

Petition No. 109-Energy Operators accessing private land

1st March 2016

The Standing Committee on Environment and Public Affairs.

Legislative Council of Western Australia

Dear Committee Members,

I applaud and congratulate you all on your paper titled, "The Impact of State Government Actions and processes on the use and enjoyment of Freehold and leasehold land in Western Australia presented to the Western Australian Government in 2013. It had the hallmark of being a realistic game changer for honest hardworking people trying to enjoy the fruits of a life time of hard work and achievement on their land.

I have a low voltage power line owned by Electrical Network Corporation Trading as Western Power traversing our property which is not subject to an easement or any notation of encumbrance on the said land title. The reason that the Energy Operators Act 1979 exempts Western Power from the normal and due processes of leasing private land is unclear to a Land Owner and requires investigation. It is beyond comprehension of why a previous Owner of the same land can make an indefinite (No time limit) and binding agreement (or contract) with an Energy Operator to allow the construction of a power line on their property without a written and legally noted agreement that there is no copy of to pass on to the successor on the land. Western Power do not require to negotiate an easement or lease on a line transmitting under about 133KVA for some unknown reason which defies all logic. This allows them to engage in the least expensive way to construct infrastructure on privately owned land to have maximum profit by supplying other consumers off that power line. It is not just for the public's benefit as the profit is quickly turned into uncontrolled major wage increases for the Executives. I am not connected to the grid as offgrid self-owned generation is far more environmentally beneficial and is way cheaper. We are not pursuing any monies for this public service by unselfishly supporting other persons to have a power supply off that line but Western Power are paid for that service and profit from that said activity. Everybody has had a ringside seat to the operation methods employed by the Energy Operator on our rural property at 146 Gulberti Road, Abba River. In November 2013 our front gate padlocked chain was cut and an Authorized Energy Operator work party entered our property without notification, identification, caused damage, changed a pole on an area without negotiation that we are developing, left without repairing, rehabilitating, or offering restitution, failed to notify us they had been in the property, placed a Western Power lock on our front gate without our permission. We only live 20 minutes away in town and they had our contact details and failed to inform us prior to entry and after entry refused to give us the identity of the Authorizing Officer which along with all these actions are requirements by the Energy Operators Act 1979 and their current licence! Again this matter has arisen as a culvert pipe has now been damaged beyond our use by an Authorized Contractor named Aaron from Logic (Company Name) who denies this action! In explanation of the first incident the Energy Operator can dishonestly add the word "Emergency or Urgent" in the content and wording of their explanation to satisfy the Sections of the Act and the Energy Ombudsman Justin O'Malley unquestionably without reasonable investigation claims the Energy Operator was justified in this method of operation. The line has stood the test of time and did not require urgent or emergency work. That is unacceptable! Again in the second incident James Birkmanis titled Scoping SHE Manager from Western Power agrees with the Logic Contractor that he did not cause damage unquestionably without reasonable and timely investigation. Again unacceptable biased decision making having an unforgivable effect on the land owner who witnessed the damage. We order them off the land and they refuse! Rasmus Moerch of the Economic Regulation Authority of Western Australia who issues the licence to Western Power does not wish to be involved in investigating whether or not the Energy Operators noncompliance with the Acts is in contravention of their current licence. The Minister is well aware of the situation but fails to respond after many emails. Need I go on? The point being if there was a written agreement such as

a lease or wayleave in the absence of an easement it would be possible for a Land Owner to seek Justice and order them off the land because they committed Criminal Acts! That does not presently exist in this State! So we have an agreement of secrecy made by a previous Owner of our land probably made decades ago that dictates the uses of our land forever. We have asked many times for a copy of such agreement and that has been denied. In the absence of an Easement Western Power admit they treat the use of our land as though it has an easement and in their documentation they refer to it as a Restrictive Zone of which there is no disclosure of their requirements also. The Energy Operators Act 1979 states that a power line is deemed to be placed lawfully! But there is no evidence to support that statement. There is nondisclosure, there is deceit, deceptive practices and possibly corrupt actions that may be present in these events. There is no evidence of the Original Owner who made the agreement having the opportunity of legal advice on the conditions that the agreement is offering when it has no time limit which is very odd and foolish.

It is law (Section 7(1) Sale of Land Act) that a Vendor of Land selling land shall disclose all encumbrance on their land to a Purchaser which in our circumstance the Government Agency (Western Power) refuses to disclose in writing prior to the sale of land contract being accepted so that the purchaser can make an informed choice. It is not possible to go into detail with the restriction of a two page submission as I have written a 32 page paper on the matter which was reduced to allow ease of reading. I appeal that it is presented to you all so that you can all fully understand these ramifications. But the bottom line is the Energy Operator has complete threatening control of our land, what they put on it without negotiation and respect for our requirements. They can completely ignore the requirements of their licence and the requirements of the Acts of Parliament that govern their actions. In that said Legislation there is little recognition of the Land Owner privileges, their requirements and use of the land. When a dispute arises the Energy Ombudsman is no solution but becomes part of the problem by applying poor investigative techniques. I was a trained Police Officer.

In the absence of an Easement there must and shall be an agreement such as a Wayleave or Lease that I suggest is presided over by a Committee made up of a Chairman, two independent members with no government service and two with Government Service for arbitration. The Chairman has no vote and if a deadlock exists then private legal advice shall be called upon to mediate! Remember the only shareholder of the Electrical Networks Corporation is the Western Australian Government which creates a clear conflict of interest in these circumstances and for any persons on a Government payroll. In reality there are alliances that exist that can cloud or persuade judgement? Having a power line on a property poses a realistic risk from an Energy Operator of illegal criminal entry, breach of security, development restrictions, legal action against the land owner, damage that will not be rectified, death, injury, fire risk, theft etc. It is my experience that The Energy Operators method of risk Management is to deny any responsibility which creates unnecessary dispute, great stress on the land owner and a severing of relations. Regardless of these issues the Energy Operator will continue use your land without your permission after abusing all privileges and may threaten you with Supreme Court Action or a Warrant for forceful entry without you being present for that application to present your defense. It does not resolve a dispute, it inflames it. Western Power is about to be sold and along with that all access rights and any agreements will be transferred to the new Energy Operator without the owners approval or knowledge.

Of course the Western Australian Government or Western Power did not want to accept the elements of your paper in 2013 as they like things the way they are as they have supreme power over privately owned land without the slightest consideration to the Land Owner's. If we had full disclosure of the encumbrances, agreements and conditions that have been placed on our land to make an informed choice prior to the contract of sale was agreed and signed in acceptance would we have purchased it? Of course not. Owners should have the privilege under law of who comes in and out of their properties gates and what happens on their land. At the moment that is not the case in these circumstances.

I am willing and ask permission to personally address you all on this complex matter and to answer any questions you may have.

Yours Sincerely,

Terry EALING