



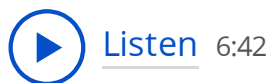
# NAFTA litigation and a police probe: How an Ontario wind turbine deal cost Canadian taxpayers millions



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Wind turbines are shown at the opening of a 44-turbine wind farm near Port Alma, Ontario in November 2008. There are 900 wind turbines in the province. (Dave Chidley/Canadian Press)



The federal government is on the hook for millions after a wind turbine deal between Ontario and New York investors went sour. This week, one of those investors is in Toronto as part of a police probe related to Ontario's gas plant scandal.

In 2010, a group of New York investors agreed to build offshore wind turbines for Ontario. They would then sell that power to the grid.



New York investor David Mars is in Toronto this week to speak with the Ontario Provincial Police. (Brian Harkin)

But delays from the province mean those turbines still haven't been built. Under the North American Free Trade Agreement, all of Canada is on the hook for the project. The federal government has been ordered to pay those investors \$28-million.

Ontario Provincial Police officers are investigating whether former Ontario government staffers illegally deleted emails related to the wind turbine project. As It Happens host Carol Off spoke to David Mars, co-founder of Windstream Energy.

**Carol Off:** Mr. Mars, what exactly was the deal that you reached with the Ontario government in 2010?

**David Mars:** As part of the Green Energy Act, we came to the province, actually, in 2007.

In 2010, we entered into a 20-year power purchase agreement for a 300-megawatt offshore wind farm. The idea here was that the province was open for business, they wanted to add jobs and have foreign investors come in and help fund that.

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**CO:** The Green Energy Act was a 2009 initiative, it gave a priority to projects like this. Ontario was going to go big into windpower. In 2011, all the projects were cancelled, there was a moratorium ... were you caught up in that?

**DM:** Yeah, we were the only project that was cancelled, because we were the only offshore wind farm that had a contract and had gone through the process with the Ontario government. And so we weren't actually cancelled, what they told us at the time was that we would be "frozen" and once they finished studying the science, they would then allow us to move forward and proceed. It's been almost six years since that date, and we've unfortunately not been able to proceed.



David Livingston and Laura Miller, top aides to former Ontario Liberal premier Dalton McGuinty, are set to go to trial for breach of trust and mischief in September 2017. (Handout/Queen's Park)

**CO:** Why did you take this as a challenge to NAFTA?

**DM:** We were attempting to discuss and to negotiate with the Ontario government so that we would have the ability to understand what it was we were to do. We're the counterparty to a contract, they're holding \$6-million of our money, and because of the timelines of the contract, we've had to spend tens of millions of other dollars pushing this forward. We had no sort of choice but to ultimately wind up in litigation and as a U.S. investor we felt that the best place for us to get some level of remedy would be through a NAFTA litigation.

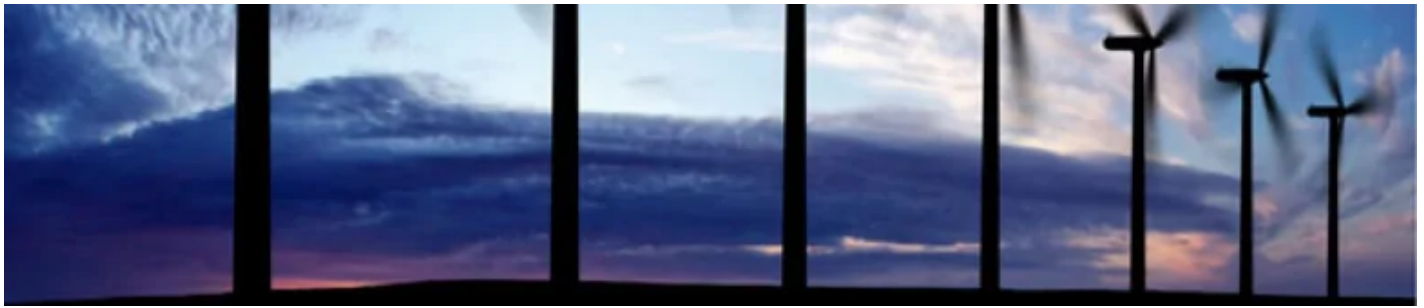
**CO:** You were awarded \$28-million dollars from the federal government. What does that amount represent, what is that for?

**DM:** We were awarded the money for what they call "frustration to the contract." It's not actually for the contract itself, it's for the damages that surround the acts that they've undertaken since then.

**CO:** You are in Toronto this week to speak with the Ontario police.

**DM:** I am. The Ontario Provincial Police Department requested that we, myself and Mr. Ian Baines who runs the company on a day-to-day basis, come up and answer questions in relation to a criminal investigation that they're undertaking related to document destruction by the Premier's office or people within the Premier's office. This is sort of the second part of what previously was reported upon with Laura Miller and David Livingston, that they've been charged for, in relation to document destruction for the gas plant scandal.





Gilead Power will continue to plan for the Thunder Bay wind farm projects, even though Hydro One currently doesn't have enough capacity on its grid to accommodate the power produced from them. (istockphoto.com)

**CO:** Okay, as if this couldn't get messier: what you're referring to is charges by the Ontario police, to these emails related to the gas plant cancellations, which cost the taxpayers about a billion dollars ... so the emails were allegedly erased in relation to that. How did you get caught up in those emails?

- **[RELATED: Liberal gas plant scandal trial scheduled for September 2017](#)**

**DM:** It was the same people that were running the government at the time, the same people we were dealing with, and it was the same time frame. So, in essence, either they were deleted in relation to our project, or we were some sort of collateral damage. But the reason we know this is because when we requested through discovery for NAFTA, emails and documents from the Premier's office, we were originally told that the Premier's office and staff had no involvement in offshore wind, and therefore there were no files or documents. Later on, about six months post our discovery period, we received a call from Canadian counsel stating we have found a bunch of documents that we're sending to you. Those documents were basically documents from the Premier's office, but they weren't given to us by the Premier's office, they were given to us by the various agencies below, like the Ministry of National Resources, the Ministry of the Environment, and a lot of it was directive from the Premier's office down to them about how to handle offshore wind.

**CO:** So what it appears is that the documents that were from the Premier's office may have been deleted?

**DM:** Yea, I mean, either they were deleted, or have been withheld from us receiving

them over the last six years.

**CO:** You realize you have been tangled in one of the more difficult files in Canadian energy policy, and... the whole issue, the cost of electricity in Ontario, and the issues with the Ontario government may actually defeat the government ... Are you aware of what you're tangled in?

**DM:** Unfortunately, I'm well aware of it. It's been a very strange process. We're infrastructure investors and we have been infrastructure investors around the world, in jurisdictions which you would argue should be a lot riskier places to do business, like the Ukraine, Russia, China, and Brazil. Unfortunately, what we've found is our closest neighbour in Canada, specifically Ontario, has become the riskiest partner. We don't want to be entangled in this, we just want full and clean transparency, and what we would like to do is sit down with the Ontario government and resolve this in a way that was most amicable for us and for the taxpayers. The unfortunate thing is that they have, to date, refused to speak to us. Which is strange when you have a counterparty to a nearly \$6-billion contract.

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