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Comité spécial de la transparence financière

1st Session
42nd Parliament

Tuesday 13 November 2018

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Mardi 13 novembre 2018

Chair: Prabmeet Singh Sarkaria
Clerk: Valerie Quioc Lim

Président : Prabmeet Singh Sarkaria
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

SELECT COMMITTEE ON FINANCIAL TRANSPARENCY

COMITÉ SPÉCIAL DE LA TRANSPARENCE FINANCIÈRE

Tuesday 13 November 2018

Mardi 13 novembre 2018

The committee met at 1501 in room 151.

ONTARIO POWER GENERATION

The Chair (Mr. Prabmeet Singh Sarkaria): Good afternoon. The Select Committee on Financial Transparency will now come to order.

I would like to welcome the panel from Ontario Power Generation. We'll give you a brief 10-minute introduction between the panel. We will then go into 20-minute rounds for questioning, starting with the government—sorry, no; my apologies. It's starting with the opposition.

Before we begin, I'm just going to quickly read out a statement on parliamentary privilege and the rights and duties of witnesses.

Witnesses appearing before committees enjoy the same freedom of speech and protection from arrest and molestation as do members of Parliament. Furthermore, section 13 of the Canadian Charter of Rights and Freedoms provides that: "A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence." Therefore, nothing said by a witness before a committee may be received in evidence against that person in a court of law or similar proceedings, except in a prosecution for perjury where evidence was given under oath. For this reason, a witness may not refuse to answer a question from the committee on the grounds of self-incrimination or that answering might expose the witness to a civil action.

Witnesses must answer all questions the committee puts to them. A witness may object to a question asked by an individual committee member. However, if the committee agrees that the question be put to the witness, he or she is obliged to reply, even if the information is self-incriminatory, is subject to solicitor-client or another privilege, or on other grounds that might justify a refusal to respond in a court of law. A witness may ask for clarification if he or she does not understand a question. Members have been urged to display the appropriate courtesy and fairness when questioning witnesses. A witness who refuses to answer questions may be reported to the assembly.

Witnesses must also produce all records requested by the committee. A witness may object to production. However, if the committee agrees that the document is to be produced, the witness is obliged to do so. A refusal or failure to produce a document may be reported to the assembly.

A refusal to answer questions or to produce papers before the committee, giving false evidence, or prevaricating or misbehaving in giving evidence may give rise to a charge of contempt of the assembly, whether the witness has been sworn in or not.

Also, just before we start, I would like to remind the committee members to refrain from using unparliamentary language and to make sure that the questions being asked are in relation to the mandate that the House has given us. I will also be listening for imputing of false or unavowed motives of other members. I will be cautioning members first, but will move on and give the floor to other members if any of these do persist.

With that, we will start with a quick 10-minute introduction.

Mr. Jeff Lyash: Good afternoon, Mr. Chair and members of the select committee. Thank you for the invitation to appear before you today.

My name is Jeff Lyash. I am the president and chief executive officer of Ontario Power Generation, and I've held that position since 2015. Prior to joining OPG, I was executive vice-president of energy supply for Duke Energy from 2008 to 2012, and president of CB&I Power from 2013 through to 2015. I began my career in the utility business in 1981 and have also held senior positions at Progress Energy and the United States Nuclear Regulatory Commission.

With me here today is Ken Hartwick, chief financial officer of OPG. Ken will be speaking to the details of OPG's involvement and the working of the trust. I'll let Ken introduce himself before I continue.

Mr. Ken Hartwick: Good afternoon. My name is Ken Hartwick, and I've been CFO at OPG since March 2016. My prior experience was predominantly in the energy sector, including president of Just Energy from 2008 to 2014 and CFO at Hydro One from 2001 to 2004. Prior to that I was a partner at Ernst and Young.

Mr. Jeff Lyash: OPG is the largest power generator in Ontario, with a diverse set of generating assets. We have a fleet of 66 hydroelectric stations, two nuclear stations and three thermal stations. OPG provides about 50% of the generation used by Ontarians on an annual basis, and we deliver that power at a price that is 40% lower than the average price paid by Ontarians for other sources of generation. OPG is the only generator in Ontario whose payments are regulated by the Ontario Energy Board—a cost-regulated utility.

OPG is also a major employer in the province. The $12.8-billion Darlington nuclear refurbishment project that we're executing is the largest clean energy project in Canada. Planning for that project has been under way since 2006 and the first unit, unit 2, was taken out of service to begin refurbishment in October 2016. The work on that unit is just under 70% complete. I'm proud to say that that project is tracking on schedule and on budget for a return to service in early 2020.

Planning and development work is well under way for the refurbishment on the next unit, and OPG has received approval to continue to operate the Pickering nuclear stations until, at the latest, 2024. We also have a number of upgrades under way at our hydroelectric facilities' infrastructure investment.

OPG is incorporated under the Ontario Business Corporations Act. Consequently, OPG's directors and officers are obligated by law to act in the best interests of the company. OPG follows the governance, reporting and disclosure requirements set by the Ontario Securities Commission.

OPG is 100% owned by the province, with the Minister of Energy acting as the sole shareholder on behalf of the province. OPG's governance framework includes an independent board of directors appointed by the province as shareholder, and also a memorandum of agreement between OPG and the Minister of Energy on the conduct of business.

OPG is a government business entity operating on a commercial basis, delivering value to the province as shareholder and to Ontarians as our customers.

Mr. Ken Hartwick: In early 2017, OPG was contacted by staff from the Ministries of Energy and Finance and the Treasury Board to discuss OPG's participation in implementing a government plan to refinance the global adjustment.

The specific proposal was for OPG to provide a vehicle for financing the deferred recovery of that global adjustment. The government said they had decided on OPG carrying out this role because of OPG's active participation in the electricity market and its expertise in rate regulation and investment stewardship over significant pension and nuclear funds.

OPG raised several initial concerns with staff from the Ministries of Energy and Finance and the Treasury Board. These concerns were eventually addressed through the establishment of a trust under the control and management of OPG but ring-fenced from OPG's other activities as the financing entity. A financial backstop was required to ensure that the financing structure would work effectively.

As OPG would be carrying out activities that fell outside of its typical business activities and corporate mandate related to power generation, OPG sought and received an indemnification agreement with the Ministry of Energy covering the corporation and its subsidiaries, directors, officers and employees.

On March 2, 2017, the government announced the Fair Hydro Plan, which included global adjustment refinancing as a major component. OPG continued working with staff from the Ministries of Energy and Finance, the Treasury Board, the IESO and their accounting and legal advisers to ensure that legislation establishing the trust provided clear separation from and protection for OPG's assets and operations.

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On June 1, 2017, the Ontario Fair Hydro Plan Act received royal assent. The legislation appointed OPG as the financial services manager under the act and conveyed upon the financial services manager statutory obligations, including the creation of financing entities that may acquire investment assets from the IESO.

In December 2017, the Fair Hydro Trust was established as the financing entity contemplated by the Ontario Fair Hydro Plan Act. The majority unitholder and beneficiary of the trust is a wholly owned subsidiary of OPG.

The trust finances the acquisition of investment assets from the IESO through senior debt borrowing from capital markets, approximately 51%, and subordinated debt financed by OPG of 49%. The OEB, the Ontario Energy Board, is responsible for approving fees earned by OPG in managing the trust. In July 2018, the OEB approved a fee of approximately $6 million for 2017, which consists largely of upfront costs to establish the Fair Hydro Plan.

As of June 30, 2018, the total investment assets purchased by the trust from the IESO was approximately $1.8 billion. This was financed by a total of $900 million of senior notes issued by the trust in two tranches in February 2018 and April 2018. OPG's activities as financial services manager are reported as a separate segment in OPG's consolidated financial statements.

In September 2018, the province announced in its public accounts its intention to make future proposed legislative changes to the Fair Hydro Act to cancel the global adjustment refinancing component of the plan. The province also announced that all debt issued under the Fair Hydro Trust, including the subordinated debt issued to OPG, will remain outstanding. The province stated that it intends to fund all the future obligations issued and outstanding as of the date the guarantee is invoked.

No asset acquisitions or debt issuances have been undertaken by the Fair Hydro Trust since April, and no future debt issuances are expected to be made.

OPG as financial services manager must legally continue to manage the Fair Hydro Trust's existing debt obligations of approximately $1.8 billion until the government puts legislation in place to cancel the plan and put in a replacement. OPG will work with the government to prepare a transition plan that permits a smooth transition for the government to take over the current and future payment obligations related to the outstanding Fair Hydro Plan debt, including replacement of OPG as financial services manager, in a way that ensures the government's obligations under the existing agreements continue to be met.

Mr. Jeff Lyash: Mr. Chairman, that concludes our opening remarks.

The Chair (Mr. Prabmeet Singh Sarkaria): Thank you very much. Now I'll turn it over for 20 minutes of questioning from the NDP, starting with Ms. Shaw.

Ms. Sandy Shaw: Thank you again for being here. I would also like to say that that was a lot of information for us, and I'm just wondering if that is something that could be available to us in a hard copy. That would be very helpful in asking some of those questions.

Mr. Jeff Lyash: Certainly.

Ms. Sandy Shaw: Clearly, you've had an opportunity to read the report of the independent commission and the recommendations of the report. Have you read those recommendations and the scope of the report?

Mr. Jeff Lyash: Not in detail. Just general awareness.

Ms. Sandy Shaw: It's not a very detailed report, to be honest with you. So this report of the independent commission of inquiry—

Mr. Ken Hartwick: Yes, I have.

Ms. Sandy Shaw: Okay. So that's good.

Have you had an opportunity to look at the Auditor General's report from 2017 that examined the Fair Hydro Plan as well, and some of the recommendations from the Auditor General?

Mr. Ken Hartwick: Yes.

Ms. Sandy Shaw: Great. The Financial Accountability Office, as well, did a report, and there were quite a number of concerns and also a number of recommendations there. You've had a chance to look at that?

Mr. Ken Hartwick: Yes.

Ms. Sandy Shaw: Finally, are you familiar with the mandate of this committee and the purpose of this committee, why we're all here today?

Mr. Ken Hartwick: Yes.

Mr. Jeff Lyash: Yes.

Ms. Sandy Shaw: Okay. So, from the perspective of our side of this committee, one of the things we're interested in—we certainly want to know how we got to this point and what transpired and some of the details of that. But more than anything, the questions that we're going to be asking are about ensuring that we can learn from this experience and put in place the kinds of provisions that we would need to make sure that something like this doesn't happen again. We're all here to protect the people of Ontario, and we want to make sure that this committee makes good use of everyone's time.

With that—there is a question in here somewhere—with the background to all of that, I have some questions particularly around the governance of OPG. You described it and there are a number of divisions, and it was—not complicated, but there was a lot of information that you gave us around the OPG. You're calling it the Fair Hydro Trust. The Auditor General doesn't call it that; she calls it the OPG Trust, actually. Is that one and the same?

Mr. Ken Hartwick: They are. The actual name is the Fair Hydro Trust.

Ms. Sandy Shaw: Okay. That's helpful. So if you could answer these questions for me: OPG rates are regulated by the OEB? Is that correct?

Mr. Jeff Lyash: Yes. We are a corporation under the Ontario Business Corporations Act. We're also regulated by the Ontario Securities Commission, and our accounting is US GAAP. Our regulated assets are rate-based and our prices are set by the Ontario Energy Board. We do have unregulated assets that are contracted, and those contracts are with the IESO.

Ms. Sandy Shaw: In terms of the Ontario Securities Commission, just to help me to understand, this rate-regulated asset that was held inside the Fair Hydro Trust: Is that regulated by the Ontario Securities Commission? Is that a traded security?

Mr. Ken Hartwick: If you split the business, the Ontario Power Generation business is regulated by the Ontario Energy Board. We're also a reporting issuer with the Ontario Securities Commission. So we follow all the same reporting requirements—report our financials quarterly—that any public company needs to do.

The trust itself is not regulated by the energy board, but there is a prospectus document that is issued in order for us to issue the $900 million of securities they talked about. Those securities are then registered with the Ontario Securities Commission and have very stringent reporting requirements and disclosure requirements associated with them.

Ms. Sandy Shaw: Okay. Then, finally, closing this section, you have a board of directors for OPG. Is it a separate, independent board of directors for the trust or is that part of the oversight of your board of directors?

Mr. Ken Hartwick: The way our governance is set up, OPG has an independent board of directors. The trust has an internal group of management who are the trustees of the trust. Then the reporting of the trust's activities is back through to our board of directors for informational purposes.

Mr. Jeff Lyash: Just to draw the link a little tighter for you: We have an independent board of directors. That independent board of directors—one of the board subcommittees is the audit and risk committee. The audit and risk committee charter was expanded to provide oversight of this new segment that we report on under the OSC regulations. That is the Fair Hydro Trust. Then there is an internal management board, established to monitor trust activities, that is accountable to me as the CEO and to the audit and risk committee through OPG's independent board.

Ms. Sandy Shaw: Okay. You talked about the OPG's financial service and management role, and that that is part of the trust that rolls up into your board of director's accountability.

Mr. Ken Hartwick: Yes.

Ms. Sandy Shaw: Thanks. I appreciate that. Specifically, because we are trying to get down to the point of how decisions were made, and again going forward, making sure that we have the ability to understand essentially what is an opaque and difficult-to-follow security, really, as described by the Auditor General: You did say earlier who first proposed that the OPG play a role in the refinancing scheme, but could you just talk a little bit about who proposed that and whether or not your board of directors was involved in that initial discussion?

Mr. Jeff Lyash: OPG's involvement began with a request from the shareholder, from the government through the Ministry of Energy, for OPG to consider being involved purely as the financial services manager—so, not around the policy decision; just around a particular scope of execution. Given that, as I said earlier, the obligation of our board and our officers is to the corporation. We listen to the shareholder, so if we get a shareholder request, we consider it. We took that to our board of directors. The board of directors formed the special committee of the board to focus on this issue as we stepped through the process of developing how we might serve as the financial services manager and under what constraints we would be willing to do that.

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Ms. Sandy Shaw: Okay. Thank you. I guess one of the things that we are trying to understand is that there wasn't undue or inappropriate pressure from the previous government. That's one of the things we've been hearing and we're trying to ferret out.

Under the previous government, would there have been any interference or any influence, I guess is the word, from the Premier's office in decisions that the board made, or perhaps senior staffing decisions at that point? Because it sounds like you had to amend the way you were delivering your services. Would they have had any influence in the senior staffing that you may have had to reallocate, given that you got into a new line of business?

Mr. Jeff Lyash: I'm not aware that we had any substantial interaction with the Premier's office. Most of our dealing was with the Ministries of Energy, Finance and through the various working groups that were set up.

As I said, we have an obligation to the corporation, but we have a shareholder. The shareholder is the government, and so the current government is our shareholder. We take on board requests and we evaluate whether it's appropriate for OPG to meet the request or not, and that test is whether it can harm the corporation or is in the best interests of the corporation.

We had a shareholder request to do this. As we looked at it, there were concerns that we had with it, but our focus was on concerns that we would have to have addressed in order to protect OPG the company, our existing operating activities, our credit metrics etc., and what it would take to successfully face the financial markets to raise this debt. That was really our focus.

So, in answer to your question, we got the request from the province, we involved our board to work through the issue, to see whether we could address our concerns, and then once our concerns were addressed, it was purely another business segment for us.

Ms. Sandy Shaw: Okay. So what I know about governance—you followed through with your due diligence; you had the fiduciary duty to your shareholders; you were reporting to your regulators and all the requirements through OSC, despite the fact that you were asked to participate in something that was outside of your normal course of business. I'm just paraphrasing what I think I heard you say.

Mr. Ken Hartwick: I'd characterize it a little bit along the lines that it was a separate financing activity, and one of the reasons, as I mentioned in my opening remarks on the financing side, is that we manage around $33 billion in our nuclear and pension funds on behalf of, eventually, our pensioners and ratepayers in the nuclear case. We deal extensively with the Ontario Energy Board and the IESO in just the normal settlements in the power sector. So we sort of took those into account.

Setting up the financing vehicle itself definitely is outside of the scope of generating power, which is the bulk of what we do, but at the same time had elements that we had some particular skills that I think our shareholder identified as a reason to ask us about taking on the financial services manager role.

Mr. Jeff Lyash: Just to add a little bit to that, we're in the power generation business, but along with a business of this scale comes these relationships with all the players in the market—

Ms. Sandy Shaw: Certainly. Right.

Mr. Jeff Lyash: —and the relationships in the financial community and internal capabilities that are very similar to what it takes to effectively act as the financial service manager in this case. So while the decision or this particular segment is not something we would enter into just in the due course, it also isn't an undue burden on OPG to serve as the financial service manager. We have the capabilities to do this.

Ms. Sandy Shaw: Right. The reason I'm asking this line of questioning around governance structure and decision-making that's important for us to understand—I don't know if you've followed news reports recently, or questions in the House, that there was some suggestion that there had been some interference in the firing of a senior employee at OPG—

Mrs. Robin Martin: Point of order.

The Chair (Mr. Prabmeet Singh Sarkaria): That's okay, I'm going—

Ms. Sandy Shaw: —and we just want to reassure that you have your own independent authority and that that is not something that the Premier's office could have had influence on.

The Chair (Mr. Prabmeet Singh Sarkaria): Just before we answer any of those questions, questions that are asked have to be in relationship to the mandate which is within the report. Commenting on staffing is not within the mandate of the report, so I'm going to ask you to rephrase the question or to move on.

Ms. Sandy Shaw: Really, in terms of what we're trying to get at, the independence of the senior decision-making at OPG is critical to understanding what happened there. I guess I will rephrase it. Rather than what we were just hearing about in the press recently, let's just say that in general, in an abstract way, a request outside of your organization to change senior levels of staff wouldn't be something that you would do without going through your board of directors or going through a process. Is that correct? What we're reading about or hearing about is not something that sounds like it would have happened, given the way you describe the process of your governance and accountability structure.

The Chair (Mr. Prabmeet Singh Sarkaria): Sorry, Ms. Shaw. Once again, I don't see how that is related to the mandate of the report, in terms of the firing or hiring of individuals in that sense, so I'm going to ask you once again to move on.

Ms. Sandy Shaw: Okay. I guess I'll just truncate the question, which is that your decision-making at a senior level, whether it's about senior staff or whether it's about ventures that are new that you would get into—that is something that is autonomous with your senior level of CEOs and your board. Is that correct?

Mr. Jeff Lyash: As in any company, you have a shareholder. Our shareholder happens to be the government of the province of Ontario. In my prior employment, it was institutional shareholders, publicly traded.

It's your obligation to listen to the views of the shareholders and to try to be responsive to them to the extent that you can. But it is clear that the primary responsibility of the board of directors—me as the CEO, and my senior management team—is to the interests of the corporation. That's what is required by law, and that's our focus.

We will certainly listen to input and try to work constructively with requests from our shareholder, but in the end, we will be independent, we will be objective and we will make decisions that are in the best interests of the business. If the board—I'll speak for them—or I don't feel that any request we get comports with that, we will not undertake it unless directed.

Ms. Sandy Shaw: Directed by your board?

Mr. Jeff Lyash: By a formal shareholder-written resolution, directing.

Ms. Sandy Shaw: Thank you. I think Ms. Fife—

The Chair (Mr. Prabmeet Singh Sarkaria): Ms. Fife.

Ms. Catherine Fife: Thank you, Mr. Lyash and Mr. Hartwick, for being here today. Ms. Shaw has already taken you through why we're here. Are you surprised to be here before the select committee?

Mr. Jeff Lyash: Perhaps I could answer that. My primary focus is on running a generating company, so what I like to pay attention to every day are things like the Darlington refurbishment, new hydro construction and dam safety. So in that regard, yes, I'm a bit surprised.

But as the province undertook the policy decision to try to address customer price by this vehicle, and OPG took on this role of financial services manager, it's not surprising that people might ask questions about how that was undertaken.

Ms. Catherine Fife: Did you feel, as your relationship with the former government was rolling out and this plan was evolving, that there would be potential questions about the smoothing-out, if you will, of the financing scheme?

Mr. Ken Hartwick: If I could—I think a lot of the questions on the securitization financing that we set up are ones we asked ourselves. We went through our own due diligence and process that we referred to earlier. Also, there were very similar questions we got from investors who ultimately bought the bonds and the securities that we issued for the $1.8 billion that I discussed.

There was always a recognition that this was a complex transaction in the Canadian marketplace, so the questions that were associated around it, to me, were a somewhat normal course for what was being undertaken, from an OPG perspective.

Ms. Catherine Fife: As this plan evolved and, obviously, there were reports from the Financial Accountability Officer, would OPG have been paying close attention to some of those reports that came out?

Mr. Ken Hartwick: Yes. As I mentioned, certainly any of the reports referred to, I read and other members of the team read as well.

Ms. Catherine Fife: And the Auditor General as well?

Mr. Ken Hartwick: The AG as well.

Ms. Catherine Fife: It's interesting, because one of the recommendations from the commission, the independent financial commission, was actually to deal with rate regulation and establish transparency for the taxpayer and the general public as the top priority. I think we have an example, with the Fair Hydro Plan, of a strategy that was put into place by the former government which was anything but transparent.

You've mentioned the complexity, and of course IESO mentioned the complexity yesterday. The senior bureaucrats and deputy ministers who came before essentially said they'd never seen a financing plan and scheme quite like this.

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You mentioned that you didn't really have any dealings with the Premier's office—but mostly the Ministry of Energy. Who were your main contacts when you were first approached by the government to contemplate going down this road?

Mr. Ken Hartwick: Maybe on a couple of fronts—as I mentioned, the first meetings were with the Ministries of Energy, Finance, Treasury Board, as the government determined what its policy direction might be.

Ms. Catherine Fife: Was the Provincial Controller at those meetings?

Mr. Ken Hartwick: At some point they would have joined, yes.

Again, going to the complexity question: Setting up the securitization is complex, perhaps, for the government, which doesn't normally do it. You have your own very complex borrowing program that's run by finance. At the same time, it's something that has been done in the marketplace. So while I say it's complex, a lot of things we do are complex, and it's why we have some of the people we do to be able to accomplish them.

The other really important point that you made was around transparency. I can speak on behalf of OPG. The good thing about being an Ontario Securities Commission filer and having all the reporting obligations is, everything we do is very transparent. It's included in our financial statements, included in a prospectus document with regard to our rationale for being involved in the securities we're issuing. So one of the key things that we were very focused on was ensuring that the transparency for that part of the transaction was very evident to anyone who wanted to look at it.

The Chair (Mr. Prabmeet Singh Sarkaria): A minute and a half.

Ms. Catherine Fife: I only have one minute. It's going to be a long afternoon, but we'll try to make it interesting for you.

You did mention that OPG itself falls under the regulation of the OEB, and then you also report to the Ontario Securities Commission, but the Fair Hydro Trust does not. That would have been a deviation from your normal work. You have clear lines of accountability—we may not always like those lines of accountability—but the trust did not fall under that, so you created a new path for the Fair Hydro Trust.

Mr. Ken Hartwick: We have a number of entities that are not regulated by the Ontario Energy Board. Some of our hydroelectric development that has been done with some of our Indigenous partners are contractual, so they don't fall under the energy board but are set up in separate entities, separate subsidiaries. The trust was another of these vehicles, for a very different purpose, but it is not OEB-regulated.

Mr. Jeff Lyash: Just to be clear: Our interest in this was not in the IESO's portion of it or in the province's; it was purely in our role as financial services manager and how to set up and manage the trust. There we're subject, when we go to the market for debt, issuing prospectus, to OSC regulation. We set this up as a separate segment so that we could report on it transparently under US GAAP. So from our point of view, while it's complicated, it's also quite clear and consistent with other activities we do—and there I'm just speaking about OPG's role in this, not the roles of others.

The Chair (Mr. Prabmeet Singh Sarkaria): That concludes the time for the NDP. I'll move it over to 20 minutes for the government side, starting with Mr. Downey.

Mr. Doug Downey: I just want to pick up on a couple of things that I heard in the opening and then subsequently.

Was there a formal shareholder resolution?

Mr. Jeff Lyash: No, there was not.

Mr. Doug Downey: But you indicated that if there was a request from the province, you would then take that to the board. That's the normal course?

Mr. Jeff Lyash: We may or may not take a provincial request to the board, but one of this nature we certainly would.

Mr. Doug Downey: I'm trying to get timelines matching with other things that we heard on previous days. There was a meeting on January 18, 2017. This seems to be a launching-off point. I don't know if either of you were at that meeting or—

Mr. Ken Hartwick: I attended.

Mr. Doug Downey: Can you describe how the meeting unfolded?

Mr. Ken Hartwick: I can describe generally. To us, it was an introductory meeting to the fact that the government was looking at options to deal with rates in the province. It was along that line. It was like any introductory meeting to a topic or concept. Again, going strictly from recollection, not a lot of detail but more just, "Here's a path we want to start thinking about."

Mr. Doug Downey: The controller for IESO said yesterday that it was clear—and I'm paraphrasing—the decision had been made before she entered the room. Was it that tone?

Mr. Ken Hartwick: Again, not that I specifically recollect, but I wouldn't have thought so. I think the decision at the time was—and certainly OPG's role in it, to the extent that that was going to evolve over time, would have been anything but clear to me.

Mr. Doug Downey: Okay. I'm going to jump around a little bit because I know the Chair has a clock that he needs to go—and I need to move over there and stop asking questions.

You mentioned accounting and legal advisers. Who do you use as an outside auditor?

Mr. Ken Hartwick: Ernst and Young is our auditor.

Mr. Doug Downey: EY? Okay. Would you have used them as advisers during this project?

Mr. Ken Hartwick: Because they are our auditors for the OPG set of financial statements, and, ultimately, the Fair Hydro Trust was going to be set up as a reporting entity, which also required a third-party auditor, we also used Ernst and Young to be the auditor of the trust itself.

Mr. Doug Downey: So you wouldn't have used them as advisers in the set-up, then?

Mr. Ken Hartwick: On the set-up and the initial analysis, our internal team will have done that, ultimately, through me.

Mr. Doug Downey: So there's enough expertise in-house?

Mr. Ken Hartwick: We do. And then what we do is tend to validate our conclusions—as we would on any accounting issue in the company, we validate those conclusions with our auditors prior to finalizing financial reporting disclosure.

Mr. Doug Downey: Was there any point through this process that you sought outside accounting or legal advice on the set-up?

Mr. Ken Hartwick: So as I mentioned, with Ernst and Young—we had legal advice throughout the process. Torys is our primary legal adviser, and we used them to help us work through the set-up of the trust and the securitization process itself.

Mr. Doug Downey: When you deal with other entities, is it routine for you to ask for and receive indemnities?

Mr. Ken Hartwick: I think, if you look to the nature of this transaction and the magnitude of what we were going to set up in a securitization, it was appropriate for OPG to ask for and receive the indemnifications.

You can contrast this to a series of—in virtually any M&A type of transaction you're involved with, indemnifications are being swapped, maybe in one direction if not both. We thought, for something of this nature and complexity, and certainly with the amount of legal elements around it, that it was appropriate, as Jeff mentioned earlier, to ensure that the interest of OPG was protected, given our role as being a very important part of the Ontario economy.

Mr. Doug Downey: I'm sure my colleagues will follow up on that question, but do you recall previous transactions where you've asked for and received indemnities when dealing with the government?

Mr. Ken Hartwick: In dealing with the government, no; in my career elsewhere, yes. I think it's very common in virtually any M&A type of transaction I've been involved in that that would be a standard element of the actual transaction itself. In this case, why that is important—with reference to the IESO, we are purchasing a financial asset from the IESO, so it's important that that indemnification exist.

Mr. Jeff Lyash: So, to Ken's point, I think asking and receiving indemnities in transactions of this sort isn't unique. In terms of asking for indemnity from the government, my understanding is, that's also not unique. It's not frequent, but this is not the first indemnity that OPG has asked for from the government over its history. There have been others, but they're not frequent.

Mr. Doug Downey: I'm afraid I—well, maybe everybody's happy that I have to stop. I'm going to the Chair.

The Chair (Mr. Prabmeet Singh Sarkaria): Ms. Martin.

Mrs. Robin Martin: Okay. I just wanted to go back to that first meeting, January 18. You were there on behalf of OPG. Was anyone else there on behalf of OPG, Mr. Hartwick?

Mr. Ken Hartwick: I'm going to say no. Based on what I recollect, I do not believe so.

Mrs. Robin Martin: At that point you didn't have legal counsel with you, for example?

Mr. Ken Hartwick: Correct.

Mrs. Robin Martin: Or your auditor, I guess.

Mr. Ken Hartwick: Correct.

Mrs. Robin Martin: And you said that it wasn't all that clear to you what they wanted you to do. Did you take the next steps out of that meeting? Did you have something you had to report back on?

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Mr. Ken Hartwick: My recollection is no. I think it was, to me, an informational session on ideas and then subsequently began to build into the working group that developed over time with the groups that I referenced earlier.

Mrs. Robin Martin: Okay. I understand, because the announcement of the Fair Hydro Plan was March 2, 2017, that that working group got established fairly quickly.

Mr. Ken Hartwick: Yes, because at that point, if the government has selected a policy direction, then from OPG's standpoint it was moving towards, "What are the options to implement the elements that are relevant for OPG in assuming the financial services manager role?"

Mrs. Robin Martin: Okay. OPG played a fairly large role in developing how they were going to proceed. Isn't that correct?

Mr. Ken Hartwick: I'd want to narrowly define that. From our standpoint, what we were asked to do was take on the financial services manager role and begin to work on establishing the securitization vehicle, ultimately the Fair Hydro Trust that we referenced, that would then conduct the financing. The work around the trust itself was very focused on ensuring that it was set up in a manner that would get the lowest financing rates possible for the construct that was going to be established. So it was a significant amount of work on the pieces that were relevant to OPG.

Mrs. Robin Martin: Okay. I have a letter dated February 27, 2017, a month or so after this meeting. I don't know if everybody wants a copy. This is from the documentary disclosure that we got. It's from OPG and it attaches a white paper called Global Adjustment Deferral–Discussion Paper. It's under your signature, copied to Mr. Lyash. From what I've seen, because there's lots of documents—I don't think anyone has been through all of the documents that we have—this letter, addressed to Deputy Minister of Energy Serge Imbrogno, looks like it attaches, basically, a white paper with the plan, the plan for global adjustment deferral. It says it's a discussion paper. This is just a few days before the government announced the Fair Hydro Plan.

Is that a correct representation of what this is?

Mr. Ken Hartwick: I think, on the document itself, one of the questions we were asked was what types of financing arrangements we had seen in the North American context—I don't think we looked much further than that—that could accommodate large financing activities such as this. We didn't think there was anything relevant in Canada, but there was in the US. Again, they tend to be referenced as rate reduction bond securitization vehicles, which is the reference on one of the pages here to Duke Energy and Florida power. As this process developed, we began to look and say, "Okay, if we're going to be asked to step into this role as financial services manager, what are those options available and how might they work to implement a financing arrangement?" That's really what the white paper here does: take some of those examples and begin to put roles and responsibilities associated with them.

Mrs. Robin Martin: What I was wanting to know earlier was, how did you get this assignment? Because you went to the meeting on January 18, and you weren't clear what the direction was. Somehow we get, a month or six weeks later, that you've been working very hard to put together this white paper—

Mr. Ken Hartwick: In my world, six weeks is a long time. Maybe just to—

Mrs. Robin Martin: Okay. It looks complicated to me. Maybe it's not.

Mr. Ken Hartwick: Borrowing other ideas from the US also makes it easier. Again, when we looked at this, we're familiar with how transactions work in the US, as you would expect us to be—in the US or Canada. Pulling this together very quickly, while it's a lot of paper, a lot of it is borrowed from precedent transactions, particularly in the US, none of which fit perfectly in the Canadian model because, first of all, laws are different in Canada than they are in the US, as you would expect. I think, if you would have asked me to pull this together, it's probably a week's worth of work to get from A to B.

Mrs. Robin Martin: Oh, very good. Can we just ask, though, who exactly made the request that you take this on? Because it's not just the SPV; it's not just the special purpose vehicle Fair Hydro Trust here. There are other things in this paper. There's the role for everybody in this paper.

Mr. Ken Hartwick: Yes, because if you look through to the US models, the industry, broadly, is all structured the same way. There is a system operator. They're called differently, depending on the region they operate in. There's the Ontario Energy Board, and the PUC, or public utilities commission in the US. So the roles and responsibilities that are set out to govern some of the financing transactions that are referenced in here are identical to roles in the US, to those related parties.

Again, what we were looking at is: What role might other parties need to be play, based on the roles they played in these precedent transactions in the US, and how would they translate? At this point, it's at a very high level, translated into roles inside an Ontario context.

Mrs. Robin Martin: Okay. But on January 18, you didn't have an exact assignment. You went off and looked at—immediately, did you go and look at what other jurisdictions do in this kind of a context if they're trying to achieve this? Like Duke Energy and—

Mr. Ken Hartwick: My expectation would be that sometime between the 18th and the 27th, however long it took us to pull the paper together, there were other discussions along the way that ultimately set us off to look for precedent transactions for large refinancings. But I'm going by my memory. I would doubt that that came out of the meeting on January 18 to that level of specificity.

Mrs. Robin Martin: Okay. So can you tell us what you do recall of when you got, between January 18 and February 27, this assignment? From what I've seen in this white paper, it's kind of the whole package. You've told the government, "This is how it's done elsewhere and here is how it can be done here, for example."

Mr. Ken Hartwick: I think what this tells the government is, "Here's how a financing structure can be done"—which you want to make sure is distinct from policy decisions or otherwise—"but here's how that can be done generically and what the roles might be for parties in order to allow the financing structure to happen." And then, "But there's still a lot of work to do, as you come out of this, on specifics as it would apply to Ontario, let alone Canadian processes."

Mrs. Robin Martin: Okay, but a couple of days after this—a week, perhaps less—the government made an announcement about the Fair Hydro Plan. So this is pretty much the basis on which they made the announcement, isn't it?

Mr. Ken Hartwick: That's probably a good question for someone else. I would say that this is the basis for how you set up the financing structure to achieve an effective financing program for what would ultimately be the trust, which is what our objective at OPG is.

The Vice-Chair (Mr. Doug Downey): Ms. Park?

Ms. Lindsey Park: Just one specific question I think we're trying to get answered here is: Who asked you to look into this? You said that you were asked to look into the type of financing arrangements that could accommodate this level of financing. So who asked you to do that?

Mr. Jeff Lyash: As Ken says—I wasn't at the meeting on January 18, but certainly over the intervening weeks, in order for us to head down this path, we were requested by the ministry to evaluate this, head down this path and give some recommendation on how it might be done. I can't tell you specifically what day or whom. I typically have interactions with the Minister of Energy and his team frequently—weekly. At some point we were asked—it would have been by the ministry; I view them as the representative of the shareholder. So if the request is coming from government, I look to them to come through the shareholder's representative. We would have been asked to evaluate what a mechanism like this would have looked like. That would have been what produced this document.

Ms. Lindsey Park: Okay, you said "the Minister of Energy and staff." So this was always at the political level—political advisers and minister?

Mr. Jeff Lyash: No, we work very closely with the deputy minister, with the chief of staff and with the minister himself, not just on this, but in the nature of the relationship, because no issue that OPG has sits squarely in either the public service or the policymaker's jurisdiction. They generally cross those lines. So our discussions would have been with them in the aggregate.

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Ms. Lindsey Park: Okay. So when you were first asked to do this, how was it described to you initially?

Mr. Jeff Lyash: My recollection is, it was a fairly straightforward request. It said, "If we were to finance this global adjustment and amortize it over a longer period of time, and OPG were requested to play a role, what would it look like?" What constraints would OPG need to stay consistent with US GAAP, to be compliant under the regulations from the OEB and the OSC? What would that look like? So we set about that narrow task.

It's really unrelated to the policy as to whether you do it or not. It's purely around this: "If you were asked to do this, how would it be constructed?"

Ms. Lindsey Park: Whose idea was that, to spread the GA financing over a longer period of time?

Mr. Jeff Lyash: I can't say.

Ms. Lindsey Park: Who told you?

Mr. Jeff Lyash: It would have been the government's idea—

Ms. Lindsey Park: It wasn't your idea?

Mr. Jeff Lyash: No.

Ms. Lindsey Park: It was presented to you? So who presented it to you?

Mr. Jeff Lyash: It would have been the Ministry of Energy.

Ms. Lindsey Park: You can't remember who in particular?

Mr. Jeff Lyash: I really can't.

Ms. Lindsey Park: Okay.

Mrs. Robin Martin: And Mr. Hartwick? At the meeting that you were at, who presented that idea?

Mr. Ken Hartwick: At the January 18 meeting?

Mrs. Robin Martin: Yes.

Mr. Ken Hartwick: It would have been someone on the Ministry of Energy side who would have led the discussion.

Mrs. Robin Martin: And you don't remember who? Was the deputy minister there?

Mr. Ken Hartwick: I do not know.

Mrs. Robin Martin: You don't remember?

Mr. Ken Hartwick: I do not remember who was there.

The Vice-Chair (Mr. Doug Downey): Okay. Mr. Piccini?

Mr. David Piccini: Just a quick question: In the majority of the emails, the common thread there is Andrew Teliszewsky. Would it be fair to say that he was in attendance in the majority of these meetings and/or was in regular interaction with you?

Mr. Jeff Lyash: With the OPG, typically, any significant issue, certainly including this one—if we're having discussions, it generally involves the deputy minister and the chief of staff both.

Mr. David Piccini: Okay.

Mr. Jeff Lyash: And it may or may not involve the minister himself.

Mr. David Piccini: Thank you.

Mr. Jeff Lyash: So I don't know the specific answer, but by practice, it would have been both.

Mr. David Piccini: But it would be fair to say that Andrew, the chief of staff, was in—yes. Okay.

The Vice-Chair (Mr. Doug Downey): We have two minutes.

Mrs. Robin Martin: We have two minutes. The other thing I wanted to ask about was, on the first page of this letter, at the bottom, you say you've developed a financing structure, depicted below, to restrict the risk to OPG, maximize the cost-effectiveness of the trust or the special purpose vehicle, and allow for consolidation into OPG financial statements.

Were those objectives described to you in the initial meeting by the deputy minister or someone else? Where did you get those objectives?

Mr. Ken Hartwick: Firstly, I would doubt they were set forth in the meeting on January 18. Those objectives, I think, are objectives that we had in setting up the trust itself, because if you go through them, by their nature—as we mentioned in our earlier remarks, we run a very important element of electricity production in the province. We wanted to ensure that this activity did not impair what we do to produce half of the electricity for the province of Ontario.

In setting up the trust or the special purpose vehicle, we wanted to ensure that it was established in a way that would get the lowest rates possible that the vehicle could obtain, so that the eventual repayment by ratepayers was as low as possible.

The reference to the consolidation on OPG financial statements: As we looked at this, one of the very important features of the trust itself was the control and management by OPG of the activities, like we do with the rest of our business. That's why, as we thought about criteria to ensure that we had the right authority level to manage and operate the trust the way we described, that would result in a consolidation onto OPG's financial statements, which it ultimately did.

Mr. Jeff Lyash: Just to add a bit to that, that first objective is our legal obligation. That's our fiduciary duty. We have to protect the interests of the corporation.

The second objective, to do it at the lowest cost, is just embedded in OPG's strategic plan. We're the low-cost provider. We don't want to do anything that will inappropriately raise the customer's price.

Then, as Ken said, that third one—if we're not able to set this up and execute it in a way where OPG has control and we can ensure transparency and consistency with our accounting, then we're not acting in the best interests of the corporation. That's a test that helps us do that.

The Vice-Chair (Mr. Doug Downey): We're going to reset the clock for 20 minutes. Ms. Fife.

Ms. Catherine Fife: If we step back, clearly the Liberal government of the day had a huge political issue. OPG has a government relations team, and maybe a division; I'm not sure. So you were aware that the government was driving to get to that 25% reduction in hydro rates because it was in the news all the time. Is that fair to say?

Mr. Ken Hartwick: Yes.

Ms. Catherine Fife: Good. I'm reading from the Auditor General's deputation. She said, "The government determined that it would have to borrow to pay for most of the rate reduction and legislated inappropriate accounting methods to defer the costs to later years by recording the costs as an asset. This avoided recording any costs in its bottom line. The borrowings were structured in a complex design at a significantly higher cost to Ontarians, in an attempt to get their desired accounting results."

Was this apparent to you at the very beginning—or when did it become very apparent to you that this would have a high cost to the citizens of the province at a later date?

Mr. Jeff Lyash: Let me just begin, and I think Ken will add some detail.

I believe what the Auditor General is referring to there are the accounting practices at the IESO and with the government. The Auditor General hasn't questioned OPG's accounting practices. Those, I think, are pretty solid.

Ms. Catherine Fife: There is a distinction, though, because in your opening comments you did mention that you have experience with rate regulation at OPG. That's a correct thing to say, right?

Mr. Ken Hartwick: Yes.

Ms. Catherine Fife: So the government looked to OPG and your experience around rate regulation, because you have experience with it.

I'll finish this thought and then you can comment on the rate regulation.

She goes on to say, "The prior government said it was simply using rate-regulated accounting, a commonly accepted practice in the US. Rate-regulated accounting is usually applied to move expenditures into the future so that present ratepayers do not have to pay for present spending that may benefit future ratepayers." So that clearly was in play. "For example, the cost of building a new power-generating plant can typically be spread out over time and charged to current and future electricity ratepayers since both groups benefit from electricity produced by the plant."

That would be primarily your experience, would it not, around capital assets?

Mr. Ken Hartwick: That's correct, because we are rate-regulated. So the investments we're making at the Darlington nuclear station, our hydroelectric facilities—

Ms. Catherine Fife: Sure, because it's a tangible asset. It's sitting right there. It's a nuclear plant, it's a gas plant, what have you.

She goes on to say, "However, in the case of the Fair Hydro Plan, a portion of purchased power contract current costs would be passed on to future generations even though this spending is for electricity for only today's ratepayers."

This new scheme must have been a departure in some respects for OPG.

Mr. Jeff Lyash: No, not a departure for OPG. We use rate-regulated accounting, as does every other utility of our structure that makes these investments. Our relationship with the IESO here, though, is a financial asset. So this question about the use of rate-regulated accounting that the Auditor General is raising really sits with the IESO. How they account for this really doesn't affect how we administer the trust.

Ms. Catherine Fife: Okay. I'm getting to the part where OPG gets pulled into this report. This is a matter of public record, so I'm sure you've seen it.

When the auditor was here, she referenced, of course, her fall 2017 report where she did report on the concerns and the risks associated with the Fair Hydro Plan. She said, "Sound fiscal transparency and accountability require that the costs of any government policy decision be fairly reported to the Legislature and the people of Ontario. Value for money requires that the government consider the optimal use of resources to implement its policy decisions."

She goes on to say, "We learned that the Ministry of Energy, with assistance from the accounting firm KPMG and several law firms, was leading the accounting objective of deferring the current cost of the rate reduction to future years. There was also input from members of senior management at the IESO, the Office of the Provincial Controller Division, Ontario Power Generation and the Ontario Financing Authority."

This is why I'm going in this direction. You had said at the beginning of your deputation that OPG has this experience with rate regulation. At this point, things obviously got very tense between the IESO and the Auditor General, because she was trying to do her job, and they were trying to say that they already had an auditor. But OPG goes on to ask for indemnification and protection from the Fair Hydro Plan, so I'm just trying to get to the point where you as a corporation recognize that this is very risky, to go down this route. I was trying to be kind by saying that it's a departure, but for an organization like OPG to ask for indemnification, that must be an indication—for us, anyway—that you were worried or concerned for your corporation on a go-forward basis. And so I just would like for you to speak to that.

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Mr. Jeff Lyash: Before you go, Ken—we're always concerned for the corporation. That's our fiduciary obligation. And not to be—

Ms. Catherine Fife: I really don't want you to be flippant about it. Have you asked for indemnification before from the government?

Mr. Jeff Lyash: Yes, the corporation has asked for indemnification from the government in the past.

Ms. Catherine Fife: On what issues, can you please tell us?

Mr. Jeff Lyash: We'll get you some of that information, yes. I don't have it at my disposal now. And I didn't mean to be flip. My point is that we are always concerned with protecting the corporation. Our request for the indemnification in this case isn't because we have a specific and current concern. It's because it is part of a very broad public policy, subject to legal challenge, subject to capital market performance and events that we don't control. We felt it was appropriate to ask for an indemnification on that basis. That's the motivation for the indemnification.

Our accounting here, I think, was our principal concern. We have great experience with it. When it comes to the decisions by the IESO with respect to their accounting, and the government with respect to how they show these expenses, that's really something for the IESO and the province. OPG very deliberately didn't opine on that.

Ken?

Mr. Ken Hartwick: I think that's right, because I go back to, I think, your point that you made earlier around what we looked at, which was just the transparency of the transaction. I think our interaction with the Auditor General—which is a very important role with us as well—was very open and very transparent. She and her office certainly did not question our accounting—how we reported, how we disclosed—which, again, was part of us being very open in how we conducted our accounting review.

Ms. Catherine Fife: So just to confirm, though, the indemnification that was asked for, effective June 1, 2017, was asked for on behalf of OPG's directors, officers and employees associated with the Fair Hydro Plan, so all of those people and all of those directors who had been part of the Fair Hydro Plan. Were you advised to ask for indemnification, or—

Mr. Ken Hartwick: I think, like I say, we have both our internal resources as well as the external resources I referred to. That is part of the discussion, and I think, in the circumstance, it was appropriate to ask for and receive the indemnification.

Ms. Catherine Fife: Okay. I'm going to pass it over to Ms. Shaw.

The Vice-Chair (Mr. Doug Downey): Ms. Shaw.

Ms. Sandy Shaw: Did you say this or did I read this in some of the papers that we have, that you had to amend your corporate objects to include participating in this kind of investment vehicle? Is that true? I mean, previous to this, you weren't in the business of being essentially an investment bank, let's call it.

Mr. Ken Hartwick: There was one specific element of our corporate objects around borrowing that we had to have amended. OPG runs our corporate borrowing program right now, so we go to the external, separate and distinct from the trust; we go and run that program. It was in the process of going through an amendment, and in being asked to take on the financial manager role that we did, that was just simply accelerated.

Ms. Sandy Shaw: So if we can go back to the Fair Hydro Trust—that is still under your purview. You still essentially own that. Is that correct?

Mr. Ken Hartwick: Yes.

Ms. Sandy Shaw: So do you have any other special purpose investment vehicles other than this as part of your core competencies or your ongoing operations, or is this unique?

Mr. Ken Hartwick: It's definitely unique, but to say that we have—we have a series of other special purpose vehicles. We have a pension fund that has a series of assets in it. We have nuclear decommissioning and used fuel funds, which are, again, special purpose vehicles set up for eventual decommissioning of nuclear plants. We have a series of ventures with some of our partners on hydroelectric facilities that are joint ventures with a variety of different partners, again, that are in special purpose vehicles—

Ms. Sandy Shaw: Okay.

Mr. Ken Hartwick: So we do have a series of them.

Ms. Sandy Shaw: But this is specifically a security. You talked about it being bonds and it's traded under OSC. Do you have anything other than that that's traded like that, that investors—that people have invested in specifically like this?

Mr. Ken Hartwick: Yes. Two other examples: Two of our hydroelectric facilities that we built were financed with external debt. So we have bondholders and investors that participate in those, along with some of our Indigenous partners who are also co-owners in those investments. And then we run our own bond program. We issue bonds to investors from an OPG standpoint.

Ms. Sandy Shaw: Okay. So if you could just help me to understand the current state of the Fair Hydro Trust—you said that there's $1.8 billion worth of bonds or securities that have been issued?

Mr. Ken Hartwick: Yes.

Ms. Sandy Shaw: And currently, it's my understanding that—it actually says this in the report, that the current government has suspended this program, the GA smoothing. So I have some questions about who has invested into this Fair Hydro Trust. Are they retail investors? Are they institutional investors? Who has money in this trust?

Mr. Ken Hartwick: It is institutional investors, which would be very typical for bonds of this nature, as it is for our corporate bonds that we issue It would be entirely institutional investors, the same ones that would invest in the province of Ontario, OPG and other corporate names.

Ms. Sandy Shaw: So you're saying it's Bay Street, not Main Street, that's invested in this? Would that be a way to say that?

Mr. Ken Hartwick: Correct. Yes, that would be fair.

Ms. Sandy Shaw: I'm just going to read something that comes directly from—before I say that, I want to make sure that—this is why we're so concerned about understanding how decisions are made in terms of your governance, your hiring and so forth. That's why I brought the earlier issue about what's currently in the news about there being undue influence in getting rid of senior staff.

That is why, because what we have here is an investment that had the potential to have individuals invest in it, and even though it is Bay Street and these are institutional investors, institutional investors are simply people who are investing on behalf of average Ontarians, essentially. Right? So you're looking at pension funds that would be—at the end of the day, this was a bond and a security that has essentially failed, and we're not sure exactly how it's going to continue to fail. That's why we're so concerned about the governance structure and how decisions were made.

My question regarding this is—and I'm going to read from the report that says, "With the presentation and reporting issues resolved"—by that, I think they mean the accounting issue, and we're not just talking about the accounting. We're talking about the actual investment vehicle that was created. It says, "The government will need to determine how best to address the risks described above in a transparent and cost-effective manner as it sets its own electricity policies."

That's a huge statement. It's hanging out there that now that the government has determined that they're going to essentially end this plan, do you have any ideas—you've rolled it up—as to how this will unroll and how people will be made whole?

Mr. Ken Hartwick: So first—

Mrs. Robin Martin: Point of order, Chair.

The Vice-Chair (Mr. Doug Downey): Ms. Martin.

Mrs. Robin Martin: On a point of order: I think we're talking about the report and up to the time of the report; you're talking about the future. So I'm not sure this is relevant to—

Ms. Sandy Shaw: Well, it's what it says right in this report. I'm quoting directly from the report. The entire mandate of this committee is to address statements in the report—

Mrs. Robin Martin: Yes, I agree with that. So what does it say in the report that you're quoting?

Ms. Sandy Shaw: It says that the government will have to address this "in a transparent and cost-effective manner as it sets its own electricity policies" going forward.

Mrs. Robin Martin: Right.

Ms. Sandy Shaw: It's right there.

Mrs. Robin Martin: So the question to these witnesses is relevant?

Ms. Sandy Shaw: Chair?

The Vice-Chair (Mr. Doug Downey): Sorry?

Ms. Sandy Shaw: It's relevant to the report that I'm reading directly from.

The Vice-Chair (Mr. Doug Downey): Can you re-ask the question, please?

Ms. Sandy Shaw: Given the fact that this vehicle currently would be—you're not actively trading in this any longer, are you?

Mr. Ken Hartwick: We are not issuing any more debt with the vehicle, no.

Ms. Sandy Shaw: So given that, that this vehicle still exists out there and that you are basically holding the trust, as you might want to say, do you have any indication as to how you will resolve, going forward, this that is essentially sitting on your books?

Mr. Ken Hartwick: Maybe two comments on it. The first is from a bondholder perspective. The bondholders have lent money to the trust for an agreed-upon interest rate; none of that changes. So whenever the next interest payment is due, they'll be paid as they should. So there will be no investor in this who lost money in the process, which is, again, how we wanted to set up the trust and the protections around it. To comment on it going forward, I think that is an active discussion we're having with government currently, as to what is the right process to transfer the financial services manager relationship back to the province in some manner. Those conversations are ongoing.

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Ms. Sandy Shaw: What we've been hearing from all of the other deputants, essentially, is that they faced, let's just call it, a lot of pressure, undue pressure, from the government to participate in something—it keeps being referred to as a scheme—but that either it was outside of their core competencies or, in fact, we had senior civil servants say that they told the government this was a bad idea.

I guess my question is—just total curiosity; what is it, Monday morning armchair quarterbacking—do you think that this was a good activity to have taken place and for you to have participated in? As you said, your job is in the best interests of the corporation and/or the people that would be involved in this, which are these institutional investors.

Mr. Jeff Lyash: Are you asking about OPG—

Ms. Sandy Shaw: Would you do it again?

Mr. Jeff Lyash: —or the province and the fair hydro concept, at large? Which are you asking about?

Ms. Sandy Shaw: I would say that OPG's participation in the Fair Hydro Plan, specifically with regard to the Fair Hydro Trust, which is now clearly under your purview—how do you feel about that now, essentially? Does it keep you awake at night? Let's just say that.

Mr. Jeff Lyash: Does it keep me awake at night? No. However, that doesn't mean I'm not concerned. OPG would not have entered into this were it not for the provincial request. This is not a business we would engage in on our own, but we had a request from the shareholder. We then spent a lot of time to make sure that our role was narrowly defined and that the accounting practices and the legislation that enabled us and our approach to facing the markets for bonds was very well defined and very consistent with all of our governance. This is not a business OPG would have gone into on its own, but we focused on making sure that if we're going to comply with the shareholder request to do this, we're in a position to do it correctly and in a way that won't harm the business in the long run, either financially or by burdening us with something that we don't have the resources to execute on.

The Vice-Chair (Mr. Doug Downey): We're at the two-minute mark.

Ms. Sandy Shaw: Okay.

Could you just help me—you've been saying this a number of times, and I haven't really caught on to this. You keep saying that this would have been a shareholder's request. But how did that dovetail with the government coming to you and saying that you should participate in this, and then the shareholder's request came to your board of directors—how were those two aligned?

Mr. Jeff Lyash: I'm sorry. When I said—I should watch my terminology. I tend to use the terms "shareholder" and "the government" synonymously—

Ms. Sandy Shaw: So the government is the shareholder. Okay.

Mr. Jeff Lyash: —because the government is the shareholder on behalf of Ontarians, and the Ministry of Energy is the shareholder's representative that we deal directly with. I'm sorry about that.

Ms. Sandy Shaw: Okay. Thank you. I'm thinking of the OSC—like securities.

The last thing I'll ask within this time frame is, what would happen now? You must be considering what would happen at this point if the investors that hold these securities for whatever reason are not paid back. Is this where the indemnity comes into play?

Mr. Ken Hartwick: The other element that was set up in the trust was a provincial support agreement that was put in place. That was really set up in anticipation if a government were to decide to change the policy objectives of the Fair Hydro Plan—to not do it anymore, to do something different.

Ms. Sandy Shaw: Which is where we are now.

Mr. Ken Hartwick: Which is where we are now. That support agreement was put there for the benefit of investors so they would lend money to the trust, recognizing that things change over the course of a political cycle and that they could have some level of protection if something did change.

Mr. Jeff Lyash: And that's really an element in your answer to how you go forward from here and why were the investors protected.

Ms. Sandy Shaw: Exactly. Okay. Thanks very much.

The Vice-Chair (Mr. Doug Downey): Thank you.

Government side: Mr. Romano.

Mr. Ross Romano: Good afternoon, gentlemen. I want to speak, as a starting point, about the meeting of January 18. Mr. Lyash, you've testified to us that you were not present at that meeting.

Mr. Jeff Lyash: I don't believe I was.

Mr. Ross Romano: Okay. Mr. Hartwick, you knew you were present at the meeting.

Mr. Ken Hartwick: Yes.

Mr. Ross Romano: You certainly would recall, obviously, some context behind the meeting. I think you characterized it as being organizational in nature.

Mr. Ken Hartwick: Correct.

Mr. Ross Romano: Now, you say "organizational in nature," but clearly there was a plan moving forward from that meeting that you can speak to in terms of what it was that the government wanted to achieve through that meeting. Is that a fair assessment?

Mr. Ken Hartwick: Again, going from my recollection, I'm not so sure there would have been a plan. I think it was asked earlier if there was a series of tasks that were assigned out—

Mr. Ross Romano: Yes, the next steps.

Mr. Ken Hartwick: —which I don't recall that there were.

Mr. Ross Romano: Okay. There was a point to the meeting.

Mr. Ken Hartwick: Yes.

Mr. Ross Romano: You remember the meeting.

Mr. Ken Hartwick: Correct.

Mr. Ross Romano: So you must remember the point of the meeting.

Mr. Ken Hartwick: I remember being invited to a meeting to talk about rate implications in the province of Ontario.

Mr. Ross Romano: But it's not like the meeting was that we were going to talk about sunshine and rainbows; we were talking about GA refinancing.

Mr. Ken Hartwick: Yes.

Mr. Ross Romano: Okay. And we were talking about GA refinancing that was going to be borne by the rate base, not the tax base. Correct?

Mr. Ken Hartwick: I couldn't recall whether that process had already been decided at that point, in an initial meeting to begin to look at GA refinancing.

Mr. Ross Romano: When my friend was asking you some questions about this plan that is in this white paper, I know you referred to that as something that would have only taken a week to put together. We're talking five weeks after the January 18 meeting, you have a letter that goes out that lays out a very detailed plan—obviously, very shortly after that meeting. I would suggest to you that during that meeting, you knew that the government had a goal to borrow money to reduce the global adjustment and that that borrowing was going to come from the rate base, not the tax base.

Mr. Ken Hartwick: I would say my recollection of the meeting was that government was looking for options to consider to reduce rates. Whether the discussion at that meeting was to the point where it's going to be the ratepayer or taxpayer or however it's going to be borrowed, I don't recall. It would be surprising that there was that level of clarity discussed with the people in the room, myself included, at that point.

Mr. Ross Romano: Let's put it this way—maybe this is a more obvious way to look at it. There is a very, very simple way to accomplish the goal of GA refinancing—by simply borrowing from the tax base, correct? That's a simple way to do it.

Mr. Ken Hartwick: It's what the government tends to do currently.

Mr. Ross Romano: Fair enough. It's a simple way to do it, is it not?

Mr. Ken Hartwick: Very, yes.

Mr. Ross Romano: Very simple. Thank you. Now, OPG had absolutely nothing to do with it if it was going to go from the tax base, correct?

Mr. Ken Hartwick: That is correct, and the assumption would be that the financial services manager role would be done by some group, perhaps within finance, government—

Mr. Ross Romano: The simple answer is that OPG would not have been necessary at that meeting if it was going to be borne by the tax base, not the rate base. Correct?

Mr. Ken Hartwick: Probably.

Mr. Ross Romano: Thank you. I'll accept that. So then why else would OPG have been invited and you been present at the meeting of January 18 if not to set it up as a rate-base borrowing as opposed to a tax-base? I'm going—

Interjection.

Mr. Ross Romano: My question is for Mr. Hartwick.

Mr. Ken Hartwick: I think earlier in my comments, I mentioned this: However the process was going to work, whether it was going to be through the tax base or with some department of finance within government as the services manager, we still needed to run a settlement process with the IESO, and we still needed to work through Ontario Energy Board and how it would be implemented from a rate perspective, all of which we do every day. We do it for our core business every day. We understand how it works every day. Whether or not we would have been asked to help out in the development of the flow of that—perhaps we would have been; perhaps we would not have been.

Mr. Ross Romano: You're providing me with a lot of detail now that seems to have come up in this meeting. I'm asking you a very simple question: There would have been no need for OPG to be present at the meeting of January 18 if they were going to borrow from the tax base, correct?

Mr. Ken Hartwick: I don't know the answer to that. There would be others—when they call a meeting and call us—as Jeff said, we regularly meet with our shareholder across a variety of topics. So when you get asked to go to something of this nature, you go, you listen and then you determine what steps out of that we are required to take as an organization, if any.

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Mr. Ross Romano: Obviously, we know that OPG had steps that were taken as a result of the January 18 meeting. Clearly, we appreciate that, and clearly, you would have been there to listen and figure out what steps you were required to take. I find it very difficult to believe that you would have left that meeting and have no recollection of what steps you were intended to take after that meeting.

Mr. Ken Hartwick: Again, I would view that—on an introductory meeting like that, I'm not so sure there are a series of steps for people that all of sudden get assigned out of an initial meeting. You would expect, as we come back together, and certainly, as you head towards the February 27 document that was provided, that along the way additional questions are asked that would help you articulate what they expect the OPG role to be.

Mr. Ross Romano: So it's fair to say that at the original meeting of January 18, you had concerns with what was being proposed?

Mr. Ken Hartwick: I wouldn't characterize it that way. As I said, from what I recollect of the meeting—and an introductory meeting—I would guess that I was there listening and trying to hear what the discussion was about, as opposed to having concerns one way or another at that point.

Mr. Ross Romano: We know you had concerns at least in the early part of this plan being devised. That's a fair characterization, correct?

Mr. Ken Hartwick: Correct. That's something, to me, for something of this nature or, really, anything complex we do at OPG—you have concerns. We are meant to worry about things so that we can get them the right way, whether it's building a hydroelectric facility or setting up a—

Mr. Ross Romano: You're especially going to have concerns about something this complex that's not done in Canada, as you said earlier.

Mr. Lyash, sorry to cut you off earlier. A question for you now: I think you indicated, to Ms. Shaw's question earlier, that you had some significant concerns about this GA refinancing that would be borne by the rate base as opposed to the tax base. Those are my words, in terms of the nature of the question. You had significant concerns about this?

Mr. Jeff Lyash: Yes, I certainly had concerns. I think OPG, whether we're doing the—

Interjections.

Mr. Ross Romano: That's fair.

Mr. Jeff Lyash: When you enter anything of this scale—OPG being asked to take on something of this nature—you have to begin with the concerns that are whether this comports with our accounting, whether this comports with our obligations to other regulators, and whether this presents a risk to the core business or not. You try to get those concerns on the table early, and then, from my point of view and the board's point of view, either those concerns are mitigated through regulation, legislation or the way this is constructed, or we're not in a position to execute on it.

Mr. Ross Romano: You at least knew of a way to devise the plan because, as Mr. Hartwick indicated earlier, this whole white document thing—this is something you're familiar with. It was US practice. You knew about it, so you knew there was at least a way that you'd be able to deliver on what it was the government was asking you to do.

Mr. Ken Hartwick: We knew there was a way to set up a financing vehicle that would then be subject to whatever form of legislation would come around, based on the US examples.

Mr. Ross Romano: That's fair, knowing those other processes would have to be in place. But you knew you had a part to play that you could deliver on.

Mr. Ken Hartwick: Yes.

Mr. Ross Romano: Okay. Now, that was identified in your letter to Deputy Minister Serge Imbrogno on February 27, correct?

Mr. Ken Hartwick: Yes.

Mr. Ross Romano: In that very letter—and I will get to that in a moment. We heard yesterday from the IESO. In particular, it was Mr. Campbell who indicated to this committee that he received a call on the morning of January 18 from Serge Imbrogno himself, inviting him to the meeting. At the January 18 meeting, Serge Imbrogno was there, as was Mr. Teliszewsky. I trust that maybe that might help your memory. Do you recall those people being at that meeting?

Mr. Ken Hartwick: I'm presuming they were at the meeting.

Mr. Ross Romano: So it's fair to say that you wouldn't presume without knowledge. You obviously have a recollection of them being at that meeting.

Mr. Ken Hartwick: No. In fact, I know I was at the meeting. I know that Ministry of Energy staff were at the meeting. If you ask me to say, "Here's who was sitting around the table," I don't—but again, I think it would be a fair presumption that—

Mr. Ross Romano: Let me ask you this: Was the Premier at that table?

Mr. Ken Hartwick: I'm not sure I've been at the table with the Premier, so—

Mr. Ross Romano: So you're saying you're not sure if the Premier was at the meeting, so perhaps the Premier was at that meeting.

Mr. Ken Hartwick: Well, given that I have not met the Premier, I'm going to presumptively eliminate that.

Mr. Ross Romano: So we at least know the Premier wasn't there. Was the Minister of Energy, Glenn Thibeault, at that table?

Mr. Ken Hartwick: I would presume not, at a working session.

Mr. Ross Romano: Okay, but you're not sure. He could have been there.

Mr. Ken Hartwick: Correct.

Mr. Ross Romano: So it's possible he was at that meeting.

Mr. Ken Hartwick: Correct. Unlikely, but possible.

Mr. Ross Romano: Okay. The plan that was devised: In your letter to Serge Imbrogno—obviously, the fact that you're writing to Serge Imbrogno—I know he's the deputy minister, but clearly you would have had constant dialogue with Mr. Imbrogno about this particular issue.

Mr. Ken Hartwick: Yes.

Mr. Ross Romano: And you would have had clearly direct involvement on a regular and ongoing basis with Mr. Andrew Teliszewsky, given the nature of his role as chief of staff to the Minister of Energy. You would have had a lot of dialogue with—

Mr. Ken Hartwick: As part of the working groups, yes.

Mr. Ross Romano: Fair enough. And you would have had some dialogue as well with then-Minister of Energy Glenn Thibeault.

Mr. Ken Hartwick: Occasionally, yes.

Mr. Ross Romano: Okay. In the second paragraph, your letter talks about how "It'll take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders. This letter is intended to provide the guideline and the framework which could form the foundation of the plan."

What you're referring to at this point in time is, as we know—basically what is laid out as the plan in your document is what ultimately becomes the plan, so it's fair to say that your plan became the foundation of the plan.

Mr. Ken Hartwick: Our plan in the reference in this document is to the financing plan.

Mr. Ross Romano: Understood. That's what I'm referring to. That's the portion I'm—

Mrs. Robin Martin: It goes beyond that, though.

Mr. Ken Hartwick: It is premised on a piece of legislation that is set up to allow certain elements of it to work. Our role specifically was to establish that financing structure that would achieve the rates that we wanted on those bond issues, that would be as low as we could achieve in the circumstances.

Mr. Ross Romano: And it was the province that actually asked OPG to administer this global adjustment refinancing.

Mr. Ken Hartwick: Correct—to become the financial services manager.

Mr. Ross Romano: Okay. And that request, as I believe I've heard on a number of occasions here today, came from your shareholder.

Mr. Ken Hartwick: Correct.

Mr. Ross Romano: Okay. And your shareholder is the Minister of Energy himself. He's actually the shareholder. That would have been Glenn Thibeault at the time.

Mr. Ken Hartwick: Yes, I guess. Yes, the Minister of Energy acts on behalf of the shareholder, which is the province of Ontario.

Mr. Ross Romano: Right. So your request would have come from the Minister of Energy himself, Glenn Thibeault.

Mr. Ken Hartwick: Yes.

Mr. Ross Romano: Okay. Thank you.

The Vice-Chair (Mr. Doug Downey): Ms. Martin.

Mrs. Robin Martin: Sorry, I just want to clarify, because you keep referring to this plan as the plan for the financing, but in the first paragraph—the first sentence—can you just read it out loud, please?

Mr. Ken Hartwick: Right below "Dear Deputy"?

Mrs. Robin Martin: Yes.

Mr. Ken Hartwick: "Below is a summary of OPG's preliminary views on the implementation of the province's proposed global adjustment smoothing account and financing structure."

Mrs. Robin Martin: And then the last sentence in the second paragraph, the conclusion of it, after "other stakeholders": Can you read that?

Mr. Ken Hartwick: "The letter is intended to provide the guideline and framework which could form the foundation of the plan."

Mrs. Robin Martin: Okay, so on the plain meaning of the words in these two paragraphs, this proposal is not just the financing structure; it is about the implementation of the province's proposed global adjustment smoothing account and financing structure, and this is the foundation of the plan. That's all we're trying to get you to say. Isn't that what it is?

Mr. Ken Hartwick: Yes. When I reference "the plan," I'm talking about the trust, the Fair Hydro Plan trust—

Mrs. Robin Martin: Let's call that the trust, just for clarity.

Mr. Ken Hartwick: Right—which is then the financing vehicle, which the trust ultimately is, and then the elements that need to be in place in order for that financing trust/plan/vehicle to work, which is roles by different people as far as IESO etc.

Mrs. Robin Martin: Right. And this white paper letter of February 27, 2017, contains all of that.

Mr. Ken Hartwick: Correct. In order for us to set up the vehicle.

Mrs. Robin Martin: Thank you. Holy cow.

The Vice-Chair (Mr. Doug Downey): Mr. Romano.

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Mr. Ross Romano: We have heard from a number of witnesses. We've had the AG. We've had the FAO office. We've had the commission of inquiry. We've had four bureaucrats, those being Serge Imbrogno, Ms. Hughes, Mr. Orsini and—who am I missing? There was one other one I know I'm missing. We've had a lot. Everybody expressed concerns over the idea of global adjustment refinancing that was done in a fashion where it was by the rate base, not the tax base. I think you've already indicated that, obviously, had it been done by the tax base, which is where we are now, it would not have necessitated all of this work, and it certainly wouldn't have necessitated OPG's efforts. Correct?

Mr. Ken Hartwick: Yes.

Mr. Ross Romano: Now, when we had those four bureaucrats, specifically Serge Imbrogno, the one you would have dealt with quite frequently in your involvement with coming up with the plan—can I characterize it that way? Are we content to just call it "the plan," borrowing from the rate base, not the tax base?

Mr. Ken Hartwick: Okay.

Mr. Ross Romano: Serge Imbrogno thought it was a bad idea. That was his evidence before this committee. Every other bureaucrat who was here said they had significant concerns, as I think you've both illustrated. Is it fair to say it was a bad idea, as Serge Imbrogno did?

Mr. Ken Hartwick: Without knowing the context that the deputy minister at the time referenced, to me, there's an element here that is government policy. The government can establish policies, and every four years, some will judge: Are they are good or bad ideas?

Mr. Ross Romano: Yes. And I can appreciate that a lot of people struggle with that in this type of setting. You've got privilege; you've got indemnity agreements. I'm not sure why it's difficult to say that a government policy was a bad idea when it was clearly a bad idea. We're not borrowing from the tax base; we're borrowing from the rate base. We're playing a whole lot of games.

I'm going to give you both a document here. You know this very well. I'll ask you to pass that around.

The Vice-Chair (Mr. Doug Downey): We're just coming up on two minutes.

Mr. Ross Romano: Yes, thank you.

Just for everybody's information, this is from the Auditor General's report. If you look at page 10, you see a very, very simple system where the government could borrow and forward the money to the IESO that would pay the generators, and it's really, really clean and easy. If you just take the government portion where the province of Ontario is, and you flip that over now to figure 2 on the back side of the page, page 11, all of these arrows, all of this stuff, all of that, is just to make this plan work. That's a bad idea, isn't it?

Mr. Jeff Lyash: I appreciate your question. I can tell you that neither OPG nor I personally recommended this notion, nor would I recommend this.

Mr. Ross Romano: So you would say it's a bad idea, then?

Mr. Jeff Lyash: I'd rather characterize it in my language; you can certainly characterize it otherwise. I would not have recommended this. I would not have been eager to have OPG participate. But these are government decisions. These are policy decisions. It's not OPG's role to make government policy, nor really to comment on it directly. It's our role to run the corporation, and that's where we focus.

Mr. Ross Romano: So, then, the simplest way to put it is, you wouldn't have done it. You would never have gone in this direction. But your shareholder, being the Minister of Energy, Glenn Thibeault, told you to do it, so you did what you were asked to do.

Mr. Jeff Lyash: I'm more comfortable with my words, which are that we didn't recommend it. I wouldn't have recommended it. When the shareholder made the serious request for us to entertain it and to focus on how it might be executed at the lowest cost without affecting the corporation, that's a request from the shareholder that I have to respect.

Mr. Ross Romano: Okay.

Mr. Jeff Lyash: So that is the basis on which we acted.

Mr. Ross Romano: So we're essentially saying the same thing. Can't you agree with me?

Mr. Jeff Lyash: I don't know that I have to agree or disagree with you. I'm just characterizing it the way I feel about it.

Mr. Ross Romano: Okay. Fair enough.

The Vice-Chair (Mr. Doug Downey): We're going to go back over to the other side.

Just an update: We have 20 minutes on this side, 20 minutes, then 10 and 10.

Mr. Vanthof.

Mr. John Vanthof: Thank you both for being here today.

My previous experience with Ontario Power Generation: My brother-in-law had a camp between the Lower Notch power dam and the Matabitchuan power dam. At that time—Marceli passed away, your public relations guy in our area—I toured the Lower Notch power dam when you changed the ropes. It was an incredible experience. I'd just like to put that on the record, because I really enjoyed that.

What I've heard so far today, and we've heard a lot of witnesses, is basically, when the Ministry of Energy is looking at implementing something, they call you and ask, "How can this happen? Can we make this happen?"—that's what I'm hearing—which a democratically elected government can do. It can be a very bad policy. I think we all agree that that was a pretty bad policy, but so far that's—regardless of what day this meeting happened, it's somehow being characterized that it's almost a bit sinister that you're meeting with the Ministry of Energy. That doesn't make sense to me at all. It's your job to meet with the Ministry of Energy.

So they come with this proposal, or the government has a political problem—they need to drop hydro rates in a hurry because there's an election coming—and the Ministry of Energy is directed to do that. They come to you with their proposal and ask for your input. It's a policy. You're not doing the policy. You've been tasked with, "How can you do this?" You did say you had some concerns, right? And you weren't alone in expressing those concerns, as Mr. Romano, the member from Sault Sainte Marie, stated. The deputy minister also expressed concerns.

We saw cabinet documents where people within the Ministry of Energy expressed serious concerns. They were asked by the government side if, at any time, they felt pressured to not express those concerns, if they felt pressured to do it regardless of—I don't know how I'm going to put this; I wish I had the minutes in front of me.

But they did say they were asked by the government side if they felt pressure when they expressed those concerns. Their response—and I was heartened by that—was, "No. We expressed our concerns and as a result we tried to find ways around it."

OPG also expressed concerns. Is that right?

Mr. Jeff Lyash: Yes.

Mr. John Vanthof: Rightfully so. Is it right to say that as a result of some of those concerns, you also had asked for the indemnity agreements?

Mr. Jeff Lyash: I think that's fair. Our concerns were particular and general. Most of the particular concerns we drove through to resolution in the way the legislation was drafted, or in the way the trust was set up, or in the way that the financing structure was put in place. I would say the majority of our concerns with respect to OPG's piece of this were specific and we had to get tham resolved as part of the process. Had we not resolved them, we would have been unable to take on the financing—we would have just said no—or we would have taken on the financing, gone to the market to raise the debt, and no one would have invested. We resolved our concerns through those specific mechanisms.

We also had broad concerns. In any transaction there is risk with the counterparty. In this transaction we're dealing with the IESO, the OEB, the government and the bondholders. You can't always transparently see that risk at the front end, and in a transaction of this magnitude, you may look for indemnification. Future governments may decide to go in a different direction. Markets may have discontinuities where you're unable to raise the debt—2008, for example—but you still have obligations. So these are broad concerns that prompt an organization in a situation like this, like OPG, to ask for a broader indemnification.

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I would characterize our request for the indemnification as ensuring that we're protecting the company against those risks and those concerns that may not be entirely known or entirely in our control, and to use the structure, the legislation and the implementation plan to disposition our specific concerns.

Mr. John Vanthof: Okay. For the record, you made it very clear in your opening remarks regarding the indemnification, and I'd like to thank you for that, because we've had to do a lot of searching, from other parties involved, regarding this indemnification.

Someone, please correct me if I'm wrong: Indemnification basically protects whoever is indemnified from the financial risk if something goes sour. Is that it?

Mr. Jeff Lyash: I'd have to get our legal counsel to go through the legal definition. But this doesn't absolve us of fraud or potential misconduct.

Mr. John Vanthof: No, no.

Mr. Jeff Lyash: It bolsters the business judgment: the fact that we've done our due diligence, made good business judgments. And to the extent that there is some residual unforeseeable risk, you can't hold the company directly liable for that.

Mr. John Vanthof: Okay. I try to simplify stuff, because farmers—we deal in simple terms. My son, my daughter and her long-term partner bought a house. They had enough down payment but they couldn't quite get the mortgage, so I co-signed the mortgage. So I kind of indemnified them; if something goes wrong, I'm stuck with paying the mortgage. I know that's not direct, but that's how I'd put it. If something goes wrong, you have done your due diligence to protect your shareholders from something that isn't a typical business transaction for the OPG.

Mr. Jeff Lyash: Correct.

Mr. John Vanthof: Okay. I'm just trying to get this all in my mind.

Something that you've mentioned that no one else has, brought up by a question from my colleague, is in the trust, the provincial support agreement. Could you broaden that a bit, how that would work?

Mr. Ken Hartwick: Sure. The support agreement is there almost for the circumstance that we have right now. You have a change in policy as to how the legislation is going to operate and/or be changed or amended, however the case might be. So that support agreement is there, in that circumstance, to allow either OEFC or OFA, the financing authority, to step into the role and keep bondholders whole for the money they lent, by backstopping, I'd call it, policy changes by the government. That's the specific purpose for it. It's more to protect the bondholder for changes in policy. Indemnification is to look to those unforeseen risks that OPG, as a corporation, needs to be protected against.

Mr. Jeff Lyash: Just to add a little bit on the payment support: Prior governments can't bind future governments, so we understood at the outset that future governments may change this legislation. But we have to face the bondholders and provide them with a prospectus, so they can judge risk versus the rate they're securing on the bond, and the certainty that they'll get payment of their principal back at the end of the bond.

This payment support was a provision that we pressed for, to make sure that the corporation and the bondholders were protected in such an event, and that it was necessary to get the lowest finance rate available for the customers, because it sets, in part, the risk associated with that transaction.

Mr. John Vanthof: Okay. Something else we've heard several times over the last few weeks, and I haven't really got it straight in my head yet—you said that OPG dealt with some rate-regulated assets before this. But I'm just trying to get it through my head. I can see borrowing money or a mortgage for something—if whatever has a 20-year lifespan, to sell bonds for that 20 years. But are some of these assets longer? One of the issues is that for some of these, the global adjustment smoothing plan was extending the payments for some of these assets potentially beyond the life of the asset. Could that be one of the issues? Because you deal with the physical assets. You know this stuff.

Mr. Ken Hartwick: I think as I look at financing an asset—whether it's a wind farm, whether it's a gas plant or a nuclear plant—you tend to put financing in place. In this case, for a lot of the contracted assets, where there is a contract with the IESO, you put a 20-year contract, 15-year contract, whatever the case might be. You do expect, if there is a good maintenance program run on that particular asset type, that it's going to operate longer than that.

Typically, what you'll see in the market is that initial financing to match the contract life, and then, assuming the market is still there and the plant has been kept well, that it will just be refinanced at the end of that contract life. Again, we do that with some of our assets where it's a regular financing program.

Now, if you don't maintain the asset, like anything else, you can get to the end of the contract life and you just shut it. But again, a well-run gas plant should last longer than the contract.

Mr. John Vanthof: But with these ones, who had actually—take it for wind farms. They have contracts with IESO, but IESO doesn't control maintenance, right? Am I wrong in thinking that if I buy a new car and I finance it for five years, after five years someone else can buy it and refinance it, depending on what's left of my car after five years? I can control the car, but if she buys a car and I'm going to refinance it—I know I'm getting in the weeds a little bit, but there is an issue. When you're in control of the asset, you're also in control of how well it's maintained.

Mr. Ken Hartwick: Right, and what I described is how OPG approaches all of our assets, including the ones you referenced at the beginning: our nuclear plants, our gas plants.

Mr. John Vanthof: Matabitchuan dam is over 100 years old and it's running fine.

Mr. Ken Hartwick: And we operate all of those on the basis of trying to keep them, both from a safety perspective but also an operational one—that we can have those plants operate as long as possible, and then borrow against them in the process to allow that maintenance to happen.

So what I described definitely is what we do, and I think others in the industry generally follow that. I'm sure there are always some participants who don't, but most people who own assets operate—

Mr. John Vanthof: But in the case of the global adjustment smoothing program, it is a little bit murkier. Am I correct in saying that there's no direct—you have control of the asset and you have control of the maintenance. When you have a contractual agreement with a private operator and you're assuming that the asset is going to last longer than the contract—that is basically an assumption.

Mr. Ken Hartwick: That's a fair comment.

Mr. Jeff Lyash: If you think about a rate-regulated utility, OPG, when we build an asset, we set a practical life on the asset, which tends to be very long and assumes a solid maintenance program. It may be 20, 30, 40 years; in the case of some of our hydro stations, it's 50 years. We amortize that return of capital over that length of time. These individual assets that are in the province that are unregulated presumptively have a similar lifespan. As I see it, in general, that's what you're trying to do, spreading this global adjustment. The difference is what you articulated: the level of control that the IESO has on the asset.

Mr. John Vanthof: That was one of the risks that you identified as well.

Mr. Jeff Lyash: Correct.

Mr. John Vanthof: Okay. So at the outset, when you described how your business is connected to the government and that you operate under a memorandum of agreement with the government, but the government is your main shareholder—that is your shareholder, right? We established earlier with other witnesses, and I believe you said the same thing—and if you didn't, please, I'm not trying to put words in your mouth.

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The deputy minister expressed concerns; you expressed concerns. The concerns were mitigated or whatever—I guess that's the word—and the plan proceeded. Good or bad, you did your job. At no time were you worried that the government would somehow pressure you to look the other way for your concerns.

Mr. Jeff Lyash: No. If our interest, as OPG's interest, hadn't been met, we would not have proceeded, regardless of pressure, I can tell you.

The government policy is a separate item. I may have personal opinions, I may share them, but that's the government's decision. We focus on OPG. On any decision that's made, we may take shareholder input, we may have a shareholder request, but our job is to do what's in the best interest of the corporation. If we can't see our way to support the government's request that's in the best interest of the corporation, then we'll decline unless a unanimous shareholder resolution is issued to direct us to do so.

Mr. John Vanthof: Okay. I feel better. I feel good.

Under your memorandum of agreement with the past government, the way I understand your memorandum of agreement—and please correct me again—your shareholder, the ministry, appoints your directors, and the directors run the company. They direct the CEO, and the CEO runs the company. It's more complicated than that; I know there are more levels than that.

Mr. Jeff Lyash: Yes. For OPG, typically we go out and recruit our directors, for the most part competitively in the market against a skills matrix. But as with any shareholder, the shareholder elects the directors. So we propose directors to the shareholder, but they have to elect the directors and seat them on the board.

The board, then, is our primary governance mechanism. There is a division of responsibility between the CEO and the board. The board doesn't manage the company; the CEO doesn't run the board.

Mr. John Vanthof: Okay. The board doesn't manage the company, right? Your shareholder, the minister, doesn't manage the company either, correct?

Mr. Jeff Lyash: Correct.

Mr. John Vanthof: That was the case under the past government, right?

Mr. Jeff Lyash: That's correct.

Mr. John Vanthof: The past government did not at any time, with the Fair Hydro Plan—we're talking about the Fair Hydro Plan—try to meddle with levels of the company below the CEO.

The Vice-Chair (Mr. Doug Downey): We're just at the two-minute mark.

Mr. Jeff Lyash: It's not to be too black and white, because there's grey: Any CEO and any board listens to their shareholder. It's the shareholder's money, the capital that's invested in the company. The shareholder needs to be comfortable with the way the company is being run and the risks, and has a right to request, to intervene, to influence. The board and I look to the shareholder for that sort of input, in the previous government and in this government.

It's then up to the board and the shareholder to decide whether what you're being asked to do comports with running the company. If it does, we certainly try to be responsive to shareholder requests, but there is a certain line at which you say, "That request does not comport with running the company. I can't reconcile that with my fiduciary responsibility and my duty of care. I can't accede to that request." That is something that goes on, on an ongoing basis, decision by decision, request by request.

Mr. John Vanthof: Typically, a request by a past government or any government to hire or terminate anyone—would that be entertained by the board?

Mr. Jeff Lyash: Certainly, any feedback from the shareholder, we're going to listen to. I'll just speak for myself personally as the CEO. Staffing the company is the CEO's responsibility. The board doesn't make hiring or firing decisions; the CEO does. That's my job and that's what I'll do.

I will always listen to input, but in the end, I will make a decision that I feel is in the best interest of the company and equitable for the employees.

The Vice-Chair (Mr. Doug Downey): We're going back over to the government side. Mr. Baber.

Mr. Roman Baber: Gentlemen, thank you for coming in. I want to begin with you, Mr. Hartwick. At some point, you understood that it was the intention of the government to keep the cost of the borrowing of the Fair Hydro Plan off the government's books. Is that correct?

Mr. Ken Hartwick: No. Our objective was to—

Mr. Roman Baber: No, the government's objective.

Mr. Ken Hartwick: I think it's appropriate to ask the government what their objectives were.

Mr. Roman Baber: Okay. But you had already conceded earlier on that the government could have simply borrowed through the financing authority and subsidized the ratepayer to achieve the desired savings, correct?

Mr. Ken Hartwick: That was one of the options that the government has, which they're currently exercising.

Mr. Roman Baber: Right. Instead, it opted to go through this fairly complex structure to attain a different purpose. We earlier heard from the bureaucrats, in fact, from the deputy minister, that the intention was to keep the cost of the Fair Hydro Plan from impacting the province's net deficit or debt. Is that not your understanding?

Mr. Ken Hartwick: From our understanding—OPG's and mine—and the three criteria that were set out that I went through earlier in the report that was distributed, it was very clear what our objectives and criteria were for OPG. I think that was the end result. We consolidated the trust, ultimately, and the $1.8 billion that we ended up borrowing for—

Mr. Roman Baber: Mr. Hartwick, this isn't complex, nor is this contentious. I'm asking you to co-operate with this committee. According to the bureaucrats who sat in the seat you're sitting in right now, it was the political intention of the government of the day to keep the cost of the Fair Hydro Plan off the net deficit of the province's books.

Mr. Jeff Lyash: May I—

Mr. Roman Baber: I'm sorry, Mr. Lyash?

Mr. Jeff Lyash: May I answer?

Mr. Roman Baber: Yes, of course.

Mr. Jeff Lyash: I wanted to make sure.

You're asking us a question that's really not our interest nor our area of expertise.

Mr. Roman Baber: Well, then, why go through the transaction devised? Why go through OPG, then IESO, OPG and OPG Trust if the intention was not to try to keep it off the province's books?

Mr. Jeff Lyash: I'm not suggesting that wasn't the intention; I'm not suggesting that. What I'm saying is, we don't know what the government's intention was.

Mr. Roman Baber: Then would you please instruct your CFO not to pretend he doesn't understand the purpose? Maybe that is not—

Ms. Catherine Fife: Chair, Mr. Baber is badgering the witness.

The Vice-Chair (Mr. Doug Downey): Mr. Baber, you can ask questions, but you can't instruct the witness.

Interjection.

Mr. Roman Baber: One minute, one minute.

Let's go back to what is at issue. It's up to you at the end of the day.

Mr. Lyash, I thank you for your input. Do I understand correctly that the object of the plan was to try to keep the costs associated with the borrowing off the province's books? Was that your understanding?

Mr. Jeff Lyash: The province's objective in making the decision of whether to finance this off the tax base or whether to finance it off the ratepayer—that is the province's decision. It may have been to keep it off their books; I can't say, because that's their intention.

What I can say is that the province's policy decision was to finance this on the ratepayer against future rates, and OPG was asked to construct the financing plan against that objective. That objective results in higher financing costs than would, I would concede, otherwise be incurred if you financed it off the tax base. From our perspective—

Mr. Roman Baber: Higher by how much?

Mr. Jeff Lyash: It depends—this is a difficult question to answer because it's prospective—

Mr. Roman Baber: Right. The FAO—I'm sorry to interrupt you—issued a report in which it estimates that the additional cost, by borrowing through OPG Trust as opposed to through the province directly, is $4 billion.

Mr. Jeff Lyash: Yes, and I don't disagree with the FAO report. Embedded in that is a set of assumptions which may or may not come true.

When asked that question, we have very carefully said, "We don't have a number," because we can't predict the future. I will give you a number here, though. If I look at the assumptions in the FAO analysis, which are legitimate assumptions, and I contrast them against the rates that we have borrowed at to date, and then I project that forward—Ken will correct me if I get the number wrong—the incremental cost is more likely around $2 billion, still a big number.

Mrs. Robin Martin: Per year?

Mr. Jeff Lyash: No, aggregate over the period. The FAO number was $4 billion in incremental financing costs. Right now, the trajectory is around $2 billion.

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But that's not a number I could have you rely on because markets may change, interests my change and some of the assumptions may not be accurate.

Mr. Roman Baber: I'd rather leave that be. You said that you don't disagree with the FAO estimation that the structure of the plan has resulted in an additional cost of $4 billion to the taxpayer. We may not have certainty based on various contingencies, but that is not an unfair proposition. Is that correct?

Mr. Jeff Lyash: No. I think, given the FAO's assumptions, that's a reasonable number. Those assumptions may or not be true. I think it is true that in almost any scenario, it is more expensive to do it this way than it would have been to do it with the government. The number is more difficult to predict.

Mr. Roman Baber: I heard you say earlier on that you would recommend against the plan. Would that be one of the reasons you would recommend against the plan?

Mr. Jeff Lyash: We clearly highlighted that this would have an incremental cost for financing.

Again, I don't want to evade your question; I just don't want to put myself in the mind that the government—that that's why they did it. From our perspective, either way is legitimate, but "legitimate" may not be the right word. There's a logic either way. Why might you attach this to this rate base? It's an electricity sector cost, by and large. Perhaps other parts of this weren't electricity sector costs.

From our perspective, there are benefits to doing it this way. It's transparent. It stands alone from the government. It has constraints on how much can be borrowed and financed by the nature of the trust; you can only do so much under this constraint, and it's borne by the electricity sector. Are those worth the incremental finance cost? I can't be the judge of that.

Mr. Roman Baber: No, but my question was specifically to your testimony earlier on, when you suggested that you wouldn't have done it this way. You specifically used the words "I wouldn't recommend it." Could you please run us through the reasons why you wouldn't recommend it?

Mr. Jeff Lyash: The government faced, and still faces, a significant issue with electricity price. The problem doesn't go away; it has to be dealt with. If you feel that's a problem, decisions have to be made and choices made. It's a difficult problem to solve, and I wish none of us were here.

To your point, my reason—

Mr. Roman Baber: Yes. If you could answer my question, please.

Please go ahead.

Mr. Jeff Lyash: When I said I personally wouldn't recommend it—it is not inconsistent with the way costs have been securitized in other businesses in this sector, but it is several steps more complicated than most of these transactions. It does have an incremental financing cost, as we've established. Perhaps it's $4 billion, perhaps it's a different number—

Mr. Roman Baber: Sorry—that's just your way of saying it's more expensive, not incremental. It's probably $4 billion more expensive.

Mr. Jeff Lyash: I think I've said several times that it's more expensive. I'll try to restate that more clearly, if you'd like. But that's what I'm saying.

I think it's a complicated approach, and so, generally, I wouldn't recommend this as the path to close the customer price gap. But having said that, if that is the government's decision, we will execute on it in the way that we need to.

Mr. Roman Baber: Let's go back to the white paper. If I could please take you to page 7, Mr. Hartwick. Specifically, you're just contrasting some of the external assessments with some of the risks associated with the plan. I want to take to you to the last bullet point, "D. External Assessment....

"While the structure is not expected to impact the province there are risks that the program could negatively" affect "the rating agencies' view of the province's financial management."

Do I understand you to suggest that there is risk here that the credit rating agencies would view the debt associated with the plan as really the province's debt, and that's going to affect its credit rating?

Mr. Ken Hartwick: I think that's a fair description of it. As we set this up, I think there's always an element of judgment applied by a credit rating agency. They apply to OPG when they assess our own credit rating with the two agencies we use. As to other elements—and again, with the province's credit rating, they could also look at this and say that if they anticipate change in legislation, they could just apply this to one of the factors they look at for the province's credit rating process.

Mr. Roman Baber: Okay. Let's go to the risk summary: "Elements of the proposed structure were established to support consolidation of the SPV into OPG. These items may not be sufficient to establish OPG as risk owner of the SPV and the SPV may need to be consolidated directly with the province."

So you're saying that the structure, as proposed, may actually not work, and this special purpose vehicle may have to be integrated into the province?

Mrs. Robin Martin: The province's books.

Mr. Roman Baber: The province's books; I'm sorry.

Mr. Ken Hartwick: Yes. If you go to the date of the white paper in February, as I think we've mentioned along the way here, there's a series of items we were looking at and which were uncertain at the time, including the ones that are listed here in the risk section. This is part of the process that we had to work through for the credit-rating one, which I think is a good point that you raised, as well as the consolidation one.

To me—remember, this is in February—it's identification of issues and other items that ultimately needed to be addressed, to the point where I think the credit rating didn't include it on the province's books, and we did consolidate it.

Mr. Roman Baber: And so we understand, at least, what the political class intended to potentially do, but nonetheless the designed transaction may get us, at the end of the day, to a point where the net borrowing associated with the plan would have to be factored into the deficit. Correct?

Mr. Ken Hartwick: Yes. I think that, even the way the trust ultimately was established, and the bonds we ultimately issued—credit rating agencies have a mind of their own. When they're assessing anyone's credit, including the province's, they can make a determination that would be different than how we would view how the bonds were consolidated. It's ultimately their conversations with your finance team that interfaces with the credit rating.

Mr. Roman Baber: In the next point, you're essentially suggesting that the structure may be more expensive at the end of the day. Then, the point after that is one of particular interest to me:

"Cost of financing

"Future governments may enact legislation that changes the right of the SPV to recover amounts from customers."

Do you see that?

Mr. Ken Hartwick: Yes.

Mr. Roman Baber: Essentially, you're suggesting that the asset is uncertain, because governments may change and there may no longer be certainty that the trust would be able to recover the amounts purported to be bought by the trust.

Mr. Ken Hartwick: Correct. That's exactly right. When we talked about the provincial supported remit, separate and distinct from the indemnification—that was ultimately why, within the bond offerings we did, that supported remit was important. Because this program, if it had gone to its end-of-life, would have been a 30-year program. That is a series of potential policy changes by governments along the way. Indemnification of this risk was important so we could ultimately end up with a structure that would allow us to issue the bonds in the manner that we did.

Mr. Roman Baber: Plainly speaking, the structure is not just complex; it's risky. It's very risky. Correct?

Mr. Ken Hartwick: There are risks with it, like there are with any financing structure, including this one.

Mr. Roman Baber: I note from some of the emails that I've reviewed that, in fact, OPG did not just ask for an indemnity from the province in connection with any liability it may owe to the capital markets or any of the bondholders; it also sought a waiver from its shareholder, the government, not to pursue any claims against OPG. Is that correct?

Mr. Ken Hartwick: That, I would have to look into.

Mr. Jeff Lyash: I'm not sure what—perhaps you can help us. Is that something other than embedded in the indemnity itself that you're referring to?

Mr. Roman Baber: Yes. I understand that OPG requested, included in the indemnity, a waiver by the province of its right to make any claim, as a shareholder of OPG, that it could otherwise make, relating in any way to the activities of OPG associated with the plan. Do you recall that, Mr. Lyash?

Mr. Jeff Lyash: Subject to check, I think that's sort of part and parcel of the indemnity. I think that is the nature of the indemnity we had asked for.

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To kind of close up that question that I couldn't quite answer before on whether indemnities have been used in the past: If we're issued a shareholder directive, which we have—they're posted on the website. We post those as disclosure if we're directed to. Those come with relieving the company of obligations, including the ones you've mentioned. So those directives come with an indemnity.

There is an instance where we asked for an indemnity that wasn't a shareholder directive, that I'll use as an example. It was related to the lease of the Bruce facility to Bruce Power. Here is a transaction that was acceptable to the corporation, but a significant unpredictable risk. We asked for an indemnity for that Bruce lease.

Mr. Roman Baber: I'll present to you OPG's reports. The document is entitled OPG Reports 2017 Third Quarter Financial Results. This is you reporting in the third quarter of 2017. Specifically, I want to take you to page 29, which I have provided to you separately. In the highlighted portion, the report deals with Ontario's Fair Hydro Plan and OPG's role in connection therewith. The title is, "OPG's role in connection with the Fair Hydro Plan could have reputational impacts on the company." Do you see that?

Mr. Jeff Lyash: Yes, I do.

Mr. Roman Baber: You're saying here that the Fair Hydro Plan received royal assent on June 1, 2017. "As the financial services manager ... OPG's reputation could potentially be adversely impacted through this involvement and through stakeholder opinions related to this involvement." It appears to me on the face of it that OPG had some reputational concerns associated with its involvement in the Fair Hydro Plan. Is that correct?

Mr. Jeff Lyash: Yes, that's correct.

I might add that what you're citing here is the management disclosure and analysis that we file quarterly with the Ontario Securities Commission. Here, we try to very transparently highlight the risks that we think the company is exposed to in the due course of business. With regard to the Fair Hydro Trust, if you trace back through all of our disclosures, we consistently characterized this as a risk, and I think you see why we characterized this as a risk as we sit here today. It's one of a number.

Mr. Roman Baber: It's not just the magnitude of the numbers and the risk of the plan. We're also talking about an intangible reputational risk to the company.

Mr. Jeff Lyash: Correct.

Mr. Roman Baber: I heard you say earlier on that you would not pursue this plan if it was not in the best interest of the company. In fact, you owe your fiduciary duty to the company, correct?

Mr. Jeff Lyash: Correct.

Mr. Roman Baber: So if the plan has significant risk, and on top of that, the plan has significant reputational risk, why would it be in the best interest of the company to enter into this sort of involvement in the Fair Hydro Plan?

Mr. Ken Hartwick: I could start on the context of this. If you look through our body of financial reports, both our year-end financial statements, our annual information form or quarterly statements, for all of which there is a reporting obligation with the OSC to do, embedded through those are a series of descriptions of risks around the business. Some of them are financial, some of them are safety, some of them are employee-related and some of them are reputational-related. It's one of the obligations we have of being a reporting issuer: You have to disclose a broad range of risks, which—I know when people read them, they think, "Well, that doesn't seem realistic," some of the risks, but they are. That's why they're in there.

I'd characterize this as one of those, but it's within a body of context around a series of risks we report that if you read in a similar manner, you'd say we shouldn't be in the generation business. But it's a requirement with the OSC that you characterize your business this way—and everybody else.

The Vice-Chair (Mr. Doug Downey): We have about one minute left.

Mr. Roman Baber: Have you previously—

Mr. Ken Hartwick: So this is—

Mr. Roman Baber: Excuse me. In response to that, you're saying that if you wouldn't be able to take some of those risks, you wouldn't be able to be in the generation business. Have you previously advised in your prospectuses that you may have incurred reputational risk as a result of entering into a transaction?

Mr. Jeff Lyash: Yes.

Mr. Ken Hartwick: Yes.

Mr. Roman Baber: Would you enter into this type of a transaction with this type of risk and this type of reputational risk but for the government potentially leading the role—it was leading in this situation—if the government didn't ask?

Mr. Jeff Lyash: As I said earlier, we would not have gone into this business were it not for the request of the shareholder. I think I've made that quite clear. But once requested by the shareholder, we had to take that request on board and make sure that we were protecting the interests of the corporation, and that's what we tried to do.

No transaction we do is risk-free, so we try to characterize the risks of each transaction in our management disclosure so that any investor who holds our bonds can clearly see it. You might look at environmental risk we have with respect to CO_2 regulation, or safety risk we have with respect to dam safety, also characterized in this report.

Mr. Roman Baber: But Mr. Hartwick—

The Vice-Chair (Mr. Doug Downey): I'm sorry, we have to stop there.

It's 10 minutes to the opposition side and then 10 minutes back to the government.

Ms. Catherine Fife: Thank you for that last set of answers.

OPG is 100% owned by the province of Ontario. The Minister of Energy is the sole shareholder. You have this board of directors who are appointed by the province, and you have a memorandum of understanding or agreement between OPG and the ministry. So that relationship is very direct between the Ministry of Energy and yourself.

Since 2015, I thought that your board was somewhat governance-related, but it's also operational. Is that true?

Mr. Jeff Lyash: The board is governance, primarily. Of course, the board has a couple of very specific responsibilities. The board hires and fires the CEO—

Ms. Catherine Fife: You care about that one.

Mr. Jeff Lyash: I do—and the board selects the independent auditor. The board is responsible for the strategy of the company, and lastly, the board is responsible for the oversight of the operation of the entity.

Ms. Catherine Fife: Of the operations—okay. The current chair is Bernard Lord, right?

Mr. Jeff Lyash: Correct.

Ms. Catherine Fife: And he's the former Premier of New Brunswick?

Mr. Jeff Lyash: That's correct.

Ms. Catherine Fife: He has been the chairman since 2015?

Mr. Jeff Lyash: I believe that's correct.

Ms. Catherine Fife: Has your board, through the chair, identified any concerns going forward with the current status of the Fair Hydro Plan?

Mr. Jeff Lyash: Like all parts of our business, the board has an oversight role, so the oversight on the Fair Hydro Plan in the board falls to the audit and risk committee. Ken, as the CFO, and I, as the CEO, report routinely to the audit and risk committee about implementation of the Fair Hydro Plan. With this change ongoing now, the redirection in the government, we're of course concerned, concerned to make sure that we support the process that the government wants to undertake and that we do it in a way that protects the corporation and the bondholders that we owe a duty to.

Ms. Catherine Fife: Your chair has a responsibility to report back to you, as the CEO, any unusual activity, right?

Mr. Jeff Lyash: Correct.

Ms. Catherine Fife: Were you concerned when Mr. Bernard Lord was approached by Dean French, from the Premier's office, to fire Mr. Velshi? Were you concerned?

The Vice-Chair (Mr. Doug Downey): This is the third time we're going down this road. This is beyond—

Ms. Catherine Fife: This speaks to transparency. This is a public entity, 100%—

Interjections.

The Vice-Chair (Mr. Doug Downey): Hold on, please. Order.

Ms. Catherine Fife: I have the chance to speak with the Chair, actually. When he makes a ruling, I have a right as a member to address the Chair when he makes a ruling.

The Vice-Chair (Mr. Doug Downey): If you'd like to inquire about their policies on transparency, that's one thing, but to use a specific example of something that's well beyond the scope of the mandate of the committee—that's too far.

Ms. Catherine Fife: Does your chair report to you on any activity—if he's approached and you're protecting the interests of OPG, does your chair have a fiduciary or an ethical responsibility to come to you and report any of that activity?

Mr. Jeff Lyash: The chair has the same fiduciary duty and duty of care to the corporation that I have, so I would expect that if there was something material that the chair needed me to know, he would satisfy his duty. I don't know, if it doesn't go to one of those duties, whether he would or wouldn't put that information to me.

Ms. Catherine Fife: Thank you. In your financial reporting, obviously OPG—we see the sunshine list on an annual basis. Is the severance of any of those employees included in that sunshine list?

Mr. Ross Romano: Point of order, Mr. Chair.

The Vice-Chair (Mr. Doug Downey): Yes, Mr. Romano.

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Mr. Ross Romano: We've heard this far too many times today. It's obvious where you wish to go. You've already heard the answer from both members in question period today—

The Vice-Chair (Mr. Doug Downey): Just a moment. You can address the Chair.

Mr. Ross Romano: Yes, Mr. Chair. We heard the answer. There have been questions from the opposition party that started in question period earlier today about this. They were permitted some leeway to get into it earlier today. They actually have the information and the evidence directly from this panel saying that the decisions with respect to this issue that the NDP is trying to raise right now were solely within the—

The Vice-Chair (Mr. Doug Downey): So what's the point of order?

Mr. Ross Romano: I'm getting there—were solely within the purview and the mandate of the CEO and the board of OPG. They are playing political games, and I think that's unfair because it's not the mandate of this committee.

Ms. Catherine Fife: Mr. Chair—

The Vice-Chair (Mr. Doug Downey): I understand your point of order.

I'm going to turn to Ms. Fife.

Ms. Catherine Fife: Mr. Chair, I'm looking for financial transparency as it relates to the unfair hydro plan and the cost to the citizens of this province. Asking questions of transparency and the reporting of those costs, which are identified in the inquiry report, needs to actually be—

Mr. Ross Romano: But you can't just assume the answer—

Ms. Catherine Fife: Don't. Talk through the Chair. I have the floor right now. I'm trying to find out from OPG about transparency.

The Vice-Chair (Mr. Doug Downey): Okay. I understand the nature of the point of order and I understand—

Ms. Catherine Fife: I'm specifically asking about the reporting of the costs to OPG.

The Vice-Chair (Mr. Doug Downey): If we could ask the witness to address the transparency, if I can phrase it that way?

Ms. Catherine Fife: Sure.

The Vice-Chair (Mr. Doug Downey): And how OPG deals with transparency of its reporting.

Ms. Catherine Fife: Thank you.

Mr. Jeff Lyash: I apologize. Could you ask the question again? I want to make sure I—

Ms. Catherine Fife: Obviously, the sunshine list comes out every year. Because you are solely owned by the province of Ontario, there is a fiduciary responsibility to report all costs that are related to salaries and pensions to the shareholders. I'm asking, will all of those costs be disclosed at the end of this year?

Mr. Jeff Lyash: Let me ask Ken, who handles the reporting, to respond first.

Mr. Ken Hartwick: Firstly, going into the transparency element of it: Again, just the fact that we are a registrant with the OSC imposes a level of transparency in our financial and public disclosures that we need to make. We need to ensure that they are, in all material respects, fair, accurate and complete. That's really what we set out to do, but it's through the body of our reporting, which is quarterly, annual information forms—those types of documents. Again, at a level of materiality you'd expect for a corporation of our size, that disclosure is complete. Ultimately, it's the Ontario Securities Commission who, if they disagreed with something we either didn't or did disclose, can ask us to do something different. They have not to date, and they've been satisfied with what we have done.

Ms. Catherine Fife: This would also be included to your board of directors around staffing. So at some time, when the sunshine list comes out, a full costing-out of your staffing costs will be there.

The Vice-Chair (Mr. Doug Downey): Is the question will they comply with the requirements in relation to the sunshine list?

Ms. Catherine Fife: That's what I just asked, yes.

Mr. Jeff Lyash: We have requirements from the OSC on compensation disclosure and we have a different set of requirements on the sunshine list, and we fully comply with both.

Ms. Catherine Fife: Thank you very much.

The Vice-Chair (Mr. Doug Downey): Ms. Shaw?

Ms. Sandy Shaw: Just to recap: In some regard, we were saying that you were dealing with the previous government; the government is the sole shareholder, 100% of the shares. As Ms. Fife has said, the Minister of Energy at the time, Mr. Thibeault, was the sole shareholder who came to you with this suggestion, proposal, that you took into consideration with your board; it's what you've described. Now, currently, we have a new government and we have a new Minister of Energy. Mr. Rickford is the new Minister of Energy.

My question around this is, the nature of the provincial support agreement that you have—which in some way, I understand, backstops this investment. If that provincial support agreement was in any way under threat or if it was removed, you would own a $1.8-billion problem. Is that correct?

The Vice-Chair (Mr. Doug Downey): We have about one and a half minutes left.

Mr. Ken Hartwick: I'd say that the intention of the provincial support agreement is to actually work in the other direction. If there is a change in government policy, direction, whatever the case might be—

Ms. Sandy Shaw: That's what we have right now.

Mr. Ken Hartwick: Right—the government would then step in behind the bonds to ensure bondholders are held whole. That's the intention of the support agreement.

Ms. Sandy Shaw: So essentially, you'll own it, if that were to fall apart. The government will own it, then, or you will own it, do you think?

Mr. Ken Hartwick: No, the government will assume those responsibilities.

Ms. Sandy Shaw: If that falls apart. Can you understand, again, why we are so concerned with the current news? Because we want to see the kinds of questions that Mr. Baber was asking about the previous government that put you into a position of undue pressure, where I'm assuming—I don't want to put words in your mouth, but the implication was that you pursued a path of activity that may or may not have been in the best interest of the shareholder or that you wouldn't have otherwise entertained. That is why we're concerned about this issue with Mr. Velshi, because of the very fact that we want to make sure that there's no—

The Vice-Chair (Mr. Doug Downey): Again, we're down the road for the fifth time, and it's beyond the scope.

Ms. Sandy Shaw: Okay, all right. Would you say—

Mr. John Vanthof: Beyond the scope of transparency.

Ms. Sandy Shaw: Yes, beyond the scope of transparency.

How much time do we have, Mr. Chair?

The Vice-Chair (Mr. Doug Downey): You have about 20 seconds.

Ms. Sandy Shaw: We just want to ensure that we're in a position where we learn from the past, we don't repeat the mistakes, and that issues like this—that are of concern not just to us but to all the reporters that are out in the hall—get addressed in this committee, and that, in fact, this committee has some kind of useful legacy for us, for all the people who have participated in it, for you coming here and for the future of all the people in Ontario who are looking to us to make this committee something that they can see a benefit from.

I realize we've been ruled out of order a number of times, but you can certainly understand why there's concern from this committee, concern from the general public, and you'll see concern from the media as well with this issue.

The Vice-Chair (Mr. Doug Downey): We'll turn now to the government side for the final 10 minutes. Who has their hand up? Mr. Baber.

Mr. Roman Baber: Mr. Lyash. You opted to proceed with the company's involvement in the Fair Hydro Plan. This is despite the fact—you're saying, at the request of the shareholder.

Mr. Jeff Lyash: Yes.

Mr. Roman Baber: This is despite the fact that you agree with me that there were significant risks associated with the plan, and reputational risks associated with your company's involvement in the Fair Hydro Plan. Correct?

Mr. Jeff Lyash: We proceeded after we felt the risks embedded in it had been eliminated or mitigated to an acceptable level, that the risk was consistent with the risk profile that we take on in the due course of business.

Mr. Roman Baber: The shareholder did not pass a unanimous shareholders' resolution compelling you to enter into the deal. Correct? That was your answer to my—

Mr. Jeff Lyash: They did not. That's correct.

Mr. Roman Baber: Second of all, and my final question: You said that you would recommend against the plan. My question to you is: Have you actually recommended or said to anyone in the former government, or written to anyone in the former government suggesting to them not to proceed with the transaction in the form conceptualized?

Mr. Jeff Lyash: I've not responded in writing on the plan, to answer that question directly. In the discussion around the Fair Hydro Plan, all the concerns that OPG had, or any view that I might have had, I would have expressed to the government so that they had the value of it in their decision-making process. Then I would expect them to take input and incorporate it into their decision.

Mr. Roman Baber: So you have expressed concerns?

Mr. Jeff Lyash: Yes.

Mr. Roman Baber: You have recommended against it or you have not recommended against it?

Mr. Jeff Lyash: It was not proposed by OPG. My initial feedback was, "This has some issues with it, and I wouldn't generally recommend this course of action. Here are some specific concerns that OPG would have with respect to the definition of our role beyond which we would not be able to participate." I expressed that to the government so they had the benefit of it in their decision-making, just as I would express it to the current government on any policy you ask me to comment on.

Mr. Roman Baber: Thank you. I'll cede the rest of my time.

The Vice-Chair (Mr. Doug Downey): Mr. Romano.

Mr. Ross Romano: Thank you. I just want to leave off on that. We've heard you say a number of times you had concerns. Did you receive any concerns from anyone else within your office, within your staff? Did anyone within your ranks express concerns over this?

Mr. Jeff Lyash: Yes. Part of our culture is to encourage our employees, whatever issue they're working on—if they have concerns, then we encourage them to express them. We take them and work them to disposition them until that employee either has recognized where to point where the concern has been mitigated, or, if it hasn't been mitigated, we escalate it. That's just a routine part of our culture. Our approach to how OPG stepped through this was no different.

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Mr. Ross Romano: Did you receive specific concerns from your controller?

Mr. Jeff Lyash: I'll let Mr. Hartwick elaborate, but we had a—

Mr. Ross Romano: I see him nodding in the affirmative, so—

Mr. Jeff Lyash: Yes. We had a team of people working on this, very expert in this process. Early on, we had a number of concerns. As a matter of fact, as I read this document, I can see some of their concerns embedded in here as actions that needed to be taken to close gaps.

Ken?

Mr. Ken Hartwick: Just to pick up on Jeff's earlier point: Having an environment where people who work in and around us, including my controller, do express concerns is the right environment to be in.

Mr. Ross Romano: Just to clarify, your controller is John Mauti?

Mr. Ken Hartwick: Correct.

Mr. Ross Romano: Okay. And he had concerns?

Mr. Ken Hartwick: Correct. As you look across this, there are concerns around the accounting. There are concerns around whether or not we can obtain the credit rating, to get the bonds financed as low as possible. There are a series of concerns, and these are items that you work through.

As Jeff mentioned earlier on, if you get to the point where those concerns are adequately addressed, then we could proceed down a certain path on the transaction. If we had gotten to a point where we didn't think we could get an effective credit rating for the bonds, and it would be prohibitively expensive—or some of the other support around it—then we would have stepped back and said, "Is this the right thing for OPG to do?", to ensure that the company is protected.

To me, that's a great environment to be in. I want my employees who work in and around me to be very quick to raise concerns.

Mr. Ross Romano: With respect to the concerns that were raised by staff, specifically Mr. Mauti, your controller, I'm going to address four concerns that were raised by all of the bureaucrats. The concerns we got from the bureaucrats—Serge Imbrogno and Mr. Orsini, for that list—they all raised concerns that they identified in a cabinet document, saying it cut across accounting lines—which you just named, so I trust that is one that you and Mr. Mauti agreed with, correct?

Mr. Ken Hartwick: There are two different sets of lines you would want to look at. One is, what is the provincial accounting? It's not my purview. You report under PSAS, not the US GAAP that we do. The item that Mr. Mauti referred to was our accounting under US GAAP, initial concerns, which we ultimately worked through for OPG's account.

Mr. Ross Romano: So it did cut across accounting lines. The way it was proposed, there were problems with that, correct?

Mr. Ken Hartwick: No. The way it was proposed required us to continue to examine it and get to the point where those issues could be addressed.

Mr. Ross Romano: There were concerns (1) with it cutting across accounting lines; (2) with it cutting across legal lines; (3) that it probably wouldn't work anyway; and (4) even if it did, costs were going to go up. Those were the concerns that were identified by the high-ranking bureaucrats who testified before this committee. Would you agree with that list of concerns?

Mr. Ken Hartwick: I think one in particular that you've mentioned—I think we have acknowledged a couple of times now that us borrowing via the trust vehicle is more expensive than—

Mr. Ross Romano: Right. So then the answer is yes.

Mr. Ken Hartwick: Yes, for that—

Mr. Ross Romano: Okay. We're limited on time, so we'll move on. So, yes, you shared those concerns. Did Mr. Mauti share those concerns as well?

Mr. Ken Hartwick: Mr. Mauti is specifically focused on the accounting side. That's one where he had initial concerns as to what OPG's accounting would be, which we ultimately addressed as the vehicle—

Mr. Ross Romano: Okay. So now I'm going to move on.

Mr. Lyash, I'm going to bring it to you. Were there any other staff concerns that were raised to you in your role, and perhaps even to the extent that people didn't want anything to do with it—within your office?

Mr. Jeff Lyash: Over the process, there were a range of concerns raised by our finance and accounting people, by our legal people, by our board of directors, by our directors' outside counsel. All of these concerns were dispositioned into actions or constraints around OPG's roles to mitigate them.

At the end of the day, our concerns, and our staff's concerns, were addressed in the construct of the trust.

Mr. Ross Romano: Okay. You say that your concerns were addressed. But I want to take you back to something we heard earlier today.

You've indicated to us that this wasn't your idea. You wouldn't have recommended it. You wouldn't have gone down this path. However, you received a direction from your shareholder, then-Minister of Energy Glenn Thibeault, to proceed, so you went in that fashion.

My question for you is, isn't it fair to say that you were going to proceed based on how your shareholder asked you to proceed?

Mr. Jeff Lyash: No, I don't think that's fair at all.

Mr. Ross Romano: All right. And the entire list of concerns that were raised and that you shared were because this whole structure was borne by the rate base, not the tax base?

Mr. Jeff Lyash: I wouldn't characterize it that way. I want to try to be responsive to your question. The decision on whether the rate base or the tax base bears this is a policy decision for the province—

Mr. Ross Romano: Yes, one that you've already indicated you would not have pursued.

Mr. Jeff Lyash: My description of concerns and those of our workforce relate materially to how this financing vehicle, the Fair Hydro Trust and our role as the service manager need to be built. Those concerns were addressed through the process.

Mr. Ross Romano: They were addressed, but it still made it considerably more expensive to the taxpayer of Ontario.

Mr. Jeff Lyash: Yes. I think I've agreed that it was more expensive. That's not my decision, nor—

Mr. Ross Romano: No, I get that, and you would never have pursued it this way, at the end of the day. That was your own evidence, but I guess we've already answered that.

Mr. Jeff Lyash: I don't think those were my words. I'd refer to the record for the words that I used to answer this question.

Mr. Ross Romano: Fair enough. I believe that's—

The Vice-Chair (Mr. Doug Downey): We have time for one short question.

Mr. Ross Romano: Okay.

The Vice-Chair (Mr. Doug Downey): Ms. Park?

Ms. Lindsey Park: I'm going to be a bit long-winded, but it's one last question. Mr. Lyash, I get that this wasn't your idea, and I can only imagine in the circumstance that you were trying to be as professional as possible in your role. But you said you've read the Auditor General's report. The Auditor General said the province chose a path, and ultimately you, being instructed by the government, had to pursue this path of a plan that was more costly and less transparent than an alternative course where the province directly borrowed. Do you agree with those concerns?

Mr. Jeff Lyash: I certainly agree with the fact that, as we said, it's more expensive, and I agree that it is difficult to understand. I think any way you go at this is difficult to understand, even a government finance plan, but I would concede that this is probably more difficult for the layman to understand than a government finance plan would be.

The Vice-Chair (Mr. Doug Downey): Thank you, gentlemen, for attending today. The committee will stand adjourned—

Ms. Catherine Fife: Oh, wait.

The Vice-Chair (Mr. Doug Downey): Sorry. Ms. Fife?

Ms. Catherine Fife: Yes, thank you, Chair. I'm sure other people have received emails from Cindy Veinot, who is the Provincial Controller. She actually wants to come to committee—

The Vice-Chair (Mr. Doug Downey): Is the question whether we should have the subcommittee address something?

Ms. Catherine Fife: Well, I'm wondering: Has the subcommittee been called to actually address the next ring of witnesses who are supposed to come before this committee?

The Vice-Chair (Mr. Doug Downey): You can ask your member who is on the subcommittee, and they can have that discussion.

Ms. Catherine Fife: Well, the government has control over when these things get called, so I'm just asking. It has been Mr. Romano all along, so we have two witnesses who are still on the list.

The Vice-Chair (Mr. Doug Downey): Okay. I understand the questions. Does the committee want to have this discussion right now, or should it go to the subcommittee?

Mr. Ross Romano: We'll go to the subcommittee and we'll determine that at that time.

The Vice-Chair (Mr. Doug Downey): Okay, so it will go to the subcommittee. Any other issues? Yes, Ms. Fife?

Ms. Catherine Fife: I just wanted to get a timeline. Are they going to be meeting this week? Because we have witnesses to call for the following week.

The Vice-Chair (Mr. Doug Downey): Well, you can have that discussion with your member on the subcommittee.

Ms. Catherine Fife: But the government calls the committee.

The Vice-Chair (Mr. Doug Downey): It's the call of the Chair, and we'll talk to the permanent Chair. Any other questions?

Ms. Catherine Fife: No, that's it.

The Vice-Chair (Mr. Doug Downey): Thank you. We're adjourned.

Thank you, gentlemen.

The committee adjourned at 1739.

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