

ELECTRICITY CORPORATIONS BILL 2005

Committee

Resumed from 1 September. The Deputy Chairman of Committees (Hon Ray Halligan) in the chair; Hon Kim Chance (Leader of the House) in charge of the bill.

Postponed clause 41: Principal functions -

The clause, as amended, was postponed on 1 September.

Hon MURRAY CRIDDLE: I thank the advisory staff for the support that I have received when going through these issues. Obviously, the National Party and I were not happy with the fact that there was no guarantee in the bill for the future-proofing of the electricity networks. However, I give due credit to the minister in the other place, who has indicated that funds will be made available over the four-year term of this government, and the minister in this house has indicated his support for that. We will look beyond that time frame, as a result of issues that arose from meetings that were held in the wheatbelt - at Koorda and Jerramungup - in 2003. The National Party is very keen to legislate for the future of the rural power improvement program. Obviously, the program that has been put in place was implemented in those areas that were known as the worst of the worst. Consideration of other areas is paramount. I am not convinced that I will vote for the bill at the third reading stage; however, I will see what happens as we debate the amendments. On that basis, I move -

Page 22, line 15 - To insert after "enhance" -

, improve

Clause 41(a) would then read "to manage, plan, develop, expand, enhance, improve and reinforce electricity transmission and distribution systems . . .".

The DEPUTY CHAIRMAN (Hon Ray Halligan): It has been suggested to me that the word "enhance" and the word "improve" are synonymous. According to *The Australian Pocket Oxford Dictionary*, "enhance" means to raise to a higher degree, intensify or magnify. The same dictionary defines "improve" as being to bring into a better condition, make good use and to increase in value, excellence etc. Those words certainly appear to be synonymous. If the member would like to put forward an alternative argument, it will certainly be considered.

Hon MURRAY CRIDDLE: The National Party has had a substantial debate about which words should be used. The people in our electorates want the legislation to designate an "improved" intention. The issue is that people expect a clear understanding that the powerlines, power poles and the like will be improved.

Hon KIM CHANCE: The government will support Hon Murray Criddle's amendment. The question of whether "enhance" encompasses entirely "improve" is a matter that the government has considered. The Deputy Chairman's explanation regarding the similarity of the two terms in the *Macquarie Pocket Dictionary* are correct. However, other dictionaries denote a difference in meaning of the words "enhance" and "improve". Most significantly, the *Australian Concise Oxford Dictionary* indicates a different meaning between the two words. The government has discussed this matter with parliamentary counsel, who concurs that the addition of "improve", notwithstanding the *Australian Concise Oxford Dictionary* definition, adds to the meaning of the clause.

Hon GEORGE CASH: The Liberal Party believes that the meanings of both words are very similar; however, we believe that a different interpretation can be placed on each of the separate words. In that regard, I agree with the view of Leader of the House. The definition of those individual words in the *Macquarie Dictionary* is very similar to the definitions the Deputy Chairman read from *The Australian Pocket Oxford Dictionary*. However, only today I received a letter sent on behalf of the Minister for Education and Training explaining to me why certain words were used in a bill in this house some weeks ago. At the time, I argued that there was no need to use the word "implied" in a particular clause of that bill. I have received a letter from parliamentary counsel about the matter. I do not have the letter in front of me, so I will not try to quote parliamentary counsel exactly; I will paraphrase the advice it gave. Parliamentary counsel was keen to see that there was a clear understanding of the use of the English language. I will now present my interpretation of the letter. Notwithstanding that there was no need to use the word "implied" in the earlier bill, they believed it would give a better understanding of what the bill was trying to achieve. That same argument can be put for these two separate words; the first being "enhance" and the other "improve". The opposition agrees with the definition and it agrees with the similarity, but there is sufficient distinction available to enable both words to be used separately. The opposition supports the amendment moved by Hon Murray Criddle. It also supports the amendment because Hon Murray Criddle is trying to insert in this bill a requirement for the Electricity Networks Corporation to recognise the need to both improve and enhance the network. I have said on a number of occasions during my comments on this bill that if there is one thing I have learned over the past four or five years about electricity distribution in Western Australia, it is that the electricity network in the south west interconnected system is in a far worse position than

most people want to admit. I have said that it will cost hundreds of millions of dollars to bring it up to capacity; that is, to accept further generation of electricity into the system. I certainly do not resile from those facts. I have stated that an independent audit will show that the system is not in the condition that Western Power has portrayed in its various briefings. At one recent briefing I attended, Western Power went to great lengths to explain how much money was going to be spent on the networks over the next four or so years. Of course, that is additional money provided by the government because the government recognises the poor state of the networks. I make those comments to reinforce that the amendments are worthy of our support. The opposition will certainly vote for them.

The DEPUTY CHAIRMAN (Hon Ray Halligan): In these instances the Chair is totally in the hands of the Committee of the Whole House.

Amendment put and passed.

Hon MURRAY CRIDDLE: I move -

Page 22, line 17 - To insert after “provide” -
and improve

This amendment is along the lines of the previous amendment.

The DEPUTY CHAIRMAN: If this amendment is passed, clause 41(a) will state -

to manage, plan, develop, expand, enhance, improve and reinforce electricity transmission and distribution systems and provide and improve electricity transmission and distribution services;

Amendment put and passed.

Postponed clause, as amended, put and passed.

Postponed clause 61: Corporation to act on commercial principles -

The clause was postponed on 1 September after it had been partly considered.

Hon MURRAY CRIDDLE: I move -

Page 35, after line 20 - To insert -

- (2) In respect of the function of the Electricity Networks Corporation referred to in section 41(a) -
 - (a) subsection (1) is subject to paragraph (b); and
 - (b) the Electricity Networks Corporation must spend at least 50 per cent of the annual cost of managing, planning, developing, expanding, enhancing and reinforcing the South West interconnected system in respect of transmission and distribution systems in regional districts.
- (3) In subsection 61(2), “**regional districts**” means the Goldfields-Esperance, Great Southern, Mid West, South West and Wheatbelt regions referred to in Schedule 1 of the *Regional Development Commissions Act 1993*.
- (4) The Minister is to review the operation of subsection 61(2) before the expiry of four years from the commencement of this subsection.

I have talked many times about some of the meetings conducted in the wheatbelt and some of the messages coming back. That was underlined at Koorda more than anywhere else because the people from Western Power came to understand how bad the situation was. That meeting underlined the fact that we need substantial amounts of money to be spent. In this case, we are talking about at least 50 per cent of the annual cost of managing, planning, developing, expanding, enhancing and reinforcing the south west interconnected system for transmission and distribution systems in regional areas. My amendment also includes -

- (3) In subsection 61(2), “**regional districts**” means the Goldfields-Esperance, Great Southern, Mid West, South West and Wheatbelt regions referred to in Schedule 1 of the *Regional Development Commissions Act 1993*.
- (4) The Minister is to review the operation of subsection 61(2) before the expiry of four years from the commencement of this subsection.

I have outlined the reasons for this amendment quite often in this debate. I leave it to the Committee of the Whole House to deal with this.

Hon KIM CHANCE: This is where the government’s support for Hon Murray Criddle’s amendment grinds to a halt. It should come as no surprise because this issue has divided our opinions since at least this bill has been

before the Parliament and probably some time before that. Although the government certainly appreciates the spirit of the amendment, it is not able to agree to the request. It will not agree on this occasion because program priorities need to be independently determined on the basis of need. To some extent this is an arbitrary formula to the point of 50 per cent. I appreciate that the wording makes it discretionary above 50 per cent, which is a good thing. If we were to accept the amendment, it would be arbitrary and mandatory up to that point. That is not something that a power provider is necessarily able to guarantee for a number of reasons. One of the reasons is the fairly lumpy nature of investment, which is variable for perfectly good reasons. This is an amendment that could, depending on whether it was read broadly or narrowly, be deemed an appropriation. However, that is not fundamental to the argument.

For the reasons outlined, the government's commitment remains that it will ensure that all network expenditure approved by the Economic Regulation Authority as part of the Electricity Networks Corporation's access arrangement and determination will be funded. That is the principal commitment that the government made in debate in the other place concerning this amendment. I believe it effectively achieves the same thing. Hon Murray Criddle is seeking on behalf of rural constituents - rural power customers - a cast-iron guarantee that there will be adequate expenditure on the network. The government appreciates what Hon Murray Criddle is trying to do. However, there are factors - I have just been through some of them - that mean that we cannot support the 50 per cent formula. However, we have given that undertaking regarding a guarantee that network expenditure that has been approved by the Economic Regulation Authority will be funded.

It needs to be recognised that the government's current network infrastructure spending actually speaks for itself. I took careful note of the comments that were made by Hon George Cash. Although it may be true that it is only over the past four or five years that we have become aware of the critical nature of that investment in our network infrastructure, it is obviously a situation that has been building up for some time. However, to the government's credit, it recognised that that infrastructure spending was necessary. In 2005-06 alone, networks capital expenditure will be more than \$400 million. That compares with a level of about half that amount going back three or four years.

As the Minister for Energy told the Legislative Assembly, it is also expected that there will be a significant increase in the proportion of networks expenditure occurring in country areas. I believe that is also a welcome outcome. Of the \$400 million for the networks capital works program this year, \$138 million will be spent in non-metropolitan areas. By 2008, that gross figure will increase from \$400 million to \$426 million, and, of that, \$208 million will be spent in non-metropolitan areas. That is more than 45 per cent of the total capital expenditure. This is all part of what has become a historic investment program for the government's upgrading of the electricity networks infrastructure in Western Australia. In the 2005-06 budget, the government has approved a \$2.23 billion program of capital and operating expenditure. That program is more than \$400 million higher than the \$1.8 billion capital and operating expenditure program that was approved just one budget ago, in the 2004-05 budget. Some of the key priorities for this expenditure include urgently improving the safety of infrastructure throughout the electricity network, developing transmission and distribution infrastructure required to support the state's very rapidly growing economy and new residential loads, and also new initiatives to target reliability black spots where network service problems must be addressed as a priority.

The government appreciates Hon Murray Criddle's amendment. The arguments that have been put in support of that and similar amendments, both in this and the other place, have led the government to put in place an ongoing commitment. It is one thing to say that if people go through the capital works budget, they can see the money the government has committed, but Hon Murray Criddle's and my constituents in the Agricultural Region want better assurances than that. They clearly want assurances that this level of investment will continue until such time as we have eliminated those serious problems which people in country areas are experiencing with power supply and which are certainly not denied by the government, Western Power or anybody else. I believe that what we have negotiated in response to those arguments, and particularly the undertaking to meet those network expenditure demands, provides a degree of certainty in the long term that networks expenditure will be continued, even though we are not prepared to go to the extent of supporting the mandatory 50 per cent formula.

Hon PAUL LLEWELLYN: I commend Hon Murray Criddle on the formulation of this proposal. However, again, while the Greens (WA) support the intent of the proposal, it does not seem as though it can be practically implemented in the way it has been formulated, notwithstanding the amount of work that I can see has gone into the logic of the amendment. Clearly, the context of this proposal is that there is an apparent discrepancy between the quality and reliability of supply of electricity in urban and regional areas; that is, they are quite markedly different. That is for good reason. The urban networks are far more interlinked in terms of the electrical interlinks between large-scale users and the size of the transmission lines.

I go back to the concept that Western Australia's south west interconnected grid, particularly in regional areas, is extremely weak and that it will require massive investments to sustain that network in the way that it exists now. I do not believe that allocating a nominal 50 per cent, or up to 50 per cent, will do the job. In fact, in many years

it may require much more than 50 per cent to augment the regional distribution infrastructure and transmission infrastructure. Therefore, the formulation will sell short regional areas, if we take it in a literal sense. If we really want to move forward on the augmentation of the south west interconnected grid, we need to look at not just what is motivating this clause. I believe the motivation for this clause is the quality and reliability of supply to regional consumers; that is, the residential and business consumers. Investment in the regional infrastructure is required to give the capacity for power generation to be located in regional areas to improve the networks and the system in those areas. I will give an example. The Narrogin oil mallee plant would require certain kinds of upgrades to get the power that is generated in the regional areas back into the main grid in the metropolitan area, where much of the power might be consumed. That is quite different logic in terms of the investment required for the system.

Similarly, if one were to look at the upgrading and use of biomass plants just north of Albany based on the plantation sector, the upgrade required would not be to enhance the quality and reliability of supply in the Albany area, but to adequately distribute the power that is produced there. By co-locating power generation in the regional areas, the reliability and quality of power for regional consumers would be improved. The same applies to renewable energy such as wind power. If a series of wind turbines were co-located with the regional grid, there would be a flow on of improved power reliability and quality of supply in the regional areas. The amendment that Hon Murray Criddle seeks to insert in this clause is not adequately constructed to allow for the greater enhancement of the regional networks through upgrades to both the network system and power generation so that they can provide synergies between power generation and the quality of supply. When we have relocated generation, not in centralised power generation facilities such as Collie, but in distributed power generation facilities across the entire grid - agricultural production could help in this area - then we will have designed and created a robust power supply system that is independent of small or obligatory upgrades to the network system.

I said that it was a quite well constructed amendment, notwithstanding that it involves an appropriation and for that reason would probably not be supported by this chamber. However, I note that when Hon Kim Chance said that there had been an increase in the projected expenditure on transmission networks - \$138 million from the \$400 million expenditure for network upgrades - he was primarily talking about poles and wires. There is no logical structure to that investment that would lead to the long-term enhancement of power reliability and quality of supply through systemic design. Hon Murray Criddle must consult more broadly with regional communities on the intent of his amendment and inform them that there are many more opportunities for maintaining, improving and enhancing regional power supplies than just investing in more poles and wires. I have said in this place previously that we must invest in regional infrastructure. This amendment fails to do that in this context. Power generation and distribution infrastructure would lead to far more regional economic development than this proposal could deliver. I say again that 50 per cent of the budget may be too small in some years. As I said before, with the urgency for bringing renewable energies into regional areas that would result in an enhanced power supply, we must rethink the way in which we formulate investment in the power system in this state. With all respect, I believe this amendment is an honest attempt to improve the lot of regional people. However, it almost does not go far enough, and it cannot in this context. The arbitrary nature of the level that the amendment sets makes it extremely difficult to support; however, I commend Hon Murray Criddle for bringing the proposed amendment to the attention of the chamber.

Hon GEORGE CASH: I listened with interest to the comments of the Leader of the House and Hon Paul Llewellyn. The Liberal Party approaches its support for this bill on the basis that it will both enhance and improve reliability and quality within the system, in particular in the south west interconnected system, and in the other greater area that will be served by the Regional Power Corporation. The Liberal Party is all about improving quality and reliability of supply.

I understand why Hon Murray Criddle has couched the amendment in these terms. I acknowledge that the Leader of the House has said that he can give his ministerial commitment to this house on the government's proposed future spending on networks generally. In that regard it offers some comfort to the chamber to note that the government itself recognises the state of the networks and is prepared to spend a greater amount of money on them. However, the bottom line is that all the ministerial commitments in the world are for naught when it comes to the statute. If a provision in a statute is not being complied with - in this case by the corporation - the corporation has the right to go to the court and seek a prerogative writ. In this case it would no doubt seek a writ of mandamus to require what is required to be done by law to be done. It appears to me that the court would be obliged to issue that writ and the corporation would be required to do certain things. I think what Hon Murray Criddle is trying to do by this amendment - he can correct me in due course if I am wrong - is to get greater certainty into the amount of money that must be spent on generally improving and enhancing the networks. An argument was put on the question of spending money that 50 per cent, as nominated in the amendment, is somewhat arbitrary. There is no question that it is arbitrary. Another point that needs to be made is that the amendment states -

the Electricity Networks Corporation must spend at least 50 per cent of the annual cost . . .

It goes on to refer to various areas, but at least 50 per cent means not less than 50 per cent. As much as 50 per cent is arbitrary, it is not a fixed amount that must be spent; it is an amount of which not less than that amount can be spent. The Electricity Networks Corporation could spend 60 per cent, 70 per cent or 80 per cent, and would not be restricted by this amendment. Therefore, our support for the amendment is based on the fact that it will give greater certainty to improving the quality and reliability of the networks, both in the south west interconnected system and regional districts generally, as they are described in the amendment.

Having said that we support the amendment, I raise one issue; that is, the point that was raised by the Leader of the House. At one stage, as I recall, an amendment said that at least \$12 million was to be spent -

Hon Ken Baston interjected.

Hon GEORGE CASH: That is right, on the other program.

Most members with whom I discussed the amendment agreed that it would contravene section 46(3) of the Constitution Acts Amendment Act. I am interested in the Leader of the House's comments about the words in this motion. I do not want to talk down the motion, as I believe that there is a need to have it agreed to. However, I raise that question because if this place is now able to dictate that a particular government organisation, in this case the Electricity Networks Corporation but in some other case some department, must spend at least 50 per cent or whatever percentage -

Hon Kim Chance: Speed camera revenue, for example.

Hon GEORGE CASH: Yes, 50 per cent of that revenue. The Leader of the House has just said "speed camera revenue". That is an interesting proposition, as I believe that we will have to determine whether this amendment is within our power. I say that because if it is in our power, it opens up significant opportunities for the upper house. The Leader of the House pointed to speed camera revenue. I am sure that a number of members would like to be able to direct the government via an amendment to spend, for example, 90 per cent of speed camera revenue on a particular road safety program.

I do not wish to delay the bill or the amendment by raising this issue; I want to progress them. However, this matter must be sorted out for not just this bill and this amendment but also future amendments in the upper house relating to the spending of money. If there were a dollar sign in front of it, we would argue that it imposed a burden on the people. The mere fact that it stipulates a percentage means that it could also be argued that it imposes a burden on the people. The vagary of this amendment or its wording, and of other amendments that might use similar wording, is whether the government intended to spend 50 per cent in the first place and whether the 50 per cent is in fact an additional burden. I do not know the answer to that. With respect, I suggest that this is a matter that we need to consider before we go a lot further. I have already indicated our support for the amendment. I am aware that with the Greens (WA) and the government voting against the amendment, it will not get up. However, there is a bigger issue, because implicit in the acceptance of and vote on this amendment will be a recognition that this is a lawful amendment that, within the rules of this house, could be moved. That question needs to be determined. I do not wish to impose any burden on you, Mr Deputy Chairman (Hon Ray Halligan), by raising the issue. The Leader of the House may wish to consider the matter further.

Hon MURRAY CRIDDLE: I want to clarify the situation that was raised and make it very clear that the National Party is concerned about guaranteeing funds for rural and regional Western Australia. That is the issue that the amendment deals with. We are clearly concerned about what might happen in the future, given that the one vote, one value legislation will be enacted, that there will be different ministers and that there will be different ways of applying this. I am well and truly aware of the infill sewerage program, the time line for which was extended by a number of years from what was first budgeted. Those are the sorts of issues that the National Party is very concerned about. There was an issue with the regional improvement program, and we spoke about \$12 million. This amendment is about the power to put in place some sort of safety net. What is it called? It is something to do with the future.

Hon Paul Llewellyn: Future-proofing.

Hon MURRAY CRIDDLE: Yes. It is about future-proofing maintenance and capital expenditure. That is what the National Party is about and what we have said from day one. The Leader of the House said that we have been insistent on this since the bill was first spoken about. I remember our initial discussions.

Hon Kim Chance: I also think you have been partly successful.

Hon MURRAY CRIDDLE: Yes. Some of the amendments have certainly assisted with the understanding that we intend to improve and enhance the network into the future. That has been put into the bill. The issue is about

getting the money spent. That is the point that we started at with the meetings we went to. We got \$48 million put back into the program; it was all about money. Hon Paul Llewellyn said that we could generate in local areas; I guess that was the tenor of what he was saying. However, we need to upgrade the conductors and the poles. There is no better example of that need than with the wind farm that was recently opened in Geraldton. The northern part of the south west interconnected system has reached the point at which no more power can be put into the line; it will not take it. Those are the sorts of issues we are concerned about. If industry in regional areas develops further, we will be under enormous pressure to get sufficient power to those areas. I understand that the wind farm in Geraldton will generate power for 60 000 homes. That is a substantial amount of power. However, it needs to be able to be distributed; we need to be able to get it somewhere and to pay the money required to shift it around the state. I wanted to underline the fact that the National Party wants at least 50 per cent of those funds to be distributed to regional areas for maintenance and capital works. I take on board the points made by Hon George Cash. It would be interesting to know the thinking along the lines that were put forward, bearing in mind that I can also count the numbers.

Hon PAUL LLEWELLYN: I will now throw a cat among the pigeons. I am rethinking this matter, because I never got -

Hon George Cash interjected.

Hon PAUL LLEWELLYN: It was a very convincing argument. Because I was not briefed on this amendment by the member and Hon Kim Chance when I received a copy of it at lunchtime, I am now having another think about it, which may open up a bit of debate. This could get members' hearts going. We could change the amendment slightly - I do not have the words in mind but they will come to me in a few minutes - to say that these enhancements should also encourage the development of renewable energy generation in regional areas. The amendment contains a clear sunset clause at subclause (4), which states that the minister should review the operation of this clause before the expiry of four years. It is possible that the Greens may be able to support this amendment because it has a sunset clause. However, I need some help in this regard, because this is the first time I have seen the amendment. I seek the indulgence of the chamber so that I can get some advice on how to proceed to improve this statute. I need some help. I know that members are excited about this. This is the cat among the pigeons. The Greens have a pivotal role to play in the development of regional infrastructure and in supporting the principle of regional development. I have not had a lot of time to consider the merits of this amendment. However, if the amendment proposed - do I have to do this on my feet? - that some of the funds must go into facilitating the connection of renewable energy generation, and if this were backed up by the sunset clause that outlines that a review must be undertaken in four years, the Greens might very well be able to support the amendment because then its merits would be clear. Even Hon Kim Chance argued in favour of the merits of this amendment. I need some help in getting this done.

The DEPUTY CHAIRMAN (Hon Ray Halligan): Is Hon Paul Llewellyn suggesting a possible amendment to the amendment moved by Hon Murray Criddle?

Hon Paul Llewellyn: Yes. I need a moment to formulate it.

Hon KIM CHANCE: Notwithstanding Hon Paul Llewellyn's comments about amendment 10/61 on supplementary notice paper 39, issue 5, the amendment did not appear at lunchtime today; the amendment goes back at least as far as 31 August and has been on the supplementary notice paper for some weeks. Frankly, the proposal to change an amendment midstream and at such an advanced stage of the consideration of the clauses of the bill is not something that the government intends to support.

Hon PAUL LLEWELLYN: I will move a further amendment that I am drafting as we speak. How do I do this? It will read something like as follows. I am looking at the supplementary notice paper. I propose that certain words be inserted after "systems" in proposed subclause (2)(b) of clause 61 so that the paragraph would then read -

- (b) the Electricity Networks Corporation must spend at least 50 per cent of the annual cost of managing, planning, developing, expanding, enhancing and reinforcing the South West interconnected system in respect of transmission and distribution systems and in order to facilitate the installation of renewable energy generation in regional districts.

I will need to write that out; I will be happy to sign off on that amendment on the amendment. I need a moment. I move -

That the amendment be amended by inserting after the word "systems" in proposed paragraph (2)(b) -
and in order to facilitate the installation of renewable energy generation

Hon KIM CHANCE: The government opposes the amendment on the amendment. Indeed, the further amendment has weaknesses that strongly indicate the reasons for not attempting to legislate on the run with such

matters. The amendment on the amendment is contrary to the intent of the amendment, which is all about enhancing network expenditure. The further amendment would detract from network expenditure. It would do so in the context of the part of the bill that deals with network expenditure, and it effectively proposes an allocation for the benefit of the power generation sector. The amendment on the amendment would allocate network expenditure to generation within the networks part, not the generation areas, of the bill. When Hon Paul Llewellyn made the point that the original legislation and Hon Murray Criddle's amendment dealt with poles and wire, he was right - the network is poles and wire; it is not about alternative generation, which is found in the part of the bill dealing with generation. The government opposes the amendment on the amendment.

Hon PAUL LLEWELLYN: Hon Kim Chance has hit upon the exact reason for the problems with the entire Electricity Corporations Bill; namely, the separation between the generation, network and retail sectors and between the metropolitan and regional sectors. That problem is created by proposing this hybrid institution, otherwise known by its agricultural names. There is an absolute obligation on a network service provider to distribute power in both directions; that is, to consumers at the household level and to generators at the larger-scale transmission level. The network's job is to do exactly what we are proposing to be done here; that is, to facilitate the distribution of power from generators to consumers.

Debate interrupted, pursuant to sessional orders.

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