'Who runs the show?'

Summer of Discontent: financialisation, corporate governance failures and political irresponsibility in Queensland's electricity distribution sector

‘Who runs the show?’

By Warwick Powell[1]

Abstract

Queensland’s recent summer of discontent, between 2003 and 2004, of power outages was first blamed by the Labor Government on acts of God and when that failed to convince, by devolving responsibility to Government-appointed corporation directors, bureaucratic administrators and the apparent inadequacy of ‘rules’. This article interrogates the foundations of this blame-shifting, by reasserting the pre-eminence of questions to do with ‘who runs the show’ in preference to the weaker intellectual apparatus of ‘governance’, which privileges procedural safeguards over political accountability. The Queensland electricity episode is also a localised instalment of a broader global theme of financialisation and its effects on government-owned corporations. Ultimately, the importance of ministerial responsibility is reasserted because the episode is a salutary case of why ‘having the right rules’ is rarely enough, especially if the key actors ignore them.

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Introduction

> "…under the previous Government, we had what was called at the time the 'Borbidge blackouts'… We are fixing a mess that existed under the previous Government. Today, all Queenslanders know about the repeated blackouts that we had. This Government is fixing those problems. We will give this electricity industry not only a future but also a direction that will provide resources and energy for infrastructure development and, in terms of power, provide security for the future." – Labor Premier, Peter Beattie MP (*Queensland Parliamentary Hansard*, 15 April 1999)

> "In the short time the Beattie Government has been in office, we have been rebuilding an industry of which everyone in this State can be proud; an industry such that, when people go to switch on their lights, the lights come on." – Tony McGrady, Labor Minister for Mines and Energy (*Queensland Parliamentary Hansard*, 15 April 1999)

> "I can't control storms and acts of God, but I am absolutely confident that Energex and Powerlink are on top of the situation." – Paul Lucas, Labor Minister for Energy (*The Courier Mail*, 14 December 2003, p. 9)

In April 1999 – 18 months after assuming office after two and half years of conservative State Government – Peter Beattie, Labor's popular Queensland Premier, chastised his conservative predecessor with jibes about 'Borbidge blackouts'. With the benefit of hindsight, we could very well describe Queensland's recent experiences of summer outages (between December 2003 and February 2004) as 'Beattie's blackouts'. How is it that in the space of four years, a Government so vocal in its commitment to securing reliable supply of electricity could have come to explain its failures to do so first through references to "acts of God" and when that failed to convince, by devolving responsibility to Government-appointed corporation directors and bureaucratic administrators?

This article tries to suggest some answers to this question, through a detailed investigation of the legislative, regulatory and administrative environment in which these corporations act. The analysis is undertaken through an investigation into the findings of the Somerville Inquiry into the state of the Queensland electricity distribution network, an inquiry that was commissioned by the Government in 2004 in response to public anger at the self-evident state of disrepair of the network (Somerville 2004).

In doing so, it seeks to reassert the pre-eminence of questions to do with 'who runs the show' rather than the weaker intellectual apparatus of proceduralism and 'governance' which "suggests that the question about who is in charge is irrelevant as long as we have procedural safeguards about 'how the show is run'" (Erturk *et al.*, 2004; Erturk *et al.,* 2008). The narrative on governance, reinforced in this localised episode by Government control over the 'terms of engagement', is politically disarming as it surreptitiously undermines the need and capacity to hold decision-makers to account. It also creates an environment in which actions are dissociated from responsibility, so that loci of responsibility are displaced from elected representatives to less tangible 'rules'.

This also is a story about the impacts of 'financialisation' within the government-owned sector. According to Froud *et al.* (2000: 103), financialisation, in stereotyped form involves among other things:

- A new universal competition of financial results with the returns on investment in one firm explicitly compared against all others, and
- A challenge for management which is represented in narrow financial terms.

The emergence of explicit financial imperatives during the early 2000s for the government-owned electricity distribution businesses, described in the accounting terminology of 'return on equity', 'return on assets' and earnings before interest and tax (EBIT), is Queensland's own take on a more global theme. The mantra of financial rectitude, combined with a Government committed to the doxa of 'low tax state', made 'improved' financial performance in Government-owned corporations an

attractive operational objective, and an indirect avenue of raising government revenues without contemplating the politically shaky proposition of talking about tax increases.

This paper, therefore, ultimately reasserts the importance of ministerial responsibility, not because it is something new, but because it has always been a requirement of the legislative, regulatory and administrative apparatus that governs the Queensland government-owned electricity corporations. The electricity networks in Queensland began to strain not for want of a requirement of government oversight, but because shareholding ministers were more concerned about raising (or raiding) revenues than with ensuring the provisions of relevant legislation and regulatory regimes were enforced. If anything, it provides a salutary case of why 'having the right rules' is rarely enough, especially if the key actors ignore them.

Corporatisation in Context

The Queensland electricity distribution system is Government-owned. The State Government established two corporations (Government Owned Corporations – GOC) to operate the distribution assets. Energex is responsible for the distribution network within South East Queensland (SEQ), a region experiencing major population growth. The State's capital, Brisbane – a city of approximately 1 million people – is located in SEQ. Approximately 50 per cent of the State's population is found in SEQ, which constitutes roughly 15 per cent of Queensland's land mass. The remainder of the State is serviced by Ergon Energy, also a GOC created in 1999 by the Beattie Labor Government. Unlike Energex, Ergon Energy's distribution area is characterised by a dispersed population, with a number of regional population centres spread along the coast and many small communities in between. In effect, this makes the Ergon Distribution network 'stringy', with long distances of line in between customers.

As GOCs, they are regulated at a State level via the *Government Owned Corporations Act 1993*. Other legislative and regulatory instruments impacting on the operations of the electricity GOC's are the *Electricity Act 1994*, the *Electricity Regulations 1994*, the National Electricity Code and the Commonwealth *Corporations Act*. The Government-as-owner is represented by Shareholding Ministers, typically two but for

some periods one Minister. The State Treasurer is the common Shareholding Minister for all GOCs. At the time of writing, the Treasurer (Andrew Fraser) and the Minister for Energy (Geoff Wilson) are the Shareholding Ministers for the electricity distribution GOCs. Terry Mackenroth was Treasurer between 2001 and 2005, a period which saw the consolidation of the logic of financialisation in Queensland's electricity sector. For some of that period, only the Treasurer was a shareholding Minister.

In terms of State apparatuses, the three main bodies relevant to the electricity distribution GOC's are the Office of Government Owned Corporations (OGOC), established in May 2000 within the Queensland Treasury; the Department of Energy (recently re-formed through 'machinery of government changes' from its predecessor organisation, the Office of Energy, which was located within the Queensland Treasury); and the Queensland Competition Council.

Finally, each corporation is governed via a Board of non-executive and executive Directors. These Directors are appointed by the Government. The responsibilities of Directors are determined generally by the requirements of Commonwealth Corporations law and specifically by prescriptions contained within the State GOC legislation.

Until recently, few questions were raised about the efficacy of the regulatory environment and the roles and operations of the various Government apparatuses. We will have cause to revisit this regulatory regime and the State apparatuses in some detail, however, as it will become clear that their constitution and actions are intimately connected with and determined by the dominant discourse of 'governance' which privileges 'procedural safeguards' over 'political responsibility'. But placed under scrutiny, the capacity of this 'regime of regulation' to obfuscate the proper responsibilities of Shareholding Ministers begins to crumble and behind the falling edifice, it is possible to see how Government Ministers have been culpable in the mishaps that have characterised the Queensland electricity distribution sector.

Queensland's 'Summer of Discontent'

After experiencing its own 'summer of discontent' between December 2003 and February 2004, which saw a series of successive blackouts and failures of the electricity network especially in SEQ, the Queensland State Labor Government of Peter Beattie was forced to confront the likelihood that the Government-owned electricity distribution system could not meet the ever-increasing demands of the State's power consumers. Summer storms and outages brought about by network limitations in the face of air-conditioner driven spikes in summer demand, made a mockery of the Government's pre-summer assurances that the system was adequate. As well, the Government was warned by its own utilities some months earlier that the network in and around the State's capital, Brisbane, and SEQ more generally, faced severe constraints, which were likely to contribute to outages in the Summers of 2004-05 and 2005-06 (Energex and Powerlink, June 2003). The utilities' report, *Emerging Network Limitations*, routinely produced in response to regulatory requirements, indicated:

> reinforcement of supply to the Brisbane CBD Area is required prior to late 2005 to avoid network overloads during intact conditions or loss of supply to customers during network contingencies (2003: p. 2).

The analysis undertaken by power engineers of the Brisbane distribution network found that:

> during the period of the study the network will be unable to supply all of the load during intact network conditions … [and that] if certain critical single contingencies occur at time of peak load, then the rest of the network will be unable to supply the remaining load and load shedding will be required (2003: p. 21).

With the benefit of hindsight, it is arguable that the electricity engineers under-estimated the extent to which peak load growth, combined with ageing equipment and strained distribution networks, would cause load shedding and outages in the summer of 2003-04 rather than 2005-06. If the Somerville Report teaches us anything, it is that

the distribution utilities' forward planners tended to under-estimate future electricity demand and it is as such understandable that their June 2003 warnings were in fact too late.

When the *Emerging Network Limitations* document first came to public attention, around September 2003, a number of commentators began to express concern about the capacity of the network to meet future demand and the need for radical reforms of the distribution and retailing environments. Despite public concerns that the network was under severe pressure, the Government continued to deny the existence of a problem. Even when, in December 2003, 150,000 customers lost power, the Government's then Energy Minister, Paul Lucas, continued to peddle the line:

> While I can't control outages caused by summer storms or acts of God, I want to assure people that Queensland does not face blackouts because of increased demand (*The Courier Mail*, 18 December 2003: p. 8).

This line of argument was continued throughout the summer, in the lead up to the February 7, 2004 State election. In part, of course, this was pre-election political *hubris*. After all, the Government was facing a general election within a couple of months, at the tail-end of summer in which its policy failures *viz*. insufficient investment in South East Queensland's electricity network infrastructure, could have adversely affected its re-election chances. Now was not the time to admit policy ineptitude.

The Somerville Inquiry

How quickly things change in politics.

The Labor Government was re-elected with its parliamentary majority largely untouched. It entered the February 7, 2004 ballot with 66 of 89 seats; it lost a net five seats at the hands of the voters, with electricity supply barely rating a mention during the campaign. Within a week of the election, however, the Government ruminated that perhaps there was a problem with the electricity distribution system. A new Minister, Stephen Robertson, was charged with responsibility for the electricity supply industry in the State, and decided (with Cabinet agreement) that some form of inquiry was needed to get to the bottom of the 'mess'. Thus was the genesis of what is now euphemistically referred to as the Somerville Inquiry, so named in reference to the Inquiry Chair, Darryl Somerville from major consulting firm PriceWaterhouseCoopers.

Somerville's 'terms of reference' were determined by Cabinet. His review was to address the following:

1) Evaluate the reliability of the Queensland electricity distribution system:
   a) Report on the standard of the Queensland electricity distribution system as benchmarked against appropriate comparisons, using recognised industry measures
   b) Review the level of expenditure on capital works and maintenance required to cater for current demands and future levels of growth in the distribution system, as benchmarked against appropriate comparisons
   c) Determine whether legislative and regulatory requirements under the *Electricity Act (QLD) 1994*, the National Electricity Code, and the Queensland Competition Authority (QCA), are sufficient to ensure reliable supply of electricity for Queensland consumers
   d) If deficient, recommend solutions for achieving reliability improvements including amendments to the *Electricity Act (QLD) 1994*, the National Electricity Code and *Electricity Regulations 1994*, and

    e) Provide recommendations for effective ongoing evaluation and reporting of reliability performance including the setting and monitoring of service quality standards

2) Evaluate capital and operational expenditure of Energex and Ergon to:
    a) Determine adequacy of current levels of expenditure on capital works and maintenance to cater for current demands and expected growth, as benchmarked against appropriate comparisons
    b) Assess whether the internal systems and processes of the above entities ensure efficient and targeted allocation of resources to capital works and maintenance of the electricity distribution system. This assessment should include a review of the planning criteria used to trigger expansion and reinforcement of the distribution network, and
    c) If deficient, recommend solutions for achieving improved resource allocation of entities
3) Evaluate internal systems, planning and processes of distribution entities to determine whether they support the provision of a reliable electricity network and if deficient develop solutions for achieving improvements
4) Determine whether communication systems used by industry bodies to advise the Queensland public of system interruptions caused by electricity distribution system failures, including extreme weather conditions, are adequate. If appropriate, the report should identify where any improvement can be made.

I have quoted the 'terms of reference' in full because we will have cause to return to these 'terms' later, as a detailed examination of what was included and excluded points clearly to the political truncation of the inquiry's purview, and consequently limited its capacity to reach into the 'nitty gritty' of Government responsibility and policy failure. In effect, the Government-determined 'terms of reference' specifically precluded an examination of questions to do with 'who runs the show' and focused attention entirely on the operational failures of and *within* the GOCs.

Despite protestations to the contrary, the Government-commissioned investigation conducted by Somerville in the wake of the spate of summer outages (and associated public outcry) into the state of electricity system found that the distribution network required significant augmentation to meet emerging demands. The investigation not

only confirmed the warnings contained in the Energex/Powerlink report on *Emerging Network Limitations*; Somerville's examination actually concluded that the situation was worse than first thought.

In terms of measures of reliability of supply, which in the politically charged context of the Inquiry was the ultimate 'test', Somerville was damning. He found that in 2002/03 Ergon Energy was the worst performer in the country, in terms of both the frequency of outages and the duration of individual outages. At the same time, Energex's performance was better, ranking in the mid-range compared to national distribution counterparts on both measures of supply reliability. However, Energex's comparative performance did worsen when the outages of the summer of 2003-04 were taken in account (Somerville, 2004: pp 79-80).

According to Somerville, there were major problems with how the distribution and retail corporations invested in the network infrastructure – both in terms of maintenance, which was patently inadequate – and augmentation to meet new emerging demands on the system. In essence, Somerville argued that the corporations – and in particular, the SEQ distributor/retailer Energex – were excessively focused on profit making at the expense of network and supply reliability. The Somerville Report said:

> the networks have not had sufficient expenditure outlaid on them to adequately maintain them and to meet increased demand from growth. … In the case of Ergon Energy, the Panel believes that this position has resulted from the fact that it inherited six networks of varying quality, with some having been poorly maintained. … In the case of ENERGEX, it is the Panel's view that this position has been reached because there has been too much focus over a considerable period on producing an improved financial result (Somerville, 2004: p. 8).

The Report went on to say that "[w]hile expenditure has certainly been reduced, the Panel believes that this has been at the expense of the condition of the network" (p. 8).

According to Somerville, there were two main reasons for failure to invest in the network to meet growing (peak) demands. The first was Energex's preoccupation with maximising financial performance; the second was the failure of its demand forecasting methods, which contributed to a failure to account for the significant increase in peak summer loads between 1996 and 2004. Chapter 6 of the *Detailed Report* examined in detail load forecasting methodologies and capital expenditure decisions within the utilities and how they impacted on network development. The examination concluded that "Energex's capital expenditure has not been adequate to cater for current demand and future growth" (p. 111).

For our purposes here, we will leave aside the issue of the veracity of demand forecasting method. Suffice it to note that the professionals chronically underestimated the rapid rise in air-conditioner usage by householders, and were caught short. This aside, we are more interested in understanding the financial decision-making and the drivers behind this. According to Somerville, Energex made a conscious decision to "work the assets harder" (p. 13), a decision which according to Somerville can be traced back to 1989, though no evidence was advanced to substantiate this chronology. Conveniently, the referral back to 1989 was able to displace responsibility for the original decision to privilege financial calculations beyond the present Government (which came to office in 1998). The result of this decision was increased capacity utilisation (to an estimated 76% compared to a national average of 56%), or put another way, reduced spare capacity. The appetite for risk was high in Energex, and management were prepared to trade-off increased risk to supply reliability for significant improvements in financial performance. According to Somerville's explanation, Energex's failure to invest adequately in the network was a function of management decision-making and the inappropriate use of management and forecasting tools. These decisions pre-dated the current Government, which in any case, could not be held responsible for the decisions and actions of the corporation's management, which was free to act as they saw fit.

As far as the Government was concerned, their pre-election confidence was, if not justified, explicable. The Government relied on the advice of the utilities and its regulators and saw no reason to be concerned about the state of the network. Even the Energex/Powerlink report of mid-2003, *Emerging Network Limitations,* spoke of

concerns for 2005-06 not 2003-04, so the Government still had time up its sleeve. Armed with the findings of the Somerville inquiry, the Government sought to immediately position itself as the proverbial 'white knight', ready and willing to 'save the day'. The Somerville Report was described as a 'warts and all' exposition of the industry's and corporation's shortcomings and its 44 recommendations were described by leading politicians as a 'blue print' to fixing the system.

But with such damning findings, 'spin' was never going to be enough. The findings of the Somerville investigation, notwithstanding its inherent constraints, undermined and ultimately exposed the Government's political pre-election *hubris*. There were demonstrable problems with the distribution system and the business drivers that led to inadequate investment in it.

Not unexpectedly, Somerville's recommendations were restricted to addressing the issues determined by the Inquiry's 'terms of reference'. The Somerville Report only once strayed from the limited 'terms' when it considered, almost parenthetically, the potential impact of demand side management measures on future network stability and supply reliability. However, beyond this brief excursion, the Report remained firmly within its 'terms'. Its recommendations dealt with operational matters *within* the corporations, and the need to clarify Government's expectations in relation to the performance and objectives of the distribution and retail companies via exercising powers contained in the *Electricity Act 1994*. Only in connection with legislatively-supported enshrinement of Government objectives did the Somerville Report touch on the role of Government as owner-regulator proper.

This is a pity, of course, because tinkering with a few 'rules' and internal processes does not address the issue of corporate and electoral responsibility for decisions. As the next section in this paper demonstrates, there are unequivocal mechanisms enshrined in State legislation that require corporate directions and priorities to be set by Government, and shareholding ministers in particular. Specifically, annual Statements of Corporate Intent are required of all GOCs; and these Statements set out the corporations' respective foci and priorities. Critically, these Statements require shareholding ministerial sign-off before they are adopted.

While Statements of Corporate Intent are treated as 'commercial-in-confidence' and are therefore not subject to detailed public scrutiny, Energex's annual reports since 1999-00 have provided summaries of these Statements as they pertain to the strategic and operational imperatives of Energex. The 1999-00 Statement of Corporate Intent focused on the following strategies:

- Achieving Australian Top 3 in customer service rating
- Retain and building our existing energy customer base
- Achieve operational excellence in delivering energy to customers
- Increase assets under management
- Grow network assets services and energy services business, and
- Achieve world class capability status (p. 64).

The strategies outlined in the 2000-2001 Statement were very similar (p. 12). So far, these objectives appear to be both reasonable, if somewhat banal, and fairly innocuous as far as network underinvestment is concerned.

However, not only did the format begin to change from 2001-02, the substance was also significantly altered. For the first time, the 2001-02 Statement of Corporate Intent identified as its first strategy the objective of "achieving acceptable returns to the shareholders" (p. 62). This new terminology marked an important turning point in the imperatives of the corporation. The targeted performance result on this front was understood in the following terms: "maximising shareholder value and effectively managing business risk" (p. 62). By 2002-03, the focus on financial performance became further refined. The first business strategy enunciated was improving EBIT. This involved "maximis[ing] returns from the network business", driving down the "cost curve", more effectively manage trading risks and optimise the use of capital and "investment in the distribution network through the implementation of Reliability Assessment Planning" (p. 22). By 2003-04, this was summarised as follows:

> Delivering improved financial performance year on year focusing on increasing EBIT by growing revenue and driving down costs and optimising the return on the capital invested in the business (p. 28).

This manifested itself in the form of Return on Asset and Return on Equity ratios well above target. The 2003-04 ROA was 8.1% and ROE 9.7% compared to a target for both of 7.2% (p. 29). This also reflects a trend over the six-years since 1998-99 in which ROA and ROE both increased more or less year-on-year (see Table 1). Taken at face value, this upward trend reflects management success in fulfilling the expectations for improved financial performance spelled out in the Statements of Corporate Intent from at least 2001-02 onwards.[2]

Table 1: Energex, Return on Asset and Return on Equity (%)

	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
ROA (%)	5.5	4.0	6.3	7.0	7.4	8.1
ROE (%)	4.5	3.3	7.0	NA	8.8	9.7

Source: Energex Annual Reports, various years

What we have witnessed, then, was the obvious incursion of explicit financial calculations in strategic and performance priorities, between 1999 and 2003-04. The turning point appeared to be 2001-02 when financialised imperatives explicitly asserted themselves in the Statements of Corporate Intent. The raw financial priorities of Government ministers, spelled out in the post-2001 statements, were pursued with vigour and with apparent success, by Energex management. That Somerville could somehow ignore the central role of shareholding Ministers in this process of financialisation is astounding, but speaks volumes for the attachment of major consultancy firms – from which Somerville came – to the rhetoric of shareholder value, corporate governance and 'rules based' business improvement.

If the electricity corporations became evermore obsessed by financialised objectives, and that demand forecasting was 'way off the mark', the Government could hardly claim that it was not aware of a worsening of system reliability. Not only did Energex and Powerlink warn of impending network limitations in their June 2003 report, Energex's own Annual Report for 2002-03 presented data showing a downward trend in reliability performance measures. The data presented by Energex (Table 2) shows

[2] There is insufficient space in this paper to consider the relationship between management narrative and the gap between rhetoric/promise and performance.

that the duration of interruptions increased significantly between 1999 and 2003 as did the frequency of supply interruptions. In essence, the data revealed a situation in which South East Queenslanders experienced longer interruptions more frequently.

Table 2: Energex, System Reliability

	1999-00	2000-01	2001-02	2002-03
SAIDI	151.1	194.3	175.5	207.8
SAIFI	1.75	1.94	1.87	2.2

SAIDI = System Average Interruption Duration Index

SAIFI = System Average Interruption Frequency Index

Source: Energex Annual Report, 2002-03: p. 14.

Legislative, regulatory and administrative conditions

The Somerville Report implicated GOC management in poor decision-making. It argued that Ergon Energy acted too slowly in integrating six different distribution networks, and this tardiness was a significant contributor to network under-investment. In this sense, Ergon Energy was let off lightly. Energex, on the other hand, suffered from a disproportionate obsession with improving financial performance, at the expense of supply reliability. According to Somerville, this placement of financial performance above other issues by Energex management was inappropriate, and that in fact such decisions were better made by elected Governments.

Why did this situation arise? According to Somerville, this imbalance of priorities was possible because of the absence of explicit "service quality standards" (p. 9). The Report states:

> In the view of the Panel, the absence of performance standards means that once the QCA had made its determination, the temptation is for the distributors to focus only on their financial outcomes (p. 9).

So what did Somerville recommend? Somerville believed that the situation would in part be remedied if Government "set minimum quality standards" (p. 10). According to the Report, "this would give direction to the distributors as to what standards their

owners required them to achieve. Currently that decision is left to the distributors themselves" (p. 10). Somerville gives great weight to these proposed 'minimum quality standards' because his argument and assessment presumed that existing standards were either non-existent or inadequate:

> The only 'standard' against which distributors are measured (other than those which they set themselves for the purposes of their Statement of Corporate Intent) are finance related and the panel believes that in the absence of service quality standards, there is a risk that the distributors could conduct their businesses with too much of an eye for financial results at the expense of measures such as reliability (p. 10).

Somerville's analysis is disingenuous and partial at best, and misleading at worse. He is right to identify that 'financialisation' (our description not his) was a key driver behind the decisions to 'work the assets harder' and drive more robust financial results; but he is wrong in identifying the causes of this focus. In his narrative of managerial 'freedom', rendered explicit in the above-cited paragraph when he states that distributors set their own standards via their Statements of Corporate Intent, it is not surprising that Somerville resolved that managers needed to be reigned in by Government through devices such as 'minimum quality standards'.

An alternative, less sanguine explanation is preferred and suggests that contrary to Somerville, there were (a) in fact plenty of legislative and regulatory 'rules' in place in relation to 'service standards' and (b) clear connections between Government Ministers and the commercial/financial focus of the GOCs. Somerville simply ignored the evidence in some cases, while in others was specifically restricted from investigating the relevant areas of legislative and regulatory operations.

To begin with, profitable GOCs, such as energy retailing, were *de facto* revenue streams for a Government whose public 'low tax state' mantra constrained its ability and willingness to increase general revenue through ordinary State taxes, fees and charges. Instead, Government claimed some 95 per cent of 'net profits' from the electricity GOCs and appropriated these dividends into general revenue, and in one

case in relation to Energex was prepared to receive a ‘special dividend’ consisting of advanced payments on the back of upward asset revaluations.

Lawyers are keen to talk about ‘motive’ and ‘opportunity’ and in the case of Energex and Ergon Energy, the Queensland Government had both. They had strong motives to maximise their dividend appropriations from the GOCs into consolidated revenue; and as dividend policies are approved by Shareholder Ministers, they clearly had the ‘opportunity’ and the means.

As for the regulatory environment, the *Electricity Act 1994* makes specific reference to the following, in relation to the conditions to which the distribution GOCs are subject:

> A supply entity authority is subject to the following conditions - … if the entity has a supply network - the entity must operate, maintain (including repair and replace as necessary) and protect its supply network to ensure the adequate, economic, reliable and safe supply of electricity to its customers (Section 42 (b)).

That this clause, which specifies the objective of providing *inter alia* “reliable” supply of power by maintaining – including repair and replacement as necessary – was not considered by the Somerville Panel strongly indicates a failure by the Panel to fully appreciate the requirements that were already existent within the legislative framework. Indeed, the Panel’s principal reference to the *Electricity Act’s* provisions on service standards are in relation to Sections 45 and 92 merely concluded that “neither of these service quality mechanisms are currently being utilised” (Somerville, p. 48). On this analysis, it is therefore hardly surprising that the Panel’s key recommendation was for these mechanisms to be utilised through the establishment of explicit service quality statements. This is, however, an inadequate assessment of the failures of service reliability. By not recognising that “reliable” supply was an explicit condition of operation stipulated in the *Electricity Act*, Somerville was left with no alternative but to suggest that the problem lay not in the failure of existing laws to be adequately followed (and *ipso facto*, enforced through effective regulatory and parliamentary oversight) but that there was insufficient explicit clarity about what was

expected of the distribution and retail utilities. Again, questions about ‘who runs the show’ are elided in favour of a focus on the existence of ‘rules’.

Contrary to Somerville’s conclusions, the legislative parameters and operational expectations were quite clear as far as the *Electricity Act* is concerned. If the question is not really about whether or not service quality expectations were clear, we are forced to consider the associated oversight apparatus to better understand the genesis of the crisis, and identify appropriate levels of responsibility for it. While the *Electricity Act* deals with the provision of electricity in general, it is the *Government Owned Corporations Act (1993)* and the bureaucratic bodies set up to administer it, which are of interest. In particular, we will consider the institutional roles and relationships of the Office of Energy and the Office of Government Owned Corporations (OGOC), both of which were from 2000, established directly under the purview of the Treasurer.

The *GOC Act* governs the operations of all government owned corporations in Queensland, including the electricity distribution/retail utilities. If we are concerned about the question of ‘who runs the show’, then the *GOC Act* is the natural place to turn because the *Act* clearly spells out in detail management principles and delineates operational and strategic responsibilities between shareholding Ministers and the Boards. There is, in fact, a powerful logic behind the *GOC Act’s* provisions concerning ministerial responsibility and accountability. The *Act* was designed with the clear expectation that shareholding Ministers – as the putative intermediary between the corporations and the people-as-owners – would take an active and responsible interest in the activities of the corporations. The mechanics, linking Ministerial oversight to daily operational matters, were in essence *threefold*.

Firstly, Ministerial accountability is achieved via the production of 5-yearly *Corporate Plans*. Like Statements of Corporate Intent, corporate plans are drafted by Boards and submitted to shareholding Ministers for final approval (s. 116 (1) and s. 118). These Corporate Plans outline the broad strategic directions and concerns of the corporations, and provide guidance on their overall trajectories.

Secondly, the GOC's were required to prepare annual *Statements of Corporate Intent* for each financial year (s. 111). These Statements were intended to be "the basis for accountability" and "performance will be measured by the Government [via the shareholding Ministers] against performance targets specified in the statement of corporate intent" (s. 19 (c)). Not only did these Statements of Corporate Intent spell out the performance targets towards which GOCs strived each year, but that GOCs would be held to account for how well they met the targets explicitly stipulated in the annual Statements. The *Act* was very explicit about what was to be included in these annual Statements. This is what the relevant sections of the *Act* say:

- s.113 A GOC's statement of corporate intent must be consistent with its corporate plan.
- s.114 (1) A GOC's statement of corporate intent must specify the GOC's financial and non-financial performance targets for its activities for the relevant financial year.
- s.115 A GOC's statement of corporate intent may include the following additional matters:
    - (a) An outline of the GOC's objectives;
    - (b) An outline of the nature and scope of the activities proposed to be undertaken by the GOC ...;
    - (c) An outline of the GOC's main undertakings during the relevant financial year;
    - (d) the GOC's capital structure and dividend policies;
    - (e) an outline of the major infrastructure investments proposed to be undertaken by the GOC ...;
    - (j) the type of information to be given to the shareholding Ministers, including information to be given in quarterly and annual reports

Clearly, shareholding Ministers are (or should be) intimately aware of the government owned corporations' annual foci, its main undertakings and major infrastructure investments together with their respective dividend policies. The precise extent to which Ministers ought to be aware of the contents of the Statements of Corporate Intent is made abundantly clear when it is understood that such Statements are like corporate plans, originally prepared by the Board, but are submitted to shareholding

Ministers for their ultimate agreement (s. 116 (1) and s. 118). Shareholding Ministers in effect have the ultimate 'veto' capacity in relation to a corporation's annual focus of activity.

Thirdly, the *Act* provides for more regular monitoring of performance through *quarterly reports* (s. 130). These reports are prepared by the GOC board for the shareholding Ministers, and cover the operations of the GOC and its subsidiaries for each of the quarters of a financial year. The *Act* states that: "A quarterly report must include the information required to be given in the report by the GOC's statement of corporate intent". From an administrative perspective, the quarterly reports are intrinsically intertwined with the requirements detailed in the annual Statements of Corporate Intent, because the quarterly reports in effect provide updates on the performance of GOC's against the expectations contained in the annual Statements.

Shareholding ministers were assisted in these duties by OGOC, which was established in May 2000, within the Queensland Treasury. According to its official website, its role "is to manage the State Government's shareholding relationship with GOC's. In doing so, OGOC works closely with the Departments of portfolio Ministers with shareholding responsibilities. These include the Minister for Transport and Main Roads and the Minister for Natural Resources, Mines and Energy." The site goes on:

> OGOC and shareholding Ministers' Departments are responsible for:
>
> - negotiating outcomes of the annual performance contract or Statement of Corporate Intent (SCI) as well as the five-yearly Corporate Plan;
> - monitoring the performance of GOC's and determining dividend payments;
> - assessing major investment proposals;
> - GOC Board appointments;
> - ensuring GOC compliance with relevant Queensland Government policies; and
> - administering the Government Owned Corporations Act 1993.

In fulfilling its functions OGOC produced the *GOC Investment Guidelines* (Queensland Government, April 2003). The *Guidelines* state that: "to perform

effectively, it is important GOC' are commercially focussed, have the flexibility to respond to competition and pursue investment opportunities that enhance shareholder value" (p. 3). The *Guidelines* cover all non-financial investments including "asset refurbishment and replacement, new capital expenditure etc." (p. 3). The key objective of the *Guidelines* is to "*clearly set out the expectations, priorities and risk concerns of shareholding Ministers*, without compromising the responsibility and accountability of board directors" (p. 3)

The *Guidelines* set out 10 principles including:

- Principle 1 - GOC investments are subject to shareholding Minister notification and approval requirements;
- Principle 2 - the decision-making process used by a GOC in developing a significant investment proposal will be reviewed by shareholding Ministers; and
- Principle 3 - significant investment proposals will be assessed and approved by shareholding Ministers.

The relevance of these *Guidelines* to the investment activities of the electricity distribution and retail utilities is palpably obvious. The *Guidelines* make it clear that on major investment decisions, shareholding Ministers are not only to be intimately involved in the evaluations but are actually to be the final arbiter. That the *Guidelines* explicitly lay claim to clearly setting out shareholding ministers' "expectations, priorities and risks" suggests that Somerville's review was chronically incomplete in its assessment of the legislative, regulatory and administrative apparatus governing the conduct and performance of electricity GOC's.

The centrality of shareholding Ministers in considering major investments go to the heart of Somerville's finding that more funding was required (and that there had been inadequate investment in the network in the past). How it is that Somerville could arrive at this conclusion without asking the obvious question of 'who was responsible for making investment decisions in the past', one cannot know.

If Ministers were 'busy' they could surely rely on OGOC to do the right thing, including ensuring GOC "compliance with relevant … policies" and "administering the GOC Act". To date, no-one has suggested that OGOC failed to perform its duties. However, in terms of their policing and compliance functions, one is forced to wonder whether in fact OGOC performed its duties precisely in accordance with the expectations and wishes of shareholding Ministers because if they did – and there is no reason to suspect that they did not – then we are again forced to consider the actions or inactions of shareholding Ministers. That is, we must once again reassert the relevance of the question of 'who runs the show' rather than be blind-sided by obsessions about 'how the show is run'.

In light of this review and analysis of the provision of the *GOC Act*, there can be no disputing the fact that from a legislative point of view, there were extensive mechanisms for successful governmental accountability of GOC activities and performance. The importance of government monitoring of GOC conduct was, according to the *Act*, "intended to compensate for the absence of the wide range of monitoring to which listed corporations are subject by, for example, the sharemarket and Commonwealth regulatory agencies". The mechanisms spelled out in the legislation therefore sought to put shareholding Ministers into the place of the sharemarket as an ongoing monitor of corporation performance.[3] This is an important recognition from the originators of the GOC legislation, because the mechanisms designed into the regular cycles of GOC-shareholding Minister relations presupposed a high level of active interest and responsibility for GOC performance. Shareholding Ministers not only monitored performance on a quarterly basis, but were instrumental in the approval of the GOC's various objectives and performance targets. Quarterly reports principally reported against the criteria approved by shareholding Ministers in the Statements of Corporate Intent and the Corporate Plans.

Somerville's review did not countenance the relevance of the *GOC Act* on the objectives and performance of the electricity distribution and retail utilities. At a

[3] Why Government would want to consciously subsume the role of the stock exchange in regulating its own corporations is open to question. What appears to be the case is that whatever its motivation, it successfully incorporated the rhetoric of financialisation into the day-to-day affairs of the corporations, which ultimately underpinned poor operational decisions leading to underperformance in security of electricity supply.

mundane level, this can readily be explained by the fact that the *GOC Act* was not included in the review's terms of reference. But this raises more questions than it actually answers. After all, the terms of reference were approved by Cabinet (on the recommendation of the shareholding Ministers *viz.* the Treasurer and Minister for Natural Resources and Energy) and the terms explicitly ignored the precise legislative references that connected Government ministers with the GOC's. Somerville's defence for this oversight ultimately must hinge on the proposition that he could only investigate what he was explicitly asked to look into. Had Somerville addressed the requirements of the *GOC Act*, and took into account s. 42 (b) of the *Electricity Act*, it is doubtful that he would have made the recommendation in favour of setting 'minimum quality standards' as a palliative to what clearly are problems to do with Ministerial prerogatives rather than the absence of clear rules and expectations.

Furthermore, the design of the inquiry's terms of reference raise additional questions that involve a twist on the 'who runs the show theme' that has been explored throughout this paper. That a Government would establish a closed inquiry, against a backdrop of rising political heat and pressure, constrained by terms of reference that specifically excluded examination of the Government's own role in the failures, raises questions about the extent to which the Government deliberately sought to divert the inquiry away from itself, and towards others.

Finally, if Somerville was a little confused by what the legislative parameters actually required, there was no confusion amongst key policy advisory bureaucrats within the Office of Energy as to what their administrative priorities were. According to the Office of Energy Strategic Plan, one of its "strategic business priorities" was to "[e]nsure the adequacy and ongoing capacity of energy markets and supply systems to deliver a competitively priced, *reliable*, safe and *secure* supply of energy to consumers in Queensland" [emphasis added]. As for the Office's role, the introduction to the Strategic Plan stated clearly that one of its roles was to monitor the operating performance of the electricity, gas and petroleum industries.

Conclusions

What can we now say about Queensland's recent summer of discontent? The Somerville Report's emphasis on 'rules-based' remedies belies the fact that the rules relating to 'governance' were on the whole extensive and arguably adequate to the task, even if demand forecasting was demonstrably faulty. The legislative, regulatory and administrative apparatus clearly enunciated Government's expectations that the electricity distribution and retail corporations provide *inter alia* a *reliable* supply of electricity, and that this would involve from time to time maintenance, repair and replacement of assets. Furthermore, relevant legislation clearly spelled out the accountability and responsibility linkages between shareholding Ministers and the performance of GOCs under their charge, and particularly in relation to major capital investment decisions. Unfortunately, Somerville was blinded to these realities by terms of reference that specifically excluded these 'rules' from view. Even the bureaucratic armoury was clear about their roles in policing and enforcing the Government's rules of the day.

The problem was not so much that the rules were inadequate. Rather, by reinvoking the relevance and importance of questions to do with 'who runs the show', we are able to wipe away the veneer of 'rules-based governance' with a more robust understanding of the political and institutional conditions of under-investment in Queensland's electricity distribution networks. Financialisation was a predominant factor, which was tightly associated with a Government that prioritised revenue-raising through GOCs over other objectives. Shareholding Ministers were responsible for setting the direction and foci of the GOC's, and were also responsible for monitoring their performance against *minister-approved* objectives. Shareholding Ministers were expected to be very active and vigilant in oversighting the work of the GOCs; after all, they were in large respect expected to replace the 'rigours' of real-time sharemarket scrutiny. If continuous disclosure was a requirement of listing on the ASX, Queensland's shareholding Ministers can consider themselves lucky that they only have to review performance on a quarterly basis.

Perhaps we should leave the final word to the responsible Premier, Peter Beattie, who provided a succinct summary explanation of the causes of power blackouts during the

reign of his conservative predecessor. In the Parliament, Peter Beattie – at the time Leader of the Opposition – said:

> So what went wrong? It was the Government's wrong priorities. The Treasurer stole more than $1.3 billion from the power industry to spend on trying to get the Government re-elected. That is what it is all about. It is about pork-barrelling. In other words, the coalition Government was more interested in political power than the power industry itself (*Queensland Parliamentary Hansard* 3 March 1998, p. 82).

A couple of weeks later, he reinforced this point:

> Blame for the power blackout that Queenslanders suffered last month lies fairly and squarely with the Treasurer. The Treasurer stole $850 million from the industry in a blatant case of wrong priorities, as the money was used for pork-barrelling electorates in an attempt to buy votes to keep this rabble in power, instead of keeping the power on for Queensland and Queenslanders (*Queensland Parliamentary Hansard* 17 March 1998, p. 395).

The weaknesses of the proceduralist doctrines inherent in the discourse on governance become abundantly clear. A continual re-write of the governance rule book does little to overcome the inability of proceduralism to supplant agent responsibility. In the case of the Queensland GOCs, resorting to proceduralist or governance-based remedies elides critical scrutiny from political leaders and the decisions and actions they take. Answering the question of 'who's running the show' exposes the parsimony of governance discourse, and explains why we are usually disappointed that an undue obsession with proceduralist governance fails to live up to its promises.

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