

[Home](#) » [Hansard & Papers](#) » [Legislative Council](#) » [28 August 2008](#) » [Full Day Hansard Transcript](#) » [Item 60 of 72](#) »

Electricity Industry Restructuring Bill 2008 (No. 2)

Electricity Industry Restructuring (Response to Auditor-General Report) Bill 2008

[Printing Tips](#) | [Print selected text](#) | [Full Day Hansard Transcript](#) | [« Prior Item](#) | [Next Item »](#)

About this Item

Speakers - [Costa The Hon Michael](#)

Business - [Bill, First Reading, Second Reading, Motion](#)

ELECTRICITY INDUSTRY RESTRUCTURING BILL 2008 (NO. 2) ELECTRICITY INDUSTRY RESTRUCTURING (RESPONSE TO AUDITOR-GENERAL REPORT) BILL 2008

Page: 9647

Bills introduced, and read a first time and ordered to be printed on motion by the Hon. Michael Costa.

Bills declared to be urgent bills by the Hon. Michael Costa.

Question—That these bills be considered urgent bills—put and resolved in the affirmative.

Declaration of urgency agreed to.

Second Reading

The Hon. MICHAEL COSTA (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [12.23 p.m.]: I move:

That these bills be now read a second time.

These bills are the most important pieces of economic reform contemplated in this State in a generation. Without them we face a very stark and unavoidable choice: Either run unacceptable risks to the security of the power supply or divert taxpayer funds away from front-line services and vital infrastructure. Neither of those choices is desirable or necessary; and that is not political posturing but the advice of an independent expert inquiry headed by Professor Tony Owen that, 12 months ago, reported to the Government on the State energy needs. The warnings that the Owen report contained, in terms of a looming baseload shortage by 2013-14 and the \$15 billion cost pressure that would be placed on the State's budget, cannot be ignored by either a responsible Government or a responsible Opposition.

The Government has provided for an exhaustive scrutiny with no less than four independent inquiries: the Owen report, the Unsworth review, the Auditor-General's Report and the Rural Community Impact Statement. The advice from the Auditor-General was clear: if we are going to act, we need to act now—to delay would only create uncertainty amongst investors willing to invest billions of dollars into the New South Wales economy.

The Rural Community Impact Statement also found that the Government's reforms would provide a net benefit to rural and regional communities and there would be no adverse impacts on jobs, prices or service levels. Importantly, these reforms are not remarkable. The national electricity market is largely dominated by private sector players following similar reforms by Coalition governments in Victoria and South Australia and by a Labor Government in Queensland. With the introduction of a national emissions trading scheme, the energy landscape will be transformed, and now is no longer the time to cling to assets that reflect the status quo, particularly in the retail and generation sectors. An emissions trading system will demand massive new investment in lower carbon technology, where the private sector is better placed to manage the risk.

In spite of the current market conditions, there are many potential bidders interested in these assets. The Auditor-General stated that he understands that a wide range of bidders has expressed an interest in these particular assets. Indeed, the report pointed to the successful disposal of power assets currently being undertaken by the Singaporean Government. The first sale of a Singaporean generator has been successfully undertaken for \$A3.2 billion, which was more than 50 per cent debt funded. On the basis of strong investor interest, the Singapore Government is set to continue with its sale of retail and generation assets. Yes, current market conditions are challenging, but the Singapore experience shows that the world has not stopped. The Auditor-General's report found that the Government's sales strategy is flexible enough to accommodate current market conditions.

Honourable members will be aware that the Electricity Industry Restructuring Bill 2008 and the Community Infrastructure (Intergenerational) Fund Bill 2008 were introduced into the Legislative Assembly on 4 June 2008. The Community Infrastructure (Intergenerational) Fund Bill 2008 deals with the appropriation of transaction proceeds from a special-purpose infrastructure fund. As such, it is required to originate in the other place. Nevertheless, that bill and the bills currently before this House should be seen as a single package of legislation. The Government will bring the Community Infrastructure (Intergenerational) Fund Bill 2008 to this House immediately after it has been passed in the other place. However, the Government believes it is appropriate that the authorising legislation be voted on in this place first. There is a simple reason for this: the investment community requires certainty. The Auditor-General said that if we are going to act we should act now, and we need to know where everybody stands on the most important economic issue facing this State.

It is the vote in this place that will determine whether the electricity industry restructuring will occur. So it is desirable that this House is the first to vote on this package of bills. For this reason the Electricity Industry Restructuring Bill 2008 and the Electricity Industry Restructuring (Response to Auditor-General Report) Bill 2008 will be considered in this place first. Following their passage in this place, the Premier will introduce the two bills in the other place, where they will be considered simultaneously with the Community Infrastructure (Intergenerational) Fund Bill 2008, which was introduced on 4 June 2008, and associated amendments. Since June the Auditor-General (Supplementary Powers) Act has been passed and the Auditor-General's review has been laid before Parliament. His review found there was nothing that caused him to believe:

that the Government's strategy for the transfer of assets to the private sector as set out in the Strategy Document supplied by the Treasurer is not appropriate for maximising financial value for taxpayers.

While the Auditor-General did not make any recommendations for amendments to the legislation, the Government has decided to introduce the Electricity Industry Restructuring (Response to Auditor-General Report) Bill 2008 in order to implement legislatively suggestions of the Auditor-General's review. It delivers exactly what has been sought by members opposite: to give effect to the results of the Auditor-General's review. The Electricity Industry Restructuring Bill 2008 will authorise the restructuring of the New South Wales electricity sector to secure our State's future electricity supplies. This will involve the sale of the State's retail electricity operations and the long-term lease of the State's generation assets.

It can be foreshadowed that following the passage of the Community Infrastructure (Intergenerational) Fund Bill in both Houses, the proceeds from these transactions will be paid into that fund. The bills that I am introducing today will enable the Government to implement its longer-term plan for securing the State's future energy supply. The proposals follow the investigation and report by Professor Owen. His report recognised the critical need to be prepared for additional investment in base-load capacity from 2013-2014. It identified the importance of ensuring that the appropriate commercial and policy signals are in place to encourage the private sector to invest in this generation capacity when it is needed.

Creating the right conditions for this investment is the most efficient way of ensuring that the State's future energy needs are met. The transactions authorised by the bills will avoid the need for New South Wales taxpayers to provide additional expenditure of up to \$15 billion for necessary investment in the competitive retail and generation sectors of the industry so that the Government can concentrate on investing in roads, trains, hospitals, schools and other essential infrastructure including electricity transmission and distribution businesses, which we will continue to own and operate.

In response to Professor Owen's report we have developed a plan that will provide for private sector operation of the retail and generation businesses and promote further future private sector investment in generation capacity while at the same time ensuring that electricity infrastructure remains in public hands. The Electricity Industry Restructuring Bill will authorise and facilitate this plan. The bill will provide for the State's electricity distributors, Energy Australia, Country Energy and Integral Energy, to retain the network distribution businesses while transferring their retail operations to the private sector. The Government has consistently made it clear that the network distribution and transmission assets, the poles and wires, will remain in public ownership and the bill expressly provides that these assets must be owned by the public sector.

In relation to the State's energy generators, Macquarie Generation, Delta Electricity and Eraring Energy, the bill authorises the leases of their power stations. Clause 4 of the bill, and other provisions, will allow authorised transfers of the generation and retail assets to be combined in a single transaction, including by way of a public share offer or an initial public offering. It should be made clear that the bill does not authorise the transfer of any assets held by TransGrid. Indeed, the bill includes an express provision that requires that TransGrid's transmission assets must remain in public ownership. The bill provides that power stations may only be leased and cannot be transferred directly or indirectly. The only exception is if there is a public float of an electricity generator's business.

While the bill authorises a share offering, it does not require it. The decision on whether to proceed with an initial public offering will depend on prevailing market conditions and on advice from our expert financial advisers. If an initial public offering is undertaken, the bill will impose a shareholding restriction for between three to five years.

This restriction limits any individual stake in the float company to no more than between 10 per cent and 15 per cent. The Auditor-General, in the normal course of the function of the Audit Office, will be able to perform an audit of the process. He will no doubt be in regular contact throughout the process with Government offices and the businesses involved and shall have full access to financial advisers and other experts who are assisting the Government on this reform. I expect that the Auditor-General will also form a view at the time as to whether the entire portfolio of transactions has met the Government's stated objectives. In conducting any such audit, the Auditor-General will be able to determine whether the transactions were carried out effectively, economically and efficiently in compliance with all relevant laws. Under the Public Finance and Audit Act the report of such an audit is required to be tabled in Parliament. However, the Auditor-General also has the discretion to report to Parliament on any matter at any time if he finds it necessary.

An imperative of the reform package is to ensure competition in the New South Wales electricity market. Our plans are designed to deliver competitive outcomes and encourage new investment in industry. The Australian Competition and Consumer Commission will play an important role in ensuring competitive outcomes in the market. In recognition of this, I have written to the chairman of the Australian Competition and Consumer Commission detailing the basis of the New South Wales Government's sale and lease strategy. The Electricity Industry Restructuring Bill contains important provisions ensuring that existing employees affected by these reforms will retain their accrued sick leave, annual leave, long service leave and superannuation entitlements. The Government has previously announced that it will provide certain guarantees in respect to jobs and conditions of public sector retail and generation electricity workers. The bill enables the Government to meet these commitments including by expressly allowing for the making of transfer payments to employees.

The bill also contains provisions to protect consumers. The bill will ensure that the State's independent pricing regulator, the Independent Pricing and Regulatory Tribunal, continues to set electricity retail prices for households and small businesses until at least 2013. The bill also allows for the date to be further extended by regulation. The Government will maintain electricity retail price regulation beyond 2013, if necessary. The Government is committed to ensuring that electricity retail price regulations remain in place until it is satisfied that there is sufficient competition in the retail energy market to keep prices as low as possible.

As part of our plans the Government will also be introducing a \$272 million electricity safety net package to help consumers, including increased electricity rebates for pensioners, funding support for a new no-disconnections policy, and other assistance for families facing severe financial hardship. The Government will shortly commence a consultation process to deliver these expanded social programs on energy. Key consumer stakeholders will be asked to contribute to ensure workable and responsive outcomes continue to be delivered to those in need. Stakeholders that will be consulted include the Energy and Water Ombudsman of New South Wales, the energy and water consumer advocacy program, the Australian Council of Social Services, the Council of Social Services of New South Wales, electricity retailers and other community welfare organisations.

The Electricity Industry Restructuring Bill facilitates these programs by strengthening the Government's regulation making powers under the Electricity Supply Act. These amendments are designed to ensure that the Government has the power to implement the full package of consumer protection measures it has promised. The bill also expands the existing information gathering powers of the Independent Pricing and Regulatory Tribunal and the Minister for Energy. This will give them the tools that they need to carry out their regulatory functions in a privately owned retail environment.

I can foreshadow that following the passage through this Chamber of the Electricity Industry Restructuring Bill and the Electricity Industry Restructuring (Response to Auditor-General Report) Bill, the Premier will introduce them into the Legislative Assembly at the same time as he introduces the Community Infrastructure (Intergenerational Fund) Bill. He will do that to enable debate on those bills to take place and for any proposed amendments to them to be considered. I can foreshadow that subsequent to the passage of the bills all proceeds from the restructuring will be paid into a new Community Infrastructure (Intergenerational) Fund, which will be established under the Community Infrastructure (Intergenerational) Fund Bill. The income from the investment of this fund will replace the dividends and the equivalents currently being received by State-owned electricity retail and generation businesses.

The fund will also be used to provide significant additional infrastructure spending for future generations in metropolitan, regional and rural New South Wales. It will be used to provide additional funding in areas of transport, health, education and water. It will also provide support funding for the Government's priorities, including the development of clean energy such as cleaner coal technology and renewable energy technologies.

The Government has already announced funding of \$100 million to establish a Clean Coal Fund, an additional \$60 million to increase the Renewable Energy Development Fund to \$100 million. The Government acknowledges the appetite of the community for progress in these areas. To help monitor this progress, the Government will establish a parliamentary joint select committee comprising representatives of both Houses of Parliament to report on the delivery of the Government's commitment in regards to renewable energy and clean coal technology.

The Government has also agreed to establish a community infrastructure fund advisory committee with

representatives of the business sector, community groups and trade unions. The committee's role will be to provide input to the development of the fund's charter. Secondly, it will receive reports from the Crown as to whether the fund is complying with its charter and governing legislation. The committee will provide reports twice a year to the Treasurer coincidentally with the half-yearly budget review and annual budget. The fund will be subject to audit by the Auditor-General under the Public Finance and Audit Act.

The Electricity Industry Restructuring (Response to Auditor-General Report) Bill 2008 addresses issues arising from the Auditor-General's review of the Government's transaction strategy. In response to the Auditor-General's review the Government is introducing new provisions. First, the bill provides that the Government is required to determine the retention value and reserve price of the State's electricity assets prior to any transfer to the private sector. Naturally, these amounts are market sensitive and will be kept confidential. In particular, they will not be disclosed to any prospective bidders. They will however be taken into account by the Government before undertaking any transactions. They will also provide a benchmark for the Auditor-General once the restructuring is complete to assess its effectiveness in meeting the Government's objectives.

The bill provides a prohibition on providing indemnities to lessees of New South Wales generators in relation to liabilities arising under a carbon emissions trading scheme; that is, it ensures that any risk that flows from the introduction of the Commonwealth's carbon pollution reduction scheme is borne by the private sector. The bill requires the Treasury to continuously evaluate the proposed transaction strategy against the impact of external factors, including financial market conditions, infrastructure capital demand and the carbon pollution reduction scheme, with the scope to delay generator transactions if the Commonwealth's white paper does not provide sufficient certainty. Further, as transactions are completed a review of the State's financial position and particularly the State's forward capital program will be undertaken. In response to the issues raised in the Rural Community Impact Statement the Electricity Industry Restructuring (Response to Auditor-General Report) Bill 2008 will also mandate for the continued operation of Country Energy's customer service centres in support of their distribution network businesses, which will remain in public ownership.

The bills I am introducing today provide for the implementation of the New South Wales Government's plans, which are necessary to ensure our future energy needs are met. As I have said before, we must act now to secure a continuing supply of electricity and to ensure continuing prosperity for the State. The plan the Government has developed will enable private sector investment in electricity retailing and generation while at the same time ensuring that the critical infrastructure remains in public hands. The solution will deliver extra electricity supply, retain public infrastructure in public hands and deliver necessary investment in research and development to obtain lower carbon energy outcomes. This solution will promote competition and keep maximum pressure on prices by keeping them as low as possible.

The bills will ensure that these objectives are met. The process has been subject to exhaustive independent analysis. No fewer than four reports have been commissioned to review and recommend improvements to the Government's proposals. In each and every case—the Owen report, the Unsworth review, the Rural Community Impact Statement and the Auditor-General's review—the Government has accepted the recommendations and acted. It is clearly time to put the public interest first. I commend these bills to the House.

[Business interrupted.]

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