



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

**(Reference: Auditor-General's report No 7 of 2008:
Proposal for a gas-fired power station and data centre—site selection)**

Members:

**MS C LE COUTEUR (The Chair)
MR B SMYTH (The Deputy Chair)
MS J BURCH**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 7 OCTOBER 2009

**Secretary to the committee:
Ms M Morrison (Ph: 6205 0136)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Committee Office of the Legislative Assembly (Ph: 6205 0127).

WITNESSES

SULLIVAN, MR MARK, Managing Director, Actew Corporation Ltd.....**84**

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Amended 21 January 2009

The committee met at 3.35 pm.

SULLIVAN, MR MARK, Managing Director, Actew Corporation Ltd

THE CHAIR: I welcome Mr Mark Sullivan of Actew Corporation to this hearing of the public accounts committee inquiry into the Auditor-General's report No 7. I imagine you would already have seen many copies of the privileges statement on the table in front of you.

Mr Sullivan: Yes, thank you. I have read it.

THE CHAIR: Do you have any opening statement to make?

Mr Sullivan: No, thank you.

THE CHAIR: Then we will go to questions. Do you want to start, Mr Smyth?

MR SMYTH: I do. Mr Sullivan, can you describe the relationship between Actew and ActewAGL, for the benefit of those who might not know what the strict arrangements are?

Mr Sullivan: Yes. Actew Corporation is a territory-owned corporation with two shareholders, being the Chief Minister and the Treasurer. Actew Corporation has two wholly owned subsidiaries. One is Actew Retail. Actew Retail is in a partnership with AGL Retail. We have another subsidiary called Actew Distribution, which is in a partnership with Jemena. The retail partnership forms a partnership called ActewAGL Retail. The distribution partnership with Jemena forms a partnership called ActewAGL Distribution, and those two partnerships form a joint venture which is called ActewAGL.

THE CHAIR: Which of these was involved in the gas-fired power station proposal?

Mr Sullivan: ActewAGL as a joint venture was concerned because it went to the joint venture board.

MR SMYTH: Just for clarity, what percentage of ActewAGL was Actew owned?

Mr Sullivan: Actew is a half-owner of each of the partnerships which form the joint venture called ActewAGL.

THE CHAIR: So effectively it is a half-owner of ActewAGL is the simple answer.

Mr Sullivan: Effectively it is a half-owner, in a very simple way. It is not a half-owner of ActewAGL; we half-control it.

MR SMYTH: So, in terms of governance arrangements, before ActewAGL undertake any major project are they obliged to report to Actew?

Mr Sullivan: No, they are not obliged to report to the shareholders. They are not a TOC.

THE CHAIR: No.

Mr Sullivan: Their shareholders are largely represented on the ActewAGL board and they are not required to report to or seek permission from the shareholders—

MR SMYTH: Thank you, but that was not the question. What is the reporting or permission that they have to seek from Actew itself, from Actew and the Actew board?

Mr Sullivan: Nothing.

MR SMYTH: Nothing. So as an entity ActewAGL—

Mr Sullivan: They report. They provide regular reports. The Actew board considers a business report from ActewAGL at each of its board meetings.

MR SMYTH: And how would Actew exert influence over the ActewAGL board?

Mr Sullivan: Through its three board members.

MR SMYTH: And how many are on the ActewAGL board?

Mr Sullivan: Six.

MS BURCH: So Actew has two board members of a board of six?

Mr Sullivan: We have three board members.

MR SMYTH: Three out of six—

Mr Sullivan: We have a chair and two board members. Jemena has two and AGL has another one.

MR SMYTH: So did the Actew board, upon receiving these business cases that you spoke of—

Mr Sullivan: I did not speak of business cases. I spoke of reporting.

MR SMYTH: Sorry, business reports. When they received those business reports, were there any discussions on the Actew board over the project of the—

Mr Sullivan: You are asking me. In terms of my review of history—and I think Jim Service covered it in the hearing before your predecessor committee—the Actew board were apprised, I think twice, about the project, formed a view that they were willing to invest up to \$300,000 in development of the business case, and ActewAGL proceeded on that basis.

MS BURCH: So Actew's investment of \$300,000?

Mr Sullivan: Actew approved spending of up to \$300,000 on the business case.

MS BURCH: Yes. But that business case and the development and activity were not of Actew; it was ActewAGL doing—

Mr Sullivan: No. It was ActewAGL's development of the business case.

MS BURCH: So the separation was that your funding of the business case was for ActewAGL to do.

Mr Sullivan: That is right.

THE CHAIR: So ActewAGL made the decision and potential commitment of money for the data centre and gas-fired power station et cetera was entirely made by—

Mr Sullivan: It was made by ActewAGL.

THE CHAIR: ActewAGL, the only relationship being that three of the members were—

Mr Sullivan: They are cross-board members, but the board members sitting on ActewAGL act in the interests of ActewAGL.

THE CHAIR: I do appreciate that it so happens that there are some common human beings, but conceptually they could be totally different people—

Mr Sullivan: They could have been, yes.

THE CHAIR: who happen, however, to have been nominated by Actew but their responsibility for it is to ActewAGL. So Actew did not at any stage approve more than \$300,000 on this?

Mr Sullivan: No. It approved expenditure within Actew of \$300,000 to contribute to the business case development.

MR SMYTH: What information did the Actew board pass on to its shareholders about this project?

Mr Sullivan: I would have to look at what was minuted in the board minutes. I do not believe that the Actew board would have gone out of its way to inform the shareholders of an investment of \$300,000 in the development of a business case, particularly when it was aware that ActewAGL was in discussion with government about things, which is on the public record.

THE CHAIR: Looking at the information the other way, Actew clearly is part of the ACT government whereas ActewAGL is not, and as such, I presume, is privy to information that ActewAGL may or may not—I do not know—be entitled to. It may simply be a matter that it would be in the public domain but ActewAGL did not realise it should ask for the information. Do you understand what I mean? There was plenty of information publicly available if you realised you should ring up and ask

someone. Was there information that Actew gave ActewAGL relevant to this project?

Mr Sullivan: No. I think it was the reverse process: as I said, the Actew board had been apprised of their plans. They had clearly endorsed the development of the plan. The prospect of enticing what would have become the largest energy user in the ACT and a tied customer of ActewAGL was sufficient enticement in itself, I would have thought, for the Actew board to basically nod and say, “Get on with your business.”

MR SMYTH: Did the three Actew members of the ActewAGL board seek guidance from the Actew board about furthering the plan?

Mr Sullivan: I was not there at the time but I am not aware that they would have.

MR SMYTH: Is it possible to check that?

Mr Sullivan: One has retired. I could ask them for their recollection. I would be almost 100 per cent certain that they sought no guidance from the Actew board, because they are not supposed to. That would suggest that they had operated in the interests of Actew. They have to act in the interests of ActewAGL, so I would be certain that they would not.

MR SMYTH: Is it possible for the committee to have copies of the two minutes of where this issue was discussed inside Actew?

Mr Sullivan: I am not sure there were minutes; I said the board were apprised. There were not minutes. Basically they were apprised. They receive a lot of briefings, the board. This is not a big business deal for Actew. It would have been “this is what we are doing; we want a contribution from Actew”. There would have been a decision of the board to approve spending of up to \$300,000. I could probably get you that minute. It would only say, “The board approves spending of up to \$300,000.” I think we may have provided that to the Auditor-General so it is probably in the papers that you have, or she has.

MR SMYTH: No, no. She gets them; we do not.

Mr Sullivan: Well, if I have given them to the Auditor-General, I think I can give them to the committee, if you hold them in confidence.

MR SMYTH: If any minutes of Actew that contain discussions or information—

Mr Sullivan: I am not going to go searching. “Any” is a very big question, Brendan.

MR SMYTH: Yes, and this is still a very big issue.

Mr Sullivan: We have searched, and in terms of our searches we have provided the Auditor-General with the papers. That is the paper.

MR SMYTH: And you now have a request from the public accounts committee of the ACT Legislative Assembly for any minutes—

Mr Sullivan: It is getting bigger now.

MR SMYTH: Any minutes that contain references to the deal.

Mr Sullivan: Any minutes. Okay. I think we can do that.

MS BURCH: Just to give a summary, given that this is looking at the administrative processes, the administrative processes for Actew really are in consideration of a request from ActewAGL to support a business case.

Mr Sullivan: That is all. That is it. That is our involvement. To be absolutely open, we did entertain the prospect, if required, would we own the land, and we said that, if we were required, we would contemplate owning the land as long as we got a return on our investment. It was never required.

THE CHAIR: If, or maybe I should say when—I do not know whether it is if or when—the project actually proceeds, would you envisage that Actew had any particular involvement in it, apart from occasionally, as you have been saying, progress reports of an informational matter? Would you anticipate any involvement apart from that?

Mr Sullivan: Under the conditions as I understand them, if there was any prospect of this project proceeding, no, Actew would not have an involvement.

MR SMYTH: Did Actew expect to get a larger return from ActewAGL if the project had proceeded?

Mr Sullivan: Yes. You had the new biggest customer of energy in the ACT, and I think there were other commercial incentives in terms of the project proceeding, but that was not for us. So, yes, we expected it to be a very positive business result for ActewAGL.

MR SMYTH: Sorry, Actew, I asked.

Mr Sullivan: That becomes a response to us. With any good business prospect for ActewAGL we would contemplate seeing a higher dividend or distribution from the joint venture.

MR SMYTH: So are there documents concerning that possible higher dividend?

Mr Sullivan: No.

MR SMYTH: Why would there not be documents concerning that?

Mr Sullivan: Because we were funding a business case. You are getting to the point where we have commissioned a data centre and we are looking at how much we have done. There are no documents.

MS BURCH: Because the business case would have been where—

Mr Sullivan: Why? There ain't none.

MS BURCH: that was to happen.

MR SMYTH: Do you find it curious that there are no documents?

Mr Sullivan: No.

MR SMYTH: You are potentially getting your largest customer, but Actew has no documentation on what it would mean—

Mr Sullivan: No, ActewAGL are getting their largest customer.

MR SMYTH: Okay. But through ActewAGL we would have had a return to Actew from its 50 per cent ownership of ActewAGL—

Mr Sullivan: We would have had an increased dividend by getting a large customer.

MR SMYTH: So there was nothing conveyed from ActewAGL to—

Mr Sullivan: No. It would be like asking what documents would Actew hold over the business dealings between, say, ActewAGL and Manildra Starches in Nowra, the current largest gas customer of that company, and I would say, "None." And does it surprise me? No. Am I pleased that they have a big customer which pays a margin and produces a dividend for Actew? Yes. That is their job: to get on with their business.

MR SMYTH: Did the board of Actew ask ActewAGL for any further information?

Mr Sullivan: Not that I am aware of. They were apprised of where they were proceeding and supported the development of the business case.

THE CHAIR: Thank you very much for your—

Mr Sullivan: I have one thing to raise, if I can—

THE CHAIR: Sure. Of course.

Mr Sullivan: because I think it is related to this because it was raised in context in the Assembly on 11 December 2008. Mrs Dunne made a statement, which is on page 87 of the uncorrected proof transcript, and I will just quote the bit that worries me:

... I do not know whether I have stumbled across something or not. I just leave it there for members to contemplate, because the Auditor-General was told that Actew has not bought—

THE CHAIR: Excuse me, Mr Sullivan. Unfortunately, you cannot quote from the uncorrected proof—

Mr Sullivan: Well, anyway, I wrote to Mrs Dunne and asked that she think about what she said and correct it. I copied that to the Speaker of the Assembly. I copied it

to the Convenor of the Greens, I copied it to the Treasurer, I copied it to the Chief Minister, and I copied it to the Auditor-General, because basically what was suggested was that I may have misled the Auditor-General, and it was promised that my possible misleading of the Auditor-General was going to be followed through. The only person I have heard from is the Auditor-General, who thanked me for my assurance that I had not misled the Auditor-General in respect of her investigation of this audit.

The Treasurer raised the matter in the Assembly when the Assembly were debating another issue that the privileges committee had become involved in, and asked why my request had not been actioned by anyone in the Assembly. It had not been. I received no response from anyone else, including Mrs Dunne, from whom I asked for a response, nor the Convenor of the Greens, nor the Speaker. I regard it as unfinished business that—

MS BURCH: Can you table the letter to us?

THE CHAIR: Obviously one possibility is if you wished to table that letter.

MS BURCH: I am happy to see the letter.

THE CHAIR: Thanks. If you want to table the letter, it can be part of evidence, I guess, which goes with the rest of—

Mr Sullivan: It is just that I watch with interest when the Assembly chase down things where they—

MS BURCH: I am happy to take the letter, Mr Sullivan.

Mr Sullivan: But as soon as a member of a corporation has such an—

MS BURCH: This is a discussion of administrative processes—

Mr Sullivan: It really is a potential misstatement.

THE CHAIR: If you wish to table it—

Mr Sullivan: I would be more than happy to table it and I am more than happy to—

THE CHAIR: The committee can take it as evidence. We do not necessarily have to do anything with it.

Mr Sullivan: If you cannot do anything with it, I am not that interested. I may write to the people I wrote to and say, “Are you going to do anything with what I wrote to you?” Is that the better way? I am more than happy to table it, but I am worried that you said, “We won’t do anything with it.”

MS BURCH: Mr Sullivan, without seeing the letter, I am not quite sure if this committee, given that we are looking at administrative processes and statements made around this issue—

MR SMYTH: The brief in this case is about the Auditor-General's report.

Mr Sullivan: This went straight to the Auditor-General's report—

MR SMYTH: Yes, I understand, but we are not responsible—

Mr Sullivan: because it was a suggestion that I misled the Auditor-General, that I may have misled the Auditor-General. It goes straight to this report. And it is at the moment an uncorrected statement on the public record.

THE CHAIR: We are not responsible for what was said in the Assembly, but to the extent that it is relevant to the Auditor-General's report, which it sounds to me from what you are saying it is—

Mr Sullivan: It is very relevant to the Auditor-General's report.

THE CHAIR: In that case it is relevant. I said that we would not necessarily do anything with it because PAC is not in a position to do—

Mr Sullivan: I hope that PAC can conclude—

THE CHAIR: PAC will put a report in—

Mr Sullivan: I would ask the PAC—

THE CHAIR: There is a limit to anything more that we can do.

Mr Sullivan: to basically assure me that you do not believe I have misled the Auditor-General. Maybe I should ask that question to the PAC: do you believe I have misled the Auditor-General?

MR SMYTH: We do not actually have the evidence before us that you are speaking of, unless you can—

Mr Sullivan: Well, maybe I can leave that as an open action for you. I want some assurance from the PAC that they accept that I have not misled the Auditor-General in this process—

MS BURCH: I am happy to explore it and to take the letter.

Mr Sullivan: because it has been raised that I have, potentially, misled the Auditor-General.

THE CHAIR: I think we should say that we are very happy to get your letter and consider it.

Mr Sullivan: I am happy to table the letter. There are several copies around the Assembly.

THE CHAIR: That probably would be the most appropriate thing for us to do with it, and we will consider at our next meeting what we should do with it. I assume you would be happy if it was authorised for publication—

Mr Sullivan: I am more than happy for it to be authorised for publication.

THE CHAIR: which is what tends to happen to these things.

Mr Sullivan: I have not released it for publication to anyone else because it is a process that I believe the Assembly needs to address, be it through the PAC or the Assembly, and it has not been.

MS BURCH: I think what we are saying is that we will take it and look at it.

THE CHAIR: We will look at it at the next meeting.

Mr Sullivan: That is all I wanted to raise. I think I have a commitment to look at any minutes of the Actew board and we will get you those without delay. Thank you for your time. It is good to be here.

THE CHAIR: And thank you very much for your time, Mr Sullivan. I now declare this hearing of the public accounts committee closed.

The committee adjourned at 3.55 pm.