



**Legislative Assembly
of Ontario**

Second Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Thursday 5 December 2013

**Journal
des débats
(Hansard)**

Jeudi 5 décembre 2013

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 5 December 2013

Jeudi 5 décembre 2013

*The committee met at 0831 in room 151.*MEMBERS' PRIVILEGES
ONTARIO POWER AUTHORITY

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy officially to order. I'd invite our first presenter to please come forward: Mr. Jim Hinds, chair of the Ontario Power Authority, who will be affirmed by our Clerk.

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

Mr. Jim Hinds: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hinds. As it's a repeat engagement, I know you know the protocol. You have five minutes for your opening address, beginning now.

Mr. Jim Hinds: Thank you, Mr. Chair. My name is Jim Hinds. I've been chair of the Ontario Power Authority since December 9, 2010. From June 2005 until December 2010, I served as the director and chair of the board of IESO.

I previously appeared before this committee on June 4, 2013. At that time, I discussed two of the lessons learned from the gas plant cancellation and relocation decisions. The first lesson was the need to align planning and siting decisions with current conditions in the electricity system. Progress has since been made, with the release of revised planning and siting recommendations on August 1, 2013, and the release of the second long-term energy plan on December 2, 2013. The second lesson involves greater transparency about the electricity system and the need to improve electricity literacy. Work is under way to achieve these objectives, with the formation of OPA's stakeholder advisory committee and negotiations with the Ministry of Energy to create a memorandum of understanding governing, among other things, our communications protocols. More work remains to be done, but I am pleased with the progress on these initiatives.

I'd like to use the balance of my time today to raise three other issues with the committee to consider in the drafting of its report.

Issue number one: Ratepayer-taxpayer distinction is important. I want to reinforce the distinction between

“ratepayer” and “taxpayer.” The business of the electricity system, funded by the ratepayer, is separate and distinct from the business of the government of Ontario, funded by the taxpayer. The electricity business costs the ratepayers of the province about \$16 billion a year. The government of Ontario is a \$150-billion-per-year enterprise. The electricity business has one simple product: electricity. The government of Ontario has many different products and services provided to its taxpayers and its citizens. It juggles competing social, political and economic priorities. There are about 4.5 million ratepayers in the province. They pay for their electricity through their bills. There are about 13.5 million citizens in the province, virtually all of whom are taxpayers in some form. There are many ratepayers who are not taxpayers. Schools, universities, hospitals, municipalities, churches, charities, unions, co-operatives and the provincial government itself are all electricity customers but not taxpayers. The government is at least nine times bigger than the electricity business. Loading costs of government onto the ratepayer can overwhelm the rate base. In one example, industries which are heavy users of electricity are extraordinarily sensitive to increases in electricity costs. Increases in such costs can cause the decline and loss of these industries, as well as the employment which comes with them.

Issue number two: consistent standards for document disclosure. Committees of the Legislature play an important role in our democratic process. Through a committee's power to require testimony of witnesses and disclosure of documents, a committee can shed light on important matters of public interest. In carrying out its business, however, a committee should have regard to considerations of fairness and proportionality and the public interest. Reasonable timelines for document disclosure, techniques to manage commercially sensitive information, techniques to determine which information is relevant to the mandate of the committee, the confidentiality of matters subject to litigation, processes governing redaction of sensitive and non-relevant information, the right of solicitor-client privilege for witnesses to the committee, whether witnesses to the committee have any charter rights at all—these are just a few of the important issues which have been addressed at estimates, public accounts and this committee. There should be a thoughtful and careful delineation of these rights and privileges based on the work done to date. Your committee can play an important role in clarifying and codifying the way in

which information is handled before legislative committees in the future.

Issue number three: former Minister Bentley and contempt of the Legislature. It is my understanding that one of the roles of this committee is to make recommendations with respect to the prima facie motion for contempt of the Legislature facing former Minister Bentley. At the time of the disclosure orders by public accounts committee and by estimates committee in May 2012, OPA and the government were engaged in serious commercial disputes with TransCanada and Eastern Power. Premature and one-sided disclosure of our negotiating positions would have harmed the public interest and would have benefited the other side. The metaphor of a poker game is apt. Had we been required to lay all of our cards down on the table, the other players could have used it to their advantage. In any event, the relocation negotiations were successful and the relocated plants are in the process of being built. We should have about 1,200 megawatts of gas generation available to join the fleet in 2017 or 2018. These plants will be available to service the needs of Ontario ratepayers for two decades and beyond.

Thank you for the opportunity to speak a second time. I'd be pleased to answer your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hinds. To the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Mr. Hinds, for joining us this morning. I want to start with a question based on the Premier's testimony the other day, where she repeated the refrain many, many times that they received advice not to go to litigation, that litigation would be bad for them. We also know, based on the auditor's report and subsequent testimony from people from the OPA, that you advised them not to build the plant in Napanee. Aren't you the Ontario Power Authority? Why is it that they chose to ignore your advice on where they would relocate this plant, when clearly you did not believe Napanee was the right place to build this plant?

Mr. Jim Hinds: Mr. Yakabuski, let me respond to your question, but I'm going to unpack it a little bit because it's got two prongs to it. The first thing, on the timelines: Our advice was extraordinarily dependent on where we found ourselves in the negotiations at the timelines. The question of litigation in respect of the Oakville facility was a question that got largely wrapped up when we signed the arbitration agreement in August 2011. The question of where the plant itself would be relocated was about a year later, September 2012. So I would just say there was a time distinction there.

Mr. John Yakabuski: I understand that, but my question is, why does she place so much weight on the advice of one group of people and ignore the advice of the very entity that was created to supposedly remove the politics out of power decisions in the province of Ontario? First of all, you guys were not in favour of cancelling this plant in the first place. Correct?

Mr. Jim Hinds: That is correct.

Mr. John Yakabuski: And even though your testimony the last time you were here says—in an exchange with Mr. Delaney, you say the reason for the cancellation derived from the fact there was no need for the plants anymore.

Mr. Jim Hinds: I don't believe I said that. That would be inconsistent with positions—

Mr. John Yakabuski: It is totally inconsistent.

Mr. Jim Hinds: Sorry, I don't believe I said that. Did you say that was my testimony, Mr. Yakabuski? May I see the reference, please?

Mr. John Yakabuski: "All the way through—in fact, earlier in the discussion" —this is from June 2013— "The plant was no longer required. We don't need the power.' You talked about, in your opening letter, that it would have been needed, in the crisis from 2004 to 2007—but 'doing it when supply is in good shape is quite another.' ... —that 'the plant was no longer required' as the reason that you were cancelling the plant. This is Oakville now. This was just a few minutes earlier, in his question to you."

That is actually Vic Fedeli paraphrasing things that you have said. So you were never of the belief that this plant was not needed?

Mr. Jim Hinds: Mr. Yakabuski, I don't agree with that paraphrase. My view consistently has been that the Oakville plant was wanted for system. When I got to the OPA in December 2010, the decision had already been made to cancel the plant in Oakville and to relocate it. In terms of what I saw when I was at the OPA, we drove consistently and worked very hard to get this plant relocated in the best way that we could.

As to your earlier question about the role of the OPA and reliance on advice, we have a particular perspective, as I mentioned: ratepayer, taxpayer, system planning, the things that we do; we bring that. But these decisions are government decisions that involve a lot of other aspects of the electricity system and the political system and the economic system. We try to represent our view, but the government can choose who it listens to when it gets into making these decisions. We've always tried to represent the ratepayer view.

0840

Mr. John Yakabuski: So it is your contention that the power plant is still needed?

Mr. Jim Hinds: It's my contention—

Mr. John Yakabuski: In Oakville—power is still needed in Oakville?

Mr. Jim Hinds: —that the power plant was needed for system needs, was wanted for system needs over the time horizon that we were required to plan.

Mr. John Yakabuski: And that would be borne out in the fact that now we're building transmission to bring this power back to Oakville. We'll have to build transmission to transport this power back to where it was needed in the first place.

Mr. Jim Hinds: That is correct.

Mr. John Yakabuski: Which, again, leads us to the inescapable, undeniable conclusion that this was totally a

decision based on politics, not based on power needs or the advice of the very entity that was created to advise the province on these issues. It was completely a political decision that we now know, based on the Auditor General's report, is going to cost us \$1.1 billion.

I know you may dispute those numbers. The Premier has accepted the details, the findings of the auditor's report. I know the Liberal members have tried to dispute those numbers, but I think the people in Ontario believe the auditor because she is the one person who has no skin in the game. Other than putting forth dependable, supportable numbers—that's her reputation. She has no political skin in the game. I must say that the government obviously does and, to some extent, so does the OPA because their credibility is always a question. If you make good decisions, people view you as being a reasonable and valuable entity. If you make bad decisions, you'll live with the consequences of those as well.

So she has no skin in the game. She's come up with the numbers. So a political decision by this government is, without question, the reason why we're \$1.1 billion poorer, or will be over the next 20 years.

Mr. Jim Hinds: Mr. Yakabuski, again, there are two components to your question. I'll address the first one. It's fairly clear to me, from the former Premier's testimony, that it was a political decision, and I saw nothing inconsistent in that in my time at the OPA. But again, I would say that in respect of the Oakville plant, I wasn't actually at the OPA at the time the political decision was made.

In the second part of your question, with respect to the Auditor General, as you anticipated, we have differences of methodological opinion with the Auditor General, and I can go into those in detail if you'd like me to. But we—

Mr. John Yakabuski: Well, I know the way that you factor the rate of interest—

Mr. Jim Hinds: In respect of Oakville, again we have to be very careful with the numbers.

Mr. John Yakabuski: The terminology—

Mr. Jim Hinds: In respect of Oakville, the actual numbers the Auditor General used are \$40 million in sunk costs and \$635 million in other costs, for a total of \$675 million of total cost, and our numbers—we agreed on the sunk costs for Oakville. Our other cost estimate was \$270 million, which takes the total to \$310 million. So the difference is explicable by two factors: one is the difference in discount rate, \$90 million of the—\$365 million is the discount rate, and the \$275 million of difference relates to different assumptions that we made about the start dates of the different facilities based on questions that we had to answer about that.

Mr. John Yakabuski: So you're not challenging the findings of the auditor. You're simply saying that you had different methodology?

Mr. Jim Hinds: Well, there are a number of different—there's a lot of stuff in the Auditor General's report. We respect the amount of work that went into it, and depending on the particular question, we might have a perspective on a difference or a clarification or a different

approach, but broadly speaking, when we try to reconcile the work that the Auditor General had done with the work that we had done on the Oakville plant, we came up with those two grounds as being our key methodological differences.

Mr. John Yakabuski: You made the—I mean, the decision was made, the contract was let out, I suppose, or signed in September 2009 to build the Oakville plant—September or October 2009 to build the Oakville plant.

Mr. Jim Hinds: I believe so.

Mr. John Yakabuski: So all of the conditions, in your opinion—and I would have to conclude that in the minds of the government at that time—still existed. The power needs were there. The need for the plant to be built was there in 2009. They signed a contract in 2009 and a scarce 12 months later, it's like the world changed, and all of a sudden, "No, it's not needed. We're going to cancel it."

You people are entrusted to operate like a business at the OPA. Correct? This is how you operate.

Mr. Jim Hinds: We're created by the Electricity Act.

Mr. John Yakabuski: Yes, but you're entrusted to run the electricity system like a business, not based on the whim of whoever happens to sit in a particular seat on one particular day. You're expected to show some consistency, reliability and long-term planning, and everything that you do should be defensible based on best business practices. Correct?

Mr. Jim Hinds: I don't believe that's what the Electricity Act says.

Mr. John Yakabuski: Well, I'm not saying that's what it says; I'm not quoting the act. But what is the purpose of the OPA, if not that? Just to do the bidding of the government on a whim?

Mr. Jim Hinds: The Electricity Act sets out the purposes of the OPA. It's created under the Electricity Act.

Mr. John Yakabuski: I understand that.

Mr. Jim Hinds: There are nine purposes. I can read through them, but I'm not sure that's helpful. They largely relate to three businesses: They relate to the long-term planning for the system, they relate to the procurement of new electrical generation, and they relate to the implementation of conservation measures.

The OPA has some aspects that look similar to a crown corporation or a private company—it has a board of directors and an organizational structure—but there's a lot of other stuff in the Electricity Act that talks about the relationship between government and the OPA. There are 23 subsections dealing with directive power in the—

Mr. John Yakabuski: We understand the directive power.

Mr. Jim Hinds: So if you'd ask me to give an overall endorsement that this looks like any private company I've ever been involved with in the private sector, no, it's quite different. The take-away on what the OPA does is it implements the government of the day's electricity policy.

Mr. John Yakabuski: We understand the government sets electricity policy. I'm not assuming anything, but

based on testimony I've had from other people at the OPA—and I don't know if you're allowed to answer this question—you still disagree with the decision that was made. Is that not true?

Mr. Jim Hinds: Perhaps that ties into the first part of your question earlier. So if I can address that question about need in the Oakville area, I think that the—and I wasn't there at the time the decision was made. I wasn't there at the time that the plant was commissioned. But from my review of that, and from my work at the OPA subsequent to my arrival and assessing those things, it was perceived—in the time frames that we deal with, which are five, 10, 20 years, sometimes as long as 40 years—that there was going to be—

Mr. John Yakabuski: Until the government changes it because they think it's politically expedient to come up with a new short-term long-term energy plan.

Mr. Jim Hinds: There was going to be a need for electrons in the Oakville area to support the economic growth of the community. From a purely systemic point of view, that was the optimal place to put it. There's a mantra in the electricity business: You put the supply where the customers are. So—

Mr. John Yakabuski: So back to the question: You still believe it was the wrong decision?

Mr. Jim Hinds: Which decision?

Mr. John Yakabuski: To cancel the plant and relocate it.

Mr. Jim Hinds: It would have been our preference to have had the plant there. You've had the testimony of all the people who were around at that time. I've reviewed that testimony, but you've had the benefit of actually having heard it, and—

Mr. John Yakabuski: I wanted to hear it from you.

Mr. Jim Hinds: Yes, but I have no personal knowledge that's any different than the people who were there when the decision was made.

Mr. John Yakabuski: You hold a different title—and I appreciate you being in front of us. But what it comes down to, Mr. Hinds, is that the decision that is now destined to cost—depending upon your viewpoint, but I'll take the Auditor General's—the taxpayer and the ratepayer in the province of Ontario was clearly done without justification from the point of view of sound power-system planning; it was done for political reasons, period.

Mr. Jim Hinds: Again, Mr. Yakabuski, I wasn't there, so I don't know the history of it.

Mr. John Yakabuski: I'm going to have one final question, and then I'm going to pass it over to my colleague Ms. MacLeod.

I don't think there's anybody in Ontario who believes the scenario that has been presented to us by the political masters here in Queen's Park. Is it even remotely possible, with decisions of this magnitude and information of this importance, that nobody—even though Colin Andersen said everybody knew, the political masters, the former Premier, the current Premier, other ministers, denied that they knew the cost of this. I know you've

testified that you knew that there was an offer to TransCanada of \$712 million, I believe it was, at one point in the negotiations. Is it even remotely possible that these people didn't know anything?

0850

Mr. Jim Hinds: Mr. Yakabuski, in respect to that question, I am not going to speculate on whether people knew or how the government chose to communicate or how the government even within itself communicates. All I can speak to is that when I was at the OPA and I looked at the information that we were preparing at the various stages of this, we were cognizant that there were going to be many different categories of cost, depending upon the plant and depending on which stage it was and depending on where the plant was ultimately going to be relocated.

I think there has been a lot of testimony from the OPA folk about how difficult it is to make these estimates.

Mr. John Yakabuski: Thank you. I'm just—

Mr. Jim Hinds: Can I go back to answer your other question on the \$712 million?

Mr. John Yakabuski: Yes.

Mr. Jim Hinds: Yes? Okay.

On the \$712 million, that was at a particular point in the negotiations of about April 2011. The letter to TransCanada cancelling the contract was October 7, 2010. In April 2011, we were on the verge of being litigated by TransCanada—"we" being the OPA—and also I believe the government was about to be litigated. In fact, subsequent to that, I think a notice of intention to sue the government was received by the government, I believe.

The point where we were at when the \$712 million discussion came to was we were trying to assess, if we got sued, how much we were going to get sued for. What's the magnitude of their claim? It's a fairly common practice when you're a company or an agency and you get litigated. The first question is, "Have they got a point?" The second question is, "How much are we talking about?" That \$712 million number came up in the context of "How much are we talking about?"

Mr. John Yakabuski: So people would have known of that potential.

Mr. Jim Hinds: We certainly knew within the OPA, but I can't speak to what the government knew. They were being separately litigated.

Mr. John Yakabuski: These people can change your direction on a whim. They can tell you to cancel a plant because "We want to save a seat." But they don't know that there is a potential of a hundreds-of-millions-of-dollars lawsuit? You strike me as a very reasonable and methodological person. I think you'd want to expect that the people who are your ultimate bosses have some level of competency, that they actually care about what's going on and what the impacts to the people of Ontario could be.

I mean, we're talking about potentially, and as we found out in the end, over a billion dollars, but even at that point, negotiations with TransCanada—I mean, the decision was made by the political masters to build this

plant in the first place. They took a political decision. That was an announcement made by the then energy minister way back in 2005 or so. They were going to build a plant in Oakville. They may have used you guys as the—I'm not even sure if you guys were here yet when that first decision was made. I would have to get the calendar out.

Mr. Jim Hinds: We were not. It was a contract that was originally entered into by the Ministry of Energy and transferred over to the OPA.

Mr. John Yakabuski: There you go. So they made the decision, a political decision, to put a plant in Oakville, and then everything is—

Mr. Jim Hinds: Oh, sorry. I misheard that. In Oakville's case, we were there. I apologize.

Mr. John Yakabuski: Yes, okay.

Every decision was ultimately made by the government, and then they somehow don't know that there's this potential of this massive hundreds-of-millions-of-dollars lawsuit that could severely impact the electricity bill for the ratepayers for a long time going forward? And we know now that it's going to.

I understand why the people out there are so upset about this issue, because they shake their heads as a group of common-sense individuals who have to manage their own homes on the basis of being able to balance the right hand and the left hand, being able to balance the pros and the cons. When they make decisions, they recognize that the consequences if they make bad ones can be devastating for their own home or their own finances or their own business.

The government—they just seem to have taken this thing as, “The taxpayer is a toy, the ratepayer is a toy, and we'll play with it any way we want if it means that we can advance our political agenda.” I guess I'm wondering, the people at the OPA, did they not feel angry about this? Did they not feel that they were being used as a political pawn in the game of brinkmanship by the Liberal Party to try to secure a political victory? And they're using the OPA almost as a tool to play politics, as opposed to a tool that was designed to actually bring some sense and some uncluttered vision to electricity planning for the province of Ontario?

Mr. Jim Hinds: Mr. Yakabuski, there were several points in your question. On the first point, in terms of the role of the government and the role of the OPA, I would step back to my opening remark, which is that we're electricity system people. We have a pretty simple job compared to you folks. You folks have to juggle important social, political, environmental—I mean, the laundry list is huge. We've just got to make sure that the lights go on when people hit the switch on the wall.

Mr. John Yakabuski: You're being very humble.

Mr. Jim Hinds: It's a tough job. I'm not disparaging that. There's a lot of machinery that goes behind the magic of the electricity system; we're just a little part of it, but that's what we focus on doing. I can't speak to the role of government in this.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To the NDP side: Mr. Tabuns, you now have the floor.

Mr. Peter Tabuns: Mr. Hinds, thank you for returning to the committee. I appreciate it.

Mr. Jim Hinds: Mr. Tabuns, good to see you again.

Mr. Peter Tabuns: A few questions that came out of the questions that the Conservatives posed, and then I'll go on to my main body. Did the OPA recommend going to arbitration with TransCanada in the summer of 2011?

Mr. Jim Hinds: Yes. Well, we went into arbitration with TransCanada in the summer of 2011. At that point in the timeline, before we entered into the arbitration agreement in the summer of 2011, we were either actually being litigated or threatened to be litigated by TransCanada.

The arbitration agreement, and presumably the litigation as well, would have had at least three counterparties. It would have been TransCanada suing the government and TransCanada suing the OPA. So, in respect of the interests that the OPA represented, we believed at the time, and still had consistently believed throughout the process, that it was better use of ratepayers' money to relocate the plant than it was to potentially lose a lawsuit and pay out liquidated damages. We were supportive of entering into an arbitration agreement to try to resolve the quantum of difference with TransCanada and, in a parallel process, hopefully engage them in negotiations to relocate the facility.

Mr. Peter Tabuns: Okay. The directive power that you referred to when you were looking at the Electricity Act—I didn't see a directive issued for the cancellation of the Oakville contract. Are you often given instructions without directive? And I mean substantive instructions on taking on contracts or letting go of contracts.

Mr. Jim Hinds: It's a very good question. I think that it would differ depending on the circumstances facing us. I can speak to the circumstances of Oakville and, to some extent, Mississauga, and then move more generally.

Mr. Peter Tabuns: Okay.

Mr. Jim Hinds: It was the view of our counsel that in the circumstances of Oakville and Mississauga, where we had run a procurement, where we had awarded a successful victor and where we had signed an agreement to construct a plan, the minister could not have given us a directive that would have breached those contracts. It was the view of our counsel, looking through those subsections of directive power, that a ministerial directive would not have been effective to breach those contracts.

Mr. Peter Tabuns: In other words, they didn't have the legal authority to give you a directive contrary to one they had already issued. Once they had given you the direction, once you'd done the RFP, it was in your hands and they didn't have the legal authority to stop you.

Mr. Jim Hinds: I'm not entirely familiar with the process through that, but I think that the general policy-level issue is that once you've given somebody a contract that promises them something, and they've promised you something, a government can't issue a directive to breach that, because it would be breaking a deal.

There are only a couple of different ways out for a government that changes its mind. One of them is to negotiate its way out. The other is to be sued and to defend itself in that. The third way is to legislate its way out.

Mr. Peter Tabuns: But in all of those circumstances, the government didn't have the legal authority to issue a directive to you to abandon the contract.

Mr. Jim Hinds: That's my understanding. Correct.

Mr. Peter Tabuns: Okay. On October 29, just a few short weeks ago, Colin Andersen told the committee about a letter the OPA sent to TransCanada guaranteeing its profits. He said, "So we drafted a letter which was consistent with our understanding of the contract and started the process of sending the letters back and forth to—Calgary, I guess, is where they were.... Ultimately, we ended up on the phrase 'anticipated financial value of the project,' which goes beyond what the contract would have allowed." Was the OPA bound by that letter that they sent to TransCanada?

0900

Mr. Jim Hinds: Yes, and you're referring to the letter of October 7, 2010?

Mr. Peter Tabuns: Yes, I am indeed.

Mr. Jim Hinds: Actually, I'll just correct one part of that. The precise words of this are very important. It was the anticipated value of the contract, not the project, that was a source of some subsequent argument with TransCanada. But, yes, with that correction as read.

Again, I was not there when the letter was written or sent—

Mr. Peter Tabuns: No. I understand that.

Mr. Jim Hinds:—but when I got there, and I read the letter, just my common-sense understanding in reading that letter was, it looked pretty conclusive to me.

Mr. Peter Tabuns: That at that point the OPA was bound?

Mr. Jim Hinds: Yes. I think if I had put myself in TransCanada's shoes as a recipient of that letter, I would be put on notice that my contract had been breached.

Mr. Peter Tabuns: Do you know how the OPA was instructed to abandon this contract?

Mr. Jim Hinds: I do not. I wasn't there. I believe the committee has had the testimony of many people who were around that decision at that time.

Mr. Peter Tabuns: When you became chair, were you told that the OPA was obliged to protect the anticipated financial value of the contract?

Mr. Jim Hinds: When I became chair, I read those words. Being a business person, they were pretty clear to me. In the subsequent period of the threatened litigation leading up to the arbitration agreement, we referred back to those words quite frequently.

Mr. Peter Tabuns: At that point, there was no option on protecting the profits of TransCanada; you had committed yourselves to that?

Mr. Jim Hinds: There was a lot of legal analysis of that question, and my recollection of the conclusions of that legal analysis is that those words were pretty clear.

Mr. Peter Tabuns: Okay. In the contract, I gather there's a section that protects the OPA from being sued over the loss of profits on a contract that's cancelled. Are you aware of that?

Mr. Jim Hinds: I am only aware of it because of my review of the testimony of people here and also reading the Auditor General's report on Oakville. I think that the section you're referring to in the original was the force majeure stuff, or was it the other one, the lost profits?

Mr. Peter Tabuns: Lost profits.

Mr. Jim Hinds: In the event that certain things happened. So my passing familiarity is only based on the Auditor General's report and reading it. But I was dealing, when I got into it, with the facts as they were at the time. With the letter having been sent and the contract having been breached, our general advice was that those provisions were inoperative and that we were in a whole new ball game.

Mr. Peter Tabuns: When the OPA, as I understand it, received verbal instructions to abandon this contract, did the OPA board do due diligence? Did it undertake an assessment of the risks and advantages?

Mr. Jim Hinds: Mr. Tabuns, I'm unable to answer that question. Again, my review of that time period was, I got the letter, I read through the minutes of the board meeting the day that the decision was made to send the letter, and that's about the extent of my personal knowledge.

Mr. Peter Tabuns: Okay.

Mr. Jim Hinds: I think you've had testimony from the people that were at the OPA at that time—quite extensively, I believe.

Mr. Peter Tabuns: The Electricity Restructuring Act says:

"25.5 Every director of the OPA shall, in exercising and performing his or her powers and duties,

"(a) act honestly and in good faith in the best interests of the OPA; and

"(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."

Do you believe that your board was put in a position where protection of ratepayers and the OPA was set aside at the instruction of the government?

Mr. Jim Hinds: I can only speak to the times that I was there because those are the times of which I have personal knowledge. The key decision points on the various times that I was there would have been the arbitration agreement, entering into the arbitration agreement—that would have been a pivotal time. Although it was a difficult decision, I believe it was a good decision. I believe that the interests of the ratepayer are better served to have a plant than the lawsuit damages.

The other pivotal time would have been how we reacted to the cancellation or announced cancellation of Mississauga. I believe that put the board in a very difficult spot, perhaps exactly addressing the issues that you just raised to me. We did the best job that we could in the circumstances on that one. Then, ultimately, I guess the

final two key decisions were supporting the relocation decisions, both of Oakville and of Mississauga.

Mr. Peter Tabuns: Let's shift over to Mississauga for a moment. When you, as a board, were made aware that the government was now going to cancel this second plant, what was the nature of the discussion at the board about the wisdom of the decision and the impact of the decision?

Mr. Jim Hinds: I already said previously that I got a phone call from a Liberal campaign volunteer at about 8 o'clock on a Friday night before it was in the—he said it was before it was going to be in the campaign promises of the Liberal Party during the election. So we huddled as a management group. The board had not had a chance to meet and say, "What does this mean?" and review all the possible things. Given that it was the chaotic nature of a political campaign, it was very hard to prejudge how that was going to turn out.

After the election, we were faced with the question of how to respond to what government-stated policy was, and the government's stated policy at that time appeared to us to be that they were, in fact, going to cancel and push to relocate the plant.

I think what was perhaps slightly different in the second plant, in the Mississauga plant, is that we really wanted greater specificity about their stated intentions and how the implications of that were going to play out. So we had an exchange of correspondence. The original letter was from the minister. He addressed us and he sent it to Colin, and I responded to Minister Bentley, and then Minister Bentley responded back to me. I think former Minister Bentley had correctly exchanged that as, "Get working on relocating the plant." I sent a letter back, saying, "Who's going to pay for this?" He sent a letter back to me, saying, "We'll talk about it"—and that's a correct characterization of the exchange.

Mr. Peter Tabuns: So those specifics were missing from the Oakville process?

Mr. Jim Hinds: Well, on the documentary side they were. Again, I wasn't there, but I think that when I reviewed Colin Andersen's testimony about the time there, I think Colin had mentioned that there was a clear statement of government intention to relocate the plant. So the only difference between the two would have been that we had that manifested in a document and with perhaps more articulation on it.

Yes, I think the piece that was missing was perhaps the ratepayer-taxpayer question. But, frankly, this has been done so seldom that I'm not even sure at that point anybody was thinking concretely about that issue, which is, "How do we allocate the cost between the rate base and the tax base on this one?" That manifested itself in the Oakville situation in a letter that during my previous testimony Mr. Fedeli spent a lot of time asking me about. It was appended to the arbitration agreement in August 2011.

Mr. Peter Tabuns: Generally speaking, does your board follow the lead of the executives?

Mr. Jim Hinds: Generally speaking, what our board would do, and the way that it works, is it would ask man-

agement for a recommendation. Sometimes management is able to give that; sometimes management is unable to give that.

Mr. Peter Tabuns: Did it give recommendations in the case of Mississauga?

Mr. Jim Hinds: I think that was one of those cases where the management was unable to come up with a recommendation about what the OPA's role should be in the cancellation of Mississauga.

Mr. Peter Tabuns: What was the nature of the debate, then, on the board about how to respond in the absence of an executive suggestion or proposal?

Mr. Jim Hinds: Well, I think from the OPA's point of view—we're talking about roughly October, November of 2011 here. I think from the OPA's point of view, we had the overall choice of getting involved or not getting involved because we had not yet been instructed to breach the contract.

Mr. Peter Tabuns: Right.

Mr. Jim Hinds: So I guess what we could have done is, we could have said, "No, it's nothing to do with us," and walked away from it.

The difficulty with doing that is that we did have a contract with a counterparty. From a legal point of view, that counterparty did nothing wrong. We have a lot of contracts with counterparties. We've got 20,000 of them, roughly. So we thought about our obligation to represent the counterparty's interests. We knew that litigation was still an option, and I think, as said before in the case of the Oakville plant, our bias was always to try to renegotiate rather than litigate. We also knew that from a system point of view we wanted that facility somewhere on the system to support the customers.

0910

Mr. Peter Tabuns: Were you subjected to significant pressure by the Liberal government to back off on the Mississauga plant, to end the construction?

Mr. Jim Hinds: Me personally?

Mr. Peter Tabuns: Sorry, your board. You and your board, as a group.

Mr. Jim Hinds: I can't speak to when our board actually talked to other people, but I know in our case, when our board decided to try to be involved in the relocation negotiations—and also to represent the interests of the contract holder that we were in contract with—there was a lot of stuff going on at the time.

One of the things that was going on that was quite difficult for us to manage was the continued building of the facility. I believe that in Mr. Vogt's testimony he talked about how he had contracts that he had to honour. I didn't know that going in, but we certainly saw the cement trucks rolling up and the rebar going in. That created a communications environment, a media environment, that was extraordinarily difficult.

I got a phone call on November 18—I think I mentioned this in my previous testimony—from Jamison Steeve. I was in an airport; it was a difficult conversation, but the recollection I took away from that was that we'd better get some agreement to move forward with this or

we're going to run out of time here. That was the nature of that.

So yes, there was a lot a political angst about them.

Mr. Peter Tabuns: Did the Premier's office do an end run around the OPA when it came to the Oakville contract? Were you essentially left out in the cold while substantial negotiations went on between the Premier's office and TCE?

Mr. Jim Hinds: I can only speak to the time that I was there; I can't speak to that before. But one of the issues that became an issue for us in about the March-April 2011 time frame was the threatened litigation from TransCanada. I think you can see from the testimony of the various people that there was an attempted negotiation between OPA and TransCanada to try to see if it made any sense to relocate this plant into the Kitchener-Waterloo-Guelph-Cambridge area. And so the OPA people were running away looking at the electrical needs of that area and the TransCanada people, of course, had their breached contract that they were trying to sort out.

What the government was doing in that time frame became an issue because—and again, not me personally, but my understanding from OPA staff was that TransCanada was claiming to our people certain things that the government was saying about the breach, the relocation, all kinds of things. Our people had no way of confirming that or not.

I think, perhaps in my earlier testimony, in response to a question from Mr. Delaney, one of the things that I did was I did meet with Jamison Steeve, Sean Mullin and Craig MacLennan and asked them, "What's going on here? What are they saying?" The answer that I got back wasn't clear to me that TransCanada was talking to those people or that they were not telling me what TransCanada was telling them. So I came away scratching my head a bit, wondering if we weren't being gamed by TransCanada.

Then we said, "Okay," and we went through a series of three board meetings in March and April, and out the other—it's like, "Okay, well, let's sit down with these TransCanada guys and let's talk about how much they think they're owed and why they think they're owed that, and whether this can be resolved in the context of a peaker plant in another location that we want it in."

Ultimately, it turned out not to work out. Ultimately, those negotiations fell apart and then we ended up revisiting the arbitration agreement.

Mr. Peter Tabuns: Last question from me, and perhaps my colleague will have some: The auditor noted that the arbitration agreement substantially gave the upper hand to TransCanada Enterprises. Is that something that you accept and acknowledge?

Mr. Jim Hinds: There are two perspectives to that. One is, I'm not in a position to comment. There were three signatories to the arbitration agreement: TransCanada, the government and OPA. So vis-à-vis the government and TransCanada, I'm not in a position to comment on that.

From a purely OPA perspective, I think the arbitration agreement allowed us to at least have a civil conversation

that ultimately led to the successful relocation of the plants. In the absence of the arbitration agreement, I believe that we'd be in the courts right now, and that process could have gone on for 10 years or more, and we could have lost.

In my view, most of the provisions that would have impacted the OPA—most of them—were dealt with by the contents of the letter that was sent to TransCanada on October 7, 2010, basically notifying them of the breach of the contract.

Mr. Peter Tabuns: I have no further questions at this point.

Mr. Gilles Bisson: And I have no further time.

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

Mr. Delaney for the government side.

Mr. Bob Delaney: Good morning, Mr. Hinds. Welcome back.

Mr. Jim Hinds: Good morning, Mr. Delaney.

Mr. Bob Delaney: I want to thank you for bringing this document with you, the very extensive spreadsheet. Do you want to have a few minutes to talk about it?

Mr. Jim Hinds: Thank you. I appreciate the credit for having brought it, but I didn't, in fact, bring it. It was provided separately to the Clerk of the Committee by the hard-working folks at the OPA.

Mr. Bob Delaney: Okay. I'm not suggesting for a moment that you sat down at Excel and did it personally, but are you familiar enough with it to discuss its contents?

Mr. Jim Hinds: Yes. Maybe by way of context, I think this document was created because of a question raised by Ms. MacLeod in discussing with Colin Andersen about the bill impact on the average Ontario ratepayer, and so this spreadsheet is an analysis of that question and an answer to it, or a partial answer to it.

Mr. Bob Delaney: I'm looking at it now, and what this does is to take all of those costs, and it appears that it has used the OPA's estimates, and it has done the same analysis for the Auditor General's estimates, and it allows what seems to me to be a valid side-by-side comparison, sort of an apples-to-apples comparison, of the two estimates. Would that be an accurate summation?

Mr. Jim Hinds: That was our intention.

Mr. Bob Delaney: Is there anything that you'd like to walk me through on it before I ask you a few questions on it?

Mr. Jim Hinds: First of all, I think it's a response to a very good question. I would indicate that in that response, the question was, "How is this going to impact"—I believe it was the men and women in—

Ms. Lisa MacLeod: Manotick.

Mr. Jim Hinds: Thank you. Manotick.

So let's assume that the men and women in Manotick are average Ontario ratepayers, and assumptions about what that means are contained in the spreadsheet about their average consumption. That ratepayer would be facing, on present numbers, an annual electricity bill of about \$1,501, and so the impact of these decisions, if you

use the OPA's numbers, would be about \$1.03 a year, and if you use the Auditor General's assumptions, we model her assumptions to be \$2.01 a year.

Mr. Bob Delaney: And that actually mirrors some of the ballpark estimates that I had made, which is that it would be a spread in which the auditor's numbers were about twice yours.

Just to get some clarification on that, you say here, "Average rate over the period (discounted to 2013 \$/MWh)". That's 11 cents. Correct?

Mr. Jim Hinds: Yes.

Mr. Bob Delaney: Okay. So in that electricity costs are billed in kilowatt hours, if I simply shift the decimal point three to the left, what you're saying is that, to a ratepayer in Nepean, this would mean \$0.00011 per kilowatt hour in additional costs. Correct?

Mr. Jim Hinds: I did not prepare the spreadsheet. I just wanted to make sure that the question was answered.

Mr. Bob Delaney: No, no. That's fine.

Mr. Jim Hinds: And I thought it was a reasonable question, and I think it's a good answer.

Mr. Bob Delaney: I think it's a great answer, actually.

Mr. Jim Hinds: In terms of going back through this thing, when I did my own calculations on the back of an envelope—

Interjection.

Mr. Jim Hinds: The number that I did on the back of an envelope was about a sixth of a basis point.

Mr. Bob Delaney: Okay.

Interjection.

Mr. Bob Delaney: Chair, I didn't interrupt this gentleman when he was asking questions. May I ask for the same consideration? Thank you.

So, Mr. Hinds, in looking at all of the numbers here, you're showing the specific points in time where not only costs are incurred, but savings are incurred, and what you've done in the highlighted calculations at the bottom is use the Auditor General's estimates and the OPA's estimates to show that to the average ratepayer, this would be \$1.03 a year if the future mirrors the OPA's estimates, and \$2.01 a year if the future mirrors the Auditor General's estimates, and somewhere in between if reality lies somewhere in between.

0920

Mr. Jim Hinds: Yes. Now, just one comment on that, because this is a complex calculation, and precision is needed: That is the net present value impact of the average bill. So the timing of the cash flows is actually important, and that's one of the areas that we were different from the Auditor General on. That explains the difference between the two of them. But other than that, yes, your question is correct.

Mr. Bob Delaney: Okay. That, I think, is one of the most significant documents that the committee has received in the roughly nine months that we've been sitting, because it takes some of the numbers, which have been very large numbers, and says, "What does this actually mean to you?" I think that was your intent in creating—

Mr. Jim Hinds: Well, I didn't have an intent other than to answer the question, but I go back to my opening remarks, which were that we—as a system, as an aggregate, the electricity system—cost the ratepayer \$16 billion a year. That's a very large number. I wanted to make sure that people understood that these are large numbers; it makes them difficult to deal with. You've heard numbers in your testimony ranging from an installed base of assets of \$100 billion, \$125 billion, \$150 billion—these are very large numbers. That's one of the challenges of working in this sector: You're dealing with large numbers.

Mr. Bob Delaney: Exactly. You've actually covered an awful lot of the questions that I was going to ask you in your spreadsheet. Perhaps you could comment, now that you've had the ability to, in essence, crunch the numbers, on why it was that during that time the numbers kept changing. At the moment we've got some degree of—the numbers have stopped changing and they've become a little more fixed, and we can actually do this type of projection, but during the time that we were discussing, that time when the decisions on the plants took place, talk a little bit about why those numbers kept changing.

Mr. Jim Hinds: Again, I would be repeating testimony that the committee has already received, but maybe just to go at the question from a purely OPA point of view: Trying to nail down numbers depends very much on where you are and what you're asking about at the time. Trying to nail down numbers before you've cancelled plants is one thing; trying to nail down numbers after you've cancelled them but not relocated them is another; trying to nail down numbers if you're in an arbitration setting versus if you're not—because the numbers themselves are moving around and the circumstances of the numbers arising are moving around.

I think, generally, when the numbers that you're referring to, Mr. Delaney, were at issue, we were fairly certain of what the sunk costs would be in respect of both plants. I don't think we really had any issues with the Auditor General on that, because once the engineering costs and everything else were added up, the contract counterparties had informed us how much money they'd spent that was wasted.

The other categories of cost depended very much on what the questions were and what we knew about them. We couldn't answer relocation cost until we knew where it was going. So how can we do that?

The other thing that sort of depended—even once we got an idea of where it was going, we needed to get renegotiations done so that we could sit down with the proponents and say, "What's it going to cost to put it there?" We don't know. They're the ones who are going to have to figure out the engineering of the site. They're going to have to look at the soil. They're going to have to look at the zoning. They're going to have to look at access to the transmission system.

The answer to your question about why a lot of these costs take time to develop is that they take time to

develop. We need the facts underneath them and we need to do some analysis on them. I think, in previous testimony, Colin Andersen had said that it took 12 to 18 months to develop the cost implications of these things. That's approximately the time between the Oakville settlement in September 2012 and the Auditor General's report in September 2013. So I think that checks out.

Mr. Bob Delaney: I actually have to commend you on the quality of the analysis here. I think this is the first time we've been able to look at those projections that take a large number and say, "What does that large number mean, broken out year by year, and what is its impact on the average household bill?"

Mr. Jim Hinds: I'll pass that back to the folks at the OPA.

Mr. Bob Delaney: Yes, please do. Anyone who's ever done one of these spreadsheets understands the degree of complexity and the time that goes into it.

I'd like to just talk a little bit—again, stemming from the analysis that's done here—about the different start dates and how that affected the cost estimates, to the degree that you're able to speak to it. You used one set of start dates; the auditor used another. Could you talk a little bit about how those different start dates made a difference in the final numbers?

Mr. Jim Hinds: Yes, there are two questions for start dates. One is, when do you assume that the uncanceled plant would have come into service? The second question is, when do you think the relocated plants are going to come into service? Those are the two questions that have to get faced in answering that.

With respect to the first question, we took a different approach than the Auditor General took. We assumed that the plants would start on the dates in the contracts when they were committed to start. We said, "Okay, let's stay with the contract." That was our approach. The Auditor General took a different approach in terms of looking at intervening events and came up with her own decision on when those start dates were reasonable. We were apart there.

Then on the question of when the new plants would come into service, we again went to the contracts. We said, "Okay, when are they contracted to come into service?" The Auditor General, I believe, through her own investigation, came up with her own conclusion about when the relocated plants were going to come into service. That created differences in time.

The relevance in that was that in the present conditions of the electrical system, we have periods of surplus power. There is a net ratepayer benefit to actually not having those plants on the system at the moment because we wouldn't need them to operate at as high a capacity as we hoped they would have needed to when the plan was done. You have to make assumptions: If we don't have this plant, and we wouldn't have had to pay for it, you can save some money. She disputed that fact, and it was largely related to the start dates and the timing of market conditions that we assumed.

Mr. Bob Delaney: So these are shown in your analysis as the numbers in brackets, where you say "Ratepayer

annual relocation costs"; those numbers in brackets would represent net savings in that year. Correct?

Mr. Jim Hinds: Yes, that's exactly right. If you go to the first line of the spreadsheet and you move to the 2014 and 2015 columns and the 2016 and 2017 columns, you'll see brackets there. That would be one of the manifestations of our assumption about timing. Then if you go down to the similar line on the Auditor General's report, first row across, you'll see she zeroed out some of those, but in 2016 and 2017, she's got numbers there.

Mr. Bob Delaney: Okay. And then the same would apply to the total partway down, where you say, "Illustrative annual impact on residential ratepayers"—some years, where you've got a positive number, that would in fact be a net cost; other years, where you have a number in brackets, such as 2014, 2015, 2016—in 2014, you would show an \$11.1-million saving; in 2015, a \$12.6-million saving; in 2016, a \$12.5-million saving. Those would represent the net savings in those years just as, for example, in 2020, you're showing a positive \$2.6 million; that would be a \$2.6-million projected additional cost. Correct?

Mr. Jim Hinds: That's correct.

Maybe, Mr. Delaney, if I might at this point, there's been a lot of discussion today about the Auditor General. I would say, to her credit, that she gave me the opportunity to address these concerns directly with her prior to the publication of the report. I very much appreciate her having done that. That was a new experience for me, and it was good to have been able to make my case. I don't believe I was effective, but that's really her choice. I would say that I respect the work that she's done on this and I respect the opportunity of having been able to state my case.

Mr. Bob Delaney: Okay. The OPA used a 6% discount rate, while the auditor used a 4% discount rate.

Mr. Jim Hinds: Yes.

Mr. Bob Delaney: Okay. Maybe I'm pushing things a bit, but would you be able to say what difference that would have made in the calculations?

0930

Mr. Jim Hinds: Yes, \$90 million, so the difference—as I mentioned earlier, the difference between the two of us was \$365 million, and \$90 million of the \$365 million, so about a quarter, was due to the difference in the selection of discount rates. That was one of those arguments I lost with her.

Mr. Bob Delaney: What factors enter into the choice of a discount rate?

Mr. Jim Hinds: Well, I think it depends very much on the purposes for which it's done and what they want. I don't understand the nature of all of the concerns that were behind the Auditor General's choice of her rate, but I've made the case that in our choice of the rate, we looked for something like a weighted average cost of capital of the business. So if you're trying to figure out the weighted average cost of capital in the electricity business, you go to the Ontario Energy Board. It's comprised of the cost of debt and the cost of equity. The

Ontario Energy Board is fairly clear that the cost of equity is about 9.88% and the cost of debt is what it is. At current bond rates, it's about 5%. So if you assume that the typical cost of capital in the electricity business is comprised of half of each, you end up with a number that looks like about 6% to 6.5%. To test that, you say to yourself, "Okay. Well, could you go and borrow at 6% or 6.5%, or could you fund your projects at that level?" and the answer is, "Yes, you could."

I think the choice of 4% surprised me as being low because I'm not really sure I know anybody who can borrow at 4% on those terms, even the province of Ontario. But I defer—I made my case, and she listened to it, and she has other reasons. I understand, in her defence, that there is a concept in government called "social cost of capital," which would be different than perhaps the world that I'm familiar with, so I defer to that.

Mr. Bob Delaney: Okay. First of all, I again want to emphasize how important the document that you submitted is. It's really the first chance we've had to look at both the auditor's numbers and the OPA's numbers, on both of which, from the vantage point of the government, we've had to say, "Okay, you're the auditor," or "You're the OPA. We accept your numbers. Now, how do you lay them side by side and look at them?"

In effect, it allows us to see how reality unfolds and see which of those two sets of estimates came closest to what will happen in the years to come, and we'll only then be able to see how what both parties admit are estimates conform with the way the future unfolds.

Anything else you want to add on that?

Mr. Jim Hinds: I just hope I'm here to see it.

Mr. Bob Delaney: You and me both.

To talk a little bit about the memorandum of agreement with reference to the costs of the Oakville plant, the province relied on the OPA's approach when it announced its original cost estimates. Correct?

Mr. Jim Hinds: I'm sorry. Could I ask for clarification? So the memorandum of agreement was signed on September 24, 2012.

Mr. Bob Delaney: Yes.

Mr. Jim Hinds: It was released publicly that day. It was a big document. There were many schedules to the document, including a schedule of costs, I believe, appended to the memorandum of understanding, and the schedule of costs had a variety of different categories of costs appended to it, some of which we knew at the time were put in, the sunk costs, and the other categories of costs were with, I believe, TBD, which was short form for "to be determined."

Mr. Bob Delaney: Right.

Mr. Jim Hinds: So I think that was the document that went out publicly. I'd assume that the government knew that.

Mr. Bob Delaney: Yes. Very similar to what Colin Andersen said when he was last here. We discussed this in September. It says that the OPA would be "paying for the cost of the gas turbines as well as the gas management, but that there would ... be significant savings from a lower net revenue requirement."

Mr. Jim Hinds: Yes, that's correct. I think the actual numbers were that our target, NRR, without the consideration of who was paying for the turbines, was about \$17,200 per megawatt hour. I think we actually achieved a realized NRR on the new Napanee plant of about \$15,200 per megawatt hour. The treatment of the turbines was different. In the treatment of the turbines, part of that difference represents the fact that they were purchased differently, but that would be correct, yes. So that's one of the factors explaining the slightly different NRRs between the Oakville plant and the Napanee plant.

Mr. Bob Delaney: Chair, I understand I'm under a minute?

The Chair (Mr. Shafiq Qadri): Yes.

Mr. Bob Delaney: Thank you very much, Chair. We'll pick it up here on the next round.

The Chair (Mr. Shafiq Qadri): Thank you. Mr. Yakabuski, 10 minutes.

Mr. John Yakabuski: Thank you again, Mr. Hinds, for joining us. I was taken by surprise that I was asking questions to start, so I didn't even thank you for joining us, so I'll do it now.

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

Mr. John Yakabuski: I did want to comment on the analysis of how it's projected this will impact the electricity bill of the consumers over the next—is it 20 years that you're factoring? It says here only 2022, but—

Mr. Jim Hinds: I'm dealing with a different copy, but the back goes out to 2038.

Mr. John Yakabuski: It's 2038.

Mr. Jim Hinds: Yes.

Mr. John Yakabuski: Okay. So we've got a different—oh, I see. Okay, we've got a second—yes, that's what I thought it was going to be, out to 2038.

I want to draw the analogy—and I hope I won't be challenged on it because I'm only speaking hypothetically. I've said it before: If somebody comes in and robs the Royal Bank of \$1 million, the impact to each individual depositor may not be that much, but they're still going to put that guy in jail when they catch him, and I think that's important to understand.

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

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

Mr. Bob Delaney: Has the member, in the opinion of the Chair, ascribed a motive or a wrongdoing to an individual?

Mr. John Yakabuski: I just said I'm speaking hypothetically. Stop the clock, please.

Mr. Bob Delaney: I'd like to ask the Chair on this particular line of questioning, which, to me, ascribes motive that is without basis.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. It's likely less caffeine than I have in my system to adequately answer this question. Mr. Yakabuski, you are welcome to pose whatever question you like. I don't think the witness is required to ask—unless there is some new information about Royal Bank

robberies that I haven't come across in these committee proceedings. Please proceed.

Mr. John Yakabuski: Thank you. That's my comment, Mr. Hinds. I want the people of Ontario to analyze—\$1.1 billion is being taken out of their pockets as a result of this political decision, and I think they can all put that into context. If that amount of money was stolen, somebody would be going to jail.

Now, I'm going to pass the microphone to my colleague Ms. Thompson from Huron—Bruce.

Mr. Jim Hinds: Is that a question, Mr. Yakabuski?

Mr. John Yakabuski: It was not a question. It was a statement.

Mr. Jim Hinds: Then I will not say anything.

Ms. Lisa M. Thompson: It's very nice to meet you officially, and welcome.

Mr. Jim Hinds: Thank you, Ms. Thompson.

Ms. Lisa M. Thompson: With regards to the information that you shared today, would you be able to ask Mr. Andersen to table all the documents that were used to generate this estimate, the background information, please?

Mr. Jim Hinds: Mr. Chair, I'm not familiar with the processes of the committee. If there is a request for documents, how does it proceed?

The Chair (Mr. Shafiq Qadri): I would suggest to Ms. Thompson and to her caucus that whatever you require, submit it in writing, and then we can deal with it from there.

Ms. Lisa M. Thompson: Okay. That's fine. Very good.

This is the first time we've officially had a conversation, and I was just wondering if you could share your background in the energy sector with me.

Mr. Jim Hinds: Sure. Well, I'll go back beyond that. I was an investment banker for about 20 years. I retired in 2003. I put my name in at the Public Appointments Secretariat for Ontario public service work, and I got a call from then-Minister Duncan, who looked at my background, saw I knew something about markets and was in the process of restructuring some of the agencies in the area. There was a thing at the time called the Independent Market Operator, so he said, "You seem to know something about markets. Why don't you go over there?" It subsequently became the Independent Electricity System Operator. I was there until December 2010, first as a board member and chair of the audit committee and then, after that, as chair of the IESO.

Ms. Lisa M. Thompson: Okay. Very good. And who were the main points of contact between OPA and the Liberal government during the cancellation and the relocation of the gas plants?

Mr. Jim Hinds: Which one? I was not there at the time of the cancellation of Oakville, so I can't speak to that.

Ms. Lisa M. Thompson: Okay. For Mississauga?

Mr. Jim Hinds: Of the government? In that case, I guess the commitment, as mentioned, to cancel the Mississauga plant was made in the Liberal campaign

material during the course of an election. To the best of my recollection, the re-election happened and then there was an interregnum period where, I believe, technically Minister Duguid was continuing to be the Minister of Energy after the re-election of the government. But again, I'm sort of forgetful about how the timing worked with the appointment of incoming Minister Bentley, so during that interregnum period, it was my understanding that the communications between the government and the OPA would have been from staff in the Premier's office and staff in the Ministry of Energy to the OPA.

0940

Ms. Lisa M. Thompson: And do you recall who they are?

Mr. Jim Hinds: Well, I mentioned my contact with Jamison Steeve, so Jamison would have been one of them. I can't speak to personal knowledge of the others, but I suspect it would have included the then chief of staff, Craig MacLennan, and—no, I'm sorry; beyond that, I don't know.

Ms. Lisa M. Thompson: And you mentioned the Liberal Party. Who in the Liberal Party, in terms of making decisions to cancel? You just quickly—

Mr. Jim Hinds: Yes, I'll go over that. I was called at 8 o'clock on a Friday night, September 26, by Chris Morley. This is in my last testimony and also prior to that.

Ms. Lisa M. Thompson: Yes.

Mr. Jim Hinds: And so he notified me of the change or creation of policy or something during the election that the Liberals were going to announce the next day. I thanked him for the call, got off the call and tried to figure out what it meant. So that would be the contact with a Liberal Party staffer. I believe he was a campaign volunteer.

Ms. Lisa M. Thompson: You bring a vast background of experience to the table in your role as it is today. Did you feel that Chris Morley had the experience to be facilitating or making those types of decisions?

Mr. Jim Hinds: Well, I'm not going to speak to Chris Morley personally, but I'd never been through something like this before, so I had no idea what the likely range of outcomes was going to be. My first sort of step after wheeling down the highway at 8 o'clock on a Friday night was to try to pull over somewhere safe and get on the phone with my chief executive and say, "What's going on here?"

Ms. Lisa M. Thompson: I can well imagine.

Mr. Jim Hinds: So, in response to that, I think what Colin Andersen did was he collected the thoughts of the organization, started to think about the implications of this and started to think about the issues of this, if the outcome of the election were to be different things and if this were to subsequently become government policy, and how would we react. So there was quite a lot of concerned thinking at the OPA, but after that, my next contact with government political people was the call I referenced earlier with Jamison Steeve in November of that year, when I was at the airport.

Ms. Lisa M. Thompson: Okay. Thank you for that.

Now, changing gears a little bit, in your previous testimony, you spoke to the fact that there was a conscious decision made on behalf of the government to divide the costs between the taxpayer and the ratepayer, but you didn't really go on to explain why this was the case. But you revealed that that directive to differentiate and chunk down expenses between ratepayer and taxpayer came from the Ministry of Energy as well as the government. Can you explain why they decided to differentiate and chunk down a value for the taxpayer, \$40 million, and the remainder for the ratepayer?

Mr. Jim Hinds: So this is Oakville.

Ms. Lisa M. Thompson: Yes.

Mr. Jim Hinds: Okay. The two plants, actually, in terms of the disputes that we had—the ratepayer-taxpayer issue wandered between the two negotiations from time to time, so I can give you a bit of a timeline on that.

On the ratepayer-taxpayer thing, it was something our board felt very strongly about. It first arose in the timeline because of the Oakville cancellation. We did not make that cancellation; the government made that cancellation. So then we began to debate, “Okay. What’s the fair allocation of costs of having made a policy reversal, changed your mind? Who bears that? Should it be borne by the rate base or should it be borne by the taxpayer?”

So until we started to address that with the government, I don't believe that there had been any history of any kind of discussion like that at all.

Ms. Lisa M. Thompson: Do you think the government of the day was intentionally trying to mislead the general public—

The Chair (Mr. Shafiq Qadri): Ms. Thompson, I would invite you to please adopt parliamentary language, and the word “mislead,” despite the smile, is not—

Ms. Lisa M. Thompson: I didn't even know I was smiling. Come on.

Anyway, do you feel that there was a conscious effort to distract people by just focusing on the cost of \$40 million to the taxpayer?

Mr. Jim Hinds: I can't speak to the intention. I just know that, from our point of view, there were certain categories—we wanted a general acknowledgement from the government that there were going to be two types of costs, those borne by the ratepayer and those borne by the taxpayer. Our role was to try to minimize the costs that were borne by the ratepayer, and people can judge whether we were ultimately successful or not in that.

In terms of the costs borne by the taxpayer, I had no knowledge of how they were going to handle it or what they were going to do, but to some extent the debate between taxpayer and ratepayer came down to: How were the costs caused? What were the types of costs? That debate evolved during the cancellation of the two plants.

Ms. Lisa M. Thompson: How did you feel when you heard the government consistently saying that it was only costing \$40 million to the taxpayer, knowing the back-

ground and knowing that there was an additional cost to ratepayers? How did that make you feel?

Mr. Jim Hinds: I can't control the way the government communicates.

Ms. Lisa M. Thompson: Did it make your skin crawl?

Mr. Jim Hinds: No, but I would say that this entire career change has been a learning experience.

Ms. Lisa M. Thompson: Okay. Interesting. Then I want to fast-forward to this past week. The Liberal government introduced their—

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Thompson. The time is now over for the PC caucus side. To Mr. Tabuns—

Ms. Lisa M. Thompson: You didn't give me a one-minute warning.

The Chair (Mr. Shafiq Qadri): I didn't. I was distracted by things. Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Chair. Mr. Hinds, earlier you said that you met with Jamison Steeve and, I think, Sean Mullin and Craig MacLennan, in the spring of 2011.

Mr. Jim Hinds: That's correct.

Mr. Peter Tabuns: Do you know what month you met with them?

Mr. Jim Hinds: It would have been in April, around, I believe, April 16. The reason is that we had a board meeting right after that, so that's why I recall it.

Mr. Peter Tabuns: And did you meet with them again in May or June?

Mr. Jim Hinds: Not to my recollection. The last time I was at committee, Mr. Fedeli, I believe, asked me a question about some correspondence, referencing a meeting in—I believe it was May of that year. I had no recollection of the meeting and I believe, in response to the committee, that other people who attended the meeting said that I was at a meeting with some energy staffers. I believe Mr. MacLennan was also on the invitation list; I don't have a recollection of that. But other than that, no.

Mr. Peter Tabuns: With regard to cancellations or other substantial matters, do you receive instructions from the government in a variety of forms?

Mr. Jim Hinds: That's a very good question, Mr. Tabuns. I think that we are reviewing how we receive instructions from the government. As discussed before, one of the overriding roles that the OPA has to play is to implement the government policy of the day in the electricity system. It can be done through directives, but directives are limited and kludgy. They can be done through other mechanics too—letters from a minister or ministry to us and responses to them. But it's certainly germane to discussions we're having, trying to get a memorandum of understanding with the ministry governing, among other things, questions like this.

Mr. Peter Tabuns: So there's a lack of clarity right now about how instructions are given and acted on. Is that correct?

Mr. Jim Hinds: I would suggest that from my role as board chair, I would like to see greater delineation of access points and responsibilities, that kind of thing. From a governance point of view, it would be something that we would be reviewing going forward and trying to improve. I think that the starting point for that discussion is the memorandum of understanding with the government.

Mr. Peter Tabuns: I don't have further questions, unless my colleague does. Thank you, Mr. Hinds.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson?

Mr. Gilles Bisson: No, I'm fine.

The Chair (Mr. Shafiq Qaadri): No questions at all? Thank you. The NDP cedes its time. To the government side. Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. I just have a few questions. Mr. Hinds, with regard to the discussions in the year 2011, were you aware that all three parties had made the same commitment to cancelling, in this case, the Mississauga plant?

Mr. Jim Hinds: Yes. We were monitoring the situation very closely. Obviously, it was a concern because we had a contract with this counter-party and the plant was being built as the election was going on. So we were monitoring the political reaction. We were monitoring the community reaction. We were monitoring the action of the NGOs that had something to say and we were also trying to assess its impact on the public and what the take-up for some of these issues was. Yes, we were.

Mr. Bob Delaney: How do you go about monitoring these things?

Mr. Jim Hinds: There are staff at the OPA in our communications division who watch the media. They review statements and they watch how things unfold. They give me statistics on Web page hits and Twitter, things like that. We do that in respect to a lot of the other activities that we perform in the electricity system, and this is another one.

0950

Mr. Bob Delaney: So by 2011, the Oakville decision had been made. The Mississauga decision was the one that all three parties had made the same commitment on?

Mr. Jim Hinds: I'm not going to speak to what the parties said. I think there were slight differences of opinion I have become aware of through reading some of the transcripts for this committee. But the general drift of what we got was that there was nobody outside that plant with a placard saying, "Keep building."

Mr. Bob Delaney: Okay. I'll certainly agree with that.

In reading the analysis that you had tabled with regard to the different sites and their pros and cons, the OPA had said their preferred relocation site would have been Kitchener-Waterloo-Cambridge. The testimony before the committee shows that you were unable to negotiate a deal on that site.

Mr. Jim Hinds: Sorry, Mr. Delaney, just a clarification: We're talking about Oakville now?

Mr. Bob Delaney: This would have been the Kitchener-Waterloo-Cambridge, so this would have been the relocation out to Napanee, I believe.

Mr. Jim Hinds: That would be the Oakville plant. So we're switching plants.

Mr. Bob Delaney: Yes.

Mr. Jim Hinds: Then that would be a year after the time period. Sorry; I'm just trying to orient myself time-wise.

Mr. Bob Delaney: Yes, sorry; I switched gears on you.

Mr. Jim Hinds: So we're in September 2012 at the moment, with the different plant?

Mr. Bob Delaney: Yes.

Mr. Jim Hinds: Yes, okay. There was a series of different site locations potentially in that time frame.

Mr. Bob Delaney: Yes, and you've outlined in the material you've given us some of the pros and cons of the various alternatives. With regard to Kitchener-Waterloo-Cambridge, others have come before here to say that there were numerous offers and counter-offers but you were unable to come to a deal on relocation to the Kitchener-Waterloo-Cambridge area. Right?

Mr. Jim Hinds: Yes; again, let me clarify here. The material you're seeing on the site stuff is September 24, 2012. The discussion about Kitchener-Waterloo was primarily in March and April 2011. So there was about an 18-month difference.

Going back to the Kitchener-Waterloo-Cambridge area discussion, that was a counter-proposal that the OPA first made to TransCanada after the contract was breached. For a variety of reasons at the time, there were challenges relocating—we call it KWGC; it's easier for me—that facility to KWGC which would have solved all of the moving parts to the problem. What KWGC needed, in our view, at the time—I think subsequent work has gone on but it's still an option—is peaking capacity, which we might be able to get a transmission solution for, but another potential solution is putting a peaking gas plant there. TransCanada was, as near as we could determine, absolutely not interested in building a peaking gas facility. It's a different business line, apparently.

The other issue that we had in connection with KWGC was, again, in April 2011 there was no site. There was no place to put it. You'd have to start the whole process of siting from ground zero. TransCanada, I believe, wanted this question resolved before the amount of time it would have taken to go through a full siting process.

Mr. Bob Delaney: Right. So then ultimately the negotiators from all three sides concluded that Napanee was the most practical site to locate the new facility?

Mr. Jim Hinds: Yes, and again there were at least three parties to this negotiation, which were TransCanada, ourselves and the government. But when the actual relocation decisions were made, OPG was involved as well because they had some of the sites, and there may have been other people involved. But when it came to the OPA board for discussion, this was the material that was

attached to the board resolution. These are the facts that we faced at the time we made the decision to support the relocation. So you see the rank ordering of the sites, and Napanee was not at the top.

Mr. Bob Delaney: Right, though Napanee was a willing host community that actively did seek the relocated—

Mr. Jim Hinds: That was very much a factor.

Mr. Bob Delaney: Then the decision to locate the new facility at OPG's existing Lennox site was one that all three parties arrived at during the negotiations?

Mr. Jim Hinds: Four, if you include OPG.

Mr. Bob Delaney: True, okay; four if you include OPG. It involved a number of trade-offs. One of the things going for it was its close proximity to existing gas and transmission lines, and it would then have been able to share some facilities with the existing Lennox plant?

Mr. Jim Hinds: Yes, there's good transmission coming in from—again, you're getting to the edges of my competence here. Planners at the OPA would be much better positioned, particularly transmission planners like Bob Chow, to give you answers to this, but my general understanding is that it's close to a lot of wires so you don't have to build lines. It's close to gas so you don't have to build a spur line for gas.

The challenge, I believe, at the time, was that we needed the power in the west, largely, going forward. That's where the original Oakville and Mississauga plants were to be located, west of Yonge Street. This relocation facility is in the east.

Mr. Bob Delaney: Deloitte reviewed the deal and independently concluded that it was commercially reasonable?

Mr. Jim Hinds: It was a concern for us. This is a difficult file. One of the concerns we had as a board was, was there any unjust enrichment as a result of comparing the original deal versus the deal that ultimately got resolved? So the solution there was, as our management team suggested, to bring in an outside accounting firm to look at it and give us an opinion. The opinion that came through from that was that there was no material difference from the point of view of TransCanada, and we relied on that, partially, to make our decision.

Mr. Bob Delaney: Is there anything else you want to say this morning?

Mr. Jim Hinds: No, thank you. I think I've answered your questions fully and I'm comfortable with the testimony I've given.

Mr. Bob Delaney: I think you've answered our questions fully, too, and again, I want to thank you for this absolutely invaluable analysis that your staff provided. Please provide my compliments to the people who crunched the numbers in the spreadsheet.

Mr. Jim Hinds: I will indeed.

Mr. Bob Delaney: A merry Christmas to you.

Mr. Jim Hinds: And to you, Mr. Delaney.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Thank you, Mr. Hinds, for your presence and your revisiting us. You are officially dismissed.

We have a motion on the floor from the PC caucus to be moved by Ms. MacLeod.

Ms. Lisa MacLeod: I move that the Standing Committee on Justice Policy requests that the Premier's office, all ministers' offices, all government ministry offices, the Ontario Power Authority and the Ontario Energy Board produce, within four weeks of the passage of this motion, all documentation, including correspondence, in any form, electronic or otherwise, made between September 1, 2012, and December 5, 2013, that is related to the inclusion of the rate-based costs associated with the Mississauga and Oakville power plant cancellations into the government's 2013 long-term energy plan, and that the documentation be provided to the committee, unredacted and in a searchable, electronic PDF.

The Chair (Mr. Shafiq Qaadri): Comments before we vote on this motion? Mr. Delaney.

Mr. Bob Delaney: Chair, first of all, a question: This makes a reference to the province's 2013 long-term energy plan. Is this motion within the scope of the committee?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. I will ask and confirm.

Interjection.

The Chair (Mr. Shafiq Qaadri): The official verdict, Mr. Delaney, is that it is, in fact, germane.

Any further comments before we vote?

Mr. Bob Delaney: A 20-minute recess, please.

The Chair (Mr. Shafiq Qaadri): It is your right to call for that. A 20-minute recess.

The committee recessed from 0958 to 1015.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We have the motion before us.

Mr. Bob Delaney: Chair, just before we vote on the motion, may I request of the mover that where it says "four weeks" you substitute "six weeks"?

The Chair (Mr. Shafiq Qaadri): I'll take that as a friendly amendment. I heard the assent earlier. Let's vote on the motion.

Interjection.

The Chair (Mr. Shafiq Qaadri): Let's vote on the amendment.

Mr. Bob Delaney: All right. Let's vote on the amendment.

The Chair (Mr. Shafiq Qaadri): Is the amendment accepted, six weeks?

Ms. Lisa MacLeod: Six weeks, I'm for it.

The Chair (Mr. Shafiq Qaadri): Let's vote on the motion. Those—yes?

Mr. Bob Delaney: Chair, I have just one more thing to ask. Is it the intention of the mover that, for example, a request for these documents be made from such agencies as the Ontario Ministry of Children and Youth Services, the Ministry of Training, Colleges and Universities, the Ontario women's secretariat and so on and so forth?

Ms. Lisa MacLeod: If they have information pertaining to the cancelled gas plants, yes.

Mr. Bob Delaney: Then we will say that that information that is responsive to the motion, that's fine. I think we concur with that.

The Chair (Mr. Shafiq Qadri): Thank you. Let's vote on the motion. Those in favour of the motion, as

amended? All in favour? Those opposed? The motion carries. Thank you.

Is there any further business before the committee? Committee's adjourned.

The committee adjourned at 1017.

CONTENTS

Thursday 5 December 2013

Members' privileges	JP-1189
Ontario Power Authority	JP-1189
Mr. Jim Hinds	

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président

Mr. Phil McNeely (Ottawa–Orléans L)

Ms. Teresa Armstrong (London–Fanshawe ND)

Mr. Bob Delaney (Mississauga–Streetsville L)

Mr. Steven Del Duca (Vaughan L)

Mr. Frank Klees (Newmarket–Aurora PC)

Mr. Jack MacLaren (Carleton–Mississippi Mills PC)

Mr. Phil McNeely (Ottawa–Orléans L)

Mr. Rob E. Milligan (Northumberland–Quinte West PC)

Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)

Mr. Jonah Schein (Davenport ND)

Substitutions / Membres remplaçants

Mr. Rick Bartolucci (Sudbury L)

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Ms. Lisa MacLeod (Nepean–Carleton PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

Ms. Lisa Thompson (Huron–Bruce PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Clerk / Greffière

Ms. Tamara Pomanski

Staff / Personnel

Ms. Karen Hindle, research officer,
Research Services

Mr. Peter Sibenik, Table Research Clerk,
Table Research