

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# STANDING COMMITTEE ON JUSTICE POLICY

## **THE CANCELLATION AND RELOCATION OF THE GAS PLANTS AND DOCUMENT RETENTION ISSUES**

1st Session, 41st Parliament  
64 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)

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The Honourable Dave Levac, MPP  
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Justice Policy has the honour to present its Report and commends it to the House.

Shafiq Qadri, MPP  
Chair of the Committee

Queen's Park  
February 2015

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COMITÉ PERMANENT DE LA JUSTICE  
Toronto, Ontario M7A 1A2

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## **ABBREVIATIONS USED IN THIS REPORT**

AMO	Association of Municipalities of Ontario
ARA	<i>Archives and Recordkeeping Act, 2006</i>
CHIP	Coalition of Homeowners for Intelligent Power
EA	Environmental Assessment
EBR	Environmental Bill of Rights
EIG	EIG Global Energy Partners
FRSA	Facility Relocation and Settlement Agreement
GTA	Greater Toronto Area
IESO	Independent Electricity System Operator
IPSP	Integrated Power System Plan
KWC	Kitchener-Waterloo-Cambridge area
MOU	Memorandum of Understanding
MW	Megawatt
OEB	Ontario Energy Board
OMB	Ontario Municipal Board
OPA	Ontario Power Authority
RFP	Request For Proposal
RFQ	Request For Qualification
TCE	TransCanada Energy Limited

## **SUMMARY**

In 2010 and 2011 the Government of Ontario listened to the concerns of residents in Oakville and Mississauga and announced the relocation of two power plants, a decision that all three recognized parties in the Legislature supported. Since the relocations were announced, cost estimates have varied, but it is clear that the cost was unacceptably high.

In February 2013 the Standing Committee on Justice Policy (the Committee) began considering the Speaker's finding of a *prima facie* case of privilege in response to the May 16, 2012 request by the Standing Committee on Estimates for the production of documents relating to the Oakville and Mississauga gas plant relocations.

On March 5, 2013 the Government put forward a motion that expanded the mandate of the Justice Committee to consider the tendering, planning, commissioning, cancellation and relocation of the two gas plants.

In the 40<sup>th</sup> Parliament the Government and its agencies provided the Justice Committee with some 400,000 pages of documents, including 30,000 documents from the Premier's Office. The Committee heard from 93 witnesses during more than 135 hours, totalling in excess of 3,000 pages of testimony.

In May 2014 an election was called for June 12, 2014 after the opposition parties announced they would not support the Government's budget. As a result, all business before Committees came to an end, including the mandate of the Justice Committee and the Speaker's *prima facie* case of privilege. Despite this, Premier Kathleen Wynne (Don Valley West) made a commitment during the election that the Committee should finish its work by writing a report.

On October 30, 2014 the Committee agreed to report its observations and recommendations on the Ministry of Energy concerning the tendering, planning, commissioning, cancellation and relocation of the Oakville and Mississauga gas plants and its observations and recommendations on the Ministry of Government and Consumer Services concerning the recordkeeping practices of Ministries and staff of the Ontario Government. The Committee agreed to consider the applicable oral and written submissions made to the Standing Committee on Justice Policy in the 40<sup>th</sup> Parliament during its consideration of these matters.

## **OBSERVATIONS AND CONCLUSIONS**

An important part of this Committee's work is to provide recommendations on energy infrastructure siting so that the situations that occurred in Oakville and Mississauga are not repeated. In the last Parliament, the Committee received good advice from numerous witnesses on how the process can be improved. These witnesses included government officials, energy experts, politicians and public advocates.

The Committee also benefited from a report on regional electricity planning prepared at the request of the Minister of Energy by the Independent Electricity System Operator (IESO) and the Ontario Power Authority (OPA). Additionally, two special reports were prepared by the Auditor General of Ontario, including one at the request of Premier Kathleen Wynne, and one special report was released by the Information and Privacy Commissioner.



Witnesses who appeared before the Committee illustrated the challenges presented by existing energy siting rules in Ontario. Testimony suggested that there was insufficient attention given to the concerns of the citizens in Oakville and Mississauga. Listening to the concerns of these communities contributed to the decisions that led to the relocation of the proposed gas plants.

The Committee heard testimony from politicians and community leaders that no party appreciated the full extent of the costs when each made assurances pledging to relocate the facilities. The Committee heard a number of cost estimates from a range of witnesses during the past 18 months. Although estimates of the cost vary, each one is unacceptably large.

For these circumstances to be avoided in the future, decisions on new large-scale energy infrastructure must take into account the needs and concerns of host communities and involve those communities in the process. It is clear that communities have not been sufficiently engaged in the large-scale energy siting process. This also must change.

Communities have a responsibility to engage in the building and maintenance of the energy infrastructure they need. Communities plan for roads, bridges and water, yet there is no requirement that these communities plan for large-scale energy siting. Growing communities must understand that, like other municipal infrastructure, energy infrastructure must be part of their plan. Ontario planning authorities and private developers must engage with municipalities early to adequately scope their energy needs and take into account local preferences. While the scope of the Committee is limited to the siting of gas generation facilities, the Committee notes that this engagement and consultation process has been reflected in the new large-scale energy siting rules released by the Government.

Another aspect of the Committee's work in the 40<sup>th</sup> Parliament was the *prima facie* case of privilege regarding the Standing Committee on Estimates request for documents from the former Minister of Energy. Although a committee cannot make findings with respect to allegations of contempt in a previous Parliament, the issues surrounding these allegations are relevant to this Committee's current mandate to examine the Government's recordkeeping practices.

Testimony from both government and agency officials described the legal challenges surrounding disclosure of confidential and privileged documents. Additionally, a number of witnesses confirmed the complex process around the production of large volumes of documents and the lack of a precedent for the government and its agencies to deal with such large requests.

The Committee heard from multiple witnesses that the former Minister of Energy, Chris Bentley (London West), made good faith efforts to produce all documents requested by the Standing Committee on Estimates.

The Committee's examination of these issues shed light on some inadequacies of recordkeeping and document retention policies and training. Several witnesses testified that they did not receive adequate training on their obligations under the *Archives and Recordkeeping Act, 2006*.<sup>1</sup> The Information and Privacy Commissioner, Dr. Ann Cavoukian, ultimately prepared a report that outlined a number of recommendations with respect to recordkeeping and document

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<sup>1</sup> S.O. 2006, c.34, Schedule A.

retention. In this report, Dr. Cavoukian acknowledged the work already being done to ensure that all staff received proper training.

The Committee thanks the witnesses who agreed to appear and testify during the last 18 months. These comments and recommendations will help strengthen the siting process for large energy projects and establish clear guidelines for document retention and disclosure.

## **ENERGY SITING**

### **Energy Planning**

In Ontario, provincial agencies have traditionally done the bulk of the work related to energy planning, often along with private sector companies that provide services or build and maintain infrastructure. Municipalities and regions have not normally played a significant role. After 2003, Ontario started to make significant investments to upgrade the electricity system. This meant many new large-scale energy projects, such as natural gas plants, were built in a short period of time.

Private developers were asked by provincial planning agencies to submit bids for projects. Developers often used municipal zoning as the primary method for deciding where to build their facility, often bypassing municipal consultations.

The Committee was told by several witnesses that their communities were surprised by announcements of procurements that could affect them. Municipal leaders are often aware of proposals for new infrastructure—either because they are informed by a provincial agency, or because project developers from the private sector engage directly with them. However, since municipalities have not had responsibility for energy decisions in the past, municipal leaders have not been in a position to influence or take ownership of the energy planning and decision-making process.

Mayor Rob Burton of Oakville told the Committee that his municipality tried to prevent an unwanted new facility by changing its by-laws. This occurred only after a developer had made public its intention to compete in a provincial procurement to build a facility. Prior to this, the Mayor testified that the town did not have “appropriate planning rules” for potential power plants in his city.<sup>2</sup>

Mayor McCallion of Mississauga indicated that the City had never been informed by the private developers of their intention to build a gas-fired plant on Loreland Avenue, prior to the developers winning the procurement process in 2004. However, in the case of Mississauga, the City had long been a host to a power plant at Lakeview and its planning bylaws did include a provision for “power generation” in certain areas of the City, including the Loreland Avenue site.<sup>3</sup> It was only after the 2004 procurement that planning rules were changed as a way to prevent the plant from being built. Ultimately, in July of 2005, Mississauga issued a letter giving the proponent, Eastern Power, the approval to construct its proposed gas plant.

In the future, it is crucial that municipalities and citizens be more engaged in the

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<sup>2</sup> Standing Committee on Justice Policy (hereafter “Committee”), *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (March 19, 2013).

<sup>3</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (March 21, 2013).

planning process for large-scale energy projects. Plans for new large-scale energy facilities should not come as a surprise to municipal leaders and potentially affected homeowners and businesses.

As the Association of Municipalities of Ontario (AMO) told the Committee, municipalities are engaged in a wide variety of consultations for different kinds of infrastructure and have learned to do this very well. Planning for large-scale energy projects must include municipalities so that those municipalities can in turn include energy plans and planning in their engagement with their citizens and businesses. An improved approach should be used to reach out to people and engage them early and regularly in decision-making on developing facilities crucial to the future of our province.

The Committee agrees with Premier Kathleen Wynne's testimony that a new siting process is needed. On April 30, 2013, the Premier stated:

The siting of these two plants failed to take into account the views of the community. Despite expert advice, despite an open procurement process and all the decision points along the way, the overall process failed. I have been very clear that I regret that we didn't have a different process in place.<sup>4</sup>

## **Relocation of the Oakville and Mississauga Gas Plants**

Ultimately, the Government did overturn the proposed developments in Oakville and Mississauga after concerns were raised by local residents.

The Oakville facility became an issue for political parties from all sides of the House in 2010. In a question to the Ministry of Energy on September 14, 2010, the Member for Halton, Ted Chudleigh, asked "Will you listen to the people of Oakville, change your mind and move the location of this power plant?"<sup>5</sup> Shortly thereafter, on October 18, 2010, NDP leader Andrea Horwath stated, "New Democrats actually have thought for a long time that that plant should never have been built and we've said so."<sup>6</sup>

On October 7, 2010 after objections from all three parties, the municipality and local residents, the Government announced that the Oakville plant would be moved to an alternate location. On the same day, the OPA sent a termination letter to TransCanada Energy Limited (TCE), the company that was awarded the contract to build the Oakville plant.

Following this announcement, the Government moved to negotiate a settlement with TCE. Several witnesses told the Committee that this was advisable:

- John Kelly, Counsel for the Ministry of the Attorney General testified: "In my experience, after 40 years of litigating, if you can avoid litigation, you should. It's a process that's fraught with risk."<sup>7</sup>

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<sup>4</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 30, 2013).

<sup>5</sup> Legislative Assembly, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (September 14, 2010).

<sup>6</sup> Legislative Assembly, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (October 18, 2010).

<sup>7</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (May 16, 2013).

- OPA Chair and CEO, Jim Hinds, testified, “If [the cancellation] was done in a way that showed disregard for contractual rights, there’s also, as I recall from the lawyers, the opportunity that we could get sued for punitive damages.”<sup>8</sup>
- The former Deputy Minister of Energy, David Lindsay, testified, “If you have a contract and you don’t honour the contract, the party on the other side can sue you for breach of contract and the damages will be all the benefits they were hoping to procure.”<sup>9</sup>
- Halyna Perun, Director of Legal Services for the Ministry of Energy testified that “TransCanada would have been in a position to sue for breach of contract.”<sup>10</sup>
- Chris Breen, a lobbyist with TransCanada, testified, “We had, as I said, the Ontario Superior Court and Divisional Court, and we would have taken this to whatever court was required in order to deliver on our commitments,” and “TransCanada were confident that they were going to eventually get to build the project on the Ford lands.”<sup>11</sup>

Consistent with this advice, in July 2011 Cabinet approved a directive, authorizing the Government to negotiate a settlement with TCE. The arbitration agreement reflected promises that had already been made in the OPA’s termination letter to TCE on October 7, 2010.

When asked on April 11, 2013 about whether this cabinet directive was “the smoking gun,” Peter Tabuns (Toronto–Danforth) responded, “We knew that cabinet was approving this process, so this does not surprise me.”<sup>12</sup> The Auditor General also confirmed that the arbitration agreement “just reiterated the original letter” sent from the OPA to TCE.<sup>13</sup>

Oakville Mayor Rob Burton stated “Our citizens organized their own effort to ask the province to re-think the proposed power plant. . . . They won promises from all parties to stop the proposed power plant.”<sup>14</sup> Another prominent local opponent, Mr. Frank Clegg of the Coalition 4 Clean Air noted that: “We met with all the parties and all the candidates and were given commitments by every candidate in the Oakville area that they would support cancelling the plant.”<sup>15</sup>

The Committee notes that despite numerous invitations, the Progressive Conservative candidates referenced by Mr. Clegg declined to appear as witnesses. As a result, we accept Mr. Clegg’s account of the meetings. It is also supported by comments made by multiple members of the PC party, including then-leader Tim Hudak (Niagara West–Glanbrook), who confirmed his opposition

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<sup>8</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (June 4, 2013).

<sup>9</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 18, 2013).

<sup>10</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (May 28, 2013).

<sup>11</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 25, 2013).

<sup>12</sup> Peter Tabuns, media availability with George Stamou, CTV News, Toronto, April 11, 2013.

<sup>13</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (October 10, 2013).

<sup>14</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (March 19, 2013).

<sup>15</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 9, 2013).

to the plants, stating, “We’ve opposed these projects in Oakville and Mississauga.”<sup>16</sup>

The Committee heard testimony that waiting to relocate the plant could have been much more expensive. According to Michael Lyle, Vice President and Chief Counsel of the OPA,

If, in fact, the government let the Oakville project go to the extent that they actually commenced construction, then yes, there would have been additional sunk costs. If the government then decided to cancel the project, there would be liability for those sunk costs.<sup>17</sup>

In light of this, the Committee finds that renegotiating with TCE was a more prudent course of action than ripping up the entire agreement. Indeed, officials testified that TCE would have stopped at nothing to build the plant.<sup>18</sup>

Later in 2011 a similar commitment to relocate the Mississauga facility was made by all three parties running for election. Progressive Conservative Leader Tim Hudak, when asked if he would cancel the project, promised the plant would be “done, done, done.”<sup>19</sup> The Committee heard from Mississauga Mayor Hazel McCallion who said: “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.”<sup>20</sup>

The Mississauga gas plant became an election issue for all three parties, with local candidates sparring over who would or would not cancel the project. On September 24, 2011, Mississauga South PC candidate Geoff Janoscik stated, “The only way to guarantee this power plant does not get built is to elect a Tim Hudak Ontario government. A Tim Hudak Government will cancel this plant.”<sup>21</sup> And on September 26, 2011, the NDP Energy Critic Peter Tabuns also confirmed, “We wouldn’t build it.”<sup>22</sup> Liberal candidate and incumbent Charles Sousa announced that a re-elected Liberal government would also not move forward with the facility.<sup>23</sup>

The Committee believes that increased local consultation prior to the siting of the Oakville and Mississauga facilities could have led to a better outcome. Former

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<sup>16</sup> Kim Mackrael, “Hudak opposed to building gas-fired power plant in Mississauga, *Globe and Mail*, September 25, 2011, accessed December 8, 2014.

<sup>17</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (May 7, 2013).

<sup>18</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 25, 2013).

<sup>19</sup> Canadian Press, “Hudak vows to scrap Mississauga power plant,” *CBC News* (October 5, 2011), accessed December 8, 2014.

<sup>20</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (March 21, 2013).

<sup>21</sup> Geoff Janoscik, “Statement by Mississauga South Ontario PC Candidate, Geoff Janoscik, on the Loreland Avenue Power Plant Press Conference,” *Press Release*, September 24, 2011.

<sup>22</sup> Tamara Shephard, “Power plant fight not over: CHIP,” *InsideToronto.com*, September 26, 2011, accessed December 8, 2014 (<http://www.insidetoronto.com/community-story/69013-power-plant-fight-not-over-chip/>).

<sup>23</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (May 23, 2013).

Premier Dalton McGuinty (Ottawa South) touched on this matter in his opening statement during his first appearance before the Justice Committee on May 7, 2013:

In Oakville and Mississauga, we were faced with a circumstance where gas plants were sited right next to schools, condominium towers, family homes and a hospital. That wasn't right. All parties agreed on that, and we needed to fix it. We all agreed on that too. Most importantly for me as Premier was to acknowledge our mistakes and fix them. We got 17 gas plants right, but we got Oakville and Mississauga wrong, so we needed to fix that.<sup>24</sup>

A decade ago, Ontario had a supply shortage, meaning the lights were not always guaranteed to go on. After an extensive rebuild of the energy system, Ontario now has a healthy supply of energy. When he appeared before the Justice Committee on June 4, 2013, the Chair of the Ontario Power Authority, Jim Hinds, noted: "I think there was, at the time of the OPA's creation, a fairly significant supply crisis in the province."<sup>25</sup>

Now the system has been rebuilt, Mr. Hinds believes:

We need to realign planning and siting functions with current system conditions. Siting and building generation when there's a supply crisis like 2004 through 2007 is one thing; doing it when supply is in good shape is quite another.<sup>26</sup>

At the Request of the Minister of Energy, Bob Chiarelli (Ottawa West–Nepean), the Committee was provided a report by the IESO, prepared in conjunction with the OPA.<sup>27</sup> The report provides several recommendations about how municipalities can be better engaged with energy planning. A critical step is recognizing that planning cannot only be provincial in nature, but that plans need to be prepared on a regional basis as well. Narrowing the scope of energy plans will allow for more focused engagement of municipalities and other stakeholders and focus on decisions that matter to people on a personal level.

The OPA/IESO report also recommends that every region have an electricity planning Advisory Committee, which includes elected municipal representatives, municipal officials, representatives of First Nation and Métis communities and other stakeholder representatives. These Advisory Committees would act as a conduit of information in both directions, ensuring that both proponents and provincial agencies better understand local concerns while allowing local and regional stakeholders to gain insight into provincial planning priorities and realities.

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<sup>24</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (May 7, 2013).

<sup>25</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (June 4, 2013).

<sup>26</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (June 4, 2013).

<sup>27</sup> Ontario Power Authority and the Independent Electricity System Operator, *Engaging Local Communities in Ontario's Electricity Planning Continuum: Enhanced Regional Electricity Planning and Siting* (August 2013).

More broadly, communities should be engaged through multiple processes at various stages of planning and implementation, including reports to local governments and First Nation and Métis communities. It should no longer be acceptable for municipalities to be surprised to find that their territory is the subject of a provincial procurement process for large-scale energy infrastructure projects. Municipalities and their leaders should be engaged in the process and have multiple opportunities to participate in decision-making. This thinking has been reflected in the new large-scale renewable procurement process that the Ministry of Energy has put into place, which requires developers to work with local communities before a project is approved.

Finally, the report also recommends the development of community energy plans. Comprehensive plans would take into account not only electricity, but also natural gas, district energy and transportation fuels. Community energy plans encourage all community stakeholders to think about, and take seriously, the need for conservation, for careful consideration of different options and opportunities for development, and the sustainability of the energy systems we all depend on. The process of community energy planning will raise general awareness about energy issues and serve to engage citizens in energy issues.

The Committee notes the Government recognized the importance of improving the siting process for large-scale energy projects and commissioned the OPA/IESO report. Witnesses testified that the old process was out-dated and there was recognition from all levels of government that change was overdue. Furthermore, the Committee notes that the Premier and the Minister of Energy accepted all the recommendations of the OPA/IESO report and look forward to continued progress on the implementation of those recommendations.

## RECOMMENDATIONS

- 1. Communities across Ontario should be engaged in energy planning, which can no longer be left exclusively to provincial agencies and proponents. Regional energy plans should be mandatory and cover the whole province.*
- 2. The Ontario Government and agencies must consult with local authorities on large-scale energy planning matters.*
- 3. Engagement should begin at the earliest stages of planning processes and include official representation of municipalities, First Nations and Métis communities.*
- 4. Multiple opportunities for engagement should be encouraged to ensure awareness of and involvement with planning for our energy future.*

## **Integrating Energy Plans with Municipal Plans**

Municipalities plan for the development of neighbourhoods. They plan for water infrastructure, like filtration plants and sewer systems, and they plan for roads, bridges and street lighting systems. They decide which land is appropriate for residential or commercial uses and which can be used for industrial needs. Historically, what they have not planned for in any systematic way is large-scale energy infrastructure. Official municipal and regional plans do not designate corridors for future transmission lines or natural gas pipelines and, typically, they do not designate certain areas for the development of power plants.

This should change. It is no longer acceptable for municipalities to make land use plans without considering their energy needs and options.

In Oakville, citizens objected to plans for a new electricity generation plant, however, there was no plan in the City to consider the energy needs of a growing community. Instead, the process was left entirely to provincial agencies, without the involvement of the community, and without any responsibility on the part of the municipalities to make provisions for changing energy needs. Citizens quite rightly objected when a new facility was proposed in what appeared to be an inappropriate location. However, it appeared that no work had been done in Oakville to determine whether any other appropriate place for construction was available or what energy alternatives to construction might exist, such as transmission.

In Mississauga, official plans in 2004 made specific reference to “power generation” as an allowable use of certain lands. However, it seems that consideration had not been given to the implications of developers relying on those designations in particular places. Communities change, neighbourhoods grow and acceptable uses of land change as well. At one time, a parcel of land might seem appropriate for a wide variety of uses, including large-scale energy infrastructure, but as surrounding lands are filled in, or repurposed for different uses, it may no longer make sense. It is up to municipalities to manage their land uses, as only they can.

As Russ Powers, the President of the Association of Municipalities of Ontario (AMO) noted to the Committee, “the planning process in Ontario is a mature one, understood, and can be the vehicle to bring forward change and move forward.”<sup>28</sup> The Committee believes the province should capitalize on this, and require that energy planning be integrated with all other land use planning at the municipal level, to the benefit of every community.

The OPA/IESO report includes some suggestions on steps that could be taken. For example, the Province could include specific energy requirements as part of the provincial policy statement, which sets out rules and guidelines for municipal land use planning across the province. Also, the Ministry of the Environment and other provincial ministries could define specific rules for different types of energy facilities (for example setbacks from facilities, or widths of right-of-ways), which could then be incorporated in municipal plans. The Province could integrate energy plans into its larger scale planning documents (such as the *Places to Grow Act, 2005*, and *the Big Move*), which in turn affect municipal planning. All of these suggestions represent positive improvements that should be implemented as soon as is practical.

The Committee heard from a number of expert witnesses who agreed that municipalities should play a bigger role when it comes to energy planning. Adjunct Professor of Energy Regulation, George Vegh, said, “I think it is clear that municipalities are in a position to take a larger role in this, and there does seem to have been a disconnect in previous planning exercises between municipal goals and electricity goals, and they shouldn’t be that difficult to reconcile.”<sup>29</sup> Summarizing the view that local decision makers need to be a part of the energy conversation, he said, “I think if I were to have one piece of advice, it would be to try to simplify the processes we now have and incorporate more

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<sup>28</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (September 10, 2013).

<sup>29</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (August 27, 2013).



local responsibility for these decisions.”<sup>30</sup>

Former Deputy Minister of Energy, David Lindsay also testified, “I think consultation and having people aware with full information is very important.”<sup>31</sup>

It is important to recognize, however, that energy planning in a municipality or region should not just be about planning for local needs. Sometimes a large facility needs to be located within a municipality or region to serve a broader area. The former Secretary of Cabinet, Shelley Jamison, testified:

You can't just choose not to have a gas plant, because you won't have power at some point in time. So if you're not going to generate the power from within your community, you have to bring it from somewhere else, which means the discussion in Oakville, really, probably should be, “If not this, then what?” And what does that look like, so that people understand the choices they're making.<sup>32</sup>

The Committee recognizes that sometimes a natural resource exists in one place which does not exist elsewhere and if it is to be used at all, it must be used on that site. Sometimes, a transmission line or pipeline must traverse a municipality or a region in order to serve other parts of Ontario. Ontario's highways pass through many municipalities for the ultimate benefit of all Ontarians: highways and transmission lines share many characteristics, yet municipalities have planned for one but not the other.

The hydroelectric plant in Niagara Falls produces far more electricity than is needed in the local area. If all energy planning was done on a regional or local basis only, the Niagara power plant would never have been built. It is crucial that these overarching provincial needs and benefits be incorporated into regional energy planning, and municipal land use planning as well.

As AMO pointed out, however, many municipalities may not have the expertise to integrate energy plans into their own development plans. Mr. Powers cited a different issue, related to asset planning, where the Association discovered that “352 out of 445 municipalities” lacked the depth of expertise required to manage the issue.<sup>33</sup> Given the complexity of energy systems, it is likely that a similar result would occur if AMO reviewed the capabilities of its members to deal with detailed energy issues. It is crucial, therefore, that provincial energy agencies continue to play a leading role in energy planning, and that they make every effort to provide information, expertise and support to municipalities that require it.

## RECOMMENDATIONS

- 5. Municipalities should be required to integrate energy plans into their municipal plans, to ensure that energy needs match up with appropriate corridors and sites designated for energy infrastructure.*

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<sup>30</sup> Ibid.

<sup>31</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 18, 2013).

<sup>32</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 16, 2013).

<sup>33</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (September 10, 2013).

6. *Municipal land use plans must recognize and incorporate not only local or regional energy needs, but also provincial energy priorities and needs.*
7. *Provincial energy agencies or the Government of Ontario should provide support and resources to municipalities in order to assist them in integrating energy plans into municipal plans.*

## **Procurement and Siting Processes**

Daniela Morawetz, President of the Chartwell-Maple Grove Residents Association in Oakville, informed the Committee that she and a few other concerned citizens founded their group in early 2009, when they “started hearing rumours about this power plant,” referring to what was ultimately the proposed natural gas-fired electricity generation plant in Oakville.

Greg Rohn of the Coalition of Homeowners for Intelligent Power told the Committee that in 2004, when his group was founded in response to the awarding of a contract to build a new power plant in Mississauga, “we contacted all of our local politicians—MPPs, MPs, councillors from the cities of Mississauga and Etobicoke—and not one of them had heard of this plant going in before the announcement. That, to me, is indicative of a terrible process and it really gave us the fuel to start our long battle.”<sup>34</sup>

Other witnesses echoed these statements about the processes that were followed for procurement and siting. Homeowners and local businesses were taken by surprise when announcements were made, or they received partial information in the form of rumours, and many of the people that they might normally contact for information did not seem to have it.

One of these processes took place in 2004, and another in 2009. The first was a new process in the province, but in the latter case, it followed a number of RFPs conducted by both the Ministry of Energy and the Ontario Power Authority. Repeated procurement processes should have been opportunities for the responsible agencies to learn and improve, so that they could better engage communities in the processes. Instead, in both of these cases it appears that there was insufficient engagement with communities, and the sense of surprise among concerned citizens led to even stronger reactions against the decisions that were taken.

This report has already suggested that strong steps be taken to ensure that regions and communities are engaged in energy planning and that municipalities take energy plans into account in their own land use planning processes. This will be a useful step in engaging more people and ensuring that no large energy infrastructure project comes as a surprise to potentially affected people. However, beyond planning, it is crucial that procurement and siting processes themselves include greater sharing of information and more community engagement. While it may be difficult to reach people focused on their own busy lives, the consequence of not reaching them is a potentially strong reaction against any new development.

Mr. Rohn pointed out that the proposed plant in Mississauga was 150 metres away from the nearest home, and 500 metres away from a hospital. Similarly, Ms. Morawetz told the Committee that the proposed Oakville plant was 400

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<sup>34</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (March 26, 2013).

metres from the nearest home, and 320 metres from the nearest school. She further pointed out that wind turbines in Ontario require a set back from homes of at least 550 metres and questioned why it appeared that gas-fired electricity plants—with air emissions and flammable substances—were not similarly restricted.

These are critical siting issues. Mr. Powers of AMO echoed these comments when he called for the Ministry of the Environment and provincial agencies to make available clear rules and information on all forms of large energy infrastructure so that municipalities can make intelligent siting decisions. If municipalities were better informed of energy needs through regional planning processes and were required to designate appropriate lands for future energy projects, with setbacks and other restrictions, it would be more likely that residents and local businesses would not be taken by surprise when procurement and siting processes get underway.

Ultimately, the Oakville and Mississauga facilities were relocated to willing host communities. Gord Schermerhorn, the Mayor of Greater Napanee, now host to the relocated Oakville facility, said; “It’s 600 construction jobs, 25 permanent jobs, and millions of dollars spent in the construction. It’s going to be the most up-to-date plant that could possibly be. We’re very happy about that.”<sup>35</sup> Sarnia–Lambton Member Bob Bailey was thrilled that the Mississauga power plant was being relocated to his community. After the announcement he said “I think its positive news, obviously, for our area, with 200 construction jobs . . . That’s positive news for our area.”<sup>36</sup> Sarnia Mayor Mike Bradley echoed; “This is a huge economic and environmental boon to our community. On the part of Queen’s Park, it’s a very intelligent decision.”<sup>37</sup>

However it is not just about willing host communities, but better linking communities to their local siting needs. The OPA/IESO report states that there need to be stronger linkages between planning processes and siting. They suggest that the regional advisory committees participating in the planning process should be called on to help the procurement process and identify the criteria for choosing successful proponents.

Regional and municipal needs—as expressed in planning processes—need to be taken into account in procurement and siting processes, so that results don’t end up being contrary to the interests of the communities they affect. This might mean that criteria other than price will play a larger role in procurement processes. This could mean requiring that competitors in procurements receive local permits before entering the process or demonstrating that they already have community support. The most important change would likely be increased transparency and openness. Energy systems are difficult to understand: more information must be made available to the public and to all levels of government, in useable and understandable forms.

## RECOMMENDATIONS

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<sup>35</sup> CKWS Newswatch, “Gas Plant a Step Closer to Reality,” *CKWS Television* (February 5, 2014), accessed December 8, 2014.

<sup>36</sup> Paul Morden, “MPP Bailey conflicted on power plant,” *Sarnia Observer* (July 12, 2012), accessed December 8, 2014.

<sup>37</sup> Editorial, “Sarnia’s gas plant,” *Windsor Star* (July 18, 2012), accessed December 8, 2014.

8. *Procurement processes for large-scale energy projects should take into account the needs of the regions and municipalities to which they apply, as described in regional energy plans. This should extend to the criteria for choosing winning projects.*
9. *Energy agencies conducting procurements for large-scale energy projects should undertake substantially more community engagement prior to and during procurement and siting processes. As much as possible, information sharing should be timely and should be in a form that is understandable and useful to average citizens.*
10. *Rules should be formulated and shared publicly about the siting of large energy infrastructure, such as setbacks and authorized uses for land in buffer zones, so that regional energy plans and municipal land use plans can designate appropriate lands for future development.*

## **The Role of Minister's Office Staff**

In her October 2013 Special Report the Auditor General commented on staff involvement in the negotiations for the relocated Oakville facility. While the Committee believes that all staff involved in the negotiations acted in good faith in fulfilling their responsibilities, more clarity around staff involvement is necessary for future negotiations.

The Government of Ontario and its agencies engage in a wide variety of important commercial transactions. It is imperative that these transactions serve the best interests of Ontarians and protect public dollars.

The Committee heard testimony from Premier Wynne that new rules had been imposed limiting political staff involvement in commercial third-party transactions.<sup>38</sup>

The Auditor General also credited Premier Wynne for taking action: "I did have the opportunity to meet with the Premier . . . it was good to hear that they are taking the report seriously and that they are taking some actions and changing the way things are going to be done in the future so that a situation like this doesn't evolve."<sup>39</sup>

The Committee believes the Premier's new rules regarding Commercial Contract Negotiations address the concerns of the Auditor and provide the necessary clarity to the role of political staff.

## **RECORDKEEPING PRACTICES**

### **Document Production**

The original mandate of the Committee in the 40<sup>th</sup> Parliament was to consider the Speaker's *prima facie* case of privilege with respect to the production of documents from the former Minister of Energy and the OPA. This issue came about after a request for documents at the Standing Committee on Estimates in 2012.

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<sup>38</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (December 3, 2013).

<sup>39</sup> Bonnie Lysyk, Auditor General of Ontario, media availability, Toronto, October 8, 2013.

The former Minister of Energy complied with the Standing Committee on Estimates request by releasing documents on September 24, 2012 and October 12, 2012, after negotiations to relocate the Oakville and Mississauga facilities were completed. The Minister testified that the initial delay in producing the documents was a result of ongoing negotiations to relocate the Oakville and Mississauga facilities at the time of the request.

As the Committee heard, there was a concern that confidential or privileged information contained in the documents could be used to weaken Ontario's bargaining position. Former House of Commons Speaker Peter Milliken spoke to this matter when he appeared before the Committee;

Clearly, if there's litigation ongoing, and the release of the documents was going to be harmful to the case of one side or the other in the litigation, or benefit one side at the expense of the other or something like that; there may be arguments for not making the documents public.<sup>40</sup>

Minister Chris Bentley was clear in his letters to the Standing Committee on Estimates that he would release the requested documents after negotiations were completed and their disclosure would not harm the bargaining position of the Government.

The advice I received, and my belief, was that producing the documents and discussing our ongoing negotiations at that time would have significantly hurt our ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario.<sup>41</sup>

Minister Bentley went on to say; "Having said that, I always intended to produce the documents. It was a question of when, not if."<sup>42</sup>

The Committee also had the benefit of hearing from the CEO of the OPA. Colin Anderson outlined his concern with the document release to the Standing Committee on Estimates before negotiations had been completed:

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

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<sup>40</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (March 7, 2013).

<sup>41</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 23, 2013).

<sup>42</sup> *Ibid.*

advantage.<sup>43</sup>

The Chair of the OPA, Jim Hinds agreed, saying; “It was a very potentially dangerous situation for us on behalf of the ratepayers.”<sup>44</sup>

During the initial search for responsive records, 36,000 documents were recovered. Due in part to the large scale of the document request, some records were missed in the initial search. As a result, an additional 20,000 documents were later located and were released to the Committee on October 12, 2012.

The Committee recognizes the difficulty presented by large document searches, and agrees with Speaker Milliken who said:

Similarly, I can see why you might have delays in getting chunks of documents because others were found that hadn't been located when the initial search was made or were in some other office or some other filing cabinet or somebody forgot about them and didn't produce them.<sup>45</sup>

The Committee also notes that the government and agencies were not experienced in document production. As noted by OPA Chair, Jim Hinds:

We are in the business of producing electricity and not producing documents. This was the first large scale document search that the OPA had undertaken. . . . OPA staff worked around the clock to get the work done, we purchased electronic search software and retained lawyers and consultants to assist us. . . It was always our intention to provide all responsive records and to respect the ruling of the speaker and the work of the Committee.<sup>46</sup>

A third set of documents overlooked in the first two releases was later found and released by the Ontario Power Authority in February, 2013, after Minister Bentley had left government. The new Minister of Energy disclosed this information and the Chair and CEO of the Ontario Power Authority (OPA) appeared at the Queen's Park media studio to explain how the documents had been overlooked.

The Committee does not believe that anyone in Government was aware of this third set of documents and, therefore, after the second document release to the Standing Committee on Estimates, the Government and the former Minister of Energy, Chris Bentley, believed all available documents had been disclosed. Minister Bentley stated, “My direction to my staff and to the Ministry throughout, and my expectation, was always to disclose every document responsive to the request, everything that was asked for.”<sup>47</sup>

Witnesses outlined the challenges with this request, including the large size of

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<sup>43</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 30, 2013).

<sup>44</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (June 4, 2013).

<sup>45</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (March 7, 2013).

<sup>46</sup> Jim Hinds and Colin Andersen, Statement and media availability, Toronto, February 21, 2013.

<sup>47</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (April 23, 2013).

the request and the difficulty of releasing confidential and privileged documents during an ongoing negotiation. The Committee heard from a number of Government staff and the former Energy Minister himself, who all confirmed this version of events.

The Committee learned that there is a great cost associated with requests for large-scale document production. On August 29, 2013 the CEO of the OPA, Colin Andersen, wrote to the Justice Committee with respect to their request for all documentation and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent, received or generated between January 1, 2012 and August 20, 2013. In his letter, Mr. Andersen noted that “we estimate that the cost to retrieve, review and produce the documents the Committee has requested will exceed \$1 million.”<sup>48</sup>

This Committee recognizes the difficulties faced by the Minister at the time and believes that if the Standing Committee on Estimates had asked for the documents to be viewed *in camera*, the matter likely would have been resolved.

## Document Retention

Although the original mandate of the Committee did not include document retention, the issue was raised in relation to the documents requested by the Standing Committee on Estimates, as well as subsequent document production motions. As the Committee heard from witnesses, it became clear that the government’s training and policies regarding document retention were out of date. This lack of training, coupled with inexperience in large document production motions, meant that the response to some requests took longer than the amount of time requested by the Committee.

Witnesses who testified before the Justice Committee outlined that the Government did not have adequate training and policies regarding document retention; former Premier Dalton McGuinty called the document retention rules “at best, murky.”<sup>49</sup> Despite some inadequacies with recordkeeping policies and training, the Committee does not believe that any staff intentionally held back documents from disclosure.

Another issue encountered by the Committee concerned departures within the Ontario Public Service. Formal practices to archive documents or keep email accounts active for the purposes of document searches were inconsistent.

It was because of inconsistent recordkeeping practices shown in the Committee that Dr. Ann Cavoukian, Ontario’s Privacy Commissioner, wrote a special report on the matter. Dr. Cavoukian’s report led to a number of recommendations with which this Committee agrees, and suggests that the government implement improved document retention policies. The Committee thanks Dr. Cavoukian for her work.

The Committee agrees with Dr. Cavoukian’s conclusion that not enough was done to ensure that Ministers’ and Premier’s Office staff were aware of their record retention responsibilities. During her appearance before the Committee, Dr. Cavoukian made the following comments:

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<sup>48</sup> Colin Andersen, *Letter to the Standing Committee on Justice Policy*, August 29, 2013.

<sup>49</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (June 25, 2013).

During the course of my interviews with both former and current political staff, despite the fact that this legislation applies to political staff in both ministers' offices and the Premier's office, I learned that there was little, if any, knowledge of its application and requirements. . . . There are some unique aspects to the work of staff in the ministers' offices that heighten the importance of training. There is a significant and regular turnover of staff. There is also major staff turnover whenever a change in government or a shuffle of ministerial responsibilities occurs.

In addition, there is some complexity to the nature of the records and the applicable regulatory requirements. Staff must understand the difference between political or constituency records, and public records. Another important consideration is the pace of work in a political office. All former and current chiefs of staff interviewed described the pace of government as being extremely fast.<sup>50</sup>

In addition, she testified that:

The individuals that we interviewed said that they were not aware, that they had not received recordkeeping training and were not aware of their obligations under the ARA.<sup>51</sup>

Dr. Cavoukian went on to say,

As my initial Report made clear, there is great uncertainty with regard to the records retention responsibilities of staff. Email management practices appear to be inconsistent and there is a lack of clarity as to how emails, as public records, are to be retained, stored and deleted in accordance with the ARA and the records retention schedules. Staff training and awareness continue to be ongoing issues, particularly in a fast-changing technological environment. To its credit, there is clear recognition of these issues within government.<sup>52</sup>

The Committee recognizes the following comments made by Dr. Cavoukian, both in her report and at the Standing Committee, that Premier Wynne has improved recordkeeping policies and training:

Throughout this entire investigation, my office received the full cooperation of all parties involved, including the Premier's

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<sup>50</sup> Information and Privacy Commissioner, *Deleting Accountability: Records Management Practices of Political Staff* (June 2013), pp. 9, 22.

<sup>51</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (June 25, 2013).

<sup>52</sup> Information and Privacy Commissioner, *Addendum to Deleting Accountability: Records Management Practices of Political Staff* (August 2013), p. 18.



office.<sup>53</sup>

This government, with respect to my investigation and the work that we have done with the government, has been very forthcoming.<sup>54</sup>

We've had very good feedback from the government.<sup>55</sup>

Any cooperation we needed was there.<sup>56</sup>

Before we had the report issued, [the Premier] had already started staff training on the importance of retaining records, both in email content and physical, and that was followed by a memo by her current chief of staff to all staff, reminding them of their obligations under the ARA and their record retention responsibilities. So I think she takes it quite seriously, and that's what we've seen to date.<sup>57</sup>

I'm pleased now to report that the new government has acted proactively to address the recommendations made in my report. Just last week we met with the Premier's chief of staff followed by the Minister of Government Services, his deputy minister, his chief of staff, the Ontario government's chief information officer, the chief Archivist of Ontario and several others to discuss the steps being taken to rectify this situation on a go-forward basis.

Just yesterday I received an update from Mr. Tom Teahen, the Premier's chief of staff, about the steps being taken by the new government to implement the recommendations in my report. I can tell you that a thorough review and update of the records retention schedules and policies has been initiated by the Ministry of government services. Policies and procedures are being now developed and senior staff are being designated in ministers' offices and the Premier's office to be accountable for ensuring that these policies are actually followed. Once these measures are in place the Premier will issue a directive to all political staff that they are aware of their obligations and will be providing scenario-based training to all staff, which is a very positive development.<sup>58</sup>

The Committee believes that with evolving email and internet use, the Government is facing a new era and must respond with increasing transparency. While there are limitations to what documents can be stored, or should be stored, on government servers, staff should be informed of their responsibilities to keep and archive relevant documents for the public record, if such access is required.

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<sup>53</sup> Information and Privacy Commissioner, *Deleting Accountability: Records Management Practices of Political Staff* (June 2013), p. 6.

<sup>54</sup> Committee, *Hansard*, 2<sup>nd</sup> Sess., 40<sup>th</sup> Parl. (June 25, 2013).

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

## RECOMMENDATIONS

11. *The Government should work regularly with the Information and Privacy Commissioner to ensure that Ontario remains up to date on document retention practices.*
12. *The Government needs to continue to develop mandatory training programs for all political and non-political staff to ensure training and awareness of their recordkeeping obligations.*
13. *A working group should be created to clarify and strengthen the Government's records retention policies and practices so that they can be successfully implemented.*
14. *The Government should appoint persons accountable for the implementation and compliance with records management policies in each of their respective offices.*
15. *Archiving requirements should be improved by conducting a review of the archiving schedules.*
16. *Formal document training must be integrated into transition briefings for any new Premier, Minister, Premier's Office staff, and Minister's Office staff.*

## **LIST OF RECOMMENDATIONS**

### **Energy Planning**

1. *Communities across Ontario should be engaged in energy planning, which can no longer be left exclusively to provincial agencies and proponents. Regional energy plans should be mandatory and cover the whole province.*
2. *The Ontario Government and agencies must consult with local authorities on large-scale energy planning matters.*
3. *Engagement should begin at the earliest stages of planning processes and include official representation of municipalities, First Nations and Métis communities.*
4. *Multiple opportunities for engagement should be encouraged to ensure awareness of and involvement with planning for our energy future.*

### **Integrating Energy Plans with Municipal Plans**

5. *Municipalities should be required to integrate energy plans into their municipal plans, to ensure that energy needs match up with appropriate corridors and sites designated for energy infrastructure.*
6. *Municipal land use plans must recognize and incorporate not only local or regional energy needs, but also provincial energy priorities and needs.*
7. *Provincial energy agencies or the Government of Ontario should provide support and resources to municipalities in order to assist them in integrating energy plans into municipal plans.*

### **Procurement and Siting Processes**

8. *Procurement processes for large-scale energy projects should take into account the needs of the regions and municipalities to which they apply, as described in regional energy plans. This should extend to the criteria for choosing winning projects.*
9. *Energy agencies conducting procurements for large-scale energy projects should undertake substantially more community engagement prior to and during procurement and siting processes. As much as possible, information sharing should be timely and should be in a form that is understandable and useful to average citizens.*
10. *Rules should be formulated and shared publicly about the siting of large energy infrastructure, such as setbacks and authorized uses for land in buffer zones, so that regional energy plans and municipal land use plans can designate appropriate lands for future development.*

### **Document Retention**

11. *The Government should work regularly with the Information and Privacy Commissioner to ensure that Ontario remains up to date on document retention practices.*

12. *The Government needs to continue to develop mandatory training programs for all political and non-political staff to ensure training and awareness of their recordkeeping obligations.*
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16. *Formal document training must be integrated into transition briefings for any new Premier, Minister, Premier's Office staff, and Minister's Office staff.*

## **APPENDIX A: TIMELINE FOR THE OAKVILLE GAS PLANT**

### **2004**

- April: Independent Electricity System Operator (IESO) releases 10-year outlook regarding Ontario's energy needs; states new electricity generation needed in the GTA by 2006.<sup>1</sup>

### **2007**

- August: Ontario Power Authority (OPA) files its Integrated Power System Plan (IPSP) for 2008 to 2027 with the Ontario Energy Board (OEB). The IPSP highlights the need for new gas-fired electricity generation in the Southwest GTA.<sup>2</sup>

### **2008**

- October: OPA starts the procurement process by releasing a Request for Qualification (RFQ). The RFQ results in the shortlisting of four proponents, including TransCanada Energy Ltd (TCE). TCE is proposing to build its plant in the Town of Oakville.<sup>3</sup>

### **2009**

- Mar 13: OPA issues RFP for up to 850 MW in Southwest GTA.<sup>4</sup>
- Mar 30: Oakville passes Official Plan amendment and interim control by-law barring new generating facilities over 10 MW.<sup>5</sup>
- May: OPA tells bidders that changes made to municipal zoning and regulations after January 2009 will not be considered in its evaluation of their proposals.<sup>6</sup>
- Jul 7: Mayor Rob Burton introduces a motion to the Regional Health Committee that calls on the Province to terminate any process to build a power plant in the overtaxed Oakville-Clarkson Airshed.<sup>7</sup>
- Aug 28: In response to community concerns, OPA announces it will work to reduce emissions from local industries.<sup>8</sup>
- Sep 30: OPA announces that it will sign contract with TransCanada to build plant in Oakville;<sup>9</sup> Ministry of Energy announces Task Force on Air Quality in Southwest GTA.<sup>10</sup>
- Oct 9: OPA signs Clean Energy Supply Contract with TCE.<sup>11</sup>
- Oct 14: Mississauga passes resolution calling upon Province not to approve Oakville gas plant until Task Force completes study.<sup>12</sup>
- Oct 20: Oakville passes resolution requesting RFP documents from OPA and individual EA of site.<sup>13</sup>
- Oct 28: Regional Municipality of Halton passes resolution calling on Province not to approve plant until Task Force on Air Quality completes study.<sup>14</sup>
- Nov 10: Oakville formally requests individual EA of site.<sup>15</sup>

- Nov 20: OPA writes open letter to Oakville residents regarding the gas plant.<sup>16</sup>
- Nov 24: Ministry of Environment appoints<sup>17</sup> Dr. David Balsillie to chair Task Force (Backgrounder<sup>18</sup>), [assisted by a community advisory committee.](#)<sup>19</sup>
- Dec 2: OPA denies Oakville's request for RFP documents.<sup>20</sup>
- Dec 4: Ontario Municipal Board (OMB) upholds Oakville interim control by-law but strikes down Official Plan amendment.<sup>21</sup>
- Dec 14: Oakville submits application under Environmental Bill of Rights (EBR) for new regulation on emissions that have health impacts.<sup>22</sup>
- Dec 17: TCE advises OPA of first *force majeure* regarding the site plan.<sup>23</sup>
- Dec 26: Media reports TCE will appeal OMB decision on gas plant.<sup>24</sup>

## 2010

- Feb 1: Oakville passes Health Protection Air Quality by-law.<sup>25</sup>
- Feb 9-12: Mayor Burton writes to Premier, Prime Minister and others about explosion at power plant under construction in Middletown, Connecticut.<sup>26</sup>
- Mar 4: Oakville advises TCE it does not support gas plant or company's draft environmental review report.<sup>27</sup>
- Mar 22: TCE advises OPA of second *force majeure* regarding the severance application;<sup>28</sup> MPP Flynn (Oakville) introduces Bill 8, *An Act to Establish Separation Distances for Natural Gas Power Plants.*<sup>29</sup>
- Mar 29: Oakville Council votes to extend interim control by-law.<sup>30</sup>
- April: Oakville submits additional material in support of its EBR application.<sup>31</sup>
- Apr 22: Bill 8 receives second reading, referred to Standing Committee on General Government.<sup>32</sup>
- May 27: MPP Flynn writes open letter to TCE.<sup>33</sup>
- Jun 24: Balsillie Taskforce issues report on Southwest GTA, Oakville-Clarkson Airshed.<sup>34</sup>
- Aug 30: Oakville passes resolution calling for a moratorium on further development of plant.<sup>35</sup>
- Sept 22: GL Noble Denton, on behalf of TCE, releases report concluding gas plant is safe.<sup>36</sup>
- Sept 27: Oakville Planning and Development Council approves report on assessing future proposals for power generation facilities; amends Official Plan and zoning.<sup>37</sup>

- Oct 7: Ministry of Energy announces cancellation of Oakville plant;<sup>38</sup> OPA asks TCE to stop all work on project and acknowledges TCE's entitlement to "reasonable damages," including anticipated financial value of contract.<sup>39</sup>
- Oct 8: OPA and TCE enter into confidentiality agreement.<sup>40</sup>
- Dec 21: OPA and TCE execute an MOU to relocate the Oakville plant to the Kitchener-Waterloo-Cambridge (KWC) area.<sup>41</sup> TCE terminates agreement to purchase land from Ford.<sup>42</sup>

## 2011

- Jan 10: Media reports TCE has withdrawn appeal of OMB gas plant decision.<sup>43</sup>
- Apr: TCE rejects OPA's counter proposal regarding project pricing and terms for the KWC plant. The Minister's Office asks OPA to make a second counter proposal to TCE, which is also rejected.<sup>44</sup>
- Apr 1: OPA and Province enter into Cooperation and Common Interest Privilege Agreement in response to threatened TCE litigation.<sup>45</sup>
- Apr 19: TCE serves OPA and Ministry of Energy with notice of intent to commence action against Crown.<sup>46</sup>
- June: The OPA–TCE MOU for the KWC plant expires.<sup>47</sup>
- Aug 5: OPA, the Province and TCE sign an agreement to submit assessment of "reasonable damages" suffered by TCE to arbitration. The agreement establishes the framework for binding arbitration in the event a settlement cannot be reached.<sup>48</sup>

## 2012

- Sep 24: Ministry of Energy announces that the OPA had reached an agreement in principle with TCE.<sup>49</sup> OPA, Province and TCE sign Memorandum of Understanding to move Oakville plant to Lennox Generating Station in Greater Napanee.<sup>50</sup>
- Dec 13: Treasury Board and Management Board of Cabinet approve reimbursing TCE for up to \$40 million in sunk costs (subject to verifications). They also approve a break free of \$50 million that the Province will pay TCE if the Napanee plant does not go ahead.<sup>51</sup>
- Dec 17: OPA announces new Clean Energy Supply Contract with TCE to relocate the Oakville plant to Lennox.<sup>52</sup>

## 2013

- Feb 7: Premier writes to the Auditor General requesting a review of the costs associated with the cancellation of the Oakville gas plant.<sup>53</sup>
- Apr 30: Chief Executive Officer of the OPA testifies to the Committee that the OPA estimated the cost of cancelling and relocating the Oakville gas

plant to be \$310 million and that cost estimates would continue to evolve.<sup>54</sup>

- Oct 8: Auditor General reports the decision to cancel the Oakville power plant and build a new plant in Napanee may cost the public \$675 million.<sup>55</sup> The cost of cancelling the Oakville and Mississauga plants is estimated by the Auditor General to be between \$950 million to \$1.1 billion over approximately 20 years.<sup>56</sup>



## **APPENDIX B: TIMELINE FOR THE MISSISSAUGA GAS PLANT**

### **2004**

- Jan 20: Ministry of Energy announces plans to create up to 2,500 MW of new electrical generation capacity in Ontario.<sup>57</sup>
- April: Independent Electricity System Operator (IESO) releases 10-year outlook regarding Ontario's energy needs; states new electricity generation needed in the GTA by 2006.<sup>58</sup>
- Jun 15: Government introduces *Ontario Electricity Restructuring Act, 2004*, creating Ontario Power Authority (OPA).<sup>59</sup>
- Sep 13: Ministry of Energy initiates RFP for 2,500 MW of electricity generation capacity and/or conservation measures.<sup>60</sup>
- Nov 12: Ministry of Energy notifies successful proponents of RFP.<sup>61</sup>

### **2005**

- Mar 24: Ministry of Energy issues directive to OPA to execute contract with Greenfield and not to pursue the two others initially signed with Eastern.<sup>62</sup>
- Apr 12: Clean Energy Supply Contract executed by OPA and Greenfield for 2315 Loreland Ave., Mississauga.<sup>63</sup>
- Jul 12: Eastern Power receives a letter from the City of Mississauga confirming that their selected construction site is zoned for "the generation and distribution of electrical power."<sup>64</sup>
- Sep 16: City of Mississauga requests Ministry of Environment to elevate proposed Greenfield project to individual environment assessment (EA).<sup>65</sup>

### **2006**

- Jan 19: Ministry of Environment denies Mississauga's request for individual EA.<sup>66</sup>
- Feb 1: Mississauga passes resolution requesting that Minister review decision of Ministry of Environment to deny individual EA for Loreland site.<sup>67</sup>

### **2007**

- Oct 4: Ontario Municipal Board (OMB) approves Greenfield proposal, with minor modifications, over objections from Mississauga.<sup>68</sup>

### **2008**

- Dec 10: Ministry of Environment issues Certificate of Approval (Air & Noise) to Greenfield.<sup>69</sup>
- July: Minister concurs with Ministry of the Environment decision and denies Mississauga's request for individual EA.<sup>70</sup>

- Aug 12: Ministry of Environment issues Certificate of Approval (Municipal Drinking Water Systems) to Greenfield.<sup>71</sup>

## 2009

- Mar 16: Contract between OPA and Greenfield amended and restated extending completion date and providing a significantly higher monthly payment for the electricity produced once the plant is operational.<sup>72</sup>
- Mar 17: Site plan approval granted for site.<sup>73</sup>
- Jun 3: OEB issues Electricity Generation License to Greenfield.<sup>74</sup>

## 2011

- May 26: Greenfield enters into financing agreements with Credit Suisse<sup>75</sup> and EIG Global Energy Partners<sup>76</sup> (EIG Global).
- May 30: Mississauga issues building permit to Greenfield.<sup>77</sup>
- June: Construction begins at the Mississauga site with target completion of July 2014. Steam turbine delivered and placed in storage.<sup>78</sup>
- Jun 15: Ministry of Environment announces intention to re-review EA of site, following an announcement from Premier Dalton McGuinty.<sup>79</sup>
- Jun 22: Mississauga passes resolution requesting full EA and Ministry of Energy review of plant location.<sup>80</sup>
- Jun 24: Mayor McCallion, on behalf of Mississauga, requests full EA re cumulative impacts of emissions around site.<sup>81</sup>
- September: Reports suggest members of all three major parties (LIB<sup>82</sup>, PC<sup>83</sup>, and NDP<sup>84</sup>) would cancel or relocate plant if asked to form government.
- Sep 7: The 40<sup>th</sup> General Election is called in Ontario.
- Oct 7: OPA and Ministry of Energy enter into Cooperation and Common Interest Privilege Agreement<sup>85</sup> and begin discussing options<sup>86</sup> re: Loreland plant.
- Oct 12: Mississauga passes resolution seeking cancellation of gas plant and stoppage of construction.<sup>87</sup>
- Oct 24: Ministry of Energy requests that OPA begin discussions to effect cancellation of Mississauga plant.<sup>88</sup>
- Nov 14: OPA advises Greenfield that if it cannot negotiate agreement to relocate plant, it will not proceed with contract.<sup>89</sup>
- Nov 18: OPA begins to reach the first of a series of interim agreements with Greenfield. Under these agreements, the OPA makes various payments to Greenfield's parent company, Eastern Power as well as to Greenfield's suppliers.<sup>90</sup>

- Nov 21: OPA announces no gas plant will be built on site;<sup>91</sup> Minister of Energy issues media statement.<sup>92</sup>
- Nov 25: OPA signs interim agreement to pay the costs for releasing Greenfield from its lender; at this time, the OPA was unaware of any onerous penalty terms.<sup>93</sup>
- Dec 9: Ontario Electricity Financial Corporation agrees to terminate contract with Greenfield re: Keele Valley upon entering into new contract with OPA.<sup>94</sup>
- Dec 14: OPA and Greenfield sign letter contract whereby Greenfield agrees to stop construction in exchange for \$35 million in equity sunk costs and satisfaction of creditors.<sup>95</sup>
- Dec 20: EIG Global serves notice of intent to commence action against the Crown.<sup>96</sup>

## 2012

- Mar 27: EIG Global brings claim against Greenfield; also names OPA and Government as defendants.<sup>97</sup> At the same time, EIG also files in Ontario a \$310-million claim for damages against the Crown and the OPA.<sup>98</sup>
- May 11: EIG rejects OPA's offer to pay \$82.3 million to settle a lawsuit.<sup>99</sup>
- Jul 9: The final agreement, called the Facility Relocation and Settlement Agreement (FRSA), becomes effective.<sup>100</sup>
- Jul 10: Ministry of Energy announces OPA agreement with Greenfield to relocate plant to Lambton and settlement with EIG Global.<sup>101</sup>
- Jul 16: Government announces the decision to halt construction on Mississauga plant and relocate will cost \$190 million.<sup>102</sup>
- September: Standing Committee on Public Accounts requests that the Auditor General examine Greenfield South/Eastern Power Mississauga plant contract, focusing specifically on the cost of cancellation to taxpayers.<sup>103</sup>

## 2013

- Apr 15: Auditor General reports that the estimated cost for cancelling the Mississauga power plant and relocating it cost about \$275 million.<sup>104</sup>

**APPENDIX C: LIST OF WITNESSES WHO APPEARED BEFORE THE  
STANDING COMMITTEE ON JUSTICE POLICY—MARCH 7, 2013 TO  
APRIL 30, 2014**

No	Date of Appearance	Witness
1.	March 7, 2013	Peter Milliken, former Speaker of the House of Commons <a href="http://www.ontla.on.ca/rw/gasplants/03072013">www.ontla.on.ca/rw/gasplants/03072013</a>
2.	March 13, 2013	Bruce Sharp, Professional Engineer <a href="http://www.ontla.on.ca/rw/gasplants/03132013">www.ontla.on.ca/rw/gasplants/03132013</a>
3.	March 19, 2013	Rob Burton, Mayor of Oakville <a href="http://www.ontla.on.ca/rw/gasplants/03192013">www.ontla.on.ca/rw/gasplants/03192013</a>
4.	March 19, 2013	Peter Wallace, Secretary of the Cabinet and Head of the Ontario Public Service (OPS) <a href="http://www.ontla.on.ca/rw/gasplants/03192013">www.ontla.on.ca/rw/gasplants/03192013</a>
5.	March 19, 2013	JoAnne Butler, Vice-President of Electricity Resources, Ontario Power Authority (OPA) <a href="http://www.ontla.on.ca/rw/gasplants/03192013">www.ontla.on.ca/rw/gasplants/03192013</a>
6.	March 21, 2013	Hazel McCallion, Mayor of Mississauga <a href="http://www.ontla.on.ca/rw/gasplants/03212013">www.ontla.on.ca/rw/gasplants/03212013</a>
7.	March 26, 2013	Tiffany Turnbull, former Executive Assistant to the Deputy Minister of Policy and Delivery, Cabinet Office <a href="http://www.ontla.on.ca/rw/gasplants/03262013">www.ontla.on.ca/rw/gasplants/03262013</a>
8.	March 26, 2013	Jamison Steeve, former Principal Secretary, Office of the Premier <a href="http://www.ontla.on.ca/rw/gasplants/03262013">www.ontla.on.ca/rw/gasplants/03262013</a>
9.	March 26, 2013	Greg Rohn, Coalition of Homeowners for Intelligent Power (CHIP) <a href="http://www.ontla.on.ca/rw/gasplants/03262013">www.ontla.on.ca/rw/gasplants/03262013</a>
10.	March 28, 2013	David Livingston, former CEO of Infrastructure Ontario and former Chief of Staff to the Premier <a href="http://www.ontla.on.ca/rw/gasplants/03282013">www.ontla.on.ca/rw/gasplants/03282013</a>
11.	April 4, 2013	Jesse Kulendran, acting Manager of Conservation Policy, Ministry of Energy <a href="http://www.ontla.on.ca/rw/gasplants/04042013">www.ontla.on.ca/rw/gasplants/04042013</a>
12.	April 9, 2013	Frank Clegg, Chair of Citizens for Clean Air (C4CA) <a href="http://www.ontla.on.ca/rw/gasplants/04092013">www.ontla.on.ca/rw/gasplants/04092013</a>
13.	April 9, 2013	Craig MacLennan, former Chief of Staff, Minister of

No	Date of Appearance	Witness
		Energy and Infrastructure <a href="http://www.ontla.on.ca/rw/gasplants/04092013">www.ontla.on.ca/rw/gasplants/04092013</a>
14.	April 9, 2013	Serge Imbrogno, Deputy Minister of Energy <a href="http://www.ontla.on.ca/rw/gasplants/04092013">www.ontla.on.ca/rw/gasplants/04092013</a>
15.	April 11, 2013	Stephen Thompson, CHIP <a href="http://www.ontla.on.ca/rw/gasplants/04112013">www.ontla.on.ca/rw/gasplants/04112013</a>
16.	April 16, 2013	Shelly Jamieson, former Secretary of the Cabinet and Head of the OPS <a href="http://www.ontla.on.ca/rw/gasplants/04162013">www.ontla.on.ca/rw/gasplants/04162013</a>
17.	April 16, 2013	Kristin Jenkins, Vice-President of Communications, OPA <a href="http://www.ontla.on.ca/rw/gasplants/04162013">www.ontla.on.ca/rw/gasplants/04162013</a>
18.	April 17, 2013	Jim McCarter, Auditor General of Ontario <a href="http://www.ontla.on.ca/rw/gasplants/04172013">www.ontla.on.ca/rw/gasplants/04172013</a>
19.	April 18, 2013	David Lindsay, former Deputy Minister of Energy <a href="http://www.ontla.on.ca/rw/gasplants/04182013">www.ontla.on.ca/rw/gasplants/04182013</a>
20.	April 23, 2013	Sean Mullin, former Deputy Director of Policy, Office of the Premier <a href="http://www.ontla.on.ca/rw/gasplants/04232013">www.ontla.on.ca/rw/gasplants/04232013</a>
21.	April 23, 2013	Chris Bentley, former Minister of Energy and former MPP for London West <a href="http://www.ontla.on.ca/rw/gasplants/04232013">www.ontla.on.ca/rw/gasplants/04232013</a>
22.	April 23, 2013	Brad Duguid, Minister of Training Colleges and Universities and former Minister of Energy <a href="http://www.ontla.on.ca/rw/gasplants/04232013">www.ontla.on.ca/rw/gasplants/04232013</a>
23.	April 25, 2013	Chris Breen, Director of Government Relations, TransCanada <a href="http://www.ontla.on.ca/rw/gasplants/04252013">www.ontla.on.ca/rw/gasplants/04252013</a>
24.	April 30, 2013	Colin Andersen, CEO, OPA <a href="http://www.ontla.on.ca/rw/gasplants/04302013">www.ontla.on.ca/rw/gasplants/04302013</a>
25.	April 30, 2013	Kathleen Wynne, Premier of Ontario and MPP for Don Valley West <a href="http://www.ontla.on.ca/rw/gasplants/04302013">www.ontla.on.ca/rw/gasplants/04302013</a>
26.	May 7, 2013	Dalton McGuinty, MPP for Ottawa South and former Premier of Ontario <a href="http://www.ontla.on.ca/rw/gasplants/05072013">www.ontla.on.ca/rw/gasplants/05072013</a>

No	Date of Appearance	Witness
27.	May 7, 2013	Michael Lyle, Vice-President and General Counsel, OPA <a href="http://www.ontla.on.ca/rw/gasplants/05072013">www.ontla.on.ca/rw/gasplants/05072013</a>
28.	May 14, 2013	Tim Hudak, Leader of the Opposition and MPP for Niagara West–Glanbrook <a href="http://www.ontla.on.ca/rw/gasplants/05142013">www.ontla.on.ca/rw/gasplants/05142013</a>
29.	May 14, 2013	Michael Killeavy, Director, Contract Management, OPA <a href="http://www.ontla.on.ca/rw/gasplants/05142013">www.ontla.on.ca/rw/gasplants/05142013</a>
30.	May 14, 2013	Rebecca MacKenzie, Chief of Staff to the Government House Leader <a href="http://www.ontla.on.ca/rw/gasplants/05142013">www.ontla.on.ca/rw/gasplants/05142013</a>
31.	May 16, 2013	John Kelly, Counsel at the Crown Law Office, Civil Division, Ministry of the Attorney General <a href="http://www.ontla.on.ca/rw/gasplants/05162013">www.ontla.on.ca/rw/gasplants/05162013</a>
32.	May 23, 2013	Charles Sousa, Minister of Finance and MPP for Mississauga South <a href="http://www.ontla.on.ca/rw/gasplants/05232013">www.ontla.on.ca/rw/gasplants/05232013</a>
33.	May 28, 2013	Bob Chiarelli, Minister of Energy and MPP for Ottawa West–Nepean <a href="http://www.ontla.on.ca/rw/gasplants/05282013">www.ontla.on.ca/rw/gasplants/05282013</a>
34.	May 28, 2013	Halyna Perun, Legal Director, Legal Services Branch, Ministry of Energy and Ministry of Infrastructure <a href="http://www.ontla.on.ca/rw/gasplants/05282013">www.ontla.on.ca/rw/gasplants/05282013</a>
35.	May 30, 2013	Daniela Morawetz, President of the Chartwell–Maple Grove Residents Association <a href="http://www.ontla.on.ca/rw/gasplants/05302013">www.ontla.on.ca/rw/gasplants/05302013</a>
36.	June 4, 2013	Laurel Broten, MPP for Etobicoke–Lakeshore and former Minister of the Environment <a href="http://www.ontla.on.ca/rw/gasplants/06042013">www.ontla.on.ca/rw/gasplants/06042013</a>
37.	June 4, 2013	Jim Hinds, Chair of the OPA <a href="http://www.ontla.on.ca/rw/gasplants/06042013">www.ontla.on.ca/rw/gasplants/06042013</a>
38.	June 6, 2013	Ziyaad Mia, Counsel at the OPA <a href="http://www.ontla.on.ca/rw/gasplants/06062013">www.ontla.on.ca/rw/gasplants/06062013</a>
39.	June 11, 2013	Peter Wallace, Secretary of the Cabinet and Head of the OPS <a href="http://www.ontla.on.ca/rw/gasplants/06112013">www.ontla.on.ca/rw/gasplants/06112013</a>

No	Date of Appearance	Witness
40.	June 18, 2013	Chris Morley, former Chief of Staff to the Premier <a href="http://www.ontla.on.ca/rw/gasplants/06182013">www.ontla.on.ca/rw/gasplants/06182013</a>
41.	June 18, 2013	Emily Marangoni, Deputy Director of Human Resources, Office of the Premier <a href="http://www.ontla.on.ca/rw/gasplants/06182013">www.ontla.on.ca/rw/gasplants/06182013</a>
42.	June 25, 2013	Ann Cavoukian, Information and Privacy Commissioner (appeared with Deputy Commissioner Brian Beamish) <a href="http://www.ontla.on.ca/rw/gasplants/06252013">www.ontla.on.ca/rw/gasplants/06252013</a>
43.	June 25, 2013	Dalton McGuinty, former Premier of Ontario and former MPP for Ottawa South <a href="http://www.ontla.on.ca/rw/gasplants/06252013">www.ontla.on.ca/rw/gasplants/06252013</a>
44.	August 6, 2013	Laura Miller, former Deputy Chief of Staff (Strategy and Communications), Office of the Premier <a href="http://www.ontla.on.ca/rw/gasplants/08062013">www.ontla.on.ca/rw/gasplants/08062013</a>
45.	August 6, 2013	Chuck Rothman, Professional Engineer <a href="http://www.ontla.on.ca/rw/gasplants/08062013">www.ontla.on.ca/rw/gasplants/08062013</a>
46.	August 6, 2013	Kevin Costante, Deputy Minister of the Ministry of Government Services (appeared with David Nicholl, Chief Information Officer, Government of Ontario) <a href="http://www.ontla.on.ca/rw/gasplants/08062013">www.ontla.on.ca/rw/gasplants/08062013</a>
47.	August 13, 2013	Don Guy, former Chief of Staff to the Premier <a href="http://www.ontla.on.ca/rw/gasplants/08132013">www.ontla.on.ca/rw/gasplants/08132013</a>
48.	August 13, 2013	John Brodhead, former acting Deputy Chief of Staff (Policy and Cabinet Affairs), Office of the Premier <a href="http://www.ontla.on.ca/rw/gasplants/08132013">www.ontla.on.ca/rw/gasplants/08132013</a>
49.	August 13, 2013	Bruce Campbell, President and CEO of the Independent Electricity System Operator (IESO) <a href="http://www.ontla.on.ca/rw/gasplants/08132013">www.ontla.on.ca/rw/gasplants/08132013</a>
50.	August 20, 2013	William Bromm, Legal Counsel and Special Advisor to the Secretary of the Cabinet <a href="http://www.ontla.on.ca/rw/gasplants/08202013">www.ontla.on.ca/rw/gasplants/08202013</a>
51.	August 20, 2013	David Phillips, former Chief of Staff to the Government House Leader <a href="http://www.ontla.on.ca/rw/gasplants/08202013">www.ontla.on.ca/rw/gasplants/08202013</a>
52.	August 20, 2013	Alan Levy, President, Alan W. Levy Consulting <a href="http://www.ontla.on.ca/rw/gasplants/08202013">www.ontla.on.ca/rw/gasplants/08202013</a>

No	Date of Appearance	Witness
53.	August 27, 2013	Alicia Johnston, former Executive Director of Communications, Office of the Premier <a href="http://www.ontla.on.ca/rw/gasplants/08272013">www.ontla.on.ca/rw/gasplants/08272013</a>
54.	August 27, 2013	George Vegh, Counsel, McCarthy Tétrault LLP <a href="http://www.ontla.on.ca/rw/gasplants/08272013">www.ontla.on.ca/rw/gasplants/08272013</a>
55.	August 27, 2013	Kevin Spafford, former Manager of Legislative Affairs, Office of the Government House Leader <a href="http://www.ontla.on.ca/rw/gasplants/08272013">www.ontla.on.ca/rw/gasplants/08272013</a>
56.	September 10, 2013	Andrew Forgione, former Issues Manager, Office of the Minister of Energy <a href="http://www.ontla.on.ca/rw/gasplants/09102013">www.ontla.on.ca/rw/gasplants/09102013</a>
57.	September 10, 2013	David Livingston, former CEO of Infrastructure Ontario and former Chief of Staff to the Premier <a href="http://www.ontla.on.ca/rw/gasplants/09102013">www.ontla.on.ca/rw/gasplants/09102013</a>
58.	September 10, 2013	Russ Powers, President, and Pat Vanini, Executive Director, Association of Municipalities of Ontario (AMO) <a href="http://www.ontla.on.ca/rw/gasplants/09102013">www.ontla.on.ca/rw/gasplants/09102013</a>
59.	September 24, 2013	Richard Carlson and Mary Ellen Richardson, Mowat Centre <a href="http://www.ontla.on.ca/rw/gasplants/09242013">www.ontla.on.ca/rw/gasplants/09242013</a>
60.	September 24, 2013	Ryan Dunn, former Legislative Assistant and Policy Advisor, Office of the Minister of Energy <a href="http://www.ontla.on.ca/rw/gasplants/09242013">www.ontla.on.ca/rw/gasplants/09242013</a>
61.	September 26, 2013	Ben Chin, former Vice-President of Communications, OPA (appeared via video conference) <a href="http://www.ontla.on.ca/rw/gasplants/09262013">www.ontla.on.ca/rw/gasplants/09262013</a>
62.	October 1, 2013	John Milloy, Government House Leader, Minister of Government Services and MPP for Kitchener Centre <a href="http://www.ontla.on.ca/rw/gasplants/10012013">www.ontla.on.ca/rw/gasplants/10012013</a>
63.	October 3, 2013	Gregory Vogt, President, Eastern Power Ltd. <a href="http://www.ontla.on.ca/rw/gasplants/10032013">www.ontla.on.ca/rw/gasplants/10032013</a>
64.	October 10, 2013	Bonnie Lysyk, Auditor General of Ontario <a href="http://www.ontla.on.ca/rw/gasplants/10102013">www.ontla.on.ca/rw/gasplants/10102013</a>
65.	October 22, 2013	Serge Imbrogno, Deputy Minister of Energy <a href="http://www.ontla.on.ca/rw/gasplants/10222013">www.ontla.on.ca/rw/gasplants/10222013</a>



No	Date of Appearance	Witness
66.	October 22, 2013	Linda Jeffrey, Minister of Municipal Affairs and Housing and MPP for Brampton–Springdale <a href="http://www.ontla.on.ca/rw/gasplants/10222013">www.ontla.on.ca/rw/gasplants/10222013</a>
67.	October 24, 2013	Dwight Duncan, former Minister of Finance and Deputy Premier and former MPP for Windsor–Tecumseh <a href="http://www.ontla.on.ca/rw/gasplants/10242013">www.ontla.on.ca/rw/gasplants/10242013</a>
68.	October 29, 2013	David Butters, President and CEO of the Association of Power Producers of Ontario (APPrO) <a href="http://www.ontla.on.ca/rw/gasplants/10292013">www.ontla.on.ca/rw/gasplants/10292013</a>
69.	October 29, 2013	Colin Andersen, CEO, OPA <a href="http://www.ontla.on.ca/rw/gasplants/10292013">www.ontla.on.ca/rw/gasplants/10292013</a>
70.	November 5, 2013	Adam White, President, Association of Major Power Consumers in Ontario <a href="http://www.ontla.on.ca/rw/gasplants/11052013">www.ontla.on.ca/rw/gasplants/11052013</a>
71.	November 5, 2013	JoAnne Butler, Vice-President of Electricity Resources, OPA <a href="http://www.ontla.on.ca/rw/gasplants/11052013">www.ontla.on.ca/rw/gasplants/11052013</a>
72.	November 21, 2013	Bob Chiarelli, Minister of Energy and MPP for Ottawa West–Nepean <a href="http://www.ontla.on.ca/rw/gasplants/11212013">www.ontla.on.ca/rw/gasplants/11212013</a>
73.	November 26, 2013	Shelly Jamieson, former Secretary of the Cabinet and Head of the OPS <a href="http://www.ontla.on.ca/rw/gasplants/11262013">www.ontla.on.ca/rw/gasplants/11262013</a>
74.	December 3, 2013	Kathleen Wynne, Premier of Ontario and MPP for Don Valley West <a href="http://www.ontla.on.ca/rw/gasplants/12032013">www.ontla.on.ca/rw/gasplants/12032013</a>
75.	December 5, 2013	Jim Hinds, Chair of the OPA <a href="http://www.ontla.on.ca/rw/gasplants/12052013">www.ontla.on.ca/rw/gasplants/12052013</a>
76.	December 10, 2013	Andrew Mitchell, former Director of Policy, Office of the Minister of Energy <a href="http://www.ontla.on.ca/rw/gasplants/12102013">www.ontla.on.ca/rw/gasplants/12102013</a>
77.	February 18, 2014	Bill Birdsell, President, Ontario Association of Architects <a href="http://www.ontla.on.ca/rw/gasplants/02182014">www.ontla.on.ca/rw/gasplants/02182014</a>
78.	February 18, 2014	Andrew Teliszewsky, Chief of Staff to the Minister of Energy

No	Date of Appearance	Witness
		<a href="http://www.ontla.on.ca/rw/gasplants/02182014">www.ontla.on.ca/rw/gasplants/02182014</a>
79.	February 25, 2014	Mark Winfield, Associate Professor, Faculty of Environmental Studies, York University <a href="http://www.ontla.on.ca/rw/gasplants/02252014">www.ontla.on.ca/rw/gasplants/02252014</a>
80.	February 25, 2014	Chris Wray, Senior Policy Advisor, Office of the Minister of Energy <a href="http://www.ontla.on.ca/rw/gasplants/02252014">www.ontla.on.ca/rw/gasplants/02252014</a>
81.	February 27, 2014	Chris Lewis, Commissioner of the Ontario Provincial Police (OPP) <a href="http://www.ontla.on.ca/rw/gasplants/02272014">www.ontla.on.ca/rw/gasplants/02272014</a>
82.	March 4, 2014	Philip Donelson, Policy Advisor (Regulatory Affairs and Strategic Policy), Office of the Minister of Energy <a href="http://www.ontla.on.ca/rw/gasplants/03042014">www.ontla.on.ca/rw/gasplants/03042014</a>
83.	March 18, 2014	Kevin Costante, former Deputy Minister of the Ministry of Government Services, and David Nicholl, Chief Information Officer, Government of Ontario and acting Deputy Minister, Ministry of Government Services <a href="http://www.ontla.on.ca/rw/gasplants/03182014">www.ontla.on.ca/rw/gasplants/03182014</a>
84.	March 25, 2014	Chuck Rothman, Professional Engineer <a href="http://www.ontla.on.ca/rw/gasplants/03252014">www.ontla.on.ca/rw/gasplants/03252014</a>
85.	April 1, 2014	Michael Ivanco, President, Society of Professional Engineers and Associates <a href="http://www.ontla.on.ca/rw/gasplants/04012014">www.ontla.on.ca/rw/gasplants/04012014</a>
86.	April 1, 2014	Greg Orencsak, Associate Deputy Minister, Office of the Budget and Treasury Board, Ministry of Finance <a href="http://www.ontla.on.ca/rw/gasplants/04012014">www.ontla.on.ca/rw/gasplants/04012014</a>
87.	April 3, 2014	André Duval, Detective Constable, OPP <a href="http://www.ontla.on.ca/rw/gasplants/04032014">www.ontla.on.ca/rw/gasplants/04032014</a>
88.	April 8, 2014	David Nicholl, Chief Information Officer, Government of Ontario <a href="http://www.ontla.on.ca/rw/gasplants/04082014">www.ontla.on.ca/rw/gasplants/04082014</a>
89.	April 15, 2014	Peter Wallace, Secretary of the Cabinet and Head of the OPS <a href="http://www.ontla.on.ca/rw/gasplants/04152014">www.ontla.on.ca/rw/gasplants/04152014</a>
90.	April 17, 2014	Shawn Truax, IT Forensics Coordinator, Cyber Security Branch, Ministry of Government Services

No	Date of Appearance	Witness
		<a href="http://www.ontla.on.ca/rw/gasplants/04172014">www.ontla.on.ca/rw/gasplants/04172014</a>
91.	April 23, 2014	Tom Adams, Electricity Consultant and Researcher <a href="http://www.ontla.on.ca/rw/gasplants/04232014">www.ontla.on.ca/rw/gasplants/04232014</a>
92.	April 29, 2014	Glen Murray, Minister of Infrastructure and Transportation and MPP for Toronto Centre <a href="http://www.ontla.on.ca/rw/gasplants/04292014">www.ontla.on.ca/rw/gasplants/04292014</a>
93.	April 30, 2014	Jason Lagerquist, Policy and Stakeholder Advisor, Ministry of Agriculture and Food and former Special Assistant, Northern, Office of the Premier <a href="http://www.ontla.on.ca/rw/gasplants/04302014">www.ontla.on.ca/rw/gasplants/04302014</a>

**APPENDIX D**

**DISSENTING OPINION FROM THE  
PROGRESSIVE CONSERVATIVE  
MEMBERS OF THE COMMITTEE**



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## **APPENDIX D: DISSENTING OPINION FROM THE PROGRESSIVE CONSERVATIVE MEMBERS OF THE COMMITTEE**

It was in October, 2010 when the Liberals cancelled a contracted gas power plant in Oakville. Then in September, 2011, with Kathleen Wynne as co-chair of the Liberal election campaign, a decision was made just days before the election to cancel a similar but smaller plant already under construction in Mississauga. There was public opposition to both plants in the locations where they were supposed to be built from day one. The Liberals didn't listen and forged ahead. It was only when they realized they could lose five seats in the 2011 election that they changed course. Kathleen Wynne herself has admitted the cancellations were "a political decision." As we now know, Ontarians are paying dearly for this decision, to the tune of \$1.1 billion.

While the Oakville plant never broke ground, there was an approved contract. Documents released to the Standing Committee on Justice Policy show the political considerations that led to the decision to cancel the plant in 2010. They also detail meetings between senior staff in the Premier's office in which the proponent believed they were promised to be "made whole" – or compensated for the full value of their 20- year contract. When Energy Minister Brad Duguid met with the proponent two days before the announced cancellation, he had no idea such a deal had been offered. He was out of the loop. Documents show the proponents then "blew a gasket" and told Duguid to "go talk to your bosses".

This set in motion months of negotiations. At one point, a deal was in place to move the plant to Cambridge, but it was never consummated. However perhaps the most telling document is the one showing that in April, 2011, the proponent had rejected a second counter-offer worth \$712 million. This was key because when the Premier tried to tell Ontarians the Oakville cancellation only cost \$40 million in September, 2012, it wasn't logical or believable. No one is going to turn down a \$712 million offer to settle for \$40 million.

Later we would learn that Cabinet, with Kathleen Wynne as Chair and with her signature on the document, would sign off on "Project Vapour" – essentially a process that wrote a blank cheque in order to reach a deal. In essence, the deal was to move from the court system into a private arbitration venue where the proceedings and the results would be kept secret. In order to secure an agreement, the Liberals waived valid defences and gave up the benefit of judicial limits on damages. The Liberals hid the majority of the settlement costs on the hydro bill, while only talking publicly about the much smaller taxpayer portion of the costs.

While the Oakville plant never broke ground, the Mississauga plant was already partly built when that cancellation was announced. But construction continued on the site for nearly two months as the proponent had a contract, and intended to fulfill it. Construction only stopped after the Government made concessions in 10 "side deals", as the Auditor General phrased it. These questionable side deals drove up the cost of the Mississauga cancellation. The Government first insisted the cost was \$180 million, then \$190 million. The Auditor put the final cost at \$275 million, because those side deals added another \$85 million on to hydro bills.

In both cases, the costs were driven up because of where the Liberals, and Liberals alone, decided to relocate the gas plants. The Mississauga plant is now

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to be built in Lambton, while the Oakville plant is to be constructed near Napanee. Because they're being moved so far away from where the power is needed – the southwest Greater Toronto Area – and in the case of Napanee, far from the source of the natural gas, the costs soared dramatically. The Auditor General testified before the Standing Committee on Justice Policy that the Liberal decision to move the Oakville plant so far away from where the power is needed, was responsible for \$513 million in added costs – nearly *half* of the total scandal cost!

Just getting the documents to piece together the real story of this scandal revealed the true nature of what drives the Ontario Liberals. In May, 2012, MPP Rob Leone of Cambridge asked the Energy Minister a simple question before the Estimates Committee – what did it cost to cancel the Oakville and Mississauga power plants? The Minister refused to provide an answer. So a motion was passed compelling the government to turn over documents related to the cancellations within two weeks. The deadline came and went – no documents.

The Energy Minister finally released the documents four months after the initial request. At that time, we were told we had *all* the gas plant documents. Then, two weeks later, shockingly we received another 20,000. Mr. McGuinty shut down the Legislature and resigned as premier three days later setting the stage for Ms. Wynne to take over. We would later hear sworn testimony that an Energy Ministry staffer with long-held Liberal ties, was sent to the Ontario Power Authority to instruct them to withhold certain documents. Then in February 2013, even more documents came forward. And later, even more. In fact the Committee is *still* waiting for documents. The total, according to Premier Wynne, is now over 300,000 – that's 18 months after being told the 36,000 documents were all the documents!

It was testimony to the Standing Committee on Justice Policy that helped reveal the most unseemly side to this story. The former Chief of Staff to the Energy Minister admitted he regularly deleted emails. We now had proof that there was indeed a cover-up, as we alleged from the day they tried to pawn off the 36,000 documents as 'everything'. That led to an investigation by the Privacy Commissioner, who revealed there had been a widespread attempt by senior staff in the Premier's office to delete and destroy records. She concluded "laws had been broken."

MPP Rob Leone and MPP Vic Fedeli wrote to the Commissioner of the Ontario Provincial Police to file a criminal complaint. When they spoke to police by phone, they told them the call was to report a crime – the theft of data belonging to the people of Ontario. In the months since, OPP investigators have visited Premier Wynne's office, and recently executed a search warrant at a data storage warehouse.

The OPP now allege the former Chief of Staff to the Premier instructed the boyfriend of his Deputy to wipe 24 computers within the Premier's office. To accomplish this, he's alleged to have provided the boyfriend with global access override passwords. The OPP case continues to unfold.

Sadly, the Liberal government still has refused to turn over many more documents the Committee has requested. They've admitted there are thousands of back-up tapes where deleted emails relating to the gas plant scandal could be

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located, but still have not produced them. More than 1,200 of those back-up tapes belong to Kathleen Wynne. We're still waiting for those emails to be produced.

The most sobering lesson of the gas plant scandal may be this – if the Liberals had won just *one* more seat in the 2011 election, none of this would have ever come to light. The Liberals would have retained their majority. Any attempt at Committee to get documents would have been voted down by the Liberals; the Gas Plant Scandal hearings would never have happened. The Liberals have tried to stall, delay, and thwart us at every turn in our bid to get to the truth. They have consistently put their own interests, and the interests of the Liberal Party, ahead of the people of Ontario.

While we still search for answers regarding the cover-up, we do know this self-serving act cost the people of Ontario – as taxpayers and as ratepayers – an astounding \$1.1 billion. Part of that cost has already shown up on our skyrocketing hydro bills, and more will be added as the terms of settlement dictate.

The two Auditors General who were involved stated it best. In referencing the Mississauga Gas Plant cancellation, Auditor General Jim McCarter stated, “The people of Ontario will have essentially paid for two power plants, but have got just one.” On the Oakville Power Plant cancellation, Auditor General Bonnie Lysyk said, “The gas plant cancellations cost “significantly more than may have been necessary” because of a number of what she calls “questionable decisions” by the Premier’s Office.

## **Timelines**

The Official Opposition wishes to present three separate timelines as part of its dissenting opinion report. The timelines focus on three specific incidents: the cancellation and relocation of the Mississauga gas plant, the cancellation and relocation of the Oakville gas plant, and issues surrounding document retention and release.

It should be noted that these timelines were originally produced by an independent and non-partisan Legislative Research Officer. Amendments were submitted by all three parties with the Liberal Government winning every single amendment vote due to their majority on committee. Therefore, any discrepancy between this timeline and the timeline attached to the Government report is a direct result of the Liberal Government’s decisions.

Any date and corresponding incident that appears in this timeline and not in the timeline voted and approved in committee was removed by the deliberate and orchestrated vote of the Liberal members of the committee and without the consent and vote of the PC members or the NDP.

Furthermore, it should be recognized that the Liberal majority on committee voted for the complete removal of the third timeline. This timeline should not have been removed in the opinion of the Official Opposition members of the committee.

Lastly, in the spirit of both co-operation and seeking the truth, every amendment



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to the timelines the NDP and PC moved in committee was included in the timelines below. Despite this dissenting opinion coming from the PC Party there is no disagreement with the NDP amendments because, as are ours, all of the amendments reflect true facts and events. In the spirit of openness and transparency, all of the dates and incident should have been included in the report timelines. Therefore the PC Party, in our dissenting opinion, has taken that step – not the Liberal Government.

### **Timeline for the Mississauga Gas Plant**

#### **2004**

- Jan 20: Ministry of Energy announces plans to create up to 2,500 MW of new electrical generation capacity in Ontario.
- Feb 19: NERA Economic Consulting selected as technical advisor to oversee tendering process for new plants.
- April: Independent Electricity System Operator (IESO) releases 10-year outlook regarding Ontario's energy needs; states new electricity generation needed in the GTA by 2006.
- Jun 15: The Liberal government introduces *Ontario Electricity Restructuring Act, 2004*, creating Ontario Power Authority (OPA).
- Sep 13: Ministry of Energy initiates RFP for 2,500 MW of electricity generation capacity and/or conservation measures.
- Nov 12: Ministry of Energy notifies successful proponents of RFP.

#### **2005**

- Mar 24: Ministry of Energy issues directive to OPA to execute contract with Greenfield and not to pursue the two others initially signed with Eastern.
- Apr 12: Clean Energy Supply Contract executed by OPA and Greenfield for 2315 Loreland Ave., Mississauga.
- Jul 12: Eastern Power receives a letter from the City of Mississauga confirming that their selected construction site is zoned for "the generation and distribution of electrical power."
- Sep 16: City of Mississauga requests Ministry of Environment to elevate proposed Greenfield project to individual environment assessment (EA).

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## 2006

- Jan 19: Ministry of Environment denies Mississauga's request for individual EA.
- Feb 1: Mississauga passes resolution requesting that Minister review decision of Ministry of Environment to deny individual EA for Loreland site.

## 2007

- Oct 4: Ontario Municipal Board (OMB) approves Greenfield proposal, with minor modifications, over objections from Mississauga.
- Dec 10: Ministry of Environment issues Certificate of Approval (Air & Noise) to Greenfield.

## 2008

- July: Minister concurs with Ministry of Environment decision and denies Mississauga's request for individual EA.
- Aug 12: Ministry of Environment issues Certificate of Approval (Municipal Drinking Water Systems) to Greenfield.

## 2009

- Mar 16: Contract between OPA and Greenfield amended and restated extending completion date and providing a significantly higher monthly payment for the electricity produced once the plant is operational.
- Mar 17: Site plan approval granted for site.
- Jun 3: OEB issues Electricity Generation License to Greenfield.

## 2011

- May 26: Greenfield enters into financing agreements with Credit Suisse and EIG Global Energy Partners (EIG Global).
- May 30: Mississauga issues building permit to Greenfield; opposed by public and local politicians.
- June: Construction begins at the Mississauga site with target completion of July 2014. Steam turbine delivered and placed in storage.
- Jun 15: Ministry of Environment announces intention to re-review EA of site, following an announcement from Premier Dalton McGuinty.
- Jun 22: Mississauga passes resolution requesting full EA and Ministry of Energy review of plant location.
- Jun 24: Mayor McCallion, on behalf of Mississauga, requests full EA re cumulative impacts of emissions around site.

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- September: Reports suggest members of all three major parties (LIB, PC, and NDP) would cancel or relocate plant if asked to form government.
  - September: Liberals decide to cancel the plant in order to save seats in Mississauga. Finance Minister Dwight Duncan told Estimates that the decision was made “at a time when I think we were still behind in the polls, so it required a government decision” (Standing Committee on Estimates, July 19, 2012).
  - Sep 7: The 40th General Election is called in Ontario.
  - Sep 24: Liberal candidates Charles Sousa, Donna Cansfield, Laurel Broten and Dipika Damerla announce that the Liberals will halt construction of the Mississauga gas plant.
  - Sep 24: During the election, Charles Sousa quietly announces the Liberals will cancel the Mississauga gas plant. The announcement is made on a weekend and construction continues until November.
  - Sep 29: New Democrats write to the Auditor General asking for a full cost for the cancellation of the plants.
  - Oct 5: Progressive Conservative Leader Tim Hudak promises to cancel the Mississauga gas plant should his party form the government. New Democrat Leader Andrea Horwath demurs, but raises concerns about the cost.
  - Oct 6: Election Day. Liberals win the most seats but fall one short of a majority.
  - Oct 6: The Liberal government is returned with a minority but manages to retain all 4 Mississauga swing ridings.
  - Oct 7: OPA and Ministry of Energy enter into Cooperation and Common Interest Privilege Agreement and begin discussing options re: Loreland plant.
  - Oct 12: Mississauga passes resolution seeking cancellation of gas plant and stoppage of construction.
  - Oct 24: Ministry of Energy requests that OPA begin discussions to effect cancellation of Mississauga plant.
  - Nov 14: OPA advises Greenfield that if it cannot negotiate agreement to relocate plant, it will not proceed with contract.
  - Nov 18: OPA begins to reach the first of a series of interim agreements with Greenfield. Under these agreements, the OPA makes various payments to Greenfield’s parent company, Eastern Power as well as to Greenfield’s suppliers.
  - Nov 21: OPA announces no gas plant will be built on site; Minister of Energy issues media statement. According to the OPA, construction of

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the plant was about 30% complete. This work stoppage comes 58 days after the original announcement to cancel the gas plant.

- Nov 25: OPA signs interim agreement to pay the costs for releasing Greenfield from its lender; at this time, the OPA was unaware of any onerous penalty terms.
- Dec 9: Ontario Electricity Financial Corporation agrees to terminate contract with Greenfield re Keele Valley upon entering into new contract with OPA.
- Dec 14: OPA and Greenfield sign letter contract whereby Greenfield agrees to stop construction in exchange for \$35 million in equity sunk costs and satisfaction of creditors.
- Dec 20: EIG Global serves notice of intent to commence action against the Crown.

## **2012**

- Mar 27: EIG Global brings claim against Greenfield; also names OPA and Government as defendants. At the same time, EIG also files in Ontario a \$310-million claim for damages against the Crown and the OPA.
- May 11: EIG rejects OPA's offer to pay \$82.3 million to settle a lawsuit.
- July: Mike Lyle, OPA General Counsel indicates that by July, the government was aware that costs would exceed \$190 million. (Committee Transcripts: Standing Committee on Justice Policy, May 7, 2013)
- Jul 9: The final agreement, called the Facility Relocation and Settlement Agreement (FRSA), becomes effective.
- Jul 10: Ministry of Energy announces OPA agreement with Greenfield to relocate plant to Lambton and settlement with EIG Global.
- Jul 16: The Liberal government announces the decision to halt construction on Mississauga plant and relocate it to a location near Sarnia will cost \$190 million.
- September: Standing Committee on Public Accounts adopts a motion introduced by MPP France Gelinis and requests that the Auditor General examine Greenfield South/Eastern Power Mississauga plant contract, focusing specifically on the cost of cancellation to taxpayers.
- Oct 15: Premier Dalton McGuinty resigns and the Legislature is prorogued.

## **2013**

- Feb 11: Kathleen Wynne is sworn in as the new Premier of Ontario.
- Apr 15: Auditor General reports that the estimated cost for cancelling the Mississauga power plant and relocating it cost about \$275 million.

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- May 14: Kathleen Wynne apologizes for the increased costs of both gas plants, thereby admitting guilt that the Liberal government wasted hundreds of millions of taxpayer dollars.

### **Timeline for the Oakville Gas Plant**

#### **2004**

- April: IESO releases 10-year outlook regarding Ontario's energy needs; states new electricity generation needed in the GTA by 2006.

#### **2007**

- August: OPA files its Integrated Power System Plan (IPSP) for 2008 to 2027 with the OEB. The IPSP highlights the need for new gas-fired electricity generation in the Southwest GTA.

#### **2008**

- October: OPA starts the procurement process by releasing a Request for Qualification (RFQ). The RFQ results in the shortlisting of four proponents, including TransCanada Energy Ltd (TCE). TCE is proposing to build its plant in the Town of Oakville.

#### **2009**

- Mar 13: OPA issues RFP for up to 850 MW in Southwest GTA.
- Mar 30: Oakville passes Official Plan amendment and interim control by-law barring new generating facilities over 10 MW.
- May: OPA tells bidders that changes made to municipal zoning and regulations after January 2009 will not be considered in its evaluation of their proposals.
- Jul 7: Mayor Rob Burton introduces a motion to the Regional Health Committee that calls on the Province to terminate any process to build a power plant in the overtaxed Oakville-Clarkson Airshed.
- Aug 28: In response to community concerns, OPA announces it will work to reduce emissions from local industries.
- Sep 30: OPA announces that it will sign contract with TransCanada to build plant in Oakville; Ministry of Energy announces Task Force on Air Quality in Southwest GTA.
- Oct 9: OPA signs Clean Energy Supply Contract with TCE.
- Oct 14: Mississauga passes resolution calling upon Province not to approve Oakville gas plant until Task Force completes study.
- Oct 20: Oakville passes resolution requesting RFP documents from OPA and individual EA of site.

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- Oct 28: Regional Municipality of Halton passes resolution calling on Province not to approve plant until Task Force on Air Quality completes study.
  - Nov 10: Oakville formally requests individual EA of site.
  - Nov 20: OPA writes open letter to Oakville residents regarding the gas plant.
  - Nov 24: Ministry of Environment appoints Dr. David Balsillie to chair Task Force. (Background)
  - Dec 2: OPA denies Oakville's request for RFP documents.
  - Dec 4: OMB upholds Oakville interim control by-law but strikes down Official Plan amendment.
  - Dec 14: Oakville submits application under Environmental Bill of Rights (EBR) for new regulation on emissions that have health impacts.
  - Dec 21: TCE advises OPA of first *force majeure* regarding the site plan.
  - Dec 26: Media reports TCE will appeal OMB decision on gas plant.

## 2010

- January: Balsillie Taskforce to establish Community Advisory Committee.
- February: OPA slide deck dated "February 2010", titled "Ministerial Briefing, SWGTA Options" contemplates ways to cancel the Oakville plant, including noting Force Majeure Options.
- Feb 1: Oakville passes Health Protection Air Quality by-law.
- Feb 9-12: Mayor Burton writes to Premier, Prime Minister and others about explosion at power plant under construction in Middletown, Connecticut.
- Feb 27: Aird and Berlis provides an opinion to the OPA saying specifically that "[t]he OPA could terminate the SWGTA contract of a delay of 24 months was occasioned by a Force Majeure such as an act by the Ontario Government or the municipality of Oakville" and that "[i]f Oakville, rather than the Ontario Government, caused the Force Majeure, this would mean that such acts would not constitute a Discriminatory Action and the Discriminatory Action remedy... would not be available to the supplier."
- March 1: Ceiran Bishop emails James Rebob to say that Jennifer Tuck in the Minister's Office had specifically said the Minister has requested a briefing on options to cancel the plant.
- Mar 4: Oakville advises TCE it does not support gas plant or company's draft environmental review report.

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- Mar 22: TCE advises OPA of second *force majeure* regarding the severance application; MPP Flynn introduces Bill 8, *An Act to Establish Separation Distances for Natural Gas Power Plants*.
  - Mar 29: Oakville Council votes to extend interim control by-law.
  - April: Oakville submits additional material in support of its EBR application.
  - Apr 22: Bill 8 receives second reading, referred to Standing Committee on General Government.
  - May 27: MPP Flynn writes open letter to TCE.
  - June: Dalton McGuinty, Chief of Staff Chris Morley and Principal Secretary Jamison Steeve met regarding TransCanada Contract. (Testimony 2013-Mar-26)
  - June 3: Jamison Steeve and Sean Mullin meet Chris Breen. Steeve and Mullin indicated that the crown recognized TransCanada's position, and according to the Auditor, the parties concluded that "the profit stream that it [TCE] was anticipating from the Oakville plant would be preserved" in spite of contract protections for instances of Force Majeure.
  - Jun 24: Balsillie Taskforce issues report on Southwest GTA, Oakville-Clarkson Airshed.
  - Aug 30: Oakville passes resolution calling for a moratorium on further development of plant.
  - Sept 22: GL Noble Denton, on behalf of TCE, releases report concluding gas plant is safe.
  - Sept 27: Oakville Planning and Development Council approves report on assessing future proposals for power generation facilities; amends Official Plan and zoning.
  - Oct 5: Premier's Office staff meets with officials from TCE. TCE leaves the meeting with the understanding that, if the government cancelled the plant, TCE would be kept whole and in return, TCE would have to lay low and not start litigation against the Government.
  - October 5: TransCanada met with representatives of the Premier's Office, who indicated that the Premier's Office would acquiesce to TransCanada's demands. TCE officials then met with the Minister of Energy who appeared to be unaware that an arrangement had already been reached with the Premier's Office.
  - Oct 7: Ministry of Energy announces cancellation of Oakville plant; OPA asks TCE to stop all work on project and acknowledges TCE's entitlement to "reasonable damages," including anticipated financial value of contract.
  - Oct 8: OPA and TCE enter into confidentiality agreement.

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- Dec 21: OPA and TCE execute an MOU to relocate the Oakville plant to the Kitchener-Waterloo-Cambridge (KWC) area. TCE terminates agreement to purchase land from Ford.

## **2011**

- Jan 10: Media reports TCE has withdrawn appeal of OMB gas plant decision.
- Apr: TCE rejects OPA's counter proposal regarding project pricing and terms for the KWC plant. The Minister's Office asks OPA to make a second counter proposal to TCE, which is also rejected.
- Apr 1: OPA and Province enter into Cooperation and Common Interest Privilege Agreement in response to threatened TCE litigation.
- Apr 19: TCE serves OPA and Ministry of Energy with notice of intent to commence action against Crown.
- June: The OPA–TCE MOU for the KWC plant expires.
- Aug 5: OPA, the Province and TCE sign an agreement to submit assessment of “reasonable damages” suffered by TCE to arbitration. The agreement establishes the framework for binding arbitration in the event a settlement cannot be reached.
- Sep 4: Briefing is held including Minister Bentley, Deputy Minister Imbrogno, Legal Counsel Halyna Perun and others, and it was discussed that costs would exceed \$40 million. (Committee Transcripts: Standing Committee on Justice Policy, May 28, 2013).

## **2012**

- Sep 24: Ministry of Energy announces that the OPA had reached an agreement in principle with TCE. OPA, Province and TCE sign Memorandum of Understanding to move Oakville plant to Lennox Generating Station in Greater Napanee at an originally estimated cost of \$35 million, which was later updated that day to \$40 million.
- Oct 15: Premier Dalton McGuinty resigns and the Legislature is prorogued.
- Dec 13: Treasury Board and Management Board of Cabinet approve reimbursing TCE for up to \$40 million in sunk costs (subject to verifications). They also approve a break free of \$50 million that the Province will pay TCE if the Napanee plant does not go ahead.
- Dec 17: OPA announces new Clean Energy Supply Contract with TCE to relocate the Oakville plant to Lennox.

## **2013**

- Feb 7: Premier writes to the Auditor General requesting a review of the costs associated with the cancellation of the Oakville gas plant.



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- Feb 11: Kathleen Wynne is sworn in as the new Premier of Ontario.
  - Apr 30: Chief Executive Officer of the OPA testifies to the Committee that the OPA estimated the cost of cancelling and relocating the Oakville gas plant to be \$310 million and that cost estimates would continue to evolve.
  - May 14: Kathleen Wynne apologizes for the increased costs of both gas plants, thereby admitting guilt that the Liberal government wasted hundreds of millions of taxpayer dollars.
  - Oct 8: Auditor General reports the decision to cancel the Oakville power plant and build a new plant in Napanee may cost the public \$675 million. The cost of cancelling the Oakville and Mississauga plants is estimated to be \$1.1 billion.

### **Timeline for Issues Related to Document Disclosure and Retention**

#### **2012**

- May 16: Standing Committee on Estimates (SCE) adopts a motion directing the Ministry of Energy and the Ontario Power Authority (OPA) to provide correspondence related to the cancellation of the Oakville and Mississauga gas plants.
- Jul 13: The Liberals release 500 pages of e-mails, letters and power point presentations. They are significantly edited and sections are missing entirely.
- Sep 13: Speaker Levac rules that “a *prima facie* case of privilege has been established” regarding the Minister of Energy’s refusal to release certain documents to the SCE. The Speaker directs House Leaders to attempt to devise a solution by September 23.
- Sep 24: Government House Leader announces that the Ministry of Energy and the OPA will table all responsive documents from the May 16, 2012 motion with the clerk of the SCE and the Clerk of the Legislative Assembly.
- Sep 25: MPP Rob Leone introduces a motion directing the Ministry of Energy and the OPA to immediately table all documents requested by the SCE and refer the *prima facie* case of privilege to the Standing Committee on Finance and Economic Affairs.
- Oct 2: House adopts MPP Leone’s motion.
- Oct. 12: An additional 20,000 documents are released — an omission Minister Bentley blamed on bureaucrats. Code-names like Project Vapour and Project Apple are found in the documents.
- Oct 15: Minister of Energy and Government House Leader inform the House that more documents responsive to the May 16 SCE motion have been discovered (tabled with the Clerk on October 12) and correct their records.

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- Oct 15: Dalton McGuinty prorogues the Legislature ensuring the committee would be unable to sit until the Legislature returned.
  - Oct 15: Premier Dalton McGuinty resigns and the Legislature is prorogued.

## 2013

- January: According to OPP ITO and Ontario's Information and Privacy Commissioner, David Livingston approached the civil service about "seeking administrative computer system passwords and information about how to permanently delete emails and other electronic documents."
- January 22: Peter Wallace has "extensive" conversations with Premier Wynne's transition team, including about "document production by the public service and about the absence of document production by others".
- February 7: According to OPP ITO, Peter Faist, the "life partner" of Deputy Chief of Staff Laura Miller came to the Premier's Office and wiped information from 24 workstations (Appendix C, line 1235-1237).
- Feb 11: Kathleen Wynne is sworn in as the new Premier of Ontario.
- Feb 20: House adopts a new motion by MPP Leone assigning the matter of the *prima facie* case of privilege regarding the disclosure of documents to the Standing Committee on Justice Policy (SCJP).
- Feb 21: Minister of Energy informs the House that further responsive documents to the May 16 SCE motion have been discovered and will be tabled that day, which new Premier Kathleen Wynne calls a surprise.
- Mar 5: House adopts a motion by the Government House Leader to expand the mandate of the SCJP and allow it to consider documents already filed with the Clerk.
- Apr 9: Craig MacLennan, former Chief of Staff to the Minister of Energy, testifies to the SCJP that he regularly deleted emails to keep a "clean inbox," which explains his lack of responsive records.
- Apr 12: MPP Peter Tabuns files a complaint with the Information and Privacy Commissioner (IPC) alleging that Craig MacLennan, former Chief of Staff to the former Minister of Energy, illegally deleted emails in contravention of the *Archives and Recordkeeping Act* (ARA).
- Summer: OPP investigators visit Queen's Park during business hours "half a dozen" times to interview staff about wiped computers (Committee Transcripts: Standing Committee on Justice Policy, April 3, 2014).
- Summer: Ministry of Government Services' Cyber Security Branch began an investigation into which computers were wiped. While Minister Milloy says he was not given a detailed brief, he makes no claims about his political staff (Hansard, April 9, 2014).

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- Jun 5: IPC Ann Cavoukian releases her report, *Deleting Accountability: Records Management Practices of Political Staff*, concluding that political staff violated their obligations under the ARA and recommends strengthening recordkeeping.
  - Jun 7: Ontario Provincial Police begin a criminal investigation into the allegations of illegally deleted emails following a complaint from MPPs Vic Fedeli and Rob Leone.
  - Aug 20: IPC Cavoukian releases an Addendum to her previous report, after 39,000 deleted emails were recovered, despite initially being considered irretrievable.
  - September: Shawn Truax, of the Ministry of Government Services' Cyber Security Branch, began to seize Premier's Office computers (ITO line 986-1091).

## 2014

- Feb 19: OPP execute a search warrant at a data storage facility and seize hard drives once used by former staff in the Office of the Premier.
- Mar 27: Judge Gilles Renaud agrees to release the OPP's information to obtain (ITO) containing the details of the criminal investigation and the potential charges the OPP is investigating. The ITO specifically names Laura Miller and Peter Faist as two main culprits and it revealed that the computer password used to delete e-mails from the Premier's Office remained active after Kathleen Wynne was sworn in as Premier.
- Mar 30: Liberal party terminates contract with Peter Faist (Hansard, March 31, 2014).
- April 15: Premier Wynne files a strategic lawsuit against public participation (SLAPP) against Tim Hudak, Lisa MacLeod and Ontario PC Party to try and silence them from further questioning her potential involvement with the destruction of documents.
- May 19: During the 2014 election, Kathleen Wynne makes it clear that she intends to allow the Standing Committee on Justice Policy to continue investigating the gas plant scandal but only for the purposes of completing their report writing and not hearing any further testimony from any witnesses.
- Oct 29: The Liberal government voted down an Opposition Day Motion calling for Peter Faist and Laura Miller to testify before Committee as had been originally scheduled before the 2014 election. The rejection of this motion leaves the committee uncompleted and without the adequate information necessary to effectively write its report.
- Dec 23: After the Progressive Conservatives make the request the Ontario Liberal Party reimburses taxpayers the \$10,000 that Peter Faist was allegedly paid to wipe government computers.

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## **The Dissenting Opinion Report**

This dissenting report will be composed of two main components. The first section will present dissenting opinions to what is actually written in the government's report, pointing out flaws and inconsistencies. The second portion of the report will detail what the government left out of their report, including the failure to bring either Laura Miller or Peter Faist before committee.

### **1: Disagreement with Government Report**

Section 1 of the Dissenting Opinion Report is a systematic breakdown of the government report, including a thorough analysis of each section.

#### *Summary*

Although the information in the summary is not necessarily wrong, it is not entirely complete. The way that this section is written leads one to believe that the Government acted on March 5, 2013 to expand the mandate of the committee under their own altruistic volition. To any impartial or partial observer to the events of this committee and its work it will be apparent that Premier Kathleen Wynne was forced to compromise because of the overwhelming pressure from Opposition parties, the media, and the public in general.

It should also be noted that committee mandate changes were likely to be put forward by opposition parties. With a Minority government the composition of committees reflected the composition of the overall Legislature, meaning opposition parties had full power to win most votes – including those that would either expand the scope of the committee or force new witnesses to testify. Premier Wynne and her government are correct to assert that they put forward the motion but they should not reasonably use this as an argument to prove they favoured greater openness or transparency.

This point is easily proven and supplemented by the fact that, in late 2014, with a majority on the committee the Liberal Government has effectively ended all work the committee was doing and forced it into report writing despite not finishing a complete and thorough investigation. These two acts are contradictory and show the true colours of the Liberal Government and Premier Wynne: when having the ability to limit openness and transparency they will.

There are two additional points here that need to be addressed. The first is that barring the committee from even writing a report would be an obvious obstruction of democracy and would lead to public vilification, thus explaining the Premier's commitment. Secondly, the report makes it seem as though this was something the Premier did not have to commit to. The Official Opposition cautions against this wording because it sets a dangerous precedent that a majority government is grounds for dismissal of questionable practices.

In fact, as is well known, the Premier had the option of being more open and transparent and allowing key witnesses Peter Faist and Laura Miller to testify. However, neither witness was brought before the committee and debate/testimony was effectively stifled by the new Liberal mandate for the committee.

Lastly, the Official Opposition takes issue with the sentence that says the

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committee will report “its observations and recommendations on the Ministry of Government and Consumer Services concerning the record keeping practices of Ministries and staff of the Ontario Government.”<sup>1</sup> The issue stems from the Liberal majority on the committee’s vote to completely remove a separate timeline that discusses the release of documents.

The committee members on the Government side cited relevance to the mandate as their sole reason for excluding this timeline prepared by the impartial and non-partisan Legislative Researcher. Yet, despite removing this timeline entirely, which exposed many of the poor practices that the Ministry of Government and Consumer Services should be addressing, they claim that the committee is reporting its recommendations and observations. The Official Opposition warns that anyone who reads the Liberal Government’s interpretation of events to be a thorough and conclusive report simply be directed to the third timeline regarding the release of documents, which has been included in the Progressive Conservative Party’s dissenting opinion report. It once again must be emphasized that this timeline was an impartial and non-partisan report of the facts surrounding the failure to release documents by the Liberal Government over the last decade and its removal was not supported by either of the opposition parties in committee.

### *Observations and Conclusions*

The Official Opposition agrees full-heartedly with the line that “there was insufficient attention given to the concerns of citizens in Oakville and Mississauga.”<sup>2</sup> However, it is important to note that that attention was solely deprived by the Liberal Government. They had every option to hear the concerns of both cities and their mayors but chose to ignore them on multiple occasions. One such occasion included the initial rejection of the City of Mississauga’s request for an additional Environmental Assessment (EA).

In fact, it should be noted that the Liberal members on the committee voted against including this rejection of the EA in the timeline. They cited relevance as the reason for striking the fact, which really meant it looked bad for the Liberal government. Yet at the same time they included the fact that the cities were ignored in their report submission. This irony and blatant contradiction shows a lack of commitment to the report writing process.

Secondly, the Official Opposition takes exception with the claim that “no Party appreciated the full extent of the costs when each made the decision to relocate the facilities.”<sup>3</sup> This is simply because only the Liberal Party actually made that decision. Although each Party may have committed to relocation, it is entirely nonsensical to suggest that neither the PC’s nor the NDP would look at the cost of such a decision before fulfilling that commitment. The commitment would most likely still have been fulfilled, however, there were many issues - like keeping TransCanada Energy Ltd whole - that further increased costs. The other parties made no commitments like these and in fact stated clearly that they would never have built those plants in the first place. It was the Liberal government’s decisions that further increased costs.

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<sup>1</sup> Report, 1.

<sup>2</sup> Ibid., 2.

<sup>3</sup> Ibid.

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The third point of contention here is in regard to the release of documents, specifically when the Government report claims that “the former Minister of Energy made good faith efforts to produce all documents requested.”<sup>4</sup> If that was truly the case the Legislature would not have had to pass multiple requests for more documents, expose code names used to intentionally withhold documents from committee, or the Government would not have voted explicitly to remove the timeline that detailed all of the ways in which the Government withheld documents as written by an impartial member of the Legislature.

In addition, the Ontario Provincial Police (OPP) would not be investigating the Liberal Government for the deletion and willful destruction of documents. It is erroneous for a Government of any stripe to claim openness and transparency and to write that relevant Ministers made “good faith efforts” when they are being investigated by the police for doing the exact opposite.

Also, it is ironic that the Government report thanks the witnesses who provided insights on record keeping practices when the two key witnesses, Ms. Miller and Mr. Faist, who had the most impact on any record keeping as they allegedly destroyed documents for payment by the Liberal Government, were barred from testifying at committee.

### *Energy Siting*

#### *i. Energy Planning:*

In this section the largest issue the Official Opposition has is with the onus of blame placed on municipalities. Although it may be true that the town of Oakville was not aware of the potential energy project until a private developer contacted them - that is not the role of the developer competing in a provincial request for proposals. Instead, the provincial government should be coordinating with municipalities and at the very least informing them of their plans before any official requests for proposals are sent out. This Liberal Government should be highly discouraged from deflecting blame to the local municipalities.

In the case of Mississauga the blame is levied at the private developer for failing to inform the City of its submission of a proposal. Again, this is the provincial Ministry’s responsibility and these practices of keeping local municipalities in the dark should not be continued.

#### *ii. Relocation of the Oakville and Mississauga Gas Plants:*

The Official Opposition takes exception with the deflection of blame written within this section. By opening the section with a quote from a PC member’s press release, who should be noted was not the leader of the party, and an NDP member the report is attempting to indicate that this was an all-party decision. This could not be further from the truth and requesting that the Government look at moving the plant does not imply culpability on either the NDP or PC parties.

The quotations used as supporting evidence on page 5 are also construed within the report to have a different meaning than in reality. All five of the quotations are used to argue the Liberal Government’s point that they had no option but to cancel the contract and negotiate a settlement. The quotations read as if the

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<sup>4</sup> Ibid., 3.

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government was doing the public a service by avoiding litigation. Although the costs of litigation are not necessarily predictable, avoiding it for the sake that it could be embarrassing for the Government and cost money is an indication that this entire process mishandled.

Instead of making the decision between litigation and expensive settlement options, the Liberal Government should have listened to the people and never put the plant there in the first place. There is no small victory from avoiding litigation when it comes at the cost of \$1.1 billion of taxpayer money.

This litigation avoidance came at a price tag that was far beyond acceptable and stems from the Liberal Government's inability to realize that at some point they may need to cancel the project for unforeseen circumstances. The same person who testified that TransCanada Energy LTD was willing to sue also said "There was no clause in the contract that allowed for the termination that happened."<sup>5</sup> If the Liberal Government was at all adept at negotiating large scale energy infrastructure projects they would have allowed for a pre-negotiated settlement clause or some sort of provision allowing for relocations. However, they did not and that mistake cost taxpayers.

In fact, Chris Breen, a lobbyist for TransCanada Corp. revealed details about the Liberal Government's promise to keep TransCanada Energy LTD whole in exchange for a lack of litigation against the government. Being kept whole was again a costly decision with offers of compensation at \$712 million being denied by TransCanada.<sup>6</sup> These decisions ultimately meant the Liberal Government knew that the cancellation and relocation of both gas-fired plants would cost more than the originally estimated and publicly released numbers.

The next point of opposition to the Government report comes with the contention that PC witnesses declined their opportunity to testify at committee. The mandate of the committee was not to determine whether or not the PC or NDP parties made similar commitments, it was to find out what the cost of the Liberal decision was. The Liberal Party is the only Party that went ahead with the cancellation and relocation and they are the only Party responsible for the ramifications of that decision. They are also the only Party with access to the privileged information that would have detailed the total cost of such a decision and they are the only Party that had any input into the original contract with TransCanada or the promise to keep them whole.

It is also quite ludicrous that a quotation from then-mayor of Mississauga Hazel McCallion detailing what she thinks the three major parties would have done if they won the election makes it into the report but the withholding of key witnesses who allegedly deleted documents from the Premier's office is nowhere to be found. This Liberal Government has written a report that grasps at straws with the intention of blaming the opposition parties in equal parts for a decision in which they had absolutely no role.

In fact, after nearly a full page of a four and a half page section dedicated to bashing opposition parties for their commitments that never came to fruition, the Liberal Government report quotes Dalton McGuinty's saying the location of the

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<sup>5</sup> Chris Breen testimony before Committee, April 25, 2013.

<sup>6</sup> Ibid.

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gas plants were “our mistakes.”<sup>7</sup> The sheer hypocrisy of claiming that the mistakes would have been made by any other party in the paragraph prior then moving into the fact that they were actually Liberal mistakes shows the arrogance and disregard for clarity with which this report is written.

*iii. Integrating Energy Plans with Municipal Plans:*

The Official Opposition has little disagreement with this section however they caution that the impetus of blame should not be put on the municipal government but rather on the provincial government for this debacle. The sentence reading “it is no longer acceptable for municipalities to make land use plans without considering their energy needs and options,”<sup>8</sup> appears to put the onus on municipalities.

Although this sentence may in fact carry some validity, the provincial government is seemingly removed of any guilt because of it. It simply is not acceptable for this report to condemn municipalities for not accurately predicting and establishing rules for the placement of large scale energy infrastructure like gas plants seeing as this decision of when and what to build is determined by the Province and not by the municipality.

There may perhaps be more room for municipal input, the Official Opposition does not disagree with that assertion and in fact encourages this conversation, however when the Province repeatedly ignored the municipalities requests for years (see EA process, letters from mayors, etc) it is quite deceptive to turn around and blame the municipalities for a lack of foresight. Again, the quotation from Premier McGuinty should be referenced here, “Most importantly for me...was to acknowledge our mistakes and fix them...we got Oakville and Mississauga wrong.”<sup>9</sup> The Premier does not claim that the cities of Oakville and Mississauga got the placement of the plants wrong, and rightfully so, because the Liberal Government of the Province did. That needs to be remembered and emphasized, which is not done through the language of this section or this report in general.

*iv. Procurement and Siting Processes:*

The Official Opposition takes issue with the fact that the most important recommendation from this section according to the Liberal authors is, “The most important change would likely be increased transparency and openness.”<sup>10</sup> Of course that is a desired goal however the ability to achieve it, what it would look like, how to achieve it, or any sort of timeline is not included. Simply, the Liberal Government feels it is enough to say they made mistakes and next time they’ll be a little more open about it.

This promise should be taken with a large grain of salt as the report essentially contains no definitive resolutions that this should occur. And, if any of the potential recommendations are construed that way, it is important to realize that they are all non-binding.

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<sup>7</sup> Report, page 7.

<sup>8</sup> Ibid., 9.

<sup>9</sup> Ibid., 7.

<sup>10</sup> Ibid., 13.



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There are obvious issues with the siting of these power plants by being both too close to schools and homes and also being placed in unwilling communities. The Official Opposition wishes to draw a parallel, which is actually initially made by the Liberal authors of the report, between the siting of gas plants and the siting of wind turbines.

The report is essentially arguing that wind turbines have greater restrictions on their placement than gas plants and that gas plants should be held to the same restrictions. Again, the Official Opposition takes no issue with this train of thought. However, the report goes on to argue that the gas plants were put in a jurisdiction that did not want them and claims that this was a problem.

Specifically, they make this argument by showing how the plant was desired in Sarnia and how the facilities were “relocated to willing host communities.”<sup>11</sup> Yet, despite the desire to make gas plant siting similar to wind turbines there is no desire on the part of this government to have wind turbines placed in willing host jurisdictions. Over 80 Ontario municipalities have passed resolutions that they are unwilling hosts yet wind turbines continue to be placed in those municipalities.

Simply, this parallel is drawn for nothing more than convenience and is not a legitimate comparison for this report to make unless they are serious about the same rules for both types of energy infrastructure.

v. *The Role of Minister’s Office Staff:*

The Official Opposition first and foremost believes that this title should include the Premier’s staff and not just the Minister. This is because; according to Chris Breen from TransCanada it was the Premier’s staff, specifically Jamison Steeve, who told them of the decision to cancel the Oakville plant and not the Ministry of Energy’s staff. Breen even suggested that the Minister of Energy seemingly did not know of the impending decision when they met two days prior to the announcement.<sup>12</sup>

In addition the Official Opposition wholeheartedly rejects the notion that “the Committee believes that all staff involved in the negotiations acted in good faith.”<sup>13</sup> To that sentence the simple question is posed, when Laura Miller and Peter Faist allegedly deleted and destroyed documents from the Premier’s Office and David Livingston authorized the wiping of hard drives from computers in said office, were those acts of good faith?

This wholehearted rejection continues to the sentence “The Committee recognizes Premier Wynne for imposing new rules limiting political staff involvement in commercial third-party transactions.”<sup>14</sup> The Official Opposition believes that, at the very least, the Premier should not be commended for instructing her staff not to destroy documents after said documents have been destroyed.

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<sup>11</sup> Ibid.

<sup>12</sup> Chris Breen testimony before Committee, April 25, 2013.

<sup>13</sup> Report, page 13

<sup>14</sup> Ibid.

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The fact that this report says nothing of the roles of David Livingston, Laura Miller, or Peter Faist is a travesty to the investigative process and removes all validity their report may have had.

### *Record Keeping Practices*

#### *i. Document Production:*

The Official Opposition wishes to expose a blatant contradiction within this section of the Liberal Government report. This portion of the report claims that, when it comes to the release of documents, “The initial delay in producing the documents was a result of ongoing negotiations to relocate the Oakville and Mississauga facilities at the time of the request.”<sup>15</sup>

The authors then attempt to back that point up with evidence from the testimony of the Right Honourable Peter Milliken when he said in front of committee, “Clearly, if there’s litigation ongoing, and the release of the documents was going to be harmful to the case of one side or the other in the litigation...there may be arguments for not making the documents public.”<sup>16</sup>

Mr. Milliken specifically references litigation, not negotiations as the authors claim was ongoing. In fact, on page 5 and 6 of the report we are presented with a litany of quotations claiming that the Liberal Government made the right choice in avoiding litigation altogether.<sup>17</sup> Therefore, how can the Liberal Government claim they were delayed in releasing documents because the release of documents may impact litigation which, also according to them, never existed?

This point is furthered by a Justice Department document that reads that the deal made between the Liberal Government and TransCanada Energy LTD said that “by finding another gas plant from which it could make the profits, and in return, TCE promised not to sue, issue a press release or otherwise embarrass the govt.”<sup>18</sup> That deal says nothing about the release of documents and it expressly prohibits litigation.

Again, the Official Opposition wants to make clear that Mr. Milliken’s testimony is incorrectly used in this portion of the document and that, since there was no litigation between TransCanada and the Government, there was absolutely no reason for the delay in documents.

This delay would be conveniently displayed in the timeline prepared by a non-partisan Legislative Researcher if the Liberal members of the committee had not rejected that segment of the timeline on the basis of relevance. It is obviously relevant as it has managed to find its way, with false evidence we might add, into the main report. Luckily, we have included that timeline in our dissenting opinion and it can be found below.

The Official Opposition wishes to also draw attention to the fact that there is no reference to David Livingston, Peter Faist, Laura Miller, or Jesse Kulendran who

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<sup>15</sup> Ibid., 15.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., 5-6.

<sup>18</sup> Chris Breen testimony before Committee, April 25, 2013.

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were integral in the document, or lack thereof, production process.

The Official Opposition also finds it relatively laughable that in back-to-back sentences the authors of the report can refer to the overlooked documents as “some records were missed” and then in the very next sentence say that those documents totaled 20,000 – or, in other words, an additional 55% of the total volume initially released.<sup>19</sup> Documents that should have been released under the original request were withheld and are only now being discovered through the OPP’s investigation.

In addition, Mr. Milliken’s suggestion that some of the documents may have been missed because “somebody forgot about them and didn’t produce them,” should not be agreed with by the committee. That assertion should be flatly rejected because it is, intentional or otherwise, withholding information from a Legislative committee. The use of code names may also contribute to Mr. Milliken’s contention that “when the initial search was made... [the documents] were in some other office or some other filing cabinet.”<sup>20</sup> The use of codenames to intentionally avoid document searches is expressed later on in the report and will not be further developed in this section.

The Official Opposition adamantly rejects the contention that “The Committee does not believe that anyone in Government was aware of this third set of documents...”<sup>21</sup> These documents were prepared by Government officials for Government officials. Therefore, it is simply impossible that no one knew of their existence. This claim is outright rejected by the committee and is a breach of trust and confidence of the people of Ontario.

The Official Opposition also finds it ironic that the OPA was able to accurately predict the costs of retrieving documents when they were ordered to do so in August of 2013 but could not find those documents mere months before nor accurately predict the cost of relocating the gas plants in the first place. The Liberal Government’s justification that the ‘potential’ high costs of an action are a reason why an alternative solution should be found is both laughable and heavily ironic when the overall subject of the report is taken into consideration.

*ii. Document Retention:*

Although this section does not contain any false information it is still not complete. There is no reference to Peter Faist, Laura Miller, Jesse Kulendran, or David Livingston. The Official Opposition finds it impossible to complete a section on document retention without discussing the alleged deletion of documents.

The Official Opposition also believes no amount of training or recommendations will ever subvert an illegal practice from occurring within the Premier’s Office under the directive of whoever issued such orders or carried out such actions. If illegal record wiping took place, as the OPP is investigating, then this section is incomplete.

The inability to be able to have a complete section here reflects the need to not

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<sup>19</sup> Report, page 15

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

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only hear from these key witnesses that have been barred from testifying by the Liberal Government but also from waiting until the OPP investigation is completed and the results made public.

There is not a single reference to the OPP investigation in this entire report and that, again, represents a significant breach of trust and the democratic process.

## **2. Background**

### *Mississauga and Oakville Gas Plant Cancellation*<sup>22</sup>

The Liberal scandal that would come to be known as the Gas Plant scandal began with a request for proposals from the Ontario Power Authority (OPA). In September of 2009 the OPA accepted a bid from TransCanada to build a power plant in Oakville.

Yet, just over a year later, after significant opposition from the citizens of Oakville and other interested groups, the Liberal government under former Premier Dalton McGuinty announced the cancellation of the Oakville gas plant.

That announcement was followed nearly a year later by a building permit issued by the city of Mississauga in June of 2011 to build a separate gas-fired power plant. That permit was followed by similar local protests to the ones in Oakville.

However, later that summer, an election was called and the Liberal government, in fear of losing seats in the Mississauga and Oakville areas announced the planned cancellation of their second gas-fired plant in as many years.

Because the Liberal government was not in power during the election, construction continued for another two months, costing the taxpayer even more in unnecessary costs.

The election returned another Liberal government who waited nearly a year to announce the termination of the Mississauga gas plant, estimating a cost of \$190 million. In addition, initial estimates by the then Minister of Energy Chris Bentley showed only a \$40 million cost for relocating the Oakville gas plant. Combined, the total was roughly \$230 million at this time.

The Oakville plant was to be relocated to Bath, Ontario while the Mississauga plant was to move to the Sarnia, Ontario area.

The September 24, 2012 announcement which outlined the estimated cost of the

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<sup>22</sup> This section is based on information from throughout the testimony and from a CTV article explaining the timeline of events –CTV News, *Timeline: Ontario's Gas Plant Cancellation Scandal*

<http://www.ctvnews.ca/canada/timeline-ontario-s-gas-plant-cancellation-scandal-1.1749746>, accessed November 4<sup>th</sup>, 2014.

Additional information for this section can be found at – Jeff Green, Toronto Star, *Gas Plant: Timeline on the life and death of two gas plants*, [http://www.thestar.com/news/queenspark/2013/04/30/gas\\_plant\\_timeline\\_on\\_the\\_life\\_and\\_death\\_of\\_two\\_gas\\_plants.html](http://www.thestar.com/news/queenspark/2013/04/30/gas_plant_timeline_on_the_life_and_death_of_two_gas_plants.html), accessed November 4<sup>th</sup>, 2014.

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Oakville relocation will cost \$40 million was accompanied by the release of 36,000 documents to the Minority Legislature about the cancellation of the gas plants.

Mere weeks later another 20,000 documents are released followed by the resignation of Premier Dalton McGuinty and the prorogation of the legislature.

During the prorogation, Ontarians are kept from knowing the true cost of the gas plant cancellations but, a Liberal leadership returns Premier Kathleen Wynne to the legislature as the newly minted leader.

Upon the recommencement of the Legislature, newly appointed Premier Wynne expands the mandate of the Standing Committee on Justice Policy to fully investigate the cancellation. However, even she is surprised when the OPA releases an additional 600 pages of documents.

Shortly thereafter, on April 15 2013, Auditor General Jim McCarter announced his findings that the Mississauga gas plant cancellation actually cost roughly \$275 million. That total was nearly \$85 million higher than originally reported by Energy Minister Bentley.

As a result of that finding and numerous allegations that the Liberal government knew about the actual cost of the Mississauga gas plant, the Ontario Provincial Police (OPP) launched an investigation into the willful destruction of documents relating to the cancellation of the two gas plants. The allegations claimed that both the cost was known despite expressed statements from both Premier McGuinty and Premier Wynne that they had no knowledge of the higher cost, and that someone in the Premier's office intentionally deleted e-mails and documents detailing these facts.

The June 7<sup>th</sup>, 2013 announcement of the OPP investigation was followed nearly a few months later by a report from the new Auditor General, Bonnie Lysyk. Ms. Lysyk indicated her new findings that the Oakville gas plant cancellation cost between \$675 million and \$815 million – much higher than the original reported cost of \$40 million.

This revelation brought the total cost of the gas plant cancellations to \$1.1 billion. This is compared to the original report of a combined \$275 million.

In addition, the OPP alleged through an information to obtain that Laura Miller, a staffer in McGuinty's office, had her boyfriend – an Information Technology specialist – come into the Premier's office and wipe computer hard drives of evidence that may have showed that both Premier's knew of the total cost of the gas plant cancellation and that the Premier's office intentionally withheld documents from a Legislative committee. This arrangement, according to the OPP, was made by David Livingston, Dalton McGuinty's last chief of staff.

Both Laura Miller and Peter Faist had agreed to testify before committee. However the 2014 election dissolved the Legislature and restricted the committee from continuing its work.

Upon return from the 2014 election, the Liberal government returned with a majority. As was their prerogative, the government of the day reformed the mandate of the committee to immediately cease investigation and commence

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report writing, despite never hearing from Ms. Miller or Mr. Faist – the only two remaining scheduled witnesses who also happen to be the two responsible for the alleged destruction of e-mails.

### **3. Ministerial Warnings**

*OPA Ministerial Briefing – February 2010 “SWGTA Options”*

In a February 2010 briefing to the Minister of Energy, the OPA clearly defines the potential problems with relocating the Oakville gas plant. In said report, which was presented to the committee on March 19<sup>th</sup>, 2013, the OPA expressly states that the cancellation of the Oakville gas plant would, at minimum, cost \$100 million.<sup>23</sup> This cost was simply to pay for the gas turbines and did not cover any relocation costs.

The Minister’s blatant disregard of this fact is evident when he stated on September 24, 2012 that the relocation and cancellation combined would cost \$40 million. He even went so far as to call it a “good deal for taxpayers.”<sup>24</sup>

In addition, this briefing also reads that the “price would be higher than the original bid, which will be passed to the ratepayer.”<sup>25</sup> Essentially, the Minister knew he was throwing away taxpayer dollars, or at the very least causing hydro rates to increase, and saw no issue with it. The same report even estimated that, if lost profits had to be paid to the company building the plant, that an additional \$500 million in cost would be added.

This technical briefing from the OPA directly contradicts the Minister and proves that the government knew the original cost would exceed \$40 million.

*Use of Government Agencies to Make Political Decisions:*

The same report goes on to mention that the decision to cancel the Oakville gas plant would cause “considerable reputational risk for the OPA.”<sup>26</sup> Despite that warning, the Minister still chose to go ahead with the decision. That cancellation not only cost more than he was willing to share but also significantly detracted from the impartiality of our province’s government agencies.

Because the decision to cancel the gas plants was rooted in a plot to save Oakville and Mississauga area seats, it is obvious that the Liberal government used the government agency of the OPA to hide a decision that was political. This not only clouded the line between non-partisan government agency and oversight but also calls into question the impartiality of all other government agencies.

This use of the OPA for nefarious purposes also extends to the capacity of its recommendations. By forcing the OPA to recommend a dollar figure that would

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<sup>23</sup> Ontario Power Authority, *Ministerial Briefing: SWGTA Options*, February 2010.

<sup>24</sup> Green, *Gas Plant*.

<sup>25</sup> Ontario Power Authority, *Ministerial Briefing: SWGTA Options*, February 2010.

<sup>26</sup> *Ibid*.

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be suitable for this cancellation; the Ministry would be able to deflect blame to the organization further eroding the premise of Ministerial responsibility in the Ontario Legislature. This is evidenced by the very fact that the OPA had to recommend that the Province should be pleased if the cancellation “does not exceed \$1.2 billion.”<sup>27</sup> It is the opinion of the dissenting group of the committee that no government agency should be required to declare a satisfactory waste of taxpayer dollars.

#### **4. Cabinet Walkaround**

It is the opinion of the Official Opposition that the Cabinet directive, called a walkaround, should be explained in full for the purposes of showing which Ministers knew of the plan to cancel the gas plants and gave full approval of the decision without exploring the ramifications of the cost.

The walkaround refers to a cabinet issued directive giving the Minister the full capacity to carry out an act without a full cabinet meeting. In this case the walkaround permitted the Minister of Energy leeway when dealing with the cancellation of the gas plants. The directive is as follows:

Cabinet directs that:

The Minister of Energy be authorized to:

- A. Enter into an agreement with TransCanada Energy LTD under the arbitration act to submit the question of reasonable damages to binding arbitration.

The Minister of Energy be authorized to:

- B. Engage in settlement discussions with TransCanada Energy LTD with respect to the October 7, 2010 termination of the Southwest GTA clean energy supply contract to resolve TransCanada Energy LTD's claim for damages arising out of that termination, and;
- C. Report back to Cabinet on settlement discussion with the terms of any potential settlement agreement.<sup>28</sup>

This directive additionally goes on to detail that the settlement must be reached to avoid legal action from TransCanada Energy LTD against the OPA. It is the opinion of the Official Opposition that actions that bring government agencies into direct breaches of contract and legal disputes should not be promoted and encouraged through Cabinet or Cabinet directives.

In addition, the Official Opposition would like to expose those Ministers who signed off on the directive allowing the Minister of Energy to follow through on a settlement package that would end up costing the province \$815 million. The

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<sup>27</sup> Ontario Power Authority, *Government Participation*, presented March 19<sup>th</sup>, 2013, p 3C

<sup>28</sup> Cabinet walkaround package as released in an e-mail from David Livingston entitled *Confidential Advice to Cabinet* and dated July 27<sup>th</sup>, 2011.

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walk around was signed by Minister Linda Jeffery, Minister of Energy Chris Bentley, Minister and later Premier Kathleen Wynne, and Minister Dwight Duncan.<sup>29</sup>

The Official Opposition also agrees with former Shelly Jamieson, the former Secretary of Cabinet, when she testified before committee regarding walkarounds on November 26<sup>th</sup>, 2013. In that deputation, Ms. Jamieson said that “Walk-arounds are not a good way to run the government...it’s not the ideal way to do cabinet business and generally frowned upon.”<sup>30</sup>

The Official Opposition unanimously agrees with the above statement and suggests that, especially in this instance where the walk-around resulted in over \$800 million of wasteful spending, that this walk-around should not have been conducted and instead a full Cabinet meeting should have been held to fully investigate the issue. By making this decision through a walkaround, the government has shown its lack of commitment to transparency and an inability to care for the financial wherewithal of the province.

## **5. Use of Codenames**

The Official Opposition feels that the codenames of Project Vapour, which refers to the Oakville gas plant cancellation, and Project Vapour-Lock, which refers to the Mississauga gas plant cancellation, were paltry and reprehensible acts designed to attempt to hide the issues from opposition and public scrutiny.

Specifically, the codenames were designed to avoid freedom of information requests and document purges that searched for individual words related to the gas plants.

In addition, these terms were well known within the Premier’s office and documents with these terms should have been released to the committee from day one and should not have been forced to be released through separate requests. The government’s inability to provide all relevant documents when asked shows the government’s lack of commitment to transparency and openness.

The Official Opposition has significant concerns that the use of codenames for the purpose of withholding documents from legislative committees, or other public entities, that request said documents is a practice that will lead to future issues around document release. The Official Opposition is concerned that the precedent set here will be continued and that future document releases will not be conclusive or all encompassing, similar to the first release of documents to the committee.

## **6. Lack of Transparency and Openness**

The Official Opposition has already expressed concerns regarding a lack of openness and transparency in its dissenting report under section 5 “Use of Codenames” however, the lack of transparency and openness in the process deserves its own dedicated section.

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<sup>29</sup> Hansard, Standing Committee on Justice Policy, November 26, 2013 – accessed online.

<sup>30</sup> Ibid.



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In a media protocol tip sheet entitled *Who Says What* and dated November 9<sup>th</sup>, 2011 the messaging for both the Minister and the OPA is outlined. In this document hypothetical questions that may be asked about the cancellation of the gas plants are raised. One question, and its answer, is of particular note.

That question reads as follows “Will the cost of these contract cancellations be made public knowledge at some time?”

The answer from the OPA is acceptable in the opinion of the Official Opposition in that they were suggested to answer “Contracts are commercially sensitive. It is up to the proponent to determine what they are willing to make public and when.”

However, the answer from the Minister is deemed an egregious breach of public trust in the opinion of the Official Opposition. The answer reads “Our government is committed to conducting business in an open and transparent manner. We will provide what we can when we can.”

The Official Opposition feels that the two sentences are inherently contradictory and serve as a microcosm for the business practices of this government. If the government was truly in the business of openness and transparency they would have actually provided all documents when requested and not used secret codenames to avoid freedom of information requests.

In addition, the Official Opposition would have been allowed to hear the final two witnesses who were denied by the Liberal Government from coming to testify before committee by the new mandate in 2014. That mandate, written by the same government that is claiming openness and transparency, is a rich exercise in hypocrisy. This particular incident will be explored further in a later section of this report entitled “2014 Mandate” and thus will not be expanded on at this time.

Part of this openness and transparency narrative that the government has attempted to create includes the idea that relocating the gas plants was a policy decision and not an attempt to save seats in Mississauga or Oakville.

However, according to June 2, 2011 meeting minutes between several high ranking Liberal staff, including the Premier’s Principal Secretary Jamison Steeve, TransCanada Energy LTD’s lawyer Michael Barrack and others, described the cancellation as a “political problem with [a] political solution.”<sup>31</sup>

The Official Opposition understands that TransCanada Energy LTD’s representative may have a different view of the situation than the Liberal government however; the Liberal government appeared to have a similar belief. In the same meeting Jamison Steeve said his boss – the Premier – wanted a decision immediately. According to the minutes, he said “yeses good, nos not bad, maybes will kill us.”<sup>32</sup> The Official Opposition rejects the premise that this process was open and transparent because this quotation demonstrates the self-centric approach to this problem. By advocating for the political health of the Liberal Party and current government, and not for the people of Mississauga, Oakville, or Ontario it is obvious that this situation was in no way transparent or

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<sup>31</sup> *Notes to File – Meeting with Michael Barrack and John Finnegan on June 2, 2011.*

<sup>32</sup> *Ibid.*

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open.

Other OPA documents further detail the lack of openness relating to the true cost of relocating the gas plants. First, an OPA document prepared in contemplation of litigation and entitled *Status* details the back and forth between the OPA and TransCanada Energy LTD regarding a potential financial settlement for the cancellation of the Oakville plant. This document explicitly states that on April 21<sup>st</sup>, 2011 the government countered a proposal to settle with TransCanada Energy LTD with an award that “had an effective financial value of \$712 million.”<sup>33</sup> Simply, the Official Opposition believes that if the government was offering a settlement of \$712 million on April 11, 2011 that Minister Bentley gave the people of Ontario incorrect information, on September 24, 2012 when he announced the cost of relocation would only be \$40 million.

The Official Opposition also finds it very hard to believe that the Minister or Premier knew nothing of the cost when an entity of the Ministry of Energy was offering up \$712 million. Further, TransCanada Energy LTD rejected the counter offer on April 29, 2011 which indicated that the cost could actually be higher than \$712 million.

The Official Opposition fully believes, based on this document released by the OPA that it was functionally irresponsible and illegitimate for the Minister to announce that the Oakville relocation would only cost \$40 million. It was also irresponsible for the then Premier, Dalton McGuinty, to write an editorial in the *Toronto Star* claiming that the relocation of Oakville was only \$40 million.<sup>34</sup> Although the Official Opposition commends the Premier for admitting his government made a mistake, the Official Opposition finds it a shallow practice to only apologize for a portion of the wrongdoing. It is the opinion of the Official Opposition, based on the evidence presented, that the government knew of the total cost – or at least that their initially reported cost – was far too low.

In addition, the opening statement from JoAnne Butler, Vice-President of Electricity Resources for the OPA, before the committee on March 19, 2013 highlights knowledge of the true costs once again. In this opening statement she testified under oath that the OPA knew the sunk costs – defined as money already spent – totaled \$40 million for Oakville and another \$190 million for Mississauga.<sup>35</sup> These are of course the costs that were initially reported to the public.

However, Ms. Butler went on to say that, in both cases, the OPA understood “that there would be other costs to relocation in addition to the...sunk costs.”<sup>36</sup> Thus, the Official Opposition believes the government was aware of a larger price tag for the relocation of both gas plants but, once again, chose to withhold that information from the public.

This point is particularly evidenced by the portion of Ms. Butler’s statement that

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<sup>33</sup> Ontario Power Authority, *Status*.

<sup>34</sup> Sarah Dea and Dalton McGuinty, “Didn’t Get it Right on Gas Plants, Premier Says” *Toronto Star*, September 24, 2012.

<sup>35</sup> JoAnne Butler, *Opening Statement by JoAnne Butler to Standing Committee on Justice Policy*, Hansard, March 19, 2013.

<sup>36</sup> *Ibid*.

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reads “The government was a party to the negotiation that resulted in the relocation of both power plants. In the case of the Oakville plant, it was represented by the Ministry of Energy....for the Mississauga plant, the government was represented by Ministry of Energy staff.”<sup>37</sup> That being said, the Official Opposition believes it is functionally impossible for Minister Bentley not to have known the true costs and highly unlikely that the Premier did not know costs would be higher than the \$40 million and \$190 million respectively.

The Official Opposition would also like to give the Ministry of Energy and the overall government enough credit that they would have realized that sunk costs do not encompass all costs associated with canceling a current build and relocating that build to another location.

Also, the OPA released the minutes from a meeting of the Board of Directors dated August 3, 2011. In that meeting, David Livingston, President of Infrastructure Ontario and later McGuinty’s chief of staff, acknowledged his involvement in the settlement with TransCanada Energy LTD started on July 1, 2011 “at the request of the Premier’s Office” and that part of his role was to “determine whether it was feasible to settle any liability to TransCanada.”<sup>38</sup> Again, this is direct evidence that the Premier’s Office, and by association the Premier as he is responsible for the conduct of his staff, was aware of the details regarding negotiations with TransCanada Energy LTD. The Official Opposition finds it very hard to believe that the Premier’s Office would request intervention only to never follow up with said intervention. Again, the openness and transparency of this government and its forwardness with the people of Ontario regarding the true cost of the relocations is quite suspect.

Although the documents above may conclusively point to the Office of the Premier having full knowledge of the cost of the relocations the Official Opposition believes all other documents that point to this knowledge should be explored in detail to both establish concrete evidence of that knowledge but to attempt to ascertain a first date of knowledge.

Therefore, the Official Opposition turns its attention to an e-mail chain dated September 16, 2010 entitled “FW: How are we doing with the ‘Project Oak’ piece? Thanks” between Carolyn Calwell and Jennifer Wismer. In that chain of e-mails, Rick Jennings from the Ministry of Energy and Infrastructure, wrote “In summary, if the Oakville plant is not built transmission costs of \$200 million will need to be incurred by Hydro One.”<sup>39</sup> The Official Opposition feels it important to note that this cost explicitly references transmission, not sunk costs or future profits – both of which the government knew would be increasing the total cost of the relocation of the Oakville plant.

That same e-mail chain also has the following quote from Rick Jennings that “the Oakville GS [Generating Station] is a \$1.2 billion investment for TransCanada for which they are the sole owner.”<sup>40</sup> The Official Opposition finds it very hard to

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<sup>37</sup> Ibid.

<sup>38</sup> Ontario Power Authority, *Meeting of the Board of Directors – Minutes*, August 3, 2011.

<sup>39</sup> Carolyn Calwell, “FW: How are we doing with the ‘Project Oak’ piece? Thanks,” Released to Committee April 4, 2013 and labeled PC Doc #6.

<sup>40</sup> Ibid.

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believe that the government would assume that TransCanada Energy LTD would not need to be compensated for this \$1.2 billion loss or that the total cost would not approach this number. Again, the Official Opposition believes this document proves of knowledge amongst many government staffers that the price would be higher than publicly reported on numerous occasions.

Even earlier than that set of e-mails is a document entitled "Legal Memorandum" prepared by the Acting Director of the Legal Services Branch of the Ministries of Energy and Infrastructure, James Girling. In that document under the "Damages" section, Mr. Girling wrote:

Should there be a successful law-suit against either or both the Ministry and the OPA for terminating the contract, the amount that the court might award would relate to the amount of money that TCPL [TransCanada] might reasonable have been assumed to earn as profit under the contract and/or the economic opportunities that TCPL gave up by pursuing this contract.<sup>41</sup>

Again it is indisputable that Ministry staff knew of the total estimated cost or, at the very least, that the cost was likely to be very high. Evidence further corroborating this allegation can be found later on in the same document when Girling wrote:

Given the risk of a successful law-suit against the OPA and the Ministry in the above scenario, the amount of the damages to be awarded by a court might be reduced depending on whether or not they [the Ministry or OPA] had offered to mitigate...TCPL's losses by offering it an equivalent *or better* economic alternative. [emphasis added]<sup>42</sup>

Once again, the Official Opposition believes that the Ministry and their staff, and thus the Minister via the long standing parliamentary tradition of ministerial responsibility, knew that the costs for relocating the Oakville gas plant had the potential to be, and eventually was, much higher than the initially reported \$40 million.

## **7. Willful Withholding of and Destruction of Documents**

On October 4, 2010 a chain of e-mails was sent from Jesse Kulendran from the Ministry of Energy and Infrastructure asking for a set of questions to be

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<sup>41</sup> James Girling, *Legal Memorandum*, August 27, 2010, Released to Committee April 4, 2013 and labeled PC Doc #6.

<sup>42</sup> *Ibid.*

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answered. This set of questions included things like “How much will this screw-up cost taxpayers?” “What is the status of the contract with TransCanada? Are you terminating it today?” and “How much will this new transmission line cost?”<sup>43</sup>

These questions, which had been labeled as highly important and confidential, were answered on October 5, 2010. Although many of these questions were answered in a partial way designed for media consumption, it is the Official Opposition’s belief that it would be impossible to answer these questions in any way if the Ministry did not know the actual answers. The Ministry is guilty of either releasing false information to the public or, more likely, withholding information from the public.

Additional information and documents were also withheld from committee by the very man who initiated this prior set of e-mails. According to an OPA memo from Kristen Jenkins entitled “Aug 22 Meeting with Jesse Kulendran on OPA’s Mississauga and Oakville Power Plant Documents” a disturbing finding is revealed. In the document the author writes “I have been clear that this is in fact what Jesse Kulendran told us to do at the meeting on Aug 22...Jesse requested that we go page by page through OPA’s non-privileged Oakville documents.”<sup>44</sup> The purpose of this exercise was to flag all documents that could be revealing about the Ministry’s knowledge of the cost.

In fact, the memo goes on to say “Not only is it apparent from the post-it notes that Jesse directed the OPA to exclude attachments where the correspondence itself was not responsive, it is also clear that Jesse directed us to exclude SWGTA [SouthWest Greater Toronto Area].”<sup>45</sup> The Official Opposition believes this is indisputable evidence that members of the government, in this case a political employee of the Ministry of Energy and Infrastructure, instructed government agencies to withhold information from the committee and thus the public. The Official Opposition believes this to be an egregious abuse of power.

## **8. Energy Siting**

The Official Opposition would like particular attention to be brought to the submission by the OPA to the Standing Committee on Justice Policy dated March 19<sup>th</sup>, 2013. In that submission the OPA details the poor practices of energy siting. The OPA were issued a directive to seek Request for Qualifications (RFQ) on August 18<sup>th</sup>, 2008 only to receive a directive straight from the Minister two days later that eliminated the option for certain locations.

That lack of co-ordination was followed by, according to the OPA, minimal communication. This is demonstrated by the quotation that reads the “OPA has long advocated better coordination between land use planning and electricity planning.”<sup>46</sup> This document proves the lack of planning and foresight of energy siting within this government as the very entity tasked with siting the gas-fired

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<sup>43</sup> Jesse Kulendran, *CONFIDENTIAL: Questions*, October 4, 2010.

<sup>44</sup> Ontario Power Authority, “Memo: Aug 22 Meeting with Jesse Kulendren on OPA’s Mississauga and Oakville Power Plant Documents,” October 3, 2012.

<sup>45</sup> *Ibid.*

<sup>46</sup> Ontario Power Authority, *Southwest GTA Procurement Process Submission to Standing Committee on Justice Policy*, March 19 2013.

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plants did not agree with the process in place.

It is without doubt that this fiasco could have been avoided entirely if the energy siting practices from the government were better. The Minister's directive eliminating potential sites and restricting the geographic boundaries to include only areas of the Southwest GTA shows a lack of planning and general ineptitude when it comes to energy siting. If all options were available and municipalities were properly consulted, it is the opinion of the Official Opposition that the gas plants never would have been located in Mississauga or Oakville in the first place. Regardless of each party's position on the relocation, this problem could have been avoided with a better conducted RFQ process.

## **9. 2014 Mandate**

The Official Opposition believes it is crucial to emphasize that the new committee mandate, as written by the now majority Liberal Government, ignored calls to have key witnesses Laura Miller and Peter Faist testify before committee and instead demanded report writing begin immediately.

This rejection of witnesses constitutes a blatant disregard for the truth as both of these witnesses were specifically named in the OPP's Information to Obtain as crucial pieces in the potential destruction of documents from the Premier's Office.

Although the Official Opposition understands that the OPP is conducting an in depth investigation and their comments will be brought to the public light soon enough, there is no reason this committee could not have conducted that investigation simultaneously. In fact, by forcing the committee to write its report the Liberal Government and the Premier are emphatically suggesting that they are happy without knowing the whole truth.

The Official Opposition also wants it to be fully recognized that the Liberal Government was the only Party to vote against an Opposition Day Motion that called for Ms. Miller and Mr. Faist to appear before committee before the report writing took place. Their emphatic decision against this motion proves, without a shadow of a doubt, that the Liberal Government has no interest in hearing from these witnesses and does not care that the Standing Committee on Justice Policy's investigative work into the cancellation and relocation of the gas plants in Mississauga and Oakville is incomplete.

This report writing commitment is not a pledge for openness and transparency but rather a full acknowledgement that \$1.1 billion dollars of wasted taxpayer money does not warrant a complete investigation and thus serves as a muzzle of the democratic spirit.

## **10. Information to Obtain**

On December 18<sup>th</sup> 2014 the OPP released their information to obtain document which contained numerous interview transcripts from various members of the Premier's Office and other high ranking Liberal positions. These documents were the evidentiary basis for a raid on a government office that occurred on December 11<sup>th</sup>, 2014.

In that raid, the OPP recovered numerous hard drives in which they were looking for backups and copies of e-mails alleged to have been deleted on three different

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occasions – September 24, October 29, and November 26 all of 2012. The building that was searched was the Ontario government’s cyber security branch at 222 Jarvis Street in Toronto and was specifically targeting e-mails from former Chief of Staff David Livingston and the Deputy Chief of Staff Laura Miller.<sup>47</sup>

Although the contents of the raid are not yet known, the information to obtain that was publicly released does contain many interesting developments that are of particular note for the committee’s work. They will be addressed now in a semblance of themes.

*i. Compromised Integrity:*

The documents released through the Information to Obtain demonstrate a demonstrable collapse in the integrity of the Premier’s Office.

One such passage comes from the Executive Assistant to the Cabinet Secretary Mr. Steen Hume, who in terms described by the author expressed that “David Livingston’s decision to involve Peter Faist compromised the integrity of the Premier’s Office.”<sup>48</sup>

The Official Opposition believes that public office should maintain a high level of distinction and integrity and if those who work within those offices feel that level of professionalism had been breached by the conduct of one of their colleagues then it is a regrettable act. The Official Opposition is wary of implying guilt with a direct police investigation ongoing however it does believe that the admission by an employee within the Cabinet Office that the integrity of the Premier’s Office was compromised should serve as compelling evidence of wrongdoing.

The Cabinet Secretary himself, Mr. Peter Wallace, also told OPP investigators his direct opinion on the events saying:

The idea that somebody would step outside of the Government of Ontario and would bring in somebody outside to alter the records of the Government of Ontario I don’t need to tell them that’s right or wrong you know that is so clearly outside of normal business...<sup>49</sup>

There is no doubt that Mr. Wallace found the actions of Mr. Livingston disagreeable, of which the Official Opposition seconds. The Official Opposition believes that there is evidence suggesting members of the Liberal Government willingly destroyed documents and wiped hard drives in an attempt to cover up a larger scandal surrounding the true cost of the cancellation of the gas plants. It is the recommendation of the Official Opposition that this evidence be carefully examined and weighed by those investigating the actions.

It is also a point of contention that the Liberal members of the committee voted whole heartedly and unanimously, against the wishes of either the PC Party or NDP, to eliminate the timeline discussing the release of documents. This information to obtain clearly shows that there are issues surrounding the proper

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<sup>47</sup> <http://www.theglobeandmail.com/news/politics/opp-launched-raid-on-government-offices-in-ontario-gas-plants-probe/article22038736/>

<sup>48</sup> ITO, Brian Goyer, Page 44.

<sup>49</sup> Ibid.

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release of documents as some have allegedly been destroyed by various Liberal employees.

Therefore, if the integrity of the Premier's Office and of the Provincial Government in general is to be upheld all efforts should be made to detail exactly what happened. The elimination of the timeline discussing the release of documents and the original report's stated satisfaction with the 'new' rules set in place for document retention is not enough. The quote from Mr. Wallace aptly demonstrates that there were rules in place prior, referred to as "normal business", and that codifying these rules will not prohibit document destruction from occurring again.

As Mr. Wallace later went on to state "I'm not going to write you a memo saying don't do that, because you already know, don't do that."<sup>50</sup> The Official Opposition believes making sure the employees see a memo, or in this case a new set of best practices, is not enough to change behaviour. Serious consequences and penalties need to accompany these rules that, despite what the original report would lead you to believe are in no way shape or form new.

*ii. Willing Orchestration of Document Destruction:*

Another major theme of the OPP's Information to Obtain documents concerns the willing arrangement of Mr. Peter Faist to come to the Premier's Office for the sole purpose of wiping hard drives and deleting e-mails. There is an obvious pre-meditated plan that was executed over numerous days and even months. At no point does it appear that this course was deviated regardless of warnings from several people.

Peter Faist acknowledges that by giving the passwords to access the computers to Wendy Wai, an employee of the Liberal Government that Cabinet Office was tacitly consenting to the duty that was to be carried out. Mr. Faist called this receipt of a password "permission in my books."<sup>51</sup>

The author of the document shares this belief that Mr. Livingston willingly orchestrated the destruction of relevant documents. He writes "...Mr. Livingston is orchestrating who will get the administrative password and how it will be used...It also clearly showed his intention to use Peter Faist..."<sup>52</sup> This passage demonstrates that Mr. Livingston was aware of his actions and took considerable effort to make the destruction of documents occur. This alleged action is both condemned and distasteful in the opinion of the Official Opposition.

In addition, the e-mail from David Livingston to Laura Miller entitled "Any luck w the admin code?" shows the overall planning of this operation. In the e-mail Mr. Livingston writes "We have broken through. CO [Cabinet Office] has facilitated and I will be talking to David Nicholl this afternoon about how to actually get the codes and move forward."<sup>53</sup>

Again this passage demonstrates the intention of both of these individuals. The

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid., 38.

<sup>52</sup> Ibid., 36.

<sup>53</sup> Ibid., 28.



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Official Opposition believes that passages like this amount to significant evidence supporting the extension of the committee's work to interview witnesses and continue its work before writing its report. The Official Opposition believes that Mr. Livingston, Mr. Faist, and Ms. Miller should all be brought before committee once more in light of the new information.

*iii. How to Delete E-Mails:*

In addition to employing Mr. Faist to delete e-mails and records, the Information to Obtain also details how these deletions occurred. According to the document, a program called White Canyon was used which:

Erases all data stored in your internet browsers, erases cached documents from your office productivity software, erases records of documents opened and viewed, [and] permanently destroys your data.<sup>54</sup>

The author suggests that Mr. Faist used this program to delete records from computers in the Premier's Office. The Official Opposition again thinks this information requires that the committee be able to continue its work beyond simply writing a report.

What is perhaps more significant than how Mr. Faist wiped the hard drives in the Premier's Office is whose hard drives were actually wiped. According to the Information to Obtain, a chain of e-mails between Laura Miller and David Livingston on February 1<sup>st</sup> 2013 – mere days before Premier Wynne is sworn into office – detail exactly that. The e-mails are, according to the author, referencing the following individual's computers: Dave Gene, Dave Phillips, Debra Roberts, Laura Miller, David Livingston, John Brodhead, Wendy McCann, Leon Korbee, and Neala Barton.<sup>55</sup> Again, in light of this information the Official Opposition believes that it is imperative that they be allowed to continue investigating the incidents and be able to call witnesses including, but not limited to, the above names.

In addition, the Official Opposition finds the author's following quote both extremely disturbing and eye-opening, "I believe it is a reasonable conclusion to draw that efforts were made to insure that potential damaging information would not be made available through a Freedom of Information request or to the Standing Committee on Justice Policy."<sup>56</sup>

The author is saying the actions taken constitute a breach of ethical parliamentary practice and procedure and are simply not the actions of an open and transparent government. The Official Opposition is extremely disheartened by these revelations.

Lastly, the Information to Obtain also contains an e-mail from David Livingston to other members of their staff about how to delete e-mails and how long they will remain on back up drives. This chain of e-mails should serve as evidence of an orchestrated plan to delete documents and exposes the overall intentions of Mr.

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<sup>54</sup> Ibid., 41-42.

<sup>55</sup> Ibid., 42.

<sup>56</sup> Ibid.

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Livingston.<sup>57</sup>

*iv. Ignoring Qualified Advice:*

The Official Opposition believes it is also important to point out the advice that Mr. Livingston seemingly ignored, or knowingly acted against, contained within the Information to Obtain document. This advice includes suggestions from the Legal Counsel to Cabinet Secretary Peter Wallace, a Mr. William Bromm, who prepared a memo for David Livingston to make sure he was aware of the rules and requirements surrounding record keeping.<sup>58</sup>

Not only was this advice ignored but advice from Peter Wallace himself was also left alone. Mr. Wallace told investigators that he warned David Livingston that “the only organizations that did not maintain records were criminal organizations...” and that “a practice of no record keeping would be embarrassing.”<sup>59</sup> Despite these very clear warnings, and an additional warning that deleting records may be in breach of ongoing Freedom of Information requests, it appears that Mr. Livingston and his staff continued to carry out the task. The Official Opposition believes this again warrants further investigation into the incident by both the OPP and the continuation of the Standing Committee on Justice Policy’s mandate.

*v. Refunding of \$10,000 +HST to Ontario Taxpayers:*

The Official Opposition would also like to draw attention to the \$10,000 plus tax that Mr. Faist was paid for his record deletion services. Originally, this money was paid out of the Liberal Caucus Services budget, which is a publicly funded body and not funded through political donations.<sup>60</sup> Since this was revealed it is important to note that the Liberal Party of Ontario claims to have refunded the money from private funds to reimburse the taxpayer. The Official Opposition acknowledges this move but feels that it is shameful that the Liberal Party of Ontario would only do so once the exchange was made public knowledge. This money should never have been spent in the first place, by a private entity or otherwise, for the alleged destruction of documents.

In addition, the Official Opposition would also like to acknowledge the fact that the payment by the Liberal Party of Ontario constitutes an admission of guilt. The Party is thereby affirming that Peter Faist was brought in and financially compensated to perform a task in the Premier’s Office. Without any other information or explanation it would lead one to believe that these actions were nefarious in nature. A Party would not simply refund over \$10,000 if they felt they had done nothing wrong.

**Recommendations**

The sole primary recommendation of the Official Opposition is as follows:

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<sup>57</sup> Ibid., 15-16.

<sup>58</sup> Ibid., 29.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid., 20.

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1. Renew the mandate of the Standing Committee on Justice Policy to continue investigating the events surrounding the cancellation of two gas fired power plants in Mississauga and Oakville including alleged document deletion, document retention practices, and the ability to call witnesses to testify before committee even if they have already appeared.

**APPENDIX E**  
**DISSENTING OPINION FROM THE**  
**NEW DEMOCRATIC**  
**MEMBERS OF THE COMMITTEE**

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## **APPENDIX E: DISSENTING OPINION FROM THE NEW DEMOCRATIC MEMBERS OF THE COMMITTEE**

### **Introduction**

This dissenting report is composed of an Executive Summary, Recommendations, Chronology and sections outlining the Cover-Up and the Waste.

It also includes references to a series of public documents submitted as evidence to the Standing Committee on Justice Policy, including relevant records, reports and non-partisan research, all of which were excluded from the final report by way of majority vote by Liberal members of the Standing Committee on Justice Policy.

### **Executive Summary**

Since 2010, Ontario has faced a growing scandal surrounding the cancelled gas plants, the waste of \$1.1 billion and the political and potentially criminal cover-up. At every step, the government has shown a willingness to use public institutions and public dollars to put the interests of the Liberal Party first. The Liberals ignored warnings from MPPs about the risks inherent in privatizing power generation and problems with the siting of these plants. After cancellations the Liberals focused on damage control to protect their political future. They ignored Legislative Committees, they shut down the legislature, and they've protected Liberal insiders at every step of the process. The majority report from this committee further attempts to whitewash this \$1.1 billion scandal.

Their primary objective was the political well-being of the Liberal Party of Ontario. While the Liberal government insists this scandal is behind Ontario, the scandal with its cover-up and police investigation continue today.

The decisions about the cancellation were made by Liberal politicians and political staff, and were done with no concern about costs. Instead of honesty, the Liberals callously reiterated figures that they knew had no basis in fact.

The Liberals caused this scandal, and they attempted to systemically cover it up, both in terms of their report, and in the fact that the Liberals have blocked the committee from hearing from key Liberal witnesses who were involved in the destruction of records.

The gas plants scandal has shown Ontarians what they can expect from this Liberal government: wasted money, cover-ups for political convenience, a criminal investigation and a culture of political entitlement.

The scandal was rooted in the 2004 decision to privatize electricity generation in Ontario, a decision that exposed Ontarians to huge risks in the event a plant project had to be cancelled. It was deepened when the Liberals ignored the opportunity to avoid building generation by investing in money saving conservation. The risky decisions taken by the Liberals led to the scandal in 2010 when the Liberal government cancelled a contract with TransCanada Energy

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and then subsequently cancelled a contract with Greenfield Energy. The second cancellation took place in the middle of the 2011 General Election campaign specifically to save or elect vulnerable Liberal MPPs including Charles Sousa, Laurel Broten, Dipika Damerla, Harinder Takhar, and Kevin Flynn.

By doubling down on Conservative hydro privatization, the Liberals helped to create a situation like a pile of oily rags already smoldering and hurting ratepayers, and Liberal greed and entitlement was the match that caused it to explode into a full-blown scandal.

The Premier's Office, together with the Minister of Energy and Cabinet, systematically and knowingly broke contracts without due process, leading to skyrocketing payoffs and relocation costs of \$1.1 billion. Instead of seeking savings, or the most cost-effective ways to relocate these power plants, the Premier's Office and Cabinet routinely chose options that cost more but allowed them to limit public scrutiny or immediate political damage to the Liberal Party of Ontario.

The Minister of Energy as well as two Premiers (both Dalton McGuinty and Kathleen Wynne) repeatedly low-balled the cost of the gas plants, until Ontario's independent Auditor General reported that these costs would reach \$1.1 billion. But the cover-up that followed – and continues at the time of writing this report – was equally damning

The *cover-up* began on May 2012, and continues as of January 2015. The report looks at three of the four distinct phases:

1. Wiping computers
2. Protection of insiders
3. Committee Cover-up

Had the Committee retained the terms of the original study that began in the previous Parliament, other issues could have been examined. Instead the Liberals made it clear that their majority would be used to limit the scope of the examination.

#### *Wiping Computers*

As materials from Energy and the Ontario Power Authority began to be released, the Premier's Office continued a systematic purge of any incriminating records. By January of 2013 this grew to an effort to wipe a large number of computers in the Premier's Office. This computer wiping scandal was ordered by the most senior members of the former Premier's Office. It has been suggested in sworn testimony that the transition team of the incoming premier, Kathleen Wynne, was aware of this orchestrated destruction of records<sup>119</sup>. Police investigators allege that senior Liberals were responsible for using military-grade software to wipe 24 computers in the Premier's Office.

#### *Protection of Insiders*

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<sup>119</sup> Peter Wallace testimony

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Police investigators have identified Laura Miller, a former Deputy Chief of Staff to the Premier, and Peter Faist, her spouse and Liberal Party and Liberal Caucus Services contractor, as two of the key insiders responsible for wiping the 24 computers in the Premier's Office. New Democrats have repeatedly called for Faist and Miller to appear before the Standing Committee on Justice Policy to provide sworn testimony about their roles in the computer wiping, but Premier Wynne's Office continues to protect Laura Miller and Peter Faist and has ensured they will not testify in public before committee.

### *Committee Cover-up*

The Liberal Party controls the majority of the Standing Committee on Justice Policy and has used this majority to whitewash the official report of this committee, including but not limited to: removing key details from the official chronology put forward by the Committee's Research Officer; and publishing a report which fails even to acknowledge the deliberate destruction of records or ongoing cover-up.

## **Recommendations**

*The Liberal Government needs to acknowledge that partisan game-playing, privatization and breaking the law led to this crisis*

The Liberal public response to the political crisis was to smear others when they couldn't escape blame – the Liberals planned, approved and then cancelled the two gas plants. By deliberately omitting the fact that the crisis around the plants was created by the Liberals they show their interest is in confusing the public. They ignored their own record-keeping laws.

*Liberals need to recognize that they are bound by rule of law.*

In their treatment of records the Liberals ignored laws that they themselves passed.

*Privatization of the electricity system isn't working and needs to be abandoned*

Privatization of electricity generation substantially increases risk to governments that decide for any reason that siting of a plant is a mistake. It was the need to pay for private sector profits that led to costs spiraling out of control.

*Conservation should be the heart of Ontario's energy strategy to minimize the need for new generation investment.*

Virtually all sitings of generating capacity will create controversy. By relying on gas plants to deal with the move to phase out coal powered generation, the Liberals increased the risk of conflict with communities because people do not want to deal with more air pollution. A strategy that centred on conservation could have avoided these conflicts and scandals.

## **Timeline**

This is a narrative timeline. Please see Appendix 1 for the timeline prepared by non-partisan research staff of the Standing Committee on Justice Policy, and Appendix 2 for the timeline which was revised to include Committee member input.

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Both of these timelines were ultimately voted down by the Liberal majority on the committee.

### *Narrative Timeline*

In September 2004 the Ministry of Energy sought proposals for new gas power plants, and by March 2005 they instructed the newly formed Ontario Power Authority to execute contracts with Eastern Power for the Mississauga Power Plant (Greenfield South) in addition to two other contracts not pursued.

In September 2009, the Ontario Power Authority awarded a contract to TransCanada Energy to build a Gas Plant in Oakville.

During the following year, TransCanada Energy filed two notices of *Force Majeure*, one on December 17, 2009 after the Ontario Municipal Board upheld the City of Oakville's legal roadblocks to the plant, and again on March 15, 2010 when the City of Oakville rejected a land severance application for the site.

By February 2010 the Ministry of Energy had already begun to look at options for how it could cancel the plant.

During June 2010, Dalton McGuinty's Chief of Staff Chris Morley and Principal Secretary JamisonSteeve met with McGuinty to discuss the cancellation of the plant. Steeve later met with TransCanada and, according to meeting notes, assured them that TransCanada would be "kept whole." In her 2013 Special Report, the Auditor General concluded this meant "the profit stream it was anticipating from the Oakville plant would be preserved..." in spite of contract provisions that would have ensured Ontarians would not have to pay profits for cancellations due to force majeure. In addition, Trans Canada, in the words of the Auditor General, "...understood that in return for being kept whole, it was to lay low and not start litigation against the Government...".

The plant was cancelled in October, 2010.

By June of 2011, the negotiations to provide TransCanada with an alternative project had stalled and the Chief Executive Officer of Infrastructure Ontario, David Livingston, was appointed to bring the parties back together. After brokering a deal, Livingston returned to Infrastructure Ontario.

On July 28, 2011, Chris Morley, then Chief of Staff to Dalton McGuinty, wrote to Shelly Jamieson, Secretary of the Cabinet, to indicate that four ministers "have been briefed and are willing to sign the necessary docs on Vapour... [including] Wynne, who is down at QP for an event as [sic] some pt tomorrow."<sup>120</sup> The document, referenced by Morley, was an authorization for the province to forgo sections of the contract with TransCanada in favour of an Arbitration Process which abandoned considerable legal protections for Ontario ratepayers.

On October 7, 2010, the Oakville contract was cancelled, just slightly more than a year after signing. And in the middle of a heated election campaign—less than a year after cancelling the

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<sup>120</sup> Morley, Chris. "Approval" Message to Shelly Jamieson, Chris Giannekos, Lynn Betzner. July 28, 2011. Email. (*All documents referenced in this report are public records on file with the Legislative Assembly of Ontario's Procedural Services Branch*)



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Oakville plant—the Liberal government announced it would cancel the Mississauga Gas Plant as well.

It is clear that the goal of the Liberal party was to hold on to their ridings in Mississauga. Months later in the Estimates Committee, then Finance Minister Dwight Duncan confirmed that the decision was made “at a time when I think we were still behind in the polls, so it required a government decision.”<sup>121</sup>

On September 29, 2011, during that same campaign, New Democrat Leader Andrea Horwath wrote to Ontario’s Auditor General to address the uncertainty in the costs of cancelling the plants, and called on the Auditor to review the Mississauga plant agreement. Ms. Horwath was clear that New Democrats would need to see final costs before making a policy decision on the future of the plants:

*“Last-minute promises like that, people have to decide whether they’re credible or they’re not... Now Mr. Hudak’s making the same claim, we don’t know what that’s going to cost. I think what both these guys need to do is be really upfront with the public about what the cost of cancelling these deals is going to be.”* Hudak vows to scrap Mississauga power plant, Canadian Press, Oct 5, 2011

After the McGuinty government was sworn in, questions continued about the costs of the gas plants.

In May 2012, Chris Morley left the Premier’s Office and was replaced, on May 3, 2012, by David Livingston, the former CEO of Infrastructure Ontario who had been involved in returning the parties to the table in the Oakville negotiations and who would come to be at the centre of the email deletion scandal.

Construction in Mississauga stopped in November 2011, and the final arrangement with the government was reached by July 2012.

By August 2012 internal discussions were happening between Premier’s Office staff asking for a “sense of damages” in an effort to get a handle on the scope of the mistake that had been made.

The Standing Committee on Estimates passed a motion on May 16, 2012 that,

*“the Standing Committee on Estimates, herein ‘the committee,’ under standing order 110(b), stating that ‘each committee shall have power to send for persons, papers and things,’ directs the Minister of Energy as well as the Ministry of Energy and Ontario Power Authority to produce, within a fortnight, all correspondence, in any form, electronic or otherwise, that occurred between September 1, 2010, and December 31, 2011, related to the cancellation of the Oakville power plant as well as all correspondence, in any form, electronic or otherwise, that occurred between August 1, 2011, and December 31, 2011, related to the cancellation of the Mississauga power plant.”*

However, the Minister of Energy failed to comply with the motion, and official Committee

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<sup>121</sup> Committee Transcripts: Standing Committee on Estimates, Thursday 19 July 2012

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proceedings were later established based on the failure to respond to the Standing Committee on Estimates' request for documents related to the costs of cancelling two gas power plants.

On September 5, 2012 the Standing Committee on Public Accounts moved a motion sponsored by NDP Committee Member France Gélinas calling for the Auditor General to review the cancellation costs of the Mississauga Gas Plant. In February 2013, the Auditor General was given a mandate to examine the Oakville deal.

On September 24, 2012, the Ontario Power Authority and the Ministry of Energy released 36,000 pages of documentation responsive to the committee motion and on October 12, 2012 released an additional 20,000 pages.

The Minister of Energy's office did not release any records.

Under growing scandal, Dalton McGuinty announced on October 15, 2012 that he was resigning and would prorogue the legislature. This ensured that no hearings into this scandal could take place.

That fall, MPPs and the media combed through the documents that had been released, which showed things like special secret code names such as "Project Vapour," "Project Vapour-Lock" and others.

New Democrats quickly made a Freedom of Information request for documents containing "Project Vapour" but were told by the Cabinet Office in November 2012 that none existed, in spite of having received emails to and from members of the Premier's Office using the term.

On January 22, 2013 the Secretary of Cabinet began discussions with transition teams of the possible winners of the Liberal Leadership race. He indicated he began a series of "many, many conversations" that included discussions "about document production by the public service, about the absence of document production by others."

According to the OPP and the Information and Privacy Commissioner, in January 2013, David Livingston, the Chief of Staff to Dalton McGuinty approached the civil service "seeking administrative computer system passwords and information about how to permanently delete emails and other electronic documents." OPP documents indicate that on February 4, 2013, David Livingston received special access, allowing a user to access and "print, delete or even modify" the hard drives of computers in the Premier's Office.

The OPP ITO says that on February 7, 2013, Peter Faist, the "life partner" of Deputy Chief of Staff Laura Miller, came into the Premier's Office and allegedly began deleting information on 24 work stations. The OPP indicates that Faist was brought into the Premier's Office by David Livingston without security clearance, "compromised the integrity of the Premier's Office" and deleted files. Furthermore, by September 2013, Shawn Truax, a Forensic Investigator with the Cyber Security Branch in the Ministry of Government Services, had begun seizing computers.

The OPP obtained a Warrant on February 12, 2014 for the offices of ReCall, an offsite data storage facility where hard drives identified by the Cyber Security Branch were being stored. On February 19, 2014 the story broke in the media and by March 27, 2014 the warrant had been unsealed.

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This first warrant and Information to Obtain to be issued and unsealed opened a variety of new allegations.

Subsequently, two more warrants and ITOs were unsealed. These included an order to release security records similar to a request made by the committee on April 3, 2014, which the Liberal chair ruled out of order, as well as unearthing new emails which had not been released to the committee due to their deletion by senior Liberals.

## **The Cover-Up**

### **Criminal Investigation**

On June 6, 2013 PC members Vic Fedeli and Rob Leone sent a letter to the Ontario Provincial Police requesting that they investigate the possible theft of government documents.

Commissioner Chris Lewis responded by letter that the OPP would investigate.

While the public was aware that an investigation had begun, there were no communications from the OPP about their investigation, and it was not until news media broke a story on February 19, 2014 that the OPP had executed a search warrant on a data storage facility called ReCall, that the public received an update on this investigation.

New Democrats immediately called OPP Commissioner Chris Lewis to appear before the Justice Policy Committee. He appeared on February 27, 2014. The Commissioner clarified that Investigators from the OPP's Anti-Rackets Branch were conducting a criminal investigation, and the possibility that there was a criminal breach of trust.

A month later, on March 27 the OPP Warrant and Information To Obtain (ITO) was unsealed, bringing to light a level of detail that had not been made public.

This first ITO revealed that, starting in the summer of 2013, OPP investigators visited Queen's Park to investigate a charge of criminal Breach of Trust against David Livingston, Dalton McGuinty's Chief of Staff.

For the first time, Ontarians learned that "a non-Ontario Public Service employee, Mr. Peter Faist... [was given] access to the Premier's Office desktop computers contrary to Section 122 of the Criminal Code"<sup>122</sup> and that Faist used this "to access 24 desktop computers in the Premier's Office between the 6<sup>th</sup> of February 2013 and the 20<sup>th</sup> of March 2013."<sup>123</sup>

The police were able to tell whose computers were wiped, and we learned that nine of the staff whose computers were wiped continue to be Liberal political staff.

These ITOs uncovered a number of new facts that, in spite of the Premier's commitment to openness, had never been provided to the committee which included:

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<sup>122</sup> ITO Appendix B, March 27, 2014, OPP Information to Obtain. . (*All documents referenced in this report are public records on file at the Legislative Assembly of Ontario's Procedural Services Branch*)

<sup>123</sup> Ibid. Appendix C, Line 368

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- A \$10,000 payment of public dollars made to Peter Faist for the deletion of emails and wiping of computers in the Premier's Office;
  - The use of military-grade software to destroy records;
  - Intentional "double deletion" of emails to circumvent FOI, and potentially committee requests;
  - That senior Liberals said the government should be "unapologetic"; and
  - Deleted emails could still exist on secret USB drives.

At the time of writing the OPP investigation continues.

### **Who knew what when?**

Premier Wynne has insisted that she was unaware of any allegations until March 27, 2014 when the ITO was unsealed.<sup>124</sup>

This is in spite of the fact that the Ministry of Government Services' Cyber Security Branch Forensic Investigators had conducted an investigation into Premier's Office computers and identified the 24 desktop computers accessed by Peter Faist and, that for months, she worked on a daily basis with staff in her office whose computers were accessed by Faist.

Peter Wallace testified to the committee that he began having "extensive" conversations with Premier Wynne's Transition Team Lead, former MPP Monique Smith around January 22. He said these discussions were "about document production by the public service, about the absence of document production by others" – and clearly indicated that if Wynne's team "wanted to discover those, they can discover those from the former Premier's office."<sup>125</sup>

During her tenure, Ms. Smith served as Minister of Intergovernmental Affairs, Minister of Tourism and Culture, Minister of Revenue, Commissioner of the Board of Internal Economy and Government House Leader. Her ministerial career means she was well-versed in the language of the civil service. This message could not have been lost on her. Additionally, on February 21, 2013, after Kathleen Wynne had been sworn in, emails were exchanged between Peter Wallace and Monique Smith about gas plants code names with the Subject Line "Let's Chat"<sup>126</sup>, suggesting this was a subject of conversation on multiple occasions.

Through the summer of 2013 the OPP visited Queen's Park during business hours half a dozen times. Their visits were scheduled and on occasions rooms were booked for interviews onsite.<sup>127</sup> There were at least two interviews with current political staffers Lauren Ramey and Jason Lagerquist. These meetings were not secret. Ms. Ramey and Mr. Lagerquist would likely have explained their meeting in some level of detail to their supervisors. Ms. Ramey's role as Press Secretary to the Minister of Education, and former role as Special Assistant-Issues Management in the Premier's Office should have made her acutely aware of the

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<sup>124</sup> Kathleen Wynne, Hansard, April 8, 2014

<sup>125</sup> Committee Transcripts: Standing Committee on Justice Policy, April 15, 2014

<sup>126</sup> Smith, Monique. "Let's Chat". Message to Peter Wallace. February 21, 2013. E-Mail. . (All documents referenced in this report are public records on file with the Legislative Assembly of Ontario's Procedural Services Branch)

<sup>127</sup> Committee Transcripts: Standing Committee on Justice Policy, April 3, 2014

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communications and issues management implications of her interview both in terms of simply taking place and content.

During the summer of 2013, as the Cyber Security Branch began their investigation into which computers were wiped, Minister John Milloy was briefed by his Deputy that the Cyber Security Branch was conducting an investigation. Minister Milloy said he did not want to be briefed further on details.<sup>128</sup> Notably, the Minister did not make the same commitment regarding his political staff.

### **Record Destruction**

In 2006 the Liberal government passed the *Archives and Recordkeeping Act* as part of the *Ministry of Government Services Consumer Protection and Service Modernization Act, 2006*. The new act clarified the existing practice of recordkeeping, and transferring records after a period of 20 years to the Archives, to include new forms of digital records, including emails. The *Act* clearly spells out that its purpose is to:

- (a) to ensure that the public records of Ontario are managed, kept and preserved in a useable form for the benefit of present and future generations;
- (b) to foster government accountability and transparency by promoting and facilitating good recordkeeping by public bodies; and
- (c) to encourage the public use of Ontario's archival records as a vital resource for studying and interpreting the history of the province.

In short, it made it clear that electronic records were to be preserved.

Over the course of the committee's investigation and investigation by media, we have learned that the government denied the existence of records, failed to produce records and deleted records.

The government regularly denied the existence of records which were known to exist. Following revelations about secret code-names, such as "Project Vapour" and "Project Vapour-lock", New Democrats made Freedom of Information requests for documents from the Premier's Office with those words. In spite of receiving documents with these code-names from other sources, the Premier's Office denied that any such records exist.

The government failed to produce records when legally required. The Standing Orders of the Legislature allow that "each committee shall have power to send for persons, papers and things." To date, the government has provided no credible reason for withholding the documents, save a flimsy "commercial sensitivity" defense that has been widely questioned and even contradicted advice given by Ministry and Premier's Office on the Government's duty to accommodate the Committee's request. Finally, records *were* deleted. Craig MacLennan, the Chief of Staff to Minister Bentley, said on April 9, 2013 that he would "regularly delete emails." David Livingston, Chief of Staff to Dalton McGuinty testified on September 10, 2013 that "Emails

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<sup>128</sup> "I had a discussion with my deputy early on where I indicated to him that any interaction between my ministry and the OPP—I did not wish to know anything about it, to be briefed on it or to be in any way connected" John Milloy, Hansard, April 9, 2014

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were my to-do list. Once action was taken, the email was deleted so that it was clear what remained outstanding.” Commissioner Cavoukian commented on this in her report *Deleting Accountability*, saying, “I do not need to emphasize how disturbing the intentional deletion of government business records is in a free and democratic society.”

A greater description of the standing practice of deleting information and simply not recording information can be found in Commissioner Cavoukian’s report, which describes a political culture that operated in such a way as to leave as few fingerprints as possible.

When David Livingston asked Peter Wallace for special passwords allowing him to wipe computers in the Premier’s Office, Wallace testified he told Livingston “I provided him with advice around how that would look and how that would give reference to—that this would be consistent with the behaviour of an organization that wipes all its records, and that is not a normal organization in this context.”<sup>129</sup>

He made his opinion known that he was shocked to learn “the actions had crossed from a stupid idea to something really stupid to...[something] potentially criminally stupid in that context.”<sup>130</sup>

“To be very, very clear—I think this is abundantly obvious—had I had any reason to take those earlier comments seriously, I would have taken very different steps.”

Wallace told the police this was so obvious that “it’s one of those things that that you really don’t take that seriously because, it’s like, really?!? Like, the tape doesn’t get my body language here, but really?!? Like, that’s just such a piece of [*expletive deleted*]. Like, I’m not going to write you a memo saying don’t do that, because you already know, don’t do that.”<sup>131</sup>

The allegations of deletions and computer wiping continue to be the subject of an OPP criminal investigation. Indeed, the wiping of computers in the Premier’s Office was so dramatic that Thom Stenson, the Manager for IT Services in the Cabinet Office described the situation he confronted saying, “Wendy or someone using her account had made some changes to the computer that made it basically no longer functioning.”<sup>132</sup>

At the time of writing this investigation into destroyed information is ongoing. However the overarching narrative is that at every step of the way, information was destroyed, denied and withheld, and reasonable observers like Peter Wallace knew this was obviously wrong.

## **The Waste**

### **Costs**

It was the question of costs that sparked the gas plants scandal. In fact, it was skepticism about

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<sup>129</sup> Committee Transcripts: Standing Committee on Justice Policy, June 11, 2014

<sup>130</sup> Committee Transcripts: Standing Committee on Justice Policy, April 15, 2014

<sup>131</sup> OPP Information to Obtain, Appendix C, line 530. . (*All documents referenced in this report are public records on file at the Legislative Assembly of Ontario’s Procedural Services Branch*)

<sup>132</sup> OPP Information to Obtain, Appendix C, line 998. (*All documents referenced in this report are public records on file with the Legislative Assembly of Ontario’s Procedural Services Branch*)

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the cancellation costs that drove many of the early questions about the gas plants, and it was the failure to release information which could have provided greater certainty about costs, among other things. In July 2012, the government announced that the renegotiated contract for the Mississauga Gas Plant would be \$180 million, which was later revised to \$190 million. Then, in September 2012, the government announced that the cancellation and relocation of the Oakville Gas Plant would cost \$40 million.

It was immediately clear to experts that these numbers were misleading.

In the instance of the Oakville Gas Plants, New Democrats called, as their first witness, Bruce Sharp, an independent energy expert. Based on calculations made with publically available data on sunk costs, turbine costs, transmission and gas costs, Mr. Sharp estimated that the total cost of the Oakville Gas Plant would cost Ontarians \$638 million. Months later, with a far more detailed analysis that took into account more primary documentation, Ontario's Auditor General concluded that this same basket of costs would cost Ontarians \$675 million. In fact, within two days of the Liberal announcement that the cancellation of the Mississauga Gas Plant, the Society of Energy Professionals issued a press release on Canada Newswire saying the decision was irresponsible and "...will cost Ontarians well in excess of the \$180 million price tag announced by Energy Minister Chris Bentley Tuesday."

Importantly the Auditor General also added an additional \$140 million for gas tolling increases to the cost of the Oakville plant relocation, something not contemplated by Mr. Sharp, bringing her total to \$815 million.

This clearly demonstrates that the government's cost figures, reinforced in the Legislature and in Committee by government members, were simply not credible.<sup>133</sup> An independent energy expert and the Auditor General reached remarkably similar conclusions about cost.

In testimony to the committee Halyna Perun, legal counsel with the Ministry of Energy, indicated that she was involved in a briefing on September 24, 2011 involving Minister Bentley and Deputy Minister Serge Imbrogno in which the range of costs for Oakville were discussed, and it was discussed clearly that the costs for Oakville would be far beyond \$40 million, and that the costs passed on to Ontarians would not be limited to sunk costs:

***Ms. Halyna Perun:** Yes. If I may, the sunk costs and the costs of the turbines—those kinds of costs—were identified costs, and they would have been noted. Additionally, you know, there are two particular schedules: schedule A, which was the OPA agreement that identified gas delivery and management service costs and that kind of thing—the NRR; and then schedule B, which was the reimbursement agreement, also noted the \$210-million cost for the gas turbines, the \$40-million sunk costs and also there was a*

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<sup>133</sup> The government made a number of unequivocal statements such as Premier McGuinty who said on October 15, 2012 "On the matter of the cost, Speaker, it's \$40 million. But what would be helpful would be to receive the costing from the leader of the NDP as to what they estimated the cost would be, given their decision to relocate the plant as well. Ours is \$40 million, Speaker; we've nailed that down."

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\$50-million break fee.<sup>134</sup>

But it wasn't only Oakville in which the government was aware that the costs they were providing to the public were not the full costs that Ontarians would pay. Michael Lyle, General Counsel to the Ontario Power Authority, told the committee that at the time of the announcement it was already known within government that the costs of the Mississauga cancellation would be higher than \$190 million.<sup>135</sup>

In addition to the fact that government consistently failed to tell the whole truth about the cost of the cancellations, Ontarians also learned that there were numerous "off-ramps" in both contracts that would have allowed the government to deliver considerable savings for Ontarians. Instead, Ontarians are paying hard-earned tax and hydro dollars into private power profit margins and US-based hedge funds.

### **Driving up the costs through privatization**

Both the Mississauga and Oakville Gas Plant cancellation costs were driven by their contracts.

Both contracts had a provision for termination in the instance of *force majeure*, meaning that if either party was unable to live up to its end of the deal for a reason beyond their control, the contract could be voided without penalty.

As noted by the Auditor General, in the instance of Mississauga,

*Events beyond the control of Greenfield and the OPA did occur, beginning September 2005, as detailed in Figure 1 [sic]. They continued for 34 months to July 2008, making it impossible for construction of the plan to begin. The OPA therefore extended the completion date to September 1, 2012. The delays prevented Greenfield from securing construction and major equipment supply contracts within its original supply budget, and Greenfield advised the OPA that it was unable to proceed under the original NRR rate of \$8,350/MW/month. Greenfield therefore asked the OPA to consider changing the contract's economic terms.*<sup>136</sup>

In this circumstance, *force majeure* meant the contract could have been cancelled between the years 2005-2008 without penalty, and it is possible that, given Greenfield's inability to meet the terms proceed under the original NRR, the contract could have been cancelled later in its course.

The Oakville contract also contained *force majeure* provisions allowing parties to walk away without penalty. In December of 2009 and March of 2010, TransCanada filed notices of *force majeure* due to the legal roadblocks put up by the Town of Oakville.<sup>137</sup> Understandably,

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<sup>134</sup> Committee Transcripts: Standing Committee on Justice Policy, May 28, 2013

<sup>135</sup> Ibid., May 7, 2013

<sup>136</sup> Office of the Auditor General. *Mississauga Power Plant Cancellation Costs. Special Report, April 2013*, 12

<sup>137</sup> In March of 2009 the town of Oakville passed an *Interim Control By-Law* suspending construction of generation projects larger than 10 MW capacity. TransCanada appealed to the OMB, but the municipal ruling was upheld by the OMB in December 2009. The



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TransCanada was unhappy about this.

On June 3, 2010, three months after the second notice of *force majeure* was filed, Chris Breen, TransCanada's lead lobbyist met with Jamison Steeve, the Premier's Chief of Staff and Sean Mullin, the Premier's Office lead Energy Advisor. These meetings eventually led to two meetings on October 5, 2011.

The first meeting was in the morning and included Steeve, Mullin, Breen, Alex Pourbaix, TransCanada's president of oil and pipelines, and Russ Girling, TransCanada's CEO. In this meeting Steeve, apparently on behalf of the Premier's Office, said, "We've decided we're going to cancel your contract."<sup>138</sup> TransCanada's representatives asked that a letter be provided to explain this to their board and shareholders. The second meeting was with Minister Brad Duguid. Breen noted that Duguid did not discuss the cancellation, and may have been unaware of the decision.

TransCanada was concerned about the value of the contract but, due to a series of discussions that followed with Steeve, and later confirmation from Ben Chin, a former senior Liberal aide, former Liberal candidate, and OPA VP at the time, TransCanada felt "when we left that room, we were convinced we would be kept whole, and then the letter that we received subsequently on October 7 satisfied us to that extent"<sup>139</sup> and then letter that confirmed that the value of their contract would be preserved.

Greenfield's financing costs also created new, heavy costs ultimately borne by Ontarians. While initially they had letters of financing commitment from Canadian lenders, they ultimately proceeded with financing from EIG, a US-based hedge fund.

In May 2011, Greenfield secured financing from EIG management: an eight-year, \$263 million line of credit, with interest of 14% per year. The final cancellation agreement included a provision that the Ontario Power Authority would cover the costs of getting Greenfield out of their agreement with their lenders.

By November 2011 Greenfield had drawn \$59 million from its line of credit, and EIG informed Greenfield that they would seek \$225 million in penalties for terminating the agreement.<sup>140</sup> Following the OPA's agreement to take on the cost of getting Greenfield out of its financing arrangements, EIG requested \$228 million. Following a refusal, EIG launched proceedings in Ontario and New York.<sup>141</sup> The OPA offered an \$82 million settlement that was rejected.<sup>142</sup>

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town then denied TransCanada's site plan application, and in March 2010 the bylaw was extended to March 31, 2011. Additionally, in February 2010 Health Protection Air Quality Bylaw passed by the Town of Oakville limiting the ability of any gas plant to operate.

<sup>138</sup> Committee Transcripts: Standing Committee on Justice Policy, April 25, 2013

<sup>139</sup> Ibid

<sup>140</sup> Office of the Auditor General. *Mississauga Power Plant Cancellation Costs. Special Report, April 2013*, 18

<sup>141</sup> *EIG MANAGEMENT COMPANY, LLC, vs. GREENFIELD SOUTH HOLDCO, CORP.* New York Civil Supreme, Index number: 650949/2012

<sup>142</sup> *EIG MANAGEMENT COMPANY, LLC, vs. GREENFIELD SOUTH HOLDCO, CORP.*

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Eventually, after significant wrangling outlined by the former Auditor General in his report, the Ontario Power Authority paid EIG \$149.6 million. It's important to recall that this was to pay the \$59 million borrowed to date, and Ontarians received absolutely no value for paying this money to a group of US based hedge funds.

It also prompts a larger question: the Clean Energy Supply Contract entered into by Greenfield/Eastern was a government contract with guaranteed revenues and profits. Lending money to Greenfield/Eastern should have been a secure risk for any lender. Why then were they stuck borrowing from a US based hedge fund charging potentially credit card levels of interest, and why were they unable to borrow from an established, lower interest lender in Canada?

### **Missing opportunities for savings**

Echoing the Aird and Berlis memorandum, the Auditor General notes that the decision to provide the full value of TransCanada's lost profits, i.e. making them whole, was never required by the contract. As the Auditor says:

*"The OPA could have invoked a clause in the contract that made it liable for reimbursing TCE for lost profits only in the event of a "discriminatory action," and argued that the cancellation of the plant would not have met the contract's definition of such an action (the definition specified that a discriminatory action affecting TCE had to be taken by the Legislative Assembly of Ontario through legislation or similar measures). In early 2010, the OPA did explore the ramifications of terminating the contract and obtained a legal opinion confirming that cancellation would not meet the definition of a discriminatory action. The opinion also said that, if enforceable, the clause in the contract would limit the OPA's liability"<sup>143</sup>*

On February 17, 2010, Aird and Berlis provided an opinion to the OPA regarding the cancellation.<sup>144</sup> Page 2 of the memo makes it clear that in the event of a cancellation the contract gives TransCanada the right to be paid for their out-of-pocket costs, but also "expected future profits. These amounts could be estimated at between \$1 and \$2 billion assuming discount rates of 7% to 10%." However, the memo notes that the *force majeure* provisions in Section 14.1 of the contract protect the OPA from paying these expected future profits if the contract could not be completed under the *force majeure* provisions of the agreement

Specifically "[t]he OPA could terminate the SW GTA [TransCanada] contract if a delay of 24 months was occasioned by a Force Majeure, such as an act by the Ontario Government or the municipality of Oakville." While the province moving legislation could be seen as a "discriminatory action", that would have required the OPA to pay a larger penalty and forgo the contractual protection, "[i]f Oakville, rather than the Ontario Government, caused the Force Majeure, this would mean that such acts would not constitute a Discriminatory Action and the Discriminatory action remedy... would not be available to the supplier [TransCanada]." Put

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New York Civil Supreme, Index number: 650949/2012. First Amended Complaint  
<sup>143</sup> Office of the Auditor General. *Oakville Power Plant Cancellation Costs. Special Report, October 2013, 9-10*

<sup>144</sup>(All documents referenced in this report are public records on file with the Legislative Assembly of Ontario's Procedural Services Branch)

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simply, if the Interim Control Bylaws of the City of Oakville continued to stall the project, it could be cancelled.

In his testimony, Oakville Mayor Rob Burton noted that the Interim Control Bylaw had been approved by the Ontario Municipal Board, and Burton was clear that “[a]s proposed, I don’t believe their plant would have gotten a building permit.”<sup>145</sup>

The most notable thing about this is that Aird and Berlis provided this memo before JamisonSteeve and Sean Mullin met with TransCanada and agreed to “make them whole,” something that Aird and Berlis makes clear is totally unnecessary.

The final result of Steeve and Mullin’s commitment was a letter from Colin Andersen, the CEO of the OPA which committed that “[a]s a result of this, the OPA acknowledges that you [TransCanada] are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract.” In short, because of the commitment made by political staff to TransCanada, the Ontario Power Authority was obliged to pay the full the value of the contract, even though the contract didn’t require they do that.

## **Final Analysis**

With the continuing OPP investigation into the cover-up and the Government’s calculated and disappointing decision to use its majority to prevent the Committee from fully examining the issues around the cancellation of the Mississauga gas plant project, it is clear that this Committee process is far from the transparent and open process promised by the Premier.

Unfortunately, by limiting the scope of the Committee’s work through procedural loopholes, the government has made it far more difficult to get the answers necessary to explain why the costs to cancel the plants were never accurately communicated and why the costs of cancellation were so high, despite of numerous “off-ramps” which could have allowed solutions that would not have cost Ontarians \$1.1 billion.

But perhaps the most significant – and troubling – aspect of the government’s majority-imposed restrictions on the Committee’s work is that it prevents those who can provide the clearest answers from testifying at Committee and before the police investigation into the matter has reached its conclusion.

## **Appendix 1**

Original Timeline prepared by non-partisan research staff of the Standing Committee on Justice Policy

### **Timeline for the Mississauga Gas Plant**

#### **2004**

- Jan 20: Ministry of Energy announces plans to create up to 2,500 MW of new electrical generation capacity in Ontario.

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<sup>145</sup> Committee Transcripts: Standing Committee on Justice Policy, March 19, 2013

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- Feb 19: NERA Economic Consulting selected as technical advisor to oversee tendering process for new plants.
  - April: Independent Electricity System Operator (IESO) releases 10-year outlook regarding Ontario's energy needs; states new electricity generation needed in the GTA by 2006.
  - Jun 15: Government introduces Ontario Electricity Restructuring Act, 2004, creating Ontario Power Authority (OPA).
  - Sep 13: Ministry of Energy initiates RFP for 2,500 MW of electricity generation capacity and/or conservation measures.
  - Nov 12: Ministry of Energy notifies successful proponents of RFP.

## **2005**

- Mar 24: Ministry of Energy issues directive to OPA to execute contract with Greenfield.
- Apr 12: Clean Energy Supply Contract executed by OPA and Greenfield for 2315 Loreland Ave., Mississauga.
- Sep 16: City of Mississauga requests Ministry of Environment to elevate proposed Greenfield project to individual environment assessment (EA) (see Appendix 2).

## **2006**

- Jan 19: Ministry of Environment denies Mississauga's request for individual EA (see Appendix 3).
- Feb 1: Mississauga passes resolution requesting that Minister review decision of Ministry of Environment to deny individual EA for Loreland site.

## **2007**

- Oct 4: Ontario Municipal Board (OMB) approves Greenfield proposal, with minor modifications, over objections from Mississauga.

## **2008**

- Dec 10: Ministry of Environment issues Certificate of Approval (Air & Noise) to Greenfield.
- July: Minister concurs with Ministry of Environment decision and denies Mississauga's request for individual EA.
- Aug 12: Ministry of Environment issues Certificate of Approval (Municipal Drinking Water Systems) to Greenfield.

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## 2009

- Mar 16: Contract between OPA and Greenfield amended and restated extending completion date and providing a significantly higher monthly payment for the electricity produced once the plant is operational.
- Mar 17: Site plan approval granted for site.
- Jun 3: OEB issues Electricity Generation License to Greenfield.

## 2011

- May 26: Greenfield enters into financing agreements with Credit Suisse and EIG Global Energy Partners (EIG Global).
- May 30: Mississauga issues building permit to Greenfield; opposed by public and local politicians.
- June: Construction begins at the Mississauga site with target completion of July 2014.
- Jun 15: Ministry of Environment announces intention to re-review EA of site.
- Jun 22: Mississauga passes resolution requesting full EA and Ministry of Energy review of plant location.
- Jun 24: Mayor McCallion, on behalf of Mississauga, requests full EA re cumulative impacts of emissions around site.
- September: Reports suggest members of all three major parties (LIB, PC, and NDP) would cancel or relocate plant if asked to form government.
- Oct 7: OPA and Ministry of Energy enter into Cooperation and Common Interest Privilege Agreement and begin discussing options re: Loreland plant.
- Oct 12: Mississauga passes resolution seeking cancellation of gas plant and stoppage of construction.
- Oct 24: Ministry of Energy requests that OPA begin discussions to effect cancellation of Mississauga plant.
- Nov 14: OPA advises Greenfield that if it cannot negotiate agreement to relocate plant, it will not proceed with contract.
- Nov 18: OPA begins to reach the first of a series of interim agreements with Greenfield. Under these agreements, the OPA makes various payments to Greenfield's parent company, Eastern Power as well as to Greenfield's suppliers.
- Nov 21: OPA announces no gas plant will be built on site; Minister of Energy issues media statement. According to the OPA, construction of the plant was about 30% complete.

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- Nov 25: OPA signs interim agreement to pay the costs for releasing Greenfield from its lender; at this time, the OPA was unaware of any onerous penalty terms.
  - Dec 9: Ontario Electricity Financial Corporation agrees to terminate contract with Greenfield re Keele Valley upon entering into new contract with OPA.
  - Dec 14: OPA and Greenfield sign letter contract whereby Greenfield agrees to stop construction in exchange for \$35 million in equity sunk costs and satisfaction of creditors.
  - Dec 20: EIG Global serves notice of intent to commence action against the Crown.

## **2012**

- Mar 27: EIG Global brings claim against Greenfield; also names OPA and Government as defendants. At the same time, EIG also files in Ontario a \$310-million claim for damages against the Crown and the OPA.
- May 11: EIG rejects OPA's offer to pay \$82.3 million to settle a lawsuit.
- Jul 9: The final agreement, called the Facility Relocation and Settlement Agreement (FRSA), becomes effective.
- Jul 10: Ministry of Energy announces OPA agreement with Greenfield to relocate plant to Lambton and settlement with EIG Global.
- Jul 16: Government announces the decision to halt construction on Mississauga plant and relocate will cost \$190 million.
- September: Standing Committee on Public Accounts requests that the Auditor General examine Greenfield South/Eastern Power Mississauga plant contract, focusing specifically on the cost of cancellation to taxpayers.

## **2013**

- Apr 15: Auditor General reports that the estimated cost for cancelling the Mississauga power plant and relocating it cost about \$275 million.

## **Timeline for the Oakville Gas Plant**

### **2004**

- April: IESO releases 10-year outlook regarding Ontario's energy needs; states new electricity generation needed in the GTA by 2006.

### **2007**

- August: OPA files its Integrated Power System Plan (IPSP) for 2008 to 2027 with the OEB. The IPSP highlights the need for new gas-fired electricity generation in the Southwest GTA.

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## 2008

- October: OPA starts the procurement process by releasing a Request for Qualification (RFQ). The RFQ results in the shortlisting of four proponents, including TransCanada Energy Ltd (TCE). TCE is proposing to build its plant in the Town of Oakville.

## 2009

- Mar 13: OPA issues RFP for up to 850 MW in Southwest GTA.
- Mar 30: Oakville passes Official Plan amendment and interim control by-law barring new generating facilities over 10 MW.
- May: OPA tells bidders that changes made to municipal zoning and regulations after January 2009 will not be considered in its evaluation of their proposals.
- Jul 7: Mayor Rob Burton introduces a motion to the Regional Health Committee that calls on the Province to terminate any process to build a power plant in the overtaxed Oakville-Clarkson Airshed.
- Aug 28: In response to community concerns, OPA announces it will work to reduce emissions from local industries.
- Sep 30: OPA announces that it will sign contract with TransCanada to build plant in Oakville; Ministry of Energy announces Task Force on Air Quality in Southwest GTA.
- Oct 9: OPA signs Clean Energy Supply Contract with TCE.
- Oct 14: Mississauga passes resolution calling upon Province not to approve Oakville gas plant until Task Force completes study.
- Oct 20: Oakville passes resolution requesting RFP documents from OPA and individual EA of site.
- Oct 28: Regional Municipality of Halton passes resolution calling on Province not to approve plant until Task Force on Air Quality completes study.
- Nov 10: Oakville formally requests individual EA of site.
- Nov 20: OPA writes open letter to Oakville residents regarding the gas plant.
- Nov 24: Ministry of Environment appoints Dr. David Balsillie to chair Task Force. (Backgrounder)
- Dec 2: OPA denies Oakville's request for RFP documents.
- Dec 4: OMB upholds Oakville interim control by-law but strikes down Official Plan amendment.

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- Dec 14: Oakville submits application under Environmental Bill of Rights (EBR) for new regulation on emissions that have health impacts.
  - Dec 21: TCE advises OPA of first force majeure regarding the site plan.
  - Dec 26: Media reports TCE will appeal OMB decision on gas plant.

## **2010**

- January: Balsillie Taskforce to establish Community Advisory Committee.
- Feb 1: Oakville passes Health Protection Air Quality by-law.
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- Mar 22: TCE advises OPA of second force majeure regarding the severance application; MPP Flynn introduces Bill 8, An Act to Establish Separation Distances for Natural Gas Power Plants.
- Mar 29: Oakville Council votes to extend interim control by-law.
- April: Oakville submits additional material in support of its EBR application.
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- Jun 24: Balsillie Taskforce issues report on Southwest GTA, Oakville-Clarkson Airshed.
- Aug 30: Oakville passes resolution calling for a moratorium on further development of plant.
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- Oct 7: Ministry of Energy announces cancellation of Oakville plant; OPA asks TCE to stop all work on project and acknowledges TCE's entitlement to "reasonable damages," including anticipated financial value of contract.
  - Oct 8: OPA and TCE enter into confidentiality agreement.
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- Dec 13: Treasury Board and Management Board of Cabinet approve reimbursing TCE for up to \$40 million in sunk costs (subject to verifications). They also approve a break free of \$50 million that the Province will pay TCE if the Napanee plant does not go ahead.
- Dec 17: OPA announces new Clean Energy Supply Contract with TCE to relocate the Oakville plant to Lennox.

## **2013**

- Feb 7: Premier writes to the Auditor General requesting a review of the costs associated with the cancellation of the Oakville gas plant.

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- Apr 30: Chief Executive Officer of the OPA testifies to the Committee that the OPA estimated the cost of cancelling and relocating the Oakville gas plant to be \$310 million and that cost estimates would continue to evolve.
  - Oct 8: Auditor General reports the decision to cancel the Oakville power plant and build a new plant in Napanee may cost the public \$675 million. The cost of cancelling the Oakville and Mississauga plants is estimated to be \$1.1 billion.

### **Timeline for Issues Related to Document Disclosure and Retention**

#### **2012**

- May 16: Standing Committee on Estimates (SCE) adopts a motion directing the Ministry of Energy and the Ontario Power Authority (OPA) to provide correspondence related to the cancellation of the Oakville and Mississauga gas plants.
- Sept 13: Speaker Levac rules that “a prima facie case of privilege has been established” regarding the Minister of Energy’s refusal to release certain documents to the SCE. The Speaker directs House Leaders to attempt to devise a solution by September 23.
- Sept 24: Government House Leader announces that the Ministry of Energy and the OPA will table all responsive documents from the May 16, 2012 motion with the clerk of the SCE and the Clerk of the Legislative Assembly.
- Sept 25: MPP Rob Leone introduces a motion directing the Ministry of Energy and the OPA to immediately table all documents requested by the SCE and refer the prima facie case of privilege to the Standing Committee on Finance and Economic Affairs.
- Oct 2: House adopts MPP Leone’s motion.
- Oct 15: Minister of Energy and Government House Leader inform the House that more documents responsive to the May 16 SCE motion have been discovered (tabled with the Clerk on October 12) and correct their records.

#### **2013**

- Feb 20: House adopts a new motion by MPP Leone assigning the matter of the prima facie case of privilege regarding the disclosure of documents to the Standing Committee on Justice Policy (SCJP).
- Feb 21: Minister of Energy informs the House that further responsive documents to the May 16 SCE motion have been discovered and will be tabled that day.
- Mar 5: House adopts a motion by the Government House Leader to expand the mandate of the SCJP and allow it to consider documents already filed with the Clerk.
- Apr 9: Craig MacLennan, former Chief of Staff to the Minister of Energy, testifies to the SCJP that he regularly deleted emails to keep a “clean inbox,” which explains his lack of responsive records.

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- Apr 12: MPP Peter Tabuns files a complaint with the Information and Privacy Commissioner (IPC) alleging that Craig MacLennan, former Chief of Staff to the former Minister of Energy, illegally deleted emails in contravention of the Archives and Recordkeeping Act (ARA).
  - Jun 5: IPC Ann Cavoukian releases her report, *Deleting Accountability: Records Management Practices of Political Staff*, concluding that political staff violated their obligations under the ARA and recommends strengthening recordkeeping.
  - Jun 7: Ontario Provincial Police begin a criminal investigation into the allegations of illegally deleted emails following a complaint from MPPs Vic Fedeli and Rob Leone.
  - Aug 20: IPC Cavoukian releases an Addendum to her previous report, after 39,000 deleted emails were recovered, despite initially being considered irretrievable.

## **2014**

- Feb 19: OPP execute a search warrant at a data storage facility and seize hard drives once used by former staff in the Office of the Premier.
- Mar 27: Judge Gilles Renaud agrees to release the OPP's information to obtain (ITO) containing the details of the criminal investigation and the potential charges the OPP is investigating.

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## Appendix 2

Original Timeline prepared by non-partisan research staff of the Standing Committee on Justice Policy as revised to include Committee member input

### Timeline for the Mississauga Gas Plant

#### 2004

- Jan 20: Ministry of Energy announces plans to create up to 2,500 MW of new electrical generation capacity in Ontario.
- Feb 19: NERA Economic Consulting selected as technical advisor to oversee tendering process for new plants.
- April: Independent Electricity System Operator (IESO) releases 10-year outlook regarding Ontario's energy needs; states new electricity generation needed in the GTA by 2006.
- Jun 15: The Liberal government introduces Ontario Electricity Restructuring Act, 2004, creating Ontario Power Authority (OPA). [Mr. Yakabuski]
- Sep 13: Ministry of Energy initiates RFP for 2,500 MW of electricity generation capacity and/or conservation measures.
- Nov 12: Ministry of Energy notifies successful proponents of RFP.

#### 2005

- Mar 24: Ministry of Energy issues directive to OPA to execute contract with Greenfield and not to pursue the two others initially signed with Eastern. [Mr, Tabuns]
- Apr 12: Clean Energy Supply Contract executed by OPA and Greenfield for 2315 Loreland Ave., Mississauga.
- Jul 12: Eastern Power receives a letter from the City of Mississauga confirming that their selected construction site is zoned for "the generation and distribution of electrical power." [SCJP, Nov. 20, 2014 (source: letter from EP)]
- Sep 16: City of Mississauga requests Ministry of Environment to elevate proposed Greenfield project to individual environment assessment (EA) (see Appendix 2).

#### 2006

- Jan 19: Ministry of Environment denies Mississauga's request for individual EA (see Appendix 3).
- Feb 1: Mississauga passes resolution requesting that Minister review decision of Ministry of Environment to deny individual EA for Loreland site.

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## 2007

- Oct 4: Ontario Municipal Board (OMB) approves Greenfield proposal, with minor modifications, over objections from Mississauga.

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- Jun 3: OEB issues Electricity Generation License to Greenfield.

## 2011

- May 26: Greenfield enters into financing agreements with Credit Suisse and EIG Global Energy Partners (EIG Global).
- May 30: Mississauga issues building permit to Greenfield; opposed by public and local politicians.
- June: Construction begins at the Mississauga site with target completion of July 2014. Steam turbine delivered and placed in storage. [SCJP, Nov. 20, 2014]
- Jun 15: Ministry of Environment announces intention to re-review EA of site, following an announcement from Premier Dalton McGuinty. [SCJP, Nov. 20, 2014]
- Jun 22: Mississauga passes resolution requesting full EA and Ministry of Energy review of plant location.
- Jun 24: Mayor McCallion, on behalf of Mississauga, requests full EA re cumulative impacts of emissions around site.
- September: Reports suggest members of all three major parties (LIB, PC, and NDP) would cancel or relocate plant if asked to form government.
- September: Liberals decide to cancel the plant in order to save seats in Mississauga. Finance Minister Dwight Duncan told Estimates that the decision was made "at a time

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when I think we were still behind in the polls, so it required a government decision” (Standing Committee on Estimates, July 19, 2012) [Mr. Tabuns]

- Sep 7: The 40th General Election is called in Ontario. [Mr. Yakabuski]
- Sep 24: Liberal candidates Charles Sousa, Donna Cansfield, Laurel Broten and Dipika Damerla announce that the Liberals will halt construction of the Mississauga gas plant. [SCJP, Nov. 20, 2014]
- Sep 24: During the election, Charles Sousa quietly announces the Liberals will cancel the Mississauga gas plant. The announcement is made on a weekend and construction continues until November. [Mr. Yakabuski]
- Sep 29: New Democrats write to the Auditor General asking for a full cost for the cancellation of the plants (<http://globalnews.ca/news/160494/ndp-asks-auditor-general-to-review-liberal-move-to-cancel-gas-plant/>) [Mr. Tabuns]
- Oct 5: Progressive Conservative Leader Tim Hudak promises to cancel the Mississauga gas plant should his party form the government. New Democrat Leader Andrea Horwath demurs, but raises concerns about the cost. [Mr. Tabuns]
- Oct 6: Election Day. Liberals win the most seats but fall one short of a majority. [SCJP, Nov. 20, 2014]
- Oct 6: The Liberal government is returned with a minority but manages to retain all 4 Mississauga swing ridings. [Mr. Yakabuski]
- Oct 7: OPA and Ministry of Energy enter into Cooperation and Common Interest Privilege Agreement and begin discussing options re: Loreland plant.
- Oct 12: Mississauga passes resolution seeking cancellation of gas plant and stoppage of construction.
- Oct 24: Ministry of Energy requests that OPA begin discussions to effect cancellation of Mississauga plant.
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- Nov 18: OPA begins to reach the first of a series of interim agreements with Greenfield. Under these agreements, the OPA makes various payments to Greenfield’s parent company, Eastern Power as well as to Greenfield’s suppliers.
- Nov 21: OPA announces no gas plant will be built on site; Minister of Energy issues media statement. According to the OPA, construction of the plant was about 30% complete. This work stoppage comes 58 days after the original announcement to cancel the gas plant. [Mr. Yakabuski]

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- Nov 25: OPA signs interim agreement to pay the costs for releasing Greenfield from its lender; at this time, the OPA was unaware of any onerous penalty terms.
  - Dec 9: Ontario Electricity Financial Corporation agrees to terminate contract with Greenfield re Keele Valley upon entering into new contract with OPA.
  - Dec 14: OPA and Greenfield sign letter contract whereby Greenfield agrees to stop construction in exchange for \$35 million in equity sunk costs and satisfaction of creditors.
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## **2012**

- Mar 27: EIG Global brings claim against Greenfield; also names OPA and Government as defendants. At the same time, EIG also files in Ontario a \$310-million claim for damages against the Crown and the OPA.
- May 11: EIG rejects OPA's offer to pay \$82.3 million to settle a lawsuit.
- July: Mike Lyle, OPA General Counsel indicates that by July, the government was aware that costs would exceed \$190 million (Committee Transcripts: Standing Committee on Justice Policy, May 7, 2013) [Mr. Tabuns]
- Jul 9: The final agreement, called the Facility Relocation and Settlement Agreement (FRSA), becomes effective.
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- Jul 16: Government announces the decision to halt construction on Mississauga plant and relocate will cost \$190 million.
- Jul 16: The Liberal government announces the decision to halt construction on Mississauga plant and relocate it to a location near Sarnia will cost \$190 million. [Mr. Yakabuski]
- September: Standing Committee on Public Accounts adopts a motion introduced by MPP France Gelinias and [Mr. Tabuns] requests that the Auditor General examine Greenfield South/Eastern Power Mississauga plant contract, focusing specifically on the cost of cancellation to taxpayers.
- Oct 15: Premier Dalton McGuinty resigns and the Legislature is prorogued. [Mr. Yakabuski]

## **2013**

- Feb 11: Kathleen Wynne is sworn in as the new Premier of Ontario. [Mr. Yakabuski]

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- Apr 15: Auditor General reports that the estimated cost for cancelling the Mississauga power plant and relocating it cost about \$275 million.
  - May 14: Kathleen Wynne apologizes for the increased costs of both gas plants, thereby admitting guilt that the Liberal government wasted hundreds of millions of taxpayer dollars. [Mr. Yakabuski]

### **Timeline for the Oakville Gas Plant**

#### **2004**

- April: IESO releases 10-year outlook regarding Ontario's energy needs; states new electricity generation needed in the GTA by 2006.

#### **2007**

- August: OPA files its Integrated Power System Plan (IPSP) for 2008 to 2027 with the OEB. The IPSP highlights the need for new gas-fired electricity generation in the Southwest GTA.

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- Aug 28: In response to community concerns, OPA announces it will work to reduce emissions from local industries.
- Sep 30: OPA announces that it will sign contract with TransCanada to build plant in Oakville; Ministry of Energy announces Task Force on Air Quality in Southwest GTA.
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  - Dec 21: TCE advises OPA of first force majeure regarding the site plan.
  - Dec 26: Media reports TCE will appeal OMB decision on gas plant.

## **2010**

- January: Balsillie Taskforce to establish Community Advisory Committee.
- February: OPA slide deck dated "February 2010", titled "Ministerial Briefing, SWGTA Options" contemplates ways to cancel the Oakville plant, including noting Force Majeure Options. [Mr. Tabuns]
- Feb 1: Oakville passes Health Protection Air Quality by-law.
- Feb 9-12: Mayor Burton writes to Premier, Prime Minister and others about explosion at power plant under construction in Middletown, Connecticut.
- Feb 27: Aird and Berlis provides an opinion to the OPA saying specifically that "[t]he OPA could terminate the SWGTA contract of a delay of 24 months was occasioned by a Force Majeure such as an act by the Ontario Government or the municipality of Oakville" and that "[i]f Oakville, rather than the Ontario Government, caused the Force Majeure, this would mean that such acts would not constitute a Discriminatory Action and the Discriminatory Action remedy... would not be available to the supplier." [Mr. Tabuns]
- March 1: Ceiran Bishop emails James Rebob to say that Jennifer Tuck in the Minister's Office had specifically said the Minister has requested a briefing on options to cancel the plant. [Mr. Tabuns]

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- Mar 4: Oakville advises TCE it does not support gas plant or company's draft environmental review report.
  - Mar 22: TCE advises OPA of second force majeure regarding the severance application; MPP Flynn introduces Bill 8, An Act to Establish Separation Distances for Natural Gas Power Plants.
  - Mar 29: Oakville Council votes to extend interim control by-law.
  - April: Oakville submits additional material in support of its EBR application.
  - Apr 22: Bill 8 receives second reading, referred to Standing Committee on General Government.
  - May 27: MPP Flynn writes open letter to TCE.
  - June: Dalton McGuinty, Chief of Staff Chris Morley and Principal Secretary Jamison Steeve met regarding TransCanada Contract (Testimony 2013-Mar-26) [Mr. Tabuns]
  - June 3: Jamison Steeve and Sean Mullin meet Chris Breen. Steeve and Mullin indicated that the crown recognized TransCanada's position, and according to the Auditor, the parties concluded that "the profit stream that it [TCE] was anticipating from the Oakville plant would be preserved" in spite of contract protections for instances of Force Majeure. [Mr. Tabuns]
  - Jun 24: Balsillie Taskforce issues report on Southwest GTA, Oakville-Clarkson Airshed.
  - Aug 30: Oakville passes resolution calling for a moratorium on further development of plant.
  - Sept 22: GL Noble Denton, on behalf of TCE, releases report concluding gas plant is safe.
  - Sept 27: Oakville Planning and Development Council approves report on assessing future proposals for power generation facilities; amends Official Plan and zoning.
  - Oct 5: Premier's Office staff meets with officials from TCE. TCE leaves the meeting with the understanding that, if the government cancelled the plant, TCE would be kept whole and in return, TCE would have to lay low and not start litigation against the Government.
  - October 5: TransCanada met with representatives of the Premier's Office, who indicated that the Premier's Office would acquiesce to TransCanada's demands. TCE officials then met with the Minister of Energy who appeared to be unaware that an arrangement had already been reached with the Premier's Office. [Mr. Tabuns]
  - Oct 7: Ministry of Energy announces cancellation of Oakville plant; OPA asks TCE to stop all work on project and acknowledges TCE's entitlement to "reasonable damages," including anticipated financial value of contract.

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- Oct 8: OPA and TCE enter into confidentiality agreement.
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- Aug 5: OPA, the Province and TCE sign an agreement to submit assessment of “reasonable damages” suffered by TCE to arbitration. The agreement establishes the framework for binding arbitration in the event a settlement cannot be reached.
- Sep 4: Briefing is held including Minister Bentley, Deputy Minister Imbrogno, Legal Counsel Halyna Perun and others, and it was discussed that costs would exceed \$40 million. (Committee Transcripts: Standing Committee on Justice Policy, May 28, 2013). [Mr. Tabuns]

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- Sep 24: Ministry of Energy announces that the OPA had reached an agreement in principle with TCE. OPA, Province and TCE sign Memorandum of Understanding to move Oakville plant to Lennox Generating Station in Greater Napanee at an originally estimated cost of \$35 million, which was later updated that day to \$40 million. [Mr. Yakabuski]
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- Feb 11: Kathleen Wynne is sworn in as the new Premier of Ontario. [Mr. Yakabuski]
- Apr 30: Chief Executive Officer of the OPA testifies to the Committee that the OPA estimated the cost of cancelling and relocating the Oakville gas plant to be \$310 million and that cost estimates would continue to evolve.
- May 14: Kathleen Wynne apologizes for the increased costs of both gas plants, thereby admitting guilt that the Liberal government wasted hundreds of millions of taxpayer dollars. [Mr. Yakabuski]
- Oct 8: Auditor General reports the decision to cancel the Oakville power plant and build a new plant in Napanee may cost the public \$675 million. The cost of cancelling the Oakville and Mississauga plants is estimated to be \$1.1 billion.

## Timeline for Issues Related to Document Disclosure and Retention

### 2012

- May 16: Standing Committee on Estimates (SCE) adopts a motion directing the Ministry of Energy and the Ontario Power Authority (OPA) to provide correspondence related to the cancellation of the Oakville and Mississauga gas plants.
- Jul 13: The Liberals release 500 pages of e-mails, letters and power point presentations. They are significantly edited and sections are missing entirely. [Mr. Yakabuski]
- Sep 13: Speaker Levac rules that “a prima facie case of privilege has been established” regarding the Minister of Energy’s refusal to release certain documents to the SCE. The Speaker directs House Leaders to attempt to devise a solution by September 23.
- Sep 24: Government House Leader announces that the Ministry of Energy and the OPA will table all responsive documents from the May 16, 2012 motion with the clerk of the SCE and the Clerk of the Legislative Assembly.
- Sep 25: MPP Rob Leone introduces a motion directing the Ministry of Energy and the OPA to immediately table all documents requested by the SCE and refer the prima facie case of privilege to the Standing Committee on Finance and Economic Affairs.
- Oct 2: House adopts MPP Leone’s motion.
- Oct. 12: An additional 20,000 documents are released — an omission Minister Bentley blamed on bureaucrats. Code-names like Project Vapour and Project Apple are found in the documents. [Mr. Yakabuski]

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- Oct 15: Minister of Energy and Government House Leader inform the House that more documents responsive to the May 16 SCE motion have been discovered (tabled with the Clerk on October 12) and correct their records.
  - Oct 15: Dalton McGuinty Prorogues the Legislature ensuring the committee would be unable to sit until the Legislature returned. [Mr. Tabuns]
  - Oct 15: Premier Dalton McGuinty resigns and the Legislature is prorogued. [Mr. Yakabuski]

## 2013

- January: According to OPP ITO and Ontario's Information and Privacy Commissioner, David Livingston approached the civil service about "seeking administrative computer system passwords and information about how to permanently delete emails and other electronic documents." [Mr. Tabuns]
- January 22: Peter Wallace has "extensive" conversations with Premier Wynne's transition team, including about "document production by the public service, and about the absence of document production by others" and indicated that. [Mr. Tabuns]
- February 7: According to OPP ITO, Peter Faist, the "life partner" of Deputy Chief of Staff Laura Miller came to the Premier's Office and wiped information from 24 workstations (Appendix C, line 1235-1237). [Mr. Tabuns]
- Feb 11: Kathleen Wynne is sworn in as the new Premier of Ontario. [Mr. Yakabuski]
- Feb 20: House adopts a new motion by MPP Leone assigning the matter of the prima facie case of privilege regarding the disclosure of documents to the Standing Committee on Justice Policy (SCJP).
- Feb 21: Minister of Energy informs the House that further responsive documents to the May 16 SCE motion have been discovered and will be tabled that day, which new Premier Kathleen Wynne calls a surprise. [Mr. Yakabuski]
- Mar 5: House adopts a motion by the Government House Leader to expand the mandate of the SCJP and allow it to consider documents already filed with the Clerk.
- Apr 9: Craig MacLennan, former Chief of Staff to the Minister of Energy, testifies to the SCJP that he regularly deleted emails to keep a "clean inbox," which explains his lack of responsive records.
- Apr 12: MPP Peter Tabuns files a complaint with the Information and Privacy Commissioner (IPC) alleging that Craig MacLennan, former Chief of Staff to the former Minister of Energy, illegally deleted emails in contravention of the Archives and Recordkeeping Act (ARA).

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- Summer: OPP investigators visit Queen's Park during business hours "half a dozen" times to interview staff about wiped computers (Committee Transcripts: Standing Committee on Justice Policy, April 3, 2014). [Mr. Tabuns]
  - Summer: Ministry of Government Services' Cyber Security Branch began an investigation into which computers were wiped. While Minister Milloy says he was not given a detailed brief, he makes no claims about his political staff (Hansard, April 9, 2014). [Mr. Tabuns]
  - Jun 5: IPC Ann Cavoukian releases her report, Deleting Accountability: Records Management Practices of Political Staff, concluding that political staff violated their obligations under the ARA and recommends strengthening recordkeeping.
  - Jun 7: Ontario Provincial Police begin a criminal investigation into the allegations of illegally deleted emails following a complaint from MPPs Vic Fedeli and Rob Leone.
  - Aug 20: IPC Cavoukian releases an Addendum to her previous report, after 39,000 deleted emails were recovered, despite initially being considered irretrievable.
  - September: Shawn Truax, of the Ministry of Government Services' Cyber Security Branch, began to seize Premier's Office computers (ITO line 986-1091). [Mr. Tabuns]

## **2014**

- Feb 19: OPP execute a search warrant at a data storage facility and seize hard drives once used by former staff in the Office of the Premier.
- Mar 27: Judge Gilles Renaud agrees to release the OPP's information to obtain (ITO) containing the details of the criminal investigation and the potential charges the OPP is investigating. The ITO specifically names Laura Miller and Peter Faist as two main culprits and it revealed that the computer password used to delete e-mails from the Premier's Office remained active after Kathleen Wynne was sworn in as Premier. [Mr. Yakabuski]
- Mar 30: Liberal party terminates contract with Peter Faist (Hansard, March 31, 2014). [Mr. Tabuns]
- May 19: During the 2014 election, Kathleen Wynne makes it clear that she intends to allow the Standing Committee on Justice Policy to continue investigating the gas plant scandal but only for the purposes of completing their report writing and not hearing any further testimony from any witnesses. [Mr. Yakabuski]
- Oct 29: The Liberal government voted down an Opposition Day Motion calling for Peter Faist and Laura Miller to testify before Committee as had been originally scheduled before the 2014 election. The rejection of this motion leaves the committee uncompleted and without the adequate information necessary to effectively write its report. [Mr. Yakabuski]

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# TIMELINE NOTES

## APPENDIX A

### 2004

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