

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# **STANDING COMMITTEE ON JUSTICE POLICY**

**INTERIM REPORT  
THE SPEAKER'S FINDING OF A "*PRIMA FACIE*" CASE  
OF PRIVILEGE WITH RESPECT TO THE PRODUCTION  
OF DOCUMENTS**

**AND**

**REVIEW OF THE MATTERS RELATING TO THE  
MISSISSAUGA AND OAKVILLE GAS PLANTS**

2<sup>nd</sup> Session, 40<sup>th</sup> Parliament  
63 Elizabeth II



ISBN 978-1-4606-3755-5 (Print)  
ISBN 978-1-4606-3753-1 [English] (PDF)  
ISBN 978-1-4606-3754-8 [French] (PDF)  
ISBN 978-1-4606-3798-2 [English] (HTML)  
ISBN 978-1-4606-3799-9 [French] (HTML)

The Honourable Dave Levac, MPP  
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Justice Policy has the honour to present its Interim Report on "The Speaker's finding of a "*prima facie*" case of privilege with respect to the production of documents and Review of matters relating to the Mississauga and Oakville gas plants" and commends it to the House.

A handwritten signature in black ink, appearing to read 'Shafiq Qadri', written over a horizontal line.

Shafiq Qadri, MPP  
Chair

Queen's Park  
May 2013



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2<sup>nd</sup> Session, 40<sup>th</sup> Parliament

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## **LIST OF ABBREVIATIONS USED IN THIS REPORT**

CHIP	Coalition of Homeowners for Intelligent Power
EIG	EIG Ltd.
EP	Eastern Power
GTA	Greater Toronto Area
MOU	Memorandum of Understanding
OMB	Ontario Municipal Board
OPA	Ontario Power Authority
OPG	Ontario Power Generation
OPS	Ontario Public Service
SCE	Standing Committee on Estimates
SCJP	Standing Committee on Justice Policy
SWGTA	Southwest Greater Toronto Area
TCE	TransCanada Energy/Enterprises/Corporation/Ltd.

## INTRODUCTION

Pursuant to the February 20 and March 5, 2013 Orders of the House, the Standing Committee on Justice Policy (SCJP) has been questioning witnesses about (a) the matter of the Speaker's finding of a *prima facie* case of privilege relating to the response to the May 16, 2012 request, by the Standing Committee on the Estimates, for the production of documents relating to the Oakville and Mississauga gas plants, and (b) the tendering, planning, commissioning, cancellation, and relocation of those plants.

This interim report is a summary in chronological order of the sworn testimony of the 25 witnesses who have appeared before the Committee up to May 2, 2013. *Hansard*, the verbatim record of the hearings, should be consulted for the complete proceedings and is available online.<sup>1</sup> A list of documents requested by the Committee is attached to this summary.

The Committee will continue to meet on the above matters with a view to hearing from more witnesses and completing a final report.

### **PETER MILLIKEN, FORMER SPEAKER OF THE CANADIAN HOUSE OF COMMONS, MARCH 7, 2013**

Peter Milliken was the Speaker of the Canadian House of Commons from 2001 to 2011. He is the longest-serving Speaker in the history of the House of Commons. He was first elected to represent the riding of Kingston and the Islands in 1988 and held this seat until his resignation in 2011.

In the 2010 Afghan detainee case, Speaker Milliken ruled on a point of privilege regarding non-compliance with an order for the production of documents.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

During an election campaign, a government can announce intended policy changes, but cannot secure additional funds that require legislation.

### **Disclosure of Documents**

Parliaments and their committees have the right to request and receive any information that they need in order to make decisions. A parliament's inability to obtain the information it requires is a serious issue, and

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<sup>1</sup> Unless otherwise indicated, all page numbers in this document refer to the *Hansard* record of the Standing Committee on Justice Policy from March 7 to April 30, 2013. These transcripts are viewable online at [http://www.ontla.on.ca/web/committee-proceedings/committee\\_transcripts\\_current.do?ParlCommID=8960&locale=en](http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_current.do?ParlCommID=8960&locale=en).

historically this has been a matter of “considerable gravity” (p. 22). In exercising this right, however, Members are typically careful not to compromise the public interest.

When an argument is made that the provision of requested materials would compromise the public interest in some way, the House must decide whether or not to accept the argument. In such situations, Members will typically take the warning seriously and work toward a solution. Production of documents does not necessarily require that those documents be made public. In the Afghan detainee case, the Canadian House of Commons decided that national security should not be jeopardized, and opted to consider the documents in confidence. In the case of the gas plants, the Legislature must decide whether or not it is willing to compromise solicitor-client privilege in exercising its authority to demand documents. Generally, Members do not want to compromise the public interest, but the challenge is how to handle the documents in a responsible way.

After the Afghan detainee ruling, parties negotiated a deal that would allow some Members to access the materials without making them public. A panel of Members reviewed the documents, and decided which could be released and which should remain confidential. In the absence of a unanimous recommendation, the final decision would be delegated to a panel of judges. All participants in this process were sworn to secrecy. Given the large volume of documents requiring review, the materials were considered in batches, and no timeline was set. Had this deal not been reached, Speaker Milliken would have ruled that there was a breach of privilege (p. 22).

There are similarities and differences between the matter of privilege involving the gas plants and the Afghan detainee case. The argument against document release in the Afghan detainee case was the potential threat to national security. Speaker Milliken has no experience with cases in which solicitor-client privilege or other legal sensitivities are at stake. The most important issues in both cases are whether or not the documents should be made public, and who should make the decision.

The basis for finding a Member to be in contempt of the House is that he or she deliberately made an untrue statement, or deliberately ignored an order of the House (pp. 23-24). If the Minister truly believed that all requested documents had been produced, but more were later found and provided, there is not a case for contempt. Although it is a Minister’s responsibility to comply with an order of the House, he or she will require the assistance of many public servants. Some materials might have been unintentionally discarded or forgotten, making it impossible for those documents to be produced to the House. This is the nature of a large administrative request. It is expected that a Minister, upon learning that some documents had not been produced, would want to correct the record.

Redaction of information from documents might constitute a *prima facie* breach of privilege (p. 18). A way to deal with this issue would be for the Committee to call as witnesses the individuals who edited the documents, in order to determine why the redactions were made.

If the Minister ultimately complied with the order of the House and provided the documents, the matter should be resolved; there would be no further case for a breach of privilege. If the Minister originally responsible for complying with the order has resigned, any further proceedings should be directed toward the new Minister responsible for production.

Punishment of a Member who is found to have breached parliamentary privilege usually involves adoption of a motion admonishing the Member. This would be the most likely consequence of a finding of non-compliance with an order of the House. Technically, expulsion and imprisonment might be possible, but these outcomes are unlikely.

### **BRUCE SHARP, PROFESSIONAL ENGINEER, MARCH 13, 2013**

Bruce Sharp is a mechanical engineer who has worked in the energy sector for 25 years. During his career, Mr. Sharp has worked in the areas of power generation, energy management, natural gas utilization, energy marketing, and electricity consulting. Currently working as a Senior Consultant for Aegent Energy Advisors, Mr. Sharp appeared before the Committee as a private citizen.

Mr. Sharp began investigating the costs associated with the cancellation and relocation of the Mississauga and Oakville gas plants shortly after the Oakville settlement details were made public in the fall of 2012. His op-ed on the topic appeared in the *National Post* on October 10, 2012.<sup>2</sup>

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. Sharp shared with the Committee his estimates of the costs associated with the cancellation of the Oakville gas plant. Based on documents publicly available at the time of his testimony, Mr. Sharp calculated that the total cost of moving the Oakville plant to Lennox was \$638 million. This amount is made up of the following costs:

- (1) Sunk Costs (\$40 million): The Ontario Power Authority (OPA) and the Ministry of Energy had previously announced \$40 million as the cost of relocating the plant; Mr. Sharp does not dispute this amount.
- (2) Turbine Payment (Net Present Value of minus \$74 million): Under the Memorandum of Understanding (MOU) between the OPA, the

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<sup>2</sup> Bruce Sharp, "[Ontario's Power Trip: The \\$733 Million Gas Boondoggle](#)," *National Post* (October 10, 2012).

Ministry of Energy, and TransCanada Enterprises Ltd. (TCE), the OPA will pay TCE \$210 million to cover the cost of the gas turbines. However, the MOU also includes a reduction in the monthly payments that the OPA will be making to TCE, from \$17,277 per megawatt capacity a month to \$15,200. Accordingly, Mr. Sharp estimates that the OPA will save \$284 million in net present value over the life of the contract. The difference between these two amounts is minus \$74 million.

- (3) Gas Delivery and Management Costs (Net Present Value of \$313 million): Gas management and delivery involves the movement of gas from the Dawn gas hub near Sarnia to the plant gate. Under the original agreement with TCE for the Oakville site, the gas delivery and management costs were to be absorbed by TCE. However, pursuant to the MOU to relocate the Oakville plant to Lennox, this amount will instead be paid by either the OPA or the Ministry of Energy over the next 20 years.
- (4) Transmission Costs (Net Present Value of \$359 million): This amount reflects the cost of completing transmission upgrades in the Southwest Greater Toronto Area (SWGTA) ahead of schedule because the Oakville generating station was cancelled.

According to Mr. Sharp, other costs associated with the cancellation and relocation of the Oakville plant have yet to be determined (e.g., gas pipeline hookups on the new site).

Based on his calculations, Mr. Sharp told the Committee that the \$40 million previously estimated by the government for relocating the Oakville plant is “quite low”; he also agreed that \$40 million “is not a credible figure to express the actual cost of [the] relocation” (p. 32). At the very least, he surmised, officials at the OPA would have been aware of the range of costs.

Testifying before the Committee, Mr. Sharp also spoke to the costs arising from the cancellation and the relocation of the Mississauga gas plant. While he did not provide a detailed analysis of the costs of the relocation, Mr. Sharp informed the Committee that the OPA “missed [an] opportunity” to negotiate a lower monthly payment to Greenfield because of the lower gas delivery management costs associated with moving the plant from Mississauga to Lambton (due to its proximity to the Dawn gas hub) (p. 32). The OPA could have achieved approximately \$28 million in net present value savings.

The Committee asked Mr. Sharp a series of questions about his employment history as well as his (and his employer’s) dealings with the proponents of the Oakville and Mississauga gas plants, the OPA, as well as a number of other players in the energy industry. Mr. Sharp advised Committee members that he has not been employed by (nor has his

employer been retained by) TCE, Greenfield, Enersource, Hydro One or Ontario Power Generation (OPG). Until 1997 Mr. Sharp was employed by Enbridge's predecessor company, Consumer Gas. Recently, Aegent Energy Advisors did some work for both Enbridge and the OPA.

### **Disclosure of Documents**

Mr. Sharp did not address the issue of document disclosure, except to say that "the volume and the general level of disorganization in the documents" tabled in the House affected his ability to make his calculations (p. 45). The format of the document disclosure has made his work "highly, highly challenging" (p. 45).

### **HIS WORSHIP ROB BURTON, MAYOR OF THE TOWN OF OAKVILLE, MARCH 19, 2013**

Mayor Burton was first elected in 2006, following a lengthy career in journalism, film and television. During the 1980s, Mayor Burton helped found YTV, a Canadian children's television network. As Mayor, Mr. Burton has served on the board of directors for Oakville Hydro, Halton Health Services, and the Halton Children's Aid Society. He has also served on the board of GO Transit.

Mayor Burton was re-elected to office during the 2010 municipal elections.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

During his testimony before the Committee, Mayor Burton focused on the Town's response to the Oakville gas plant, and its dealings with the project proponent, TCE.

According to Mayor Burton, there was an "overwhelming consensus in Oakville" that the proposed plant should not be built for health, safety and planning reasons (p. 48). First, Town residents were concerned that the plant would worsen the air pollution in an airshed that was already "vulnerable" and "overtaxed" (p. 48). The Town also expressed astonishment that the plant would be located "so close to homes and schools" (p. 48). Mr. Burton described the location of the plant as

adjacent to more than 3,000 homes, nine schools, a hospital, a long-term-care centre, the QEW and the region's busiest commuter rail corridor, all within 1,500 metres of the site. The proposed site was closer to homes than the province allows a wind turbine. Turbines have to be 550 metres from homes etc. There are very real

risks associated with being so close to a large gas-fired power plant (p. 48).

Thirdly, Mayor Burton informed the Committee that the Oakville plant never received the proper planning approvals to go to construction. In 2009, six months before the TCE project was selected by the OPA, Town Council passed an interim control by-law in an effort to give its planning staff the opportunity to “develop appropriate planning rules” for power plants in Oakville (p. 48). TCE appealed the Town’s interim control by-law to the Ontario Municipal Board (OMB), but it was upheld. According to Mayor Burton, the OMB held that the Town had done “exactly the right thing at exactly the right time for exactly the right reasons” (p. 56). TCE appealed the decision of the OMB, but abandoned its appeal after the government cancelled the plant. The Town was prepared to defend its interim control by-law at the Supreme Court of Canada if necessary.

In September 2010 Town Council passed an official plan amendment and a zoning by-law amendment that “required [developers to provide] technical studies . . . to allow [the Town to conduct an] evidence-based assessment of any proposed power plant’s suitability” (p. 48). Mayor Burton called these the Town’s “do-no-harm planning rules” (p. 50). Town Council also passed the country’s first municipal health protection air quality by-law in an effort to regulate “the direct emissions of fine particulate matter [(PM<sub>2.5</sub>)] and the precursor substances that become particulate matter” (p. 48). Under these new rules, Mayor Burton did not believe that the Oakville plant, as proposed, would get a building permit.

Mr. Burton met with the Premier once at the Association of Municipalities of Ontario conference in August 2010. During his 15 minute meeting with the Premier, Mr. Burton stressed his community’s concerns with the emissions that would be generated by the plant and the “already deadly level of air quality” in the SWGTA (pp. 54, 59).

Nevertheless, Mayor Burton advised the Committee that Oakville residents “were, and . . . are, very thankful” for the government’s decision to relocate the plant (p. 48). According to Mr. Burton, the Town believes “that the costs to cancel the proposed power plant are far less than the health, safety and environmental costs it would have caused our community” (p. 48).

Oakville residents, through its Town officials and C4CA, secured promises from all parties to stop the plant. Mayor Burton expressed displeasure with some of the criticism of the cost of cancelling the gas plant: critics would “do everybody a favour if they would explain how they would have done it differently” (p. 51). Going forward, however, Mayor Burton stressed that the Legislature and the Government need to develop a new process for siting power plants “that respects safety, health, and local communities” (p. 55). Mayor Burton provided the Committee with a couple of different models to consider:

About half of the [U.S.] States have a method of siting gas power plants that involves objective, evidence-based public hearings. I used to believe that that would be the easiest way for Ontario to get this procedure on a sounder footing, but I recently heard that the Premier has suggested that instead she favours—if I understand this correctly—local energy supply plans, and each community would be able to decide for itself whether it wanted to host a power plant. I've had conversations with the leader of one of the opposition parties, who has assured me, again and again, that his policy would be, "We will only use willing hosts," I think was the expression that he used with me—Mr. Hudak did. To a degree, those two positions, from my perspective, appear to be very similar, so perhaps there's an agreement available there, and that might be easier and less cumbersome than copying and pasting the process that they use in the States (p. 50).

### **Disclosure of Documents**

Mr. Burton did not speak directly to the matter of document disclosure, but indicated his frustration that the Town was unable to access the contract between TCE and OPA before it was released to the Legislature.

### **PETER WALLACE, SECRETARY OF THE CABINET AND HEAD OF THE ONTARIO PUBLIC SERVICE, MARCH 19, 2013**

Peter Wallace has been Secretary of Cabinet and head of the Ontario Public Service (OPS) since 2011. Prior to this appointment, Mr. Wallace has served as Deputy Minister and Secretary to the Treasury Board as well as Deputy Minister of Finance and Deputy Minister of Energy. With more than 30 years in the public service, Mr. Wallace has also served as Assistant Deputy Minister with Management Board, Cabinet Office and the Ministry of Natural Resources.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

The OPS implements the policy directions of the government of the day. With regard to the gas plants, the direction and desired outcomes were clear: suspension of activities at the initial sites; relocation; and the maintenance of commercial relationships with the proponents, including securing essentially equal investment and financial opportunities for those proponents. This took place

in a very complex environment due to: the commercial contracts; secondary linkages with the financial and other partners of the main proponents; actual and threatened litigation; the governance associated with the independent roles of the OPA and other agencies; and a timeline that exceeded two years. It involved multiple ministries and agencies.

Exhibit A (email from David Livingston, formerly of Infrastructure Ontario, July 27, 2011) proposed a walk-around package on “Project Vapour.” A walk-around package is a process used when an urgent commercial or other matter requires immediate action outside of the usual Cabinet meeting cycle. The Secretary of Cabinet would find an opportunity to create a decision-making forum by Cabinet. This could involve a special meeting or having officials go individually to Cabinet Ministers to secure their consent. At this stage, political involvement on “Project Vapour” from the Premier’s Office would involve a relatively small circle of individuals, likely including Chris Morley; from the Ministry of Energy, the circle would have included the Minister’s Chief of Staff. It is unlikely that the July 27, 2011 walk-around would have been the first time that the issue of the Oakville plant would have been raised in Cabinet (p. 64).

With regard to Exhibit B (Cabinet minute, July 29, 2011), all Cabinet minutes are made available to the full Cabinet. On urgent matters, or during extended periods between Cabinet meetings, decisions may be made by a subcommittee of Cabinet.

“Project Vapour-lock” (Exhibit C) refers to the cancellation and relocation of the Mississauga plant. The reference in that document to “OPA and government is also similar to the Vapour transaction” meant the government was announcing a policy change with respect to a contract to which it was not a signatory.

The government set clear priorities for dealing with the gas plants: suspension, relocation and securing alternative arrangements. The OPS's role was to implement the policy direction of the government. No written policy directive was sent to the head of the civil service to set up these priorities; it would have been “commonly understood” (p. 67).

Exhibit D (memorandum from David Lindsay, December 2, 2011) indicates that there may be costs related to the relocation of the Mississauga and Oakville plants. This document is one of the routine quarterly reports that the Ministry of Finance requests from all ministries. The document notes that there may be budget pressure associated with the relocation of the plants, but the specific number is not known. The memorandum was written when the settlement discussions were at an early stage; therefore, the costs were indeterminate.

Mr. Wallace's involvement in “Project Vapour” in 2011 was as Deputy Minister of Finance. He was concerned about value propositions, and was tracking — and trying to understand — the fiscal implications for the Province. The Ministry of Finance had a broader responsibility to understand the development of policy across the government, any precedents it set, and the financial ramifications, present or future, associated with any activity (p. 68).

With respect to the use of the expression “kept whole” in relation to TCE, Mr. Wallace indicated that the policy objectives included the relocation of the gas plant, the maintenance of personal relationships, and the securing of essentially equal investment financial opportunities. It meant giving TCE an equivalent opportunity related not only to process, but also to the maintenance of its role in the production of gas-fired electricity in the province (p. 69).

There is an “arm's length” relationship between the government of Ontario and the OPA (p. 75).

Mr. Wallace's predecessor (Shelly Jamieson) had sought to end the involvement by some political staff in outreach to TCE on the Oakville file because they might be included in legal action and because they exposed the government to additional risk.

Regarding the financial risk involved in terminating the contracts, the policy direction provided to the OPS by the government was to ensure that the relocation of the plants was on terms that were similar to the original business proposition that the proponents had signed up for. Eastern Power (EP) had problems securing financing for the Greenfield South plant; this was one of the challenges associated with the contracts. Those engaged in the relocation discussions found additional barriers to the relocation because of the financial backstop contracts that had been entered into by Greenfield (e.g., high interest rates).

Mr. Wallace “may have had a peripheral involvement” in the decision to pay for the cancellation of the Mississauga plant through general revenue rather than through hydro rates (p. 76).

## **Disclosure of Documents**

The OPS has experience with document disclosure, particularly with respect to commercial and labour relations, litigation, freedom of information, judicial inquiries, and the Auditor General. The committee process associated with the production of documents was a new factor; it required thought and additional research to fully understand how it related to Cabinet privilege, legal privilege, statutory privilege, and contractual privileges associated with producing documents related to third parties. The Ministry of Energy acted in good faith in searching for and producing responsive documents in its possession.

Code names are routinely used in the OPS. They are used for all major commercial transactions, not just gas plant transactions. The OPS does not use code names to obstruct requests for documents (pp. 63, 68, 70-71).

The OPS has other documents relating to the plants, but they were not produced because they fell outside of the committee request (pp. 63, 64-65).

Allegations that a Ministry of Energy employee directed the OPA to withhold documents from disclosure were investigated by Ministry of the Attorney General counsel; the findings were inconclusive. The Ministry of Energy employee had attended a meeting in the absence of more senior staff and counsel (who had

originally been scheduled to attend the meeting). There were no appropriate notes taken at the meeting to corroborate or disprove the allegations. While the file is not necessarily closed, there is “nothing left to find on the file at this point” (p. 68). These concerns were raised by Kristin Jenkins (p. 69). Mr. Wallace learned of the allegations from the Deputy Minister of Energy.

The Secretary of Cabinet cannot waive Cabinet privilege. The only way “in which Cabinet privilege can be raised is in response to a specific request that is legally unavoidable for me to comply with. That would, in all likelihood, be an order from this committee” (p. 65). The committee does not have some documents because the document production was directed to the Ministry of Energy, not the Cabinet Office.

With regard to some documents being heavily redacted (e.g., Exhibit D, memorandum from David Lindsay), the document production order required that the Ministry of Energy produce responsive records. The redacted portions were unrelated to the request. The OPS was acting in the best of faith on the basis of legal advice; public servants were trying to make difficult judgments, and to protect the privilege and the advice they give to Cabinet in other unrelated matters (p. 66).

The document production order was made at the time that negotiations were ongoing with TCE and EP. While ordinary practices of disclosure associated with commercial discovery protect commercial interests, document production orders from parliamentary committees are “different and override the traditional statutory and other protections associated with that” (p. 71).

Document production requests are normally processed over a substantially longer period of time and are generally burdensome. They are taken very seriously. The OPS is obligated to produce the documents required, and to produce only responsive records; it must not maliciously comply by simply dumping vast amounts of irrelevant data. It is a challenge to review the full documentation record and to make appropriate judgments about what to release; it involves securing legal advice and trying to reach an understanding in the very best of faith about what should or should not be released (p. 72).

Not all documents were released initially; there were two subsequent releases. Some documents were inadvertently left out of the original search (e.g., some people had since left the organization). Mr. Wallace’s experience with commercial discovery is that there is usually a process of rolling disclosure (p. 73).

Generally, public servants respond to the specific requests of a committee. The OPS provided information requested by the committee, and to which the committee was entitled. The request was specific to the Minister of Energy, to the Ministry of Energy and to the OPA. If the SCJP wants additional documents, “there is an appropriate forum to direct public servants in order to obtain the broader information.” The main barrier to the provision of information “has been

the specificity of the request” (p. 75). Errors were made, mostly as a result of urgency and people “just not thinking things through” (p. 75).

### **JOANNE BUTLER, VICE-PRESIDENT OF ELECTRICITY RESOURCES, OPA, MARCH 19, 2013**

Joanne Butler is Vice-President of Electricity Resources at the OPA. Her department is responsible for procuring generation resources, providing policy and analysis advice, and administering the contracts of electricity generators.

Prior to joining the OPA in 2008, Ms. Butler was President of TransAlta Mexico, where she was responsible for the day-to-day operations of two Mexican gas-fired electricity generation plants. Ms. Butler has also worked for TransAlta in Calgary as its general manager for western operations. All told, Ms. Butler has worked in the energy sector for 35 years.

#### **Involvement with the Mississauga and/or Oakville Gas Plants**

In her testimony before the Committee, Ms. Butler outlined the process by which the OPA sites and procures new gas plants. While not involved in the contracting of the Mississauga plant, Ms. Butler did oversee the procurement process for the Oakville plant. In respect of the Oakville plant, the need for new electricity was clear: in addition to the need for reliability in the Greater Toronto Area (GTA), “there was growing demand, and there was an off-coal strategy. So we needed more megawatts to bring onto the system” (p. 82). In response to that need, on August 18, 2008 the Minister directed the OPA to procure a gas-fired power plant in one of the following areas: south Oakville, south Etobicoke, south Mississauga, or between the Oakville and Manby transformer stations. The Ministry of Energy told the OPA that it should not consider the Lakeview Generating Station as a possible site.

Under the procurement process established by the OPA, it is the responsibility of the proponents to find an appropriate site within the limits imposed by the government directive. They must also ensure access to the transmission system, site control, and conformity with any environmental or planning standards set by the government. Bids are evaluated on the basis of the “combination” of the OPA’s belief that the proponent has the “financial wherewithal” and operational and technical capacity “to build this plant,” and that it is offering “the lowest cost” (p. 83). Proponents are responsible for their own financing.

Ms. Butler acknowledged that there may be a better way to site gas plants in Ontario. She advised the Committee, for example, that in Mexico (where she worked previously) the government provides the site and starts the environmental approval process. Lowering the risk that

developers face, the government is able to command a lower price for its power plants.

When asked about the negotiations for the relocation of the power plants, Ms. Butler indicated that once the government made the decision to cancel the plants,<sup>3</sup> the OPA was responsible for “com[ing] up with a new arrangement that would provide value to the electricity ratepayer and move forward with a new project” (p. 79). However, in the case of the Oakville plant, Ms. Butler learned that the government and, in particular, Sean Mullin (former Deputy Director of Policy for the Office of the Premier) and Craig MacLennan (former Chief of Staff to the Minister of Energy) had, without her knowledge, made certain commitments to TCE. It was therefore up to the OPA to “repurpose” the commitments “into a valuable project for the ratepayer” (p. 79). This was not standard practice – in fact, Ms. Butler advised that this “was the first time I’d seen that happen in my tenure with the OPA” (p. 80). This put the OPA in a difficult bargaining position.

In respect of the negotiations surrounding the relocation of Oakville gas plant, the OPA also struggled to receive adequate disclosure from TCE. Ultimately, talks between TCE and the OPA broke off, and David Livingston of Infrastructure Ontario was brought in by the government “to be the lead in the negotiations with TCE and move forward on the settlement” (p. 87). A third party negotiator was also brought in to lead discussions with Greenfield South.

Ms. Butler explained to the Committee that there are a number of “buckets” of costs associated with the cancellation and relocation of the Oakville plant to Lennox. According to Ms. Butler, each of the following “buckets” is contemplated by the MOU signed in 2012:

- (1) Sunk Costs (\$40 million). These costs represent the monies spent by TCE in developing the Oakville plant which cannot be used at the new site. In order to calculate the sunk costs, TCE provided the OPA with invoices, bills and receipts for goods and services which could not be repurposed in Lennox (e.g., engineering, design, permitting, and legal costs). The costs claimed by TCE were audited by a third party, and paid out by the OPA.
- (2) Additional costs associated with connecting the gas line to the Lennox site and connecting the new plant to the province-wide transmission system (Ms. Butler did not provide exact amounts).
- (3) Gas Demand and Management Services (Net Present Value \$319 to \$476 million). Because the OPA assumed some of the gas

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<sup>3</sup> While Ms. Butler advised the Committee that the government can “tell [her] what to do” (p. 91), in her view, the Oakville plant should not have been cancelled: “It was put in the optimal location to solve a bunch of requirements: demand, off-coal and reliability” (p. 88).

management fees (it also gave TCE an upfront payment for its turbines and paid its sunk costs), the OPA negotiated the net revenue requirement lower from \$17,277 a month to \$15,200.

Some costs could not be determined at the time that the MOU was signed. For instance, additional engineering work needed to be completed before some of the costs could be finalized. However, Ms. Butler repeatedly advised the Committee that the government would have been aware of the costs outlined above (not just the sunk costs) because it negotiated and signed the MOU.

Ms. Butler indicated that there are similar “buckets” of costs for the cancellation and relocation of the Mississauga plant to Lambton. Focusing on the sunk costs of the Mississauga location, she advised the Committee that these costs were higher than in Oakville because construction had already started at the time the plant was cancelled. A significant portion of the sunk costs went toward paying off Greenfield and its trade creditors, as well as for equipment and materials that had been purchased or leased.

Ms. Butler also discussed the estimated \$200 million differential in costs associated with moving up the transmission solution for the SWGTA to 2019 from 2029. Because the Oakville (and ultimately the Mississauga) gas plant is not going ahead, the OPA needs to upgrade the transmission system for the SWGTA ahead of schedule in order to ensure a “reliable supply” of electricity (p. 85). However, she would not consider this \$200 million as part of the cost to cancel and relocate either gas plant.

### **Disclosure of Documents**

Ms. Butler testified that while she collected and disclosed all her documents related to the Mississauga and Oakville gas plants, as requested by the Standing Committee on Estimates (SCE), she had no direct involvement in the document disclosure process at the OPA. However, she emphasized that the OPA made “absolutely every effort to try and do whatever was asked of us” (p. 83).

Ms. Butler informed the Committee that the term “Project Vapour” was used to describe the Oakville plant, and the term “Vapour Lock” to describe the Mississauga plant. While she had heard of other code names referring to the gas plants (e.g., “Project Apple,” “Project Banana,” “Fruit Salad”), she was unable to identify their precise meaning. Ms. Butler had not used code names in the past.

Ms. Butler also agreed that the OPA’s bargaining position could have been weakened if commercially sensitive details had been made public before the relocation agreements were finalized.

**HER WORSHIP HAZEL MCCALLION, MAYOR OF MISSISSAUGA,  
MARCH 21, 2013**

Hazel McCallion was first elected Mayor of the City of Mississauga in 1978 and is currently in her twelfth consecutive term as Mayor. During her time as Mayor, Ms. McCallion has shepherded the growth of Mississauga to become one of the largest cities in the country.

In 2005 Mayor McCallion was appointed a Member of the Order of Canada.

**Involvement with the Mississauga and/or Oakville Gas Plants**

Testifying before the Committee on March 21, 2013, Ms. McCallion provided the Committee with much-needed background on the commissioning of the Mississauga gas plant and outlined the efforts by her municipality to oppose the construction of the plant.

Mayor McCallion testified that the OPA announced Greenfield's plans to build the Mississauga plant on the Loreland Avenue site without consulting with the City or its residents. The Ministry of Energy did not advise her of the pending announcement. According to Ms. McCallion, the lack of communication continued for many years, despite the City's opposition and concerns. The OPA, Mayor McCallion argued, was to blame for the handling of the Mississauga gas plant:

Let's zero in on the OPA. They're the ones that caused all this problem [*sic*]. I can assure you; I dealt with them. They ignored any concern of the citizens. They ignored any concerns of the professional staff of our city, and I have the two of them sitting here. They know all the details—absolutely ignored and said, "We're bulldozing ahead." And by the way, find out whether their projections of the need of hydro in the GTA are flawed or not. Nobody has questioned that, except the citizens and the city of Mississauga—flawed . . .

So, in my opinion, zero in on the OPA. They're the ones who should be on the carpet, because we worked with the OPA to try to convince them that they were on the wrong track. They wouldn't listen. They're arrogant—absolutely arrogant (p. 96).

After consulting with the then Minister of Energy Dwight Duncan (who was supportive of the City's position), the City tried to challenge the

construction of the plant. Cognizant that there was a contract in place between Greenfield and the OPA, and wanting to limit any potential for litigation, the City opposed the power plant by taking Greenfield to the OMB, where it argued that the plant was contrary to the City's official plan and zoning by-laws. In addition, the City asked that the Ministry of the Environment elevate the Greenfield project to an individual environment assessment. The City released a report analyzing the electricity requirements for the GTA in an effort to demonstrate that the Mississauga gas plant was not necessary; it also explored alternative sites for the gas plant. Once their options were exhausted, however, the City issued a building permit to Greenfield on May 28, 2009.

Mayor McCallion informed the Committee that her City's residents were happy that the Mississauga gas plant was cancelled, and were prepared for the costs associated with that decision. However, she indicated that the plant should have been cancelled before the building permit had been issued:

Obviously, if you're going to cancel a contract, you'd better be prepared to pick up a pretty heavy cost of cancelling a contract. Think of the costs if it had been cancelled before the permit was issued. Now you're faced with the building half up, with all the equipment ordered, you name it. The decision should have been made earlier. It should have been made before the permit was issued, in my opinion (p. 94).

Ms. McCallion said the plant "was cancelled obviously for political reasons" (p. 95).

### **Disclosure of Documents**

Mayor McCallion did not address the issue of privilege in her testimony; however, she told the Committee that it should not be investigating the cancellation of the plants and its fallout, but "get[ting] on with the business of the province."

### **TIFFANY TURNBULL, FORMER EXECUTIVE ASSISTANT TO THE DEPUTY MINISTER OF POLICY AND DELIVERY, CABINET OFFICE, MARCH 26, 2013**

Tiffany Turnbull has been Manager, Evaluation and Renewal, at the Workplace Safety and Insurance Board since July 2012. Prior to holding that position, she worked in Cabinet Office for five years, three of which

were spent in the office of the Deputy Minister, Policy and Delivery, Giles Gherson.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Ms. Turnbull advised the Committee that she had no direct involvement in the issues being investigated. She attended no meetings or teleconferences on the topic of either the Oakville or Mississauga gas plant cancellation. Ms. Turnbull testified that she recalls “occasions when I was copied or sent emails related to these files, but I have no specific recollection of their contents” (p. 109). Her role was to pass on documents to her superior, Mr. Gherson, and to coordinate meetings for him.

Ms. Turnbull also provided information to the Committee regarding Mr. Gherson’s role in the cancellation and relocation of the two gas plants. To the best of her recollection, Ms. Turnbull reported that Mr. Gherson was “very peripherally, if at all, involved until . . . following the election” on the gas plant file (p. 110). Following the 2011 provincial election, Mr. Gherson was in contact with Chris Morley from the Premier’s Office, David Lindsay, the Deputy Minister of Energy and Peter Wallace, the Deputy Minister of Finance. Mr. Gherson would have been involved in chairing and organizing meetings and teleconferences concerning the implementation of the government’s decision to cancel the Mississauga gas plant, but Ms. Turnbull testified that her office would not have had a substantive role in the decision-making (p. 113). By her recollection, her office was not involved in decision-making regarding the Oakville gas plant. She did note that it was rare for her office to be dealing with files from the Ministry of Energy and she could not recall any other power plants being discussed in her five years in Cabinet Office (p. 113).

When asked about the various code names for the gas plant cancellations, Ms. Turnbull informed the Committee that she was familiar with some, but not others. She had heard about “Project Vapour” (Oakville), probably in the Spring or Summer of 2011, but only in informal conversation. Shortly after the 2011 election, she first came across “Project Vapour-lock” (Mississauga) as Deputy Minister Gherson “had been asked to assist in coordinating meetings out of Cabinet Office to facilitate the implementation of this government commitment” (p. 111). Ms. Turnbull testified that code names were not common, as items coming across her desk were on their way to Cabinet and such names were unlikely by that stage of a project (p. 114). She testified that she was not familiar with the following code names: “Apple,” “Banana” or “Fruit Salad” (p. 111).

### **Disclosure of Documents**

Ms. Turnbull testified that she had no direct involvement in the search for, or disclosure of, documents. She also reported to the Committee that she

was no longer with the OPS and thus, had no access to her old records or documents. She was able to recall, however, that she saw a few emails that included the terms “vapour” or “vapour-lock” (p. 113).

### **JAMISON STEEVE, FORMER PRINCIPAL SECRETARY, OFFICE OF THE PREMIER, MARCH 26, 2013**

Jamison Steeve has been Executive Director of the Martin Prosperity Institute and the Institute for Competitiveness and Prosperity since September 2012. Prior to that, he was Principal Secretary to former Premier Dalton McGuinty from the end of June 2008 until the end of June 2012. Mr. Steeve’s responsibilities as Principal Secretary focused on three main areas: advising the government on overall policy development and its legislative agenda; strategic communications; and key stakeholder engagement and issues management (p. 118).

#### **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. Steeve was involved in the Oakville file from June 2010 until the spring of 2011. Following conversations with colleagues in the Premier’s office, and with the Premier, he and Sean Mullin, the Premier’s policy adviser on energy, were asked to meet with TCE (p. 120). Mr. Steeve was tasked with exploring options to see how the government could resolve “an increasingly intractable situation” (p. 118).

Mr. Steeve was already aware of opposition to the plant. He also knew that the local MPP, Kevin Flynn, had introduced a bill which “had given all of us some reason for pause from a regulatory environment perspective” (p. 119).<sup>4</sup> TCE had also raised concerns that construction could be impeded by an Oakville by-law (p. 119).<sup>5</sup>

Mr. Steeve had five meetings with TCE between June 2010 and October 2010; all were conducted in the company of Mr. Mullin. Over the same time period, he had four conversations with the Premier about the Oakville plant (pp. 118, 127).

The initial TCE meeting on June 3 was with Chris Breen, Director of Government Relations. Two possible courses of action were discussed: proceeding with the plant by way of legislation dealing with an Oakville by-law; and considering another site, with an unknown fiscal cost (p. 120). (According to Mr. Steeve, two options were available to the government at this time: legislation and a minister’s directive to the OPA not to proceed (pp. 128-29).)

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<sup>4</sup> Mr. Steeve noted that the *Green Energy Act* had introduced a setback of 550 metres for wind turbines. The gas plant was located under 400 metres from both residences and schools.

<sup>5</sup> Oakville had passed two by-laws dealing with plant size and airshed.

TCE presented location options and “again” raised the issue of force majeure and moving forward with legislation on July 15. Mr. Steeve increasingly felt the Oakville site would be a challenge but made it clear to TCE he was not the one to make a decision (p. 121). Communication with the Premier after this meeting indicated that he (the Premier) was more comfortable with trying to move forward with Oakville (p. 127).

By September, as the long-term energy plan was being prepared, it “came to light” that the power was no longer required in Oakville at either the rate or the speed indicated in the original contract (p. 119). The Premier was also expressing increased sympathy for the argument being put forward by Mr. Flynn respecting the regulatory environment (p. 127).

Mr. Steeve met with the Premier prior to an October 1 meeting with TCE. He was directed to advise TCE that a minister’s directive would be issued. The Premier asked if there was any certainty about the cost of not moving forward with Oakville. Mr. Steeve was unable to provide that certainty. He told the Committee that this was not unexpected as the decision was going to be the subject of ongoing negotiation and mitigation by the OPA and TCE (p. 126). Mr. Steeve also met with senior Ministry staff who asked that he communicate the following points: the Premier and the Minister of Energy had decided to issue a minister’s directive to the OPA to not proceed with the Oakville plant; and that TCE consider not proceeding with litigation so that TCE and the OPA could enter into productive negotiations (pp. 118, 125).

At the October 1 meeting, in addition to speaking to the points above, Mr. Steeve told TCE that the change in power requirements was “the primary rationale” for the decision communicated that day (p. 121).

Mr. Steeve had minimal involvement with the file after his October meetings. His involvement with settlement negotiations was limited, as those conversations were between the OPA, TCE and the Ministry of Energy. He was screened from the Oakville file in April 2011 and had no further involvement. The Secretary of Cabinet, Shelly Jamieson, told him he was screened because TCE had threatened litigation and he was a potential witness. He then met with government lawyers, provided them with his meeting notes, and answered their questions regarding his discussions with TCE (pp. 132, 118).

Mr. Steeve was not familiar with the phrase “Project Vapour” (p. 128). He was also unfamiliar with a \$712 million offer made to TCE in or around April 2011 (p. 126). When asked to comment on references to making TCE whole, he replied that the only time he heard the words “whole” or “close-to-whole” used was during an October 2010 meeting with TCE (p. 120).

Mr. Steeve noted that the two opposition parties had taken a stand on the Oakville plant in advance of the final decision regarding that site, and that

all three parties had made commitments with respect to the Mississauga plant (p. 123).

Mr. Steeve had no direct contact with the office of the Minister of Energy. The line of contact would have been from Sean Mullin to Craig MacLennan. Asked who contacted the OPA to tell them that the Oakville plant would not be going ahead, Mr. Steeve testified that he believed it was Sean Mullin and/or Craig MacLennan (pp. 126-128).

While he expressed respect for the work done by the OPA, Mr. Steeve wondered if earlier and greater community involvement with respect to selection of a project proponent or a physical site might not be essential. It was because the public interest “had no other place to go but to its local member” and through them, to the government, that he and other members of the “political class” eventually became involved in the process (p. 124).

Mr. Steeve had limited involvement with the Mississauga file. His primary interaction was over a two to three week period at the end of October and into early November 2011, when he was both Principal Secretary and acting Chief of Staff in the Premier’s office. During this time he worked with Shelly Jamieson and Giles Gherson, Deputy Minister, Policy and Delivery in Cabinet Office, to obtain the OPS’s advice on how to fulfill the government’s commitment to cancel the gas plant. His involvement with the file ended on the return of the Chief of Staff, Chris Morley (p. 118).

### **Disclosure of Documents**

Mr. Steeve was not involved in the production of documents related to the request from the SCE. Although he was Principal Secretary at the time of the request and for a brief while after, the request was for documents from the Ministry of Energy, the Office of the Minister of Energy, and the OPA (p. 132).

### **GREG ROHN, COALITION OF HOMEOWNERS FOR INTELLIGENT POWER, MARCH 26, 2013**

The Coalition of Homeowners for Intelligent Power (CHIP) was founded in 2004 to oppose the Mississauga gas plant. It consists of a collection of individuals and ratepayer groups. Many of its key members do not live in the vicinity of the proposed plant, nor do they live downwind; rather, CHIP is made up of individuals concerned that “a terrible wrong [was] being foisted [onto the] community” (p. 133). At its height, CHIP counted on the support of 10,000 homes.

Greg Rohn is a small business owner and a lifelong resident of Etobicoke. He joined CHIP in 2005, shortly after it was formed.

## **Involvement with the Mississauga and/or Oakville Gas Plants**

CHIP opposed the construction of the Mississauga gas plant for several reasons. Chief among them was the environmental and health toll that the plant would take on the communities of Etobicoke and Mississauga. Mr. Rohn testified that

it's probably the most heavily polluted area in the country. What we were faced with was the developers' reasoning that this is better than the coal plant at Lakeview. Well, the fact of the matter is that in the immediate area and for the people where this plant was going to be located it would be much worse.

The stacks were a lot shorter than Lakeview. The emissions would blow down on the local neighbourhood, whereas with Lakeview they were tall stacks, and it blew out over the lake  
(p. 134).

CHIP was also concerned about the type of emissions from gas-fired power plants, known as PM<sub>2.5</sub> – “the emissions from these plants are of the smallest particulate matter that gets deep in your lungs” – and how they may affect the health of local residents (p. 134).

CHIP challenged the Mississauga gas plant on several fronts. CHIP members tried to engage politicians both in government and in the opposition. They organized rallies. They also applied to the Ministry of the Environment for an individual environmental assessment of the proposed site, outlining 42 points that it expected the Ministry to address. The Committee heard that CHIP received a form letter in response, refusing their request and failing to address any of their arguments, except for offering to set up a community advisory committee. They appealed the Ministry's decision to the Minister, but got no response.

According to Mr. Rohn, CHIP also vigorously pursued the issue of the gas plant during the 2011 provincial election campaign, believing that it may be their last chance to stop construction:

We had some great support in the last campaign running up to the election. A lot of younger people came in and set up websites and Twitter and Facebook and all that kind of stuff, and we really started getting the word out there. It was really something to see. I know in my own neighbourhood, I'd be driving to work in the

morning, and I would see five times more “Stop the Sherway Power Plant” signs than election signs (p. 139).

During the campaign, CHIP put pressure on all parties to support the cancellation of the gas plant. Ultimately, in the last few days of the campaign, all three major parties either committed to or supported cancelling the plant. However, construction continued after the election, “creat[ing] a lot of fear and anger in the community,” and possibly “put[ting] the government under more duress to come to some sort of deal” (p. 138).

Mr. Rohn advised the Committee that there should be more local involvement in the siting process for gas plants. For CHIP, the issue is not gas plants themselves, but rather their location:

I think that if the community is brought in at the beginning—first of all, in a location like that, you’re not going to get a community supporting you, because it was the wrong location, but we were never against power plants. We were never against power plants in Mississauga or Etobicoke. We were never against any of that. It was strictly the location. It has got to be in the right location, and you’ve got to bring the community into it. It’s a big issue.

I’m not sure what the answer is as to how you gather the community together. We came together because of a mistake. I’m not sure you would have had as strong a group coming forward, willing to help the government figure out how to properly site (p. 136).

Mr. Rohn argued that most people are reasonable and understand the need for new infrastructure investments like power plants; however, “you just cannot drop these things right into a residential neighbourhood. It makes no sense at all” (p. 137).

## **Disclosure of Documents**

Mr. Rohn did not comment on the issue of document disclosure.

## **DAVID LIVINGSTON, FORMER CEO OF INFRASTRUCTURE ONTARIO AND FORMER CHIEF OF STAFF TO THE PREMIER, MARCH 28, 2013**

David Livingston is the former chief executive officer of Infrastructure Ontario, the provincial agency responsible for public procurement on behalf of the Government of Ontario, for lending to public sector authorities, such as municipalities, to undertake infrastructure projects, and for managing real estate owned by the Government of Ontario.

Prior to joining Infrastructure Ontario, Mr. Livingston worked at TD Bank for 30 years, last serving as executive vice-president of corporate development.

In 2012 Mr. Livingston was appointed Chief of Staff to the Premier of Ontario.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. Livingston advised the Committee that he first became involved with the gas plants matter in June 2011, in his capacity as CEO of Infrastructure Ontario, after negotiations between the OPA and TCE had broken down.

In June 2011 the former Secretary of Cabinet (Shelley Jamieson), the former Deputy Attorney General (Murray Segal), and the former Deputy Minister of Energy (David Lindsay) asked him to meet with TCE in order to determine whether it was possible to negotiate a settlement. Mr. Livingston understood that they were looking for ways to mitigate the risks of litigation and to “get a deal where value was created for the money that was going to TCE as opposed to just writing them a cheque for the value of the contract” (p. 151). Mr. Livingston is not an expert in energy-related matters, but he informed the Committee that he had the commercial expertise necessary to meet with TCE officials and identify possible options to help the government resolve the dispute.

Mr. Livingston met with TCE between June 2011 and July 2011 in order to determine, in his words, “what [was] possible” (p. 143). While Mr. Livingston acknowledged that he was the lead negotiator with TCE at that time, he stressed that he did not have a mandate to settle with TCE, nor did he have any signing authority. He described his role as follows:

The first approach or the first step I took was to go and talk to TCE and figure out where they were, what was their interest, what were they looking for. I had a sense of what they wanted. At that point, we started into discussions. I think it's fair to say that what TCE really wanted was—they had a contract to provide power to the province in

Oakville. They wanted another contract to provide power to the province—obviously not in Oakville. So the question was, where was it going to be possible to do that?

...

I would say more that once it became clear what was going to be possible to do, I was coming to the government—the parties to the agreement, if there was going to be one reached, were going to have to be TCE, OPA and the province. So it was more me explaining what was possible and them deciding were they prepared to live with it, as opposed to them saying to me, “Here’s what we’ll do. You go out and sign a deal” (p. 144).

Having determined what TCE was looking for, Mr. Livingston then presented possible options to Ms. Jamieson, Mr. Murray, and Mr. Lindsay for their consideration. No other Ministry, public service, or government officials were involved. According to Mr. Livingston, it was then up to the OPA and the Province to determine whether they were willing to settle the dispute on the terms sought by TCE. Mr. Livingston did not make any specific offers to TCE, nor did he have a clear sense of how much each the options he presented to Ms. Jamieson, Mr. Murray, and Mr. Lindsay would cost.

Mr. Livingston also informed the Committee that there were two other parallel negotiations being conducted by the parties in June 2011 and July 2011. First, officials at TCE were speaking with OPG about the possibility of moving the Oakville plant to another site, including Lennox. Second, Mr. Livingston was involved in negotiations with TCE to draft a binding arbitration agreement, as a means to resolve the impasse without resorting to the courts.

Once the arbitration agreement was signed, Mr. Livingston stopped working directly on the Oakville file. Mr. Livingston also never worked directly on the Mississauga file. While he was aware, as Chief of Staff to the Premier, that the Province had entered into final agreements with TCE and Greenfield, he was not directly involved in these agreements, nor did he review them. Mr. Livingston testified that he was not advised that the cost of relocating the Oakville plant could exceed \$40 million. According to Mr. Livingston, both deals likely went to Treasury Board for consideration prior to being ratified by Cabinet.

## **Disclosure of Documents**

Mr. Livingston was also asked about his role in the disclosure of documents to the SCE in 2012. As Chief of Staff to the Premier in 2012, Mr. Livingston advised that he had no role in the decision not to comply with the two-week deadline imposed by the Estimates Committee, or to redact any documents. According to Mr. Livingston, the Premier was not involved in these decisions either. Mr. Livingston said that such decisions would have likely been made by the parties named in the Committee's motion – the Minister of Energy, the Ministry of Energy, and the OPA – but that he did not know for sure.

Mr. Livingston indicated that while he believed the Minister, the Ministry of Energy and the OPA made best efforts to respond to the Committee's request, he could understand their motivation to withhold and/or redact documents. Settlement discussions between the Province and the proponents of the Oakville and Mississauga plants were ongoing, and public disclosure of the Province's position could have prejudiced the deals. Accordingly,

the Ministry would have [had] to balance the request for the information with the commercial sensitivity of what was going on to try and protect the taxpayer. So they would be taking out information that, if it got into the public domain, could be prejudicial to trying to get a deal (p. 154).

Based on his experience, Mr. Livingston surmised that the Ministry of Energy would have also sought to redact any information that was extraneous to the Committee's request.

Mr. Livingston also discussed with the Committee the practice of using code names. According to Mr. Livingston, the use of code names is a fairly common practice in both the private and the public sectors. Code names are often used to prevent the inadvertent disclosure of commercially sensitive negotiations. Mr. Livingston testified that he likely created the code name "Project Vapour" when working on the Oakville file.

### **JESSE KULENDRAN, ACTING MANAGER OF CONSERVATION POLICY, MINISTRY OF ENERGY, APRIL 4, 2013**

In the past, Jesse Kulendran has worked in the offices of MPPs Linda Jeffrey and Gerry Phillips. Since 2008, she has worked in the Ministry of Energy's Communications Branch, the Deputy Minister's office, and then in the Renewables and Energy Efficiency division. From December 2009 to February 2010, Ms. Kulendran provided assistance to the interim Minister of Energy, Gerry Phillips, and then returned to her Ministry of Energy position. She provided temporary assistance to the office of the Deputy Minister from May to June 2012, and began working in her current

position as the Acting Manager of Conservation Policy in June 2012. For one week in August 2012, Ms. Kulendran worked in the Deputy Minister's office, after which she returned to her current position.

## **Disclosure of Documents**

During Ms. Kulendran's 2010 placement in the Deputy Minister's office, she worked as a policy coordinator. Her responsibilities in this role included the coordination of documents, but not the provision of "advice or information" (p. 169).

During her 2012 work in the Deputy Minister's office, Ms. Kulendran provided support in relation to the Ministry of Energy's appearance before the SCE. Her responsibilities included preparation of briefing and follow-up materials. She was in this position when the SCE demanded production of documents from the Ministry of Energy, and she participated in the initial coordination of the search for documents. Ms. Kulendran took instruction from Serge Imbrogno, Deputy Minister of Energy, and Halyna Perun, Director of Legal Services, in the drafting of emails instructing Ministry of Energy staff to search their records, and advising them of the parameters of the SCE's request (p. 162). Individual staff members, including Ms. Kulendran, were responsible for conducting searches of their own files, and the Freedom of Information Coordinator, Alma Beard, compiled the results. The Legal Services Branch answered questions about privileged information, and screened the documents. Ms. Kulendran was informed by Ryan Dunn, Policy Adviser to the Minister of Energy, that the Minister's Office did not have any documents that were responsive to the SCE's request. This was not communicated in writing (p. 162).

In August 2012, Ms. Kulendran assisted in the Ministry of Energy's preparation for the release of documents to the SCE, because she "knew about the parameters of the motion" and "knew about the document production" (p. 162). During this time, she "did not directly control any content" (p. 171). She was not involved in the redaction of documents or in the subsequent releases of documents by the Ministry of Energy.

The process of searching for documents was "labour-intensive" (p. 163). The Ministry of Energy had never before conducted a search of this nature, and it was "understandable that there may have been some items that were missed" (p. 163). Although she was not working in the Deputy Minister's office at the time, Ms. Kulendran was aware that the search had missed the records of some employees who had either moved into different positions or left the public service. She believes that these errors were corrected when the second search for correspondence was conducted.

At 11:00 a.m. on August 22, 2012, Ms. Kulendran attended a meeting with OPA employees Kristin Jenkins and Ziyaad Mia. The meeting was requested and scheduled by the Ministry of Energy's Legal Services Branch. Halyna Perun, Director of Legal Services, and another legal counsel had planned to attend. Earlier that morning, Ms. Kulendran was informed that neither legal counsel would attend the meeting, and she was instructed to proceed with the meeting. The objective of the meeting was to "review the Ontario Power Authority's non-privileged materials related to the Oakville gas plant. Those materials were in fact a small subset of all the materials that they had prepared for release" (p. 160). The OPA had outsourced its document search, and OPA staff had not reviewed the compiled documents prior to providing them to the Ministry of Energy. Approximately 15 to 20 documents had been flagged by the Minister's Office as not being relevant to the SCE request. For example, the documents included materials related to the Atikokan and Thunder Bay plants, and unrelated transition materials (p. 160).

During the meeting, Ms. Kulendran worked from the Ministry of Energy's copy of the documents, and made notes on the documents themselves. This set of documents was "left with the Deputy Minister's office, and all the Ministry's copies of OPA materials were returned to the Ontario Power Authority" in October 2012 (p. 160). For this reason, Ms. Kulendran cannot provide a copy of her notes from the meeting. Ms. Jenkins and Mr. Mia brought a copy of the documents to the meeting, and placed Post-it notes on the potentially non-relevant pages. The removal of these documents from the package was not discussed at this time. Ms. Kulendran repeatedly informed Ms. Jenkins and Mr. Mia that they must speak with senior management and legal counsel "about what was and was not responsive to the Committee's motion," as the OPA was responsible for complying with the SCE's request (p. 164).

The scope of the SCE request was also discussed during the August 22 meeting. Ms. Kulendran noticed that the OPA had used the search term "southwest GTA", and she advised Ms. Jenkins and Mr. Mia that they might have missed the search terms "Oakville" and "Oakville generating station". Ms. Kulendran observed that "in searching for 'southwest GTA' it seemed that documents had been included about other issues in the region, because the Ontario Power Authority deals with a variety of planning issues as well as conservation, etc." (p. 166). Additional challenges with the search process were also discussed: Ms. Jenkins "had indicated that they had not searched the records of an employee who had departed the Ontario Power Authority" (p. 165). The meeting was "very amicable" and "productive" (p. 161).

Ms. Kulendran did not participate in any further meetings with OPA staff, but she had telephone conversations with Ms. Jenkins in the days following the August 22 meeting. During these conversations, Ms. Jenkins informed Ms. Kulendran that the OPA had undertaken a full review of its documents. They also discussed some confidential banking information

that had been found in the set of privileged documents. Two revised sets of unredacted documents were sent to the Ministry of Energy on August 24 (p. 167).

Ms. Jenkins' allegations in her October 3, 2012 memo that Ms. Kulendran directed the OPA to exclude responsive attachments where the correspondence itself was not responsive, and to exclude "SWGTA," are not accurate (p. 160); she "did not direct the Ontario Power Authority, under any circumstance, to exclude documents. That discussion was about sharing observations; it was not about making decisions for the Ontario Power Authority" (p. 167). She did not have the authority to direct the OPA. Contrary to the claim made in the October 3 memo, Ms. Kulendran did not request a page-by-page review of the documents during the August 22 meeting; this request was made by Ms. Jenkins and Mr. Mia. In January 2013, Ms. Kulendran became aware of Ms. Jenkins' claim that she had provided inappropriate direction regarding the document search. Ms. Kulendran has been interviewed twice by Ministry of the Attorney General legal counsel regarding the allegations.

Emails sent by Ms. Jenkins on August 24 and September 20, 2012, and the OPA's Q&A document from October 1, offer evidence that the OPA made its own decisions about the document disclosure process.

When she worked as a political staffer, Ms. Kulendran held a membership with, and made donations to, the Liberal Party. She maintains occasional contact with former Liberal colleagues who are no longer employed with the party. Since 2008, Ms. Kulendran has been a public servant and has "maintained the values of the public service" (p.172). She has acted in good faith.

### **FRANK CLEGG, CHAIR OF CITIZENS FOR CLEAN AIR (C4CA), APRIL 9, 2013**

Frank Clegg, former President of Microsoft Canada, is the Chair of C4CA, a non-profit, non-partisan, grassroots organization made up of citizens from Oakville and Mississauga. While C4CA was established to oppose the construction of the Oakville power plant, C4CA has since broadened its mandate to oppose the siting of any power plant that is "unreasonably close to homes and schools" (p. 175).

At the height of its work, Mr. Clegg testified, C4CA had an extended reach of 50,000 citizens.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

During his testimony, Mr. Clegg cited three reasons why C4CA opposed the Oakville plant.

First, the plant would contribute to existing air pollution in the Clarkson airshed, which Mr. Clegg described as “stressed” and “already exceed[ing] Ministry of the Environment guidelines for some air pollutants, including PM<sub>2.5</sub>” (p. 175). C4CA was concerned that elevated levels of air pollution would compromise the health of local residents.

Second, the proposed Oakville site would have no setbacks or buffer zones to ensure the safety of residents, despite being “[only] 400 metres from the nearest home, 320 metres from the nearest school, 65 metres away from the closest office complex and only a few metres from one of the busiest railway lines in Canada” (p. 175).

Third, C4CA expressed serious reservations about the procurement and siting process for gas power plants. Mr. Clegg described the SWGTA procurement process as “mainly an engineering, finance and real estate exercise, with limited community involvement or engagement before the contract was awarded” (p. 175).

Later on during its campaign, and relying upon a report prepared by the Independent Electricity System Operator (IESO), C4CA also argued that the Oakville plant was no longer needed as the projected demand for power had decreased.

C4CA secured commitments from every major party (and/or local candidate) to stop the construction of the proposed plant.

On behalf of C4CA, Mr. Clegg made several recommendations to the Committee on how to improve the procurement process for power plants, in an effort to ensure that “this doesn’t happen to another community in our province” (p. 180).

- (1) There should be a basic buffer zone between a power plant and any homes and schools.
- (2) Any proposed power plant site should undergo an environmental assessment prior to a contract being awarded, and perhaps even before proposals are submitted.
- (3) Community input should be sought out before any new power plant is announced. The process should be open and transparent, providing community members with a meaningful opportunity to give feedback.

Mr. Clegg provided the Committee with the example of California, which set up a committee to evaluate proposed sites and where citizens are consulted. According to Mr. Clegg,

The thing I like about it from a business standpoint is that if you’re a proponent and

you already know that that site is going to have problems, then you can decide to use that site or not. I think if citizens are aware that that site is going to be evaluated by the government and it is going to be potentially part of the procurement process, and if that's known upfront, I think people would pay attention and would actually give proper feedback (p. 178).

- (4) More generally, the government should adopt a clearer policy on how it sites gas plants. Clarity in the siting process would give much-needed direction to planners such as the OPA; provide certainty to municipalities and their residents, while allowing them to express their concerns; create a "level . . . playing field" for proponents; and "ensure consistency with siting policies and requirements for other types of sensitive developments, such as wind farms, railway corridors, landfills etc." (p. 175).

## **Disclosure of Documents**

Mr. Clegg advised the Committee that when he was President at Microsoft every major project undertaken by the company was assigned a code name.

## **CRAIG MACLENNAN, FORMER CHIEF OF STAFF, MINISTER OF ENERGY AND INFRASTRUCTURE/ENERGY, APRIL 9, 2013**

Craig MacLennan was Chief of Staff in the office of the Minister of Energy and Infrastructure/Energy from January 2010 until late August 2012. He was absent from his position for approximately three months prior to the October 2011 election (p. 181).

## **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. MacLennan's involvement with the file increased in September 2010, as he attended more meetings with various parties for briefing purposes and to support the Minister. After the decision not to proceed with the plant, he took meetings as needed. He was screened off the file in April 2011 to limit potential litigation testimony (pp. 181, 189).

Mr. MacLennan met with TCE on three occasions. The first was soon after the decision not to proceed, with the Minister and the Deputy also in attendance. Legal counsel took notes. At the second meeting, Mr. MacLennan was accompanied by the Deputy Minister and Sean Mullin, from the Premier's office. Legal counsel again took notes. Based on advice from legal counsel, the Deputy, Mr. MacLennan and Mr. Mullin said very little. Mr. MacLennan's third meeting, again in the company of Mr.

Mullin, was with Chris Breen, TCE's Director of Government Relations. Prior to the meeting, on behalf of himself and Mr. Mullin, he consulted with government legal counsel who provided significant advice and coaching. As instructed, they made sure the meeting was without prejudice. They listened but made no commitments. Legal counsel was briefed following the meeting (pp. 181-182).

Mr. MacLennan was asked what happened to cause the OPA and the Ministry to try and exit the contract with TCE in February 2010, a few months after it had been signed. Mr. MacLennan was not part of the contract process but acknowledged community backlash and referred to "significant discussions on how to get out of it and what our options" were (e.g., legislation, doing nothing and relocation) (p. 186). When asked about the issue and the upcoming election, Mr. MacLennan said his participation in discussions was based on area supply needs as was his advice to the Minister. It was the long-term energy plan, produced later in 2010, that led to the realization that "a transmission solution could be found and the supply needs of the areas had changed" (p. 186).

Reference was made to a Ministry legal opinion from August 2010 which said the risk of legal action was low if TCE was left to its own devices as it was having problems with by-laws. When asked why that approach was not taken, Mr. MacLennan replied that he "wasn't the decision-maker on the file" (pp. 186-187).

Mr. MacLennan was presented with a September 2010 email chain which referred to \$10 million in sunk costs to date and a contract life-time value of \$1.4 billion, in which he was said to be "not happy" (p. 183). Because he had been screened off the file two years before, Mr. MacLennan said he could "talk about what numbers we were talking about back then," which were the sunk costs (p. 184).

Mr. MacLennan was asked who decided to "sole-source the new plant to TCE without going to a bid" (p. 184). His understanding was that the Minister would need to write a directive. While he was not part of the negotiations, "the thought was that the plant could be relocated to an area [Kitchener-Waterloo Cambridge] that needed the power," then given to the same contractor (p. 184).

Mr. MacLennan was presented with an internal OPA email from January 2011 which said that Ministry legal staff had said that the Minister's office "is dead set against any reference to costs, so we need to be prepared to deal with being told they won't do it" (p. 193). When asked why a minister's directive acknowledging costs was not being provided, his interpretation was that costs had not been finalized. It may have been a reference to initial negotiations to relocate to the Cambridge area and the wish not to put costs in a directive because it was "the precursor to finalizing the negotiations, and we probably didn't want to set a number that would undermine the OPA's negotiations" (p. 193).

When first asked about an April 2011 offer of \$712 million rejected by TCE, Mr. MacLennan told the Committee that he was unaware of the offer and assumed it was made after he was screened off the file. He was familiar with an OPA request to TCE to go to the government (pp. 183, 185, 191). Mr. MacLennan was later told that an earlier witness had indicated that he and Mr. Mullin were behind the \$712 million offer to settle, in March 2011. (The OPA had already made an offer to TCE which was rejected.) In response, Mr. MacLennan said that any offer would have to be signed off by the Minister and the Premier. He would not have come up with a \$712 million figure; the OPA would have been asked for a number that was within a commercially defensible range and had some rigour behind it (p. 193).

Mr. MacLennan was asked if he was aware of who decided that TCE needed to be made whole. He had been told by contacts at the OPA that TCE had thought they had heard someone say that or agree to it at a meeting and then had used it “as part of the negotiations” (p. 187).

He later responded to a question about the factors underlying the decision to cancel the Oakville plant. He had advised decision-makers that the area’s supply needs were changing (as indicated in the long-term energy plan), a transmission solution could be found, force majeure was not a certainty, the community was clearly against the plant, and it was likely that the plant could be relocated to an area that needed it (p. 189).

Prior to his departure from the Minister’s office before the 2011 election, Mr. MacLennan was involved in briefings and information gathering as the issue of the Mississauga plant emerged. This was raised as a concern by caucus members but he was not the lead on the file. On his return, Mr. MacLennan supported the new minister in implementing the campaign commitment (pp. 183, 185).

Information presented at the hearings indicated that in July 2012 the Minister announced that cancelling the Mississauga plant would cost \$180 million. A few days later, the Minister of Finance said it would be \$190 million. In explaining the difference, Mr. MacLennan said the \$180 million figure had been provided by the OPA which had indicated these were direct costs. He went on to say that a case could be made for an outstanding \$10 million that allowed for the cessation of construction and for the deal to be closed. Mr. MacLennan was also questioned about a \$5 million “side deal” with Greenfield South with which he said he was not familiar (p. 185).

## **Disclosure of Documents**

Mr. MacLennan was not responsible for coordinating the documents prepared in response to the SCE’s request; the Ministry decided how to collect them (pp. 182, 187). Legal counsel from both the OPA and the

Ministry advised that releasing documents, which contained privileged solicitor-client information, would undermine negotiations and recommended that they not be handed over. It was ultimately the Minister's decision to accept or decline that advice (pp. 182, 185).

Mr. MacLennan was questioned about the number of document releases. While he had left the Ministry eight months before, he understood that the Ministry and the OPA had not searched all of the terms or email boxes that they should have. The Minister's office had no impact on the Ministry or OPA searches (p. 190).

Mr. MacLennan outlined options that were considered with respect to the Committee's request. He believed the Committee was offered a sign-in process for reviewing the documents in-camera but was told it had not been presented (pp. 191-192). Just releasing the documents was another option, but "the legal advice was significant enough that that would compromise the negotiations and put the people at risk even more" (p. 192).

Mr. MacLennan was asked about the lack of responsive documents from the Minister's office, even though some of his own missives appear in email chains. He tended not to save e-mails, based on the capacity of his account. He also admitted that he did not know how to archive emails. Mr. MacLennan could not speak to the email practices of colleagues but did know that Ministry legal counsel and the OPA did save theirs. The ministers he had worked with did not email anything more than requests to chat (p. 194).

### **SERGE IMBROGNO, DEPUTY MINISTER OF ENERGY, APRIL 9, 2013**

Mr. Imbrogno has been Deputy Minister of Energy since April 2, 2012. Prior to this appointment, he was an Assistant Deputy Minister at the Ontario Financing Authority, beginning in March 2008. He has also served at the Ministry of Finance as well as the former ministries of Industry, Trade and Technology and Consumer and Commercial Relations.

In both his capacities at the Ministry of Energy and the Ontario Financing Authority, he was involved in issues related to the relocation of the Oakville and Mississauga plants.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

With respect to the Oakville deal:

- As Assistant Deputy Minister, Mr. Imbrogno worked with Infrastructure Ontario and David Livingston on parts of the arbitration, and with OPG and Infrastructure Ontario on trying to find joint ventures. As Deputy Minister, he worked with Infrastructure Ontario, the OPA, the Ministry

- of Energy, and outside legal counsel to negotiate the relocation of the plant (p. 195).
- The estimate of the sunk costs was \$40 million, to be paid out of the Consolidated Revenue Fund. The Ministry of Energy knew that there would be other to-be-determined costs and benefits associated with the relocation of the plant; the costs would be borne by the ratepayer. The Minister was briefed on the contract and the costs and benefits. Among the costs were \$221 million for the turbines, and another amount for transmission costs. The benefit was that there was a reduction in the monthly payment. The gas management cost has not been finalized (p. 198).
  - The Ministry of Energy would have informed the Minister about all cost components on the deal, not just the \$40 million in sunk costs (p. 205).
  - When the OPA assumed the costs related to the turbines and gas management, the OPA was able to negotiate a lower price for power at the Lennox site (pp. 201-202).
  - The appropriate benchmark for gas delivery costs is \$17,200 – not the current lower amount – because it represents the last competitively procured gas plant (p. 204).
  - Mr. Imbrogno does not know about a \$712 million settlement offer that TCE rejected, but the costs would add up to close to that number (p. 203).

With respect to the Mississauga deal:

- The \$5 million side-deal on the Mississauga plant relates to complex litigation between EP and the Ontario Electricity Financial Corporation (pp. 204-205).
- There are costs and savings on top of the \$190 million in sunk costs (p. 206).

The cancellation of the gas plants means that transmission upgrades for the southwestern GTA will now be needed in 2018 instead of 2029 (p. 201).

During an election campaign, the OPS keeps an eye on the parties' commitments in order to prepare for their implementation (p. 202).

In the future, there should be more municipal involvement in the selection of sites for gas plants (p. 207).

## **Disclosure of Documents**

The search process that the Ministry of Energy used to comply with the SCE's May 16, 2012 request for production was similar to the process

used for complying with *Freedom of Information and Protection Act* requests. It took time to understand the scope of the request and how to search for responsive documents in a challenging time frame. Significant resources were used to collect and organize the documents. The first search was a good faith effort by the Ministry of Energy to provide all responsive documents; no responsive documents were deliberately withheld with respect to the September 24, 2012 tabling (p. 195).

There was no production on May 30, 2012 because of concerns about the disclosure of confidential, privileged and commercially sensitive documents at a time when there were ongoing negotiations and litigation (in the case of the Mississauga plant) or arbitration (in the case of the Oakville plant). The Ministry of Energy and the OPA provided responsive documents on July 11 and September 24. The Ministry of Energy and the OPA conducted independent, but coordinated searches. Shortly before the September 24 tabling, Mr. Imbrogno became aware that no responsive documents had been found in a search of the Minister's Office. The Minister's Office reviewed Ministry of Energy and OPA documents prior to the September 24 release. The October 12 release occurred because he learned on September 28 (due to a September 27 conversation with Colin Andersen) that the initial Ministry of Energy search had inadvertently omitted some documents; Mr. Imbrogno informed the Cabinet Office, David Livingston and the Minister's Chief of Staff about these developments on September 27. On September 28, he instructed his staff to do a second search, and he telephoned the Minister that evening about the second search. Significant human resources were applied to this search, which took priority over all other matters at the Ministry of Energy (pp. 195-196).

The Ministry of Energy and OPA used consistent search methodology in searches leading up to the October 12 release. The Ministry of Energy's search to comply with the SCE's request for production was conducted in good faith (p. 195).

Mr. Imbrogno was not made aware whether Minister's Office staff had noticed obvious gaps in the September 24 documents (p. 196).

Shortly after the September 24 release, Mr. Imbrogno informed Secretary of Cabinet Peter Wallace that Mr. Andersen had informed him that, based on a meeting between OPA staff and the Ministry of Energy staffer Jesse Kulendran, the Ministry of Energy was not following its own search protocol. When Mr. Imbrogno spoke to Ms. Kulendran about this, she indicated that she had not told the OPA to withhold responsive documents. Legal staff were not at the meeting in question. Ms. Kulendran did not do political work at the Ministry of Energy. He learned afterwards that a Ministry of the Attorney General investigation of the matter was inconclusive (pp. 196-197).

Mr. Imbrogno did not direct the OPA to exclude documents, or tell Ms. Kulendran to do so. Ms. Kulendran told him that she had not directed the OPA to exclude documents; she did not have the authority to make a decision or provide direction. The Ministry of Energy was sharing information with the OPA on what the Ministry of Energy was doing with respect to the SCE request for production (p. 197).

He believed that the OPA acted in good faith with respect to the initial search leading to the September 24 tabling. The search for responsive documents has been a learning experience for the Ministry of Energy; lessons have been learned. The Ministry of Energy and OPA were juggling many things at the same time. The Ministry of Energy redacted information that was not responsive to the SCE request (pp. 200-201).

Mr. Imbrogno could not speak to the absence of responsive documents from the Minister's Office concerning the two gas plants, but in the past he had received writings and emails from Minister's Office staff (p. 197).

Mr. Imbrogno normally takes notes at meetings (p. 207).

At the time of the SCE's May 16 request, an arbitration process with TCE was under way, and there was litigation with EIG (which had sued the Province and Greenfield). The OPA was also liable. Negotiations with Greenfield on the relocation had also begun. The negotiations and process were extremely commercially sensitive. There would have been fairly large risks to the taxpayer and ratepayer if these details became public before the deals were finalized (p. 199).

The Ministry of Energy considered all Ministry documents in the September 24 tabling to be confidential, privileged or commercially sensitive; that is why none of them were released to the SCE on the May 30 deadline. On September 24, the Ministry of Energy and the OPA each provided their documents to the Clerk (p. 202).

There was a common list of search terms in the second search, but not in the first search (p. 202).

On October 18, 2012, Mr. Andersen informed Mr. Imbrogno that he was conducting a third search (leading to the February 2013 tabling) because the OPA had inadvertently forgotten to put a search term in its software, and that they were going to look for additional documents (p. 203).

## **STEPHEN THOMPSON, COALITION OF HOMEOWNERS FOR INTELLIGENT POWER, APRIL 11, 2013**

Stephen Thompson is a member of CHIP, and is responsible for political advocacy with the organization.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

As a political advocate for CHIP, Stephen Thompson reached out to politicians from all parties and all levels of government: “we asked for help from everybody; it didn’t matter who. You know, we didn’t have a specific party; we just wanted help, and we got that help” (p. 213). Both before and during the 2011 election campaign, CHIP spoke with local candidates from all parties, asking for their support. Not everyone was willing to give it. Mr. Thompson also advised the Committee that CHIP had no communication with Greenfield and experienced difficulties obtaining documentation or any other information from the company.

Mr. Thompson contended that government ministries operate like “silos” and do not communicate with one another:

You’ve got all these different ministries making all these different decisions but no one wants to talk to each other, and we tried to get them involved. We begged them to get involved with each other and talk to each other. The unfortunate part about it is, you get a minister come in, a minister go out; a minister come in, a minister go out. Then they’re got to learn all over again. It’s just the same process.

Having the OPA around—it didn’t help at all. We would have assumed that the OPA would have been able to help us out. We got very, very little out of them (p. 216).

Accordingly, he thought that the OPA should be reaching out to the community when siting power plants. However, when asked about what role local groups like CHIP could play in the siting process, Mr. Thompson advised that they should not play any role; rather, he stated that “the politicians who get elected should make the right decision. We elect people to do and make decisions based on the intelligent facts that are put in front of them” (p. 213).

### **Disclosure of Documents**

Mr. Thompson did not testify on this issue.

## **SHELLY JAMIESON, FORMER SECRETARY OF THE CABINET AND HEAD OF THE ONTARIO PUBLIC SERVICE, APRIL 16, 2013**

Shelly Jamieson served as the Secretary of Cabinet, Clerk of the Executive Council and head of the OPS from January 2008 to December 2011. Prior to this appointment, she was the Deputy Minister of Transportation, Vice-President of Operations and eventually President of Extencicare Canada and Executive Director of the Ontario Nursing Home Association (now the Ontario Long-Term Care Association).

Ms. Jamieson is currently the Chief Executive Officer of the Canadian Partnership Against Cancer as well as a member of the Board of Directors of High Liner Foods.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

As Secretary of Cabinet, Ms. Jamieson identified the expertise needed to work with the OPA to support very complex and politically sensitive commercial decisions and negotiations. Input was required from numerous ministries and agencies (p. 219).

After it was decided to terminate the Oakville plant, Ms. Jamieson coordinated the discussions between the various parties, and ensured that they and the government had the necessary information at critical stages of the negotiations. Direction came from: the Premier, the Executive Council, or the Premier's Chief of Staff. In the summer of 2011, she asked the Deputy Minister of Policy and Delivery in Cabinet Office, Giles Gherson, to take the lead on the coordinating role (p. 219). David Livingston, head of Infrastructure Ontario, was asked to serve as an intermediary between the public service, the OPA and the proponents of the Oakville plant. In these early days, the idea was to assess whether an agreement was even possible (p. 219). The group model used on the Oakville file was also used on the Mississauga file after the 2011 election. When Ms. Jamieson left the public service in December 2011, active negotiations were still proceeding on both files (p. 220).

After consulting with the former Deputy Attorney General, Ms. Jamieson decided to screen three individuals from further involvement in the Oakville negotiations because they were potential witnesses in threatened litigation and because it was important that one voice control the negotiations (pp. 220, 223, 227). When she assumed the lead in the implementation of the government's decision, she learned that "parallel conversations may or may not have committed people to other things." Colin Andersen was frustrated by the fact that political staff were in contact with TCE and Greenfield (pp. 229-30).

About a week before October 7, 2010, the Deputy Minister of Energy (David Lindsay) informed her that the Minister was considering sending a letter to the OPA to cancel the Oakville plant. Lindsay would have heard this directly from the Minister of Energy or the Minister's Chief of Staff (p. 221). She received confirmation of this course of action from the Premier's Chief of Staff. The OPA

was informed via a letter from the Minister of Energy. Negotiations between the OPA and the proponents then went on for months without any progress; by the spring of 2011, negotiations had broken down. In April 2011, TCE gave notice that it intended to litigate (p. 220). The Premier's Office then asked Ms. Jamieson to determine if there was a deal to be had to avoid litigation, and to investigate the options (p. 220). She assembled a group to assist with that process; it included David Livingston. For an intense three-week period, Livingston was the only person speaking to the proponents, while the group worked behind the scenes (p. 221).

The decision to cancel the Oakville plant was made by the Premier's Office and Cabinet. The direction given to Ms. Jamieson was "unambiguous" – investigate all options (e.g., litigation, negotiated settlement, arbitration, mediation).

Ms. Jamieson does not know the actual date of the decision to cancel the Oakville plant; it was made by October 7, 2010 when the letter was sent to the OPA. The matter did not come to Cabinet that fall, but it might have been discussed *in camera* when civil servants were not present. She does not know precisely when Cabinet was made aware of the decision to cancel Oakville.

The Secretary of Cabinet is in the room during Cabinet meetings, and attests to the discussions in the room by signing the Cabinet minutes. The Secretary of Cabinet is in the room when the Cabinet makes a recorded decision. Cabinet Office plans the agenda and keeps track of Cabinet minutes. The cancellation of the Oakville plant was discussed for the first time at Cabinet on July 29, 2011 (p. 221).

Ms. Jamieson was aware of "Project Vapour" and "Project Vapour-lock;" the use of code names is quite common and these code names were known to the Secretary of Cabinet, the Cabinet and the Premier's Office (p. 222).

In the spring of 2011, attempts were made to identify the costs of cancelling the Oakville plant. This was not a contract between the government and the proponents, but rather between the OPA and the proponents.

The group had to become familiar with the contract; it relied heavily on the OPA's experience. It was known that there would be more than just the sunk costs (pp. 222, 224).

Once Cabinet authorized the Minister of Energy to deal with TCE, Ms. Jamieson would have called the Deputy Minister of Energy to say that the Cabinet minute was signed and that the Ministry of Energy was authorized to proceed (p. 222).

There was no cap on the mandate at that point in the process (summer 2011). This is normal for all negotiations. The mandate was to investigate and bring back scenarios with details. Decisions would be made by the Premier or the Chief of Staff, but the OPS would implement them (p. 223). During the spring of 2011, there were many back-and-forth offers in the negotiations between the OPA and

TCE (p. 223). TCE spent a lot of money on Oakville. The full costs of cancellation would not have been known in the summer of 2011 (p. 224).

Regarding the Mississauga plant, the options provided to the government by the group included reviewing the siting of the gas plants and the passage of legislation. “I got an unambiguous decision back that we were to proceed to stop the Mississauga plant” (p. 225). When Ms. Jamieson left the OPS, the government and the OPA were in negotiations with EP. Costs were starting to come in, but there was still no final estimate of the costs. The best-case scenario was to write a cheque and have a proponent still deliver power (p. 225). As she was leaving the OPS, Ms. Jamieson became aware of EP's American funder, and was certainly aware “all the way through that Ontario taxpayers and ratepayers were on the hook for those costs – all of the costs” (pp. 225-226).

There are ways to improve the process of siting gas plants (pp. 228-29).

Discussions to cancel the Mississauga plant started before the 2011 general election. There was talk in the spring of 2011 of reviewing the environmental assessment. The Premier's Office asked questions about the plant in July and August 2011 without specifying why they were asking for information. The decision to cancel was not made before the election was called (p. 231).

Ms. Jamieson was aware that the OPA had been directed to submit two settlement offers to TCE in the spring of 2011, before she became the coordinator; both offers were rejected. She was not aware of the details or where the direction (to submit settlement offers) came from, only that the OPA was trying to reach a settlement. She discussed the matter with Chief of Staff Chris Morley after the notice of litigation was sent (p. 232). David Livingston was also briefed by the Deputy Minister of Energy on the failed offers when he was brought onboard.

## **Disclosure of Documents**

Ministers and their political staff are responsible for their own records and follow the law on document preservation. The civil service is not responsible for the records of Ministers and their staff. Ms. Jamieson received emails and other correspondence from political staff about “Project Vapour” and “Project Vapour-lock” (p. 226).

Preparing for document requests is “almost a cottage industry” inside government. There are well-worn processes for searching email, understanding the scope of the request, and determining the affected ministries. Experts assist civil servants with these requests, both in terms of IT support and privacy and confidentiality issues (p. 227).

Rules on redaction mostly govern the removal of non-responsive information. A “redacted” notation would appear on a redacted document. Decisions about redaction are not made by those closest to the file, but rather by professionals adhering to a decision-making tree (p. 227).

Ms. Jamieson has been involved in previous lawsuits and she understood the importance of preserving documents. When notice of litigation is received, there is a process to ensure that records are protected. When TCE gave notice of litigation, the civil service would have done what they were supposed to do to prepare for it. Ms. Jamieson would have notified civil servants — not political staff — about the need to preserve records. Political staff were interviewed by Crown Attorneys; notes from those interviews were then turned over to Ms. Jamieson. The notes are in the legal opinion released to the SCJP by Peter Wallace (p. 231). The destruction of records would damage Ontario's prospects in a lawsuit (p. 232).

The release of confidential and privileged information would have prejudiced the Province's negotiating position (p. 232).

A ministry might not know whether something had gone to a full Cabinet meeting as opposed to a walk-around; it would be advised after a walk-around. Walk-arounds would be reported into the next full Cabinet meeting. The minute of the July 27, 2011 Cabinet meeting (provided by Peter Wallace) would not have been released in the first document release because it was not responsive to the original document production order (p. 233).

### **KRISTIN JENKINS, VICE-PRESIDENT OF COMMUNICATIONS, ONTARIO POWER AUTHORITY, APRIL 16, 2013**

Kristin Jenkins is OPA's Vice-President of Communications, before which she was OPA's Director of Stakeholder Relations. She has been with the OPA since 2009.

Before joining the OPA, Ms. Jenkins held several other roles specializing in communications and public affairs, including as Vice President of Public Affairs at the Toronto Community Housing Corporation and Vice President of Communications and Marketing at Waterfront Toronto. She also has nine years' experience in healthcare communications.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Ms. Jenkins was informed of the Liberal Party's plan to cancel the Mississauga plant on the evening before the announcement (p. 237). She became aware of cost estimates a few months later. The OPA and the Ministry of Energy communicated about costs throughout the negotiation process, sharing information about potential sites and the cost of alternative sites (p. 237). Ms. Jenkins was aware of discussions about gas management and delivery costs, transmission costs, and costs associated with connecting the new facility to the grid (pp. 237-238). The OPA was "forthcoming and open about the costs of the cancellation" (p. 238).

Ms. Jenkins is not aware of the total cost of the cancellation and relocation of the Oakville plant. She is aware that there are costs associated with

gas management and delivery, with connecting the Napanee plant to the grid, and with transmission upgrades “that will have to be advanced in the southwest GTA as a replacement for the power plants that weren't built there” (p. 248). The Auditor General reported that there will be savings associated with the relocation of the Mississauga plant, and this will also be the case in Oakville. Ms. Jenkins does not know the total costs and savings, as many factors are still unknown. The sunk costs for Oakville are \$40 million.

## **Disclosure of Documents**

In May 2012, the OPA's legal staff conducted a document search and review to comply with the SCE request. No outside firm was involved in the OPA's search (p. 234). The OPA sent copies of the compiled documents to the Ministry of Energy in July and August for its review. The OPA was not given copies of the Ministry of Energy documents until a few days prior to their disclosure in September (p. 239). Ms. Jenkins' only involvement in the initial search was in the areas of communications and issues management (p. 234).

At 10:00 a.m. on August 22, 2012, Ms. Jenkins attended a meeting with Ziyaad Mia, OPA Legal Counsel, and Jesse Kulendran, a staffer in the office of the Deputy Minister of Energy. The meeting was requested by the Ministry of Energy's Director of Legal Services, Halyna Perun. Mike Lyle, the OPA's General Counsel, requested that Ms. Jenkins attend. The purpose of the meeting was for Ms. Kulendran to “go over issues the Ministry had with [the OPA's] non-privileged Oakville documents” (p. 234). During this meeting, Ms. Kulendran informed Ms. Jenkins and Mr. Mia that the Ministry of Energy was using a “strict interpretation of the wording of the Estimates Committee motion” and that some of the OPA's documents were not consistent with the search parameters used by the Ministry of Energy (p. 234). Ms. Kulendran told them that this approach had been discussed with the Ministry of Energy's freedom of information and legal staff, and that the OPA was expected to follow it (p. 240). At Ms. Kulendran's request, she and Mr. Mia reviewed the documents page by page, applying the Ministry of Energy's approach, while Ms. Jenkins wrote the reasons for document exclusions on Post-it notes. Ms. Jenkins and Mr. Mia were instructed to apply the Ministry of Energy's approach to their search, and to submit a new set of documents to the Ministry of Energy by 5:00 p.m. that day. Ms. Jenkins and Mr. Mia did not commit to follow these instructions, and they advised Ms. Kulendran that the approval of Colin Andersen would be required. They did not discuss the OPA's search terms, “did not tell Ms. Kulendran that an outside firm had searched [the OPA's] documents, and did not say that [the OPA's] documents had not yet been reviewed for relevancy” (p. 235).

The direction given by Ms. Kulendran on August 22 was that “the documents needed to be correspondence, that they needed to fall within

the dates of the motion, and that the correspondence needed to mention Oakville or Mississauga in the correspondence itself; otherwise the correspondence and any attachments to that correspondence were to be excluded” (p. 235). She also instructed the OPA not to use the terms “SWGTA” or “southwest GTA” as proxies for “Oakville” (p. 235).

After the meeting, Ms. Jenkins and Mr. Mia reported Ms. Kulendran's instructions to Mr. Andersen and Mr. Lyle. Mr. Andersen decided that it was important to be consistent with the Ministry of Energy's approach to document production. The OPA followed Ms. Kulendran's instructions, and provided a new set of non-privileged Oakville documents to the Ministry of Energy at 5:00 p.m. that day. Over the next 48 hours, the OPA applied Ms. Kulendran's approach to the privileged Oakville and Mississauga documents, and delivered ten boxes of re-screened documents to Ms. Kulendran and another staff person from the Minister's office at 7:30 p.m. on August 24.

On September 24, the OPA disclosed about 27,000 pages of documents (p. 235). Following this release, the OPA discovered that some terms and employees had been missed in the search. Mr. Andersen notified the Clerk of the SCE, and OPA staff worked “around the clock” to disclose the documents that had been missed (p. 245). On October 2, Mr. Andersen informed Ms. Jenkins that the approach Ms. Kulendran had instructed the OPA to use was not the approach that had been used by the Ministry of Energy. Mr. Andersen had received this information from Serge Imbrogno, the Deputy Minister of Energy. Ms. Jenkins then reviewed her notes from the August 22 meeting, and sent an email to Mr. Andersen on October 3 to confirm the direction that had been provided by Ms. Kulendran. The documents that had been removed based on Ms. Kulendran's instructions were re-screened. On October 12, the OPA disclosed 14,000 pages of documents, of which 6,400 had been removed based on Ms. Kulendran's screening instructions, while another 7,600 were the result of adding new terms and employees to the search parameters (p. 242). A law firm, Goodmans, was retained to assist with the second document search. This firm helped the OPA to identify documents already produced after the first search.

On October 1, the OPA drafted a “Key Messages and Questions and Answers” document; it indicated that some terms and employees had been missed in the initial search. This document was written before the OPA became aware on October 2 that the screening approach they were directed to use by Ms. Kulendran was not the approach used by the Ministry of Energy. The document “was a draft, and it was revised after the information we [the OPA] received on October 2” (p. 245).

Ms. Jenkins' October 3 email was sent to Mr. Andersen, Mr. Mia, and Mr. Lyle. She later forwarded the email to Will McDowell, a lawyer she retained in the fall of 2012.

The OPA retained litigation lawyers at Lenczner Slaght to advise staff prior to their appearances before the SCJP, and to conduct a review of the document disclosure process. A chronology of the document disclosure process and recommendations for future document disclosures were reported to the OPA's board of directors. PricewaterhouseCoopers also prepared a report. In future cases of document requests and searches, the OPA will "need a written protocol with the Ministry," as well as a "clear understanding" of what is being requested (p. 247).

### **JIM McCARTER, AUDITOR GENERAL OF ONTARIO, APRIL 17, 2013**

Jim McCarter was the Auditor General of Ontario from September 2003 until April 2013. Prior to this, Mr. McCarter served in several auditing roles, including as Ontario's Assistant Provincial Auditor and the Government of Ontario's first Chief Internal Auditor (at the level of Assistant Deputy Minister).

On April 15, 2013 Mr. McCarter released his report into the costs of cancelling the natural gas power plant in Mississauga.<sup>6</sup> A similar report concerning the cancellation of the Oakville gas plant will be released by the Office of the Auditor General in August or September 2013 (p. 266).

### **Involvement with the Mississauga and/or Oakville Gas Plants**

In his testimony, Mr. McCarter summarized his Office's investigation into the cost of cancelling the Mississauga gas plant. His audit found the final cost of the cancellation to Ontario's taxpayers and ratepayers to be "about \$275 million" (p. 252). This total was based upon an estimate of the complete costs of the cancellation and relocation over 20 years offset by a smaller amount of savings (p. 261). To put this in context, Mr. McCarter stated:

In essence, given that the construction of the Mississauga plant was estimated to cost slightly less than \$275 million, and we still have to pay for the Lambton plant, the people of Ontario will have essentially paid for two power plants but have gotten just one (p. 252).

Before the inclusion of any offsetting savings, Mr. McCarter reported that his audit team found "about \$350 million in costs associated with the cancellation and relocation" of the Mississauga gas plant (p. 252). He specifically identified several sources for this cost:

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<sup>6</sup> Office of the Auditor General, [Mississauga Power Plant Cancellation Costs](#) (April 2013), accessed April 26, 2013.

- \$150 million to pay the US-based lender that provided credit to Greenfield for the construction of the power plant, \$90 million of which was “related to penalty fees for cancelling the project” (p. 252).
- \$43.8 million reimbursed for sunk costs, of which more than 80% was for labour costs claimed by Greenfield (p. 252).
- \$15 million in the settlement of an unrelated matter (Keele Valley) and legal fees. Mr. McCarter estimated that the government was required to pay Greenfield “about \$8 million more than they otherwise would have been entitled to” (pp. 252, 253).
- Repayment of Greenfield’s suppliers, including “\$3 million in equipment rental charges that the builder racked up by not returning rented construction equipment until more than a year after construction had stopped” (p. 252).
- Approximately \$76 million in future costs for the construction of a new plant in Lambton and the additional costs (such as line loss) associated with transmitting power from there to the GTA (p. 253).<sup>7</sup>

Against this \$350 million total, Mr. McCarter’s audit team found an estimated \$76 million in savings, which came from two sources. First, it pointed to the ability to reuse or repurpose equipment and engineering work from the Mississauga plant, which was reflected in a slightly lower rate for electricity from the Lambton plant. Of the \$80-100 million in reusable equipment, the Auditor found that the OPA was able to recover about \$20 million through lower rates (p. 258). Second, the delay in constructing a new power plant meant the Province was spared the liability for three years’ worth of electricity that it would have incurred had the Mississauga plant been constructed. In addition, Greenfield stands to reap a savings of approximately \$65 million based on lower natural gas transportation costs (p. 252).

According to Mr. McCarter, the cancellation of the Mississauga gas plant was costly because of the difficult negotiating position that the OPA was in, combined with the high financing costs of Greenfield’s line of credit. Construction of the Mississauga plant was well underway when the government publically announced its intention to cancel the project. This put the OPA in a “challenging negotiating position” as they were under pressure to get construction stopped quickly while Greenfield had an incentive to continue construction to increase their leverage (p. 255). Greenfield was able to use this advantage to demand compensation for labour costs, which they did not completely document, as well as repayment of their financing costs (pp. 252, 257). The high cost of paying cancellation penalties and reimbursing Greenfield’s creditors

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<sup>7</sup> These are the rounded figures given by Mr. McCarter in his testimony. For the complete figures and totals, please refer to the Auditor General’s report on the Mississauga plant cancellation.

surprised everybody, according to Mr. McCarter. Greenfield was paying a 14% interest rate on its line of credit, ultimately increasing the costs of cancelling the contract (p. 256).

Given these constraints, Mr. McCarter testified that he could find no wrongdoing on the part of the OPA – it was attempting to make the best of a poor negotiating position (p. 252). Cancelling the contract outright (and exposing the Province to litigation) or legislating a solution (and potentially impacting future negotiations between the government and suppliers) were both inherently risky (p. 262).

### **Disclosure of Documents**

When asked about difficulties in obtaining information for his report, Mr. McCarter stated that his team “found the OPA quite co-operative in providing us with the information that we needed” (p. 257). Information was not available concerning some of Greenfield’s costs, particularly for labour. Although requests were made to Greenfield through the OPA, Greenfield declined to provide complete documentation (pp. 257-258).

In terms of when the OPA would have had complete information concerning the cancellation of the contract, Mr. McCarter confirmed that the OPA would have “had a pretty good understanding of what those hard costs were” by July 2012 (pp. 265-266). At least \$245 million had already been paid by that point in time. Mr. McCarter could not comment on what information or documentation the Ministry of Energy had or on the nature of its communication with the OPA (p. 265).

Mr. McCarter also testified that there could be a risk of documents being disclosed during an on-going negotiation, but acknowledged that there are precedents for a Legislative Committee keeping such disclosures secret (pp. 261, 263).

### **DAVID LINDSAY, FORMER DEPUTY MINISTER OF ENERGY, APRIL 18, 2013**

David Lindsay was appointed Deputy Minister of Energy and Infrastructure in June 2010 and served until his retirement from the OPS in March 2012. Previously, Mr. Lindsay held the position of Deputy Minister in a number of ministries, including Northern Development, Mines and Forestry; Natural Resources; and Culture and Tourism, stretching back to 2006.

Before joining the OPS, Mr. Lindsay was the President of Colleges Ontario (2004-2006), President and CEO of Ontario SuperBuild Corporation (1999-2003), and President and CEO of the Ontario Jobs and Investment Board (1997-1999). He also served as Principal Secretary and Chief of

Staff to Premier Mike Harris during the first two years of that administration (1995-1997).

Currently, Mr. Lindsay is the President and CEO of the Forest Products Association of Canada and has started his own consulting firm, Strategic Win Consulting.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

During his testimony, Mr. Lindsay addressed topics pertaining to the negotiations related to the cancellation of the Mississauga and Oakville gas plants. He testified that the Ministry of Energy was involved in setting up a “negotiating mandate,” determining the options in the discussions with the contractors. This mandate would have been complicated by the goals of the energy system, which he described as

[maintaining] the integrity of the electrons . . .  
. . . in the system, . . . its best  
financial/fiduciary responsibilities, and the  
public good and the public interest. Those  
three buckets of things, you’re trying to  
balance . . . The negotiating mandate is to  
maximize all of those (p. 270).

Mr. Lindsay also reported that the Ministry of Energy and the OPA were seeking leverage (a “back pocket hammer”) that would aid negotiations. He cited the example of the government bringing forward legislation to act as leverage, but did not recommend such a course of action (p. 271).

In terms of the proposed costs of the project, Mr. Lindsay testified that while he initially sought a “firm cap” on costs prior to negotiations, “it was recognized that we didn’t have enough details to even come up with a firm cap” (p. 271). Throughout the negotiations, the Mr. Lindsay stayed in touch with the OPA to receive information concerning the negotiations and the costs, but only in a general or “ballparking” sense (p. 274). The specific costs were “difficult to ascertain” (p. 274). The final costs for the Mississauga cancellation were not fully known by Mr. Lindsay until after the announcement of a final deal (p. 274).

Mr. Lindsay provided information concerning the distinction between taxpayers and ratepayers found in some of the disclosed documents. He noted that there was legislation that prevented a minister from “committing the treasury or committing the taxpayers to money without having had treasury board approval” (p. 272). This was complicated by the position that the OPA was in:

[U]nder normal circumstances the costs  
incurred by the Ontario Power Authority are  
borne by the rate base. If it is determined

that because some of these costs are due to a government decision and should not appropriately be on the rate base, then they would be borne by the taxpayers on the tax base. But because that hadn't been determined yet, Minister Bentley would not be committing the tax base, but the Ontario Power Authority were concerned they had a fiduciary responsibility to protect the rate base (p. 272).

The OPA wanted assurances that this would be discussed and communicated it to the Ministry of Energy (p. 272).

Mr. Lindsay's testimony also sheds light on the normal process of decision-making within government, referring several times to a "four corners meeting" (pp. 274-275). These meetings would include the Minister and Deputy Minister as well as representatives of their political and bureaucratic superiors, the Premier's Office and Cabinet Office, respectively. Based on these meetings, Mr. Lindsay confirmed that the direction to relocate the Oakville gas plant came from the Premier's Office, and not from the Ministry of Energy or the Minister (p. 275).

### **Disclosure of Documents**

Mr. Lindsay reported to the Committee that when he retired from the OPS in March 2012, he did not keep any documents nor did he retain his Outlook calendar (p. 269). Because he was not Deputy Minister when documents were requested by the Committee, he was not involved in that process (p. 279).

While he was not involved with the document search and disclosure, Mr. Lindsay did speak generally on a number of related issues in his capacity as former Deputy Minister of Energy. Mr. Lindsay noted that on projects with sensitive information, the use of "code names" was not uncommon (p. 282). He also confirmed that there was a potential risk to the taxpayer should certain documents have become public prior to the conclusions of negotiations with the contractors (p. 276). Finally, Mr. Lindsay acknowledged that if political staff were directing the OPA in its search and disclosure of documents, this would not have been "normal practice" (p. 272).

### **SEAN MULLIN, FORMER DEPUTY DIRECTOR OF POLICY, PREMIER'S OFFICE, APRIL 23, 2013**

Sean Mullin is the former Deputy Director of Policy with the Office of the Premier.

Mr. Mullin joined the Office of the Premier in 2007 as a policy advisor. From 2007 to 2009 he was responsible for finance and economic policy, including the annual budget process. In 2009 Mr. Mullin was appointed Deputy Director of Policy, at which time he assumed responsibility for energy policy.

Mr. Mullin left the Office of the Premier at the end of the 2011 provincial election campaign.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Sean Mullin advised the Committee that he participated in a series of meetings with TCE between December 2009 and April 2011. He indicated that 30% to 40% of his day consisted of meetings with stakeholders such as TCE, and were a “routine” part of his work (p. 286).

In December 2009, shortly after he was appointed Deputy Director of Policy, Mr. Mullin met with officials at TCE for the first time. He characterized this meeting as a “meet-and-greet,” held at the request of TCE (p. 286). The request was not unusual; at that time, Mr. Mullin was meeting with stakeholders from across the energy sector. During this meeting, Mr. Mullin testified, TCE told him about the company. They may have also “indicated that they were having problems” with the Oakville plant (p. 286).

According to Mr. Mullin, the problems cited by TCE in their first meeting escalated, and the company asked for another meeting with the Premier’s Office in June 2010. Mr. Mullin accompanied Jamieson Steeve (Principal Secretary to the Premier) to this meeting, at which time TCE asked for “a legislative solution” to its problems with the Oakville plant (p. 286). No officials from the Ministry of Energy or the OPA attended this meeting, but Mr. Steeve had the Premier’s permission to meet with TCE. Mr. Mullin characterized this meeting as “without prejudice” and “exploratory in nature” (p. 285). At the time, the decision had not been made to cancel the plant; rather, TCE communicated “their challenges and their problems” and asked whether the government was “willing to pass legislation to override the local concerns” (pp. 292, 296).

During the summer of 2010, Mr. Mullin learned from Ministry officials and the OPA that demand projections for the SWGTA had changed and a plant was no longer needed to meet electricity demands in the Oakville area:

Once we found out that the lights would stay on after 2014 without a gas plant in Oakville, then suddenly a transmission solution was now possible again. A transmission solution was possible in 1999,

but it was not possible in the first half of 2010. Once the demand forecasts had changed, it was now possible to get by. So now the issue facing the government was not, “Keep the lights on or cancel or move a plant”; it was, “Yes, this plant could be useful, but it’s not necessarily needed in this exact location versus the public opposition to it.” That was, I think, a very different decision (p. 290).

According to Mr. Mullin, the Premier and the Minister of Energy ultimately made the decision to cancel the Oakville plant at the end of September or the beginning of October 2010. A consensus quickly emerged that the government should try to negotiate with TCE, with a view to avoiding the risks associated with litigation and to obtaining some value for ratepayers and taxpayers out of monies paid. It was also agreed that the OPA should start negotiating as soon as possible in order to limit any further progress on the plant and any subsequent costs.

Mr. Mullin met with officials from TCE in October 2010, shortly after the decision was made to cancel the Oakville plant. Over the course of two meetings, Mr. Steeve (acting on behalf of the Premier) informed TCE that the government would not be proceeding with the Oakville gas plant and asked that TCE and the OPA “enter into negotiations to mutually resolve the matter” (p. 285). Mr. Mullin emphasized that “no offers [were] made on our part in those meetings, and there were no commitments made” (p. 293). Mr. Mullin testified that he did not know why TCE later said that they had negotiated during those meetings, or that they had made any kind of offer or commitment. One of the potential options discussed, Mr. Mullin acknowledged, was moving the contract with TCE to Kitchener-Cambridge-Waterloo.

After the announcement was made, Mr. Mullin was “kept abreast” of the negotiations between the OPA and TCE, but only “at a very high level” (p. 294). He was aware that offers were going back and forth (and of the amounts potentially involved), but not of any of the details. Mr. Mullin testified that there was a lot of uncertainty about the costs:

The sunk costs were \$40 million, in that range. We knew that those would be a cost, but other than that, until the negotiations occurred and both sides were able to reach an agreement, we didn’t know what the outcomes would be in that scenario (p. 287).

Mr. Mullin then met with TCE again in April 2011 at the request of the company. He testified that at this meeting, which was attended by staff

from the Minister's office, the Deputy Minister and legal counsel, TCE attempted to convince them that "their proposal . . . was acceptable" (p. 296). However, according to Mr. Mullin,

it was getting into a level of detail—engineering issues that the two sides were arguing over—that quite frankly wasn't something that we were able to appreciate. That's precisely why we had the OPA undertake the negotiations. I think at this point, TCE had thought that the negotiations weren't going well and they wanted to meet with the government. We met and listened after talking to counsel, but that was the extent of that meeting (p. 296).

No commitments were made. Shortly thereafter, Mr. Mullin and Craig MacLennan (Chief of Staff to the Minister of Energy) met with Chris Breen, TCE's director of government relations. On the advice of legal counsel, the meeting was held "without prejudice, and after hearing from TCE we again made no commitments" (p. 286). During this meeting, Mr. Breen advised them that the company would pursue the matter in the courts, and that it "wasn't . . . bluffing about going to litigation" (p. 297).

Towards the end of April TCE filed notice of its intention to sue the government. Mr. Mullin was subsequently advised by Mr. Steeve that the Secretary of Cabinet, Shelley Jamieson, had decided to screen them (Mr. Mullin and Mr. Steeve) off the file. It was his understanding that he should no longer be involved in the Oakville file because he "could potentially be called to give evidence or be a witness" (p. 290). Mr. Mullin was debriefed by counsel at Ministry of the Attorney General and thereafter ceased participating in the file. According to Mr. Mullin, any meeting request or other mention of his name in connection with the Oakville matter after April 2011 was "inadvertent" – "I was very careful not to have any involvement" (pp. 295, 297).

Mr. Mullin's involvement with the Mississauga plant was very limited. While he was aware that the government had made a campaign promise to cancel the Mississauga plant, he left government after the election and "was not involved in the implementation of that campaign commitment in any way" (p. 286).

## **Disclosure of Documents**

As Mr. Mullin had ceased working for the government a half year before the SCE requested documents related to the Mississauga and Oakville gas plants, he had no comment to make on this matter.

## **CHRIS BENTLEY, FORMER MINISTER OF ENERGY, APRIL 23, 2013**

Former MPP Chris Bentley was Minister of Energy from October 20, 2011 to February 11, 2013. Mr. Bentley has served in a number of other roles in Cabinet, including as Minister of Labour (2003-2005), Minister of Training, Colleges and Universities (2005-2007), Attorney General (2007-2011), and Minister of Aboriginal Affairs (2010-2011, 2012-2013).

He was elected in 2003 to represent the constituency of London West and was re-elected twice. He resigned from the Legislative Assembly in February 2013.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

When appointed Minister of Energy, Mr. Bentley became responsible for the gas plants file. At that time, the OPA and TCE were in arbitration over the cancellation of the Oakville plant, and the government had recently committed to stopping construction of the Mississauga plant and relocating it (pp. 302, 303).

When appearing before the SCE in May 2012, Mr. Bentley tried to protect the interests of Ontarians, and could not speak in much detail because of the ongoing negotiations and litigation (pp. 302, 304).

The Ministry of Energy's figure of the total cost to taxpayers for cancelling the Mississauga plant (\$180 million to \$190 million) differed from the figure in the Auditor General's report (\$275 million) because of differing methodologies (pp. 306, 307, 310-311, 316-317). The Mississauga agreement was reached on July 9, 2012. The next day, Mr. Bentley reported the costs "in two different baskets" (p. 306). The first "basket" was \$180 million spent by the government and the OPA for sunk costs (i.e. engineering, construction work, payout to EP's financier). Later in the week, another \$10 million was added to this amount. Another \$85 million (not included in the \$180 million) was re-purposed in the negotiations in order to reach a commercially reasonable deal. The Auditor General used a different approach in his report; Mr. Bentley accepts the Auditor General's accounting (pp. 306, 307, 308, 311, 317). When the agreement and the \$180 million cost to the Province were announced on July 10, "we did say that there were other costs spent by the OPA, the people of Ontario, totalling \$85 million, which were not in the \$180 million, but they were part of the negotiation to reach a new agreement" (p. 307).

On the Oakville agreement, the sunk costs were \$40 million. In addition, "we had a commercially reasonable deal negotiated by the parties and the OPA. We did mention that there was \$210 million, I think, that the OPA was paying as part of this" (pp. 307-08).

Mr. Bentley was briefed on the proposed MOU with TCE on the Oakville plant, but the briefing did not identify the total cost. A number of costs had yet to be calculated. The out-of-pocket payment for the Province was the \$40 million for sunk costs. Colin Andersen and others were at the briefing,

I rely on the experts at the table to give me a review and to tell me at the end of the day if we have a commercially reasonable and defensible contract, and the answer is yes. They didn't have all the numbers—they still don't, I don't believe, have all the numbers—but they could say, on the basis of the back-and-forth negotiation, that we have a commercially reasonable agreement, and that's the basis on which we were able to proceed, because I wouldn't sign it unless we did (pp. 309-310).

Regarding the Mississauga settlement, the costs were presented in the July 12, 2012 document; the Keele Valley matter and the no-interest loan were added a week later. There were other matters yet to be settled, such as the Province assisting with financing, a land sale, and specific on-site costs. The July 10, 2012 document was prepared by Mr. Bentley's office, based on information from the OPA (p. 310).

The figure presented in July 2012 was \$265 million, but the Ministry of Energy took a different approach than the Auditor General has taken. For example, the Ministry of Energy indicated that \$88 million was paid to EIG, while the Auditor General pegged the amount at \$149.6 million (p. 311).

The decision to move the Oakville plant was announced in October 2010. The next discussion in Cabinet occurred in July 2011. The July 29 document was a walk-around. Mr. Bentley was not Minister of Energy at that time. He was generally aware of efforts to avoid a lawsuit with TCE. He does not recall costs being discussed in Cabinet (p. 314). When he became Minister, the OPA briefed him on the state of the negotiations, not on the costs. In November, Mr. Bentley informed the Minister of Finance that the OPA's very rough estimate of the risk for Mississauga was between \$200 million and \$500 million (p. 315).

Any side agreements in the Oakville agreement are contained in the \$40 million and the MOU. Mr. Bentley is not aware of any side agreements other than what is in the MOU or final agreement. When he became involved with the Oakville file, he did not have a specific maximum exposure number in mind. He knew that the costs would be "huge," possibly between \$700 million and \$1 billion, but that was based only on other people's speculation. As the situation evolved, the maximum exposure was probably about \$750 million, but that would have been "a cheque for nothing" – no plant, no power production (p. 316).

## **Disclosure of Documents**

In preparation for his appearance before the SCE in May 2012, legal staff from the Ministry of Energy and Ministry of the Attorney General advised him that many of the documents that the SCE might ask about were privileged and commercially sensitive. Releasing those documents would be detrimental to the

interests of the Province and could seriously affect the ongoing negotiations or lawsuits. He was trying to reconcile the right of the SCE to have the material it requested with the money that was at stake for the Province. “It was never a question of if the documents were going out; they were always going out. It was a question of when” (p. 304).

Regarding the allegations by Kristin Jenkins that Ministry of Energy staffer Jesse Kulendran had instructed the OPA to withhold 6,000 documents, Mr. Bentley explained that the Ministry of Energy did the search, and decided what would be searched. He had nothing to do with any instructions to any member of the Ministry of Energy or the OPA or Ms. Kulendran. He did not direct the OPA to remove 6,000 documents (p. 309).

When asked why not a single document in response to the original production order came from his office, Mr. Bentley explained that the appropriate searches were done on all staff computers, including his own. He did most of his business in person, at meetings or by phone. Many people at those meetings keep records of the meetings. Mr. Bentley instructed his staff to provide documents responsive to the motion (p. 312).

Mr. Bentley did not manage his staff's email accounts. He did not get emails from staff on his ministry computer. Sometimes he got emails on his BlackBerry. He was not aware at the time that any of his staff were destroying records (p. 312).

Mr. Bentley was not involved in the search for documents, but knew that it was time consuming and challenging. Ministry of Energy and OPA staff worked hard to get it right, and were acting in good faith. He received no instruction from the Premier regarding document production (p. 315).

### **BRAD DUGUID, MINISTER OF TRAINING, COLLEGES AND UNIVERSITIES AND FORMER MINISTER OF ENERGY, APRIL 23, 2013**

The Honourable Brad Duguid is Minister of Training, Colleges and Universities. Elected as MPP for Scarborough Centre in 2003, he had previously served on the municipal councils of Scarborough and the amalgamated City of Toronto.

Mr. Duguid has served in a number of other roles in Cabinet, including as Minister of Labour, (2007-2008), Aboriginal Affairs (2008-2010), Energy and Infrastructure (2010), Energy (2010-2011) and Economic Development and Innovation (2011–2013).<sup>8</sup> The cancellations of the Oakville and Mississauga gas plants were announced during his time as Minister of Energy.

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<sup>8</sup> The Ministry of Energy and Infrastructure was split into separate Ministries in 2010. The Hon. Bob Chiarelli became the Minister of Infrastructure while Mr. Duguid served as Minister of Energy.

## **Involvement with the Mississauga and/or Oakville Gas Plants**

As the Minister of Energy when the decisions were made to cancel both the Oakville and Mississauga gas plants, Mr. Duguid spoke about these actions to the Committee. He testified that when he first became the Minister of Energy, he “determined that there were some major challenges that needed to be considered with regard to the Oakville project” (p. 319). These challenges included

- strong opposition from the community, led by Oakville MPP Kevin Flynn and Mayor Rob Burton;
- new municipal by-laws to “delay and potentially prevent” the gas plant’s construction; and
- a decrease in demand for electricity due to the recession and greater conservation efforts (p. 319).

Mr. Duguid also informed the Committee that he had received legal opinions from Ministry staff suggesting that the Province might incur liability if the government did not use its seldom-used power to override municipal by-laws that were delaying construction (p. 325). He further argued that the opposition of the Progressive Conservative and New Democratic Parties to the Oakville plant also provided “some justification” for the cancellation decision (pp. 322, 328). Given all of these reasons, Mr. Duguid suggested that “cancelling the Oakville plant simply made sense” (p. 319).

With regard to the Mississauga gas plant, Mr. Duguid testified that although he was the sitting Minister of Energy, he was not directly involved in the decision to cancel the power plant. Early in the campaign for the 2011 provincial election he received a call from Sean Mullin (former Deputy Director of Policy in the Premier’s Office), advising that “there was an intention to announce the cancellation of the plant in Mississauga” (p. 322). Mr. Duguid advised against cancelling the Mississauga plant, believing that “the energy file had actually been going well during the election and it wasn’t a good time to bring it up” (p. 330). Toward the end of the campaign, Mr. Duguid received a second call informing him that the decision had been made to cancel the gas plant and that the announcement was forthcoming (p. 330). Although he had not initially supported the cancellation, Mr. Duguid came to support it “once all three parties committed to cancelling the Mississauga gas plant” (p. 319).

Mr. Duguid was asked to clarify previous statements suggesting that the cancellation of the Oakville power plant was a decision purely based upon supply considerations (p. 321). He explained that supply was still needed, but the need was not as pressing (p. 331). There were other options for providing that power that could be considered, including a transmission solution (p. 321). Future demand and the refurbishment of the nuclear

power plants still required the construction of new generating facilities, which Minister Duguid suggested explains the relocation (p. 331).

Mr. Duguid also testified regarding his role in the negotiations concerning the cancellation of the Oakville gas plant. He disputed earlier testimony suggesting the Premier's Office had not informed him of the cancellation of the Oakville power plant before a meeting with TCE on October 5, 2010. Mr. Duguid stated that he was fully informed about the decision and was already preparing his announcement for 48 hours later. He did not feel it was appropriate to inform the CEO of TCE prior to that announcement, regardless of what might have been disclosed by staff from the Premier's Office (p. 329).

In terms of the costs of cancelling the Oakville plant, Mr. Duguid explained that there were two choices: simply to rip up the contract or engage in a "negotiated settlement" (p. 322). With the former option, the government knew what the value of the contract was and that this would likely be the total cost of reneging (p. 331). Because the government was engaged in negotiations to relocate the plant, the costs of this alternative were evolving over time (p. 331).

### **Disclosure of Documents**

When asked about the dangers of disclosing documents prior to the completion of negotiations, Mr. Duguid confirmed that there were risks in releasing "sensitive material" (p. 327). Because of the potential costs associated with information leaks, Mr. Duguid defended Minister Bentley's decision and criticized the contempt motion brought against him (p. 327).

Mr. Duguid was also questioned about the lack of documents released from the Minister's office. He explained that personally, he did not speak about policy files via email (p. 325). As for the rest of the relevant documents, "things like decks" would generally be kept by the Ministry of Energy and they would have been responsible for producing the documents (p. 326).

### **CHRIS BREEN, DIRECTOR OF GOVERNMENT RELATIONS, TRANSCANADA, APRIL 25, 2013**

Chris Breen is the Director of Government Relations for TCE and has had responsibility for this portfolio for 11 years. He is a registered lobbyist and was a part of TCE's negotiations concerning the cancellation and relocation of the Oakville gas plant.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. Breen discussed the opposition TCE faced from Oakville residents and politicians. When TCE had initially registered part of the Ford lands

as the proposed site of the plant, there were no restrictions to power generation. Beginning in March 2009 however, the City Council passed an official plan amendment that would “prohibit power generation greater than 10 megawatts anywhere in the town of Oakville” (p. 337). This was followed by an interim control by-law which “effectively had the same goal albeit on an interim basis” (p. 337). TCE appealed these changes to the OMB, which upheld the interim measure due to its temporary nature, but overturned the amendment to the official plan. TCE appealed the OMB’s decision to Divisional Court and had three applications in the Ontario Superior Court to deal with other planning barriers when the Oakville plant was cancelled (p. 341).

According to Mr. Breen, appeals to the OMB and the courts were not the only option for overcoming municipal opposition. He testified that the government had the power to make a regulation under the *Planning Act* which could exempt the Oakville plant from municipal by-laws. Mr. Breen cited the York Energy Centre in King township as a precedent; the government issued a regulation for this gas plant in 2010. TCE spoke to the Minister of Energy Brad Duguid about this possibility, but the Minister “was not committed to that path going forward” (p. 337).

Mr. Breen testified that although the Minister was not willing to issue a regulation to override Oakville’s opposition to the gas plant, he urged TCE to consider alternative locations. Mr. Breen was also in contact with Sean Mullin and Jamison Steeve from the Premier’s Office and the Energy Minister’s Chief of Staff, Craig MacLennan, during this process, all of whom encouraged alternative locations including Halton Hills, Nanticoke and north Oakville. TCE advised both the Premier’s Office and the Minister of Energy that they still believed that Oakville was the best site for the project and while they were willing to talk about alternatives, they had a contractual obligation to build the plant in Oakville, unless otherwise instructed (pp. 338-339).

On October 5, 2010 Mr. Breen and TCE received confirmation from Mr. Mullin and Mr. Steeve that the government would be cancelling the Oakville contract. Mr. Breen testified that this meeting was a “frank discussion,” but was followed by a meeting with Minister Duguid, Deputy Minister David Lindsay and Craig MacLennan in which the Minister did not confirm the cancellation. Mr. Breen disputed the characterization that a TCE executive “blew a gasket,” but did confirm that the meeting with the Minister was “strange” and that TCE’s executives “showed a degree of exasperation” (p. 339).

Mr. Breen stated that in the discussions leading up to the cancellation of the Oakville gas plant, TCE continued to advise against this, but insisted that if the contract was to be cancelled that they must be “kept whole.” Mr. Breen elaborated upon this, noting that TCE was not interested in going to court or simply taking a cheque from the government in compensation, but

rather were looking for “a project equivalent to the one that was just cancelled” (p. 340).

Mr. Breen told the Committee that TCE advised the government that cancelling and relocating the Oakville gas plant would lead to increased costs. These new costs took two forms: cancellation costs and moving costs. Cancellation costs were primarily the sunk costs, which TCE determined to be \$40 million, according to Mr. Breen. He also noted that TCE had paid \$210 million for gas turbines, but these could be used in another gas plant. In terms of relocating the plant, Mr. Breen identified gas management and delivery, transmission from the new location in Bath and the electrical connection of the new site as known additional moving costs. He stated that TCE would have expected the OPA to pay these additional costs and it was their impression that the OPA and the government understood this (p. 346).

Mr. Breen was able to confirm that TCE received an offer for an alternative project on April 21, 2011, which had been reported as a “government-instructed counter-proposal” of \$712 million. This proposal was to build a “peaking natural gas-fired plant in the Kitchener-Waterloo area” (p. 344). Mr. Breen reported that TCE rejected this offer because the “proposals that we saw would not have passed the TCE board as stand-alone projects, let alone as replacements for the Oakville project” (p. 344). As the proposal was not sufficient, Mr. Breen reported that TCE continued negotiations with the OPA until concluding that they would relocate the Oakville project to Bath, in Greater Napanee.

### **Disclosure of Documents**

Mr. Breen did not speak directly to the disclosure of documents, but he did confirm that his communications with staff from the Energy Minister’s office and the Premier’s Office were rarely via email (p. 346).

### **COLIN ANDERSEN, CHIEF EXECUTIVE OFFICER, OPA, APRIL 30, 2013<sup>9</sup>**

Colin Andersen is the Chief Executive Officer of the OPA, a position he has held since 2008. Mr. Andersen joined the OPS in 1986, working in a number of capacities for the Ministry of Health and Long-Term Care, the Ministry of Revenue, the Ministry of Finance and Cabinet Office. Immediately prior to his appointment with the OPA, Mr. Andersen was Deputy Minister of Finance, where he oversaw the production of five annual budgets.

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<sup>9</sup> A final version of *Hansard* was not available at the time that this summary was initially prepared; accordingly, this summary (and any quotes it contains) reflects the preliminary transcript of the April 30, 2013 meeting. There are also no page numbers.

Mr. Andersen has a Master's degree in Economics from the University of Toronto and an Honours Bachelor of Arts from the University of Calgary.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

The bulk of Mr. Andersen's testimony focused on the events surrounding the cancellation of the Oakville gas plant, and its corresponding costs. According to Mr. Andersen, shortly after the OPA signed the contract with TCE to build the Oakville plant, "community opposition ramped up" and the Energy Minister began asking the OPA questions about the proposed plant. However, the decision to cancel the plant was only made in late September or early October 2010.

Shortly before the announcement was made, the OPA was told that the Premier's Office had spoken with TCE, that there had been some discussions about keeping TCE "whole," "and that one of the conditions that [TCE] had for supporting that announcement was that it needed to get something in writing." Accordingly, the Premier's Office asked the OPA to draft a letter, which, after numerous drafts, was signed and sent by Mr. Andersen on October 7, 2010.

Mr. Andersen advised the Committee that the government does not have the explicit legal authority to tell the OPA to cancel a contract. However, the government had made its wishes known, and always had the option to pursue a legislative option. Mr. Andersen discussed the contract with his board, and the decision was made to attempt to renegotiate and ultimately to relocate the plant. While he was not happy about the cancellation,<sup>10</sup> Mr. Andersen and the OPA Board of Directors focused on renegotiating the TCE contract, believing this course of action would be in the best interests of ratepayers and the government as a whole:

We were thinking about the contract holders that we were dealing with, but also very top-of-mind for myself and my board was the impact that this could have on future contract deliberations, not only for the kinds of contracts that the OPA is looking at, but the kind of contracts that other parts of the government, Infrastructure Ontario and those, you know, you want to have investor confidence in this province.

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<sup>10</sup> Mr. Andersen indicated that the OPA's "preference was to go with the gas plant. I continue to feel strongly that maybe we're putting too many eggs in the transmission basket in the Toronto area, and I would prefer to see generation, because it provides a lot of things that transmission doesn't."

Governments have the right to change their minds, and in some cases we expect them to do so, but I think it's also important that when those circumstances happen, everybody sees that people are treated fairly, that the contract holders are treated fairly, and, you know, we were looking out to get value for ratepayers as well.

Mr. Andersen agreed that the Ministry of Energy and the government relied on the OPA to provide them with the cost of the relocation. He also told the Committee that he continues to stand behind the \$180 million number he gave the Ministry of Energy as “the net costs that cannot be repurposed in the [Lennox] plant.”

During his appearance, Mr. Andersen also produced two summaries of costs related to the cancellation and relocation of the Oakville power plant. Mr. Andersen explained that many of the costs identified in each report are in flux, and will likely remain so for some time:

Projects of this size and complexity have many moving parts and their costs evolve over time, and estimates are often very dependent on methodology, assumptions and judgment calls. These include assumptions about events that are far in the future: for example, the state of the economy in 2018, the price of gas in 2022 and the industrial demand in southwestern Ontario in 2029.

They might also depend on site-specific issues that cannot be known until detailed engineering work is completed.

To some extent, it's like a Polaroid picture that takes 20 years to develop. Some parts become clear pretty quickly—turbine costs and monies expended on sunk costs are good examples; some come into focus later.

About a month before appearing before the Committee, Mr. Andersen and the OPA hired NERA Economic Consulting, an independent economic and financial consulting firm, to review the costs of relocating the Oakville plant. The OPA has also prepared a series of estimates of the costs associated with the plant, and will likely continue to do so as the “numbers . . . evolve[,] . . . as more information becomes available and assumptions, discount rates and planning scenarios are developed

further.” (Both the OPA and NERA used their own methodology to calculate the estimated costs.)<sup>11</sup> During his testimony, Mr. Andersen informed the Committee that the OPA’s current best estimate for the relocation cost is \$310 million, while the NERA estimate is \$241 million. He outlined the elements of the OPA and NERA cost estimates as follows:

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<sup>11</sup> NERA Economic Consulting, “The Costs of Relocating the Oakville Generation Station – Prepared for the Ontario Power Authority” (April 29, 2013); Ontario Power Authority, “Estimated Oakville GS Relocation Costs – April 29, 2013.” Copies of each of these reports were provided to Committee members by Mr. Andersen.

### **Payments Made Directly to TCE**

- Sunk Costs (\$40 million, according to the OPA): This amount reflects the cost of developing the site in Oakville before its cancellation.
- Turbine Cost (\$210 million): This amount reflects the cost incurred by the OPA to purchase the Oakville gas turbines and repurpose them for Lennox.

NERA estimated the total cost of the turbines and the sunk costs to be \$254 million (titled “Reimbursement for Costs Incurred.”)

### **Future Site-Related Costs**

- Transmission Connection (\$37 million): The OPA estimates that it will cost \$37 million to connect the new plant to the transmission system in Lennox.
- Gas Connection (\$10 million): This amount reflects the estimated cost of connecting the new plant to the gas pipeline.
- Gas Delivery and Management (\$406 million): This amount is the most recent estimate of the OPA for the costs associated with delivering gas to the new Lennox plant and managing it.

NERA estimated the first two of these costs (which fall under the title “Reimbursable Capital Costs” in their report) to be approximately \$42 million. It estimated the gas delivery and management costs to be approximately \$350 million. According to Mr. Andersen, the OPA took a more conservative approach to estimating the gas delivery and management costs than NERA.

### **Future System-Related Costs**

- Bulk Transmission Upgrade in the SWGTA (\$90 million): The OPA originally estimated the cost of moving up transmission upgrades in the SWGTA from 2028 to 2018 to be \$200 million. However, the OPA has developed alternatives that will likely reduce this cost to \$90 million.
- Higher Line Losses (\$32 million): The OPA estimates that it will lose \$32 million by having the generation plant far from the areas it will serve. The line losses were originally captured by the \$200 million estimated by the OPA.
- Lower Turbine Efficiency (\$53 million): The Lennox plant will be less efficient than the original Oakville plant because of its “faster capability.”

NERA estimated that the acceleration of the transmission upgrade would cost approximately \$88 million and \$24 million for “incremental transmission losses.” NERA did not identify a separate cost for lower turbine efficiency.

### **Contract-Related and Other Savings**

Under the MOU, the OPA secured a lower monthly payment (also known as a net revenue requirement) for the new Lennox plant. Estimated savings from reducing the monthly payment from \$17,277 per megawatt a month to \$15,200 per megawatt a month will save the OPA \$195 million. (This new payment is higher than the average monthly payment for the OPA’s gas fleet, but lower than the payment average in its more current contracts.) The OPA also estimates that it will save \$539 million by deferring its payments to TCE from 2014 to 2019; however, Mr. Andersen advised that the OPA believes that it will need to contract for additional power in 2017-2018 before the new Lennox generation station comes online, which will cost approximately \$215 million. Finally, the OPA estimates that it will save an additional \$50 million because the Lennox plant will continue in operation for five years after the Oakville contract was to end in 2034.

NERA grouped the contract-related savings and the savings arising from the deferral of the OPA payments together under the heading “contingent support payment” and estimated these savings to be \$670 million. It recognized a cost of approximately \$152 million for replacement power in 2017-2018.

During his testimony, Mr. Andersen made it clear that the sunk costs, as well as the future-related site costs listed above, were all listed in the MOU, even if specific amounts were not identified; rather, the MOU classified these costs as TBD or “to be determined” because additional work had to be done before they could be nailed down. As a signatory to the MOU, the Ministry of Energy (through its Deputy Minister and approved by its Minister) would have been aware of the “categories” of costs beyond the \$40 million in sunk costs. The Ministry of Energy would have also been aware of “system costs” associated with moving the plant out of the SWGTA. The MOU (and ultimately the contract) was also posted on the OPA website, along with a backgrounder reviewing these costs.

Mr. Andersen also advised the Committee that he and his board took a strong position that the OPA should not bear all of the costs for the government’s decision to cancel the plant. Accordingly, Mr. Andersen and the Deputy Minister of Energy agreed that these costs would be divided between taxpayers and the OPA ratepayers.

## **Disclosure of Documents**

Mr. Andersen testified that the request for documents made by the SCE in 2012 was “new to us, a request of this scope and this nature, and we had to learn as we went along.” He spoke about the OPA’s conflicting obligations. On the one hand, the OPA wanted to comply with the request of the Committee; however, the request was made in the middle of negotiations with both TCE and Greenfield, and the OPA was aware of the possibility of litigation. The OPA was gravely concerned about the possibility of disclosing commercially sensitive and privileged documents to the Committee, for fear that they would then be made available to the media, the public, and ultimately TCE and Greenfield:

We absolutely felt that there was a possibility of significant exposure, because it would have revealed our thinking in the negotiation side of things, and we felt that it would have weakened our case down the road, should this come to litigation. These are very detailed assessments that we were making, including of the risks and our assessment of how far we might be able to get at the table. The other side of the table would have loved, absolutely, to get this kind of information because it very much would have impacted how hard they would have fought back on some of these items. They would know exactly where to press their advantage.

Mr. Andersen, on behalf of the OPA, took ownership for its mistakes in the documentary disclosure process. He acknowledged that in hindsight the OPA should not have relied on their understanding of the process being used by the Ministry of Energy in vetting their documents. The OPA adopted what they believed to be the narrow approach used by the Ministry of Energy (based on Kristin Jenkins' meeting with Jesse Kulendran), despite their concerns that it was too narrow. However, according to Mr. Andersen, "it was our due diligence that ultimately led to the fact that we wanted to add more documents to our disclosure, so we did produce everything." The OPA's efforts also led the Ministry of Energy to disclose additional documents.

### **KATHLEEN WYNNE, PREMIER OF ONTARIO, APRIL 30, 2013<sup>12</sup>**

The Honourable Kathleen Wynne became the 25<sup>th</sup> Premier of Ontario on February 11, 2013. She also holds the Cabinet portfolio of Minister of Agriculture and Food. Ms. Wynne has served as the MPP for the riding of Don Valley West since 2003.

Before becoming Leader of the Ontario Liberal Party and Premier, Ms. Wynne held several Cabinet posts, including as Minister of Transportation from January 2010 to October 2011, and Minister of Municipal Affairs and Housing and Minister of Aboriginal Affairs from October 2011 to November 2012.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Ms. Wynne was not involved in the decision to relocate the Oakville plant. She became aware of this plan when it was announced by the Minister of Energy on October 7, 2010.

Ms. Wynne and three other Ministers signed a July 29, 2011 Cabinet minute authorizing the Ministry of Energy to "formalize settlement discussions with TCE and enter into an agreement under the Arbitration Act should negotiations fail." Ms. Wynne attended an August 10, 2011 Cabinet meeting in which this authorization was reported to Cabinet, and an October 3, 2012 meeting in which the Treasury Board reported on the mandate it had approved for negotiations with TCE. There were no discussions of the Oakville relocation in Cabinet meetings between October 7, 2010 and July 29, 2011.

The \$40 million figure for the Oakville plant was what Cabinet understood to be "the number," but it was also understood that there would be other costs associated with the decision to cancel the plant, as indicated in the MOU. The \$40 million was for sunk costs, but it was only part of the total; there "were other

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<sup>12</sup> A final version of *Hansard* was not available at the time that this summary was initially prepared; accordingly, this summary (and any quotes it contains) reflects the preliminary transcript of the April 30, 2013 meeting. There are also no page numbers.

numbers and other costs that could be considered part of the overall costs.” However, the \$40 million “was the cost that I was told and that our caucus and our government were told would be the cost associated with relocating the Oakville plant.” It is frustrating that this number has changed. Ms. Wynne believes that the cost is going to be more than \$40 million.

On March 19-20, 2013, Ms. Wynne was briefed by Ministry of Energy staff, who informed her that the OPA's estimates kept changing. At that time, the cost to relocate the Mississauga plant was \$271.4 million, and the cost to relocate the Oakville plant was between \$33 million and \$136 million. The changing numbers justified the decision to refer the matter to the Auditor General. Since learning that the \$40 million and \$190 million numbers were not the complete numbers, she has not said that they are final numbers.

Ms. Wynne learned about the relocation of the Mississauga plant through media reports.

Ms. Wynne served as Vice-Chair of the 2011 Liberal election campaign. In this role, she worked with candidates, did radio spots in small communities, visited unheld ridings, and attended fundraisers. She was not involved in the day-to-day, riding-by-riding strategy discussions. The issue of the Mississauga plant was not raised in any of the campaign meetings she attended. She was aware that the plants were an issue in the communities, but she was not “engaged in the day-to-day impacts of those decisions on the candidates.”

After the election, the new Cabinet met on October 20, 2011. Ms. Wynne, who had been appointed Minister of Municipal Affairs and Housing and Minister of Aboriginal Affairs, attended this meeting, at which there was a high-level discussion on the government's plan to move forward with the relocation of the Mississauga plant.

On November 21, 2011 Ms. Wynne and three other Ministers signed a Cabinet minute approving a \$10 million settlement of outstanding litigation with EP. This settlement has been publicly disclosed as part of the total cost of the Mississauga relocation.

In a November 24, 2011 Cabinet meeting, the Minister of Energy provided a high-level update on the negotiations between the OPA and EP. At a May 30, 2012 Cabinet meeting, there was a report “on the approved Treasury Board negotiation mandate to settle with EIG, as well as a direction to the Ministry of Energy and the OPA to continue their settlement discussions with Greenfield.” At an August 15, 2012 Cabinet meeting, there was a report on a Treasury Board order approving \$180 million for the Greenfield South settlement, and \$10 million for the Keele Valley settlement. Ms. Wynne attended these meetings.

In the Cabinet meetings immediately after the decision to cancel the Mississauga plant, the Cabinet “would not have had those detailed discussions about cost, the

financial parameters or the specific negotiations at the table.” It was understood that the relocations would be negotiated, and that there would be costs associated with the decisions. Negotiations are confidential processes. Ms. Wynne had no access to the details of the files, and no knowledge of the financial parameters of the ongoing negotiations. The government was using the \$40 million in sunk costs because it was understood that that would be the cost in terms of “public dollars.” There were other costs, but at that time they were “unclear.”

When Ms. Wynne signed the “Vapour” minute, Chris Morley provided a briefing. This briefing was high-level and did not include specific information about costs. Being a Minister with a constituency office in Toronto, Ms. Wynne was frequently approached to sign Cabinet walk-around minutes when the House was not sitting; she would request a briefing on such occasions, but the briefing would be very high-level.

The decisions to relocate the plants were political in the sense that they were made by politicians, not bureaucrats. Experts provided advice to the government on the siting of the plants, but this advice did not consider the voices of the communities. There was an understanding that the siting decisions had been wrong; intervention by politicians allowed the decisions to be reversed. All three political parties “agreed that these decisions needed to be taken,” but it would have been impossible for anyone to estimate the costs.

Since becoming Premier, Ms. Wynne learned that the cost for Mississauga was \$271.4 million and that the cost for Oakville was between \$33 million and \$136 million. She learned this before the Auditor General released his report on the Mississauga deal, but did not make the new figures public because she believed that the Auditor General needed to do his work and that there had been enough murkiness on the subject.

Ms. Wynne cannot speak to the specifics as to why a distinction was made between taxpayer costs and ratepayer costs, but acknowledges that they were “all public dollars”.

“[W]e need a better process going forward. We need better process in terms of siting energy infrastructure and we need to have a better process when and if there ever is a situation where there has to be a reversal of a decision.”

The only concrete number that the government had was \$40 million, a number that the OPA provided to it. It was only at the March 2013 briefing that she was presented with a cost ranging from \$33 million to \$136 million. The MOU made it clear that there would be other costs associated with the relocation, but the government had no “crystalized” or “true” number. The government relied on the information given to it by the OPA.

## **Disclosure of Documents**

Former Minister of Energy Chris Bentley “was acting in the best interests of the people of Ontario;” he “was very concerned with releasing information that could do damage and could actually end up costing the people of Ontario more.”

The first search for documents was conducted using narrow language. There are not stacks of boxes labelled “Oakville and Mississauga gas plants.” The searches have been done electronically, and “you have to ask the question to get the right answer.” This is why more documents have not been released, and why Ms. Wynne wanted the search language broadened.

**APPENDIX A – LIST OF DOCUMENTS REQUESTED  
AND RECEIVED UP TO MAY 3, 2013**

The table lists in chronological order those witnesses from whom documents were requested.

<b>Witness</b>	<b>Date of Request or Motion</b>	<b>Documents Requested</b>	<b>Response Received by Committee</b>
Bruce Sharp	March 13, 2013	Capacity Analysis prepared for Enbridge  Formal cost analysis, based on email sent to Mr. Tabuns (annual gas tariffs, cash flow analysis)	
Rob Burton	March 19, 2013	Any correspondence sent to the Minister of Energy regarding the cancelling of the Oakville power plant within 2 weeks.  Any correspondence with Craig MacLennan, Minister Duguid's former Chief of Staff.  Any and all correspondence with the Premier, even including council motions regarding the cancellation of the Oakville gas plant within 2 weeks.  All emails, letters, correspondence, communications with the provincial government, or the OPA, or the ADM level or higher, including the	April 4, 2013  April 4, 2013  April 4, 2013  April 4, 2013

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
		political staff within 2 weeks.	
Peter Wallace	March 19, 2013	<p>List of individuals of all political staff in the Premier's Office, the Office of the Minister of Finance and the Office of the Minister of Energy, (past or present) that were involved with or had knowledge of Project Vapour within 2 weeks.</p> <p>Minister signed submission with respect to the Cabinet Minute dated July 29, 2011.</p>	<p>April 9, 2013 from Secretary of Cabinet and Office of the Premier</p> <p>Additional documents received on April 16, 2013</p>
Hazel McCallion	March 21, 2013	<p>Study by Mr. MacKenzie, regarding the projected requirements by the OPA.</p> <p>The date that the individual site environmental assessment request was denied.</p>	<p>April 2, 2013</p> <p>April 2, 2013</p>
Tiffany Turnbull  (directed to Cabinet office)	March 26, 2013	Record of all meetings that Giles Gherson had regarding the Mississauga gas plant between 2011 and 2012, including the participants.	April 22, 2013

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
<p>Jamison Steeve</p> <p>(directed to William Bromm, Legal Counsel &amp; Special Advisor, Cabinet Office)</p>	<p>March 26, 2013</p>	<p>Motion passed by Committee:</p> <p>THAT all documents pertaining to the meetings between Mr. Jamison Steeve and TransCanada which are now in possession of the legal counsel of the government be tabled immediately to the Standing Committee on Justice Policy.</p>	<p>April 9, 2013</p>
<p>Greg Rohn</p>	<p>March 26, 2013</p>	<p>Copy of email exchange with PC candidate.</p> <p>Form letter that was received in response to the environmental assessment report sent to the Minister of the Environment.</p> <p>Copy of flyer.</p>	<p>April 19, 2013</p> <p>April 19, 2013</p> <p>April 19, 2013</p>
<p>David Livingston</p> <p>(directed to Infrastructure Ontario)</p>	<p>March 28, 2013</p>	<p>Notes of meetings or emails with Shelly Jamieson (former Secretary of Cabinet), Murray Segal (former Deputy Attorney General) and David Lindsay (former Deputy Minister of Energy) with respect to the Oakville gas plant and the status of it.</p>	<p>April 22, 2013</p>

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
(directed to Treasury Board)	March 28, 2013	<p>Motion passed by Committee:</p> <p>THAT the Treasury Board be asked to provide the Standing Committee on Justice Policy its assessment of the cost of the settlement MOU between TransCanada, Ontario Power Authority and the Ministry of Energy as soon as possible.</p>	April 11, 2013
(directed to the OPA)	April 4, 2013	<p>Appointments and notes of meetings that you had on August 22, 2012.</p> <p>Emails sent with instructions to staff to search their records regarding the document request from the Standing Committee on Estimates.</p> <p>October 5, 2010 email attachment without redaction (document tabled by PC caucus – labelled PC Doc #5, page 3)</p> <p>Motion passed by Committee:</p> <p>THAT the OPA produce the documents annotated by Jesse Kulendran in</p>	<p>April 15, 2013</p> <p>April 15, 2013</p> <p>April 15, 2013</p> <p>April 15, 2013</p>

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
(directed to the OPA)	April 9, 2013	<p>her meeting of August 22, 2012 with Kristin Jenkins and Ziyaad Mia.</p> <p>Motion passed by Committee:</p> <p>THAT the OPA provide any and all reports and correspondence from their legal counsel in respect of their internal investigation of the conduct of Jesse Kulendran and her role in the OPA's production of documents.</p>	<p>April 26, 2013</p> <p>Additional documents received on May 2, 2013 from Secretary of Cabinet</p>
<p>Craig MacLennan</p> <p>(directed to Ministry of Energy and OPA)</p>	April 9, 2013	<p>Motion passed by Committee:</p> <p>THAT any and all personal and legal counsel notes and documents from meetings and debrief meetings referred to by Craig MacLennan in his April 9, 2013 testimony to the Standing Committee on Justice Policy following his meeting with TransCanada be tabled as soon as possible with the Standing Committee on Justice Policy.</p>	May 2, 2013, from Secretary of Cabinet

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
(directed to Ministry of Energy and OPA)	April 11, 2013	<p>Motion passed by Committee:</p> <p>THAT the Justice Committee request the production of the documents from the OPA and the Ministry of Energy referred to by Craig MacLennan in his testimony before this committee this week, including the slide deck he referred to as setting out the draft Long Term Energy Plan and the slide decks prepared on gas plant and transmission matters that led to the Long Term Energy Plan.</p>	<p>April 26, 2013, from OPA</p> <p>May 2, 2013, from Ministry of Energy</p>
Serge Imbrogno	April 9, 2013	<p>Total system costs and benefits estimate and when the estimate was made.</p> <p>Ministry of Energy's list of search terms.</p> <p>Second document search plan and the list of staff names who were asked to search for the documents and list of staff that had responsive records.</p> <p>Motion passed by Committee:</p> <p>THAT all documents pertaining to estimates</p>	<p>April 24, 2013</p> <p>April 24, 2013</p> <p>April 24, 2013</p> <p>April 29, 2013</p>



Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
Energy and Premier's Office)		Office (Energy) and Premier's Office produce all briefing notes including cost estimates, related to the spring 2011 discussions regarding the cancellation of the Mississauga gas plant, and that a search be extended to Archives Ontario in the event documents were archived following staff departures.	
Sean Mullin  (directed to Minister of Energy)  (directed to Cabinet Office)	April 23, 2013  April 23, 2013	Motions passed by Committee:  THAT the demand projections for the SWGTA and the province as a whole that are cited as shaping the Long Term Energy Plan and the Oakville decision be provided by the Minister of Energy as soon as possible.  THAT the Secretary of Cabinet produce Sean Mullin's notes from any of his meetings with Trans Canada Energy and provided to counsel in the debrief referred to by Mr. Mullin as soon as possible.	
Chris Breen	April 25, 2013	Motion passed by Committee:	April 29, 2013

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
		<p>THAT Mr. Chris Breen produce his notes related to meetings with the Office of the Minister of Energy and the Premier's office in respect of the Oakville gas plant within the next two weeks of this motion passing.</p>	
Kathleen Wynne	April 30, 2013	Copy of Liberal talking points (letter has not been sent as of May 3)	
<p>No Specific Witness</p> <p>(directed to Cabinet Office and Office of the Budget and Treasury Board)</p>	April 23, 2013	<p>Motion passed by Committee:</p> <p>THAT the Standing Committee on Justice Policy requests the following documents from Cabinet Office and the Office of the Budget and Treasury Board within two calendar weeks of the date of the motion passing:</p> <ol style="list-style-type: none"> <li>1. All documentation, electronic or otherwise between January 1, 2010 and April 23, 2012 related to the cancellation and relocation of the power plants in Oakville and Mississauga, including but not limited to documents</li> </ol>	

<b>Witness</b>	<b>Date of Request or Motion</b>	<b>Documents Requested</b>	<b>Response Received by Committee</b>
		containing any and all proxy names or code names such as but not limited to SWGTA, Project Vapour, Project Vapour Lock, Project Apple, Project Banana and Project Fruit Salad.	



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APPENDIX A – LIST OF DOCUMENTS REQUESTED AND RECEIVED UP TO  
MAY 3, 2013 **ERROR! BOOKMARK NOT DEFINED.**

## **LIST OF ABBREVIATIONS USED IN THIS REPORT**

CHIP	Coalition of Homeowners for Intelligent Power
EIG	EIG Ltd.
EP	Eastern Power
GTA	Greater Toronto Area
MOU	Memorandum of Understanding
OMB	Ontario Municipal Board
OPA	Ontario Power Authority
OPG	Ontario Power Generation
OPS	Ontario Public Service
SCE	Standing Committee on Estimates
SCJP	Standing Committee on Justice Policy
SWGTA	Southwest Greater Toronto Area
TCE	TransCanada Energy/Enterprises/Corporation/Ltd.



## INTRODUCTION

Pursuant to the February 20 and March 5, 2013 Orders of the House, the Standing Committee on Justice Policy (SCJP) has been questioning witnesses about (a) the matter of the Speaker's finding of a *prima facie* case of privilege relating to the response to the May 16, 2012 request, by the Standing Committee on the Estimates, for the production of documents relating to the Oakville and Mississauga gas plants, and (b) the tendering, planning, commissioning, cancellation, and relocation of those plants.

This interim report is a summary in chronological order of the sworn testimony of the 25 witnesses who have appeared before the Committee up to May 2, 2013. *Hansard*, the verbatim record of the hearings, should be consulted for the complete proceedings and is available online.<sup>13</sup> A list of documents requested by the Committee is attached to this summary.

The Committee will continue to meet on the above matters with a view to hearing from more witnesses and completing a final report.

### **PETER MILLIKEN, FORMER SPEAKER OF THE CANADIAN HOUSE OF COMMONS, MARCH 7, 2013**

Peter Milliken was the Speaker of the Canadian House of Commons from 2001 to 2011. He is the longest-serving Speaker in the history of the House of Commons. He was first elected to represent the riding of Kingston and the Islands in 1988 and held this seat until his resignation in 2011.

In the 2010 Afghan detainee case, Speaker Milliken ruled on a point of privilege regarding non-compliance with an order for the production of documents.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

During an election campaign, a government can announce intended policy changes, but cannot secure additional funds that require legislation.

### **Disclosure of Documents**

Parliaments and their committees have the right to request and receive any information that they need in order to make decisions. A parliament's

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<sup>13</sup> Unless otherwise indicated, all page numbers in this document refer to the *Hansard* record of the Standing Committee on Justice Policy from March 7 to April 30, 2013. These transcripts are viewable online at [http://www.ontla.on.ca/web/committee-proceedings/committee\\_transcripts\\_current.do?ParlCommID=8960&locale=en](http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_current.do?ParlCommID=8960&locale=en).

inability to obtain the information it requires is a serious issue, and historically this has been a matter of “considerable gravity” (p. 22). In exercising this right, however, Members are typically careful not to compromise the public interest.

When an argument is made that the provision of requested materials would compromise the public interest in some way, the House must decide whether or not to accept the argument. In such situations, Members will typically take the warning seriously and work toward a solution. Production of documents does not necessarily require that those documents be made public. In the Afghan detainee case, the Canadian House of Commons decided that national security should not be jeopardized, and opted to consider the documents in confidence. In the case of the gas plants, the Legislature must decide whether or not it is willing to compromise solicitor-client privilege in exercising its authority to demand documents. Generally, Members do not want to compromise the public interest, but the challenge is how to handle the documents in a responsible way.

After the Afghan detainee ruling, parties negotiated a deal that would allow some Members to access the materials without making them public. A panel of Members reviewed the documents, and decided which could be released and which should remain confidential. In the absence of a unanimous recommendation, the final decision would be delegated to a panel of judges. All participants in this process were sworn to secrecy. Given the large volume of documents requiring review, the materials were considered in batches, and no timeline was set. Had this deal not been reached, Speaker Milliken would have ruled that there was a breach of privilege (p. 22).

There are similarities and differences between the matter of privilege involving the gas plants and the Afghan detainee case. The argument against document release in the Afghan detainee case was the potential threat to national security. Speaker Milliken has no experience with cases in which solicitor-client privilege or other legal sensitivities are at stake. The most important issues in both cases are whether or not the documents should be made public, and who should make the decision.

The basis for finding a Member to be in contempt of the House is that he or she deliberately made an untrue statement, or deliberately ignored an order of the House (pp. 23-24). If the Minister truly believed that all requested documents had been produced, but more were later found and provided, there is not a case for contempt. Although it is a Minister’s responsibility to comply with an order of the House, he or she will require the assistance of many public servants. Some materials might have been unintentionally discarded or forgotten, making it impossible for those documents to be produced to the House. This is the nature of a large administrative request. It is expected that a Minister, upon learning that

some documents had not been produced, would want to correct the record.

Redaction of information from documents might constitute a *prima facie* breach of privilege (p. 18). A way to deal with this issue would be for the Committee to call as witnesses the individuals who edited the documents, in order to determine why the redactions were made.

If the Minister ultimately complied with the order of the House and provided the documents, the matter should be resolved; there would be no further case for a breach of privilege. If the Minister originally responsible for complying with the order has resigned, any further proceedings should be directed toward the new Minister responsible for production.

Punishment of a Member who is found to have breached parliamentary privilege usually involves adoption of a motion admonishing the Member. This would be the most likely consequence of a finding of non-compliance with an order of the House. Technically, expulsion and imprisonment might be possible, but these outcomes are unlikely.

### **BRUCE SHARP, PROFESSIONAL ENGINEER, MARCH 13, 2013**

Bruce Sharp is a mechanical engineer who has worked in the energy sector for 25 years. During his career, Mr. Sharp has worked in the areas of power generation, energy management, natural gas utilization, energy marketing, and electricity consulting. Currently working as a Senior Consultant for Aegent Energy Advisors, Mr. Sharp appeared before the Committee as a private citizen.

Mr. Sharp began investigating the costs associated with the cancellation and relocation of the Mississauga and Oakville gas plants shortly after the Oakville settlement details were made public in the fall of 2012. His op-ed on the topic appeared in the *National Post* on October 10, 2012.<sup>14</sup>

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. Sharp shared with the Committee his estimates of the costs associated with the cancellation of the Oakville gas plant. Based on documents publicly available at the time of his testimony, Mr. Sharp calculated that the total cost of moving the Oakville plant to Lennox was \$638 million. This amount is made up of the following costs:

- (5) Sunk Costs (\$40 million): The Ontario Power Authority (OPA) and the Ministry of Energy had previously announced \$40 million as the cost of relocating the plant; Mr. Sharp does not dispute this amount.

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<sup>14</sup> Bruce Sharp, "[Ontario's Power Trip: The \\$733 Million Gas Boondoggle](#)," *National Post* (October 10, 2012).

- (6) Turbine Payment (Net Present Value of minus \$74 million): Under the Memorandum of Understanding (MOU) between the OPA, the Ministry of Energy, and TransCanada Enterprises Ltd. (TCE), the OPA will pay TCE \$210 million to cover the cost of the gas turbines. However, the MOU also includes a reduction in the monthly payments that the OPA will be making to TCE, from \$17,277 per megawatt capacity a month to \$15,200. Accordingly, Mr. Sharp estimates that the OPA will save \$284 million in net present value over the life of the contract. The difference between these two amounts is minus \$74 million.
- (7) Gas Delivery and Management Costs (Net Present Value of \$313 million): Gas management and delivery involves the movement of gas from the Dawn gas hub near Sarnia to the plant gate. Under the original agreement with TCE for the Oakville site, the gas delivery and management costs were to be absorbed by TCE. However, pursuant to the MOU to relocate the Oakville plant to Lennox, this amount will instead be paid by either the OPA or the Ministry of Energy over the next 20 years.
- (8) Transmission Costs (Net Present Value of \$359 million): This amount reflects the cost of completing transmission upgrades in the Southwest Greater Toronto Area (SWGTA) ahead of schedule because the Oakville generating station was cancelled.

According to Mr. Sharp, other costs associated with the cancellation and relocation of the Oakville plant have yet to be determined (e.g., gas pipeline hookups on the new site).

Based on his calculations, Mr. Sharp told the Committee that the \$40 million previously estimated by the government for relocating the Oakville plant is “quite low”; he also agreed that \$40 million “is not a credible figure to express the actual cost of [the] relocation” (p. 32). At the very least, he surmised, officials at the OPA would have been aware of the range of costs.

Testifying before the Committee, Mr. Sharp also spoke to the costs arising from the cancellation and the relocation of the Mississauga gas plant. While he did not provide a detailed analysis of the costs of the relocation, Mr. Sharp informed the Committee that the OPA “missed [an] opportunity” to negotiate a lower monthly payment to Greenfield because of the lower gas delivery management costs associated with moving the plant from Mississauga to Lambton (due to its proximity to the Dawn gas hub) (p. 32). The OPA could have achieved approximately \$28 million in net present value savings.

The Committee asked Mr. Sharp a series of questions about his employment history as well as his (and his employer’s) dealings with the proponents of the Oakville and Mississauga gas plants, the OPA, as well as a number of other players in the energy industry. Mr. Sharp advised

Committee members that he has not been employed by (nor has his employer been retained by) TCE, Greenfield, Enersource, Hydro One or Ontario Power Generation (OPG). Until 1997 Mr. Sharp was employed by Enbridge's predecessor company, Consumer Gas. Recently, Aegent Energy Advisors did some work for both Enbridge and the OPA.

### **Disclosure of Documents**

Mr. Sharp did not address the issue of document disclosure, except to say that "the volume and the general level of disorganization in the documents" tabled in the House affected his ability to make his calculations (p. 45). The format of the document disclosure has made his work "highly, highly challenging" (p. 45).

### **HIS WORSHIP ROB BURTON, MAYOR OF THE TOWN OF OAKVILLE, MARCH 19, 2013**

Mayor Burton was first elected in 2006, following a lengthy career in journalism, film and television. During the 1980s, Mayor Burton helped found YTV, a Canadian children's television network. As Mayor, Mr. Burton has served on the board of directors for Oakville Hydro, Halton Health Services, and the Halton Children's Aid Society. He has also served on the board of GO Transit.

Mayor Burton was re-elected to office during the 2010 municipal elections.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

During his testimony before the Committee, Mayor Burton focused on the Town's response to the Oakville gas plant, and its dealings with the project proponent, TCE.

According to Mayor Burton, there was an "overwhelming consensus in Oakville" that the proposed plant should not be built for health, safety and planning reasons (p. 48). First, Town residents were concerned that the plant would worsen the air pollution in an airshed that was already "vulnerable" and "overtaxed" (p. 48). The Town also expressed astonishment that the plant would be located "so close to homes and schools" (p. 48). Mr. Burton described the location of the plant as

adjacent to more than 3,000 homes, nine schools, a hospital, a long-term-care centre, the QEW and the region's busiest commuter rail corridor, all within 1,500 metres of the site. The proposed site was closer to homes than the province allows a wind turbine. Turbines have to be 550 metres from homes etc. There are very real

risks associated with being so close to a large gas-fired power plant (p. 48).

Thirdly, Mayor Burton informed the Committee that the Oakville plant never received the proper planning approvals to go to construction. In 2009, six months before the TCE project was selected by the OPA, Town Council passed an interim control by-law in an effort to give its planning staff the opportunity to “develop appropriate planning rules” for power plants in Oakville (p. 48). TCE appealed the Town’s interim control by-law to the Ontario Municipal Board (OMB), but it was upheld. According to Mayor Burton, the OMB held that the Town had done “exactly the right thing at exactly the right time for exactly the right reasons” (p. 56). TCE appealed the decision of the OMB, but abandoned its appeal after the government cancelled the plant. The Town was prepared to defend its interim control by-law at the Supreme Court of Canada if necessary.

In September 2010 Town Council passed an official plan amendment and a zoning by-law amendment that “required [developers to provide] technical studies . . . to allow [the Town to conduct an] evidence-based assessment of any proposed power plant’s suitability” (p. 48). Mayor Burton called these the Town’s “do-no-harm planning rules” (p. 50). Town Council also passed the country’s first municipal health protection air quality by-law in an effort to regulate “the direct emissions of fine particulate matter [(PM<sub>2.5</sub>)] and the precursor substances that become particulate matter” (p. 48). Under these new rules, Mayor Burton did not believe that the Oakville plant, as proposed, would get a building permit.

Mr. Burton met with the Premier once at the Association of Municipalities of Ontario conference in August 2010. During his 15 minute meeting with the Premier, Mr. Burton stressed his community’s concerns with the emissions that would be generated by the plant and the “already deadly level of air quality” in the SWGTA (pp. 54, 59).

Nevertheless, Mayor Burton advised the Committee that Oakville residents “were, and . . . are, very thankful” for the government’s decision to relocate the plant (p. 48). According to Mr. Burton, the Town believes “that the costs to cancel the proposed power plant are far less than the health, safety and environmental costs it would have caused our community” (p. 48).

Oakville residents, through its Town officials and C4CA, secured promises from all parties to stop the plant. Mayor Burton expressed displeasure with some of the criticism of the cost of cancelling the gas plant: critics would “do everybody a favour if they would explain how they would have done it differently” (p. 51). Going forward, however, Mayor Burton stressed that the Legislature and the Government need to develop a new process for siting power plants “that respects safety, health, and local communities” (p. 55). Mayor Burton provided the Committee with a couple of different models to consider:

About half of the [U.S.] States have a method of siting gas power plants that involves objective, evidence-based public hearings. I used to believe that that would be the easiest way for Ontario to get this procedure on a sounder footing, but I recently heard that the Premier has suggested that instead she favours—if I understand this correctly—local energy supply plans, and each community would be able to decide for itself whether it wanted to host a power plant. I've had conversations with the leader of one of the opposition parties, who has assured me, again and again, that his policy would be, "We will only use willing hosts," I think was the expression that he used with me—Mr. Hudak did. To a degree, those two positions, from my perspective, appear to be very similar, so perhaps there's an agreement available there, and that might be easier and less cumbersome than copying and pasting the process that they use in the States (p. 50).

### **Disclosure of Documents**

Mr. Burton did not speak directly to the matter of document disclosure, but indicated his frustration that the Town was unable to access the contract between TCE and OPA before it was released to the Legislature.

### **PETER WALLACE, SECRETARY OF THE CABINET AND HEAD OF THE ONTARIO PUBLIC SERVICE, MARCH 19, 2013**

Peter Wallace has been Secretary of Cabinet and head of the Ontario Public Service (OPS) since 2011. Prior to this appointment, Mr. Wallace has served as Deputy Minister and Secretary to the Treasury Board as well as Deputy Minister of Finance and Deputy Minister of Energy. With more than 30 years in the public service, Mr. Wallace has also served as Assistant Deputy Minister with Management Board, Cabinet Office and the Ministry of Natural Resources.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

The OPS implements the policy directions of the government of the day. With regard to the gas plants, the direction and desired outcomes were clear: suspension of activities at the initial sites; relocation; and the maintenance of commercial relationships with the proponents, including securing essentially equal investment and financial opportunities for those proponents. This took place

in a very complex environment due to: the commercial contracts; secondary linkages with the financial and other partners of the main proponents; actual and threatened litigation; the governance associated with the independent roles of the OPA and other agencies; and a timeline that exceeded two years. It involved multiple ministries and agencies.

Exhibit A (email from David Livingston, formerly of Infrastructure Ontario, July 27, 2011) proposed a walk-around package on “Project Vapour.” A walk-around package is a process used when an urgent commercial or other matter requires immediate action outside of the usual Cabinet meeting cycle. The Secretary of Cabinet would find an opportunity to create a decision-making forum by Cabinet. This could involve a special meeting or having officials go individually to Cabinet Ministers to secure their consent. At this stage, political involvement on “Project Vapour” from the Premier’s Office would involve a relatively small circle of individuals, likely including Chris Morley; from the Ministry of Energy, the circle would have included the Minister’s Chief of Staff. It is unlikely that the July 27, 2011 walk-around would have been the first time that the issue of the Oakville plant would have been raised in Cabinet (p. 64).

With regard to Exhibit B (Cabinet minute, July 29, 2011), all Cabinet minutes are made available to the full Cabinet. On urgent matters, or during extended periods between Cabinet meetings, decisions may be made by a subcommittee of Cabinet.

“Project Vapour-lock” (Exhibit C) refers to the cancellation and relocation of the Mississauga plant. The reference in that document to “OPA and government is also similar to the Vapour transaction” meant the government was announcing a policy change with respect to a contract to which it was not a signatory.

The government set clear priorities for dealing with the gas plants: suspension, relocation and securing alternative arrangements. The OPS's role was to implement the policy direction of the government. No written policy directive was sent to the head of the civil service to set up these priorities; it would have been “commonly understood” (p. 67).

Exhibit D (memorandum from David Lindsay, December 2, 2011) indicates that there may be costs related to the relocation of the Mississauga and Oakville plants. This document is one of the routine quarterly reports that the Ministry of Finance requests from all ministries. The document notes that there may be budget pressure associated with the relocation of the plants, but the specific number is not known. The memorandum was written when the settlement discussions were at an early stage; therefore, the costs were indeterminate.

Mr. Wallace's involvement in “Project Vapour” in 2011 was as Deputy Minister of Finance. He was concerned about value propositions, and was tracking — and trying to understand — the fiscal implications for the Province. The Ministry of Finance had a broader responsibility to understand the development of policy across the government, any precedents it set, and the financial ramifications, present or future, associated with any activity (p. 68).

With respect to the use of the expression “kept whole” in relation to TCE, Mr. Wallace indicated that the policy objectives included the relocation of the gas plant, the maintenance of personal relationships, and the securing of essentially equal investment financial opportunities. It meant giving TCE an equivalent opportunity related not only to process, but also to the maintenance of its role in the production of gas-fired electricity in the province (p. 69).

There is an “arm's length” relationship between the government of Ontario and the OPA (p. 75).

Mr. Wallace's predecessor (Shelly Jamieson) had sought to end the involvement by some political staff in outreach to TCE on the Oakville file because they might be included in legal action and because they exposed the government to additional risk.

Regarding the financial risk involved in terminating the contracts, the policy direction provided to the OPS by the government was to ensure that the relocation of the plants was on terms that were similar to the original business proposition that the proponents had signed up for. Eastern Power (EP) had problems securing financing for the Greenfield South plant; this was one of the challenges associated with the contracts. Those engaged in the relocation discussions found additional barriers to the relocation because of the financial backstop contracts that had been entered into by Greenfield (e.g., high interest rates).

Mr. Wallace “may have had a peripheral involvement” in the decision to pay for the cancellation of the Mississauga plant through general revenue rather than through hydro rates (p. 76).

## **Disclosure of Documents**

The OPS has experience with document disclosure, particularly with respect to commercial and labour relations, litigation, freedom of information, judicial inquiries, and the Auditor General. The committee process associated with the production of documents was a new factor; it required thought and additional research to fully understand how it related to Cabinet privilege, legal privilege, statutory privilege, and contractual privileges associated with producing documents related to third parties. The Ministry of Energy acted in good faith in searching for and producing responsive documents in its possession.

Code names are routinely used in the OPS. They are used for all major commercial transactions, not just gas plant transactions. The OPS does not use code names to obstruct requests for documents (pp. 63, 68, 70-71).

The OPS has other documents relating to the plants, but they were not produced because they fell outside of the committee request (pp. 63, 64-65).

Allegations that a Ministry of Energy employee directed the OPA to withhold documents from disclosure were investigated by Ministry of the Attorney General counsel; the findings were inconclusive. The Ministry of Energy employee had attended a meeting in the absence of more senior staff and counsel (who had

originally been scheduled to attend the meeting). There were no appropriate notes taken at the meeting to corroborate or disprove the allegations. While the file is not necessarily closed, there is “nothing left to find on the file at this point” (p. 68). These concerns were raised by Kristin Jenkins (p. 69). Mr. Wallace learned of the allegations from the Deputy Minister of Energy.

The Secretary of Cabinet cannot waive Cabinet privilege. The only way “in which Cabinet privilege can be raised is in response to a specific request that is legally unavoidable for me to comply with. That would, in all likelihood, be an order from this committee” (p. 65). The committee does not have some documents because the document production was directed to the Ministry of Energy, not the Cabinet Office.

With regard to some documents being heavily redacted (e.g., Exhibit D, memorandum from David Lindsay), the document production order required that the Ministry of Energy produce responsive records. The redacted portions were unrelated to the request. The OPS was acting in the best of faith on the basis of legal advice; public servants were trying to make difficult judgments, and to protect the privilege and the advice they give to Cabinet in other unrelated matters (p. 66).

The document production order was made at the time that negotiations were ongoing with TCE and EP. While ordinary practices of disclosure associated with commercial discovery protect commercial interests, document production orders from parliamentary committees are “different and override the traditional statutory and other protections associated with that” (p. 71).

Document production requests are normally processed over a substantially longer period of time and are generally burdensome. They are taken very seriously. The OPS is obligated to produce the documents required, and to produce only responsive records; it must not maliciously comply by simply dumping vast amounts of irrelevant data. It is a challenge to review the full documentation record and to make appropriate judgments about what to release; it involves securing legal advice and trying to reach an understanding in the very best of faith about what should or should not be released (p. 72).

Not all documents were released initially; there were two subsequent releases. Some documents were inadvertently left out of the original search (e.g., some people had since left the organization). Mr. Wallace’s experience with commercial discovery is that there is usually a process of rolling disclosure (p. 73).

Generally, public servants respond to the specific requests of a committee. The OPS provided information requested by the committee, and to which the committee was entitled. The request was specific to the Minister of Energy, to the Ministry of Energy and to the OPA. If the SCJP wants additional documents, “there is an appropriate forum to direct public servants in order to obtain the broader information.” The main barrier to the provision of information “has been

the specificity of the request” (p. 75). Errors were made, mostly as a result of urgency and people “just not thinking things through” (p. 75).

### **JOANNE BUTLER, VICE-PRESIDENT OF ELECTRICITY RESOURCES, OPA, MARCH 19, 2013**

Joanne Butler is Vice-President of Electricity Resources at the OPA. Her department is responsible for procuring generation resources, providing policy and analysis advice, and administering the contracts of electricity generators.

Prior to joining the OPA in 2008, Ms. Butler was President of TransAlta Mexico, where she was responsible for the day-to-day operations of two Mexican gas-fired electricity generation plants. Ms. Butler has also worked for TransAlta in Calgary as its general manager for western operations. All told, Ms. Butler has worked in the energy sector for 35 years.

#### **Involvement with the Mississauga and/or Oakville Gas Plants**

In her testimony before the Committee, Ms. Butler outlined the process by which the OPA sites and procures new gas plants. While not involved in the contracting of the Mississauga plant, Ms. Butler did oversee the procurement process for the Oakville plant. In respect of the Oakville plant, the need for new electricity was clear: in addition to the need for reliability in the Greater Toronto Area (GTA), “there was growing demand, and there was an off-coal strategy. So we needed more megawatts to bring onto the system” (p. 82). In response to that need, on August 18, 2008 the Minister directed the OPA to procure a gas-fired power plant in one of the following areas: south Oakville, south Etobicoke, south Mississauga, or between the Oakville and Manby transformer stations. The Ministry of Energy told the OPA that it should not consider the Lakeview Generating Station as a possible site.

Under the procurement process established by the OPA, it is the responsibility of the proponents to find an appropriate site within the limits imposed by the government directive. They must also ensure access to the transmission system, site control, and conformity with any environmental or planning standards set by the government. Bids are evaluated on the basis of the “combination” of the OPA’s belief that the proponent has the “financial wherewithal” and operational and technical capacity “to build this plant,” and that it is offering “the lowest cost” (p. 83). Proponents are responsible for their own financing.

Ms. Butler acknowledged that there may be a better way to site gas plants in Ontario. She advised the Committee, for example, that in Mexico (where she worked previously) the government provides the site and starts the environmental approval process. Lowering the risk that

developers face, the government is able to command a lower price for its power plants.

When asked about the negotiations for the relocation of the power plants, Ms. Butler indicated that once the government made the decision to cancel the plants,<sup>15</sup> the OPA was responsible for “com[ing] up with a new arrangement that would provide value to the electricity ratepayer and move forward with a new project” (p. 79). However, in the case of the Oakville plant, Ms. Butler learned that the government and, in particular, Sean Mullin (former Deputy Director of Policy for the Office of the Premier) and Craig MacLennan (former Chief of Staff to the Minister of Energy) had, without her knowledge, made certain commitments to TCE. It was therefore up to the OPA to “repurpose” the commitments “into a valuable project for the ratepayer” (p. 79). This was not standard practice – in fact, Ms. Butler advised that this “was the first time I’d seen that happen in my tenure with the OPA” (p. 80). This put the OPA in a difficult bargaining position.

In respect of the negotiations surrounding the relocation of Oakville gas plant, the OPA also struggled to receive adequate disclosure from TCE. Ultimately, talks between TCE and the OPA broke off, and David Livingston of Infrastructure Ontario was brought in by the government “to be the lead in the negotiations with TCE and move forward on the settlement” (p. 87). A third party negotiator was also brought in to lead discussions with Greenfield South.

Ms. Butler explained to the Committee that there are a number of “buckets” of costs associated with the cancellation and relocation of the Oakville plant to Lennox. According to Ms. Butler, each of the following “buckets” is contemplated by the MOU signed in 2012:

- (4) Sunk Costs (\$40 million). These costs represent the monies spent by TCE in developing the Oakville plant which cannot be used at the new site. In order to calculate the sunk costs, TCE provided the OPA with invoices, bills and receipts for goods and services which could not be repurposed in Lennox (e.g., engineering, design, permitting, and legal costs). The costs claimed by TCE were audited by a third party, and paid out by the OPA.
- (5) Additional costs associated with connecting the gas line to the Lennox site and connecting the new plant to the province-wide transmission system (Ms. Butler did not provide exact amounts).
- (6) Gas Demand and Management Services (Net Present Value \$319 to \$476 million). Because the OPA assumed some of the gas management fees (it also gave TCE an upfront payment for its

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<sup>15</sup> While Ms. Butler advised the Committee that the government can “tell [her] what to do” (p. 91), in her view, the Oakville plant should not have been cancelled: “It was put in the optimal location to solve a bunch of requirements: demand, off-coal and reliability” (p. 88).

turbines and paid its sunk costs), the OPA negotiated the net revenue requirement lower from \$17,277 a month to \$15,200.

Some costs could not be determined at the time that the MOU was signed. For instance, additional engineering work needed to be completed before some of the costs could be finalized. However, Ms. Butler repeatedly advised the Committee that the government would have been aware of the costs outlined above (not just the sunk costs) because it negotiated and signed the MOU.

Ms. Butler indicated that there are similar “buckets” of costs for the cancellation and relocation of the Mississauga plant to Lambton. Focusing on the sunk costs of the Mississauga location, she advised the Committee that these costs were higher than in Oakville because construction had already started at the time the plant was cancelled. A significant portion of the sunk costs went toward paying off Greenfield and its trade creditors, as well as for equipment and materials that had been purchased or leased.

Ms. Butler also discussed the estimated \$200 million differential in costs associated with moving up the transmission solution for the SWGTA to 2019 from 2029. Because the Oakville (and ultimately the Mississauga) gas plant is not going ahead, the OPA needs to upgrade the transmission system for the SWGTA ahead of schedule in order to ensure a “reliable supply” of electricity (p. 85). However, she would not consider this \$200 million as part of the cost to cancel and relocate either gas plant.

### **Disclosure of Documents**

Ms. Butler testified that while she collected and disclosed all her documents related to the Mississauga and Oakville gas plants, as requested by the Standing Committee on Estimates (SCE), she had no direct involvement in the document disclosure process at the OPA. However, she emphasized that the OPA made “absolutely every effort to try and do whatever was asked of us” (p. 83).

Ms. Butler informed the Committee that the term “Project Vapour” was used to describe the Oakville plant, and the term “Vapour Lock” to describe the Mississauga plant. While she had heard of other code names referring to the gas plants (e.g., “Project Apple,” “Project Banana,” “Fruit Salad”), she was unable to identify their precise meaning. Ms. Butler had not used code names in the past.

Ms. Butler also agreed that the OPA’s bargaining position could have been weakened if commercially sensitive details had been made public before the relocation agreements were finalized.

**HER WORSHIP HAZEL MCCALLION, MAYOR OF MISSISSAUGA,  
MARCH 21, 2013**

Hazel McCallion was first elected Mayor of the City of Mississauga in 1978 and is currently in her twelfth consecutive term as Mayor. During her time as Mayor, Ms. McCallion has shepherded the growth of Mississauga to become one of the largest cities in the country.

In 2005 Mayor McCallion was appointed a Member of the Order of Canada.

**Involvement with the Mississauga and/or Oakville Gas Plants**

Testifying before the Committee on March 21, 2013, Ms. McCallion provided the Committee with much-needed background on the commissioning of the Mississauga gas plant and outlined the efforts by her municipality to oppose the construction of the plant.

Mayor McCallion testified that the OPA announced Greenfield's plans to build the Mississauga plant on the Loreland Avenue site without consulting with the City or its residents. The Ministry of Energy did not advise her of the pending announcement. According to Ms. McCallion, the lack of communication continued for many years, despite the City's opposition and concerns. The OPA, Mayor McCallion argued, was to blame for the handling of the Mississauga gas plant:

Let's zero in on the OPA. They're the ones that caused all this problem [*sic*]. I can assure you; I dealt with them. They ignored any concern of the citizens. They ignored any concerns of the professional staff of our city, and I have the two of them sitting here. They know all the details—absolutely ignored and said, "We're bulldozing ahead." And by the way, find out whether their projections of the need of hydro in the GTA are flawed or not. Nobody has questioned that, except the citizens and the city of Mississauga—flawed . . .

So, in my opinion, zero in on the OPA. They're the ones who should be on the carpet, because we worked with the OPA to try to convince them that they were on the wrong track. They wouldn't listen. They're arrogant—absolutely arrogant (p. 96).

After consulting with the then Minister of Energy Dwight Duncan (who was supportive of the City's position), the City tried to challenge the

construction of the plant. Cognizant that there was a contract in place between Greenfield and the OPA, and wanting to limit any potential for litigation, the City opposed the power plant by taking Greenfield to the OMB, where it argued that the plant was contrary to the City's official plan and zoning by-laws. In addition, the City asked that the Ministry of the Environment elevate the Greenfield project to an individual environment assessment. The City released a report analyzing the electricity requirements for the GTA in an effort to demonstrate that the Mississauga gas plant was not necessary; it also explored alternative sites for the gas plant. Once their options were exhausted, however, the City issued a building permit to Greenfield on May 28, 2009.

Mayor McCallion informed the Committee that her City's residents were happy that the Mississauga gas plant was cancelled, and were prepared for the costs associated with that decision. However, she indicated that the plant should have been cancelled before the building permit had been issued:

Obviously, if you're going to cancel a contract, you'd better be prepared to pick up a pretty heavy cost of cancelling a contract. Think of the costs if it had been cancelled before the permit was issued. Now you're faced with the building half up, with all the equipment ordered, you name it. The decision should have been made earlier. It should have been made before the permit was issued, in my opinion (p. 94).

Ms. McCallion said the plant "was cancelled obviously for political reasons" (p. 95).

### **Disclosure of Documents**

Mayor McCallion did not address the issue of privilege in her testimony; however, she told the Committee that it should not be investigating the cancellation of the plants and its fallout, but "get[ting] on with the business of the province."

### **TIFFANY TURNBULL, FORMER EXECUTIVE ASSISTANT TO THE DEPUTY MINISTER OF POLICY AND DELIVERY, CABINET OFFICE, MARCH 26, 2013**

Tiffany Turnbull has been Manager, Evaluation and Renewal, at the Workplace Safety and Insurance Board since July 2012. Prior to holding that position, she worked in Cabinet Office for five years, three of which

were spent in the office of the Deputy Minister, Policy and Delivery, Giles Gherson.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Ms. Turnbull advised the Committee that she had no direct involvement in the issues being investigated. She attended no meetings or teleconferences on the topic of either the Oakville or Mississauga gas plant cancellation. Ms. Turnbull testified that she recalls “occasions when I was copied or sent emails related to these files, but I have no specific recollection of their contents” (p. 109). Her role was to pass on documents to her superior, Mr. Gherson, and to coordinate meetings for him.

Ms. Turnbull also provided information to the Committee regarding Mr. Gherson’s role in the cancellation and relocation of the two gas plants. To the best of her recollection, Ms. Turnbull reported that Mr. Gherson was “very peripherally, if at all, involved until . . . following the election” on the gas plant file (p. 110). Following the 2011 provincial election, Mr. Gherson was in contact with Chris Morley from the Premier’s Office, David Lindsay, the Deputy Minister of Energy and Peter Wallace, the Deputy Minister of Finance. Mr. Gherson would have been involved in chairing and organizing meetings and teleconferences concerning the implementation of the government’s decision to cancel the Mississauga gas plant, but Ms. Turnbull testified that her office would not have had a substantive role in the decision-making (p. 113). By her recollection, her office was not involved in decision-making regarding the Oakville gas plant. She did note that it was rare for her office to be dealing with files from the Ministry of Energy and she could not recall any other power plants being discussed in her five years in Cabinet Office (p. 113).

When asked about the various code names for the gas plant cancellations, Ms. Turnbull informed the Committee that she was familiar with some, but not others. She had heard about “Project Vapour” (Oakville), probably in the Spring or Summer of 2011, but only in informal conversation. Shortly after the 2011 election, she first came across “Project Vapour-lock” (Mississauga) as Deputy Minister Gherson “had been asked to assist in coordinating meetings out of Cabinet Office to facilitate the implementation of this government commitment” (p. 111). Ms. Turnbull testified that code names were not common, as items coming across her desk were on their way to Cabinet and such names were unlikely by that stage of a project (p. 114). She testified that she was not familiar with the following code names: “Apple,” “Banana” or “Fruit Salad” (p. 111).

### **Disclosure of Documents**

Ms. Turnbull testified that she had no direct involvement in the search for, or disclosure of, documents. She also reported to the Committee that she

was no longer with the OPS and thus, had no access to her old records or documents. She was able to recall, however, that she saw a few emails that included the terms “vapour” or “vapour-lock” (p. 113).

### **JAMISON STEEVE, FORMER PRINCIPAL SECRETARY, OFFICE OF THE PREMIER, MARCH 26, 2013**

Jamison Steeve has been Executive Director of the Martin Prosperity Institute and the Institute for Competitiveness and Prosperity since September 2012. Prior to that, he was Principal Secretary to former Premier Dalton McGuinty from the end of June 2008 until the end of June 2012. Mr. Steeve’s responsibilities as Principal Secretary focused on three main areas: advising the government on overall policy development and its legislative agenda; strategic communications; and key stakeholder engagement and issues management (p. 118).

#### **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. Steeve was involved in the Oakville file from June 2010 until the spring of 2011. Following conversations with colleagues in the Premier’s office, and with the Premier, he and Sean Mullin, the Premier’s policy adviser on energy, were asked to meet with TCE (p. 120). Mr. Steeve was tasked with exploring options to see how the government could resolve “an increasingly intractable situation” (p. 118).

Mr. Steeve was already aware of opposition to the plant. He also knew that the local MPP, Kevin Flynn, had introduced a bill which “had given all of us some reason for pause from a regulatory environment perspective” (p. 119).<sup>16</sup> TCE had also raised concerns that construction could be impeded by an Oakville by-law (p. 119).<sup>17</sup>

Mr. Steeve had five meetings with TCE between June 2010 and October 2010; all were conducted in the company of Mr. Mullin. Over the same time period, he had four conversations with the Premier about the Oakville plant (pp. 118, 127).

The initial TCE meeting on June 3 was with Chris Breen, Director of Government Relations. Two possible courses of action were discussed: proceeding with the plant by way of legislation dealing with an Oakville by-law; and considering another site, with an unknown fiscal cost (p. 120). (According to Mr. Steeve, two options were available to the government at this time: legislation and a minister’s directive to the OPA not to proceed (pp. 128-29).)

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<sup>16</sup> Mr. Steeve noted that the *Green Energy Act* had introduced a setback of 550 metres for wind turbines. The gas plant was located under 400 metres from both residences and schools.

<sup>17</sup> Oakville had passed two by-laws dealing with plant size and airshed.

TCE presented location options and “again” raised the issue of force majeure and moving forward with legislation on July 15. Mr. Steeve increasingly felt the Oakville site would be a challenge but made it clear to TCE he was not the one to make a decision (p. 121). Communication with the Premier after this meeting indicated that he (the Premier) was more comfortable with trying to move forward with Oakville (p. 127).

By September, as the long-term energy plan was being prepared, it “came to light” that the power was no longer required in Oakville at either the rate or the speed indicated in the original contract (p. 119). The Premier was also expressing increased sympathy for the argument being put forward by Mr. Flynn respecting the regulatory environment (p. 127).

Mr. Steeve met with the Premier prior to an October 1 meeting with TCE. He was directed to advise TCE that a minister’s directive would be issued. The Premier asked if there was any certainty about the cost of not moving forward with Oakville. Mr. Steeve was unable to provide that certainty. He told the Committee that this was not unexpected as the decision was going to be the subject of ongoing negotiation and mitigation by the OPA and TCE (p. 126). Mr. Steeve also met with senior Ministry staff who asked that he communicate the following points: the Premier and the Minister of Energy had decided to issue a minister’s directive to the OPA to not proceed with the Oakville plant; and that TCE consider not proceeding with litigation so that TCE and the OPA could enter into productive negotiations (pp. 118, 125).

At the October 1 meeting, in addition to speaking to the points above, Mr. Steeve told TCE that the change in power requirements was “the primary rationale” for the decision communicated that day (p. 121).

Mr. Steeve had minimal involvement with the file after his October meetings. His involvement with settlement negotiations was limited, as those conversations were between the OPA, TCE and the Ministry of Energy. He was screened from the Oakville file in April 2011 and had no further involvement. The Secretary of Cabinet, Shelly Jamieson, told him he was screened because TCE had threatened litigation and he was a potential witness. He then met with government lawyers, provided them with his meeting notes, and answered their questions regarding his discussions with TCE (pp. 132, 118).

Mr. Steeve was not familiar with the phrase “Project Vapour” (p. 128). He was also unfamiliar with a \$712 million offer made to TCE in or around April 2011 (p. 126). When asked to comment on references to making TCE whole, he replied that the only time he heard the words “whole” or “close-to-whole” used was during an October 2010 meeting with TCE (p. 120).

Mr. Steeve noted that the two opposition parties had taken a stand on the Oakville plant in advance of the final decision regarding that site, and that all three parties had made commitments with respect to the Mississauga plant (p. 123).

Mr. Steeve had no direct contact with the office of the Minister of Energy. The line of contact would have been from Sean Mullin to Craig MacLennan. Asked who contacted the OPA to tell them that the Oakville plant would not be going ahead, Mr. Steeve testified that he believed it was Sean Mullin and/or Craig MacLennan (pp. 126-128).

While he expressed respect for the work done by the OPA, Mr. Steeve wondered if earlier and greater community involvement with respect to selection of a project proponent or a physical site might not be essential. It was because the public interest “had no other place to go but to its local member” and through them, to the government, that he and other members of the “political class” eventually became involved in the process (p. 124).

Mr. Steeve had limited involvement with the Mississauga file. His primary interaction was over a two to three week period at the end of October and into early November 2011, when he was both Principal Secretary and acting Chief of Staff in the Premier’s office. During this time he worked with Shelly Jamieson and Giles Gherson, Deputy Minister, Policy and Delivery in Cabinet Office, to obtain the OPS’s advice on how to fulfill the government’s commitment to cancel the gas plant. His involvement with the file ended on the return of the Chief of Staff, Chris Morley (p. 118).

### **Disclosure of Documents**

Mr. Steeve was not involved in the production of documents related to the request from the SCE. Although he was Principal Secretary at the time of the request and for a brief while after, the request was for documents from the Ministry of Energy, the Office of the Minister of Energy, and the OPA (p. 132).

### **GREG ROHN, COALITION OF HOMEOWNERS FOR INTELLIGENT POWER, MARCH 26, 2013**

The Coalition of Homeowners for Intelligent Power (CHIP) was founded in 2004 to oppose the Mississauga gas plant. It consists of a collection of individuals and ratepayer groups. Many of its key members do not live in the vicinity of the proposed plant, nor do they live downwind; rather, CHIP is made up of individuals concerned that “a terrible wrong [was] being foisted [onto the] community” (p. 133). At its height, CHIP counted on the support of 10,000 homes.

Greg Rohn is a small business owner and a lifelong resident of Etobicoke. He joined CHIP in 2005, shortly after it was formed.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

CHIP opposed the construction of the Mississauga gas plant for several reasons. Chief among them was the environmental and health toll that the plant would take on the communities of Etobicoke and Mississauga. Mr. Rohn testified that

it's probably the most heavily polluted area in the country. What we were faced with was the developers' reasoning that this is better than the coal plant at Lakeview. Well, the fact of the matter is that in the immediate area and for the people where this plant was going to be located it would be much worse.

The stacks were a lot shorter than Lakeview. The emissions would blow down on the local neighbourhood, whereas with Lakeview they were tall stacks, and it blew out over the lake  
(p. 134).

CHIP was also concerned about the type of emissions from gas-fired power plants, known as PM<sub>2.5</sub> – “the emissions from these plants are of the smallest particulate matter that gets deep in your lungs” – and how they may affect the health of local residents (p. 134).

CHIP challenged the Mississauga gas plant on several fronts. CHIP members tried to engage politicians both in government and in the opposition. They organized rallies. They also applied to the Ministry of the Environment for an individual environmental assessment of the proposed site, outlining 42 points that it expected the Ministry to address. The Committee heard that CHIP received a form letter in response, refusing their request and failing to address any of their arguments, except for offering to set up a community advisory committee. They appealed the Ministry's decision to the Minister, but got no response.

According to Mr. Rohn, CHIP also vigorously pursued the issue of the gas plant during the 2011 provincial election campaign, believing that it may be their last chance to stop construction:

We had some great support in the last campaign running up to the election. A lot of younger people came in and set up websites and Twitter and Facebook and all that kind of stuff, and we really started

getting the word out there. It was really something to see. I know in my own neighbourhood, I'd be driving to work in the morning, and I would see five times more "Stop the Sherway Power Plant" signs than election signs (p. 139).

During the campaign, CHIP put pressure on all parties to support the cancellation of the gas plant. Ultimately, in the last few days of the campaign, all three major parties either committed to or supported cancelling the plant. However, construction continued after the election, "creat[ing] a lot of fear and anger in the community," and possibly "put[ting] the government under more duress to come to some sort of deal" (p. 138).

Mr. Rohn advised the Committee that there should be more local involvement in the siting process for gas plants. For CHIP, the issue is not gas plants themselves, but rather their location:

I think that if the community is brought in at the beginning—first of all, in a location like that, you're not going to get a community supporting you, because it was the wrong location, but we were never against power plants. We were never against power plants in Mississauga or Etobicoke. We were never against any of that. It was strictly the location. It has got to be in the right location, and you've got to bring the community into it. It's a big issue.

I'm not sure what the answer is as to how you gather the community together. We came together because of a mistake. I'm not sure you would have had as strong a group coming forward, willing to help the government figure out how to properly site (p. 136).

Mr. Rohn argued that most people are reasonable and understand the need for new infrastructure investments like power plants; however, "you just cannot drop these things right into a residential neighbourhood. It makes no sense at all" (p. 137).

## **Disclosure of Documents**

Mr. Rohn did not comment on the issue of document disclosure.

## **DAVID LIVINGSTON, FORMER CEO OF INFRASTRUCTURE ONTARIO AND FORMER CHIEF OF STAFF TO THE PREMIER, MARCH 28, 2013**

David Livingston is the former chief executive officer of Infrastructure Ontario, the provincial agency responsible for public procurement on behalf of the Government of Ontario, for lending to public sector authorities, such as municipalities, to undertake infrastructure projects, and for managing real estate owned by the Government of Ontario.

Prior to joining Infrastructure Ontario, Mr. Livingston worked at TD Bank for 30 years, last serving as executive vice-president of corporate development.

In 2012 Mr. Livingston was appointed Chief of Staff to the Premier of Ontario.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. Livingston advised the Committee that he first became involved with the gas plants matter in June 2011, in his capacity as CEO of Infrastructure Ontario, after negotiations between the OPA and TCE had broken down.

In June 2011 the former Secretary of Cabinet (Shelley Jamieson), the former Deputy Attorney General (Murray Segal), and the former Deputy Minister of Energy (David Lindsay) asked him to meet with TCE in order to determine whether it was possible to negotiate a settlement. Mr. Livingston understood that they were looking for ways to mitigate the risks of litigation and to “get a deal where value was created for the money that was going to TCE as opposed to just writing them a cheque for the value of the contract” (p. 151). Mr. Livingston is not an expert in energy-related matters, but he informed the Committee that he had the commercial expertise necessary to meet with TCE officials and identify possible options to help the government resolve the dispute.

Mr. Livingston met with TCE between June 2011 and July 2011 in order to determine, in his words, “what [was] possible” (p. 143). While Mr. Livingston acknowledged that he was the lead negotiator with TCE at that time, he stressed that he did not have a mandate to settle with TCE, nor did he have any signing authority. He described his role as follows:

The first approach or the first step I took was to go and talk to TCE and figure out where they were, what was their interest, what were they looking for. I had a sense of what they wanted. At that point, we started into discussions. I think it's fair to say that what TCE really wanted was—they had a contract to provide power to the province in

Oakville. They wanted another contract to provide power to the province—obviously not in Oakville. So the question was, where was it going to be possible to do that?

...

I would say more that once it became clear what was going to be possible to do, I was coming to the government—the parties to the agreement, if there was going to be one reached, were going to have to be TCE, OPA and the province. So it was more me explaining what was possible and them deciding were they prepared to live with it, as opposed to them saying to me, “Here’s what we’ll do. You go out and sign a deal” (p. 144).

Having determined what TCE was looking for, Mr. Livingston then presented possible options to Ms. Jamieson, Mr. Murray, and Mr. Lindsay for their consideration. No other Ministry, public service, or government officials were involved. According to Mr. Livingston, it was then up to the OPA and the Province to determine whether they were willing to settle the dispute on the terms sought by TCE. Mr. Livingston did not make any specific offers to TCE, nor did he have a clear sense of how much each the options he presented to Ms. Jamieson, Mr. Murray, and Mr. Lindsay would cost.

Mr. Livingston also informed the Committee that there were two other parallel negotiations being conducted by the parties in June 2011 and July 2011. First, officials at TCE were speaking with OPG about the possibility of moving the Oakville plant to another site, including Lennox. Second, Mr. Livingston was involved in negotiations with TCE to draft a binding arbitration agreement, as a means to resolve the impasse without resorting to the courts.

Once the arbitration agreement was signed, Mr. Livingston stopped working directly on the Oakville file. Mr. Livingston also never worked directly on the Mississauga file. While he was aware, as Chief of Staff to the Premier, that the Province had entered into final agreements with TCE and Greenfield, he was not directly involved in these agreements, nor did he review them. Mr. Livingston testified that he was not advised that the cost of relocating the Oakville plant could exceed \$40 million. According to Mr. Livingston, both deals likely went to Treasury Board for consideration prior to being ratified by Cabinet.

## **Disclosure of Documents**

Mr. Livingston was also asked about his role in the disclosure of documents to the SCE in 2012. As Chief of Staff to the Premier in 2012, Mr. Livingston advised that he had no role in the decision not to comply with the two-week deadline imposed by the Estimates Committee, or to redact any documents. According to Mr. Livingston, the Premier was not involved in these decisions either. Mr. Livingston said that such decisions would have likely been made by the parties named in the Committee's motion – the Minister of Energy, the Ministry of Energy, and the OPA – but that he did not know for sure.

Mr. Livingston indicated that while he believed the Minister, the Ministry of Energy and the OPA made best efforts to respond to the Committee's request, he could understand their motivation to withhold and/or redact documents. Settlement discussions between the Province and the proponents of the Oakville and Mississauga plants were ongoing, and public disclosure of the Province's position could have prejudiced the deals. Accordingly,

the Ministry would have [had] to balance the request for the information with the commercial sensitivity of what was going on to try and protect the taxpayer. So they would be taking out information that, if it got into the public domain, could be prejudicial to trying to get a deal (p. 154).

Based on his experience, Mr. Livingston surmised that the Ministry of Energy would have also sought to redact any information that was extraneous to the Committee's request.

Mr. Livingston also discussed with the Committee the practice of using code names. According to Mr. Livingston, the use of code names is a fairly common practice in both the private and the public sectors. Code names are often used to prevent the inadvertent disclosure of commercially sensitive negotiations. Mr. Livingston testified that he likely created the code name "Project Vapour" when working on the Oakville file.

### **JESSE KULENDRAN, ACTING MANAGER OF CONSERVATION POLICY, MINISTRY OF ENERGY, APRIL 4, 2013**

In the past, Jesse Kulendran has worked in the offices of MPPs Linda Jeffrey and Gerry Phillips. Since 2008, she has worked in the Ministry of Energy's Communications Branch, the Deputy Minister's office, and then in the Renewables and Energy Efficiency division. From December 2009 to February 2010, Ms. Kulendran provided assistance to the interim Minister of Energy, Gerry Phillips, and then returned to her Ministry of Energy position. She provided temporary assistance to the office of the Deputy Minister from May to June 2012, and began working in her current

position as the Acting Manager of Conservation Policy in June 2012. For one week in August 2012, Ms. Kulendran worked in the Deputy Minister's office, after which she returned to her current position.

## **Disclosure of Documents**

During Ms. Kulendran's 2010 placement in the Deputy Minister's office, she worked as a policy coordinator. Her responsibilities in this role included the coordination of documents, but not the provision of "advice or information" (p. 169).

During her 2012 work in the Deputy Minister's office, Ms. Kulendran provided support in relation to the Ministry of Energy's appearance before the SCE. Her responsibilities included preparation of briefing and follow-up materials. She was in this position when the SCE demanded production of documents from the Ministry of Energy, and she participated in the initial coordination of the search for documents. Ms. Kulendran took instruction from Serge Imbrogno, Deputy Minister of Energy, and Halyna Perun, Director of Legal Services, in the drafting of emails instructing Ministry of Energy staff to search their records, and advising them of the parameters of the SCE's request (p. 162). Individual staff members, including Ms. Kulendran, were responsible for conducting searches of their own files, and the Freedom of Information Coordinator, Alma Beard, compiled the results. The Legal Services Branch answered questions about privileged information, and screened the documents. Ms. Kulendran was informed by Ryan Dunn, Policy Adviser to the Minister of Energy, that the Minister's Office did not have any documents that were responsive to the SCE's request. This was not communicated in writing (p. 162).

In August 2012, Ms. Kulendran assisted in the Ministry of Energy's preparation for the release of documents to the SCE, because she "knew about the parameters of the motion" and "knew about the document production" (p. 162). During this time, she "did not directly control any content" (p. 171). She was not involved in the redaction of documents or in the subsequent releases of documents by the Ministry of Energy.

The process of searching for documents was "labour-intensive" (p. 163). The Ministry of Energy had never before conducted a search of this nature, and it was "understandable that there may have been some items that were missed" (p. 163). Although she was not working in the Deputy Minister's office at the time, Ms. Kulendran was aware that the search had missed the records of some employees who had either moved into different positions or left the public service. She believes that these errors were corrected when the second search for correspondence was conducted.

At 11:00 a.m. on August 22, 2012, Ms. Kulendran attended a meeting with OPA employees Kristin Jenkins and Ziyaad Mia. The meeting was requested and scheduled by the Ministry of Energy's Legal Services Branch. Halyna Perun, Director of Legal Services, and another legal counsel had planned to attend. Earlier that morning, Ms. Kulendran was informed that neither legal counsel would attend the meeting, and she was instructed to proceed with the meeting. The objective of the meeting was to "review the Ontario Power Authority's non-privileged materials related to the Oakville gas plant. Those materials were in fact a small subset of all the materials that they had prepared for release" (p. 160). The OPA had outsourced its document search, and OPA staff had not reviewed the compiled documents prior to providing them to the Ministry of Energy. Approximately 15 to 20 documents had been flagged by the Minister's Office as not being relevant to the SCE request. For example, the documents included materials related to the Atikokan and Thunder Bay plants, and unrelated transition materials (p. 160).

During the meeting, Ms. Kulendran worked from the Ministry of Energy's copy of the documents, and made notes on the documents themselves. This set of documents was "left with the Deputy Minister's office, and all the Ministry's copies of OPA materials were returned to the Ontario Power Authority" in October 2012 (p. 160). For this reason, Ms. Kulendran cannot provide a copy of her notes from the meeting. Ms. Jenkins and Mr. Mia brought a copy of the documents to the meeting, and placed Post-it notes on the potentially non-relevant pages. The removal of these documents from the package was not discussed at this time. Ms. Kulendran repeatedly informed Ms. Jenkins and Mr. Mia that they must speak with senior management and legal counsel "about what was and was not responsive to the Committee's motion," as the OPA was responsible for complying with the SCE's request (p. 164).

The scope of the SCE request was also discussed during the August 22 meeting. Ms. Kulendran noticed that the OPA had used the search term "southwest GTA", and she advised Ms. Jenkins and Mr. Mia that they might have missed the search terms "Oakville" and "Oakville generating station". Ms. Kulendran observed that "in searching for 'southwest GTA' it seemed that documents had been included about other issues in the region, because the Ontario Power Authority deals with a variety of planning issues as well as conservation, etc." (p. 166). Additional challenges with the search process were also discussed: Ms. Jenkins "had indicated that they had not searched the records of an employee who had departed the Ontario Power Authority" (p. 165). The meeting was "very amicable" and "productive" (p. 161).

Ms. Kulendran did not participate in any further meetings with OPA staff, but she had telephone conversations with Ms. Jenkins in the days following the August 22 meeting. During these conversations, Ms. Jenkins informed Ms. Kulendran that the OPA had undertaken a full review of its documents. They also discussed some confidential banking information

that had been found in the set of privileged documents. Two revised sets of unredacted documents were sent to the Ministry of Energy on August 24 (p. 167).

Ms. Jenkins' allegations in her October 3, 2012 memo that Ms. Kulendran directed the OPA to exclude responsive attachments where the correspondence itself was not responsive, and to exclude "SWGTA," are not accurate (p. 160); she "did not direct the Ontario Power Authority, under any circumstance, to exclude documents. That discussion was about sharing observations; it was not about making decisions for the Ontario Power Authority" (p. 167). She did not have the authority to direct the OPA. Contrary to the claim made in the October 3 memo, Ms. Kulendran did not request a page-by-page review of the documents during the August 22 meeting; this request was made by Ms. Jenkins and Mr. Mia. In January 2013, Ms. Kulendran became aware of Ms. Jenkins' claim that she had provided inappropriate direction regarding the document search. Ms. Kulendran has been interviewed twice by Ministry of the Attorney General legal counsel regarding the allegations.

Emails sent by Ms. Jenkins on August 24 and September 20, 2012, and the OPA's Q&A document from October 1, offer evidence that the OPA made its own decisions about the document disclosure process.

When she worked as a political staffer, Ms. Kulendran held a membership with, and made donations to, the Liberal Party. She maintains occasional contact with former Liberal colleagues who are no longer employed with the party. Since 2008, Ms. Kulendran has been a public servant and has "maintained the values of the public service" (p.172). She has acted in good faith.

### **FRANK CLEGG, CHAIR OF CITIZENS FOR CLEAN AIR (C4CA), APRIL 9, 2013**

Frank Clegg, former President of Microsoft Canada, is the Chair of C4CA, a non-profit, non-partisan, grassroots organization made up of citizens from Oakville and Mississauga. While C4CA was established to oppose the construction of the Oakville power plant, C4CA has since broadened its mandate to oppose the siting of any power plant that is "unreasonably close to homes and schools" (p. 175).

At the height of its work, Mr. Clegg testified, C4CA had an extended reach of 50,000 citizens.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

During his testimony, Mr. Clegg cited three reasons why C4CA opposed the Oakville plant.

First, the plant would contribute to existing air pollution in the Clarkson airshed, which Mr. Clegg described as “stressed” and “already exceed[ing] Ministry of the Environment guidelines for some air pollutants, including PM<sub>2.5</sub>” (p. 175). C4CA was concerned that elevated levels of air pollution would compromise the health of local residents.

Second, the proposed Oakville site would have no setbacks or buffer zones to ensure the safety of residents, despite being “[only] 400 metres from the nearest home, 320 metres from the nearest school, 65 metres away from the closest office complex and only a few metres from one of the busiest railway lines in Canada” (p. 175).

Third, C4CA expressed serious reservations about the procurement and siting process for gas power plants. Mr. Clegg described the SWGTA procurement process as “mainly an engineering, finance and real estate exercise, with limited community involvement or engagement before the contract was awarded” (p. 175).

Later on during its campaign, and relying upon a report prepared by the Independent Electricity System Operator (IESO), C4CA also argued that the Oakville plant was no longer needed as the projected demand for power had decreased.

C4CA secured commitments from every major party (and/or local candidate) to stop the construction of the proposed plant.

On behalf of C4CA, Mr. Clegg made several recommendations to the Committee on how to improve the procurement process for power plants, in an effort to ensure that “this doesn’t happen to another community in our province” (p. 180).

- (5) There should be a basic buffer zone between a power plant and any homes and schools.
- (6) Any proposed power plant site should undergo an environmental assessment prior to a contract being awarded, and perhaps even before proposals are submitted.
- (7) Community input should be sought out before any new power plant is announced. The process should be open and transparent, providing community members with a meaningful opportunity to give feedback.

Mr. Clegg provided the Committee with the example of California, which set up a committee to evaluate proposed sites and where citizens are consulted. According to Mr. Clegg,

The thing I like about it from a business standpoint is that if you’re a proponent and

you already know that that site is going to have problems, then you can decide to use that site or not. I think if citizens are aware that that site is going to be evaluated by the government and it is going to be potentially part of the procurement process, and if that's known upfront, I think people would pay attention and would actually give proper feedback (p. 178).

- (8) More generally, the government should adopt a clearer policy on how it sites gas plants. Clarity in the siting process would give much-needed direction to planners such as the OPA; provide certainty to municipalities and their residents, while allowing them to express their concerns; create a "level . . . playing field" for proponents; and "ensure consistency with siting policies and requirements for other types of sensitive developments, such as wind farms, railway corridors, landfills etc." (p. 175).

## **Disclosure of Documents**

Mr. Clegg advised the Committee that when he was President at Microsoft every major project undertaken by the company was assigned a code name.

## **CRAIG MACLENNAN, FORMER CHIEF OF STAFF, MINISTER OF ENERGY AND INFRASTRUCTURE/ENERGY, APRIL 9, 2013**

Craig MacLennan was Chief of Staff in the office of the Minister of Energy and Infrastructure/Energy from January 2010 until late August 2012. He was absent from his position for approximately three months prior to the October 2011 election (p. 181).

## **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. MacLennan's involvement with the file increased in September 2010, as he attended more meetings with various parties for briefing purposes and to support the Minister. After the decision not to proceed with the plant, he took meetings as needed. He was screened off the file in April 2011 to limit potential litigation testimony (pp. 181, 189).

Mr. MacLennan met with TCE on three occasions. The first was soon after the decision not to proceed, with the Minister and the Deputy also in attendance. Legal counsel took notes. At the second meeting, Mr. MacLennan was accompanied by the Deputy Minister and Sean Mullin, from the Premier's office. Legal counsel again took notes. Based on advice from legal counsel, the Deputy, Mr. MacLennan and Mr. Mullin said very little. Mr. MacLennan's third meeting, again in the company of Mr.

Mullin, was with Chris Breen, TCE's Director of Government Relations. Prior to the meeting, on behalf of himself and Mr. Mullin, he consulted with government legal counsel who provided significant advice and coaching. As instructed, they made sure the meeting was without prejudice. They listened but made no commitments. Legal counsel was briefed following the meeting (pp. 181-182).

Mr. MacLennan was asked what happened to cause the OPA and the Ministry to try and exit the contract with TCE in February 2010, a few months after it had been signed. Mr. MacLennan was not part of the contract process but acknowledged community backlash and referred to "significant discussions on how to get out of it and what our options" were (e.g., legislation, doing nothing and relocation) (p. 186). When asked about the issue and the upcoming election, Mr. MacLennan said his participation in discussions was based on area supply needs as was his advice to the Minister. It was the long-term energy plan, produced later in 2010, that led to the realization that "a transmission solution could be found and the supply needs of the areas had changed" (p. 186).

Reference was made to a Ministry legal opinion from August 2010 which said the risk of legal action was low if TCE was left to its own devices as it was having problems with by-laws. When asked why that approach was not taken, Mr. MacLennan replied that he "wasn't the decision-maker on the file" (pp. 186-187).

Mr. MacLennan was presented with a September 2010 email chain which referred to \$10 million in sunk costs to date and a contract life-time value of \$1.4 billion, in which he was said to be "not happy" (p. 183). Because he had been screened off the file two years before, Mr. MacLennan said he could "talk about what numbers we were talking about back then," which were the sunk costs (p. 184).

Mr. MacLennan was asked who decided to "sole-source the new plant to TCE without going to a bid" (p. 184). His understanding was that the Minister would need to write a directive. While he was not part of the negotiations, "the thought was that the plant could be relocated to an area [Kitchener-Waterloo Cambridge] that needed the power," then given to the same contractor (p. 184).

Mr. MacLennan was presented with an internal OPA email from January 2011 which said that Ministry legal staff had said that the Minister's office "is dead set against any reference to costs, so we need to be prepared to deal with being told they won't do it" (p. 193). When asked why a minister's directive acknowledging costs was not being provided, his interpretation was that costs had not been finalized. It may have been a reference to initial negotiations to relocate to the Cambridge area and the wish not to put costs in a directive because it was "the precursor to finalizing the negotiations, and we probably didn't want to set a number that would undermine the OPA's negotiations" (p. 193).

When first asked about an April 2011 offer of \$712 million rejected by TCE, Mr. MacLennan told the Committee that he was unaware of the offer and assumed it was made after he was screened off the file. He was familiar with an OPA request to TCE to go to the government (pp. 183, 185, 191). Mr. MacLennan was later told that an earlier witness had indicated that he and Mr. Mullin were behind the \$712 million offer to settle, in March 2011. (The OPA had already made an offer to TCE which was rejected.) In response, Mr. MacLennan said that any offer would have to be signed off by the Minister and the Premier. He would not have come up with a \$712 million figure; the OPA would have been asked for a number that was within a commercially defensible range and had some rigour behind it (p. 193).

Mr. MacLennan was asked if he was aware of who decided that TCE needed to be made whole. He had been told by contacts at the OPA that TCE had thought they had heard someone say that or agree to it at a meeting and then had used it “as part of the negotiations” (p. 187).

He later responded to a question about the factors underlying the decision to cancel the Oakville plant. He had advised decision-makers that the area’s supply needs were changing (as indicated in the long-term energy plan), a transmission solution could be found, force majeure was not a certainty, the community was clearly against the plant, and it was likely that the plant could be relocated to an area that needed it (p. 189).

Prior to his departure from the Minister’s office before the 2011 election, Mr. MacLennan was involved in briefings and information gathering as the issue of the Mississauga plant emerged. This was raised as a concern by caucus members but he was not the lead on the file. On his return, Mr. MacLennan supported the new minister in implementing the campaign commitment (pp. 183, 185).

Information presented at the hearings indicated that in July 2012 the Minister announced that cancelling the Mississauga plant would cost \$180 million. A few days later, the Minister of Finance said it would be \$190 million. In explaining the difference, Mr. MacLennan said the \$180 million figure had been provided by the OPA which had indicated these were direct costs. He went on to say that a case could be made for an outstanding \$10 million that allowed for the cessation of construction and for the deal to be closed. Mr. MacLennan was also questioned about a \$5 million “side deal” with Greenfield South with which he said he was not familiar (p. 185).

## **Disclosure of Documents**

Mr. MacLennan was not responsible for coordinating the documents prepared in response to the SCE’s request; the Ministry decided how to collect them (pp. 182, 187). Legal counsel from both the OPA and the

Ministry advised that releasing documents, which contained privileged solicitor-client information, would undermine negotiations and recommended that they not be handed over. It was ultimately the Minister's decision to accept or decline that advice (pp. 182, 185).

Mr. MacLennan was questioned about the number of document releases. While he had left the Ministry eight months before, he understood that the Ministry and the OPA had not searched all of the terms or email boxes that they should have. The Minister's office had no impact on the Ministry or OPA searches (p. 190).

Mr. MacLennan outlined options that were considered with respect to the Committee's request. He believed the Committee was offered a sign-in process for reviewing the documents in-camera but was told it had not been presented (pp. 191-192). Just releasing the documents was another option, but "the legal advice was significant enough that that would compromise the negotiations and put the people at risk even more" (p. 192).

Mr. MacLennan was asked about the lack of responsive documents from the Minister's office, even though some of his own missives appear in email chains. He tended not to save e-mails, based on the capacity of his account. He also admitted that he did not know how to archive emails. Mr. MacLennan could not speak to the email practices of colleagues but did know that Ministry legal counsel and the OPA did save theirs. The ministers he had worked with did not email anything more than requests to chat (p. 194).

### **SERGE IMBROGNO, DEPUTY MINISTER OF ENERGY, APRIL 9, 2013**

Mr. Imbrogno has been Deputy Minister of Energy since April 2, 2012. Prior to this appointment, he was an Assistant Deputy Minister at the Ontario Financing Authority, beginning in March 2008. He has also served at the Ministry of Finance as well as the former ministries of Industry, Trade and Technology and Consumer and Commercial Relations.

In both his capacities at the Ministry of Energy and the Ontario Financing Authority, he was involved in issues related to the relocation of the Oakville and Mississauga plants.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

With respect to the Oakville deal:

- As Assistant Deputy Minister, Mr. Imbrogno worked with Infrastructure Ontario and David Livingston on parts of the arbitration, and with OPG and Infrastructure Ontario on trying to find joint ventures. As Deputy Minister, he worked with Infrastructure Ontario, the OPA, the Ministry

- of Energy, and outside legal counsel to negotiate the relocation of the plant (p. 195).
- The estimate of the sunk costs was \$40 million, to be paid out of the Consolidated Revenue Fund. The Ministry of Energy knew that there would be other to-be-determined costs and benefits associated with the relocation of the plant; the costs would be borne by the ratepayer. The Minister was briefed on the contract and the costs and benefits. Among the costs were \$221 million for the turbines, and another amount for transmission costs. The benefit was that there was a reduction in the monthly payment. The gas management cost has not been finalized (p. 198).
  - The Ministry of Energy would have informed the Minister about all cost components on the deal, not just the \$40 million in sunk costs (p. 205).
  - When the OPA assumed the costs related to the turbines and gas management, the OPA was able to negotiate a lower price for power at the Lennox site (pp. 201-202).
  - The appropriate benchmark for gas delivery costs is \$17,200 – not the current lower amount – because it represents the last competitively procured gas plant (p. 204).
  - Mr. Imbrogno does not know about a \$712 million settlement offer that TCE rejected, but the costs would add up to close to that number (p. 203).

With respect to the Mississauga deal:

- The \$5 million side-deal on the Mississauga plant relates to complex litigation between EP and the Ontario Electricity Financial Corporation (pp. 204-205).
- There are costs and savings on top of the \$190 million in sunk costs (p. 206).

The cancellation of the gas plants means that transmission upgrades for the southwestern GTA will now be needed in 2018 instead of 2029 (p. 201).

During an election campaign, the OPS keeps an eye on the parties' commitments in order to prepare for their implementation (p. 202).

In the future, there should be more municipal involvement in the selection of sites for gas plants (p. 207).

## **Disclosure of Documents**

The search process that the Ministry of Energy used to comply with the SCE's May 16, 2012 request for production was similar to the process

used for complying with *Freedom of Information and Protection Act* requests. It took time to understand the scope of the request and how to search for responsive documents in a challenging time frame. Significant resources were used to collect and organize the documents. The first search was a good faith effort by the Ministry of Energy to provide all responsive documents; no responsive documents were deliberately withheld with respect to the September 24, 2012 tabling (p. 195).

There was no production on May 30, 2012 because of concerns about the disclosure of confidential, privileged and commercially sensitive documents at a time when there were ongoing negotiations and litigation (in the case of the Mississauga plant) or arbitration (in the case of the Oakville plant). The Ministry of Energy and the OPA provided responsive documents on July 11 and September 24. The Ministry of Energy and the OPA conducted independent, but coordinated searches. Shortly before the September 24 tabling, Mr. Imbrogno became aware that no responsive documents had been found in a search of the Minister's Office. The Minister's Office reviewed Ministry of Energy and OPA documents prior to the September 24 release. The October 12 release occurred because he learned on September 28 (due to a September 27 conversation with Colin Andersen) that the initial Ministry of Energy search had inadvertently omitted some documents; Mr. Imbrogno informed the Cabinet Office, David Livingston and the Minister's Chief of Staff about these developments on September 27. On September 28, he instructed his staff to do a second search, and he telephoned the Minister that evening about the second search. Significant human resources were applied to this search, which took priority over all other matters at the Ministry of Energy (pp. 195-196).

The Ministry of Energy and OPA used consistent search methodology in searches leading up to the October 12 release. The Ministry of Energy's search to comply with the SCE's request for production was conducted in good faith (p. 195).

Mr. Imbrogno was not made aware whether Minister's Office staff had noticed obvious gaps in the September 24 documents (p. 196).

Shortly after the September 24 release, Mr. Imbrogno informed Secretary of Cabinet Peter Wallace that Mr. Andersen had informed him that, based on a meeting between OPA staff and the Ministry of Energy staffer Jesse Kulendran, the Ministry of Energy was not following its own search protocol. When Mr. Imbrogno spoke to Ms. Kulendran about this, she indicated that she had not told the OPA to withhold responsive documents. Legal staff were not at the meeting in question. Ms. Kulendran did not do political work at the Ministry of Energy. He learned afterwards that a Ministry of the Attorney General investigation of the matter was inconclusive (pp. 196-197).

Mr. Imbrogno did not direct the OPA to exclude documents, or tell Ms. Kulendran to do so. Ms. Kulendran told him that she had not directed the OPA to exclude documents; she did not have the authority to make a decision or provide direction. The Ministry of Energy was sharing information with the OPA on what the Ministry of Energy was doing with respect to the SCE request for production (p. 197).

He believed that the OPA acted in good faith with respect to the initial search leading to the September 24 tabling. The search for responsive documents has been a learning experience for the Ministry of Energy; lessons have been learned. The Ministry of Energy and OPA were juggling many things at the same time. The Ministry of Energy redacted information that was not responsive to the SCE request (pp. 200-201).

Mr. Imbrogno could not speak to the absence of responsive documents from the Minister's Office concerning the two gas plants, but in the past he had received writings and emails from Minister's Office staff (p. 197).

Mr. Imbrogno normally takes notes at meetings (p. 207).

At the time of the SCE's May 16 request, an arbitration process with TCE was under way, and there was litigation with EIG (which had sued the Province and Greenfield). The OPA was also liable. Negotiations with Greenfield on the relocation had also begun. The negotiations and process were extremely commercially sensitive. There would have been fairly large risks to the taxpayer and ratepayer if these details became public before the deals were finalized (p. 199).

The Ministry of Energy considered all Ministry documents in the September 24 tabling to be confidential, privileged or commercially sensitive; that is why none of them were released to the SCE on the May 30 deadline. On September 24, the Ministry of Energy and the OPA each provided their documents to the Clerk (p. 202).

There was a common list of search terms in the second search, but not in the first search (p. 202).

On October 18, 2012, Mr. Andersen informed Mr. Imbrogno that he was conducting a third search (leading to the February 2013 tabling) because the OPA had inadvertently forgotten to put a search term in its software, and that they were going to look for additional documents (p. 203).

## **STEPHEN THOMPSON, COALITION OF HOMEOWNERS FOR INTELLIGENT POWER, APRIL 11, 2013**

Stephen Thompson is a member of CHIP, and is responsible for political advocacy with the organization.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

As a political advocate for CHIP, Stephen Thompson reached out to politicians from all parties and all levels of government: “we asked for help from everybody; it didn’t matter who. You know, we didn’t have a specific party; we just wanted help, and we got that help” (p. 213). Both before and during the 2011 election campaign, CHIP spoke with local candidates from all parties, asking for their support. Not everyone was willing to give it. Mr. Thompson also advised the Committee that CHIP had no communication with Greenfield and experienced difficulties obtaining documentation or any other information from the company.

Mr. Thompson contended that government ministries operate like “silos” and do not communicate with one another:

You’ve got all these different ministries making all these different decisions but no one wants to talk to each other, and we tried to get them involved. We begged them to get involved with each other and talk to each other. The unfortunate part about it is, you get a minister come in, a minister go out; a minister come in, a minister go out. Then they’re got to learn all over again. It’s just the same process.

Having the OPA around—it didn’t help at all. We would have assumed that the OPA would have been able to help us out. We got very, very little out of them (p. 216).

Accordingly, he thought that the OPA should be reaching out to the community when siting power plants. However, when asked about what role local groups like CHIP could play in the siting process, Mr. Thompson advised that they should not play any role; rather, he stated that “the politicians who get elected should make the right decision. We elect people to do and make decisions based on the intelligent facts that are put in front of them” (p. 213).

### **Disclosure of Documents**

Mr. Thompson did not testify on this issue.

## **SHELLY JAMIESON, FORMER SECRETARY OF THE CABINET AND HEAD OF THE ONTARIO PUBLIC SERVICE, APRIL 16, 2013**

Shelly Jamieson served as the Secretary of Cabinet, Clerk of the Executive Council and head of the OPS from January 2008 to December 2011. Prior to this appointment, she was the Deputy Minister of Transportation, Vice-President of Operations and eventually President of Extencicare Canada and Executive Director of the Ontario Nursing Home Association (now the Ontario Long-Term Care Association).

Ms. Jamieson is currently the Chief Executive Officer of the Canadian Partnership Against Cancer as well as a member of the Board of Directors of High Liner Foods.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

As Secretary of Cabinet, Ms. Jamieson identified the expertise needed to work with the OPA to support very complex and politically sensitive commercial decisions and negotiations. Input was required from numerous ministries and agencies (p. 219).

After it was decided to terminate the Oakville plant, Ms. Jamieson coordinated the discussions between the various parties, and ensured that they and the government had the necessary information at critical stages of the negotiations. Direction came from: the Premier, the Executive Council, or the Premier's Chief of Staff. In the summer of 2011, she asked the Deputy Minister of Policy and Delivery in Cabinet Office, Giles Gherson, to take the lead on the coordinating role (p. 219). David Livingston, head of Infrastructure Ontario, was asked to serve as an intermediary between the public service, the OPA and the proponents of the Oakville plant. In these early days, the idea was to assess whether an agreement was even possible (p. 219). The group model used on the Oakville file was also used on the Mississauga file after the 2011 election. When Ms. Jamieson left the public service in December 2011, active negotiations were still proceeding on both files (p. 220).

After consulting with the former Deputy Attorney General, Ms. Jamieson decided to screen three individuals from further involvement in the Oakville negotiations because they were potential witnesses in threatened litigation and because it was important that one voice control the negotiations (pp. 220, 223, 227). When she assumed the lead in the implementation of the government's decision, she learned that "parallel conversations may or may not have committed people to other things." Colin Andersen was frustrated by the fact that political staff were in contact with TCE and Greenfield (pp. 229-30).

About a week before October 7, 2010, the Deputy Minister of Energy (David Lindsay) informed her that the Minister was considering sending a letter to the OPA to cancel the Oakville plant. Lindsay would have heard this directly from the Minister of Energy or the Minister's Chief of Staff (p. 221). She received confirmation of this course of action from the Premier's Chief of Staff. The OPA

was informed via a letter from the Minister of Energy. Negotiations between the OPA and the proponents then went on for months without any progress; by the spring of 2011, negotiations had broken down. In April 2011, TCE gave notice that it intended to litigate (p. 220). The Premier's Office then asked Ms. Jamieson to determine if there was a deal to be had to avoid litigation, and to investigate the options (p. 220). She assembled a group to assist with that process; it included David Livingston. For an intense three-week period, Livingston was the only person speaking to the proponents, while the group worked behind the scenes (p. 221).

The decision to cancel the Oakville plant was made by the Premier's Office and Cabinet. The direction given to Ms. Jamieson was "unambiguous" – investigate all options (e.g., litigation, negotiated settlement, arbitration, mediation).

Ms. Jamieson does not know the actual date of the decision to cancel the Oakville plant; it was made by October 7, 2010 when the letter was sent to the OPA. The matter did not come to Cabinet that fall, but it might have been discussed *in camera* when civil servants were not present. She does not know precisely when Cabinet was made aware of the decision to cancel Oakville.

The Secretary of Cabinet is in the room during Cabinet meetings, and attests to the discussions in the room by signing the Cabinet minutes. The Secretary of Cabinet is in the room when the Cabinet makes a recorded decision. Cabinet Office plans the agenda and keeps track of Cabinet minutes. The cancellation of the Oakville plant was discussed for the first time at Cabinet on July 29, 2011 (p. 221).

Ms. Jamieson was aware of "Project Vapour" and "Project Vapour-lock;" the use of code names is quite common and these code names were known to the Secretary of Cabinet, the Cabinet and the Premier's Office (p. 222).

In the spring of 2011, attempts were made to identify the costs of cancelling the Oakville plant. This was not a contract between the government and the proponents, but rather between the OPA and the proponents.

The group had to become familiar with the contract; it relied heavily on the OPA's experience. It was known that there would be more than just the sunk costs (pp. 222, 224).

Once Cabinet authorized the Minister of Energy to deal with TCE, Ms. Jamieson would have called the Deputy Minister of Energy to say that the Cabinet minute was signed and that the Ministry of Energy was authorized to proceed (p. 222).

There was no cap on the mandate at that point in the process (summer 2011). This is normal for all negotiations. The mandate was to investigate and bring back scenarios with details. Decisions would be made by the Premier or the Chief of Staff, but the OPS would implement them (p. 223). During the spring of 2011, there were many back-and-forth offers in the negotiations between the OPA and

TCE (p. 223). TCE spent a lot of money on Oakville. The full costs of cancellation would not have been known in the summer of 2011 (p. 224).

Regarding the Mississauga plant, the options provided to the government by the group included reviewing the siting of the gas plants and the passage of legislation. “I got an unambiguous decision back that we were to proceed to stop the Mississauga plant” (p. 225). When Ms. Jamieson left the OPS, the government and the OPA were in negotiations with EP. Costs were starting to come in, but there was still no final estimate of the costs. The best-case scenario was to write a cheque and have a proponent still deliver power (p. 225). As she was leaving the OPS, Ms. Jamieson became aware of EP's American funder, and was certainly aware “all the way through that Ontario taxpayers and ratepayers were on the hook for those costs – all of the costs” (pp. 225-226).

There are ways to improve the process of siting gas plants (pp. 228-29).

Discussions to cancel the Mississauga plant started before the 2011 general election. There was talk in the spring of 2011 of reviewing the environmental assessment. The Premier's Office asked questions about the plant in July and August 2011 without specifying why they were asking for information. The decision to cancel was not made before the election was called (p. 231).

Ms. Jamieson was aware that the OPA had been directed to submit two settlement offers to TCE in the spring of 2011, before she became the coordinator; both offers were rejected. She was not aware of the details or where the direction (to submit settlement offers) came from, only that the OPA was trying to reach a settlement. She discussed the matter with Chief of Staff Chris Morley after the notice of litigation was sent (p. 232). David Livingston was also briefed by the Deputy Minister of Energy on the failed offers when he was brought onboard.

## **Disclosure of Documents**

Ministers and their political staff are responsible for their own records and follow the law on document preservation. The civil service is not responsible for the records of Ministers and their staff. Ms. Jamieson received emails and other correspondence from political staff about “Project Vapour” and “Project Vapour-lock” (p. 226).

Preparing for document requests is “almost a cottage industry” inside government. There are well-worn processes for searching email, understanding the scope of the request, and determining the affected ministries. Experts assist civil servants with these requests, both in terms of IT support and privacy and confidentiality issues (p. 227).

Rules on redaction mostly govern the removal of non-responsive information. A “redacted” notation would appear on a redacted document. Decisions about redaction are not made by those closest to the file, but rather by professionals adhering to a decision-making tree (p. 227).

Ms. Jamieson has been involved in previous lawsuits and she understood the importance of preserving documents. When notice of litigation is received, there is a process to ensure that records are protected. When TCE gave notice of litigation, the civil service would have done what they were supposed to do to prepare for it. Ms. Jamieson would have notified civil servants — not political staff — about the need to preserve records. Political staff were interviewed by Crown Attorneys; notes from those interviews were then turned over to Ms. Jamieson. The notes are in the legal opinion released to the SCJP by Peter Wallace (p. 231). The destruction of records would damage Ontario's prospects in a lawsuit (p. 232).

The release of confidential and privileged information would have prejudiced the Province's negotiating position (p. 232).

A ministry might not know whether something had gone to a full Cabinet meeting as opposed to a walk-around; it would be advised after a walk-around. Walk-arounds would be reported into the next full Cabinet meeting. The minute of the July 27, 2011 Cabinet meeting (provided by Peter Wallace) would not have been released in the first document release because it was not responsive to the original document production order (p. 233).

### **KRISTIN JENKINS, VICE-PRESIDENT OF COMMUNICATIONS, ONTARIO POWER AUTHORITY, APRIL 16, 2013**

Kristin Jenkins is OPA's Vice-President of Communications, before which she was OPA's Director of Stakeholder Relations. She has been with the OPA since 2009.

Before joining the OPA, Ms. Jenkins held several other roles specializing in communications and public affairs, including as Vice President of Public Affairs at the Toronto Community Housing Corporation and Vice President of Communications and Marketing at Waterfront Toronto. She also has nine years' experience in healthcare communications.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Ms. Jenkins was informed of the Liberal Party's plan to cancel the Mississauga plant on the evening before the announcement (p. 237). She became aware of cost estimates a few months later. The OPA and the Ministry of Energy communicated about costs throughout the negotiation process, sharing information about potential sites and the cost of alternative sites (p. 237). Ms. Jenkins was aware of discussions about gas management and delivery costs, transmission costs, and costs associated with connecting the new facility to the grid (pp. 237-238). The OPA was "forthcoming and open about the costs of the cancellation" (p. 238).

Ms. Jenkins is not aware of the total cost of the cancellation and relocation of the Oakville plant. She is aware that there are costs associated with

gas management and delivery, with connecting the Napanee plant to the grid, and with transmission upgrades “that will have to be advanced in the southwest GTA as a replacement for the power plants that weren't built there” (p. 248). The Auditor General reported that there will be savings associated with the relocation of the Mississauga plant, and this will also be the case in Oakville. Ms. Jenkins does not know the total costs and savings, as many factors are still unknown. The sunk costs for Oakville are \$40 million.

## **Disclosure of Documents**

In May 2012, the OPA's legal staff conducted a document search and review to comply with the SCE request. No outside firm was involved in the OPA's search (p. 234). The OPA sent copies of the compiled documents to the Ministry of Energy in July and August for its review. The OPA was not given copies of the Ministry of Energy documents until a few days prior to their disclosure in September (p. 239). Ms. Jenkins' only involvement in the initial search was in the areas of communications and issues management (p. 234).

At 10:00 a.m. on August 22, 2012, Ms. Jenkins attended a meeting with Ziyaad Mia, OPA Legal Counsel, and Jesse Kulendran, a staffer in the office of the Deputy Minister of Energy. The meeting was requested by the Ministry of Energy's Director of Legal Services, Halyna Perun. Mike Lyle, the OPA's General Counsel, requested that Ms. Jenkins attend. The purpose of the meeting was for Ms. Kulendran to “go over issues the Ministry had with [the OPA's] non-privileged Oakville documents” (p. 234). During this meeting, Ms. Kulendran informed Ms. Jenkins and Mr. Mia that the Ministry of Energy was using a “strict interpretation of the wording of the Estimates Committee motion” and that some of the OPA's documents were not consistent with the search parameters used by the Ministry of Energy (p. 234). Ms. Kulendran told them that this approach had been discussed with the Ministry of Energy's freedom of information and legal staff, and that the OPA was expected to follow it (p. 240). At Ms. Kulendran's request, she and Mr. Mia reviewed the documents page by page, applying the Ministry of Energy's approach, while Ms. Jenkins wrote the reasons for document exclusions on Post-it notes. Ms. Jenkins and Mr. Mia were instructed to apply the Ministry of Energy's approach to their search, and to submit a new set of documents to the Ministry of Energy by 5:00 p.m. that day. Ms. Jenkins and Mr. Mia did not commit to follow these instructions, and they advised Ms. Kulendran that the approval of Colin Andersen would be required. They did not discuss the OPA's search terms, “did not tell Ms. Kulendran that an outside firm had searched [the OPA's] documents, and did not say that [the OPA's] documents had not yet been reviewed for relevancy” (p. 235).

The direction given by Ms. Kulendran on August 22 was that “the documents needed to be correspondence, that they needed to fall within

the dates of the motion, and that the correspondence needed to mention Oakville or Mississauga in the correspondence itself; otherwise the correspondence and any attachments to that correspondence were to be excluded” (p. 235). She also instructed the OPA not to use the terms “SWGTA” or “southwest GTA” as proxies for “Oakville” (p. 235).

After the meeting, Ms. Jenkins and Mr. Mia reported Ms. Kulendran's instructions to Mr. Andersen and Mr. Lyle. Mr. Andersen decided that it was important to be consistent with the Ministry of Energy's approach to document production. The OPA followed Ms. Kulendran's instructions, and provided a new set of non-privileged Oakville documents to the Ministry of Energy at 5:00 p.m. that day. Over the next 48 hours, the OPA applied Ms. Kulendran's approach to the privileged Oakville and Mississauga documents, and delivered ten boxes of re-screened documents to Ms. Kulendran and another staff person from the Minister's office at 7:30 p.m. on August 24.

On September 24, the OPA disclosed about 27,000 pages of documents (p. 235). Following this release, the OPA discovered that some terms and employees had been missed in the search. Mr. Andersen notified the Clerk of the SCE, and OPA staff worked “around the clock” to disclose the documents that had been missed (p. 245). On October 2, Mr. Andersen informed Ms. Jenkins that the approach Ms. Kulendran had instructed the OPA to use was not the approach that had been used by the Ministry of Energy. Mr. Andersen had received this information from Serge Imbrogno, the Deputy Minister of Energy. Ms. Jenkins then reviewed her notes from the August 22 meeting, and sent an email to Mr. Andersen on October 3 to confirm the direction that had been provided by Ms. Kulendran. The documents that had been removed based on Ms. Kulendran's instructions were re-screened. On October 12, the OPA disclosed 14,000 pages of documents, of which 6,400 had been removed based on Ms. Kulendran's screening instructions, while another 7,600 were the result of adding new terms and employees to the search parameters (p. 242). A law firm, Goodmans, was retained to assist with the second document search. This firm helped the OPA to identify documents already produced after the first search.

On October 1, the OPA drafted a “Key Messages and Questions and Answers” document; it indicated that some terms and employees had been missed in the initial search. This document was written before the OPA became aware on October 2 that the screening approach they were directed to use by Ms. Kulendran was not the approach used by the Ministry of Energy. The document “was a draft, and it was revised after the information we [the OPA] received on October 2” (p. 245).

Ms. Jenkins' October 3 email was sent to Mr. Andersen, Mr. Mia, and Mr. Lyle. She later forwarded the email to Will McDowell, a lawyer she retained in the fall of 2012.

The OPA retained litigation lawyers at Lenczner Slaght to advise staff prior to their appearances before the SCJP, and to conduct a review of the document disclosure process. A chronology of the document disclosure process and recommendations for future document disclosures were reported to the OPA's board of directors. PricewaterhouseCoopers also prepared a report. In future cases of document requests and searches, the OPA will "need a written protocol with the Ministry," as well as a "clear understanding" of what is being requested (p. 247).

### **JIM McCARTER, AUDITOR GENERAL OF ONTARIO, APRIL 17, 2013**

Jim McCarter was the Auditor General of Ontario from September 2003 until April 2013. Prior to this, Mr. McCarter served in several auditing roles, including as Ontario's Assistant Provincial Auditor and the Government of Ontario's first Chief Internal Auditor (at the level of Assistant Deputy Minister).

On April 15, 2013 Mr. McCarter released his report into the costs of cancelling the natural gas power plant in Mississauga.<sup>18</sup> A similar report concerning the cancellation of the Oakville gas plant will be released by the Office of the Auditor General in August or September 2013 (p. 266).

### **Involvement with the Mississauga and/or Oakville Gas Plants**

In his testimony, Mr. McCarter summarized his Office's investigation into the cost of cancelling the Mississauga gas plant. His audit found the final cost of the cancellation to Ontario's taxpayers and ratepayers to be "about \$275 million" (p. 252). This total was based upon an estimate of the complete costs of the cancellation and relocation over 20 years offset by a smaller amount of savings (p. 261). To put this in context, Mr. McCarter stated:

In essence, given that the construction of the Mississauga plant was estimated to cost slightly less than \$275 million, and we still have to pay for the Lambton plant, the people of Ontario will have essentially paid for two power plants but have gotten just one (p. 252).

Before the inclusion of any offsetting savings, Mr. McCarter reported that his audit team found "about \$350 million in costs associated with the cancellation and relocation" of the Mississauga gas plant (p. 252). He specifically identified several sources for this cost:

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<sup>18</sup> Office of the Auditor General, [Mississauga Power Plant Cancellation Costs](#) (April 2013), accessed April 26, 2013.

- \$150 million to pay the US-based lender that provided credit to Greenfield for the construction of the power plant, \$90 million of which was “related to penalty fees for cancelling the project” (p. 252).
- \$43.8 million reimbursed for sunk costs, of which more than 80% was for labour costs claimed by Greenfield (p. 252).
- \$15 million in the settlement of an unrelated matter (Keele Valley) and legal fees. Mr. McCarter estimated that the government was required to pay Greenfield “about \$8 million more than they otherwise would have been entitled to” (pp. 252, 253).
- Repayment of Greenfield’s suppliers, including “\$3 million in equipment rental charges that the builder racked up by not returning rented construction equipment until more than a year after construction had stopped” (p. 252).
- Approximately \$76 million in future costs for the construction of a new plant in Lambton and the additional costs (such as line loss) associated with transmitting power from there to the GTA (p. 253).<sup>19</sup>

Against this \$350 million total, Mr. McCarter’s audit team found an estimated \$76 million in savings, which came from two sources. First, it pointed to the ability to reuse or repurpose equipment and engineering work from the Mississauga plant, which was reflected in a slightly lower rate for electricity from the Lambton plant. Of the \$80-100 million in reusable equipment, the Auditor found that the OPA was able to recover about \$20 million through lower rates (p. 258). Second, the delay in constructing a new power plant meant the Province was spared the liability for three years’ worth of electricity that it would have incurred had the Mississauga plant been constructed. In addition, Greenfield stands to reap a savings of approximately \$65 million based on lower natural gas transportation costs (p. 252).

According to Mr. McCarter, the cancellation of the Mississauga gas plant was costly because of the difficult negotiating position that the OPA was in, combined with the high financing costs of Greenfield’s line of credit. Construction of the Mississauga plant was well underway when the government publically announced its intention to cancel the project. This put the OPA in a “challenging negotiating position” as they were under pressure to get construction stopped quickly while Greenfield had an incentive to continue construction to increase their leverage (p. 255). Greenfield was able to use this advantage to demand compensation for labour costs, which they did not completely document, as well as repayment of their financing costs (pp. 252, 257). The high cost of paying cancellation penalties and reimbursing Greenfield’s creditors

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<sup>19</sup> These are the rounded figures given by Mr. McCarter in his testimony. For the complete figures and totals, please refer to the Auditor General’s report on the Mississauga plant cancellation.

surprised everybody, according to Mr. McCarter. Greenfield was paying a 14% interest rate on its line of credit, ultimately increasing the costs of cancelling the contract (p. 256).

Given these constraints, Mr. McCarter testified that he could find no wrongdoing on the part of the OPA – it was attempting to make the best of a poor negotiating position (p. 252). Cancelling the contract outright (and exposing the Province to litigation) or legislating a solution (and potentially impacting future negotiations between the government and suppliers) were both inherently risky (p. 262).

### **Disclosure of Documents**

When asked about difficulties in obtaining information for his report, Mr. McCarter stated that his team “found the OPA quite co-operative in providing us with the information that we needed” (p. 257). Information was not available concerning some of Greenfield’s costs, particularly for labour. Although requests were made to Greenfield through the OPA, Greenfield declined to provide complete documentation (pp. 257-258).

In terms of when the OPA would have had complete information concerning the cancellation of the contract, Mr. McCarter confirmed that the OPA would have “had a pretty good understanding of what those hard costs were” by July 2012 (pp. 265-266). At least \$245 million had already been paid by that point in time. Mr. McCarter could not comment on what information or documentation the Ministry of Energy had or on the nature of its communication with the OPA (p. 265).

Mr. McCarter also testified that there could be a risk of documents being disclosed during an on-going negotiation, but acknowledged that there are precedents for a Legislative Committee keeping such disclosures secret (pp. 261, 263).

### **DAVID LINDSAY, FORMER DEPUTY MINISTER OF ENERGY, APRIL 18, 2013**

David Lindsay was appointed Deputy Minister of Energy and Infrastructure in June 2010 and served until his retirement from the OPS in March 2012. Previously, Mr. Lindsay held the position of Deputy Minister in a number of ministries, including Northern Development, Mines and Forestry; Natural Resources; and Culture and Tourism, stretching back to 2006.

Before joining the OPS, Mr. Lindsay was the President of Colleges Ontario (2004-2006), President and CEO of Ontario SuperBuild Corporation (1999-2003), and President and CEO of the Ontario Jobs and Investment Board (1997-1999). He also served as Principal Secretary and Chief of

Staff to Premier Mike Harris during the first two years of that administration (1995-1997).

Currently, Mr. Lindsay is the President and CEO of the Forest Products Association of Canada and has started his own consulting firm, Strategic Win Consulting.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

During his testimony, Mr. Lindsay addressed topics pertaining to the negotiations related to the cancellation of the Mississauga and Oakville gas plants. He testified that the Ministry of Energy was involved in setting up a “negotiating mandate,” determining the options in the discussions with the contractors. This mandate would have been complicated by the goals of the energy system, which he described as

[maintaining] the integrity of the electrons . . .  
. . . in the system, . . . its best  
financial/fiduciary responsibilities, and the  
public good and the public interest. Those  
three buckets of things, you’re trying to  
balance . . . The negotiating mandate is to  
maximize all of those (p. 270).

Mr. Lindsay also reported that the Ministry of Energy and the OPA were seeking leverage (a “back pocket hammer”) that would aid negotiations. He cited the example of the government bringing forward legislation to act as leverage, but did not recommend such a course of action (p. 271).

In terms of the proposed costs of the project, Mr. Lindsay testified that while he initially sought a “firm cap” on costs prior to negotiations, “it was recognized that we didn’t have enough details to even come up with a firm cap” (p. 271). Throughout the negotiations, the Mr. Lindsay stayed in touch with the OPA to receive information concerning the negotiations and the costs, but only in a general or “ballparking” sense (p. 274). The specific costs were “difficult to ascertain” (p. 274). The final costs for the Mississauga cancellation were not fully known by Mr. Lindsay until after the announcement of a final deal (p. 274).

Mr. Lindsay provided information concerning the distinction between taxpayers and ratepayers found in some of the disclosed documents. He noted that there was legislation that prevented a minister from “committing the treasury or committing the taxpayers to money without having had treasury board approval” (p. 272). This was complicated by the position that the OPA was in:

[U]nder normal circumstances the costs  
incurred by the Ontario Power Authority are  
borne by the rate base. If it is determined

that because some of these costs are due to a government decision and should not appropriately be on the rate base, then they would be borne by the taxpayers on the tax base. But because that hadn't been determined yet, Minister Bentley would not be committing the tax base, but the Ontario Power Authority were concerned they had a fiduciary responsibility to protect the rate base (p. 272).

The OPA wanted assurances that this would be discussed and communicated it to the Ministry of Energy (p. 272).

Mr. Lindsay's testimony also sheds light on the normal process of decision-making within government, referring several times to a "four corners meeting" (pp. 274-275). These meetings would include the Minister and Deputy Minister as well as representatives of their political and bureaucratic superiors, the Premier's Office and Cabinet Office, respectively. Based on these meetings, Mr. Lindsay confirmed that the direction to relocate the Oakville gas plant came from the Premier's Office, and not from the Ministry of Energy or the Minister (p. 275).

### **Disclosure of Documents**

Mr. Lindsay reported to the Committee that when he retired from the OPS in March 2012, he did not keep any documents nor did he retain his Outlook calendar (p. 269). Because he was not Deputy Minister when documents were requested by the Committee, he was not involved in that process (p. 279).

While he was not involved with the document search and disclosure, Mr. Lindsay did speak generally on a number of related issues in his capacity as former Deputy Minister of Energy. Mr. Lindsay noted that on projects with sensitive information, the use of "code names" was not uncommon (p. 282). He also confirmed that there was a potential risk to the taxpayer should certain documents have become public prior to the conclusions of negotiations with the contractors (p. 276). Finally, Mr. Lindsay acknowledged that if political staff were directing the OPA in its search and disclosure of documents, this would not have been "normal practice" (p. 272).

### **SEAN MULLIN, FORMER DEPUTY DIRECTOR OF POLICY, PREMIER'S OFFICE, APRIL 23, 2013**

Sean Mullin is the former Deputy Director of Policy with the Office of the Premier.

Mr. Mullin joined the Office of the Premier in 2007 as a policy advisor. From 2007 to 2009 he was responsible for finance and economic policy, including the annual budget process. In 2009 Mr. Mullin was appointed Deputy Director of Policy, at which time he assumed responsibility for energy policy.

Mr. Mullin left the Office of the Premier at the end of the 2011 provincial election campaign.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Sean Mullin advised the Committee that he participated in a series of meetings with TCE between December 2009 and April 2011. He indicated that 30% to 40% of his day consisted of meetings with stakeholders such as TCE, and were a “routine” part of his work (p. 286).

In December 2009, shortly after he was appointed Deputy Director of Policy, Mr. Mullin met with officials at TCE for the first time. He characterized this meeting as a “meet-and-greet,” held at the request of TCE (p. 286). The request was not unusual; at that time, Mr. Mullin was meeting with stakeholders from across the energy sector. During this meeting, Mr. Mullin testified, TCE told him about the company. They may have also “indicated that they were having problems” with the Oakville plant (p. 286).

According to Mr. Mullin, the problems cited by TCE in their first meeting escalated, and the company asked for another meeting with the Premier’s Office in June 2010. Mr. Mullin accompanied Jamieson Steeve (Principal Secretary to the Premier) to this meeting, at which time TCE asked for “a legislative solution” to its problems with the Oakville plant (p. 286). No officials from the Ministry of Energy or the OPA attended this meeting, but Mr. Steeve had the Premier’s permission to meet with TCE. Mr. Mullin characterized this meeting as “without prejudice” and “exploratory in nature” (p. 285). At the time, the decision had not been made to cancel the plant; rather, TCE communicated “their challenges and their problems” and asked whether the government was “willing to pass legislation to override the local concerns” (pp. 292, 296).

During the summer of 2010, Mr. Mullin learned from Ministry officials and the OPA that demand projections for the SWGTA had changed and a plant was no longer needed to meet electricity demands in the Oakville area:

Once we found out that the lights would stay on after 2014 without a gas plant in Oakville, then suddenly a transmission solution was now possible again. A transmission solution was possible in 1999,

but it was not possible in the first half of 2010. Once the demand forecasts had changed, it was now possible to get by. So now the issue facing the government was not, “Keep the lights on or cancel or move a plant”; it was, “Yes, this plant could be useful, but it’s not necessarily needed in this exact location versus the public opposition to it.” That was, I think, a very different decision (p. 290).

According to Mr. Mullin, the Premier and the Minister of Energy ultimately made the decision to cancel the Oakville plant at the end of September or the beginning of October 2010. A consensus quickly emerged that the government should try to negotiate with TCE, with a view to avoiding the risks associated with litigation and to obtaining some value for ratepayers and taxpayers out of monies paid. It was also agreed that the OPA should start negotiating as soon as possible in order to limit any further progress on the plant and any subsequent costs.

Mr. Mullin met with officials from TCE in October 2010, shortly after the decision was made to cancel the Oakville plant. Over the course of two meetings, Mr. Steeve (acting on behalf of the Premier) informed TCE that the government would not be proceeding with the Oakville gas plant and asked that TCE and the OPA “enter into negotiations to mutually resolve the matter” (p. 285). Mr. Mullin emphasized that “no offers [were] made on our part in those meetings, and there were no commitments made” (p. 293). Mr. Mullin testified that he did not know why TCE later said that they had negotiated during those meetings, or that they had made any kind of offer or commitment. One of the potential options discussed, Mr. Mullin acknowledged, was moving the contract with TCE to Kitchener-Cambridge-Waterloo.

After the announcement was made, Mr. Mullin was “kept abreast” of the negotiations between the OPA and TCE, but only “at a very high level” (p. 294). He was aware that offers were going back and forth (and of the amounts potentially involved), but not of any of the details. Mr. Mullin testified that there was a lot of uncertainty about the costs:

The sunk costs were \$40 million, in that range. We knew that those would be a cost, but other than that, until the negotiations occurred and both sides were able to reach an agreement, we didn’t know what the outcomes would be in that scenario (p. 287).

Mr. Mullin then met with TCE again in April 2011 at the request of the company. He testified that at this meeting, which was attended by staff

from the Minister's office, the Deputy Minister and legal counsel, TCE attempted to convince them that "their proposal . . . was acceptable" (p. 296). However, according to Mr. Mullin,

it was getting into a level of detail—engineering issues that the two sides were arguing over—that quite frankly wasn't something that we were able to appreciate. That's precisely why we had the OPA undertake the negotiations. I think at this point, TCE had thought that the negotiations weren't going well and they wanted to meet with the government. We met and listened after talking to counsel, but that was the extent of that meeting (p. 296).

No commitments were made. Shortly thereafter, Mr. Mullin and Craig MacLennan (Chief of Staff to the Minister of Energy) met with Chris Breen, TCE's director of government relations. On the advice of legal counsel, the meeting was held "without prejudice, and after hearing from TCE we again made no commitments" (p. 286). During this meeting, Mr. Breen advised them that the company would pursue the matter in the courts, and that it "wasn't . . . bluffing about going to litigation" (p. 297).

Towards the end of April TCE filed notice of its intention to sue the government. Mr. Mullin was subsequently advised by Mr. Steeve that the Secretary of Cabinet, Shelley Jamieson, had decided to screen them (Mr. Mullin and Mr. Steeve) off the file. It was his understanding that he should no longer be involved in the Oakville file because he "could potentially be called to give evidence or be a witness" (p. 290). Mr. Mullin was debriefed by counsel at Ministry of the Attorney General and thereafter ceased participating in the file. According to Mr. Mullin, any meeting request or other mention of his name in connection with the Oakville matter after April 2011 was "inadvertent" – "I was very careful not to have any involvement" (pp. 295, 297).

Mr. Mullin's involvement with the Mississauga plant was very limited. While he was aware that the government had made a campaign promise to cancel the Mississauga plant, he left government after the election and "was not involved in the implementation of that campaign commitment in any way" (p. 286).

## **Disclosure of Documents**

As Mr. Mullin had ceased working for the government a half year before the SCE requested documents related to the Mississauga and Oakville gas plants, he had no comment to make on this matter.

## **CHRIS BENTLEY, FORMER MINISTER OF ENERGY, APRIL 23, 2013**

Former MPP Chris Bentley was Minister of Energy from October 20, 2011 to February 11, 2013. Mr. Bentley has served in a number of other roles in Cabinet, including as Minister of Labour (2003-2005), Minister of Training, Colleges and Universities (2005-2007), Attorney General (2007-2011), and Minister of Aboriginal Affairs (2010-2011, 2012-2013).

He was elected in 2003 to represent the constituency of London West and was re-elected twice. He resigned from the Legislative Assembly in February 2013.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

When appointed Minister of Energy, Mr. Bentley became responsible for the gas plants file. At that time, the OPA and TCE were in arbitration over the cancellation of the Oakville plant, and the government had recently committed to stopping construction of the Mississauga plant and relocating it (pp. 302, 303).

When appearing before the SCE in May 2012, Mr. Bentley tried to protect the interests of Ontarians, and could not speak in much detail because of the ongoing negotiations and litigation (pp. 302, 304).

The Ministry of Energy's figure of the total cost to taxpayers for cancelling the Mississauga plant (\$180 million to \$190 million) differed from the figure in the Auditor General's report (\$275 million) because of differing methodologies (pp. 306, 307, 310-311, 316-317). The Mississauga agreement was reached on July 9, 2012. The next day, Mr. Bentley reported the costs "in two different baskets" (p. 306). The first "basket" was \$180 million spent by the government and the OPA for sunk costs (i.e. engineering, construction work, payout to EP's financier). Later in the week, another \$10 million was added to this amount. Another \$85 million (not included in the \$180 million) was re-purposed in the negotiations in order to reach a commercially reasonable deal. The Auditor General used a different approach in his report; Mr. Bentley accepts the Auditor General's accounting (pp. 306, 307, 308, 311, 317). When the agreement and the \$180 million cost to the Province were announced on July 10, "we did say that there were other costs spent by the OPA, the people of Ontario, totalling \$85 million, which were not in the \$180 million, but they were part of the negotiation to reach a new agreement" (p. 307).

On the Oakville agreement, the sunk costs were \$40 million. In addition, "we had a commercially reasonable deal negotiated by the parties and the OPA. We did mention that there was \$210 million, I think, that the OPA was paying as part of this" (pp. 307-08).

Mr. Bentley was briefed on the proposed MOU with TCE on the Oakville plant, but the briefing did not identify the total cost. A number of costs had yet to be calculated. The out-of-pocket payment for the Province was the \$40 million for sunk costs. Colin Andersen and others were at the briefing,

I rely on the experts at the table to give me a review and to tell me at the end of the day if we have a commercially reasonable and defensible contract, and the answer is yes. They didn't have all the numbers—they still don't, I don't believe, have all the numbers—but they could say, on the basis of the back-and-forth negotiation, that we have a commercially reasonable agreement, and that's the basis on which we were able to proceed, because I wouldn't sign it unless we did (pp. 309-310).

Regarding the Mississauga settlement, the costs were presented in the July 12, 2012 document; the Keele Valley matter and the no-interest loan were added a week later. There were other matters yet to be settled, such as the Province assisting with financing, a land sale, and specific on-site costs. The July 10, 2012 document was prepared by Mr. Bentley's office, based on information from the OPA (p. 310).

The figure presented in July 2012 was \$265 million, but the Ministry of Energy took a different approach than the Auditor General has taken. For example, the Ministry of Energy indicated that \$88 million was paid to EIG, while the Auditor General pegged the amount at \$149.6 million (p. 311).

The decision to move the Oakville plant was announced in October 2010. The next discussion in Cabinet occurred in July 2011. The July 29 document was a walk-around. Mr. Bentley was not Minister of Energy at that time. He was generally aware of efforts to avoid a lawsuit with TCE. He does not recall costs being discussed in Cabinet (p. 314). When he became Minister, the OPA briefed him on the state of the negotiations, not on the costs. In November, Mr. Bentley informed the Minister of Finance that the OPA's very rough estimate of the risk for Mississauga was between \$200 million and \$500 million (p. 315).

Any side agreements in the Oakville agreement are contained in the \$40 million and the MOU. Mr. Bentley is not aware of any side agreements other than what is in the MOU or final agreement. When he became involved with the Oakville file, he did not have a specific maximum exposure number in mind. He knew that the costs would be "huge," possibly between \$700 million and \$1 billion, but that was based only on other people's speculation. As the situation evolved, the maximum exposure was probably about \$750 million, but that would have been "a cheque for nothing" – no plant, no power production (p. 316).

## **Disclosure of Documents**

In preparation for his appearance before the SCE in May 2012, legal staff from the Ministry of Energy and Ministry of the Attorney General advised him that many of the documents that the SCE might ask about were privileged and commercially sensitive. Releasing those documents would be detrimental to the

interests of the Province and could seriously affect the ongoing negotiations or lawsuits. He was trying to reconcile the right of the SCE to have the material it requested with the money that was at stake for the Province. “It was never a question of if the documents were going out; they were always going out. It was a question of when” (p. 304).

Regarding the allegations by Kristin Jenkins that Ministry of Energy staffer Jesse Kulendran had instructed the OPA to withhold 6,000 documents, Mr. Bentley explained that the Ministry of Energy did the search, and decided what would be searched. He had nothing to do with any instructions to any member of the Ministry of Energy or the OPA or Ms. Kulendran. He did not direct the OPA to remove 6,000 documents (p. 309).

When asked why not a single document in response to the original production order came from his office, Mr. Bentley explained that the appropriate searches were done on all staff computers, including his own. He did most of his business in person, at meetings or by phone. Many people at those meetings keep records of the meetings. Mr. Bentley instructed his staff to provide documents responsive to the motion (p. 312).

Mr. Bentley did not manage his staff's email accounts. He did not get emails from staff on his ministry computer. Sometimes he got emails on his BlackBerry. He was not aware at the time that any of his staff were destroying records (p. 312).

Mr. Bentley was not involved in the search for documents, but knew that it was time consuming and challenging. Ministry of Energy and OPA staff worked hard to get it right, and were acting in good faith. He received no instruction from the Premier regarding document production (p. 315).

### **BRAD DUGUID, MINISTER OF TRAINING, COLLEGES AND UNIVERSITIES AND FORMER MINISTER OF ENERGY, APRIL 23, 2013**

The Honourable Brad Duguid is Minister of Training, Colleges and Universities. Elected as MPP for Scarborough Centre in 2003, he had previously served on the municipal councils of Scarborough and the amalgamated City of Toronto.

Mr. Duguid has served in a number of other roles in Cabinet, including as Minister of Labour, (2007-2008), Aboriginal Affairs (2008-2010), Energy and Infrastructure (2010), Energy (2010-2011) and Economic Development and Innovation (2011–2013).<sup>20</sup> The cancellations of the Oakville and Mississauga gas plants were announced during his time as Minister of Energy.

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<sup>20</sup> The Ministry of Energy and Infrastructure was split into separate Ministries in 2010. The Hon. Bob Chiarelli became the Minister of Infrastructure while Mr. Duguid served as Minister of Energy.

## **Involvement with the Mississauga and/or Oakville Gas Plants**

As the Minister of Energy when the decisions were made to cancel both the Oakville and Mississauga gas plants, Mr. Duguid spoke about these actions to the Committee. He testified that when he first became the Minister of Energy, he “determined that there were some major challenges that needed to be considered with regard to the Oakville project” (p. 319). These challenges included

- strong opposition from the community, led by Oakville MPP Kevin Flynn and Mayor Rob Burton;
- new municipal by-laws to “delay and potentially prevent” the gas plant’s construction; and
- a decrease in demand for electricity due to the recession and greater conservation efforts (p. 319).

Mr. Duguid also informed the Committee that he had received legal opinions from Ministry staff suggesting that the Province might incur liability if the government did not use its seldom-used power to override municipal by-laws that were delaying construction (p. 325). He further argued that the opposition of the Progressive Conservative and New Democratic Parties to the Oakville plant also provided “some justification” for the cancellation decision (pp. 322, 328). Given all of these reasons, Mr. Duguid suggested that “cancelling the Oakville plant simply made sense” (p. 319).

With regard to the Mississauga gas plant, Mr. Duguid testified that although he was the sitting Minister of Energy, he was not directly involved in the decision to cancel the power plant. Early in the campaign for the 2011 provincial election he received a call from Sean Mullin (former Deputy Director of Policy in the Premier’s Office), advising that “there was an intention to announce the cancellation of the plant in Mississauga” (p. 322). Mr. Duguid advised against cancelling the Mississauga plant, believing that “the energy file had actually been going well during the election and it wasn’t a good time to bring it up” (p. 330). Toward the end of the campaign, Mr. Duguid received a second call informing him that the decision had been made to cancel the gas plant and that the announcement was forthcoming (p. 330). Although he had not initially supported the cancellation, Mr. Duguid came to support it “once all three parties committed to cancelling the Mississauga gas plant” (p. 319).

Mr. Duguid was asked to clarify previous statements suggesting that the cancellation of the Oakville power plant was a decision purely based upon supply considerations (p. 321). He explained that supply was still needed, but the need was not as pressing (p. 331). There were other options for providing that power that could be considered, including a transmission solution (p. 321). Future demand and the refurbishment of the nuclear

power plants still required the construction of new generating facilities, which Minister Duguid suggested explains the relocation (p. 331).

Mr. Duguid also testified regarding his role in the negotiations concerning the cancellation of the Oakville gas plant. He disputed earlier testimony suggesting the Premier's Office had not informed him of the cancellation of the Oakville power plant before a meeting with TCE on October 5, 2010. Mr. Duguid stated that he was fully informed about the decision and was already preparing his announcement for 48 hours later. He did not feel it was appropriate to inform the CEO of TCE prior to that announcement, regardless of what might have been disclosed by staff from the Premier's Office (p. 329).

In terms of the costs of cancelling the Oakville plant, Mr. Duguid explained that there were two choices: simply to rip up the contract or engage in a "negotiated settlement" (p. 322). With the former option, the government knew what the value of the contract was and that this would likely be the total cost of reneging (p. 331). Because the government was engaged in negotiations to relocate the plant, the costs of this alternative were evolving over time (p. 331).

### **Disclosure of Documents**

When asked about the dangers of disclosing documents prior to the completion of negotiations, Mr. Duguid confirmed that there were risks in releasing "sensitive material" (p. 327). Because of the potential costs associated with information leaks, Mr. Duguid defended Minister Bentley's decision and criticized the contempt motion brought against him (p. 327).

Mr. Duguid was also questioned about the lack of documents released from the Minister's office. He explained that personally, he did not speak about policy files via email (p. 325). As for the rest of the relevant documents, "things like decks" would generally be kept by the Ministry of Energy and they would have been responsible for producing the documents (p. 326).

### **CHRIS BREEN, DIRECTOR OF GOVERNMENT RELATIONS, TRANSCANADA, APRIL 25, 2013**

Chris Breen is the Director of Government Relations for TCE and has had responsibility for this portfolio for 11 years. He is a registered lobbyist and was a part of TCE's negotiations concerning the cancellation and relocation of the Oakville gas plant.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Mr. Breen discussed the opposition TCE faced from Oakville residents and politicians. When TCE had initially registered part of the Ford lands

as the proposed site of the plant, there were no restrictions to power generation. Beginning in March 2009 however, the City Council passed an official plan amendment that would “prohibit power generation greater than 10 megawatts anywhere in the town of Oakville” (p. 337). This was followed by an interim control by-law which “effectively had the same goal albeit on an interim basis” (p. 337). TCE appealed these changes to the OMB, which upheld the interim measure due to its temporary nature, but overturned the amendment to the official plan. TCE appealed the OMB’s decision to Divisional Court and had three applications in the Ontario Superior Court to deal with other planning barriers when the Oakville plant was cancelled (p. 341).

According to Mr. Breen, appeals to the OMB and the courts were not the only option for overcoming municipal opposition. He testified that the government had the power to make a regulation under the *Planning Act* which could exempt the Oakville plant from municipal by-laws. Mr. Breen cited the York Energy Centre in King township as a precedent; the government issued a regulation for this gas plant in 2010. TCE spoke to the Minister of Energy Brad Duguid about this possibility, but the Minister “was not committed to that path going forward” (p. 337).

Mr. Breen testified that although the Minister was not willing to issue a regulation to override Oakville’s opposition to the gas plant, he urged TCE to consider alternative locations. Mr. Breen was also in contact with Sean Mullin and Jamison Steeve from the Premier’s Office and the Energy Minister’s Chief of Staff, Craig MacLennan, during this process, all of whom encouraged alternative locations including Halton Hills, Nanticoke and north Oakville. TCE advised both the Premier’s Office and the Minister of Energy that they still believed that Oakville was the best site for the project and while they were willing to talk about alternatives, they had a contractual obligation to build the plant in Oakville, unless otherwise instructed (pp. 338-339).

On October 5, 2010 Mr. Breen and TCE received confirmation from Mr. Mullin and Mr. Steeve that the government would be cancelling the Oakville contract. Mr. Breen testified that this meeting was a “frank discussion,” but was followed by a meeting with Minister Duguid, Deputy Minister David Lindsay and Craig MacLennan in which the Minister did not confirm the cancellation. Mr. Breen disputed the characterization that a TCE executive “blew a gasket,” but did confirm that the meeting with the Minister was “strange” and that TCE’s executives “showed a degree of exasperation” (p. 339).

Mr. Breen stated that in the discussions leading up to the cancellation of the Oakville gas plant, TCE continued to advise against this, but insisted that if the contract was to be cancelled that they must be “kept whole.” Mr. Breen elaborated upon this, noting that TCE was not interested in going to court or simply taking a cheque from the government in compensation, but

rather were looking for “a project equivalent to the one that was just cancelled” (p. 340).

Mr. Breen told the Committee that TCE advised the government that cancelling and relocating the Oakville gas plant would lead to increased costs. These new costs took two forms: cancellation costs and moving costs. Cancellation costs were primarily the sunk costs, which TCE determined to be \$40 million, according to Mr. Breen. He also noted that TCE had paid \$210 million for gas turbines, but these could be used in another gas plant. In terms of relocating the plant, Mr. Breen identified gas management and delivery, transmission from the new location in Bath and the electrical connection of the new site as known additional moving costs. He stated that TCE would have expected the OPA to pay these additional costs and it was their impression that the OPA and the government understood this (p. 346).

Mr. Breen was able to confirm that TCE received an offer for an alternative project on April 21, 2011, which had been reported as a “government-instructed counter-proposal” of \$712 million. This proposal was to build a “peaking natural gas-fired plant in the Kitchener-Waterloo area” (p. 344). Mr. Breen reported that TCE rejected this offer because the “proposals that we saw would not have passed the TCE board as stand-alone projects, let alone as replacements for the Oakville project” (p. 344). As the proposal was not sufficient, Mr. Breen reported that TCE continued negotiations with the OPA until concluding that they would relocate the Oakville project to Bath, in Greater Napanee.

### **Disclosure of Documents**

Mr. Breen did not speak directly to the disclosure of documents, but he did confirm that his communications with staff from the Energy Minister’s office and the Premier’s Office were rarely via email (p. 346).

### **COLIN ANDERSEN, CHIEF EXECUTIVE OFFICER, OPA, APRIL 30, 2013<sup>21</sup>**

Colin Andersen is the Chief Executive Officer of the OPA, a position he has held since 2008. Mr. Andersen joined the OPS in 1986, working in a number of capacities for the Ministry of Health and Long-Term Care, the Ministry of Revenue, the Ministry of Finance and Cabinet Office. Immediately prior to his appointment with the OPA, Mr. Andersen was Deputy Minister of Finance, where he oversaw the production of five annual budgets.

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<sup>21</sup> A final version of *Hansard* was not available at the time that this summary was initially prepared; accordingly, this summary (and any quotes it contains) reflects the preliminary transcript of the April 30, 2013 meeting. There are also no page numbers.

Mr. Andersen has a Master's degree in Economics from the University of Toronto and an Honours Bachelor of Arts from the University of Calgary.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

The bulk of Mr. Andersen's testimony focused on the events surrounding the cancellation of the Oakville gas plant, and its corresponding costs. According to Mr. Andersen, shortly after the OPA signed the contract with TCE to build the Oakville plant, "community opposition ramped up" and the Energy Minister began asking the OPA questions about the proposed plant. However, the decision to cancel the plant was only made in late September or early October 2010.

Shortly before the announcement was made, the OPA was told that the Premier's Office had spoken with TCE, that there had been some discussions about keeping TCE "whole," "and that one of the conditions that [TCE] had for supporting that announcement was that it needed to get something in writing." Accordingly, the Premier's Office asked the OPA to draft a letter, which, after numerous drafts, was signed and sent by Mr. Andersen on October 7, 2010.

Mr. Andersen advised the Committee that the government does not have the explicit legal authority to tell the OPA to cancel a contract. However, the government had made its wishes known, and always had the option to pursue a legislative option. Mr. Andersen discussed the contract with his board, and the decision was made to attempt to renegotiate and ultimately to relocate the plant. While he was not happy about the cancellation,<sup>22</sup> Mr. Andersen and the OPA Board of Directors focused on renegotiating the TCE contract, believing this course of action would be in the best interests of ratepayers and the government as a whole:

We were thinking about the contract holders that we were dealing with, but also very top-of-mind for myself and my board was the impact that this could have on future contract deliberations, not only for the kinds of contracts that the OPA is looking at, but the kind of contracts that other parts of the government, Infrastructure Ontario and those, you know, you want to have investor confidence in this province.

Governments have the right to change their minds, and in some cases we expect them

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<sup>22</sup> Mr. Andersen indicated that the OPA's "preference was to go with the gas plant. I continue to feel strongly that maybe we're putting too many eggs in the transmission basket in the Toronto area, and I would prefer to see generation, because it provides a lot of things that transmission doesn't."

to do so, but I think it's also important that when those circumstances happen, everybody sees that people are treated fairly, that the contract holders are treated fairly, and, you know, we were looking out to get value for ratepayers as well.

Mr. Andersen agreed that the Ministry of Energy and the government relied on the OPA to provide them with the cost of the relocation. He also told the Committee that he continues to stand behind the \$180 million number he gave the Ministry of Energy as “the net costs that cannot be repurposed in the [Lennox] plant.”

During his appearance, Mr. Andersen also produced two summaries of costs related to the cancellation and relocation of the Oakville power plant. Mr. Andersen explained that many of the costs identified in each report are in flux, and will likely remain so for some time:

Projects of this size and complexity have many moving parts and their costs evolve over time, and estimates are often very dependent on methodology, assumptions and judgment calls. These include assumptions about events that are far in the future: for example, the state of the economy in 2018, the price of gas in 2022 and the industrial demand in southwestern Ontario in 2029.

They might also depend on site-specific issues that cannot be known until detailed engineering work is completed.

To some extent, it's like a Polaroid picture that takes 20 years to develop. Some parts become clear pretty quickly—turbine costs and monies expended on sunk costs are good examples; some come into focus later.

About a month before appearing before the Committee, Mr. Andersen and the OPA hired NERA Economic Consulting, an independent economic and financial consulting firm, to review the costs of relocating the Oakville plant. The OPA has also prepared a series of estimates of the costs associated with the plant, and will likely continue to do so as the “numbers . . . evolve[,] . . . as more information becomes available and assumptions, discount rates and planning scenarios are developed further.” (Both the OPA and NERA used their own methodology to

calculate the estimated costs.)<sup>23</sup> During his testimony, Mr. Andersen informed the Committee that the OPA's current best estimate for the relocation cost is \$310 million, while the NERA estimate is \$241 million. He outlined the elements of the OPA and NERA cost estimates as follows:

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<sup>23</sup> NERA Economic Consulting, "The Costs of Relocating the Oakville Generation Station – Prepared for the Ontario Power Authority" (April 29, 2013); Ontario Power Authority, "Estimated Oakville GS Relocation Costs – April 29, 2013." Copies of each of these reports were provided to Committee members by Mr. Andersen.

### **Payments Made Directly to TCE**

- Sunk Costs (\$40 million, according to the OPA): This amount reflects the cost of developing the site in Oakville before its cancellation.
- Turbine Cost (\$210 million): This amount reflects the cost incurred by the OPA to purchase the Oakville gas turbines and repurpose them for Lennox.

NERA estimated the total cost of the turbines and the sunk costs to be \$254 million (titled “Reimbursement for Costs Incurred.”)

### **Future Site-Related Costs**

- Transmission Connection (\$37 million): The OPA estimates that it will cost \$37 million to connect the new plant to the transmission system in Lennox.
- Gas Connection (\$10 million): This amount reflects the estimated cost of connecting the new plant to the gas pipeline.
- Gas Delivery and Management (\$406 million): This amount is the most recent estimate of the OPA for the costs associated with delivering gas to the new Lennox plant and managing it.

NERA estimated the first two of these costs (which fall under the title “Reimbursable Capital Costs” in their report) to be approximately \$42 million. It estimated the gas delivery and management costs to be approximately \$350 million. According to Mr. Andersen, the OPA took a more conservative approach to estimating the gas delivery and management costs than NERA.

### **Future System-Related Costs**

- Bulk Transmission Upgrade in the SWGTA (\$90 million): The OPA originally estimated the cost of moving up transmission upgrades in the SWGTA from 2028 to 2018 to be \$200 million. However, the OPA has developed alternatives that will likely reduce this cost to \$90 million.
- Higher Line Losses (\$32 million): The OPA estimates that it will lose \$32 million by having the generation plant far from the areas it will serve. The line losses were originally captured by the \$200 million estimated by the OPA.
- Lower Turbine Efficiency (\$53 million): The Lennox plant will be less efficient than the original Oakville plant because of its “faster capability.”

NERA estimated that the acceleration of the transmission upgrade would cost approximately \$88 million and \$24 million for “incremental transmission losses.” NERA did not identify a separate cost for lower turbine efficiency.

### **Contract-Related and Other Savings**

Under the MOU, the OPA secured a lower monthly payment (also known as a net revenue requirement) for the new Lennox plant. Estimated savings from reducing the monthly payment from \$17,277 per megawatt a month to \$15,200 per megawatt a month will save the OPA \$195 million. (This new payment is higher than the average monthly payment for the OPA’s gas fleet, but lower than the payment average in its more current contracts.) The OPA also estimates that it will save \$539 million by deferring its payments to TCE from 2014 to 2019; however, Mr. Andersen advised that the OPA believes that it will need to contract for additional power in 2017-2018 before the new Lennox generation station comes online, which will cost approximately \$215 million. Finally, the OPA estimates that it will save an additional \$50 million because the Lennox plant will continue in operation for five years after the Oakville contract was to end in 2034.

NERA grouped the contract-related savings and the savings arising from the deferral of the OPA payments together under the heading “contingent support payment” and estimated these savings to be \$670 million. It recognized a cost of approximately \$152 million for replacement power in 2017-2018.

During his testimony, Mr. Andersen made it clear that the sunk costs, as well as the future-related site costs listed above, were all listed in the MOU, even if specific amounts were not identified; rather, the MOU classified these costs as TBD or “to be determined” because additional work had to be done before they could be nailed down. As a signatory to the MOU, the Ministry of Energy (through its Deputy Minister and approved by its Minister) would have been aware of the “categories” of costs beyond the \$40 million in sunk costs. The Ministry of Energy would have also been aware of “system costs” associated with moving the plant out of the SWGTA. The MOU (and ultimately the contract) was also posted on the OPA website, along with a backgrounder reviewing these costs.

Mr. Andersen also advised the Committee that he and his board took a strong position that the OPA should not bear all of the costs for the government’s decision to cancel the plant. Accordingly, Mr. Andersen and the Deputy Minister of Energy agreed that these costs would be divided between taxpayers and the OPA ratepayers.

### **Disclosure of Documents**

Mr. Andersen testified that the request for documents made by the SCE in 2012 was “new to us, a request of this scope and this nature, and we had to learn as we went along.” He spoke about the OPA’s conflicting obligations. On the one hand, the OPA wanted to comply with the request of the Committee; however, the request was made in the middle of negotiations with both TCE and Greenfield, and the OPA was aware of the possibility of litigation. The OPA was gravely concerned about the possibility of disclosing commercially sensitive and privileged documents to the Committee, for fear that they would then be made available to the media, the public, and ultimately TCE and Greenfield:

We absolutely felt that there was a possibility of significant exposure, because it would have revealed our thinking in the negotiation side of things, and we felt that it would have weakened our case down the road, should this come to litigation. These are very detailed assessments that we were making, including of the risks and our assessment of how far we might be able to get at the table. The other side of the table would have loved, absolutely, to get this kind of information because it very much would have impacted how hard they would have fought back on some of these items. They would know exactly where to press their advantage.

Mr. Andersen, on behalf of the OPA, took ownership for its mistakes in the documentary disclosure process. He acknowledged that in hindsight the OPA should not have relied on their understanding of the process being used by the Ministry of Energy in vetting their documents. The OPA adopted what they believed to be the narrow approach used by the Ministry of Energy (based on Kristin Jenkins' meeting with Jesse Kulendran), despite their concerns that it was too narrow. However, according to Mr. Andersen, "it was our due diligence that ultimately led to the fact that we wanted to add more documents to our disclosure, so we did produce everything." The OPA's efforts also led the Ministry of Energy to disclose additional documents.

### **KATHLEEN WYNNE, PREMIER OF ONTARIO, APRIL 30, 2013<sup>24</sup>**

The Honourable Kathleen Wynne became the 25<sup>th</sup> Premier of Ontario on February 11, 2013. She also holds the Cabinet portfolio of Minister of Agriculture and Food. Ms. Wynne has served as the MPP for the riding of Don Valley West since 2003.

Before becoming Leader of the Ontario Liberal Party and Premier, Ms. Wynne held several Cabinet posts, including as Minister of Transportation from January 2010 to October 2011, and Minister of Municipal Affairs and Housing and Minister of Aboriginal Affairs from October 2011 to November 2012.

### **Involvement with the Mississauga and/or Oakville Gas Plants**

Ms. Wynne was not involved in the decision to relocate the Oakville plant. She became aware of this plan when it was announced by the Minister of Energy on October 7, 2010.

Ms. Wynne and three other Ministers signed a July 29, 2011 Cabinet minute authorizing the Ministry of Energy to "formalize settlement discussions with TCE and enter into an agreement under the Arbitration Act should negotiations fail." Ms. Wynne attended an August 10, 2011 Cabinet meeting in which this authorization was reported to Cabinet, and an October 3, 2012 meeting in which the Treasury Board reported on the mandate it had approved for negotiations with TCE. There were no discussions of the Oakville relocation in Cabinet meetings between October 7, 2010 and July 29, 2011.

The \$40 million figure for the Oakville plant was what Cabinet understood to be "the number," but it was also understood that there would be other costs associated with the decision to cancel the plant, as indicated in the MOU. The

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<sup>24</sup> A final version of *Hansard* was not available at the time that this summary was initially prepared; accordingly, this summary (and any quotes it contains) reflects the preliminary transcript of the April 30, 2013 meeting. There are also no page numbers.

\$40 million was for sunk costs, but it was only part of the total; there “were other numbers and other costs that could be considered part of the overall costs.” However, the \$40 million “was the cost that I was told and that our caucus and our government were told would be the cost associated with relocating the Oakville plant.” It is frustrating that this number has changed. Ms. Wynne believes that the cost is going to be more than \$40 million.

On March 19-20, 2013, Ms. Wynne was briefed by Ministry of Energy staff, who informed her that the OPA's estimates kept changing. At that time, the cost to relocate the Mississauga plant was \$271.4 million, and the cost to relocate the Oakville plant was between \$33 million and \$136 million. The changing numbers justified the decision to refer the matter to the Auditor General. Since learning that the \$40 million and \$190 million numbers were not the complete numbers, she has not said that they are final numbers.

Ms. Wynne learned about the relocation of the Mississauga plant through media reports.

Ms. Wynne served as Vice-Chair of the 2011 Liberal election campaign. In this role, she worked with candidates, did radio spots in small communities, visited unheld ridings, and attended fundraisers. She was not involved in the day-to-day, riding-by-riding strategy discussions. The issue of the Mississauga plant was not raised in any of the campaign meetings she attended. She was aware that the plants were an issue in the communities, but she was not “engaged in the day-to-day impacts of those decisions on the candidates.”

After the election, the new Cabinet met on October 20, 2011. Ms. Wynne, who had been appointed Minister of Municipal Affairs and Housing and Minister of Aboriginal Affairs, attended this meeting, at which there was a high-level discussion on the government's plan to move forward with the relocation of the Mississauga plant.

On November 21, 2011 Ms. Wynne and three other Ministers signed a Cabinet minute approving a \$10 million settlement of outstanding litigation with EP. This settlement has been publicly disclosed as part of the total cost of the Mississauga relocation.

In a November 24, 2011 Cabinet meeting, the Minister of Energy provided a high-level update on the negotiations between the OPA and EP. At a May 30, 2012 Cabinet meeting, there was a report “on the approved Treasury Board negotiation mandate to settle with EIG, as well as a direction to the Ministry of Energy and the OPA to continue their settlement discussions with Greenfield.” At an August 15, 2012 Cabinet meeting, there was a report on a Treasury Board order approving \$180 million for the Greenfield South settlement, and \$10 million for the Keele Valley settlement. Ms. Wynne attended these meetings.

In the Cabinet meetings immediately after the decision to cancel the Mississauga plant, the Cabinet “would not have had those detailed discussions about cost, the financial parameters or the specific negotiations at the table.” It was understood that the relocations would be negotiated, and that there would be costs associated with the decisions. Negotiations are confidential processes. Ms. Wynne had no access to the details of the files, and no knowledge of the financial parameters of the ongoing negotiations. The government was using the \$40 million in sunk costs because it was understood that that would be the cost in terms of “public dollars.” There were other costs, but at that time they were “unclear.”

When Ms. Wynne signed the “Vapour” minute, Chris Morley provided a briefing. This briefing was high-level and did not include specific information about costs. Being a Minister with a constituency office in Toronto, Ms. Wynne was frequently approached to sign Cabinet walk-around minutes when the House was not sitting; she would request a briefing on such occasions, but the briefing would be very high-level.

The decisions to relocate the plants were political in the sense that they were made by politicians, not bureaucrats. Experts provided advice to the government on the siting of the plants, but this advice did not consider the voices of the communities. There was an understanding that the siting decisions had been wrong; intervention by politicians allowed the decisions to be reversed. All three political parties “agreed that these decisions needed to be taken,” but it would have been impossible for anyone to estimate the costs.

Since becoming Premier, Ms. Wynne learned that the cost for Mississauga was \$271.4 million and that the cost for Oakville was between \$33 million and \$136 million. She learned this before the Auditor General released his report on the Mississauga deal, but did not make the new figures public because she believed that the Auditor General needed to do his work and that there had been enough murkiness on the subject.

Ms. Wynne cannot speak to the specifics as to why a distinction was made between taxpayer costs and ratepayer costs, but acknowledges that they were “all public dollars”.

“[W]e need a better process going forward. We need better process in terms of siting energy infrastructure and we need to have a better process when and if there ever is a situation where there has to be a reversal of a decision.”

The only concrete number that the government had was \$40 million, a number that the OPA provided to it. It was only at the March 2013 briefing that she was presented with a cost ranging from \$33 million to \$136 million. The MOU made it clear that there would be other costs associated with the relocation, but the government had no “crystalized” or “true” number. The government relied on the information given to it by the OPA.

## **Disclosure of Documents**

Former Minister of Energy Chris Bentley “was acting in the best interests of the people of Ontario;” he “was very concerned with releasing information that could do damage and could actually end up costing the people of Ontario more.”

The first search for documents was conducted using narrow language. There are not stacks of boxes labelled “Oakville and Mississauga gas plants.” The searches have been done electronically, and “you have to ask the question to get the right answer.” This is why more documents have not been released, and why Ms. Wynne wanted the search language broadened.

**APPENDIX A – LIST OF DOCUMENTS REQUESTED  
AND RECEIVED UP TO MAY 3, 2013**

The table lists in chronological order those witnesses from whom documents were requested.

<b>Witness</b>	<b>Date of Request or Motion</b>	<b>Documents Requested</b>	<b>Response Received by Committee</b>
Bruce Sharp	March 13, 2013	Capacity Analysis prepared for Enbridge  Formal cost analysis, based on email sent to Mr. Tabuns (annual gas tariffs, cash flow analysis)	
Rob Burton	March 19, 2013	Any correspondence sent to the Minister of Energy regarding the cancelling of the Oakville power plant within 2 weeks.  Any correspondence with Craig MacLennan, Minister Duguid's former Chief of Staff.  Any and all correspondence with the Premier, even including council motions regarding the cancellation of the Oakville gas plant within 2 weeks.  All emails, letters, correspondence, communications with the provincial government, or the OPA, or the ADM level	April 4, 2013  April 4, 2013  April 4, 2013  April 4, 2013

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
		or higher, including the political staff within 2 weeks.	
Peter Wallace	March 19, 2013	<p>List of individuals of all political staff in the Premier's Office, the Office of the Minister of Finance and the Office of the Minister of Energy, (past or present) that were involved with or had knowledge of Project Vapour within 2 weeks.</p> <p>Minister signed submission with respect to the Cabinet Minute dated July 29, 2011.</p>	<p>April 9, 2013 from Secretary of Cabinet and Office of the Premier</p> <p>Additional documents received on April 16, 2013</p>
Hazel McCallion	March 21, 2013	<p>Study by Mr. MacKenzie, regarding the projected requirements by the OPA.</p> <p>The date that the individual site environmental assessment request was denied.</p>	<p>April 2, 2013</p> <p>April 2, 2013</p>
Tiffany Turnbull  (directed to Cabinet office)	March 26, 2013	Record of all meetings that Giles Gherson had regarding the Mississauga gas plant between 2011 and 2012, including the participants.	April 22, 2013

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
<p>Jamison Steeve</p> <p>(directed to William Bromm, Legal Counsel &amp; Special Advisor, Cabinet Office)</p>	<p>March 26, 2013</p>	<p>Motion passed by Committee:</p> <p>THAT all documents pertaining to the meetings between Mr. Jamison Steeve and TransCanada which are now in possession of the legal counsel of the government be tabled immediately to the Standing Committee on Justice Policy.</p>	<p>April 9, 2013</p>
<p>Greg Rohn</p>	<p>March 26, 2013</p>	<p>Copy of email exchange with PC candidate.</p> <p>Form letter that was received in response to the environmental assessment report sent to the Minister of the Environment.</p> <p>Copy of flyer.</p>	<p>April 19, 2013</p> <p>April 19, 2013</p> <p>April 19, 2013</p>
<p>David Livingston</p> <p>(directed to Infrastructure Ontario)</p>	<p>March 28, 2013</p>	<p>Notes of meetings or emails with Shelly Jamieson (former Secretary of Cabinet), Murray Segal (former Deputy Attorney General) and David Lindsay (former Deputy Minister of Energy) with respect to the Oakville gas plant</p>	<p>April 22, 2013</p>

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
(directed to Treasury Board)	March 28, 2013	<p>and the status of it.</p> <p>Motion passed by Committee:</p> <p>THAT the Treasury Board be asked to provide the Standing Committee on Justice Policy its assessment of the cost of the settlement MOU between TransCanada, Ontario Power Authority and the Ministry of Energy as soon as possible.</p>	April 11, 2013
(directed to the OPA)	April 4, 2013	<p>Appointments and notes of meetings that you had on August 22, 2012.</p> <p>Emails sent with instructions to staff to search their records regarding the document request from the Standing Committee on Estimates.</p> <p>October 5, 2010 email attachment without redaction (document tabled by PC caucus – labelled PC Doc #5, page 3)</p> <p>Motion passed by Committee:</p> <p>THAT the OPA produce the documents annotated</p>	<p>April 15, 2013</p> <p>April 15, 2013</p> <p>April 15, 2013</p> <p>April 15, 2013</p>

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
(directed to the OPA)	April 9, 2013	<p>by Jesse Kulendran in her meeting of August 22, 2012 with Kristin Jenkins and Ziyaad Mia.</p> <p>Motion passed by Committee:</p> <p>THAT the OPA provide any and all reports and correspondence from their legal counsel in respect of their internal investigation of the conduct of Jesse Kulendran and her role in the OPA's production of documents.</p>	<p>April 26, 2013</p> <p>Additional documents received on May 2, 2013 from Secretary of Cabinet</p>
<p>Craig MacLennan</p> <p>(directed to Ministry of Energy and OPA)</p>	April 9, 2013	<p>Motion passed by Committee:</p> <p>THAT any and all personal and legal counsel notes and documents from meetings and debrief meetings referred to by Craig MacLennan in his April 9, 2013 testimony to the Standing Committee on Justice Policy following his meeting with TransCanada be tabled as soon as possible with the Standing Committee</p>	<p>May 2, 2013, from Secretary of Cabinet</p>

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
(directed to Ministry of Energy and OPA)	April 11, 2013	<p>on Justice Policy.</p> <p>Motion passed by Committee:</p> <p>THAT the Justice Committee request the production of the documents from the OPA and the Ministry of Energy referred to by Craig MacLennan in his testimony before this committee this week, including the slide deck he referred to as setting out the draft Long Term Energy Plan and the slide decks prepared on gas plant and transmission matters that led to the Long Term Energy Plan.</p>	<p>April 26, 2013, from OPA</p> <p>May 2, 2013, from Ministry of Energy</p>
Serge Imbrogno	April 9, 2013	<p>Total system costs and benefits estimate and when the estimate was made.</p> <p>Ministry of Energy's list of search terms.</p> <p>Second document search plan and the list of staff names who were asked to search for the documents and list of staff that had responsive records.</p> <p>Motion passed by Committee:</p> <p>THAT all documents</p>	<p>April 24, 2013</p> <p>April 24, 2013</p> <p>April 24, 2013</p> <p>April 29, 2013</p>

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
		<p>pertaining to estimates of transmission and gas management costs of the Oakville gas plant relocation in possession of the Deputy Minister of the Ministry of Energy's office be tabled as soon as possible with the Standing Committee on Justice Policy.</p>	
Stephen Thompson	April 11, 2013	Email correspondence with Mr. Yakabuski	
Kristin Jenkins	April 16, 2013	<p>The document search parameters that the OPA used prior to receiving search instructions from Jesse Kulendran.</p> <p>Copy of the final communications materials for the October 12, 2012 disclosure.</p>	<p>April 26, 2013</p> <p>April 26, 2013</p>
David Lindsay  (directed to Ministry of Energy and Cabinet Office)	April 18, 2013	<p>Motions passed by Committee:</p> <p>THAT the Ministry of Energy and Cabinet Office produce any and all briefing notes including cost estimates, related to the spring 2011 discussions regarding the cancellation of the Mississauga gas plant.</p>	

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
(directed to Minister of Energy and Premier's Office)	April 18, 2013	THAT the Minister's Office (Energy) and Premier's Office produce all briefing notes including cost estimates, related to the spring 2011 discussions regarding the cancellation of the Mississauga gas plant, and that a search be extended to Archives Ontario in the event documents were archived following staff departures.	
<p>Sean Mullin</p> <p>(directed to Minister of Energy)</p> <p>(directed to Cabinet Office)</p>	<p>April 23, 2013</p> <p>April 23, 2013</p>	<p>Motions passed by Committee:</p> <p>THAT the demand projections for the SWGTA and the province as a whole that are cited as shaping the Long Term Energy Plan and the Oakville decision be provided by the Minister of Energy as soon as possible.</p> <p>THAT the Secretary of Cabinet produce Sean Mullin's notes from any of his meetings with Trans Canada Energy and provided to counsel in the debrief referred to by Mr. Mullin as soon as possible.</p>	
Chris Breen	April 25,	Motion passed by	April 29, 2013

Witness	Date of Request or Motion	Documents Requested	Response Received by Committee
	2013	<p>Committee:</p> <p>THAT Mr. Chris Breen produce his notes related to meetings with the Office of the Minister of Energy and the Premier's office in respect of the Oakville gas plant within the next two weeks of this motion passing.</p>	
Kathleen Wynne	April 30, 2013	Copy of Liberal talking points (letter has not been sent as of May 3)	
<p>No Specific Witness</p> <p>(directed to Cabinet Office and Office of the Budget and Treasury Board)</p>	April 23, 2013	<p>Motion passed by Committee:</p> <p>THAT the Standing Committee on Justice Policy requests the following documents from Cabinet Office and the Office of the Budget and Treasury Board within two calendar weeks of the date of the motion passing:</p> <p>2. All documentation, electronic or otherwise between January 1, 2010 and April 23, 2012 related to the cancellation and relocation of the power plants in Oakville and Mississauga,</p>	

<b>Witness</b>	<b>Date of Request or Motion</b>	<b>Documents Requested</b>	<b>Response Received by Committee</b>
		including but not limited to documents containing any and all proxy names or code names such as but not limited to SWGTA, Project Vapour, Project Vapour Lock, Project Apple, Project Banana and Project Fruit Salad.	

## APPENDIX B

### DISSENTING OPINION FROM THE LIBERAL MEMBERS OF THE COMMITTEE

# **DISSENTING REPORT FROM THE LIBERAL CAUCUS MEMBERS OF THE STANDING COMMITTEE ON JUSTICE POLICY**

**May 7, 2013**

The Liberal Caucus members of the Standing Committee on Justice Policy wish to thank the Procedural Clerks and Legislative Research Services for their efforts in the preparation of the Committee's Interim Report.

This dissenting report arises because both opposition parties shut down the Committee's discussions about the report. On Monday, May 6, 2013, the Committee met for the purposes of report writing. After only one hour, and after reviewing the testimony of just 4 out of the 25 witnesses that had appeared before the Committee, the opposition members put forward, and voted in favour of, a motion to terminate the report writing process.

In the normal course, during the Committee report writing process, all Committee members have an opportunity to make comments and suggestions with respect to that report. To this end, Liberal Caucus members had a number of suggestions to share with the Committee. The goal of the Liberal Caucus members was to strengthen the first draft of the Interim Report by providing further context and detail to some of the testimony already cited. Similarly, the Liberal Caucus members had looked forward to hearing the input and suggestions of the opposition members of the Committee.

After the report writing process was terminated by the opposition majority on the Committee, the opportunity for input from all sides ended. The Liberal Caucus members of the Committee therefore offer the following suggested inclusions in the form of a dissenting report.

## **General Comments**

In addition to the two sub-headings already included within the summary for each witness, a heading of "Go Forward Recommendations" should be included. An important part of this Committee's work is to provide recommendations on energy infrastructure siting moving forward so that the situations in Mississauga and Oakville are not repeated. The Committee has already received good advice from numerous witnesses as to how the process can be improved. This valuable input should be highlighted in this consistent fashion rather than leaving suggestions inside the body of each witnesses' testimony.

## **Witness-Specific Comments**

*Peter Milliken, Former Speaker of the Canadian House of Commons*

The Interim Report should include the quote from former Speaker Milliken's in response to the question of whether the matter of contempt should be resolved if the Minister complied with the Speaker's ruling. Mr. Milliken replied: "If he complied I don't know why there would have been a breach. I don't understand that."

*Bruce Sharp, Professional Engineer*

It should be noted that Mr. Sharp's calculations are based not only on "documents publicly available" but also ballpark estimates that he acknowledged would not be certain until the plant is operational.

*Rob Burton, Mayor of the Town of Oakville*

Mayor Burton spoke at length about his interactions with all parties on this issue. The following comment made by Mayor Burton should be included in the Interim Report: "We enjoyed expressions of support from all parties, including Mr. Tabuns, and we appreciated the support of all parties. We were particularly encouraged by the strong statements that MPP Ted Chudleigh."

*Peter Wallace, Secretary of the Cabinet and Head of the Ontario Public Service*

The Interim Report notes testimony from Mr. Wallace related to redactions. After the line "The redacted portions were unrelated to the request" it would be helpful to include a footnote that Secretary Wallace followed up after his testimony, and re-reviewed all the redactions in the Ministry of Energy documents.

In the letter Mr. Wallace sent to the Committee on April 8th he states "I wish to confirm for the Committee my continued belief that good faith efforts were made to provide the information responsive to the Committee's order and that the redactions removed only information that appeared to be unrelated to that order."

Further, in the interest of providing a fulsome record, it should also be noted that Mr. Wallace subsequently provided the Committee with a copy of the un-redacted records.

*Joanne Butler, Vice-President of Electricity Resources, OPA*

While Ms. Butler acknowledged that there were additional costs associated with the cancellation and relocation, she also confirmed that there would be additional savings from the lower Net Revenue

Requirement. This should be clearly reflected in the summary of her testimony.

*Hazel McCallion, Mayor of Mississauga*

The Interim Report should include the quote from Mayor McCallion in response to the question of what commitments she received from the opposition parties regarding the power plant: "The impression that was certainly given beyond a doubt-and, in fact, I want to tell you I think all parties would have cancelled it; there's no question about it.

*Jamison Steeve, Former Principal Secretary, Office of the Premier*

Mr. Steeve described the five meetings with TCE. as "exploratory in nature". Given his direct knowledge of these meetings, his interpretation should be clearly reflected in the summary of his testimony. Also on this page, the information related to the setback rules for wind turbines is included as a footnote. This issue highlights the problematic nature of the siting around the Oakville plant and warrants inclusion in the main body of the text.

It is also essential to put the \$712 million offer cited during the questioning of Mr. Steeve in context. Both Chris Breen from TCE and Colin Andersen from the OPA have confirmed that the offer included the value of a new plant in Kitchener-Waterloo. It was not a standalone cash offer, but rather an offer valued at \$712 million for an alternate power-generation project.

*Craig McLennan, Former Chief of Staff, Minister of Energy*

Similarly to the comments with respect to Mr. Steeve's testimony, it is essential to put the \$712 million number cited in questioning in context. Both Chris Breen from TCE and Colin Andersen from the OP A have confirmed that the offer included the value of a new plant in Kitchener-Waterloo. It was not a standalone cash offer, but rather an offer valued at \$712 million for an alternate power- generation project.

*Serge Imbrogno, Deputy Minister of Energy*

Similarly to the comments already made with respect to the summaries for Mr. Steeve and Mr. McLennan's testimony, it is essential to put the \$712 million number cited in questioning in context. Both Chris Breen from TCE and Colin Andersen from the OP A have confirmed that the offer included the value of a new plant in Kitchener-Waterloo. It was not a standalone cash offer, but rather an offer valued at \$712 million for an alternate power-generation project.

At the end of the summary of his testimony, the context of the "costs" Mr. Imbrogno discussed should be more clearly explained. Mr. Imbrogno was referring to the sum costs of cancellation plus the potential lost profits

throughout the life of the project if the contract was ripped up, rather than renegotiated.

*Stephen Thompson, Coalition of Homeowners for Intelligent Power*

Given that the focus of Mr. Thompson's testimony was his views on the decision to relocate the Mississauga power plant, the summary of his testimony should include his stated opinion that relocating the plant was the right decision.

Similarly, the process of Mr. Thompson's advocacy on the issue should be explained. He testified that he spoke with candidates from all three parties asking for their support. Mr. Thompson noted that initially "not everyone was willing to do so," but eventually they all committed to cancelling the plant. In particular, Mr. Thompson spoke of Mr. Hudak's campaign announcement that he would cancel the plant, and how this was contrary to the position taken by PC Energy Critic John Yakabuski leading up to the election.

*Kristin Jenkins, Vice-President of Communications, OPA*

Ms. Jenkins confirmed to the Committee that the OPA was responsible for its own document search and that the OPA had final sign off on what was provided to the Clerk. Furthermore, Ms. Jenkins confirmed that Ms. Kulendran had no authority to direct the OPA's search. These elements of her testimony should be more clearly reflected in the summary.

*Jim McCarter, Auditor General of Ontario*

The Interim Report should include the Auditor General's acknowledgement that sunk costs would have been higher if construction continued. Given that part of the Committee's mandate is to review document disclosure issues, a quote from Mr. McCarter, as an independent and neutral third party, should be included on this issue. Mr. McCarter stated with respect to the risk of disclosing these documents before deals were finalized: " ... it's like in poker you don't show the people around the table your cards." He further stated, "the more people that see the documents does increase the risk that some of that can get out into the public forum ... "

*Chris Bentley, Former Minister of Energy*

The context of Mr. Bentley's comment that the costs would be "huge" should be explained. Mr. Bentley stated this in reference to the cost of ripping up the agreement, and not renegotiating an alternative site, because the province would be liable for all the damages.

Mr. Bentley's testimony with respect to the personal impact this matter has had on him warrants inclusion. Mr. Bentley stated "I think it would be fair to say that this past year has been one of the most difficult that I could ever imagine. The sacrifices that families make in public life are enormous far

beyond what most people would even begin to think. About the sacrifice and effect that family has had over the past year has been incredible. I am sorry that I have put them through that by effectively doing what I always wanted to do which was serve the people"

*Brad Duguid, Minister of Training, Colleges and Universities and Former Minister of Energy*

For context, the full quote from the Minister in respect of his position on the Mississauga plant should be included. Minister Duguid testified: "once all three parties committed to cancelling the Mississauga gas plant during the election, I, like all of you here, supported the fulfillment of that election commitment."

Because this Committee's work arose at least in part from Mr. Bentley's appearance at Estimates Committee, inclusion of Minister Duguid's testimony on this issue is warranted. Minister Duguid testified: "Minister Bentley was caught in a position where he had the Committee asking for documents, and he was also being advised that those documents were sensitive and would impact negotiations, and potentially cost the province additional costs. What he displayed, I think, was the ultimate integrity in making his best judgment. It's very sad to see the way he was treated in this Legislature."

*Colin Andersen, Chief Executive Officer, OPA*

It should be noted after the sentence "the OPA has also prepared a series of estimates" that Mr. Andersen acknowledged they had prepared a document on March 20 2013 that estimated the cost to relocate Oakville between \$33 million and \$136 million.

*Kathleen Wynne, Premier of Ontario*

March 19-20 refers to the dates on the OPA documents that were used in the Premier's briefing, not the actual date of that briefing.

## APPENDIX C

DISSENTING OPINION FROM THE PROGRESSIVE  
CONSERVATIVE MEMBERS OF THE COMMITTEE

**ONTARIO PC CAUCUS**  
**DISSENTING OPINION TO THE STANDING COMMITTEE ON JUSTICE**  
**POLICY'S *INTERIM DRAFT REPORT***

**May 7, 2013**

The Committee's investigation into the Liberal government's gas plant scandal has shown the depths that the McGuinty-Wynne Liberals were willing to go to save Liberal seats in the 2011 election and put the political interests of their friends and that of the Liberal Party of Ontario ahead of the people and Province of Ontario.

Testimony of energy experts and professional civil servants has proven to be far more credible and believable than those of political staff and political decision makers. So far, \$585 million taxpayer dollars (a number likely to be much higher) has been wasted to save a few Liberal seats. The testimony of both Premier Wynne and that of former Premier McGuinty was unapologetic for its political crassness and contradicted experts and public service professionals whose testimony was far more believable.

It is clear that testimony from Liberal officials, both staff and politicians, is circular in nature, contradictory and at times outright evasive. Despite witnesses being under oath, it is clear that a number of witnesses have not told the 'whole' truth or suffered from diplomatic amnesia. There is a trend among witnesses who have Liberal Party connections in that their responses are evasive, which speak to the ongoing cover-up of the entire gas plant scandal. This evasiveness has thwarted the committee in its efforts to get to the bottom of the scandal and find out: *who made the decision to cancel the gas plants; how much it actually cost; when did cabinet and Premier Wynne in particular know of the 'real' costs of the cancelled gas plants; and, who ordered the documents covering up the scandal withheld from the Parliament.*

Sworn testimony of at least six key witnesses directly contradict Premier Wynne's statements, thereby calling into question the veracity and credibility of her Committee testimony and comments in the House. Therefore, political decision makers who advised or decided to only disclose so-called "*sunk costs*" for the Oakville power plant cancellation and low-ball costs for the Mississauga cancellation (*and then repeat those numbers in public and on the floor of the Legislative Assembly of Ontario*) that they knew were not complete or accurate have chosen, by their actions and/or decisions to partake in a cover-up.

The committee has also learned that senior Liberal political staff has deleted documents, emails and correspondence in general that relates to

the cancellations of the Gas Plants, which is in all likelihood in breach of the law. To that end, the Progressive Conservative Caucus remains deeply concerned by this trend of destroying documents critical to getting to the bottom of this scandal.

It seems that many of the witnesses at the political level forget that this Committee has the authority and power to recommend to the Chamber that individuals can be held in *contempt of parliament* for their role in ordering the cover-up or for providing the public and the legislature with information that they knew was false. A finding of *contempt of parliament* is very serious and can come with very serious sanctions.

It is therefore the position of the PC Caucus that contradictory testimony, evasive answers or refusal to provide even basic answers that someone holding the positions of those who testified should know indicates that the cover-up of this scandal runs deep within the McGuinty-Wynne Government.

To that end, the PC Caucus remains committed to getting to the bottom of this scandal and will likely recall several witnesses to clarify their testimony. These witnesses include but are not limited to: *Premier Wynne, Former Premier Dalton McGuinty, Minister Duguid, former Minister Bentley, Jamieson Steeve, Craig MacLennan, Sean Mullin, David Livingston and Jesse Kulendran.*

It is strongly advised that these witnesses sharpen their memories, get their facts straight and not destroy any documents. Given concerns over their contradictory testimony against professionals who are far more believable, it is the position of the PC Caucus that the aforementioned individuals may well risk being served notice that a recommendation will be made to the House in the final report of this Committee that they be held in *Contempt of Parliament* for their role in this scandal or the subsequent cover-up and sanctioned accordingly.