



**Legislative Assembly
of Ontario**

Second Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Thursday 10 October 2013

**Journal
des débats
(Hansard)**

Jeudi 10 octobre 2013

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés

Hansard on the Internet

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

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

Index inquiries

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

Le Journal des débats sur Internet

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

Renseignements sur l'index

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

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



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

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 10 October 2013

Jeudi 10 octobre 2013

The committee met at 0831 in room 151.

MEMBERS' PRIVILEGES

OFFICE OF THE AUDITOR GENERAL

Le Président (M. Shafiq Qadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. We welcome Bonnie Lysyk, not only to the committee, but also to Ontario as Ontario's Auditor General. She's accompanied by some of her colleagues.

Ms. Lysyk, I understand you will be sworn in.

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

Ms. Bonnie Lysyk: I do.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Lysyk. Just for identification purposes, you might let us know who your colleagues are, although I understand they will not be speaking on the record. I invite you to begin your five-minute opening address now.

Ms. Bonnie Lysyk: I'd like to introduce who I have with me. I have Gus Chagani, who is a director in the Office of the Auditor General; and Kim Cho, a manager in the Office of the Auditor General. Both are familiar with and have been involved in the Mississauga and Oakville power plant audits.

I just want to start by thanking members of the Standing Committee on Justice Policy for the opportunity to speak with you today. I would like to take you through the key findings of our special report on cancellation costs associated with the gas-fired generating plant in Oakville. Then I'd be happy to answer your questions.

In October 2009, the Ontario Power Authority contracted with TransCanada Energy to build a gas-fired electricity generating plant in Oakville. The following year, at the direction of the Premier's office, the Oakville plant was cancelled before construction had even begun. Eventually, plans were made to build a replacement plant in Napanee.

Our office estimates that the net cost to the public to cancel the Oakville plant and move it to Napanee will be about \$675 million, with \$635 million to be paid by electricity ratepayers and the remaining \$40 million by taxpayers. We arrived at that \$675 million by adding all costs and then subtracting estimated future savings.

In terms of costs, we have two broad categories: costs already incurred and estimated future costs.

In the first category, incurred costs, we have three items:

—\$210 million to cover TransCanada Energy's cost to purchase and modify gas turbines for the Oakville plant;

—\$40 million to cover TransCanada's sunk costs related to Oakville; and

—\$3 million in legal and professional fees.

In the second category, estimated future costs, we noted the following items:

—\$577 million in gas delivery and management services for the Napanee plant;

—\$91 million to buy replacement power, beginning in 2017;

—\$81 million to upgrade power transmission lines to bring the electricity back to the southwest GTA;

—\$43 million in gas and hydro connections for the Napanee plant;

—\$35 million for additional gas for the less efficient turbines in Napanee; and

—\$32 million in line losses for the distance power from Napanee has to travel.

All of these costs amount to \$1.112 billion.

From that, we subtracted \$275 million in savings as a result of the lower price negotiated for electricity from the Napanee plant and \$162 million in estimated savings because no payments for power will have to be made to TransCanada Energy until 2017.

That's how we arrived at \$675 million: by subtracting all estimated savings from all costs, estimated and real.

In addition, we believe it is possible that the \$675-million figure could also rise by up to \$140 million because of potential future increases in the cost of delivering natural gas to the Napanee plant.

A section of the pipeline route owned by TransCanada PipeLines Ltd. does not currently have the capacity to transport the amount of gas needed to service the Napanee plant. TransCanada PipeLines will need to invest in the pipeline to increase capacity, and then recover the cost of this investment through increased tolls—the rate it charges to move gas through the pipeline.

There is something you should keep in mind about these numbers. About two thirds of all cancellation costs and all of the savings will occur in the future, so our numbers are estimates—our best judgment of what these costs would look like in the next two decades.

Those are the detailed costs, and now I'd like to take you through the decisions that we believe had an impact on the cost to the public.

Soon after the Ontario Power Authority started the tendering process for a power plant in the southwest GTA, the town of Oakville publicly took measures to stop the project from being located there. Despite this, the OPA told prospective builders that it would not consider any municipal opposition in evaluating bids. In September 2009, with Oakville already having put a bylaw in place delaying the establishment of a power plant in the town, the Ontario Power Authority awarded the contract to TransCanada Energy.

At the time of the cancellation, we understand that the government committed to compensate TransCanada Energy for the full value of the Oakville contract—

The Chair (Mr. Shafiq Qadri): Ms. Lysyk, that's the five-minute opening address. We do have your remarks on file here.

I would now invite the PCs to please begin questioning, opening with Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much, Chair. Welcome, Ms. Lysyk, to Ontario and to our committee.

Ms. Bonnie Lysyk: Thank you.

Ms. Lisa MacLeod: I want to congratulate you for the work that you've done. Given your new entry here and, of course, the big issue and the bombshell that this is, you've done, I think, a great job.

You said at your media availability a few days ago that the government would have known back in October 2010 what the costs would be—or, the earliest date they would have known that cancelling the Oakville gas plant would be well beyond the \$33 million to \$40 million that they had started to tell the Legislature. I'm just wondering: Can you confirm that here in committee, that they would have known it would have been beyond \$33 million to \$40 million?

Ms. Bonnie Lysyk: I have to think for a second about your question. I guess we knew that when the estimates were being done for the final negotiation, at that point in time, there would have been an understanding around some of the components of cost. As far back as December 2010, there would have been an understanding in terms of what some of the sunk costs were for the plant, as well as the turbine costs.

Ms. Lisa MacLeod: We have a cabinet document—this committee has, members of the assembly have, and you reference that cabinet document, I believe, on page 16 of your report. It was signed by Kathleen Wynne, who's now our Premier, on July 29, 2011. What it effectively did was, it authorized the Ministry of Energy to enter into an arbitration process with TransCanada and other parties on the issue of cancelling the Oakville power plant.

Is it possible, given what you just answered—that as far back as October or December 2010, the sunk costs and other costs associated with the turbine would have started to develop—that the Premier would have known at that time that the number would have been beyond the

\$33 million or \$40 million that had been suggested in this House?

0840

Ms. Bonnie Lysyk: The final settlement agreement was December 2012. At the point that you're talking about, which is December 2010, around the time they were drafting a memorandum of understanding for Kitchener-Waterloo—I guess I'd like to say that I think that is specifically a question for the Ontario Power Authority, because the Ontario Power Authority were involved in the negotiations. They were familiar with what was happening on the arbitration. Also, I believe Mr. Livingston was involved in the arbitration discussions. So at that point in time, it would be dependent on the information they communicated back.

In terms of being able to answer your question directly, I would be speculating as to exactly the numbers that people were aware of at that point in time.

Ms. Lisa MacLeod: But it was clear that as far back as 2010, they would have known that the costs would evolve well past \$33 million.

Ms. Bonnie Lysyk: I would say that depending on the communications from OPA back to the ministry and into the Premier's office—again, I don't want to speculate what people knew or didn't know.

Ms. Lisa MacLeod: Sure, but it is conceivable that the Premier would have known that cancelling the Oakville gas plant was well beyond the \$33-million to \$40-million mark when she gave her testimony back in April of 2013.

Ms. Bonnie Lysyk: Again, in April 2013—I'm speculating. I prefer not to speculate. I can speak to exactly what we have in the report, but in terms of what individuals knew and didn't know—

Ms. Lisa MacLeod: Right, but it is conceivable that the OPA knew. It would have been conceivable, given that this was a political decision, that Premier McGuinty's office and Premier Wynne's office would have been told it had evolved, since you yourself have just suggested that as far back as October and December 2010, there would have been known amounts or, I guess, estimates that, given the turbine situation and the sunk costs situation, it would have been far beyond the \$40 million.

Ms. Bonnie Lysyk: Again, I think these are questions for the people who were actually involved in the transactions, because they would know who they spoke with and who they didn't speak with. We've looked at the costs, we've looked at the process, but as to what people knew, my comfort level is you asking the people directly versus me hypothesizing on it.

Ms. Lisa MacLeod: So you would suggest, though, that the OPA would have known.

Ms. Bonnie Lysyk: The OPA would have known that there were additional costs, yes.

Ms. Lisa MacLeod: And they are an agency of the government.

Ms. Bonnie Lysyk: Yes.

Ms. Lisa MacLeod: And they were created by this government.

Ms. Bonnie Lysyk: The OPA, because they were going into negotiations, would have had estimates and costs.

Ms. Lisa MacLeod: Okay. In your report, you suggest the cost for cancelling the Oakville plant would have been lower if the government chose to wait. I think that's very significant to the population of Ontario. Can you elaborate on that?

Ms. Bonnie Lysyk: Yes. Under the contract, there is the force majeure provision and discriminatory action provisions, and also there was a responsibility for TransCanada Energy to obtain the appropriate permits and municipal approvals prior to TransCanada Energy being able to start construction. So they had to get approvals from Oakville.

At the time, as of June 2010, they weren't able to get those approvals. So within the time frame before there was a public announcement of the cancellation of the plant, they filed two forces majeures indicating that they themselves recognized that they might be having problems meeting the construction date and the in-service date.

Given all that, if that problem continued with Oakville and caused construction to be delayed 24 months after the original in-service date, at that point, the parties under the existing agreement could have walked away with lesser costs being paid to TransCanada Energy than under this arrangement.

Ms. Lisa MacLeod: So in theory, any government of any political stripe could have cancelled the Oakville gas plant project for little to no cost to the taxpayer if proper digression were exercised and proper due diligence was undertaken?

Ms. Bonnie Lysyk: I think what we're saying is that if they waited it out until it was obvious that TransCanada Energy wouldn't be able to have the plant constructed before 24 months after the original in-service date, there would be lesser costs.

Ms. Lisa MacLeod: In your professional opinion as auditor here in Ontario, did it make any financial sense to cancel the gas plant in 2010?

Ms. Bonnie Lysyk: Again, I'm not going to second-guess what people's decisions were at that point in time. All I would say is that when we looked at this situation and we got some familiarity with the contract, that it looked to us that it was reasonable to assume that if you had waited it out, you would be walking away having paid less than what this arrangement cost.

Ms. Lisa MacLeod: I just have one final question before my colleague Mr. Fedeli takes over the questioning.

Given the costs that we know now, particularly with respect to relocating to Napanee, had any other location in the GTA or another place in southwestern Ontario been chosen, is it conceivable that the costs would have been mitigated?

Ms. Bonnie Lysyk: I guess each project has its own costs, but if, for instance, for Napanee—by locating this plant in Napanee and requiring the power in the southwest GTA, you have to have in place more transmission

capability and the gas has to be moved from Sarnia to the plant, and then the electricity back to the southwest GTA. So there are more costs associated with the transmission of the power back into the southwest GTA, and there are more gas delivery costs. There are more costs, as a result of the location of the plant that's providing the electricity back to the southwest GTA.

Ms. Lisa MacLeod: Okay, thanks.

Mr. Victor Fedeli: Thank you very much, and welcome, and welcome to Ontario as well.

Ms. Bonnie Lysyk: Thank you.

Mr. Victor Fedeli: I want to follow up on two points that my colleague Ms. MacLeod had made. The first was about who knew what when? Now I understand you can't speculate back in December 2010, but on page 11, there is a point made that—this is in the response down at the bottom:

“Nevertheless, when the relocation deal was announced, the memorandum of understanding (MOU)—that would have been the document that was signed in September 2012—“with TCE was clear that there would be costs in addition to the \$40 million in sunk costs incurred for the Oakville plant.”

Would you acknowledge, then, that at the signing of that MOU, back in September 2012—Colin Andersen, when I asked him the question, “Who knew?” he said everyone knew. Would you acknowledge or agree, then, that the government would have known back in September 2012, at the signing of this MOU, that there were indeed additional costs above and beyond the \$40 million?

Ms. Bonnie Lysyk: Again, this is the Ontario Power Authority's response that you're quoting from. This was drafted for us by Colin Andersen, and that is Colin Andersen's response.

I would say, based on his response, he's indicating that, and that goes back to my original premise that in something as concerning as this, I think it's better to ask the original people what they knew at the time.

Mr. Victor Fedeli: Okay. On page 15, we talk about the Premier's office making TransCanada whole. How is it, in your opinion, that you are able to devote a certain amount of space to this that, and I'll read from it, OPA “had not been consulted when the Premier's office made its commitment to keep TCE whole. The OPA first confirmed with the Premier's office this commitment had in fact been made.” Following that, they made a letter. “The OPA,” it says, informed you that had it “been consulted, it would have advised the Premier's office against making the keeping-whole commitment to TCE....”

How is it then that you knew this, and we have been sitting in this committee, in these chairs, for one year, asking the same question to dozens upon dozens of witnesses, who have sworn an oath to tell the truth, and told us this never occurred?

Ms. Bonnie Lysyk: Well, we have a copy of the letter. I think that it's now in the public domain. So I'm not speaking out of turn there. It was information that was passed over to the office.

Now, on the other side, this audit had started before the justice hearings and, in terms of obtaining informa-

tion during the course of an audit, the team asked for listings of information that were held by the Ministry of Energy, as well as the OPA, and, from that listing of information chose what we wanted to see. Therefore, this information was provided based on our requests. I think we had access to information before the committee.

0850

Mr. Victor Fedeli: So you're confident, then, that the Premier's office did indeed make the commitment to keep TransCanada whole?

Ms. Bonnie Lysyk: Again, we're confident—well, again, based on information that's already public record.

Mr. Victor Fedeli: Okay. My only other thought on that, before I get back to Ms. MacLeod's points: How is it that you were able to come up with a total number? Again, we've been here for a year asking for numbers and being sent in circles, chasing our tails, to be quite frank. How is it that you were able to come up with a number and we couldn't, over the course of the year? We speculated on the number. Our number that we came up with was remarkably close to yours, incidentally, about \$15 million—a rounding fraction away, but how is it that we could not get that and you could? Are they more afraid of you than us?

Ms. Bonnie Lysyk: I guess the team just had a responsibility to determine the costs and worked with the staff at the OPA. They had prepared some information, so some of this is coming from the information they prepared, and then there were discussions that led to some of the finalization of this. So it was really just working with the OPA staff.

Mr. Victor Fedeli: Ms. MacLeod talked about the fact that you've pointed out that going to Napanee is what made this all more expensive, so when we continue to hear the government say, "Everybody was going to do this"—the fact that they went to Napanee is what really added the money. Am I correct in that? Is that a safe sentence?

Ms. Bonnie Lysyk: I think the majority of the difference in the cost between the Oakville plant and the Napanee plant relates to the fact that there's distance from the southwest GTA.

Mr. Victor Fedeli: So it's not really the cancellation; it was the poor choice of relocation that added the hundreds of millions? Is that safe to say?

Ms. Bonnie Lysyk: The settlement linked to the new contract, and that resulted in the additional costs, so yes.

Mr. Victor Fedeli: We've got five minutes for the rapid round here. I'm going to ask five questions, and they basically have to do with your opening statement, where you say, "In the second category, estimated future costs ... \$577 million in gas delivery and management services for the Napanee plant."

I'm going to ask the same question five times. How much of that \$577 million is because it's in Napanee and how much would have had to have been spent, should it have stayed in the Oakville area in a willing host community within a reasonable distance?

I'm going to ask that for the next five points, actually—bar the \$91 million. So the \$577 million in gas delivery: How much of that is because it's in Napanee? If you can't answer, I can appreciate that.

Ms. Bonnie Lysyk: Okay. So in terms of the gas—just a sec. I'm just going to look at—

Mr. Victor Fedeli: And you know I'm going to ask that about the \$81 million, the \$43 million, the \$35 million and the \$32 million, not the next point. Those are my five questions coming up.

Ms. Bonnie Lysyk: Yes, I hear you.

Mr. Victor Fedeli: Okay.

Ms. Bonnie Lysyk: Some of the costs in these costs are attributable to the in-service dates of the plants.

Mr. Victor Fedeli: I understand.

Ms. Bonnie Lysyk: For instance, on the—

Mr. Victor Fedeli: So the \$577 million is \$500 million because it's in Napanee—all of it?

Ms. Bonnie Lysyk: On the \$577 million, we're dealing with the split of—\$225 million is associated with Oakville.

Mr. Victor Fedeli: So \$225 million would have been spent if it stayed in Oakville?

Ms. Bonnie Lysyk: Yes.

Mr. Victor Fedeli: So \$577 million minus \$225 million?

Ms. Bonnie Lysyk: That's correct.

Mr. Victor Fedeli: And that number that I come up with—

Ms. Bonnie Lysyk: Is the Napanee—

Mr. Victor Fedeli: —is \$332 million extra because it went to Napanee. Am I correct in that?

Ms. Bonnie Lysyk: Correct.

Mr. Victor Fedeli: All right. Two lines down: "\$81 million to upgrade power transmission lines to bring the electricity back to the southwest GTA." How much of that?

Ms. Bonnie Lysyk: Well, the full amount, because—

Mr. Victor Fedeli: The full amount?

Ms. Bonnie Lysyk: Yes.

Mr. Victor Fedeli: And "\$43 million in gas and hydro connections for the Napanee plant": How much of that is because of the decision to go to Napanee?

Ms. Bonnie Lysyk: Oakville was \$10 million.

Mr. Victor Fedeli: Oakville was \$10 million. So we've got \$33 million there; "\$35 million for additional gas for the less efficient turbines in Napanee."

Ms. Bonnie Lysyk: None of that would have been incurred if it had stayed in Oakville.

Mr. Victor Fedeli: So that's \$35 million more because it went to Napanee?

Ms. Bonnie Lysyk: Correct.

Mr. Victor Fedeli: And "\$32 million in line losses for the distance power from Napanee has to travel." So I can presume—

Ms. Bonnie Lysyk: Likely the majority, yes.

Mr. Victor Fedeli: Yes, that's \$32 million. So how's your math? That's \$332 million plus \$81 million—they promised me there'd be no math here this morning, but

it's \$332 million plus \$81 million plus \$33 million plus \$35 million plus \$32 million—you're the auditor. I'm going to go with your number.

Ms. Bonnie Lysyk: It's \$513 million.

Mr. Victor Fedeli: So \$513 million extra because it went, the choice was made, to Napanee as opposed to if it stayed in a willing host community in the area where the power was needed.

I want you to go to page 17 of your submission. It's the second paragraph down, about halfway through. It's unfair: Mine is highlighted, and I can find it easily. It's page 17, the first paragraph; it starts "On September 24," about halfway down that one.

"The OPA informed us that the Minister of Energy told the OPA to locate the new plant in Napanee. The OPA did not think that Napanee was the optimal location because it would result in higher costs...."

Obviously, the higher costs were \$513 million. Do you have any idea why the Minister of Energy would tell the OPA to locate in Napanee when they knew it was going to cost so many hundreds of millions more? Any thought on that?

Ms. Bonnie Lysyk: They were already negotiating the KWC, Kitchener-Waterloo. They had two counter-offers.

Mr. Victor Fedeli: Somewhere nearby, that is—

Ms. Bonnie Lysyk: Yes.

Mr. Victor Fedeli: —a willing host community?

Ms. Bonnie Lysyk: They fell through. At that point, this was the plant that was designated by the minister for them to sign an agreement with. As to why, I can't answer why they made the choice they made.

Mr. Victor Fedeli: So you would confirm that because they chose the plant so far away, it's not the cancellation, it's the relocation cost—your original estimate here is an additional \$513 million because of the choice they made?

Ms. Bonnie Lysyk: Correct. Plus, I think, in that you would include the tolls, the additional tolls that could potentially be charged in the future.

Mr. Victor Fedeli: We'll talk about that \$140 million later. Thank you very much.

The Chair (Mr. Shafiq Qaadri): To the NDP side: Mr. Tabuns.

Mr. Peter Tabuns: Good morning, Ms. Lysyk.

Ms. Bonnie Lysyk: Good morning.

Mr. Peter Tabuns: What a way to start a new job, eh?

Ms. Bonnie Lysyk: Yes.

Mr. Peter Tabuns: A quiet little file that you can get your teeth into.

I just want to follow up on a question that was asked by Mr. Fedeli, and you may comment. If the government of Ontario had waited instead of acting precipitously, we could have paid much less for cancellation of this plant; it may never have been built?

Ms. Bonnie Lysyk: We believe so.

Mr. Peter Tabuns: Did you quantify how low the figure could be if we had taken a slow route and let it just simply wither because it didn't meet the dates?

Ms. Bonnie Lysyk: We didn't quantify a number of what that would be. I think we felt that the discriminatory action section, which is the section that deals with the profits, would have perhaps been a section referred to, to avoid having to make TCE whole, so that would have been one. The sunk costs and the costs that they incurred as a result of being engaged in the transaction would logically have been the costs that would have been recouped maybe.

Mr. Peter Tabuns: If the city of Oakville had kept this matter before the courts, and they had missed their dates entirely, it's reasonable to say that Ontario would have spent nothing?

Ms. Bonnie Lysyk: Well, again, we believe that under that agreement, the profit side would not have had to have been paid.

Mr. Peter Tabuns: But the risk was entirely with the company. If they weren't able to meet their dates, their contract effectively lapsed, and it would have been no expense to us?

Ms. Bonnie Lysyk: Yes. Our thought, when we looked at that, is that TransCanada Energy really hadn't met their condition of the contract up to that point, and because the contract was meant to protect both parties, going into discussions, they were in a weaker position for negotiation purposes.

Mr. Peter Tabuns: If they had not been able to get started before the contract lapsed, would Ontario have been responsible for anything?

Ms. Bonnie Lysyk: Not to the extent that we have quantified, in our opinion.

Mr. Peter Tabuns: Are Ontarians getting a good financial deal out of the cancellation of the Oakville plant and its relocation to Napanee?

Ms. Bonnie Lysyk: Based on the information that we see in figure 2, we think that the costs associated with the Napanee plant are in excess of what the costs would have been if the Oakville plant had been built. At the end of the day, there's money that is being paid as a result of the cancellation leading to a new plant. There is an estimated \$675 million as a result of the decisions that were made.

0900

Mr. Peter Tabuns: So \$675 million in excess money or wasted money that ratepayers and taxpayers are covering.

Ms. Bonnie Lysyk: Money that will have to be paid as a result of the decision around the cancellation.

Mr. Peter Tabuns: For which we get no benefit.

Ms. Bonnie Lysyk: That would be—or at least costs that are beyond what we think needed to have been paid, had the Oakville plant gone ahead.

Mr. Peter Tabuns: Unnecessary expense.

Ms. Bonnie Lysyk: It would be, considering that, yes, unnecessary expense.

Mr. Peter Tabuns: Was this preventable?

Ms. Bonnie Lysyk: Again, you have to live in other people's shoes to know what was going through heads during the decision-making. But when we look at the situation and you see that there is a contract to benefit

both parties, at the end of the day, it didn't work, I think, like it was intended to when OPA signed the agreement.

Mr. Peter Tabuns: If the Premier's office had not stepped in and blocked the OPA from using contract provisions to protect the interests of the public, if the Premier's office had not stepped in and said, "Arbitration agreements are going to be required to drop all defences that you have," if the minister hadn't stepped in and dictated where the plant would be relocated, would we have had significantly lower costs?

Ms. Bonnie Lysyk: I think it goes back to the different points. OPA gave the ability to the government not to sign the deal at the very beginning when there was opposition from Oakville, so that was one.

Mr. Peter Tabuns: So that was the first out.

Ms. Bonnie Lysyk: The promise of making something whole, making TransCanada Energy whole and making that commitment, but actually putting it in writing I think is the next part that put the OPA in a weaker negotiating position. Then when the arbitration framework was put into place, it was all in favour of TransCanada Energy; there was really nothing in the arbitration framework that gave OPA any strength in negotiating.

Mr. Peter Tabuns: Then finally, the Minister of Energy determined where the new plant would go.

Ms. Bonnie Lysyk: Then in terms of where they thought a plant should be located based on their planning information, the choice was made for them.

Mr. Peter Tabuns: Without using numbers, could you describe this process in plain language?

Ms. Bonnie Lysyk: Okay. First of all, a request for proposals goes out, and there's an understanding now that there's a community that is taking issue with that proposal. Yet you go ahead and you issue an addendum that says, "We're not going to consider the fact that there's community non-support for this project," so the proposals are assessed, even knowing that there isn't support for the proposal, not taking it into account. That's one thing.

The second is, it's signed when there is strong opposition, so you have an agreement that is signed that you already know you're going to be fighting on, but you transfer that risk over to TransCanada Energy under a contract that protects you and TransCanada with respect to the force majeure sections. You cancel a contract and then, in my view, void it by putting in writing the fact that TransCanada Energy is entitled to recoup their profits. Then you set the stage for the arbitration framework, where you put in play a negotiating framework that doesn't give OPA much strength. At the end of the day, I think things transpire to the point where you have to make a deal because you don't want legal action to be taken because that's more public, and you end up with an arrangement that costs ratepayers more money than possibly it needed to.

Mr. Peter Tabuns: Okay. Mr. Bisson?

Mr. Gilles Bisson: No, go ahead.

Mr. Peter Tabuns: Was it a foregone conclusion when TransCanada was told the plant wouldn't go ahead? Was it a foregone conclusion that we'd be stuck with a bill for \$815 million?

Ms. Bonnie Lysyk: Well, from what we've got in the report here, we know that there were meetings between TransCanada Energy and the Premier's office, and that there was a commitment at that time to make them whole. "Make them whole" means that they would still stand to benefit from the contract, so one would assume, based on that—and again, I'm assuming—that there would be an appreciation and that that involves costs.

Mr. Peter Tabuns: The Premier has said that this never should have happened. But, in fact, it couldn't have played out the way it did and we wouldn't have incurred such large expenses, if the Premier's office hadn't been involved directing the way this matter was handled. Is that correct?

Ms. Bonnie Lysyk: Again, what I can comment on is what we have in the report. Why people made decisions and who actually made the final decisions, that's for, I think, this committee to conclude on.

Mr. Peter Tabuns: I'll try and put it a different way. The Ontario Power Authority have been told, "We don't want to go forward with this. You handle it," without being given further direction. Given the directions they were given, would they have been able to make better choices to give us a better deal?

Ms. Bonnie Lysyk: I think that's a question for Ontario Power Authority, but I can comment that if a promise wasn't put in writing, there might have been a potential to rely on sections of the contract to negotiate a deal, because TransCanada Energy, obviously, had met their part of the deal by being able to get the permits and the necessary municipal approvals they needed for them to begin construction.

Mr. Gilles Bisson: I just have a couple of very quick questions: Back when estimates was asking for the documents from the government, the government kept on saying, "We can't do that because it's going to muck up our negotiations." But from what I'm hearing from you, in fact, the government already mucked up their own negotiations by doing what they did, which led to higher costs.

Is it fair to say that the government, even though they were saying they couldn't release the documents because it was going to affect negotiations, in fact, had already done so by giving OPA the direction to make TCE whole? Would that be fair?

Ms. Bonnie Lysyk: I would say that, by issuing a letter on October 7 to TransCanada Energy, that that letter had a section in it that basically indicated to TransCanada Energy that they would be receiving a deal versus no deal.

Mr. Gilles Bisson: So that was the primary thing that led to the higher costs and settlement?

Ms. Bonnie Lysyk: That was the first part, yes.

Mr. Gilles Bisson: Do you know, in your investigation, were there any documents that you got in regard to the involvement of cabinet in all of this?

Ms. Bonnie Lysyk: No. I'll mention how we did the search for our documents. There was no search of the Office of the Premier, no search of the minister. The information we obtained was from the Ministry of Energy and the Ontario Power Authority.

Mr. Gilles Bisson: Was it, in your view, from what you see, solely the decision of the Premier or was it a decision of cabinet?

Ms. Bonnie Lysyk: Again, I can't comment on that.

Mr. Peter Tabuns: I'm going to go back to the question of the expenses that could have been avoided if we'd gone slowly.

If, in fact, TransCanada had not been able to meet their delivery dates and the contract had been dissolved, would we have been responsible for sunk costs?

Ms. Bonnie Lysyk: I guess I'd say it would have to have played itself out. I would think that, just, generally, based on my past business experience, one would believe you would have to cover sunk costs.

Mr. Peter Tabuns: And we wouldn't have had to pay for any profits?

Ms. Bonnie Lysyk: That would be correct.

Mr. Peter Tabuns: And we wouldn't have had to pay for a relocation?

Ms. Bonnie Lysyk: Well, it would be a decision as to whether you wanted to do another plant deal.

Mr. Peter Tabuns: In the government's 2010 long-term energy plan, they said this plant was no longer necessary in the system as a whole. They said that we had needed three plants, that we only need one now, and this isn't one of them.

Ms. Bonnie Lysyk: I think in discussions with the OPA, we understand that there is a recognition that they didn't need the power. They came to the realization that they didn't need the power for the Oakville plant until 2017. If the plant had been built, as was intended, there would have been NRR payments, net revenue requirement payments, made for electricity that wasn't needed.

Mr. Peter Tabuns: How long would it have taken the province to get to the lowest-cost option point?

0910

Ms. Bonnie Lysyk: How long would it—can you rephrase that?

Mr. Peter Tabuns: If we had been waiting it out, how long would we have had to wait? How long would this issue have been in the public eye?

Ms. Bonnie Lysyk: It would have been 24 months after—well, as soon as it was known they weren't able to build the plant within 24 months after the original in-service date, which was in 2014, so by some point in 2016 the plant would have been up and running. That would have been the time the discussions could have taken place around the fact that they wouldn't be meeting the 24-month—

Mr. Peter Tabuns: So this would have been in the headlines and in public consciousness right through the 2011 election and, frankly, for 2016? It might have gone through two election cycles; is that fair?

Ms. Bonnie Lysyk: Based on the contract, there was a 24-month requirement after in-service date before—

Mr. Peter Tabuns: So on a four-year term through two elections.

Ms. Bonnie Lysyk: Yes. Again, I'm not familiar—I have to say, being new to Ontario, the election dates are not—the past one is not in my mind right now, and the future one I haven't thought much about.

Mr. Peter Tabuns: Do you know, I understand that. For us, it's a whole different world.

Ms. Bonnie Lysyk: Yes.

Mr. Peter Tabuns: A lot of people are saying that the government took this high-cost option because the Liberal campaign team that was co-chaired by Kathleen Wynne, our Premier, wanted this dealt with before the 2011 election. Can you think of any reason other than political expediency to take this fast but expensive route as opposed to taking a slower, lower-cost route?

Ms. Bonnie Lysyk: I would be speculating on what the decision-makers were thinking when they made the decisions they did. I would say, I wouldn't be able to answer that.

Mr. Gilles Bisson: Did it make any sense fiscally to do that? Would you say as an auditor, over many years of reviewing how we spend money, did that decision make any sense fiscally?

Ms. Bonnie Lysyk: In which particular decision?

Mr. Gilles Bisson: The Napanee decision.

Ms. Bonnie Lysyk: To negotiate for the Napanee?

Mr. Gilles Bisson: For the expedited—yes.

Ms. Bonnie Lysyk: If we do look to page 8, page 8 is telling us that there were costs incurred beyond the costs of building a 900-megawatt plant in Oakville—

Mr. Gilles Bisson: Would you say this was fiscally prudent on the part of the government?

Ms. Bonnie Lysyk: I guess I would say that there were more costs incurred in this arrangement than perhaps what would have been incurred—

Mr. Gilles Bisson: So it wasn't fiscally prudent, then?

Ms. Bonnie Lysyk: I would say that obviously \$675 million or the estimated costs associated with the decisions leading to the cancellation—

Mr. Gilles Bisson: If it was your money, would you have made this decision?

Ms. Bonnie Lysyk: I should say, I wish I had this money.

Mr. Gilles Bisson: I've just given it to you. Would you have made this decision if it was your money?

Ms. Bonnie Lysyk: I can't walk in other people's shoes to prejudge their decisions. Things—

Mr. Gilles Bisson: Let's pretend they're your shoes. If it was your money, would you have made this decision?

Ms. Bonnie Lysyk: I'm going to say: What are the lessons that we see from this exercise? We see that there's community opposition to something. Would you discount that in the assessment of the sites to select? That would be one thing that maybe we would say is a little different than what I might assume would normally

occur. There are circumstances I guess around all these decisions that obviously we've questioned in the report. But again, I don't want to prejudge the decisions that people made. I think that's for you to ask the people involved in this, why did they make the decisions they did—

Mr. Gilles Bisson: I'm going to try again. I'm going to ask you: If it was your money, would you have made this decision?

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, two things—

Mr. Gilles Bisson: It's a question.

The Chair (Mr. Shafiq Qaadri): One, if you might not take phone calls during committee testimony, especially when you're the actual questioner.

Mr. Gilles Bisson: Very good, Chair. It's a good idea—a very good idea.

The Chair (Mr. Shafiq Qaadri): Secondly, Ms. Lysyk has already gone on record that her spending habits are beyond personal—

Mr. Gilles Bisson: No, Chair, with all due respect, I'm allowed to ask questions. I'm asking a question, and I can ask a question repeatedly. There's nothing in the standing orders that prevents me from doing that. So I'm just asking the question: If it was your money, would you have made this decision?

Ms. Bonnie Lysyk: I go back to the process. I guess I would probably take into account opposition to the construction of something. At the end of the day, I would make sure the contract protected me, and I would probably hope that at the end of the day it did. I guess I'd put in place a contract that I think should protect me. Obviously this didn't work that way. So would I end up in the same place? I guess I would hope not.

Mr. Gilles Bisson: Okay. Thank you.

Mr. Peter Tabuns: Kathleen Wynne signed a cabinet minute that let the government proceed with the arbitration process you describe here. Did that arbitration process favour Ontarians or favour TransCanada?

Ms. Bonnie Lysyk: No. The arbitration process favoured TransCanada Energy versus the Ontario Power Authority—the arbitration framework.

Mr. Peter Tabuns: And what potential cost implications could this have?

Ms. Bonnie Lysyk: Well, it really tied OPA's hands and gave them less negotiating strength, because it really said, "Ignore the force majeure provisions, ignore the fact that TransCanada Energy wasn't allowed to get their permits and approvals." So you take that away and now you're left with having to make a deal with no strength on your side.

Mr. Peter Tabuns: Can you describe the legal opinion that the OPA received about the risk of litigation? You reference it.

Ms. Bonnie Lysyk: I'm cognizant of what we have in our files as being confidential versus what is already public, and I'm just sensitive to the fact that anything in our working papers is confidential, so I'd like to limit my comment to what's in the report. I think we've com-

mented that there was a legal opinion received, but as to the content of that, beyond what's in the report, I would be uncomfortable talking about that.

Mr. Peter Tabuns: I may come back, but how many times had TransCanada filed notice of force majeure?

Ms. Bonnie Lysyk: Twice.

Mr. Peter Tabuns: Twice, okay. Were the same people involved in this audit as were involved in the Mississauga audit?

Ms. Bonnie Lysyk: That's correct.

Mr. Peter Tabuns: And did you use the same methodology?

Ms. Bonnie Lysyk: Yes, the same methodology was used as well.

Mr. Peter Tabuns: Yesterday, the Premier referred to your report as an estimate, and you've used the word "estimate" from time to time, but she highlighted uncertainty, whereas when Mr. McCarter's report came out, those terms weren't used. Do you understand why she's taking a different approach to your report?

Ms. Bonnie Lysyk: The Mississauga report—

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

Mr. Bob Delaney: Good morning, Auditor.

Ms. Bonnie Lysyk: Good morning.

Mr. Bob Delaney: Good to have you.

Ms. Bonnie Lysyk: Thank you.

Mr. Bob Delaney: I'd actually like to pick up where my colleagues left off. You've just stated that the arbitration agreement took away the force majeure provisions. The directive to set up the arbitration agreement wasn't signed until eight months after the very public announcement that the Oakville plant was being relocated, which was a decision supported by both opposition parties.

So, Auditor, what's clear from the testimony and the documentation that we've seen is that establishing an arbitration agreement was a necessary step to help move the negotiations along. Experts have confirmed to us here that if the two sides couldn't reach an agreement through negotiations, it was much better to go to arbitration than it was to go to court through a litigation process. What we've heard in the committee is that there was a serious risk of being sued by the company—in this case TransCanada Energy—if this step wasn't taken, and this was determined to be a preferable route to litigation since the court process would be long; it would be complicated; it would be, as one witness said, fraught with risk; and would be extremely expensive. So the arbitration agreement reflected promises that had been made in the OPA's termination letter to TCE on October 7. You saw that letter, right?

Ms. Bonnie Lysyk: Yes.

Mr. Bob Delaney: Okay. So the letter had been written by Colin Andersen of the OPA, approved by the entire board on October 7, 2010, and ultimately the province and TCE finalized a deal to relocate the plant to Napanee, outside the terms of the arbitration agreement.

In fact, at that time, arbitration was paused and a settlement was reached.

Could you clarify some of the opinions you've just been expressing to the committee around that?

Ms. Bonnie Lysyk: Well, I guess in terms—

Interjections.

Ms. Bonnie Lysyk: I'm sorry. It's just hard to concentrate.

The Chair (Mr. Shafiq Qaadri): Colleagues—Ms. MacLeod, Mr. Yakabuski, the auditor herself is asking for silence.

Ms. Bonnie Lysyk: So in terms of the original letter—right?—the original letter indicated that OPA would not be proceeding with the contract, that TCE was to cease all future work and activities in connection with Oakville and that TCE was entitled to reasonable damages, including the anticipated financial value of the original contract. So that letter was key in putting in writing for TransCanada Energy the fact that now they were entitled to the financial value of the original contract, and they requested that that letter be written so that they had information on paper.

0920

The OPA was asked to put a paragraph in there that gave them that responsibility. That last sentence, that “reasonable damages including anticipated financial value,” was not something that OPA had in their original draft. They were asked to put that in there.

Now you go from there to the arbitration framework. So right there with that letter, you're saying that TransCanada Energy is entitled to reasonable damages, even though TransCanada Energy wasn't able to get the necessary permits and approvals under the contract that they were required to do. They had started to approach the Premier's office because they knew that they were having trouble, and they knew there was a condition in the contract that they had to have this information. So then they were making appeals, which is why they filed two forces majeures: because they recognized that they were having problems under the contract.

So then they drafted—you're right—the framework for arbitration. That framework waived the clause, again, that gave the OPA a defence, a defensible claim of not owing TCE for profit. So it just reiterated the original letter and stated that only if government took discriminatory action through legislation or similar means would the OPA be liable for damages. I'm sorry; I'm going on here. But basically that framework that they put in place wasn't in OPA's favour. It was already concluding, the same way that that original letter concluded, that TransCanada Energy was entitled to profits.

Mr. Bob Delaney: Who is the “they” that put it in place?

Ms. Bonnie Lysyk: I guess that would be a question for OPA to answer. During the process that we conducted our review, we spoke to people at Ontario Power Authority, but I think that's the committee's responsibility. We don't put names in our report, but there was communica-

tion between the Ontario Power Authority and the government.

Mr. Bob Delaney: I'd like to move back, then, to the question of the sunk costs. You confirm in your report that OPA had paid \$40 million to TCE to cover sunk costs. You said earlier that that likely would have been paid in any event, no matter how this transaction had transpired, right?

Ms. Bonnie Lysyk: Yes.

Mr. Bob Delaney: Okay. When the relocation deal was finalized on September 24, 2012, the OPA published a final memorandum of understanding and a news release on their website that stated—and I'll use the exact words—“The cost of TransCanada's plant at Lennox will be comparable to the cost of the original competitively procured Oakville plant.” The only cost it provides is \$40 million for sunk unrecoverable costs.

The government, in fact, was criticized for not providing a fuller picture last fall beyond the sunk costs, but the OPA has testified that, at that time, the future costs and savings estimate were, in fact, unknown.

I've got a couple of quotes here that I'd like to put on the record before I get to my question. Colin Andersen, OPA CEO, told us, in his words, “They relied on OPA numbers, and that's true. We did provide them with the numbers. That is what you would expect.”

He also stated—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, just before we continue, I appreciate that CBC wants the right angle, but if you could just—thanks.

Go ahead.

Mr. Bob Delaney: Thanks, Chair.

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

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

And Jim Hinds, the OPA chair, testified, “The broad categories of the costs were known at the time—the costs you identified. The costs that were specifically known at the time that the MOU was released were the sunk costs. The others were costs to be determined....”

Is it reasonable to assume, then, and would you agree, that the OPA's costing that was available at the time the memorandum was signed was that figure that was provided to the public?

Ms. Bonnie Lysyk: I guess I would suggest that, having worked in a utility before—I had 10 years at Manitoba Hydro—when you're in a negotiation for a deal, you have a lot of people behind you preparing material and giving you the costs of the deal. Purely, in my own opinion, versus what I show in the report right now, having been involved in that process, it would be likely that people would know what a deal would cost. If they don't know what a deal would cost, then I would say there's concern around the fact that they signed a deal without knowing what it would cost. So from a logical

perspective and from my experience in those types of things, I would assume that people knew what the deal would cost.

Maybe in the time frame that they negotiated it, which was 12 days, by virtue of Colin's response here, they might not have had all their metrics and their forecasting models together, but, at the end of the day, with respect to the turbines, the turbine cost was a known. The turbine was asked to be modified by—OPA asked TransCanada Energy to have the supplier modify the turbines once they signed the memorandum of understanding for the Kitchener-Waterloo plant. That would have come with information.

Now, do we comment on that in the report with respect to that? We do know that there is a lot of information at Ontario Power Authority that has been created around the deal. So I think it is a good thing if you're looking for answers on dates, that that material is likely in the material provided to you.

Mr. Bob Delaney: So am I to understand, then, that in your report, you base it not on what you knew but on what you assumed?

Ms. Bonnie Lysyk: No. I would say that I'm not going to be speaking to material that's not written in the report. You asked a question, and I answered it on my experience outside of this particular audit.

Interjections.

Mr. Bob Delaney: Chair, can I actually hear the answer here?

The Chair (Mr. Shafiq Qadri): That would be advisable.

Mr. John Yakabuski: We're still laughing at the question.

The Chair (Mr. Shafiq Qadri): Colleagues. Thank you.

Go ahead, Mr. Delaney.

Mr. Bob Delaney: Am I then to understand that in your report, it's based not on what you knew but on what you assumed?

Ms. Bonnie Lysyk: No. The content of the report is based on what we knew.

Mr. Bob Delaney: Okay.

Ms. Bonnie Lysyk: During the course of an audit, there's a lot of information that is accumulated, and in order to put down on paper the estimated costs, we put on paper the information that we think fits with that mandate, and the mandate was to quantify the cost versus a comment on all the decisions along the way.

Mr. Bob Delaney: Back in September 2012, the OPA informed the government that the lower net revenue requirement, which is the monthly cost of the new contract, would offset the cost of the gas turbines and the gas management and delivery. In your report, you state, to use the report's language, "The OPA told us that one of the reasons it will be paying a lower" net revenue requirement "for the Napanee plant's power is to offset its assumption of this cost."

What do you think of the OPA's assumption that future savings would offset future costs was ultimately incorrect?

Ms. Bonnie Lysyk: I didn't hear the very last part of your question. Sorry?

Mr. Bob Delaney: What do you think of the OPA's assumption that future savings would offset future costs? Was that ultimately incorrect?

Ms. Bonnie Lysyk: There's an NRR under the Oakville contract and there's an NRR under the Napanee contract, and the difference between that is an amount—it's \$275 million. That difference is the amount that we would look at to see whether or not they had any benefits to offset that amount. That's part of why there is a difference that shows up in the \$675 million number, because in our opinion, in the calculations here and in our evidence, there wasn't enough benefit to make up the difference in the NRR.

Mr. Bob Delaney: Okay. Thank you. I want to ask you a few questions about the timing of when you predict the Oakville plant would have been operational. In your report, you estimate that, all things considered, including municipal bylaws and the numerous court appeals, as well as a possible appeal to the Supreme Court by the mayor of Oakville, the plant construction would have begun in mid-2012 and been completed by December 2015, which is, I think, what you have in your report.

0930

In making this, you make the leap to perhaps pre-suppose the timing of how quickly all of this would have moved through the courts. I'd say it's probably very difficult to predict whether it would have actually made its way to the Supreme Court of Canada. Obtaining leave to bring a matter to the Supreme Court of Canada is more extraordinary than routine; would we agree on that?

On what basis have you presumed the progress of litigation throughout this procedure and come to the point that it would have been possible to, to use the report's language, "wait it out"?

Ms. Bonnie Lysyk: We relied on an external legal opinion that we received that looked at how long it would take for the situation to be addressed, like all the bylaw issues to be addressed and then all the potential court actions, and in this assumption, we assumed that everything would be ruled in favour of TransCanada Energy, so the legal opinion assumes everything would work in TransCanada Energy's support in reaching that date.

The other side of that is, if Oakville had decided to take it to the Supreme Court, that would have extended the date. We used that date in looking at—in calculating the no payments to TCE until 2017, and that resulted in \$162 million. If we had done this assuming the plant would never have come in service, that savings would be zero. So we thought we were being reasonable in suggesting that the savings was at least \$162 million.

Mr. Bob Delaney: So your legal opinion, then, just to reconfirm, presumed that every decision would be made in favour of TransCanada Energy?

Ms. Bonnie Lysyk: Correct.

Mr. Bob Delaney: So, given the obstacles posed by the bylaws that were enacted by the town of Oakville, you then suggest that it still would have been possible to

wait it out and to enable the OPA to walk away from the contract?

Ms. Bonnie Lysyk: Again, because the—and I think you've had before you the mayor testifying that they would have taken it to the Supreme Court. If they had taken it to the Supreme Court, that would have extended that date, and so it would have extended it beyond the date that we have here. This extension that we have is only a few months shy of the 24-month period after the original in-service date.

Mr. Bob Delaney: Okay. Again, I'm going to come back to your legal opinion that assumes all of the decisions would have been made in favour of TransCanada. Your report correctly notes that TransCanada was actively fighting the bylaws, with five appeals at the Ontario Municipal Board and three appeals in Divisional Court.

Ms. Bonnie Lysyk: Correct.

Mr. Bob Delaney: We had Chris Breen, a TransCanada representative, here, who testified at the committee, and he told us, "We had a contractual obligation. It was very cleanly spelled out in black and white that that was our responsibility: 'You have to go through every possible channel to deliver on your obligations in this contract.' And we would have done that." He also said that "TransCanada were confident that they were going to eventually get to build the project on the Ford lands...."

If you had a legal opinion that made the assumption that every decision would fall in favour of TransCanada, how could you arrive at a conclusion different from TransCanada that—and I'll repeat it again: "TransCanada were confident that they were going to eventually get to build the project on the Ford lands," which is the Oakville site. Could you explain the discrepancy there?

Ms. Bonnie Lysyk: Again, the reason the in-service dates were important in this document is because in calculating the \$310 million that OPA testified to, they used the original in-service date of the plant. We knew that the plant would never be able to be ready by the in-service date, given what was happening, so we were actually looking at this from a realistic perspective in terms of the time it would take for TransCanada Energy to have worked it through everything. If the plant had never gone ahead, this \$162-million savings wouldn't have been incurred.

I guess, at the end of the day, when we did this calculation and when we relied on the information that we received, we believed that this is representative of what is a reasonable scenario that would have played out. In our opinion, we think it was fair in the calculation leading up to the \$675 million to at least assume the plant would have come in service. Had we assumed the plant would never come in service, there would be no savings here.

So to your question, OPA assumed it would come in service by the original date. It was never going to meet that original date, based on the fact that there were all those things pending. So—anyway, I'll leave it at that.

Mr. Bob Delaney: Okay. We had just recently Ben Chin, who was at the time employed by the Ontario

Power Authority and he worked very closely on this file. When he testified to this committee, he said that he thought TransCanada was very confident in their legal opinion. Was there a very real possibility that the courts would have ruled in the proponent's favour and TCE would have been able to start construction?

Ms. Bonnie Lysyk: You're asking me to guess, and I can't guess. We use a logic that I'm comfortable with in reaching our numbers in this report. I wouldn't begin to guess what the actuality of everything would have been. We put together what I think is a reasonable estimate.

Mr. Bob Delaney: Though your conclusion that the OPA could have waited it out is speculative, by your own admission.

Ms. Bonnie Lysyk: No. I think the way we laid it out is that, given the scenario that was happening, if 24 months had passed after the in-service date and they had not been able to construct the plant, meet the commitment—

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

Mr. John Yakabuski: I'm happy to be joining the conversation—not half as happy as the people in the Premier's office, I'm sure.

First of all, thank you very much for joining us, and thank you for this thorough report.

I want to speak to Mr. Delaney's questions for a minute. You know, the one thing that is wonderful about when the auditor comes to visit us is that we know that someone is coming here with no motivation other than to do their job, which is to inform the people of Ontario what happened in their judgment with respect to a specific situation. Today, we're dealing with the Oakville power plant cancellation costs, not with the multitude of speculative questions that Mr. Delaney put forward to you—and I apologize for those questions, because it seems to me that he's questioning your competence in your report. We certainly don't do that. We make it very clear that we accept—

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

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

Mr. Bob Delaney: Chair, we are governed by the standing orders of the Legislative Assembly, and I would appreciate it if my colleague did not speculate on my motives.

The Chair (Mr. Shafiq Qadri): Mr. Delaney, your point is well taken. Colleagues, let's return to parliamentary decorum.

Mr. John Yakabuski: Yes. Thank you very much, Chair—that we accept your report as written.

He touched on Chris Breen's testimony. Of course, Mr. Breen was here as a representative of TransCanada and offering opinion. Now, you've been in the corporate world, you've worked for Manitoba Hydro; you understand that if Mr. Breen had come here and said, "We never believed the project would get off the ground or be finished," the shareholders of TransCanada would be very upset. Would you not agree to that? You're an auditor; you know how money works.

Ms. Bonnie Lysyk: I guess I could say that your view as TransCanada Energy would be to maximize the return for your shareholders.

Mr. John Yakabuski: Absolutely. Thank you very much, Ms. Lysyk.

Now I want to talk a little bit about the fact that he's speculating about the possible success in a court case from the government when all the cards were in TransCanada's favour. On top of that, if you go to page 15 of your report, the Premier is on record as having absolutely demanded that we keep TransCanada whole in whatever negotiations go on with respect to the cancellation of this plant. That's not an opinion. You bring here the facts, and that is a factual matter. Is that not correct?

0940

Ms. Bonnie Lysyk: The information that we have in the report is factual around the letter, yes.

Mr. John Yakabuski: Absolutely. Thank you very much.

Now I want to talk about the turbines. We had the current Premier and former Premier talk about \$40 million and then possibly only \$33 million in actual costs for the cancellation of the Oakville plant, but all along—and that is on page 18—it was clear that prior to the visit by Premier Wynne this year, TransCanada had been paid for the turbines. They had already been paid for those turbines. I'm trying to understand how a government could say that \$210 million of our money was paid out, but that it's somehow not real. TransCanada was paid for those turbines prior to the Premier's visit here this year. Is that not correct?

Ms. Bonnie Lysyk: I'm sorry. We don't have the exact date of the payment for you.

Mr. John Yakabuski: No, but it does say: "Under one of the December 2012 settlement agreements, the OPA paid TCE \$210 million to cover gas turbine costs."

Ms. Bonnie Lysyk: Yes. I just don't have the date for you, but it has been paid.

Mr. John Yakabuski: You don't have the date. Okay. Would we be able to get that date, or is that confidential?

Ms. Bonnie Lysyk: Yes. We can provide the date to the committee.

Mr. John Yakabuski: That would be excellent if we could have that actual date, Madam Auditor. Thank you very much.

I want to go back now to the line of questioning, which I think is the nub of the matter. The government keeps talking about how they—incidentally, the day after the Speaker ruled against the government on the matter of privilege in the House, all of a sudden we have this deal announced to move this plant to Oakville. I don't think it happened overnight at an all-night coffee shop or something; something must have been in the works. The additional cost to move this plant to Oakville of \$513 million, by your calculation—I'm asking you to speculate, but I'm only asking you to use your logic; you used that word quite a bit here today. If you would use your logic, it is impossible for the government to conclude that each of the other two political parties would have made

the same decisions. They argue up and down—"Well, you were in favour of the cancellation. You were in favour of the cancellation." We never thought it should have been built there, but would it not be fair to say that it's impossible for them to argue that the identical decision would have been made by either or both of the other two political parties, the opposition parties?

Ms. Bonnie Lysyk: I can't respond to that question. I'm sorry.

Mr. Gilles Bisson: We can answer that if you want.

Mr. John Yakabuski: Yes, we can answer that. I think it's fair enough that we ask the question. It just seems, Ms. Lysyk, that they keep going on and on, somehow trying to make this a tri-party operation here, that the three parties somehow collaborated on this. When it's in their favour, they like to talk about co-operation between parties, but there was no consultation whatsoever between anyone but the Liberal Party, the OPA and the folks at TransCanada, and much of that, quite frankly, came out of the Premier's office.

You talked about how the—and Mr. Delaney chooses to disagree with your findings; that's entirely up to him; I accept them for what they are—

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

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

Mr. Bob Delaney: I would appreciate it if my colleague from Renfrew-Nipissing-Pembroke didn't tell me what I did and didn't decide to do on something I never said.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. Mr. Yakabuski, continue, please.

Mr. John Yakabuski: I thank you for your admonition.

This court case—if it goes 24 months past the commercial operation date of February 2014, basically the contract is null and void. Correct? If, 24 months past February 2014, they don't have a plant in operation, the deal is dead.

Ms. Bonnie Lysyk: Our understanding is that the provisions in the contract would allow both parties to walk away from the deal.

Mr. John Yakabuski: Penalty-free?

Ms. Bonnie Lysyk: How that would end up being, I would be speculating. But it would be less—

Mr. John Yakabuski: Yes. We recognize that—

Ms. Bonnie Lysyk: It would be less than—I could say that I think we'd be comfortable in saying it would be less than the \$675 million.

Mr. John Yakabuski: Yes. I mean, there would be, understandably, some legal costs because a court case would have been proceeding to that point, but even if they resurrected Johnnie Cochran, it's not going to cost \$513 million.

Ms. Bonnie Lysyk: I would say it would be less than the \$675 million that we have on page 8.

Mr. John Yakabuski: Yes, and I'm just using the \$513 million, the additional cost. Just the additional cost—I think we really have to hone in on that one. Just

the additional cost of making the decision to move that plant to Napanee, where the power's not needed—how could that be considered anything but a decision for political expediency? There's not a single logical justification—and as you say, you worked in the hydro business. There's not a single justification from the point of view of providing power to the people of Ontario for moving that plant to Napanee. From your previous expertise, would that be a fair conclusion?

Ms. Bonnie Lysyk: You know, in the way the question is phrased, I can't comment on that.

Mr. John Yakabuski: Could I make it softer?

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

Mr. John Yakabuski: I've already certainly drawn my conclusions. I think what's important here—and what we really appreciate is the way that you've brought the facts forward to us. The conclusions will be left to be drawn by the people of Ontario, and that's where the real issue's going to be dealt with, because we were led all along down this garden path that it was \$40 million and then they come up with the \$310 million, and thank goodness for your report, because now we know that this plant could cost \$675 million, plus the \$140 million in extra gas tolls because of another deal made with TransCanada to compensate them for the upgrades to the gas transmission up to Napanee. Correct?

Ms. Bonnie Lysyk: You know, I can't comment on—I don't know what the direct question is—

Mr. John Yakabuski: I'm just giving you the number. So you stand by, absolutely stand by, the numbers in your report?

Ms. Bonnie Lysyk: Yes.

Mr. John Yakabuski: Thank you very much.

Ms. Bonnie Lysyk: I can provide the answer to the turbines. They were purchased on December 14—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Yakabuski. Just before I offer it to the NDP, I might just remind all colleagues respectfully that the Auditor General and her colleagues are here actually to speak about the report that was tabled. I sense there's a struggle going on with some of the questions, but in any case—

Mr. Peter Tabuns: You've stopped the clock, of course, haven't you, Mr. Chair?

The Chair (Mr. Shafiq Qadri): I have, Mr. Tabuns.

Mr. Peter Tabuns: Thank you.

The Chair (Mr. Shafiq Qadri): Your time officially begins now.

Mr. Peter Tabuns: Ms. Lysyk, if you just want to finish your sentence that you were putting forward when the gavel came down?

Ms. Bonnie Lysyk: Yes. The turbines were paid for on December 14, 2012—\$210 million.

Mr. Peter Tabuns: Okay. You've already made it pretty clear to us that you stand by your numbers, that you feel they're a fair and accurate assessment?

Ms. Bonnie Lysyk: Yes.

Mr. Peter Tabuns: All right. The Premier's office directed the OPA to abandon part of their contract when they gave them the letter of cancellation to say, "No, we

will make you whole." Was the province obliged in any way to do this?

Ms. Bonnie Lysyk: Again, I don't know what the reasons were. I just know that the OPA was asked to put together the letter that was issued on October 7.

Mr. Peter Tabuns: Well, I'm not asking you for the reasons. Was the province obliged to convey to TransCanada that, "You will be made whole"—legally obliged?

Ms. Bonnie Lysyk: Again, the one part of that is that I'd be speculating on what the verbal communications and promises were that led up to the creation of the letter.

Mr. Peter Tabuns: Did the contractual relationship with TCE require Ontario to make TransCanada whole when this project was cancelled? Nothing about verbal promises, just black and white to paper.

Ms. Bonnie Lysyk: I'm more comfortable speaking to that and saying that if the 24-month period had been missed, both parties would have walked away from the contract. With respect to all the activity and communications that led up to this letter, again, I'm not sure that we even have all the information to be commenting that way on it.

0950

Mr. Peter Tabuns: Okay. I'm actually not asking for all the letters and the conversations. Did the contracts oblige Ontario to keep TransCanada whole?

Ms. Bonnie Lysyk: We think there were conditions in the contract that, if relied on, would perhaps not have required the province to incur the costs associated with making TCE whole.

Mr. Peter Tabuns: So ratepayers, taxpayers, they had protections in that contract. Were those protections simply abandoned?

Ms. Bonnie Lysyk: The Ontario Power Authority and TransCanada Energy had negotiated a contract where there were protections for both sides.

Mr. Peter Tabuns: And Ontario's protections were abandoned when the letter was sent to TransCanada telling them, "This plant's cancelled."

Ms. Bonnie Lysyk: I guess from what we see, there were representations made to TransCanada Energy that culminated in a letter that placed a commitment on the Ontario Power Authority to compensate TCE for the financial value of the original contract.

Mr. Peter Tabuns: And that was outside the scope of the original contracts.

Ms. Bonnie Lysyk: I think the Ontario Power Authority took issue with the fact that this was being requested of them.

Mr. Peter Tabuns: Okay. You note that because the gas line coming into the Napanee plant is not big enough to provide enough gas, enough volume for this plant, there will have to be a substantial investment and expansion of the line's capacity. Is the full weight of that expansion cost borne on the shoulders of the Ontario Power Authority?

Ms. Bonnie Lysyk: Attached to the agreement there is the responsibility to cover capital investments associated

with the expansion of the pipeline that's needed to transport the gas to Napanee. But TransCanada PipeLines would have the opportunity to define how they want to recoup that money, and they would likely recoup it in tolls. They could increase tolls for all users of the pipeline to then recoup the capital costs that way. The \$140 million that we have estimated in here would be the portion that the Ontario Power Authority would have to pay if the tolls were increased to 50% of the current toll rate, and that's only up till the next three years.

Mr. Peter Tabuns: So the gas plant will have to pay more to help expand this line, and the other gas distributors who take gas off this line will have to pay more. I assume that the town of Napanee, the city of Kingston, Cornwall—all of those people in those towns are going to have to pay more because the cost of this pipeline expansion is going to be on their bills.

Ms. Bonnie Lysyk: I can't comment on the impact on the communities.

Mr. Peter Tabuns: But the local distributors are going to be paying more?

Ms. Bonnie Lysyk: The users of the pipeline have had discussions with TCPL and reached an agreement—a tentative agreement, not a final agreement—around what the rates could potentially be, and that's the basis behind the \$140-million estimate.

Mr. Peter Tabuns: And the local users are the local gas companies?

Ms. Bonnie Lysyk: No. Gaz Métro, Union Gas and Enbridge.

Mr. Peter Tabuns: So it's entirely possible that homeowners in Kingston will be paying more in the future for their gas because of this plant, because of this deal.

Ms. Bonnie Lysyk: Again, I'm not familiar enough to comment on that.

Mr. Peter Tabuns: Did you receive a briefing on the request-for-proposals process that led to the plant being put in place in Oakville in the first place?

Ms. Bonnie Lysyk: Well, the audit team received information from the Ontario Power Authority around that process, yes.

Mr. Peter Tabuns: And do you know why the Oakville plant was picked over other proposals? You note there were four. I think three were in Mississauga and one in Oakville.

Ms. Bonnie Lysyk: Yes. There were three in Mississauga and one in Oakville. At the end of the day, the Oakville one was selected. Although we haven't described it in detail, yes, the process was one of lowest bidder, and the lowest bidder was chosen.

Mr. Peter Tabuns: Okay. So it was the lowest bidder in this case?

I guess a question that comes to mind is, given what Oakville was doing at that point, could anyone have built a plant in Oakville? The city of Oakville was mobilizing; it mobilized six months before this contract was signed. It started putting in place a series of legal defences to

block this from happening. Would anyone else have been blocked from putting in a plant as well?

Ms. Bonnie Lysyk: That I don't know.

Mr. Peter Tabuns: Is there any good reason that TransCanada should have come out of this deal further ahead than it was when it went in in the first place?

Ms. Bonnie Lysyk: I can't go back and comment on what TransCanada Energy's thoughts were on this and OPA's thoughts were on this, and the province's. All I can comment on is that our estimate indicates that the Napanee plant will cost more than the Oakville plant did.

Mr. Peter Tabuns: And—sorry, and that TransCanada will make more money out of this than they would have?

Ms. Bonnie Lysyk: Well, we have a section on page 10, section 3.2, and it's called "Benefits to TCE." How we determined benefits to TransCanada Energy, we looked at the change in the net revenue requirement under the Napanee agreement and under the Oakville agreement, and then took into account that under the new Napanee agreement, the Ontario Power Authority assumed more risk and more costs associated with the delivery of gas and the transmission. Those before had been factored into the Oakville contract. When we did the math, at the end of the day, it indicated that there are costs that TransCanada Energy doesn't have to cover anymore that they would have covered under the Oakville deal.

Mr. Gilles Bisson: If you were in the market of hiring somebody to negotiate on your behalf a cancellation of gas plants, would you have hired this crew?

Ms. Bonnie Lysyk: I can't comment on that.

Mr. Gilles Bisson: Well, would you?

Ms. Bonnie Lysyk: You know what? I'm trying to be factual, that's—

Le Président (M. Shafiq Qaadri): Monsieur Bisson, merci pour de spéculation, mais s'il vous plaît—

Mr. Gilles Bisson: No, it's not a speculation. Chair, it is a question. Would you hire these people to negotiate on your behalf, if you were cancelling a gas plant, knowing what you know now?

Ms. Bonnie Lysyk: And again, at the end of the day, I probably would hope that I wouldn't have to pay more than the cost of the Oakville plant in this case—

Mr. Gilles Bisson: So the answer is no.

Ms. Bonnie Lysyk: I'm not going to—it's a hypothetical question. I won't answer that. I'm sorry.

Mr. Gilles Bisson: Thank you. That was my question. I got my answer. It's what I wanted.

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

Mr. Bob Delaney: Thank you, Chair. In your report on page 7, you state: "About two thirds of the net costs we have estimated have yet to be incurred, and all of the savings are estimated to be realized in the future." By the future, what you mean is over a 20-year period, correct?

Ms. Bonnie Lysyk: Correct.

Mr. Bob Delaney: Okay. In that 20-year period, would those costs be averaged in a linear sense? Would they be front-end or back-end loaded?

Ms. Bonnie Lysyk: Spread over—a lot of these would be spread over the 20-year period.

Mr. Bob Delaney: So although the arithmetical mean may not be correct in every year, it would be in approximately a straight line, right?

Ms. Bonnie Lysyk: Correct.

Mr. Bob Delaney: Okay. So your office, then, took a fairly long-term and forward-looking view when you made your costing, correct?

Ms. Bonnie Lysyk: Yes, consistent with OPA's methodology in looking at this.

Mr. Bob Delaney: Okay. It would have been a fairly complex process for your office then to arrive at these numbers. I think in your news conference on Tuesday, you said that your findings weren't finalized until, to use your words, a week and a half ago, correct?

Ms. Bonnie Lysyk: The finalization of the draft report wasn't completed till a week and a half before.

Mr. Bob Delaney: You also cautioned that there is considerable uncertainty when dealing with future events and that the cost estimates, and I'll use your words, "are based considerably on judgment." Can you explain to the committee why it's so difficult to pin down these estimates?

Ms. Bonnie Lysyk: Well, what you're dealing with, you're looking at the present value of future cost expenditures, so you are factoring in an interest rate assumption. We are factoring assumptions about the in-service date both of the Oakville plant and of the Napanee plant. And then, there are still, with respect to the tolls, negotiations to happen on that and things to happen to confirm what that will be at the end of the day. So we do appreciate that this is somewhat different from Mississauga. With Mississauga, there were actual costs that were involved. Two thirds of the costs here are estimates, and that's why we've been very careful in that wording, to indicate to people that we are using estimates and assumptions.

1000

Mr. Bob Delaney: Okay. So it is based on your best guess, using generally accepted accounting principles, right?

Ms. Bonnie Lysyk: I would say that it's not a guess, and I would say that it doesn't have any association with generally accepted accounting principles. It's looking at the situation and understanding what the costs would be on a go-forward basis, discounting those cash flows backwards to determine a present value, and also getting a better understanding around why some of these costs would be incurred. So we had discussions with consultants, experts, OPG, Hydro One and the distribution system, IESO.

Mr. Bob Delaney: Okay. On Tuesday, the OPA put out a statement that thanked you for your report, and they said in the statement that they stand by their estimate of \$310 million—

Ms. Bonnie Lysyk: I know.

Mr. Bob Delaney: —for the relocation cost of moving the plant from Oakville to Napanee, and that's

the same estimate that they provided to the committee more than six months ago, on April 30. In fact, in their release, they note that the difference between your estimate and theirs is largely attributable to the fact that you used different rates to put future costs and savings in today's dollars and used different in-service dates for the plants, correct?

Ms. Bonnie Lysyk: Correct.

Mr. Bob Delaney: So getting to the in-service dates in a minute, just to concentrate for a moment on these discount rates, in your report you note that the OPA used a 6% discount rate and your report used a 4% discount rate.

Ms. Bonnie Lysyk: Yes.

Mr. Bob Delaney: There does seem to be a number of arguments in favour of both discount rate ranges. For example, a Ministry of Finance report from August 2012 recommended that a 5.5% rate is the most appropriate to be used in determining anticipated streams of costs and benefits that accrue to society over time, and they would argue that 5.5% best reflects the opportunity cost of private capital and the current cost of Ontario government borrowing.

So given the various arguments, could you comment on whether a 6% discount rate is unreasonable, or do you understand the OPA's rationale for using it?

Ms. Bonnie Lysyk: Again, we think the 4% that we used is more reasonable. We started by asking OPA, "Why did you use the 6% rate?" What we found when we asked them that question is that they've used a 6% rate for evaluating their projects since 2007, and they never adjusted that for the changes in the interest rates since 2007.

In their calculation in 2007, they used the rate of return on the long-term government of Canada bonds, and at that point, when they calculated their 2007 return, it was 4.5%. All we've done here is said, "This contract and the decisions around it were firmed up around December 2012." We used the January 1, 2013, government of Canada benchmark, so we just substituted that in for the rate they were using, and we come to a lower amount which is more reflective of the current environment. Plus, our exercise is really quite simplistic: We're looking at what the present value is of future dollars, so we're just discounting future cash flows back using a reasonable long-term interest rate. There's nothing more to that. So really, what we did is we mimicked OPA's calculation but brought it more current.

Mr. Bob Delaney: Auditor, is there any reason that you couldn't provide the committee with a table showing your calculations based on a 0.5% increment between 4% and 6%?

Ms. Bonnie Lysyk: Well, you know, again, what we have in the report is what we stand by. Maybe I'm not clear what you're asking.

Mr. Bob Delaney: No, I'm not questioning what's in the report. What I'm asking is, could you apply the same methodology and give us the analysis in half per cent increments, between 4% and 6%?

Ms. Bonnie Lysyk: I could show between 4% and 6%. If you look in the report right now and you look to page 19, we've looked at that. When the OPA uses 6%, the difference between their estimate and ours—\$235 million—is mainly due to the difference in the assumption dates around the start. In terms of your question, the impact between a 4% and a 6% discount rate is \$90 million.

Mr. Bob Delaney: But the question I'm asking is, over and above what's in the report, would it be possible for you to provide the committee with the analysis that you've done at rates of 4%, 4.5%, 5%, 5.5% and 6%?

Mr. John Yakabuski: You can figure it out, Bob. If it's \$90 million, you can figure out the breakdown between the other points. It's not difficult.

Mr. Gilles Bisson: I don't understand why, though, Bob. Why?

Mr. John Yakabuski: She's busy on other projects. There are other scandals coming up. I mean, come on.

Mr. Bob Delaney: Chair, I would appreciate the response coming from only one quarter.

Ms. Bonnie Lysyk: Sure, we can do that calculation and provide it to the committee.

Mr. Bob Delaney: That's fine. That was the whole question.

Ms. Bonnie Lysyk: That's not a problem.

Mr. Bob Delaney: Chair, how am I doing on time here?

The Chair (Mr. Shafiq Qaadri): One minute, 10 seconds.

Mr. Bob Delaney: Okay. Is it possible, then, given the difference—and a fairly significant difference—between the different discount rates, in 20 years from now is it possible that either the OPA's estimate of \$310 million or something close to it could be the actual total cost of the relocation?

Ms. Bonnie Lysyk: All I can say on that is that to determine the present value of future cash flows, we used the best information we believed we had available, and that was the long-term borrowing rate. As you know, interest rates can go up, interest rates can go down, and—this is obviously what you're asking—until costs are actually incurred, you're dealing with estimates here.

Mr. Bob Delaney: So it could be your number, it could be the OPA's number, or it could be something in between.

Ms. Bonnie Lysyk: I would say to you that in calculating the estimate of the bottom line today on the cost, we feel comfortable that our estimates are the right ones.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thanks to you, Ms. Lysyk, for your testimony. We'll have you back at 1 p.m. We have a motion with Mr. Tabuns; we'll deal with that this afternoon.

Once again, I would just remind committee members respectfully that witnesses do not have to answer hypothetical or speculative questions. Interestingly enough, even if the question is rephrased, said in other languages or offered more politely, they still do not have to answer hypothetical or speculative questions.

With that, committee is now recessed till 1 p.m.

The committee recessed from 1008 to 1300.

The Chair (Mr. Shafiq Qaadri): Colleagues, the Standing Committee on Justice Policy is called officially to order. I welcome you to reconvene.

We have once again with us Ms. Bonnie Lysyk, the newly minted Auditor General of Ontario. We'll once again offer you, Ms. Lysyk, five minutes for your opening address, officially beginning now.

Ms. Bonnie Lysyk: Thank you, Mr. Chair. I just wanted to clarify a few points that were raised, either through questions or through comments, in the morning session.

One in particular dealt with the calibre and the quality of the work that was put into the report and led to question whether our work was done with an objective state of mind. I just want to say that the report that we have presented to the Legislative Assembly was done in accordance with appropriate auditing standards, as well we are comfortable that everything in our report has backup and support for the information that's being put forward to this committee. I just wanted to take that off the table, because I think there was some comment this morning that—after thinking about it, I didn't like that it was still on record that perhaps there was some question around the quality of the work, and I stand behind the work in the office and the work in the report. So I just wanted to make that point.

The second point I wanted to make is just a clarification of a couple of questions that came regarding dates. Yes, the turbine, I guess—we did confirm it this morning, but I want to say that that turbine was paid for in December 2012. And I did want to comment that in terms of September 2012, at that point the memorandum of understanding had already been agreed to and the memorandum of understanding already included estimates for turbines, as well as sunk costs. And that would have been in September 2012, so I wanted to clarify that.

The third thing I wanted to clarify is that Mr. Delaney had asked whether or not we would do some additional work. I went back and cogitated and had a discussion in the office, and the precedent of the office, when there was a request from an individual in the past, has been to say that, unfortunately, if there is something that is going to cause us additional work beyond the work that we have on our plate right now, we would not do that additional work on a member's request. However, if the committee as a whole here would pass a motion that they would want us to do something like Mr. Delaney had suggested, and that is re-estimate the figures using different discount rates, then by all means, as an office, we would do that. But I think at this point, I would like to respectfully say that we wouldn't be able to do that work for Mr. Delaney unless, of course, the committee as a whole wanted us to do that work. So I'd just like to clarify that.

I thank you for the questions, and I'm hopeful, if you've got more, that I'll be able to answer them to your satisfaction.

Mr. John Yakubuski: Thank you for that clarification. Perhaps Mr. Delaney just wants to give up his time this afternoon, then. He's come up—

The Vice-Chair (Mr. Phil McNeely): You've used your five minutes. Is that—

Ms. Bonnie Lysyk: I'm finished, yes.

The Vice-Chair (Mr. Phil McNeely): Okay. We'll now go to the official opposition. You have 20 minutes, Ms. MacLeod.

Ms. Lisa MacLeod: Merci, monsieur le Président.

Thanks again, Auditor. I just want to thank you for being here this morning and again this afternoon, and I want to, on behalf of the official opposition, congratulate you for the work that you've done. We certainly respect your numbers. We believe in your report. This has been an excruciating process for a number of people, and you brought clarity to that. On behalf of the official opposition, I'd like to apologize for the questioning by the government this morning that did question your integrity and your professionalism. It was wrong.

Mr. Bob Delaney: Chair, on a point of order: Once again, the opposition is trying to impute motive with a baseless statement that is, frankly, forbidden by the standing orders.

The Vice-Chair (Mr. Phil McNeely): I think it was out of order, but continue.

Ms. Lisa MacLeod: Thanks very much. I'll get to my questioning, and my other colleagues from the Ontario PC Party will have some questions as well.

I'd like to talk about the \$513 million that we talked about earlier this morning with the relocation to Napanee. That obviously was brought up by myself and others in question period today, and I think it's really important that it be known that that decision to relocate in that specific community had increased the cost of the cancellation to \$513 million. From what we understand, the majority of the \$513 million quoted for relocation costs is dependent on a series of variables. We know, and I think any good economist would agree, that variable costs will just increase beyond original expectations over time—certainly with this government; I think they've demonstrated that.

I'm wondering if you could, in your professional opinion, provide us with some clarity over whether or not it's possible, over the period of 20 years from now, that the cost of actually relocating to Napanee will again increase, ultimately inflating the original estimate of \$1.1 billion which is quoted in the report? In other words, given that there is some uncertainty with the variables, is it possible that that number for relocating to Napanee could increase over time?

Ms. Bonnie Lysyk: Thank you. Basically, this calculation was done at the point in time around now, using a discount rate and information on in-service dates. Could this change? This could change upward. Depending on the interest rates, it could change slightly downward. We're more apt to think that the costs here—it's possible that they may even be higher from the perspective of the tolls. There are a lot of unknowns around the tolls and

around that section of the contract. When we were doing the audit, my team raised the issue of the tolls with the OPA, and that began a discussion process that led to, I think, providing us with information that sort of said that the cap would be \$140 million. So there are some unknowns around that.

At this point, though, I'd have to say that this is our best estimate of what the cost will be.

Ms. Lisa MacLeod: Sure. But you would agree that because of the variables, this price could increase.

Ms. Bonnie Lysyk: I guess there are some unknowns in here, and there is that possibility.

Ms. Lisa MacLeod: Okay. Thank you very much.

I want to go back to this Napanee issue, because I think it's really significant for taxpayers and ratepayers to understand that by moving outside of the GTA, that has increased the cost, as you say, by \$513 million, with the possibility of extending it, even a little bit. Is it your opinion that Napanee, of all of the other choices, was not the most economical option?

Ms. Bonnie Lysyk: I'd have to say we don't have and we didn't assess the actual costs of all the other items that were being considered at the time they were negotiating, so I wouldn't be in a position to provide you with that answer.

Ms. Lisa MacLeod: During your research and during the audit, did you or any of your staff come across documentation that explains why Napanee was chosen over the other areas, particularly in the GTA or in southwestern Ontario?

Ms. Bonnie Lysyk: We know that during discussions between the OPA and TransCanada Energy, they were looking at different plant locations, so there were generalities around each of those plant locations that were being considered. As to why Napanee was chosen, the information we have is that OPA was directed to choose Napanee at the end of the day.

Ms. Lisa MacLeod: And directed by—

Ms. Bonnie Lysyk: Directed by the Minister of Energy.

Ms. Lisa MacLeod: By the Minister of Energy. At that point in time—and I think you stated earlier today that the OPA paid about \$210 million for the turbines on December 14, 2012. Is that correct?

Ms. Bonnie Lysyk: That's correct.

Ms. Lisa MacLeod: As a key player in the negotiation process, would this information have been made available, according to your research, to either the Minister of Energy or the Premier of Ontario, or that office?

Ms. Bonnie Lysyk: I guess we can't say what information they were aware of. Was it available? The information was available.

Ms. Lisa MacLeod: So yes, the information was available.

During your process in terms of your audit, were you provided with any documentation that would suggest there was notification for a variety of partners and players within the system?

1310

Ms. Bonnie Lysyk: No.

Ms. Lisa MacLeod: No?

Ms. Bonnie Lysyk: No.

Ms. Lisa MacLeod: Was anything in your research, in your audit and in your study made available to you that indicates the OPA's misgivings about the decision to go to Napanee?

Ms. Bonnie Lysyk: On page 17 of the report, there is a direct quote there that indicates that: "The OPA did not think that Napanee was the optimal location because it would result in higher costs to deliver gas from the Sarnia area to Napanee and to transmit the electricity to the southwest GTA, where the power is needed."

Ms. Lisa MacLeod: Right. I appreciate you reading that into the record. I guess my follow-up is this: Given that it is now in Napanee, and you indicate in your report that some ratepayers are going to see an increase of up to 50% as a result of the toll increases, can you explain the geographic location in which this increase will take place?

Ms. Bonnie Lysyk: Okay. The pipeline goes from Sarnia to Parkway to Quebec, I guess. There is a small piece of the pipeline around Parkway that is the pipeline section that is mentioned in the agreement between the OPA and TransCanada Energy, and that's the section that requires a capacity investment.

Ms. Lisa MacLeod: And it is those ratepayers who are going to be seeing an additional charge as a result of this decision?

Ms. Bonnie Lysyk: In terms of the cost, it would be Ontario ratepayers. I can't speak to how that cost will be allocated along all of TCPL's lines or how they will allocate it on tolls so that the impact would be spread between, let's say, Union Gas and TCPL.

Ms. Lisa MacLeod: I have one final question, and I know my colleague Mr. Fedeli will want to ask you—throughout this process, we obviously have an OPP investigation ongoing; the anti-rackets squad is looking into this. The Information and Privacy Commissioner has indicated that her work had been obstructed, or that there were obstacles placed in her way. There were emails pertaining to what may or may not have occurred in a conversation with our very own Speaker.

We have had to deal with being told that there weren't documents, and then getting document dumps. We feel, obviously, that over the past two years, while we tried to get the information to gain the true cost and to understand when Premier McGuinty and Premier Wynne would have known about these true costs, there have been many obstacles put in our way. I would like to ask you this, with the greatest of respect: I'm wondering if, in any instance during this process of auditing or writing your report, you were disrupted at all by any missing or destroyed documentation?

Ms. Bonnie Lysyk: No.

Ms. Lisa MacLeod: Okay. Thank you. Vic?

The Chair (Mr. Shafiq Qadri): Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, and welcome back this afternoon. I basically have three questions for you today.

Number one: Auditor, how much power will the taxpayers of Ontario receive? How much power is generated from this \$1.1 billion that has been spent?

Ms. Bonnie Lysyk: You're talking about the Napanee plant? The Napanee plant, I believe, is a 900-megawatt plant. I think the intent—

Mr. Victor Fedeli: That's a new contract?

Ms. Bonnie Lysyk: That is the new contract.

Mr. Victor Fedeli: I'm talking about the \$1.1 billion that was spent to cancel. How much power will we generate from that cancellation fee?

Ms. Bonnie Lysyk: How much power—

Mr. Victor Fedeli: It's a rhetorical question. You know that the answer is zero.

Ms. Bonnie Lysyk: Yes, I know. I guess this is cost that is embedded in the cost to build Napanee.

Mr. Victor Fedeli: So \$1.1 billion is the cancellation cost and the relocation cost.

Ms. Bonnie Lysyk: And then I believe it's important to take into account the estimated future savings, which really brings it down to \$675 million.

Mr. Victor Fedeli: Precisely. And how much power do we get for that \$675 million?

Ms. Bonnie Lysyk: Well, these costs, again, would be added into the Napanee plant, so it would be an additional charge to the Napanee plant.

Mr. Victor Fedeli: Okay. Do we get any power from the \$675 million? You can say it; it's okay.

Ms. Bonnie Lysyk: I guessed where we were going on this. The Napanee plant has a cost that is higher than the Oakville plant, and therefore, you're having to pay this.

Mr. Victor Fedeli: I think it's safe to assume that the \$675 million for cancellation and relocation—we don't get any power from that. The power will come from the future 900-megawatt plant that will be paid for separately and built separately as well.

Ms. Bonnie Lysyk: The Napanee plant will be the plant that these costs are allocated toward.

Mr. Victor Fedeli: Thank you. I handed out a document—

Mr. John Yakabuski: It gets worse?

Mr. Victor Fedeli: Yes, it is pretty bad, by the way—all that money, John, and we get no power for it.

The Chair (Mr. Shafiq Qadri): Mr. Yakabuski, at least don't heckle your own member.

Mr. Victor Fedeli: I am handing out a document; the Clerk has handed out a document. For the record and for the members, I want it noted that this document came from the May 14 OPA non-confidential document file. I want that noted, because there is a number in this.

It says, down at the bottom—it has to do with the HH NRR, the Halton Hills net revenue requirement. At the moment, we are paying Halton Hills, also owned by TransCanada, X amount—it doesn't show the amount here. We're paying them X amount for their net revenue requirement.

I can say that on the record, we were given somewhere around—when I asked the OPA—not specifically about

this one—what is the average NRR that we’re paying, it’s somewhere around \$11,000, \$12,000, \$13,000—if we all remember correctly my asking that, and it is on the record somewhere. So we know the quantum that we’re talking about.

This is from Michael Killeavy of the Ontario Power Authority, and it’s to Deborah Langelaan. This is about two weeks before the MOU was signed.

He says, “Deb, I did an analysis of the proposal to increase HH NRR...” So they have a proposal to increase how much they were going to pay TransCanada at their Halton Hills facility; nothing to do with the TransCanada facility. “Can you please review it ... to see if you agree with the analysis?”

“I have made a simplifying assumption of indexing ... cash flows,” and he goes on and on and on.

She answers back: “Michael: The way I read paragraph 12 of the OGS settlement proposal”—that settlement proposal is the Oakville generating station. She is saying that the way she reads paragraph 12 of the Oakville generating station settlement proposal is that Halton Hills, an unrelated gas plant also owned by TransCanada, would have their NRR increased “commencing Jan. 1/16, by the entire OGS NRR of \$17,277 adjusted for CPI... Is that the way you interpret it?”

At one point in time, somebody was negotiating to give TransCanada, by my calculations, about a \$250-million kiss.

I have absolutely no idea of the answer to this. This is only one page out of the 110,000 non-confidential documents that we have. There’s only one page. Did this go through? We saw 10 side deals in Mississauga. Is this a side deal?

Ms. Bonnie Lysyk: On page 16 of the report, under section 4.2.4, it mentions, “On September 12, 2012 (the date that the OPA and TCE were required to submit settlement offers to an arbitrator), the parties agreed to one more attempt to agree on another plant.”

There were a number of things that TransCanada Energy and the Ontario Power Authority were discussing, leading up to the contract for Napanee being put together—

Mr. Victor Fedeli: But this isn’t another plant. This is already a plant that has been running in Halton Hills.

Ms. Bonnie Lysyk: As far as we know on this one, the NRR did not change.

Mr. Victor Fedeli: You don’t believe the NRR changed. Is there any way to verify that? I’ll be honest: Our trail ran cold, but we know that, obviously, they were negotiating.

Ms. Bonnie Lysyk: I would think you’d be in a position to confirm it with OPA, because they do manage the relationship, so they can confirm whether this went or did not go through. In terms of our understanding, the NRR has not changed at this point.

Mr. Victor Fedeli: At Halton? Well, it’s not supposed to change until January 2016.

Ms. Bonnie Lysyk: For the period—I think you have here for the period. So it would have changed earlier.

1320

Mr. Victor Fedeli: It would have been adjusted for CPI anyway, wouldn’t it?

Ms. Bonnie Lysyk: They usually all have adjustments for CPI in these types of agreements, but I would say—

Mr. Victor Fedeli: That’s not the part I’m concerned with, then, the 2013-16; it’s the 2016.

Ms. Bonnie Lysyk: All I can say at this point in time is we understand that this has not increased, that this did not go through, but again, if the committee as a whole wants a confirmation of it, my suggestion is that’s a good question for Ontario Power Authority.

Mr. Victor Fedeli: Or we may be asking you to finalize that, if there is indeed a motion, because out of 110,000 pages, there’s only one that—and I’ll be perfectly blunt: I think it slipped through the OPA that we got this one. I’ll be very firm in saying that, because they would never allow numbers like that to be out in the public. It’s about \$250 million, according to my math, so I’ll be very eager. I’m not being accusatory at all. I just don’t—the trail went cold.

Ms. Bonnie Lysyk: I’m just saying one more time, we have confirmed that it hasn’t gone through or that they don’t plan to make it go through at this point in time, so—

Mr. Victor Fedeli: Is it in arbitration right now? Is it being studied? Is it still being considered, and at the moment it’s not planned to?

Ms. Bonnie Lysyk: Those questions are beyond—

Mr. Victor Fedeli: Okay. And the only reason I push, Auditor, is because we found others—certainly not you by any stretch of the imagination, but others who have sat in that chair—if we don’t ask and drill down specifically, they tell us one thing, but even they know that that’s not the full truth, that there’s really a real answer back there. If they give us a couple of wiggle words—and I’m not in any way suggesting this is coming from you; I’m talking about others—they give us a wiggle word that says, “Well, that’s not in the plans today.” That doesn’t answer the question from them, because that also could mean, “But we’re planning to do it tomorrow, and we’re just not going to tell you about it.” So that’s what we’ve learned from them.

Ms. Bonnie Lysyk: Yes. All I can say is, at this point in time, our understanding is that this is not going to go through, but we have not done a full-scale review of the contract.

Mr. Victor Fedeli: Okay. So I’m going to take your advice and talk to the OPA about that when they’re back here.

In the remaining two minutes, then, I just want to ask you a little bit more about page 8 and the \$140 million. So the way we see it, TransCanada was driving the bus here because they were told, number one, “We’ll make you whole.” The OPA was told by the government, by the Premier’s office, “You’re to make TransCanada whole.” That set this whole sad billion dollars in motion.

But then, for whatever reason—we’ll get people back here again in the near future, I’m sure—the energy

minister made the decision to move to Napanee. But in your own document, it says here on page 8, the fourth line:

“There is currently no pipeline path that would be a practical alternative to this route. This section does not currently have the capacity to transport the amount of gas needed to service the Napanee plant. Accordingly ... through increased toll charges, which get passed on to electricity ratepayers,” that new pipe will have to be installed.

So, basically, they went to Napanee knowing that the capacity wasn't there. Incidentally, had it stayed in the Oakville area, TransCanada would have had to buy gas from one of their competitors, Enbridge. By going to Napanee specifically, they don't have to buy gas any further from their competitor; they get to buy it from their sister company, TransCanada, who supply the gas. That's an awful big quid pro quo, to give the company a gift, moving to Napanee when the pipeline there did not, in your own words here, “have the capacity to transport.” As a result, you feel the price could go up \$140 million because there is an application going in to the National Energy Board to increase tolls by 50%. Am I pretty close on all of this?

Ms. Bonnie Lysyk: On page 21, in the left-hand column, we explain the circumstances leading up to the \$140 million.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Fedeli. Mr. Tabuns, the floor passes to you.

Mr. Peter Tabuns: Ms. Lysyk, could you just finish your statement there about the circumstances on the gas supply?

Ms. Bonnie Lysyk: Yes. On page 21, in the first column, “Potential increase in gas delivery and management costs,” we're explaining sort of the context of what led us to the \$140-million quantification. So in September 2013, the gas distributors agreed on a tolling framework—it's a draft document—with TCPL to recover the cost of its additional investment requirements. So under this framework, the tolls could increase up to 50% in the first three years.

What we did is, to be conservative in terms of erring on the upside, we've got the 50% in this because it only relates to three years. Beyond three years, we don't know. Again, there's a negotiation process.

In terms of the path, that is the only path right now that's available, because of the type of flow into the Napanee plant that's required. If they change the path, which they might do in the future, that's a negotiation yet between OPA and TCPL that has to take place. It's part of their gas management plan discussions.

Mr. Peter Tabuns: If the OPA is paying the gas delivery for gas coming through TransCanada PipeLines to a TransCanada power plant, is it fair to say that TransCanada Enterprises is double-dipping here?

Ms. Bonnie Lysyk: I can't comment on that comment.

Mr. Victor Fedeli: I think it's triple-dipping, Peter.

Mr. Peter Tabuns: Well, unfortunately, I'm not questioning you, Vic, but that was a good answer.

I assume that it may be fair to say that TransCanada is now making money on the gas it supplies through its lines, which it wouldn't have done with the original agreement. Is that correct?

Ms. Bonnie Lysyk: Under the Oakville agreement, you're correct in suggesting that TCPL would not have handled the gas going into the plant. In this case, they would be. This is a pathway that's identified at this point in time.

Mr. Peter Tabuns: Why did the OPA take on the gas delivery costs?

Ms. Bonnie Lysyk: I'd be speculating. At the end of the day, they did. I think that is a great question for the OPA. I think they didn't have that responsibility under the Oakville contract; they do under the Napanee. But they also have taken on some of that responsibility under other power plants that they've engaged with.

During the negotiation process, when they lowered the NRR calculation, they did factor some of the costs in, in lowering their NRR. They took the costs, but they were then going to be paying a lower NRR for some of those costs.

Mr. Peter Tabuns: Do you know at what point in the negotiations this arrangement was made?

Ms. Bonnie Lysyk: With respect to the gas?

Mr. Peter Tabuns: Yes.

Ms. Bonnie Lysyk: No, I don't.

Mr. Peter Tabuns: Okay. You said this morning that every time the government took an action, it favoured TransCanada.

Ms. Bonnie Lysyk: Sorry?

Mr. Peter Tabuns: You said this morning that every time the government took an action with regard to this file, it favoured TransCanada. Can you outline those instances?

Ms. Bonnie Lysyk: “It favoured”—no. What I'm saying is that, at the end of the day, TransCanada Energy, in our view, based on the information that we have here in the report—we see it having some benefit from the negotiation as we've laid out.

At the end of the day, I think we've quantified the estimated benefit to TCE of approximately \$225 million, based on the information that we've been provided by the Ontario Power Authority.

Mr. Peter Tabuns: But if we go back, then, when the cancellation notice was given, TCE was given pretty much all they wanted in October 2010. That would be one place where the government had a decision to make, and its decision was in favour of TransCanada, correct?

Ms. Bonnie Lysyk: I guess when the letter was provided to TransCanada on October 7, and when the arbitration framework was drafted, both those two documents reflect terms that appear to favour TransCanada Energy over the OPA's position on issues.

Mr. Peter Tabuns: And then again, when the arbitration agreement was made, two lines of defence for the public were set aside. One was the protection against recovery of profits, and the other was any defence against claim, because this plant was facing huge difficulties and

might not have gone ahead. Are those two other instances where the government made decisions that favoured TransCanada?

Ms. Bonnie Lysyk: I would say, in terms of the negotiations, at the end of the day, they ended up with the additional cost estimate of \$675 million because of the decisions leading up to this.

1330

Mr. Peter Tabuns: Who made those decisions? Was it the OPA or the government of Ontario?

Ms. Bonnie Lysyk: In terms of the addendum to the request for proposal, that would have been OPA. In terms of the letter being provided to TCE, that would have been the direction they received from the Premier's office. In terms of the selection of the plant, from what we understand, that would have been direction from the minister.

Mr. Peter Tabuns: Do you know if the OPA was told it had to put in the gas demand and management charges prior to the final agreement?

Ms. Bonnie Lysyk: No.

Mr. Peter Tabuns: Could the arbitration framework have been put into place between the OPA and TransCanada without cabinet approval?

Ms. Bonnie Lysyk: That, I think, is a question for Ontario Power Authority. I can't guess where the authority lied around that time.

Mr. Peter Tabuns: Did you ask any questions about that when you did this audit?

Ms. Bonnie Lysyk: Could you say around what again?

Mr. Peter Tabuns: Did you question the OPA about whether or not they had to have the government of Ontario signing off on this before they went ahead with arbitration?

Ms. Bonnie Lysyk: On page 16, if we go to the second column, the second paragraph: "Facing this risk of litigation, the government asked the chief executive officer (CEO) of Infrastructure Ontario in June 2011 to find alternative projects acceptable to both sides. In case this was not successful, the CEO was also asked to establish a framework for arbitrating the amount of damages to be paid to TCE."

At that point, the government was involved with having the CEO of Infrastructure Ontario enter into this process.

Mr. Peter Tabuns: But you can't tell me whether OPA had to come back to cabinet for approval to do an arbitration agreement?

Ms. Bonnie Lysyk: We don't know if there was a cabinet approval required. We know that Infrastructure Ontario had the authority to negotiate, but we don't know whether or not it required cabinet approval at the end of the day.

Mr. Peter Tabuns: I'll preface this question.

When your predecessor was asked about the Mississauga plant, he said that, effectively, we paid for two power plants and got one.

How many power plants did we pay for in this instance and how many did we wind up with?

Ms. Bonnie Lysyk: One and a half.

Mr. Peter Tabuns: Okay. The turbines going into the Napanee plant: Can you tell us about their specifications and their suitability for this plant?

Ms. Bonnie Lysyk: The turbines that TransCanada Energy were originally having manufactured were designed for the Oakville plant—specific qualifications and design as to what would be needed in that plant. When TransCanada Energy and OPA were negotiating the Kitchener-Waterloo option, they signed a memorandum of understanding, and at that time the Ontario Power Authority requested TransCanada Energy to have those turbines modified so that they would be able to be used in the potential plant going into Kitchener-Waterloo, which would have been a peaker plant. After that happened, there wasn't, obviously, a deal reached on Kitchener-Waterloo, but the turbine issue was still there.

The turbines that were modified for Kitchener-Waterloo will still be the turbines used in Napanee, but those turbines, because of that modification, are less efficient than if those turbines had been specifically designed for the Napanee plant.

On page 21, at the bottom, and it goes to the top of 22, we do highlight that, at the end of the day, the additional costs around those turbines, because of the modification and the efficiency impact, are about \$70 million. So \$36 million of it was for modifications, and an additional \$35 million would be incurred over the life of the contract because it requires more—there will be a higher fuel requirement associated with the modified turbines.

Mr. Peter Tabuns: It's useful to have that annual number, which is a lot of money. By what percentage was the efficiency of the turbines reduced?

Ms. Bonnie Lysyk: It's an OPA estimate, but unfortunately we don't have that percentage with us.

Mr. Peter Tabuns: Okay. Then we can track that down.

I assume that you've had a long history doing audit work for governments?

Ms. Bonnie Lysyk: Yes.

Mr. Peter Tabuns: Have you seen \$1 billion blown out like this in your previous assignments?

Ms. Bonnie Lysyk: Every audit's different. Some involve money, some involve issues beyond money, and there's a significant impact from those as well. I would say this is a lot of money, and I'd leave it at that.

Mr. Peter Tabuns: Would you say it's one of the larger or largest ones you've seen in your career?

Ms. Bonnie Lysyk: Yes, I would say that in terms of the information that we have and the report on the additional costs above and beyond what appears to have been needed for this process, it's pretty high.

Mr. Peter Tabuns: You've worked previously for Manitoba Hydro?

Ms. Bonnie Lysyk: Correct.

Mr. Peter Tabuns: Did they ever have blowouts at this level in terms of investment for power?

Ms. Bonnie Lysyk: It was many years ago. I can't remember what different transactions were. I was privy to some but not to all.

Mr. Peter Tabuns: There were none that were big enough that made it onto the public radar like this?

Ms. Bonnie Lysyk: I can't recall any big bills in Manitoba that ended up costing ratepayers significant dollars.

Mr. Peter Tabuns: Okay. You've looked at the siting process. You've looked at the difficulties with siting this plant in Oakville. Was this a good process for Ontario to engage in?

Ms. Bonnie Lysyk: Again, I can't comment on whether the process was good or bad. I guess I can say that, in our view, when there was strong opposition to the plant, it did make us question why that would lead into the signing of a contract.

Mr. Peter Tabuns: Was it a risky process for the people of Ontario?

Ms. Bonnie Lysyk: Risky? Risky in what regard?

Mr. Peter Tabuns: In that it was unpredictable as to what the outcome would be.

Ms. Bonnie Lysyk: Well, I think that any time you sign a contract, you take on some risk. I think the fact that there was a community that had expressed considerable discontent around this is a risk factor.

Mr. Peter Tabuns: Did the contract with TransCanada intend to transfer risk to TransCanada or keep it with the public?

Ms. Bonnie Lysyk: Are you speaking to Oakville or—

Mr. Peter Tabuns: Yes.

Ms. Bonnie Lysyk: Oakville? I guess at the end of day, I would comment that the Oakville contract was tendered and the lowest bidder was chosen. So from that perspective, we didn't identify any concerns around that. I think at the end of the day, when you look at the whole transaction in terms of Oakville to Napanee, there is more risk associated with taking on gas distribution costs for the Napanee plant. So there is some risk that we see that was transferred from TransCanada Energy over to the Ontario Power Authority because of that transaction.

Mr. Peter Tabuns: When Mr. Ben Chin was testifying here recently, he said one of the beauties of these private contracts is that the risks get transferred to the private contractor, and the public is insulated. Were we insulated?

1340

Ms. Bonnie Lysyk: Were we insulated? When a contract is written—and it was written for Oakville; there were provisions in the contract, both the force majeure, discriminatory action and the requirement for TransCanada Energy to obtain the necessary permits and approvals. One would assume that those were protections for the Ontario Power Authority that would then protect ratepayers, because there were appropriate protections built into the contract.

Mr. Peter Tabuns: So, in fact, risk was supposed to be transferred to the private company. The contracts were structured to put the risk on their shoulders. But in the end, the government of Ontario took back all the risk.

Ms. Bonnie Lysyk: The contracts put the requirement on TransCanada Energy to obtain the necessary approvals before they could start construction. They did have the risk, at the time the contract was signed, to ensure that they obtained the necessary approvals before the plant could be built.

Mr. Peter Tabuns: Do you know how they convinced the Premier of the day to take back that risk and put it on our shoulders?

Ms. Bonnie Lysyk: No, I can't comment on that.

Mr. Peter Tabuns: All right. If Napanee was a location that the OPA didn't want to use because it was too far from the southwest GTA, what was their preference?

Ms. Bonnie Lysyk: Their preference was the Kitchener-Waterloo-Cambridge option.

Mr. Peter Tabuns: Which would have been significantly less costly all around, I gather.

Ms. Bonnie Lysyk: Less costly, and it was suggested, I think, to be a peaker plant, and the megawatts that would be produced from the plant were less as well.

Mr. Peter Tabuns: Was there any community consultation with the people of Napanee before this plant was sited?

Ms. Bonnie Lysyk: I guess we know that—well, what we were told is that there was already an environment that was accepting of having a plant in it.

Interjection.

Ms. Bonnie Lysyk: I've just been reminded that the audit team met with the officials from Napanee to confirm that they were accepting of having a plant built in their community, and they were.

Mr. Peter Tabuns: Okay. How much time do I have left?

The Chair (Mr. Shafiq Qaadri): One and a half minutes.

Mr. Peter Tabuns: I think I'll pass on the one and a half minutes.

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

Mr. Bob Delaney: Welcome back, Auditor. I'd like to talk to you a little bit about the negotiation process.

In your report, you say that the government appeared to tie its own hands by committing to keep TransCanada whole. We've learned through testimony at the committee that it was actually TransCanada that used that term and not staff in the former Premier's office.

When we asked Chris Breen, who represented TransCanada Energy, about the term "made whole," he responded, "This was put forward by TransCanada.... 'Our idea of being kept whole is just that if you don't want us to build there—we're a contractor. Just send us to another site. We'll build on the other site.'"

When we asked staff from the former Premier's office whether they agreed to keep TransCanada whole, they said no.

Did you interview any members from the former Premier's staff as part of your report?

Ms. Bonnie Lysyk: No. There was no interviewing performed by the auditors—our office—of the staff of

the Premier's office. The information that we have around this is from discussions at the OPA.

Mr. Bob Delaney: Thank you. Chris Breen from TCE and these former staff also testified that they did not negotiate directly about the cancellation.

Chris Breen told us, "Negotiating? I think what they were—certainly not negotiating in the sense of fine-detail dollars and cents. I think what they were saying to us was quite clearly that this plant is not likely to move ahead on the site that you've chosen."

Sean Mullin, one of the Premier's former staff, testified, "We were not authorized to, we had no intention to, and we did not engage in" any negotiation.

OPA Chair Jim Hinds testified, "I did not see evidence of close engagement between the Premier's office staff ... and TransCanada.

"My take-away from that, as Chair of the OPA board, was probably that TransCanada was playing a divide-and-conquer strategy at that ... point in time: If they heard something from the OPA that they didn't like, that they were probably pretending or bluffing a bit."

The lessons to be learned indicate why the Premier announced on Tuesday that she has asked the secretary of cabinet to create new procedures limiting political staff involvement in commercial third party transactions.

Based on your report and your findings, what would you think of the Premier's decision on limiting staff participation?

Ms. Bonnie Lysyk: In this report, obviously, you see that we didn't put recommendations. But if we had put a recommendation forward, I think that is a good one.

Mr. Bob Delaney: So it would be a step forward, in terms of lessons learned from this particular experience, for the Premier's staff to implement new procedures making very clear what your roles are and what your roles are not.

Ms. Bonnie Lysyk: I think so. I think what we saw is that it created a lot of confusion in Ontario Power Authority. Yes, it would add clarity.

Mr. Bob Delaney: Okay. The prevailing advice from experts when the decision was made not to move forward with the Oakville plant was that it was much better to renegotiate on an alternative project than to end up in litigation. The consensus was that the costs would be much, much greater to litigate than to arrive at a settlement, which is why the OPA and the province worked as hard as they did to negotiate in good faith on an alternative project.

These sentiments were expressed by multiple witnesses who sat where you are at the committee. Halyna Perun, who is the director of legal services at the Ministry of Energy, testified that, had the decision been made to cancel the contract, as opposed to renegotiating, "TransCanada would have been in a position to sue for breach of contract because there was no right to terminate in this particular instance."

David Lindsay, the former Deputy Minister of Energy, stated, "Paying costs and getting no electricity would not be a very good business decision. So try to avoid litiga-

tion was the strategy and get maximum electrons for minimum cost was what we in the OPA were trying to do."

John Kelly from the Attorney General's office testified to us, "I'm fairly satisfied there would have been litigation," referring to if the government and the OPA hadn't negotiated with TCE on an alternative plant.

Mr. Kelly also said—

Mr. John Yakabuski: Point of order.

Mr. Bob Delaney: It's not a point of order.

Mr. John Yakabuski: Point of order, Chair.

Mr. Bob Delaney: Mr. Kelly also said—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Yes, Mr. Yakabuski?

Mr. John Yakabuski: Mr. Delaney seems to want to rehash a lot of testimony from other people, out of context. If he is challenging the findings of the auditor in her report, why doesn't he just state that? He keeps coming back to contradictory statements—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. I'm sure he'll consider that advice.

Mr. Bob Delaney: Thank you, Chair.

Going back to Mr. Kelly from the Attorney General's office, he said, "In my experience, after 40 years of litigating, if you can avoid litigation, you should. It's a process that's fraught with risk."

Under these circumstances, perhaps the only way for the province to be certain to avoid litigation was either to reach a settlement on damages or to renegotiate for a new plant with TCE, to find a new project. Would that be congruent with your findings?

Ms. Bonnie Lysyk: I think I'm more basic when I say that if somebody has, under their contract, a requirement to obtain permits and they don't fulfill it—when we looked at this, we would think that that in itself is a reason to say, before we do anything and make a decision to commit, in a letter, additional funds towards, let's say in this case, TransCanada Energy—we would think about what our actions should be so that we minimize it, before we put our commitment in a letter.

I've heard that people maybe weren't sure what was in the contract, and what they could have relied on or what they didn't rely on. But at the end of the day, who didn't meet the initial terms of the contract? That was TransCanada Energy, because they weren't able to get the permits. So whatever happened after that was a decision as to—you're right—whether they decided to go and take legal action or whether they decided to do a settlement.

1350

All we've done here is, at the end of the day, we looked at those decisions and we outlined what happened and we've quantified the impact of those decisions. At the end of the day, they chose a course of action, and I'm not disputing or questioning—I don't live in their shoes. What we have in this report is an estimate of the impact of the decisions that took place from the point of signing that contract to the Napanee contract.

Mr. Bob Delaney: Right. And your report does acknowledge that there would be quite a bit of uncertainty

around where a court might land on these particular questions?

Ms. Bonnie Lysyk: I think actions that people took impacted their options, and that's kind of what we laid out.

Mr. Bob Delaney: All right. To come back to the report, your estimate for the relocation cost is \$675 million, and you also state there could be an increase of as much as \$140 million in tolling related to the delivery of gas. I've heard others combine the two figures and allege that the total cost is \$815 million, which would make the cost of cancelling both Mississauga and Oakville \$1.1 billion, but that's not what your report says. Why didn't you include the \$140 million in that final cost?

Ms. Bonnie Lysyk: I want to clarify, too, on the question you just asked me: The legal counsel for OPA said that if we had let the contract run its course and TransCanada was unable to complete the plant for several years because of permitting issues etc., we could have terminated the contract because of the force majeure clause. That's an important one to keep in mind.

In terms of the settlement and why we didn't add the \$140 million, we didn't add the \$140 million in because there is a lot of uncertainty around that figure. It could be significantly higher; it could be within the range of zero to \$140 million. We felt more comfortable that \$675 million is our best estimate, but we thought this item of tolls hadn't been brought to the attention of the members of the assembly, and that's why we included it in here, to bring to your attention that it's a factor to consider on a go-forward basis.

Mr. Bob Delaney: So, then, it would be accurate to call the \$140 million an estimate, but you can't say whether it's certain at this time?

Ms. Bonnie Lysyk: I think we can say, based on the documentation that we received from OPA that is from TransCanada Energy, that this is a decent estimate in terms of the tolls, but not one that we wanted to add to the \$675 million, because the items in the \$675 million are slightly more definitive.

Mr. Bob Delaney: Yes. That's correct, because any increase in tolls would require the approval of the National Energy Board.

Ms. Bonnie Lysyk: And we have that in our report as well.

Mr. Bob Delaney: Right. Okay. Hence the reason you kept those two totals separate.

Ms. Bonnie Lysyk: Correct.

Mr. Bob Delaney: Okay. So that for the Oakville plant, the correct figure is \$675 million?

Ms. Bonnie Lysyk: For the cancellation of the Oakville plant—

Mr. Bob Delaney: Exactly. That's what I'm asking.

Ms. Bonnie Lysyk: —and the Napanee plant being started, \$675 million, yes.

Mr. Bob Delaney: Okay. Thank you.

Minister Chiarelli recently announced a series of measures that will decrease energy rates. For example, the renegotiation of the Samsung agreement takes \$3.7

billion off the rate base, and another \$1.9 billion has been taken off the rate base from the removal of the domestic content provisions. So adding those two together, that \$5.6 billion, will, on average, push energy prices down.

When you include the \$675 million into that combined pool, over the course of 20 years, will it have a material effect on power rates?

Ms. Bonnie Lysyk: I would say just the fact that it's \$675 million, it would have some impact, yes.

Mr. Bob Delaney: Right. Earlier this morning, you said that, in your opinion, those costs would be averaged more or less in a linear fashion. So we would expect that that would be about \$32 million or so per year on the power rates, right?

Ms. Bonnie Lysyk: I don't know how you've gotten your calculation, so I can't comment. It sounds like it could be—

Mr. Bob Delaney: Yes, \$675 million divided by 20.

Ms. Bonnie Lysyk: Yes, it sounds like it could be— but there are probably more aspects to this. Everything's always more complicated than it looks, right?

Mr. Bob Delaney: Right. I think what we're trying to do now here is to just get an approximate idea of a good ballpark estimate—

Interjections.

The Chair (Mr. Shafiq Qadri): Mr. Yakabuski.

Mr. Bob Delaney: I don't interrupt you when you're questioning. I'd actually like you to behave yourself when I'm questioning, okay?

Interjection.

The Chair (Mr. Shafiq Qadri): Gentlemen.

Interjection.

Mr. Bob Delaney: Oh, behave yourself.

The Chair (Mr. Shafiq Qadri): Mr. Yakabuski.

Mr. Bob Delaney: Okay. I'd like to talk to you a little bit about some of the steps that the Premier and the government have taken to be open and transparent on the file.

Immediately after being elected, the Premier struck this committee, actually, so that we could review all of the facts regarding the two relocations. She ordered a full disclosure of documents, and on February 7, she wrote to your office, to your predecessor, asking your office to undertake a review and, of course, to write this report.

When you were asked about all the steps at your press conference and at your meeting with Premier Wynne, you made a comment at the time that it was good to hear that they're taking the report seriously and they're taking some actions and changing, maybe, the way things are going to be done in the future so that a situation like this doesn't evolve.

Would you like to elaborate on the steps that have been taken by the province to be open and transparent and to ensure that we get the siting decisions right the first time?

Ms. Bonnie Lysyk: I think that's public record already, in terms of the Premier's public announcement. But my understanding of the public announcement is that there will be additional steps taken to discuss issues with

the community around the siting of plants, and I think that stems from an initiative that was undertaken to explore what needs to be done to improve the siting process.

I think the second thing is the political staff's interfacing with the crown's. The third—I can't remember what the third is. I'm sorry, but you'd have to remind me of what the third one is, if there is a third one.

Mr. Bob Delaney: No, that's fine.

Ms. Bonnie Lysyk: I think I'd like to say too that, yes, I had a meeting the day before this was tabled. I was given an indication of what steps had been taken and what steps would be taken. I think what was communicated was positive, so I'm not going to say not.

Mr. Bob Delaney: Thank you. With regard to the siting of the Oakville plant, which was chosen by the proponent, TransCanada, on the Ford lands in Oakville, based upon zoning made by the town of Oakville, you note in your report that the OPA had told prospective proponents not to be concerned about municipal opposition when they chose their site to build the plant.

You note that even though the town of Oakville had already taken measures to try to stop the project from being located on that site, the OPA issued an addendum to its requests for proposals, stating it would not consider any municipal opposition when evaluating these proposals.

In other words, TransCanada was allowed by the OPA to choose a site, despite the fact that Oakville had clearly stated it was an unwilling host.

What we've learned from the experiences in Oakville and Mississauga is that there were serious flaws in the siting process for that particular energy infrastructure. Actually, frankly, I'm very happy to see that we're making important changes.

On Tuesday, the Minister of Energy announced that our government is implementing the 18 recommendations of a recent IESO and OPA report on the best practices for energy siting, moving forward. These are changes, just to encapsulate them very quickly, that will "improve municipal engagement and public consultation, and ensure ... predictability for the energy sector."

What did you think of these particular steps—

Mr. John Yakabuski: Point of order, Chair: Could I ask what that has to do with the auditor's report, those questions over there? She's here to talk about her report and recommendations, and the scandal that we've been dealing with.

The Chair (Mr. Shafiq Qadri): We thank you for the reminder, Mr. Yakabuski.

Mr. Delaney, continue.

Mr. Bob Delaney: Thank you, Chair.

With regard to the conclusions in your report and some of the decisions arising from it from the government, what did you think of those particular steps?

Ms. Bonnie Lysyk: I think those are positive steps. I think one other area—and we had some discussion on it—this wasn't a report for recommendations.

The other thing to keep in mind is that the Oakville plant, when it was initially contracted for—there was a requirement for 900 megawatts of power. Seven, eight months later, there wasn't a requirement for power.

Another area that, down the road, we think, as an office, there would be a benefit to look at is the power planning process and why, within months, does a power plan change so that you would have—if Oakville had gone ahead, OPA would have been paying for power that wasn't needed.

1400

Mr. Bob Delaney: Okay. Chair, how am I doing on time?

The Chair (Mr. Shafiq Qadri): Three minutes.

Mr. Bob Delaney: Okay. During the summer, we heard suggestions from some quarters that the province should release a copy of your draft report, somehow alleging that the province had a copy at that time. Did anyone have a copy of a report from you in the summer?

Ms. Bonnie Lysyk: In the summer?

Interjection.

Ms. Bonnie Lysyk: The first draft—again, this was before I stepped into the office. On August 23, the first draft went to the Ontario Power Authority only.

Mr. Bob Delaney: Okay. In other words, no one in the government had a copy of your report at that time.

Interjection.

Ms. Bonnie Lysyk: The process in the office is that when there is an audit, it is cleared with the direct subject of the audit. The only group that had a copy of the audit draft report was the Ontario Power Authority.

Mr. Bob Delaney: Thank you. All right. There's a provision in the Auditor General Act that prohibits the disclosure of your office's working papers.

Ms. Bonnie Lysyk: That's correct.

Mr. Bob Delaney: Section 19 says: "Audit working papers of the Office of the Auditor General shall not be laid before the assembly or any committee of the assembly."

Could you comment, just in the last few minutes, on why it's important to protect the integrity of these working papers?

Ms. Bonnie Lysyk: It is important. Any time we are working with any entity in the public sector and we are exchanging information, it's important that that information be confidential. We request it, and we support the fact that that information would be kept confidential. If it wasn't, then it would be more difficult for us to do audits. People would not feel comfortable talking with us.

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

Ms. Bonnie Lysyk: False information could go out because, at the end of the day, these are drafts, and there are a lot of changes to drafts, as everyone around the table is probably aware.

Mr. Bob Delaney: No, I understand. In July, in the middle of the by-election, our opponents opposite made an allegation that the government actually had a draft copy of your report. Could you please confirm that on July 25, your report was still incomplete and that investi-

gations and interviews were ongoing and nobody had a copy of your report?

Ms. Bonnie Lysyk: That's correct. In July, the work was still ongoing and there wasn't a draft report to provide to anybody.

Mr. Bob Delaney: Okay. Thank you, Chair. I'm done.

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

Mr. Victor Fedeli: I'm passing to Mr. Yakabuski.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski.

Mr. John Yakabuski: We'll see if Mr. Delaney keeps his word about not interrupting. I'm sure we can trust him on that.

Thank you again, Auditor, for joining us this afternoon.

You did mention that the auditor's act, or whatever we call it, prohibits someone from disclosing that information. You're probably aware, too, then of the fact that the Archives and Recordkeeping Act actually prohibits people from deleting emails when they work in the Premier's office or the minister's office or such things as that. So, apparently, just because an act prohibits something, it doesn't mean that people don't actually do it. It seems to be the practice in this government. I just wanted to make sure we had that on the record.

We're going to go back a little bit. I am saddened by the line of questioning, and I can see that the members opposite, under directions from the corner office on the second floor, I'm sure, were trying—doing everything they can to get you to agree with something that they're doing as being—

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, you're really skirting the line on attribution, imputing motives, and all the rest of it. I'd just invite you to please ask your questions—

Mr. John Yakabuski: Well, I'll do my best. But it is clear that, talking about energy plans and steps that have been taken, that have nothing to do with your report whatsoever, he was fishing desperately to get you to say something positive, which I think he succeeded at the end. But they have nothing to do with the fact about this power plant, why it was cancelled and how much it cost. And the cost is—auditors: That's what they deal with; they deal with money.

We do know that on December 14, 2012, TransCanada was paid the \$210 million for those turbines. That was confirmed today and also confirmed in the House today. It would be almost inconceivable, given the gravity of this investigation—not necessarily your audit, because you hadn't been asked to do a report on Oakville at that time. But given the work that the committee is doing and has been doing, it would be almost inconceivable to believe that the people who are going to be politically affected by this would not have been informed that, "Hey, TransCanada has been written the cheque to pay for the turbines."

We had the Premier here in April—she would have been in the middle chair—who said that to her knowledge, she had no knowledge of any costs beyond \$40

million and, in fact, they may be as low as \$33 million. What's your comment on that?

Ms. Bonnie Lysyk: You know, I can't comment, because I don't know what she was aware of.

Mr. John Yakabuski: The Ontario Power Authority knew for certain, because they paid for those turbines by that date, by December 14, 2012. The OPA had paid TransCanada for the turbines by December 14, 2012?

Ms. Bonnie Lysyk: That's correct.

Mr. John Yakabuski: Okay. I think we can leave the speculation as to whether the Premier knew for the people out in Ontario. I'm satisfied that the Premier knew.

So the additional gas tolls going to TransCanada for the upgrades to the pipeline because of the Napanee relocation—let me get this straight. I just want to make sure that the people have this straight. So the Liberal government cancelled a plant in Oakville where, according to their reasoning, it was needed to provide power to the southwest GTA. They cancelled the plant in Oakville, relocating that plant to Napanee, so that they would have to build transmission and delivery for gas to go from Sarnia to Napanee, and then further build additional hydro transmission lines to bring that very same power that they were now producing in Napanee back to the southwestern GTA. This was essentially what they did?

Ms. Bonnie Lysyk: That's correct.

Mr. John Yakabuski: That's almost insane, isn't it? I know you're not a psychologist; you're an auditor—or a psychiatrist.

But if you're supposed to be the people who are elected to safeguard and act on the behalf of the citizens of Ontario and you made a decision to take a plant that was going to be here, moved it there to bring the power back here—I'm going to leave that one for the folks to decide too.

Auditor, so we now know that there were massive costs involved for the cancellation of the plant in Oakville. Given this government's track record, and I do want to comment for a second about all of these promises they've made about—now the Minister of Energy promising that there's going to be a reduction in power? We're going to be watching for that on the hydro bills.

But a funny thing he said in the House yesterday, or in an interview, is that your power bills are going to go up as a result of the cancellation of this plant.

Mr. Victor Fedeli: It was in the Leg.

Mr. John Yakabuski: In the Leg. They're going to have to get their story straight.

But given their track record, which is pretty dismal—you've had a chance to look at these contracts now. What's the cancellation fee if they cancel the plant in Napanee? Because we never know what these guys might pull next.

Ms. Bonnie Lysyk: Okay. In the contract, there is a break fee of about \$50 million, and if the plant is cancelled, the arbitration framework that was put in place for discussions around Oakville come back to play, so that's the framework that they're negotiating under again, if the Napanee plant doesn't go through.

Mr. John Yakabuski: That brings me to another question. So we're talking hundreds of millions of dollars of cancellation costs here, much of it to the benefit of TransCanada, which you have said repeatedly—every time there was a dispute, it was resolved to the benefit of TransCanada Energy essentially. Is it possible there was an, “Okay, we're going to throw in”—which seems kind of small—“a \$50-million cancellation fee for Napanee, because we're going to be so enriched by this cancellation of the Oakville plant that we can actually make this one work.”

1410

The fees involved in the Oakville cancellation, I think, for the average person, they're just mind-blowing. They're mind-blowing, the costs of making this decision—and a decision, as you have said in your report—and I thank you for that report; this is excellent stuff—that the OPA advised against. They run to the OPA when it suits them, but when the OPA told them, “Don't move that plant to Napanee. That's a disaster. This is a financial boondoggle,” they went ahead and did it.

Just this whole mess—there's just this confusing aura around this. It's something out of a horror movie. Do you have any comments on the mess?

Ms. Bonnie Lysyk: No, I don't have any additional comments. I'd let our report just stand the way it is.

Mr. John Yakabuski: Oh, my goodness gracious.

On page 22, \$36 million more for turbines, “for the cost of the modifications as discussed in section 4.3.1”—we see in your chart the \$35 million for the additional gas for the lower efficiency, but I don't see anything for the \$36 million.

Is this accounted for somewhere, or is it not accounted for, that additional \$36 million? Are we talking about a potential additional \$36 million, or is that accounted for somewhere else?

Ms. Bonnie Lysyk: On page 8, if you go to figure 2, the \$36 million is embedded in the \$210 million in that chart.

Mr. John Yakabuski: It is embedded in the \$210 million. Thank you very much. My colleague and I were unsure about that. You know, we're actually relieved, because I didn't know what I was going to say to my grandkids if I said another \$36 million had to be added to the bill.

Ms. Lisa MacLeod: You're not old enough to have grandkids, are you?

Mr. John Yakabuski: Oh, yes. Yes.

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

Mr. John Yakabuski: How much?

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

Mr. John Yakabuski: Oh, my goodness.

Kitchener-Waterloo: They had demonstrated that there was an actual need for power in that district. In Cambridge, there were—so there were some proposals for a power plant there, and there were proposals from other proponents as well.

It's interesting that the government decided that instead of relocating this plant to the Kitchener-Waterloo

area—where there was at least a demonstrated need of power, and which then would have been much cheaper, because the transmission costs from Sarnia to Kitchener would be minuscule relative to Napanee, and the pipelines are already in place; they could have handled that—they still made the decision to move this to Napanee at an additional cost, simply for that decision of \$513 million. Is that correct?

Ms. Bonnie Lysyk: Well, I think—

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

Mr. Peter Tabuns: Ms. Lysyk, when we talk about the increase in tolling framework for the expansion of the pipeline to carry gas to the plant, you talk about the fees going up over a three-year period. Is there the potential for the fees to increase beyond that?

Ms. Bonnie Lysyk: Whenever there is a fee increase, it will still have to be approved by the National Energy Board, but there is a risk that toll fees will increase beyond that.

Mr. Peter Tabuns: And is there a potential for Union Gas—which, I gather, is involved in providing a portion of the gas—to increase their tolls as well?

Ms. Bonnie Lysyk: Yes, there is.

Mr. Peter Tabuns: Okay. Are there any other gas or pipeline providers that could increase costs for this plant?

Ms. Bonnie Lysyk: The understanding that we have of the way—at this point in time, they have outlined the way the gas would flow, it's Union Gas and TCPL.

Mr. Peter Tabuns: All right. Who gets paid to provide the replacement power that will be needed in the period when this plant is not in operation? Will TransCanada plants like Halton Hills be making extra revenue for replacement power?

Ms. Bonnie Lysyk: Yes. It depends on, I guess, the source of the power and how it's dispatched. We can't comment on source.

Mr. Peter Tabuns: So there's no one particular plant that would be providing the make-up power?

Ms. Bonnie Lysyk: No. I think it's part of the whole grid system.

Mr. Peter Tabuns: On another matter, was any justification ever given to you for the decision of the Premier's office to make TransCanada whole?

Ms. Bonnie Lysyk: No.

Mr. Gilles Bisson: Did you ask?

Ms. Bonnie Lysyk: We did not interview people from the Premier's office.

Mr. Gilles Bisson: Fair enough.

Mr. Peter Tabuns: Have you ever seen an unnecessary “make whole” agreement like this in the past?

Ms. Bonnie Lysyk: Agreements are all different. This, in itself, is just a different agreement, never mind the concept of “make whole.”

Mr. Peter Tabuns: Have you received any justification for removing the protections of the public interest from the arbitration agreement? The public would have been protected by the contract, which said that we wouldn't have to pay lost profits if this contract was can-

celled. The public was in a position to defend its interests by saying that it was unlikely that this plant would be built, given the obstacles in Oakville. Did you have any reasons provided to you for why these protections or defences were not included in the arbitration agreement?

Ms. Bonnie Lysyk: No, just that they followed the same direction as the letter of October 7, where they incorporated the profit part in the arbitration agreement.

Mr. Peter Tabuns: Actually, didn't this go beyond the October 7 letter? The October 7 letter just said, "We'll make you whole"—but in the arbitration agreement, it's not just "make whole," but abandon any defences about the real state of the project and its obstacles to construction.

Ms. Bonnie Lysyk: Yes. They took out the section that said, basically, that arbitrators weren't to bring to the table the fact that TransCanada Energy wasn't able to get the necessary permits and approvals.

Mr. Peter Tabuns: Yes, that was taken off.

Ms. Bonnie Lysyk: That was taken off the table, yes.

Mr. Peter Tabuns: One of the questions that you were asked by Mr. Delaney was about the difficulties we would have in litigation, what chances we would have had in court. You said that the actions that were taken weakened our court defences, if we had ever had to go there. Could you just elaborate on that? Let's say things broke down, there wasn't an arbitration agreement and we were taken to court. Would the fact that the Premier's office had told the OPA to say, "You'll be made whole," have weakened us in any litigation?

Ms. Bonnie Lysyk: I'm going to read the OPA lawyer's thing. If you're asking for an opinion directly from their lawyer: "If we had the contract run its course and TCE was unable to complete the plant for several years because of permitting issues, we could have terminated the contract because of the force majeure clauses."

The discrimination clause was the one that was linked to the profits, and that one, based on the wording in the contract, deals with the fact that it would need to be cancelled through a direction of the Legislative Assembly or an order in council. There had to be formality around the way the plant was cancelled for that clause to kick in. Information that we had suggested that it is possible that those could have been terms that were used, if there was the desire to go to court—to use those clauses as defence.

Mr. Peter Tabuns: The Ontario Power Authority had a legal opinion that you cited earlier, that, effectively, TransCanada Enterprises was in a situation where they were facing force majeure; they weren't going to be able to make their contract dates; the clock would have run out. Did the OPA take that opinion seriously? Was that a basis for them, arguing with the government that, "In fact, we don't have to give up these legal defences?"

Ms. Bonnie Lysyk: I think that's a very good question to ask the OPA directly. I can say that what we know is they did not think at first that it was necessary for them to include a paragraph in the October 7 letter that indicated TransCanada Energy would be entitled to their profits. I think that's a good question for the Ontario Power Authority.

1420

Mr. Peter Tabuns: Okay. Mr. Bisson, do you have any questions?

Mr. Gilles Bisson: Yes. Again, always glad to have you with us.

On page 15 of your report, second column over, second point down, you're saying, "According to documents that the Ministry of the Attorney General," etc. It goes on to say "the Oakville plant that would reflect the financial value of that plant's contract, including lost profits" is what the Premier's office more or less promised to TCE. That, obviously, was part of the problem as far as the elevated costs: factoring in the lost profits.

How much was it? I think I missed that somewhere, the lost profits. How much of the settlement cost is lost profits? Because "lost profits" is a pretty wide—

Ms. Bonnie Lysyk: We don't have what the lost profits would be—how to break it out of there, is what I'm saying, or what it would be in terms of the NRR, what was embedded in the NRR.

Mr. Gilles Bisson: Why is that?

Ms. Bonnie Lysyk: The profit component would be embedded in the NRR, and so—

Mr. Gilles Bisson: How much was the NRR again?

Ms. Bonnie Lysyk: On Oakville, it was \$17,277. Napanee was lower, \$15,200. Part of the difference between those was made up by the fact that OPA assumed the gas costs, assumed more of those additional costs, and the difference is why we have indicated here that we believe there were some benefits to TransCanada Energy.

Mr. Gilles Bisson: So if we tried to estimate what the cost is, how would we go about that—the lost profit?

Ms. Bonnie Lysyk: In my opinion, to know what that actually is for TransCanada Energy, it would be TransCanada Energy providing you with that information.

Mr. Gilles Bisson: Okay. That's something we may want to do as a committee.

On the Napanee thing—

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

Mr. Gilles Bisson: Oh. Well, very quickly, on the Napanee part of it, it's always been a bit strange to me that you would build a plant where it's the farthest away, it costs the most to build, you don't have infrastructure, gas and hydro, to move gas in and electricity out. Obviously, there were other places they could have done this. Were you ever given an explanation of why they chose the most expensive alternative?

Ms. Bonnie Lysyk: Just like we have in the report, they were asked to negotiate for that location by the minister.

Mr. Gilles Bisson: My point, though, is the minister or the Premier never gave—because you didn't ask the Premier's office; you only did the Minister of Energy's, I take it. Did the Minister of Energy ever indicate why Napanee was their chosen, preferred site?

Ms. Bonnie Lysyk: No. We're not aware of the reason behind the choice.

Mr. Gilles Bisson: But there are clearly sites that would have been a lot less expensive.

Ms. Bonnie Lysyk: I can't comment on all the sites because we didn't see 100% analysis on all of the options that are there for sites.

Mr. Gilles Bisson: But it's clear to see Napanee ended up costing us more money than it would have in Waterloo.

Ms. Bonnie Lysyk: It cost more money than Oakville—

Le Président (M. Shafiq Qaadri): Merci, monsieur Bisson. Je passe la parole au gouvernement. Monsieur Delaney?

Mr. Bob Delaney: Thank you very much, Chair: the home stretch.

I have a few questions about the potential tolling increases. When you considered the additional tolling charges that could be implemented by the National Energy Board, did anyone from the auditor's office meet with either TransCanada PipeLines or the National Energy Board?

Ms. Bonnie Lysyk: No.

Mr. Bob Delaney: Thank you. From my understanding, the investments planned for the Parkway to Vaughan pipeline are not solely the result of the Napanee site. I understand there was a settlement between TransCanada PipeLines, Enbridge, Union Gas and GMI which is completely unrelated to the Napanee gas plant. Would that be correct?

Ms. Bonnie Lysyk: In the discussion on page 21, we took that information into account when we drafted the commentary on page 21. So we were familiar with that.

Mr. Bob Delaney: In other words, the upgrades to the pipeline were planned regardless of whether the Napanee plant was built or not.

Ms. Bonnie Lysyk: What we're referring to in our write-up is that in the contract for the Napanee plant, embedded in it is the requirement for OPA to cover capital costs associated with enabling the capacity to be there on the pipeline for Napanee. Specifically embedded in the contract is the requirement that OPA cover capital investments on that pipeline.

Mr. Bob Delaney: And that, I would assume, would refer to those pro-rated investments to carry the capacity of the gas to the Napanee gas plant, right?

Ms. Bonnie Lysyk: It would refer to—yes, modifying the pipeline so that at some point it would be available to supply gas to Napanee.

Mr. Bob Delaney: Right. But OPA would not be bearing the whole cost; they would bear that portion that relates to that generating station, correct?

Ms. Bonnie Lysyk: That's correct.

Mr. Bob Delaney: That's good. That's just what I wanted to clarify.

You talked earlier about the notion of whether TCE would be able to recover lost profits and you mentioned in your report that, in 2010, the OPA had obtained a legal opinion that indicated the cancellation of the gas plant may not have triggered a reimbursement to TCE. However, the committee heard some different testimony.

For example, in a memo prepared by the Attorney General's office on this very issue before the committee, it's clear there was a high level of uncertainty over how the various clauses could be interpreted. I guess you had the benefit of having prepared your report after it was all done, so you knew what obviously didn't happen. But at the time, it was what could have happened before the arrangement was complete.

To quote a section in the memo that looks at this clause: "There is considerable uncertainty surrounding the precise scope and meaning of the phrase 'consequential damages' in contractual exemption provisions ... Under"—referring to the English Court of Appeal's approach—TCE's "claim for lost profits would almost certainly be characterized as a direct, rather than consequential loss. "The whole point of the SWGTA contract was for TCE to design and build a gas-fired electricity generation facility, which could then be operated at a profit by TCE. As a result, the loss of these anticipated profits would seem to be a natural and direct consequence of the OPA's termination of the SWGTA contract."

In the same vein, when questioned about this clause and whether TCE wouldn't have a right to profits, John Kelly from the Attorney General's office responded that "TransCanada didn't accept that position."

Jim Hinds from the OPA testified, referring to the cancellation, that if it "was done in a way that showed disregard for contractual rights, there's also ... an opportunity that we could get sued for punitive damages...."

David Lindsay said that "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 would be all the benefits they were hoping to procure...."

So although you had the luxury of writing the report after the fact, wouldn't it be fair to say that while it was going on, there was quite a bit of uncertainty around where the courts might land on this particular issue?

Ms. Bonnie Lysyk: I guess I would say that decisions were made, and at the end of the day, based on what people at the time thought they needed to do, they did. All we're reporting here is that the consequence of the decisions is that there is a \$675-million additional cost for relocating the Oakville plant into Napanee. It ended up costing more than the Oakville plant, so I guess I would say that if one litigated the Oakville plant, would it have been more than this? I'm not sure.

Mr. Bob Delaney: Which, I think, is the point that everyone who came to the committee said.

Ms. Bonnie Lysyk: Right. It would be making TCE more than whole. I guess I'd say that we looked at the impact of the decisions that were taken, and we laid out what those decisions were in light of the contractual provisions that were there. So that's pretty much what we did in terms of putting forward a report that said, "Here's the estimated cost and here's what led us to that estimated cost." But I can't go back and ask, did people make the right or wrong decisions? We're not going to comment on right or wrong decisions. We're just going to comment that the impact of the decision is this.

Mr. Bob Delaney: Okay. I'll go on, then. Some specific costing questions: What I'd like to ask you about are some of the cost estimates that might have been made at the time the decision was made to relocate the plant. I've heard criticism of the government for not knowing what the cost of cancellation or relocation would have been at the time the announcement was made, but from the vantage point of the auditor, wouldn't that have involved presupposing the outcomes of negotiation, litigation and arbitration?

Ms. Bonnie Lysyk: Well, I think, if you're asking my opinion—

Mr. Bob Delaney: Yes.

Ms. Bonnie Lysyk: —if you're negotiating, like in this case, the cancellation of a plant and the relocation to another location, there are usually a lot of calculations and data and information behind that before it leads you up to an agreement. You know, you would hope that in making the decision that was made to build a plant in Napanee that it's all supported with appropriate analysis, and usually that analysis and that work takes a lot of time. So, depending when they started getting ready for negotiations, I would have assumed there was some idea with the people who were actually involved in the detail, some information with them around the potential cost.

But whether people at higher levels had the information, I can't offer comment on that—when people received information and when they didn't.

Mr. Bob Delaney: I'm sure you're aware that all three parties in the Legislature had opposed the Oakville plant and said it should be cancelled. In fact—

Ms. Lisa MacLeod: Point of order, Chair—

The Chair (Mr. Shafiq Qadri): Ms. MacLeod on a point of order.

Ms. Lisa MacLeod: I'd just like to point out that there were two political parties that weren't in government, and my political party didn't support siting it there in the first place.

The Chair (Mr. Shafiq Qadri): Exceptionally correct—not a point of order. We thank you for the reminder.

Ms. Lisa MacLeod: I just wanted to make sure that the member knew that.

The Chair (Mr. Shafiq Qadri): And that's not a future aspiration, I presume, also. Fair enough.

Mr. Bob Delaney: Thank you, Chair.

I think what's interesting to me is that although we had asked for them in the Legislature, neither opposition party had provided us with their cost estimates for their commitments either.

In your review of the matter, have you ever discovered a cost estimate from either opposition party on how much they were willing to spend to fulfill their commitments to cancel either the Oakville or the Mississauga plant?

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

Ms. Bonnie Lysyk: That was outside of our scope.

Mr. Bob Delaney: Thank you.

Thank you, Chair. I think we're done.

The Chair (Mr. Shafiq Qadri): Thank you very much, Mr. Delaney, and to all those who participated, whether it was their turn or not, and thank you to you, Ms. Lysyk, and welcome to your first committee hearing as Auditor General of Ontario. Please give our regards to Mr. McCarter as well. Thank you very much.

Colleagues, we have a motion before the committee here—

Mr. Bob Delaney: Five-minute recess.

The Chair (Mr. Shafiq Qadri): All right. A five- to 10-minute recess.

The committee recessed from 1433 to 1446.

The Chair (Mr. Shafiq Qadri): Colleagues, welcome back to session. We have a motion. Mr. Tabuns.

Mr. Gilles Bisson: No, Monsieur Bisson.

Le Président (M. Shafiq Qadri): Monsieur Bisson; excusez-moi, mon ami.

Mr. Gilles Bisson: Not a problem. I move that the Standing Committee on Justice Policy requests from the OPA the legal opinion referenced by the Auditor General of Ontario on page 14 of her 2013 Special Report: Oakville Power Plant Cancellation Costs, and that the OPA provide the material in a searchable electronic form to the Standing Committee on Justice Policy within seven calendar days of this motion passing.

If this has been provided to the committee, the committee requests that the OPA provide the file name, page reference and date distributed to the committee for the legal opinion referenced by the Auditor General of Ontario.

The Chair (Mr. Shafiq Qadri): The motion is in order, and we'll entertain any comments. Just for the record, I let you know that that's in the middle of constituency week—so just to tell you.

Mr. Gilles Bisson: It's all right. We're all working.

The Chair (Mr. Shafiq Qadri): Fair enough. Any comments on this motion before we vote? Seeing none, those in favour of the motion? Opposed? The motion is carried.

Any further business before the committee?

Colleagues, I thank you for your indulgence. Committee is adjourned.

The committee adjourned at 1447.

CONTENTS

Thursday 10 October 2013

Members' privileges	JP-1007
Office of the Auditor General	JP-1007
Ms. Bonnie Lysyk	

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

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

Vice-Chair / Vice-Présidente

Mr. Phil McNeely (Ottawa–Orléans L)

Ms. Teresa Armstrong (London–Fanshawe ND)

Mr. Bob Delaney (Mississauga–Streetsville L)

Mr. Steven Del Duca (Vaughan L)

Mr. Frank Klees (Newmarket–Aurora PC)

Mr. Jack MacLaren (Carleton–Mississippi Mills PC)

Mr. Phil McNeely (Ottawa–Orléans L)

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

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

Mr. Jonah Schein (Davenport ND)

Substitutions / Membres remplaçants

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

Mrs. Donna H. Cansfield (Etobicoke Centre / Etobicoke-Centre L)

Mr. Victor Fedeli (Nipissing PC)

Ms. Lisa MacLeod (Nepean–Carleton PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

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

Also taking part / Autres participants et participantes

Ms. Bonnie Lysyk, Auditor General

Clerk / Greffière

Ms. Tamara Pomanski

Staff / Personnel

Ms. Karen Hindle, research officer,
Research Services

Mr. Jeff Parker, research officer,
Research Services

Mr. Peter Sibenik, Table Research Clerk,
Table Research