



**REPORT OF THE**  
**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS**  
**IN RELATION TO**  
**A PETITION REQUESTING THE SUCCESSFUL**  
**ESTABLISHMENT OF A TIDAL POWER PROJECT**  
**IN DOCTOR'S CREEK AT DERBY**

Presented by the Hon Murray Nixon JP, MLC (Chairman)

Report 33

## **STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS**

### **Date first appointed:**

21 December 1989

### **Terms of Reference:**

1. The functions of the committee are to inquire into and report on:
  - (a) the constitutional law, customs and usages of Western Australia;
  - (b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,  
  
and any related matter or issue;
  - (c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
  - (d) any petition.
  
2. A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

### **Members as at the date of this report:**

Hon Murray Nixon JP, MLC (Chairman)  
Hon Ray Halligan MLC  
Hon Tom Helm MLC

### **Staff as at the date of this report:**

Ms Felicity Beattie, Advisory/Research Officer  
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**Report of the Legislative Council  
Constitutional Affairs Committee**

**in relation to**

**A Petition Requesting the Successful Establishment of a Tidal Power Project in Doctor's  
Creek at Derby**

**1. Introduction**

**1.1 The Petition**

On 9 December 1998, the Hon Greg Smith MLC tabled a petition (*TP # 577*) requesting that "the state government take whatever steps necessary to ensure the successful establishment of a tidal power project in Doctor's Creek at Derby".

**1.2 Background to the Petition**

1.2.1 On 25 June 1998, the State Government announced a new policy for electricity supply in regional areas of Western Australia to encourage the introduction of private generation and to bring more competition into the market.

1.2.2 The first step in this process was the introduction of a competitive tender process to call for Expressions of Interest from the private sector to establish new power generation in these regional areas.

1.2.3 The initial Expressions of Interest for Western Power's West Kimberley regional systems signalled the start of the competitive procurement process for bulk power supply by private companies to be distributed by Western Power on a commercial basis to its customers in non-interconnected systems.

1.2.4 The Minister for Energy has set in place a Regional Power Procurement Steering Committee ("the Steering Committee") to manage the competitive procurement process.

1.2.5 Ten (10) proposals were selected from the Expressions of Interest process. Those proponents were invited to submit detailed tenders for the provision of power to Western Power in the West Kimberley.

1.2.6 One of the ten proposals selected from the Expression of Interest process proposed the supply of power through means of hydro power generated by a tidal action process unique to Australia.

1.2.7 Evaluation of the tender proposals will consider commercial aspects and least cost options as well as non-commercial and environmental costs and other benefits and costs for the region and the State of Western Australia as a whole. Details of the procurement process for the supply of power to Western Power are set out at paragraph 2.1.

## 2. The Procurement Process

2.1 The anticipated steps in the process are:

Tender documents issued 22 February 1999;

Proposals to be lodged by 19 April 1999;

Evaluation of Proposals complete mid May 1999; and

Negotiations Commence late May 1999.

2.2 Following evaluation of the proposals, it is intended that negotiations will commence with one or more of the Bidders with the intention of finalising a contract between Western Power and the Bidder that offers the best value for money to both Western Power and the State of Western Australia, provided that the proposal offers value above Western Power's current provision of the services.

2.3 The successful Bidder will be required to enter into a Power Supply Agreement with Western Power. This will be an exclusive supply agreement with Western Power in return for the commitment of the Bidder to supply the services. Pursuant to section 34 of the *Electricity Corporation Act (WA) 1994*, the Minister for Energy is also required to approve the decision to enter into the agreement.

2.4 Key terms of the proposed agreement are outlined below:

- the contract supply period will be from 1 January 2000 up to either 31 December 2009 or 31 December 2017, providing a maximum contract supply period of 10 years or 18 years respectively.

An option is included in the Proposed Agreement to extend the supply period by up to 7 years, taking the maximum supply period to up to 17 or 25 years respectively;

- the fundamental supply obligation will be for a continuous, uninterrupted and instantaneous supply of electricity sufficient to meet all Western Power's requirements; and
- the initial evaluation of proposals will be based on the supply of electricity to cover the area of Broome (including Broome 12-mile), Derby and Fitzroy Crossing.

## 3. Evaluation of Proposals

Proposals will be evaluated by an Evaluation Team consisting of personnel from the Office of Energy and Western Power, and supported by other specialists and advisors where required. Proposals will be evaluated using the following process:

- proposals will be assessed to confirm that all mandatory criteria are satisfied. The mandatory criteria are conformance to the specific Request for Proposal requirements outlined in a document issued to the ten short-listed Bidders, and financial soundness and capability of the Bidder;
- Bidders may be invited to present their proposal to the Evaluation Team to clarify any areas of uncertainty;
- reference sites may be visited or contacted to confirm that Bidders performance and systems are as stated in the proposal; and
- proposals will be compared against Western Power's current operations to ensure they provide additional value.

## **4. Evaluation Criteria**

### **4.1 Technical and Commercial Evaluation Criteria**

The technical and commercial benefits of each Proposal will be assessed against the following criteria:

- Environmental Impact;
- Operational Capability;
- Project Management Capability;
- Quality and Reliability of Supply;
- Risk and Gain Sharing;
- Technology;
- Timetable; and
- Community Benefits.

### **4.2 Financial Evaluation Criteria**

Bidders must demonstrate that they are a financially sound organisation capable of providing the services. As stated at paragraph 3, this is a mandatory requirement and no agreement will be entered into unless Western Power has satisfied itself of the financial soundness of the preferred Bidder.

### **4.3 Economic Evaluation Criteria**

The economic benefits and value to the State of Western Australia of each proposal will be assessed, including the direct and indirect benefits expected to be realised from the proposal over the life of the contract, based on an assessment of each Bidder's answers to questions on the level of community benefits arising from the proposal. The criteria against which these community benefits will be assessed are:

- Regional Opportunities created;
- Local Employment;
- Provision of lower-priced fuel and/or electricity;

- Fuel and/or electricity availability to other communities; and
- Local and Western Australian content.

## 5. **Basis of Remuneration**

The acceptance of an appropriate level of both market risk and operational risk is of primary concern to Western Power. Accordingly, it has indicated a preference for pricing based on an energy plus demand payment structure or an energy plus capacity payment structure. However Western Power has also indicated that it is expected that the successful Bidder, by operating to best practice standards, will minimise this risk. Western Power has stated that it is not prepared to pay high risk premiums.

## 6. **The Petitioners' Submissions**

6.1 The petitioners have provided submissions to the Committee setting out the advantages to the town of Derby and the surrounding areas of establishing a tidal power project in Doctor's Creek at Derby. Those advantages include:

- the supply of a continuous, renewable, clean source of energy providing power to the Kimberley area;
- increased employment opportunities for people currently living in the area and incentives for people to relocate to the area. The petitioners have predicted that approximately 170 new jobs would be created if the project were to go ahead;
- increased capital expenditure in the region. The petitioners have predicted that the capital expenditure of the project will be in the order of \$200 million and that \$150 million of that initial sum will be spent within Australia and the greater portion within the State;
- environmental benefits in helping Australia to reduce its total greenhouse gas emissions. No greenhouse gases would be produced at the tidal power station and it has been estimated that the carbon monoxide avoidance during the lifetime of the project (120 years) would be 25 million tonnes;
- an increased knowledge and understanding of mangrove ecology, tidal marine systems and tropical deltaic systems;
- scientific benefits such as the expertise gained through the design and construction of the project which could be applied at other locations throughout the world; and
- social benefits such as a reduction in the noise and air pollution which is generated from diesel powered stations, the creation of a permanent lake on the outskirts of the town creating greater opportunities for recreational fishing, swimming and other water sports, development of a sense of community pride in the project and increased tourism in the region.



- 6.2 The Committee has noted these submissions, however in the light of the fact that the proposal is subject to a tender process, the Committee considers that it is inappropriate for it to comment on the submissions or become involved in the tender process.

**6. Conclusion**

It is the responsibility of the Steering Committee, through the Evaluation Team, to evaluate the proposals in a structured process to identify the proposal that offers the best commercial and regional value to both Western Power and the State of Western Australia. The set criteria against which the proposals are assessed are specific and detailed. The Committee believes that due process will be followed and the merits of the hydro power proposal will be taken into account by the Steering Committee during its evaluation of the proposals.

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**Hon Murray Nixon JP, MLC**

