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Thursday 3 October 2013

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Jeudi 3 octobre 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 3 October 2013

Jeudi 3 octobre 2013

The committee met at 0831 in room 151.

MEMBERS' PRIVILEGES

MR. GREGORY VOGT

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the Standing Committee on Justice Policy to order. I invite our first presenter to please come forward, Mr. Gregory Vogt, president of Eastern Power Limited, who will be sworn in by our very able Clerk.

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

Mr. Gregory Vogt: I do.

The Chair (Mr. Shafiq Qaadri): Welcome, Mr. Vogt. Your five-minute opening address begins now.

Mr. Gregory Vogt: Thank you. I'm Gregory Vogt, president of Eastern Power. I was president, I think, in the period in question when this committee seems to be interested. Thank you for having the committee so close to my daughter AlanaSophia's school, just across the street, St. Joe's. I'm sure she'll be watching this and enjoying this as we go. I'm available for your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vogt. We'll begin with the NDP. Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Good morning, Mr. Vogt.

Mr. Gregory Vogt: Good morning, Mr. Tabuns.

Mr. Peter Tabuns: When did you first sign a contract for the two Greenfield power plants?

Mr. Gregory Vogt: That would be back in 2005, I believe.

Mr. Peter Tabuns: When you signed these contracts, had you had experience building large facilities like this or doing community consultation?

Mr. Gregory Vogt: We had had experience building facilities. The type that we proposed would have been our largest project at that time. We had never built a project to that size. Mind you, we had experience within our staff members who had built projects much larger than that.

Mr. Peter Tabuns: But your company, what was the largest project you had built previous to bidding on these?

Mr. Gregory Vogt: Thirty megawatts.

Mr. Peter Tabuns: Okay. With whom did you negotiate the contract?

Mr. Gregory Vogt: There actually wasn't a negotiation of a contract. The contract was a standard form. There was a process that was created in advance, and everybody sort of knew what the contract was. I think it was posted on the Internet. There really wasn't a negotiation, per se.

Mr. Peter Tabuns: Who did you sign the contract with? Who was the counter-party in this?

Mr. Gregory Vogt: Ultimately, it was the Ontario Power Authority, but I think at the time there was that transition where the Ontario Power Authority was being created, so the ministry was still involved. There was a transition there somewhere.

Mr. Peter Tabuns: Greenfield North didn't go forward. Why was that?

Mr. Gregory Vogt: There were two projects that we did sign. The other project, we mutually agreed with the ministry that we would not go forward with that project.

Mr. Peter Tabuns: Why on your end didn't you go forward with it?

Mr. Gregory Vogt: With the project that we did go forward with?

Mr. Peter Tabuns: No, why didn't you go forward with Greenfield North, from your end?

Mr. Gregory Vogt: There were difficulties in terms of arranging the financing.

Mr. Peter Tabuns: Okay. You were able to secure financing for Greenfield South?

Mr. Gregory Vogt: We were, yes.

Mr. Peter Tabuns: JoAnne Butler testified that the OPA didn't assess your financial backing when the company filed a proposal. What happened to that financial backing you had for Greenfield South?

Mr. Gregory Vogt: It didn't materialize the way we expected.

Mr. Peter Tabuns: What does that mean? You had been made commitments by a financial backer, and they declined to back you at a later date?

Mr. Gregory Vogt: Effectively, things changed over the course of that contract award and the signing of the contracts such that when it came time to put up performance security, some of the people that we had been counting on did not come through with what we expected.

Mr. Peter Tabuns: So by what year had the financing lapsed? If you had signed around 2004, when did your funding stop being in place?

Mr. Gregory Vogt: Are you talking about the project that did not go ahead?

Mr. Peter Tabuns: I'm talking about Greenfield South.

Mr. Gregory Vogt: Well, Greenfield South did go ahead. I'm not too sure what you mean by "it lapsed." That didn't lapse. The contract did go ahead. We did put financing in place.

Mr. Peter Tabuns: The financiers who were backing you when you put in your proposal were the same as the ones that you had when you went forward in 2011?

Mr. Gregory Vogt: No, that changed. Through the financial crisis, a lot of the banks completely revisited what they were prepared to do and what they weren't prepared to do. It was a completely different world over that process. It was many years. The permitting took a long time to put in place and things did change. Therefore, we did have different financial backers when we finally closed the financing in 2011.

Mr. Peter Tabuns: You had a signed purchase agreement with the OPA for power in 2009. It took almost two years for you to get financing. Why was there that difficulty?

Mr. Gregory Vogt: Actually, the delays in that period were permitting; they weren't really financing. We had a lot of difficulty with the city of Mississauga. Initially, we got a letter from them saying that we were zoned correctly when we bid for the project. We picked a site where the zoning was good and the city said, "Yes, you're good to go." They changed their mind on that and we had an OMB process which was quite extensive. Of course, during that process a lot of commitments that we had on financing had lapsed and we had to go back out into the market and arrange financing after that process completed.

Mr. Peter Tabuns: So things didn't come to fruition at the time you had expected them to come to fruition. Financiers simply said at some point, "It doesn't look like it's going ahead right now. We aren't going to be continuing with this financing." Is that correct?

Mr. Gregory Vogt: Often, financial backing has a time clock on it. They say, "We're good to go for this period," because they have their own business plans, and their business appetite and whatnot also changes over time. Because of the delay caused by the city of Mississauga—which was, as I said, very extensive—those financial commitments had lapsed.

Mr. Peter Tabuns: When you did get financing for the construction phase, the Auditor General reports that you were paying 14% interest, compounded quarterly, on the money you were drawing.

Mr. Gregory Vogt: That's correct.

Mr. Peter Tabuns: So about 60% a year.

Mr. Gregory Vogt: No, 14% compounded quarterly is not 60% a year. It's a little bit over 14%, but not much more. It's not 14% a quarter; it's 14% per annum, except that you calculate it each quarter. Because of that compounding, it's a little bit higher than the 14%, but not much.

Mr. Peter Tabuns: Why did this whole question of a criminal rate of interest keep intruding on discussions?

Mr. Gregory Vogt: Again, I'm not an expert in this area, but my understanding is that with the additional cancellation fees on a financing package, it's not unusual to have—if you back out of financing that you take and no longer want, it's similar to having a mortgage. If you want to get out of your mortgage ahead of time, sometimes there are cancellation fees that you have to pay. If those fees are large compared to the amount of interest you've already paid—to give you an example, if you had a mortgage on a house and you wanted to cancel it the day after you took out the mortgage, the cancellation fee may be a month's worth of interest. If you've only had the mortgage out for one day, then that fee could drive your interest rate up above 60%. That's sort of what happened there.

Mr. Peter Tabuns: And that then was the penalty on this. It amounted to approximately 60% per annum.

Mr. Gregory Vogt: I don't know whether it amounted to that, but that's where that discussion was. I think there actually was an argument that it was higher than that number, that the penalty fees amounted to a number that would equate to higher than 60% interest. The loan had not been outstanding that long.

Mr. Peter Tabuns: No, it was a very short while.

Mr. Gregory Vogt: Similar to my example of a house mortgage, if you cancel very close to the start of a loan the cancellation costs can be quite significant compared to your interest costs, putting you in a very strange position. Banks specifically try to do those sorts of things so that you don't have people walking away or cancelling mortgages shortly after they start them, because they do all the work to get into them and their opportunity to earn money is then over the term. If you're basically eliminating the term, they never get a chance to make any money. That's why these penalty fees, as you call them, are often put into lending agreements. It's not an unusual situation.

Mr. Peter Tabuns: But they're extraordinarily high. There were quite a few legal arguments, and we've seen documentation, that the Criminal Code seemed to prohibit the level of interest or penalty that you were being asked to pay.

Mr. Gregory Vogt: I don't disagree that they were high per se, but your comment that they're unusual—in almost all the financing agreements that I've seen there is some form of that, and depending on when you cancel an agreement you can be in that situation. There's often a clause put in those lending agreements that says if those fees are deemed to be interest, then it simply becomes 60% so that you're not in violation of the law because no lender wants to be in violation of the law. That was similar in this agreement. There was a similar clause that said that if it's deemed to be interest and therefore over the criminal rate, then it'll simply become the 60%, or whatever, the 59% that's allowed. I'm not too sure exactly where that limit is, but it's right there at 60% somewhere.

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Mr. Peter Tabuns: Okay. When you submitted a proposal to the Ministry of Energy for the Greenfield

South plant, what permissions did you have to secure to go forward?

Mr. Gregory Vogt: All of them. If I can broadly—

Mr. Peter Tabuns: Building permit, environmental assessment—

Mr. Gregory Vogt: The big one is the environmental screening you have to go through. You have to do an environmental screening. So you have to do a public consultation; you have to present the findings of your environmental studies back to the ministry; there's a comment period for both the public and the government; the various agencies are all canvassed—everything from NAV Canada to aboriginal groups, so a broad canvass of all the issues with all the agencies. That's the big one you do initially, and at that point you sort of touch all the governments per se, and the agencies and stakeholders. Then there are final permits—things like building permits—which tend to be more following the building code and things like that, which have to be obtained as well.

Mr. Peter Tabuns: Did you have to do a public consultation before you submitted your proposal?

Mr. Gregory Vogt: There just had to be a notification that you were going to submit a proposal on that site, which was done. That was a requirement. I think all the proponents did that.

Mr. Peter Tabuns: Did you get any public response to that notification?

Mr. Gregory Vogt: I believe we did. I don't think there was a lot, but I think we did get some public feedback.

Mr. Peter Tabuns: I assume you were given a contract.

Mr. Gregory Vogt: That's correct, in 2005.

Mr. Peter Tabuns: So once the contract had already been given, then you had to do a public consultation?

Mr. Gregory Vogt: That's correct.

Mr. Peter Tabuns: What was the object of the public consultation if you already had the contract and the project was going forward?

Mr. Gregory Vogt: Well, there wasn't a promise that the project would go forward. The contract was the opportunity to seek permits. There was no guarantee that the permits would be issued. You had to go and prove you were eligible and you could get those permits. That was the proponent's job, to go through that process, and if there was a fault found in any of that—for instance, if you were going to build something that didn't follow the building code or you were going violate some sort of environmental law or limit—then obviously you would not be able to go ahead. So it was a test to make sure you were in compliance and followed the science and the environmental laws of the province.

Mr. Peter Tabuns: Did it ever occur to you that if you had difficulty with the municipality or with the Ministry of the Environment, you could go to cabinet, you could go to the Premier's office and ask them to overturn any decision at the municipal level?

Mr. Gregory Vogt: I don't recall any such thoughts, no.

Mr. Peter Tabuns: So you assumed the whole risk of getting the necessary permissions—building permits, environmental assessment, zoning, etc.—before you went forward?

Mr. Gregory Vogt: Well, maybe you're alluding to the clause in the contract that said something about if the government changed legislation to make it impossible for you to go ahead, then there'd be some relief; they could deal with that.

Mr. Peter Tabuns: You mean the provincial government?

Mr. Gregory Vogt: Yeah. There was some clause that if they changed the laws in some way or if there was legislation that would put you at a disadvantage, they would then compensate you for that. I think they were concerned that if you—this was a contract for differences, and a contract for differences basically allows you to compete with your electricity in the market. There's a base payment that's sort of guaranteed, but if you're making good money in the market, then the payment you get from the government is reduced, but there's an opportunity to make beyond those payments.

For instance, if you're in a constrained area, in an urban area where power is needed and they need you to run because they can't get the power in there, then sometimes there's the higher local price and that higher local price is an incentive for people to site where power is needed. Therefore, let's say the government changed the rule, that there was no such thing as a constrained price. A proponent would object and say, "Look, I'm not getting my value out of the contract the way I anticipated."

Mr. Peter Tabuns: That's fine, but I just want to go back: It never occurred to you, and it was never suggested to you, that if you were having difficulty with municipal zoning, you could ask the government of Ontario to step in and override the decision?

Mr. Gregory Vogt: I don't recall such a discussion with anybody, if that's what you're asking me.

Mr. Peter Tabuns: That's fine. What public reaction did you get from the local community in Mississauga when you had your consultation?

Mr. Gregory Vogt: We had an open house. I thought that went very well. The comments that we had from the community were—and I think that's all a matter of public record, because we published our comments and whatnot. There were some people who were concerned, especially the people who were in some of the neighbourhoods where other plants, which weren't successful, had been proposed.

I remember that the Applewood people, who were many kilometres away, had a large representation, and they were particularly concerned about the plant, even though they were arguably upwind and a significant distance away. But because they'd organized against a number of other proposals, this was sort of the natural result of that.

I also recall there was a large public meeting, that initially we weren't invited to, that the local ratepayers

organized. We indicated to them, since we'd invited them to our public consultation, that we'd like to have a chance to present, and we did present. Actually, one of our project managers got a standing ovation after he presented what he was going to do in terms of building the project, and the pride that he was going to bring to Mississauga as a Mississaugan building a plant in Mississauga.

I thought the reaction was somewhat mixed. The news response from that—one of the environmental groups actually stood up and said this was a good project and was something worth doing. So, yes, I would describe it as mixed.

Mr. Peter Tabuns: And whether it was positive, mixed or negative, would those consultations have any impact on whether you went forward or not?

Mr. Gregory Vogt: It depends on what comes out of the consultation. I mean, you really have to read the consultations for what they're worth.

Mr. Peter Tabuns: And did you have to show to the OPA that you had public support, to be able to go forward?

Mr. Gregory Vogt: I don't believe there was a requirement for public support. You had to be able to get your permits. You basically had to execute according to the laws of the land. I mean, there wasn't some sort of discretionary ability to show that the community wanted you.

Mr. Peter Tabuns: Okay. In 2010, you must have noticed that the Oakville plant had been cancelled.

Mr. Gregory Vogt: Yes, we certainly heard about the cancellation of the Oakville—

Mr. Peter Tabuns: Did you think this would have any implications for your project?

Mr. Gregory Vogt: We were a little bit unsure of what it meant for our project. Cancellation of projects is never, in our opinion, a good thing. When projects like that are cancelled, it's not stability. It's hard to build a province that way.

Mr. Peter Tabuns: Did you talk to the OPA or to local politicians about this at the time?

Mr. Gregory Vogt: I can't recall. I mean, it was a long time ago.

Mr. Peter Tabuns: So in the summer of 2011, were you approached by the Ministry of Energy, the OPA, any representatives of the Liberal Party, any locally elected MPPs, prior to the announcement that the plant wasn't going to go forward, on September 24, in the middle of the election campaign?

Mr. Gregory Vogt: I'm not too sure, exactly, of your question. Were we contacted by who?

Mr. Peter Tabuns: The Ontario Power Authority, the Ministry of Energy or locally elected MPPs, in the summer of 2011, while your plant was under construction, suggesting to you that the plant might not go forward.

Mr. Gregory Vogt: I would say, generally, no. I don't recall any such meeting or conversation.

Mr. Peter Tabuns: Once the announcement was made on September 24, did you contact the Ministry of

Energy? Did you contact the Liberal Party and ask them what was going on?

Mr. Gregory Vogt: I wasn't in the country at the time, so, no, I didn't contact anybody.

Mr. Peter Tabuns: Did anyone in your company contact them?

Mr. Gregory Vogt: I'm not too sure.

Mr. Peter Tabuns: So an announcement is made that your project, that you've invested years into, is not going forward, and no one from your corporation checked to see what this announcement made on September 24, that you weren't going forward, was going to do?

Mr. Gregory Vogt: Well, I didn't say nobody from the company checked. You're asking me—for me to tell you exactly what happened over those days—I can't tell you. I wasn't in the country, so I wasn't able to follow the day-to-day activities. I know that there were a number of announcements. I know that, at some point, the OPA did contact us to talk about it, about what was going on and what would go on. And we waited.

Mr. Peter Tabuns: And you waited.

Mr. Gregory Vogt: Well, because they didn't have too much to say, initially.

Mr. Peter Tabuns: So when were you first contacted by the Ontario Power Authority or the Ministry of Energy?

Mr. Gregory Vogt: There were regular visits to see what our project was up to, and I do believe they did some visits around that time, so they knew how far we were in terms of construction and whatnot. There was contact and discussion.

But my recollection—again, that's a ways back—was that, you know, there wasn't any clear direction in terms of what exactly was going to go on. Even on the political announcement side, there was a lot of back and forth. That was my understanding.

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Mr. Peter Tabuns: And did you discuss the fact that your construction was going on and they were concerned because they wanted this plant stopped?

Mr. Gregory Vogt: I know that they came out to the site at some point and they did talk about that, that they wanted to have the construction stopped, yes.

Mr. Peter Tabuns: And what was your response to that?

Mr. Gregory Vogt: Well, we were very concerned. This was not good news for us.

Mr. Peter Tabuns: So once the election was over, when did the government first come to you and say, "We have to negotiate on this. We have to stop this plant"?

Mr. Gregory Vogt: Well, I don't think the government ever came to us and said that. I don't recall the government ever coming to us with that. All our contact was through the OPA.

Mr. Peter Tabuns: When did the OPA first come to you?

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

Mr. Gregory Vogt: I don't have exact dates for you, but it was some weeks after that.

Mr. Peter Tabuns: What was their message and how did you respond to them?

Mr. Gregory Vogt: That we were very concerned and that it was not a good day.

Mr. Peter Tabuns: And you continued building?

Mr. Gregory Vogt: They told us they'd like us to stop, but that was all they were able to tell us, and we had obligations.

Mr. Peter Tabuns: And what were the risks that you faced in stopping construction?

Mr. Gregory Vogt: Being in default on a whole number of agreements with a whole number of parties.

Mr. Peter Tabuns: And you made the OPA aware of that at the time?

Mr. Gregory Vogt: Oh, they were fully aware of that, of course.

Mr. Peter Tabuns: At what point did you effectively become partners with the OPA, fighting EIG?

Mr. Gregory Vogt: I guess late in 2011, or somewhere in that transition period.

Mr. Peter Tabuns: And what was the—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. The floor passes now to Mr. Delaney of the government.

Mr. Bob Delaney: Good morning, Mr. Vogt.

Mr. Gregory Vogt: Good morning.

Mr. Bob Delaney: I'd like to pick up on some of the things Mr. Tabuns started. Following the blackout in the summer of 2003, the Ontario Ministry of Energy issued a call for proposals to ensure that in the event of a heavy demand on the system, that southwest GTA area—which means, for all practical purposes, Mississauga and Oakville—would have some generating capacity. Could you tell me a little bit about your understanding? First of all, were you in your present position in the 2003-04 period?

Mr. Gregory Vogt: I was.

Mr. Bob Delaney: Okay. Were you involved in the response to the request for proposals?

Mr. Gregory Vogt: I was.

Mr. Bob Delaney: What was your understanding of the power situation when you responded to the request for proposals in 2004?

Mr. Gregory Vogt: It was dire. I mean, when you took the electrical analysis across the grid—I like to think of it as sort of a map where the areas that are low have problems and the areas that are high are strong. Basically, the area that we finally selected as our site was like a big sinkhole. It needed support and stabilization. You can call it low-quality power that was being delivered there. The voltage, the frequency, all of that stuff was not good in that area. They needed support there.

Mr. Bob Delaney: How did you pick the site?

Mr. Gregory Vogt: Because the need was there, we then looked at what Mississauga said were good sites for power plants. We quickly established, from a zoning and planning point of view, what the city was saying were good sites for power. We contacted the city and talked to them about it. They said, "Yes, those sites are good to go." We then found a piece of property that was within

that zoned area that was for sale. We then got an option agreement on that property and prepared a bid.

Mr. Bob Delaney: So in other words, the Mississauga site was selected by your firm, Eastern Power?

Mr. Gregory Vogt: Correct.

Mr. Bob Delaney: And it had been zoned—what was the zoning at the time from the city of Mississauga? Do you recall?

Mr. Gregory Vogt: They have these letters, and they change them over the course, so I couldn't tell you what they are. E2 and M2 are numbers that float around in my mind, but I'm not too sure exactly what the designation was. It was like a heavy industrial designation. I mean, there was a meat-packing plant, a lead smelter and a railroad track. The only thing we were missing was the prison.

Mr. Bob Delaney: At the time, in 2004, what was the situation with regard to neighbourhoods in proximity of the site that Eastern Power chose for the peak power plant?

Mr. Gregory Vogt: Well, it was nicely isolated. As I said, we did have those other neighbours that were generally on the rougher side, if I can describe it that way, and therefore we thought it was actually a good fit. Arguably, I thought we would actually lead, in a sense, to an improvement in the look of the neighbourhood. There are second-tier-type industrial facilities that are down the one road, so we thought it would probably make a good site. The city of Mississauga zoning people agreed with us.

Mr. Bob Delaney: Was the Ministry of Energy at that time, in 2004, involved in any way in the selection of the site?

Mr. Gregory Vogt: They were not.

Mr. Bob Delaney: What were the advantages of the project that you proposed with regard to such things as air quality at that time when you responded to the RFP in 2004?

Mr. Gregory Vogt: Since the entire effort was to get off coal—because coal is, of course, a bad actor in our environment. Certainly the mercury level in my kids' blood is high because of the coal that we burn in this province. Natural gas is a good-news story from an environmental point of view. The story I like to tell is that this morning I cooked my eggs over a natural gas flame. I could sit there my whole life and eat my eggs that way and I would not suffer any negative impacts, despite burning natural gas in my kitchen, whereas if I pull my car into my kitchen and turn it on, in 20 minutes I'm dead. So it gives you sort of an idea in terms of the order of magnitude of what a great fuel natural gas is. We felt that replacing the Lakeview Generating Station with natural gas, which was effectively, in a sense, what we were proposing to do because we were not too far away from the Lakeview area—that plant was coming down; it was weak electrically. There was a big, strong need. These types of facilities are often built in urban settings because of the great environmental story that they have. We thought it was a good fit.

Mr. Bob Delaney: Although you and I know, just for the purposes of the record, the fuel that the Lakeview Generating Station burned was—

Mr. Gregory Vogt: Coal.

Mr. Bob Delaney: Thank you. The proposed size, the proposed generating capacity of the plant would have been—

Mr. Gregory Vogt: Three hundred megawatts.

Mr. Bob Delaney: Okay. And the intent of the plant was that it would not be a base-load generating station. Correct?

Mr. Gregory Vogt: That's right. We basically saw it as a peaking or shoulder-type operation, because basically it would come on when the electricity and the gas price would dictate. So you would generally be running, as I said, a peaking, shoulder-type operation.

Mr. Bob Delaney: A peaking and shoulder-type operation, which I understand and you understand. Perhaps you could explain in layman's terms what proportion of the time during the year and at what times during the year, typically, a plant like the proposed Greenfield South would operate.

Mr. Gregory Vogt: A base-load plant, of course, runs a base load, meaning 100% of the time or very close to 100%. A peaking plant tends to run 5% to 10% of the time. Shoulder plants are a little bit higher than that.

Mr. Bob Delaney: Just to come back to the zoning, the only source that you would have had to know whether or not you could have used that site to build a power plant would have been the city of Mississauga's official plan. Right?

Mr. Gregory Vogt: That's correct.

Mr. Bob Delaney: How many versions of the official plan did you look at? Do you recall?

Mr. Gregory Vogt: That wasn't exactly my area. I mean, I was generally aware of it, but—

Mr. Bob Delaney: But it's fair then to say that before having submitted the proposal, your firm was certain that the plant was zoned, to quote from the zoning at the time, "industrial/power plant"?

Mr. Gregory Vogt: Not only that, but we actually got a letter from the city indicating that we were good to go and that the site would work for us. We wanted more than just our own opinion. We wanted them to confirm that we were good, so we did get a letter from the city saying that this would be consistent with their zoning understanding.

Mr. Bob Delaney: May I ask you please to table with the committee that letter so that it can be part of our record?

Mr. Gregory Vogt: I'm not too sure if we still have that, but it's something I could look into.

Mr. Bob Delaney: Okay. What date would the letter have been written to you?

Mr. Gregory Vogt: Back in 2004-05.

Mr. Bob Delaney: So end of 2004, something like that?

Mr. Gregory Vogt: Something like that.

Mr. Bob Delaney: Okay. If that site had not been zoned "industrial/power plant" in the city of Mississauga's municipal plan, would you or could you have chosen that site to build a generating station?

Mr. Gregory Vogt: I think that would have been foolhardy.

Mr. Bob Delaney: After you received the permit to build the plant in 2006, the city of Mississauga initiated a review of their official plan and then appealed your contract to the Ontario Municipal Board. Having secured a letter from the city of Mississauga confirming, to use your words, that you were good to go, did you feel that the city of Mississauga had changed its mind on you?

0900

Mr. Gregory Vogt: Oh, absolutely. There was an about-face there.

Mr. Bob Delaney: By the city of Mississauga?

Mr. Gregory Vogt: By the city of Mississauga. They basically said they didn't agree with that letter anymore, they had a different view on it. In layman's terms, because I'm not a planner, they reinterpreted their own official plan and zoning so that they said no, it wouldn't work anymore: "We're not going to issue you permits for that site."

Mr. Bob Delaney: What was your response?

Mr. Gregory Vogt: Ultimately, we took them to the Ontario Municipal Board and said that was inappropriate, because we continued to believe in the original planning view, and we didn't believe they had the right to change that, because generally, when people apply to do something somewhere, you usually are grandfathered with the existing zoning or planning to prevent exactly this sort of situation.

Mr. Bob Delaney: What happened at the OMB? Could you walk us through that?

Mr. Gregory Vogt: We provided evidence. I mean, we had counsel that took us through that. We provided a planner. We gave our environmental arguments. We had experts on all the various issues. The city had their lawyers and their planner, and had their arguments, as well. Ultimately, the board ruled that we were fully compliant, that our zoning was good, that it was good planning. Basically, I think they actually issued the statement in terms of, "Your planning is good, your zoning is good, and the city has to then follow it."

Mr. Bob Delaney: Do you recall the basis on which the board arrived at that conclusion?

Mr. Gregory Vogt: Well, my understanding is they looked at the environmental arguments that the city had presented and basically agreed that our arguments won the day and, therefore, it was good planning. There was a need, there was no environmental concern per se and, therefore, they should follow through on the zoning that we'd originally had.

Mr. Bob Delaney: In the OMB proceeding, did the matter of Mississauga's original zoning of the site as industrial/power plant play a factor in the decision of the OMB?

Mr. Gregory Vogt: I would say it was fundamental.

Mr. Bob Delaney: Is there anything else you want to add on your interactions with Mississauga as Mississauga changed its position and you went through the OMB process? Ultimately, then, could you walk us through the process whereby you got a building permit?

Mr. Gregory Vogt: Certainly it was a long, drawn-out process. Even on the building permit front, they were not particularly friendly in terms of expediting that. It took a long time for them to actually issue the building permit. So the road in Mississauga was long and difficult through the permitting process and probably the major reason why it took as long as it did to get this project to the stage that we got it.

Mr. Bob Delaney: At what point, having gone through the process—roughly what was the date when you realized you would get the building permit and be able to begin construction of the plant?

Mr. Gregory Vogt: The building permit was issued in May 2011, so shortly before we saw that, things were coming together for the building permit being issued and whatnot, so probably a high degree of confidence in the spring of that year in terms of things would move forward. Mississauga was aware of all that, because they saw us moving forward with these things.

Mr. Bob Delaney: Talk to me a little more about the residents in the surrounding community. When you originally responded to the RFP, there weren't that many homes there, yet by 2011, the area had grown up around you. To what degree did that factor into any of your thinking about whether or not to proceed with construction?

Mr. Gregory Vogt: We believed from an environmental point of view it was a good thing. When you looked at the environmental analysis on any of the critical receptors, I would argue that you'd have a hard time knowing if our plant was running or not at any of the critical receptors. So we felt that environmentally we were good all the way through that process. I mean, yes, the area did change a little bit. There were some condominiums that were built down in Sherway and whatnot, and I know the ministry had some issues there. We reviewed those issues and felt that we were still very good and compliant with all of the laws and the rules and regulations concerning environmental emissions. We felt we were good on that, and we knew that there were additional concerns over that and we responded to those concerns.

Mr. Bob Delaney: Any difference between the fuel that you would conceivably have been burning at the Greenfield South site and the fuel that residents are burning in their furnaces at home?

Mr. Gregory Vogt: It's exactly the same.

Mr. Bob Delaney: Okay. Any comments about the opposition and, as you approached the start of construction, how the opposition to the plant grew?

Mr. Gregory Vogt: The funny thing was, the opposition seemed to grow during the election. When we started construction, there didn't seem to be any real opposition with the construction per se. I know there was

some political banter when we started construction, but my recollection is they even had a hard time finding a citizens' group to take this on. So there seemed to be a political thing going to try to give it to somebody to run with that ball, if I can describe it that way.

I know the initial picture was a woman standing on our site, and I think this was in the Toronto Star where she says the reason why she's concerned is because her father lives five, six kilometres away in Etobicoke, and she lived even further away. So they seemed to have a hard time getting somebody interested who was local, but eventually I guess they did.

Mr. Bob Delaney: Several witnesses have told us that in between issuing the call for proposals in response to the 2003 blackout and the time that construction began, some other fundamental things had changed. For example, there was a new transmission corridor built from the Bruce Peninsula to connect to the big substation up in Milton, which meant there was a transmission solution available. As well, the anticipated growth in demand for power had simply not materialized by about that time that you were beginning construction in 2011. Did the fact that the assumption of the need for power, which you responded to with the RFP, was no longer valid—did you take that into consideration at all?

Mr. Gregory Vogt: You're talking about overall system planning. From our perspective, that was not our purview. We weren't there to guarantee the power for the entire province. I would say our focus was to get our contracted facility built.

Mr. Bob Delaney: Okay. Were you following the election and the degree to which that plant had become a local issue in Mississauga?

Mr. Gregory Vogt: When stories about our plant showed up in the media, certainly we were interested in that and we followed that, yes.

Mr. Bob Delaney: What was the time period when you were out of the country?

Mr. Gregory Vogt: September, early October—late September, so the second week in September, and early October.

Mr. Bob Delaney: All right. So at that time, you would have been well aware that all three parties had come out in opposition to the Greenfield South project continuing?

Mr. Gregory Vogt: Towards the end of that period, I do think all three parties did indicate that they had a common view, if I could put it that way.

Mr. Bob Delaney: What would have been your options if a government of whatever stripe had cancelled the plant—just cancelled it?

Mr. Gregory Vogt: I'm speculating here, but probably lawsuits. I mean, that's probably what happens.

Mr. Bob Delaney: And what were your options if a government of whatever stripe had said, "We need to talk about a relocation"?

Mr. Gregory Vogt: That was certainly something that we welcomed a lot more. I mean, we're trying to grow an Ontario company. I think we're one of, and maybe the

only, company that does what we do, which is use Ontario engineers to design, build, own and operate power facilities. We believe that we're on the right track to grow this province, and so we much preferred that relocation approach to a cancellation approach.

Mr. Bob Delaney: When you got back after your vacation, was it pretty obvious to you that no matter what happened, that plant wasn't going to go forward?

Mr. Gregory Vogt: There were certainly very, very dark clouds on the horizon, if I can put it that way. Where the ball finally bounces on some of these things, sometimes it's hard to predict. To say we were certain that we'd end up where we did end up, I'd say we did not know. We did not know where it was going.

Mr. Bob Delaney: Why did you keep building it?

Mr. Gregory Vogt: We have obligations. When we sign contracts with people, we honour them. We honour them as long as we are able to honour them, and if the other side of the party says the contract's still valid, then we continue to honour them. I don't know how else to proceed. It's not a willy-nilly world; you've got to do what you sign up to do.

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Mr. Bob Delaney: Despite the fact that a government of any political stripe wouldn't have continued with the project and there was no local need for the power—and presumably the Ontario Power Authority had conveyed this to you—you continued with the project.

Mr. Gregory Vogt: That is correct.

Mr. Bob Delaney: I'm having trouble following that from a business perspective. What was your business case for continuing to build a project for which there was very little doubt that it wouldn't proceed?

Mr. Gregory Vogt: Well, if a party would come to us and say, "Your contract is no longer valid," then we can react to that differently than if a party says, "The people of Ontario have spoken; how would you like to react?" We're not an elected company. We don't get elected by the population of Ontario—

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

Mr. Gregory Vogt: —so we have to react to the contractual realities of the day, and that's what we did. We didn't have much other choice.

Mr. Bob Delaney: Okay. So in the end, you didn't litigate because the province did negotiate on an alternative site.

Mr. Gregory Vogt: They did.

Mr. Bob Delaney: Okay. I think I'm going to stop there. I think we're out of time. I'm going to continue to explore this on my next round.

The Chair (Mr. Shafiq Qadri): To the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. Good morning, Mr. Vogt. I want to just start by asking you—I'm looking for a few names. Who from your side and who from the government's side did the negotiations? Who was dealing with whom?

Mr. Gregory Vogt: In what negotiations?

Mr. Victor Fedeli: After the announcement, after the OPA called you one day and said, "Tools down."

Mr. Gregory Vogt: Certainly, I was involved. Our legal team was involved.

Mr. Victor Fedeli: You know, we have so many thousands of emails, and we see names popping up every once in a while. Who from the legal team on your side? Which firm?

Mr. Gregory Vogt: We use a firm called McMillan.

Mr. Victor Fedeli: Sorry?

Mr. Gregory Vogt: McMillan.

Mr. Victor Fedeli: Okay. So, when I see McMillan's emails, which we have, I'll know that that involves you, then.

Mr. Gregory Vogt: Yes.

Mr. Victor Fedeli: Okay. And who else?

Mr. Gregory Vogt: Well, that was generally the way that it ran. I would then consult with other individuals in my firm or other people I would know in the industry if I wanted further information. But that was generally the way that things happened. The legal team really did a lot of the work.

Mr. Victor Fedeli: And who was on the other side?

Mr. Gregory Vogt: The OPA—

Mr. Victor Fedeli: Okay.

Mr. Gregory Vogt: —and then their legal team.

Mr. Victor Fedeli: And who was that?

Mr. Gregory Vogt: They, I believe, used Osler, but I'm not too sure if they exclusively used Osler. I believe they also consulted with others, as well as internal counsel. We don't have internal counsel.

Mr. Victor Fedeli: We have emails from Torys as well. Would you have seen—

Mr. Gregory Vogt: There were a number of different firms that were involved.

Mr. Victor Fedeli: Any individuals? Did you meet with any individuals? You, face to face, with any individuals from OPA or other law firms?

Mr. Gregory Vogt: Certainly, we met with people from the OPA.

Mr. Victor Fedeli: Who would you have met with?

Mr. Gregory Vogt: Colin Andersen, as well as other people out of their organization.

Mr. Victor Fedeli: How many times would you have met with Colin Andersen?

Mr. Gregory Vogt: A handful, maybe.

Mr. Victor Fedeli: Okay. That's fair.

I've handed you a package of documents that looks like this.

Mr. Gregory Vogt: Right.

Mr. Victor Fedeli: So on tab 1, on the first page, you're going to see a sentence that says, "Both Vogt and the OPA are playing hardball." This is from the Ministry of Energy. You may never have seen this email; we have.

This is internal in the Ministry of Energy, from energy to energy: "Both Vogt and the OPA are playing hardball. Seems to me that the bottom line is that Vogt has the leverage, unless the negotiator plays the legislation card." Why would you, probably seeing this for the first time,

think that the government would admit that you have the leverage? What leverage would you have held in this particular cancellation?

Mr. Gregory Vogt: I'm not too sure.

Mr. Victor Fedeli: Okay.

Mr. Gregory Vogt: I mean, our flagship project is being attacked in a fundamental way. Last time I checked, the laws of this province are created by the government of this province.

Mr. Victor Fedeli: The Auditor General has told us that they cut 10 side deals—he calls them “side deals”—with you. You must have had some very serious leverage over these people for 10 side deals to be cut. Would you think about anything further, why they would have succumbed to so many of these deals?

Mr. Gregory Vogt: I think a lot of the exercise here—because the elephant in the room really was our lender, and our lender was very no-nonsense about it and they're a major player, they hired the biggest legal guns they could get their hands on to do what they felt they needed to do. Because it's now a very complex situation with a number of players, we decided that our future lay in this province, our future lay in building a project, and our future lay in doing what we do best, which we believe is developing environmental technology and implementing it in this province.

Mr. Victor Fedeli: Who is Art Birchenough?

Mr. Gregory Vogt: I believe he was a consultant that, I'm not too sure who hired but it's the other side, the government or the OPA; I'm not too sure who exactly—

Mr. Victor Fedeli: On document 2, we have another—this is all energy people and justice people, in fact more justice people than energy people.

“I just heard from DM Lindsay that Art Birchenough is meeting with Greg Vogt this afternoon—this letter is no longer in play. Pens down on this one.”

Obviously, this is back on November 10, so this is around the time the announcement is made that you're to stop work. They were starting to craft letters. There are letters back and forth. There's a lot of correspondence here from Robert Prichard at Torys.

Had you ever dealt with Robert Prichard or any correspondence from Robert Prichard at the firm Torys to you?

Mr. Gregory Vogt: At this point, I had never met Mr. Prichard.

Mr. Victor Fedeli: Okay. Karen Howlett from the Globe and Mail is writing to him and saying, “Can I talk to you about your role in this? I gather from my sources that you were responsible for negotiating the settlement with EIG, the Washington-based hedge fund lenders to Greenfield, and that you were also the lead negotiator in talks with the Vogt brothers to transfer their project to Sarnia.”

Had you dealt with the firm Torys at all, or was it only Osler when you would sit across a table to negotiate? Or did you talk to your lawyer and they negotiated?

Mr. Gregory Vogt: I do believe there were some meetings where Torys was around the table and Mr.

Prichard was around the table, but that was later on in the process, not at this November 10 time.

Mr. Victor Fedeli: So there were times when you did meet with Mr. Prichard?

Mr. Gregory Vogt: Yes.

Mr. Victor Fedeli: Okay. In document 2, in a July 7 email, it appears the minister is ready to sign off on the final deal. Did you ever talk to a Craig MacLennan from energy?

Mr. Gregory Vogt: No.

Mr. Victor Fedeli: The deputy minister, Serge Imbrogno?

Mr. Gregory Vogt: Throughout this period?

Mr. Victor Fedeli: Between that period and today.

Mr. Gregory Vogt: “Ever” is a different a story because Mr. Imbrogno had a different role at OEFC and we had a contract with OEFC so there were times that we met with Mr. Imbrogno on another file. But—

Mr. Victor Fedeli: Okay. So the OEFC: Was he there at the time when the settlement was done?

Mr. Gregory Vogt: I can't speak to that either.

Mr. Victor Fedeli: Okay. We'll figure that out.

You've already told me you had a handful of meetings with Colin Andersen. Do you feel he was representing the government?

Mr. Gregory Vogt: I thought he represented the OPA. I mean that's what his business card said and that's what his title said. I took him at that, that he was the OPA.

Mr. Victor Fedeli: That's fair, most fair.

There are a lot of correspondent letters between, again, justice and OPA and cabinet and that type of thing. This would have all gone on behind the scenes while you met with Colin Andersen. He was the face-to-face guy for you.

Mr. Gregory Vogt: He was the most senior person on the OPA side, the other side of our contract. Yes, I guess he would be certainly the senior face that we dealt with.

Mr. Victor Fedeli: Do you remember any other names of people you dealt with day-to-day? I mean, this took some time. Does anybody of significance come to mind in your—

Mr. Gregory Vogt: I know Mr. Killeavy was involved as well, but Colin tended to be the one who would call me.

Mr. Victor Fedeli: Directly?

Mr. Gregory Vogt: He would call me and I would call him when we'd set up a meeting or whatnot to talk about this. It seemed to be fairly important to him and it certainly was very important to me.

Mr. Victor Fedeli: After the election, we have emails. You mentioned Mr. Killeavy. That's Michael Killeavy from the OPA?

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Mr. Gregory Vogt: That's correct.

Mr. Victor Fedeli: Go to document 4, tab 4. He's talking to Rocco Sebastiano and other lawyers and other people, and for some reason they think you're about to go under. He said, “I hope that Greg”—referring to you—

“et al have snorkels. They’re going to need them. This project is seriously underwater.” Did you feel at any time that you were going to go belly-up?

Mr. Gregory Vogt: No.

Mr. Victor Fedeli: We have other documents. I didn’t bring them today, because we’ve tabled them before. There was talk of forcing you to seek CCAA protection. Are you aware of that? Had you heard about that?

Mr. Gregory Vogt: Yes, yes.

Mr. Victor Fedeli: Why do you think the government wanted you to fail or didn’t let you fail? Take about 30 seconds and just tell me about that whole—

Mr. Gregory Vogt: Well, my understanding, in the fight between EIG and the OPA and us—if I could sort of line up the parties that way, because when that fight then progressed, the government agreed to indemnify us against our claims from our lenders.

Mr. Victor Fedeli: Yes.

Mr. Gregory Vogt: That’s the way the parties then lined up. I’m sorry, could you just repeat the question again?

Mr. Victor Fedeli: I was just asking you about the CCAA protection, bankruptcy protection.

Mr. Gregory Vogt: Okay. So in that process, one of the thoughts or one of the ideas that was tabled was that, with the difference between New York law and Ontario law and the issue around the legal rate of interest, what could be different strategies that could be used to achieve the best end? One of the strategies that was developed, that ultimately was not used, was a CCAA approach.

Mr. Victor Fedeli: A bankruptcy approach?

Mr. Gregory Vogt: You can call it that; a re-org approach.

Mr. Victor Fedeli: I want to talk about the deal that eventually was done, because I’ve got to be honest with you: You fell into a jar of honey here, at the end of the day. Somehow I cannot figure out—you had a deal with EIG for \$150 million. Am I right so far? A borrowing capacity or an agreement—

Mr. Gregory Vogt: No, no.

Mr. Victor Fedeli: But why did the government then repay the—

Mr. Gregory Vogt: It was \$260-odd million financing.

Mr. Victor Fedeli: We’ve been told that \$60 million was used to repay the funds to EIG and \$90 million was used to pay penalty fees. Those are rough numbers. It might have been \$88 million point something. Is the Auditor General accurate in those numbers?

Mr. Gregory Vogt: They sound correct to me. I don’t have any reason to dispute them.

Mr. Victor Fedeli: So if the loan was \$60 million, how could the penalty be \$90 million? Just the penalty; we don’t get any energy out of that. That’s a penalty.

Mr. Gregory Vogt: I tried to give you the example. Mr. Tabuns, earlier, had the same question—

Mr. Victor Fedeli: I heard that.

Mr. Gregory Vogt: When you’re early on in—so if a bank lends you—

Mr. Victor Fedeli: Okay. So it’s going to be the same answer. Let me just twist it up here for a second.

Mr. Gregory Vogt: Sure.

Mr. Victor Fedeli: We heard this from the auditor. The government agreed to the \$150 million, \$60 million and—they agreed to the \$150 million. Did they know that \$90 million of that was penalties? When they agreed to make EIG whole, did they know that \$90 million was in a penalty?

Mr. Gregory Vogt: I think they understood all of the numbers. I believe they were aware of all of the numbers and what they were for and how they were accounted for.

Mr. Victor Fedeli: You think they knew, when they agreed to pay EIG the \$150 million, that \$90 million of it was not for the loan repayment; it was for a penalty?

Mr. Gregory Vogt: Certainly I had no indication that they didn’t know that. I mean, I can’t speak for what they knew and they didn’t know, but—

Mr. Victor Fedeli: I’ve got to be honest with you. That’s pretty shocking—not on your behalf.

So they paid you, according to the auditor—I’ll use rougher numbers, without fractions—\$85 million for the building that’s currently in Mississauga. When the government told the public the total cost to cancel Mississauga was \$180 million, they told us \$85 million was for the building, \$88 million was to EIG in an early termination settlement, \$7 million for site-specific costs, \$2 million was some other miscellaneous kind of number—\$180 million. Does that sound about right?

Mr. Gregory Vogt: I’m not intimately familiar on how those numbers were arrived at. I mean, nothing that you say to me suggests to me that those are not right, but I don’t know if they’re right, because I don’t know what was in those numbers at the end of the day.

When somebody builds a house and borrows money to build the house and the builder needs to charge that interest because it’s part of his cost to the person buying the house, is that cost to the house or is it cost of the financing? It’s certainly in the purchase price. So it starts to get a little bit nebulous when you start parsing it apart carefully.

Mr. Victor Fedeli: Okay. That’s fair. So they told us the total price was \$180 million. Of course the auditor’s come out and said that’s wrong; the total price is \$275 million. Actually he said the total price is \$351 million minus some future payment savings that we may receive, which is \$275 million. But the Liberals came out and said it’s \$180 million. Shortly after, they corrected it and said it’s \$10 million. That’s the OEFC you were referring to. “The OEFC agreed to pay \$10 million, the absolute maximum amount it felt a court could have awarded, including interest” and forgave \$700,000 in court fees to Eastern Power. You’re familiar with that \$10-million payment?

Mr. Gregory Vogt: I’m familiar with that statement, yes.

Mr. Victor Fedeli: Did you receive the \$10-million payment?

Mr. Gregory Vogt: Yes, we did.

Mr. Victor Fedeli: Okay. The next part is one that I've had a bee in my bonnet over for a long time. It's this \$5.4-million side deal, and I'm going to call it here a "secret" side deal. It's been disclosed by the Auditor General, but I need to hear it from you. Basically what the auditor said, and what I have alleged right from day one, when we found one document that said there's a secret side deal here that's for \$5 million—nobody seems to know what it's for.

I'm going to read you what the auditor says and I'll ask you if you agree. He said that the side agreement—there's a "\$5.4-million difference needed to satisfy Eastern Power's demand"—it's a \$5.4-million contract—"so that negotiations on stopping construction at Mississauga could get started." It's for a new power contract at Keele Valley. It allows "Eastern Power to keep the money if Keele Valley was found not to be a viable site."

So they agreed to pay you \$5.4 million for a contract for power, but if the site's not viable, you keep the money. In fact, the auditor says, "Our review of documents found that the OPA had already questioned—before agreeing to the payment—whether it would be possible to extract methane gas from the site...." They knew it wasn't a viable site, yet they went ahead anyway. The auditor says, "No new power supply contracts for this site ever materialized, and therefore Eastern Power kept the \$5.4 million." Did you receive that additional \$5.4 million in that side deal?

Mr. Gregory Vogt: I can't comment on all of that analysis because I wasn't privy to where the Auditor General's coming on that. Our view was—

Mr. Victor Fedeli: Did you receive \$15.4 million from the OEFC?

Mr. Gregory Vogt: That's the comment I was going to make: We received the \$15 million that we felt was a fair settlement for our issues.

Mr. Victor Fedeli: So you'd been asking for \$15 million or \$15.4 million all along?

Mr. Gregory Vogt: Right.

Mr. Victor Fedeli: Am I correct in that? That's your number? You wanted \$15 million—

Mr. Gregory Vogt: Well, there was some negotiation back and forth, but that's the number that we finally agreed to.

Mr. Victor Fedeli: Okay. They came out and would not tell the public it was \$15 million. They told the public it was \$10 million. Do you have any idea why they would have told the public it was \$10 million?

Mr. Gregory Vogt: Again, I can't comment on any of that because that's—I don't know exactly what you're referring to.

Mr. Victor Fedeli: Did you receive it as a \$15.4-million payment or did you receive \$10 million and later \$5.4 million? Would you know how you received that?

Mr. Gregory Vogt: I would need to go back, but I do believe some monies came from OEFC and some came from the OPA—

Mr. Victor Fedeli: I think so, too, by the way. In order to cover up the fact that they paid you \$15.4 mil-

lion, they paid you \$10 million from the OEFC and disclosed it. Why they would go to such great pains to hide \$5.4 million I'll never know. They hid the fact that there was almost \$100 million outstanding. I have no idea why they would go to such great pains. We have found the documentation track on their purposeful cover-up of \$5.4 million. Do you have any idea why it was so important for them to hide that extra \$5-million payment? Any idea whatsoever?

Mr. Gregory Vogt: I don't know what you're referring to about hiding \$5.4 million, because certainly—

Mr. Victor Fedeli: Only the Auditor General told us. The government has never admitted to that payment until the Auditor General did, although I've asked for it in the Legislature time after time after time. So do you have any idea why this \$5.4 million was so important?

Mr. Gregory Vogt: I can't speak to any of that. I'm not privy to that.

Mr. Victor Fedeli: Is it that embarrassing, do you think, that they would give you a contract for \$5.4 million knowing that you could never do what the contract offered, but your out on it is that, if you can't do it, you get to keep the money? That's how they made you whole on that contract. Do you have any idea about their back-room dealings or their background dealings on this?

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Mr. Gregory Vogt: I can't comment on any of this.

Mr. Victor Fedeli: You just understood that you were getting \$15.4 million, and you got it in two different cheques.

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

Mr. Victor Fedeli: I want to go to the other payment, if you will. It's the \$65 million you're going to receive over 20 years for the pipeline charges. They originally had this in Mississauga. Now it's in Lambton, and the gas is closer. Because the gas is closer, the auditor says, "We estimate that"—you—"Greenfield will save about \$65 million...."

"The OPA told us that it was aware of these savings during its negotiations" but "no amount of savings was able to be negotiated and reflected in the price...." The OPA could not negotiate you out of that \$65 million. Do you acknowledge that there is \$65 million in additional profits to be made for absolutely no additional work?

Mr. Gregory Vogt: No, I don't acknowledge that.

Mr. Victor Fedeli: You don't acknowledge that? Do you think the Auditor General is wrong in saying to the Legislature that you're going to make \$65 million over 20 years because the gas is closer, and they couldn't stop you from keeping that money?

Mr. Gregory Vogt: First of all, these are—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. To you, now, Mr. Tabuns: 10 minutes.

Mr. Peter Tabuns: Thank you, Chair. Mr. Vogt, earlier I asked you about the risks that you ran in stopping construction—that the OPA was aware of the risks that you were facing—but our Auditor General said that the OPA had asked you for the lending agreement with EIG and you refused to give it to them before a

settlement was made between you and them. Why did you refuse to give them that information?

Mr. Gregory Vogt: Our view was that they needed to basically come to the table and say, “We’re going to indemnify you, come hell or high water.” We told them, “That’s what you need to come to the table for, because otherwise, if you want us to be part—if you’re going to protect us from the lender, then you have to be up at the table with that.”

Mr. Peter Tabuns: But how could they make an informed decision without knowing what your obligations were to your lender?

Mr. Gregory Vogt: Well, there was enough information there for them to make, I thought, an informed decision. They knew how expensive these projects are. We gave them a rough idea of the magnitude involved in terms of the dollars. All of that stuff was correct, so they could make an informed decision.

Whether a dollar is interest or a dollar is penalty or this dollar has been spent yet or not—we thought that that was minutiae and would distract from getting to a settlement, so we chose the course that would get us to a settlement.

Mr. Peter Tabuns: They apparently found that your situation was far more dire than they expected. I don’t know whether they would have made a different decision. My suspicion was that they had gone so far down this road—not the OPA; the government had gone so far down this road that it wasn’t going to change course, but they made a decision without actually seeing what your lending agreement was, and you wouldn’t provide that to them before they signed off. Correct?

Mr. Gregory Vogt: Well, you’ve made a lot of statements there.

Mr. Peter Tabuns: Sorry; I’ll simplify. They signed off with you before they were able to see what your liabilities were to the financier.

Mr. Gregory Vogt: No, I wouldn’t agree with that either. They certainly knew the quantum that we were talking about. They knew that this was a \$500-million to \$600-million project and that we were 30% in terms of the construction progress. There would be a couple hundred million dollars’ worth of liability to the lender. That’s what we told them the quantum was, so they had a rough idea where we were going.

It was surprising to them, I know, when they found out in terms of the interest rate, the penalty fees and how that was structured, because I would say that our transaction was different than other ones that they had seen.

Mr. Peter Tabuns: This line of credit with EIG was for how much?

Mr. Gregory Vogt: Some \$260-odd million.

Mr. Peter Tabuns: And you just said this project would cost somewhere in the \$500-million range?

Mr. Gregory Vogt: Well, when you take all of the revenues that such a project can generate, and all the costs that need to go into it, yes, you get numbers like that.

Mr. Peter Tabuns: Sorry. The cost of the construction of the project: How much was that?

Mr. Gregory Vogt: Well, there was this facility, which was \$260 million, but there was also a Credit Suisse facility which was for \$24 million. And then there were additional monies that we had put in, of course, so there was a lot of money in this project.

Mr. Peter Tabuns: So the total cost of getting this project launched would have been how much?

Mr. Gregory Vogt: I would push a number north of \$400 million.

Mr. Peter Tabuns: And you had enough money beyond Credit Suisse, beyond EIG, to cover the rest of that?

Mr. Gregory Vogt: To deal with the costs? Yes, we had a complete program to be able to complete construction.

Mr. Peter Tabuns: One of the things that was disturbing to the Auditor General and to us was the whole settlement of costs with your corporation.

The Auditor General reports: “Neither we nor the independent engineer hired to certify Greenfield’s costs were able to get copies of payroll” or T4 information to support the costs that you had put forward as ones you had incurred in getting this plant together. Why did you not provide the OPA with that information?

Mr. Gregory Vogt: The process that we put in place to get costs verified was through the independent engineer, and it was an arduous process. Ultimately, I think that even the Auditor General acknowledges that that process was completed and that all the costs were certified. So there was a process that did come to completion. Unfortunately, it came to completion shortly after his report was written, but it did reach completion. It’s a tough process to pull all the documents and all the pieces that you need to get together. I think you’ve seen that yourself on projects like this. There’s a lot of stuff. That would be my explanation.

Mr. Peter Tabuns: If I’ve heard you correctly, after the Auditor General had completed his report, you provided further documentation to the OPA. Is that correct?

Mr. Gregory Vogt: The certification—I’m not too sure exactly in terms of what t’s needed to be crossed and what i’s needed to be dotted, but there was a process that continued and the certifications were completed.

Mr. Peter Tabuns: My understanding, though, from the Auditor General was that he couldn’t get payroll and T4 information that would have verified what you were charging. He noted that you had a 2011 plant budget, one that you provided to your lenders, showing engineering and plant management costs in May at \$19 million. The OPA paid you \$28 million. That’s a big gap.

Mr. Gregory Vogt: But that’s comparing apples and oranges.

Mr. Peter Tabuns: Well, you’re telling your lenders what it’s going to cost you, and then you turn around to the party that you have a contract with and say, “We told our lenders \$19 million, but in fact you’re going to have to pay us \$28 million to settle this.”

Mr. Gregory Vogt: Well, one is an engineering budget and one is a project development budget, which includes engineering, so they're different. One is a superset of the other one. For instance, when you do engineering and you're doing a drawing for the way a foundation looks, that's one piece of work. When you're doing an environmental screening or you're having public consultation, that isn't engineering. One is a superset of the other one, so you've really got to compare apples and apples, as opposed to apples and oranges.

Mr. Peter Tabuns: Did you tell your lenders what that superset was?

Mr. Gregory Vogt: Oh, yes.

Mr. Peter Tabuns: And our Auditor General didn't figure out that these were two different numbers?

Mr. Gregory Vogt: All of these documents are very tricky. It takes a long time to understand them fully.

Mr. Peter Tabuns: Do you own the Mississauga site? Do you still own the one on Loreland?

Mr. Gregory Vogt: If you're asking whether Eastern Power or an affiliated company still owns the site, yes, it does.

Mr. Peter Tabuns: And has the government sought to gain title to this site? They paid you a large amount of money for it.

Mr. Gregory Vogt: Yes, they did, but in the negotiation there were a lot of things that we didn't get a lot of money for. I'll give you an example. One of the major costs that we've never received a dime for is our cost of capital. Everybody else gets cost of capital. The provincial government and the Auditor General say that there is a cost of capital—calculates it and says, "This is a cost of capital." We've never received one cent for cost of capital. We've put in tens of millions of dollars and were not paid one cent for cost of capital. These were things that were negotiated out that just didn't fall on the right side of the line. That's why when it's described that we're the ones that have the leverage—we were pushed awfully hard.

Mr. Peter Tabuns: Just going back to the Mississauga site, you were paid for the site and you retained the value of the site. What was the meaning of that payment? Why were you paid money for this site?

Mr. Gregory Vogt: Because those were costs that we had to put in there. Those were monies that had to go into the project. They were costs.

Mr. Peter Tabuns: So you were reimbursed for clearing the site and setting it up for construction etc.?

Mr. Gregory Vogt: That's correct.

Mr. Peter Tabuns: Have you selected a site in Lambton?

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Mr. Gregory Vogt: It's not finalized yet, but we believe we're basically there. The building permit is not yet issued, but we hope that that will happen shortly.

Mr. Peter Tabuns: How much did you pay for the land?

Mr. Gregory Vogt: That was somewhat over \$1 million.

Mr. Peter Tabuns: Somewhat over a million?

Mr. Gregory Vogt: A million dollars.

Mr. Peter Tabuns: Will you be meeting your construction deadlines?

Mr. Gregory Vogt: We certainly hope so.

Mr. Peter Tabuns: When was Greenfield South supposed to originally come online?

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

Mr. Gregory Vogt: In the original contract signed in 2005?

Mr. Peter Tabuns: Yes.

Mr. Gregory Vogt: The dates changed, so that's no longer fresh in mind.

Mr. Peter Tabuns: How much were you anticipating in monthly payments for the Greenfield South plant?

Mr. Gregory Vogt: Again, these are calculations that have been superseded since then, so I don't know what the monthly amount was.

Mr. Peter Tabuns: When you renegotiated your contract in 2009 with the OPA for Greenfield South, you substantially increased the monthly payment. The OPA didn't have to do that. Why did they increase the monthly payment?

Mr. Gregory Vogt: I think in a nutshell, the power was needed at that location. We had a good, competitive project. We wanted to go forward; they wanted to go forward. So that's what we did.

Mr. Peter Tabuns: If they hadn't increased the amount of money they were paying you, the project wouldn't have gone forward?

Mr. Gregory Vogt: That's correct.

Mr. Peter Tabuns: You dropped the diesel component of the operation, or the backup diesel, at that point?

Mr. Gregory Vogt: That's correct.

Mr. Peter Tabuns: What difference—

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

Mr. Bob Delaney: I think I'll probably pick up a little bit of the narrative that my colleague has been pursuing. Mr. Vogt, you now have a project in a willing host community in Sarnia, right?

Mr. Gregory Vogt: Very much so.

Mr. Bob Delaney: This time, you're actually going to build a generating station, right? One hopes.

Mr. Gregory Vogt: Yes.

Mr. Bob Delaney: Could you just briefly walk me through some of the local reception to having the project moved from Mississauga to Sarnia, how you've gotten on with the local population, the local civic leaders and what public consultation you've done?

Mr. Gregory Vogt: Right off the bat, after the announcement was made, the mayor of St. Clair township, Mr. Steve Arnold, called me up and welcomed me to St. Clair township. We immediately set up a meeting shortly thereafter, and they rolled out the red carpet and basically told us that anything that they could do to help expedite this project they would do. We then had a series of open houses in the local community centre in Moore-

town, and we had a very positive reception there. There were basically no real objectors to the project. There were some people who wanted us to buy their land, as well, if that's the way I can describe it. We did buy one farmer's piece of property, and there were other farmers and other landowners who were very interested in being able to do a similar transaction.

We've been well received there from a public consultation point of view, so I would describe it as very positive. It's hard to imagine it being much more positive than it has been. The local staff and the people at the town have been very co-operative as well and have moved us forward so that we're close to completing the permitting process.

Mr. Bob Delaney: So it would be fair to say that in Sarnia, both the local civic leadership and the population, to use words that have meaning in this committee, are willing hosts?

Mr. Gregory Vogt: I think that's fair.

Mr. Bob Delaney: Okay. What have you learned about the siting of energy generation projects? You've said that it's your hope to be able to go forward with additional such projects in the future. Based on your experience in Mississauga and now in Sarnia, what things have you learned going forward, and thinking back, what would you have done differently in Mississauga?

Mr. Gregory Vogt: That's a little bit of navel-gazing I guess. Having permitted a site or chosen a site where you're zoned, the local planners are generally happy, you've got a mixed result in public consultation, I don't know whether we would do too much different there. It's hard to turn around and try to predict the future. If you can turn around and look 10 years down the road and see your obstacles, well, fine, then you can avoid them. But if you can't, that's the tricky part: knowing where the population or the political scene will move. We've certainly thought about that, but it's a tricky equation. I really leave that to you. This is something that sounds more like a political question than it does an engineering, science or business question.

Mr. Bob Delaney: Well, if any of us in this room knew the answer to that, our party would form government forever.

Speaking again about Sarnia, what are some of the economic benefits that the project will bring to the Sarnia area?

Mr. Gregory Vogt: Certainly, the employment is a big component. I know that the township and the area welcome the construction jobs, the ongoing operational jobs, the dollars we leave in the community with the supplies we buy and the taxes that we pay in the community, the strengthening of the infrastructure out there. All of those things are very strong contributors to the lifeblood of the community.

Mr. Bob Delaney: Have you estimated the construction jobs in Sarnia and the ongoing operating jobs, in terms of numbers?

Mr. Gregory Vogt: There are many hundreds. There may be as many as 400 or 500 construction jobs. The

operating jobs: We're estimating about 35 people, permanent positions out there. That's quite a significant number of people for a small township.

Mr. Bob Delaney: A big part of our committee's mandate is to review the siting of the province's energy infrastructure. In the past 10 years, Ontario has sited 17 gas plants without an issue—let's say correctly—but clearly got two of them wrong, and yours was one of them. You're in a unique position to speak to us from the perspective of an affected proponent. In the next questions, your feedback is core to some of the work that this committee is doing.

How could there have been a better consultation process, both with you as a proponent at the outset, going back to 2004, and then continuing with the city and with local residents right from the beginning?

Mr. Gregory Vogt: That's a very, very tough question. I recall that when the proposal calls were being developed, there were special bonus points granted for certain electrical areas which needed the power. I know that some of the communities east of the city of Toronto—I believe we're talking Pickering, Ajax; Durham region—complained that they weren't given any brownie points for any new developments, in other words, because they didn't need the power there. I guess with the Pickering nuclear station and Darlington being out there, they're very strong electrically and therefore wouldn't be favoured that way. I know they complained. There were stories in the paper about how they wanted to get a valuation bonus as well to increase the chances of them getting a facility. You actually had municipalities sort of in the GTA fighting over whether they were going to welcome this. I know that even the city of Mississauga wanted to do their own power generating station.

The world changes so much, in terms of a public perception point of view, in the span of a few years, in terms of what somebody welcomes and what somebody is against. I'd like to give you the crystal ball and show you the way in terms of finding solutions, leading the population to a more prosperous Ontario. I know the part that I can do or that our company can do, and that's on the engineering and construction and operations and technical innovation. That's what we do. But when you start talking about getting people on board and moving in a common direction, that sounds like leadership, and I leave the leadership up to you.

Mr. Bob Delaney: As a proponent, you may find yourself in a position where you would bid on energy infrastructure in a relatively more built-up area. What things at Eastern Power have you learned about how to better engage city councils and the local communities early on in the siting process so that you don't start building something and then have to stop?

Mr. Gregory Vogt: We've certainly learned that no matter how much consultation you do, it's never enough. We consider our consultation process with the township of St. Clair to be an ongoing process. We've had meetings with local citizens beyond what we were required to do. We found that to be helpful in terms of continuing the dialogue. We think that's a positive thing.

I would also suggest having communities actually participate in the projects themselves. I know there has been talk about doing that in terms of getting communities involved so that they're actual stakeholders and more than simply a consumer of the power.

All of those things, I think, are positive steps.

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Mr. Bob Delaney: In my last round, you spoke about a memo you had received from the city of Mississauga that I had asked you for. I believe your words were telling us that we were "good to go." Just to remind me again, the approximate date of that memo would have been—

Mr. Gregory Vogt: In 2004, 2005, somewhere in there.

Mr. Bob Delaney: Now that you've had some experience in it, where you've dealt with a city, and a very well-run city, what are the rights and responsibilities of cities in dealing with proponents such as yourself in building energy infrastructure?

Mr. Gregory Vogt: I certainly would encourage them to be consistent on their story. If they do have a zoning bylaw that they've passed and their citizens have supported, that they continue to support it and do not reverse themselves in short order. I don't think that does anybody any favours.

Mr. Bob Delaney: In other words, cities, when they've set aside land for power production, should be consistent in that and review their municipal plans.

Mr. Gregory Vogt: Correct.

Mr. Bob Delaney: Thanks, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To Mr. Fedeli: final 10 minutes.

Mr. Victor Fedeli: Thank you very much. I'll be sharing it with Mr. Leone.

I just need to catch up on the Mississauga site again. I know Mr. Tabuns was referring to that. What's happening with that site today?

Mr. Gregory Vogt: The equipment has been removed off the site. It's there. I don't know exactly what—

Mr. Victor Fedeli: You've got rusting girders there after two years in the rain. Is the building being dismantled at this moment?

Mr. Gregory Vogt: We have plans to eventually dismantle. Hopefully, we'll do that sooner rather than later, as well as hopefully—I know we've had some discussions with the city of Mississauga in terms of bringing it back to pre-development conditions, but there have been no final decisions made on that yet.

Mr. Victor Fedeli: And the Lambton site: You had mentioned that you are getting close to announcing a site that you purchased for \$1 million. The Auditor General said that you'll be producing power by 2017. Are you on schedule for that?

Mr. Gregory Vogt: We believe so.

Mr. Victor Fedeli: Okay. We've had different and competing documentation—that might be the word to say—on when you received some money, the payments in all of this. The Auditor General said the OPA had paid

out nearly \$250 million by July 11 in 2012. Is that around the time and is that around the amount?

Mr. Gregory Vogt: I can't speak to all the amounts that they've paid out, but with the EIG settlement and whatnot happening all around that time, I could imagine that being correct. But again, I'm not the expert to be able to—

Mr. Victor Fedeli: Okay, let's take it through just a little slower, then. Are you all paid out for everything that you think you have coming to you for the cancellation of the Mississauga gas plant at this moment, today? Are there any outstanding monies?

Mr. Gregory Vogt: I believe there are outstanding monies.

Mr. Victor Fedeli: What kind and for what?

Mr. Gregory Vogt: There are some suppliers that the OPA had agreed to pay, and some of those deliveries on some of the supply, or some minor trailing items, have still not been done yet. So there are still some outstanding issues. But I would describe them generally as minor. I think the vast majority has been done.

Mr. Victor Fedeli: A couple million?

Mr. Gregory Vogt: That's probably a correct guess.

Mr. Victor Fedeli: It's kind of what we've heard from suppliers as well, by the way, who call us to see if we can help them get paid. It's there, but it's not a big, big amount.

Mr. Gregory Vogt: Right.

Mr. Victor Fedeli: July 11, 2012—that seems to be some magical date; I don't know why—just about a year ago: Would you agree that the bulk of monies paid to you would have occurred by that time, or on or around that time, July 2012?

Mr. Gregory Vogt: Monies paid to us with respect to this file? I think that's a fair statement.

Mr. Victor Fedeli: The finance documents show us the government knew that it was around \$220 million back then. The Auditor General said it was \$250 million back then, so we're quibbling over only a few million. Would you agree again, then, that in and around \$200-plus million was paid out back in July 2012?

Mr. Gregory Vogt: I know some monies were just shortly thereafter as well. Don't hold me too tightly to that number, but I think the concept that around that time—

Mr. Victor Fedeli: A year after or a few months after or a few weeks after?

Mr. Gregory Vogt: Yes, I think in the next month or two probably is a correct statement. Again, I can't recall when the payments were made.

Mr. Victor Fedeli: Were you surprised, then, when you heard the government announce that the total cost was \$180 million, when we now, of course, know that more than \$200 million had been paid in July? The auditor tells us that the total is \$275 million. Would you have been surprised to read the minister stating that the total cost was \$180 million?

Mr. Gregory Vogt: No.

Mr. Victor Fedeli: Why not?

Mr. Gregory Vogt: The whole accounting exercise, when you look at savings and you look at additional ongoing costs going forward—to a certain extent, you're crystal-balling what the future will bring, so it gets to be a little bit tricky when you take a view on that.

Mr. Victor Fedeli: But that crystal-balling from the auditor is \$351 million. That's what it cost to cancel the Mississauga gas plant. He tells us \$351 million, minus \$20 million, minus \$56 million, for a total of \$275 million. He's not crystal-balling \$180 million. There's nowhere near \$180 million in any of these numbers. He has come up with \$291 million plus \$60 million for the extra fuel costs for delivering the power from Lambton versus Mississauga—\$351 million. He's not talking about \$180 million back then. If you'd already received \$220 million or \$250 million back in July, it doesn't come as any surprise that the number thrown out by the government is \$180 million when you'd already received, as you said, around that number around July? We're talking \$250 million. That's significantly more.

Mr. Gregory Vogt: I don't want to argue with you on this, but when you look at the Auditor General's report there's a lot of stuff in there, significant and large numbers, which are about ongoing costs to move power backward and forward across the province. Those are things that are going to happen in the future. If they don't come to bear, it does move the number down a lot.

Mr. Victor Fedeli: If they don't come to bear, it's \$351 million to cancel, not \$275 million. But you already said that all of the payments between EIG and everybody else, yourself included, are in the \$250-million range around July, maybe a few weeks here or there; maybe a few million still outstanding. Why would it not come as a surprise to you, then, when the minister says it's \$180 million and when you and the partners already received \$250 million?

Mr. Gregory Vogt: I'll go back to my earlier comment. When you look at the savings—

Mr. Victor Fedeli: No; this is cash that has already been paid. This isn't about future savings. These are cheques that have been written. We know—the Auditor General told us—that the cheques that have been written are \$250 million.

Mr. Gregory Vogt: I don't disagree with that, because I don't have knowledge that that's wrong, nor do I have knowledge that that's the absolute number, but—

Mr. Victor Fedeli: But it's in and around that number, you've said.

Mr. Gregory Vogt: I can't say that it looks completely wrong.

Mr. Victor Fedeli: But it's \$70 million more than \$180 million.

Mr. Gregory Vogt: And I don't disagree with that either, but when you do an analysis based on costs, not just cash—

Mr. Victor Fedeli: But we're not talking about the future costs. I understand that. We're not splitting hairs over the future costs. That's the Auditor General's pro-

jections; we'll leave that to him. Then we're talking \$351 million. Let's not talk about that.

Mr. Gregory Vogt: But correct me if I'm wrong. Are you asking about \$180 million in costs or \$180 million in actual monies? When people use the word "cost," it means something different to me than something meaning "monies." You're talking to me about monies being spent, but you're saying that the statement the government made was "costs," and those are different categories.

Mr. Victor Fedeli: Well, \$250 million is the cheques that were written.

Mr. Gregory Vogt: Again, cheques are not costs.

Mr. Victor Fedeli: I'm going to turn it over to my friend Mr. Leone.

Mr. Rob Leone: I'm not sure where to weigh in on that one.

Mr. Victor Fedeli: Cheques aren't costs.

Mr. Rob Leone: When did the construction of the Mississauga site start?

Mr. Gregory Vogt: When did it start?

Mr. Rob Leone: Yes.

Mr. Gregory Vogt: The building permit was issued in May 2011. Pre-construction, site utilities and things like that were done earlier than that.

Mr. Rob Leone: Okay. Any indication, after you put a shovel in the ground at that time in May 2011, that the project might not go through or might not move forward? You charged ahead after May when you had the building permit to build the site. At that time, you fully believed you were building a power plant in Mississauga.

Mr. Gregory Vogt: Certainly there was a high degree of confidence earlier than that, but the building permit was issued in May. We were doing pre-construction—in other words, investing significantly in pipes and roads and things like that—earlier than that.

Mr. Rob Leone: Could you estimate how much savings to the government would have occurred had the cancellation of the Mississauga plant happened before you actually started constructing the site?

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

Mr. Rob Leone: Would you have saved money? Would the government have saved money had you not put a structure up?

Mr. Gregory Vogt: Under what circumstances? That the government would ask us to volunteer to stop building?

Mr. Rob Leone: You were building a structure that added to the cost of the cancellation of the project—or the relocation costs, at least. Correct? So if you didn't put the structure up, you would have saved money, would you not? Can one reasonably assume that the costs would have been less had this project been cancelled a lot sooner than it was?

Mr. Gregory Vogt: As we've already discussed, I don't disagree with the general concept that if you don't spend a dollar, you could save a dollar, but things like

cancellation costs on the financing and whatnot may have actually gotten worse.

Mr. Rob Leone: All right. In the sense of trying to stop the project after it was built, you used this mortgage analogy—I think I'm going to get the hammer here pretty soon. This mortgage analogy is, I think, a very interesting concept.

The Chair (Mr. Shafiq Qaadri): You are very correct, Mr. Leone. Thanks for your questions and thanks for your presence, Mr. Vogt. You are officially dismissed.

Mr. Gregory Vogt: Thank you.

The Chair (Mr. Shafiq Qaadri): We have a number of motions before the committee. We'll begin with Mr. Tabuns. I would encourage you to do this more frequently, Mr. Tabuns. The floor is yours for a deferred motion.

Mr. Peter Tabuns: Withdrawn for now.

The Chair (Mr. Shafiq Qaadri): We certainly accept that. I'm not even going to call for a vote there. Anything else, Mr. Tabuns, from your side?

Mr. Peter Tabuns: Yes, I move—

Mr. Victor Fedeli: Why are we not calling for a vote on this?

The Clerk of the Committee (Ms. Tamara Pomanski): There was a motion on August 27. It has just been deferred for a few weeks. Mr. Tabuns has withdrawn it.

Mr. Victor Fedeli: It has a lot of dust on it.

Mr. Peter Tabuns: It was a great motion in its day.

The Chair (Mr. Shafiq Qaadri): Yes, and it would save everyone time, Mr. Tabuns, if you'd cancel your motions earlier, but in any case, go ahead.

Mr. Peter Tabuns: So true. I move that the Standing Committee on Justice Policy not meet on Tuesday, October 8, 2013.

The Chair (Mr. Shafiq Qaadri): That's an exceptionally welcome motion, Mr. Tabuns. Any discussion thereof? The motion is officially carried.

The Clerk of the Committee (Ms. Tamara Pomanski): No, you have to vote.

Mr. Victor Fedeli: We just did. You blinked.

The Clerk of the Committee (Ms. Tamara Pomanski): Oh, sorry.

The Chair (Mr. Shafiq Qaadri): As advised by Clerk Pomanski, those in favour of said motion will please vote. Those opposed? Any abstentions or conscientious objections? None. The motion carries.

Mr. Tabuns, your motion.

Mr. John Yakabuski: I didn't realize that there was an option here.

Mr. Peter Tabuns: Mr. Chair, I move that the Auditor General be called as a neutral witness at her earliest availability following Tuesday, October 8, 2013. Subject to the auditor's availability, she shall be scheduled for two witness slots on either Tuesday or Thursday. If this falls on a Tuesday, she shall be scheduled from 8:30 a.m. to 10 a.m. and 3 p.m. to 4:30 p.m. If this falls on a Thursday, she shall be scheduled from 8:30 a.m. to 10 a.m. and 1 p.m. to 2:30 p.m.

The Chair (Mr. Shafiq Qaadri): Thank you. Any discussion? All those in favour of said motion? A conscientious objection, Mr. Yakabuski?

Mr. John Yakabuski: No, it's part of the discussion. You're too quick. Given that we now have five-minute statements and an hour and 90 minutes of questions, it should be from 8:30 to 10:05.

The Chair (Mr. Shafiq Qaadri): We'll work it in. I accept your math, Mr. Yakabuski. We'll accommodate.

Mr. John Yakabuski: I thought we had a motion earlier to change the times on the committee. That's fine.

The Chair (Mr. Shafiq Qaadri): All right; we get your point. In any case, all in favour of that motion? All opposed? The motion carries.

Mr. Delaney?

Mr. Bob Delaney: Thank you, Chair. I move that the Standing Committee on Justice Policy request from Eastern Power Ltd. the correspondence from the city of Mississauga in 2004-05 confirming that Eastern Power was cleared to build its project on the Greenfield South site.

The Chair (Mr. Shafiq Qaadri): Any discussion on this motion? All those in favour? All opposed? The motion carries.

In the never-ending saga of distribution by Clerk Pomanski of confidential documents, she has this to offer you.

The Clerk of the Committee (Ms. Tamara Pomanski): We've received documents from the OPA: batch 2. One member per caucus received confidential—please keep them confidential until we decide otherwise. There was non-confidential as well distributed to the rest of the members.

Mr. Peter Tabuns: And the non-confidential documents are now public.

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

Mr. Victor Fedeli: When is the next subcommittee meeting to go over these confidential documents?

The Clerk of the Committee (Ms. Tamara Pomanski): I was going to remind the subcommittee that we are still meeting next Tuesday at 4:45, and the OPA is attending.

Mr. Victor Fedeli: That's the AG day. We're going to have to go to that.

The Clerk of the Committee (Ms. Tamara Pomanski): When did you want to meet? I have Mr. Lyle confirmed, but I can—when would the subcommittee like to meet next?

Mr. John Yakabuski: Reschedule to a later date because—

Mr. Victor Fedeli: The report is at 3:00. This is going to come right in the middle of it all.

The Clerk of the Committee (Ms. Tamara Pomanski): Okay.

The Chair (Mr. Shafiq Qaadri): And please get the five minutes of Mr. Yakabuski's correct next time as well.

Mr. Victor Fedeli: So how much later?

Mr. Peter Tabuns: We could make it for Thursday after the one—

Mr. Victor Fedeli: Thursday the 10th?

Mr. Peter Tabuns: Well, we could make it for Thursday at 10, sure.

Mr. Victor Fedeli: Thursday the 10th?

Mr. Peter Tabuns: Thursday at 10—oh, no; we're not going to do anything on the subcommittee next week.

Mr. John Yakabuski: We should just let him know that we will be recalling him at a later date.

The Clerk of the Committee (Ms. Tamara Poman-ski): Okay.

The Chair (Mr. Shafiq Qaadri): All right; thanks. Further business, colleagues? The committee is adjourned.

The committee adjourned at 1005.

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