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Tuesday 22 October 2013

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Mardi 22 octobre 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 22 October 2013

Mardi 22 octobre 2013

*The committee met at 0831 in committee room 2.*MEMBERS' PRIVILEGES
MINISTRY OF ENERGY

The Vice-Chair (Mr. Phil McNeely): The meeting will come to order. We'll start with the swearing-in of Serge Imbrogno, Deputy Minister of Energy.

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

Mr. Serge Imbrogno: I do.

The Vice-Chair (Mr. Phil McNeely): You have up to five minutes to make your opening statement.

Mr. Serge Imbrogno: Thank you.

Good morning. At my previous appearance before this committee on April 9, I outlined my ministry's efforts in the release of 8,800 pages of documents on September 24, 2012, and an additional 5,895 pages of documents a few weeks later, on October 12, 2012.

In responding to a question that day, I said that I thought there was value for future document searches in having a discussion with the committee outlining what we're doing, the process we're following, whose records we're searching and what terms we're using. I have written to this committee to explain our methodology and progress, which I will also briefly detail now.

As you know, on August 27 of this year, this committee made an additional request of my ministry for documents covering a broader range of dates and documentation. The ministry is in the process of collecting and preparing the records of current and former staff. Our minister's office is undertaking a similar search. As mentioned in my letters to the committee, gathering the records of the more than 250 current and former employees is a huge undertaking, but one that we have given the highest priority.

We have experienced a number of technical issues gaining access to older electronic records. Converting the documents to a searchable PDF format will also take time. Given these delays, and our understanding of the committee's interest in receiving documentation as soon as possible, on October 7 we submitted a partial release of documents to the Clerk totalling about 50,000 pages of documents. We are currently working to provide a

version of this initial package with all confidential, privileged and unrelated information redacted.

To speed up this process, we have hired the law firm of Wortzman Nickle, who specialize in e-discovery, to help redact this sensitive information to expedite our next disclosure to the committee. At the same time we are continuing to collect and review records from staff not included in the October 7 disclosure.

Thank you for this opportunity. I'm happy to take your questions.

The Vice-Chair (Mr. Phil McNeely): We'll now start with questions and we'll start with the government. It will be 20 minutes each and then, for the second round, 10 minutes each. You may begin, Mr. Delaney.

Mr. Bob Delaney: Just at the outset, Chair, for the information of the committee, our Chair, Mr. Qaadri, is not with us today. On behalf of the committee, I'd like to extend our deepest sympathies to his family on the passing of Mr. Qaadri's father.

Deputy, it's good to see you back.

Mr. Serge Imbrogno: It's nice to be here. Thank you.

Mr. Bob Delaney: We'll pick it up. I just want to have a little discussion this morning about some aspects of the Auditor General's recent report on the relocation of the Oakville plant. As a preamble, the report states, and I'll use the language of the report, "About two thirds of the net costs we have estimated have yet to be incurred, and all of the savings are estimated to be realized in the future."

The question is, "in the future," means amortized over a 20-year period. Would that be correct?

Mr. Serge Imbrogno: That's correct.

Mr. Bob Delaney: Okay. Based on that, it would be fair to say that the auditor's office took a fairly long-term, forward-looking view for their estimate of the costs? Again, correct?

Mr. Serge Imbrogno: That's correct. The plant would come into production in 2017-18, and at that point payments would begin for the electricity produced from the plant, and from 2017-18 those would go over the 20-year period. So the auditor is signalling that most of the costs that will come on to the rate base would start once the plant is constructed.

Mr. Bob Delaney: The auditor would then have been talking about a time frame of 2017-18, all the way out to 2037-38?

Mr. Serge Imbrogno: That's correct.

Mr. Bob Delaney: To do that projection, there's a bit of art in that, too, I would assume?

Mr. Serge Imbrogno: I think any time you're modelling what's going to happen in the future, 20 years out, there's a lot of assumptions that need to be made.

Mr. Bob Delaney: Right. In fact, the auditor cautioned—and I'll again use the language of the auditors' report, "There is considerable uncertainty when dealing with future events," and the report goes on to say that the cost estimates "are based considerably on judgment." Would you just expand for the committee on why it may be difficult to exactly pin down this type of a 20-year future estimate?

Mr. Serge Imbrogno: I think there's many variables that you have to take into account. There's inflation out for the 20 years. There's the price of gas. There's the price of infrastructure, tolling costs, gas management costs. All those will change over time. There's a number of regulators that would have to opine on different rates that are being charged. So all those things, you make your best guess today at what they will be 20 years over time. All those factors can go one way or the other.

Mr. Bob Delaney: Okay. In these 20 minutes we'll explore a little bit of that. Last Tuesday, the same day that the auditor tabled her report—sorry; that would be a week ago Tuesday, the OPA put out a statement saying that they stand by their estimate of \$310 million for the relocation cost of moving that plant from Oakville to Napanee. That's the same estimate that the Ontario Power Authority provided to this committee more than six months ago, on April 30. In their release, they note that the difference between the Auditor General and the OPA's estimate is largely attributable to the fact that they used "different rates to put future costs and savings in today's dollars and used different in-service dates for the plants."

Getting to the in-service dates a little later on, I'd like to focus for a moment on the different discount rates. The auditor used a 6% discount rate while the OPA used a 4% discount rate. Would you explain to the committee just what discount rates are and what type of judgment or factor would go into estimating that value?

Mr. Serge Imbrogno: Sure, I can do that. I think you said the AG used 6%. I think the AG used 4% and the OPA used 6%. I just want to make sure I heard that correctly. So AG 4%—

Mr. Bob Delaney: Sorry. Your numbers are correct. That's what I thought I had said.

Mr. Serge Imbrogno: Okay. The discount rate: When you have a stream of payments over time or a stream of revenues over time, it's common practice in financial analysis to present-value those cash flows or cost payments over time, so you can compare them to today's dollars. There are a number of different discount rates that can be used. They all try and reflect the time value of money, or the opportunity cost of those funds that you expense or those costs that you incur.

0840

The Auditor General basically uses a risk-free discount rate that reflects the long-term borrowing costs of

the province, and that cost is in the 4% range. Economists tend to use what we call a social discount rate, so from an economist's perspective, when we look at the opportunity cost of funds or the opportunity cost of payments, it's more than just an interest cost. We try and look at what is the opportunity cost of not investing in health, environment or other government investments, and economists tend to use what we call a social discount rate.

At the Ministry of Finance, the current estimate of the social discount rate is 5.5%. When you look at an organization like the OPA, they tend to have a discount rate based on what their risk assessment is of the market. The OPA is into contracting with electricity generators; they have a discount rate that they use that reflects what they think is their opportunity cost of funds, and the OPA uses a 6% discount rate.

The mechanics of it is, the lower the discount rate, the higher the PV, so when you have two cash streams that are the same and you use a lower discount rate, you're going to have different present value. So when the auditor uses a 4% discount rate versus the OPA's 6% discount rate, the Auditor General would get a higher present value even though the revenue streams are basically equivalent.

Mr. Bob Delaney: What was the OPA's rationale in using the discount rate of 6% that they chose, which is higher than the 5.5% that you mentioned?

Mr. Serge Imbrogno: I don't want to speak on behalf of the Ontario Power Authority. I would just say in general that when you're looking at different organizations, they use different discount rates, depending on where they think the risk is for them in the market. If you looked at a company, they could use an equity discount rate, which is more what they expect their equity returns would be. Sometimes you use a weighted average cost of capital when it's a commercial company. For the OPA, I think, whatever discount rate they select would reflect what they think is the risk of the investments they're making or the people they're contracting with.

Mr. Bob Delaney: The OPA and the Auditor General also differ on the estimated start dates for the Oakville plant, assuming it had gone forward, and for the future Napanee plant. In fact, the timing of those start dates are based on a number of different assumptions. Given this and the pros and cons behind using a 6% discount rate, 20 years from now, is it in the realm of possibility that the OPA's estimate of \$310 million could actually be closer to the total cost of the relocation?

Mr. Serge Imbrogno: Well, I think that if you look out 20 years, if you compare the cash flows, I think the cash flows between the OPA and the auditor, after a certain point in time, are not that different. It really is what you feel is the discount rate, so I don't think that would change. I think what would be known over 20 years is if those are the cash flows as forecast today. I think that, as you look out further, there's not a lot of difference between the auditor and the OPA in terms of, for example, gas management costs. It's hard to say, 20

years from now, whether it will be \$610 million or \$310 million or \$675 million.

Mr. Bob Delaney: When the auditor played out her scenario regarding the Oakville plant and when it might have been operational, the auditor's report estimated that, all things considered—including the municipal bylaws and the numerous court appeals, as well as a possible appeal to the Supreme Court by the mayor of Oakville—plant construction would have begun in mid-2012 and possibly been complete by December 2015. We accept that it's difficult to presuppose what the outcome would have been from the various legal processes, up to and including the Supreme Court. But the question here is, would you agree that the OPA would have still incurred savings from the fact that the construction of the plant would have been delayed as these processes played out?

Mr. Serge Imbrogno: No. I think both the OPA and the auditor agree there would be savings from not having the plant start on the original date, and so, by pushing it out, both agreed that there are savings.

For the OPA, because they use the contract start date, there are many more years of savings that OPA has taken into account, whereas with the auditor, in the auditor's judgment, the plant wouldn't start until 2015. She also believes that the relocated plant would start earlier than the OPA believes, so the auditor only has about 21 months of savings. So they both agree on savings; it's just that one is a bit more truncated than the other.

Mr. Bob Delaney: In Oakville, Oakville town council had tried to erect obstacles in the path of construction of the plant through the passage of municipal bylaws. As we've heard in this committee, the proponent, TransCanada Energy, had contested the bylaws with five appeals, both at the Ontario Municipal Board and in Divisional Court. In fact, when I asked the auditor about that, one of the things that she testified was that she had a legal opinion that TransCanada Energy would win each of those five appeals.

Just to refresh you, when Chris Breen from TransCanada testified at the committee, he told us: "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." He also said, "TransCanada were confident that they were going to eventually get to build the project on the Ford lands."

When Ben Chin, formerly of the OPA, was here, he told the committee that all of the obstacles put forth by the town of Oakville, to use his words, "could be overcome. It was just a matter of time." He concurred that TransCanada were very confident in their legal advice. And ultimately, in her report, the auditor concluded that the plant would have been built.

From your vantage point, was there a very real possibility that the courts would have ruled in the proponent's favour and TransCanada would have been able to start construction on the plant on the Ford lands in Oakville?

Mr. Serge Imbrogno: That's a difficult question for me to answer, because I wasn't around when those dis-

cussions were happening; I haven't seen any of the legal opinions from various sides. I would leave it to what's already in the public domain about whether the plant would have been constructed. I guess the fact that the auditor has accepted some of the start dates—

Mr. Bob Delaney: Let's put it a little differently, then. As soon as the bylaws would have been overturned, the permits would have had to be issued by the town of Oakville and TCE would then have been able to begin construction, correct?

Mr. Serge Imbrogno: I think that's how it would have worked, yes.

Mr. Bob Delaney: In other words, the province would have been taking a huge risk if it had tried to wait out a process that we now know was very much stacked in TransCanada's favour.

Interjection.

Mr. Serge Imbrogno: Could you repeat the question, because I was just—

Mr. Bob Delaney: In other words, from the province's perspective, the province would have been taking a huge risk if it had tried to wait out a process that we now know was stacked in TransCanada's favour and, in the end, the bylaws had been overturned.

Mr. Serge Imbrogno: Again, I'm not familiar enough with the contracts. It's really a contract between TransCanada and the OPA. The OPA would have all the information about different terms of force majeure, different contract provisions, discriminatory action clauses. So I'm really not in a position to say what the risk was.

Mr. Bob Delaney: If the decision to relocate the plant had not been made until after construction started, then would it be fair to say, in terms of Oakville, that the sunk costs would have been higher?

Mr. Serge Imbrogno: Sorry. Could you repeat that again.

Mr. Bob Delaney: Yes. If the decision to relocate the Oakville plant had not been made until after construction had started on the Ford lands in Oakville, would the sunk costs have been higher?

0850

Mr. Serge Imbrogno: I think it's my sense that it would be fair to say that TransCanada probably would have incurred more as set-up costs, so I think by definition the sunk costs would have been higher at that point.

Mr. Bob Delaney: To move now to talk about the potential tolling increases that were referenced in the Auditor General's report: Any increase in tolls, first of all, my understanding is, would require the approval of the National Energy Board; correct?

Mr. Serge Imbrogno: That's correct.

Mr. Bob Delaney: So prior to any National Energy Board review and approval, it would be somewhat speculative to try to determine how any future tolling costs would impact gas management costs associated with the Napanee facility; right?

Mr. Serge Imbrogno: Yes. I think until the NEB rules on a tolling arrangement, then it would be just a risk that's out there that's been identified, but the exact

amount of it wouldn't be known, obviously, until the NEB rules.

Mr. Bob Delaney: So with the report noting that a gas management plan must be approved by the Ontario Power Authority prior to TransCanada Energy purchasing any gas services, and furthermore, that TransCanada Energy and the Ontario Power Authority are currently looking at alternative gas supply arrangements, the \$140-million figure referenced in the auditor's report is at best an estimate and may be somewhat speculative; correct?

Mr. Serge Imbrogno: I think there's two issues. One is the gas management contract between the OPA and TransCanada. That's one set of costs. Then, in addition to that, there would be tolling costs that would be determined through the National Energy Board. I think the OPA has a forecast of what those gas management costs are. They won't be finalized until this committee of OPA and TransCanada agree, and the \$140 million is really an upper-end estimate of what a potential tolling cost might be, in addition to the gas management costs.

Mr. Bob Delaney: The investment planned for the Parkway to Vaughan pipeline isn't solely the result of the Napanee plant being sited along that route; correct?

Mr. Serge Imbrogno: Discussions have been happening related to the Parkway infrastructure investment before the Napanee plant was relocated to Lennox, so that's an existing discussion that's happening between TransCanada and the local distribution companies.

Mr. Bob Delaney: In other words, there was a settlement between TransCanada PipeLines, Enbridge, Union Gas and GMI which is completely unrelated to the Napanee gas plant; correct?

Mr. Serge Imbrogno: Yes, that's correct.

Mr. Bob Delaney: So those upgrades were planned, regardless of whether this new facility in Napanee would be built or not built; correct?

Mr. Serge Imbrogno: That's my understanding, yes.

Mr. Bob Delaney: In terms of the \$615-million cost, the Auditor General's report notes that two thirds of the net costs and all of the savings have yet to be incurred. Could you explain how this would be amortized over the next 20 years?

Mr. Serge Imbrogno: Well, starting when the plant is constructed, the OPA would make a payment based on the net revenue requirement. Those payments would happen over the next 20 years.

Are you asking about how that would be reflected in rates, or just how it's—

Mr. Bob Delaney: How do you amortize it?

The Vice-Chair (Mr. Phil McNeely): You have less than a minute.

Mr. Bob Delaney: Do you simply average it over the 20 years? Do you front-end or back-end load it? What would be the mechanics of that amortization over 20 years?

Mr. Serge Imbrogno: I think you would have to make certain assumptions about the start date of the plant and how the plant would run, because you're paying a

certain megawatt hour payment. You'd also have to make assumptions about what revenues the plant would get from the market. There's a deeming provision in the contract. So I wouldn't say it's front-end loaded, but it's not averaged over the 20 years either. You'd have to make certain assumptions of when the plant is running, more or less, and you'd model that out. So it's possible in certain years the plant might run more, as you have nuclear outages, and then, as the nuclear plants come back, you might run the plant less.

The Vice-Chair (Mr. Phil McNeely): Thank you. The 20 minutes is up. We'll go to Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. Good morning, Mr. Imbrogno. How are you today?

Mr. Serge Imbrogno: I'm doing well, thank you.

Mr. Victor Fedeli: Good. It's good to see you back here again. You were here on April 9 of this year.

Mr. Serge Imbrogno: That's correct.

Mr. Victor Fedeli: The Mississauga power plant cancellation auditor's report came out at the end of April. When would you have seen the draft of the Mississauga report? How many weeks before this came out?

Mr. Serge Imbrogno: Sorry, the Oakville report or the—

Mr. Victor Fedeli: Mississauga.

Mr. Serge Imbrogno: Mississauga. I think maybe a week before or in that range.

Mr. Victor Fedeli: The auditor told us it was six to eight weeks in advance that the ministry people were given the copy. Would you have been one of those people?

Mr. Serge Imbrogno: I would have probably been the first one to get it.

Mr. Victor Fedeli: So is it six to eight weeks, as he said, or a couple of weeks?

Mr. Serge Imbrogno: This is—

Mr. Victor Fedeli: Mississauga.

Mr. Serge Imbrogno: Mississauga. I'd have to go back. I know that I got the Oakville report about a week before it was put out.

Mr. Victor Fedeli: If the auditor told us it was six to eight weeks before, do you think he was accurate?

Mr. Serge Imbrogno: I'm sure he was totally accurate, yes.

Mr. Victor Fedeli: Now I am switching to Oakville.

Mr. Serge Imbrogno: Okay.

Mr. Victor Fedeli: I'll come back to Mississauga. I'm going to tackle you on the \$5-million NUG contract in Mississauga, but I'll get to that a bit later.

When we had you here—I'm going to read one sentence from the transcript. This is on this \$40 million. These are your words: "The \$40 million was our estimate of the termination at the time, what the sunk costs were that would be paid for by the Consolidated Revenue Fund. We knew that there would be other costs and benefits of relocating to a new site and those would be part of the obligation of the ratepayer."

That was your statement back then. Do you recall that?

Mr. Serge Imbrogno: Yes.

Mr. Victor Fedeli: A little later, about two minutes later, you also said this: “I think the minister knew—I believe—that the \$40 million was the sunk costs paid for by the taxpayer, and there were other costs and benefits to the system that would be through the rate base.”

Do you recall that, as well?

Mr. Serge Imbrogno: Yes, I do.

Mr. Victor Fedeli: Why, then, would you think the minister would continue to say, “You’re going to hear a lot of numbers but there’s only one number you need to know and that’s the total cost is \$40 million”? Why would you think the minister would say that if he knew, as you said twice here, that there were going to be other costs?

Mr. Serge Imbrogno: I think if you look at the minister’s statement closely, he does, I believe, say “in the end, attributed to the taxpayer.” So he—

Mr. Victor Fedeli: So he forgot to tell us about the money to the ratepayer.

Mr. Serge Imbrogno: He may be consistent saying that the \$40 million is taxpayer, but there were other costs and benefits.

Mr. Victor Fedeli: You told us that the minister knew at the time there were indeed other costs for the ratepayer.

Mr. Serge Imbrogno: The minister would have been aware of the \$210 million for the turbines. He would have been aware that the OPA had taken on gas management costs, although at the time, we didn’t have a firm estimate of what that would be. There was a committee that would be set up, so over time those would be firmed up. There were connection costs that he would have been aware would have been part of the additional costs.

Mr. Victor Fedeli: Those are adding up into the hundreds of millions, by the way, between the costs and the savings.

Mr. Serge Imbrogno: Right.

Mr. Victor Fedeli: The net is still hundreds of millions, as we ended up learning.

Mr. Serge Imbrogno: Yes, and just so I’m clear, at the time we knew that the Oakville contract had certain costs attributed to it, so we would have tried to back those out of the net revenue requirement.

Mr. Victor Fedeli: I understand.

Mr. Serge Imbrogno: The incremental costs at Napanee were not known at the time. We knew they would be incrementally potentially higher, but we didn’t have a firm estimate to say how much—

Mr. Victor Fedeli: Back when you were here in April?

Mr. Serge Imbrogno: No, when we were negotiating the actual deal back in September.

Mr. Victor Fedeli: Because here at the committee, after we were maybe about halfway through, you and I had a pretty good chat about these costs, and between us, we started talking about the value TransCanada was seeking as \$503 million plus \$210 million plus \$37 million. I asked you, “Is that kind of where their starting

point was back in ... 2011?” We came up, here at the table, a year and a half before the auditor—at that particular time, the numbers that came out would have been half a year before the auditor—\$750 million was our estimate back then. The auditor did confirm \$675 million plus an additional \$140 million, for an \$800-million number. So we were kind of in the middle.

0900

So you and I really were talking about this kind of number, and I had asked you at the time, “You prepared this document, I presume”—these are my words; I’m quoting—“or had it prepared. This is a document you originated. You’re sending this.” You started by saying:

“Hi,

“Attached are initial comments on the TCE model.

“Serge.”

At that time, we were indeed in the \$750-millionish number. Do you confirm that today?

Mr. Serge Imbrogno: I just wanted to—I don’t have that in front of me. I think it’s referring to when I was working at the Ontario Financing Authority. It was during the arbitration process. It was when TransCanada was sharing their pro forma models and we were looking at—

Mr. Victor Fedeli: It was December 2011.

Mr. Serge Imbrogno: So it was in the context of the arbitration. It was looking at what TransCanada felt they would recover in terms of sunk costs plus lost profits plus terminal values. So we would have looked at that model.

Mr. Victor Fedeli: They were pretty close, weren’t they? I mean, they ended up at \$750 million and the auditor came in at \$675 million plus perhaps another \$140 million, which looks like it will come through when the ruling comes through. So you knew, back in December 2011, that the scope TransCanada was looking for was in the \$750-million range.

Mr. Serge Imbrogno: In the context of the arbitration, that’s correct, yes.

Mr. Victor Fedeli: Okay. So back in—

Mr. Serge Imbrogno: Just to clarify, not that we agreed with TransCanada that that’s what they were due, but that’s from our understanding—

Mr. Victor Fedeli: Well, that brings us to the next point. So you understood, back in December 2011, that the scope of this was in the \$750-million range. That’s the letter you wrote: “Attached are our initial comments....” You’re going back and forth debating the \$750-million number. You said you did not necessarily agree with them, but this is the scope that they were talking. What happened then? The Premier’s office agreed to make TransCanada whole. Is that when you threw the towel in and said, “Well, if we’re going to make them whole, we already know the number is around \$750 million.” Is that kind of what happened next?

Mr. Serge Imbrogno: I think the sequence was a little bit different than that, Mr. Fedeli.

Mr. Victor Fedeli: I would appreciate hearing it.

Mr. Serge Imbrogno: When I came into the process, the arbitration agreement had already been put in place,

so whatever terms of that arbitration were already reflected. I think the arbitration agreement said that the plant would have been built, and the plant would have been built on time. Then, based on that is how we did the analysis going forward. So whatever agreements were discussed would have been before the arbitration agreement was signed.

Mr. Victor Fedeli: I understand that, and I don't disagree with you for a moment on that. Basically the arbitration agreement is discussed, it's agreed to and the number that we knew back in December 2011 was going to be in the \$750,000 range, if it was all approved.

Mr. Gilles Bisson: \$750 million.

Mr. Victor Fedeli: \$750 million. Thank you. If it was all blessed.

Mr. Serge Imbrogno: Based on what TransCanada felt was what the contract value was to them.

Mr. Victor Fedeli: Well, it seems to be more than just what TransCanada felt, because it did happen. The auditor has told us now that these numbers, almost to the dollar, are indeed the numbers that did happen: 503, 385 minus the discount rate—they used 5.25% back then as the discount rate. That's all in the transcript of our discussion. So you came up with a number of \$504 million using that discount rate. It was smaller numbers if you use a different discount rate and a different term. My point is: Back in December 2011 we knew that it was \$750 million if the settlement was going to be granted.

Mr. Serge Imbrogno: Yeah, but just the settlement—

Mr. Victor Fedeli: I'll take the "yeah." The "yeah" was good.

Mr. Serge Imbrogno: But I think it's important: The settlement would have been paying for the turbines, paying for the lost profits, potentially a terminal value, but—

Mr. Victor Fedeli: That's exactly what the auditor went through: turbine purchase, \$210 million; modifications, \$36 million; sunk costs, \$40 million; legal, \$3 million; gas delivery and management, \$577 million—we were a little off on that. But then, when you get to the lower price negotiated, it's minus \$275 million, so basically we're in the same zone. Mind you, we were using five and a quarter, so we're off by a per cent or so there.

Mr. Serge Imbrogno: But in that context, it would have been a payment to TransCanada if the arbitration went TransCanada's way.

Mr. Victor Fedeli: So we didn't bother with arbitration because we just jumped in and the Premier said, "Make them whole."

Mr. Serge Imbrogno: No, I'm just saying, going forward, what we have now is we're actually getting generation, we're getting electricity, we're getting payments from TransCanada for the electricity—

Mr. Victor Fedeli: We're getting nothing today. Let's remember: There's nothing today. This is \$675 million plus \$275 million. We're not getting anything for that; we're getting air. Let's be clear about that.

Back in 2010, when we knew it was going to cost \$750 million, did we know that—the auditor has con-

firmed that \$513 million was made because of the poor site that was chosen: Napanee, so far away from Oakville, where the power is needed. How did we get to that figure?

Mr. Serge Imbrogno: The arbitration process continued into September 2012. The government decided that, rather than—there was going to be a model exchange and a valuation exchange. It was a decision that we would have one more opportunity to find a commercial agreement, and at that point, we were looking at different potential locations for the TransCanada site.

Mr. Victor Fedeli: You don't have to be an energy expert to say, "Wow, that's a long way from Oakville. Isn't it going to cost a lot of money to get material there, and isn't it going to cost a lot of money to get power back? Aren't we going to have a line loss?"

Did anybody go through those calculations as the auditor did? She sat in that very chair, Mr. Imbrogno, and she went through these items one by one and said that because Napanee was chosen, the gas delivery and management cost a net increase of \$300-and-whatever million. But the hydro connections, because it's Napanee, was a certain percentage of the \$43 million. The gas for less efficient turbines is \$35 million. The transmission system upgrades, because it's out there, is \$81 million. The line loss for power to travel is \$32 million, and on and on and on. She's not an energy expert; I'm not an energy expert. But we can all figure out, "Wow, that's a heck of a long way to go to get power when there are other areas nearby that may be willing host communities."

Did anybody even question why Napanee? Or did anybody do the math and say, "If we go to Napanee, it's going to cost at least \$500 million more"? Did anybody do that?

Mr. Serge Imbrogno: When we were looking at the various potential locations for the relocated Oakville site, one of the key criteria that we looked at was a willing host, and I think the minister felt comfortable a willing host was potentially an OPG site that had an existing thermal plant on it.

Mr. Victor Fedeli: But \$500 million: Did anybody do that—just scratch their noodle for a second?

Mr. Serge Imbrogno: What we did is, we looked at existing OPG sites. We looked at Lambton; we looked at Nanticoke; we looked at Lennox; we looked at Wesleyville. Each of those sites has pros and cons. Once you're moving the plant out of Oakville that had access to transmission, had access to the gas management—

Mr. Victor Fedeli: What you're saying, in these pros and cons, is that somebody actually did figure out that one of the cons is \$513 million that the taxpayer—pardon me, the ratepayer—would pay to get power there and back?

Mr. Serge Imbrogno: No. At the time, what our rationale was, we would take the Oakville contract as is and move it to one of the other sites. At the time, the Oakville contract had gas management costs with TransCanada. So it wasn't one of the factors we looked at. The

key factors we looked at was willing host, transmission, and access to gas.

Mr. Victor Fedeli: Did anybody look at this? It's a half a billion dollars. Nobody? Even I could figure that out, a long time ago, that this is going to cost a lot of money. If you look through the transcripts, we've asked time and time, "That's a long way away. What does it cost?"

0910

Nobody sat in that chair and told us, by the way, "Oh, yes, there's going to be this cost, this cost, this cost." Everybody said, "Oh, no, it may be incremental." But we're talking—as the auditor showed us, it's half a billion dollars extra for that foolish decision. Never mind the decision to cancel. Never mind the relocation choice, which was purely a government choice. The auditor told us that the minister made the choice. The minister said, "We're moving it to Napanee." That sentence cost the ratepayers \$513 million.

Mr. Serge Imbrogno: Each site had its own issue. In Lambton we would have had to spend potentially \$500 million for transmission—

Mr. Victor Fedeli: Let's talk about Lambton. What the auditor told us about Lambton is that because the gas is so close—now I'm at Mississauga, by the way; I'm switching over to Mississauga. This is from the first auditor's report. It's under "Other benefits to Greenfield." These guys made out like bandits: "We estimate that Greenfield will save about \$65 million (in present-value dollars) in pipeline charges over the 20-year life..."

Because they moved the Mississauga plant to Lambton, where gas in Lambton is so close to Sarnia, they're getting paid the price as if the gas was coming to Mississauga, but it's only whipping across over to Lambton. They—the proponent, Greenfield—get to keep that \$65 million. Who the heck negotiates that kind of a deal?

Mr. Serge Imbrogno: It is a negotiation, and—

Mr. Victor Fedeli: It's \$65 million. That's on top of being paid—

Mr. Serge Imbrogno: I understand. I think there are gives and takes in the negotiation, and those would have been taken into account. There would have been other takes that aren't shown—

Mr. Victor Fedeli: As I said to you in the last—if you look at the transcript, because you did say that there was give and take. I said, "Yes, the government is giving and the proponents are taking." That's what I said to you last time, and I say the same thing to you again.

The last time we were together was just before the auditor came out, and I asked you about the \$5-million NUG. I'm going to be blunt here: You were less than forthcoming about that \$5-million NUG. Only a few days after you left here, after you would have known what was in the auditor's report, the auditor came clean on what you guys did. You paid \$5 million for nothing, absolutely nothing, on this side deal. It's called a side deal.

What it said here, under November 25, 2011, was: "... side agreement, the OPA agreed to pay ... \$5.4 million

... to satisfy Eastern Power's demand...." You gave them a non-utility generation—a NUG—contract, and I'm going to say it was a fake NUG contract, because if you didn't need the power, they got to keep the money. Lo and behold—wow. No new power supply contract for the site ever materialized, and therefore Eastern Power kept the \$5.4 million. That's just a gift, a kiss—\$5.4 million. Who negotiates these kinds of side deals? Under what authority?

Mr. Serge Imbrogno: First, Mr. Fedeli, I think I've always been forthcoming to the committee.

Mr. Victor Fedeli: I asked you about this NUG deal, and what you said to me was: "We'd better wait and hear what the auditor has to say." Why didn't you just tell us that day?

Mr. Serge Imbrogno: I was part of the OEFC. I was part of the agreement to settle a long-outstanding legal dispute. The OEFC board was comfortable with the \$10-million payment, and that's what we paid—

Mr. Victor Fedeli: Yes, the \$10 million, which brought it from \$180 million to \$190 million, but what about that side deal?

Mr. Serge Imbrogno: The \$5.4-million payment is a contract between the OPA and Greenfield, Eastern Power.

Mr. Victor Fedeli: For nothing.

Mr. Serge Imbrogno: I don't control that. I think you should have the OPA come in and explain that.

Mr. Victor Fedeli: You know what they're going to tell me: that you guys told them to do it.

Mr. Serge Imbrogno: I did not negotiate that.

Mr. Victor Fedeli: But you can't have one of these every time.

Mr. Serge Imbrogno: No, I'm not saying that. I'm trying to explain that the \$10 million was an outstanding litigation.

Mr. Victor Fedeli: Yes, I got that.

Mr. Serge Imbrogno: The other payment between the OPA—

The Vice-Chair (Mr. Phil McNeely): One minute.

Mr. Serge Imbrogno: —and Eastern Power is something the OPA needs to explain.

Mr. Victor Fedeli: No, it's not. That outstanding payment was for \$15 million, and I've brought that email chain here many, many times. It says, "We want \$15 million." In fact, the Auditor General says it's \$15.4 million as a precondition. They wanted it as a precondition to settle the lawsuit. The government agreed to pay the \$10 million as an absolute maximum that it felt comfortable giving, and they left the other \$5.4 million for somebody else to pay. You can't tell me, "Oh, it was an OPA contract for power. I don't know anything about it." Come on. They wanted \$15.4 million. The OEFC agreed to pay only \$10 million, and that \$5.4 million was a secret side deal that we disclosed here in this—I disclosed it in the Legislature and everybody just shakes their head, "Oh, I don't know anything about it. Ask somebody else." You know as well as I know that that was \$15.4 million.

The Vice-Chair (Mr. Phil McNeely): Thank you, Mr. Fedeli. We'll go to Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Chair. Good morning, Mr. Imbrogno.

Mr. Serge Imbrogno: Good morning.

Mr. Peter Tabuns: Do you accept the Auditor General's report?

Mr. Serge Imbrogno: The government has accepted the report. The Premier asked the auditor to undertake the report, so yes, we accept the auditor's report.

Mr. Peter Tabuns: You personally accept the report?

Mr. Serge Imbrogno: Yes.

Mr. Peter Tabuns: It's a fair and credible stating of the numbers and the situation?

Mr. Serge Imbrogno: I think the auditor took the time to go through the numbers. As the auditor herself says, there are costs that will be incurred in the future, so they may change over time. But this is the best estimate, based on the assumptions that the auditor put out.

Mr. Peter Tabuns: So it's fair and credible and you accept it?

Mr. Serge Imbrogno: Yes.

Mr. Peter Tabuns: Mr. Delaney and the Liberals seem to be trying to cast doubt on the credibility of the report. He asks whether the future costs could be lower. Is it possible future costs could be higher?

Mr. Serge Imbrogno: Yes, future costs could be lower or higher. That's correct.

Mr. Peter Tabuns: Okay. In the case of the reduced monthly payments or the net revenue requirement—NRR—I'll just call it monthly payments so that everyone is speaking English. In your testimony when you were last here you said that you tried in the negotiations to reduce the monthly payments to reflect the extra costs Ontario was taking on for gas management. Is that correct?

Mr. Serge Imbrogno: That's correct.

Mr. Peter Tabuns: You were also trying to reduce the monthly payments to offset the cost of the turbine that Ontario bought. Is that correct?

Mr. Serge Imbrogno: That's correct.

Mr. Peter Tabuns: The turbine cost \$210 million; everyone knew that. What were you estimating would be the cost for gas demand if you were able to reduce the monthly payments by \$275 million and the turbine was \$210 million? It's about \$65 million. That's completely out of the ballpark for all the other numbers we've been given when it comes to gas management. Why was it set so low?

Mr. Serge Imbrogno: I think the OPA estimate at the time was that the gas management costs in Oakville were in the \$10-million-to-\$15-million range. They would have pulled that out of the model. The actual costs today for Napanee are tracking more in the \$40-million-to-\$50-million range. It would appear to be a low estimate at the time that was taken out of the—

Mr. Peter Tabuns: Actually, you know, what you've just said to me is very interesting. They simply took out the gas demand and management charge for the Oakville installation. Is that correct? That's the number that was used?

Mr. Serge Imbrogno: That's my understanding, yes, or at least their best estimate. They may have added a bit to it, but I think it was in that ballpark.

Mr. Peter Tabuns: The fact that this plant was hundreds of kilometres to the east and had a very much greater distance for gas to travel—that wasn't taken into account?

Mr. Serge Imbrogno: I think the understanding would be that there would probably be an incremental payment that would be required. I don't think at the time there were credible numbers about what that payment would be.

Mr. Peter Tabuns: No one did a calculation?

Mr. Serge Imbrogno: I think in the negotiation—it would have been part of this committee that OPA and TransCanada would be part of and that all would agree, and then they'd go to arbitration if there was a disagreement.

Mr. Peter Tabuns: Why did the people of this province take on this unpredictable, unknown cost? Why didn't you say to TransCanada, "Okay, we'll cover you up to the \$50 million and you pay for the rest"? Why did we take it on?

Mr. Serge Imbrogno: I think it was part of the negotiations. I think from the TransCanada perspective, they had a contract in Oakville with a known gas management cost that was built into that revenue requirement. I think from their perspective, going to Napanee, it was an unknown cost to them. The calculation was, "We'll pull out all your costs that we know in Oakville and then we'll have this committee decide together what the additional costs would be for Napanee."

0920

Mr. Peter Tabuns: And did the committee decide prior to signing the agreement?

Mr. Serge Imbrogno: No, it was set up so that over time the committee would come to an agreement since, when we were doing the negotiations, either side really didn't know what those gas management costs would be.

Mr. Peter Tabuns: So we signed off with no compensation, effectively, for this half-billion-dollar charge.

Mr. Serge Imbrogno: Well, it would have been the reduction in the net revenue requirement.

Mr. Peter Tabuns: Yeah, but the reduction was worth 10% of what we got stuck with.

Mr. Serge Imbrogno: I think the costs have turned out higher than was expected.

Mr. Peter Tabuns: Between the Ontario Power Authority—which specializes in developing new power plants and securing contracts—and TransCanada, a huge firm, no one could figure out that it was going to cost more to get gas to Kingston than to Oakville?

Mr. Serge Imbrogno: There was probably an understanding that it would be incrementally more. The exact amount wasn't known at the time, and that's why they struck this committee to finalize the amount.

Mr. Peter Tabuns: Why wasn't that reflected in the reduction of the payments that Ontario is going to pay?

Mr. Serge Imbrogno: Well, OPA would have pulled out what they knew the Oakville cost was and reduced the NRR by that amount.

Mr. Peter Tabuns: So we got exposed for all the costs of moving.

Mr. Serge Imbrogno: I think the province, or the ratepayer, would be exposed to the incremental cost of moving.

Mr. Peter Tabuns: And the incremental cost was about \$500 million.

Mr. Serge Imbrogno: I think now, with the costs that are coming in in the \$40-million to \$50-million range a year, that that would be the incremental amount.

Mr. Peter Tabuns: I know these matters are complex. I know they can be hard to predict. But between TransCanada on one side and the OPA on the other, the fact that no one would have a figure for this, even within the ballpark, is extraordinarily hard to believe. Was no one saying, “Hey, this could cost a lot of money”?

Mr. Serge Imbrogno: I think that either site we would have picked had pros and cons with it.

Mr. Peter Tabuns: I’m sure.

Mr. Serge Imbrogno: I think the Lennox site had access to gas, access to transmission, a willing host. If we would have moved it to Nanticoke, it only had 300 megawatts of gas capacity, so we would have had to build a pipeline. If we had moved it to Lambton, there were issues about transmission shortage. We might have to spend \$500 million on transmission.

Mr. Peter Tabuns: You know what—

Mr. Serge Imbrogno: I’m just saying every site had additional costs.

Mr. Peter Tabuns: I accept that every site would have difficulties. What you said to us previously was that the monthly payments would be reduced to make up for the fact that Ontario is going to spend more on gas management, and in fact, we took on this incredibly risky cost and we’re paying the bill for it. TransCanada, effectively, is getting this big chunk of its cost written off without them having to give any compensation to us. That’s the reality, is it not?

Mr. Serge Imbrogno: No. TransCanada would have had their net revenue requirement reduced by the Oakville gas management costs.

Mr. Peter Tabuns: That’s right, and they weren’t—

Mr. Serge Imbrogno: The incremental is being paid by the ratepayers going forward.

Mr. Peter Tabuns: Right. They got stuck with a half-billion.

Did the Ontario Power Authority support or oppose this transfer of costs from TransCanada to the province?

Mr. Serge Imbrogno: The OPA was part of the negotiating team, and I think that was part of the give and take in the negotiations.

Mr. Peter Tabuns: Did they raise any red flags? Did they oppose? Were they concerned about this transfer of costs to the province?

Mr. Serge Imbrogno: I don’t recall the OPA raising it during the negotiations.

Mr. Peter Tabuns: Colin Andersen didn’t raise it? No one in the OPA raised it?

Mr. Serge Imbrogno: He may have raised it with someone else, but I don’t remember in our discussions or our debriefs of the negotiating team. I think it was understood that this committee would sort out the additional costs over time, and that the OPA would be on that committee, and they could go to arbitration if there was a disagreement.

Mr. Peter Tabuns: I’ll turn it over to my colleague.

Mr. Gilles Bisson: Just following up on Mr. Tabuns’s question, why in heck did you guys decide to choose the most expensive option? You wrestled yourselves to the ceiling. Why? There was certainly a cheaper way of cancelling this thing. Why did you guys decide to go with the Cadillac when you could have got the Volkswagen?

Mr. Serge Imbrogno: When I came onto the file, it was already into arbitration. The government wanted to—

Mr. Gilles Bisson: But certainly you must have been briefed, coming in, on how all this was set up. Why did the government choose the most expensive option?

Mr. Serge Imbrogno: I think my understanding was that the government wanted to get electricity out of any arrangement. They didn’t want to make a lump sum payment or—

Mr. Gilles Bisson: But the government has cancelled contracts before. There are NUGs that had contracts signed with the province in the past that were cancelled, that never cost anywhere near this kind of money. Why, in this case, did the government decide to move to make TransCanada whole by the most expensive means? Were you ever explained why?

Mr. Serge Imbrogno: My job was to relocate the plant, provide advice on potential locations—

Mr. Gilles Bisson: I understand that, but did they brief you as to why it is that they chose the most expensive option, and do you ever say to yourself in the course of all this, “Oh my God, there’s another way of doing this; this is expensive”?

Mr. Serge Imbrogno: I was asked to relocate the plant. The decisions were already made about arbitration going forward.

Mr. Gilles Bisson: Did it occur to you that this was a pretty expensive option?

Mr. Serge Imbrogno: Well, I think, as I said, any site that we looked at outside of Oakville that had a willing host had additional costs.

Mr. Gilles Bisson: But this was the most expensive. So you’re being asked essentially to conclude this deal. Did it ever occur to you this was the most expensive way to conclude the deal with TransCanada and making them whole? Did the alarm bells ever go off in your head?

Mr. Serge Imbrogno: So part of it, we had the turbines already—to get electrons out of this arrangement would have been probably in the best interests of the ratepayer. Any site that we picked outside of the current one would have had sunk costs and additional costs, whether they be transmission, gas infrastructure.

Mr. Gilles Bisson: We have lots of capacity, as you well know, in our hydro system, far more than we use, and so my question is, in the process of concluding an agreement to make TransCanada whole and your implementing that, did you never, never think to yourself, “Oh my God, this is more money than we should be paying”? Did you ever at one point think that maybe there was a better way of doing this that would have been cheaper?

Mr. Serge Imbrogno: So the plant will come in 2017-18. Our expectation is—

Mr. Gilles Bisson: I’m asking the question, did you—

Mr. Serge Imbrogno: I’m just trying to answer. From a supply perspective, we do need the capacity in 2017-18. The OPA would have had to procure other capacity, so it’s in that context.

Mr. Gilles Bisson: First of all, we can debate that, but let’s say for the purpose of this question I won’t debate that. My point is, you were to conclude a deal that made TransCanada whole. In doing that, did you not at one point think, “My God, this is expensive. I can’t do it in the way that the government wants. I’ve got to advise them to do something else. This is going to break the bank”?

Mr. Serge Imbrogno: The PV calculation really is bringing all those costs forward. When the plant is built, TransCanada has to put in \$800 million in construction, they have to build the plant, run the plant and produce the power—

Mr. Gilles Bisson: So you never thought this was the most expensive option? That never occurred—

Mr. Serge Imbrogno: Given the circumstance, if you’re taking a contract and relocating it, there will be costs, and any site that we relocated it to, there were going to be—

Mr. Gilles Bisson: The part that frustrates the public—we wasted over \$1 billion on these particular deals, and nobody seems to want to fess up to the fact that, “My God, there was a cheaper way of doing this, and I was part of the process, and maybe I should have done things differently.” And number two is that nobody seems, at the end, to be held to account for that decision, but that’s a whole other thing.

So, as I was listening to your exchange with my learned colleagues from the Liberal caucus, you were essentially pushing back—

Interjection.

Mr. Gilles Bisson: I meant that as a compliment.

They were pushing back on the auditor’s report. Is that the purpose of your being here today, to try to push back on the auditor’s report and to spin the numbers in a way that the government needs? Is that part of why you’re here today?

Mr. Serge Imbrogno: No. I’m here to answer questions of the committee.

Mr. Gilles Bisson: Were you given any direction by the government in any way about what you should or shouldn’t be doing at this committee as far as strategy?

Mr. Serge Imbrogno: No.

Mr. Gilles Bisson: Because it sounded to me as if what the government was attempting to do, and you were

kind of helping, was trying to push back the auditor. And I’ve got to say, from the perspective of—you’re the guys who got it wrong and cost us \$1 billion, and if I’m going to believe anything in this, I’m going to believe an independent officer of the House, who happens to be the auditor, on the numbers, because I don’t think you guys have very much credibility on numbers, to be blunt.

So I ask the question again—and remember, you’re under oath—were you given any direction by the government as to your strategy of being here today?

Mr. Serge Imbrogno: No, and I’ve said to Mr. Tabuns that I’ve accepted the auditor’s report. I’m just trying to explain differences in discount rates and differences in start dates, which the auditor already mentions in her report.

Mr. Gilles Bisson: I think Mr. Tabuns was proving that it’s far more expensive than you guys realize. But again, for the record, you were not instructed by the government or by the minister in any way as to what your strategy at this committee would be today?

0930

Mr. Serge Imbrogno: That’s correct.

Mr. Gilles Bisson: Okay. And the second thing, the last thing—how much time do I have?

The Vice-Chair (Mr. Phil McNeely): Five minutes.

Mr. Gilles Bisson: Oh my God, we’re doing so well. You may even get some more time.

Mr. Peter Tabuns: I’m looking forward to it.

Mr. Gilles Bisson: Okay, just to the release of the documents: The committee has asked for these documents that go between January 1, 2012, and August 2013. We asked for that back on August 27. You’re before this committee today telling us all kinds of reasons why you’re having a hard time trying to release those documents. In your statement you say, “We have experienced a number of technical issues gaining access to older electronic records.”

These records are not old. These are more recent documents than what we had before. So what is that all about?

Mr. Serge Imbrogno: We have a number of staff who have left, so it’s more difficult to access their files.

Mr. Gilles Bisson: When you say “older” records, you’re not meaning older, because these are pretty recent documents. These are pretty recent records, right?

Mr. Serge Imbrogno: Yes, that’s correct.

Mr. Gilles Bisson: Okay. When do you expect to have all these documents before this committee as requested? We requested this back on August 27; we’re now into the month of October. When can this committee expect to have those documents?

Mr. Serge Imbrogno: Well, we provided the 50,000 pages. We’ve hired a law firm to go through the redaction process. I always hate to give dates, because you always end up having some issues. But they have been engaged; they are working this week and next week to—

Mr. Gilles Bisson: But it should be up to this committee to decide what’s redacted and not redacted. We requested documents.

There is a very defined power of a committee and of this Legislature. We are akin to a court. When we—

Mr. Serge Imbrogno: Absolutely. We—

Mr. Gilles Bisson: Just let me ask the question. We requested documents, and those documents should be provided. If they have to be redacted, that's up to this committee to decide if we want to redact something, not you. Why are you taking the position that you have to redact documents before giving them to the committee?

Mr. Serge Imbrogno: We've provided 50,000 pages of unredacted files. They are already with the committee.

Mr. Gilles Bisson: I understand that.

Mr. Serge Imbrogno: Our understanding was that the committee also wanted to be able to see which of those might be sensitive, so we are going through that process, but as of today you have 50,000—

Mr. Gilles Bisson: Unrelated documents, I'm not going to argue. If it's not related to what the request was on this particular issue, I understand; you're going to blank that out. But stuff that's related to the request doesn't have to be redacted. This committee has the right to ask for those documents, and what makes you think that you can redact documents this committee has requested?

Mr. Serge Imbrogno: Just to be clear, we have provided the committee with 50,000 unredacted pages. We are giving the committee the opportunity to look at: "If you wanted to redact something, here's what we're suggesting," but it's with the committee. I think we're trying to be helpful, but as of right now, you have all the unredacted files.

Mr. Gilles Bisson: So your intent is to give us all the unredacted files, and the only thing you're going to do is say, "By the way, here's some that you should be sensitive to."

Mr. Serge Imbrogno: That's right. We'll have two piles. Right now—

Mr. Gilles Bisson: But it will not be redacted when we get it.

Mr. Serge Imbrogno: No. Right now, you have 50,000—

Mr. Gilles Bisson: No, the stuff that's coming.

Mr. Serge Imbrogno: In the future?

Mr. Gilles Bisson: Yes, the stuff that includes this request by the committee.

Mr. Serge Imbrogno: We've given you a partial release, and all of those are unredacted. We're going to take those unredacted and redact them for you, so you'll have two—50,000 unredacted; 50,000 with redactions—and then all the other material will come in the same way.

Mr. Gilles Bisson: But I go back to the point, as far as the power to redact documents. The committee has the right to request documents. If you think there's something sensitive, point it out to us. But it's up to us to decide if it's redacted or not.

Mr. Serge Imbrogno: And that's why we're giving you both. The committee can decide not to accept any of our redactions.

Mr. Gilles Bisson: So where are you at in the release of these documents? You don't want to pin yourself down to a date. Are you within weeks? Days?

Mr. Serge Imbrogno: I would say weeks.

Mr. Gilles Bisson: Not months?

Mr. Serge Imbrogno: I don't think months, no. I think weeks.

Mr. Gilles Bisson: Okay. Well, I'd just remind you that this committee has requested documents. As you know, it's akin to a court of law, and when we request documents there's a penalty if we don't get those. I'm just going to remind you of that.

Mr. Serge Imbrogno: I understand. We're trying to be as responsive as possible.

Mr. Peter Tabuns: Mr. Imbrogno, just going back to the Napanee site and the opinion of the OPA, the auditor reported—

The Vice-Chair (Mr. Phil McNeely): One minute.

Mr. Peter Tabuns: Pardon?

The Vice-Chair (Mr. Phil McNeely): One minute.

Mr. Peter Tabuns: Thank you.

"The OPA," she writes, "did not think that Napanee was the optimal location because it would result in higher costs to deliver gas from the Sarnia area to Napanee."

You knew it was going to cost a lot more for gas management when you went to Napanee, but wasn't there any calculation on that?

Mr. Serge Imbrogno: My recollection is that when we decided to negotiate with TransCanada, it was more of a like-for-like movement of the contracts, that we would take the Oakville contract and try to move it to Napanee; take the \$17,000 net revenue requirement—there may have been possible inflation adjustment—and move it to Napanee. It was only during the negotiations with TransCanada after—I forget the date, but into September—

The Vice-Chair (Mr. Phil McNeely): Thank you. Time's up. We'll go to the government and Mr. Delaney for a 10-minute round.

Mr. Bob Delaney: Mr. Imbrogno, in the exchanges that you've had with the PCs and the NDP, there were a few things that you didn't really get a chance to finish. Are there any particular comments you'd like to add, just before I ask you a few questions?

Mr. Serge Imbrogno: No, that's fine. I'm not sure which ones I didn't finish, so I'll just go with the new questions.

Mr. Bob Delaney: All right. When we left off I was talking about the notion that with respect to Oakville, some two thirds of the costs and all of the savings have yet to be incurred, and we were talking about the amortization over the next 20 years. Minister Chiarelli has recently announced a series of measures that will decrease energy rates. For example, the renegotiation of the Samsung agreement takes \$3.7 billion off the rate base, and another \$1.9 billion has been taken off the rate base with the recent removal of the domestic content provisions.

Mr. Victor Fedeli: Point of order, Chair.

The Vice-Chair (Mr. Phil McNeely): Point of order.

Mr. Victor Fedeli: Are we discussing the Samsung deal? Is the door open here to now discuss the Samsung deal? Because we were given documents in confidence, and if—

Mr. Bob Delaney: No, we are not discussing the Samsung deal, but what we are discussing is the rate base.

Mr. Victor Fedeli: Excuse me, Chair, but if he has opened the door, I look forward to asking about the Samsung deal in my last 10 minutes.

Mr. Bob Delaney: Just to be fair, we are not opening the door or discussing the Samsung deal.

Mr. Victor Fedeli: I kind of heard the door open, Chair.

The Vice-Chair (Mr. Phil McNeely): It's outside the scope of this committee. We are not discussing the Samsung deal.

Mr. Bob Delaney: What we are discussing is the removal of \$5.6 billion from the rate base—

Mr. Victor Fedeli: Chair, point of order: So he is discussing the Samsung deal, and I do intend to ask about it.

The Vice-Chair (Mr. Phil McNeely): I've made the decision that we're not discussing the Samsung deal.

Mr. Victor Fedeli: But he's carrying on. After your decision, he's carrying on discussing the Samsung deal. I'm going to look forward to asking Mr. Imbrogno two questions about the Samsung deal that we were given in confidence.

The Vice-Chair (Mr. Phil McNeely): I caution Mr. Delaney to stay within the scope of this committee.

Mr. Bob Delaney: All right. We will stay then. When you include the \$675 million in that pool of both costs and savings, amortized over the course of 20 years, what effect would it have overall?

Mr. Serge Imbrogno: I haven't done that calculation. There are a lot of different variables that need to be taken into account. There are savings related to the Samsung renegotiation, but then it depends—

Interjection.

Mr. Serge Imbrogno: Sorry, am I not supposed to answer that?

Mr. Victor Fedeli: Point of order, Chair. If he's asking about savings and he's answering about savings, I am looking forward to asking two questions about the Samsung deal.

Mr. Bob Delaney: Okay, let's go back onto—

The Vice-Chair (Mr. Phil McNeely): Mr. Delaney, I've cautioned you before. Stay away from the Samsung deal.

Mr. Victor Fedeli: I won't, though.

Mr. Bob Delaney: Let's then talk about the process through which it was determined that the Oakville plant should be relocated to Napanee. The Ontario Power Authority told the Auditor General that their preferred location would have been in Kitchener-Waterloo-Cambridge. Could you just explain how it was that Kitchener-Waterloo-Cambridge was rejected as a possible relocation site?

Mr. Serge Imbrogno: The discussions of Kitchener-Waterloo-Cambridge took place before I became the deputy, so I really wasn't involved in them. My understanding was that they were trying to locate a peaker plant in Kitchener-Waterloo, so a smaller megawatt plant. I think, based on that, they changed the configuration of the turbines and had a negotiation between the OPA and TransCanada, but they were never able to come to contract terms, so the Kitchener-Waterloo site didn't transpire.

Mr. Bob Delaney: Okay. How did the Napanee option come about then? Who suggested Napanee as a viable alternative to Oakville?

0940

Mr. Serge Imbrogno: When we were in the arbitration process, we were always looking for a potential commercial arrangement, rather than completing the arbitration, and in September the government decided that we would have one more opportunity to try and come up with a commercial arrangement with TransCanada. One of the main criteria that Minister Bentley at the time was looking for was to make sure that if we relocate the Oakville contract, it would be to a willing host community, and a willing host community at the time was defined as an existing OPG site that had a thermal plant on it, whether it be gas or coal, and maybe some other OPG sites that were identified.

Based on that, we had a short list of sites that included Lambton, Nanticoke, Lennox and Wesleyville. We looked at each of those sites, and they had their pros and cons to each of them. So Nanticoke had excellent transmission capacity, was obviously a willing host, but it only had an existing gas pipeline that would serve a 300-megawatt or less generation facility. So if we tried to relocate at Nanticoke, there would be additional costs related to building the gas pipeline into Nanticoke. There were risks related to that. So that was one of the issues with Nanticoke.

We looked at Lambton. Lambton had access to gas. It had a willing host, but there were also issues there with transmission. There were potential congestion problems with the Lambton site—potential transmission upgrades of \$500 million if you put a 900-megawatt plant in Lambton. So we discounted Lambton.

Wesleyville didn't really have an existing facility on it. There were transmission issues, and we weren't sure if there'd be a willing host.

When we looked at Lennox, it has access to gas, access to transmission. It was a willing host.

Based on that criteria, we had put Greenfield site at Lambton and that left the Lennox site open for TransCanada. All these sites had their additional costs related to them, but we tried to find the site that met most of that criteria.

Mr. Bob Delaney: When you referred in your remarks to the "we" that did the looking, is that entity "we" the Ontario Power Authority?

Mr. Serge Imbrogno: Yes. We would have been working with the Ontario Power Authority to look at all

these sites, and provide us with a high-level assessment at each of those sites.

Mr. Bob Delaney: I'd like to talk a little bit about the sunk costs relative to Oakville confirmed in the Auditor General's report at \$40 million. When the relocation deal was finalized in September 2012, the Ontario Power Authority published the final memorandum of understanding in a news release on their website which stated, "The cost of TransCanada's plant at Lennox will be comparable to the cost of the original competitively procured Oakville plant." The only cost it provides is \$40 million for sunk unrecoverable costs. What the OPA has testified was that, at that time—September 2012—the future costs and savings were unknown; is that correct?

Mr. Serge Imbrogno: No, I think we had a firm cost for the \$210 million for the turbines. We had a firm cost for the \$40 million sunk costs. The other future savings and costs would have been unknown at the time.

Mr. Bob Delaney: Okay.

The Vice-Chair (Mr. Phil McNeely): You have one minute.

Mr. Bob Delaney: Oh, okay. Thank you, Chair. Back in September 2012, the OPA informed the government that the lower net revenue requirement, which is the monthly cost of the new contract, would offset the cost of gas turbines and gas management and delivery. The report says, "The OPA told us one of the reasons it will be paying a lower" net revenue requirement "for the Napanee plant's power is to offset its assumption of this cost." Could you enlighten me a little bit on the OPA's assumption that future savings would offset future costs? Was that accurate or not?

Mr. Serge Imbrogno: The negotiation with TransCanada would have been to move the Oakville contract to Napanee and make appropriate adjustments. Adjustments would have been made to the net revenue requirement for gas turbine costs and for gas management costs that were incurred at Oakville, connection costs that were incurred at Oakville. The incremental costs of the Napanee plant weren't—

The Vice-Chair (Mr. Phil McNeely): Time is up, and we'll go to Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. Mr. Imbrogno, on page 9—we are at Oakville now—of the Auditor General's report, she states, "The contract for the Oakville plant contained protection to relieve both TCE and the OPA of any financial obligations if events beyond their control (force majeure events) caused the plant's ... operation date ... to be delayed...." She goes on to say, "with no penalty and at no cost."

Were you aware at any time that we could have gotten out of this whole TransCanada deal for nothing?

Mr. Serge Imbrogno: Mr. Fedeli, I was not the deputy at the time of that, so I wasn't involved.

Mr. Victor Fedeli: Did you eventually learn that, or did you just find out about that in the auditor's report? Or did you know that at any time before?

Mr. Serge Imbrogno: No. I would have become aware that there were different views on force majeure events.

Mr. Victor Fedeli: Do you agree with the auditor's view?

Mr. Serge Imbrogno: I accepted the report. I would just say that there—I don't know. I haven't talked to the auditor specifically on that, so I would just—

Mr. Victor Fedeli: So the auditor tells us we could have gotten out with no penalty and at no cost.

Let me ask you a very direct question: Are there any other recent power deals, not necessarily related to natural gas, that we could have gotten out of without any costs?

Mr. Serge Imbrogno: Not that I'm aware of.

Mr. Victor Fedeli: You're not aware of any power deals that we could have gotten out of without paying any costs?

Mr. Serge Imbrogno: No.

Mr. Victor Fedeli: Thank you. I appreciate your answer on that.

I want to go back to your last testimony. We're back at that \$750-million area. I asked you about the \$712-million offer, and you said you hadn't heard about the offer, but here's what you said, "I'm aware when you add those up you could get close to \$700 million." So, again, I'm going back to December 2011. You knew that the number, in your own words, "could get close to \$700 million."

Mr. Serge Imbrogno: In the arbitration process, if we went to arbitration and lost, our estimate was that TransCanada would have been potentially awarded that amount of money.

Mr. Victor Fedeli: That's exactly what I expected you to answer. That arbitration agreement was kick-started by our current Premier, Kathleen Wynne, when she was a cabinet minister. In fact, she is the chair of cabinet that signed the July 2011 document that kick-started that whole arbitration agreement.

If you knew back in December 2011 that if the arbitration was awarded—we're talking, in your own words, "I'm aware when you add those up you could get close to \$700 million"—who in the government would have known that when you added those numbers up, it could get close to \$700 million, as well as you. Other than you, who else? I'm looking for names.

Mr. Serge Imbrogno: Infrastructure Ontario, at the time, was the lead on the arbitration, so David Livingston would have been leading the arbitration process. I would assume David would have briefed others. I don't know directly who was briefed, but IO was the lead on the arbitration.

Mr. Victor Fedeli: That's IO. Anybody else now? Let me remind you, under oath, what Colin Andersen said. When I asked him, he had a one-word answer: "Everybody."

Mr. Serge Imbrogno: Back at the time, I would have been working at the Ontario Financing Authority, so I would have been supporting the arbitration, and I would have been involved.

Mr. Victor Fedeli: Did everybody at the Ontario Financing Authority know?

0950

Mr. Serge Imbrogno: That would have been involved in the discussions. They would have known. We would have built into the fiscal plan some risks related to, if the arbitration went the wrong way, and if the taxpayer had to pay for those costs. On finance, we would have built some risks into the fiscal plan.

Mr. Victor Fedeli: So IO people knew? At finance, the people involved in this file, everybody there would have known, who were involved in this file, that we're talking, in your words, \$700 million—mine were \$750 million, but it was math. We used a 5.25% factor back then and whatnot.

In July, when that document was signed, who would have briefed those cabinet members that, by kick-starting this program, it was going to cost \$700 million? Who would have been the person to have briefed the four cabinet members, including Kathleen Wynne, who signed off on that document to go ahead and do this?

Mr. Serge Imbrogno: I don't know, Mr. Fedeli. I wasn't there.

Mr. Victor Fedeli: Nobody at finance, the energy finance?

Mr. Serge Imbrogno: Like I said, I was at Infrastructure Ontario and later with David Livingston, so I don't know who would have been involved in the initial going-to-cabinet. I only became involved, if my memory serves correctly, after the arbitration agreement was—

Mr. Victor Fedeli: So you knew back in December 2011 that the cost would be \$700 million. Those are your own words: "I'm aware when you add those up you could get close to \$700 million." That's if the arbitration happened. Kathleen Wynne signed the order to kick-start this arbitration. Is it a reasonable assumption that anybody who started this arbitration would have any idea of the quantum of dollars we're talking about, or would they sign a kick-start not having any clue about how many hundreds of millions this would cost? What would your thoughts be?

Mr. Serge Imbrogno: I really don't want to speculate on what was provided to cabinet at the time.

Mr. Victor Fedeli: That's fair; that's fair enough.

Later in your testimony last time, when I asked you, "Did the minister know the full cost, the more-than-\$40-million full cost?" Your answer was, "We would have informed the minister of all of the components of those costs." You told me back then that, yes, the minister would have known that quantum of costs, whether it was specifically the \$700 million, or some number reasonably close. But the minister would have known there were costs—the former minister I'm talking about now.

Mr. Serge Imbrogno: On the Oakville—no, we would have briefed the minister on the components of the deal, but he would not have known the magnitude of the gas management costs because they were—

Mr. Victor Fedeli: Would you have given him a guideline on it, the number that, for instance, we had from the OPA—in one of our testimonies, they were

saying, "It's \$300-and-some million to \$486 million," right?

Mr. Peter Tabuns: It's \$308 million.

Mr. Victor Fedeli: Yes, to \$486 million. If we knew that number, I'm quite sure that you would have known that rough, approximate number as well.

Mr. Serge Imbrogno: At the time, the estimates were much lower than that. So we would have briefed the minister on the components of the deal.

Mr. Victor Fedeli: But still hundreds of millions at the end of the day. Maybe not \$700 million, but hundreds of millions. Is that fair?

Mr. Serge Imbrogno: The—

Mr. Victor Fedeli: It wasn't \$40 million. Can I ask you that? It wasn't \$40 million as the total.

Mr. Serge Imbrogno: Well, it was \$40 million in sunk costs, \$210 million in turbines, additional connection costs, additional potential gas management costs—

Mr. Victor Fedeli: Your number was \$700 million.

Mr. Serge Imbrogno: But I just want to be fair that we didn't have a—

Mr. Victor Fedeli: You said, under oath, "I'm aware when you add those up you could get close to \$700 million." You're still stuck with the \$700 million. Would you have told the minister—

The Vice-Chair (Mr. Phil McNeely): Let the witness answer the question.

Mr. Victor Fedeli: I haven't asked the question yet.

The Vice-Chair (Mr. Phil McNeely): You have, several times. He started to answer.

Mr. Victor Fedeli: Would you have told the minister it's \$700 million?

Mr. Serge Imbrogno: Mr. Fedeli, the \$700 million was arbitration. If we would have lost, what would have been the potential outcome if TransCanada won in arbitration and we didn't? What we're talking about now is moving the Oakville site to Napanee. We're getting electricity out of it. What's the additional cost to the ratepayer?

Mr. Victor Fedeli: Would he have known that number?

Mr. Serge Imbrogno: He would have known there would have been incremental costs in addition to the turbines, and the gas management costs would have been incremental.

Mr. Victor Fedeli: The auditor told us that it was the minister's choice to go to Napanee. Would he have asked, "By the way, guys, how much more if I go to Napanee?" Would he have been shocked to hear, "\$513 million more to go to Napanee," which the auditor told us? Would he have known that number, that it was \$513 million extra to go to Napanee?

Mr. Serge Imbrogno: At the time that we were looking at sites, each site had its own sets of costs, advantages, disadvantages—

Mr. Victor Fedeli: Was the disadvantage of \$513 million in extra cost to the ratepayer ever discussed?

The Vice-Chair (Mr. Phil McNeely): You have a minute.

Mr. Victor Fedeli: Thank you, Chair.

Mr. Serge Imbrogno: No, that cost wasn't discussed, because at the time, we didn't have a firm estimate of what that would be.

Mr. Victor Fedeli: So the former energy minister knew that it wasn't \$40 million, that the total cost was going to be more than \$40 million. The current energy minister obviously knows that it's not \$40 million. The former Premier knew that it was more than \$40 million; the current Premier knew that it was more than \$40 million. Would you have any idea why those four people continued, up until the auditor's report, to say, in all discussions, "The total cost is \$43 million"? In fact, the current Premier said, "Maybe even as low as \$33 million." It's certainly not \$700 million. Do you have any idea why the four of them would say it? Did they get misinformation from you?

Mr. Serge Imbrogno: I think we tried to be careful that the \$40 million are the sunk costs that would be picked up by the taxpayer.

Mr. Victor Fedeli: You're trying to be careful, and I appreciate that. They aren't. They have told us that the total cost is \$40 million, when they knew indeed that it was \$700 million.

The Vice-Chair (Mr. Phil McNeely): Time is up. We'll go to Mr. Tabuns.

Mr. Peter Tabuns: Mr. Imbrogno, the Auditor General reports that the Ontario Power Authority didn't think that this was an optimal site because of the long distance for transmission of gas and the cost of that. Did the OPA tell you and the minister's office about this prior to the decision to conclude a deal?

Mr. Serge Imbrogno: Mr. Tabuns, we had discussions of the various sites that I went through already: Nanticoke, Lambton, Lennox, Wesleyville. OPA would have provided us with some high-level views on each of those sites. I don't recall gas management costs as being one of those issues that was raised on Lennox, mainly because it was really during the negotiations that there was a decision to pull out the gas management costs rather than having that as something going into discussions.

Mr. Peter Tabuns: Who made the decision to take out the gas management costs?

Mr. Serge Imbrogno: It was part of the negotiations with the OPA; Infrastructure Ontario was at the table. It was the give and take of the negotiations.

Mr. Peter Tabuns: So you don't remember the OPA resisting taking over the gas management costs?

Mr. Serge Imbrogno: No, I don't recall that at all.

Mr. Peter Tabuns: Did the team, knowing that it was going to cost more to operate out of Napanee because of gas management costs, talk to Ontario Power Generation? Because they have a plant on that site, they would have some idea of what their gas management costs are.

Mr. Serge Imbrogno: I think, because it was a commercial negotiation between TransCanada and the OPA, there was probably reluctance to get information from OPG.

Mr. Peter Tabuns: You could have gone to Ontario Power Generation, which was paying those gas management costs because they are located so far from the central hub for gas distribution in southwestern Ontario, and gotten a much clearer picture of what those costs were. I think of OPG as being on your team, to tell you the truth. You are the Ministry of Energy; we do own them. We can use them for information, can we not?

Mr. Serge Imbrogno: It's possible. I think the OPG—the site at Lennox had interruptible gas. It may have been a different cost estimate.

The OPA has their gas management experts. At some sites, they already take on the gas management costs, so I think the idea was that the OPA would have the experts to provide us with the advice.

Mr. Peter Tabuns: That's why I find it very puzzling: because you do have the experts, and you would have had an estimate and would have known that it would cost a lot more to manage the gas and transport the gas at Lennox than at Oakville. Napanee is a lot farther from where the gas distribution occurs.

Mr. Serge Imbrogno: I believe that people understood there would be incremental costs. I think the extent of those additional costs was not known at the time.

Mr. Gilles Bisson: Can I just ask a quick question?

Mr. Peter Tabuns: Go ahead.

Mr. Gilles Bisson: If you're negotiating this, why wouldn't you go to one of the arms of the government that already can give you a pretty good estimate about what the costs were, in the case of OPG? Why wouldn't you have done that? You said earlier you thought it was because it was a commercially sensitive negotiation; I don't get where you were going with that.

Mr. Serge Imbrogno: OPA was in the negotiation. OPA had the experts that do gas management costs.

Mr. Gilles Bisson: But you're the Ministry of Energy, right, and you do have a relationship with OPG?

Mr. Serge Imbrogno: Yes.

Mr. Gilles Bisson: So why wouldn't you have gone to them—Mr. Tabuns's question? Those were the guys who had an idea what it cost. Why didn't you go to them to find out what the gas management cost was?

1000

Mr. Serge Imbrogno: Like I've said, the OPA has experts that do gas management costs, and—

Mr. Peter Tabuns: Yes, but clearly they didn't give you a figure for the Napanee site that even within the ballpark. You effectively took on this—we, sorry, not you; the people of Ontario, ratepayers and people who pay taxes, got stuck with this whole risk, and you didn't factor it in to reducing the cost to TransCanada at all. TransCanada got this huge gift in terms of a half-billion-dollar cost of management, a piece of risk completely taken out of their hands.

Mr. Serge Imbrogno: Their net revenue requirement would have been reduced by the Oakville gas management cost.

Mr. Peter Tabuns: That's right.

Mr. Serge Imbrogno: And it's the incremental amount.

Mr. Peter Tabuns: Yes, and we took on the risk for having it at this site much further east and at a much higher cost. That wasn't reflected on what they pay on a monthly basis. They got this huge plum. Why didn't anyone say, "Let's do a calculation; let's check with a comparator plant next door so that we can get the correct reduction in the monthly payments to TransCanada"?"

Mr. Serge Imbrogno: But it was meant to keep TransCanada—basically, where they were in Oakville would have been in Napanee. So it would have been very difficult to reduce the net revenue requirement by the full amount in Napanee. It was the incremental that—

Mr. Peter Tabuns: So, you and TransCanada knew this was going to be a big number?

Mr. Serge Imbrogno: No, we didn't —

Mr. Peter Tabuns: If it's a small number—you took away the—

Mr. Serge Imbrogno: We took away what the Oakville number would have been that they built into their net revenue requirement—would have stripped that out. The incremental would have been what the additional amount would be for the OPA to pay through picking up the incremental amount. We didn't, at the time, have a good estimate of the incremental amount.

Mr. Peter Tabuns: When, frankly, ministers have said to us, "We reduced the monthly payments. That's how we covered these extra gas charges. That's how we covered the turbines," in fact, the reduction was only a small part of what the real cost was to Ontario.

Mr. Serge Imbrogno: The incremental would have been larger than—

Mr. Peter Tabuns: The reduction was only a small part of the cost to Ontario. Is that true or false?

Mr. Serge Imbrogno: Well, the \$210 million would have been taken out.

Mr. Peter Tabuns: That's correct.

Mr. Serge Imbrogno: The connection costs that were in Oakville and the gas management costs in Oakville would have been taken out. The incremental costs are a lot more in Napanee.

Mr. Peter Tabuns: Yes, they are, and we got stuck with them. It is true.

Mr. Serge Imbrogno: But I would just say that any other location that we'd move to had larger costs, and they would have been factored in as well.

Mr. Peter Tabuns: You could say many things. It's true that we got stuck with a very big cost here. We took on the risk, and TransCanada was relieved of a very expensive piece of risk. Is that true or false?

Mr. Serge Imbrogno: They would receive a reduced net revenue requirement, and the incremental amount would be passed through the rates.

Mr. Peter Tabuns: Mr. Imbrogno, I'm not trying to put words in your mouth, but when I ask if something is true or false and the numbers come down fairly clearly, it would assist all of us if you would recognize if something is true or false.

Mr. Serge Imbrogno: It's the way you frame the question. TransCanada itself doesn't make money on having the gas management costs passed through. It is an additional cost to the ratepayer, I would agree with you on that, and it's a larger cost than it would have been at Oakville.

Mr. Peter Tabuns: They had a big chunk of volatility taken out.

Mr. Serge Imbrogno: Relative to Oakville, it was a more known amount. They would have taken that risk at Oakville, and they would pass on that risk, I agree, in Napanee.

Mr. Peter Tabuns: And we got stuck with that risk. We assumed the responsibility for that risk.

Mr. Serge Imbrogno: Yes, the ratepayers assumed the responsibility for that risk; correct.

Mr. Peter Tabuns: The Auditor General said, "The province and the OPA agreed to an arbitration framework (for determining damages to be paid to TCE if no settlement was reached) that favoured TCE and waived the protections the OPA had on the Oakville contract...." Do you agree?

Mr. Serge Imbrogno: Sorry, was that in that auditor's report?

Mr. Peter Tabuns: Yes, it was. That's a quote from the auditor.

Mr. Serge Imbrogno: I'm not going to disagree with the auditor.

Mr. Peter Tabuns: So you agree. The auditor also said, "This arbitration framework clearly favoured TCE and gave it the upper hand in the negotiations for a project to replace the Oakville plant." Do you agree with the auditor's assessment?

Mr. Serge Imbrogno: So on the arbitration agreement—

Mr. Peter Tabuns: Do you agree with her?

Mr. Serge Imbrogno: I was just going to try to explain what my understanding of that is. It's that, in the arbitration agreement, the government would have agreed that the plant would have been built on the timeline. So the ability for us in arbitration to argue that the plant would have been built was not there—

Mr. Peter Tabuns: Do you agree with the auditor's assessment?

Mr. Serge Imbrogno: Yes.

Mr. Peter Tabuns: You do. Oh, good.

The auditor characterized the arbitration framework, saying that negotiators were told, "Ignore the force majeure provisions, ignore the fact that TransCanada Energy wasn't allowed to get their permits and approvals." So you take that away and now you're left with having to make a deal with no strength on your side."

Did you find that the promises or the limits put into the arbitration tied your hands in negotiations with TransCanada?

Mr. Serge Imbrogno: Well, it took away the ability for the arbitrator to rule on whether the plant would have been built or at what time frame, because the arbitration

agreed to certain dates. So the ability to make that argument was taken away.

Mr. Peter Tabuns: So you agree with the auditor.

Mr. Serge Imbrogno: Yes.

Mr. Peter Tabuns: Okay. The last time you were here, you weren't sure who had made the promise to make TransCanada whole. The auditor—

The Vice-Chair (Mr. Phil McNeely): Your time is up. The questioning is over.

Mr. Peter Tabuns: Thank you, Chair.

The Vice-Chair (Mr. Phil McNeely): I wish to thank the witness for being here.

We will recess now until 3 p.m. this afternoon.

The committee recessed from 1006 to 1501.

HON. LINDA JEFFREY

The Vice-Chair (Mr. Phil McNeely): Good afternoon. I'd like to welcome Minister Jeffrey to the table. You will be sworn in.

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

Hon. Linda Jeffrey: I swear.

The Vice-Chair (Mr. Phil McNeely): You will be given five minutes for your opening statement, Minister. Then we will start with questions from the opposition: 20 minutes and 10 minutes again this afternoon, a round of 20 minutes and a round of 10 minutes. You may proceed.

Hon. Linda Jeffrey: Thank you, Chair, and good afternoon, committee. I'm pleased to be here this afternoon to answer questions about what I know regarding the cancellation and relocation of the Mississauga and Oakville gas plants. I know this committee is doing important work and will hopefully bring forth constructive recommendations as a result of your deliberations. I'm pleased to explain my involvement in these files.

Let me begin by stating that I was not involved in the siting of either the Oakville or the Mississauga gas plant, nor was I involved in the decisions to relocate these plants. When the original decision not to proceed with the Oakville plant was announced in October 2010, I sat on cabinet as Minister of Natural Resources; however, at that point, I had not yet been asked to serve on treasury board.

During the 2011 election campaign while out canvassing, I heard that the Liberal Party had issued a press release stating that the Mississauga gas plant would be relocated if we were re-elected as government. To the best of my recollection, I first heard about this campaign commitment on the radio, like many Ontarians. What I can tell this committee is that this subject was not a top-of-mind issue in my riding. In fact, I don't believe it was ever raised at any of the doors I knocked on or during any of the public debates I took part in during the 2011 election campaign. Again, I was not part of the decision-making process to relocate the Mississauga plant, and as

the candidate for Brampton–Springdale, I would not have expected to be.

After we were re-elected as government in October 2011, there was a cabinet shuffle and I was appointed Minister of Labour and minister responsible for seniors. I was then asked to join treasury board. It was in this role that I was one of four ministers who, on September 21, 2012, was approached to sign a cabinet walk-around document which outlined the mandate for the Ontario Power Authority's—OPA—and the Ministry of Energy's negotiations with TransCanada Energy Ltd. for a commercial alternative to the Oakville plant site. I have a distinct memory of the day that I signed the document, because I remember officials from Cabinet Office calling numerous times throughout the day, trying to schedule a briefing with me.

In fact, we had to change where we would meet three times, until they finally managed to track me down after 5 o'clock at Brampton Civic Hospital near the emergency room, where my youngest son was being treated that afternoon. We found a small, quiet, private area where I could read the documents and speak to Cabinet Office staff. These officials handed me two documents, which I took the time to read carefully, and I remember asking a couple of questions. Our discussion lasted approximately half an hour, and once satisfied, I signed the minute.

I would like to remind the committee that, had we not engaged in negotiations right away, the province would have taken a significant risk. As this committee has heard, if Oakville's bylaws had been overturned by the courts, permits would have been issued and construction would have started. As you have heard from a number of witnesses, the attempt to negotiate was a prudent step, because if the contract was just torn up, which was the position advocated by the opposition parties, the cost to the province would have been significantly higher.

Let me close by saying that I know you have put in many, many hours of work, interviewed countless witnesses and reviewed thousands of pages of documents. The opposition, as is its right, demanded that we produce documents related to the relocation of the plants—plants that both the opposition parties agreed should not be built. I believe the former Premier's office acted in good faith while the relocation of the Oakville plant was being negotiated, but from this experience there are important lessons to be learned. Money is too tight for tax dollars to be spent in any way that does not benefit our economy.

I appreciate the leadership of Premier Wynne, who asked the Auditor General to examine the costs of relocating the Oakville gas plant, and based on her findings we are introducing new rules to make sure this never happens again. We need to ensure that we get the siting decisions right the first time.

Premier Wynne has also stated that she will be putting in place new rules that will limit political staff involvement in commercial third party transactions. I believe it's in everyone's best interest that this issue be addressed and that we have a full understanding of how to better ensure the appropriate placement of necessary energy infrastructure in Ontario going forward in the future.

With that, Mr. Chair, I'm pleased to take questions.

The Vice-Chair (Mr. Phil McNeely): Thank you, Minister. We'll start with Ms. MacLeod for the opposition.

Ms. Lisa MacLeod: Thank you very much, Minister Jeffrey. I appreciate you coming in and I do hope that your son is on the mend, feeling better, and that it wasn't too serious.

Hon. Linda Jeffrey: He's good, thank you.

Ms. Lisa MacLeod: That's great. I appreciated your statement and I appreciate your coming here today. I've always found you to be a good minister and one I could work well with, and I know that you'll be forthright in answering these questions.

In your preliminary statement, you had said that you read the documents carefully and that you asked a few questions, and then you were "satisfied" with the response. Before I get into the minute that you did sign, can you answer for me what those questions were?

Hon. Linda Jeffrey: I'm going from recollection. It was two years ago, but at the end of the day, I had had some sense of the fact that we were about to set out a mandate. I wanted to know the scope of the mandate, and generally I was reading the deck and looking at when they thought the negotiations would take place, how long they would take place and when we would expect a report back. They were of that nature.

Ms. Lisa MacLeod: What were the responses? Who would have briefed you at the time? Would it have been members of Mr. McGuinty's staff?

Hon. Linda Jeffrey: No.

Ms. Lisa MacLeod: Or was it cabinet staff?

Hon. Linda Jeffrey: There was somebody from energy—I cannot recall their name—and there were some cabinet staff that came. There was nobody from the Premier's office.

Ms. Lisa MacLeod: Did they explain to you what the scope of the mandate would be in terms of the negotiation?

Hon. Linda Jeffrey: What they explained to me was what the negotiating mandate was, what the upper limit was with regard to the negotiations, and that they were trying to provide an outcome that would cost less than an outright cancellation.

Ms. Lisa MacLeod: What did they say the upward limit would be at the time?

Hon. Linda Jeffrey: I believe it was \$50 million at the time.

Ms. Lisa MacLeod: Fifty million—that was quite wrong. In terms of the sunk costs, it was \$40 million, and then of course we look and it's well beyond that.

I also wanted to just correct with you one thing. You had indicated that we, in the opposition—I suspect that means the PC Party as well as the NDP—would have torn this up and it would have cost more. Of course, the Auditor General was here just two weeks ago to indicate to us that the decision to relocate plants from Oakville to Napanee actually was the bulk of the costs, and that for quite some time the government knew that it would

exceed the \$40-million price tag. They were saying that it could have been upwards of \$750 million or even over \$1 billion. I just want to point out to you that that was your government's decision and your government's decision alone.

But I'd like to go quickly back to the sense of the mandate. You indicated to me—you talked about the scope of the mandate. You also talked about the negotiations that would take place. To what extent did you ask and have those questions answered with respect to negotiations?

Hon. Linda Jeffrey: What I saw that was brought forward was the fact that commercially sensitive negotiations were going on and that we were to give the negotiators a scope. Actually, we got a much better deal than the \$50 million that went out for negotiation. The final agreement that we eventually got was a lower sunk cost and other costs that were less, so I think we were trying to negotiate with the company in good faith to try to find a better deal, and I think, ultimately, a better deal was reached.

1510

Ms. Lisa MacLeod: Do you actually think that this whole deal was a good deal for taxpayers and ratepayers?

Hon. Linda Jeffrey: I think what we know is that it was a very huge risk if we hadn't engaged in negotiations as early as we did, and we know that certainly there was great risk had we gone forward and allowed things to play out without having taken action.

Ms. Lisa MacLeod: But that's exactly opposite of what the auditor told this committee and what she revealed in her report. She actually said that, because of the stipulations and the bylaws and the complications that the city of Oakville was placing upon TransCanada with respect to any development there, had you waited it out and not made a political decision, the ratepayers and taxpayers could have walked away at zero cost. She further said that once you made the decision to cancel, the bulk of the cost of that \$1.1 billion would have come from the relocation to Napanee, which was over \$500 million. I guess I'm having a difficult time buying into the spin line that you think that this \$1.1 billion is a good deal for taxpayers when the auditor says it wasn't.

You have to keep in mind, too, that Serge Imbrogno—I can't say his name; I do apologize to him—claimed earlier today that they were talking of figures of \$700 million as early as December 2011. Somebody, I would have to say, would have had that information.

Let's be very clear: I'm looking at the cabinet minute that you signed. The cabinet minute you signed—annotated minutes, Treasury Board and Management Board of Cabinet meeting of Thursday, December 13, 2012—your name is the last one to have signed that cabinet minute.

Serge said to this committee today—the Deputy Minister of Energy came in here and said that you were talking of figures of \$700-million-plus as early as December 2011, a full year before you signed that cabinet minute, and you're telling me you were satisfied you

could get out of this for \$50 million when everybody knew that it was going to be more than \$700 million in the Ministry of Energy? You're telling me that somebody from the Ministry of Energy briefed you?

I'm asking you simply: What kind of questions did you answer, and did you feel at all that you had any sense of depth in this department, given the magnitude of what we now know to be a \$1.1-billion scandal?

Hon. Linda Jeffrey: There were a lot of questions in that statement, so I'll try and tackle a few of them.

Whenever I look at a cabinet document or I'm asked to sign off, I ask what I believe to be appropriate questions. This was clearly a small sliver of a very complex deal that was being discussed over a number of years. It was something that I believe had many moving parts. The part that I knew to be in front of me at that point was very commercially sensitive. I knew that the company was working very hard to have the bylaws overturned in Oakville in several different courts. I know that, had those bylaws been overturned, permits would have been issued and the construction would have started. So I think it was prudent to negotiate with the company on an alternative site. I think it minimized costs. I think all three parties agreed to cancel the plant. It wouldn't have gone ahead regardless of whether it was our government or any other government, and certainly there were going to be costs associated with it. It was better to negotiate and find an outcome that both sides could agree to.

Ideally, those plants wouldn't have been sited in those locations, but I think certainly Premier Wynne has addressed that. We appreciate the work that the Auditor General has done in going back and evaluating what steps, what actions, were taken. Hindsight is helpful in this position, but at the time, that appeared to be the least cost-prohibitive approach. My decision was based on advice given to me by the Ministry of Energy.

Ms. Lisa MacLeod: But it's clear, even in confidential advice to cabinet at the time, that there would be other financial arrangements associated with the terms sheet. It's clear that the Ministry of Energy, as indicated this morning in this same committee, was aware that they were talking in terms of \$750 million at the time. It's clear, and I'll use your words, that this is not "a small sliver" of a complex deal; this is a major, major issue in a complex deal.

You signed a document, along with several of your colleagues. Mr. Duncan, who will be before this committee, Mr. Bartolucci, Ms. Broten, Mr. Chan and yourself signed a document that allowed TransCanada to enjoy benefits in order for them to become whole at the expense of the ratepayer and at the expense of the taxpayer.

I'm going to ask you this, because I'm not confident that you either received a full briefing or you understood the complexity of this at the time. Again, I have the highest respect for you, but I must think of the people in my riding who are at home wondering why they're stuck paying for this mess. Do you think that the ministry deliberately hid information from you when you signed the document, or do you think that when you read this

complex minute you had difficulty understanding the terms? I mean no disrespect to you. It is very hard for me to understand why you think a \$1.1-billion boondoggle is good for the taxpayer and why you would sign this cabinet minute based on the information that you had.

Hon. Linda Jeffrey: I think that when we were in the midst of having these conversations, either in cabinet or when I was briefed by energy in Brampton that summer afternoon, I knew that we were following through on a public commitment to relocate the plant. We had made the commitment two years prior and, based on the advice I received from the Ministry of Energy, I felt that, rather than rip up the contract and pay money for no power to be produced, the negotiations that were being led by OPA and energy were a more prudent route to go.

I appreciate that you think I may not have asked the right questions. At the end of the day, you rely on the expert advice you receive from the Ministry of Energy officials. You attempt—as I think all members around this table do—to conduct yourself thinking about the taxpayers and thinking about how to best use taxpayers' dollars. I believe that, as a government, we made the commitment to follow through, and no matter who had been in government following the election, all three parties committed to cancelling this plant. So the negotiations were something that all three parties would have assumed costs for following the election.

We happened to be the government, and certainly I think, ideally, the sites would not have been chosen that were, but they were and we were tasked with the responsibility of finding another way to minimize the outcome that we had.

Ms. Lisa MacLeod: I guess I do take issue, and I'll continue to take issue, with the fact that all three parties would have done the same thing. The Auditor General even came to this committee and told the public that that is simply not the case. The Auditor General said it was a political decision for a bulk of those costs to have been made to move to the Napanee area, to that part of eastern Ontario. She also indicated to us that there were enough obstacles in place by the city of Oakville that we could have had that terminated, had we waited it out, at limited if no cost to the taxpayer. So I do take exception to that, and I'll continue to reiterate it as long as you're prepared to continue to put it on the record.

But it does speak to something: You say to me that you rely on the ministry officials and their expertise, and then you tell me that you're comfortable with the information they provided you. We had—and I'll go back to this—the ministry official, the chief bureaucrat, the Ministry of Energy deputy minister in here today, who said they were talking figures of \$700-million-plus as early as December 2011, a full year before you signed the cabinet minute. I'm going to be honest; I have to go back to my earlier question. You either accepted their explanation and they misled you or—

Mr. Bob Delaney: Chair?

Ms. Lisa MacLeod: —let me finish—or you didn't understand the implications, neither of which is flattering for your government—

Mr. Bob Delaney: Chair, a point of order.

The Vice-Chair (Mr. Phil McNeely): Mr. Delaney.

Mr. Bob Delaney: Chair, you cannot say in committee anything you cannot say in the House. Perhaps the member would wish to rephrase the question she is asking the witness.

Ms. Lisa MacLeod: No, thank you. I don't. I think that it stands. I think that the ministry was either deliberately hiding information to force you to sign the document or—

Mr. Bob Delaney: Chair, that question is out of order.

The Vice-Chair (Mr. Phil McNeely): You were outside the limits a bit of parliamentary language. I'd just like you to rephrase your question.

1520

Ms. Lisa MacLeod: And which was it? Was it “deliberate” or “misleading”?

The Vice-Chair (Mr. Phil McNeely): I think both.

Ms. Lisa MacLeod: Okay.

Mr. Gilles Bisson: “Deliberate”?

Ms. Lisa MacLeod: “Deliberate” is now unparliamentary language?

The Vice-Chair (Mr. Phil McNeely): Well, let's say at least “misleading” is, but put the two together and they're both not suitable for the questioning.

Ms. Lisa MacLeod: Okay. Well, at some point, when you signed the final deal in December 2012—

Mr. Gilles Bisson: Just on a point of order. Excuse me. Just in your defence, the member from Ottawa-Nepean did not say that the minister was misleading. She said that the staff at the ministry were either misleading you—she was not aspersing anything against her. I don't see how that's out of order.

Interjection.

Ms. Lisa MacLeod: I appreciate the objection from my colleague from the third party because I think that it does stand. He understands where we were going with that.

But having said that, at the point when you signed the final deal in 2012, when as far back as December 2011, a year before, when the Deputy Minister of Energy is telling us that they knew the cost was well over \$750 million—did you at that point know that the cost was higher than \$33 million, as the Premier said in this committee and in the House?

Hon. Linda Jeffrey: I would say that the knowledge that I had was that I expected that there would be future costs because I knew the negotiation was something that was ongoing. I did not know what the number was going to be, and I would say that any knowledge I had came from the then ministry officials or the Minister of Energy.

I have to be honest. As I said in my opening comments, this was not my file. It was not an issue that presented in my riding either before or after the election. It was not an issue, and certainly when it first—the issue not to proceed with the Oakville plant—I was then Minister of Natural Resources. I don't know if you recall, but I had to go back through my notes to figure out where I

was at the time to come to this committee, and I was dealing with more fires in northern Ontario than had ever been seen in probably a decade. So I was travelling around the province. This was not an issue that I was focused on. I relied on the advice of ministry officials and certainly saw updates as the negotiations progressed, but as I said, when I was asked to sign the walk-around, it was for a negotiating mandate to try and minimize the cost that would be associated with the cancellation—

Ms. Lisa MacLeod: So were you too overwhelmed to do your job?

Hon. Linda Jeffrey: I'm telling you that this was an issue that I was certainly aware of through cabinet, but it was not my file. It wasn't one that I had the intimate knowledge—working—as I don't for many issues that come to cabinet. There can be seven or eight issues that come to a cabinet meeting that you are given updates on, but don't have to make any decisions. So I would say that it is something that I rely on ministry officials to provide context and detail about, and you're able to ask questions, but I trusted the advice and guidance of ministry officials and people from OPA.

Ms. Lisa MacLeod: So you said you had expected “future costs.” What were those expected future costs and how much did you expect them to be, or did you not think about it when you signed the document?

Hon. Linda Jeffrey: What I believe would be that there would be future complex negotiations going forward. I knew this was the beginning of the conversation. That was my expectation, but I had no idea as to what the numbers would be.

Ms. Lisa MacLeod: I'm really going to stick on this point for one second and then we'll move on to another point. You're talking about future negotiations. You are acknowledging that it was at least going to cost \$50 million. You didn't pay a lot of attention because you had other issues in your community. I'm just wondering why you would decide to sign that cabinet minute.

Even if it were just the simple fact that it could cost \$50 million alone, people in the public, people outside this building—I think it's a lot of money, and someone's going to have to pay for it. It just seems to be very cavalier of an attitude to say, “Okay. Well, it's only going to be \$50 million, but then I expected there would be future costs, but I didn't know what they were.”

I'm having a real difficult time, and I'm hoping you can explain yourself with that reasoning.

Hon. Linda Jeffrey: Ms. MacLeod, I didn't say that I didn't care about this issue, so I would challenge you on that point.

I would say that any information I received on costing was provided to me by the Ministry of Energy. I understand they received those numbers from the OPA. Certainly there has been testimony and thousands of documents that you've received that have proven that the cost estimates that were provided to us and to cabinet were signed off by OPA.

I know it was a very complex issue; it was hard to estimate for many groups. I'm grateful to the auditor for

having provided the review—both auditors for the reviews that they provided. But at the time, all I was asked to sign off on was a negotiating mandate. It's a lot of money and certainly, in retrospect, we know now that the auditor has given us some advice, which I believe that the Premier has acted on very swiftly. These are tight times; tax dollars are tight. We always want to spend them properly. But I guess I believe that these were complex negotiations and we did the right thing going forward to find a way to negotiate our way out.

The Vice-Chair (Mr. Phil McNeely): Time is up. We'll go to the third party and Mr. Bisson.

Mr. Gilles Bisson: Thank you very much. First of all, just a response to something you said, then I've got a series of questions.

You said in your comments that the three parties had said that they would cancel these gas plants and rip up the contracts. I just want to be really clear: We would have never built that gas plant in the way that you guys did. We would have done it under a public power of ownership, never under the ownership model that you put forward.

The other thing is—Andrea Horwath was quite specific in that election and I remember well, as I was co-chair of the campaign and this was a discussion that the co-chairs and parts of our campaign had talked about—that we would in fact not scrap contracts unseen. If you remember, there was some question as to Samsung contracts being ripped up on the part of the Conservatives, and we thought it wasn't responsible to start talking about ripping up contracts in the middle of a campaign that you haven't had a chance to see or understand what the cost might be. So I'll just put that on the record.

I just want to go back to this cabinet document that you signed. When you got briefed in regard to this particular issue, I take it there was more than one briefing. By the time you signed the cabinet document, there was other discussion about this prior to the signing, the day that you signed?

Hon. Linda Jeffrey: I'm going to go back to what you said about how you would have done it differently, and I appreciate that you have that perspective now. But I guess in my riding during the election, I actually heard NDP candidates throughout Peel saying the opposite. I don't know that the candidates and the leader were on the same page with regards to the gas plants. So I believe that there were candidates out there indicating from the NDP that they were actually going to rip up the contracts and that we were all—

Mr. Gilles Bisson: You should have heard what the Liberal candidates said back home.

Hon. Linda Jeffrey: At the end of the day, we can agree to disagree, but I think that that was a perception, so—

Mr. Gilles Bisson: Listen, the facts are that our leader, Andrea Horwath, had said she would not scrap contracts unseen. But anyways, that's just a minor thing.

My question to you is: Did you have any briefings prior to the signing of the cabinet document by whom-ever?

Hon. Linda Jeffrey: I was appointed to cabinet in January 2010 and I guess there was probably an original briefing in the fall, and then there was one in the summer. So there were probably updates more than briefings. I would say that they were opportunities when staff came in and gave you an update as to where the—

Mr. Gilles Bisson: As to the cancellation.

Hon. Linda Jeffrey: As to the cancellation, there were probably two or three briefings.

Mr. Gilles Bisson: In other words, when it came to you signing that document, it wasn't as if this sprung out of nowhere and you didn't know what it was all about. You had been briefed; you understood what this was all about.

During those briefings or at the time you signed the document, did anybody raise the issue of the force majeure part of the contract or allowing it to extinguish—
Interruption.

Mr. Gilles Bisson: What was that? It almost sounded like a dog out there. Anyway, sorry, I was distracted with the noise out the window.

At the time of the signing or prior to it, did anybody come to you as a cabinet minister or on this particular cabinet committee to say, "By the way, the other option is we could allow the contract to expire and we would not be in a position of having to spend a lot of money"? Did anybody come out and say that?

Hon. Linda Jeffrey: I don't recall that conversation. I knew it was a complex and commercially sensitive negotiation. I knew that if we released any details prior to it being finalized, then it would have jeopardized our negotiating position. I think that was why we worked so hard to, we believed, protect the public interest.

1530

Mr. Gilles Bisson: Arguably, you took the most expensive route, so I don't know if that did you any good.

So the answer to my question is that nobody had come to you and said, "There is actually force majeure within this contract. If we don't do anything, the thing would expire. One of the options is to do nothing, allow it to expire." Nobody ever came up and raised that point?

Hon. Linda Jeffrey: Mr. Bisson, I would challenge you on arguing that we took the most expensive route; I would argue that we didn't. Really, you won't know that, because we were able to negotiate a deal. Had we not gone to a deal, and had the contract been ripped up, we would have been in a position of being sued. I think that any time you decide to go to court and someone sues you—

Mr. Gilles Bisson: I'm not arguing about ripping up the contract.

Hon. Linda Jeffrey: —you are in a more risky position than you would be if you had negotiated something.

Mr. Gilles Bisson: The auditor was quite clear and categorical in her report that the government had an option and didn't follow it. Instead, they decided to make TransCanada Energy whole.

But anyway, the answer to the question I was asking, and I just want to be clear: Did you or did you not get a

briefing from somebody within government, from OPA or from anywhere in regard to an option that would essentially allow the contract to expire as a way of being able not to be on the hook for a lot of money?

Hon. Linda Jeffrey: The conversation I recall was that a decision had been made to negotiate with the proponents. I was not apprised of any other choices. The decision had already been made by the time I saw it.

Mr. Gilles Bisson: Was there any conversation about why you decided to make TCE whole? At cabinet, did you guys discuss that?

Hon. Linda Jeffrey: That conversation did not take place while I was in the room.

Mr. Gilles Bisson: At any time there was no conversation in cabinet in regard to—

Hon. Linda Jeffrey: I don't recall that. I think we discussed the fact that if we ripped up the contract, as the opposition advocated, the company would have sued us, and we believed the province would have been paying a higher cost.

Mr. Gilles Bisson: Okay. That's fair enough, but that's not my question.

Hon. Linda Jeffrey: I understand that, but that's what I recall being the conversation.

Mr. Gilles Bisson: So in regard to making them whole, were there any discussions you remember that ensued at cabinet or within government in regard to why you decided to make them whole?

Hon. Linda Jeffrey: There were no conversations that I attended.

Mr. Gilles Bisson: Okay. There was also some question that possibly, with the cancellation of the plant, it would be moved to Brampton. Were you aware of that? It was one of the options.

Hon. Linda Jeffrey: I have never heard that.

Mr. Gilles Bisson: Okay. That was one of them. So you never heard. That's interesting. I'll let my colleague follow up on that one.

Let me switch tracks a little bit here. On May 14 last year, or the year before, when the estimates committee asked for the documents, were you part of any discussion at any time in regard to the logic of why you would not be releasing these documents to the committee?

Hon. Linda Jeffrey: I don't recall us not providing documents. I believe, to the best of my ability, that when this conversation originally took place, when it first came to our attention, there was some commercial sensitivity to some of the documents being released. Mr. Bentley indicated at the time that it wasn't a matter of if the documents were going to be released; it was when they were going to be released. In order to protect the commercially sensitive conversations that were taking place, some of the details needed to be held back until those conversations were complete.

Mr. Gilles Bisson: And that discussion was at cabinet, I take it?

Hon. Linda Jeffrey: I guess the first time I recall, those conversations were in the House.

Mr. Gilles Bisson: Did you guys have that discussion at cabinet?

Hon. Linda Jeffrey: I don't recall that conversation taking place.

Mr. Gilles Bisson: So the committee requested documents. Were you aware that a committee has the right to request documents?

Hon. Linda Jeffrey: Yes.

Mr. Gilles Bisson: Did it strike you as strange that the government was taking a position of not releasing those documents?

Hon. Linda Jeffrey: When I heard Minister Bentley talk about the commercial sensitivity to the negotiations, I understood that he was trying to protect the public interest and that he was co-operating to the best of his ability. That's what I understood.

Mr. Gilles Bisson: Did you have any discussions with anybody in regard to the strategies of the government to filibuster the estimates committee? Just to refresh your memory, when the request was moved in order to be able to request the documents, the government filibustered those motions for I can't remember how many days but quite a few days. Were you aware that there was an attempt on the part of the government to filibuster the estimates committee at the time?

Hon. Linda Jeffrey: No, I don't believe that was the case. At the end of the day, my understanding was that at the time the documents were asked for, Minister Bentley stood in the House on numerous occasions and indicated that there was—he brought forward concerns that many of these documents could potentially negatively impact and violate solicitor-client privilege. I think that those were commercially sensitive documents. He was trying to protect those ongoing negotiations. I think he struggled with trying to be open and transparent, as is his practice, in my experience. I appreciated that he was trying to comply, but also understood that he was in the midst of very technical negotiations that needed some amount of time.

Mr. Gilles Bisson: Are you saying it was his decision alone not to release those documents?

Hon. Linda Jeffrey: I believe that the minister and certainly the Premier were the people making the decisions. Certainly they were having conversations with regard to the negotiations, and likely they made those decisions.

Mr. Gilles Bisson: Did any of those discussions happen at cabinet?

Hon. Linda Jeffrey: Not to my knowledge.

Mr. Gilles Bisson: Again, to refresh your memory, what actually happened was, originally, when the request was made at the committee, the minister took the position of not releasing them. It wasn't until sometime after that the government twigged into that they had to release them, and that's when the filibuster happened. I don't remember how many days, but the Clerk might remember. There were a number of days where there was an attempt on the part of the government—and rightfully so; that's their right as a government, as the opposition or the

government has the right to try to amend motions and stuff. I get that. But there was a clear attempt on the part of the government not to release those documents, and you're saying that never did any of you talk about this at cabinet?

Hon. Linda Jeffrey: I think the only time we even touched close to this area was to talk about the commercial sensitivity and the solicitor-client privilege that was contained in documents that were being requested. Minister Bentley worked very hard to provide as much clarity as he could, and I think he was willing and wanted to provide as much clarity as possible, but also did not want to endanger or put in jeopardy any of the conversations he was having.

Mr. Gilles Bisson: So there was some form of conversation at cabinet, then, in regard to this.

Hon. Linda Jeffrey: I think he just explained that there were ongoing conversations that were very technical and solicitor-client privileged. He didn't speak to the documents, but I think it was clear to us that it was a time when he was unable to provide too much clarity even to cabinet at that time because of the negotiations.

Mr. Gilles Bisson: So there was some conversation but not a lot of detail—that's kind of what you're saying.

Hon. Linda Jeffrey: Yes.

Mr. Gilles Bisson: Who else would have been involved in this whole move on the part of the government—I'm trying to say this in the least negative way possible—to hold up the documents that were being requested by the committee? The Premier, the Minister of Energy—was anybody else involved?

Hon. Linda Jeffrey: I have no idea who—

Mr. Gilles Bisson: The House leader's staff, House leader, whip?

Hon. Linda Jeffrey: I have no idea who was involved. At the end of the day, what I know about this file is what was presented to me by the ministry and the Minister of Energy, and any of the OPA officials who accompanied him to any cabinet meetings. But what I knew about what was going on in negotiations were those and anything I read in the paper.

Mr. Gilles Bisson: Okay. I'm going to reserve the rest of the time for my colleague, if you don't mind—you can switch over. Can I just save what we've got now? Because my colleague had some questions.

Interjection.

Mr. Gilles Bisson: Could we? Because Peter had some questions, and I just need to save him a bit of time.

The Vice-Chair (Mr. Phil McNeely): Does the committee agree with—

Mr. Gilles Bisson: We'll just lump whatever time we have in our last rotation.

The Vice-Chair (Mr. Phil McNeely): Reserving eight minutes?

Mr. Gilles Bisson: Yes. Just lump it into the 10 minutes at the end. I would ask, I would move that we lump the remaining eight minutes over to the last 10 minutes, in order—

The Vice-Chair (Mr. Phil McNeely): All those in favour of him reserving eight minutes?

Mr. Bob Delaney: What we would be asking for here would be unanimous consent, which would be required to override the subcommittee report, correct?

Mr. Gilles Bisson: No, I can move a motion. It's a simple motion.

Mr. Bob Delaney: Now, hold on. Just hold on.

Mr. Gilles Bisson: It's not an unreasonable request.

Mr. Bob Delaney: No, I'm not saying it is.

Mr. Gilles Bisson: Look, he's over there on TV, speaking in the House.

Mr. Bob Delaney: No, we get that. I understand what you're asking.

The Vice-Chair (Mr. Phil McNeely): Okay, through the Chair, here. You're saying it's unanimous—

Mr. Bob Delaney: No. What I'm asking, Chair, is—my understanding, then, is that the member is asking for unanimous consent to override the subcommittee report one time to use—on this one occasion, to add his remaining time to his second round. Is that correct?

1540

Mr. Gilles Bisson: We can do it by motion—

The Vice-Chair (Mr. Phil McNeely): Mr. Bisson, is that what you're asking?

Mr. Gilles Bisson: Are you agreeable to unanimous consent?

Mr. Bob Delaney: Yes.

Mr. Gilles Bisson: Okay, fine. Let's do it that way.

The Vice-Chair (Mr. Phil McNeely): Is everybody agreeable?

Interjection: Sure.

Mr. Gilles Bisson: I appreciate that. Thank you.

The Vice-Chair (Mr. Phil McNeely): We'll go to the government, and you'll have 20 minutes; we'll reserve eight.

Mr. Bob Delaney: Okay, thank you. Minister, welcome. It's good to see you. I'm not completely sure why you're here, but nonetheless. As the opposition has admitted, it's not unusual for a cabinet officer to sign off on a mandate for this type of a negotiation, and in approving the negotiation mandate, cabinet was in fact following through on a public commitment to relocate that Oakville plant, and that commitment was made in 2010, some two years before you had that minute, so it had been two years at that point.

Just to recap: Rather than rip up the contract and pay more money for no power, the province chose to relocate the plant so that there would actually be a benefit to the energy system, which is why the negotiations were taking place during that summer of 2012. The testimony that we've heard and the documents that we've seen made it clear that the negotiations were in fact taking place by experts in the OPA, who assured the government that they were working hard to negotiate the most commercially reasonable deal.

My understanding from your description is that you signed off on the upper limit of the negotiation mandate and, ultimately, those things that were being negotiated came in at a lower cost than what was authorized in the mandate. Is that correct?

Hon. Linda Jeffrey: Yes. The recommendations were the negotiating terms of up to \$50 million to cover TCE's sunk costs incurred on the Oakville generating station, and the breaking fee was up to \$100 million. In fact, when the negotiations came back, the final agreement, which was announced a few days later, was actually a lower sunk cost, a lower NRR fee and a lower break fee. So I think it was a better outcome. It wasn't ideal, at the end of the day, had these locations been sited better, which is something the Premier has talked about. It was a better deal. We believed that had we ripped up the contracts and cancelled them completely, we would have been sued, and we believe the costs would have been significantly higher.

Mr. Bob Delaney: Again, just to recap, at this point in the summer and the fall of 2012 when the deals to relocate the two plants were being finalized, your cabinet portfolio was—

Hon. Linda Jeffrey: I was the Minister of Labour, and at that point I had joined treasury board.

Mr. Bob Delaney: And the Ministry of Labour was not involved in the decisions regarding the Mississauga and Oakville power plants?

Hon. Linda Jeffrey: Not at all.

Mr. Bob Delaney: As a minister in a cabinet in 2011, I assume that you paid close attention to the policies and positions of your counterparts in the election.

Hon. Linda Jeffrey: Yes.

Mr. Bob Delaney: So you then would have been fully aware that the other candidates all through Peel region were all committed to cancelling the Oakville and Mississauga power plants.

Hon. Linda Jeffrey: Yes. After we made our announcement, it seemed to be a good idea by the opposition, and really, they made the right decision as well, I think. It was a better decision that all three parties agreed on and, at the end of the day, we became government following that election and had to implement a promise that we had made to the residents, certainly, in Oakville and Mississauga.

Mr. Bob Delaney: The mayor of Oakville, Rob Burton, was here on March 19 and he told us—let's use some of his words: "Our citizens ... won promises from all parties to stop the proposed power plant." He then met personally with PC leader Tim Hudak, whom Mr. Burton said expressed "support for the path that the community was on."

My question to you then: At that time, in the election of 2011, both opposition parties opposed the Oakville plant. Do you recall any of your opposing candidates saying how much their commitment would cost?

Hon. Linda Jeffrey: I think that was the most interesting part of the conversations that I watched in the media. Certainly as I stated in my opening comments, this was not an issue that resonated at all in Brampton, to my recollection, but I would say that I watched with interest what was going on in other parts of Peel, because obviously I have an interest in what goes on in the region. I thought it was a very easy statement to make

during the course of the election that you're going to cancel it but not to attribute any costs to it.

There's no magic to these negotiations. You have to have some difficult conversations about what those costs are going to be. We were prepared to do that, and certainly it became clear when we came back from the election that we had to do those negotiations, and that's what we did.

Mr. Bob Delaney: Mayor McCallion testified that regardless of who won the election, in her words, "I think all parties would have cancelled it," in this case referring to the Mississauga plant. We have transcripts and campaign literature and robocall scripts that highlight these comments and commitments made by both opposition parties.

With regard to the opposition plan, do you ever recall any opposition candidate saying how much their commitment would cost?

Hon. Linda Jeffrey: I don't recall that, but I do recall some of the comments that Mayor McCallion says—she says what she thinks on a regular basis because I see her monthly at my AMO MOU table. She's a pretty candid speaker. She spoke very candidly, I recall, at an event that I was at during the course of the election. She spoke about this issue in great detail, unsolicited, about how pleased she was with what the government had committed to with the cancellation. So I appreciated her speaking in detail about it, but I don't recall any candidate speaking in any detail on this issue.

Mr. Bob Delaney: Yes. Mayor McCallion is my constituent. I understand.

With regard to the final deal to relocate the Oakville plant to Napanee that was announced on September 24, 2012, when it was announced the Ontario Power Authority published the final memorandum of understanding and a news release on their website that stated, "The cost of TransCanada's plant at Lennox will be comparable to the cost of the original competitively procured Oakville plant," and specified that the sunk cost was \$40 million. The OPA testified here at the committee that at the time the deal was announced, the future cost and savings estimates were unknown. Colin Andersen, the OPA's CEO, said as much, and he also said:

"It's true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized, if you will, at that point in time."

"There were other elements that were noted ... but none of them had a number attached to them at that point in time."

Similarly, OPA chair Jim Hinds said much the same thing. So at that time, would you agree that the OPA's costing that was available when the memorandum of understanding was signed was what had been provided to the public?

Hon. Linda Jeffrey: I think that's all we had to rely on at that point. I think there were a lot of estimates and I think certainly the Auditor General has—both Auditors General have provided clarity on what costs were

assumed, and really estimates as to what the cost will be in the future. Based on the information we had at the time, I would agree with you.

Mr. Bob Delaney: Okay. Again as a member of cabinet, let's just talk briefly about the many steps the Premier has taken to be open and transparent on the relocations of both facilities in Mississauga and in Oakville. As a quick recap, the Premier ordered the full disclosure of documents, wrote to the Auditor General, re-struck the committee. At this point, we've heard from 64 witnesses, some 95 hours of testimony, and the government has provided more than 175,000 documents and emails—by a long shot, the most open process in the province's history. The Information and Privacy Commissioner has credited the government for implementing important record-keeping reforms and staff training. The Auditor General stated last week that the Premier is “changing ... the way things are going to be done in the future so that a situation like this doesn't evolve.”

Did you have any personal opinion about all of these steps?

1550

Hon. Linda Jeffrey: I was very proud when Premier Wynne committed to getting all the information on the two gas plant relocations, and I was glad that she brought the House back so quickly. I'm glad that she expanded the mandate of the justice committee, and I am glad that she asked the Auditor General to examine the costs. I think that those were important steps that gave the public confidence that we were open and transparent. Certainly there have been a lot of documents provided to the committee, which I think is a good thing. There have been many witnesses here who have provided clarity as to what we should do.

On the Information and Privacy Commissioner work, my own staff have been through some training in records retention and awareness. I think that only improves all of the work that we do on an ongoing basis. That's a positive step, to make sure that our political staff are aware of their responsibilities. It demonstrates that our government is serious about record-keeping, and our government is serious about making sure that all the facts are made available.

Mr. Bob Delaney: And just for clarity, when you said that Minister Bentley and the Premier were the ones who decided about the documents, as Minister of Labour at the time you personally were not involved in those conversations, correct?

Hon. Linda Jeffrey: No, I was never involved in those conversations.

Mr. Bob Delaney: Okay. In May 2012, when the estimates committee passed a motion by Mr. Leone asking for all correspondence within a specific time frame from the Minister of Energy, the Ministry of Energy and the OPA related to the two gas plants in Mississauga and Oakville, at that time complex and sensitive negotiations were going on with both proponents.

We've asked many witnesses at the committee pretty much the same question: What would have happened if,

as the opposition was demanding—we say recklessly—commercially sensitive information had been made public prior to the point where negotiations had been finalized?

Hon. Linda Jeffrey: Well, I'm speculating at this point, but I believe it would have been very dangerous and reckless. As I said earlier, these were commercially sensitive documents with client-solicitor privilege. I think it was something that Minister Bentley spoke about a number of times in the Legislature, that to disclose that information would have put us in jeopardy and I believe would have cost us significantly more money in the long run.

At the end of the day, these were sites that we believed should be relocated to another part of Ontario because we needed the energy. I think any time you can negotiate a solution, that's always a better outcome than being taken to court and sued.

Mr. Bob Delaney: Thank you. I think every single witness has responded that it would have put the province at a huge disadvantage because its negotiating position would have been prejudiced. Would that accurately encapsulate it?

Hon. Linda Jeffrey: Absolutely.

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

I'm just wondering if you could share with the committee your views on the allegations made against Mr. Bentley and whether you felt that Mr. Bentley had acted in any manner other than in the public interest?

Hon. Linda Jeffrey: I recall that time in the Legislature as being one of the most unpleasant that I participated in. I found that Minister Bentley was doing his best to navigate through an extraordinarily difficult time: on the one hand, negotiating something that was commercially sensitive and, at the same time, being personally attacked in the Legislature. It was a very toxic environment and I think that, I know that Minister Bentley—when I first met him, I remember being impressed with his values. I thought he was an individual who certainly had the public interest at heart. He worked very hard to try and manage this file and provide as much clarity as possible. Certainly, I think that he always had the public interest at heart. It was never his intention to withhold the documents. It was a matter of when he was going to release those documents. Certainly, I never saw anything that would have me believe otherwise.

Mr. Bob Delaney: And, I guess, if I could add personally, he was a deeply honest and honourable man.

Chair, I think we're done for this round. Thank you.

The Vice-Chair (Mr. Phil McNeely): We'll go now to the opposition. You have 10 minutes left.

Mr. Victor Fedeli: Thank you, Chair. I appreciate it. Welcome, Ms. Jeffrey.

Hon. Linda Jeffrey: Thank you.

Mr. Victor Fedeli: I have two different lines of questioning. I want to pick up, actually, where Mr. Bisson basically left off. On page 10 of the document that you signed—the slide deck—the cost recovery where it says, “Other financial arrangements associated with the term sheet would be the responsibility of the OPA.” You yourself acknowledged, “I had knowledge that there would be expected future costs.”

Just to start the conversation all over that you finished with Mr. Bisson, you acknowledged, then, that you knew, when you signed the document, that there were up to \$50 million in, it called it relocation costs—we hadn't heard that words “sunk costs” yet—and a break fee as well. But, in addition to that, you had knowledge that there would be expected future costs. Would you acknowledge that?

Hon. Linda Jeffrey: What I would acknowledge is that I was briefed by the appropriate staff in the Cabinet Office and representatives from the relevant ministry. I think that I learned that they were working hard to negotiate something that was commercially reasonable. I think that certainly it was clear to me that if you didn't rip up the agreement, you had to find a way to negotiate going forward.

Again, what I saw that day that I signed the walk-around document was a negotiation mandate that would be coming back for an update to cabinet. So I would have expected the numbers to change, but I knew what the high end of those negotiations was the day that I signed it. But I certainly expected that this was a file that wasn't going to be resolved easily because of the public interest in the file and certainly the fact that we were trying to negotiate a reasonable commercial deal.

Mr. Victor Fedeli: So you told Mr. Bisson that you had knowledge that you expected future costs. Are you changing that now?

Hon. Linda Jeffrey: What I'm saying is, it was something that—

Mr. Victor Fedeli: You've already said it: You had knowledge that there would be expected future costs.

Hon. Linda Jeffrey: I would say that, Mr. Fedeli, what I believed to be something that would be coming back in the future was something of my own knowledge. It wasn't conveyed to me in the course of the briefing, but I would have expected the deal to come back, and that there would be more costs associated in the future.

Mr. Victor Fedeli: Okay. You also have said a few times that you were briefed by ministry officials as well as cabinet officials—

Hon. Linda Jeffrey: Cabinet Office, yes.

Mr. Victor Fedeli: Cabinet Office officials. They told you a few things. You said something about, “If we ripped up the contract.” I wrote “ripped up the contract.” I think you've said that two or three times. Am I correct in that?

Hon. Linda Jeffrey: Yes.

Mr. Victor Fedeli: So, without seeming too blunt, is that a talking point or did somebody actually say that to you, “If we rip up the contract, it will cost?” Did somebody actually say that or is that today's talking point? I don't mean to be blunt or rude when I say that; I just need to get it clear.

Hon. Linda Jeffrey: I don't recall getting any talking points on this particular item. All I know is when you cancel a contract, you rip it up and you start over, or you go to court.

Mr. Victor Fedeli: Did somebody tell you that?

Hon. Linda Jeffrey: I assumed that when I heard the opposition talk about this in the media, that was—

Mr. Victor Fedeli: No, no, no. This is going back. I'm going back. You said that when you signed that document, the ministry officials briefed you and said, “If we rip up the contract, it will cost more money.” Are you saying that's not accurate?

Hon. Linda Jeffrey: Are you asking me about the time that I signed the walk-around?

Mr. Victor Fedeli: Yes.

Hon. Linda Jeffrey: We did not talk about that portion of the deal. That day was only to discuss the mandate for the negotiations.

Mr. Victor Fedeli: So you went ahead and signed a \$700-million deal. Earlier you said you had a briefing. Was there no briefing? Did you sign it without a briefing, or were you briefed?

Hon. Linda Jeffrey: I was briefed by some staff in the Cabinet Office and representatives from the Ministry of Energy.

Mr. Victor Fedeli: And when you were briefed, did they tell you—according to the Auditor General, on page 9, I'll read what she said: “The contract for the Oakville plant contained protection to relieve both TCE and the OPA of any financial obligations if events beyond their control (force majeure events) caused the plant's ... operation date ... to be delayed”—with no penalty and at no cost. Did anybody from Cabinet Office or the ministry tell you that you could cancel this contract without any cost?

1600

Hon. Linda Jeffrey: What we spoke about was the decision that was for me to sign on the minute, which was agreeing to the approval and the negotiating terms of \$50 million to cover the sunk costs incurred by the Oakville generating station and to approve a provision of a break fee of up to a \$100 million if a new plant couldn't be completed. That's what we talked about.

Mr. Victor Fedeli: So they didn't tell you what the Auditor General told us, that you could have got out of it with no penalty and no cost? You were not informed of that?

Hon. Linda Jeffrey: We did not discuss that the day that I was given the walk-around document.

Mr. Victor Fedeli: Were you told, as the Auditor General also pointed out to us, that you needed to make TransCanada whole, as the auditor has disclosed here in her findings as well? Were you told that?

Hon. Linda Jeffrey: I was told there were complex negotiations but that OPA was trying to work hard to negotiate the most commercially reasonable deal.

Mr. Victor Fedeli: Yes, well, the auditor told us that the OPA thought it was a bad deal, that the OPA believes that going to Napanee was the wrong place to go. The OPA was committed by the Premier's office to make them whole, and they didn't agree with that either. It's not the OPA here; we're talking about the Premier's office.

So nobody from Cabinet Office told you that (1) you could have got out of this for nothing; and (2) that you were to make them whole. Nobody told you that when you signed this?

Hon. Linda Jeffrey: What they provide you with is a detail about the negotiating mandate and that's what I asked questions about. I asked when the reporting back would occur—

Mr. Victor Fedeli: Did you ask them what the whole thing would cost? I mean, there is a sentence in there: "other financial arrangements" associated with the term sheet would be the responsibility of the OPA, and as my colleague Lisa MacLeod said today, we also learned that that \$700 million was known back as early as December. And you're telling us you that had knowledge that there would be expected future costs. Did you understand what you were signing, or did you ask any questions about, "Hang on, how much is that, this other financial arrangement? How much are we talking"? Did you ask, "How much we are talking"?

Hon. Linda Jeffrey: Mr. Fedeli, I did understand what I was signing, which was a negotiation for a mandate to negotiate up to \$50 million to deal with TCE's sunk costs. That's what I knew to be signing at that point—

Mr. Victor Fedeli: Well, it also said "other financial arrangements."

Hon. Linda Jeffrey: —and what you're asking me to do is to speculate about future costs, and what I was being asked to sign that day is what I understood.

Mr. Victor Fedeli: Well, the briefing that we got, that they say you got, it says "other financial arrangements," so obviously somebody should have asked, "Hang on, a red flag here. How much is this?" As we now know, it was \$700 million speculated; it turned out to be \$675 million.

Hon. Linda Jeffrey: What I indicated earlier on, before you arrived, was that any information that I had was based on knowledge that was given to me by ministry officials at the Ministry of Energy, the minister and/or his officials.

Mr. Victor Fedeli: So they didn't tell you the whole story? They didn't tell you that you could have got away for nothing?

In the remaining two minutes, I want to jump to October 1. In the Legislature, you stood and said, "The documents in their entirety have been provided to this Legislature." This was October 1. I know the minister talks about commercially sensitive and solicitor-client privilege. This is long after that now. This is after the disclosure; this is after the 36,000 documents. And by the way, you do know that at this committee, there is no commercially sensitive or solicitor-client privilege. We're entitled to all the documents. But that can't be the argument, because you've got 36,000 documents. You stood up and said, "The documents in their entirety have been provided to the Legislature." Yet we've been told by sworn testimony that 20,000 were held by the OPA under the instructions of the Ministry of Energy. Two weeks later, 20,000 documents were indeed disclosed to the Legislature.

Now that you know that "the documents in their entirety" were not provided to the Legislature—you know that that sentence is not true—will you now stand in the Legislature and correct your record?

The Vice-Chair (Mr. Phil McNeely): You have a minute left.

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

Hon. Linda Jeffrey: Mr. Fedeli, when I spoke in the Legislature in defence of Minister Bentley, I did so with the knowledge at that time of what documents had been made available. I felt that, at the time, there was almost a personal attack being placed by the opposition—

Mr. Victor Fedeli: No, no. We're not talking about that. We're talking after—

Hon. Linda Jeffrey: You're asking me for my opinion as to what I said—

Mr. Victor Fedeli: No, I'm not—

The Vice-Chair (Mr. Phil McNeely): Let her answer.

Mr. Victor Fedeli: I have about 30 seconds left. This is after—

Hon. Linda Jeffrey: Chair, can I get an opportunity to answer the question?

Mr. Victor Fedeli: This is after the 36,000, so you're talking about earlier. I'm talking October 1 now. This is long after the platitudes for the minister. Over 36,000 documents were released; 20,000 new documents came up that were withheld from us. You're saying that the documents in their entirety have been provided to the Legislature. You now know that's not true. Will you stand in the Legislature and correct your record, because you now know it's not true?

The Vice-Chair (Mr. Phil McNeely): Time is up. We'll go now to the third party: Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Chair. Good afternoon, Minister.

Hon. Linda Jeffrey: Good afternoon.

Mr. Peter Tabuns: When you received this half-hour briefing on this negotiation minute, who were the individuals who briefed you?

Hon. Linda Jeffrey: There were people from Cabinet Office, and there were people from the Ministry of Energy.

Mr. Peter Tabuns: And what were their names?

Hon. Linda Jeffrey: I couldn't tell you at this point. I'm sure there's a record in the Cabinet Office, but I couldn't tell you off the top of my head right now.

Mr. Peter Tabuns: Could I ask you to check and provide that information to this committee?

Hon. Linda Jeffrey: Sure. Absolutely.

Mr. Peter Tabuns: I appreciate you taking on that duty.

On a different matter, do the political staff in your office respect the Archives and Recordkeeping Act in their management of email?

Hon. Linda Jeffrey: Certainly, this has been a heightened issue, and my staff have gone through training. As we all do, we go through new staff all the time, and whether they're trained adequately is something that, certainly, we've all got a heightened awareness to. My staff, I'm fairly sure, were not as well trained as they could have been. So, certainly, on the Information and Privacy Commissioner's advice, we've all gone through additional training as to making sure that we retain our records as her advice has come forth. It's something that we've been alerted to do a better job.

But there were no records in my ministry or in any of the correspondence I would have used on this particular issue, so—

Mr. Peter Tabuns: That's not my question, though. But you are aware of the act and the requirement to retain records?

Hon. Linda Jeffrey: Absolutely. Yes.

Mr. Peter Tabuns: Great.

The potential for this plant—sorry; the plant from Mississauga—to be sited in Brampton showed up in the Brampton News on April 16, 2012. Were you aware of the potential to site the Mississauga plant in Brampton at that time, or before the newspaper report?

Hon. Linda Jeffrey: Until it was raised here, I had forgotten that it had even been raised. I'd completely dismissed it. There are many things that I read in my local paper that I find to be not always accurate, so I take everything I read in the newspaper with a grain of salt.

Mr. Peter Tabuns: At that time, did you check with the Minister of Energy, or with any of your colleagues, as to whether or not this is correct?

Hon. Linda Jeffrey: I didn't, because I didn't believe it was a factual or possible choice of a location.

Mr. Peter Tabuns: Were you surprised when the mayor and others spoke up on this and took the action they wanted to take to stop it from being located in Brampton?

Hon. Linda Jeffrey: I was not surprised that the mayor went to the newspaper or that she spoke on this issue. I knew that it was not a real or potential site for location. It made no sense, based on the power needs in the area. We already had sufficient power; it made no sense. I don't know why it was even raised, so I didn't see it as being a relevant or—again, whether it was a real potential, so it wasn't something that worried me.

Mr. Peter Tabuns: Okay. You're aware that, prior to the contract being signed for the Oakville plant—and I'll speak for the NDP, and the opposition can speak for themselves—that the NDP had warned that it was a bad idea to go ahead with this plant because it wasn't needed and that it was risky. Were you aware of that?

Hon. Linda Jeffrey: I became aware of this issue probably after the fact, not during. As I said earlier, this has never been an issue for me, either during the election—before, during or after. It wasn't an issue that resonated with my community at all. It wasn't something that came up in debates; it didn't come up at the door. I pretty much have been following issues since that time.

1610

Mr. Peter Tabuns: But you're now aware that, prior to the Liberal government committing to a billion-dollar contract, they were warned by us in the Legislature—and former Premier McGuinty has acknowledged that—that this was a bad idea.

Hon. Linda Jeffrey: I think in hindsight, there were communities that told us that better siting could have been part of that conversation, and certainly all parties in the Legislature came to that conclusion. I think Premier Wynne has talked about the siting being something that we need to get right the next time.

Mr. Peter Tabuns: You know, when you tell someone not to drive over a cliff and they drive over a cliff, the responsibility tends to be theirs rather than anyone else's. We told you not to drive over a cliff.

Hon. Linda Jeffrey: I appreciate that you gave us that advice.

Mr. Peter Tabuns: Would that you would take it in these matters.

Mr. Gilles Bisson: It would have been better, yes.

Mr. Peter Tabuns: It would have been better.

The risk with private power contracts: We had Ben Chin testify before this committee recently telling us that the beauty of private power contracts was that you passed all the risk on to the private contractor. Having gone through this experience, do you believe that that's the case?

Hon. Linda Jeffrey: I don't really have an opinion on how power or energy is purchased or how it's managed. This is not my file, and certainly any knowledge I have with regard to energy is something that I get from the Ministry of Energy in briefings.

As I said previously, over the last two and a half years, I've been pretty much focused on my own ministry responsibilities. Power generation or siting or relocation has not been something that I have great knowledge on, so I don't feel qualified to answer that.

Mr. Peter Tabuns: Do you think that when you're dealing with counter-parties, someone who signed a contract with you, if there are problems, it's a good idea to make them more than whole?

Hon. Linda Jeffrey: Again, it's not a place where I feel qualified to give answers. When we were dealing with this issue, there were many negotiations that were not made public to either cabinet and/or treasury board

due to the commercial sensitivity, so I couldn't comment on this with any great knowledge.

Mr. Peter Tabuns: Well, in your ministry, generally speaking, would you try to ensure that in a commercial transaction, people didn't come out better in a deal than they would have if you'd pursued a particular course?

Hon. Linda Jeffrey: There aren't that many deals I deal with. The only people we negotiate with are the federal government, and right now, I'm hoping I come out in a better position than I have previously with regard to housing matters.

Mr. Peter Tabuns: I can actually understand that. I'm sure that you feel that in the energy sector, you hope that the public comes out better than they would in normal—

Hon. Linda Jeffrey: In a perfect world, they will.

Mr. Peter Tabuns: Even in an imperfect world. Apparently, TransCanada knows how to operate in an imperfect world and do better on a deal than they start out with.

In this situation, it was pretty clear to us and many in the media that the reason these power plants were cancelled was to save Liberal seats. The Liberals had made a decision, against warnings both by the communities and by opposition parties. They had gone ahead and sited these plants, decided they were in deep political trouble and decided to take on huge public cost and risk. Do you think that that's a good approach, or do you think, as your Premier said, that it's a mistake?

Hon. Linda Jeffrey: I think that there were good intentions by the former Premier to think about power needs going forward. Certainly, the Minister of Energy did his very best to negotiate a good deal. I think we've learned from two auditors' reports that there are lessons to be learned, and Premier Wynne has acted quickly and swiftly to provide as much clarity and transparency to any future negotiations we have with regard to siting. I think Premier Wynne has apologized for the process in the siting and that the communities that were chosen to have these sites were ones that were not happy with those choices. Hindsight is 20/20. I think, ideally, in the future, we will hopefully have sites that are not as contentious and don't cost as much money.

Mr. Peter Tabuns: Mr. Bisson will take a few minutes here.

Mr. Gilles Bisson: I want to go back to the issue of the estimates committee. Just to be clear, just to review what happened, the estimates committee had requested documents from the Minister of Energy in regard to the cancellation of the gas plants. The then Minister of Energy, Mr. Bentley—a private citizen today—said, "I'm not going to release those documents for two reasons: first of all, sub judice rules"—in regard to the point that you were trying to make—"and solicitor-client privilege."

The committee continued to try to deal with getting a motion through the committee in order to be able to get the request of those documents, because the process is that an individual member can make a request for a document, but once the committee votes and there's a

majority vote at committee to request documents, then you're obliged to give it.

We didn't get to that point initially because the government actually filibustered the committee. They did everything they could to slow down the process of allowing the estimates committee to move that motion. So it's pretty clear that there was an attempt on the part of the government and then Mr. Bentley, the Minister of Energy, and whoever else, to not release the documents for either sub judice reasons or solicitor-client privilege reasons.

Further to that, when we returned, Mr. Leone filed a motion in the House—filed notice that he was going to rise on a point of privilege. Up to that point, the government continued and Mr. Bentley continued to argue sub judice and continued to argue solicitor-client privilege.

It wasn't until after the Speaker ruled that it was a prima facie case of contempt that the government then said, "Okay, let's figure out how we're going to release those documents," just to be clear. So there's a fairly long period of time where the position of the Minister of Energy—and presumably the government—is, "We're not going to release these documents because of sub judice rules and because of solicitor-client privilege." Just so that we're all clear, those are not bases by which you can refuse to give documents, as the Speaker ruled.

In all that time, from the month of May up until—when was the actual point of privilege raised? Do you remember the date? It was August—something?

Interjection: September.

Mr. Gilles Bisson: It was in September, so there's May, June, July, August—there's a four-month period there where the government is taking the position, "We're not going to release these documents because of sub judice and because of solicitor-client privilege."

Did you at any time have any discussion with any of the government committee members about this particular issue?

Hon. Linda Jeffrey: I don't recall a—I'm not a lawyer.

Mr. Gilles Bisson: I understand. That's why I took some time to lay it out.

Hon. Linda Jeffrey: Thank you. I appreciate that, but I don't feel qualified—first of all, I don't sit on estimates, and I wasn't following what was happening in the estimates committee that closely. I think the time that I learned about what was going on in committee was what I heard in the House. I relied on the advice of the Minister of Energy and certainly anybody from that department who determined what documents should be released.

Mr. Gilles Bisson: Fair enough, and I understand. You said that earlier. But my specific question to you is: At any time, did you have a discussion with any of your colleagues on the Liberal side of the estimates committee? Did they come to you? Did you go to them to ask questions? Was there any discussion between you?

Hon. Linda Jeffrey: No.

Mr. Gilles Bisson: Were there any documents exchanged?

Hon. Linda Jeffrey: No.

Mr. Gilles Bisson: Were there any discussions that you had with the government House leader or his office in regard to the release of the documents?

Hon. Linda Jeffrey: No.

Mr. Gilles Bisson: There was no exchange of documents between yourself and—

Hon. Linda Jeffrey: There was no exchange of documents.

Mr. Gilles Bisson: You never sent an email saying, “Hey, what the heck is going on?”

Hon. Linda Jeffrey: Most of the time, I find it’s unwise to put things in emails when you can go over and talk to somebody, but I would say to you—

Mr. Gilles Bisson: Okay. So did you talk to somebody?

Hon. Linda Jeffrey: —in the case of this, it wasn’t something that was—again, during the last two and half years, I have had some extraordinarily busy files. This has not been my file, and energy is not something that—

Mr. Gilles Bisson: Fair enough; fair enough.

Hon. Linda Jeffrey: —consumed my every waking day.

Mr. Gilles Bisson: My specific question: In those four months when it was quite a contentious issue—the non-release of documents—did you have any discussions with anybody in the Premier’s office?

Hon. Linda Jeffrey: I believe the only conversations I may have had were at the cabinet table, where, at the time, the then Minister of Energy would have alerted the cabinet to the fact that there were commercially sensitive negotiations going on, and I would have assumed that it would be unwise to release documents. I don’t recall him saying that, but I would say that that would be the only way I would have—

Mr. Gilles Bisson: Was there much of a conversation about it?

Hon. Linda Jeffrey: I would say that when I look back at my calendar, because obviously none of us remember what we were doing two and a half years ago, there were a few times when updates did come to cabinet. I don’t recall the conversation about the documents to

committee being the issue. We were dealing with how to negotiate—and certainly the negotiations were something I was asked to sign off on later on, but they were an update as to how things were going with the conversation.

Mr. Gilles Bisson: So, clearly, the minister didn’t want to release the documents for his reasons, which were sub judice rules and solicitor-client privilege, and there was some discussion as to why he was doing that and why the documents weren’t being released then.

Hon. Linda Jeffrey: I presume so.

Mr. Gilles Bisson: Okay. Did you have any conversations with any other caucus members or any other members of cabinet—what’s the word I’m looking for—casual conversations? Were there any casual conversations between yourself and any member of the government in regard to, “So what’s going on? How come we’re not releasing these documents?” kinds of conversations?

Hon. Linda Jeffrey: I don’t recall any conversations. I would say that most cabinet meetings are packed agendas. Many decisions and many information items come forward, and you’re running from question period into a cabinet meeting. You’re usually covering seven to eight items. You’re covering items that frequently are outside your knowledge base or your realm. You’re either being given an update or being asked to make a decision. There isn’t a lot of time for idle chitchat.

Mr. Gilles Bisson: Okay. No further questions.

The Vice-Chair (Mr. Phil McNeely): You’re finished?

Mr. Gilles Bisson: I said “no further questions.”

The Vice-Chair (Mr. Phil McNeely): We’ll go to the government side—you surprised me there. Mr. Delaney?

Mr. Bob Delaney: Thanks, Chair. We have no further questions.

The Vice-Chair (Mr. Phil McNeely): Seeing that there are no further questions, the witness may be excused. Thank you very much for coming today.

Hon. Linda Jeffrey: Thank you.

The Vice-Chair (Mr. Phil McNeely): And we will be having a subcommittee meeting.

Meeting adjourned.

The committee adjourned at 1622.

CONTENTS

Tuesday 22 October 2013

Members' privileges	JP-1037
Ministry of Energy	JP-1037
Mr. Serge Imbrogno	
Hon. Linda Jeffrey	JP-1053

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