yes, I believe that's correct.

**Mr. Peter Tabuns:** And the contract had only been signed about seven months previously?

**Mr. Ben Chin:** That's right.

**Mr. Peter Tabuns:** That's quite a sharp change in seven months. What changed?

**Mr. Ben Chin:** I don't know, because, again, those decisions did not involve me. I think that at the Ontario Power Authority itself, there was quite a bit of soul-searching, obviously, before the RFP was awarded: "Do we really need this plant?" We knew how difficult a challenge it would be, and so we really did our homework in terms of what the assumptions were. That didn't really involve me, other than that I was present with much more qualified people than me—from planning, for instance—to look at what demands would be in Ontario and so on and whether this contract should be awarded.

In the spring, I don't believe, if my recollections are correct, that we had changed that opinion at the Ontario Power Authority. But I think government was quite leery of the project to begin with, and there were several rounds of questions of: "Is this really necessary? Must it go there? Can it go somewhere else? What are the alternatives? What's an alternative to a power generating station?"—and so on.

**Mr. Peter Tabuns:** Mr. Breen testified that he was talking to you almost every day, and you've said this just a few moments ago. With regard to this plant, what was the thread of the discussions in the spring of 2010?

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**Mr. Ben Chin:** I think that the main theme of the discussions was how do we get it built, really—between our relationship, between TransCanada and the Ontario Power Authority? We are the contracted parties and we want to see it fulfilled. So there are a number of challenges. The community group in Oakville, the mayor and council in Oakville, the provincial government itself, all of them have differing views and, really, I think that I would characterize it as, none of them were as committed as we were at the time to get the plant built.

**Mr. Peter Tabuns:** Were you drawn into the discussions with the Premier's office and TransCanada over the summer of 2010, given your connections to TransCanada and the Premier's office?

**Mr. Ben Chin:** At times I was, but not always. Keep in mind that it's a complicated and difficult situation when you are representing an agency in the electricity sector, because you have government on the one hand and you have the contractor on the other hand. Again, our objective is to see the contract fulfilled, to have the project built. So you're working towards that and trying to mitigate risks and doubts about it on all sides. So from that perspective, yes, I would have been engaged in some of the conversations, but not all.

**Mr. Peter Tabuns:** Were you made aware of the negotiations going on between Jamison Steeve and Sean Mullin in the summer of 2010?

**Mr. Ben Chin:** Between just the two of them or—

**Mr. Peter Tabuns:** Yes, the two of them and TransCanada.

**Mr. Ben Chin:** I became aware of that, yes.

**Mr. Peter Tabuns:** About when were you made aware of that?

**Mr. Ben Chin:** I think I was aware of the meeting in which TransCanada—and I don't recall the date, but when TransCanada requested legislative action to the government. And then the other meeting that I'm aware of, of course, is the one where, I believe, Mr. Alex Pourbaix was at the meeting and met with Sean Mullin and Jamison Steeve before meeting with Minister Duguid.

**Mr. Peter Tabuns:** Okay. In document 10 that you should have—

**Mr. Ben Chin:** I'm not sure which one you're referring to, Mr. Tabuns. Is it the—

**Mr. Peter Tabuns:** You should have two packages.

**Mr. Ben Chin:** Yes. They're not numbered on my side. So—

**Mr. Peter Tabuns:** Pardon?

**Mr. Ben Chin:** The documents aren't numbered, so I don't know which one document 10 is.

**Mr. Peter Tabuns:** Actually, they are; the upper right-hand corner as you flip through.

**Mr. Ben Chin:** Is it page 10? I've got page numbers.

**Mr. Peter Tabuns:** No. There's a number that's circled in the upper right-hand corner as you go through the documents. They're handwritten.

*Interjections.*

**Mr. Ben Chin:** They're handwritten. Okay, I see it. There's one. Sorry. Let me flip through as quickly as I can. There's three—

**Mr. Victor Fedeli:** It was put in backwards, Peter. It's on the inside.

**Mr. Peter Tabuns:** Okay.

**Mr. Ben Chin:** There it is. I've got it.

**Mr. Peter Tabuns:** You've got it. Good. Thank you.

On page 2 of that document, you said to Breen, "You knew this plant was never going to be built," and this would have been in the summer of 2010. You had come to the conclusion at that point that this plant was never going to be built. Why?

**Mr. Ben Chin:** I'm sorry. You're going to have to direct me to that because that's kind of news to me.

**Mr. Peter Tabuns:** Okay. If you've got "solicitor-client privileged" at the top of the page—

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** —and you see a series of bullet points, the second group of bullet points, the bottom bullet point—

**Mr. Ben Chin:** Okay.

**Mr. Peter Tabuns:** "I said to Breen, 'You do a lot of business in Ontario. You knew this plant was never going to be built. Surely we can negotiate the difference in our position.'"

**Mr. Ben Chin:** That's sort of not the summer. That is pretty close to the cancellation period. That would have been around the time of their meeting with the minister and with the Premier's office.

**Mr. Peter Tabuns:** So that would have been in September?

**Mr. Ben Chin:** That's right, somewhere in September-October.

**Mr. Peter Tabuns:** So you say at this point, "You knew the plant was never going to be built." What did you mean?

**Mr. Ben Chin:** Well, I think that both of us came to realize by the fall that it didn't look like the plant was going to go ahead. I think as late as the summer, my recollection is that we were still working to see if we could get the plant built, but it was becoming increasingly clear that there were too many difficulties in getting this done, and largely that government may well cancel the project or say that the project shouldn't go forward.

**Mr. Peter Tabuns:** And the other difficulty—

**Mr. Ben Chin:** It was kind of speculative on our part but just sort of gauging the air.

**Mr. Peter Tabuns:** That's quite a strong statement to make to someone you've got a contract with.

**Mr. Ben Chin:** Yes, and I don't know whether I said that or he said that or we just simply agreed to that. You know, I think—

**Mr. Peter Tabuns:** Well, all I have is the recording of your words.

**Mr. Ben Chin:** Yes, that's right, so I'm not going to dispute that, but I do recall the conversation, and I also do recall a conversation—and I don't know whether Chris Breen's notes would back this up, but saying, "Look, there could be an elegant solution to this where we walk away and mutually terminate the contract in favour of another project." You know, I think that that notion was kind of presented at that time.

**Mr. Peter Tabuns:** Did the rest of the Ontario Power Authority know that the plant was dead at this point?

**Mr. Ben Chin:** I think we were all—I mean, we may have all had different personal opinions about the fate of the plant at that time, but we were all opening our eyes to the very distinct possibility of it not going forward.

**Mr. Peter Tabuns:** Okay. Mid-September to October 7 was a really critical time for negotiations with TransCanada.

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Who was pressing to ensure that TransCanada was made whole? Whose idea was this?

**Mr. Ben Chin:** It would have come originally from TransCanada—sorry. Mr. Tabuns, can I go back to your earlier question? Because something just occurs to me. What changed for me in terms of looking at the prospects of the plant getting built was that our planning assumptions somewhat changed somewhere near the end of the summer. I think in one of the questions of, can the plant be moved to a different location in Oakville, and what would that entail, the answer from our planners came back as yes, a 300-megawatt plant could be built elsewhere, and I think everybody in government took notice: "Well, how does a 900-megawatt plant turn into a 300-megawatt plant?"

As soon as that question came back, I began to think, "I'm not sure this is going to get built," because the rationale for it was the plant—you know, you never build

a plant to do one thing. You build it to do four different things. Three of those things are based on provincial demand as opposed to local demand. Local demand is still growing, but that can be addressed through transmission which is planned for later in the decade, and we can just move that project up.

As soon as that explanation started to come in, I realized that, really, there was no argument to make that this plant was required for coal closure or for provincial reliability. It was simply for local reliability, and the plant was bigger than what was needed at that moment.

**Mr. Peter Tabuns:** Much bigger.

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Much bigger.

**Mr. Ben Chin:** Well, 600 megawatts bigger than originally planned.

**Mr. Peter Tabuns:** On page 2, you say, “My understanding was that they agreed TC should be kept whole.”

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Can you confirm that the “they” was Jamison and Mullin?

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Okay. And can you recall how and when you were told this by Sean Mullin?

**Mr. Ben Chin:** Not the exact details of it, but I believe it was on the phone, and my understanding of that conversation was that TransCanada indicated that they were willing to mutually agree to terminate the contract, to not go forward, in return for something, a different project which would keep them whole or close to whole, so mostly whole. That was conveyed to me, and my understanding was that that is the desirable outcome of the negotiation.

Now, that leaves a lot of room, because there’s different interpretations of what that is exactly.

**Mr. Peter Tabuns:** Yes, there are very different interpretations.

**Mr. Ben Chin:** Yes.

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**Mr. Peter Tabuns:** Who instructed the OPA that they should agree with TransCanada to make them whole? Why would the OPA do this for a plant? Obviously, the plant wasn’t going to go forward. It had all kinds of legal obstacles. It wasn’t going to get an override of municipal regulation. Given that the OPA had written contracts to protect the public from substantial claims, why did this come to be the outcome?

**Mr. Ben Chin:** You know, I’m not a lawyer, and Mr. Lyle probably can answer that better from a legal standpoint about article 14. But my understanding of it, from receiving briefings at the time, was that we were sort of stepping outside the contract now because mutual agreement to terminate is not really contemplated in the contract.

I have to say that personally I felt—for what it’s worth, my opinions on things—that it was not unfair, that you have investors, a shareholder-driven company that has a legal contract to build, and plans are changing. It is not circumstances overriding the project so much as a

decision in government. At the time, they absolutely have recourse to sue, regardless of article 14. If we can arrange to say, “Fine. We’re not doing this project, but there’s a project of similar size and anticipated financial value. Does that work for you?”—that seemed like a fair way to terminate this contract.

**Mr. Peter Tabuns:** Well, section 14 was the section that protected the Ontario Power Authority and rate-payers from a claim for lost profits. Who directed the OPA to abandon that legal defence, that contractual defence?

**Mr. Ben Chin:** I don’t know that anybody explicitly asked to abandon it. I think that, as I recall the legal opinion, it was that we are now—our understanding was that government was asking us to make sure that we keep them whole, or close to whole, that it’s better to pay for electrons than to just make a payment. Our own view of it, legally, the legal opinion, I believe, was that, “Well, we’re sort of stepping outside the contract here, because we’re talking about a mutual agreement to terminate.”

So if you and I are sitting across the table from each other, and you require something to mutually agree to terminate the contract, we’re both agreeing to terminate it, so let’s try to work towards that. After all, that future project will have to be built. There are costs to that. So if we can just fold in these costs into that plant, then there’s really no additional costs for the future plant.

**Mr. Peter Tabuns:** I’ll put an alternative scenario to you: You did your long-term energy planning. You realized that there was no need for a plant anymore because, in fact, consumption had dropped dramatically; Mississauga: something like 20% in one year. So you were looking for a saw-off with them so you wouldn’t have to fight in court, in the press, in public, for a plant that, even when it was commissioned, it was doubtful whether it was needed.

**Mr. Ben Chin:** I would disagree with your last point. I think that, when it was commissioned, we didn’t have doubts. We turned out to be wrong, in hindsight. But the organization didn’t have doubts about its need or else we wouldn’t have proceeded with it.

I think, yes, that’s one way to read it. I think it’s really a matter of being fair to the contractor. And when you look at the context of electricity history in Ontario, we, at that point, were just sort of 10 years past when the market had been opened up to free market pricing—

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

**Mr. Ben Chin:** —and then that had been reversed and investors were jittery and not coming to Ontario. So you want to avoid that situation—

**Mr. Peter Tabuns:** Just to clarify before I leave my time with you: So it was the Premier’s office that made you aware that TransCanada was to be kept whole, and that direction came down to the OPA to abandon their defence in article 14.

**Mr. Ben Chin:** Yes. I don’t quite agree with the second part of it, but my understanding, and my recollection, of that conversation with the Premier’s office was that it was desirable to keep TransCanada whole, or close to

whole, and at least pursue the possibility of finding a way to a mutual agreement on termination of contract.

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

**Mr. Ben Chin:** That's my recollection. Thank you.

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

To the government side: Mr. Delaney—your 20 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair. Hello, Ben. Good to see you again.

**Mr. Ben Chin:** How are you, Mr. Delaney? Good to see you as well.

**Mr. Bob Delaney:** Hope you're still finding time for a little hockey.

**Mr. Ben Chin:** Not a lot of time in my present job, unfortunately.

**Mr. Bob Delaney:** Okay. So I want to start by asking you a few questions about some of the factors that led to the decision to relocate the Oakville power plant. I'm going to go back a little bit. When he appeared before the committee, Minister Duguid said that a big part of the decision was a result of the strong local opposition to the plant. Testimony before the committee has shown that there were serious issues with the siting of the plant, including an already overtaxed airshed, the lack of a buffer zone—particularly in Oakville—to ensure the safety of residents, and the close proximity to homes and a school. There was, as I know you know, a group of local advocates who, along with city council, had worked very hard to advocate against the plant. They didn't just reach out—the advocates, that is—to the government, but also to the other two parties, securing, as I understand, commitments from both the NDP and the PCs that they, too, would cancel the plant.

So, at the time, you were the VP of communications at the OPA. I assume you would have kept track of some of the opposition commitments with regard to Oakville?

**Mr. Ben Chin:** Yes, that's absolutely the case as you've described it. I guess I would say that the Ontario Power Authority and TransCanada were about the only people who wanted to build the plant at that time.

**Mr. Bob Delaney:** Okay, you've saved me reading a few quotes into the record, then. Another factor that contributed to the decision to relocate Oakville, of course, was the changing energy needs. The committee has heard from a number of witnesses who said that when the long-term energy plan was updated in the summer of 2010, it became clear, as a result of declining industrial demands and better-than-expected conservation, that energy demands had actually decreased and the plant's need was no longer as imminent as originally anticipated. Does that ring a bell?

**Mr. Ben Chin:** Yes, it absolutely rings a bell.

**Mr. Bob Delaney:** Okay. Just again, in the OPA board minutes we had received from October 10, there is this passage in it: "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 more than

8,000 megawatts of new, cleaner power and successful conservation efforts—have made it clear" that the plant, referring to the Oakville gas generating plant, was no longer required.

Could you elaborate a little bit in more detail as to how changing energy needs contributed to the decision to relocate the plant?

**Mr. Ben Chin:** Yes, I'd be pleased to do that. I want to start by saying that one of the things that I was proudest of at the Ontario Power Authority and working there was the planning department. It has strong leadership, great experience and very qualified people. Planners in Ontario—really, what they do is they travel into the future. Because, you know, infrastructure takes three years, five years or, in the case of nuclear, much longer to build. So you have to go project into the future and think about how the economy is doing, what kind of appliances do people have, how do people live their lives? You start to plan based on all of those things.

I think that four years before the cancellation, when it was first—through the IPSP, the integrated power system plan, there was a plan for a southwest GTA generator. The planners prudently thought that there are four factors here, among which is, really, a local area problem. The community is growing much faster. The per capita usage of electricity is much higher than in the rest of the province, and yet there's antiquated infrastructure, and the design of the infrastructure sort of traps electrons in the wrong way that doesn't [*inaudible*] the area reliable.

We heard from people that run industries in the south part of Mississauga about brownouts and constantly rotating brownouts and the unreliability of power. So that was one major reason. The other was the provincial government's commitment to close coal plants by 2014. That puts pressure on the system, and you need replacement power. Then there were two other factors that were needed for west Toronto and for just sort of a generator with peaking ability for the rest of the province. I remember being briefed on that—that, you know, it's quite smart to have one project knock off or tick off four boxes in terms of what you need for the province.

So at the Ontario Power Authority, you're thinking purely from a reliability perspective. You're projecting into the future and you're thinking about, "When we spend ratepayers' money, how many boxes can we tick off when we enter into a large-size contract?"

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As it turned out, no one could guess the full extent of the global economic downturn and its impact on Ontario, which was particularly hard-hit. Even our conservation figures had jumped ahead of what we had predicted. It was far more successful than the Ontario Power Authority had forecasted. Of course, there was the Green Energy Act, which wasn't contemplated earlier, which had brought on thousands of megawatts of power into the system. So all of a sudden, things started to change, from a provincial outlook.

Also, I believe that the planners told me that they went ahead and started to look at other ways of meeting coal

closure. Those were being identified, and all of a sudden the need to have a 900-megawatt plant shrank to a 300-megawatt plant [*inaudible*] could have been only for local area reliability, which can also be addressed through transmission.

**Mr. Bob Delaney:** You reminded me that, had we had that local generating capacity 10 years ago, that particular area—where I happen to live, by the way—would have recovered a lot quicker from the August 2003 blackout. That’s a good point you made.

On June 22, 2011, you were interviewed by lawyers from the Ministry of the Attorney General about the Oakville relocation. Just for the benefit of everyone here, our committee, of course, has a copy of these notes. When asked about the changing energy demands—I’ll remind you what you said at the time: “We didn’t need the Oakville plant to close coal by 2014. The job that this plant was supposed to do has now gone down by two thirds. The government said, ‘Wait a minute. Why do we need this plant? Can’t we do something else to meet the other demands for power?’ Yes, we could build transmission lines, and that would satisfy the need for power in that community”—referring to Oakville, Milton and perhaps western Mississauga.

I’m wondering if you could perhaps expand a little more on the transmission solution. We know from OPA testimony that a transmission upgrade was required in that area regardless of whether a power plant was built or not, but by speeding up the upgrade, it of course meant that an actual generating station would no longer be needed. Could you elaborate on that?

**Mr. Ben Chin:** Yes. A lot of the problems in the southwest GTA—it’s this growing community with high electricity use and, as I said, antiquated infrastructure. If you look at the map, it has kind of a dead end. Electrons sort of get trapped on one end, and it is not a very reliable system.

The immediate fix for that, while fulfilling those three other more province-wide goals leading to coal closure, was a power generating station, and then, I believe—as I recollect, Mr. Delaney, something like 10 years after that, about a decade later, there would still be a requirement to upgrade those old, antiquated transmission lines and to build new ones, as well.

As I said to Mr. Tabuns, there have been many questions from a government sensitive to community reaction, setbacks, the airshed and so on—constant questions about the need for the plant: “What are the alternatives?” This was really the first time, in late summer, when we began to realize at the Ontario Power Authority that, actually, there is another answer: We overestimated the need for power based on four years ago. Yes, the transmission project, if we moved it up by a decade, would take care of the local area reliability, which, in fact, is the only box we really need to tick at this moment. That was a changing dynamic, an answer that changed over a period of time.

**Mr. Bob Delaney:** A lot of that transmission infrastructure was the original transmission structure built after the war.

**Mr. Ben Chin:** That’s correct.

**Mr. Bob Delaney:** Going back to local opposition to that plan: In an attempt to slow down construction, Oakville town council had enacted some bylaws. Despite all of the local opposition, one of the things that you said earlier is that both the OPA and TransCanada still wanted to build a plant, if not that plant.

**Mr. Ben Chin:** Right.

**Mr. Bob Delaney:** From the documents that we’ve received and the testimony here at the committee, TransCanada was fully aware that the province could override Oakville’s bylaws using legislation, right?

**Mr. Ben Chin:** Yes.

**Mr. Bob Delaney:** Okay. TCE had also appealed these bylaws with the Ontario Municipal Board. Chris Breen was here from TCE. We asked him about this. He testified, and we asked him what actions TCE had taken to try to overrule the bylaws, and he said—I’ll use his words: “We were already before two different courts with what looks like about four actions, and we were before the OMB, the Ontario Municipal Board, with two appeals. We had a contractual obligation. It was very cleanly spelled out in black and white that that was our responsibility: ‘You have to go through every possible channel to deliver on your obligations in this contract.’ And we would have done that.”

Could you speak to us in a bit more detail about the actions TransCanada Energy was taking to overrule Oakville’s municipal bylaws?

**Mr. Ben Chin:** Yes. I mean, they had a number of options, and so they were exploring all of them, and the legal channel of overturning the interim—the control bylaw—was one of them, rising all the way up to receiving help, some sort of legislative support, from the provincial government. So they were certainly doing that.

For my part, in the work I did with Chris Breen, one of the challenges when you work at a contracting agency and you’re working with a private sector partner, and in order to obtain social licence to build infrastructure, is that you can have things fall between the cracks and not respond in a uniform way. We are two different organizations, after all. We can have different objectives, and unless we’re on the same page, you don’t want a situation where you give the city of Oakville two different answers. So they always kept me informed and kept us informed at the Ontario Power Authority of the steps that they were doing to try to satisfy the contract, and we kept note of it.

I wouldn’t go into the community without phoning Chris first and saying, “Look, I’m going to have to go in and meet with the mayor. Are there any messages you want us to deliver on your behalf? What are the ways we can work together here?” and to make sure that we were working together for that common purpose of fulfilling the contract.

**Mr. Bob Delaney:** Okay. Yes, Rob Burton actually confirmed a lot of what you said when he was here.

Chris Breen had confirmed to the committee that, based on the legal opinions that they'd received, TCE was confident that they were on solid ground and that they would have won their cases had they gone to court. Ultimately, as we know, the plant was relocated, but for the purposes of this question, let's just assume for a moment that that decision wasn't made and the province had not intervened. When we asked Chris Breen about that, he testified that TCE would have kept fighting, and ultimately, he feels, they would have been successful in overturning Oakville's municipal bylaws. What he said is, "We had ... the Ontario Superior Court and Divisional Court, and we would have taken this to whatever court was required" to get this through. He later went on to say, "What I would say is that TransCanada were confident that they were going to eventually get to build the project on the Ford lands, but clearly we had some work to do at the Ontario Municipal Board and the various courts that I had mentioned earlier."

So we'll get to the point. As we saw with Mississauga, just as soon as the OMB or another court had overruled the bylaws, it meant that Oakville would have had no other option but to issue building permits to the company, as happened in Mississauga. So in that scenario, what I want you to comment on is the assumption that as soon as these permits were issued, TransCanada could have begun construction and that they had a contractual obligation to get their shovels in the ground just as soon as possible. Would you comment on that?

**Mr. Ben Chin:** I think that that's correct, Mr. Delaney. I think that TransCanada was very confident in their legal advice. Their legal advice looked sound to our legal team because we were consulted—you know, shown where they were going to go. I think that history would show that in most cases like this, whether it's a power plant or some other piece of vital infrastructure, there are strong arguments on the side of upholding the contract.

When I look back on the summer of 2010, as I was saying to Mr. Tabuns, what spelled the possible end, the potential end of the plant being built was the changing assumption on need and the size of the plant and what else could be done. That planning change was much more of a wakeup call than any court challenge or interim bylaw or control bylaw, because I do think that quite capable lawyers looking at this had a very strong opinion that all of that could be overcome. It was just a matter of time.

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**Mr. Bob Delaney:** Yes. So, then, to quickly encapsulate, the land had been zoned industrial by Oakville, TCE had legally acquired the land and had a contract to build, and despite the fact that Ontario didn't need the electricity and there were other solutions to provide for local needs such as transmission, had the company overturned Oakville's bylaws, they could have, and arguably would have, built a very large generating station when there

really wasn't the need for the electricity and, failing some action by the province, any other option to stop the plant would have been much more costly. Correct?

**Mr. Ben Chin:** That is correct. I think that any organization—you know, when you set out to build something and you have procured it, you are proud of the contract that you have signed for cost-effective power, and you start to move ahead, there is a momentum in getting it built. I would characterize it as—I saw my job as doing everything I could in 2010 to ensure that the project was completed, and I think that Chris Breen's objective would have been exactly the same. And all through the summer, we were trying to convince government that there was a need for the plant and the project had to be built, and what changed were the assumptions about need, and that was—you know, had that not happened, if there wasn't a change in the forecast in terms of re-adjusting for the times and for a new energy plan, if that hadn't happened, I'm quite confident that we would have found ourselves on the way to getting that plant built.

**Mr. Bob Delaney:** So if one could say that "sunk costs" were a layman's term, which I'm not sure is true, the sunk costs would have been much, much higher had construction started?

**Mr. Ben Chin:** Absolutely.

**Mr. Bob Delaney:** Okay. Let's talk a little bit about some of the negotiations, then, on the Oakville relocation, because there were essentially two options: cancel it and get nothing for the money that you've spent, or relocate the plant and ultimately get some electricity. The decision to move the plant would have been made by the OPA, the Minister of Energy and the Premier on October 7, 2010, with, as I recall, the support of both opposition parties; correct?

**Mr. Ben Chin:** Yes, that's my recollection as well.

**Mr. Bob Delaney:** From what we've been told about that decision, throughout the negotiations, both sides were working very hard to relocate the plant as opposed to just ripping up the contract and walking away. Now, the prevailing opinion from witnesses at this committee is that the best path forward after the decision was made not to move ahead with the Oakville plant was to negotiate an alternative site with TransCanada, correct?

**Mr. Ben Chin:** That's correct. Not to oversimplify it, but the way we saw it was, you hire a contractor to do a renovation in your house—that renovation is no longer required, but maybe there's a project somewhere else, of equal value, that the contractor can fulfill. You're just trying to treat your contractor fairly for the amount of time and planning he has put into doing the original renovation.

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

**Mr. Bob Delaney:** Okay. In the remaining minute, then, I don't really have much time to go into a lot else, but I'd like to talk about what Deputy Minister of Energy David Lindsay said when he said, "Paying costs and getting no electricity would not be a very good business decision." Could you comment on that in the time remaining?

**Mr. Ben Chin:** Yes. I think that was everybody's view: that if you are paying money, you might as well get—instead of paying money out for no electrons, it's better to have a project that is anticipated and planned for in the future. If it can fulfill the financial needs of that company or the anticipated financial value of the original project, then that is a much better solution, so that that plant gets built, the first one gets cancelled, and there are limited liabilities.

**Mr. Bob Delaney:** Thank you.

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

To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair.

**Mr. Victor Fedeli:** Good morning—good afternoon, Mr. Chin. How are you today?

**Mr. Ben Chin:** It's afternoon here now, Mr. Fedeli. Thank you.

**Mr. Victor Fedeli:** Good afternoon.

**Mr. Ben Chin:** Good afternoon.

**Mr. Victor Fedeli:** Thanks for participating today. I quite appreciate it.

You had answered a couple of times to Mr. Tabuns, and these were the first several questions I was going to ask about as well. I just want to hear you say it again. It's about being kept whole, that indeed the Premier's office had agreed that TCE should be kept whole. Am I correct in—

**Mr. Ben Chin:** Yes, whole or close to whole. That is my recollection of it.

**Mr. Victor Fedeli:** I was just looking at the notes. You may not have seen them. Actually, I sent them to you in document 1, page 11 of 13—not that you need to refer to it, but it's there. It's the John Kelly—

**Mr. Ben Chin:** Yes.

**Mr. Victor Fedeli:** That whole thing. This is your discussion with them. I understand it was done via teleconference as well, that you had said to them, "Chin confirmed that he understood that the Premier's office had agreed that TCE should be kept whole."

**Mr. Ben Chin:** Yes, that's my recollection. I wonder now whether I misunderstood, but that is my recollection and, in fact, that is what happened afterwards.

**Mr. Victor Fedeli:** Exactly; that is what happened afterwards. I'm still on document 1, on page 8 of 13. There's a piece in the middle—again, it talks about this "whole" thing, but I'm going to switch to the net revenue stream now. It says: "If you have a contract with the government and you have sunk costs in it, you want to be kept whole in terms of your revenues from that contract." It looks like somebody is asking you: "Does that mean a net revenue stream over 20 years?" and it appears that you would have said, "That's right."

**Mr. Ben Chin:** Yes.

**Mr. Victor Fedeli:** I just don't know much about that side of it. Take a second and talk about that, please.

**Mr. Ben Chin:** In the contracting for power with a generator, the contract, let's say, is for 20 years. There are different periods for different kinds of generation, but

if you have a contract for 20 years, there is an anticipated revenue for that 20 years. The beauty of engaging in a contract with the private sector is that in the building of that plant, they assume all the risks, so the ratepayers and the taxpayers have no risk in the building of that plant. But once it's built, they're going to be paid a sum of money for providing that power for a period of time. The anticipated financial value—and two parties can have arguments about what that number is, but there is some number there and so you try to look at the footprint of that deal, and in this case you look for another planned piece of infrastructure which would have a similar financial footprint.

**Mr. Victor Fedeli:** In document 2 it gets into the letter from October 6, October 7—I'll call it "the letter."

**Mr. Ben Chin:** Oh, right.

**Mr. Victor Fedeli:** This is "the letter." Were you involved in that?

**Mr. Ben Chin:** Yes, I was certainly witnessing it, but it was mostly led from a legal perspective. It's where communications takes a back seat to lawyers, who actually know what they're talking about. But I was assisting in it, and it went back and forth a few times as it was altered to meet the needs of both sides.

**Mr. Victor Fedeli:** Who would have approved that before it went to the board, specifically, in this case? Would you know?

**Mr. Ben Chin:** It would have been Colin Andersen who approved it and took it into the board.

**Mr. Victor Fedeli:** I realize—because it is written in pretty much legalese—there are some different versions where they've sort of softened or hardened it up a little here or put a few little words here and there. Would somebody like yourself have been involved—not in politicizing it, but covering off the consumer side rather than the legal side?

**Mr. Ben Chin:** Yes, and I think that the CEO, Colin Andersen, was very much concerned about that too. You can sort of see how, through the different iterations, it lands on "anticipated financial value" as opposed to the word "compensation," which is more open-ended.

**Mr. Victor Fedeli:** Yes.

**Mr. Ben Chin:** That kind of thing is a way of trying to lock down the ultimate price and to protect the ratepayers.

**Mr. Victor Fedeli:** You were at the board meeting on October 7, according to the members of staff in attendance at the OPA board meeting on October 7, where it says that the board reviewed the terms of a draft letter to cease all work and acknowledged that TransCanada Energy Ltd. was entitled to compensation.

**1520**

At that particular time, did anybody—there were maybe a dozen people there. Did anybody ask, "What kind of compensation, what scope are we talking about," back on October 7? Did anybody ask, "What's the volume of this?" or "What's the nature of the dough?"

**Mr. Ben Chin:** To be absolutely honest with you, Mr. Fedeli, I don't recall the conversation at the board. I

don't know whether that was because I was constantly going in and out of the board meeting with others, looking at different drafts of the letter or what was going on at the time. I do remember the board being very firm on, "What does this letter mean?" and, "What kind of liability does this open the Ontario Power Authority up to?" and doing all of this protective work around that. But I don't really recall the particulars or the specifics.

**Mr. Victor Fedeli:** That's fair. I'm going to jump to document 3, page 3 of 15. This is a Matt Galloway—it looks like an interview at the CBC, right?

**Mr. Ben Chin:** Yes.

**Mr. Victor Fedeli:** It's a Metro Morning interview. This is October 8, so the next day. Matt Galloway says, "The estimate is that it's going to cost about \$1 billion to cancel this deal; does that seem reasonable to you?" This is Oakville only that I'm talking about. You answer, "A billion dollars or more was the cost of the plant, and of course we honour our contracts."

He says, "So how much is it going to cost to cancel the contract?" You say, "I think it's premature to put a price tag on it."

At that time, what would you have thought in your own mind—before I get to some documents that are more specific.

**Mr. Ben Chin:** I think that these answers reflect what I was thinking at the time. If, in the long-term energy plan, you have a piece of infrastructure with a net revenue stream, a total anticipated financial value, of a billion dollars somewhere else—Nanticoke, Lambton, Kitchener-Waterloo, wherever that may be, because there were several more generating stations that were in the plant. And we don't know, really, until people sharpen their pencils and sit down, which is why I'm saying it's premature. Let's say one of them is exactly \$1 billion and TransCanada agrees that the Oakville plant is \$1 billion in value over 20 years and you can simply transfer the contract over; then there is no additional cost, if it's one-for-one. However, if negotiations go a different way and it's \$1.2 billion and \$1 billion, then there's a \$200-million difference.

That's why I'm saying it's premature. I don't know what the outcome of the negotiations will be.

**Mr. Victor Fedeli:** It's funny that you mentioned Kitchener and Nanticoke—places that are reasonably close to Oakville. I didn't hear you mention Napanee, which is considerably farther away and, as we have learned from the OPA, is going to cost, in their estimation in their presentation, an additional \$1.1 billion minus anticipated savings. At that point of the presentation, they anticipated the savings to be \$700 million, for a net cost of \$310 million. That's been presented here; it's the number that's being used. Add Mississauga onto that and we get \$585 million in cancellation costs.

I know everybody's been talking about—I think you quoted David Lindsay, or somebody did, maybe on the other side: It doesn't seem right to pay money and not get any electrons, but so far, the bill is \$585 million for no electrons. We still have the bill going forward. So it kind

of seems that there's a bit of a fly in the ointment on that theory.

**Mr. Ben Chin:** I can't comment on where the negotiations were completed because, as I said, I wasn't at the Ontario Power Authority after February 2011. But I think, to just add some context to your comment, you were either going to come in with a project that was bigger than Oakville or smaller than Oakville or the same size, right? Those were the choices. That's really up for negotiation. It's a question of what is the best outcome. You—

*Interjection.*

**Mr. Victor Fedeli:** Sorry. Pardon me.

**Mr. Ben Chin:** What is the best outcome—if your argument is that it was \$500 million more in order to get those electrons, but you're still getting electrons from the new plant.

**Mr. Victor Fedeli:** We haven't paid for those yet, though. That bill is coming, right? So we'll deal with that billion-dollar plant—let me just be mildly rude—that sole-sourced billion-dollar plant. We'll deal with that later. It's the \$585 million that we have actually acknowledged—the government has acknowledged that we've paid for no electrons so far. I appreciated your earlier comment, but let's just keep it in perspective that that isn't quite what worked out.

**Mr. Ben Chin:** Okay.

**Mr. Victor Fedeli:** OPA here presented its \$1.1 billion to cancel the contract, minus the \$700 million that they forecast. The Auditor General will come out very shortly and tell us—and we know what happened last time in Mississauga. They said it was so many dollars in savings, but the auditor balked at the formula. We asked the auditor here, under oath as well, "Will you be using the same formula to calculate the Oakville gas charges and the reverse transmission charges?" and the auditor said, "Yes, we will." So we'll see how much of that \$700 million in savings the auditor finds. But their starting number was \$1.1 billion, which is kind of interesting when you look at—we're going to go to page 6 now of 15, that same document, 6 of 15, document 3, about halfway down. Somebody—it's you, actually, saying, "Looks good, Deb" to a Deborah Langelaan—"... one suggestion, some wording changes on slide 7." But here we go—this is you writing this: "Negotiated solution does not exceed \$1.2B."

This is November 24, so about a month and a half after the cancellation. We're talking about a \$1.2 billion here. Later in the year, we come across—I don't have them in the package, but these are slide decks that we've talked about—and I apologize. We've talked about them so many times here, I didn't bring them back—that an offer was made to TransCanada to settle for \$712 million, an offer that they turned down.

Would you again say that that is the scope of what we're talking about? "Negotiated solution does not exceed \$1.2B": Is that fair, considering, a year or two later, OPA came out with that it does cost \$1.1 billion?

**Mr. Ben Chin:** Yeah, I think that it probably would have been the estimate at the time of the full value of the Oakville generating station. In other words, these are goals, really. These are optimal goals of where we need to land, and it's to not pay over and above what Oakville would have cost.

**Mr. Victor Fedeli:** The bottom line is, we keep hearing about this \$40 million in sunk costs. I don't think anybody's going to dispute the sunk-cost number. It may be off a million here or a million there, according to the auditor; we'll see. But is it safe to say—the same question I asked Colin Andersen and many, many others—and, to use Colin Andersen's words, "Everybody knew" that there would be more than sunk costs here in the cancellation of Oakville? Is that a safe sentence to suggest? I would ask you your opinion, then.

**Mr. Ben Chin:** That's a difficult question for me to answer because—

**Mr. Victor Fedeli:** Did you think it was going to cost more than sunk costs? Did you think you were going to get away with \$40 million or whatever the number—it would have been unknown at the time, but that sunk cost number?

**Mr. Ben Chin:** To be honest with you, I didn't think about, "Is it possible," because I'm not in contracting. I'm really there to help them prepare their—in this situation, prepare their slide decks and to get information—

**Mr. Victor Fedeli:** Just for a second, though. A couple of slides ago when I talked about it, this was a letter you wrote to Deborah Langelaan, that here are "some wording changes." "Negotiated solution does not exceed \$1.2B." You're in the ballpark. You're in the game here. It's not that, "I don't do those things." You were commenting on that billion-dollar number.

**Mr. Ben Chin:** Yeah, but the number doesn't come from me. It comes from people like Deborah Langelaan who know what they're talking about, who were contractors. I'm—

**Mr. Victor Fedeli:** So that number was being kicked around by professionals in the energy sector.

1530

**Mr. Ben Chin:** That's right. All I'm saying is that what we want is a one-for-one deal here, not a one-for-1.5 or 1.8.

**Mr. Victor Fedeli:** No, no. I understand.

**Mr. Ben Chin:** That's all I'm saying, and I think, to get back to your earlier question—

**Mr. Victor Fedeli:** Is that the one about more than sunk costs? That question?

**Mr. Ben Chin:** Yes. I think that I was only aware of the goal that we had to drive hard to try to get to a place where the only additional payments were the sunk costs. If you have a one-for-one project and sunk costs, that would be the optimal solution. I didn't know whether we would be able to get there, but that was what we were driving towards.

**Mr. Victor Fedeli:** I want you to look at page 11 of 15. Now, this one is still on doc 3. Now we're talking

about transmission, and this is from Joe Toneguzzo, and you're one of the people that—

**Mr. Ben Chin:** Yes.

**Mr. Victor Fedeli:** Somewhere in the middle there he's talking about, "total equals \$200 million." And earlier actually, on an earlier page, there was another discussion about—it's doc 3, the first page—transmission. Would you have been aware that there would be additional transmission costs? In this particular case it was Oakville versus Nanticoke.

**Mr. Ben Chin:** Right.

**Mr. Victor Fedeli:** So it's understood there are other costs other than the \$40 million in sunk costs?

**Mr. Ben Chin:** That's right, but this is, remember, the transmission project that's called for in the long-term energy plan, which is under development at this time, so this is in answer to a question, "What if we put Oakville generating station on a flatbed and moved it to Nanticoke, basically? What would be the additional costs of doing that?" The answer is, "Well, that doesn't address local area reliability in the southwest GTA; therefore, we would have to move up the plan to build transmission by a decade, and that cost is this."

**Mr. Victor Fedeli:** Go to document 4, then, if you don't mind, and I don't know the source of this document. It's just marked "Confidential," and it's called "Key Names." It's got Colin Andersen and Michael Killeavy, Michael Lyle, JoAnne Butler—these are a lot of people that we've had here—Kristin Jenkins, Jim Hinds. Ben Chin is listed in the key names.

On the next page—and I have to apologize; I know it's a bit unfair—about two thirds of the way down, it's 2010, December 10, and these are the words that are printed here. This is on page 2 of 6 now, on doc. 4. Do you see it?

**Mr. Ben Chin:** Okay.

**Mr. Victor Fedeli:** I honestly don't know who the author is, but it seems that you were involved heavily. It says, "(December 10): Sean Mullin and Ben Chin speak to Chris Breen from TCE." And this is the wording that's printed here; this is a government document: "This shows that Ben Chin is involved in the negotiations with TCE." Do you know what somebody was concerned about?

If my memory serves me correctly, this might be actually preparing for the lawsuit, so they're trying to line up who might be—but it says that you're involved in the negotiations. And the next page, "2011 (January 12): Ben Chin sends PO and MO staff TCE decks on location options to read over." It also goes on to read, "This shows MO and PO involvement in the process."

Would you say that clearly identifies that you were in negotiations with TransCanada and that you were the link between the Premier's office and the minister's office? Is that fair?

**Mr. Ben Chin:** Not quite. The—

**Mr. Victor Fedeli:** Then the next page, 4, says, "Ben will update Premier's office on a weekly basis and will be touching base with them next week after financial analysis."

**Mr. Ben Chin:** And I—

**Mr. Victor Fedeli:** I'm just asking you. I won't interrupt you. You finish off.

**Mr. Ben Chin:** I'm not going to push very hard in trying to change your mind on this, but I'm not actually proposing and fighting back on aspects of the deal.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Fedeli. To Mr. Tabuns now. Thank you, Mr. Chin. Mr. Tabuns has the floor now.

**Mr. Peter Tabuns:** Mr. Chin, I was just listening to the exchange between yourself and Mr. Delaney, and if I can summarize, Ontario doesn't need this power. That was what you concluded in the long-term energy plan: large plant not needed. So why did we sign a contract for 20 years for a 900-megawatt plant that is not needed and that is not part of your plans?

**Mr. Ben Chin:** It was in the four years before that when the process began. It was part of the plans, and it was anticipated to be needed.

**Mr. Peter Tabuns:** I'm sorry. Just for clarity: In September 2010, you said, "We have a long-term energy plan. We've made it pretty clear now. We don't need this plant. We have declining power demand outside the southwest GTA. In the southwest GTA, it's flat." So if we don't need the plant, why did we sign a 20-year contract for a 900-megawatt plant in Napanee?

**Mr. Ben Chin:** Oh, in Napanee.

**Mr. Peter Tabuns:** Why did we decide to give TransCanada a 20-year contract for an unneeded generating station?

**Mr. Ben Chin:** Well, that I can't answer. I can't answer your question, because I wasn't there following February 2011. All I can say is, that long-term energy plan does call for other facilities and gas-fired generators in different parts of Ontario. It's saying that we don't need a 900-megawatt plant in Oakville to do these four things. We only need a plant there to do this one thing in terms of local area reliability, which can be done by moving up the transmission project by a decade.

That's really the extent of the information I know from having been there. Following my departure, there were discussions about where else a plant is required. I don't think that, in saying that in the long-term energy plan, they were ruling out ever building a 900-megawatt plant anywhere in the whole province. I mean, that's not the same.

**Mr. Peter Tabuns:** In Mr. Delaney's words, and you were agreeing, Ontario doesn't need this power; it wasn't the southwest GTA. We have a surplus of power generation capacity, and yet TransCanada, which took the risk of getting permitting to go forward, finds that it can't get the permits to go forward, turns to the province and says, "We want one-for-one." Instead of standing up for the interests of ratepayers, you give them a whole new plant and, as you say, Ontario doesn't need the power. Why was that the case?

**Mr. Ben Chin:** Maybe I should apologize; if that's what I said, then I'm not being clear. What we're saying is that we don't need that plant there. In all the communications materials from the time, it's clear we're saying

that we don't need the plant here; there will be other plants required elsewhere, and hopefully we can find one with the same financial value.

**Mr. Peter Tabuns:** One of the things you were also just saying is that the beauty of having a privately owned plant is that they take all the risk, but apparently that's not the case. They had risk, they ran into trouble, they came to you and said, "Bail us out. Bail us out in Oakville. Overrule the council." You did it with the York Energy Centre; that was a Conservative area. You wouldn't do it in a Liberal area.

What risk did TransCanada take when they knew that they could come to you and, either by threatening a lawsuit which would garner all kinds of negative press or just generally pushing you hard, they would have the OPA bail them out? What sort of risk did they take?

**Mr. Ben Chin:** I don't know that I would agree with that characterization of it. I'm sure that, as we have in the past, Mr. Tabuns, we could have arguments on the merits of public-private partnerships versus public-only projects.

**Mr. Peter Tabuns:** We have; that's true.

**Mr. Ben Chin:** As I recall, you prevailed in that last argument. However, there are sound arguments on all sides of that.

I would say this: It's really not a fair characterization of the situation, as they have a contract for a piece of infrastructure which, we are confident, will go ahead over time no matter how difficult the road may be. It turns out, though, in the midst of that, that we don't really have the evidence to back up going through with it.

The government makes up its mind, and so, in that situation, we need to be fair and to see that, well, there are other projects on the list that need to be done. It doesn't have to be additional money; why not just have them build that other project, so that they have a project, and continue on? It's not a question of creating a project; it's a question of doing one on the list.

1540

**Mr. Peter Tabuns:** I just have to note to you that, in April of that year, Chris Breen reported that TransCanada met with the minister, who said, "Start coming back to us with alternative sites." It was already very clear that there was a political problem with this plant. Set aside the need for the power or not; there were political problems and already then you were looking at ways to get out of those political problems and move this plant on. So it wasn't the change in the energy demand; it was the political problems that the minister and the party were facing in Oakville. That's what this move was about.

**Mr. Ben Chin:** Again, I don't agree with that characterization. I don't know why the government made the decision it did. I do know that we didn't have a leg to stand on when we were facing down government with all their requests for an alternative plan when our planning assumptions changed. If our planning assumptions hadn't changed, we would have continued to vigorously advise government to go through with the plant, which is what we did up until that moment. It's just that at that point we were sitting on a three-legged chair, because it didn't

make sense to argue for this anymore; our numbers had changed.

But I can tell you that up until the numbers were changed there were many requests for looking at alternative sites that we were able to push back on and say, “That’s going to be too costly. That doesn’t work out.” They generally ended up with the conclusion: “That is not an option.” We continued to press ahead, trying to get government’s approval to go ahead with this.

**Mr. Peter Tabuns:** I’m going to take you back to the documents for a minute. You were good enough for me to find document 10; if you would go through and find document 12. While you’re looking, document 12 is, “Notes to file,” a meeting with Michael Barrack and John Finnegan on June 2, and they’re from TransCanada. On the other side were Malliha Wilson, John Kelly, Halyna Perun and Carolyn Calwell. These are notes of their meetings with those representatives from TransCanada Enterprises. On page 2 of those notes—and the “2” is at the bottom of the page—have you been able to find that?

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Okay. “October 5, 2010—two meetings ... J.S.”—I’m going to guess Jamison Steeve: “We are open; threat of litigation is a motivator; spoken to Colin Andersen and Ben Chin (OPA).” Can you tell us what he discussed with you at that point?

**Mr. Ben Chin:** I don’t know why he would—oh, sorry. October 5?

**Mr. Peter Tabuns:** Yes, the bottom third of the page.

**Mr. Ben Chin:** I’m not sure what that refers to, but I think this is sort of why I have the recollection of understanding my conversation with the Premier’s office to mean that we should do our best to keep TransCanada whole or close to whole and to make sure that there was a future project.

**Mr. Peter Tabuns:** The Premier’s office was pretty clear: “Keep TransCanada whole or close to it,” and the OPA took those instructions and that’s the basis on which they wrote their letter to TransCanada.

**Mr. Ben Chin:** Yes. I know that it’s a disputed point, but that’s my recollection of it and that is, in fact, what ended up happening.

**Mr. Peter Tabuns:** Okay. On the next page, at the top—and I gather this is a second meeting on the same day—draft letters are exchanged and we have here: “OPA goes away ... Ben Chin checks with boss—comes back and they have the October 7 letter from Colin Andersen.” Can you tell us about your checking in with your boss?

**Mr. Ben Chin:** Yes. That must be referring to Colin?

**Mr. Peter Tabuns:** I assume so.

**Mr. Ben Chin:** We wouldn’t have had sent out a letter like that without making sure that Colin was absolutely confident with the wording.

**Mr. Peter Tabuns:** And in that wording, you’d abandoned article 14, the defence of the ratepayers section in the contract with TransCanada. Is that correct?

**Mr. Ben Chin:** That is correct in that we were seeking a mutual agreement to terminate the contract by finding

another project of close-to-anticipated financial value of OGS, basically.

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

**Mr. Bob Delaney:** Thank you very much. I was interested in the early part of my colleague’s exchanges. Just for everybody’s recollection, the original call for proposals was issued by the Ministry of Energy in 2004 before there was an OPA, and it was in reaction to the big blackout of the year before.

I just want to begin by asking you a little perspective around the \$1.2-billion number. The goal was really, as we were discussing the last time, to do a one-for-one contract and to settle on the minimum amount of cost beyond the sunk cost. Do you want to walk me through that a bit?

**Mr. Ben Chin:** I can’t really recall the significance of the \$1.2-billion number, but that would have come from more financially minded and contract-negotiating skilled people at the Ontario Power Authority. That document is outlining the objectives that we want to meet, that we want a one-for-one deal so that there is no additional cost to the ratepayer other than the sunk costs.

**Mr. Bob Delaney:** In other words, what it meant is that neither the ratepayer nor the taxpayer was actually going to spend anything like that number; it’s just that that was the value of the contract that you were trying to negotiate a one-for-one swap with. Right?

**Mr. Ben Chin:** That’s correct. Going back to my home renovation analogy—and I hope you’ll forgive me for oversimplifying—if you’re doing a \$60,000 kitchen renovation and you plan to do a \$60,000 garage renovation later, then you cancel your kitchen renovation and you give the contractor the \$60,000 garage renovation, you’re not piling on an additional \$60,000. You’re simply moving the contract from one part of the house to the other.

**Mr. Bob Delaney:** In other words, “I’ll give you the \$250 for the stuff that you’ve started. Now let’s move the work over to another room.”

**Mr. Ben Chin:** That’s right.

**Mr. Bob Delaney:** Good. Thank you.

Let’s go back to the discussions about the pros and cons of either ripping up the agreement or renegotiating the contract. When former Deputy Minister of Energy David Lindsay was here, he said, “If you have a contract and you don’t honour the contract, then the party on the other side can sue you for breach of contract and the damages will be all the benefits they were hoping to procure.”

There were others who said similar things. John Kelly from the Attorney General’s office said, “I’m fairly satisfied there would have been litigation,” referring to if the government and the OPA had not negotiated with TransCanada on an alternative plant. The key thing that he said was, “In my experience, after 40 years of litigating, if you can avoid litigation, you should. It is a process that’s fraught with risk.”

In the circumstances, the best way for the province to avoid litigation was to either reach a settlement on

damages or renegotiate for a new plant with TransCanada. Could you walk us through a bit more detail on that?

**Mr. Ben Chin:** Sure. I think that the way you put it, frankly, is just common sense. You can open the door to risks that are beyond calculation, going down the court route not knowing how it will turn out and, at the same time, send a signal to investors in Ontario that there's no certainty in Ontario, that things can change overnight and that your money is not safe—sending that message at the same time when you're trying to build infrastructure. So you could really do a lot of damage doing that.

A more elegant solution, really, is to do the one-for-one swap: without adding any additional project in the queue, just to take one that is already in the queue and seeing whether that matches up with the value of the Oakville generating station and finding a solution where the company and its shareholders are happy to do the next project and Ontario ratepayers are not paying an additional cost, the company is treated fairly and a vital piece of infrastructure that the province requires is being built. That is the much preferred route to go on than to roll the dice and see how much your costs can go up.

**Mr. Bob Delaney:** So, in the end, there was no litigation because the province and TransCanada successfully negotiated in good faith on an alternative site?

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**Mr. Ben Chin:** Yes. I think all sides were pulling for that outcome. Now, I wasn't there for how that eventually happened, but I think that, all through it, my strong sense from government, from my colleagues at the Ontario Power Authority and from TransCanada was not that TransCanada wanted a briefcase of compensation to walk away with; they wanted a project of equal value.

**Mr. Bob Delaney:** Okay. There have been a few questions back and forth on some of the meetings with the Premier's office, particularly meetings that took place between TransCanada and Jamison Steeve and Sean Mullin, both of whom worked in the Premier's office in that era. Both have confirmed to this committee—which is what I want to explore with you—that they never made any direct offers or promises to TCE.

For your benefit, Jamison Steeve told us, "My discussions with TransCanada were exploratory in nature." Sean Mullin said, "We were not authorized to ... and we did not engage in" any negotiation. He also said that no "commitments had been made," and that there "was no direction from the Premier's office." They said that they had never negotiated directly with TransCanada, and their role in these meetings was to listen.

My question, then: Is it appropriate, in the circumstances, for the Premier's staff to attend meetings with stakeholders on projects of this scale and scope?

**Mr. Ben Chin:** I think it's absolutely appropriate. Both of those individuals are two of the most forthright people I've ever worked with. It's absolutely crucial, at a time like this, that the Premier's office is involved and understands where the different sides are at in terms of the project.

**Mr. Bob Delaney:** In the past, in the present and in the years to come, advisers to the Premier have met, are continuing to meet and will meet with stakeholders on projects that are strategically sensitive to the government of the day. Presumably that would also happen in British Columbia.

**Mr. Ben Chin:** It would happen in every province of the country, in every provincial government, at the federal level, in North America, in Washington and every state government. I think that that is normal business practice.

**Mr. Bob Delaney:** So no one actually has to be shocked that, in fact, advisers to the Premier will attend to be the Premier's eyes and ears when they meet with a stakeholder. Okay.

Let's see. During those preliminary meetings with Sean Mullin, Jamison and CEO Alex Pourbaix, apparently there has been some suggestion around TCE's expectations to be—I'm going to use this word which has a meaning in the legal vernacular—"kept whole."

That was confirmed by Chris Breen when he testified here; he used that expression, "kept whole." He said, "This was put forward by TransCanada.... 'Our idea of being kept whole ... if you don't want us to build there—we're a contractor. Just send us to another site. We'll build on the other site.'"

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

**Mr. Bob Delaney:** What we've been exploring here is that the best outcome on both sides was to find that alternate project to allow TCE to recoup the value of that contract. Is that a correct interpretation? Do you want to just finish my time by expanding on it?

**Mr. Ben Chin:** Yes. That is absolutely the correct interpretation of it. I think that, in that discussion, you wouldn't say to the other party, "We're going to give you another contract of one tenth the size." Obviously, that's not going to be on. If you're going to mutually agree to terminate, you have to mutually come to terms with what both sides can live with.

**Mr. Bob Delaney:** In other words, equals for equals.

**Mr. Ben Chin:** That's right.

**Mr. Bob Delaney:** Thank you.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Delaney. To the PC side: Mr. Yakabuski?

**Mr. John Yakabuski:** Thank you very much, Mr. Chin. Thank you for joining us from Vancouver today. Or Victoria.

**Mr. Ben Chin:** Yes.

**Mr. John Yakabuski:** Regardless, thank you.

*Interjection.*

**Mr. John Yakabuski:** The other side of the country, yes.

Mr. Delaney and you have been talking about 2004, and that is when the original RFPs were sent out about a proposal to build a new gas-fired power plant in the southwestern GTA, being Oakville. This was conceived, thought about; proposals were devised, sent out; and not until 2009 was a contract signed. By that time—and from 2004 on, it was very clear to anybody who was listening that this was a problem. The local people were absolutely

opposed to it, yet the government continued to insist that the reason behind it was the need for power in that region. In fact, after the cancellation, in an interview with Matt Galloway, you continued to insist that the local need for the power was still there.

**Mr. Ben Chin:** Yes.

**Mr. John Yakabuski:** So you still insist the local need is there. You sign a contract in 2009. Within a year and a month, the decision is made not to build that plant. We now know that it's going to cost us at least \$310 million for that mistake. Offers of \$712 million were made for that mistake, to TransCanada. We won't know what the final amount is going to be until the auditor actually releases his report.

Who is responsible for that kind of a litany of incompetence to make that kind of a decision? "Go ahead with the plant. Make the decision to sign those contracts." If they had said in July 2009, "You know what? The writing is on the wall here. We're not going to go ahead," you don't sign a contract—and now you're going to build a power plant in Napanee, where you've got all kinds of additional costs because of gas transportation issues and transmission. Who's responsible for that kind of a mistake?

**Mr. Ben Chin:** I would start here, sir, that—I really can't speak to Napanee or where the dollar figures are today. I'll just take your word for it, because I'm not aware of what's been happening since I left Ontario in February 2011. But I will say this: When you look back at 2004 and the need that was identified in the southwest GTA, you could as easily ask who was responsible for ignoring the infrastructure problems in the southwest GTA, reliability issues in the southwest GTA, or the 10 years before that when no work was done on it, when—

**Mr. John Yakabuski:** I'm not asking you about that. I'm asking you about the decisions that were made at the OPA, where you worked, and with the present government. We're not looking for a history lesson, here. I've got 10 minutes here, Mr. Chin.

Who was responsible for making those decisions?

**Mr. Ben Chin:** Well, I would say that the Ontario Power Authority's planners made their forecast based on the best information they had four years before the cancellation of the plant; and that that information changed, they were alive to it, they brought it up, and that changed all of the circumstances.

Had they not discovered that their planning assumptions had changed over the four-year period, then we would have gone ahead and continued to work to build the plant in every way that we could have. But they were honest about it. They found it, and they shared that information.

**Mr. John Yakabuski:** Well, it seems that an awful lot of discussion went on about how we were going to get out of this mess once we created it, but we don't have much background on what kinds of discussions you folks might have had in avoiding this mess in the first place. Because the writing was on the wall. Just as you said to Chris Breen that you know this plant is never going to get

built—well, sometime between 2004 and 2009, you must have had some discussions that centred around that. Why would you go ahead and sign a contract in 2009, already knowing that the chances of this were becoming slim to none, and a year later, you make a decision that now foists upon the people of Ontario hundreds of millions, possibly a billion dollars, in additional costs because of that decision? Someone has to be made responsible for that.

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**Mr. Ben Chin:** So first of all, from 2004 to 2009, I don't think there's any discussion other than, just before, a gut check, before awarding the contract, of any information that is available to the Independent Electricity System Operator and to the Ontario Power Authority in the mid-term plan, in the long-term plan that says that that plant is not required. That plant was vitally required for all of that time. Somewhere between 2009—

**Mr. John Yakabuski:** And now it's not?

**Mr. Ben Chin:** Yes. Somewhere between 2009 and 2010, that assumption changes. Now, it would be great if we could go back and turn back the clock and have a better understanding in 2008 of what would happen in 2010, but we didn't. In hindsight, yes, it would have been great to know that in 2004 or 2007, but unfortunately we didn't know, or our planners did not know, until 2010.

**Mr. John Yakabuski:** So you expect the people of Ontario to believe that between September 2009, when the contract was signed with TransCanada, and October 7, 2010, but probably more about February or March but certainly by April 2010—that this was already the wrong decision, that the world changed that much in those few months? You expect the people of Ontario to actually believe that?

**Mr. Ben Chin:** I believe, sir, that it was more the summer of 2010 and the preparatory work going into the long-term energy plan. That's what really unearthed it because, up until then, as I've said to Mr. Tabuns and to Mr. Delaney, I saw that my primary objective was to work with TransCanada to make sure that the plant got built, so that the southwest GTA would have a vital asset in their neighbourhood to power their homes and hospitals and businesses.

When you quoted the conversation between me and Mr. Breen, that's after that fact emerges, and we realize—you know, if the government is intent on cancelling this plant, there's really not much of an argument that we can put forward because, all of a sudden, a 900-megawatt plant has shrunk to a 300-megawatt plant for that local area.

It's a difficult job of, as I said before, projecting yourself forward—using some of our best minds to project forward—to go look at future conditions. In this case, the number changed over a period of time, and that work really began—I don't know exactly when that began, but it was preparatory work for the long-term energy plan, so it would have been the summer.

**Mr. John Yakabuski:** So the government—it was based on the decision of the government to cancel the

plant; not the recommendation of the OPA, the decision of the government. So people were going along blindly, myopically determined that this was going to be built, and then the decision was made by political operatives to cancel the plant. Well, then, if that is the case, Mr. Chin, would it not be those people who should be held responsible for this decision?

**Mr. Ben Chin:** I think that at that period of time, Mr. Yakabuski, the government was constantly challenging the need for the plant and why it was being built, and they were constantly looking for alternatives, and we were strongly advising them that this was the best alternative and that this was the optimal location. We argued for that vigorously and then, all of a sudden, we had different numbers—

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

**Mr. Ben Chin:** —which changed the game and really did not—we weren't able to vigorously argue against moving the plant after that.

**Mr. John Yakabuski:** Okay. Great. So the plan was changed. You had quite some significant involvement in this. We've seen this from the paper trail and the conversations etc.

So at the end of the day, a decision is made to build this plant in eastern Ontario, nowhere near the power need. Could you have supported that decision? You talked about Nanticoke. You talked about Cambridge. You talked about the Kitchener-Waterloo area. Building this plant in Napanee: How wrong was that?

**Mr. Ben Chin:** Well, again, I don't know what factors went into it. I'm not a planner. I would ask you to ask the head planner for the Ontario Power Authority—

**Mr. John Yakabuski:** You've offered some opinions here.

**Mr. Ben Chin:** —who knows the system inside and out.

**Mr. John Yakabuski:** Give me an opinion on that one.

**Mr. Ben Chin:** If I gave you an opinion, it would be pretty worthless compared to his and—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski, and thanks to you, Mr. Chin—

**Mr. Ben Chin:** I don't know how to answer that.

**The Chair (Mr. Shafiq Qaadri):** —for your testimony from Victoria, British Columbia.

Colleagues, that concludes the—not the witness protection but the witness questioning.

#### SUBCOMMITTEE REPORT

**The Chair (Mr. Shafiq Qaadri):** We have a subcommittee report to be entered by Mr. Delaney. Go ahead.

**Mr. Bob Delaney:** Okay. Chair, your subcommittee on committee business met on Tuesday, September 24, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following:

(1) That the Clerk of the committee invite Michael Lyle from the Ontario Power Authority to attend an in-camera meeting of the subcommittee on Tuesday, October 8, 2013, to:

(i) further review the confidential documents received in response to the committee's May 14, 2013, motion; and

(ii) to discuss the confidential nature of the documents received in response to the committee's August 27, 2013, motion.

(2) That the non-confidential documents the committee received from the Ministry of Finance in response to the committee's May 7, 2013, motion, form part of the committee's public record.

(3) That the non-confidential documents the committee received from the Ontario Power Authority in response to the committee's August 27, 2013, motion, form part of the committee's public record.

I move that the subcommittee report be adopted.

**The Chair (Mr. Shafiq Qaadri):** Any questions or comments before we move adoption?

**Mr. John Yakabuski:** No.

**The Chair (Mr. Shafiq Qaadri):** All those in favour? All opposed? The motion is adopted as read.

Any further business before the committee? Thank you, colleagues. The committee is adjourned.

*The committee adjourned at 1606.*





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