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Mr JAMES HAY, Chief Executive Officer, Energy Corporation of NSW (EnergyCo), on former affirmation

Mr ANDREW KINGSMILL, Executive Director, Network Planning and Technical Advisory, Energy Corporation of NSW (EnergyCo), on former affirmation

The CHAIR: Welcome to this session. We'll proceed either straight to questions or you may have an opening statement?

JAMES HAY: We don't really have an opening statement. We thought you'd would want to ask questions.

The Hon. WES FANG: Good, I've got plenty of questions. Mr Hay, can you tell me about how the acquisition in Central-West Orana is going?

JAMES HAY: The land acquisitions?

The Hon. WES FANG: Yes.

JAMES HAY: We're progressing that. It's always a difficult process and so we are progressing that. At this stage, we're on target.

The Hon. WES FANG: Are you aware that the Treasurer and the Minister for Energy were in Dunedoo on Tuesday?

JAMES HAY: Yes.

The Hon. WES FANG: So you've spoken to both of them?

JAMES HAY: No.

The Hon. WES FANG: Have they communicated anything to you at all about that meeting?

JAMES HAY: I haven't had a debrief from either of them about that. I've talked with their office a little.

The Hon. WES FANG: Has the office provided you any insights into their meeting? What have you heard about the meeting other than that they were there?

JAMES HAY: The feedback is similar to what we're hearing.

The Hon. WES FANG: Which is?

JAMES HAY: It's a process that is difficult for everyone involved.

The Hon. WES FANG: Right. You're part of the Treasury cluster. Is that correct?

JAMES HAY: Not any longer. As of 1 January we're part of the Department of Climate Change, Energy, the Environment and Water.

The Hon. WES FANG: So you've switched recently between the two clusters?

JAMES HAY: Yes.

The Hon. WES FANG: But you were previously under the Treasurer's effective, I guess, cluster?

JAMES HAY: We reported to the Minister of Energy but we were part of the Treasury cluster.

The Hon. WES FANG: Right. How many DPIE staff do you have seconded to your organisation?

JAMES HAY: DPIE ceased to exist two years ago so we have no DPIE staff seconded to us.

The Hon. WES FANG: But they are still using those emails?

JAMES HAY: We have to use those emails, unfortunately.

The Hon. WES FANG: There are a number of former DPIE staff that are still using DPIE emails that are working for—

JAMES HAY: Including myself.

The Hon. WES FANG: Yes. Do you know how many people transitioned across or seconded within the organisation that were—

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JAMES HAY: If the question is about who is using DPIE emails, at this stage it's a domain of convenience that the IT department uses. Any new starter at EnergyCo is allocated a DPIE email, notwithstanding that department ceased to exist two years ago. So to answer your question would be very, very hard.

The Hon. WES FANG: I'm trying to establish where the legacy is and where the existing is now, because I have been following some of the things—

The Hon. MARK BUTTIGIEG: Clearly not.

The CHAIR: Order!

The Hon. WES FANG: But the DPIE email addresses are all still there, as opposed to anything that is linked to EnergyCo.

JAMES HAY: The only EnergyCo emails we've got are the ones that are used on our website. We have people still on Planning emails; we have people still on Environment emails. That's just a matter for the IT part of government. You are rapidly getting to the end of my level of knowledge on that.

The Hon. WES FANG: That's fine. I appreciate the feedback. It helps and clarifies a little bit for me. In relation to the land negotiations that are occurring, did the Treasurer, when you were under the Treasury cluster, or now the energy Minister that you are now part of the—

JAMES HAY: The CCEEW?

The Hon. WES FANG: Yes, whatever—it's a very, very long name with a lot of Es. Have they said anything to you around the negotiations about how they wish that you would approach it?

JAMES HAY: The Treasurer has not discussed the land acquisition program with us.

The Hon. WES FANG: Has not at all?

JAMES HAY: No, not to my knowledge. Just for the record, I should just correct the name of the department: It's the Department of Climate Change, Energy, the Environment and Water.

The Hon. WES FANG: Thank you. Are you aware that when the Treasurer was in Dunedoo on Tuesday he indicated that he believed that the just terms Act was not fit for purpose and that he and the energy Minister would like to get rid of it?

JAMES HAY: I don't know. I'm not aware of that.

The Hon. WES FANG: So they haven't indicated to you that that Act is not fit for purpose in relation to, in their belief, Central-West Orana land acquisitions and that, if they could, they would get rid of it? They didn't indicate that to you at all?

JAMES HAY: No.

The Hon. WES FANG: Because that's the position they put to the people of Dunedoo on Tuesday.

JAMES HAY: I have no idea.

The Hon. WES FANG: You have said the negotiations are ongoing and, I think, difficult or that circumstances were difficult. Would that be a fair paraphrasing of your earlier evidence?

JAMES HAY: Look, we try to be very, very respectful. Part of that respect is acknowledging that these are difficult conversations.

The Hon. WES FANG: Would you consider that "negotiating with respect" would mean that you would negotiate in good faith?

JAMES HAY: Negotiate in good faith, did you say?

The Hon. WES FANG: Yes.

JAMES HAY: Yes.

The Hon. WES FANG: Have you outsourced the negotiation process?

JAMES HAY: We use a number of parties to help us with that process. Over time, as resources become available, I have recruited a full-time property manager, but we do have a number of people who are engaged to help on the ground.

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The Hon. WES FANG: What sort of organisations do you have engaged?

JAMES HAY: There's a number, but I didn't really come prepared for these conversations. I thought we were talking about undergrounding.

The Hon. WES FANG: No, I'm sure you weren't. Is AVC one of those companies?

The Hon. EMILY SUVAAL: Point of order: Chair, the line of questioning is outside the terms of reference for this inquiry. I would ask you to direct the member to come back to the terms of reference for the inquiry and to use questions along that line. It's not budget estimates yet.

The CHAIR: Yes. There is "any other related matters" within our terms of reference and you are being generally relevant. I'm sure we'll get to the reasons why you're asking those questions. I will allow the member to continue.

The Hon. WES FANG: Thank you. Is ABC engaged to negotiate on your behalf?

JAMES HAY: ABC is one of our contractors, yes.

The Hon. WES FANG: Have you authorised any of those third parties that are assisting with the negotiation process of land acquisition for the transmission lines in Central West Orana to effectively hold over landholders' heads the threat of compulsory acquisition? Do you believe that that's negotiating in good faith?

JAMES HAY: We don't authorise threats at all. The reality is the process is underpinned by the terms of the just terms Act, so we are not allowed, or we're not free to negotiate amounts that would not otherwise be payable under that Act because that is the backstop.

The Hon. WES FANG: You're saying, in effect, that you can negotiate up to what the just terms Act would require you to pay under a compulsory acquisition, and that's it?

JAMES HAY: That's it.

The Hon. WES FANG: I believe my colleague might have a different view of that. Ms Carter?

The CHAIR: With respect, if Mrs Carter is going to ask a question, please go ahead, but you're not asking a question of the member.

The Hon. SUSAN CARTER: Do you have a view about whether the terms of the just terms Act are still fit for purpose, given the financial obligations that accrue from the compensation packages which are being discussed?

JAMES HAY: It's really, as an official, not my job to comment on the efficacy of that statute. That would be a government policy question.

The Hon. SUSAN CARTER: Are you in a position, as an official, to advise government if they need to consider reworking that legislation?

JAMES HAY: Yes. That is something an official might do, but my advice to government is not the subject of this Committee.

The Hon. WES FANG: I am going to table now a document. I ask if the secretariat can take this. There's a copy for everybody. I've made 10 copies, so one for the secretariat and other staff. Mr Stuart Hackney has provided to me this document, which I will table under parliamentary privilege in this inquiry. It sets out the ways in which the negotiation for his property is occurring from EnergyCo. Are you aware of his circumstances, Mr Hay?

JAMES HAY: I don't think it's appropriate for me to comment on individual circumstances in this Committee, especially when it's not part of what I was asked to come here to be answered.

The Hon. WES FANG: Certainly, his property is under threat of compulsory acquisition for transmission lines, so I would say that it's definitely within the terms of the—

JAMES HAY: But commenting on individual cases, I would not want to do that without a caveat. That might be something that needs to go in camera, or whatever needs to be done, but I'm not sure that's appropriate.

The CHAIR: At this point in time I remind witnesses that you are able to take questions on notice. It's a procedural fairness, if you aren't able to answer questions. You are not compelled to answer the question and you are able to take questions on notice, if you need to, and get back to us.