

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 25 NOVEMBER 1998**

**Hon Mark Nevill (Chairman)
Hon E.R.J. Dermer
Hon Muriel Patterson
Hon Simon O'Brien
Hon Bob Thomas**

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MURPHY, DR PETER,
Director North and Inland Division,
Department of Resources Development,
170 St Georges Terrace,
Perth, examined:

The CHAIRMAN: On behalf of the committee, I welcome you to today's meeting. Please state the capacity in which you are appearing.

Dr MURPHY: I am appearing as the Director of the North and Inland Division of the Department of Resources Development.

The CHAIRMAN: You have signed a document entitled "Information for witnesses". Have you read and understood that document?

Dr MURPHY: Yes, I have.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript of the evidence will be provided to you. The committee wants to find out more about the process behind the review of the transmission tariffs on the goldfields gas pipeline. Can you advise the committee the process through which Bird Cameron and McLennan Magasanik were chosen?

Dr MURPHY: They were both chosen through the procedures set down by the State Supply Commission on how consultants should be appointed .

The CHAIRMAN: Was that a tender procedure or were there other bids?

Dr MURPHY: It was a restricted tender. We went to a number of people who we believed had the capacity to do the work we had in mind. We received expressions of interest and then decided whom we would select from that group of consultants.

The CHAIRMAN: How did the department satisfy itself as to the expertise of Bird Cameron and McLennan Magasanik?

Dr MURPHY: In the normal way. We knew both of them. McLennan Magasanik had worked for the department previously in the negotiations leading up to the goldfields gas pipeline agreement and Bird Cameron had worked for the department on a similar task. However, in selecting them we were comparing them with other consultants and following the normal procedures, such as asking for expressions of interest, receiving information from consultants, assessing that information and talking to people who we knew had worked with various

consultants. We also looked at the price and quality and undertook the normal process one would undertake before selecting a consultant.

The CHAIRMAN: How was the price determined for the contract?

Dr MURPHY: I do not recall the price for Bird Cameron; I would have to check. For McLennan Magasanik it was based on a set number of hours, and people were asked to quote against those hours, to indicate who would be involved and to state what prices they would charge.

The CHAIRMAN: Was it a fixed-sum contract or a time-charge contract?

Dr MURPHY: It was a time-charge contract, but with a cap on the number of hours.

The CHAIRMAN: What was that initial cap?

Dr MURPHY: I believe it was 80 hours, but I would have to check. To some extent the cap would have been decided by the limit beyond which one is required to go to a public tender. It would have been capped at less than \$50 000. I could not be sure.

The CHAIRMAN: Please provide that estimate to the committee.

Dr MURPHY: The estimate of the cap when the contract was let?

The CHAIRMAN: Yes. Please advise the committee what amount you thought the initial contract might be. Was it capped only on hours or on the dollars per hour as well?

Dr MURPHY: At this stage my recollection is that we set 80 hours as the limit. The way in which we selected the consultant would have put a \$50 000 limit on it. Beyond that we are required to go to open tender.

The CHAIRMAN: That is \$600 an hour. Would that be the going rate for a consultant?

Dr MURPHY: That was not the rate. The \$50 000 would have been the limit that would have caused us to go to open tender. The fact that we did not go to open tender suggests that we expected it to be less. I believe that we indicated that the job would take 80 hours.

The CHAIRMAN: How much has been paid to McLennan Magasanik to date?

Dr MURPHY: I do not have those figures to hand.

The CHAIRMAN: Please provide those figures and other amounts that are due to be paid.

Dr MURPHY: We can provide the amount paid.

The CHAIRMAN: And any outstanding accounts.

Dr MURPHY: Yes.

The CHAIRMAN: Can you advise the committee what was the cost of the Bird Cameron study?

Dr MURPHY: No, I cannot.

The CHAIRMAN: Please provide that information.

Dr MURPHY: Yes.

The CHAIRMAN: When was Bird Cameron contracted to do this work?

Dr MURPHY: According to the records I saw this morning, the contract appears to have been let on 16 February 1998.

The CHAIRMAN: When did the initial offers go out for people to submit expressions of interest?

Dr MURPHY: It would have been before that, but I cannot say when.

The CHAIRMAN: Would it have been in January or December?

Dr MURPHY: It would have been around then, but I would need to check.

The CHAIRMAN: Please advise the committee when that was done. What was the case with McLennan Magasanik?

Dr MURPHY: McLennan Magasanik was commissioned on 16 March 1998.

The CHAIRMAN: Which other companies did you approach as part of that tender that you thought had the expertise?

Dr MURPHY: Again, I do not have that information; I will have to provide it to the committee.

The CHAIRMAN: Please do that. Am I right in believing that you made it clear that you do not know what has been paid to McLennan Magasanik to date?

Dr MURPHY: That is correct. I have a number in mind, but I am not prepared to commit to that because I have not checked it.

The CHAIRMAN: What is the last known definite number you have in mind?

Dr MURPHY: I have no definite number in mind.

The CHAIRMAN: I thought you might have known a number three months ago but which might have since increased.

Dr MURPHY: It has moved on. We have let a series of subconsultancies to McLennan Magasanik for more detailed work that arose as a result of the work we are doing. It is too complicated to say what is part of the first contract and what is part of the subconsultancies.

The CHAIRMAN: Has the consultancy proved to be about the size you initially thought it would be?

Dr MURPHY: The work has exceeded what we expected. We have endeavoured to manage that as the process has gone on. It has also required a number of smaller subconsultancies on specific issues that arose as the review went on, including issues raised by this committee.

The CHAIRMAN: Please elaborate on the areas that have created more work than you initially thought they would.

Dr MURPHY: I would prefer to take that question on notice. A number of consultancies were let, and I would prefer to provide accurate information.

The CHAIRMAN: If you want to provide evidence in camera, please indicate and I will ask those questions at the end of the hearing.

Dr MURPHY: It is not a question of giving evidence in camera but of wanting to give the correct information.

The CHAIRMAN: Please provide the committee with the terms of engagement and period of engagement for both consultants.

Dr MURPHY: I do not know; I would have to take advice on that. As members know, I have a direction from the minister in relation to both reports. I would have to see whether that direction covers the terms of reference. However, if I can obviously I will.

The CHAIRMAN: Please advise the committee if you cannot.

Dr MURPHY: Yes.

The CHAIRMAN: Please provide some broader information on any extensions or variations to either of those two contracts since they were let. I partly asked that question previously, but is there any general information you can provide?

Dr MURPHY: It is an open question. I do not think there were any changes to the Bird Cameron brief. It went through as the brief was determined. However, we had to take up a number of issues with McLennan Magasanik. One was the question of infrastructure bonds, which had been raised by the committee. The other issue was the Australian Competition and Consumer Commission inquiry into the Victorian gas situation, which impinged directly on the study. There may have been others and they will be revealed in the information to be provided.

The CHAIRMAN: Did the sale of the pipeline by the joint venture partners have any impact on the study?

Dr MURPHY: It has had no direct impact, but the indirect impact is that it has muddied the waters significantly, both for them and for the department.

The CHAIRMAN: You have received a final report from Bird Cameron.

Dr MURPHY: That is correct.

The CHAIRMAN: When was that received?

Dr MURPHY: According to my records it was received on 29 April 1998, but I would have to confirm that.

The CHAIRMAN: I presume that was a straightforward accounting report on expenditure on the pipeline.

Dr MURPHY: That was an audit of the expenditure on the pipeline. It was obviously an input into the McLennan Magasanik work as well, because the cost of the pipeline is an important variable in setting the tariffs.

The CHAIRMAN: Were you kept informed of any litigation, or the results of any litigation or discussions on finalising the costs after the construction of the pipeline?

Dr MURPHY: The department has not been kept informed by the pipeline owners of the litigation.

The CHAIRMAN: I gather that was the reason the cost could not be finalised.

Dr MURPHY: That was the reason they were giving us - that they had litigation outstanding with the contractors.

The CHAIRMAN: Did they provide any further information?

Dr MURPHY: They gave us some information in response to our questions. When they said

that we asked for more information to satisfy ourselves that that really was the problem.

The CHAIRMAN: Were you satisfied that they were expeditious in finalising that litigation?

Dr MURPHY: We did not form an opinion on how quickly they were going. We know from our own experiences that once one starts getting involved in legal matters they drag on almost of their own volition.

The CHAIRMAN: Have you had any interim reports from McLennan Magasanik?

Dr MURPHY: Yes; we received an interim report in June. That is the report on which the minister has provided direction about not releasing.

The CHAIRMAN: There is just the one interim report.

Dr MURPHY: Yes.

The CHAIRMAN: Have you any idea when you may receive the final reports?

Dr MURPHY: We are currently working to finalise the report. We have a further final draft making significant changes to the report we received in June, which we are currently discussing in an effort to finalise it.

The CHAIRMAN: I understand that the Department of Resources Development is providing information to the two consultants to undertake their work.

Dr MURPHY: The consultants are drawing on a number of sources. We provided Bird Cameron with little information. Its information came from looking at the books of the GGT. We provided McLennan Magasanik with some information, advice and interaction on what it is preparing. The main source document has been information received from the joint venturers in relation to the tariff model. It has received complete information from the joint venturers about what is in the tariff model. McLennan Magasanik has worked on that model and modified it as it believes it should be modified.

The CHAIRMAN: Do you personally feel confident that McLennan Magasanik has been provided with all the information it needs to discharge its duties independently and to ensure that it produces an objective finding?

Dr MURPHY: In the end it is for McLennan Magasanik to tell the department what further information it needs to meet the brief. We provided a very detailed brief and discussed it at length. We have also discussed the reports and indicated where we believe they do not meet the brief and where we expect further information. Beyond that, it is up to McLennan Magasanik to tell us whether it has sufficient information.

The CHAIRMAN: But you have all the information that would allow it to cover all the issues of which you are aware?

Dr MURPHY: We have set out the terms of reference. We have also spent a lot of time getting the report into a form which we believe meets the terms of reference and which covers all the points. As to being confident, that is a difficult question. We have provided what we can.

The CHAIRMAN: To put it bluntly, has DRD withheld any material information that it might need to determine what the tariff should be?

Dr MURPHY: I cannot think of a reason we would want to do that.

The CHAIRMAN: Have you not done that?

Dr MURPHY: Certainly not.

The CHAIRMAN: To what extent is the McLennan Magasanik report independent?

Dr MURPHY: How independent is any consultant's report? In the end, it is being prepared in line with terms of reference prepared by us, and we are having a major input into ensuring that it meets the terms of reference. We believe the consultants are giving us independent advice. Others would see us as influencing the advice we are given. We believe we are getting independent advice, but we are having an influence on the advice we received as a result of the information provided in the discussions we are having with the consultants.

The CHAIRMAN: I recall the Arthur Andersen case in Perth a couple of years ago. It related to a situation in which the people who were preparing a prospectus were having discussions with Arthur Andersen and together they worked out what would be in the prospectus. Arthur Andersen lost a court case, because under the Corporations Law, it was found not to be acting independently. Are you saying that it is a joint effort between you and McLennan Magasanik?

Dr MURPHY: I am not suggesting it is a joint effort; rather we would influence the advice we receive, as would anyone, by talking to the consultant. However, we have always made it clear to McLennan Magasanik that we want a report that they are prepared to sign as their report - one that in the ultimate could be released to the joint venturers and be given intense scrutiny, perhaps right through to the point of being arbitrated. The consultants are aware that their report will be looked at intensively and that they will need to be able stand by their work. If the consultants are being influenced by us to the point of not providing independent advice, I suggest they are not being sensible.

The CHAIRMAN: Would you describe the report as both completely independent and expert?

Dr MURPHY: Yes, in the context of a consultant's report. That is a little different from what

you may have in mind.

The CHAIRMAN: Is it like a regulator looking at the issues?

Dr MURPHY: It is not like a regulator looking at an issue.

The CHAIRMAN: It is not that sort of independence.

Dr MURPHY: No. I do not think any consultant is that independent.

The CHAIRMAN: I just wanted to get a feel for the matter. As we do not have a report, we are snipping around the edges. How have the tariff renegotiations affected the completion of the McLennan Magasanik report, or have they affected it?

Dr MURPHY: The negotiations that have occurred so far have been in the context of preparing the McLennan Magasanik report; therefore, we could not go into any significant negotiations until that report was received.

The CHAIRMAN: I put this hypothetical question to you: If the report recommends a significant reduction in tariffs, how is that legally effected? Is it possible to be legally realisable?

Dr MURPHY: I am sorry, I must decline to answer that in this public session. If the committee requires me to answer that, we must go into private session because it deals with legal advice I have received from the Crown Solicitor's Office.

The CHAIRMAN: It is not clear from my reading of the legislation how that with happen. That is why I asked the question.

Dr MURPHY: Sure.

The CHAIRMAN: Are there any restrictions on information given to the consultants?

Dr MURPHY: Do you mean restrictions in terms of the amount, or what they could do with it?

The CHAIRMAN: On what you provided to them?

Dr MURPHY: There were no restriction; we provided the consultants with whatever they asked for, as long as we could provide it. There are always questions we cannot answer. We want a good report and it is only sensible to provide as much information as we can.

The CHAIRMAN: Did you give me a final date for when the McLennan Magasanik report will be completed?

Dr MURPHY: No. You have not asked me a question about the final date. As late as yesterday morning I was talking to McLennan Magasanik about specific points in relation to the report which have caused those consultants to go back and to talk with their subconsultants, Ernst and Young. We are some weeks away from being able to draw a line and to say that the report is finalised

The CHAIRMAN: Are there any restrictions on the costs that McLennan Magasanik are incurring to satisfy the department on the contents of the report?

Dr MURPHY: That is done through the contract. As I say, we have a part of the report. It is being done within the contract we have.

The CHAIRMAN: Does that result in extra costs being incurred as the work progresses?

Dr MURPHY: It depends. It is like building a house; some things are within the contract and then there are extras. Some things have turned out to be extras; some are within the existing contract.

The CHAIRMAN: Has Mr Magasanik been working on this contract principally, or have other people being working on it?

Dr MURPHY: No. Two consultants within McLennan Magasanik have been working on the contract. One of our difficulties at the moment is that the major consultant who has been working on it has left the company in the past few weeks to join the Victorian regulator. He had been doing most of the work under the direction of one of the principals of the firm. Now the principal of the firm is getting involved and a bit of an education process is going on to bring him up to speed on the detail of the things we are interested in and the changes we want to see made. As to whether Dan Magasanik has been involved, I have no idea. I would have to check with the consultants.

The CHAIRMAN: Have you prescribed the methodology to be used by McLennan Magasanik on the way it has undertaken the consultancy?

Dr MURPHY: We have indicated through the terms of reference how we expect the study to be done. The consultants are working to those terms of reference and that will have the effect we are talking about.

The CHAIRMAN: Could the committee be provided with a copy of those terms of reference?

Dr MURPHY: You have asked that question before and my answer is the same: I will need to check to see whether that is covered by the direction I have received from the minister.

The CHAIRMAN: I hope not.

Dr MURPHY: I do not know.

The CHAIRMAN: The committee announced its inquiry in November of last year. In one letter I think you said that the inquiry commenced in December. In your evidence on 4 March you used the words "as of now" when talking about the two consultants' reports. When was the inquiry initiated? Was it back in December or January or February?

Dr MURPHY: Do you mean the consulting inquiry?

The CHAIRMAN: Yes. When was the review of the tariffs formally initiated?

Dr MURPHY: In terms of formality, I guess it was initiated in December when the minister wrote to the joint venturers indicating that he was unhappy with the tariffs and that he wanted a review. They carried out an internal assessment and made a 15-per-cent reduction in tariffs sometime toward the end of February, I believe. The minister responded in March by saying, "Thank you, but that is not enough; I intend to conduct my review now." I am not sure of his exact words, but that was the import of them. In other words, we foreshadowed in December that we were prepared to do a review. We were doing preliminary work towards that review. In February, when the joint venturers failed to provide a sufficient discount, we initiated the review in March. In April, McLennan Magasanik came on board.

The CHAIRMAN: That makes sense. What confidentiality agreements have been entered into between the department and each of the two consultants?

Dr MURPHY: The department has the normal confidentiality requirements it puts in contracts, which are not particularly detailed. Both the consultants may have entered confidentiality agreements with the joint venturers as a result of receiving information. I seem to recall there was a discussion on that. The joint venturers wanted us to sign confidentiality agreements, but we declined on the basis that the Government does not sign confidentiality agreements.

Hon E.R.J. DERMER: I seek to put a question on notice. When the principal consultancy with McLennan Magasanik is completed, could the committee be provided with the total cost of that contract?

Dr MURPHY: Certainly; I expect so. We will know the cost by then.

Hon E.R.J. DERMER: In summary: My question on notice is that that you will provide the committee with that total cost information and also the total cost of the various subconsultancies.

Dr MURPHY: Yes; I can certainly provide that information.

The CHAIRMAN: That is all the evidence that will be taken in public. We will now move in camera to pick up one final issue. I thank the members of the press in attendance.

[The witness retired]

THE COMMITTEE ADJOURNED
