

General Purpose Standing Committee No. 1

The Gentrader transactions

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Terms of reference

That General Purpose Standing Committee No. 1 inquire into and report on the following aspects of the Government Energy Reform Strategy announced on 15 December 2010:

1. The details of the energy reform transactions completed on Tuesday 14 December 2010
2. The circumstances that led to the resignation of directors from Eraring Energy and Delta Electricity
3. The impact the transaction will have on current and future electricity prices, competition in the electricity market, and the value obtained for NSW taxpayers; and
4. Other related matters.

These terms of reference were self-referred by the Committee on 23 December 2010.

Committee membership

Revd the Hon Fred Nile MLC	Christian Democratic Party	<i>(Chair)</i>
The Hon Kayee Griffin MLC	Australian Labor Party	<i>(Deputy Chair)</i>
The Hon Greg Donnelly MLC¹	Australian Labor Party	
The Hon Luke Foley MLC	Australian Labor Party	
Dr John Kaye MLC	The Greens	
The Hon Trevor Khan MLC²	The Nationals	
The Hon Greg Pearce MLC³	Liberal Party	

¹ The Hon Greg Donnelly MLC substituted for The Hon Ian West MLC for the duration of this inquiry.

² The Hon Trevor Khan MLC substituted for The Hon Melinda Pavey MLC for the duration of this inquiry.

³ The Hon Greg Pearce MLC substituted for The Hon Matthew Mason-Cox MLC for the duration of this inquiry.

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Chair's foreword

I am pleased to present the report of General Purpose Standing Committee No. 1 on the Gentrader transactions.

Given the limited timeframe available to conduct the Inquiry, the Committee has not prepared a comprehensive report. Rather, the report consists of two chapters. Chapter 1 outlines key procedural aspects of the Inquiry, and Chapter 2 contains a summary of key issues. Further detail can be found in the transcripts of evidence from the Committee's public hearings and answers to questions on notice, which are available at Appendices 4-8.

This Inquiry came about after certain transactions took place on 14 December 2010 as part of the NSW Government's energy reform strategy, which led to the sale of the retail arms of the three State-owned energy corporations (EnergyAustralia, Integral Energy and Country Energy), three power station development sites, and the electricity trading rights of Eraring Energy and Delta West (the 'Gentrader model').

Following the sale it emerged that eight of 13 directors from the boards of Delta Electricity and Eraring Energy had resigned their directorships shortly before the execution of the transactions, and that four new directors had subsequently been appointed by the Treasurer, the Hon Eric Roozendaal MLC, to reconstitute the boards and enable the transactions to be completed.

The transactions caused considerable concern within the community, and led to the establishment of this Inquiry. Concerns included the value obtained from the sale for NSW taxpayers, the impact of the reforms on electricity prices and greenhouse gas emissions, and the circumstances which led to the resignations of the directors from Delta Electricity and Eraring Energy.

This Inquiry almost did not proceed after the Premier, the Hon Kristina Keneally MP, prorogued the Parliament in what was widely believed to be an attempt to prevent this Inquiry from going ahead. Following advice from the Clerk of the Parliaments that the Committee could still meet and transact business during prorogation, the President of the Legislative Council announced that she would allow the Inquiry to proceed.

Unfortunately the Committee was stymied in its efforts to uncover the facts surrounding the Gentrader transactions. Despite multiple efforts to hear evidence from the directors who resigned from Delta and Eraring, these directors declined to appear before the Committee due to concerns about the application of parliamentary privilege during prorogation. While the Committee sought reassurances from the Premier that she would not bring legal action against the directors for giving evidence to the Inquiry, the Premier would not give such an undertaking.

One of the key issues raised during the Inquiry was the value obtained by the transactions. It is clear that the net proceeds of the sale of the State's electricity assets will be significantly less than the \$5.3 billion sale price. The Treasurer suggested that after repaying debts and other costs the net proceeds will be around \$3.272 billion. However this fails to take into account the \$1.5 billion that the Government will be spending on developing the Cobbora coalmine to provide low cost coal to the electricity generators, nor does it take into account forgone revenue from the coal, which is estimated to be at least \$1 billion.

It is also clear that the sale of assets under the Gentrader model has still left the State with risks relating to the electricity market, coal supply and the costs of operating and maintaining generators. In the event that the NSW Government has failed to properly assess the future costs of operating and maintaining the generators, then the NSW taxpayer will be required to meet these as yet unquantified costs.

Concerns were also raised regarding the impact of the transactions on competition in the NSW retail electricity market. The Government argued that the reforms will lead to increased competition and lower electricity charges for consumers, however the Committee was not convinced by these arguments. Hence the Committee recommended that the structure of the NSW retail electricity industry be subject to an Independent Pricing and Regulatory Tribunal inquiry.

On 1 February 2011, more than halfway through the Inquiry, the Premier announced that the NSW Government would not proceed with any further privatisation of the State's energy sector. The result of this decision is that the second tranche of the Government's energy reform process will not proceed, leaving the Macquarie Generation and Delta Coastal Gentrader contract bundles in public ownership. The reality of a half-privatised electricity industry raises an entirely new set of issues, which the Committee had limited time to explore.

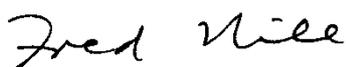
Due to the significant concerns about the transactions, the Committee has recommended that the Gentrader contracts be immediately rescinded to allow the incoming government to reassess the future of the electricity industry in New South Wales, and that the full financial details of the transactions be made publicly available.

Acknowledging that a state election is only a matter of weeks away, the Committee recommended that the incoming government establish a full Judicial Inquiry into the energy reform transactions. In the event that the current Government does not rescind the Gentrader contracts, the Judicial Inquiry should examine the amount of damages that the State may be liable for if the Gentrader contracts were to be reversed.

Importantly, the Committee also recommended that legislation be enacted to prohibit any privatisation, leasing or other form of disposal of a principal undertaking of a State-owned electricity company without the approval of both Houses of Parliament.

On behalf of the Committee I would like to thank all inquiry participants for taking the time to write submissions and give evidence at the public hearings. Your contributions are sincerely appreciated.

I am also grateful to my committee colleagues for the work they have undertaken on this Inquiry. On their behalf I wish to thank the Clerk of the Parliaments, Ms Lynn Lovelock, for the procedural advice that she provided to the Committee, and the Committee secretariat: Teresa McMichael, Cathryn Cummins, Stewart Smith, Christine Nguyen and Lynn Race.



Revd Hon Fred Nile MLC
Committee Chairman

Summary of findings

- Finding 1** 8
The answers given by the Premier to the media conference held on 23 December 2010 regarding the reasons for the proroguing of Parliament were directly contradicted by the evidence available to the Committee.
- Finding 2** 8
Contrary to the evidence of the Premier, the Committee concludes that the NSW Government prorogued the Parliament for the specific purpose of frustrating the Inquiry into the Gentrader transactions.
- Finding 3** 8
The Inquiry was properly constituted pursuant to NSW Legislative Council standing order 206, with all the ancillary powers to compel attendance of and answers from witnesses and for the production of papers.
- Finding 4** 8
It is clear that the Executive has taken all steps it could to stop this Inquiry from proceeding, and to prevent exposure of the details of the Gentrader transactions which may have damaged the Government's reputation on the eve of the State election on 26 March 2011.
- Finding 5** 13
The refusal to provide documents that the NSW Government asserted to be privileged, or an index of any such documents, was a deliberate attempt by the Government to prevent a full and proper analysis of the Gentrader transactions.
- Finding 6** 19
The NSW Government's rationale for the energy reform transactions is based on the Owen Inquiry report, however there are concerns that the Owen report is based on an outdated and inaccurate understanding of electricity generation requirements.
- Finding 7** 21
The exposure of the generator companies to claims for Availability Liquidated Damages creates a significant and uncertain future liability to the taxpayers of New South Wales.
- Finding 8** 22
The NSW Government has aimed through its Gentrader model to exit the 'risky business of electricity generation and trading'. However, under this model the Government has been left with risks relating to the electricity market, coal supply and the costs of operating and maintaining generators.
- In the event that the Government has failed to properly assess the future costs of operating and maintaining the generators, the NSW taxpayer will be required to meet these as yet unquantified costs.

Finding 9

27

An accurate estimate of the net proceeds of the sale cannot be determined due to a lack of information provided by the NSW Government. However it is likely to be significantly less than the figure of \$3.272 billion provided by the NSW Treasurer.

Finding 10

27

The decision to set maintenance payments for the life of the Gentrader contracts, subject only to certain fixed escalations, exposes the public sector to significant and unmeasurable risks associated with an unexpected decline in the condition of the generating plant. The decision to place all of the risk for unexpected maintenance costs in the hands of the generators is unusual and not in the best interests of the people of New South Wales.

Further, the risks associated with maintenance costs exceeding fixed payments from the Gentrader and the Availability Liquidated Damages could in any one year result in a negative net outcome for the State.

Finding 11

33

In seeking to implement its energy reforms, the NSW Government is subsidising the cost of coal purchased by private energy corporations through its involvement in the Cobbora coal mine.

While it is difficult to accurately forecast the exact financial impacts of the Cobbora mine proposal, it is clear that:

- the mine will have substantial local and global environmental impacts,
- the costs of construction of the mine will be borne by the people of New South Wales and might not be recouped in any potential future sale of the mine, and
- the operational subsidy will be substantial and will largely become profits for the Gentraders, rather than reductions in electricity bills for households.

Finding 12

43

The Gentrader transactions have left a remaining State-owned generator industry structure that does not contain an economically feasible contract supplier for Hydro Aluminium Kurri Kurri Pty Ltd. The residual Delta Electricity is too small and is already exposed to massive market risks. If Macquarie Generation were to take on the contract, combined with its existing contracts with Tomago, almost 50 per cent of its generation annual output would be tied up with aluminium smelters, exposing the State-owned generator to significant electricity and aluminium market risks.

Finding 13

46

There exists a real risk of privatisation of the State's electricity generation, transmission and distribution assets under the next Government, given the refusal of the Leader of the Opposition to rule out such a course.

Summary of recommendations

- Recommendation 1** **24**
That the NSW Government disclose the retention values of the electricity assets and bundles of assets that were sold as part of the Gentrader transactions, and the methodology used to determine those values, prior to the NSW State election on 26 March 2011.
- Recommendation 2** **34**
That development of the Cobbora mine proposal be suspended and subjected to an independent expert review where the terms of reference include:
- estimating the total public subsidy to the mine, including establishment and opportunity costs of below-market-price coal,
 - the efficiency of spending money on subsidising coal as a measure to contain household electricity bills, and
 - the economic benefits of instead using a portion of that money to assist households to become more energy efficient.
- Recommendation 3** **37**
That the structure of the NSW retail electricity industry be subject to an Independent Pricing and Regulatory Tribunal inquiry with terms of reference including:
- the degree of concentration of ownership of retail created by the NSW Government's reforms and its potential impacts on household power bills,
 - the potential for new competitors to enter the market and for existing competitors to increase their market share, and
 - the impacts on the potential to contain household electricity bills and carbon footprints from the loss of public sector presence in electricity retailing in New South Wales.
- Recommendation 4** **43**
That all parties involved be encouraged to resolve the uncertainty regarding the Hydro Aluminium Kurri Kurri Pty Ltd supply contract as a matter of urgency, with the aim of securing the future of the company and jobs.
- Recommendation 5** **46**
That legislation be enacted to prohibit any privatisation, leasing out or other form of disposal of a principal undertaking of a State-owned electricity company, without the approval of both Houses of Parliament.
- Recommendation 6** **47**
That the full financial details of the Gentrader transactions be made publicly available immediately.
- Recommendation 7** **47**
That the incoming Government establish a full judicial inquiry into the energy reform transactions.

Recommendation 8

47

That the Gentrader contracts be immediately rescinded to allow the incoming Government to reassess the future of the electricity industry in New South Wales.

Recommendation 9

47

That, in the event that the Gentrader contracts are not rescinded by the current Government, the incoming Government ask the judicial inquiry to examine the amount of damages that the State may be liable for if the Gentrader contracts were to be reversed.

Recommendation 10

48

That the incoming NSW Government ask the judicial inquiry to:

- a) inquire into the circumstances surrounding and the reasons for the Energy Reform Group Steering Committee making a direction to Delta Electricity not to execute the contract between Hydro Aluminium Kurri Kurri Pty Ltd and Delta Electricity,
- b) investigate the capacity of Macquarie Generation to enter into a contract with Hydro Aluminium Kurri Kurri on similar terms to the Heads of Agreement with which Hydro had with Delta Electricity,
- c) determine what, if any, compensation would be payable to Hydro Aluminium Kurri Kurri in the event that a contract, as described in b), cannot be entered into, and
- d) whether the NSW Government should make a direction under section 20N of the *State Owned Corporations Act* for Macquarie Generation to enter into a contract with Hydro Aluminium Kurri Kurri on similar terms to the Heads of Agreement with which Hydro had with Delta Electricity.

Chapter 1 Introduction

This chapter considers the background for establishing the Inquiry into the Gentrader transactions and outlines the way in which the Inquiry was conducted. The chapter also discusses several significant procedural issues that arose during the course of the Inquiry.

Given the Inquiry's short timeframe, the report consists of two chapters, the transcripts of evidence from the Committee's four public hearings (available at Appendices 4-7), and answers to questions on notice (Appendix 8).

Background to the Inquiry

1.1 In March 2009, the NSW Government released its *NSW Energy Reform Strategy – Defining an Industry Framework* paper, setting out the Government's energy reform strategy which comprises the following elements:

- selling the retail arms of the three State-owned energy corporations, EnergyAustralia, Integral Energy and Country Energy,
- selling seven power station development sites around New South Wales,
- contracting the electricity trading rights of the nine State-owned power stations to the private sector (the 'Gentrader model'),
- maintaining public ownership of existing power stations, and
- maintaining public ownership of electricity transmission and distribution networks (the 'poles and wires').⁴

1.2 As part of the strategy the Government would offer four Gentrader contract bundles for sale. Delta Electricity's generation portfolio was separated into two Gentrader contract bundles: the Delta Coastal contract bundle, covering Delta's Central Coast power stations, and the Delta West contract bundle, covering Mount Piper and Wallerawang in the Central West. The other two Gentrader contract bundles were Macquarie Generation and Eraring Energy.⁵

1.3 On 14 December 2010 the Treasurer, the Hon Eric Roozendaal MLC, announced that the first tranche of the Government's energy reform strategy had been completed, which executed agreements for the sale of:

- Country Energy, Integral Energy and the Eraring Gentrader contract (the Eraring Energy contract bundle) to Origin Energy, for \$3.25 billion
- EnergyAustralia, the Delta West Gentrader contract bundle and the Mount Piper Extension, and two development sites at Marulan (the Delta West contract bundle) to TRUenergy, for \$2.035 billion. In addition, TRUenergy committed to provide an

⁴ NSW Government, *Energy Reform*, accessed 21 January 2011 < <http://www.nsw.gov.au/energy>>.

⁵ NSW Government, *Energy Reform*, accessed 21 January 2011 < <http://www.nsw.gov.au/energy>>.

additional \$240 million in funding to enable capital improvements at the Wallerawang power station.⁶

- 1.4 In the media release announcing the transactions, the Treasurer advised that the energy reform process was ongoing, with the Government continuing negotiations for the sale of the two remaining Gentrader contract bundles, Macquarie Generation and Delta Coastal.⁷
- 1.5 Following the announcement of the sale, it emerged that eight of the 13 directors from the boards of Delta Electricity and Eraring Energy had resigned their directorships shortly before the execution of the transactions.⁸
- 1.6 The resignation of the eight directors denied the boards of Delta Electricity and Eraring Energy the necessary quorum required to execute the transactions. Following the receipt of legal advice, the Treasurer appointed four new directors, two each to Eraring and Delta, to facilitate the execution of the Gentrader transactions.⁹
- 1.7 The Gentrader transactions provoked significant concern within the community, particularly in regard to the impact of the transactions on current and future electricity prices, competition in the electricity market, the value obtained for NSW taxpayers and greenhouse gas emissions. Questions also arose as to the circumstances which led to the resignations of the directors from Delta Electricity and Eraring Energy.¹⁰ The Committee examined these and other issues, such as the NSW Government's decision to develop the Cobbora coal mine development, during the Inquiry. Chapter 2 provides a summary of these key issues.

Conduct of the Inquiry

- 1.8 The Inquiry's terms of reference were adopted on 23 December 2010 under the Committee's power to make a self-reference. The terms of reference are reproduced on page iv.

Submissions

- 1.9 The Committee invited submissions through advertisements in the *Sydney Morning Herald*, *The Daily Telegraph*, *The Australian*, the *Financial Review* and the *Newcastle Herald*.
- 1.10 The Committee received 65 submissions and three supplementary submissions. The majority of submissions were received from members of the community. Submissions were also received from environmental groups and political parties. All of the submissions expressed

⁶ Hon Eric Roozendaal MLC, Treasurer, '\$5.3 billion for first tranche of energy reforms', *Media Release*, 14 December 2010.

⁷ Hon Eric Roozendaal MLC, Treasurer, '\$5.3 billion for first tranche of energy reforms', *Media Release*, 14 December 2010.

⁸ Email from Mr Raymond Madden, Company Secretary, Delta Electricity, to A/Director, 2 February 2011; Email from Ms Rochelle Reynolds, Company Secretary, Eraring Energy, to A/Director, 2 February 2011.

⁹ Hon Eric Roozendaal MLC, Treasurer, Evidence, 17 January 2011, p 6 and p 25.

¹⁰ See for example Bibby P, Robins R and Nicholls S, 'Sold ... state gets \$5.3 billion for electricity assets', *The Sydney Morning Herald*, 15 December 2010; Salusinszky I and Hepworth A, 'NSW Treasurer Eric Roozendaal brushes off board protests as electricity sale goes through', *The Australian*, 15 December 2010; Hepworth A and Salusinszky I, 'Substitute boards to enable sell-offs', *The Australian*, 16 December 2010.

concerns about the Gentrader transactions, particularly the value for money obtained by the transactions, the potential impact on electricity prices and the effect of the transactions on climate change.

- 1.11** A full list of submission authors can be found in Appendix 1.

Hearings

- 1.12** The Committee held four public hearings at Parliament House on 17, 18 and 24 January, and 10 February 2011.
- 1.13** The Committee received evidence from the Premier, the Treasurer and representatives from NSW Treasury. The Committee also received evidence from newly appointed directors to Eraring Energy and Delta Electricity, the Leader of the Opposition, Mr Barry O'Farrell MP, the Shadow Treasurer, Mr Mike Baird MP, witnesses from Hydro Aluminium Kurri Kurri and academics. A full list of witnesses is provided in Appendix 2.
- 1.14** The Committee would like to thank all the individuals and organisations that made a submission or gave evidence to the Inquiry.

Procedural aspects of the Inquiry

- 1.15** Several procedural issues arose during the course of the Inquiry. The following section discusses each of these issues.

The prorogation of the 54th Parliament

- 1.16** Prior to the formal requisitioning of a meeting to establish the Inquiry, speculation began to appear in the media that members of the NSW Upper House were considering the establishment of an inquiry into the Gentrader transactions.
- 1.17** The Committee concludes that on 21 December 2010 the Premier, the Hon Kristina Kenelly MP, received advice from the Department of Premier and Cabinet regarding the effect of the prorogation of Parliament on the operation of Committees.
- 1.18** In a briefing note prepared for the Premier the option of the immediate proroguing of Parliament was specifically considered, in the context of its effect on a committee of the NSW Legislative Council to continue to sit and transact business.¹¹
- 1.19** At 11.05am on 22 December 2010, in accordance with paragraph 2 of the resolution of the House of 10 May 2007 establishing the General Purpose Standing Committees, the Clerk Assistant – Committees received correspondence from three members of the Committee requesting that a meeting be convened to consider a proposed inquiry into the Gentrader transactions.¹²

¹¹ Department of Premier and Cabinet, 'Effects of Prorogation on Committees', Briefing Note DPC 10/03902.

¹² Correspondence from Revd the Hon Fred Nile MLC, Mr Matthew Mason-Cox MLC and Ms Melinda Pavey MLC, to the Clerk Assistant – Committees, 22 December 2010.

1.20 The same morning, the Governor, with the advice of the Executive Council, prorogued the 54th Parliament.¹³ The Legislative Council stands prorogued until 10 May 2011.¹⁴ The Government also issued a press release stating that, among other things, standing committees were not able to meet and transact business during prorogation unless empowered by statute¹⁵ (i.e. 'enabling legislation'). This reflected advice provided by the Crown Solicitor to the Clerk of the Legislative Assembly in December 1994.¹⁶

1.21 On the morning of 23 December 2010, Premier Keneally held a press conference in which the following exchange occurred:

JOURNALIST: Is the reason you prorogued parliament yesterday to prevent this inquiry from going ahead?

Ms KENEALLY: No, no.¹⁷

1.22 On the same day, the Committee met to adopt the terms of reference for this Inquiry. This followed the receipt of advice from the Clerk of the Parliaments that should the Committee wish to meet, it was able to do so despite prorogation.¹⁸

1.23 The Clerk's advice was in contrast to advice provided by the Crown Solicitor to the Legislative Assembly regarding the status of standing committees after prorogation of Parliament. The Clerk argued that the view expressed by the Crown Solicitor in 1994 was a 'restrictive view' of the powers of committees. The Clerk cautioned, however, that the extent of committee powers during prorogation had yet to be tested before the courts.¹⁹

1.24 Shortly before the commencement of the meeting on 23 December 2010, the three Labor members of the Committee issued a statement in which they said:

This is a decision that we have not taken lightly. However, in view of the fact that the NSW Parliament was prorogued yesterday, we have solid advice from respected authorities that the meeting is illegally constituted, and that presents several risks.

Witnesses cannot be compelled to attend and parliamentary privilege would not cover Members or witnesses. Witnesses may also be liable for revealing commercial-in-confidence decisions.²⁰

¹³ Hon Kristina Keneally MP, Premier, 'Governor prorogues 54th NSW Parliament', *Media Release*, 22 December 2010.

¹⁴ Government Gazette of the State of NSW, *Special Supplement*, no. 139, Wednesday 22 December 2010, p 6109.

¹⁵ Hon Kristina Keneally MP, Premier, 'Governor prorogues 54th NSW Parliament', *Media Release*, 22 December 2010.

¹⁶ Crown Solicitor's Office, *Status of Standing Committees after prorogation of Parliament*, 13 December 1994, p 2.

¹⁷ Sky News 23 December 2010, video footage tabled by Hon Trevor Khan MLC on 16 February 2011.

¹⁸ Email from the Clerk of the Parliaments to Revd the Hon Fred Nile MLC, Chairman, General Purpose Standing Committee No. 1, 22 December 2010.

¹⁹ Email from the Clerk of the Parliaments to Revd the Hon Fred Nile MLC, Chairman, General Purpose Standing Committee No. 1, 22 December 2010.

²⁰ Tabled document, Statement from the Government members of the GPSC 1 Committee – Honourable Greg Donnelly, Honourable Kayee Griffin and Honourable Luke Foley, p 1.

- 1.25** The Committee notes that the Labor members did not attend the meeting on 23 December 2010 but thereafter took part in all other meetings and hearings of the Inquiry, and exercised their rights to ask questions of witnesses.
- 1.26** At the meeting of 23 December 2010 the Committee resolved to determine a list of suitable witnesses to attend on the first days of hearing of the Committee. Subsequently invitations were issued to the following individuals:
- The Premier
 - The Treasurer
 - Minister for Energy
 - Mr Ross Bunyon AM, former Chairman, Eraring Energy
 - Mr Michael Vertigan AC, former Director, Eraring Energy
 - Mr Dean Pritchard, former Director, Eraring Energy
 - Mr Tony Maher, former Director, Eraring Energy
 - Dr Col Gellatly, Director, Eraring Energy
 - Mr Kim Yeadon, Director, Delta Electricity
 - Mr John Dermody, Director, Delta Electricity
 - Mr Jim Henness, former Chief Executive and Director, Delta Electricity (Mr Henness retired as CEO / Director of Delta on 17 July 2010)
 - Mr Loftus Harris, former Director, Delta Electricity
 - Mr Michael Knight AO, former Director, Delta Electricity
 - Mr Paul Forward, former Director, Delta Electricity
 - Ms Sandra Moait, former Director, Delta Electricity
 - Ms Jan McClelland, Director, Delta Electricity
 - Mr Grant Every-Burns, CEO and Managing Director, Macquarie Generation
 - Mr Michael Schur, Secretary, NSW Treasury
 - Mr Kevin Cosgriff, Deputy Secretary Fiscal, NSW Treasury
 - Dr Richard Sheldrake, Director General, Department of Industry and Investment
 - Professor Hugh Outhred, School of Electrical Engineering & Telecommunications, University of New South Wales.
- 1.27** On 2 January 2011, the Crown Solicitor provided further advice to the Department of Premier and Cabinet confirming his 1994 advice that a standing committee of the Legislative Council cannot function while the Council is prorogued, unless it has the legislative authority to do so.²¹
- 1.28** The Crown Solicitor also expressed the view that committees do not have power during prorogation to compel the attendance of witnesses or require them to answer questions, and suggested that there is a risk that evidence provided to the Committee would not be protected by parliamentary privilege. The Crown Solicitor stated this could expose witnesses to claims of defamation and breaches of confidence.²²

²¹ Crown Solicitor's Office, *Prorogation: effect on Standing Committees*, 2 January 2011, p 2.

²² Crown Solicitor's Office, *Prorogation: effect on Standing Committees*, 2 January 2011, p 2.

- 1.29** On 11 January 2011, the Clerk of the Parliaments provided advice to the President of the Legislative Council, respectfully disagreeing with the Crown Solicitor.²³
- 1.30** The Clerk advised that while the House can be prorogued under section 10 of the *Constitution Act 1902*, the House has the power under section 15 to regulate its own business. The Clerk noted that standing order 206 allows the House to appoint committees with the power to sit during the life of the Parliament, and advised that there is no limitation in the standing order regarding the right of standing committees to sit during any recess of the House.²⁴
- 1.31** The Clerk stated that the power of modern standing committees to sit after prorogation is based on the common law principle of 'reasonable necessity'. While the traditional understanding of prorogation was that committees may not meet, a contemporary reading of the system of responsible government is that the Council, through its standing committees, must be able to exercise its constitutional role of scrutinising the actions of the executive government and holding it to account. This includes during any period of prorogation. The Clerk noted that this contemporary view of responsible government was most recently articulated by the High Court in *Egan v Willis* in 1998.²⁵
- 1.32** In response to the Crown Solicitor's position regarding enabling legislation, the Clerk argued that such legislation is not required for standing committees, which are appointed for the life of the Parliament, to be able to operate during prorogation.²⁶
- 1.33** As such, and in contrast to the views of the Crown Solicitor, the Clerk advised that the *Parliamentary Evidence Act 1901* would apply, and consequently that the Committee would be able to sit after prorogation and that it would lawfully be able to exercise its power to summon persons (other than members) to attend and give evidence.²⁷
- 1.34** On 12 January 2011, the President of the Legislative Council, having considered the conflicting advice of the Clerk of the Parliaments and the Crown Solicitor, indicated that she was prepared to support the holding of the Inquiry.²⁸ However, the President cautioned that in light of the conflicting advice on the status of standing committees after prorogation, '... there can be no legal certainty regarding the powers of the Committee. Therefore the Committee should proceed with caution as there is no guarantee of legal protection'.²⁹

²³ Clerk of the Parliaments, *Advice to the President of the Legislative Council on the power of standing committees to sit during the prorogation of the House*, 11 January 2011.

²⁴ Clerk of the Parliaments, 11 January 2011, p 2.

²⁵ Clerk of the Parliaments, 11 January 2011, pp 2-3. See also the decision of the NSW Court of Appeal in *Egan v Willis and Cabill* (1996) 40 NSWLR 650, the decision of the High Court in *Egan v Willis* (1998) 195 CLR 424 and the decision of the NSW Court of Appeal in *Egan v Chadwick* (1999) 46 NSWLR 563.

²⁶ Clerk of the Parliaments, 11 January 2011, p 3.

²⁷ Clerk of the Parliaments, 11 January 2011, p 9.

²⁸ Hon Amanda Fazio MLC, President, Legislative Council of NSW, *Statement by the President of the Legislative Council on the Gentrader Transactions Inquiry*, 12 January 2011.

²⁹ Hon Amanda Fazio MLC, *Statement by the President of the Legislative Council on the Gentrader Transactions Inquiry*, 12 January 2011.

Committee comment

- 1.35** The Committee concludes that, notwithstanding her denial, the Premier's advice to the Governor of New South Wales to prorogue Parliament was a deliberate action to stop the Committee's inquiry, with the effect of casting doubt on the protection of parliamentary privilege to witnesses – in particular, the resigned directors – if they gave evidence to the Inquiry.
- 1.36** It is noted that the Premier and the Treasurer, along with key members of the energy reform transaction office, appeared before the parliamentary committee in January.
- 1.37** The Committee notes that the Premier has asserted that the Auditor-General will conduct a performance review into this transaction, regardless of the status of the parliamentary inquiry.
- 1.38** Requests by the Committee to the Premier to give an undertaking not to sue the resigned directors if they gave evidence to the Inquiry were rejected by the Premier.

Actions of the Premier following the establishment of the Inquiry

- 1.39** On 6 January 2011 the Premier issued a media release which provided in part:

Premier Kristina Keneally, Treasurer Eric Roozendaal and key electricity bid project team members will appear before the Upper House committee.

Ms Keneally and Mr Roozendaal will represent the NSW Government.

While the Crown Solicitor's legal advice is abundantly clear that the committee is unconstitutional and is unable to compel witnesses – I have decided that the Treasurer and I will attend voluntarily, along with members of the electricity bid project team, to answer any questions this group of MPs want to put to us.

I have always said that I am confident that the transactions stand up to scrutiny, and I acknowledge this must happen before the March State election...³⁰

- 1.40** The Premier in her evidence before the Inquiry on 17 January 2011 also gave evidence as to the circumstance surrounding the proroguing of Parliament. Unlike the flat denial given in her media conference of 23 December 2010, the Premier's evidence was instead, in the view of the Committee, more equivocal.

- 1.41** In response to questions from the Committee the Premier stated:

I certainly knew, on the advice of the Department of Premier and Cabinet [DPC] that the effect of proroguing Parliament would be to stop committees from meeting, yes, that is correct. However, DPC in its advice also stated to me that there were competing legal views to that point. Indeed, the Clerk of this Chamber had a different view from the view of the Crown Solicitor.³¹

³⁰ Premier of New South Wales, 'Statement from the Office of the Premier', *Media Release*, 6 January 2011.

³¹ Hon Kristina Keneally MP, Premier, Evidence, 17 January 2011, p 12.

Committee comment

- 1.42** The Committee notes that the contents of the Briefing Note of 21 December 2010 makes clear that the advice received by the Premier related solely to the impact of proroguing the Parliament upon the work of the Committee, and that the background to the provision of the Briefing Note was the knowledge of the possible establishment of this Inquiry. The Committee rejects suggestions by the Premier that other factors were considered beyond frustrating the work of this Committee.
-

Finding 1

The answers given by the Premier to the media conference held on 23 December 2010 regarding the reasons for the proroguing of Parliament were directly contradicted by the evidence available to the Committee.

Finding 2

Contrary to the evidence of the Premier, the Committee concludes that the NSW Government prorogued the Parliament for the specific purpose of frustrating the Inquiry into the Gentrader transactions.

- 1.43** The Committee further concludes that the Inquiry was properly constituted pursuant to NSW Legislative Council standing order 206.
-

Finding 3

The Inquiry was properly constituted pursuant to NSW Legislative Council standing order 206, with all the ancillary powers to compel the attendance of and answers from witnesses and for the production of papers.

- 1.44** It is the Committee's view that the Executive has taken all steps it could to stop this Inquiry from proceeding, and to prevent exposure of damaging details of the Gentrader transactions on the eve of the State election.
-

Finding 4

It is clear that the Executive has taken all steps it could to stop this Inquiry from proceeding, and to prevent exposure of the details of the Gentrader transactions which may have damaged the Government's reputation on the eve of the State election on 26 March 2011.

Evidence from the former directors of Delta Electricity and Eraring Energy

- 1.45** The Committee's terms of reference required the Committee to examine the circumstances that led to the resignation of directors from Delta Electricity and Eraring Energy.³²

³² Inquiry terms of reference, Item Two.

Accordingly, the Committee invited each of the resigned directors to appear before the Committee. All of the resigned directors declined the Committee's invitation to appear.

- 1.46** The Committee also invited the four newly appointed directors of Delta Electricity and Eraring Energy to appear before the Committee. Two of the new directors, Dr Col Gellatly and Mr Kim Yeadon, appeared before the Committee on a voluntary basis. The other two directors, Mr John Dermody and Ms Jan McClelland, declined the Committee's invitation to appear.³³
- 1.47** Following deliberation, on 17 January 2011, the Committee took the unusual step of deciding that the importance of the directors' evidence to the Inquiry warranted compelling these witnesses to appear before the Committee. The Committee resolved to issue summonses under the *Parliamentary Evidence Act 1901* to the following individuals:
- Mr John Dermody, Director, Delta Electricity,
 - Mr Michael Knight AO, former Director, Delta Electricity,
 - Mr Loftus Harris, former Director, Delta Electricity,
 - Mr James Henness, former Director, Delta Electricity,³⁴
 - Mr Paul Forward, former Director, Delta Electricity,
 - Ms Sandra Moait, former Director, Delta Electricity,
 - Mr Ross Bunyon AM, former Chairman, Eraring Energy,
 - Mr Tony Maher, former Director, Eraring Energy,
 - Mr Michael Vertigan AC, former Director, Eraring Energy, and
 - Mr Dean Pritchard, former Director, Eraring Energy.³⁵
- 1.48** On 20 January 2011, the Committee received correspondence from Blake Dawson law firm advising that the firm was acting on behalf of each of the individuals listed above. Blake Dawson advised that their clients would not be attending the Inquiry in answer to the summonses, citing concerns over the contested status of the Committee's proceedings.³⁶
- 1.49** Blake Dawson further advised that their clients would willingly appear before the Committee if the Supreme Court determined that the summonses were lawful, and that parliamentary privilege did apply to the Inquiry.

³³ The Committee notes that following the appointments of the four new directors on the night of 14 December 2010, additional directors have subsequently been appointed to the boards of Delta Electricity and Eraring Energy.

³⁴ Retired as CEO / Director of Delta Electricity on 17 July 2010.

³⁵ NSW Legislative Council, General Purpose Standing Committee No. 1, Minutes No. 46, 17 January 2011, Item 7.5 and NSW Legislative Council, General Purpose Standing Committee No. 1, Minutes No. 47, 18 January 2011, Item 4.2

³⁶ Correspondence from Blake Dawson to the Chair, 20 January 2011. The Committee received four separate items of correspondence from Blake Dawson as the legal representatives of the former directors of Delta Electricity; the former directors of Eraring Energy; Mr James Henness; and Mr John Dermody.

- 1.50** The Committee had previously resolved on 17 January 2010 to obtain advice from eminent Senior Counsel on the powers of Committee. The need for this advice followed the conflict between the positions of the Clerk of the Legislative Council and the Crown Solicitor. Added to this were the comments made by Premier Keneally which appeared designed to have the affect of discouraging potential witnesses from appearing.
- 1.51** The Committee believed that witnesses might have been encouraged to attend if the powers of the Inquiry were supported by an appropriate legal opinion.
- 1.52** On 21 January 2011, the Legislative Council received independent legal advice from Mr Bret Walker SC, supporting the advice of the Clerk of the Parliaments that standing committees have the power to meet during prorogation.³⁷ In that advice Mr Walker states:

14. It follows, in my opinion, that Standing Order 206 is valid, and in terms empowers the Standing Committee (which was constituted as contemplated by the Standing Order) to transact business during the life of the Parliament which presently continues. That, in my opinion is the end of the question. All other matters flow consequently, in favour of the ancillary powers to compel attendance of and answers from witnesses, and for the production of papers (in accordance with rules such as discussed in *Egan v Willis* and *Egan v Chadwick* (1999) 46 NSWLR 563.

...

18. In other words, in the absence of any statutory or judicial pronouncement not susceptible to being superseded by parliamentary practice, in my opinion "the orderly conduct of [the Legislative] Council" certainly includes providing for continued inquiry, possibly in public proceedings, into the doings of the Executive notwithstanding prorogation.

19. It is clear from the reasoning of all justices in the High Court in *Egan v Willis*, various as their approaches were, that questions of parliamentary power depend not only on statutory wording but also on a broad, beneficial and purposive reading of provisions for such a central institution. And at the heart of that functional approach, in my opinion, lies a paramount regard for responsible government in the sense of an Executive being answerable to the people's elected representatives. It is not possible, in my view, to read any of the historical and especially English accounts and explanations of prorogation without noting the radical shift from a King against Parliament to Ministers responsible to democratically elected representatives of the people. What possible justification could there be, in modern terms, for permitting the Executive to evade parliamentary scrutiny by taking care to time controversial or reprehensible actions just before advising the Governor to prorogue the chambers?"

Accordingly I agree with the answer to the questions raised as given by the Clerk of the Parliament, with great respect, and acknowledging the force of his reasoning, I disagree with the answers proposed by the Crown Solicitor.³⁸

- 1.53** The Committee notes that the advice received from Mr Walker was wholly consistent with the advice previously provided to the Committee by the Clerk of the Legislative Council, and also

³⁷ Mr Bret Walker SC, *Legislative Council's General Purpose Standing Committee No. 1 – Effect on Prorogation: Opinion*, 21 January 2011.

³⁸ Mr Bret Walker SC, 21 January 2011.

wholly consistent with the High Court decision *Egan v Willis* (1998) 195 CLR 424 and the Supreme Court decision of *Egan v Chadwick* (1999) 46 NSWLR 563.

- 1.54** On 24 January 2011, the Committee forwarded copies of this advice to each of the summoned individuals and requested that they reconsider their position not to comply with their summonses.³⁹
- 1.55** On 25 January 2011, the Committee received further correspondence from Blake Dawson which again advised that their clients would not be attending the Inquiry in answer to the summonses, due to the contested status of the Committee's proceedings.⁴⁰
- 1.56** At its next meeting on 27 January 2011, the Committee resolved that, pursuant to sections 7-9 of the *Parliamentary Evidence Act 1901*, the Committee did not consider that the following individuals had just cause or reasonable excuse for their failure to answer their summonses to appear before the Committee:
- Mr John Dermody, Director, Delta Electricity,
 - Mr James Hennes, former Chief Executive and Director, Delta Electricity,⁴¹
 - Mr Michael Knight AO, former Director, Delta Electricity,
 - Mr Paul Forward, former Director, Delta Electricity,
 - Mr Loftus Harris, former Director, Delta Electricity,
 - Mr Ross Bunyon AM, former Chairman, Eraring Energy, and
 - Mr Tony Maher, former Director, Eraring Energy.
- 1.57** The Committee wrote to the President of the Legislative Council to request that she certify these facts to a Judge of the Supreme Court, in order for warrants to be issued for the apprehension of these individuals to appear before the Committee.⁴²
- 1.58** The Committee did not request the President to take any action in relation to Ms Sandra Moait, former Director, Delta Electricity, as Ms Moait was outside of the jurisdiction of New South Wales for the duration of the Committee's hearings.⁴³

³⁹ Correspondence from the Chair to Blake Dawson, 24 January 2011.

⁴⁰ Correspondence from Blake Dawson to the Chair, 25 January 2011. The Committee received four separate items of correspondence from Blake Dawson as the legal representatives of the former directors of Delta Electricity; the former directors of Eraring Energy; Mr James Hennes; and Mr John Dermody. The Committee also received correspondence from Blake Dawson as the legal representative of Ms Sandra Moait, former Director, Delta Electricity, advising that Ms Moait departed Australia on 22 January 2011 and that Blake Dawson had therefore been unable to obtain instruction from her on the matter.

⁴¹ Retired as CEO / Director of Delta Electricity on 17 July 2010.

⁴² NSW Legislative Council, General Purpose Standing Committee No. 1, Minutes No. 49, 27 January 2011, Item 9.

⁴³ NSW Legislative Council, General Purpose Standing Committee No. 1, Minutes No. 49, 27 January 2011, Item 9.

1.59 The Committee also resolved to issue new summonses to Mr Michael Vertigan AC and Mr Dean Pritchard, former directors of Eraring Energy, to appear before the Committee, as they had not been served with their previous summonses due to being outside of the jurisdiction.⁴⁴

1.60 Later the same day, the President advised that she was of the view that the non-attendance of the individuals listed at paragraph 1.56 was with just cause or reasonable excuse and accordingly, that she would not be asking the Supreme Court to issue warrants for their apprehension. The President cited the lack of legal certainty regarding the powers of the Committee and the legal protection afforded to witnesses as the primary reason for her decision.⁴⁵

Order for papers

1.61 On 18 January 2011, the Committee resolved to order the production of documents provided for under standing order 208(c) of the Legislative Council.

1.62 The Committee ordered these documents from the Premier, the Office of the Premier, the Department of Premier and Cabinet, the Treasurer, NSW Treasury, Eraring Energy, Delta Electricity, Macquarie Generation, and the NSW Electricity Reform Project Office.⁴⁶

1.63 The documents requested related to communications regarding the energy reform transactions, the impact of the transactions on issues such as current and future electricity prices and the value obtained for NSW taxpayers.

1.64 The Committee, in light of the evidence given on 21 January 2011, anticipated that there would be issues relating to claims for privilege, particularly as they related to documents deemed by the Executive to be 'commercial-in-confidence'.

1.65 As a result of this potential conflict the Committee agreed to a mechanism for settling disputes to ensure that any privilege claims would be addressed.

1.66 The Committee noted that the dispute settling mechanism was similar to that used by the House when dealing with disputes as to privilege following a Call for Papers pursuant to Standing Order 52.

1.67 On 25 January 2011, the Department of Premier and Cabinet delivered some documents in response to the order for papers. However, the Department did not provide any documents requested by the Committee which were privileged, nor did it provide an index of privileged documents.

⁴⁴ NSW Legislative Council, General Purpose Standing Committee No. 1, Minutes No. 49, 27 January 2011, Item 9.

⁴⁵ Correspondence from the Hon Amanda Fazio MLC, President, Legislative Council of NSW, to Revd the Hon Fred Nile MLC, Chairman, General Purpose Standing Committee No. 1, 27 January 2010.

⁴⁶ NSW Legislative Council, General Purpose Standing Committee No. 1, Minutes No. 47, 18 January 2011, Item 4.5 and correspondence from the Clerk of the Parliaments to Mr Brendan O'Reilly, Director General, Department of Premier and Cabinet, 18 January 2011.

- 1.68** On 27 January 2011, the Committee resolved to write to the Department of Premier and Cabinet to request that all privileged documents, and an index of those documents, be provided by 31 January 2011.⁴⁷
- 1.69** On 1 February 2011 the Department of Premier and Cabinet advised that, in light of the Crown Solicitor's advice that there is a risk that documents provided to the Committee would not be protected by parliamentary privilege, the Department had not requested that the relevant agencies provide documents over which there would be a claim of privilege. The Department advised that it was therefore unable to provide the Committee with any privileged documents or an index of privileged documents.⁴⁸

Committee comment

- 1.70** The Committee notes that the refusal to cooperate in the provision of documents is inconsistent with Premier Keneally's statements of 6 January 2010 that she was committed to 'openness and transparency' and her stated confidence that 'the transactions (will) stand up to scrutiny'.

Finding 5

The refusal to provide documents that the NSW Government asserted to be privileged, or an index of any such documents, was a deliberate attempt by the Government to prevent a full and proper analysis of the Gentrader transactions.

⁴⁷ NSW Legislative Council, General Purpose Standing Committee No. 1, Minutes No. 49, 27 January 2011, Item 8 and correspondence from the Clerk of the Parliaments to Mr Brendan O'Reilly, Director General, Department of Premier and Cabinet, 27 January 2011.

⁴⁸ Correspondence from Mr Brendan O'Reilly, Director General, Department of Premier and Cabinet to the Clerk of the Parliaments, 1 February 2011.

Chapter 2 Summary of key issues

Introduction

This chapter provides a summary of the key issues that emerged during the Inquiry. It begins with an overview of the Owen Inquiry report and the Gentrader model, then outlines concerns about the value obtained by the Gentrader transactions, net proceeds, and any impact on the State's triple-A credit rating. Issues associated with the development of Cobbora mine by the Government and its impact on the environment are canvassed before the chapter highlights the potential impacts of the transactions on electricity prices and market competition, issues regarding the resignations of the directors of Delta Electricity and Eraring Energy, and electricity supply negotiations with Hydro Aluminium Kurri Kurri smelter. The chapter concludes with a discussion on the future structure of the NSW electricity industry. More detailed information about the issues raised in this summary can be found in the hearing transcripts and answers to questions on notice, which are reproduced in Appendices 4-8.

Cancellation of the second tranche of the Gentrader transactions

2.1 On 1 February 2011, more than halfway through the Inquiry, the Premier, the Hon Kristina Keneally MP, announced that the NSW Government would not proceed with any further privatisation of the State's energy sector.⁴⁹

2.2 In her media statement the Premier said:

Premier Kristina Keneally today announced the NSW Government would not proceed with any further privatisation of the state's energy sector and challenged the Opposition to detail their plans before the election.

Ms Keneally said this ended the matter and ruled out any further privatisation of electricity assets by the Government.⁵⁰

2.3 The result of the decision is that the second tranche of the Government's energy reform process will not be carried out, leaving the Macquarie Generation and Delta Coastal Gentrader contract bundles in public ownership.

2.4 The Committee resolved that in light of the previous evidence given, it was appropriate to seek to recall a number of witnesses to further explain the impact of the decision not to proceed with the second tranche upon the electricity market.

2.5 Invitations were issued to:

- The Premier, the Treasurer, Dr Col Gellatly, Mr Kim Yeadon,
- Mr Michael Schur and Mr Richard Timbs, and
- the directors of Macquarie Generation.⁵¹

⁴⁹ Hon Kristina Keneally MP, Premier, 'No further privatisation of energy assets', *Media Release*, 1 February 2011.

⁵⁰ Hon Kristina Keneally MP, Premier, 'No further privatisation of energy assets', *Media Release*, 1 February 2011.

2.6 The Premier and Treasurer did not agree to give further evidence.

Committee comment

2.7 The refusal of key witnesses, including the Premier and Treasurer, to return to give evidence are actions that materially impact upon the public's right to understand the implications of the Gentrader transactions upon the electricity market of New South Wales.

Owen Inquiry report

2.8 In May 2007 the NSW Government commissioned Professor Anthony Owen to report on the need for new baseload generation⁵² in New South Wales.⁵³ The Owen Inquiry report, released in September 2007, found that New South Wales needed to prepare for increased electricity demand, and that additional investment in baseload generation would be required by 2013-14.⁵⁴

2.9 The report found that up to \$15 billion would be needed to fund future costs in the electricity industry. This amount comprised of up to \$8 billion for new baseload generation, up to \$4 billion to retrofit existing power stations with carbon reduction technologies, and up to \$3 billion to provide retail businesses with additional capital to ensure their competitive viability.⁵⁵

2.10 The Owen report found the combined impact of both the divestment of generation and retail and the avoidance of new generation investment means that total State new debt would be up to \$26 billion lower in 2020 compared to a 'retain and invest' scenario.⁵⁶

2.11 The Owen report suggested that public investment in new baseload power stations would compromise the state's credit ratings and impose unacceptable burdens on the economic future of New South Wales. Consequently, private investment in power generation was the only means of providing for the additional baseload. The Owen report also asserted that private sector investment would be unlikely under continued public control of both the generators and the retailers. The report therefore recommended that the Government divest itself of all State ownership in electricity retail businesses and power generation.⁵⁷ Premier Keneally stated:

[Professor Owen's] unambiguous findings were that the Government had to exit the competitive aspects of the electricity market, that is, the retailing and trading of wholesale electricity in the national market. Doing so would create an environment

⁵¹ NSW Legislative Council, General Purpose Standing Committee No. 1, Minutes No. 50, 2 February 2011, Item 9.

⁵² The Owen Inquiry report defined a baseload power plant as 'one that provides a steady flow of power regardless of total power demand by the grid'. (Professor Anthony D. Owen, 'Inquiry into Electricity Supply in NSW', September 2007, p I (hereafter referred to as the 'Owen report').

⁵³ Owen Inquiry Update No. 1 – June 2007, Department of Premier and Cabinet, accessed 4 February 2011, www.dpc.nsw.gov.au/__data/assets/pdf_file/0020/12890/OwenInquiryUpdateNo1.pdf.

⁵⁴ Professor Anthony D. Owen, 'Inquiry into Electricity Supply in NSW', September 2007, p i.

⁵⁵ Professor Anthony D. Owen, September 2007, p v.

⁵⁶ See pp 1-13 of the Owen Report.

⁵⁷ Professor Anthony D. Owen, September 2007, p i.

where the private sector has the confidence to invest in new power stations and to vigorously compete for customers.⁵⁸

- 2.12** The Owen report recommended that in the event that the Government does not wish to sell generation, then it should implement an appropriately structured long-term leasing of current generation assets. The State would retain ownership of the assets, with operational and commercial control by the private sector.
- 2.13** In response to the Owen report, the then Premier, Mr Morris Iemma, announced plans to lease existing electricity generators to private operators and sell the retailers.⁵⁹ Mr Iemma claimed that unless New South Wales sold the electricity assets it would need to find \$15 billion 'to keep the lights on'.⁶⁰
- 2.14** During evidence to the Inquiry, Premier Keneally advised that the objectives of the Owen report remain the objectives of the NSW Government, which are:
- ... to exit the Government from the competitive aspects of retail and generation, to improve competition, to increase investment from the private sector into generation, to secure a reliable electricity supply and to secure the strong financial position of New South Wales.⁶¹
- 2.15** However, the Owen report and the Government's reliance on its findings were criticised by inquiry participants. For example, Professor Hugh Outhred, a Visiting Fellow at the University of New South Wales, contended that the Owen report was based on a 'misunderstanding' of information. Professor Outhred noted that the report relied on the annual 'Statement of Opportunities' by the Australian Energy Market Operator (AEMO),⁶² which he advised refers to the ability of generating capacity to meet peak demand,⁶³ rather than any need to build baseload generation.⁶⁴
- 2.16** Similarly, the submissions from Ms Lillian Morrissey, Environmental Policy Analyst, and Ms Kellie Tranter, Lawyer, stated that the Statement of Opportunities report in fact identified a relatively small shortfall during peak demand, which it said could be more cheaply met by better management of energy use and improved energy efficiency in businesses and homes.⁶⁵
- 2.17** The current Statement of Opportunities indicates that New South Wales now has adequate generation capacity to 2017-18.⁶⁶ The Committee was also informed that current data from the NSW grid operator, Transgrid, indicates that baseload generation capacity is not required

⁵⁸ Hon Kristina Keneally MP, Premier, Evidence, 17 January 2011, p 2.

⁵⁹ 'Iemma paves way for \$15 bn power sale', *The Australian*, 8 December 2007.

⁶⁰ Submission 2, Professor Bob Walker and Dr Betty Con Walker, June 2010 Briefing Note, p 3.

⁶¹ Hon Kristina Keneally MP, Premier, Evidence, 17 January 2011, p 2.

⁶² Formerly the National Electricity Market Management Company Limited (NEMMCO).

⁶³ Professor Outhred advised that an electricity industry typically has a mix of 'generation types': baseload capacity, intermediate capacity, and peaking capacity. Peaking capacity comes first when new demand appears. If it becomes evident that the new demand is permanent, then baseload capacity comes in where it is cost effective to build the baseload (baseload is the most expensive in capital terms).

⁶⁴ Professor Hugh Outhred, visiting Fellow, University of New South Wales, Evidence, 18 January 2011, p 27.

⁶⁵ Submission 14, Ms Kellie Tranter, p 4; Submission 55, Ms Lillian Morrissey, p 3.

⁶⁶ Dr Betty Con Walker, Evidence, 10 February 2011, p 28; Australian Electricity Market Operator, '2010 Electricity Statement of Opportunities for the National Electricity Market', p 201.

in New South Wales until at least 2019, due in part to improved energy efficiency, and also due to economic downturn.⁶⁷

- 2.18** Another point, raised by Professor Outhred, relates to the focus of the NSW Government to create new baseload generation in New South Wales. Professor Outhred expressed the view that in the National Electricity Market (NEM), 'it does not matter a great deal' which state the baseload generation is located in,⁶⁸ and that this will be even more so if the transmission network is strengthened:

[I]n the latest National Transmission Network Development Plan AEMO is talking about the possibility of even further strengthening the transmission network, which they call NEMLink, which would make the location of baseload capacity even less important. So the whole story and line that New South Wales has to be somehow self-sufficient in baseload capacity has never been correct and never will be correct unless we take a hacksaw and disconnect ourselves from the National Electricity Market and go back to some sort of island State network in New South Wales.⁶⁹

- 2.19** The Owen report noted each interconnector has a maximum limit to the amount of energy it can supply and that the amount of energy available to New South Wales also depends on the energy consumption in other regions of the NEM and relative costs of supplying energy to each region.⁷⁰

- 2.20** Professor Bob Walker however noted that 95 per cent of electricity generated in New South Wales is consumed in New South Wales.⁷¹

Committee comment

- 2.21** The Committee notes that the NSW Government has relied on the findings and recommendations of the Owen Inquiry report as the basis for its energy reforms. However, the Committee also notes the suggestions that the Owen report is based on a 'misunderstanding' of information regarding generating capacity, the ability of the public sector to invest in new generation capacity and the reticence of the private sector to invest in an industry dominated by public sector retailers and generators.

- 2.22** Further, the Owen report, which was released in September 2007, was based on the assumption that unless New South Wales invested in new generation capacity by 2013-14, the State's electricity assets would be unable to meet demand. The Committee notes that current data indicates that new generation capacity is now not required until 2017-18.

⁶⁷ Submission 63a, Greenpeace Australia Pacific and Nature Conservation Council of NSW, p 2.

⁶⁸ Professor Hugh Outhred, Evidence, 18 January 2011, p 27.

⁶⁹ Professor Hugh Outhred, Evidence, 18 January 2011, p 27.

⁷⁰ See pp 2 – 15 of the Owen Report.

⁷¹ Professor Bob Walker and Dr Betty Con Walker, Evidence, 10 February 2011, p 34.

Finding 6

The NSW Government's rationale for the energy reform transactions is based on the Owen Inquiry report, however there are concerns that the Owen report is based on an outdated and inaccurate understanding of electricity generation requirements.

The Gentrader model and the transfer of risks

2.23 As mentioned in chapter 1, under the Gentrader model the NSW Government is selling the right to trade electricity, while retaining ownership of and responsibility for operating the actual generators. This was outlined by the Treasurer:

It is the right to trade in the output of our generators that bidders have purchased through gentrader contracts. The electricity then is distributed to New South Wales families and businesses via the State-owned poles and wires and is sold by electricity retailers to New South Wales families and businesses.⁷²

2.24 The Treasurer advocated the benefits of the Government's energy reforms, stating:

Our State's financial position is stronger. New South Wales is getting out of the risky business of electricity generation and electricity trading. We have created a more competitive retail electricity market, and we have further secured New South Wales' solid-gold triple-A credit rating.⁷³

2.25 The notion of New South Wales 'getting out of the risky business of electricity generation and electricity trading' was repeatedly emphasised by the Treasurer and the Premier,⁷⁴ who espoused the view that one of the key benefits of the Gentrader model is that it transfers risks to the private sector. Mr Michael Schur, Secretary, NSW Treasury, explained that these risks relate to the market:

There is tremendous volatility in spot market prices ranging from negative \$1,000 per megawatt hour up to \$12,500 per megawatt hour. We have seen that reflected in the very volatile dividend flows that we have received from these businesses over the past five years.⁷⁵

2.26 Under the Gentrader model, the Gentraders pay capacity charges to the State-owned generators over the life of the contract, which pay for the right for access to electricity.⁷⁶ The Committee was advised that there is an agreed maximum available capacity that each Gentrader is permitted to call upon at any time for the generator to dispatch on their behalf into the NEM.

⁷² Hon Eric Roozendaal MLC, Treasurer, Evidence, 17 January 2011, p 4.

⁷³ Hon Roozendaal MLC, Evidence, 17 January 2011, p 3.

⁷⁴ Hon Kristina Keneally MP, Premier, Evidence, 17 January 2011, p 3; Hon Eric Roozendaal MLC, Treasurer, Evidence, 17 January 2011, pp 3, 4 and 35.

⁷⁵ Mr Michael Schur, Secretary, NSW Treasury, Evidence, 18 January 2011, p 17.

⁷⁶ Mr Kim Yeadon, Director, Delta Electricity, Evidence, 17 January 2011, p 20.

- 2.27** Where a generator is unable to deliver power when scheduled to do so and called upon, it must pay availability liquidated damages (ALDs) to the Gentrader as compensation. Mr Kim Yeadon, Director, Delta Electricity, advised that ALDs are also capped on an annual basis to a maximum amount, which is equivalent to the capacity charge that is being paid by the Gentrader.⁷⁷ Mr Schur informed the Committee that the expected risk associated with ALDs over the life of the Gentrader contracts is approximately \$360 million.⁷⁸ The risks associated with the ALDs was determined by looking at every half hour of dispatch to see every outage – both scheduled and unscheduled – that occurred at the relevant plants within the last 10 years.⁷⁹
- 2.28** The Treasurer advised that the job of the generators will change to one of ensuring that the equipment is maintained in good order and capable of meeting the requirements of the Gentrader contracts.⁸⁰ In turn, the Gentrader will make monthly payments to the generators to pay for fixed and variable costs, such as maintenance, fuel, wages, capital operating expenditure, and any carbon liability that may emerge as a result of the introduction of a carbon tax or similar arrangement.⁸¹ The Treasurer stated that the State's generating companies will effectively become asset managers, while 'all the market risk of trading and energy falls into the responsibility of the Gentrader.'⁸²
- 2.29** However, the Committee was informed that not all risks are transferred to the Gentrader. This was acknowledged by Mr Schur, who described the Gentrader model as the 'next-best option',⁸³ due to the fact that it leaves the State with residual risks. Mr Schur advised that the only way to de-risk the State entirely would be to have no residual involvement in generation, either by entering into long-term leases of the assets or selling them. Mr Schur stated that this was his preferred option.⁸⁴ Mr Schur further informed the Committee:
- In August 2008, there was a lack of Parliamentary support for the original transaction strategy, which included long-term leases of the State-owned generation businesses. Given this legislative constraint and the continuing desire to encourage private investment, the Government moved to what successive Treasury Secretaries have described as 'the next best option'.
- The term 'next best option' represents more a statement of fact than an opinion, given that the Government's originally preferred approach was no longer available.⁸⁵
- 2.30** A key risk that remains with the State-owned generators relates to operation and maintenance. While the Gentraders pay monthly fees toward these costs, those fees are fixed over the life of the contract. There are some escalators built into the fees, however if costs increase

⁷⁷ Mr Yeadon, Evidence, 17 January 2011, p 18.

⁷⁸ Mr Schur, Evidence, 18 January 2011, p 14.

⁷⁹ Mr Yeadon, Evidence, 17 January 2011, p 27.

⁸⁰ Hon Roozendaal MLC, Evidence, 17 January 2011, p 4.

⁸¹ Hon Roozendaal MLC, Evidence, 17 January 2011, p 4.

⁸² Hon Roozendaal MLC, Evidence, 17 January 2011, p 16.

⁸³ Mr Schur, Secretary, Evidence, 18 January 2011, p 14.

⁸⁴ Mr Schur, Secretary, Evidence, 18 January 2011, p 14.

⁸⁵ Answers to Additional Questions on Notice, Mr Michael Schur, 10 February 2011, Question No 13.

significantly beyond the escalators in the contract, then the additional costs must be borne by the owner.⁸⁶ Professor Outhred observed:

The Gentrader model exposes the generator State Owned Corporations to on-going financial risks with respect to the operational performance of the generators while eliminating their ability to manage those risks through control over operational and maintenance strategies.⁸⁷

- 2.31** Another issue raised during the Inquiry concerns the methodology for determining the generators' maintenance payments. Professor Outhred noted that these rates were determined by looking at the history of outages at the relevant units. However, he cautioned against relying on this approach:

Electricity generating units, like other complex engineering systems, can be subject to design and/or manufacturing weaknesses that lead to a higher than expected risk of "type failures" ... Given a design or manufacturing weakness, the actual incidence of type failures depends on how the engineering systems are operated and maintained. Thus past experiences may not be a reliable guide to future performance if significant changes are made to operation and/or maintenance regimes.⁸⁸

Committee comment

- 2.32** The Committee notes that the exposure of the Generator companies to claims for Availability Liquidated Damages creates a significant and uncertain future liability to taxpayers.

Finding 7

The exposure of the generator companies to claims for Availability Liquidated Damages creates a significant and uncertain future liability to the taxpayers of New South Wales.

- 2.33** The Committee further notes that one of the key benefits espoused by the Premier and the Treasurer of the Gentrader transactions is that it is getting the State out of the 'risky business of electricity generation and electricity trading'.
- 2.34** However, the State is still left with residual risks relating to operation and maintenance. While the Gentraders pay monthly charges toward these costs, these fees are fixed over the life of the contract, subject only to some escalators. Where costs are greater than these fees, the State-owned generator must foot the remaining bill.
- 2.35** The Government maintains that the risks faced by the State under the energy reform transactions and the Gentrader model are far reduced than the risks of full ownership under a 'retain and invest' scenario.

⁸⁶ Mr Yeadon, Director, Evidence, 17 January 2011, p 33.

⁸⁷ Submission 45a, Professor Hugh Outhred, p 16.

⁸⁸ Submission 45a, pp 11-12.

Finding 8

The NSW Government has aimed through its Gentrader model to exit the 'risky business of electricity generation and trading'. However, under this model the Government has been left with risks relating to the electricity market, coal supply and the costs of operating and maintaining generators.

In the event that the Government has failed to properly assess the future costs of operating and maintaining the generators, the NSW taxpayer will be required to meet these as yet unquantified costs.

Value obtained by the transactions

- 2.36** One of the key issues raised during the Inquiry concerned the value obtained by the Gentrader transactions. The combined proceeds of the sales for the Delta West contract bundle and Eraring Energy contract bundle is \$5.3 billion. However, numerous inquiry participants expressed the view that this amount was too low.
- 2.37** For example, Shadow Treasurer, Mr Mike Baird MP, described the proceeds of the sale as 'insulting'⁸⁹ and 'pathetically low',⁹⁰ citing independent expert reports that suggest that the Government should have achieved close to \$15 billion for the State electricity assets. Mr Baird said: 'For me, this means nothing less than the State Government has undertaken a \$15 billion giveaway to the private sector.'⁹¹
- 2.38** The submission from Transport Energy Studies Pty Ltd argued that the sale price appears particularly low when compared to the amount the Victorian government received for the sale of its power assets in the 1990s⁹² (Victoria received almost \$30 billion⁹³ for its gas and electricity assets).⁹⁴
- 2.39** In response to concerns about the value obtained for the Gentrader transactions, the Premier stated:

I have seen many attempts to make historical comparisons between the value achieved, the \$5.3 billion, for this transaction to that of other jurisdictions or previous proposals for privatisation in New South Wales. I want to lay to rest what are really these pointless comparisons between outcomes we have achieved and previous examples. These are not apples-with-apples comparisons. What was being privatised previously in other jurisdictions, proposed for individual companies or across the whole sector is not what we have done here. It also does not account for the relative age of assets at the point of sale or new factors, such as the likelihood of a CPRS and

⁸⁹ Mr Mike Baird MP, Shadow Treasurer, Evidence, 24 January 2011, p 6.

⁹⁰ Mr Baird MPEvidence, 24 January 2011, p 4.

⁹¹ Mr Baird MP, Evidence, 24 January 2011, p 6.

⁹² Submission 25, Transport Energy Studies Pty Ltd, p 3.

⁹³ Access Economics, 'Impact on Victoria of the Privatisation of the State's Electricity and Gas Assets', Canberra, June 2001, p 41, accessed 9 February 2011, <<http://accesseconomics.com.au/publicationsreports/getreport.php?report=45&id=53>>.

⁹⁴ See also the Institute of Public Affairs Energy Issues Paper No. 20 August 2001.

increased demand from overseas for coal. That makes these very different transactions.⁹⁵

Retention values

- 2.40** The Treasurer advised that retention values (i.e. reserve prices) were set for the assets, and that those retention values were exceeded.⁹⁶ Mr Baird noted that the Government has refused to provide details of the Gentrader transactions to determine the retention value of electricity assets:

... the Government has refused to provide any detail or clarity on these critical points: the retention values, including calculations and assumptions, for either the individual assets or the bundled assets; the net proceeds actually received ...⁹⁷

- 2.41** During evidence the Premier and the Treasurer would not disclose what the retention values were as the Government was in the process of a live transaction.⁹⁸ The Premier told the Committee:

[O]nce the transactions are concluded there will be a very full public review by the Auditor-General and at that point I will have no qualms about the retention value being made public.⁹⁹

- 2.42** However, on 8 February 2011, the Treasurer announced that the Government would not publicly release the retention values, deeming the information to be commercially sensitive. The Treasurer stated that the information would only be provided to the Auditor-General, who is reviewing the sale.¹⁰⁰

- 2.43** The Committee received evidence from academics indicating that the methodology used for calculating the retention values can lead to different amounts. For example, Professor Outhred highlighted four different strategies for arriving at an estimated retention value. The first is based on the replacement cost for a new asset and the remaining life of an existing asset, the second is based on 'discounted cash flow analysis', the third relates to a 'carbon-constrained future', and the fourth involves an 'option-value' approach.¹⁰¹ Applying the first method, which looks at replacement costs, Professor Outhred suggested that the electricity assets have been sold at less than a third of their actual value – even after taking into account depreciation.¹⁰² Applying the second method of 'discounted cash flow analysis', Professor Outhred stated that the estimated retention value would depend on the discount rate used, with a discounted rate of zero getting a much higher value than a higher discount

⁹⁵ Hon Keneally MP, Evidence, 17 January 2011, p 3.

⁹⁶ Hon Roozendaal MLC, Evidence, 17 January 2011, p 6.

⁹⁷ Mr Baird, Evidence, 24 January 2011, p 5.

⁹⁸ Hon Roozendaal MLC, Evidence, 17 January 2011, p 6; Hon Keneally MP, Evidence, 17 January 2011, p 8.

⁹⁹ Hon Keneally MP, Evidence, 17 January 2011, p 8.

¹⁰⁰ 'Treasury goes back on its word to divulge power company valuations', *Sydney Morning Herald*, 8 February 2011.

¹⁰¹ Professor Outhred, Evidence, 10 February 2011, pp 19-20. More information about these strategies is available in the transcript of hearing.

¹⁰² Professor Outhred, Evidence, 10 February 2011, p 19; Professor Outhred, Evidence, 18 January 2011, p 25.

rate.¹⁰³ The third and fourth options can similarly lead to different results. Professor Outhred said: 'You can see how we can come up with almost any answer we want.'¹⁰⁴

- 2.44** Similar evidence was received from Professor Walker who also discussed the discounted cash flow analysis method. Professor Walker told the Committee that under this method, if NSW Treasury used a discount rate higher than seven per cent, 'this either represents an acknowledgement that the State has retained responsibility for a high level of risks or, alternatively, they have managed the numbers to understate retention value.'¹⁰⁵ Professor Walker argued that it is therefore 'critically important that we see at least the methodology that has been used to calculate retention value.'¹⁰⁶

Committee comment

- 2.45** The Committee acknowledges the advice of the Treasurer that retention values were established prior to the Gentrader reforms, and that prices obtained by the sales exceeded those values.
- 2.46** The Premier and Treasurer would not disclose the retention values as the NSW Government was (at the time) in the process of a live transaction. The Premier did suggest that the retention values would be released after the transaction was complete. However, the Treasurer is now refusing to publicly advise what the retention values are. In the interest of public accountability, the Committee believes that it is vitally important that the NSW Government publicly disclose the retention values, and the methodology used to determine those values.

Recommendation 1

That the NSW Government disclose the retention values of the electricity assets and bundles of assets that were sold as part of the Gentrader transactions, and the methodology used to determine those values, prior to the NSW State election on 26 March 2011.

Net proceeds

- 2.47** During the Inquiry information emerged on the net proceeds that would be gained from the sale of the two Gentrader contract bundles. One media suggestion was made that the State would only net \$400 million after paying fees, costs and debts.¹⁰⁷
- 2.48** The Treasurer advised that of the \$5.3 billion sale proceeds, \$1.2 billion of the proceeds will be used to pay off the outstanding debt for Eraring and Delta West, \$360 million will go toward ALDs, and \$400 million will go toward separation and transaction costs. He stated that the total net proceeds from the transactions would be approximately \$3.272 billion, as shown in Table 1.

¹⁰³ Professor Hugh Outhred, Visiting Fellow, University of New South Wales, Evidence, 10 February 2011, p 20.

¹⁰⁴ Professor Outhred, Evidence, 10 February 2011, p 20.

¹⁰⁵ Professor Bob Walker, Evidence, 10 February 2011, p 28.

¹⁰⁶ Professor Walker, Evidence, 10 February 2011, p 28.

¹⁰⁷ 'State will net only \$400m after fees for electricity sales', *Sydney Morning Herald*, 19 January 2011.

Table 1 Treasurer's evidence - Energy reform proceeds from 14 December 2010 transactions¹⁰⁸

Energy reform proceeds	\$5.285 billion
Less*	
Repayment of state (Eraring and Delta) debt	\$1.253 billion
Less costs	
Provision for Availability Liquidated Damages	\$360 million
Separation costs	\$200 million
Transaction costs	\$200 million
Total	\$2.013 billion
Net proceeds	\$3.272 billion

* Estimates, subject to minor changes

2.49 Commenting on the overall result of the sale, one submission author, Ms Kellie Tranter, said:

... the end result of the fire sale seems to be that our assets have been sold at a price that may leave a paltry \$3 billion to disappear into consolidated revenue, the State has lost a substantial source of recurrent revenue and the people of NSW have been left with public ownership of the ageing assets - existing power stations and electricity transmission and distribution networks (the poles and wires) that still need to be upgraded or replaced.¹⁰⁹

2.50 However, in addition to the costs provided by the Treasurer, it was revealed that the NSW Government will also be spending around \$1.5 billion on developing the Cobbora coalmine to provide low-cost coal to the generators, with speculation that at least an additional \$1 billion will go toward subsidising the future coal contracts.¹¹⁰ Mr Schur advised that these costs were not included in the net proceed figures, as the coal mine is being treated as a separate, stand-alone entity.¹¹¹ The Cobbora mine will be considered separately later in this chapter.

2.51 The NSW Government may also end up facing hundreds of millions of dollars in damages over a dispute with Hydro Aluminium Kurri Kurri Pty Ltd over an electricity supply contract renewal with Delta Electricity. This will be discussed later in this chapter.

2.52 In addition to the upfront costs that will come out of the proceeds, the sale of the three retail businesses and the Eraring and Delta West Gentrader bundles will also result in a reduction in

¹⁰⁸ Hon Eric Roozendaal MLC, Treasurer, 'Treasurer Roozendaal: energy reform secures NSW's financial future', *Media Release*, 19 January 2011.

¹⁰⁹ Submission 14, Ms Kellie Tranter, Lawyer, p 7.

¹¹⁰ Submission 43, Newcastle Greens, p 2; 'State will net only \$400m after fees for electricity sales', *Sydney Morning Herald*, 19 January 2011.

¹¹¹ Mr Schur, Evidence, 18 January 2011, p 22.

tax equivalent payments (which will now going to the Commonwealth instead of the states)¹¹² and lost dividends, estimated at approximately \$600 million over the next four-year forward estimates period.¹¹³

2.53 Mr Schur argued that these losses are more than offset by the impact of the transaction, such as the \$5.3 billion improvement to the State's balance sheet.¹¹⁴ He advised this translates to a seven per cent reduction in a key credit rating metric, which 'gives the State tremendous headroom and flexibility on its balance sheet that it would not otherwise have',¹¹⁵ and the interest earned on the proceeds.¹¹⁶ The Premier added that the State will benefit from a lower debt level (as the outstanding debt for Eraring and Delta West will be paid off) and an increase in potential earnings from financial assets if proceeds are invested in superannuation assets.¹¹⁷

2.54 However, Professor Walker argued that Mr Schur's claim that the transactions would improve the State's balance sheet by \$5.3 billion improvement is misleading. Professor Walker noted that balance sheets only show the assets and liabilities of a business, they do not attempt to value a business.¹¹⁸ He stated:

The sale of a business is going to involve proceeds as something which was not previously recognised on balance sheets and so a lot of that would be recorded as profit ... the gentrader transactions, from what I have read, involve the sale of certain previously recognised assets, hence the claim that 100 per cent of those proceeds will increase the assets on the State balance sheet is plainly wrong.¹¹⁹

2.55 Professor Walker argued that the State's electricity assets should stay in public ownership as they are highly profitable, producing a rate of return of around 24 per cent per annum. In addition, electricity revenue was less volatile than from other sources such as property taxes.¹²⁰ The submission from Professor Walker and Dr Con Walker remarked:

Selling highly profitable assets that provide basic services is not a 'reform' – it is foolish. Cash flows from the State's electricity businesses are relatively stable (and increasing) – in contrast to the volatility of the State's revenues from property taxes – and hence actually enhance the State's capacity to borrow for new investment in infrastructure.¹²¹

2.56 When questioned on whether an estimate could be reached regarding actual net proceeds, Professor Walker replied:

¹¹² Mr Schur, Evidence, 18 January 2011, p 5; Answers to additional questions on notice, 17 January 2011, the Hon Kristina Keneally MP, Premier, Question 20, p 7.

¹¹³ Mr Schur, Secretary, Evidence, 18 January 2011, p 8.

¹¹⁴ Mr Schur, Secretary, Evidence, 18 January 2011, p 6.

¹¹⁵ Mr Schur, Secretary, Evidence, 18 January 2011, p 7.

¹¹⁶ Mr Schur, Secretary, Evidence, 18 January 2011, p 8.

¹¹⁷ Answers to additional questions on notice, 17 January 2011, the Hon Kristina Keneally MP, Premier, Question 23, p 10.

¹¹⁸ Professor Walker, Evidence, 10 February 2011, p 29.

¹¹⁹ Professor Walker, Evidence, 10 February 2011, p 29.

¹²⁰ Submission 2, June 2010 Briefing Note, p 6.

¹²¹ Submission 2, June 2010 Briefing Note, p 6.

We cannot really tell because we have not seen the deal; we do not know what is the deal, what compensation will be paid to gentrader operators if the outage, if the poles and wires have some difficulties; in other words, what are the contingent liabilities.¹²²

- 2.57** Dr Con Walker noted that there is inadequate information to even make a judgement, stating that while there are a number of indicators that erode the \$5.3 billion, it is unclear how many other indicators there are that are not yet known about. Dr Con Walker told the Committee: 'All you can say is that it will be significantly less from what we know from the information we have.'¹²³

Committee comment

- 2.58** The Committee notes the information provided by the Treasurer that the net proceeds from the \$5.3 billion sale will be \$3.272 billion.
- 2.59** However, this figure does not take into account the \$1.5 billion that will go toward developing the Cobbora mine, nor does it take into account the forgone revenue from the subsidised coal, which some have estimated to be at least \$1 billion, and the risks associated with operations and maintenance.
- 2.60** The Committee notes the suggestions that there may be unknown costs that may erode the proceeds, and that it is impossible to accurately estimate what the net proceeds will be without more information. The Committee notes it has not received evidence from the former company directors who resigned, nor has it been provided with the documents it requires from the Government to establish the true figures.

Finding 9

An accurate estimate of the net proceeds of the sale cannot be determined due to a lack of information provided by the NSW Government. However it is likely to be significantly less than the figure of \$3.272 billion provided by the NSW Treasurer.

Finding 10

The decision to set maintenance payments for the life of the Gentrader contracts, subject only to certain fixed escalations, exposes the public sector to significant and unmeasurable risks associated with an unexpected decline in the condition of the generating plant. The decision to place all of the risk for unexpected maintenance costs in the hands of the generators is unusual and not in the best interests of the people of New South Wales.

Further, the risks associated with maintenance costs exceeding fixed payments from the Gentrader and the Availability Liquidated Damages could in any one year result in a negative net outcome for the State.

¹²² Professor Walker, Evidence, 10 February 2011, p 29.

¹²³ Dr Betty Con Walker, Evidence, 10 February 2011, pp 29-30.

Triple-A credit rating

- 2.61** The Treasurer emphasised the importance of selling the electricity assets to retain the State's triple-A credit rating, which he suggested could save New South Wales around \$200 million a year.¹²⁴ Mr Schur told the Committee that the Gentrader transactions have improved the credit metrics that Standard and Poor's uses to assess the creditworthiness of the State.¹²⁵ However, several submissions disagreed with this suggestion.¹²⁶
- 2.62** For example, one submission stated: 'My understanding of being dropped to double AA credit rating is that it would have very little effect on our ability to lend or repay money'.¹²⁷
- 2.63** Dr Con Walker noted that there are two major rating agencies that rate New South Wales – Standard and Poor's and Moody's. She informed the Committee that at the time the Owen report was published, the two agencies had issued conflicting information about the impact of the reforms. According to Standard and Poor's, it was suggested that the New South Wales Government would need to attract significant private investment in the electricity industry, otherwise it would be put on credit watch. On the other hand, Moody's advised that the water and electricity agencies could take on more debt because they are self-funding. Dr Con Walker noted that the NSW Government appeared to rely solely on the Standard and Poor's report, which she observed 'seemed a rather selective process of using the comments by Standard and Poor's which was very pro-privatisation'.¹²⁸
- 2.64** Dr Con Walker further noted that at one stage after the release of the Owen report, the Iemma Government (and subsequently Rees Government) claimed that the State would be liable to pay \$500 million per year in interest payments if the State's credit rating was reduced to a double-A plus rating. However she said that according to her and Professor Walker's calculations, the State would have only been liable for an additional \$7 - \$14 million per year, due to matured borrowings.¹²⁹

Cobbora coal mine

- 2.65** Another key issue that emerged during the Inquiry was the development of the Cobbora coal mine. The proposed open cut coal mine is located approximately 22km south west of Dunedoo in the Central Tablelands. It is proposed to mine 30 million tonnes per annum run-of-mine coal at the site, with the majority of coal produced used in the State's power stations to generate electricity. The proposed life of the mine is 21 years, with mining currently

¹²⁴ Hon E Roozendaal MLC, Treasurer, 'Treasurer Roozendaal: energy reform secures NSW's financial future', *Media release*, 19 January 2011.

¹²⁵ Mr Schur, Evidence 18 January 2011, p 7.

¹²⁶ For example, Submission 24, Mr David Allen, p 2; Submission 51, 450 Parts Per Million, p10.

¹²⁷ Submission 51, p10.

¹²⁸ Dr Con Walker, Evidence, 10 February 2011, p 32. See also Moody's report of 10 June 2008.

¹²⁹ Dr Con Walker, Evidence, 10 February 2011, p 32.

scheduled to commence in 2013.¹³⁰ The development cost of the mine has been forecast at approximately \$1.3 - \$1.5 billion.¹³¹

2.66 Mr Schur explained that the Cobbora mine was originally intended to be developed by the private sector.¹³² However, he said that the tender process did not result in an agreement with the preferred tenderer because of a 'mismatch' between the rate of return and the risks of the project, and due to concerns that if the price of coal from the mine was set too high there would be a significant impact on the value of the generators.¹³³

2.67 As a result, the Treasurer advised that the Government decided to develop the mine itself in order to secure future supplies of coal for the electricity generators.¹³⁴ The Treasurer explained that:

... we need coal to generate electricity in Australia and the reality is that coal is getting more expensive. We have acted in the interests of electricity users to address the fuel cost issue ... Our rationale for the Cobbora resource is simple: to provide a secure and long-term supply of fuel for our generators at prices that are less distorted by booming export demand.¹³⁵

2.68 Mr Baird highlighted a range of 'significant risks' that he felt were associated with the Cobbora development, including:

- potential for development costs to increase,
- risk of penalties if the development is not completed on time,
- risk of financial losses if the coal is sold at less than the cost of its extraction, or if the coal is sold for less than would be paid on the open market, and
- no clear exit strategy for the sale of the mine.¹³⁶

2.69 Professor Outhred commented that there was an 'obvious irony for the Government to start a new State-owned mine to support a privatisation process.'¹³⁷ Professor Outhred observed that if the price of Cobbora coal was being subsidised by the Government, it would provide a competitive advantage to the coal-fired electricity generators that purchased the coal as compared to non-coal using power stations.¹³⁸

2.70 When questioned on the price of Cobbora coal, Mr Schur undertook to provide the Committee with details on the coal pricing structure. However, in answers to questions on

¹³⁰ NSW Government Planning, *Major Project Assessment: Cobbora Coal Project – Cobbora*, accessed 1 February 2011. < http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=3695 >

¹³¹ Answers to additional questions on notice, 17 January 2011, the Hon Kristina Keneally MP, Premier, Question 36, p 21.

¹³² Mr Schur, Evidence, 18 January 2011, p 19.

¹³³ Mr Schur, Evidence, 18 January 2011, p 19.

¹³⁴ Hon Roozendaal MLC, Evidence, 17 January 2011, p 20.

¹³⁵ Hon Roozendaal MLC, Evidence, 17 January 2011, p 41.

¹³⁶ Mr Baird MP, Evidence, 24 January 2011, p 5.

¹³⁷ Professor Outhred, Evidence, 18 January 2011, p 25.

¹³⁸ Professor Outhred, Evidence, 18 January 2011, p 29.

notice, Mr Schur advised that he was unable to provide the information because it was commercial in confidence.¹³⁹ Mr Schur did however disclose that:

... the 'free on rail price' (ex mine) at Cobbora is fixed to all parties. The 'free on rail' price does not include transport to power stations or mining royalties. The price is adjusted with regard to a number of published indices including CPI, materials, fuel and labour.

Cobbora Coal Contracts involve delivered costs of coal some 25% to 50% higher than current average delivered coal costs to the Central Coast and Hunter Valley power stations.¹⁴⁰

2.71 It was suggested to the Committee however that the price of the subsidised coal from Cobbora mine would be \$30-\$40 per tonne, compared to the current market price of \$70-\$100 per tonne.¹⁴¹ However Mr Cosgriff advised the Committee that the coal is priced differently because it is a different quality coal, with only some parts of it suitable for the export market.¹⁴² The need for extending railways to transport the coal was also discussed during evidence.¹⁴³

2.72 The Treasurer emphasised that the development of the Cobbora mine would have proceeded even if the energy reform process had not:

The development of Cobbora would have occurred regardless of whether or not we embarked on this energy reform strategy because our coal-fired generators do need and will need coal to continue to be supplied to them for the rest of their economic life.¹⁴⁴

2.73 Mr Schur advised the Committee that the Government intended to sell the Cobbora mine site at some stage in the future.¹⁴⁵ Mr Schur stated that it was expected that the eventual sale price and income generated by the mine would recover the estimated \$1.5 billion development costs of the site:

The current working assumption and the modelling that has been done to date suggests that that project will be able to recover its cost of funds, that is, before we contemplate any export potential associated with that mine. So that would be a further upside that would increase the return to government. So the view on Cobbora is that it is a commercially viable, stand-alone entity that will recover its costs of funds.¹⁴⁶

2.74 However, Professor Outhred noted that in relation to climate change, no investor has a clear idea about the best future electrical generation technology and fuel, and that this would have

¹³⁹ Answers to questions on notice taken during evidence 18 January 2011, Mr Michael Schur, Secretary, NSW Treasury, Question 5.

¹⁴⁰ Answers to questions on notice taken during evidence 18 January 2011, Mr Michael Schur, Secretary, NSW Treasury, Question 5.

¹⁴¹ For example, Submission 63, Greenpeace and the Nature Conservation Council, p 2.

¹⁴² Mr Cosgriff, Evidence, 18 January 2011, p 23.

¹⁴³ Mr Outhred, Evidence, 18 January 2011, p 30.

¹⁴⁴ Hon Roozendaal MLC, Evidence, 17 January 2011, p 20.

¹⁴⁵ Mr Schur, Evidence, 18 January 2011, pp 19-20.

¹⁴⁶ Mr Schur, Evidence, 18 January 2011, p 22.

ramifications on valuing coal mines. He explained to the Committee that until a societal response to the issue of climate change is resolved, the future value of the Cobbora coal mine is impossible to determine:

At the moment the kind of problem we have, if we just speak about electricity, is that no investor has a clear idea about what the best technology options are or what the best fuel options are. No-one does. Nobody can value a coalmine in a 10-year time frame. Everyone is just taking a punt on that.¹⁴⁷

- 2.75** In its joint submission Greenpeace and the Nature Conservation Council (NCC) noted that in addition to the direct costs of establishing and operating the mine, there would be further losses to taxpayers as a result of the forgone revenue from sale of the mine, and forgone royalties by not selling coal from Cobbora into the export market.¹⁴⁸ It was suggested that these forgone royalties could amount to \$1 billion.¹⁴⁹
- 2.76** The NCC advised that it has requested that the Australian Competition and Consumer Commissions (ACCC) examine the Cobbora coal mine project because the NCC believes that the project may breach some of the restrictive trade practices provisions in the *Trade Practices Act 1974*¹⁵⁰ (renamed the *Competition and Consumer Act 2010* on 1 January 2011).

Environmental concerns

- 2.77** A number of inquiry participants opposed the development of the Cobbora mine on environmental grounds. One concern was the direct effects of the proposed mine on the surrounding environment. For example, the Midwestern Regional Community Action Group argued against the 'unsustainable commitment' to the Cobbora mine development, on the basis that the mine would have an '... enormous and detrimental impact on the town of Mudgee including future health issues, noise and air pollution'.¹⁵¹
- 2.78** Other concerns focused on the impact of cheap coal from the mine entrenching coal for electricity generation at the expense of lower greenhouse gas emission intensity fuels. For instance, Greenpeace and the NCC suggested that the Cobbora mine development would 'artificially' reduce the price of coal for the generators, which would have a negative impact on the use of renewable energy sources:

The Cobbora coal mine proposal will have a strong impact on electricity market competition by artificially reducing the price of coal supplied to relevant electricity generators from the current market price of \$70-\$100 per tonne to \$30-\$40 per tonne. By delivering a massive effective subsidy for coal-fired power generation, the proposed mine will create a strong barrier to entry for new market participants, especially those using renewable energy sources.¹⁵²

¹⁴⁷ Professor Outhred, Evidence, 10 February 2011, p 22.

¹⁴⁸ Submission 63, p 2.

¹⁴⁹ Submission 43, Newcastle Greens, p 2.

¹⁵⁰ Submission 63, Attachment A, p 1.

¹⁵¹ Submission 40, Midwestern Regional Community Action Group, p 3.

¹⁵² Submission 63, p 2.

- 2.79** Another submission to the Committee noted that one of the main incentives to drive energy efficiency and reduce carbon emissions is the cost of electricity, and that:

It is well recognised that one of the main incentives to drive energy efficiency is the cost of electricity. Various ways to 'put a price on carbon' are being canvassed at the federal level. Any such efforts to affect energy usage and influence consumers and industry to adopt energy efficiencies will be undermined by state government proposals to secure a cheap source of coal for power stations.¹⁵³

- 2.80** The Mudgee District Environment Group opposed the Cobbora mine development because the Government has a conflict of interest in being both the developer and approver of the project which, they argued, will benefit electricity retailers through the provision of subsidised coal:

The government has been unable to find a mining company prepared to develop the mine and is using taxpayer's money to produce an environmental assessment report. The NSW Government will have a conflict of interest by being both the proponent and the approver of this development. While the people of NSW will be paying to produce their own coal supplies to generate more greenhouse gases, the new power retailers will be able to make higher profits through the resale of the 'cheap' power generation.¹⁵⁴

- 2.81** Greenpeace and the NCC highlighted that the Cobbora mine development was likely to have a detrimental impact on NSW climate policy.¹⁵⁵ Professor Outhred agreed that Government ownership of the Cobbora mine may restrict the options available to future governments who may wish to pursue action to minimise the potential environmental effects of climate change.¹⁵⁶

- 2.82** Several submissions also argued that with a privatised electricity industry, society will not be able to reduce greenhouse gas emissions as easily as an electricity industry held in public hands, as privatised electricity generators and retailers have an incentive to sell more electricity.¹⁵⁷ Professor Outhred noted that one of the most important options for governments to reduce greenhouse gas emissions is to retire existing coal fired power stations:

Sooner or later governments will have to take climate change seriously. When they do, one of the most important options for New South Wales is a strategic, planned, careful retirement of the existing coal-fired power stations. That is one of the most important options available to New South Wales to make a contribution to reducing climate change emissions.¹⁵⁸

- 2.83** Professor Outhred concluded:

It is inconsistent with such fundamental and well-understood principles for the New South Wales government to now sell Gentrader contracts that extend for the

¹⁵³ Submission 27, Name suppressed, p 2.

¹⁵⁴ Submission 65, Mudgee District Environment Group, pp 1-2.

¹⁵⁵ Submission 63, p 3.

¹⁵⁶ Professor Outhred, Evidence, 18 January 2011, p 25.

¹⁵⁷ See Submission 55, Ms Lillian Morrissey; Submission 3, Ms Lynne Saville, p1.

¹⁵⁸ Professor Outhred, Evidence, 10 February 2011, p 18.

remaining technical working life of New South Wales coal-fired power stations that are supported by long-term subsidised coal sourcing arrangements.¹⁵⁹

Committee comment

- 2.84** The Committee notes the advice from the Government that the estimated \$1.5 billion development of the Cobbora mine is necessary to ensure a long-term coal supply for use in NSW coal-fired electricity generators, and that it has been forecast that the future sale of the mine will recover the costs of development and operation. However, we also note the statement from Professor Outhred that no one can predict the value of a coalmine in 10 years.
- 2.85** The Committee acknowledges the concerns of inquiry participants regarding the detrimental environmental impacts of the mine and the barriers created for other market participants – particularly those using renewable energy sources – as a result of subsidising coal to the two generators.
- 2.86** Further, the Committee notes that, notwithstanding the NSW Government's recent announcement to not proceed with the second tranche of transactions, the unsold generators will also have access to the low-cost coal.¹⁶⁰
- 2.87** Due to the limited information available to the Committee, it is difficult to accurately measure the potential financial and environmental impacts of the Cobbora mine. However NSW Treasury advised the Committee that the Cobbora coal contracts involve delivered costs of coal some 25 to 50 per cent higher than current average delivered coal costs to the Central Coast and Hunter Valley power stations.¹⁶¹

Finding 11

In seeking to implement its energy reforms, the NSW Government is subsidising the cost of coal purchased by private energy corporations through its involvement in the Cobbora coal mine.

While it is difficult to accurately forecast the exact financial impacts of the Cobbora mine proposal, it is clear that:

- the mine will have substantial local and global environmental impacts,
 - the costs of construction of the mine will be borne by the people of New South Wales and might not be recouped in any potential future sale of the mine, and
 - the operational subsidy will be substantial and will largely become profits for the Gentraders, rather than reductions in electricity bills for households.
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¹⁵⁹ Submission 45, p 12.

¹⁶⁰ Additional Answers to Questions on Notice 10 February 2011, Mr Michael Shur, Secretary, NSW Treasury, Question 19.

¹⁶¹ Answers to additional questions on notice, 10 February 2011, Mr Michael Shur, Secretary, NSW Treasury, Question 19.

Recommendation 2

That development of the Cobbora mine proposal be suspended and subjected to an independent expert review where the terms of reference include:

- estimating the total public subsidy to the mine, including establishment and opportunity costs of below-market-price coal,
 - the efficiency of spending money on subsidising coal as a measure to contain household electricity bills, and
 - the economic benefits of instead using a portion of that money to assist households to become more energy efficient.
-

Electricity prices and market competition

2.88 Numerous concerns were raised regarding the potential impact of the Gentrader transactions on current and future electricity prices, and on competition in the electricity market. Two divergent views on the potential impact of the transactions emerged. Government officials contended that the transactions would place downward pressure on electricity prices as a result of increased market competition, whilst community members expressed concern that the transactions would lead to increased electricity prices, largely due to the emergence of three dominant electricity retailers.

2.89 The Treasurer expressed the former view, arguing that the transactions would enhance competition in the electricity market, leading to 'strong' downward pressure on electricity prices for consumers:

I believe that with TRUenergy's acquisition of EnergyAustralia we now have a genuine third force within the national retailing market to take on and compete with AGL and Origin. We now have three big national players in the New South Wales electricity market all hungry to poach customers from one another. I think it demonstrates through this that we will see strong competitive downward pressures on prices.¹⁶²

2.90 Similarly, the Premier stated that several third parties, including the ACCC, agreed that the Gentrader transactions would result in increased competition in the electricity market:

The overwhelming consensus is that these reforms will deliver a more competitive electricity market in New South Wales. It is worth remembering that the ACCC has assessed and approved these transactions. Add to that the actions of AGL in the days after it failed to secure a retail business and told the *Australian Financial Review* on 15 December that it would invest almost \$1 billion in an aggressive campaign to poach hundreds of thousands of customers from its new rivals, making consumers aware of the savings that could be made by switching providers, and also the words of Origin Energy chief executive officer, Grant King, who said, 'Good news for the New South Wales consumers. They will be the beneficiary of the competitive activity that occurs.'¹⁶³

¹⁶² Hon Roozendaal MLC, Evidence, 17 January 2011, p 40.

¹⁶³ Hon Keneally MP, Evidence, 17 January 2011, p 3.

- 2.91** On 9 December 2010 the ACCC announced its approval of the Gentrader transactions, following an assessment of the potential impact of the transactions on electricity prices and market competition.¹⁶⁴
- 2.92** On the other hand, the majority of submission authors expressed the opinion that household power bills would increase as a consequence of the Gentrader transactions. For example, Mr John Inshaw, private citizen, stated: 'We have no doubt that our household power bills will skyrocket as the private sector operators will seek to make higher profits in order to please their shareholders'.¹⁶⁵ Dr Butler also agreed that 'Household power bills will increase as the 'gentraders' seek to make more profit'.¹⁶⁶
- 2.93** Professor Outhred argued that, based on information from the Australian Energy Regulator, competition between retailers for electricity consumers would only reduce electricity prices within a five per cent margin.¹⁶⁷ Professor Outhred noted: '[T]here are a number of factors at play here which means that at best the reduction in electricity price due to the privatisation and due to the retailer competition will be small'.¹⁶⁸
- 2.94** Professor Outhred further noted that, following the execution of the Gentrader transactions, the composition of the National Electricity Market¹⁶⁹ will change, with Origin Energy having the dominant share of the retail market, as shown in Box 1:

¹⁶⁴ Australian Competition and Consumer Commission, 'ACCC clears potential acquisitions under NSW Energy Privatisation', Media Release, 9 December 2010.

¹⁶⁵ Submission 15, Mr John Inshaw, private citizen, p 1. See also for example Submission 6, Mr Michael LeClerc, p 1; Submission 11, Ms Prudence Wawn, p 1; Submission 30, Ms Julie Sheppard, p 1; Submission 37, Mr Colin Ryan, p 1 and Submission 55, p 3.

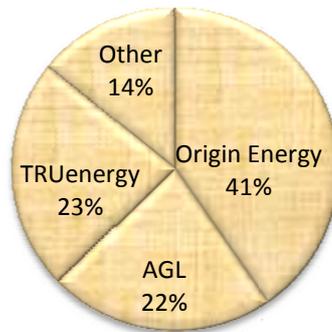
¹⁶⁶ Submission 48, Dr Adam Butler, p 2.

¹⁶⁷ Professor Outhred, Evidence, 18 January 2011, p 26.

¹⁶⁸ Professor Outhred, Evidence, 18 January 2011, pp 26-27.

¹⁶⁹ The National Electricity Market covers all of the parts of New South Wales, Queensland, Victoria, South Australia, the ACT and Tasmania that have access to the conventional electricity grid, but does not include Western Australia and the Northern Territory (Professor Outhred, Evidence, 18 January 2011, p 25 and p 27).

Box 1: Electricity Retailers Market Share Post Gentrader Reforms



Source: Professor Hugh Outhred, visiting Fellow, University of New South Wales, Evidence, 18 January 2011, p 24; Submission 45, Professor Hugh Outhred, p 9.

2.95 Mr Baird MP, Shadow Treasurer, argued that this concentration of ownership would result in reduced competition, create high barriers to entry for new market entrants and increase upward pressure on electricity prices:

... New South Wales energy and retail markets are now dominated by Origin and TRUenergy ... Those incumbents have therefore substantially increased their market power and reduced competition. Moreover, because Origin and TRUenergy will benefit from below market coal costs, thanks to the heavily subsidised contracts, there is almost no way that a new entrant can legitimately enter the market and compete with them. The Government has effectively put in place a huge barrier to new entrants and secured market dominance for Origin and TRUenergy for probably the next 20 years. I would be arguing that that has led to pressure on increased electricity prices and profits for the private sector.¹⁷⁰

2.96 On 14 February 2011 Professor Tony Owen, who in May 2007 was commissioned by the NSW Government to Chair an inquiry into the need for new generation capacity in New South Wales, appeared in a Channel 7 news piece. In the piece he said:

Well this certainly is a 'second best solution', if not a third best solution ... the cost of electricity will rise quite significantly. The population of NSW will suffer from higher prices because of this half-pregnant solution.

2.97 The statements by Professor Owen concerning a 'second best solution' are consistent with other evidence given to the Committee by the Treasury Secretary, Mr Schur, and Professor Outhred.

2.98 Professor Outhred concurred that the creation of three dominant market participants would make it 'very hard' for new retailers to gain entry to the market:

¹⁷⁰ Mr Baird MP, Evidence, 24 January 2011, p 6.

Most economic theory on markets suggests you need more than that to have adequate levels of competition ... If we consolidate ownership of retailers into large retailers, as we are now doing, that makes it very hard for a small retailer to gain entry, and, secondly, on the generation side, if we concentrate generation ownership as well it makes it very hard for a new entrant retailer to find a generator counterparty to the derivative contracts which are needed to support that new entrant retailer.¹⁷¹

- 2.99** Concerns were also raised that the Gentrader transactions may create high market entry barriers for renewable energy infrastructure. For example, a submission to the Inquiry argued: 'If the companies that buy parts of the NSW electricity infrastructure are essentially fossil fuel companies, there is little doubt that they will set up barriers to entry for renewable energy infrastructure'.¹⁷²

Committee comment

- 2.100** The Committee notes the conflicting arguments on the potential impact of the Gentrader transactions on electricity prices and market competition. Whilst Government officials argue that electricity prices will decrease as a result of increased market competition, the majority of inquiry participants are of the view that electricity prices will increase following the establishment of three dominant market players and the creation of barriers to market entry for potential market entrants. The Committee does not have sufficient commercial information to make a finding at this point.

Recommendation 3

That the structure of the NSW retail electricity industry be subject to an Independent Pricing and Regulatory Tribunal inquiry with terms of reference including:

- the degree of concentration of ownership of retail created by the NSW Government's reforms and its potential impacts on household power bills,
 - the potential for new competitors to enter the market and for existing competitors to increase their market share, and
 - the impacts on the potential to contain household electricity bills and carbon footprints from the loss of public sector presence in electricity retailing in New South Wales.
-

Resignation of directors from Delta Electricity and Eraring Energy

- 2.101** As outlined in chapter 1, following the announcement of the Gentrader transactions on 14 December 2010, it emerged that eight of the 13 directors of Delta Electricity and Eraring Energy had resigned their directorships shortly before the execution of the transactions.¹⁷³
- 2.102** The effect of these resignations was to deny the boards of Delta and Eraring the necessary quorum to execute the transactions.¹⁷⁴ The Treasurer advised that following the receipt of

¹⁷¹ Professor Outhred, Evidence, 18 January 2011, pp 30-31. Professor Outhred also discussed these issues in Submission 45, pp 9-10.

¹⁷² Submission 51, p 2.

¹⁷³ Hon Keneally MP, Evidence, 17 January 2011, p 13.

¹⁷⁴ Hon Roozendaal MLC, Evidence, 17 January 2011, p 25.

legal advice, the boards of both Delta and Eraring were lawfully reconstituted under the *State Owned Corporations Act 1989* through the appointment of two new directors to each board.¹⁷⁵ Once reconstituted, the boards were able to complete the transactions.¹⁷⁶

2.103 As also outlined in chapter 1, the Committee made repeated attempts to hear evidence from the resigned directors. However, they all declined to appear before the Committee to explain the circumstances which led to their resignations.

2.104 The lack of publicly available information on the circumstances leading to the resignations of the eight directors and the appointment of the four new directors raised numerous questions within the community, as evident in the submissions received during the Inquiry. For example, submission author Mr Simon Chance said:

There is grave concern in the community regarding the transaction. The rush at the last minute, in the dead of night, to ram this deal through, which led to the resignation of eight directors of the State-owned generators, points to this as not being a good deal for the people of NSW.¹⁷⁷

2.105 Another submission author, Dr Mehreen Faruqi, similarly commented:

The unprecedented mass resignation of eight out of ten directors of the state-owned energy companies in protest of the sale surely indicates the uneconomic nature of the deal. In addition, the rushed appointment of new directors by the NSW Treasurer such that the deal could be struck without any delay leaves the process open to much, well-deserved, criticism. The people of NSW have a right to know what led to the resignation of the directors ...¹⁷⁸

2.106 While the Committee was unable to hear from the directors to ascertain their reasons for resigning, the Treasurer insisted that the transaction details could not have been a surprise because the boards had been repeatedly briefed since March 2009 on the transaction process and their role in it: 'Every inch of this transaction has been signposted, debated, analysed and scrutinised every step of the way for more than two years'.¹⁷⁹

2.107 Among the topics discussed at the board briefings was the potential for the government to use its ministerial direction powers under section 20N of the *State Owned Corporations Act 1989* to complete the transactions.

2.108 Section 20N states, among other things, that if the portfolio Minister (in this case, Mr Roozendaal)¹⁸⁰ wishes a statutory State Owned Corporation to perform activities, or to cease performing activities, in circumstances where the board considers that it is not in the commercial interests of the SOC to do so, that Minister (with the approval of the Treasurer)

¹⁷⁵ *State Owned Corporations Act 1989* s 20(j)

¹⁷⁶ Hon Roozendaal MLC, Evidence, 17 January 2011, p 6 and p 25. The Committee notes that following the appointments of the four new directors on the night of 14 December 2010, additional directors have subsequently been appointed to the boards of Delta Electricity and Eraring Energy.

¹⁷⁷ Submission 33, Mr Simon Chance, p 3.

¹⁷⁸ Submission 53, Dr Mehreen Faruqi, pp 1-2.

¹⁷⁹ Hon Roozendaal MLC, Evidence, 17 January 2011, p 5.

¹⁸⁰ Answers to questions taken on notice during evidence, the Hon Kristina Keneally MP, Premier, Question 1.

may by written notice to the board, direct the SOC to do so in accordance with any requirements set out or referred to in the notice.¹⁸¹

2.109 The Treasurer stated that:

... the SOC directors were advised about directional powers and its possible use on at least 13 separate occasions between our announcement of the reform strategy paper in March 2009 and the meetings held to consider the transactions on 14 December last year.¹⁸²

2.110 The Treasurer explained that these briefings had taken place because it was 'inevitable' that the section 20N powers would need to be used due to the complexity and scope of the Gentrader transactions, which involved consideration of the value of the entirety of the bids:

When each of the SOC boards was convened on the morning of 14 December it was provided with information relevant to its own State-owned corporation only. None of the boards was asked to consider the overall bid combinations, that is, the total bid values or the relationship between the bid prices for retail and the bid prices for Gentrader, and that is entirely appropriate. It is with that scenario it was inevitable that under the provisions of the *State Owned Corporations Act* that a ministerial direction would need to be issued to execute the transactions.¹⁸³

2.111 The Treasurer further suggested that the reasons for the resignation of the eight directors was that:

The Government as the owner and only shareholder of the SOCs was essentially asking the electricity trading companies to stop trading electricity. To put it very simply we are asking a leopard to change its spots. Of course, a SOC board acting in a commercial manner would not support essentially voting itself out of a core business.¹⁸⁴

2.112 Evidence as to the reasons for the resignations of the eight directors was not however limited to the Treasurer. During evidence given on 17 January 2011 Mr Kim Yeadon, a member of the Energy Reform Project team, stated:

CHAIR: To answer my question: during those times were you aware of any directors raising objections or questioning the process?

Mr YEADON: There were concerns expressed by directors of the board in relation to the post transaction environment, but not in relation to the process that would occur on 14 December. In other words, when the deal was going to be transacted and they needed to make a decision, there was no concern expressed to me by any board member in those meetings nor, indeed, on 14 December. No director indicated to me directly that they had a problem with the approach that was being taken. In those meetings it was about the post environment, how they were going to be funded, how the situation worked and that was explained to them.¹⁸⁵

¹⁸¹ *State Owned Corporations Act 1989* s 20N(1).

¹⁸² Hon Roozendaal MLC, Evidence, 17 January 2011, p 23.

¹⁸³ Hon Roozendaal MLC, Evidence, 17 January 2011, p 5.

¹⁸⁴ Hon Roozendaal MLC, Evidence, 17 January 2011, p 5.

¹⁸⁵ Mr Yeadon, Evidence, 17 January 2011, p 25.

2.113 Similarly Dr Col Gellatly, Chair of the Energy Reform Project, stated:

I was present at a number of those briefings and it was a similar position as Mr Yeadon has outlined. The main issues were about the post-sale environment. Towards the end of the period, in the first couple of weeks of December, there was some questioning about wanting legal advice about the legality of the ministerial direction, and that was provided before the fourteenth.¹⁸⁶

2.114 It is noted that amongst the documents the NSW Government has refused to release to the Committee are section 20N notices and correspondence relating to section 20N orders between the State Owned Corporations' company boards and the Government.

2.115 The Committee considers that the actions of the Government, in refusing to release these documents, are more likely than not to be consistent with conclusions reached elsewhere in this report. That is, the refusal to cooperate with the Inquiry was designed to restrict the damage done to the reputation of the Government in the run-up to the state election on 26 March 2011.

Committee comment

2.116 The Committee made repeated attempts to secure the attendance of the eight resigned directors at the Committee's hearings. We are disappointed that the eight directors did not appear before the Committee.

2.117 The Committee believes it is reasonable to conclude that, in the absence of evidence to the contrary, the decision of the directors to resign was based upon a concern for the viability of the generator companies to continue to operate solvently under the terms of the Gentrader Agreements.

Hydro Aluminium Kurri Kurri smelter

2.118 The Committee received evidence that the finalisation of electricity supply contract negotiations between a State Owned Corporation generator and a major corporate customer were hindered during the government's energy reform process.

2.119 The Committee received evidence that, after nearly two years of negotiations, in July 2010 Delta Electricity and Hydro Aluminium Kurri Kurri Pty Ltd entered into a binding Heads of Agreement in relation to the extension of power contracts for the Kurri smelter from 2017 to 2027.

2.120 This Agreement was approved by the boards of both Hydro and Delta Electricity. The Heads of Agreement were executed at a formal ceremony in Oslo attended by representatives of Hydro and Delta Electricity.¹⁸⁷ Hydro noted that the contracts provide long-term commercial benefits to Delta Electricity, and provide Hydro with the long-term power price predictability that it determines to be critical to its ongoing investment in the smelter.¹⁸⁸

¹⁸⁶ Dr Gellatly, Evidence, 17 January 2011, p 26.

¹⁸⁷ Mr Trevor Coombe, Head of Global Alumina and Smelter Growth, Oceania Region, Hydro Aluminium Kurri Kurri Pty Ltd, Evidence, 10 February 2011, p 2.

¹⁸⁸ Submission 44, Mr Alberto Fabrini, Hydro Aluminium Kurri Kurri Pty Ltd, p 1.

- 2.121** Having executed the Heads of Agreement, further negotiations resulted in the finalisation of the terms of the actual contract. In due course the contract, prepared by lawyers acting on behalf of Delta Electricity, was executed by Hydro and returned for formal execution by Delta Electricity.
- 2.122** However, on 5 November 2010, the day that the contracts were due to be executed, Hydro was informed by telephone by the CEO of Delta Electricity that the Energy Reform Steering Committee had advised Delta to not proceed with the extension of the power contracts.¹⁸⁹
- 2.123** Since the telephone call of 5 November 2010, Hydro has received no formal written advices from Delta Electricity.
- 2.124** Evidence was given before the Committee by Mr Trevor Coombe, Head of Global Alumina and Smelter Growth, Oceania Region that Macquarie Generation had been in negotiations with the owners of the Tomago Smelter at approximately the same time.¹⁹⁰
- 2.125** He further gave evidence that on 6 November 2010, Tomago announced that it had successfully concluded contract negotiations with Macquarie Generation.¹⁹¹
- 2.126** Mr Timbs, Deputy Secretary of the Treasury, also gave evidence on the direction given to Delta Electricity not to sign the contract, in answer to questions from the Hon Luke Foley MLC.¹⁹²
- 2.127** On 26 November 2010, Hydro wrote to Premier Keneally seeking meetings regarding the situation. At the time of giving evidence before the Committee on 10 February 2011, Hydro had received no acknowledgement, yet alone a response to the letter sent.¹⁹³
- 2.128** Hydro currently employs more than 500 full time employees, and there are approximately 800 workers on the site on any one day. The Committee concludes that this indicates that in addition to direct employees there are a large number of part-time and contract workers on the site at any time.
- 2.129** In addition to the direct employment benefits, Hydro gave evidence of economic inflows to the community from salaries and the use of local services at the smelter total over \$80 million per year, and capital maintenance expenditures of approx \$50 million per annum. Hydro noted that this investment is at risk by not having long term electricity supply contracts:

The future economic inflows to the Community and investments to maintain and further develop the smelter are dependent on the existence of a long term power contract... We doubt the [Energy Reform] Steering Committee can have appreciated that its decision would risk such serious and far-reaching consequences for the local economy.¹⁹⁴

¹⁸⁹ Mr Coombe, Evidence, 10 February 2011, p 5.

¹⁹⁰ Mr Coombe, Evidence, 10 February 2011, p 3.

¹⁹¹ Mr Coombe, Evidence, 10 February 2011, p 3.

¹⁹² Mr Timbs, Evidence, 18 January 2011, p 20.

¹⁹³ Mr Coombe, Evidence, 10 February 2011, p 2.

¹⁹⁴ Submission 44, p 2.

2.130 The impact of this interference is to potentially put at risk the jobs of as many as 2,500 jobs in the Hunter Valley¹⁹⁵ and the injection of approximately \$130 million per annum into the NSW economy.¹⁹⁶

2.131 Mr Alberto Fabrini, Managing Director, Hydro Aluminium Pty Ltd, explained to the Committee that without the certainty of the electricity supply contract, the company had already deferred plant modernisation projects.

I can tell you that right now we are deferring modernisation projects — we started. We have projects in the pipeline that is very much needed for us. We have plans to creep our production and these projects have been deferred right now as we speak because there is no certainty. That is the start. Of course, if this continues we can have other effects, like I said, even in our regular maintenance.¹⁹⁷

2.132 Mr Coombe noted that the contract negotiations with Delta Electricity took two years, and he did not want to have start negotiating again with another electricity supplier:

These are quite complex and quite detailed negotiations and, as I said, they are two years usually in the making so I do not really want to spend another two years negotiating if I can actually secure a long-term contract with what I believe my existing contract that I had signed ...¹⁹⁸

2.133 During the course of Hydro Aluminium's public hearing, the Hon Luke Foley MLC tabled a media release from the Premier, released that morning approximately ten minutes before the Hydro company representatives gave their evidence. The Premier stated:

The NSW Government has made its position clear – there will be no further energy asset energy sales.

That clears the way for Macquarie Generation to enter into negotiations with the owners of Kurri Kurri's Hydro Aluminium Smelter for a new electricity supply contract.

I encourage both Macquarie Generation and Hydro Aluminium to work quickly towards a mutually beneficial agreement.¹⁹⁹

2.134 The Hydro company representatives were unaware of the media release until their attention was directed to it by Mr Foley.

2.135 In response to this announcement by the Premier, Mr Fabrini told the Committee:

We believe that we have a legal contract with Delta and also that we have a legal contract for the extension; however, we would be willing to discuss further possibilities for the future. One thing that is very important is that time is of essence.

¹⁹⁵ Mr Coombe, Evidence, 10 February 2011, p 4.

¹⁹⁶ Submission 44, p 2.

¹⁹⁷ Mr Alberto Fabrini, Managing Director, Hydro Aluminium Kurri Kurri Pty Ltd, Evidence, 10 February 2011, p 4.

¹⁹⁸ Mr Coombe, Evidence, 10 February 2011, p 9.

¹⁹⁹ News Release, Premier of New South Wales, 'Kurri Kurri Smelter: Premier Keneally vows to do everything she can to protect jobs'. Thursday 10 February 2011.

We saw here that the Premier mentioned that she would like to see this resolved quickly, which is positive. That is basically our position for now.²⁰⁰

- 2.136** When asked by the Hon Greg Pearce MLC as to the potential damages that may be payable for any breach of contract that may be pursued by Hydro, Mr Coombe agreed with the proposition that if his contract with Delta was not honoured it could result in compensation claims of 'a few hundred million dollars'.²⁰¹

Committee comment

- 2.137** On the basis of the evidence available, the Committee concludes that the Energy Reform Group Steering Committee directed Delta Electricity not to execute the contract with Hydro to maximise the price received from the successful bidder for the Delta Electricity Gentrader contract.
- 2.138** The Committee concludes that the intervention by the NSW Government has potentially created significant risk to employment and investment into the Hunter Valley.
- 2.139** The Committee is concerned about the treatment that Hydro Aluminium Kurri Kurri received from the NSW Government and the potential impact on employment in the Hunter region. This behaviour sends the wrong signals to corporations to invest in New South Wales. Furthermore, not honouring the 'Heads of Agreement' potentially exposes the State to liability claims from Hydro.
- 2.140** The Committee is not satisfied that the invitation to enter into negotiations between Macquarie Generation and Hydro will result in the timely execution of an electricity supply contract. There is no certainty, on the evidence available to the Committee, that any contract would result in agreement being reached on the same terms and conditions as was reached with Delta Electricity.

Finding 12

The Gentrader transactions have left a remaining State-owned generator industry structure that does not contain an economically feasible contract supplier for Hydro Aluminium Kurri Kurri Pty Ltd. The residual Delta Electricity is too small and is already exposed to massive market risks. If Macquarie Generation were to take on the contract, combined with its existing contracts with Tomago, almost 50 per cent of its generation annual output would be tied up with aluminium smelters, exposing the State-owned generator to significant electricity and aluminium market risks.

Recommendation 4

That all parties involved be encouraged to resolve the uncertainty regarding the Hydro Aluminium Kurri Kurri Pty Ltd supply contract as a matter of urgency, with the aim of securing the future of the company and jobs.

²⁰⁰ Mr Fabrini, Evidence, 10 February 2011, p 13.

²⁰¹ Mr Coombe, Evidence, 10 February 2011, p 14.

Future structure of the NSW electricity industry

- 2.141** The Gentrader transaction process has evolved during the Inquiry. At the public hearing on 17 January 2011, the Treasurer advised that 'the Government's financial advisors remain in detailed negotiations with multiple bidders for the remaining Gentrader and development site contracts'.²⁰² These were for the Gentrader rights of Macquarie Generation and Delta Coastal.
- 2.142** However, on 27 January 2011, the Premier announced that it was possible that the second tranche of Gentrader transactions would not be completed before the caretaker provisions came into effect prior to the March 2011 election. Ms Keneally acknowledged that the completion of the process may become a matter for the incoming government.²⁰³
- 2.143** On 1 February 2011 it was revealed that no bids²⁰⁴ had been lodged for the remaining two Gentrader contract bundles, Macquarie Generation and Delta Coastal.²⁰⁵ The Premier subsequently announced that the NSW Government would not proceed with any further privatisation of the energy sector either before the March 2011 election, or afterwards if the Labor Government was re-elected.²⁰⁶
- 2.144** The result of this change in government policy is that half of the New South Wales electricity industry will remain in public hands, and half will be the domain of private companies. The Committee heard that partial privatisation will have its own problems, as explained in the next section.

The problems of partial privatisation

- 2.145** Under the new arrangements, the two publicly-owned generators Macquarie Generation and Delta Electricity will face a significantly different trading environment compared to prior the Gentrader reforms. Delta Electricity now has two different functions. Firstly it is responsible for the asset management of the Delta West generators. Secondly, for Delta Coastal assets it has a full business function of electricity production and trading.
- 2.146** Professor Outhred suggested that the reduced size of the full business of Delta East (i.e. Delta Coastal) will create a riskier business, because it has fewer assets to operate and less diversity of generating units in the case of breakdowns. Other associated issues will result in higher costs for Delta East:

Because of the reduced size of the full business – in other words, it is now Delta East, not Delta total as it was before – it will be a riskier business than it was before because

²⁰² Hon Roozendaal MLC, Evidence, 17 January 2011, p 6.

²⁰³ Ms Kristina Keneally MP, Premier, 'Statement on News Limited article – second tranche electricity transaction', Media Release, 27 January 2011.

²⁰⁴ It is noted that Shadow Treasurer, Mr Mike Baird MP, called for bidders not to bid. See 'Baird calls for bids boycott', *Australian Financial Review*, 20 January 2011.

²⁰⁵ Nicholls S and Robins B, 'Another \$2 billion hot for Keneally government as power assets fail to attract a bid', *The Sydney Morning Herald*, 1 February 2011; Salusinszky I, 'Investors ignore NSW power sell-off', *The Australian*, 1 February 2011; AAP, 'Controversy killed power sell-off, says NSW Treasurer Eric Roozendaal', *The Australian*, 1 February 2011.

²⁰⁶ Ms Kristina Keneally MP, Premier, 'No further privatisation of energy assets', Media Release, 1 February 2011.

it has fewer physical assets to operate and there will be less diversity with respect to breakdowns. There will be smaller volume of fuel to buy. There will be other issues of that type that will generally increase the costs of that particular full business compared to if the previous version of the full business which had the larger portfolio.²⁰⁷

- 2.147** Professor Outhred identified other problems for Macquarie Generation, namely reduced income from derivative trading. This is because the counter parties for derivative trading are primarily the electricity retailers. However, as the reforms have created three dominant electricity retailers, Professor Outhred suggests this will suppress the derivative prices that Macquarie Generation will be able to receive, and hence reduce its income:

[T]he counter parties for generators for derivative trading are primarily the retailers. Having sold the retailers — Energy Australia, Integral Energy and Country Energy — that process has created three dominant retailers on the buying side: the new Origin Energy portfolio, the new TruEnergy portfolio and the AGL portfolio. ... So essentially it is a triopoly that would be on the other side of the market. That will probably tend to suppress the derivative prices that Macquarie Generation would be able to attract compared to a previous situation where there was probably more open competition So I would suggest that probably the cashflow, the income that Macquarie Generation can achieve now, has probably reduced compared to its previous circumstance.²⁰⁸

- 2.148** Professor Walker and Dr Con Walker also agreed that part electricity privatisation creates new problems. They identify that 'the separate sale of the retail segments of government businesses contradicts the Owen report's claim that it would be desirable to have some degree of integration between generators and retailing activities.'²⁰⁹

- 2.149** Professor Walker and Dr Con Walker explained that whilst all the generators were publicly owned, any losses incurred by one generator could be largely offset by gains in another government owned generator. However, the introduction of the Gentrader contracts removes this advantage:

[W]hile the State's electricity agencies were all government owned, and supposedly competing against each other in the National Electricity Market, any losses incurred by one generator could be largely offset by gains of another government owned business – it was in effect a hedging arrangement. If the current transactions proceed, the state-owned generators may well be affected by the interests of the gentraders.²¹⁰

- 2.150** Another potential problem facing the remaining publicly owned generators is that they will be selling electricity into a market where the two competing Gentraders also own about 85 per cent of the retail electricity market. Professor Walker notes that this is likely to place the two government owned generators, and their ability to sell electricity contracts, in a very difficult situation.²¹¹

²⁰⁷ Professor Outhred, Evidence, 10 February 2011, p 17.

²⁰⁸ Professor Outhred, Evidence, 10 February 2011, p 17.

²⁰⁹ Supplementary Submission 2a, Professor Bob Walker and Dr Betty Con Walker, p 6.

²¹⁰ Supplementary Submission 2a, p 7.

²¹¹ Professor Walker, Evidence, 10 February 2011, p 35.

- 2.151** In response to the NSW Government's decision not to further privatise electricity assets, Professor Walker and Dr Walker commented 'if it is wrong now and in the future to sell any more electricity assets, it was wrong to sell any at all.'²¹²

Opposition response

- 2.152** Opposition Leader Mr O'Farrell indicated that should the Liberal/National coalition be elected in March 2011, one of the first acts of his government would be to establish a judicial inquiry to examine the detail of the Gentrader transactions.²¹³ Mr O'Farrell further stated that the judicial inquiry would have no limitations in determining what recourse was in the best interests of New South Wales, and that a Coalition Government reserved the right '... to pursue whatever remedy will protect public interest and defend public value'.²¹⁴
- 2.153** The Opposition did not disclose the detail of their energy policy during the Inquiry, with Mr O'Farrell stating: 'We will announce our policy in the fullness of this election campaign'.²¹⁵

Committee comment

- 2.154** The Committee is concerned that the Leader of the Opposition and the Shadow Treasurer did not rule out further electricity privatisation despite being repeatedly invited to do so by members of the Committee.

Finding 13

There exists a real risk of privatisation of the State's electricity generation, transmission and distribution assets under the next Government, given the refusal of the Leader of the Opposition to rule out such a course.

Recommendation 5

That legislation be enacted to prohibit any privatisation, leasing out or other form of disposal of a principal undertaking of a State-owned electricity company, without the approval of both Houses of Parliament.

Conclusion

- 2.155** The Committee believes that the NSW Government did not achieve value from the energy reforms, and is significantly concerned that the Government has left the electricity industry half-reformed and the other half effectively in limbo.
- 2.156** The Committee notes that the Government has not achieved its objective of removing the State from the 'risky business' of electricity trading and generation. Further, rather than

²¹² Supplementary Submission 2a, p 9.

²¹³ Mr Barry O'Farrell MP, Leader of the Opposition, Evidence, 24 January 2011, p 3.

²¹⁴ Mr O'Farrell MP, Evidence, 24 January 2011, p 15.

²¹⁵ Mr O'Farrell MP, Evidence, 24 January 2011, p 2.

improving competition, it appears that the reforms have in fact hindered competition and created barriers for new market entrants – particularly those using renewable energy sources.

- 2.157** Under the current situation the remaining State-owned generators who have a trading function are likely to suffer from increased costs and face competitors which also own a large proportion of the retail sector. This may potentially make the State-owned generators less competitive.
- 2.158** Calls have been made for the NSW Government to not proceed with the sale of the first two Gentrader contract bundles. The Premier was reported in the media saying that doing so may cost taxpayers 'hundreds of millions of dollars' in damages.²¹⁶ While this is a significant amount, the income generated by these assets is likely to far outweigh these costs.
- 2.159** The Committee is aware that a state election is due in six weeks. The Committee recommends that the Gentrader contracts be rescinded to allow the future government to reassess the future of the electricity industry in New South Wales, and that the full financial details of the transactions be made public.
- 2.160** The Committee further recommends that a full judicial inquiry into the energy reform transactions be established, and that in the event that the Gentrader contracts are not rescinded, the judicial inquiry should examine the amount of damages that the State may be liable for if the Gentrader contracts were to be reversed.

Recommendation 6

That the full financial details of the Gentrader transactions be made publicly available immediately.

Recommendation 7

That the incoming government establish a full judicial inquiry into the energy reform transactions.

Recommendation 8

That the Gentrader contracts be immediately rescinded to allow the incoming Government to reassess the future of the electricity industry in New South Wales.

Recommendation 9

That, in the event that the Gentrader contracts are not rescinded by the current Government, the incoming Government ask the judicial inquiry to examine the amount of damages that the State may be liable for if the Gentrader contracts were to be reversed.

²¹⁶ "Treasury goes back on its word to divulge power company valuations", *Sydney Morning Herald*, 2 August 2011.

Recommendation 10

That the incoming NSW Government ask the judicial inquiry to:

- a) Inquire into the circumstances surrounding and the reasons for the Energy Reform Group Steering Committee making a direction to Delta Electricity not to execute the contract between Hydro Aluminium Kurri Kurri Pty Ltd and Delta Electricity,
 - b) Investigate the capacity of Macquarie Generation to enter into a contract with Hydro Aluminium Kurri Kurri on similar terms to the Heads of Agreement with which Hydro had with Delta Electricity,
 - c) Determine what, if any, compensation would be payable to Hydro Aluminium Kurri Kurri in the event that a contract, as described in b), cannot be entered into, and
 - d) Whether the NSW Government should make a direction under section 20N of the *State Owned Corporations Act* for Macquarie Generation to enter into a contract with Hydro Aluminium Kurri Kurri on similar terms to the Heads of Agreement with which Hydro had with Delta Electricity.
-

Appendix 1 Submissions

No	Author
1	Ms Agner Sorensen
2	Professor Bob Walker and Dr Betty Con Walker
2a	Professor Bob Walker and Dr Betty Con Walker
3	Ms Lynne Saville
4	Ms Annissa Kall
5	Ms Sally Chapman
6	Mr Michael LeClerc
7	Mr Michael Nankin
8	Dr Edward Ross
9	Mr Sean Badenhorst
10	Mr Tony Burns JP
11	Ms Prudence Wawn
12	Dr Catherine Woolnough
13	Ms Helene See
14	Ms Kellie Tranter
15	Mr John Inshaw
16	Ms Jennifer Kent
17	Name suppressed
18	Ms Emma Heyde
19	Name suppressed
20	Mr John Davis
21	Dr Ailsa Burns
22	Mr Richard Stanford
23	Name suppressed
24	Mr David Allen
24a	Mr David Allen
25	Transport Energy Studies Pty Ltd
26	Mr Laurence See
27	Name suppressed
28	Ms Suzanne Marks
29	Northern Beaches Greens

: -

No	Author
30	Ms Julie Sheppard
31	Mr Volker Pfannenber
32	Name suppressed
33	Mr Simon Chance
34	Ms Susanna Pearson
35	Mr Patrick O'Rourke
36	Ms Wendy White
37	Mr Colin Ryan
38	Ms Noela McDonald
39	Mr Mervyn Murchie
40	Midwestern Regional Community Action Group (MWCAN)
41	Mr Jason Koh
42	Name suppressed
43	Newcastle Greens
44	Hydro Aluminium Kurri Kurri Pty Ltd
45	Mr Hugh Outhred, School of Electrical Engineering and Telecommunications, University of New South Wales
45a	Mr Hugh Outhred, School of Electrical Engineering and Telecommunications, University of New South Wales
46	Parramatta Climate Action Network
47	Name suppressed
48	Dr Adam Butler
49	Mr Phil Bradley
50	Mr John Butler
51	450 Parts Per Million (450ppm)
52	The Fishing Party
53	Dr Mehreen Faruqi
54	Mr Kieran Adair
55	Ms Lillian Morrissey
56	Mr Ken Partridge
57	Parramatta Greens

No	Author
58	Name suppressed
59	Wollongong Climate Action Network (WCAN)
60	Mr Rowan Huxtable
61	Name suppressed
62	Name suppressed
63	Greenpeace Australia Pacific and Nature Conservation Council of Australia
64	Mid Western Community Action Network (MWCAN)
65	Mudgee District Environment Group

Appendix 2 Witnesses

Date	Name	Position and Organisation
Monday 17 January 2011 Jubilee Room Parliament House, Sydney	Hon Kristina Keneally MP	Premier, NSW
	Hon Eric Roozendaal MLC	Treasurer, NSW
	Dr Col Gellatly	Director, Eraring Energy
	Mr Kim Yeadon	Director, Delta Electricity
Tuesday 18 January 2011 Jubilee Room Parliament House, Sydney	Mr Michael Schur	Secretary, NSW Treasury
	Mr Kevin Cosgriff	Deputy Secretary, Fiscal and Economic Directorate, NSW Treasury
	Mr Richard Timbs	Deputy Secretary, Commercial Management Directorate, NSW Treasury
	Professor Hugh Outhred	Professional Visiting Fellow, School of Electrical Engineering and Telecommunications, University of New South Wales
Monday 24 January 2011 Jubilee Room Parliament House, Sydney	Mr Barry O'Farrell MP	Leader of the Opposition
	Mr Mike Baird MP	Shadow Treasurer
Thursday 10 February 2011 Jubilee Room Parliament House, Sydney	Mr Trevor Coombe	Head of Global Alumina and Smelter Growth, Oceania Region, Hydro Aluminium Kurri Kurri Pty Ltd
	Mr Alberto Fabrini	Managing Director, Hydro Aluminium Kurri Kurri Pty Ltd
	Professor Hugh Outhred	Professional Visiting Fellow, School of Electrical Engineering and Telecommunications, University of New South Wales
	Professor Bob Walker	
	Dr Betty Con Walker	

Appendix 3 Tabled documents

Thursday 23 December 2010

Deliberative meeting, Members Lounge, Parliament House

1. Advice from the Clerk of the Parliaments to the Chairman, regarding the effect of prorogation on General Purpose Standing Committee No. 1, dated 22 December 2010, *tendered by Revd the Hon Fred Nile, Chairman.*
2. Email from Mr Michael Galderisi, Acting Chief of Staff, Office of the Treasurer of NSW, to the Chairman, regarding concerns about the potential impact of the proposed inquiry on the NSW Energy Reform transactions, dated 21 December 2010, *tendered by Revd the Hon Fred Nile, Chairman.*
3. Advice from the Crown Solicitor to the Clerk of the Legislative Assembly, regarding the status of standing committees after prorogation, dated 13 December 1994, *tendered by Revd the Hon Fred Nile, Chairman.*
4. Media statement from government members highlighting the following three concerns with the proposed Gentrader transactions inquiry, *tendered by Mr Trevor Khan.*
5. Document detailing, parliamentary privilege; confidential documents; and the power to compel witnesses, *tendered by Revd the Hon Fred Nile, Chairman.*

Monday 17 January 2011

Public hearing, Jubilee Room, Parliament House

6. Chart One – Transaction Structure, *tendered by the Hon Eric Roozendaal, Treasurer.*
7. Chart Two – Energy Reform Project, *tendered by the Hon Eric Roozendaal, Treasurer.*
8. NSW Energy Reform Project – Transaction Timeline 2009-2010, *tendered by the Hon Eric Roozendaal, Treasurer.*
9. NSW Energy Reform Project Board Briefing Chronology, *tendered by the Hon Eric Roozendaal, Treasurer.*

Monday 24 January 2011

Public hearing, Jubilee Room, Parliament House

10. NSW Labor's Power Sale Objectives, *tendered by Mr Mark Baird, Shadow Treasurer.*
11. Independent Expert Report by Grant Samuel, *tendered by Mr Mark Baird, Shadow Treasurer.*
12. Recent Transaction Evidence – Electricity and Gas Retailing in Australia and New Zealand, Origin Energy Independent Expert Report, September 2008, *tendered by Mr Mark Baird, Shadow Treasurer.*
13. Australian Utilities Coal Contracts Impact on NSW Privatisation: Industry Overview, by Equity Australia Utilities, Merrill Lynch, October 2010, *tendered by Mr Mark Baird, Shadow Treasurer.*
14. Revenue from Electricity - 1995/96 to 2013/14 (estimate), *tendered by Mr Barry O'Farrell, Opposition Leader.*

Thursday 27 January 2011

Deliberative meeting, Room 1102, Parliament House

15. Article entitled ' Fitzpatrick and Browne: Imprisonment by a House of the Parliament, by Harris Evans, Former Clerk of the Senate, , Former Clerk of the Senate, *tendered by Mr Steven Reynolds, Clerk Assistant – Committees.*

Thursday 10 February 2011

Public hearing, Jubilee Room, Parliament House

16. Supplementary Submission No. 2a, *tendered by Professor Robert Walker and Dr Betty Con Walker.*

Wednesday 16 February 2011

Deliberative meeting, Room 1102, Parliament House

17. Video footage of the Premier's Press conference broadcast on Sky news on 23 December 2010, *tendered by Mr Trevor Khan.*
18. Briefing Note (DPC 10/03902) by the Department of Premier and Cabinet entitled: Effects of Prorogation on Committees, *tendered by Mr Trevor Khan.*
19. Media Release from the Premier dated 1 February 2011 entitled: "No Further Privatisation of Energy Assets", *tendered by Mr Trevor Khan.*
20. Media release from the Premier dated 6 January 2011 entitled: "Statement from the Office of the Premier, *tendered by Mr Trevor Khan.*
21. Article entitled 'Release contradicts Premier on closure', The Sunday Telegraph, dated 13 February 2011, *tendered by Revd the Hon Fred Nile, Chairman.*
22. Article entitled 'Power directors accused of conflict', The Herald, dated 5 January 2011, *tendered by Revd the Hon Fred Nile, Chairman.*
23. Article entitled 'Trio paid big bucks by Labor', The Sunday Telegraph, dated 30 January 2011, *tendered by Revd the Hon Fred Nile, Chairman.*
24. Video footage of Channel 7 news interview with Professor Tony Owen discussing the partial privatisation of the NSW electricity industry, 14 February 2011, *tendered by Mr Trevor Khan.*

Appendix 4 Transcript of 17 January 2011

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

INQUIRY INTO THE GENTRADER TRANSACTIONS

—
At Sydney on Monday 17 January 2011

—
The Committee met at 10.00 a.m.

—
PRESENT

Reverend the Hon. F. J. Nile (Chair)

The Hon. G. J. Donnelly
The Hon. L. A. Foley
The Hon. K. F. Griffin
The Hon. Dr J. Kaye
The Hon. T. J. B. Khan
The Hon. G. S. Pearce

CHAIR: Welcome to the first public hearing of the inquiry into the gentrader transactions. As Chair of the Committee I take this opportunity to express our condolences to those suffering as a result of the flooding in Queensland, New South Wales and Victoria. Our thoughts are with all those people.

Before commencing today's hearing I shall address some procedural issues. The impetus for this inquiry came about after certain transactions were carried out on Tuesday 14 December 2010 which sold the gentrader rights of Eraring Energy and Delta Electricity and led to the resignation of eight directors from those companies. On 22 December 2010, in accordance with paragraph 2 of the resolution of the House of 10 May 2007 establishing general purpose standing committees, the Clerk Assistant—Committees received correspondence at 11.05 a.m. from three members of this Committee, dated 21 December 2010, requesting him to convene a meeting of the Committee to consider a proposed inquiry into the gentrader transactions.

On 22 December 2010 the Government, with the advice of the Executive Council, prorogued the Parliament. The Legislative Council now stands prorogued until 10 May 2011. On the same day the Clerk of the Parliaments provided advice to the Committee that should it wish to meet it was able to do so despite prorogation. This was in contrast to advice provided by the Crown Solicitor to the Legislative Assembly in 1994, which stated that committees of either House cannot transact business during prorogation unless authorised by legislation. The Clerk expressed the view that the Crown Solicitor's advice was a very restrictive view of the powers of the Legislative Council; however, issued a cautionary note that the extent of the Committee's powers during prorogation has yet to be tested before the courts. On 23 December 2010 the Committee met and resolved to conduct this inquiry into the gentrader transactions.

On 2 January 2011 the Crown Solicitor provided further advice to the Department of Premier and Cabinet confirming his earlier opinion expressed in 1994. The Crown Solicitor further expressed the view that committees do not have the power to compel the attendance of witnesses or require them to answer questions and suggested that there is a risk that evidence provided to this Committee would not be protected by parliamentary privilege. The Crown Solicitor stated that this could expose witnesses to claims of defamation and breaches of confidence.

On 11 January 2011 the Clerk of the Parliaments issued advice to the President of the Legislative Council respectfully disagreeing with their Crown Solicitor. The Clerk advised that whilst the House can be prorogued under section 10 of the Constitution Act 1902, the House has the power under section 15 to regulate its own business. The Clerk noted that Standing Order No. 206 allows the House to appoint committees with power to sit during the life of the Parliament and advised that there is no limitation in the standing orders regarding the right of standing committees to sit during any recess of the House. The Clerk advised that the power of modern standing committees to sit after prorogation is based on the common law principle of "reasonable necessity".

While the traditional understanding of the prorogation was that committees may not meet, a contemporary reading of the system of responsible government is that the Legislative Council through its standing committees must be able to recognise its constitutional role of scrutinising the actions of the Executive Government and holding it to account; this includes during any period of prorogation. This contemporary view was most recently articulated by the High Court in *Egan v. Willis* in 1998. In response to the argument of the Crown Solicitor regarding enabling legislation, the Clerk expressed the view that such legislation is not required for standing committees which are appointed for the life of the Parliament to be able to operate during prorogation. As such, and in contrast to the views of the Crown Solicitor, the Clerk advised that the Parliamentary Evidence Act 1901 would apply and,

consequently, the Committee will lawfully be able to exercise its power to summon persons other than members of Parliament to attend and give evidence and to examine any witnesses under oath.

On 12 January 2011, after considering the advice of the Crown Solicitor and the Clerk of the Parliaments, the President of the Legislative Council, the Hon. Amanda Fazio, issued a statement announcing that she was persuaded by the view of the Clerk that the Committee could hold the inquiry even though the Parliament had been prorogued. The President therefore announced that she would support the holding of the inquiry; however, in light of the conflicting advice from the Crown Solicitor and the Clerk regarding the summoning of witnesses and parliamentary privilege, the President noted that there is no legal certainty regarding the powers of the Committee. As such the President advised that the Committee should proceed with caution due to their being no guarantee of legal protection.

I note that a draft exposure bill has been circulated by the Greens and that the Opposition has indicated its support for the introduction of that bill in the next Parliament. This should provide some assistance to witnesses before the Committee. The Committee resolved this morning to summon a number of former directors of Eraring Energy and Delta Electricity to appear before the Committee on Monday 24 January 2011.

I make some comments about procedural matters. In accordance with the Legislative Council's *Guidelines for the Broadcast of Proceedings*, the Committee has previously resolved to authorise the media to broadcast sound and video excerpts of the public proceedings. In accordance with those guidelines only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. The Committee has authorised a number of media organisations to broadcast the Committee's proceedings on websites and digital television channels. In reporting the proceedings of this Committee, the media must take responsibility for what it publishes or the interpretation that is placed on anything that is said before the Committee. Any messages from attendees in the public gallery should be delivered through the Chamber and support staff or the Committee clerks. I ask everybody to turn off all mobile phones.

I welcome the Premier, and Minister for Redfern Waterloo, Ms Kristina Keneally; the Treasurer, Minister for State and Regional Development, Minister for Ports and Waterways, Special Minister of State, and Minister for the Illawarra, the Hon. Eric Roozendaal; Dr Col Gellatly, Director, Eraring Energy; and Mr Kim Yeadon, Director, Delta Electricity. The Premier and Treasurer are not required to be sworn as they have already sworn an oath to their office as members of Parliament. I ask Dr Gellatly and Mr Yeadon that you each in turn state your full name, job title and agency and indicate whether you will swear an oath or take an affirmation—the words of both the oath and affirmation are on the cards on the table in front of you.

KRISTINA KENEALLY, Premier, and Minister for Redfern Waterloo,

ERIC ROOZENDAAL, Treasurer, Minister for State and Regional Development, Minister for Ports and Waterways, Special Minister of State, and Minister for the Illawarra, and

COLIN GELLATLY, Director, Eraring Energy, sworn and examined, and

KIMBERLEY MAXWELL YEADON, Director, Delta Electricity, affirmed and examined:

Mr YEADON: I am also a consultant to the Government's energy reform project.

Dr GELLATLY: I am also the chair of the energy reform project.

CHAIR: Does any witness wish to make an opening statement?

Ms KRISTINA KENEALLY: Yes, thank you Reverend Nile. Both I and the Treasurer would like to make opening statements. Electricity reform in New South Wales is an issue that has been debated and politicised for far too long. Until now, greater public benefit and public interest always has run a distant second to easy politics. Throughout this energy reform process my Government has never lost sight of the big picture and the goals we set. Our objectives are to exit the Government from the competitive aspects of retail and generation, to improve competition, to increase investment from the private sector into generation, to secure a reliable electricity supply and to secure the strong financial position of New South Wales. To judge the outcome of this transaction we must briefly revisit those objectives. I do not intend to take up the time of the Committee with a line-by-line account of the policy debate over the past four years, but I remind everyone of Professor Tony Owen's report investigating how the New South Wales Government could best secure the State's energy needs.

His unambiguous findings were that the Government had to exit the competitive aspects of the electricity market, that is, the retailing and trading of wholesale electricity in the national market. Doing so would create an environment where the private sector has the confidence to invest in new power stations and to vigorously compete for customers. They were our objectives from the beginning, and I am pleased to say that we have achieved those objectives significantly. The Government is now out of the retail sector and we continue to negotiate with the bidders for the last two gentrader contracts.

The overwhelming consensus is that these reforms will deliver a more competitive electricity market in New South Wales. It is worth remembering that the ACCC has assessed and approved these transactions. Add to that the actions of AGL in the days after it failed to secure a retail business and told the Australian *Financial Review* on 15 December that it would invest almost \$1 billion in an aggressive campaign to poach hundreds of thousands of customers from its new rivals, making consumers aware of the savings that could be made by switching providers, and also the words of Origin Energy chief executive officer, Grant King, who said, "Good news for the New South Wales consumers. They will be the beneficiary of the competitive activity that occurs."

I want to talk about this issue of value for a moment. I have seen many attempts to make historical comparisons between the value achieved, the \$5.3 billion, for this transaction to that of other jurisdictions or previous proposals for privatisation in New South Wales. I want to lay to rest what are really these pointless comparisons between outcomes we have achieved and previous examples. These are not apples-with-apples comparisons. What was being privatised previously in other jurisdictions, proposed for individual companies or across the whole sector is not what we have done here. It also does not account for the relative age of assets at the point of sale or new factors, such as the likelihood of a CPRS and increased demand from overseas for coal. That makes these very different transactions.

The Treasurer will make further remarks on how the Government assessed the value received by taxpayers, but as the Premier of New South Wales let me say this: The reform of the New South Wales electricity industry is the most important piece of economic reform undertaken in New South Wales so far this century. In tackling this difficult issue my Government has achieved what we set out to do. We have delivered our objectives: we are out of the risky business of electricity generation, we have improved competition in the retail energy market, we have put downward pressure on prices and

we have secured the State's triple-A credit rating. We have achieved fundamental economic reform in this State. It has not been easy, and on many occasions it might have been easier to say, "Let's not bother, let's let someone else do it." Ultimately, governments must govern in the long-term interests of the people they represent, and that is what my Government has done.

The Hon. ERIC ROOZENDAAL: Thank you Reverend Nile and Committee members. I would like to be crystal clear from the start that the energy reform process has delivered a very good result for the people of New South Wales. Our State's financial position is stronger. New South Wales is getting out of the risky business of electricity generation and electricity trading. We have created a more competitive retail electricity market, and we have further secured New South Wales' solid-gold triple-A credit rating. The first tranche of this transaction has delivered \$5.3 billion in proceeds to the people of New South Wales. On that point I want to be clear: we have completed only the first tranche. This transaction is ongoing. We are now into the next part of this transaction. This is a live transaction involving assets worth billions of dollars and involving multiple bidders. I will not do or say anything here today that may jeopardise the remaining transactions. I am happy to answer your questions, but it is important that the Committee be conscious that there are live transactions in place now with multiple bidders.

I would like to take a little time to go through the details of this transaction with the Committee, especially the reform process and what the boards of the five State-owned corporations were asked to do on 14 December. I ask you bear with me so the Committee can properly be informed of the complex processes that were undertaken and the steps and various processes over the past two years required to achieve what I believe to be fundamental economic reform for the people of New South Wales. I have brought with me two charts that will help explain the process. I am happy to table both documents for Committee members and the table.

Documents tabled

Dr JOHN KAYE: If I could interrupt briefly and request that the witness be asked to make it clear for Hansard what the charts represent. It is difficult for Hansard to report chart contents.

The Hon. ERIC ROOZENDAAL: I am providing copies that can be incorporated. The Premier already has addressed the Committee on the policy objectives of the energy reform process. The transaction was structured to achieve those objectives. Chart 1, Transaction Structure, sets out the structure of the transaction and all the participants involved in this multibillion-dollar process. It is fair to say that this is the big picture—the entire landscape of the most fundamental economic reform undertaken by this Government or any government in this State in a generation. What the Committee should think about before we move on to anything else is that it cannot look at any one piece of the jigsaw of this process without taking into account the other pieces and the entire picture they create. Every piece of the transaction is interconnected, and as a whole they make up a multibillion-dollar economic reform.

At the top of the chart you can see we have the generators and the boards, which, of course, remain in public ownership. Obviously, they generate electricity—more than 64,000 gigawatt hours per year. New South Wales is the largest and most important electricity market in Australia. We account for around one-third of the total installed generation capacity and about one-third of all retail customers in the national electricity market—the NEM. Macquarie Generation and Delta Electricity are the two largest generators in the national electricity market. It is the right to trade in the output of our generators that bidders have purchased through gentrader contracts. The electricity then is distributed

to New South Wales families and businesses via the State-owned poles and wires and is sold by electricity retailers to New South Wales families and businesses. There are around 3.1 million electricity customers in New South Wales. By that I mean residential, small to medium businesses and large industrial mining commercial customers.

As the Committee is well aware the Government has signed the first two transactions worth \$5.3 billion. Origin Energy has purchased the retail operations of Integral Energy and Country Energy, and the right to trade the output of Eraring Energy for a total of \$3.25 billion. In the second transaction, True Energy has purchased the right to trade the output of Delta's Electricity western power stations and the retail operations of Energy Australia for \$2.035 billion.

I want to address the concept of gentrader. Given the success of the first tranche of the transactions, and the high level of competitive bidder participation it is now a model which has been accepted by industry. It is a model which removes the taxpayers of New South Wales from the very risky business of electricity trade, one of the key objectives of the reform. There is no question that gentrader contracts fundamentally change the nature of our generating businesses and transfer substantive risks to the private sector. Today the State-owned generating companies are major market participants in the national electricity market and are exposed to all the risks which that involves. They run very sophisticated hedge books and sophisticated trading strategies. The wholesale price of electricity in the national electricity market can surge from \$50 to \$10,000 a megawatt hour in a matter of minutes.

Under the gentrader model our generating companies effectively become asset managers with market risk removed. This allows the Government—and when I talk about the "Government" I talk about the taxpayers of New South Wales—to exit the volatile business of trading electricity. The job of the generators changes to one of ensuring that the equipment produced in electricity is maintained in good order and capable of meeting the requirements of the gentrader contracts. The gentrader, in turn, will make monthly payments to the generators to meet all of the costs of producing electricity which they trade. This means the gentrader will pay for all of the fuel supplies, all of the fixed and variable charges that are expected to be incurred by the generator, wages, salaries, maintenance, capital operating expenditure, and any carbon liability that may emerge as a result of the introduction of a carbon tax, or similar arrangement, by the Commonwealth Government.

I would like to move on to how this transaction was executed over a period of two years—yes, nearly two years since the Government reaffirmed its energy reform strategy in March 2009. Chart two entitled "Energy Reform Project" outlines the governance structure for the transaction and reinforces the robust arrangements and processes that have been built up around the transactions and that is to ensure that issues and policy matters are appropriately considered right through the transaction process. Significant resources have been allocated to the transaction which, as I said earlier, is the most fundamental economic reform in this State in many, many years.

Let me briefly explain the structure because it is very important to the whole issue of the transaction. The energy reform project team reports to me as the Treasurer, and through me to the relevant Cabinet committees. The project is guided by a steering committee, chaired by Dr Col Gellatly, as chairman of the Energy Reform Task Force. The steering committee itself is made up of representatives of NSW Treasury, the Department of Industry and Investment and the Department of Premier and Cabinet. Throughout the transactions the Government has received: financial and transaction advice from Credit Suisse, Lazards; legal advice from Baker and MacKenzie, and Johnson,

Winter and Slattery; energy market advice and modelling from Frontier Economics; accounting and tax advice from Ernst and Young; and probity advice and supervision from RSM Bird Cameron.

Other consultants have been engaged for various aspects of the project including engineering and information and technology. Reporting to the steering committee, through the project director, there has been, over time, as many as 13 different working groups responsible for various aspects of these transactions, and that includes the gentrader contracts, the due diligence, retail separation, regulation and employee issues, just to name some of the different areas that have been dealt with through this transaction process. Reporting to those working groups, individual businesses have formed their own internal working groups and committees to manage work flow.

I would like to move on to some of the key milestones in the transaction over the past two years. To do that I will table for the benefit of the Committee, a timeline which shows the steps and the processes that have been passed through since September 2008. This shows that it has been a long, detailed and very public process. The Parliament has had an unprecedented access to thousands upon thousands of transaction documents which were produced under parliamentary privilege to the Legislative Council. More than 80 boxes of documents were delivered to the upper House. Notwithstanding the fact that these thousands of documents are in this building today, it seems to me that many of them have gone unread. This chronology is important because it dispels immediately any notion that the provisions of the transaction was some kind of surprise, or element of surprise. This has been a multibillion dollar transaction. Every inch of this transaction has been signposted, debated, analysed and scrutinised every step of the way for more than two years.

It is here I would like to address the role of the directors of the five State-owned corporations [SOCs] in the 18 months leading up to the transaction. The SOCs involved in the first tranche of the transaction are Delta Energy, Eraring Energy, Energy Australia, Integral Energy and Country Energy. Let me very clear on this important point: those SOCs boards have been briefed repeatedly since March 2009 on each step of the transaction process and their role in it. I would like to table a document outlining the extent of briefings to those SOCs. Those boards have been involved in at least six major briefings on issues like the gentrader contracts, the transaction process, the transaction approval process and the Government's intention to use its ministerial direction powers to execute the transaction documents, if necessary.

I can confirm that between March and May last year the boards of Delta and Eraring were briefed that the Government would use the ministerial directions clause of State Owned Corporations Act, if required, to complete this transaction. That means that basically any assertion that this was a sudden move by the Government undertaking four weeks ago is simply incorrect. I want to be very clear on the point that the discussion of the use of ministerial directions was well and truly flagged to the boards many, many times. The bids and the transaction have gone through literally hundreds of experienced hands and been reviewed by thousands of eyes before it got to the SOCs boards. For 18 months, the SOCs boards were aware the Government was prepared to use its ministerial direction powers, if required.

The reason for this is quite clear. If you look at chart one, each board of each SOC is responsible for only that State-owned corporation—its own little patch. They are not answerable to any other SOC or responsible for the Government's overall reform objectives. Their fiduciary duty is to their own SOC, as it should be. It is the elected Government that takes responsibility of the big-picture policy direction, and it is the Government which had the responsibility to deliver this massive economic reform, that is, getting out of electricity generation, and the billion dollar cost to future

generations, getting out of the retail energy market and securing the State's triple-A credit rating and future financial security of the State.

When each of the SOC boards was convened on the morning of 14 December it was provided with information relevant to its own State-owned corporation only. None of the boards was asked to consider the overall bid combinations, that is, the total bid values or the relationship between the bid prices for retail and the bid prices for gentrader, and that is entirely appropriate. It is with that scenario it was inevitable that under the provisions of the State Owned Corporations Act that a ministerial direction would need to be issued to execute the transactions. I would just like to explain why.

The Government as the owner and only shareholder of the SOCs was essentially asking the electricity trading companies to stop trading electricity. To put it very simply we are asking a leopard to change its spots. Of course, a SOC board acting in a commercial manner would not support essentially voting itself out of a core business. But as the owners of the SOCs, the Government had a set of public policy objectives that it wished to achieve and we had the power to direct them to achieve that well within the State Owned Corporations Act. As I said earlier, the board knew for 18 months that the Government would exercise its ministerial direction if need be. This was not a surprise move in any way. I can further confirm that in circumstances where a ministerial direction is issued, directors of the SOCs, members of the boards, are indemnified against any civilian action that may arise as a result of them complying with that direction.

I want to move on to the issue of value which has been well and truly canvassed in the public arena. I can confirm to the Committee that the retention value for each of the two transaction bundles was exceeded. The retention value is effectively the Government's reserve price and in both transaction bundles that were traded we exceeded the reserve price of the Government. I can also confirm the total transaction proceeds of the \$5.3 billion exceeded the combined retention values of the five major businesses transacted. That is a fact and, however, before I am asked I am not going to go into the retention value of the individual assets because we have other transactions that are live and it could impact on those transactions. Obviously, as with other parts of the transaction, we expect the Auditor-General, when he does his standard review of any major transaction of government, to review this work in detail. To discuss retention value of individual assets would severely compromise the live ongoing transactions and potentially risk hundreds of millions of dollars of taxpayers' money.

But one fact is clear: these packages were sold for more than their retention or reserve value. Once the retention value had been finalised, and it had been determined the bids before the Government surpassed it, it was the budget committee of Cabinet that approved the transaction on the advice of the transaction steering committee, with the support of the project team and with the support of NSW Treasury, clear in the knowledge that the people of New South Wales will be receiving an exceptional deal for the bundle of assets as they were being sold.

That brings us, I guess, to the decision of the 8 out of 30 directors to resign from the SOC boards. The eight directors were only on the boards of Delta West and Eraring. Let me be clear about one point that I think has been a bit lost—22 directors out of the five SOCs, including the chief executive officers, remained, yet there has been no question asked of them as to why they did not resign. The directors on three of the five SOCs boards were all able to come to a decision, yet those eight directors elected to make no decision at all. They did not support the sale of their organisation but equally they did not oppose it. Instead, they chose to leave. That was their decision made for their individual reasons, and I have no issue with it.

The effect of the resignations from Delta and Eraring was to deny the boards a forum. While this was taking place we had two international power companies who had made bona fide bids, both in trading halts, on both the Australian and the Hong Kong stock exchanges. We also had unhappy losing bidders already beginning to talk down the transaction. It was a situation that had to be resolved and this is why new directors were appointed on 14 December.

I, as the Treasurer of New South Wales with the duty to protect the State's finances and the future of this State, was not prepared to allow a fundamental economic reform and billion dollars of taxpayers' money, as well as a major restructure of our energy market, be risked all because a minority of directors refused to make a decision they had been briefed about for some 18 months and they knew they would eventually have to make. They could have voted "yes" to the proposals before them. They could have voted "no". In the end they decided not to vote at all and in the end the Government exercised its powers under the relevant legislation in the greater interests of the State—powers it had always flagged it was prepared to exercise.

The Government received legal advice regarding the appointment of new directors to Delta and Eraring boards. The two boards were lawfully reconstituted and then considered the transactions. Those two boards took advice, including from professional management of the individual SOCs and were subsequently directed to execute the transaction documents. The Government announced the deals as soon as the transactions were completed. Anyone familiar with complex mergers and acquisition deals knows they can be completed at any hour of the day, day or night. I believe I had a duty to the people of New South Wales to announce the completion of such a massive reform as soon as the deals were done, regardless of the hour of the day.

To sum up, the Government's financial advisors remain in detailed negotiations with multiple bidders for the remaining gentrader and development site contracts. I ask you to consider the live status of these negotiations and the commercial-in-confidence nature of the transaction contracts that have already been entered into. I am pleased to be here to answer your questions. However, my responses will take into account the need to maintain the confidentiality of the commercial aspects of the contracts entered into, as well as those currently being negotiated with bidders. I thank the Committee for its patience.

CHAIR: We will have questions from the members of the Committee, but I have just one general one for the Premier. As you gathered from my opening statement, the proroguing of Parliament has created a number of problems for this Committee. What were the reasons for you proroguing Parliament at almost the same time as the Committee was being established?

Ms KRISTINA KENEALLY: I was asked by my department, the Department of Premier and Cabinet, on 29 November to nominate a date for the proroguing of Parliament. Once I had received advice that the Government has complied with all Standing Order 52s I proceeded with the proroguing of Parliament. In the advice that was provided to me by the Department of Premier and Cabinet they also provided me with the dates of the previous prorogations of Parliament, which included, from memory, 7 December by the Fahey Government, mid January by the Iemma Government and late January by the Carr Government. Parliament is, as a usual procedure, prorogued around this time prior to a State election, and once I had received the advice that we had concluded our calls for papers for the upper House I proceeded with the proroguing of Parliament.

CHAIR: Did you take into consideration the effect of that on the proposed inquiry?

Ms KRISTINA KENEALLY: I recognise now that it had an effect on this Committee, which is why I acknowledged that. I acknowledge that I made a mistake in underestimating the level of public interest in this transaction and the need for scrutiny prior to the State election. Anyone can make a mistake. The question is what you do when that occurs. I have acknowledged it, taken responsibility, and that is why I am here today, the Treasurer is here, key members of the bid team, as well as Treasury officials will be here tomorrow to answer this Committee's questions.

The Hon. GREG PEARCE: You have heard now that the Committee has resolved to summons the directors to give evidence. Will you now unprorogue or recall the Parliament to remove the uncertainty about privilege and to protect these witnesses?

Ms KRISTINA KENEALLY: I appreciate the question. Technically, there is no such process as unproroguing Parliament, and I see the recall of Parliament as an unnecessary step, given that I am here, the Treasurer is here, these gentlemen, Dr Gellatly and Mr Yeadon, as well as Treasury officials will be here. I do believe in accountability and scrutiny. I have always said that this transaction stands up to scrutiny, and indeed I have offered the Auditor-General additional resources in order to undertake his scrutiny of the transaction.

The Hon. GREG PEARCE: If you will not recall Parliament to ensure that the directors have protection for telling the truth, will you give your personal assurance that your Government will not sue any of these directors for telling the truth?

Ms KRISTINA KENEALLY: I would note that the directors have a responsibility to their companies and that is where their responsibility lies. I am here today to provide the accountability and transparency that I am quite confident this transaction stands up to. With the greatest of respect to the Committee, I do wonder why the Committee has only asked for those eight directors who resigned and not any of the 22 who did not.

The Hon. GREG PEARCE: Do you recognise that your actions in the way that you put out the Crown Solicitor's advice and the other actions you took before Christmas have had the effect of intimidating these witnesses? A number of them have written to us saying that as a result of those things that is the reason they will not appear now.

Ms KRISTINA KENEALLY: I go back to the Chair's opening statement and he made clear there are competing legal views. Indeed, I understand the Clerk of the Legislative Council has a different view to the Crown Solicitor. The Government relies on the Crown Solicitor—

The Hon. TREVOR KHAN: That is too cute by half. It is quite plain what you have done. Surely you can concede that what you attempted to do—

The Hon. GREG DONNELLY: Point of order—

CHAIR: Let the Premier finish her sentence.

Ms KRISTINA KENEALLY: Clearly, the Clerk and the Crown Solicitor have a different point of view. The Government relies on the Crown Solicitor's advice, and that was made, one, it was sought and, two, made available following questions from the media as to the status of the Crown solicitor's advice.

The Hon. GREG PEARCE: I accept that the directors have duties to the companies of which they were directors, but I ask you again. Will you personally guarantee that your Government will not take any action against these directors if they tell the truth?

Ms KRISTINA KENEALLY: Again, I have no qualms about what these directors might say and I think it would be a loss for democracy if, as some members of Parliament have suggested, this needs to end up in courts. I do not see any need for that. I have no qualms about these directors explaining their decisions. As the Treasurer has just outlined, they had extensive briefings over a two-year period and these eight directors chose not to take a decision. They did not vote for the transaction; they did not vote against it. They simply denied their boards a quorum.

The Hon. GREG PEARCE: Can I take it from that answer that you are saying that you will guarantee that your Government will not take any action against the directors if they tell the truth?

Ms KRISTINA KENEALLY: I will not give a guarantee of the nature you are suggesting in the absence of knowing what sort of information—for example, I would not want, in any circumstance, to see the retention value revealed whilst we are in a live bidding process. Please understand that this is in the best interests of the taxpayer. There is a significant economic reform underway. There is a significant live bidding process underway. The retention value is absolutely essential in order to secure the best outcome for the taxpayer. Neither the Treasurer nor I will say anything here today; nor would I want in any way the retention value to be publicly revealed before the conclusion of the transaction. Mind you, once the transactions are concluded there will be a very full public review by the Auditor-General and at that point I will have no qualms about the retention value being made public.

The Hon. GREG PEARCE: But as far as you are concerned the axe continues to hang over their heads.

Ms KRISTINA KENEALLY: As I have said, my interest is to act in the best interest of the taxpayer and I will not have the retention value or anything—

[Interruption]

CHAIR: Order! Please remove that person from the public gallery.

The Hon. GREG PEARCE: You mentioned that you had various advice in relation to proroguing the Parliament. At any time was there any advice from your department as to a recommended date to prorogue Parliament?

Ms KRISTINA KENEALLY: No, there was no recommended date put to me by my department.

The Hon. GREG PEARCE: So you made that decision yourself?

Ms KRISTINA KENEALLY: Yes I did.

The Hon. GREG PEARCE: Was there any discussion between you or any of your officers and the Treasurer about the date?

Ms KRISTINA KENEALLY: I had no discussions with the Treasurer.

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The Hon. GREG PEARCE: With any of his staff or any of your staff with his staff?

Ms KRISTINA KENEALLY: I had no discussions with his staff about it.

The Hon. GREG PEARCE: So there was no communication between the Treasurer and yourself as to the date?

Ms KRISTINA KENEALLY: That is correct.

The Hon. GREG PEARCE: For the record, who were the shareholder Ministers and the portfolio Minister at the time of execution of the transactions?

Ms KRISTINA KENEALLY: At the time of the execution of the transaction the shareholding Ministers were Minister Daley as Minister for Finance and the Treasurer.

The Hon. GREG PEARCE: And the portfolio Minister?

Ms KRISTINA KENEALLY: The portfolio Minister remains the Minister for Energy. However, I transferred some of the responsibility for direction making to the Treasurer approximately six weeks before the conclusion of the transaction. I would need to check the date for you. That was to enable the transaction to be carried out in an efficient manner. We were very mindful, as the Treasurer has outlined and we had advised the boards, that the Government was prepared to use its direction-making power should it be necessary to do so in order to conclude this important piece of economic reform.

The Hon. GREG PEARCE: Would that transfer of powers to the Treasurer have been pursuant to the State-owned Corporations Act?

Ms KRISTINA KENEALLY: I would need to check the advice that I was provided but I did receive preparation of the documentation for that from my department.

The Hon. GREG PEARCE: Are you aware that if you did use that power you are required to publish the details of that in the Government gazette?

Ms KRISTINA KENEALLY: From memory, it was gazetted at the time and indeed we had inquiries from at least one media outlet in relation to it.

The Hon. GREG PEARCE: So you did do it under that power then?

Ms KRISTINA KENEALLY: Yes. I would need to check the documentation. I do not have it with me today but I can assure you it was provided and prepared for me by the Department of Premier and Cabinet.

The Hon. TREVOR KHAN: I want to go back to the proroguing of Parliament that occurred. When you sought the proroguing of Parliament from the Governor were you aware of the intention for some members of General Purpose Standing Committee No. 1 to call for an inquiry into the gentrader transaction?

Ms KRISTINA KENEALLY: There had been some public reporting of it but I had received nothing of any official nature about it. However, of course, in the advice that I was provided by the Department of Premier and Cabinet it did outline the effect of proroguing across a range of areas—Standing Order 52s, questions on notice and the effect on committees.

The Hon. TREVOR KHAN: The only inquiry that was in the wind as at the morning of 22 December 2010 was an inquiry into the gentrader transaction, was it not?

Ms KRISTINA KENEALLY: That I am aware of, yes, and I have said that I underestimated the level of public interest in this and having that scrutiny prior to the election. The Auditor-General will, and always does, provide scrutiny—

The Hon. TREVOR KHAN: We will get on to that.

Ms KRISTINA KENEALLY: Thank you.

The Hon. TREVOR KHAN: Were you aware as at 21 December—that is, the day before you sought the proroguing of Parliament—that your Treasurer was ringing the chairman of this Committee trying to convince him not to support an inquiry into the gentrader transaction?

Ms KRISTINA KENEALLY: The Treasurer can speak to his own conversations—

The Hon. TREVOR KHAN: I am asking what you were aware of.

Ms KRISTINA KENEALLY: I have said publicly that I signed the papers the day before, on 21 December, and no, I was not aware of any communication between the Treasurer and Reverend the Hon. Fred Nile.

The Hon. TREVOR KHAN: So the Treasurer, I take it, was off on a flight of fancy of his own with regards to trying to shut down an inquiry into the gentrader transaction. Is that the case?

Ms KRISTINA KENEALLY: The Treasurer was in New York briefing the ratings agencies on the position of the mid-year economic numbers.

The Hon. TREVOR KHAN: Yes, we know that. Was he off on a flight of fancy of his own trying to shut down an inquiry into the gentrader transaction?

The Hon. ERIC ROOZENDAAL: I think the Hon. Trevor Khan is using quite colourful language. I did indeed ring Reverend the Hon. Fred Nile and raise some concerns I had about any inquiry potentially risking hundreds of millions of dollars of taxpayers' money—

The Hon. TREVOR KHAN: Was that one phone call or was it more than one phone call that you made seeking to shut down the inquiry?

The Hon. ERIC ROOZENDAAL: I think we need to be clear. I wanted to explain to Reverend the Hon. Fred Nile my concerns that any inquiry that detailed the retention values particularly of the gentraders while we have two live transactions worth billions of dollars could potentially impact on those transactions. Those were the issues that I canvassed—

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The Hon. TREVOR KHAN: Was there one or more telephone conversations? It is a simple question that can be answered simply.

The Hon. ERIC ROOZENDAAL: From my recollection I had one conversation with Reverend the Hon. Fred Nile.

The Hon. TREVOR KHAN: How did you become aware on 21 December that there was sought to be an inquiry into the gentrader transaction?

The Hon. ERIC ROOZENDAAL: I think from memory it came from reading something on the internet about it.

The Hon. TREVOR KHAN: So you were aware of it and phoned. Did you then phone other members of the budget committee of Cabinet to say this gentrader transaction was about?

The Hon. ERIC ROOZENDAAL: I am sorry, I do not understand the question.

The Hon. TREVOR KHAN: Having made a phone call trying to shut down in inquiry, when you did not get the answer that you wanted out of Reverend the Hon. Fred Nile did you just sit in your motel room and say, "Oh well, that'll do" or did you actually then attempt to put another course of action into play?

The Hon. ERIC ROOZENDAAL: With the greatest of respect, I explained my concerns to Reverend the Hon. Fred Nile. I did not seek an undertaking from him to shut down the committee, to use your term. I merely explained to him my concerns about the impact on the ongoing transactions. I did not seek or ask him to shut it down, as you put it. I explained to him that the Government was always prepared to subject the process to scrutiny but I had serious concerns about the financial impact on the taxpayers of this State if it damaged the ongoing transactions and I left that with Reverend the Hon. Fred Nile to consider for himself.

The Hon. TREVOR KHAN: Mr Roozendaal, having not got the answer that you wanted out of Reverend the Hon. Fred Nile, are you saying that you did nothing further?

The Hon. ERIC ROOZENDAAL: I did not seek an answer from Reverend the Hon. Fred Nile. I merely alerted him to my concerns and I left it at that.

The Hon. TREVOR KHAN: So you did not ring anyone in your own department?

The Hon. ERIC ROOZENDAAL: Not to my recollection, no.

The Hon. TREVOR KHAN: You did not ring anyone in the Premier's Department?

The Hon. ERIC ROOZENDAAL: Not to my recollection, no.

The Hon. TREVOR KHAN: You got what you say is an important \$5.3 billion transaction that may be subject to scrutiny that you do not want to have happen, and you sit in your hotel room and do nothing. Is that what you are asking this Committee to accept?

The Hon. ERIC ROOZENDAAL: All I can do is explain to the Committee what happened. I rang Reverend the Hon. Fred Nile because I know him to be a reasonable and honourable person. I explained to him my concerns and I left it with the Chair of the Committee to consider those concerns. I did not ask him to shut down the process; I merely explained what my concerns were. I felt it was important that he be alerted to those concerns.

The Hon. TREVOR KHAN: Ms Keneally, before you held the executive council meeting on 22 December at about 9 o'clock in the morning, did you notify the Treasurer of your intention to prorogue Parliament on that morning?

Ms KRISTINA KENEALLY: First of all, and to be clear on this point, Mr Khan, I did not attend the executive council meeting that morning. I did sign the paperwork the day before. From memory, I did speak to the Treasurer on the evening of 21 December about how the meetings with the ratings agencies were going. I mentioned in that conversation that the Parliament would be prorogued, but we had no conversation of any nature about the Committee or its inquiry. The conversation that the Treasurer and I had that night was about the ratings agencies and the nature of his meetings.

The Hon. TREVOR KHAN: Ms Keneally, just to be clear on this point, at the time that you signed the papers that would put in train the proroguing of Parliament you knew, did you not, that the effect of it would be to stop—or you thought it would stop—the inquiry into the gentrader transaction?

Ms KRISTINA KENEALLY: As I said, I knew it would not stop the Auditor-General's scrutiny. I have no qualms about scrutiny.

The Hon. TREVOR KHAN: I am not asking about that. I am talking about—

The Hon. LUKE FOLEY: Let her answer.

Ms KRISTINA KENEALLY: Am I able to continue, or do you want to finish your question?

The Hon. TREVOR KHAN: I am asking you to apply your mind to the question and to answer the question that was put to you.

Ms KRISTINA KENEALLY: I have already said—I think in response to a question from Mr Pearce—I acknowledge that I underestimated the level of interest in the Committee.

The Hon. TREVOR KHAN: Premier, with respect, that is not answering the question. You were asked to answer the question wholly.

The Hon. LUKE FOLEY: Point of order: The Hon. Trevor Khan keeps badgering the witness. If he let her finish her answers rather than continuing to jump in he might be better informed.

The Hon. TREVOR KHAN: It is appropriate that she answer the question rather than—

The Hon. LUKE FOLEY: Let her answer the question.

CHAIR: Order! We will continue with the questions.

Ms KRISTINA KENEALLY: Mr Khan, I am happy for you to restate your question.

The Hon. TREVOR KHAN: What I am asking is this: When you signed the papers you knew, did you not, what its effect would be. Sorry, I withdraw that question. When you signed papers you hoped that the effect of that would be to prevent this inquiry from proceeding?

Ms KRISTINA KENEALLY: I certainly knew, on the advice of the Department of Premier and Cabinet [DPC], that the effect of proroguing Parliament would be to stop committees from meeting, yes, that is correct. However, DPC in its advice also stated to me that there were competing legal views to that point. Indeed, the Clerk of this Chamber had a different view from the view of the Crown Solicitor.

The Hon. TREVOR KHAN: Premier, Mr Pearce might ask this question himself. At the time you were signing the papers you knew, did you not, that the only potential inquiry that was underway was this inquiry?

Ms KRISTINA KENEALLY: Yes, I did.

The Hon. TREVOR KHAN: When you were signing the papers you were applying your mind to the fact that the effect of the signing those papers would be to close down this inquiry and no other inquiry?

Ms KRISTINA KENEALLY: I am sorry, Mr Khan.

The Hon. TREVOR KHAN: I am sorry, were you distracted?

Ms KRISTINA KENEALLY: I started to speak and you had not finished your question.

The Hon. TREVOR KHAN: When you signed the papers you were applying your mind to the question of the impact of the proroguing of Parliament on this inquiry alone?

Ms KRISTINA KENEALLY: No. In fact, I was applying my mind to a request from the Department of Premier and Cabinet that Parliament needed to be prorogued. It had asked me to nominate a date on 29 November. Yes, it provided me with advice to the effect of proroguing Parliament across a range of areas. Yes, I acknowledge now that the proroguing of Parliament has had an effect on this Committee, which is why I changed my mind and I decided to appear here. I have always felt confident that this transaction stands up to scrutiny. I have always been comfortable with the Auditor-General providing that scrutiny, but I acknowledge that there is a public interest. That is why I am here today, that is why the Treasurer is here today, that is why Mr Yeadon and Dr Gellatly are here today, and that is why members of the Department of Treasury will be here tomorrow.

The Hon. TREVOR KHAN: Premier, how many directors were on the board of Eraring?

Ms KRISTINA KENEALLY: On Eraring there were seven.

The Hon. TREVOR KHAN: And how many resigned?

Ms KRISTINA KENEALLY: Four.

The Hon. TREVOR KHAN: How many directors were on the board of Delta?

Ms KRISTINA KENEALLY: Five. Is that correct?

Dr GELLATLY: There were eight.

Ms KRISTINA KENEALLY: There were eight on Delta.

The Hon. TREVOR KHAN: And how many resigned?

Ms KRISTINA KENEALLY: Four resigned.

The Hon. TREVOR KHAN: Of the two generator companies—

Ms KRISTINA KENEALLY: I apologise. I think I made the same mistake that the Committee has made. I flip-flopped Eraring and Delta in my answer; my apologies.

The Hon. GREG PEARCE: There were seven on Delta and eight on Eraring?

Ms KRISTINA KENEALLY: No, there are not. We have all got it wrong. Hang on a moment.

The Hon. TREVOR KHAN: Premier, you are primarily responsible for State-owned corporations [SOCs].

Ms KRISTINA KENEALLY: Would you hold on a moment? I note that today the Committee as well as a number of other people have made a mistake in flip-flopping the board director names. On the board of Delta there are nine, including the chief executive officer, and on the board of Eraring there are nine, again including the chief executive officer. From each of those boards four resigned.

The Hon. GREG PEARCE: Ms Keneally, we have taken note of your concern about the retention values. Mr Roozendaal has indicated that the retention values or reserve for the bundles were met. Was the retention value for Delta West met and was the retention value for the Eraring gentrader met?

Ms KRISTINA KENEALLY: I will ask Dr Gellatly to answer those questions.

Dr GELLATLY: As the Treasurer explained, the retention values were met for the packages of the two transactions. It is not appropriate to disclose individual asset retention value while a live transaction is occurring.

The Hon. GREG PEARCE: Who determined the retention values?

Dr GELLATLY: There was a process. There was a working party—one of the many, as the Treasurer mentioned—that was set up and chaired by Richard Timbs from Treasury. That went through a process using modelling and advisers, as necessary, to determine the retention values, which eventually were signed off through the steering committee.

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The Hon. GREG PEARCE: The steering committee, which was charged with selling the assets, decided on the price?

Dr GELLATLY: That is the usual process in any asset sale.

The Hon. GREG PEARCE: Was an individual amount determined for each of the businesses?

Dr GELLATLY: Yes, there was.

The Hon. GREG PEARCE: Those amounts would have been given to the boards?

Dr GELLATLY: No.

The Hon. GREG PEARCE: They were not given to the boards?

Dr GELLATLY: No.

The Hon. GREG PEARCE: The boards were not told what the retention value was for the assets that you were insisting they sell?

Dr GELLATLY: That is right.

The Hon. GREG PEARCE: They were just told to take it or leave it?

Dr GELLATLY: That is the usual process. You do not disclose to the boards of the corporations that you are selling what their retention value is.

The Hon. GREG PEARCE: That is the usual process?

Dr GELLATLY: Yes.

The Hon. GREG PEARCE: We might have alternative evidence on that.

Dr JOHN KAYE: Premier, I refer to the issue referred to earlier by Mr Khan relating to your motivation in proroguing Parliament. You made it clear to the Committee that it was not about avoiding scrutiny by this Committee. Is that correct? Can I summarise your position by saying that you had no intention of avoiding scrutiny. It was not in your heart or in your mind to avoid scrutiny when you prorogued Parliament.

Ms KRISTINA KENEALLY: No.

Dr JOHN KAYE: How does that gel with the statement made by the Treasurer to Gemma Jones of the *Daily Telegraph* on the following day in which he said:

Any scrutiny should not be done by a politically motivated committee ...

Some of the present members of the committee have already said publicly and in Hansard they object to the transaction process.

It has been prorogued early, it has been prorogued later [before past elections] but at the end of the day we have got to work in the interests of the people of NSW.

Do you read that as stating that it was his belief that the prorogation happened specifically in order to avoid appearing before this Committee?

Ms KRISTINA KENEALLY: No, with the greatest respect, I do not see that in those words. The Treasurer made the point that he made here today and that I have made—we are still in a live transaction process. Our responsibility as Premier and as Treasurer is to the taxpayers of New South Wales—to get the best value, the best outcome and to achieve the objectives we set out in 2008 following the Owen report.

Dr JOHN KAYE: With respect, we are talking about the prorogation. You said that your prorogation had nothing to do with avoiding scrutiny before this Committee.

Ms KRISTINA KENEALLY: Indeed, I agree to that.

Dr JOHN KAYE: Yet the next day the Treasurer said that there should not be any scrutiny before this Committee.

Ms KRISTINA KENEALLY: The Treasurer is certainly able to speak for himself, and you might want to ask him a question.

Dr JOHN KAYE: I am asking you the question.

Ms KRISTINA KENEALLY: You asked me to interpret the Treasurer's words. I think he made a valid point. There are those who have—and it is their right to do so—political differences on the structure of the electricity market and the ownership of various assets, or classes of assets, within the electricity market. We would not want to see those who have different political views seeking to scuttle a live and ongoing transaction that is seeking to achieve the policy objectives of this Government.

Dr JOHN KAYE: Did you give that answer in response to the question about prorogation, or are you making that as a general observation? I asked about prorogation and you said that you would not seek to have it scuttled.

Ms KRISTINA KENEALLY: You asked me to explain my understanding of the Treasurer's statement from which you read out earlier.

Dr JOHN KAYE: Let us go back one step. The Treasurer might prefer to answer this question as he might have more detailed knowledge. Is it not correct that in the confidentiality agreements there is a specific clause that allows people who have signed the confidentiality agreement to give fulsome answers when they are required to do so by a lawful body?

The Hon. ERIC ROOZENDAAL: To which agreements are you referring?

Dr JOHN KAYE: To the confidentiality agreements, which I presume the directors have signed in the transaction process.

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The Hon. ERIC ROOZENDAAL: I am not aware of the individual confidentiality agreements of those State-owned corporations, so I cannot really comment on them.

Dr JOHN KAYE: Dr Gellatly, are you aware of what is in them?

Dr GELLATLY: Not off the top of my head.

Dr JOHN KAYE: I presume that you signed one of those confidentiality agreements?

Dr GELLATLY: As a director?

Dr JOHN KAYE: Yes.

Dr GELLATLY: No.

Dr JOHN KAYE: You signed no confidentiality agreement at all with respect to this process?

Dr GELLATLY: Yes, of course I did.

Dr JOHN KAYE: In that—

Dr GELLATLY: I signed the confidentiality agreement as the chair of the reform process. I would see it as a confidentiality agreement in that regard.

Dr JOHN KAYE: When the reform process provided information about the transaction to boards of directors did they have to sign a confidentiality agreement in respect of that?

Dr GELLATLY: I am sure there was but I cannot recall exactly.

Dr JOHN KAYE: Mr Yeadon?

Mr YEADON: Yes, there was a confidentiality agreement. I think it was indicated earlier that there are differences of legal opinion as to the status of this Committee. I say to you that for my purposes I am not prepared to break confidentiality agreements in the current circumstances.

Dr JOHN KAYE: Mr Yeadon, that was not my question. I would like to know whether there is a clause in the agreement that states that if you give an answer to a lawfully constituted body, or you are compelled to do, you are not bound by that confidentiality.

Mr YEADON: I am not sure whether that provision was in the confidentiality agreement that I signed.

Dr JOHN KAYE: You do not recall whether it was in there?

Mr YEADON: Not off the top of my head, no. Do not quote me on that as it might be there.

CHAIR: Is it possible for you to table a copy of that agreement—not the one that was signed, but a pro forma agreement—for the benefit Committee members?

Dr JOHN KAYE: Could that be tabled today?

Ms KRISTINA KENEALLY: We give you our best undertaking to do so.

Mr YEADON: I indicate again, as I indicated in my earlier answer, that I am happy to come to this Committee and to answer all questions. However, I would like the Committee to bear in mind that there are some legal differences of opinion which I believe at the end of the day would be resolved only in the court itself relating to matters of privilege and protection in this Committee meeting. I will not go to areas that will see me breaching confidentiality or jeopardising the future prospects of this transaction which, as the Treasurer and Premier have indicated, are live. That simply would be too detrimental for the people of New South Wales. I will not go into areas that will result in a breach of confidentiality.

Dr JOHN KAYE: Thank you, Mr Yeadon, I appreciate that. I would like to now go to the Treasurer and ask the Treasurer some specific questions about the actual transaction itself. You signed memorandums of understanding to conclude gentrader contracts with Origin and TRUenergy for Eraring and Delta West, is that correct?

The Hon. ERIC ROOZENDAAL: Yes.

Dr JOHN KAYE: But you have not signed the contracts themselves?

The Hon. ERIC ROOZENDAAL: We are moving towards financial closure by the beginning of March.

Dr JOHN KAYE: Would that be before 5 March?

Mr YEADON: Yes. The transactions are scheduled to be finished, in fact, at the end of February.

Dr JOHN KAYE: Is it not true, Treasurer, that the Government goes into caretaker mode on 5 March?

The Hon. ERIC ROOZENDAAL: Yes.

Dr JOHN KAYE: Are you in a position to sign the contracts if there is a delay in moving to closure? Would you sign the contracts while you are in caretaker mode?

The Hon. ERIC ROOZENDAAL: We anticipate that the transaction will be completed on time.

Dr JOHN KAYE: Fantastic. But if it is not—because we know sometimes transactions involving these sorts of things are not—would you sign it while you are in caretaker mode?

The Hon. ERIC ROOZENDAAL: We would have to seek advice as to the appropriate behaviour of the Government if we were in caretaker mode.

Dr JOHN KAYE: Will you provide this Committee with that advice?

The Hon. ERIC ROOZENDAAL: In the event that we need to we will seek that advice.

The Hon. TREVOR KHAN: That was not an answer to the question.

Dr JOHN KAYE: That is not unusual. Can I now ask you about the terms of the contract? There are two contracts, as I understand it, and I must say there is a lot of information released by Origin Energy and very little by yourself—and that it is an interesting point in and of itself—but can I ask you about the arrangements with the contract? You said before that we are moving out of the risky business of generation—we the State of New South Wales are moving out of the risky business of generation, yet there are a number of clauses within that contract, as revealed by Origin Energy, and their statement to their shareholders that would suggest that there are still some risks associated with this contract left with the people of New South Wales. Is that correct?

The Hon. ERIC ROOZENDAAL: I think the simple answer to that is what the gentrader agreement does is apports risk between the generators and the generation trader. The responsibility for the generators is effectively to deliver power. They become an asset manager; their responsibility is to deliver power and all the market risk of trading and energy falls into the responsibility of the gentrader.

Dr JOHN KAYE: All of the market risk?

The Hon. ERIC ROOZENDAAL: The market risk in terms of trading. The generators are responsible for the delivery of power. In the event that they do not deliver power, they have an obligation to compensate the gentraders. But I just want to make this point, because I know exactly where you are going with this—

Dr JOHN KAYE: I am impressed by your prescience but let me show you where I am going with that and ask you the following question: When you say that there are, I guess they are referred to as ALDs, in the gentrader contract—they are called availability liquidated damages—is it not true that those liquidated damages depend on the market price at the time of the generator outage? This is the payment that the publicly owned generator has to make to the gentrader if the publicly owned generator fails to deliver energy at a particular time. Is it not true that those damages are dependent on market price?

The Hon. ERIC ROOZENDAAL: I will let Mr Yeadon answer that.

Dr JOHN KAYE: You do not know the answer yourself?

The Hon. ERIC ROOZENDAAL: I am allowing Mr Yeadon to answer it.

Mr YEADON: That is correct, it is not true.

Dr JOHN KAYE: It is not true?

Mr YEADON: It is not true. There is no relationship at all between availability liquidated damages and the prevailing market price at any particular time within the NEM.

Dr JOHN KAYE: Mr Yeadon, have you read the document that was put out to Origin Energy shareholders in respect to this transaction?

Mr YEADON: No, I am not a shareholder.

Dr JOHN KAYE: You have not read it?

Mr YEADON: No.

Dr JOHN KAYE: What would you say to the proposition that within that document at page 21 it specifically says ALDs—that is the payment we are talking about—are higher in peak than off-peak periods? You just said that the payments were not dependent on price—

Mr YEADON: The payment bears no relationship to the prevailing price within the NEM. Perhaps, Mr Chairman, I could give a brief outline of the gentrader for the edification of the Committee and how ALDs work, if you are interested.

CHAIR: Do you need that, John?

Dr JOHN KAYE: We are interested but I do not know whether we have got time.

Mr YEADON: I will be very brief. I will be extraordinarily succinct.

CHAIR: You may need to see that document so you know what Dr Kaye is talking about.

Mr YEADON: I have not seen the document but I understand what it is saying. The gentrader agreement is best looked at as a relationship and therefore there is a contractual arrangement or provision in a legal contract that outlines that relationship. That relationship is basically about providing electricity capacity, which is done by the owner, the allocation of risk between those two parties and, as the Treasurer and the Premier have both indicated, total, absolute market risk is with the gentrader—it no longer rests with the owner or the generator—and the document also works to align incentives with those two parties to ensure that they have an interest in mutual outcomes.

ALDs—if an owner does not provide electricity when it is called upon by the gentrader then they are open to what is called availability liquidated damages. In the first instance they are based on the cost of the replacement of a power station for that lost megawatt or whatever megawatt capacity is lost during the period when the owner is out. That cost is based on what it would cost to replace a megawatt of power for the owner. Clearly, one megawatt hour or a number of megawatt hours will not replace the cost, but if you look at the cost of building a power station in contemporary dollars, for the life of that asset it basically comes out at around \$30 a megawatt hour, which was the strike price for the availability liquidated damages. That is where it is drawn from because there is no relationship any more with the owner to the market; that is clearly with the gentrader. So it is just a penalty that is paid to the gentrader by the owner if they are not available when they are called upon to dispatch.

There is a variation to that because there is some volatility within the NEM through periods of shortage of demand for whatever reason, whether that be weather, breakdown of a generation distribution or transmission issues, and they can be discerned at times—hot weather and so on—and they have been deemed within the gentrader contract as super-peak periods. They are very rare or very innumerate times; they need to be nominated in advance by the gentrader and when a super-peak

period is nominated then the penalty rate is somewhat higher. I will not disclose that penalty rate because it is still subject to negotiation with a range of bidders and would be detrimental to the commercial aspects of the ongoing transaction.

Dr JOHN KAYE: Has it been finalised with Origin?

Mr YEADON: With Origin, no it has not, in fact, which is why I do not want to go into the details of it. But it does lift the overall ALD average a little bit above 30 because they are only a rare number of times throughout the year and they need to be nominated by the gentrader.

Dr JOHN KAYE: Presumably it is below the \$12,500?

Mr YEADON: Absolutely. We are nowhere near in the thousands. We get \$30 a megawatt hour beforehand. The other important rationale to understand behind the gentrader contract is that the Government would be silly to give back in rent, if you want to put it that way, any more than what it was paid for the asset in the first place. So if you look at the capacity payments—and you can draw an analogy with renting a house here; if you are going to rent a house for X number of dollars per year, if that house was not to be available then the landlord would not pay back to the occupant any more than the initial rent in the first place, and that is exactly the approach that is taken within the gentrader agreement. So ALDs are in fact capped on an annual basis to a maximum amount, which is the capacity charge that is being paid by the gentrader. So there is inherent protection in there within the State that they clearly know what the absolute amount of money per annum is that they will be up for. In an absolute disaster case scenario that every generator within the State's portfolio was to go belly up for the entire year, then the amount is known.

The other important point, I think, to understand about gentrader is that there has been an extraordinary amount of work gone into looking at the parameters of the plant and equipment—the kit, if you like—that is being rented to gentraders. In fact, 10 years of data on every half hour of dispatch within the NEM has been looked at to look at every outage that has occurred on all of these plants, both scheduled and unscheduled outages, which has then set the rate for the maximum available capacity that the gentrader can call on at any time for the generator to dispatch on their behalf into the NEM, and it is on that basis that the incidents of outage and the penalties that will go with it have been determined and that has been determined at a very prudent position, which is in keeping with responsible government on behalf of the people of New South Wales.

So there are many checks and balances within the document. The whole document is, in fact, constructed that way. The Government knows exactly where it is up to in terms of risk within the gentrader, and of course gentraders who have put significant amounts of money on the table to purchase these assets know how they operate as well. One would think, as a matter of course, that people who are purchasing a right to an asset or to an amount of generation would not put such significant amounts of money on the table if they did not know what they were purchasing. Certainly they do; they have spent months themselves and tens of millions of dollars in the data room going through all of this data. They understand what the gentrader delivers, the Government understands what it provides and bids have already been entered into and are being finalised and the transaction goes on. But, yes, the availability liquidated damages bears no direct relationship to the NEM price whatsoever.

(Short adjournment)

CHAIR: Treasurer, you gave a very impressive outline of how much information the directors had about all the stages of the proposed gentrading arrangement. How do you account for four directors of each of those bodies resigning? What reasons do you believe justify such a dramatic action by people like Michael Knight, a former Labor Government Minister—one would not see him as a Liberal Party stooge; he would be seen as loyal to the Labor Party? I find it hard to envisage people like that resigning for no reason. How would you justify that action?

The Hon. ERIC ROOZENDAAL: Thank you for that question. I was asked a question about memorandums of understanding before the break. I have reflected on my answer and I want to clarify that the Government has not signed memorandums of understanding with regard to these transactions. Binding contracts have been signed and there are no further decisions to be made. The process of completion involves the bidders effectively completing the financial arrangements and paying the people of New South Wales the \$5.3 billion. These are binding contracts in place and they will be honoured. I wanted to put that on the record after I reflected on the discussion we had earlier.

The Hon. TREVOR KHAN: Did you reflect or were you told?

Dr JOHN KAYE: There are things that have not been resolved.

The Hon. TREVOR KHAN: It is not a reflection; he has changed his evidence entirely.

The Hon. ERIC ROOZENDAAL: In relation to the question asked by the Chair, it is worth making the observation that directors on these boards are not appointed because of any political affiliations. Prominent people from all political parties and all walks of life are appointed to give the boards the appropriate mix. I will not provide any hypotheticals as to why those board members decided to resign. That was their individual decision and I am disappointed. However, I note that 22 directors chose not to resign and the boards are continuing to function as they should. Those who chose to resign made that decision and I will not make any judgement of them.

CHAIR: You said that by resigning they dismantled the quorum and you could not proceed. As a result, you had to replace them virtually at midnight with your own appointees. Was their action in resigning designed to prevent the gentrader sale proceeding—that is, they were not simply voting against it but depriving you of a quorum of directors?

The Hon. ERIC ROOZENDAAL: It is worth reflecting that the bids put before them had been ticked off through the process detailed in the charts provided and through the bid evaluation team, and they had been approved by the steering committee of the transaction team and the project team and had been ticked off by the legal advisers, the financial advisers and the probity auditors. Finally, they had been ticked off and supported by Treasury and brought to the budget committee of Cabinet for final approval. Therefore, the bids put before the directors had been well and truly carefully analysed and assessed by the many prudent processes that were part of the transaction.

It is also worth noting that none of the directors was directly involved in the negotiations in relation to the bids. They were simply told on the day. They had been alerted to the fact that this day would come—that is, when they would need to sit down and consider the issues before them and to support or not support the proposal put forward by the Government. They would simply be required to vote for it or against it. Their decision not to participate in that process was an individual decision and I will not reflect on it.

CHAIR: You have presented the Committee with a chart today showing the figures for Origin Energy at \$3.25 billion and TRUenergy at \$2.035 billion. Obviously, Treasurer, you have made as much mileage out of that as you can by adding the figures together to get to \$5.3 billion. Can you guarantee to the Committee that no subsidies or hidden subsidies were offered to attract those bids? In other words, is the net gain for the taxpayers far less than \$5.3 billion and could it be as low as \$3 billion?

The Hon. ERIC ROOZENDAAL: It is important when we talk about the energy reform process that we first acknowledge that there are two transactions still live at the moment for the remaining assets of MacGen and Delta. Those negotiations are continuing with multiple bidders. So the transaction is at stage two. We must also remember that the objectives of the energy reform strategy were always to derisk the State budget going forward, to shift the need for building future baseload generation to the private sector and away from the public sector pocket and the taxpayers of this State, to protect the State's solid gold triple-A credit rating and to protect the State's financial future. I think those objectives are being met through this process. Whatever the final net proceeds, that is something that Treasury will determine. Once it has been determined it, it will be released publicly.

CHAIR: I am interested in whether subsidies have been provided to attract the bidders. The obvious example is the Cobbora coal arrangement. I understand that the coal supplied by Centennial Coal costs \$44 a tonne but that Cobbora will be supplying coal at a very low rate of \$32 a tonne. In other words, the Government is carrying some built-in subsidy because it will control the Cobbora coalmine.

The Hon. ERIC ROOZENDAAL: When talking about Cobbora we should be clear about a number of aspects. First, this coal reserve is owned by the taxpayers of New South Wales and it has been set aside to provide future coal to our coal-fired generators. The three generating companies formed an unincorporated body to progress the Cobbora site. That development of Cobbora would have occurred regardless of whether or not we embarked on this energy reform strategy because our coal-fired generators do need and will need coal to continue to be supplied to them for the rest of their economic life. We did go to a tender process in relation to the Cobbora mine.

At the end of the day the Government was unhappy with the price from the preferred tenderer and determined that it would develop the site with a view to selling the mine in the short term—it is not a long-term investment. I believe it represents very good value for the people of New South Wales in two respects. First, it guarantees fuel supplies to our coal-fired generators—that is, it will keep the lights on and ensure that that coal supply is secured—and, secondly, we will get it at a reasonable price for the people of New South Wales. If there is a movement in coal prices in the future it will not have a major impact on the cost of generating energy.

CHAIR: I note that some of the documents make reference to monthly payments. Can you explain the situation now that those monthly payments have been included in the value of the trading rights—in other words, included in the \$2.035 billion?

The Hon. ERIC ROOZENDAAL: Monthly payments from whom?

Dr JOHN KAYE: He is talking about fixed charges for operation and maintenance and variable charges.

Mr YEADON: The operation and maintenance and variable charges are in fact paid by the gentrader directly or to the owner to compensate for the fixed and variable costs of the operation of

the power station. First there are the capacity payments, which buy the rights to the generation of the station, but then the station needs to be run. The gentrader contract is designed so that it is almost as if the gentrader owned the site. The Government does not have the risk of trading and therefore the gentrader pays an amount per month to the owner to cover all of the fixed and variable costs. Fixed costs are things like corporate overheads, rent and so on.

Of course, the highest of the variable costs is fuel—coal, oil and the like. There are also some pass-through costs; for example, existing coal contracts that rest with the current generators have been back-to-backed with the gentrader, but the payment still needs to be made by the owner because that is the contractual relationship. It is a pass-through cost and the gentrader compensates the owner for that. The important point to make is that those fixed and variable costs are "usables", if you like, over the life of the plant to operate it and the capacity charge is a payment for the right to have access to that capacity.

CHAIR: So, in summary, there will still be monthly payments and they have now been included in the gross—

Mr YEADON: Yes, but they will be paid by the gentrader.

Dr GELLATLY: But they are separate from the capacity payment.

Mr YEADON: Completely separate and upfront.

Dr JOHN KAYE: Separate in what sense?

Mr YEADON: Well, you bid the capacity payment—they are the figures on the chart—and then each month the gentrader will pay the generator to compensate for all fixed and variable charges to run the plant for that month.

The Hon. KAYEE GRIFFIN: Treasurer, can you outline to the Committee the transaction process and what levels of consultation took place?

Dr JOHN KAYE: He has done that.

The Hon. GREG PEARCE: We have done that.

Dr JOHN KAYE: You were not paying attention.

CHAIR: The member has asked for additional information.

The Hon. ERIC ROOZENDAAL: I can see from their faces that Committee members are thrilled by this question.

The Hon. TREVOR KHAN: But we are not thrilled by the repetition that will inevitably come as a result of the dorothy dixers asked by government members.

The Hon. KAYEE GRIFFIN: Excuse me! Mr Chairman, will you please remind the Hon. Trevor Khan that he will get another opportunity to ask questions and that he should not invade government members' time?

CHAIR: We assume that the answer will include additional information.

The Hon. ERIC ROOZENDAAL: I would like to be very clear from the start that this has been an open, transparent and accountable process. The successful transactions we have announced are the product of a logical, methodological and rigorous policy development and transaction program. The Government has undertaken exhaustive steps to execute what is undoubtedly one of the most important and complex financial transactions in the State's history. As the Treasurer, I have a fiduciary obligation to act in the State's best and long-term interests knowing that my actions will always be a matter of constant and ongoing scrutiny. I welcome that scrutiny.

Similarly, all the public sector officials who have been involved in this transaction—as members can see from the chart, there are many—have acted to the best of their abilities and in accordance with their public service commitments and obligations to the people of this State. Our reforms have been conducted to the highest standards of public administration and accountability. It is my strong view that any objective and fair-minded person will see that at every stage of this complex and exhaustive process the Government has strived to ensure that it has acted in the best interests of the people of New South Wales.

I will take the Committee through the multiple steps that we have engaged in as a government in this process. In March 2009, the Government released the strategy paper defining the industry framework and commenced its market sounding process. Members should recall that at that time global capital markets were still adjusting to the financial shock of the global financial crisis. Nevertheless, as a government we believed it was critical to implement the energy reform strategy by publicly producing a discussion paper on the electricity sector and we announced that we would begin market soundings on potential investment opportunities. After receiving positive feedback from the market sounding process, in May 2009 the Government announced its intention to call for expressions of interest to participate in the transactions.

In September that year we released yet more information confirming the details of the Government's approach to the transactions and the gentrader contracts. Also that month we formally commenced the transaction phase, calling for expressions of interest and publishing information memoranda on the businesses involved. This provided potential participants in the sale process with important information about the Government's reform objectives and the proposed transaction structure. In mid-November 2009 I was formally appointed as the Minister responsible for implementing these reforms, and on 18 November the expressions of interest [EOI] phase closed. At conclusion of the EOI process the Government had received expressions of interest from a well-qualified field of domestic and international bidders seeking to participate in the reforms.

In May 2010 the New South Wales Government endorsed the final transaction structure that it would take to market—being three electricity retailers and four gentrader contract bundles along with the development sites. This milestone cleared the way for the commencement of the formal staged due diligence process for the transactions. It is worth noting here, as you would expect with a transaction of this size and complexity, the due diligence process was complex. The painstaking commercial accounting and legal work required for any corporate sale is extremely significant; in this case the work was multiplied seven times over because seven assets were being transacted simultaneously. It is for that reason the Government agreed to a staged due diligence process that would allow bidders to investigate the retailers and gentraders in a methodical fashion. Throughout this process bidders were provided with management presentations by each of the businesses, they were given access to their

financial data and forecasts, and were given the opportunity to satisfy themselves about the opportunity they were being offered.

On 15 November the due diligence process concluded and binding bids were lodged with the Government. This triggered the commencement of the bid evaluation process. I think it is very important for the Committee to understand how the bid evaluation process was conducted. The membership of the evaluation committee—that is, the committee that looked at the bids—consisted of New South Wales Treasury, Baker and McKenzie, Credit Suisse and Lazard's, who followed up a seven-step process. Each bid was first of all evaluated in accordance with a mandatory threshold and other criteria. Where they were required clarifications from bidders were then sought.

The committee then identified the combination of bids considered most likely to meet the objectives of the New South Wales Energy Reform Strategy and developed a bidder interaction and transaction negotiation plan. Throughout the process the evaluation committee directed and monitored negotiations that were led by financial and legal advisers. It then recommended to the steering committee in a confidential report the preferred bidders for each asset or combination of assets which met the Government's objectives and implemented processes to ensure fair and equal treatment to all bidders. The evaluation process was observed by the project's probity advisers, R S N Bird Cameron, whose job it was to observe the processes adhered to were in a manner that was fair and equal to all bidders and that appropriate probity was being conducted at all times.

Upon completing the evaluation the chairman of the evaluation committee presented their recommendation to the project steering committee. The steering committee then made its recommendations to myself and, finally, to the budget committee of Cabinet. On 13 December the budget committee of Cabinet considered the report and the Government's objectives and took the final decision to proceed with the transactions with the support of New South Wales Treasury. The transactions were completed on the evening of 14 December, and a media release was issued on the signing of the contracts. I think I have made it clear from that timeline that this has been an open and transparent process, having regard to the obvious need to protect the commercially sensitive nature of the transactions. I trust I have given you some insight and confidence regarding the rigour and integrity of the process that we have been through.

The Hon. GREG DONNELLY: My question to the Treasurer will require him to elucidate on some of the comments he made in answer to questions earlier this morning. Treasurer, will you provide additional detail as to the extent to which the boards of the generators were briefed or otherwise informed about the generating contracts and how the transactions were to be executed?

The Hon. ERIC ROOZENDAAL: I thank the member for his question. In addition to securing the energy reform objectives that we have already detailed, the transaction outcomes also substantially improve New South Wales' financial capacity and flexibility to fund new infrastructure. It is these precise considerations that are well beyond the responsibilities of the directors of state-owned corporations to consider. Their legal obligations as a director are quite correctly focused on the specific fiduciary considerations of each individual business. It is not their job to assess broader government policy or broader public policy objectives. That broader obligation always falls to the government of the State. The structure of the New South Wales Government's energy reform transactions was designed to achieve the policy objectives identified by the Premier while ensuring appropriate energy infrastructure remains in public ownership.

Before going into the details of the numerous briefings provided to the state-owned corporation [SOC] boards leading up to the finalisation of the electricity reform transactions I want to make this critical point. It was always envisaged that the Government may need to rely on its power to direct the SOC boards to sign the transaction contracts. There is no last minute surprise about this. We made the possible use of ministerial directional powers clear to the SOC boards on many occasions over many months. The only details about the transactions that were new to the SOC directors on 14 December was the identity of the successful acquirer, the price and any changes to gentrader contracts that had been negotiated during the bid process.

The Hon. TREVOR KHAN: Any details.

The Hon. ERIC ROOZENDAAL: That is for the variations.

The Hon. TREVOR KHAN: Price.

The Hon. ERIC ROOZENDAAL: No SOC board was in a position to take a whole-of-government commercial view on the portfolio of approved transactions. None of them had that vision on anything but their own individual SOC. That is for a very good reason. It is not their job. It is not their statutory obligation. Indeed, it is not within their capacity to assess and determine the bundled transactions or the combined financial fiduciary and market reform benefits that are being achieved for the people of New South Wales. The legislation for state-owned corporation directors' obligations does not contemplate the objectives of the electricity market reform strategy.

The state-owned corporation legislation is focused on the responsibility of individual companies. That is why the Government's directional powers exist. The Act recognises there can be higher priorities and considerations for a government. So it was always envisaged that individual SOC boards would not be able to assess the bundled transactions and therefore would be unable to make an informed decision in favour of one asset of any one of the asset sales. That is why the Government advised the boards on many occasions that we expected to rely on our directional powers to have the individual asset sale contracts signed by the individual boards.

The electricity reform project is not about individual asset sales: it is focused on overall market benefits. It is also about overall long-term financial and fiduciary benefits for New South Wales such as the considerable reduction of financial risk by taking the Government out of the potentially volatile wholesale electricity trading market. The chart I tabled earlier I think summarises the dates on which the SOC directors were advised about the development of the gentrader contracts and the likelihood of the need to use ministerial directions, and also the reasons for that process. You can observe that the SOC directors were advised about directional powers and its possible use on at least 13 separate occasions between our announcement of the reform strategy paper in March 2009 and the meetings held to consider the transactions on 14 December last year. I think this chronology is important because it makes it clear there was no surprise for the SOC directors about the use of the directional powers.

Our likely need to use the directional powers was first flagged to the boards of the generators between March and May 2009. Whether some chose to ignore that message does not change the fact that we made it clear to the boards that because the transactions involved considerations about packages of assets or bundles of assets, considerations that went beyond the scope and capacity of a single board to determine, the Government would be prepared to use its directive powers if required. These powers are designed to provide legal protection for individual directors against having to make

decisions beyond their capacity given the circumstances of the transaction process. It is important the Committee understands the detail of chronology of information provided to the boards of Delta Electricity and Eraring Energy regarding these issues.

In March 2009 we released "Defining an Industry Framework" setting out strategic and policy rationale underpinning the proposed gentrader contracts—almost two years ago. In the period between March and May 2009 briefings were held for Delta and Eraring management teams. These briefings included full details on the possible use of a Minister's directional powers under section 20N of the State Owned Corporations Act. During the process the directors and management of Delta and Eraring were provided with updated indemnities that provided for any potential civil liability arising from either entering into the transactions or following the issuing of directions by Ministers under the State Owned Corporations Act.

On 30 July 2009 the Delta board received a further briefing, which included full details of indemnities provided by the State to directors, details of proposed implementation arrangements that could include a request to either execute the transaction or decide the transactions were not in the company's commercial interest and possible use of the directional powers of the Minister under section 20N of the State Owned Corporations Act, and details of the proposed form of the gentrader contracts. On 18 August 2009 Eraring received the same briefing as the Delta board. In the second half of 2009 and the first half of 2010 management and boards of Delta and Eraring were provided with various updated briefings on developments of the gentrader contracts.

On 24 March 2010 the chairman and project director of the New South Wales Electricity Reform Project Office met with the Delta chair and chief executive officer where the gentrader transaction arrangements were discussed. A similar meeting was held on 2 June 2010, 28 July 2010, 21 September 2010 and 16 November 2010. The Eraring board received detailed briefings and updates on gentrader agreements, transaction approval processes and the possible use of ministerial directions.

Specifically the boards were informed of the need to act quickly to either accept or reject the binding bids from the bidders. This is an important point. The boards knew they would have very little time to consider any request to execute the transaction documents. As a result of these timing imperatives the boards were informed that all information about the arrangements would be provided in advance except for the identity of the successful bidder, the price payable and any changes to the gentrader contract negotiated after 15 November, when binding bids closed. This is an important point. Throughout the last six months of 2010 SOC directors were regularly updated on the gentrader transaction process. They were made aware that to protect confidentiality and the commercial integrity of the transactions they would not know the successful identity, the price or final negotiation points until the transactions were to be completed. The Delta board received the same briefings on 19 August 2010 and 21 October 2010.

On various occasions in September and October Delta and Eraring management teams provided briefings on gentrader contracts to bidders. In late October 2010 a document package was sent to the management of Delta and Eraring Energy for release to the boards, including a legal opinion from Mr David Jackson, SC, on the use of section 20N directional powers and a draft request to execute transaction documents from the Minister, a draft of section 20Y approval, a draft of a covering letter for direction assuming that direction was required, and a draft of section 20N ministerial directions. Both Delta and Eraring boards had access to these documents 7 to 8 weeks in advance of the final request for the boards to execute the transaction documents. On 1 November 2010 the

management of Delta and Eraring were briefed on amendments to proposed gentrader contracts, which had come out of ongoing negotiations with bidders in September and October 2010.

Between 1 and 14 December 2010 further drafts and supporting legal opinions were provided to Delta and Eraring and meetings were held with the management of both generators to finalise materials, which were presented to the boards on 14 December. On 14 December 2010 board briefings were scheduled on the basis that they were already fully informed of the content of the gentrader agreements other than terms negotiated since 15 November 2010 and a proposed process to request the boards to sign transaction documents and ultimately use ministerial directions to direct signing, including the legal basis of this and supporting legal advice. The SOC directors were well informed about the process, the reason for that process and the intention that the Government would rely on its directional powers if necessary. There were no surprises. There were very good reasons for the boards to find they could not endorse individual contracts, because the reform considerations went beyond those individual companies and beyond the individual asset transactions. There were very good reasons for the use of ministerial directions to affect the transaction packages.

While we are talking about the briefing of the SOC boards it is also important to have a little bit of a discussion about the Government's directional powers. It is important for the Committee to have a good appreciation of this matter because there has been so much misinformed commentary and posturing on the issue of the Government's directional powers. As I mentioned earlier, the gentrader contracts fundamental changed the nature of generating companies from energy market traders to asset managers. Under those gentrader contracts generators receive less revenue and will deliver lower profits. So from a commercial perspective an individual SOC director's conclusion on an individual asset transaction with such an outcome is self evident—it would not be in the commercial interest of that individual, specific business.

However, the taxpayers are being properly compensated for the individual gentrader sale outcomes through the overall reform outcomes and the substantially reduced financial risks for New South Wales by getting the State and getting taxpayers out of the volatile business of electricity trading. Taxpayers also will have less risk and avoid future capital expenditure on the State's power stations. The best evidence that this objective is being met is that True Energy already has disclosed plans to spend another \$240 million on capital upgrades at Wallerawang. That is \$240 million in capital that New South Wales does not have to find. That is a quarter of a billion dollars in capital that New South Wales can now direct to other priorities. No doubt Committee members will have many ideas as to where this money now can be directed.

A narrow consideration of the commerciality of the individual asset transactions does not take into account the Government's wider policy objectives or the market structure and value outcomes achieved when the transaction packages are considered as a whole. That is why some 18 months ago the Government raised this issue with the boards and began to plan for the issuing of ministerial directions. Rather than take the decision about the commerciality of the transactions, some State-owned corporations' directors elected not to make any decision at all and to resign. The effect of these resignations was to deny the boards a quorum. However, having received legal advice regarding the appointment of new directors, the boards were reconstituted lawfully. Subsequent board members, the new board members, appropriately disclosed their roles with the reform office. The transaction was considered by the newly constituted boards and, as expected, ministerial directions were then issued and transaction documents were executed.

Taken together with information I have provided already about the overall transaction governance, I trust the Committee can now see that this was an appropriate process. There were no surprises for the directors of those SOCs. We gave them very thorough briefings of their responsibilities and duties through the transaction process. The SOC directors were never in a position to fully assess the transaction packages as a whole; they had neither the fiduciary responsibility nor the legal power to determine the overall transaction outcomes. This remains the case for the remaining assets, which are subject to ongoing negotiations and so it remains the case that the Government intends to use its directional powers to conclude those transactions as appropriate.

CHAIR: Were you present at all those briefings you have outlined?

The Hon. ERIC ROOZENDAAL: No.

CHAIR: Or at selected ones?

The Hon. ERIC ROOZENDAAL: No.

CHAIR: Would you be aware if some of the directors who resigned had objected during the process, indicated their reservations or questioned what you were doing?

Ms KRISTINA KENEALLY: Mr Yeadon might answer that question.

Mr YEADON: I certainly was not present at all of those briefings, but I did attend some briefings or at least one each with Eraring and Delta.

Dr JOHN KAYE: As a consultant, not as a director?

Mr YEADON: That is correct.

Dr JOHN KAYE: Before you were a director?

Mr YEADON: That is correct, yes. This is in the process leading up to 14 December.

CHAIR: To answer my question: during those times were you aware of any directors raising objections or questioning the process?

Mr YEADON: There were concerns expressed by directors of the board in relation to the post-transaction environment, but not in relation to the process that would occur on 14 December. In other words, when the deal was going to be transacted and they needed to make a decision, there was no concern expressed to me by any board member in those meetings nor, indeed, on 14 December. No director indicated to me directly that they had a problem with the approach that was being taken. In those meetings it was about the post-environment, how they were going to be funded, how the situation worked and that was explained to them.

CHAIR: At those earlier briefings there were no indications of disagreement with the process?

Mr YEADON: No, just about the terms of what the post-transaction environment would be. That is all. There was no concern expressed at all at any time.

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CHAIR: As someone observing that process, were you shocked when the directors resigned?

Mr YEADON: I was surprised, yes.

CHAIR: You had no warning or indication?

Mr YEADON: I did not understand why they had done it. I pass no judgement on them.

Dr GELLATLY: I was present at a number of those briefings and it was a similar position as Mr Yeadon has outlined. The main issues were about the post-sale environment. Towards the end of the period, in the first couple of weeks of December, there was some questioning about wanting legal advice about the legality of the ministerial direction, and that was provided before the fourteenth.

CHAIR: But they had not questioned that ministerial direction?

Dr GELLATLY: No.

CHAIR: Even though you claim you mentioned it some months or a year prior? They underestimated the Government's use of it, apparently, to that very last point?

Dr GELLATLY: I am not sure about that. As the Treasurer said, it was always fully expected that that would be required.

CHAIR: Yes, by your side, but was it understood by the directors?

Dr GELLATLY: I think they understood too, from the reaction I received in the briefings.

The Hon. GREG PEARCE: Mrs Keneally, you said earlier in your statement that one of the objectives was to remove New South Wales from energy generation, but when listening to Mr Roozendaal and Mr Yeadon it is clear that we have been removed from the trading risk?

Ms KRISTINA KENEALLY: That is correct.

The Hon. GREG PEARCE: Not the risk on actually producing the power?

Ms KRISTINA KENEALLY: We become, in effect, asset managers of the generators. It is probably important to make the point here, if I may, Mr Pearce, that the Government was clear when it set out on its energy reform strategy that the existing generators would remain in public ownership, as would the poles and the wires. If you look at chart 1, Transaction Structure, the poles and the wires, the transmission business transgrid is a natural monopoly and the Government made a policy decision that we would not be selling the poles and wires. I can confirm that that remains the policy and will be the policy of my Government. I can rule out any privatisation of the poles and wires, the transmission and distribution. Furthermore, we made that policy decision to maintain public ownership of the generators but, yes, we have been taken out of the business of electricity trading on the NEM.

The Hon. GREG PEARCE: As Mr Yeadon pointed out, the liquidated damages that are payable are capped at the same amount as the capacity charge. That means that in any year if there are outages, effectively the Government could receive nothing for the gentrader contracts?

Mr YEADON: No, I am sorry Chair.

The Hon. GREG PEARCE: Under the capacity payment?

Mr YEADON: No, from the gentraders' perspective, or even the owners', there is no direct relationship between the ALDs and the capacity payments. The capacity payments are paid and they rest with the Government. The Government then puts in place a contingency arrangement on a full understanding of what the risk parameters are on ALDs over the life of the assets.

The Hon. GREG PEARCE: The risk is an amount of liquidated damages equal to the capped amount, which is the capacity charge?

Mr YEADON: Yes.

The Hon. GREG PEARCE: But the Government is still at risk for the full amount?

Mr YEADON: No. There is just no way that that will occur.

The Hon. GREG PEARCE: You are going to guarantee supply?

Mr YEADON: The only way that is going to occur is if every generator in this State was to go belly up at the one time. Now, everyone faces that risk.

The Hon. GREG PEARCE: That is not true.

Dr JOHN KAYE: You know that is not true.

Mr YEADON: That is right. No, it is not going to happen. Therefore, there is no way those payments are at risk to that extent.

The Hon. GREG PEARCE: Each one is individually contracted, so it has nothing to do with every generator in the State going down. Each gentrader contract stands on its own and if there is a failure to supply by the existing generator, that generator pays the liquidated damages, and by your words they are capped at the same amount as the capacity charge, which means that in any given year the Government may receive nothing for the gentrader sale.

Mr YEADON: That is just extraordinarily unlikely.

The Hon. GREG PEARCE: You are going to give a guarantee to that effect, are you?

Mr YEADON: Pretty well, yes. The capacity payment that will be provided to the gentrader by the owner—it is called the total available capacity factor—has been determined by looking at 10 years of actual, physical operation of this plant and equipment, each power station in the market.

Dr JOHN KAYE: Ten years?

Mr YEADON: Yes, back over the last 10 years. Every outage that has been scheduled, every unscheduled outage, every breakdown for every five minutes of every one of those stations for the last 10 years. The past is not always an absolute predictor of the future.

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Dr JOHN KAYE: Oh, really?

Mr YEADON: Well, in terms of prudent compilation of data to understand this situation, you could not have done a better job. I assure you, Mr Chairman, that there has been an extraordinary amount of work that has gone into determining the capacity availability factors for these stations. Yes, there is no doubt that the Government will pay some penalty over the time, but it will not reach in any way all of the capacity outlets.

The Hon. GREG PEARCE: Mr Roozendaal, when you exercised your section 20N power as portfolio Minister, you were required to do so with the approval of the Treasurer. I assume you had no trouble agreeing with yourself that this was a good idea?

The Hon. ERIC ROOZENDAAL: Yes.

The Hon. GREG PEARCE: Did you write a note, memorandum or minute to that effect?

The Hon. ERIC ROOZENDAAL: I signed the appropriate documentation as prepared by Treasury.

The Hon. GREG PEARCE: Are you prepared to table that documentation to the Committee?

The Hon. ERIC ROOZENDAAL: I would have to seek some advice if there are any commercial-in-confidence issues.

The Hon. GREG PEARCE: You are prepared to table it, subject to excluding anything that is commercially in confidence?

The Hon. ERIC ROOZENDAAL: Yes.

The Hon. GREG PEARCE: Under section 20N the Government is required to reimburse any State-owned corporation for the costs of performing, in simple terms, what is required under the notice. Have you received any requests from any of the State-owned corporations for payments under those provisions or are you anticipating any such requests?

Dr GELLATLY: I am not aware of any.

Mr YEADON: I am sorry, I missed the first part of the question.

The Hon. GREG PEARCE: Under section 20N, the direction power, there is a provision that the Government must reimburse the State-owned corporations effectively for the cost of carrying out what they have been directed to do. I want to know if there is any reimbursement required.

Mr YEADON: Not aware of it.

The Hon. GREG PEARCE: Mr Gellatly, could you tell us how much you are being paid for your role in the strategy?

Dr GELLATLY: As chairing the energy reform project?

The Hon. GREG PEARCE: Your total role?

Dr GELLATLY: I am getting paid nothing as a director of Eraring Energy. I made that clear on the evening. I have not put in all my invoices. I put in a monthly invoice.

The Hon. GREG PEARCE: What is the basis of the invoice? What are you entitled to charge?

Dr GELLATLY: I am entitled to charge \$3,000 a day.

The Hon. GREG PEARCE: How much have you charged so far for any invoices?

Dr GELLATLY: I would have to check my records. I do not keep a daily count of it.

The Hon. GREG PEARCE: Would you mind checking?

Dr GELLATLY: I think I worked on a basis of about two or three days a week.

The Hon. TREVOR KHAN: Did you not charge about \$18,000 for three days' work at one stage?

Dr GELLATLY: No. That is Canberra. Ex Canberra bureaucrats do that. At the State level we do not charge as much.

The Hon. GREG PEARCE: Could you take that on notice and let us know?

The Hon. TREVOR KHAN: So you did not charge \$18,000 for three days on one of the invoices?

Dr GELLATLY: No.

The Hon. GREG PEARCE: Could you take that on notice and let us know?

Dr GELLATLY: Yes.

The Hon. GREG PEARCE: Mr Yeadon, could you give us the same information?

Mr YEADON: Yes I can.

The Hon. GREG PEARCE: Mr Roozendaal, could you have the other members of the strategy team give us the same information?

The Hon. ERIC ROOZENDAAL: Sure.

The Hon. GREG PEARCE: Mrs Keneally, what was your understanding of the impact of the gentrader transaction on the debt and solvency position of Delta Electricity?

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Ms KRISTINA KENEALLY: That was not my concern in this process. My concern was achieving the Government's energy reform strategy.

The Hon. GREG PEARCE: According to the Act, you are the responsible Minister?

Ms KRISTINA KENEALLY: It was not my concern through this process. My concern was achieving the Government's stated public policy objectives through the energy reform strategy.

The Hon. TREVOR KHAN: So you were not concerned whether it drove one of the generator companies into insolvency, is that what you are saying?

Ms KRISTINA KENEALLY: No. I acted on the advice through the extensive process that the Treasurer has outlined here, led by the project bid team chaired by Dr Gellatly.

The Hon. TREVOR KHAN: Premier, prior to today were you aware that the concern of some of the directors of the generator companies was what could be described as the future financial environment in which those generators would be operating?

Ms KRISTINA KENEALLY: Again, as Mr Yeadon has just outlined, the members of the steering bid briefed members of the board. They did ask some questions regarding future post-transaction—

The Hon. TREVOR KHAN: Premier, were you aware that they had a concern about their future financial viability? In essence, that is what Mr Yeadon is saying.

Ms KRISTINA KENEALLY: Yes, of course I was aware.

The Hon. TREVOR KHAN: They were worried about the issue of insolvency.

Mr YEADON: I did not say that at all.

The Hon. TREVOR KHAN: That is precisely what they were worried about, was it not Mr Yeadon? They were concerned with where they were going to end up?

Mr YEADON: They were concerned about how they were going to be funded. The simple answer is that the New South Wales Treasury would place an amount on their books for them to operate into the future. That was always considered.

The Hon. GREG PEARCE: So Treasury is putting in money! Subsequently it is putting in money. I just asked you that three times.

Mr YEADON: No, it is not a subsidy, it is an operating amount for their balance sheets because their businesses—

[Interruption]

Mr YEADON: I do not know what you are trying to suggest but we have already said clearly that the generators are exiting the national electricity market. They no longer have access to revenues from the NEM, that is just inherent to the gentrader agreement and therefore the Government gets

paid capacity payments for that. It then takes a small portion of that to put on the balance sheet of the SOC in order for it to operate into the future.

Dr JOHN KAYE: The Government gets paid or the SOC gets paid?

Mr YEADON: Through the SOCs but ultimately to the Government. We are just playing with words now.

The Hon. GREG PEARCE: Mrs Keneally, as the responsible Minister for the State-owned corporations, were you aware that after 15 years of Labor's gauging of dividends from Delta, that in its annual report Delta directors said a couple of months ago, "There are material uncertainties as to whether Delta will be able to pay its debts when due". It went on to say, "The company breached its bank loan in November 2009 and the company has relied on forbearance from tis bankers to survive." Are you aware of that position with Delta?

Ms KRISTINA KENEALLY: No, I had not read their shareholding report, their annual report.

The Hon. GREG PEARCE: And no-one has told you?

Ms KRISTINA KENEALLY: Kim has had—I am happy to have Mr Yeadon speak further to that issue.

The Hon. TREVOR KHAN: Kim, the former member for Granville. Are you on a first-name basis?

The Hon. GREG PEARCE: No-one has told you that?

The Hon. TREVOR KHAN: I do know Mr Yeadon by his first name and I do know Dr Gellatly by his first name. I also know a number of Committee members—

The Hon. TREVOR KHAN: And the former member for Granville, do you know him as that?

Ms KRISTINA KENEALLY: I also know you by your first name Mr Khan.

The Hon. TREVOR KHAN: I do not think you have ever used it.

Ms KRISTINA KENEALLY: No, because I choose to give your position the respect that it is due.

The Hon. GREG PEARCE: Mr Yeadon is not part of the budget committee of Cabinet which made this decision; you are and you are telling me you did not know that the Delta directors were concerned about the uncertainty as to whether the company could pay its debts and that the company was in breach of its loans?

Ms KRISTINA KENEALLY: Certainly I understand that the directors had questions about the future post-transaction. The budget committee of Cabinet was briefed regularly by the project bid team which is why I am asking Mr Yeadon to speak to the question you have raised.

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The Hon. GREG PEARCE: But you were not briefed on the fact that Delta had breached its loans?

Ms KRISTINA KENEALLY: I am asking Mr Yeadon to speak to the question.

The Hon. GREG PEARCE: Were you or were you not briefed?

Ms KRISTINA KENEALLY: No, I was not briefed on that. I am asking, however, Mr Pearce if you would like further answers to your question—

The Hon. GREG PEARCE: No, I was interested in your role. I do not need Mr Yeadon to tell me that. We only have limited time.

The Hon. TREVOR KHAN: I go back to 14 December. On that day do I take it that you were not aware that the directors were going to act up?

Ms KRISTINA KENEALLY: No, of course not. As Mr Yeadon has indicated, that was also a surprise to the project bid team.

The Hon. TREVOR KHAN: Suffice to say that you became aware that the directors were acting up sometime during the day. Is that right?

Ms KRISTINA KENEALLY: Yes, I would be happy to take you through my movements on that day if you would like Mr Khan.

The Hon. TREVOR KHAN: The fact that the directors were acting up did not concern you sufficiently to not go to Oprah, for instance?

Ms KRISTINA KENEALLY: I would be happy to take you through that.

The Hon. TREVOR KHAN: Is that right? It did not concern you sufficiently that you still went off to Oprah, on what we now know to be a \$5.3 billion deal?

Ms KRISTINA KENEALLY: I would be happy to take you through my movements on the day, if you would like Mr Khan.

The Hon. TREVOR KHAN: Is it the case that notwithstanding that you knew that the directors were resigning you still went off to a frippery of Oprah?

The Hon. Greg Donnelly: Point of order:

Ms KRISTINA KENEALLY: Actually if I may answer that Reverend the Hon. Fred Nile. That is not accurate Mr Khan, with the greatest of respect. The Oprah show started at 4.00 p.m. and you will, of course, appreciate that this was a significant boost for New South Wales tourism. I was attending that with a number of people who had been invited to that event. I arrived there at 4.00 p.m. At 4.48 and then again at 4.52 I received two emails alerting me to an incident on the F3. Those emails advised me that two of three south-bound lanes were closed; that helicopters were being brought in to remove the injured. I decided then that I would leave the filming at the Opera House. I contacted my

office at about 5 o'clock and said I am coming back to receive an update on the F3 situation. At that time I was advised the transaction had not yet concluded. I spoke to the Treasurer then on the phone and he advised that the transaction was still ongoing.

I came back to my office around 5.30 p.m. awaiting further updates on the F3. I told my husband that I would be staying at the office until both the F3 and the transaction had been concluded, those situations had been resolved. At around a quarter to six I first became aware that some board members were considering resignations—

The Hon. TREVOR KHAN: Eight of the 14—that is "some" is it not? Eight of the 14! The majority of the directors were resigning.

Ms KRISTINA KENEALLY: I apologise. Do you have a question?

The Hon. TREVOR KHAN: Yes, I do. Do you agree that eight of the 14 directors of the generator companies were resigning? That is correct, is it not?

Ms KRISTINA KENEALLY: At around a quarter to six I became aware that some were considering it—I had no number or no indications.

The Hon. TREVOR KHAN: We now know it is eight of the 14. Can I put this to you? Now that we know that eight of the 14 were resigning, now we know that the reason for that was their concern over the future financial capacity of the generators, will you not provide the directors with an indemnity so they can come here and themselves explain what the problem was that they saw with them signing off on this deal?

Ms KRISTINA KENEALLY: Those are your assumptions Mr Khan and I am taking you through my movements on the day.

The Hon. TREVOR KHAN: I am asking you, will you not provide them with an indemnity that will allow them, instead of the Treasurer who was not even there, to explain what were their concerns with this transaction as it impacted on the two generator companies that supply electricity that turn on the lights of the houses of the voters of New South Wales? They are entitled to know what the directors' concerns are. Will you give them the indemnity?

The Hon. TREVOR KHAN: No, I will not because I will not put the current ongoing transaction process for the final two gentrader contracts at any risk.

The Hon. TREVOR KHAN: You can exempt the retention value issue which is precisely the issue, can you not?

The Hon. TREVOR KHAN: I do note that those directors will, of course, also be answerable to the Auditor-General.

The Hon. TREVOR KHAN: You know that the Auditor-General is not going to report before the election, do you not?

The Hon. Greg Donnelly: Point of order:

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Ms KRISTINA KENEALLY: I do not know when the Auditor-General will report. That is not subject to my direction.

The Hon. Greg Donnelly: Time has well passed for Opposition questions.

The Hon. TREVOR KHAN: Perhaps the Premier will prefer to stay longer and answer all the questions that we have.

The Hon. Greg Donnelly: You just do not like the answers you are getting.

The Hon. TREVOR KHAN: She will have the afternoon free to come back.

CHAIR: We will move on Dr Kaye.

Dr JOHN KAYE: My question picks up on what Mr Yeadon said before. He said that the capacity payments which is, in the case of Origin and Eraring, \$950 million paid as capacity payments over the life of the contract. You told us before that it is possible but highly unlikely that, in fact, all of that could be taken up in liquidated damages. You have also told us that, in fact, the board needed in the case of Delta, and presumably also in the case of Eraring, a float. They needed money to come from Treasury into the power station company to keep them going. On top of that I want to ask you about operations and maintenance payments. Treasurer, I will finish my question and then you can have a chat with Mr Yeadon.

The Hon. ERIC ROOZENDAAL: There are about seven in there so far.

Dr JOHN KAYE: I ask about the operations and maintenance contracts. I understand from what Origin is telling people that these charges for operations and maintenance are fixed for the life of the contract subject to index escalation. So any risk on price is borne by the SOC that has already lost its main income stream and needed a float to survive. It is now told that it has to bear all the risk of increase in operations and maintenance costs. Is that correct?

Mr YEADON: There are no re-openers for fixed and variable costs but there are escalators built into them for the life of the agreement.

Dr JOHN KAYE: What are those escalators based on?

Mr YEADON: It depends.

Dr JOHN KAYE: Are they based on CPI?

Mr YEADON: No, it depends on, for example, labour is based on labour indices costs, schedules and so forth. They are drawn from a whole range of areas.

Dr JOHN KAYE: As has happened in the past the cost of an unforeseen and unforeseeable major fault on one of these generators would be borne by the State-owned corporation?

Mr YEADON: If costs were to significantly escalate beyond what the escalators are in the contract, then that is borne by the owner.

Dr JOHN KAYE: So all of the risk on the cost of the plant operation, keeping it running, falls to the Government.

Mr YEADON: It is very low though. It is a very low risk, is the first thing I would indicate to you. The second point I would indicate is that that equation works both ways in that if the generator can find cost savings within their organisation over time, which will be very feasible indeed, then the generator will be in a better position.

Dr JOHN KAYE: Treasurer, so far we have talked about a lot of what led up to the night of 14 December. I will now move beyond that. In the case of Delta, Mr Darmody and Mr Yeadon had been appointed to that board and I think by that stage also Mr Lillee was appointed to that board?

Dr GELLATLY: No, Mr Lillee was appointed the next day.

Dr JOHN KAYE: At some stage you issued a request to what was now effectively a new board that you wanted them to consider this transaction and if they did not do it there would be a section 20N directive to do it?

Mr YEADON: That is correct.

Dr JOHN KAYE: When you did that, did the new board notify you that they would not actually do it; they required a section 20N directive?

Dr GELLATLY: Yes.

Dr JOHN KAYE: What date did they do that?

Dr GELLATLY: The 14th.

Dr JOHN KAYE: That night they indicated that to you?

Dr GELLATLY: Yes.

Dr JOHN KAYE: Did that come by writing from Mr Darmody?

Dr GELLATLY: Yes, there were letters prepared to the Treasurer, yes.

Dr JOHN KAYE: There were letters prepared to the Treasurer?

Dr GELLATLY: Signed by the chairs.

Dr JOHN KAYE: Who prepared those letters?

Dr GELLATLY: There were legal advisers available to both boards.

Dr JOHN KAYE: They were employees of Delta and Eraring but not employees of Treasury? Is that correct?

: -

Dr GELLATLY: They had their own legal representation but there was obviously access to the Baker and MacKenzie legal team.

Dr JOHN KAYE: Have you seen all of the letters that came from the board of Delta in respect to the section 20N process?

Dr GELLATLY: Yes.

Dr JOHN KAYE: Would you say there is anything unusual in any of those documents?

Dr GELLATLY: No.

Dr JOHN KAYE: How long was the letter saying that the pre-section 20N directive, the request, was going to be denied? How many pages?

Dr GELLATLY: It was fairly simple. There had been drafts around for months.

Dr JOHN KAYE: Was it just one page?

Dr GELLATLY: It could be in one, or possibly two, but they were not tomes.

Dr JOHN KAYE: Could it have been three pages?

Dr GELLATLY: I cannot recollect.

Dr JOHN KAYE: Treasurer, you would have seen that letter. Can you recollect it? Did you think there was anything unusual in the correspondence that came to you from the board of Delta?

The Hon. ERIC ROOZENDAAL: Not to my recollection.

Dr JOHN KAYE: You have seen the documentation?

The Hon. ERIC ROOZENDAAL: It has been across my desk.

Dr JOHN KAYE: How many pages was it?

The Hon. ERIC ROOZENDAAL: I cannot recall.

Dr JOHN KAYE: Could it have been three pages?

The Hon. ERIC ROOZENDAAL: I have already answered the previous question.

Dr JOHN KAYE: Dr Gellatly answered and I just want to know whether you know it was three pages.

The Hon. ERIC ROOZENDAAL: I have told you I cannot recall.

Dr JOHN KAYE: Are you prepared to table that letter?

The Hon. ERIC ROOZENDAAL: Subject to normal commercial considerations.

Dr JOHN KAYE: Will you release all of the correspondence from the board to the Minister on that matter?

The Hon. ERIC ROOZENDAAL: I will take advice in relation to that.

Dr JOHN KAYE: I refer to a matter that has been raised with me by more people than I can actually account, that is, why is this actually happening? Treasurer, why have you been such an advocate of this? It has been put to me continuously that this is really about you positioning yourself for a future job. I do not say I believe that but everybody I speak to says "This is all about Roozendaal putting himself out there for his next job, proving that he can carry off a big transaction." Is that true Treasurer? How will you dispel those rumours?

The Hon. ERIC ROOZENDAAL: I think the simple response is it is completely untrue. If you look at the history of the debate around energy reform in this State it has been going for some 13 years. It has been around in various guises going back to Premier Carr and Egan period right up through the Iemma and Costa period. Originally carriage of this particular energy reform strategy which had been approved by Cabinet was through the Minister for Finance. When he was no longer responsible, that responsibility then passed to me as Treasurer. I have fulfilled all of my responsibilities to deliver on the Cabinet determination to complete this energy reform strategy.

I want to make it very clear since you have given me this opportunity that I believe that this is a major reform for the people of this State to de-risk the budget going forward and to take us out of the very, very risky business, which you are well aware of, of generating and trading electricity which is highly a risk. We have substantially reduced the risk to the taxpayers of this State through this reform strategy.

Dr JOHN KAYE: Out of which we made \$750 million a year.

The Hon. ERIC ROOZENDAAL: I would like to finish. Any suggestion that my motivation in any of my time as Minister or Treasurer has been anything but for the benefit of this State I find offensive and I reject outright. Any suggestion that I have sought, am seeking any sort of position outside of the Parliament is outrageous, without any foundation whatsoever, and I absolutely reject it. I was tasked—

Dr JOHN KAYE: Will you commit to spending another four years in the Parliament if you are in Opposition?

The Hon. ERIC ROOZENDAAL: Yes.

Dr JOHN KAYE: You will commit now to spending four years in Parliament.

The Hon. ERIC ROOZENDAAL: I intend to stay here.

Dr JOHN KAYE: You will not be leaving in Opposition.

The Hon. ERIC ROOZENDAAL: I intend to stay. Well, let us wait and see what happens, but I intend to stay here. I find it interesting that that is the best you can come up with. As we talk

about this very serious \$5.3 billion transaction—I know you have had a preoccupation with me for some time—you are now worried about what I may or may not do at some time in the future.

Dr JOHN KAYE: Pot and kettle, Treasurer.

The Hon. ERIC ROOZENDAAL: I think it is important that the people of this State understand that this transaction has been carried out, through all the processes over there, with some of the best public servants in the country, some of the best advisors, to ensure that the people of this State will not be liable for future generation, to protect the State's triple-A gold-plated credit rating—something other States have failed to achieve—and to de-risk the budget of this State for future governments.

CHAIR: Following the successful gentrader transactions, what plans do you have for the income from those transactions, the \$5.3 billion? Has that been allocated for any special infrastructure?

Ms KRISTINA KENEALLY: The decisions will be made by Cabinet and we will do that following Treasury's finalisation of the proceeds. We are yet to receive Treasury's final advice as to proceeds. When we do that Cabinet will be in a position to make those decisions.

CHAIR: When do you think—

Ms KRISTINA KENEALLY: I understand they will be in a position to do that shortly. I think here it is important to return to the idea as to why we undertook this transaction. We undertook it in order to protect the State's financial position going forward. If we had not done so, the taxpayer would be liable for building the next generation of base-load power in this State, the taxpayer would continue to be exposed to the volatility of the electricity wholesale market, and the taxpayer would continue to have a government presence in the retail sector. The Owen report makes it very clear that if the Government were to exit that sector we would increase competition and that would put downward pressure on prices. Indeed, what we have seen already by the actions of those new entrants as well as existing market players such as AGL is that is precisely what is happening.

CHAIR: Is it still correct that the Government has responsibility for the actual generators, for the power stations, into the future?

Ms KRISTINA KENEALLY: We continue to own the existing generators and as the chart of the transaction structure makes clear the Government is selling the future generation sites.

CHAIR: So the generators that you own will require upgrading and expenditure?

Ms KRISTINA KENEALLY: Yes, they will. I might ask either Mr Yeadon or Dr Gellatly to speak to how that—again, it covers ground we have already covered but I am happy for us to speak to it again.

Mr YEADON: Any future capital improvements to the power stations will be undertaken by and paid for by the gentrader. Indeed, there could occasions where the gentrader could use some of the skills and expertise of the owner but it will be the gentrader who will pay for all future upgrades and access. Of course, they will also be liable for any future carbon impost that may come about as a result of a move by the national or State government.

CHAIR: How do you negotiate that? Do you as the owner initiate that? Do you tell the gentrader you want them to do this or do you wait for them to do it?

Mr YEADON: It will be the gentrader that will approach the owner and indicate that they may want to undertake some work to get a better outcome from some particular area, whether that is increased capacity or more efficient operation or to deal with an environmental issue better. That will then be negotiated with the owner and they will come to an agreement and then that works will go ahead and it will be the gentrader who will pay for it. For example, on Wallerawang with True Energy it is already proposed for \$240 million of capital works to occur there. So gentraders in the future will be taking the place of the New South Wales taxpayer in terms of upgrading and ensuring that these plant operate effectively.

CHAIR: Treasurer, one of the terms of reference that the Committee is investigating relates to the potential impact of the gentrader transactions on current and future electricity prices. What is your answer to that? What in your view will be the impact?

The Hon. ERIC ROOZENDAAL: When we are looking at the issue of the whole energy reform strategy, the whole \$5.3 billion transaction, what we can see in terms of the energy retail side is that we now will have two major players in Origin and True Energy, which acquired retailers. Just as importantly, you have other players in the market that missed out, and the one that has been most prominently canvassed in the media recently has been AGL. AGL was unsuccessful in the process. They have made that pretty clear, and they have had a fair bit to say about the process since and in fact have accused the successful bidders of paying too much. I think that is worth reflecting on. They are out there saying those people paid too much for the assets that they bought from the New South Wales Government.

At the same time AGL has made it very clear that it intends to acquire up to 500,000 new customers in the New South Wales market. It has around 10 per cent of the market at the moment in terms of customers. A lot of those are in gas. It has made it clear through public statements and statements to the exchange that it intends to aggressively compete for further customers. So we will have True, Origin and AGL, three private sector retailers, competing very strongly, and there are a number of smaller retailers worth noting within the market in New South Wales competing to win customers. The New South Wales energy market has quite a high churn rate. It can be up to 20 per cent churn rate in customers, so that is a lot of competition being generated by very hungry private sector retailers competing against each other to try to win customers off each other.

It also means for Origin and True that they need to defend their customer bases aggressively to stop them being eroded from their competitors. Clearly, we will have a far more competitive retail market to what we had previously, which was three retailers plus a number of other retailers but three major retailers all owned by the Government, all owned by the same owner. So I believe that that competitive pressure will apply downward pressure in terms of power prices going forward. At the same time I believe the securing of a long-term and good value coal supply for the generators will help to insulate the New South Wales generators from potential fluctuations in the price of coal. As you know, coal is at a high market value particularly for export coal but that has impacts on domestic coal. We believe that in turn will help to assist downward pressures on electricity prices.

CHAIR: Another issue that has been raised—you may not have all the answers, but in the True energy company, for example, do you take into account the shareholders of that company? There has been some report that it could involve some Hong Kong investment, which is really China, and even

Singapore investment. Would either of those government involvements—as they often do; in those places the Government is actually the overall owner—have any impact on those companies and their operation in New South Wales?

The Hon. ERIC ROOZENDAAL: I am aware that True Energy is listed on the Hong Kong exchange. I think it is important to remind the Committee—

Dr JOHN KAYE: China Light and Power is; True Energy is not.

The Hon. GREG PEARCE: True Energy is a subsidiary. China Light and Power is the company.

The Hon. ERIC ROOZENDAAL: I think the important point is that we had a strong criteria that has been to evaluate all of the bids, and at the end of the day it was Origin and True Energy that had the best value for the people of New South Wales and the best met objectives of energy reform strategy in New South Wales.

Mr YEADON: I also indicate that one of the requirements of the bid was approval by the Foreign Investment Review Board if that was necessary.

CHAIR: And there was no trouble getting that approval?

Mr YEADON: No.

The Hon. LUKE FOLEY: Just to be clear, what is the policy of the Government regarding ownership of electricity transmission and distribution, and to your knowledge what is the policy of the Opposition regarding ownership of electricity transmission and distribution?

Ms KRISTINA KENEALLY: Again, if I can refer back to chart one, which lays out the structure of the electricity businesses in New South Wales, the transmission and distribution, which are commonly referred to as the poles and wires, are a natural monopoly. As I said in my opening statement, there are often comparisons made between this transaction and that in Victoria under the former Liberal Premier Jeff Kennett. It is worth remembering that Jeff Kennett sold everything, including the poles and the wires—lock, stock and barrel, sold the electricity businesses.

This Government took a decision not to sell the poles and wires. We did so reflecting community desires to maintain public ownership in the electricity sector. The way the energy reform strategy, which was announced two years ago, was structured by this Government is that the natural monopoly—that is, the poles and wires—would be owned by the Government and continue to be owned by the Government, would not be privatised, and further that the Government would continue to own the existing power stations. As both the Treasurer and Mr Yeadon have pointed out, we are essentially changing the nature of those businesses to be ones of asset managers rather than electricity traders. So this Government's policy is and continues to be public ownership of the poles and wires, as well as public ownership of the generators—

The Hon. TREVOR KHAN: And operation of the generators.

The Hon. GREG PEARCE: And the risk of the operation.

CHAIR: Let the Premier answer the question.

Ms KRISTINA KENEALLY: The position and the policy of the Government continues to be public ownership of the poles and wires and the existing generators. I can comprehensively rule out any privatisation of the poles and wires or the existing generators.

The Hon. GREG PEARCE: Just like Mr Iemma did before the last election.

Ms KRISTINA KENEALLY: I do note that on 29 August 2008 Mr O'Farrell told ABC *Stateline* that "the one guarantee the public have is that before the next election they'll have our detailed energy policy". Again, Mike Baird, on 20 May 2009 on 2UE radio, said, "We will be very clear with the electorate. There will be a very clear policy and we certainly haven't ruled out private sector involvement in that." I cannot provide the Committee with any further information as to the Opposition's policy. As far as I can see, despite Mr O'Farrell's commitment, none has been released.

The Hon. LUKE FOLEY: Should we call Barry O'Farrell before this Committee and plonk him in the witness box to get an electricity policy out of him?

Ms KRISTINA KENEALLY: That would certainly be a decision that the Committee would take, and while I would not seek to influence the Committee I do think if the purpose of holding hearings was to have public scrutiny prior to an election then it would be an even-handed thing—

The Hon. TREVOR KHAN: Then give an indemnity to the directors. Do not get cute with anyone else! It is the directors.

The Hon. LUKE FOLEY: Point of order—

CHAIR: The Labor members are asking the questions at the moment.

Ms KRISTINA KENEALLY: If the purpose of this Committee is to provide scrutiny prior to the election then I certainly would endorse—

The Hon. TREVOR KHAN: Then give an indemnity to the directors.

The Hon. KAYEE GRIFFIN: Point of Order: I cannot hear the Premier's reply.

CHAIR: Yes, I agree.

Ms KRISTINA KENEALLY: If the Committee were to take such a decision I certainly think it would be in the best interests of the people of New South Wales and the taxpayers of New South Wales before the election to have an opportunity to know the energy and electricity policies of both the Government and the Opposition.

The Hon. KAYEE GRIFFIN: Treasurer, what has been the reaction of market analysts and commentators to the transaction?

The Hon. ERIC ROOZENDAAL: Before I answer that question I want to clarify an issue that was raised earlier by the Hon. Greg Pearce, which I feel may have misled the Committee.

Ms KRISTINA KENEALLY: Unintentionally, I am sure.

The Hon. ERIC ROOZENDAAL: Unintentionally, I am sure, in relation to the profitability and solvency of Delta Electricity. Having had an opportunity to double-check on that, and as I would not want the Hon. Greg Pearce to mislead the Committee or the public, it is clear that there has been a misreading of the annual report.

The Hon. GREG PEARCE: Here it is; I am happy to table it.

The Hon. ERIC ROOZENDAAL: Delta is profitable. There is a subsidiary of Delta known as Delta Electricity Australia Pty Limited, which is facing some financial issues because of an investment of which the Government is aware. The subsidiary entered the Sunshine Electricity joint venture with New South Wales Sugar Mills Co-operative.

Ms KRISTINA KENEALLY: With respect, Mr Pearce, your question was not specific or accurate. I have been briefed on this issue.

The Hon. ERIC ROOZENDAAL: For the information of the Committee, since the Hon. Greg Pearce clearly misread the annual report, the electricity joint venture has resulted in selling its share of assets in the joint venture. Repayment of subsidiary debt depends on continuing negotiations with its bankers after negotiating a further forbearance period. According to financial reports in relation to the subsidiary, reports were prepared on a liquidation basis. That is not an ongoing concern.

Ms KRISTINA KENEALLY: In effect, Mr Pearce, that issue has been resolved.

The Hon. ERIC ROOZENDAAL: I go back now to the question asked earlier by the Hon. Kayee Griffin. I thank the Committee for allowing me to clarify and to clear up the misunderstanding of the Hon. Greg Pearce. Let me talk now about the transaction. I believe that the transaction outcomes speak for themselves: \$5.3 billion in value for taxpayers represents an outstanding result for taxpayers, reinforcing our solid gold triple-A credit rating and putting New South Wales on a more secure financial footing. It will remove also taxpayers' exposure to the risk of electricity trading and the State's requirement to build new power stations. Many of those on the Committee have had plenty to say about the transaction outcomes. But what do independent non-partisan and expert observers have to say? In an article in the *Australian Financial Review*, David Leitch, UBS Utilities Analyst, said:

As a result of transactions the market structure nationally will be stronger.

Paul Johnston from the Commonwealth Bank also said it was a good market structure and electricity companies would "enjoy the broader industry benefits that would come from the Government being out of energy retailing". There is no doubt that some of the less commercial or uncommercial competitive pressures in the industry have come from government-owned retailers. So with that gone the broader industry benefits are real. Stephen Bartholomeusz, one of Australia's most respected business analysts and commentators, passed this verdict on 15 December:

There is no doubt that the value received for the retailers is full, with Origin paying just under \$1300 per customer. That's as big a price as has ever been paid for an energy retailer, particularly as the last big sales in Queensland were pre-crisis. The fact that AGL was a distant third bidder also tends to validate the value.

The bonus for NSW from the process is that AGL is now vowing to spend up to \$1 billion to try to wrest those soon-to-be acquired customers from the winning bidders, which is a massive positive for competition and a validation of the Australian Competition and Consumer Commission's decision to allow Origin to bid for two retailers.

Tony Boyd from the *Australian Financial Review* wrote that the conflict between the interest of the directors of the generation companies and the interest of the Government does not necessarily mean that the taxpayer has got a bad deal and that individual asset prices "should be viewed in a context of the relatively high price for the retail customers". Kevin, McCann, Chairman of Origin Energy, described his company's purchase as "transformational for the company which provides a strong platform for growth". Richard McIndoe, TRUenergy's Managing Director, said:

EnergyAustralia, the Delta Western gentrader contract and the developments sites would give TRUenergy a competitive scale in Australia's largest energy market.

He then said:

We now have a strong and diverse, vertically-integrated business within the National Electricity Market (NEM), which provides an excellent platform for further growth.

On 15 December Shaw Stockbroking published a research report in which it said that Origin paid "full and fair" value for Integral and Country Energy businesses. Paul Xiradis, Chief Executive Officer of Ausbil Dexia said:

From here AGL will have to be potentially far more competitive. It's going to be a far more competitive landscape that they deal within.

He went on to say:

AGL could be up against it a little bit as competition intensifies.

He added:

The utility may need to be more aggressive in gaining market share and there could be a cost in doing so.

That is just a sample of the positive responses that have come from commentators right across the board in relation to what has been a very good transaction for the people of New South Wales, meeting all the key objectives that the Government set out when it embarked on this long process—over two years—for energy reform strategy.

The Hon. KAYEE GRIFFIN: Thank you, Treasurer.

The Hon. GREG DONNELLY: I will go back to an area that has been covered to some degree but I would like further clarification. How does the transaction put downward pressure on electricity prices—

Dr JOHN KAYE: Did you not just ask that question?

The Hon. KAYEE GRIFFIN: No.

The Hon. GREG DONNELLY: No. Could the Treasurer elucidate on how that downward pressure will be created?

The Hon. ERIC ROOZENDAAL: It is important to remind the Committee that regulated retail energy prices are set by the Independent Pricing and Regulatory Tribunal [IPART]. It determines the appropriate profit margin that can be charged by retailers. Electricity retailers in New South Wales cannot charge what they like for electricity on the regulated tariffs. Their profit margins for these customers are fixed by regulations which will continue to be regulated until at least 2013. New South Wales retail electricity prices are very competitive in States such as Victoria and Queensland where electricity retailers have long been owned by the private sector.

It is worth making that observation. For example, as at 1 July 2010 a household in New South Wales consuming around 5,600-kilowatt hours a year on a standard regulated domestic tariff would pay around \$1,115 a year with EnergyAustralia and around \$1,343 a year with Integral Energy. For a similar customer in Queensland retailers privately owned would pay around \$1,176; and in Western Australia retailers that are government owned and in a similar class would pay about \$1,306. Another important factor that will contribute to downward pressure on electricity prices is competition.

I think it is worth noting—I have not expanded on this yet—that the competition watchdog, the Australian Competition and Consumer Commission [ACCC], has reviewed and endorsed our transaction outcomes and the market structure that has been delivered. There is no reason whatsoever to take a different view of the competition outcomes to that reached by the ACCC. In announcing the ACCC's position, Graham Samuel, the head of the ACCC said:

After extensive inquiries, the ACCC concluded that these potential acquisitions were unlikely to result in a substantial lessening of competition in any of the relevant markets.

The ACCC concluded that new entry, together with continued vigorous competition from existing players, would be likely to preserve competitive tension in the retail markets.

Finally, the ACCC concluded that the vertical integration of generators and retailers arising from the potential acquisitions would not be likely to change incentives for generator bidding or retailer conduct in New South Wales, nor raise barriers to entry in these markets.

When assessing competition outcomes we need to look at what the market participants are saying. I have already spoken about AGL's intention to hunt down and catch customers in New South Wales with its target of around 500,000 new customers over the next three years. It has indicated within the media that it wants to invest around \$1 billion in chasing down those customers. To do that it has to compete with the other new retailers that we have created in the market. I believe that with TRUenergy's acquisition of EnergyAustralia we now have a genuine third force within the national retailing market to take on and compete with AGL and Origin. We now have three big national players in the New South Wales electricity market all hungry to poach customers from one another. I think it demonstrates through this that we will see strong competitive downward pressures on prices.

One of major contributors to rising electricity prices is the cost of generating electricity and increasing costs for fuel. We have talked about the booming coal export market and the benefits that this creates for the Australian economy in relation to jobs and its contribution to the GDP. But the

flipside is that we need coal to generate electricity in Australia and the reality is that coal is getting more expensive. We have acted in the interests of electricity users to address the fuel cost issue by letting them take on the development of the Cobbora resource. Our rationale for the Cobbora resource is simple: to provide a secure and long-term supply of fuel for our generators at prices that are less distorted by booming export demand. We believe that these are appropriate responses to take and we believe that through the energy reform strategy we will see downward pressures on electricity prices.

The Hon. GREG DONNELLY: Thank you, Treasurer.

CHAIR: I thank the Premier, the Treasurer, Dr Gellatly and Mr Yeadon for participating in this inquiry and for cooperating in the Committee's procedures. I thank you also for taking the oath and the affirmation. I inform all witnesses that they have seven days within which to provide answers to questions taken on notice. Answers are due by Tuesday 25 January. We are still working on finalising our report by 31 January. Thank you again for your time and for your contributions.

(The witnesses withdrew)

(The Committee adjourned at 1.10 p.m.)

Appendix 5 Transcript of 18 January 2011

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

INQUIRY INTO THE GENTRADER TRANSACTIONS

At Sydney on Tuesday 18 January 2011

The Committee met at 10.00 a.m.

PRESENT

Reverend the Hon. F. J. Nile (Chair)
The Hon. G. J. Donnelly
The Hon. L. A. Foley
The Hon. K. F. Griffin
The Hon. Dr J. Kaye
The Hon. T. J. B. Khan
The Hon. G. S. Pearce

CHAIR: Welcome to the second public hearing of the inquiry into gentrader transactions. I refer attendees of today's proceedings to the statement I made yesterday concerning the Committee's proceedings and prorogation of Parliament. The Committee intends to hold further hearings on Friday 21 January and Monday 24 January.

Before we commence, I will make some comments about procedural matters. The Committee previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. In accordance with the Legislative Council's guidelines, members of the Committee and witnesses may be filmed or recorded, but people in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings, the media must take responsibility for what they publish or interpretation that is placed on anything that is said before this Committee.

Witnesses, members and their staff are advised that any messages should be delivered through the Committee clerks. All persons present should please turn off their mobile phones. I am very pleased to welcome our first witnesses for today and I thank them for their attendance—Mr Michael Schur, Secretary, New South Wales Treasury; Mr Kevin Cosgriff, Deputy Secretary, Fiscal and Economic Directorate, New South Wales Treasury; and Mr Richard Timbs, Deputy Secretary, Commercial Management Directorate, New South Wales Treasury. All witnesses will be sworn or affirmed prior to giving evidence. I know that the witnesses have attended previous hearings of other Committees, but that does not cover this particular Committee's inquiry.

KEVIN COSGRIFF, Deputy Secretary, Fiscal and Economic Directorate, New South Wales Treasury, and

RICHARD TIMBS, Deputy Secretary, Commercial Management Directorate, New South Wales Treasury, Level 27, Governor Macquarie Tower, 1 Farrer Place, Sydney, sworn and examined:

MICHAEL ALAN SCHUR, Secretary, New South Wales Treasury, Level 27, Governor Macquarie Tower, 1 Farrer Place, Sydney, affirmed and examined:

CHAIR: As Chairman, I add my personal thanks for your appearance. There was some debate of whether public servants would attend this Committee's hearings. I am grateful that you accepted the invitation. Do you wish to make any statement, Mr Schur?

Mr SCHUR: No.

CHAIR: We will commence questions with Mr Pearce.

The Hon. GREG PEARCE: Mr Schur, having regard to your previous appearances before this Committee, what guarantees can you give us that your evidence will be truthful, complete and honest?

The Hon. GREG DONNELLY: Point of order: The question goes straight to the throat in terms of impugning the witness's truthfulness and honesty.

The Hon. GREG PEARCE: I suggest you read the transcripts of evidence that Mr Schur previously has given in relation to infrastructure.

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CHAIR: Allow Mr Donnelly to complete his point of order.

The Hon. GREG DONNELLY: The question is inappropriate.

The Hon. GREG PEARCE: The question is entirely appropriate.

The Hon. GREG DONNELLY: Greg, I can take the time up if you like and you can talk as long as you like. You are an experienced member of the House. You know the form of questions and how they are to be asked. That is an inappropriate question and I ask you to withdraw it.

The Hon. GREG PEARCE: I am not going to withdraw it. I want the question answered.

CHAIR: It is quite clear that the witnesses have taken the oath or affirmation. That is sufficient testimony to the truthfulness of their statements before this inquiry.

The Hon. GREG DONNELLY: Thank you, Chair.

The Hon. GREG PEARCE: Mr Cosgriff, we know that your evidence will be frank and open. Can you outline for the Committee your role in the energy reform process?

The Hon. GREG DONNELLY: Point of order: The implication of the question you asked impugned the person you asked the first question of.

The Hon. GREG PEARCE: And your point is?

The Hon. GREG DONNELLY: The point is that I ask you to withdraw it.

The Hon. GREG PEARCE: I have already said I am not withdrawing it, and the Chair has ruled on it.

CHAIR: We do not want you to give a preamble to the question.

The Hon. GREG DONNELLY: By impugning a witness to this inquiry.

CHAIR: Just ask him the question.

The Hon. GREG PEARCE: The question to Mr Cosgriff was: Could you outline to the Committee your role in the energy reform process?

Mr COSGRIFF: Yes. I sit on the steering committee along with Richard Timbs. I have in the past run the energy section in the New South Wales Treasury, but that is now the responsibility of Richard.

The Hon. TREVOR KHAN: I am sorry, I just missed that last bit.

Mr COSGRIFF: I have in the past run the energy section in the New South Wales Treasury, but that is now the responsibility of Richard.

The Hon. GREG PEARCE: Did you have a role in setting the retention values for each of the assets?

Mr COSGRIFF: I did not have a role beyond the role of being on the steering committee. There was a subcommittee which was responsible for the work that led to the retention value which has been approved by the steering committee and the budget committee of Cabinet.

The Hon. GREG PEARCE: Do I take it from that that you were part of the recommendation of the retention value?

Mr COSGRIFF: Of the steering committee to the budget committee of Cabinet, yes.

The Hon. GREG PEARCE: And those recommendations were accepted?

Mr COSGRIFF: Yes.

The Hon. GREG PEARCE: Just to be completely clear on this, there was a retention value for each of the individual assets for, in particular, the Delta West assets.

Mr COSGRIFF: Yes. The evaluation was done against the package of assets that Origin and TRU had bid on. To compose that, you have to compose a series of retention value analyses based on your expectation about the cash flows out of the existing generation and retail businesses.

Mr TIMBS: I was heavily involved in any retention value setting process. I am quite happy to take any questions you might have on that.

The Hon. GREG PEARCE: My question is quite clear: Was there a retention value set for the Delta West assets?

Mr TIMBS: Yes, there was.

The Hon. GREG PEARCE: There was—an individual value?

Mr TIMBS: Yes.

The Hon. GREG PEARCE: Was there a retention value set for the Eraring assets?

Mr TIMBS: Yes. The retention value process, consistent with the Government's aims to actually transact all of the assets in one loan in a simultaneous set of transactions, was a retention value that was calculated for all of the assets that were intended to be transacted and then there were retention values calculated for all of the discrete component parts because there might have been the possibility, which turned out to be the case, that we were not transacting everything at the one time.

What we needed to do was to be in a position to have retention values calculated across particular packages or bundles which the Government ultimately decided to transact. In the case of the Origin Energy transaction for the assets acquired by Origin, there was a retention value calculated for that package of assets which was compared to the transaction. In the case of the TRUenergy transaction, there was also a retention value calculated for that package of assets that was compared to those bids.

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That process was entirely consistent with the recommendation of the Auditor-General in his report in 2008, which I quote. He recommends, "... calculating a retention value for each generator and retailer"—I am sorry. His quote was, "I am of the view it is also essential for a confidential reserve price for each transaction to be established by the Government before each transaction proceeds." That is the methodology that we followed.

The Hon. GREG PEARCE: Without disclosing the retention values, can you indicate to us whether the price paid for the Delta West assets exceeded the retention value for the Delta West assets?

Mr TIMBS: As you say, I am not in a position to comment on specific retention values because those matters remain commercial-in-confidence and we have a remaining transaction in process. We would not want to prejudice that. What I can confirm is that the bids for each of the transactions that have been signed by Government exceeded the retention values for those packages or those bundles. In the case of TRU, the bid exceeded the retention value for the assets that they are acquiring. In the case of Origin, the bid exceeded the retention value for the assets that they are acquiring.

The Hon. GREG PEARCE: If I understood you correctly in terms of the process, you said that the retention values for the packages were calculated or determined after the bids were actually lodged.

Mr TIMBS: No. I did not say that.

The Hon. GREG PEARCE: When exactly were the retention values for the packages determined?

Mr TIMBS: The retention value work was done in the months leading up to bids being submitted, and the recommendation to approve retention values was put to the budget committee of Cabinet prior to this being lodged and was approved by the budget committee of Cabinet prior to bids being lodged.

The Hon. GREG PEARCE: When the bids came in, you took those pre-approved retention values and bundled them up to match the bids, and that was what went forward for the final decision. Is that it?

Mr TIMBS: That is correct.

The Hon. GREG PEARCE: There has been some public concern about an alleged breach of confidence in relation to negotiations with Hydro Aluminium Kurri Kurri. Mr Schur, can you outline what has occurred there?

Mr SCHUR: I am not aware of that. One of my colleagues might be able to answer that.

The Hon. GREG PEARCE: You are not aware of it?

Mr SCHUR: No.

The Hon. GREG PEARCE: Mr Cosgriff?

Mr COSGRIFF: No, I am not aware of that.

The Hon. GREG PEARCE: You are not aware of it either?

Mr TIMBS: I am also not aware of any breach of confidence.

The Hon. GREG PEARCE: You are not. There is a suggestion that an injunction was taken out against the Government to prevent a breach of confidence. Are any of you aware of that? Is that a no?

Mr COSGRIFF: No.

Mr TIMBS: I think if there is an injunction that has been lodged, that would be a matter of public record.

The Hon. GREG PEARCE: That is right.

Mr TIMBS: But as I stated in my earlier answer, I am not aware of any breach of confidence.

The Hon. GREG PEARCE: You are not aware of any breach of confidence. Are you aware of an allegation of a breach of confidence?

Mr TIMBS: No.

The Hon. TREVOR KHAN: Mr Schur, I do not want to keep you out of the game, so I will talk to you and you can decide where we go from there.

Dr JOHN KAYE: He is thrilled.

The Hon. TREVOR KHAN: I am a lawyer as opposed to an accountant, so you will have to keep it simple. I think what mums and dads are interested in out of the transaction is what the impact of this transaction may be on things like whether we are going to be better or worse off. Keeping it simple, do I take it that you as Treasury Secretary have gone to the task, or have delegated the task to somebody, to work out what the effect of this transaction is on the receipt of tax equivalent payments going into the future? Would that be right?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Do I take it that is an exercise that would have gone forward for some years to work out what that effect is?

Mr SCHUR: Correct.

The Hon. TREVOR KHAN: Do I take it that one of the effects of this transaction is that the tax equivalent payment—that is, part of the money that the Government would otherwise receive—is reduced because by selling the gentrader assets and the retailer assets, those will now be paying taxes to the Commonwealth instead of the tax equivalent payments coming to the States?

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Mr SCHUR: That is correct, yes.

The Hon. TREVOR KHAN: There is a calculated reduction in the amount of money that is now going to be received into the budget bottom line. Is that right?

Mr SCHUR: Yes, but that is only one side of the equation.

The Hon. TREVOR KHAN: We will get to it. Again, I am simple, so I will just deal with it in its component parts. Are you able to indicate for each of the coming four years what the reduction in tax equivalent payments will be that will be received by the State?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Will you do that?

Mr SCHUR: Yes. I can give you some details now.

The Hon. TREVOR KHAN: I am inviting you to.

Mr SCHUR: I should say, Mr Khan, that I will provide a detailed analysis—a year-by-year analysis—of the impact of the transaction on the State's finances as part of my updated statement of uncommitted funds, in which I indicated in the first version of that that the statement of uncommitted funds would be updated for any significant change to the State's financial position, in particular in relation to the energy transaction. Let me answer your question in this way: The way we have to consider the transaction is in two ways—What is the impact of the transaction on the State's finances? Does the transaction represent value for money?

The Hon. TREVOR KHAN: I am asking you, with respect—and I know you are trying to do your best.

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: I am asking you: What is the effect in terms of the tax equivalent payments? How much less are we going to receive each year over the next four years?

Mr SCHUR: I am going to answer your question. If you are prepared to bear with me, Mr Khan, I will answer your question.

The Hon. TREVOR KHAN: We will see how far I am prepared to bear.

Mr SCHUR: I will answer your question. As I said, there are two things to consider here: did the State get value for money and what is the impact on the State's finances? When we talk about the impact of the transaction on the State's finances, there are two impacts. It is really important that we understand those two impacts.

The Hon. TREVOR KHAN: Mr Schur, I do not want to be rude. I really do not, believe it or not. I am asking what is the impact of tax equivalent payments?

Mr SCHUR: Mr Khan, I am answering your question. Bear with me and I will answer your question.

The Hon. TREVOR KHAN: I want you to answer the specific question.

Mr SCHUR: You have asked me a question but the point is there is a negative impact from the lost dividends and tax equivalents that we would have received—

The Hon. GREG PEARCE: What are the amounts?

Mr SCHUR: I am going to take you through that, Mr Pearce—but they are more than offset by the impact of the transaction. I cannot give you an answer to that question without explaining the broader implications of the transaction on the State's finances. So please bear with me. There are two impacts on the State's finances. The numbers I am about to give you, which will answer your question, are relative to the aggregates that we published in the 2010-11 half-year review. First of all, there is an unambiguous improvement to the State's balance sheet to the tune of about \$5 billion. So the day we receive the proceeds from Origin and TRU the State's balance sheet is improved by about \$5 billion relative to the—

The Hon. TREVOR KHAN: Can I just cut you off there? Are you saying that at some point in time the State Government is going to receive \$5.3 billion in one lump sum?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Subject to adjustments, is that right?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: So suddenly into the coffers is going to come \$5.3 billion, is that what you are saying?

Mr SCHUR: That is correct.

The Hon. TREVOR KHAN: That is what TRUenergy is giving us—one lump of their part of the transaction?

Mr SCHUR: Yes.

The Hon. TREVOR KHAN: Are they not bleeding it in over some years?

Mr SCHUR: No, they are not. They are paying upfront for the gentrader. The capacity payments they are paying upfront. That is true for both transactions.

Dr JOHN KAYE: They are paying upfront?

Mr SCHUR: Upfront payments.

Mr TIMBS: The \$5.3 billion is a combination from TRU and from Origin.

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Dr JOHN KAYE: They are paying upfront?

Mr SCHUR: They are paying that all upfront. When we execute these transactions in a matter of weeks the State's balance sheet will unambiguously improve by the tune of \$5 billion.

The Hon. TREVOR KHAN: By that lump of money coming into a bank account?

Mr SCHUR: Correct, the balance sheet.

The Hon. TREVOR KHAN: By that lump of money coming into a bank account, I asked?

Mr SCHUR: Yes. Let me explain what that means for the State's finances. The State's credit rating—

The Hon. GREG PEARCE: Forget the numbers on the tax—

The Hon. GREG DONNELLY: Point of order.

The Hon. GREG PEARCE: This is what I was concerned about at the beginning.

The Hon. GREG DONNELLY: I am trying to follow the witness giving his answer. He is barely getting the opportunity to speak for 45 or 50 seconds without an interruption. You are entitled to ask your questions but it seems to me that you are getting to the point of almost badgering the witness.

The Hon. TREVOR KHAN: People have seen me badger a witness. He is not getting badgered.

The Hon. GREG DONNELLY: The witness is entitled to be given an opportunity to answer the question as he wishes to do so. You are getting to the point of badgering the witness.

The Hon. TREVOR KHAN: That is ludicrous. Let him get on with it and stop wasting time.

Mr SCHUR: Mr Khan, your question went to the impact of the transaction on the State's finances.

The Hon. TREVOR KHAN: My question actually went to the tax equivalent payments. Anyway, go on.

Mr SCHUR: I will get to that. The State's balance sheet unambiguously improves by \$5 billion. What that means is that that translates into a 7 per cent reduction in the key credit rating metric that the rating agency Standard and Poor's uses to assess the creditworthiness of our State. That credit rating metric, which is the ratio of total State net financial liabilities to total State revenues, at the end of the forward estimates as per our half-year review gets up to about 112 per cent. The rating agencies have told us that a trigger—

The Hon. TREVOR KHAN: Mr Schur—

CHAIR: Would you let him finish his explanation?

Mr SCHUR: Mr Khan, I really would have thought that the inquiry would be interested in the impact of the transaction on the State's finances.

The Hon. GREG PEARCE: Do not lecture the Committee. Just answer the question.

Mr SCHUR: I am answering the question. There is a 7 per cent improvement in the ratio. That gives the State tremendous headroom and flexibility on its balance sheet that it would not otherwise have. Let us go to the impact on the budget. Yes, there is a reduction in tax equivalents and lost dividends when we transact on these assets. That is equivalent to roughly \$600 million of dividend flows, tax equivalent flows that we no longer have. But—

The Hon. TREVOR KHAN: Because I asked about tax equivalents, again, what is the impact year by year for the next four years in terms of tax equivalent payments?

Mr SCHUR: I have an aggregate figure here of forward dividends and tax equivalents. I have an aggregate figure. It is roughly \$600 million over the forward estimates. But that is more than offset by the interest earned on those proceeds. Because the assumption that is made, Mr Khan, is—

The Hon. TREVOR KHAN: Mr Schur, can I just ask this question? In terms of Eraring, for instance, what is the reduction in tax equivalent payments and dividends received from Eraring?

The Hon. GREG PEARCE: Could you table that document, Mr Schur?

Mr SCHUR: I will not table it. I will provide this as part of my statement of uncommitted funds.

Mr TIMBS: It is about \$300 million over forward estimates.

The Hon. TREVOR KHAN: Have you or your department made an assessment on the impact on the profitability going forward of this transaction on Eraring?

Mr SCHUR: Yes, we have.

The Hon. TREVOR KHAN: Are you able to give us what the impact is on its profitability?

Mr TIMBS: Mr Khan, if I can take you back to my comments earlier on retention value. The retention value work was exactly that. It was a comparison of the state of play immediately pre-transaction—so the businesses that we own and an estimate of the expected cash flows from those businesses for the remaining term. That takes into account things like dividends, tax equivalent payments, government guarantee fees. What it compares against that is the bids that we got less any residual liabilities or provisions that we need to create. In respect to Eraring though, the design of the gentrader agreement is such that Eraring's costs broadly will be covered by the fixed and variable operating payments that it gets from the gentrader. So rather than being the trading profit-making enterprise that it is today, it is effectively getting coverage of its costs from the gentrader. So it would be a—

The Hon. TREVOR KHAN: What assumptions have been made with regard to its continuing debt position?

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Mr TIMBS: There will be no debt in Eraring. All of the debts in Eraring will be repaid.

The Hon. TREVOR KHAN: Out of the proceeds of sale?

Mr TIMBS: Correct, and the debt apportioned to the Delta West component of the Government's transaction will also be repaid. That must be repaid. Those businesses under the gentrader contract will not have an ability to service debt in the future. So they will be left debt free.

Mr SCHUR: Mr Khan, if I could just add to that, and I was going to get to this. We have got this \$5 billion that comes in when the transactions are executed. In terms of the impact of that on the budget, what we do is we assume that we take those proceeds and use those proceeds to retire all the outstanding debt for these entities.

The Hon. GREG PEARCE: How much is that?

Mr SCHUR: This is essentially the debt for the generators, the gentrader contracts.

Mr TIMBS: It is approximately a bit over \$1.2 billion.

The Hon. GREG PEARCE: Total, for the two?

Mr TIMBS: That is for Eraring and for Delta West, yes.

CHAIR: Would you state that figure again?

Mr TIMBS: It is approximately \$1.2 billion.

The Hon. TREVOR KHAN: In terms of the retailer components, is their debt being retired as well?

Mr COSGRIFF: Effectively the retailers do not have any debt. The debt is carried by the network businesses which they have been associated with.

The Hon. TREVOR KHAN: The network businesses' debt will not be retired?

Mr COSGRIFF: No, the network debt is supported by the revenue flows they get from the regulatory determined rate of return they get out of the Australian Energy Regulator.

The Hon. GREG PEARCE: One final question.

The Hon. GREG DONNELLY: No, it is our question time.

The Hon. GREG PEARCE: You took up enough of our time. Let me ask one question.

Dr JOHN KAYE: It is not your question time, Mr Donnelly, it is mine.

The Hon. GREG PEARCE: There has been a great deal of reliance on the Auditor-General to report on these transactions. In the Auditor-General's report on the lotteries transaction, the most

recent report, he made comments about the fact that New South Wales Treasury obtained legal advice which limited his power to undertake the review. He complained about that in his report. Will you give us an undertaking that Treasury will cooperate with the Auditor-General in relation to the inquiry into these transactions and give him full access to allow him to do whatever report he wants to?

Mr SCHUR: We did that in relation to the lotteries transaction. We did not limit his powers in any way.

The Hon. GREG PEARCE: According to him, you obtained two legal advices—not one, but two—from the Crown Solicitor about his powers, limiting him as to what he could do.

Mr SCHUR: Which in no way limited his powers.

The Hon. GREG PEARCE: Why did he write that in the preface to his report? Would you like to have a look at it?

Mr SCHUR: I do have his report. I do not believe he said it limited his powers.

The Hon. GREG PEARCE: Will you fully cooperate?

Mr SCHUR: We have previously and we will.

The Hon. GREG PEARCE: Will you allow him to undertake such report as he wants to?

Mr SCHUR: Absolutely. We encourage his participation.

Mr TIMBS: Mr Pearce, in relation to the second part of your question about access to records, I led the lotteries transaction. I had the primary interface with the Auditor-General. I can assure you that the Auditor-General had complete and unfettered access to every single document in relation to the lotteries transaction. I think if you asked him he would confirm that. There was no restriction as to access whatsoever.

CHAIR: We will move on to questions from Dr John Kaye.

Dr JOHN KAYE: I want to be absolutely clear. Mr Schur, let me take the case of the gentrader Eraring's purchase by Origin of \$950 million, according to Origin's documents. You are saying that \$950 million turns up in the balance sheets. By that, do you mean that goes into general revenue? So tomorrow the Treasurer could write a cheque for \$950 million to buy something?

Mr SCHUR: Yes.

Dr JOHN KAYE: Why then does Origin in its document say, "At completion Origin has agreed to place funds on security deposit for the term of the gentrader arrangements to cover the annual capacity charge payment"? I am terribly confused. On the one hand, you say it comes as a nice cheque in the mail to the Treasurer. On the other hand, Origin does not think that at all. Origin says that it is putting the money into a security deposit for the term of the gentrader arrangement to cover the annual capacity charge payment. Can you unwind that for us, Mr Schur?

Mr SCHUR: I will get Mr Timbs to talk about the contractual arrangements.

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Mr TIMBS: I do not think there is an inconsistency between the two statements. What Origin is saying is that they are paying upfront for the proceeds of the transaction. The reason they do that is rather than the State take credit risk on their ability to pay capacity charges in future years, they are actually giving us all that money upfront and we get access to it upfront.

Dr JOHN KAYE: Can you define the word "us"? What Origin says in its document is that it will place the funds on security deposit. Earlier Mr Schur told us, no, we are going to get the money in a cheque. Mr Roozendaal or Mr Schur will go down to the bank and deposit it and it is there ready to write another cheque against. You are saying that is not the case.

Mr TIMBS: I am saying the money becomes an asset of the State.

Dr JOHN KAYE: It is an asset of the State—

The Hon. GREG PEARCE: It is an annual payment.

Dr JOHN KAYE: —but it is an annual payment. I refer to what Origin is saying as against what Mr Schur is saying. I note that Mr Schur and Mr Cosgriff are busy trying to sort this out. Mr Schur said it was a lump sum of payment. Here it is, here is your money. What you or Origin are saying is that, no, it is an asset of the State but it is placed in a security deposit and we only get it on an annual basis. Are you correct or is Mr Schur correct?

Mr TIMBS: I am saying it is cash and I am saying it is an asset of the State.

Dr JOHN KAYE: It is cash? It is not in a security deposit at all?

Mr TIMBS: A security deposit is cash.

The Hon. GREG PEARCE: Is it accounted straightaway or on a yearly basis when it is due?

Dr JOHN KAYE: That is the question. How is it accounted? Do you put it into the balance sheet today and say that we have got \$950 million in this financial year or does it come in year by year?

Mr COSGRIFF: No, it is accounted for as a financial asset as it is received.

Dr JOHN KAYE: As it is received?

Mr COSGRIFF: As it is received on the day that Origin executes the transaction, or TRU or whomever we are discussing.

Dr JOHN KAYE: Do you have any sensitivity at all for my confusion on this matter? On the one hand, you are saying it is a lump sum payment. On the other hand, Origin is saying it is an annual capacity charge payment. Do you see any contradiction between those at all?

Mr SCHUR: I have not seen the documentation you refer to but—

Dr JOHN KAYE: You have not seen the documentation?

Mr SCHUR: I have not seen the document.

Dr JOHN KAYE: You have not seen Origin's statement to their shareholders?

Mr SCHUR: No.

Dr JOHN KAYE: Fascinating.

Mr SCHUR: But unambiguously it comes into the State's balance sheet on day one on the execution of the contract.

Dr JOHN KAYE: The balance sheet is one thing but does it come in as cash on day one to the State with the State's ability to use that cash as cash without borrowing further money—to use that cash to pay teachers and tram drivers and whatever?

Mr SCHUR: Yes. It is available on day one.

Dr JOHN KAYE: As cash or do you have to borrow to get that money? Could you pile it up in a pile of \$950 million in cash? I am sorry to simplify this but it is totally the opposite of what Origin is saying.

Mr TIMBS: The cash, the security deposit, is an asset that can be borrowed against.

Dr JOHN KAYE: So you have changed your tune. It is not actually cash—

Mr TIMBS: Excuse me, I have said for the last five minutes it is cash, it is an asset of the State. That is the answer I have given to your questions.

Dr JOHN KAYE: But you cannot use it. It is like grandma has left you something but she has left it in a security deposit and if you want to use it you have got to borrow against it. Is that what you are saying?

Mr TIMBS: Correct.

Dr JOHN KAYE: So it is not actually cash in the sense that you can use that cash now. Is that right, Mr Schur?

Mr SCHUR: No, that is not my understanding.

Dr JOHN KAYE: But that was the understanding that Mr Timbs just gave us.

Mr SCHUR: My understanding is that it comes in and on day one it is an asset of the State and it improves the balance sheet of the State to the tune of almost \$5 billion.

Dr JOHN KAYE: Sorry, Mr Schur, we have done that, but the question is: is it cash? Mr Timbs says it is cash but you cannot use it; you are saying it is cash but you can use it without further borrowing?

Mr TIMBS: I did not say you cannot use it; I said you can borrow against it.

Dr JOHN KAYE: You can borrow against it, true. You could borrow against Parliament House; that does not make it a cash asset—it does not make it cash, it makes it an asset. You are saying it is cash; he is saying it is an asset. Basically, what we can take away from this is that you guys do not know?

Mr COSGRIFF: No, Dr Kaye, let us be crystal clear about this. In the budget we produce three statements: we produce an operating statement, a balance sheet and a statement of cash flows.

Dr JOHN KAYE: Yes, I am aware of that.

Mr COSGRIFF: We have for some years in the first two statements done that on an accruals basis. What we are saying is that the payments by those two businesses will be accrued into the State's accounts on the balance sheet as an upfront payment. That means that they will effectively improve the balance sheet of the State to \$5.3 billion.

Dr JOHN KAYE: Let us go somewhere else for a minute. You gentlemen, two, I believe, of the three of you gentlemen were on both the evaluation committee and the steering committee, is that correct?

Mr TIMBS: I was on the evaluation committee and the steering committee.

Dr JOHN KAYE: Mr Cosgriff or Mr Schur, were you on either of those committees?

Mr COSGRIFF: I am on the steering committee; I was not on the evaluation committee.

Dr JOHN KAYE: Can I ask you, Mr Timbs—and I am not seeking specific dollar amounts because I would understand that all I would get back is that is commercial in confidence—can you tell me how you valued the downside risks in these bids? You have these bids: you had a bid from Origin and you had a bid from TRU and you had bids from AGL, but there are a number of downside risks for the State associated with those. There was the risk on maintenance—the decision made somewhere that maintenance would be fixed from day one; there would not be re-negotiation of the maintenance contract. The ALDs, which pose some risk, as we heard yesterday from Mr Yeadon; there are significant downside risks on the ALDs. We will come to the coal contract in a minute, because that is a separate issue. Let us talk about the maintenance and the ALDs. What mechanisms did you use to say what are the long-term risks to the balance sheet, whatever, to the people of New South Wales of those two attributes of those contracts?

Mr TIMBS: On all of those matters we engaged independent expert advisers to do forecasts and to look into those matters precisely. We also worked with the State-owned corporations themselves to get their input, because they are obviously running the businesses. So we received expert independent reports on those precise matters that you are talking about on the issue around the potential for outages and also around the future maintenance profile of the businesses.

Dr JOHN KAYE: So the risk of a substantial outage happening at a bad time causing a substantial liability against the contract and the risk of an unexpected maintenance cost that was not anticipated in the payments from the gentrader to the generator, you looked at both of those risks?

Mr TIMBS: Yes, we did, and I think if we can just talk about the outages for a minute because a very important point which I am not sure came out fully yesterday is that these risks around outages are in fact not new risks at all under the gentrader; they are a risk that was in the business immediately prior to gentrader and they are a risk that is with the State immediately post-gentrader.

Dr JOHN KAYE: We understand that but this is a different situation because surely prior to that the generator had on the one hand risks and on the other hand they had an upside risk of a high price and selling their energy at a high price. They were balancing those in marketing. But these are new days for the State-owned corporations. My real question, Mr Timbs, is: when you looked at the retention value and you asked the question was this bundle of offers, of bids, greater than retention value, did you subtract some measure of risk?

Mr TIMBS: Let me take you through it because it is a very important point. The test on this particular transaction, on these two bundles, as it is with all government asset sales, is are you better off post-transaction, taking into account all of the impacts, the net impact of the transaction, than you would be under the retention value? The best way to think of this is like an equation. On the one side you have got what is the retention value, and the retention value is the value to the government today of that business for evermore—that is your starting point. What you have to do is you have to beat that. So then what we do is look at the gross bids that we have got and then we take off that any amounts that are liabilities created by the transaction for the future.

Dr JOHN KAYE: Can I pause you there for one second and just ask you this question? Those liabilities you are taking off are in respect of events that are yet to happen?

Mr TIMBS: I was about to make that comment.

Dr JOHN KAYE: Which is what Donald Rumsfeld would refer to as, to some extent, unknowable unknowns. The question I want you to address is how do you put a current value on those things that are yet to happen?

Mr TIMBS: I was about to explain. Going back to the equation about retention value, what we are comparing to retention value is the gross bids we received less liabilities that are potential future liabilities that are created through the transaction, and in this case we are looking at any payments we might have to make to gentraders under the contracts and any costs that are incurred by the retail businesses as a result of their sale.

Dr JOHN KAYE: So what probability did you put on a major outage at two units at Eraring simultaneously that will require re-turbining them?

Mr TIMBS: There was an extremely sophisticated piece of work and an algorithm around all of the generators and there were confidence levels derived from zero to 100 per cent as to the likelihood of an amount of payments being made. So we did an analysis of what is the 50 per cent confidence level, which is your sort of expected, your mid-point, your most likely—you might beat that, you might be under that—and 95 to 100 per cent confidence levels. So we looked at the entire range of those possibilities.

Dr JOHN KAYE: But, like all good gambles, underlying that is somebody's expectation of what is going to happen in the future—somebody's understanding of the risk profile of what is going to

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happen in the future. Was that yours, Mr Timbs, or Mr Schur's or Mr Cosgriff's or Mr Roozendaal's or mine?

Mr TIMBS: No, it was based on a detailed review of the previous operating history of the businesses and detailed and expert technical advice from relevant advisers.

Dr JOHN KAYE: Mr Timbs, you are guaranteeing us that the future will be a repetition of the past?

Mr TIMBS: No, I am not saying that at all. You cannot actually look at the situation with liquidated damages post the transaction in isolation of what it would be today. Those risks are in the businesses today because the business, if it is not producing at times of high market prices, will miss out on profits, which go to profitability, or it might be put in a situation where it has got to go into the market and buy cover for contracts that it has written that it cannot physically deliver on. So there is an inherent volatility and instability in the forward revenue profile of those generators today. We have got that; the State has got that. If there is no gentrader transaction we are at that risk.

If I can just make the point: if you look at the annual dividend coming from Eraring and from Delta for the last five years, the annual dividends for both Eraring and Delta in financial year 2009 and financial year 2010 were less than they were in financial year 2005. So these are our profit-making businesses which are inherently volatile and that is the nature of trading in the electricity market. Those risks are already there today; all we were doing was trying to put a quantum around what is left after the transaction. What we have done in looking at retention value is look at the gross bids, taken off the provision for these ALDs, taken off the costs of separating the retail businesses out, and that net amount exceeded the retention values for both transactions. That was the work that was done.

Mr COSGRIFF: Can I just add to this point, so that it is crystal clear, about the modelling of generator outages, that you could calculate 8,760 hours in a year and say that was the capacity that was available from each of our generation units. In practice they have run historically up to 90 per cent of that—it varies a bit depending on the generator—and that covers both the unforced outages, the outages for repairs and for maintenance, those sorts of things, plus the forced outages, the outages that occur because something unexpected goes wrong, and the 2, 3, 4, 5 per cent of the hours in the year are the historic pattern out of the generators.

That historical pattern is used in the gentrader contracts to construct an availability. So it is not true to say that the gentrader has got in their contract or the generator is liable for 100 per cent of the hours of generation. What it is true to say is that there is a number there that reflects the historic pattern and the change in that pattern through time of availability of the New South Wales generation plant that is specific to the individual generation plant and different from each other, reflecting their underlying engineering, their track record and how they are expected to perform over time.

Dr JOHN KAYE: Which is fine so long as the future is a repeat of the past?

Mr COSGRIFF: No, so long as the future reflects the patterns of the past, because there is a decay factor built into the capacity for each of the generation units, as you would expect.

Dr JOHN KAYE: Which you know what it is.

Mr SCHUR: Can I just add to that for a moment? I want to correct the record. Dr Kaye is right: it is not the cash position of the State that improves by \$5 billion; it is unambiguously the State's balance sheet and it is the additional fiscal flexibility, that improvement to the State's balance sheet, is what is important here in terms of the overall impact on the State's finances.

Dr JOHN KAYE: But not the cash?

Mr SCHUR: Not the cash. In terms of the cash impact, as I say, I am happy to give that detail when I submit my updated statement of uncommitted funds. In relation to the ALD regime I think it is important that we make a point that I think has been missing so far in some of the debate. This is not a new risk—I think Richard has made the point. The risk associated with unplanned outages is an existing risk; it is a risk that the businesses currently face.

Richard has already made the point that volatility in dividends we receive from these businesses is somewhat a reflection of that risk. Could we have got rid of this risk entirely? The answer to that is there is only one way in which we could have got rid of this risk entirely and that is to have no residual involvement in generation. In other words, the only way you can get rid of this unplanned outage risk is to have entered into long-term leases of the assets or sold them. That is the only way.

Dr JOHN KAYE: Is that your favourite option, Mr Schur?

Mr SCHUR: It was my favourite option.

Dr JOHN KAYE: An option you put to the Treasurer?

Mr SCHUR: An option that was put to the Government and the Government accepted.

Dr JOHN KAYE: So you accept we have got a second-rate option here?

Mr SCHUR: I have said on more than one occasion, and I could quote from my predecessor John Pierce, who I think said it at budget estimates committee hearings, that the gentrader option is the next-best option available to the State for exactly the reason that we are having this discussion about ALDs now, because it does leave the State with residual risks.

Dr JOHN KAYE: It does not de-risk the State?

Mr SCHUR: It does not de-risk the State in the same way—

Dr JOHN KAYE: Your boss said it did yesterday.

Mr SCHUR: —in the same way that you could have de-risked the State if you had sold the underlying assets. That is the only way you could have entirely de-risked the State. As far as the ALD regime is concerned, I think it was mentioned yesterday that there are caps in place to limit that liability. One could have had no caps, and then one would likely have got higher proceeds, but there would have been a higher exposure. One could have had a lower cap and we would likely have received lower proceeds from the sale. But there is no way in which you can get rid of the risk entirely. The best you can do is to mitigate it.

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Dr JOHN KAYE: And that cap is the total annual payment for capacity—that is, the size of the cap?

Mr SCHUR: That is correct. I am happy to indicate, because I think this is important and it should be transparent to the Committee, that based on the accounting standard we have calculated what we believe to be the net present value of the expected risk associated with ALDs over the life of the GTA contracts. We determined that to be roughly \$360 million in net present value terms.

CHAIR: There was some concern that this inquiry might in some way hinder the process of the gentrader contract bundle of sales. Can you update the Committee on the current status of the negotiations for the sale of the gentrader contract bundles? Where are we at the moment?

Mr SCHUR: In general terms the transaction is ongoing. I will ask Richard Timbs to talk in more detail insofar as he can, obviously without prejudicing those ongoing negotiations.

Mr TIMBS: As you say, it is very difficult to comment in any detail without prejudicing the nature of those ongoing discussions. Suffice to say that we are expecting further bids for the remaining assets in the near term. Once those bids are considered, if they beat the relevant retention values, the Government would expect to be in a position to sign those transactions during February. If the bids do not exceed retention values, the transactions will not be progressed.

CHAIR: Early or mid February?

Mr SCHUR: I cannot comment at this time.

CHAIR: There has also been a lot of discussion in the community and at our hearing yesterday about the resignations of the eight directors of Delta Electricity and Eraring Energy and the appointment of four new directors to those companies. Do you have any understanding of the circumstances of their resignations or the reasons for their resignations?

Mr SCHUR: I do not.

Mr TIMBS: I was made aware of the resignations some time on the afternoon of 14 December. I am not aware of any of the specific reasons of any of those directors for their resignations and I have had no personal conversations with any of them since that time.

CHAIR: We understand that the former directors were receiving briefings. It seems that the Treasurer was not present at those briefings. Were any of you involved in the briefing of the directors on the progress of the sales?

Mr TIMBS: Yes. On the morning of 14 December a series of board meetings were held by the relevant State-owned corporations—the two generators and the three retail businesses. I was not present at those, but I understand that they were given by the State's financial and legal advisers. In the afternoon I was asked to attend with those same advisers what I believe were board meetings of Delta and Eraring at which we were asked various questions. The advisers answered those questions and then we were asked to leave the room.

Dr JOHN KAYE: What date was that?

Mr TIMBS: It was when the transactions were announced. I think it was Tuesday 14 December. I attended those briefings in the afternoon and after we answered some questions from the directors we were invited to leave. I went back to my office and some time later that day I was called and advised that certain directors had resigned.

CHAIR: During the briefing and when the questions were being asked did you get any indication of their unhappiness with the process to the extent that they would resign?

Mr TIMBS: There was no apparent indication at that meeting of any thought of resignations. It was clear that the directors had concerns around value and there was some discussion about that. Some questions were put and they were answered. But I do not think there was anything out of the ordinary in those discussions.

CHAIR: By that do you mean the viability of those organisations as companies?

Mr TIMBS: I think the key point here is that because of the nature of the transaction the boards of Eraring and Delta were asked to consider transactions that related purely to their business. What they did not know and what they could not be told because of the nature of the transaction and the confidentiality is that there were retail businesses that were being packaged together by a bidder to put together with their business. The consideration for the State as owner and shareholder was whether we were getting value over this combined package. The bids we received from Origin Energy and TRUenergy ascribed value to the gentrader contracts and the retail businesses. We do not know how they ascribed that value. It is not a concern for us; it is a concern for them.

The issue that the directors faced was that they had a transaction in front of them to be dealt with in isolation. The appropriate consideration for them was whether the transaction was in the best interests of the company. That was the decision that was put to them and they had to make a decision on that. It was a yes or no decision. What the transaction team knew was the other retail transactions that sat behind that would be bundled with it. We had the overall value perspective, as was appropriate for the group of people considering the transactions.

CHAIR: So the directors were feeling some tension because as directors they also had primary responsibility to those organisations, not to the Government.

Mr TIMBS: I think they had sole responsibility to those organisations. They have fiduciary duties to act in the best interests of the company. They had a transaction in front of them and they were asked whether they wanted to complete it on the basis of whether it was in the interests of the company. I think the Treasurer made it quite clear yesterday that there was a contemplation by the State's advisers from a long time ago that there might be circumstances where individual boards might be in a position where they decided that the transaction was not in the best interests of their company and therefore they would decline to do that transaction. At that point the Government would issue a direction to the company to execute the transaction. The chronology laid out yesterday by the Treasurer tracked those discussions with the State-owned corporations back for some 18 months. That was not a new issue.

CHAIR: Another important issue that has come out of this gentrader transaction is the impact on electricity prices for New South Wales consumers. I understand that through this process the TRUenergy customer base will increase from 1.3 million to 2.8 million accounts. Is there a danger of a monopoly developing?

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Mr SCHUR: I think we must look at what the Australian Competition and Consumer Commission [ACCC] said in relation to the transactions that were executed. We had a long engagement with the ACCC leading up to the transaction. Obviously this is front and centre for the ACCC—what will be the competitive impacts and the degree of competitiveness in the energy sector has an implication for electricity prices. It is important to understand what transactions it specifically approved and what it did not. I will not go into detail; their transcript is on their website. However, it is important to understand one of the things they said in relation to Origin acquiring both Country Energy and Integral Energy. I am quoting here:

In analysing the competition effects if Origin were to acquire Country Energy and Integral Energy—

which is what transpired—

...the ACCC took into account the fact that EnergyAustralia would be acquired by a third party not including AGL.

In other words, the ACCC effectively blocked AGL acquiring EnergyAustralia. To conclude the quote:

The ACCC therefore concluded that Origin would face competition in electricity retailing from the separate acquirer of Energy Australia, smaller players, as well as AGL, which has a large gas customer base and expanding electricity customer base.

The ACCC concluded that new entry, together with continued vigorous competition from existing players, would be likely to preserve competitive tension in the retail markets.

That was a key driving consideration for the State. Obviously without that approval we would have had a different outcome.

CHAIR: These documents also refer to a "contracted term" and to the "remaining technical life of the power station". In other words, you are guaranteeing that the power station will operate for a certain number of years. Can you explain how that would work? Is there a point at which the power station is written off—after 10 or 20 years?

Mr COSGRIFF: Throughout the transaction process engineering advice was taken as to the capacity that the power station would generate and what its technical life would be. That is reflected in the gentrader agreements. Effectively what we are saying is that the power station works for a period and that its technical life can be and has been estimated, and that is included in the gentrader contract.

CHAIR: Do you know offhand the estimated technical life?

Mr COSGRIFF: I do not have that in front of me, but that information is easily obtainable and I can provide it.

CHAIR: I understand that the figure for Mount Piper is 2042.

Mr COSGRIFF: Yes.

CHAIR: The date for Wallerawang is 2028. That is not long in terms of a State's future power needs. Is there any plan for what will happen in 2028?

Mr COSGRIFF: The purpose of the transaction as originally set out in the Owen report was to execute the retail and generation in order to give the private sector the incentive to invest in new generation. Indeed, we need new generation as we go through the next two decades, partly to deal with changes in demand but also changes in environmental regulation and replacement of existing plant. The first significant coal-fired generator, Munmorah, will retire within the next few years.

Dr JOHN KAYE: That is not true. Are you not trying to get a contract to refurbish it?

Mr COSGRIFF: Yes. Delta notified the energy trading market that it would be decommissioned, from memory in 2014, but I will take that date on notice. That provides a refurbishment option. The gentrader contract written for the life of that plant will be very short term.

The Hon. TREVOR KHAN: So it is true.

The Hon. KAYEE GRIFFIN: There has been some discussion this morning in relation to the gentrader transaction reducing risk, but it was caught up in other questions. Can you take us through the risk reduction in relation to this transaction?

Mr SCHUR: I am happy to start and then to hand over to my colleagues to fill in the details. As members know, the gentrader construct effectively separates operations from trading. The volatility in generation is in the trading function. There is tremendous volatility in spot market prices ranging from negative \$1,000 per megawatt hour up to \$12,500 per megawatt hour. We have seen that reflected in the very volatile dividend flows that we have received from these businesses over the past five years. The key volatile risk is being transferred to the gentrader. The other risks that are transferred to the gentrader that are critical in a post Carbon Pollution Reduction Scheme world are the implications of what that carbon world will look like into the future.

They are responsible for procuring more inputs fuel for these generation plants. The key risks that remain with the State are the ones related to the availability liquidated damages, to which we spoke. We believe in providing a very explicit provision. The \$360 million that I spoke about is the net present value. So there is a profile attached to that provision over time explicitly providing for that potential contingency, and that includes potential mismatches between the actual operating costs of the businesses and the variable and fixed charges they receive from the Government. As I said earlier, in the gentrader construct you cannot get rid of all the risks, but we think we have got rid of the risks that are most difficult to manage in relation to electricity trading and by identifying explicit provisions. Having gone through a robust exercise to determine what those provisions should be, we believe we have mitigated the risks to the greatest extent possible.

Dr JOHN KAYE: Greatest extent possible?

Mr SCHUR: Yes.

Mr TIMBS: If I could just add to that in relation to the retail businesses. The retail businesses are mass market low margin businesses subject to a high degree of churn. Previously we had government-owned businesses effectively competing for customers: spending money on marketing and competing for customers. We have taken that additional cost away from the Government today. So

that has been fully passed to the private sector, which is quite free to compete now on pricing terms for retail customers.

The Hon. GREG DONNELLY: Potential values received some coverage in this morning's questions, but I want to return to the issue and invite you to give further explanation as to how potential values are actually calculated? What is the detail?

Mr SCHUR: Again, I will make some general marks. Richard was heavily involved in the working group that determined the retention value. In some ways this goes to the issue of potential differences in valuation that came out of the retention value exercise and what the businesses might perceive to be the value of their individual businesses. I will let Richard go through the detail, but the key difference, if you like, is the fact that we would have developed for the generating businesses a single market model and we would have had a single set of assumptions that reflected views of the expertise that the Government had available in relation to electricity supply and demand, coal prices—domestic coal prices were not as export coal prices—gas prices, the impact of carbon policy, carbon pricing and regulation.

Dr JOHN KAYE: A single scenario?

Mr SCHUR: A common set of assumptions that were applied to all the businesses, which is different to how the individual businesses may have applied those assumptions to their own businesses. I am happy for Richard to add some detail.

Mr TIMBS: Certainly. Let me deal with that point now. The key difference between this particular transaction or series of transactions and past transactions certainly in which I have been involved, such as lotteries and waste, is that in those instances you are dealing with one business. Here we are dealing with multiple businesses in the same energy market. If you think for a minute about the way the boards of Eraring, Delta and Energy Australia might actually go about valuing the assets in their business, they will have underlying assumptions about a whole series of inputs and most likely those assumptions will not be the same across all these businesses because they will reflect their best judgement or the judgement of their advisers as to what are those inputs.

So for things like coal prices, gas prices, energy demand, energy output they will all have different views. What we needed to do to preserve the integrity of this process was to say, "We must come up with a single set of consistent energy market assumptions to be applied to this valuation", otherwise it falls down. You cannot apply different assumptions to different businesses on the market. In fact, and this is the comment I was making earlier, we drew back to the report of the Auditor-General in August 2008 in which he recommended, and I quote again, "calculating a retention value for each generator and retailer using consistent assumptions prior to commencing each transaction". The key thing was that we had to make sure that we had integrity and consistency through the process.

Coming back for a minute though to the concept of retention value, you can boil all of these discussions around balance sheet impact, budget impact and value down to one key thing: are we better off post the transaction? The retention value goes to the heart of that. As I was explaining earlier, what we do is we calculate the value as estimated today of these businesses in government hands under usual business circumstances and we say, "That's the hurdle we have to clear." We then ask, once we get bids, "Do those bids, less any additional costs or liabilities stemming from that, clear the hurdle?" If they do, the State is better off—unambiguously. It is a yes-no test. In that instance the Government is able then to proceed with the transaction.

If I can just talk a bit about the detail as to how we did this. Obviously, I cannot talk about numbers for confidentiality reasons, but it is important that people get a sense of the large amount of work that went into this exercise and the sorts of things that are taken into account in looking at retention values. The methodology for calculating retention value is to value the free cashflows to the Government as shareholder of these businesses over the forecast life of the business. That means the dividends we expect to get, tax equivalent payments we expect to get, and government guarantee fees that we get for providing the debt to those businesses. We then look at the best judgement of what those cashflows are expected to be for the life of the business, we discount it back at an appropriate rate to reflect the risk of those cashflows and come up with a present value.

In addition, on the retail side we had one other element to take into account, which was to value the hedge books of the retailers. Effectively, that reflects their derivative contracts and any power purchase agreements they have. In distinguishing between generation and retail, for the generation businesses we did long-term cashflows and discounted those back as I explained. On the retail side we took a slightly different methodology. We looked at the business plans of the government-owned retailers today, which were five-year plans. The difference is that we replaced in those business plans these consistent energy market assumptions that I referred to earlier that we were advised by our market advisers. We then looked at those cashflows for five years and we calculated a terminal value on those, which basically looks at the forecast growth rate of those cashflows after five years.

There was a slight difference because of the nature of the forecasting for retailers as to generation, but essentially that is bringing back to today, using our best judgement and the best judgement of expert financial advisers and expert market advisers, what do we think are the values of those businesses. The sorts of assumptions that had to be made that went into those valuations and the sorts of inputs are things like coal prices, gas prices, future capital expenditure, energy market demand, supply of energy in the market. So you can see that this is quite a detailed, complicated and complex process and for that reason we had the assistance of, as I say, expert market advisers on the energy market and expert financial advisers that do these valuations for a living; they have a high degree of experience in doing these valuations.

I am happy to take any further questions on retention value, but I just want to leave the Committee with the clear understanding that this is something that is done comprehensively; it is done in a great deal of detail, there is a lot of rigour and, of course, what happens is that post the transaction the Auditor-General will come in and review the retention value methodology and the paper and will opine on that.

The Hon. KAYEE GRIFFIN: This inquiry has had some discussion about the Cobbora decision. Could you provide some clarification in relation to that and the impact on the State's budget position?

Mr SCHUR: The Cobbora project was originally envisaged as a mine that would be developed by the private sector. The exploration area was determined and the generation businesses formed an unincorporated joint venture. The reason they did that was that Cobbora became essential in terms of further coal supply for those generating business, particularly in an environment in which export coal prices have been increasing, poor facilities, particularly at Newcastle, have improved and our generating businesses face this pressure of increasing fuel costs, given the demand for coal internationally. That was the underlying motive.

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The commencement of the procurement process for Cobbora coincided with the global financial crisis. Effectively, that financial climate meant that the playing field was thinner than may otherwise have been the case. There was also a fair bit of merger activity that was happening at the time and one or two participants in the process dropped out at very late stages as well.

Dr JOHN KAYE: One or two?

Mr SCHUR: Can I take that on notice?

Dr JOHN KAYE: Yes please.

Mr TIMBS: I do not think we said publicly how many parties were bidding or how many dropped out. I am not sure that we would actually disclose that.

Dr JOHN KAYE: We now know that it is one or two.

Mr SCHUR: I am happy to take that on notice. The point is that we were left with a thin playing field and, essentially, there was a preferred tenderer the Government was negotiating with. The advisers to the transaction had several concerns with the price that was being negotiated with the preferred tenderer. There were issues around a mismatch between the rate of return, in the view of some of the advisers, that the preferred tenderer would have enjoyed relative to the risks of the project. And there was a second view that the coal price to those generators that was set too high would have a very significant impact on the value of the generation businesses.

Dr JOHN KAYE: Or the gentrader contracts?

Mr SCHUR: Independent of whether there were gentrader contracts. Independent of the transaction, a high cost of coal going into those generators would have a very significant impact on the values of their businesses by extension. Obviously, it would have an impact on the value of the gentrader contracts. Was Treasury concerned about a decision to invest what would amount to about \$1.5 billion in a new project? Yes, we always are, but no differently to how we would view a very large investment by the State in any other project, whether it is a transport project or anything else for that matter. The Government is confronted with concerns around the risk, but also this strong view that was held that there was a risk return mismatch from the preferred tenderer and that there was an asymmetrical risk between developing the mine itself and the enhanced value to the businesses of providing reasonably priced coal to those businesses.

Ultimately, the Government decided that in the short term it was in the best interests of the State to take on the mine development, always with the intention that that would be sold at some stage in the future; exactly when will be determined over time. That is the history to this. In terms of the impact on the State's balance sheet, obviously our half yearly review that came out in December reflected the capital costs associated with that project. The reason it was not singled out in the half yearly review is that the actual impact on our capital program is roughly \$43 million only to the end of the forward estimates. There is a ramp-up in costs to 2016-17, I believe it is, but before that stage the capital cost implications are rather small.

The Hon. LUKE FOLEY: I would like to turn to the extension of the power contracts between Delta Electricity and Hydro Aluminium Kurri Kurri Pty Ltd. Are you aware that some months

ago Delta and Hydro entered into heads of agreement in relation to the extension of power contracts for the Kurri smelter?

Mr SCHUR: Again, I am not across the details.

Mr TIMBS: I was aware of that, yes.

The Hon. LUKE FOLEY: Treasury was briefed on the contracts at the time, was it not?

Mr TIMBS: I got a very little amount of detail. Typically with these commercial contracts the information flow from the business through to the shareholder, because of the highly sensitive commercial nature of these contracts, is very low. So I knew of the issue. I did not have specific details about the contract.

The Hon. LUKE FOLEY: What involvement have Treasury officials had in the decision to decline permission to Delta Electricity to proceed with the extension of the power contracts?

Mr TIMBS: The way that that decision and other decisions regarding the businesses subject to these transactions have been taken for the last probably 12 or 18 months is under a protocol that was established by the project team. So matters of a potentially material nature in relation to the transaction that the businesses brought forward went through to the steering committee for the transaction and the steering committee took advice from its advisors as to the potential impact of those and then these decisions were typically taken at the steering committee. Often, but not always, these things would come to my attention as the Deputy Secretary with responsibility for the State-owned corporations. But the protocol, I should stress, was through the transaction team.

The Hon. LUKE FOLEY: Can you enlighten us on why permission for Delta to proceed with the extension of the power contract was declined?

Mr TIMBS: I do not think it is appropriate to disclose that information in this particular forum.

The Hon. GREG PEARCE: It is a Government member asking.

The Hon. LUKE FOLEY: Are you aware that all relevant agreements which are needed to legally extend the power contracts have been signed by Hydro and are currently awaiting Delta's signature?

Mr TIMBS: I was not aware of that. That may be true.

The Hon. LUKE FOLEY: Are you aware that the Kurri smelter has more than 500 full-time employees?

Mr TIMBS: I do not know the specifics but I will not doubt your comment.

The Hon. LUKE FOLEY: Do you acknowledge that the future of the Kurri smelter, the security of the workforce and that community are dependent on the existence of a long-term power contract?

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Mr TIMBS: I do not have specific knowledge of that business but I have no reason to dispute what you are saying.

The Hon. LUKE FOLEY: Why would the energy reform group decline permission for Delta to extend its power contract with Hydro yet at around the same time allow Macquarie Generation to proceed with an extension of its power contract with Rio Tinto for the Tomago smelter?

Mr TIMBS: I will not comment on that particular matter in this forum other than to say that the way that the transaction team and the steering committee viewed these matters was as they were raised with them by particular businesses and with respect to the impact on each business and the potential valuation transaction impact of any particular contracts.

The Hon. LUKE FOLEY: But Macquarie Generation's deal with Rio Tinto for Tomago was struck later than the Delta-Hydro contract extension was struck, was it not?

Mr TIMBS: I cannot comment.

The Hon. LUKE FOLEY: I am just trying to draw out the reasons for the inconsistent treatment. I put it to you that one reason may be that it is because Rio Tinto as a company has far more muscle than Hydro and its parents and that is why Macquarie Generation and Rio Tinto were allowed to proceed but Delta is being stopped from entering into its contract with Hydro at Kurri.

Mr TIMBS: I am not in a position to either comment on that or answer that question.

CHAIR: Does the steering committee that made that decision have a Treasury representative on it?

Mr TIMBS: Yes, it does. Both myself and Mr Cosgriff are on that steering committee.

CHAIR: So you do know the reason for that decision.

Mr TIMBS: I was involved in some of those discussions, not all of those discussions. The steering committee had an input and I am not aware but there may have been government deliberations on these matters as well. I do not know about that.

The Hon. TREVOR KHAN: Mr Schur, you talked about \$5 billion being the proceeds, and I take it that is the balance sheet proceeds because we have gone through that exercise already. But because the headline rate has been \$5.3 billion, do I therefore take \$300 million as being the fees payable to the various banks and other institutions that have had their hand in the pot on this transaction?

Mr SCHUR: No. I think the \$500 million odd is because we deduct from the gross proceeds the allowance for the forecast penalty payments.

The Hon. TREVOR KHAN: What is the amount of the fees that are payable to the various institutions that have made valuable contributions to this transaction?

Mr SCHUR: I do not have that information on me. I am happy to take that on notice.

The Hon. TREVOR KHAN: So whatever it is, we take \$5 billion, we take \$1.2 billion off for the repayment of the debt, is that right?

Mr SCHUR: Yes, roughly.

The Hon. TREVOR KHAN: So again, working on the back of the pad or on a pad on the fridge, we take \$1.5 billion off for Cobbora, is that right, if we are looking at a net position?

Mr SCHUR: No, I would not characterise it the way you are characterising it. By logical extension from what you are saying, if you are subtracting the capital cost of Cobbora from the proceeds, then the logical extension of what you are saying is that we should subtract the operating costs associated with Cobbora from the proceeds and then add back the revenue.

Dr JOHN KAYE: Precisely.

Mr TIMBS: And the sale price.

Mr SCHUR: And the future sale price of Cobbora. Cobbora—it is important to understand this—will be a stand-alone commercial entity. It will have capital costs, it will have operating costs and it will generate revenue. The working assumption and the modelling that has been done to date suggests that there is a reasonable probability that to supply the coal needs of the generators it is likely to be an 11 megatonne per annum mine and given the price that is locked into the gentrader contracts, if it delivers—

The Hon. TREVOR KHAN: Sorry, that is the price for coal locked into the gentrader contracts?

Mr SCHUR: Yes.

CHAIR: It is the \$31 per tonne.

Mr SCHUR: I do not know. I do not have the details.

The Hon. GREG PEARCE: Against the current market value, which is \$70, \$80 or \$90.

The Hon. TREVOR KHAN: But you can get that detail for us?

Mr SCHUR: I am happy to get that detail for you. The current working assumption and the modelling that has been done to date suggests that that project will be able to recover its cost of funds, that is, before we contemplate any export potential associated with that mine. So that would be a further up side that would increase the return to government. So the view on Cobbora is that it is a commercially viable, stand-alone entity that will recover its costs of funds.

The Hon. TREVOR KHAN: You were not able to find an operator of the mine to enter into a transaction to do all of this for you.

Mr SCHUR: No—

The Hon. TREVOR KHAN: Make sure a greater down-side risk on the transaction.

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Mr SCHUR: No. The view that was taken ultimately by government was that what the preferred bidder had on the table was not acceptable to government because in the Government's view there was a mismatch between the rate of return embedded in their offer and the risks attached to the project and they were not willing to recognise and pay up-front for the up side associated with the export potential of the mine.

Dr JOHN KAYE: While we are on Cobbora, in that contract who were the risks to? To the Government?

Mr SCHUR: No. What I am saying is that the advice to government was that the bid that was on the table by the preferred tenderer had a mismatch between its return and the risks it would have taken to develop the mine. That is what I meant by that.

Dr JOHN KAYE: When you said it was a commercial undertaking what rate of return were you using on the Government's invested capital? You said you viewed it as a commercial entity, you invested money—\$1.5 billion you tell us—and it can cover its capital. What rate of return were we getting on that \$1.5 billion we were investing?

Mr SCHUR: I do not think we can speculate about what the return will be.

Dr JOHN KAYE: But we know. Hang on a minute—

Mr SCHUR: It will be a function of the size of the mine, the ultimate level of the capital costs—

Dr JOHN KAYE: Eleven million tonnes per annum. We know the price; it is \$32 per tonne. We know what we invested—\$1.5 billion. You know what the costs are.

Mr SCHUR: Those are the estimated costs at this stage.

Dr JOHN KAYE: So what is your estimated rate of return?

Mr SCHUR: It will cover the cost of the Government's funds.

Dr JOHN KAYE: Zero.

Mr SCHUR: No. It will recover the costs of the Government's funds.

Dr JOHN KAYE: If instead the people of New South Wales decided to sell that coal on the open market—they should not do that but if they did—what would be the return?

Mr SCHUR: I do not think it makes sense to speculate now, given the Government's intention to sell the asset at some time in the future.

Dr JOHN KAYE: If you are going to sell the asset, anyone who is going to buy it will ask the question: "Well, if I mine this coal and I sell it to the power stations at \$32 a tonne or I sell it on the open market some time in the next 10 years or so when the price is anticipated to go to \$160 a tonne,

why would I mine that coal when there are other coal leases I can get that are probably cheaper to operate"—

Mr COSGRIFF: Can I just make a technical point for clarification of the Committee? We are not comparing like with like with that comparison. The coal at Cobbora is very high ash. Only some parts of it are suitable for the export market. Only some parts of it can be washed cost competitively relative to other coal suppliers in New South Wales. But it is suitable for domestic power generation. So effectively it is priced differently because it is a different quality coal.

Dr JOHN KAYE: So you are saying a private sector investor will come along and buy Cobbora from you with a fixed quantity contract that goes at least—well, the purchases of Eraring and Origin tell us the contract goes through for another 22 years—for 22 years when, if they are interested in coalmining, they could be putting their money into a coalmine somewhere else in New South Wales which could be earning \$160 a tonne. Do you seriously think you will find a buyer for Cobbora?

Mr COSGRIFF: Yes, there are some up-side opportunities there to, for instance, blend the proportion of coal that is suitable for the export market with their existing operations and export that at a better rate of return that is consistent with their other investments.

CHAIR: We have to finish there. Thank you for your attendance today and the helpful information you have provided to the Committee. If you have taken any questions on notice during today's hearing the Committee would appreciate if the response to those questions can be forwarded to the Committee secretariat within seven days.

(The witnessed withdrew)

(Short adjournment)

HUGH RONALD OUTHRED, Professor, University of New South Wales, Sydney, New South Wales, affirmed and examined:

CHAIR: I welcome our next witness, Professor Hugh Outhred. Professor Outhred, in what capacity are you appearing before the Committee today?

Professor OUTHRED: I hold the position of Professorial Visiting Fellow at the University of New South Wales, but this is my personal submission and not the submission of the university.

CHAIR: Thank you for the detail contained in your submission, which is submission No. 45. Do you wish to add anything to your submission before we ask questions?

Professor OUTHRED: Perhaps I can speak briefly to the submission and pick out a couple of key issues from it that relate to the evidence that the Committee has been hearing. I think it is important to remember that electricity is regarded as an essential service in society and that, as a result, governments retain some responsibility for the service that is delivered, whether the industry itself is State or privately owned. There is an ongoing and active role for government in the industry. The question then is: What is that role? Should it extend to equity, should it extend to active participation in the industry, or should it be more of a pure governance role? I think that question really has recurred in

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an underground way throughout the proceedings. I am very happy to take questions about that at a later time.

With respect to the value achieved from the gentrader sale, because we do not have full access to the information we can only estimate that or guess it, given the information that has been published. So far as I can work out, if we consider it as a fraction of the replacement value for the assets, the sale so far is achieving about 10 per cent to 15 per cent of the replacement value. In other words, if you had to start with a so-called greenfields power station and rebuild it, it would cost you somewhere between seven and 10 times the amount that the Government will get for the sale.

With the remaining gentrader bundles, the size of the Macquarie gentrader bundle is an issue in itself. It is by far the largest, originally because it was to be in two parts, as you may recall. But because of the failure of the co-insurance proposal—that was not authorised by the Australian Competition and Consumer Commission [ACCC]—that has been amalgamated. That gentrader bundle in itself now is 4,640 megawatts—a very large single entity to sell. Because the retailers have already been sold I think it would be difficult for an independent purchaser to come in and buy it. That is another issue that has not come up as yet. There is less of an issue with the Delta East asset.

Referring to the retention value, which has received a lot of attention, we have heard from Treasury officials as to how that can be looked at and they have talked about a discounted cash flow analysis. If you use that method of analysis one of the critical questions is: What discount rate do you actually use? To the best of my knowledge that is not yet known to the Committee. I think that is a question the Committee should inquire about. Depending on the discount rate that you use it is a question of: How much do you discount the value of future income streams as you look further ahead into the future? If you have a high discount rate it means that you do not look very far into the future. That will mean you will get a much lower value for the asset in relation to what is called the net present value than if you used a low discount rate. So it is a question of significance.

With the retailers now sold it certainly will have an impact on the national electricity market or NEM-wide retail market shares. I have a table in the submission that relates to that. With the outcome of the sale, so far as I can work out from the available information, Origin Energy will have a retail share of roughly 40 per cent; AGL roughly 22 per cent, and it has not really changed across the transaction to date; and TRUenergy will have risen from 8 per cent to 23 per cent. That means we will have three dominant retailers in the national electricity market.

Dr JOHN KAYE: Are those national figures?

Professor OUTHRED: Yes they are NEM-wide.

Dr JOHN KAYE: NEM being the national electricity market.

Professor OUTHRED: It leaves out Western Australia and the Northern Territory. So we have a national electricity market that really is not a national electricity market, but that is another story. With respect to the Cobbara mine, there are obvious questions about the role of the Government in that. It is an obvious irony for the Government to start a new State-owned mine to support a privatisation process. That is something that is curious about this process. I think we can relate that as well to the actual value for the sales that have been achieved—as I said, somewhere between 10 per cent and 15 per cent of the replacement value.

If those power stations, or if the gentraders to be more correct, can access cheap coal for those particular power stations but not for other power stations, obviously that means they are willing to pay more to get access, in the gentrader sense, for those particular power stations than others. So there is a relationship between those two activities. But another issue—and it is an issue really that has not had much attention so far—is the implications for climate change response, which maybe future citizens of New South Wales will wish to take seriously. To the extent that the State Government is now an active player in a mine, until it is sold presumably, then again this I think can be seen as restricting the options available to the Government in relation to climate change response.

One final point I would like to make is to do with coming back now to the question of retention value. The methodology for retention value that we heard discussed—the net present value or discounted value style of methodology—is the traditional way of assessing retention value, but there is a more modern technique that would normally be used by any party considering either an investment in a new project or the valuation of a present project, and that is called option valuation techniques, or real option theory. The underlying idea behind that is that you should not necessarily assume that whatever asset or resource you have is going to continue to be used in the same way as it was in the past. In other words, you need to consider all options for the use of that resource or that aspect.

Again, in the context of climate change response, State ownership of coal power stations gives the Government an important option value in terms of determining and having some discretion over climate change response. To date I have not seen any evidence or any recognition of that fact. Sooner or later this is an issue that is going to have to be taken seriously by government, or more seriously than it has been taken to date. I will stop at that point.

The Hon. GREG PEARCE: Professor, thank you for coming along. Can I just take you back to your opening statement. By your calculations—and obviously we do not have all the details—you are saying that the proceeds for the gentraders look like they represent about 10 to 15 per cent of replacement costs of those assets.

Professor OUTHRED: Yes.

The Hon. GREG PEARCE: For somebody coming into the market who was going to build a generator with 2,000 megawatt capacity, they have actually achieved these assets for 10 to 15 per cent of what it would cost them to build them themselves.

Professor OUTHRED: That is correct. These assets, of course, have been used for some time so we would depreciate their value compared to a new plant. But, for example, Alan Moran in an article in the *Herald* suggested that, all other things being equal, they would be worth roughly \$1,000 a kilowatt as a reasonable representation of that discounted value as against what this sale is achieving, which is more like about \$300 to \$350 a kilowatt is what is being achieved from the sales to date, as far as we can work out from the published information.

The Hon. GREG PEARCE: So we are selling the assets at less than a third of the actual value?

Professor OUTHRED: Yes. Mr Moran goes on to point out that then the question arises: Why are they so low? He hypothesises that one reason is because of climate change risk.

The Hon. GREG PEARCE: Just taking you back to the coal deal, these transactions are taking place on the basis that if you buy this discounted power station or the rights to the trading, you will get, into the future for the whole contract, cheap coal. The effect of that would be, you would think, that the price would be greater than if they had to pay full price for the coal.

Professor OUTHRED: Yes.

The Hon. GREG PEARCE: Do you have any sort of feel for the amount of that discount?

Professor OUTHRED: No, I do not, but in terms of working that out, the people interested in the gentrader contract would be looking at what they perceive the electricity would be worth sold onto the market compared with the cost of production. So it is the differential that matters. If you increase the coal somewhat, that will reduce the differential or that profit if you like—the operating surplus—by a more substantial amount than you might think.

The Hon. GREG PEARCE: Just to undertake an exercise on it, assuming that the coal under these contracts is at \$32 a tonne and the market price is \$65 a tonne, so it is half price, what would that do to the purchase price, if they did not get the \$32 and they had to pay the \$65 instead?

Professor OUTHRED: One way we can see some information related to that is to look at the recent publication by the Australian Energy Market Operator [AEMO] called the National Transmission Network Development Plan. What that does is look ahead to 2030 across the national electricity market and it looks at the various new generation facilities that might be dealt compared to the expectations of increasing demand and retiring plants. By the way, they consider a range of scenarios. They do not just look at one scenario, which seems to be the story we are hearing from Treasury.

With that range of scenarios it is a rare for a coal power station to appear in any other scenarios primarily because of the expectation that with rising market prices for coal combined with possible climate change regulation of various kinds—and they have different scenarios of that—compared to the alternative technologies, including gas and renewables, then very few coal-fired power stations will be built. Down the track towards the end of the period, they do see the possibility of coal-fired power stations with carbon capture and storage being built, but with the type of coal-fired power stations we presently have, it comes up very rarely in those scenarios. I think that indirectly answers your question in a way that is, if you like, more objective than my opinion would be.

The Hon. GREG PEARCE: The sale that seems to have taken place has locked in the Independent Pricing and Regulatory Authority [IPART] price increases to 2012-13 effectively.

Professor OUTHRED: To the best of my knowledge, but I do not have knowledge, obviously, of the details of these sales. And of course, for the retailers only some of their customers are eligible for those tariffs so they would be acquiring a set of customers from the existing retailers. Some of those are subject to an Independent Pricing and Regulatory Authority effective cap and others are not.

The Hon. GREG PEARCE: Perhaps this is a bit hypothetical, but do you think it is possible that electricity prices will go down for retail customers as a result of these transactions?

Professor OUTHRED: Yes, that is an important question. To answer that, again, we have information available to us, in this case from the Australian Energy Regulator state-of-the-market report that they publish every year. In that they provide a breakdown of the costs that go into a typical tariff for residential consumers according to different functions in the market—generation, transmission, distribution and retailing. Retailing contributes about 5 per cent of cost. In other words, if we have retailer-on-retailer competition, the savings that we can achieve within that are 5 per cent. Most of the cost in this electricity industry comes from generation in the network and in particular in the network case from distribution rather than transmission.

Again if we look at the scenarios study by AEMO to which I referred earlier, the National Transmission Network Development Plan, it estimates to 2030 expenditures on generation and transmission alone of the order of \$40 billion to over \$100 billion, depending on the scenario. It depends on economic growth and things like that. To that we would have to add distribution network investment. Typically, distribution network investment is of the order of generation capacity investment, so that would be another probably \$30 billion plus. Those are the costs that are going to be following into this industry that will have to appear one way or another in electricity prices. The effect of these retailer's sales, I would suggest, will at best have a marginal downward impact on price.

Furthermore it will vary from situation to situation. For example, given that the retailers have been allowed to use the existing retailer names, particularly in country areas—the name of Country Energy is one that has a high retention value because of the perceptions of country people that that is their retailer—therefore the effectiveness of competition in country areas I would say would be particularly unlikely to be strong. There are a number of factors that play here which means that at best the reduction in electricity price due to the privatisation and due to the retailer competition will be small.

The Hon. GREG PEARCE: Obviously you are aware of the Owen report.

Professor OUTHRED: Yes, I am.

The Hon. GREG PEARCE: It indicated that it was expected the Government would have to spend in the order of \$7 billion to \$8 billion by 2013-14 for generation assets. That was the basis of what has taken place since. The latest Australian Energy Market Operator [AEMO] report that I have looked at says it is not likely we will need that expenditure until 2018 or 2019. Were we all operating under a misconception arising from the Owen report?

Professor OUTHRED: I think the report itself was operating under a misunderstanding of what the various pieces of information were, unfortunately. The information from AEMO refers to the ability of generating capacity to meet peak demand. A new version is published every year in what is called the "Electricity Statement of Opportunities". The information in that does not relate to any need to build baseload generation, which seems to be the way that was interpreted within the whole Owen inquiry process. What it says is: Have we got enough generation in total? In an electricity industry we typically have a mix of what we call generation types. We have baseload capacity, intermediate capacity, peaking capacity. Of those the baseload is the most expensive in capital terms and the peak capacity is the least expensive.

The AEMO statement of opportunities is really just flagging whether there is enough total capacity to meet demand. The typical concern there is to do with investment in peaking capacity. The way our National Electricity Market works is that peaking capacity comes first, so to speak, when new

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demand appears. Then later on as that demand becomes, if you like, proven and clearly there for the long term, then baseload capacity comes in behind that where it is cost effective to build the baseload. In our National Electricity Market the location of baseload generation does not matter a great deal. It does not matter a great deal whether it is in, for example, southern Queensland, New South Wales or Victoria.

Again, in the latest National Transmission Network Development Plan AEMO is talking about the possibility of even further strengthening the transmission network, which they call NEMLink, which would make the location of baseload capacity even less important. So the whole story and line that New South Wales has to be somehow self-sufficient in baseload capacity has never been correct and never will be correct unless we take a hacksaw and disconnect ourselves from the National Electricity Market and go back to some sort of island State network in New South Wales.

The Hon. TREVOR KHAN: Do I take it that in the context of what you talk about as the National Electricity Market we are talking about, at least, southern Queensland, New South Wales and Victoria?

Professor OUTHRED: Yes. Let me clarify that. It covers all of the parts of Queensland, New South Wales, Victoria, South Australia, the ACT and Tasmania that have access to the conventional electricity grid. In western New South Wales and western Queensland not everybody is connected to the grid. So there are some people, if you like, who miss out. But for well over 90 per cent, probably over 95 per cent, of the population in those States, their electricity supply comes to them through this national electricity grid and the wholesale market part of this is called the National Electricity Market.

The Hon. TREVOR KHAN: If, for instance, a new power station was built in the Latrobe Valley, it would be quite capable, using its brown coal supplies, of supplying Sydney with baseload capacity or baseload power?

Professor OUTHRED: For the last few years New South Wales has been a net importer of electrical energy, primarily recently from Queensland but also from Victoria.

The Hon. TREVOR KHAN: Is there an added transmission cost that needs to be built into the equation?

Professor OUTHRED: That is already built into the equation through the outworkings of the National Electricity Market and the charges for transmission and distribution networks associated with the market.

The Hon. TREVOR KHAN: In a sense, therefore, stripping away our parochialism, we do not need to build another power station in the Hunter Valley?

Professor OUTHRED: No. That is another curious thing about the documentation in this process. In some of the documentation from the State Government it appears as though New South Wales has a sole obligation to build capacity. That is not true, never was true and never will be true so long as we have the National Electricity Market. Might I also say that in the scenarios in the AEMO National Transmission Network Development Plan they look at where generation is likely to be located. In their modelling studies—presumably the same expertise that was available to our Treasury friends—only under some scenarios does much of that capacity appear in New South Wales. It is more

likely to appear in either Queensland or in Victoria because the various cost advantages that those locations have.

The Hon. TREVOR KHAN: Do I take it the principal cost advantage relates to feedstock, that is, coal supplies being available to the baseload generator?

Professor OUTHRED: For a coal-fired power station, obviously the cost of coal is critical. The nature of the site and construction costs are critical. Access to cooling water is critical. Those are the kinds of factors that feed into the process. Coming to the question of mines, by the way, and the concept we heard about export and local mines, most coalmines are what we call "two product" mines where some of the coal goes to export and what is called the high ash coal, which has a higher basically non-burnable component, is used locally because it is obviously very expensive to send rocks to Japan, for example, and they do not want them when they get there.

So the export market pays more for a product that is purer in the sense of having more burnable material in it. But the power stations are designed to burn coal with a higher ash content. So that this concept of the two product mine is a standard construct. In terms of coal exporter, of course, Queensland and New South Wales are both the major coal exporting States and they both have mines that are so-called two product mines producing coal for local use and for export use.

CHAIR: We will move on to questions from Dr John Kaye.

Dr JOHN KAYE: I will allow Mr Khan to ask one more question.

The Hon. TREVOR KHAN: I want to ask about the implications of Cobbora. I think you are aware that Cobbora is a project that essentially is owned by the three current generators/gentraders? Is that your understanding?

Professor OUTHRED: That was my understanding before this process worked through. To be honest, I do not understand if there has been any change. There may or may not have been a change in the way it is organised.

The Hon. TREVOR KHAN: Let us assume that structure is the same. Would it not be the case that the effect of providing cheap coal to the three existing generator companies acts as a barrier to any new entrant in the market providing baseload capacity in New South Wales because they will not get the cheap coal?

Professor OUTHRED: In my submission you will find a comment on that point. In fact, the Nature Conservation Council of New South Wales has applied to the ACCC for a ruling on that matter.

The Hon. TREVOR KHAN: You are essentially saying that it does act as a barrier to added competition?

Professor OUTHRED: I guess we will await the ACCC's learned judgement on that matter.

CHAIR: We now will take questions from Dr John Kaye.

Dr JOHN KAYE: I will go back to the very beginning to the Owen inquiry report, which you referred to earlier. You spoke about the issue of misuse of the forecast in terms of baseload versus peaking plant. That was your general remark earlier?

Professor OUTHRED: I would be cautious about "misuse" there. Shall we say there seems to be some discrepancy between the way in which AEMO uses the term and the way in which the inquiry interpreted it. I would point out that AEMO made a submission to the Owen inquiry relevant to that point of interpretation.

Dr JOHN KAYE: Of course, it was not called AEMO then.

Professor OUTHRED: At that stage it was NEMMCO, the National Electricity Market Management Company.

Dr JOHN KAYE: Given that the Treasurer continues to rely on the Owen inquiry report, can you point to any other issues with the Owen inquiry report that we should be aware of or cautious about?

Professor OUTHRED: I need to take that question on notice. I can certainly come back to the Committee on that point.

Dr JOHN KAYE: That would be very useful, thank you. I will deal with the issue of Cobbora. I understand that the Nature Conservation Council's complaint to the ACCC is about a barrier to entry to other coal-fired power stations in that those power stations that have a contract with Cobbora at a suppressed price will have an unfair market advantage against those that do not. Would you also say that effectively what is a coal subsidy against market prices coming out of Cobbora would also be a barrier to entry to other forms of generation other than coal?

Professor OUTHRED: Yes. I think that is clear to the extent that if somebody is subsidising the price of coal, whether it is the State Government or whoever, that is obviously a competitive advantage for coal-fired generators per se as against particular power stations that do not use coal. In some ways that arrangement has some similarities to the co-insurance proposal which the ACCC declined to authorise in the sense that it is creating a relationship between the particular set of power stations. In terms of the ACCC consideration the question would be: Is there some public value that outweighs the existence of that relationship, assuming it is a Trade Practices Act-type consideration. Then one would presumably have to identify some public value that outweighed the existence of some sort of cooperative agreement between a small number of players within a competitive industry.

Dr JOHN KAYE: Do you think the Cobbora coal contract will undermine the economic viability of other forms of generation, specifically, wind, solar thermal, solar photovoltaic?

Professor OUTHRED: Unfortunately, the answer is it depends. So long as we have a scheme like the Mandatory Renewable Energy Target [MRET] Scheme, there is a floating amount of money in there for a renewable energy certificate, which is designed, so to speak, to pick up the difference between the price of the income needed by the investor in a renewable generation activity compared to the income stream available through selling electricity into the National Electricity Market. If for some reason the average price in the National Electricity Market drops, then the renewable energy certificate [REC] price will go up to compensate for that. But there is a second issue here as to whether if you subsidise the price of coal that actually influences the average price of electricity or not. It depends on

the bidding strategy of the generators concerned. They may prefer just to take the profit without passing it on through the market.

There is another important point here. Because New South Wales participates in the National Electricity Market, if New South Wales subsidises something on the generation side, firstly, the benefits may not flow through the market to consumers as a general class. Secondly, if the benefits do pass through the market to the consumer side, that will not be restricted to the New South Wales consumers. All consumers in the National Electricity Market will have some access to that benefit. So we can end up with a situation where New South Wales subsidises costs within its territory or somehow bears some unrevealed costs, like the availability liquidated damages—and I would like to come back to that point. You can see the benefit through that, if there is a subsidy there, maybe spread amongst all electricity consumers across the National Electricity Market. There is no way of capturing them purely for New South Wales, which was a problem that arose with some of the earlier Treasury schemes.

Dr JOHN KAYE: You are effectively saying that the lost value and money that the people of New South Wales put into the Cobbora coalmine will end up in three locations. It will end up as increased profits for the gentraders; it will end up as benefits outside of New South Wales to retail customers across the market throughout Australia; and it will end up as an increased cost in the REC market. To some extent, we are being clever in a weird way of passing on some of our costs to the Commonwealth by pushing up the amount of money they have to put into the REC market?

Professor OUTHRED: Yes, you can see once you are dealing with these complex situations actually finding the money trail itself is a problem, and understanding who the winners and losers are is a further problem. So we need to be very cautious in these types of interventions.

Dr JOHN KAYE: Can I just go back very briefly to one remark you made before about Cobbora coal mine being some distance from the generators that it is supposed to provide, particularly Eraring, which presumably gets its coal currently from Central Coast and Lower Hunter coal mines? Presumably what is happening here will be a need for augmentation of the railways. Do you have some sense of how much augmentation would be required and the sorts of costs that will need to go into the augmented railways?

Professor OUTHRED: No, I do not, but I think it is an important question and presumably there are people who can help you with the answer to that. But it has another interesting little wrinkle on it in that in prior years Eraring used to face, on average, a higher coal cost than the inland power stations like Bayswater. This process of the joint venture presumably results in some sort of levelling up of the coal costs amongst the power stations, so it seems to give an added advantage to Eraring that it did not have before. I do not know what effect that might have on the value achievable for the Macquarie gentrader bundle but it would be of less attractiveness to a purchaser of the gentrader bundle than if it had its own local cheap coal compared to the other power stations.

CHAIR: Moving on to some questions relating to your submission. You state in your submission on page 5 that you believe the sale price has not been adequate, in other words, it is inadequate. In other words, based on the retention value of the assets, the Government—that is, the taxpayers—are not getting full value for this asset. Would you like to comment on that proposition in your submission?

Professor OUTHRED: First of all, I think I was a little more cautious than that. I said, "Costs potentially resulting from the sale process to date: 1. Inadequacy of sale price with respect to the

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retention value". I did not say that was the actual outcome; I said that was something we had to consider and look into and decide whether it was or was not adequate. The problem, of course, that we have is that we do not know what the calculated retention value for the asset happens to be and the problem is they should not be considered on a bundle basis because they are totally different businesses—the generation business and the retail business are totally different businesses, so you have to consider them separately.

CHAIR: You did make the point that it was difficult for you to make detailed assessments because of a lack of information.

Professor OUTHRED: Yes.

CHAIR: What particularly was lacking that would help you?

Professor OUTHRED: As we heard in the evidence over the last day and a half, the details of the retention values have not been released; the information is regarded as commercial in confidence.

CHAIR: Because they are still dealing with further sales?

Professor OUTHRED: Yes, and whether they will be released after that I do not know. This is not a matter over which I have any control.

CHAIR: You made another point, quoting your submission: "Creation of an industry structure that has a small number of dominant privately owned firms", that this, in a way, does not provide for competition. I think the Treasurer made statements that he was confident that the new setup would lead to reduced pricing through the competition, but there does not seem to be any point in those two or three large operators reducing their prices; they could just share the market.

Professor OUTHRED: Yes. We end up, effectively, with three dominant players. Most economic theory on markets suggests you need more than that to have adequate levels of competition. It is a fairly simple, well understood situation. In the case of electricity it is further complicated by this vertical little ownership structure that we are developing where we have so-called gentailers with dominant players in both generation and retail. You will notice at one point I quote concerns, on page 10, that are arising in the UK about a similar matter. I have a quotation there from Ian Marlee, partner, GB Markets for Ofgem—Ofgem is the regulatory body for the electricity and gas industry in the UK—with respect to electricity. He said:

Over the last 18 months we have been monitoring and investigating the liquidity of wholesale power in Great Britain. We have concerns that the wholesale market might not be delivering the products and signals that all market participants need to operate their business effectively. In particular, independent suppliers and generators have expressed concerns that they find it difficult to manage risk with the wholesale products currently available. This could be having a negative impact on the outcomes for consumers in the supply market—

that is, the electricity retail market—

especially if it means that there is no viable threat to existing suppliers.

Threat of entry is a really important issue in markets. We notice, for example, the debate at the moment about Internet sales, of the concerns that large retailer chains have about that; it is the threat of entry issue for them. If we consolidate ownership of retailers into large retailers, as we are now doing, that makes it very hard for a small retailer to gain entry, and, secondly, on the generation side, if we concentrate generation ownership as well it makes it very hard for a new entrant retailer to find a generator counterparty to the derivative contracts which are needed to support that new entrant retailer.

Further steps being taken are significant, and because New South Wales is the largest component of the national electricity market in terms of megawatts, the number of people and so on, the steps that are taken in New South Wales are of significance for the market as a whole.

CHAIR: You state in your submission on page 8—you are quoting other reports but you appear to agree with them: "Bidders for the coal assets have estimated this subsidy"—the Cobbora—"would add as much as \$2 billion in value to the power assets which are being sold". Can we, from that, deduct \$2 billion from the sale price of \$5.3 billion?

Professor OUTHRED: Unfortunately, as I say, I am not aware of any official information on the matter. I do not know how valid that figure is but I think what I was trying to flag here was an issue that should be of concern and that the Committee should seek more information on this matter.

CHAIR: The point is that when the Government quotes the \$5.3 billion as the sale income, should there be a deduction from that amount for such things as the Cobbora mine, that, in a sense, it is an indirect subsidy and therefore it should be deducted from the total sale price?

Professor OUTHRED: Going from the information that has been released, you can see how one could form that impression. But, of course, I do not have access to any of that information so I cannot express an informed view on that matter.

CHAIR: We will move on to Government members. Mr Foley?

The Hon. LUKE FOLEY: Professor, have you been involved in the development of the Greens' electricity policy?

Professor OUTHRED: No.

The Hon. LUKE FOLEY: Have you given advice to Dr Kaye and/or other members of the Greens on electricity policy matters?

Professor OUTHRED: No.

The Hon. LUKE FOLEY: Have you had any involvement at all in any aspect of these specific transactions which the Committee is holding hearings into?

Professor OUTHRED: No.

The Hon. LUKE FOLEY: Did you have any access to the data rooms in this reform process?

Professor OUTHRED: No.

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The Hon. LUKE FOLEY: Are you working for any of the successful or unsuccessful bidders?

Professor OUTHRED: No.

The Hon. LUKE FOLEY: Have you had any contact with the eight directors who resigned from Delta and Eraring?

Professor OUTHRED: No.

The Hon. LUKE FOLEY: Have you had any contact with any of the directors who did not resign?

Professor OUTHRED: No.

The Hon. LUKE FOLEY: Could I put it to you then, Professor, that you are not sufficiently informed about the particular transactions here that we are inquiring into to shed any light on them for us?

Professor OUTHRED: I think in my submission I made clear what I was in a position to say and what I was not in a position to say. May I draw your attention to that? At the start, under the scope of submission heading I say, "I have played no role in the energy reform transactions, thus this submission does not address Terms of Reference 1 and 2. Instead it first summarises the process to date and then comments on the following issues". I have made no claim to have any detailed information of the transactions. I would not make such a claim. But to suggest that that means I am not in a position to make any comments I regard as just faintly ridiculous.

The Hon. GREG DONNELLY: In terms of the evidence you have given, on page 3 of your submission under the heading "The nature of the electricity industry", at the end of the first paragraph you state, "The complex technological system can be subdivided into generation, transmission and distribution (poles and wires) and end-use sub-systems". Could you explain to the Committee the meaning of "end-use sub-systems" so we are all clear about that?

Professor OUTHRED: The end-use services—what happens is that people who use electricity in their homes or commerce or industry, we are not actually interested in the electricity per se, we are interested in the services that it provides, like the light in this room so that we can have this conversation, air-conditioning, heating and all the machinery that is operated in industry and so on, and those are known as the services that are delivered by the electricity. The reason why it is important to make that distinction is that depending on the type of end-use technology that we use we might use more electricity or less electricity to achieve the same purpose. Something that is reasonably well-known there is in lighting where the so-called old-fashioned incandescent lights use a lot more electricity to achieve a given lighting level than, say, fluorescent lights.

The Hon. GREG DONNELLY: In terms of the way in which you have broken down the complex technology of the electricity industry, what do you say is the proper role or the appropriate role of government in those four areas?

Professor OUTHRED: Firstly, may I say I have advised various State governments in Australia, the Australian Federal Government and overseas governments on matters of this kind and the way I respond to the question is not to be specific about who should do what but more to say that if you want to, for example, set up a State-owned industry or the State wants to play an active role in the industry, then these are the issues you need to consider. On the other hand, if you want to have a fully privately operated industry, which is also possible, then you need to consider those issues, because different issues arose in each case, basically because the relationship between government, or governance more generally, and the industry changes depending on how actively government is involved, as we see in this case, for example, through the question of the Cobbara mine.

The Hon. GREG DONNELLY: What about the hybrid situation which lies in the middle there where you have both State involvement and private enterprise? How does that model work?

Professor OUTHRED: The easiest function to remove government from is generation because we now can set up sufficient competition amongst generation to achieve the kind of outcomes that privately owned industries or industries with private ownership can achieve where they both make a profit and still deliver something that is in the public good. That is basically what you are trying to achieve when you have private industry: you are allowing people to make a profit but only by doing something that delivers some long-term public good. The poles and wires, the network businesses, because they are much closer to what we call monopolies, if you are going to retain anything in public ownership then that is the correct place to focus.

The question of retailing has become an open question again because traditionally we just regarded it as an interface between the supply-and-demand side of the industry, which is what we now have. But, looking forward into the future, we are going to have to pay much more attention to efficient and providential use of electricity, partly because of rising electricity prices, partly because of climate change issues and other things, and the present structure of the industry does not provide enough support for end-users to make the really good decisions about how to use energy that they will need to make in the future.

At the moment our industry structure is not designed in the way that we need it to be designed for the future rather than the past. In that transition it is really redesigning the retailer role that is the critical issue. Just as I said there is an option value about retaining assets, there is actually an option value in retaining retailers in New South Wales because then you can create a new form of retailer that is actually more focused on delivery of efficient and prudential energy use.

The Hon. GREG DONNELLY: But surely government regulation has a role through law or regulation in terms of influencing customer behaviour in the use of electricity?

Professor OUTHRED: That is correct. It is not only the end users but also those who provide electricity to them. The end users are not really in a position to make independent decisions. The typical residential end user does not have the expertise to make those decisions without support. Where will they get that support? It is more of an active role than just government regulation. Who will take on that active role? At the moment we kind of ask retailers to do it. However, quite frankly, it is not in the retailer's best interests once it is privatised. It is a profit-making entity and it will tend to make most profit by selling more electricity.

The Hon. GREG DONNELLY: I refer to your evidence where you talked about the real option theory. Can you provide any examples to the Committee where the real option theory has been

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used in practice in terms of making some assessment of a transaction such as the one we are considering? Can you provide examples of where that theory has been specifically applied and produced some—

Professor OUTHRED: It is widely used in private industry. First, to the best of my knowledge, it is not so commonly used in this type of public assessment. I think that is one of the problems here. We are seeing a lagging process in the way that the Treasurer is approaching this. Secondly, as an example not so much of a specific calculation but how to approach the problem, the National Transmission Network Development Plan that I alluded to earlier produced by the Australian Energy Market Operator [AEMO], is a good illustration of the way in which the broad uncertainties can be approached and dealt with on a scenario basis. Scenario-type studies are the basis of the application of real option theory.

However, because the AEMO is an advisory body and not a decision-maker it does not go to the final step of saying how we choose among these options. It is stopping at the point of trying to illuminate what might happen rather than choosing a particular path. In terms of private companies actually choosing which project to invest in and which to reject, I doubt that there are many that do not use this technique.

The Hon. GREG DONNELLY: I want to revisit your evidence about the issue of vacating of baseload power stations. Please correct me if I have misunderstood you. I got the impression that, in effect, for a sovereign State or Territory in the context of the national market there is really no interest by the State or Territory in having generators within their borders. If I understand your evidence correctly, generators will just pop up, so to speak; in other words, market forces will result in the creation of baseload generators. Is that your evidence?

Professor OUTHRED: It is a little more complex than that when you observe what governments do in practice. Most governments have regional development policies, other concepts about utilising resources within their state borders and so on, which mean that they still retain a legitimate interest in related matters. So they do have an interest in seeing large projects going to regional areas. But in deciding whether to give preference to a project of that type, they should not be thinking about that purely as an electricity generation project.

If they were thinking about the project purely from the point of view of electricity generation, they should be entirely indifferent about where it is located through the national electricity market as far as so-called baseload generation is concerned, except for the concern about the possibility of the transmission lines being somehow interrupted or broken. That happens very occasionally due to bushfires and the like. Under those circumstances, the normal strategy is to rely on local peaking capacity and other emergency procedures. In other words, the location of the baseload power station is not regarded as the most critical matter.

The Hon. GREG DONNELLY: But it is an important matter.

Professor OUTHRED: Yes. It is certainly a complex story and governments have the right to take a broad view of it. But if they are purely thinking about a power station as a producer of electricity and if they are being hard-headed in the way that the Treasury officials suggested they are hard-headed then they should not be concerned; they should be indifferent as to location. They should be more concerned about finding the cheapest possible electricity because all New South Wales electricity

customers would benefit from a lower price. It should be always a natural inclination to look for a low price for electricity because it is an essential good for nearly all economic and residential activities.

The Hon. GREG DONNELLY: Can you help me to understand what is your position having examined the scenario we are looking at and in making your submission? What do you say is the role of government in the electricity industry?

Professor OUTHRED: As I said, this is a matter of social choice. Suppose I suddenly became Premier and decided I wanted to impose my views on the rest of society, as I said my concern would not be then so much who owned what but how we organised it so we got the best outcomes for society.

The Hon. GREG DONNELLY: But in your mind the ownership issue is not critical.

Professor OUTHRED: No. I believe that as long as we undertake the processes and establish everything in a correctly functioning way then we can have an electricity industry that is largely privately owned or largely publicly owned.

The Hon. GREG DONNELLY: But also a mix?

Professor OUTHRED: Yes, absolutely; and anything in between. However, in each case you have to address the issues that then arise. For example, I started my career as an employee of what was then the Electricity Commission of New South Wales. My first job was as an employee of a publicly owned electricity generation and transmission entity. I had no objection to that; I took the job. But in terms of the organisational arrangements at the time, they clearly needed some work and things have been done since then.

The Hon. GREG PEARCE: You were selected by the Committee as an independent expert to give evidence. It would be very helpful for us to have your CV.

Professor OUTHRED: I am happy to provide that.

CHAIR: Please attach that to your submission. If you took any questions on notice, you have seven days in which to respond. Thank you for your attendance and your assistance to the Committee. It is appreciated.

(The witness withdrew)

The Committee adjourned at 12.55 p.m.

Appendix 6 Transcript of 24 January 2011

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

INQUIRY INTO THE GENTRADER TRANSACTIONS

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At Sydney on Monday 24 January 2011

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The Committee met at 9.00 a.m.

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PRESENT

Reverend the Hon. F. J. Nile (Chair)

The Hon. G. J. Donnelly

The Hon. L. A. Foley

The Hon. K. F. Griffin

The Hon. Dr J. Kaye

The Hon. T. J. B. Khan

The Hon. G. S. Pearce

BARRY ROBERT O'FARRELL, Leader of the Opposition, and

MICHAEL BRUCE BAIRD, Shadow Treasurer, examined:

CHAIR: I welcome you all to the third public hearing of the inquiry into the gentrader transactions. I refer attendees of today's proceedings to the statement I made last Monday 17 January concerning the Committee's proceedings and the prorogation of the Parliament. As many of you would be aware, by order of the Committee I have issued summonses to the 10 former or current directors of Delta Electricity and Eraring Energy. The Committee has been advised by the legal representatives of these individuals that they will not be attending today's hearing. The Committee will consider this matter after today's hearing. The Committee also invited the current directors who did not resign from Delta Electricity and Eraring Energy to give evidence on Friday 21 January 2011. Those directors also declined the Committee's invitation. The Committee will also consider that matter after this morning's hearing.

Before we commence taking evidence I will make some comments about procedural matters. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of the public proceedings. In accordance with those guidelines only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting these proceedings the media must take responsibility for what it publishes or what interpretation is placed on anything that is said before the Committee. Witnesses, members and their staff are advised that any messages should be delivered through the Committee clerks. I ask everybody to turn off their mobile phones during the proceedings. I am very pleased to welcome our witnesses today and thank them for their attendance, Mr Barry O'Farrell, Leader of the Opposition, and Mr Mike Baird, MP, shadow Treasurer. I remind you that you do not need to be sworn as you both have already sworn an oath to your office as members of Parliament. Do you wish to make an opening statement?

Mr BARRY O'FARRELL: We do, Chairman. Firstly, we thank you for the invitation to appear. Whilst we do not have firsthand or direct knowledge of the transaction, we certainly understand the community's concern about this whole deal and we welcome your activity. I congratulate you, Mr Chairman, on withstanding the pressure that has been applied and ensuring this Committee proceeds. We certainly hope that the eight directors do end up appearing because the Committee has done well to date but it will not be able to do all its work until it hears from those eight directors.

As I said, Mr Chairman, this inquiry has already uncovered a disgraceful trail of deceit, incompetence and cover-ups in what is quickly becoming known as the dud deal of the century. This inquiry discovered that there will not be \$5.3 billion returned to taxpayers out of this deal; it could be as little as 10 per cent of that amount. This inquiry has discovered that the real reason for proroguing the Parliament was to try to shut down this inquiry, to try to stop the people of New South Wales getting the facts about this transaction, the reasons for it and the proceeds from it. This inquiry has discovered that despite the Premier's alleged apology 10 days ago she is still prepared to deny eight directors the immunity they need to come in and give truthful and open evidence and satisfy the public about their reasons for resigning in protest at this deal.

This inquiry has discovered that the top Treasury officials do not believe that this deal was in the best interests of the State and yet, remarkably, the Treasurer, as confirmed in these hearings, is pressing ahead with a second sale of electricity assets. The Treasurer has ignored the advice of his most

senior public servant; he is pressing ahead with further sales; he has misled the public and that is the reason I believe he should be sacked. I do admit that, whilst I welcome coming along to this inquiry, as I have come to previous parliamentary inquiries—I am always happy to assist to try to uncover the truth—I was to some extent a little surprised at the request to come to an inquiry that is focused on Labor's bungled sale of the State's electricity assets.

As Leader of the Opposition I have no firsthand knowledge of this transaction. Probably no-one in New South Wales was less likely to be briefed about the process over the past two years than the Leader of the Opposition. This inquiry, though, is about getting to the bottom of that stinking, steaming mess and I am happy to do anything I can to assist this inquiry in trying to achieve that. I realise just how important this inquiry is: it is examining the scandalous sell-off of the State's electricity assets and, importantly, looking at the impact of that sale on the electricity bills of families and small businesses across New South Wales. But I am not going to talk today about our policy, because we will not release our policy until we see the full extent of the damage that this Government's sale of the State's electricity assets has done to the New South Wales electricity sector. Can I just be clear about that—this inquiry is about the transaction, about the sorry, stinking mess that is that transaction that Kristina Keneally and Eric Roozendaal have presided over. We will announce our policy in the fullness of this election campaign but we will not do so until we see the full extent of the damage wreaked by that lousy deal upon the State's electricity sector. There will be plenty of opportunity for policy release during the campaign. We will continue to do that very happily.

With just a few witnesses to this inquiry heard to date, we have now seen that the deal that the Premier and the Treasurer for a month said was in the public interest—had delivered \$5.3 billion for taxpayers—is a long way from that. We are determined to get to the bottom of this process. If we are elected we will appoint a special commission of inquiry, a judicial inquiry, to investigate it. We will seek to get all the documents before that inquiry. We will seek to get all the witnesses before that inquiry and we will get to the bottom of this whole matter. We are determined to bring people to account for what appears to be the dud deal of the century.

Mr Chairman, just to revisit some of the key dates of this sell-off, of course, the first key date is 14 December. That was the date when, whilst the Premier and 11 of her staff were at the *Oprah Winfrey Show* in the forecourt of the Opera House, Eric Roozendaal was presiding over perhaps one of the most important transactions in the State's history, with the Treasurer ready to give the final approval to that power sell-off. We know the Treasurer had an incentive to get it done quickly that day because he was off on his annual rendezvous to New York. What we need to know is whether the Treasurer agreed to sign off on this deal because of his desperation to avoid delaying his trip or whether there was some other reason why we had this extraordinary spectacle of a deal done, flogging State assets at a quarter to midnight.

The next key date, of course, was Sunday 18 December, which was when the New South Wales Liberals and Nationals argued in the face of the Kristina Keneally's refusal to appoint a judicial inquiry into this matter that there should be a parliamentary inquiry. As you know, Mr Chairman, I proposed this inquiry should proceed so that the public could get all the details on this deal, all the details on this sell-off, before the State election. There is no point leaving it to the Auditor-General. No matter the good office that he runs or the good person that he is, if that report is going to come down after the next election. Too many times over the past 16 years issues have not come to full light until after Labor has been re-elected and the public, the community, do not want that repeated in relation to this issue. That is the significance of this inquiry.

But of course what then happened after that Sunday announcement was the decision on 22 December by the Premier to prorogue or shut down early this Parliament, shut it down without warning, to shut it down in contravention of the memo prepared by her own department about the caretaker provisions about the months leading up to the next State election campaign. As you know, last week she admitted in this inquiry she knew that by shutting down Parliament early it would stop, in her view, this inquiry proceeding. We have seen when the Clerk, to her credit, gave contrary advice, when you, Mr Chairman, have stood behind the Clerk's advice, the Premier go to extraordinary lengths to try to curtail this inquiry, to intimidate witnesses into not appearing. She used outdated legal advice to try to intimidate not just this Committee not to proceed but to raise legal questions about the privilege that applies to the evidence that is being provided by people such as those eight directors.

She has refused point blank to provide an indemnity to those eight directors and she continues to take a stand that can only block the evidence, the information, the firsthand knowledge they have about this matter coming to light. Eventually, of course, after a public backlash 10 days or so ago the Premier conceded she has underestimated the public interest in the issue and agreed to the inquiry proceeding. Now I know the inquiry would have proceeded, but at least she agreed to come along. But, frankly, she has shown that she is like her predecessors: they are fantastic at apologies after the event but nothing ever changes. On the one hand, they apologise for underestimating the public concern about this issue, but on the next day, the first day she arrives at the inquiry, she snubs her nose at the public by refusing to offer that indemnity to those directors who clearly have relevant information for this inquiry, who clearly have information that could further inform the public about this whole sale process.

The next key date was Monday 17 January, the first day of this inquiry. On that day the Premier and the Treasurer claimed the value of the fire sale of electricity assets would be \$5.3 billion. That figure is now shown to be nothing more than fiction. It has since emerged that nearly all the proceeds of the sale will be taken up in costs and fees and that the people of New South Wales will be left with virtually nothing to show for the sale of such a significant State asset. The Labor Party is requiring taxpayers to chip in for a new coalmine, for dividends and tax equivalents, for compensation and heaven knows what else, although I commend again this inquiry for last week getting to the bottom of some of those issues.

As we have said before, this is like selling your car and then agreeing to pay the registration, petrol and maintenance charges for the new owner. It makes no sense. I note the Treasurer, who was proudly boasting about the \$5.3 billion proceeds from this sale when it first went through—a claim he made time and time again over the month after the sale—has now changed his tune completely. Now he is saying that the sale will protect ratepayers from future costs. Actually he is saying that the sale will protect taxpayers from future costs rather than generating revenue for taxpayers to use on basic services and infrastructure that have been allowed to be neglected and ignored over the past 16 years. That is simply not good enough.

On the second day of the inquiry, last Tuesday, we saw the Secretary of the Treasury come forward and give advice. The most crucial element of his advice was that he advised against this sale. He also admitted that most of the proceeds would be swallowed in fees, costs and other side deals to the transaction. We need to know, through this inquiry, why the Treasurer decided to proceed against the advice of Treasury and how much that decision has cost the taxpayers of New South Wales. We need to know what impact it will have on the power bills of those small business operators and families who are already suffering price increases of something like 60 per cent in recent years. And we need to

know whether there is a hidden agenda in relation to this Government sell-off of assets. That is one of the other reasons I think the appearance of the eight directors is so critical.

We know those eight directors were Labor appointed directors. We know many of them have extremely close connections with the Labor Party. I have no doubt that some of them could share their own views, with their background in the Labor Party, on why Eric Roozendaal and Kristina Keneally have pressed ahead with a deal that has not only failed taxpayers but seems to have caused the Labor Party—that some of those directors and certainly Kristina Keneally and Eric Roozendaal are apparently supporting. We need to know if the Labor Government wanted to sell off the electricity assets at a bargain price to minimise the funds or to create problems for a future government should there be a change at the next election. That would not only be an abuse of trust; if that was the cause it would frankly be a crime against the State.

This inquiry has made enormous headway. We believe that we are still a long way though from discovering all the truth. We believe what you have uncovered to date is simply the tip of an iceberg. Every time a new witness appears before this inquiry more information comes to light. We need to hear from the eight directors who have first-hand knowledge about this matter. I note the release on Friday and Saturday of new advice from Bret Walker, SC, the leading silk before the High Court in this nation, someone who has done project after project, inquiry after inquiry for this State Labor Government. He clearly has backed the Clerk's view of this inquiry—that it can proceed, it is valid, and that the evidence that is provided is protected by privilege. That is critical advice because that advice from Mr Walker confirms not just the validity of this inquiry but the right of the public to demand to know what has gone on here. It is the right of the public to have that information before they exercise their democratic right on 26 March and cast a vote across this State.

I would urge this Committee to continue to press the Premier to stop trying to hide the facts of this deal, to stop the Premier trying to continue to block the appearance of those eight directors, and to ensure that the Premier does ensure that your request for papers is fully complied with. But if, as I suspect, the Premier refuses I will again say that, notwithstanding whatever work you are able to do should we be elected on 26 March, almost the first thing I would do is establish a judicial inquiry into this whole affair. That inquiry would have the power to call for all the papers and it would offer the privilege that all the witnesses need, to get to the truth because we are determined to get to that truth. Most amazingly though, the Treasurer came along last week and said they were continuing with a second round of asset sales. We are now just over a month before the Government goes formally into caretaker mode. What keeps me awake at night is the damage that Kristina Keneally and Eric Roozendaal can still do to the State before they go into a period where they are no longer able to make the sort of crazy, incompetent and misdirected decisions we have seen in recent times.

Thank you again for allowing me to appear today. This has been a sorry saga from the start. As the facts come out in this inquiry the outlook for the taxpayers of this State frankly gets worse and worse. As I said, the Coalition will soon unveil its energy policy but we will not do so, we cannot do so, until we see the full extent of the devastation of the damage wreaked by Eric Roozendaal and Kristina Keneally through this asset sell-off. We will establish a special commission of inquiry to get to the truth and to hold people accountable for whatever sorry dealings that will be exposed. We are ready to put the finishing touches to that energy policy but, as I say, we will only do so when the full extent of the damage and information is out there.

When I proposed that there should be a parliamentary inquiry there were three things on my mind. Firstly, whether proper value for money had been achieved in the sale of a State asset—because

if you come to sell a State asset you only get one chance on your obligation is to get the best possible deal for taxpayers. Secondly, why eight directors resigned in protest at the deal—not just eight directors but eight directors appointed by the Labor Party, some of whom have very strong Labor allegiance. It is not as if resigning on principle has been a characteristic of this government over the past 16 years. Thirdly, to try to shed some light for the consumers of electricity across this State: business, small business and families who are struggling now with power bills, who are struggling now trying to cope with power increases, and we need to know as a result of this inquiry or a judicial inquiry what impact the sale process is going to have on their power bills in the years ahead.

Chair, before I ask the shadow Treasurer to make an opening statement can I ask you a question, as rare as that is? With leave can I ask you a question? In the light of Bret Walker's advice, in the light of his certainty that the eight directors and others could come along and give evidence with the full protection of the privilege of evidence and the immunity that would apply, what steps are being taken to convince them to come, because I am concerned that without them being here this jigsaw that is the dud deal of the century will never be completed by this inquiry. We do need them to come forward to reveal openly and honestly what they know about the sell-off.

The Hon. GREG DONNELLY: Point of order—

CHAIR: As soon as the evidence is completed today the Committee will meet to consider that very matter. The Committee has not made a decision on that as yet. It now has the advice of Bret Walker before it. The Committee will make a decision at that time, which will then be made public. Mr Baird, do you wish to make some brief opening comments?

Mr MIKE BAIRD: Yes.

Dr JOHN KAYE: Before Mr Baird begins, I am looking forward to hearing from Mr Baird but I do have concerns about time. I understand Mr O'Farrell has to leave here at—

Mr BARRY O'FARRELL: I am happy to stay with you for as long as you would like to see me.

Dr JOHN KAYE: So you will stay until 11.00 a.m. if needed.

Mr BARRY O'FARRELL: Whatever makes you happy.

CHAIR: The Committee is scheduled until 11.00 a.m. If you could stay until then that would be very convenient for the Committee.

Mr BARRY O'FARRELL: Absolutely.

CHAIR: Mr Baird.

Mr MIKE BAIRD: Mr Chair, I reiterate my leader's affirmation of your role in this inquiry. We really appreciate you standing up for the people of New South Wales and looking for the truth in relation to this transaction against a government that has bullied and intimidated. We thank you for that. We thank you for your support alongside the eight directors who have done likewise. Barry and I are delighted to attend this Committee to give our views. Certainly I want to put down why I think this

is a terrible deal for the people of New South Wales. I am very happy to do so and I appreciate the opportunity.

If you go through the New South Wales Government's energy reform process it has been a failure on any measure. Specifically, I think the process has failed for two key reasons. Firstly, the proceeds realised from the sale of this critical infrastructure are pathetically low and represent a shift of billions of dollars of value from the New South Wales taxpayer to the private sector. Secondly, the process itself did not achieve any of its stated objectives—that is, State Labor's stated energy objectives. It is these very objectives that the Government itself said it would achieve or it would not proceed. I will go into a bit of detail on why I think they have failed every single objective they have set themselves. Through these failures alone the transaction has failed the public interest test and the Government has further avoided its accountability to the New South Wales public by ensuring that there has been virtually no transparency around this process.

Specifically, the Government has refused to provide any detail or clarity on these critical points: the retention values, including calculations and assumptions, for either the individual assets or the bundled assets; the net proceeds actually received, which have already been marked down by over \$2 billion dollars; the ongoing risks to the New South Wales public under the gentrader contract, in particular the blackout risk and the risk of cost overrun; the risks in relation to the Government developing the Cobbora coalmine, in particular what is the risk of cost overrun and what penalties are payable if the development does not complete on time; what the embedded subsidy does to future competition and thus long-term electricity prices; the ongoing cost to the New South Wales public for the Cobbora development—what are the economics and why did no private sector participant want to develop the project; the ongoing tax liabilities for New South Wales, indeed, what this transaction does to the bottom-line position of the budget—Treasury is working on that but we are still not to know what that is; and the reasons why so many directors of Eraring and Delta West actually resigned. With no transparency on the risks, limited transparency on the process, substantial changes in the announced proceeds to the New South Wales public, and a complete denial of accountability, how can the New South Wales public possibly be expected to believe that these transactions are in their best interests?

I want to spend a little bit of time on Cobbora as this is a significant risk and we just have not seen some of the details come out on this. There are very significant risks and costs being imposed on the whole of New South Wales through the Cobbora development. By committing to this, New South Wales is going to re-enter the high-risk mining sector, an area in which they have no expertise. Furthermore, this is a direct contradiction to their stated aim of exiting the competitive energy market and represents a complete reversal in policy from the Government's decision to exit the mining sector in 2002. To be clear, the risks to the New South Wales public of committing to the Cobbora development are quite significant and include: firstly, a potential development cost blowout—the development cost was first estimated to be \$1.3 billion and it is now, through the Secretary of the Treasury, confirmed at \$1.5 billion. With the full costings report not yet released it is impossible to know how much these costs may rise or indeed how they will be funded. Secondly, there is a failure to complete on time—there is still no detail on what penalties the New South Wales Government will have to pay if they fail to complete the Cobbora development on time. These could actually completely destroy any remaining proceeds.

Thirdly, ongoing losses in the project—the market estimates that the total losses incurred from selling the coal at less than what it costs to mine the coal will be more than \$1 billion. A Merrill Lynch research report, which I am happy to table as part of this, even said that the coal costs at Cobbora—so basically the operating cost—will equate to about \$50 a tonne. This is a \$17 a tonne cash loss to the

Government, and on 138 million tonnes that is a potential cost of up to \$2 billion, well above the market estimates, and that excludes what your long-term view on coal prices may be. The true costs really need to be understood. Fourthly, in terms of a long-term subsidy, if the Government had instead sold the coal on the open market it could have realised billions in additional revenues over the next 17 years—so it is a real opportunity cost in relation to that. Fifthly, there is no clear path to sale—the Government claims it will subsequently sell the coalmine, but who will buy a loss-making project? They have already tried to do it and it failed in a spectacular sale in the lead up to this.

I strongly believe the Government is also to blame for not managing the coal risk. About 40 per cent of the costs of the generators are actually in the coal, in the energy supply. Most of these key contracts are expiring in the next few years and any company that had this sort of risk would have been managing it in a professional and diligent way—long-term profiles, long-term expiries and diversification of tenure. You would not let the majority of these contracts collide not only with the sale; just collide full stop as they have, because that has exposed New South Wales to huge risk and I believe it is the fundamental reason we have had to go back into coalmining. It really does raise the question of what sort of risk management processes are in place under this State Labor Government because this is a huge risk, a fundamental risk, and it has been ignored at every turn.

Before I finish with the objectives, the sale values achieved to date are significantly below what is historically paid for similar assets—this is just market fact. The market believes the electricity generation and retail assets should have ultimately realised proceeds of closer to \$15 billion rather than the \$3 billion before coal commitments are realised from the current sales process. There are a couple of other independent reports, which I am happy to table. The independent expert report that Origin Energy itself commissioned in September 2008 and the Alinta Energy independent expert report from February 2010 showed that similar generation assets have historically achieved approximately 10 times earnings before interest, tax, depreciation and amortisation [EBITDA]. Given the combined EBITDA for the government-owned generation assets in 2010 was over \$1 billion, the proceeds achieved for all generation assets should be over \$10 billion.

Furthermore, the same independent expert report looks at the megawatt price per million and it showed since 2005 that has been running at about \$1.5 million, which was the first time the concept of an emissions trading scheme was formally tabled in the Federal Parliament for coal-fired generators. When we consider that the Government has sold the rights to the 5,400 megawatts currently of generation capacity at Eraring and Delta West, under this analysis they could well have realised up to \$8.5 billion for the generation assets sold. This latter analysis really highlights that the \$10 billion figure we are talking about for the generation assets is not only achievable but is likely to be conservative in relation to a proper process. Referencing the same independent expert reports for the sale of the retail customer bases since 2005 implies an average multiple of approximately \$1,350 per retail customer. Applying this multiple to over 3 million retail customers in EnergyAustralia, Country Energy and Integral Energy implies a valuation of over \$4 billion. Therefore based on recent—and this is not Opposition numbers—independent experts across the market that look at these assets day in, day out on a professional basis, they believe the Government should have achieved close to \$15 billion for the State electricity assets that it has just sold. Instead, the Government to date has net proceeds of about \$3 billion—well below the \$5.3 billion—and that is before you deal with the very real cost of the Cobbara mine development which I have articulated. For me, this means nothing less than the State Government has undertaken a \$15 billion giveaway to the private sector.

The last point I want to finish with is the objectives. The Government has grossly failed to meet its own objectives. The four key objectives when it embarked on an energy reform process that State

Labor set up for itself were simple. The first was to deliver a competitive electricity market in New South Wales specifically by ensuring at least one new market entrant is able to establish itself. That has not happened. Where is it? Where is the new entrant? There is no new entrant and the New South Wales energy and retail markets are now dominated by Origin and TRUenergy, with a combined market share of approximately 80 per cent. Those incumbents have therefore substantially increased their market power and reduced competition. Moreover, because Origin and TRUenergy will benefit from below market coal costs, thanks to the heavily subsidised contracts, there is almost no way that a new entrant can legitimately enter the market and compete with them. The Government has effectively put in place a huge barrier to new entrants and secured market dominance for Origin and TRUenergy for probably the next 20 years. I would be arguing that that has led to pressure on increased electricity prices and profits for the private sector.

The second objective is to encourage private sector investment into the New South Wales electricity sector as, according to the Government's own report, it is inhibiting the private sector in new New South Wales generation. If you just thumb through the transaction you can see that that is not the case. The Government is still an active participant in the competitive market. It continues to own some generation assets. It has the operational risk for Eraring and Delta West, over 5,250 megawatts of generation capacity, and 36 per cent of New South Wales generation capacity. Furthermore, with its decision to enter the high-risk business of coalmining, the Government has intentionally undermined its objective by committing at least \$1.5 billion to this development, which will obviously displace private sector investment.

The third objective is to ensure New South Wales homes and businesses continue to be supplied with reliable and efficient electricity. Again the Government has not delivered. The Government has itself admitted that no less than \$360 million of value is at risk and payable back to the bidders if there are unscheduled blackouts at the power stations. But if the costs allowed for maintenance are fixed under the terms of the gen-trader contracts, as we are led to believe they are, this restricts the generators from performing more maintenance, which increases the risk of blackouts, which therefore further increases the risk of additional disruptions to supply of electricity homes and businesses in New South Wales. In addition, if the generators are restricted from completing additional maintenance required to avoid unscheduled outages, they will have to pay more liquidated damages to the bidders, thereby reducing the value to the New South Wales public. Either way, the separation of functions under the gen-trader contract creates a dysfunctional situation under which the entity responsible for the security of supply does not have control over how much money it can invest to ensure reliable supply.

The final objective is to place New South Wales in a stronger financial position by optimising the sale value of public assets, reducing the Government's exposure to the electricity market, and reducing the State's public sector debt. It is on that objective that the Government has failed beyond all expectations. As previously discussed, the net proceeds of this transaction are insulting to the people of New South Wales and may well come out at almost nothing once you account for the significant risk with the Cobbora coalmine. Therefore, any reduction in the State's public sector debt, which currently stands at \$34 billion or close enough thereto, will almost be immaterial in the overall scheme of that objective. And, as opposed to the element of reducing the Government's exposure to the electricity market risk, well it is well and truly still front and centre of that.

Therefore, as I said, against all four objectives the Government set for itself this process has been an unprecedented failure. This deal is a disgrace, and the Premier and the Treasurer should be condemned for signing a transaction that will hurt New South Wales for decades to come. I am angry

about this deal. I am furious that families across New South Wales will pay the price for this Government's incompetence and arrogance, and I am very happy to continue to help the Committee to expose what is a rotten deal for New South Wales that is going to hurt families for many years to come.

The Hon. GREG PEARCE: I think the witness wanted to table a document.

Mr MIKE BAIRD: Yes. I seek leave to table the document.

The Hon. GREG PEARCE: Do you want to table the chart on the four objectives as well?

CHAIR: Do you request that?

Mr MIKE BAIRD: Yes.

Documents tabled.

CHAIR: In view of the information the Committee has received in this inquiry, do you believe the eight directors were justified in resigning and not signing on the dotted line when demanded by the Treasurer?

Mr BARRY O'FARRELL: I think we are clearer, in some sense, as to the circumstance in which they resigned. I do not think until we hear from the eight directors directly that you will get to the real reason. My issue, having seen part of this inquiry, having read the transcript and having seen the media reports is that there are eight directors—they are diverse in terms of their experience and background, ranging from unionists, to a former Minister, to people that have spent a lifetime in the energy sector—and what is remarkable is that they have all done the same thing, and that is why I think they should have their day here. So, do I believe the Committee has got the answers yet? With all due respect, Chairman, no, but then you have had some pretty heavy opposition in the form of the Treasurer and the Premier up against you.

CHAIR: Mr Foley, do you have a question?

Dr JOHN KAYE: Normally questions come from Opposition, crossbench, Government.

CHAIR: Yes, but because we have the Opposition presenting the evidence I believe we should start with government members to respond to the opening statements.

The Hon. LUKE FOLEY: Do you think there has been too much privatisation here or not enough privatisation?

Mr BARRY O'FARRELL: That is an issue that we are determined to have a judicial inquiry get to the bottom of because until we see the full extent of the damage done by the Labor Government, until we see whether Eric Roozendaal is stupid enough to continue to press forward with a second round of sales, we will not know precisely what damage your colleagues have done to this State—to the State in terms of its current assets but, more importantly, to the power bills faced by families and small businesses across New South Wales.

The Hon. LUKE FOLEY: But I am asking about your principled position. This is a very long-running debate. There are two principled positions poles apart—

Mr BARRY O'FARRELL: What is the Government's principled position?

The Hon. LUKE FOLEY: Some advocate for privatisation—

Mr BARRY O'FARRELL: What is the Government's principled position?

The Hon. LUKE FOLEY: You are running for Premier. Some people advocate for a privately run electricity sector, some advocate for a State-owned and run electricity sector. What is your principled position as a Liberal?

Mr BARRY O'FARRELL: Our principles are outlined as they were in September 2008: principles that said that we have no difficulty with private sector involvement in any area of government activity providing it is in the public interest. What has been clear after two days of this inquiry is how on earth, how in hell could Eric Roozendaal and Kristina Keneally come in here, put hand on heart and say what we have uncovered, what we have seen revealed about this deal is in any one's public interest.

The Hon. LUKE FOLEY: In your maiden speech to Parliament, which I have read, you said:

Like Menzies I believe our first question is not whether the Government could do this thing but whether private citizens could. If the answer is that they could, our answer is that they should.

Well the private sector can run the electricity industry—it does in Victoria. Surely then you believe, given that statement in your maiden speech as a Liberal, that the private sector ought to run the electricity industry?

Mr BARRY O'FARRELL: I am not going to back away from a statement that says we should be encouraging citizens of this State to take maximum control of their lives, to be at the centre of what government does. But can I just get this right? You are not advocating for the full sale of privatisations?

The Hon. LUKE FOLEY: I am asking you the questions. You are running for Premier.

Mr BARRY O'FARRELL: You, the man who Rodney Cavalier calls one of the fellows of the anti-privatisation push, you who rang members of Morris Iemma's caucus telling them to cross the floor and become heroes in their own right; you who are named by Mr Cavalier, an excellent author, as the leader of the anti-privatisation push, are now putting questions that suggest that you have flipped and that like Mr Robertson you are now a key supporter of this deal!

The Hon. LUKE FOLEY: I am not running for Premier; you are. My position on electricity privatisation, against it, is in that book. Your position is a closed book. Why will you not tell the people of New South Wales what your position is? Do you support a privately run electricity sector or a State-owned and run electricity sector? Which one?

Mr BARRY O'FARRELL: We are very happy to tell the public about our electricity plans when we see the damage that your Government has done, when we see how much more of the State's electricity assets have been sold. If you can tell me that today we might be able to put the finishing touches to it but we are not going to unveil our plans—and they will be unveiled before the State election—until we see the extent of your damage. What we will not do is what you and your colleagues

did before the last election. What we will not do is go into an election campaign promising not to sell an asset and then almost within minutes of winning that election start the process to sell it.

The Hon. LUKE FOLEY: Will you rule out the privatisation of electricity generation in New South Wales?

Mr BARRY O'FARRELL: As you know, we currently have a system—we currently have an industry that has private and public operations.

The Hon. LUKE FOLEY: Will you rule out full privatisation?

Mr BARRY O'FARRELL: As you know, we will unveil our plans when we see the extent to which—

The Hon. LUKE FOLEY: It is a simple question—

Mr BARRY O'FARRELL: With a simple answer—

The Hon. LUKE FOLEY: Yes or no, will you rule out full privatisation of electricity in New South Wales?

Mr BARRY O'FARRELL: The simple answer is that we will unveil our plans when we see the extent of the damage that your deal—and the future deal that the Treasurer is talking about—has done to this State.

The Hon. LUKE FOLEY: Will you rule out the privatisation of electricity transmission and distribution in New South Wales?

Mr BARRY O'FARRELL: You will see our policy—

The Hon. LUKE FOLEY: Why will you not rule it out?

Mr BARRY O'FARRELL: Mr Chairman, as I said before, I am happy to come along and help in any way to get to the bottom of this stinking, steaming mess that is Eric Roozendaal and Kristina Keneally's first sale of electricity. I am concerned about the second sale, a sale that I think should be just put on hold. But, Mr Chairman, we will use the election campaign to unveil our plans. I am looking forward to that but we will not put the finishing touches until we see where the Government gets up to. That is a reasonable position, and the position that we will continue to argue up until the time that your Committee reports, and up until the time that it is clear we will know how far Mr Roozendaal and Ms Keneally have got before the election.

The Hon. LUKE FOLEY: The fundamental principle of whether the sector is privately owned and operated or run by the State is more than a finishing touch. What is your principled position?

Mr BARRY O'FARRELL: The principled position is the same as it was, can I say, two years ago, which is, unlike Mr Roozendaal and unlike Ms Keneally, we will be guided by public interest. That is the principle that we applied and we announced in September 2008. We will do nothing that is not in

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the public interest and yet your Government, of which you are a key member, has signed up to a deal that on the basis of limited evidence given over two days, has clearly done the dud deal of the century!

The Hon. LUKE FOLEY: In 1999 as a member of the shadow Cabinet you advocated for full privatisation of the sector. In 2007 after assuming the leadership you advocated for selling the retailers. In 2008 you argued for the principle of privatisation but opposed it in practice in the Parliament. In 2010 you opposed the gentrader model. You have had more positions than the *Kama Sutra* on electricity privatisation! Why cannot you tell us the principle of whether you will privatise?

Mr BARRY O'FARRELL: Mr Chairman, we will unveil our plans but we cannot do so. And if Mr Foley wants to do something useful what he should do is sit down with his good friend Eric Roozendaal and get Eric Roozendaal to tell us the full extent of the deal. What he should do is sit down with his party Leader Kristina Keneally and tell her to indemnify the eight directors who will not appear because they are fearful about being sued by the Keneally Government so that we can get all the information on the table; so we can actually get an idea of the full extent of the damage that has been wreaked by this terrible deal—terrible on the basis, as I say, of just two days of hearings. I am not going to engage in the party political games that Mr Foley wants me to because, frankly, like Mr Baird I am angry. I am angry about the way this process has been done.

The Hon. LUKE FOLEY: Well, Barry, let us in on your plans. No more waffle. Tell the people of New South Wales—

CHAIR: Let the witness finish his sentence.

Mr BARRY O'FARRELL: I am angry about the woman from western Sydney whose husband works full time. She works part time. They have got three kids—

The Hon. LUKE FOLEY: Why don't you rule out full privatisation?

Mr BARRY O'FARRELL: They have tried the very best to decrease their energy use, to cut down on inefficient—

[*Interruption.*]

CHAIR: Let the witness finish his statement.

Mr BARRY O'FARRELL: What is their reward for it? Their reward is, even though they have used less electricity, their power bill has gone up by 20 per cent. That is the second thing that this Committee has to do: not just find out why this deal proceeded, not just find out how much taxpayers are ripped off, but frankly find out how much more ordinary people in this State are going to have to pay for the incompetence of Mr Foley and his friends who continue to make the wrong decisions, and seem to want to do so until the writs are issued on 4 March.

CHAIR: Can we move on to other questions, Mr Foley?

The Hon. LUKE FOLEY: On 29 August 2008 you said in an interview, "The one guarantee the public have is that before the next election they will have our detailed energy policy". That was 879 days ago! The election is in 61 days. Where is it?

Mr BARRY O'FARRELL: It was also, I think, two years ago that Eric Roozendaal started a process that he said was well thought through and the best and brightest brains in government were working on it. However, we discovered last Tuesday, thanks to the Treasury Secretary, that it was not the best option and that Treasury opposed it. We also discovered that taxpayers will be lucky to walk away with a bob in cash as a result of the deal. I repeat: I will not use this inquiry today to release the Coalition's energy policy, as much as I would like to. We are going to wait to see the extent of the damage done and the future electricity deals done by this State Government. However, the principle that I espoused and the commitment that I gave in 2008 stands: As people vote on 26 March they will clearly understand the Coalition's energy plans and they will be able to contrast them with not only the deals that have been done that this Committee is investigating but also this State Labor Government's attempts to block the public getting the full details of those deals before the election. That is why the Coalition has committed in part in our policy to establishing a judicial inquiry that will get to the bottom of this and to putting the facts on the table.

The Hon. LUKE FOLEY: Mr O'Farrell, I invite you now to rule out the full privatisation of electricity generation, distribution and transmission. Will you do that?

Mr BARRY O'FARRELL: We will unveil our policy before the election and after we see how far Eric Roozendaal goes in his selloff of the State's assets. I invite Mr Foley to come to the judicial inquiry if we win the election and when we establish it to tell us what he knows about Eric Roozendaal's dealings on this whole matter.

The Hon. LUKE FOLEY: Mr Baird, on your blog on 15 December you criticised the Government as being "still involved in the generation sector". You support the Government getting out of the generation of electricity, do you not?

Mr MIKE BAIRD: I support very much what Barry just said—that is, the public interest. We have consistently said that we are open to private sector involvement in the industry on the basis of public interest and public value. What we have seen with this transaction—which I point out is the focus of this inquiry—is a complete erosion of both. We have seen the destruction of billions of dollars for the people of New South Wales. While you are being cute with your political nonsense now—

The Hon. LUKE FOLEY: I am simply asking what you will do.

Mr MIKE BAIRD: Every mum and dad—

The Hon. LUKE FOLEY: You are odds on to be Treasurer in eight weeks. Are you going to flog it or not?

Mr MIKE BAIRD: Every mum and dad will have to bear the consequences of your mismanagement of this transaction and this State for four years.

The Hon. LUKE FOLEY: You are going to sell the lot.

Mr MIKE BAIRD: No, let me finish; I am happy to do so. When you went through this process before in terms of looking at the actual sale under your second last Premier—Morris Iemma—it was very clear. You can use comments made in the market. The market said when you were trying to sell the assets and we opposed it on the basis of timing and the emissions trading scheme that it should be based on public value and public interest. That is what we stand up for on this side.

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The Hon. LUKE FOLEY: So you have no in-principle objection to selling?

Mr MIKE BAIRD: No, we have no in-principle objection to private sector involvement at the right time, with the right structure and in the right place.

Mr BARRY O'FARRELL: It is private sector involvement.

The Hon. LUKE FOLEY: You do not have to cover for him, Barry.

Mr BARRY O'FARRELL: No, he is doing very well. He is stating a principle. If you stick to principles—

The Hon. LUKE FOLEY: What is your principled position—a private-sector or a State-run electricity industry?

Mr MIKE BAIRD: Whatever is in the interests—

The Hon. LUKE FOLEY: What is your principled position?

Mr MIKE BAIRD: We are open to private sector involvement where it makes sense at the right time and with the right structure.

Mr BARRY O'FARRELL: But it has to be guided by public interest. What is clear is that there has been no public interest demonstrated by anything that has come out of this inquiry to date.

The Hon. LUKE FOLEY: Mr Baird, in 2008 you argued that the Coalition should support the Iemma-Costa privatisation package; that is, privatisation of retail and generation. Are you telling us that you have changed your mind since then and that you now believe that electricity generation should be State owned and run?

Mr MIKE BAIRD: No, I never said that. You are putting words in my mouth. What I said at the time was exactly what our position was. I said we had huge concerns about the process and that is why we opposed it. We opposed it because of the onset of the global financial crisis. The head of the Deutsche Bank's Financial Sponsors Group, David Backler, said then that he had never seen the markets that bad. Annabel Hepworth of the *Australian Financial Review* reported that New South Wales, after years of reform inertia, had chosen the worst possible time to sell these assets. She stated:

The credit crunch and crisis among bond insurers known as monoline makes debt funding more expensive for possible bidders. That's not great news for trade sales. The turmoil on financial markets makes any initial public offering hard to price. And uncertainty about carbon policy isn't going away.

It was right to stand up for the people of New South Wales on the basis of public interest and public value. I tell you, Mr Foley, that has not changed today. Whether it be timing, structure or process, the Coalition will do what is right for the people of New South Wales full stop.

Dr JOHN KAYE: Have you read the Owen report?

Mr MIKE BAIRD: You are condemned for being part of a government that has thrown billions of dollars into the bin, and you are going to be condemned for that for years to come. That is not something with which you can play political tricks. They are the facts.

The Hon. LUKE FOLEY: What are you going to do about it? Tell us. Are you going to privatise it or not?

Mr MIKE BAIRD: We are looking at a judicial inquiry—

The Hon. LUKE FOLEY: Here is your chance to rule out full privatisation. The floor is yours. Will you rule it out?

Mr MIKE BAIRD: We are proposing a judicial inquiry that will look into the intricate detail of what you have done.

The Hon. LUKE FOLEY: Why will you not rule it out?

Mr MIKE BAIRD: Why are the directors not here?

Mr BARRY O'FARRELL: We will—

The Hon. LUKE FOLEY: Why will you not rule it out?

Mr BARRY O'FARRELL: Mr Chairman, I am not sure that we need this level of heat from Mr Foley. Perhaps he should run for a lower House seat. I cannot make it clearer: We will unveil our electricity plans during the campaign and before people vote. However, it will be after this Committee works out how far the Government has gone in selling off existing electricity assets.

CHAIR: We understand that. Parties will launch their policies during the election campaign. This is not the place for a policy launch.

The Hon. LUKE FOLEY: Mr Baird, who do you think should carry the cost of construction of further baseload generation capacity—the State or the private sector?

Mr MIKE BAIRD: Ideally that is something you want the private sector to do.

Mr BARRY O'FARRELL: I would like to add something to that. Of course, the private sector is building generation capacity now; it has been building generation plants and it has been involved in our State's electricity assets system for some time. I heard the Treasurer address that issue on radio last week. He said that he had saved electricity consumers the cost of future generation construction. I seem to remember something about the Treasurer's university career. I would have thought that if the private sector is involved in building additional or new generation capacity the people who will ultimately pay for it are the families, small businesses and big businesses across New South Wales. I have noticed that the private sector does not operate for altruistic reasons; it normally seeks not only to cover its costs but also to make a profit. Apparently the Premier can apologise for not understanding about the interests of families in this whole process. However, it beggars belief that the Treasurer is now pretending that those families will be assisted by his deal in some way because they will pay the cost of that future generation under his model.

The Hon. LUKE FOLEY: Do I take it that if you form a government the State will build new power stations and upgrade the existing energy assets?

Mr BARRY O'FARRELL: You can take it that we will announce our plans when we see how far you get. What you can also take from my answer is that the Treasurer clearly lives in another world—not just the eastern suburbs but another world and far away from the struggle families face in trying to pay electricity bills that are rising sharply even though they have curtailed their electricity use. I cannot believe that the Premier did not understand the significance of this. I have not been able to go anywhere for the past nine months without families telling me about how difficult it is to pay power bills. I met a senior woman who told me that she could not use her heater in winter because she was afraid she would not have enough money to pay for food.

The Hon. LUKE FOLEY: Mr O'Farrell, if you are concerned about families—

Mr BARRY O'FARRELL: I do not understand the Premier's and the Treasurer's isolation from those issues. I do not think that any other lower House member of Parliament has been anything other than aware of the enormous distress caused by significant power price increases—60 per cent over the past five years when the CPI has risen by 16 per cent.

The Hon. LUKE FOLEY: If you are so concerned about rising electricity prices—

Mr BARRY O'FARRELL: The Premier and the Treasurer do not understand.

The Hon. LUKE FOLEY:—you can rule out selling the lot now. Why will you not do that?

Mr BARRY O'FARRELL: We will announce our electricity policy during the election campaign. I suspect that we will do that after this Committee has done its job and reported, when we see how far this Government has gone and when we see what New South Wales electricity assets have not been flogged off by Mr Foley's colleagues.

The Hon. LUKE FOLEY: Mr O'Farrell, if you are so concerned about families, I invite you to rule out flogging off the electricity connection to every home and business in this State and electricity generation, transmission and distribution. For the fourth time, why will you not rule that out?

Mr BARRY O'FARRELL: The only people flogging off assets belong to the Labor Party. Anyone who wants favours should vote Labor. The only people who seem to have an inside deal are those dealing with the Labor Party. We will announce our plans in due course. However, we will not be lectured by you, Mr Foley, with your faux concern for families across this State. We will not be lectured by you given your false concerns about where the State is going. I have not heard you publicly over the past two years during which Mr Roozendaal has been proceeding down this flawed path raising a single public concern about the process. That stands in stark contrast to the Liberal-Nationals, who continue to stand up for public interest in this affair, who are determined to get to the bottom of it and to establish the full extent of the damage done and, critically, who are determined to see what lasting legacy this will have for the power bills of families across this State.

The Hon. LUKE FOLEY: Mr O'Farrell, you have told us this morning that the Coalition is "ready to put the finishing touches" to its electricity policy. Is it true that you have engaged a number of accountancy firms to provide policy advice to the Coalition?

Mr BARRY O'FARRELL: I think we have had advice from a number of firms in relation to issues that have come up in policy generally—absolutely. We make no bones—

The Hon. LUKE FOLEY: Is it not the case that the policy work being done by those firms includes consideration of privatisation options for an incoming Coalition government?

Mr BARRY O'FARRELL: I have not seen such work.

Dr JOHN KAYE: Mr O'Farrell, I am interested in your statement that you could not announce your electricity policy until you saw the full details of the devastation. I have some sympathy for that: I can understand where you are coming from. However, I want to get to the bottom of this. There are two aspects to what we do not know. The first is that we do not know just how bad this deal is, we do not know the numbers on the liquidated damages, we do not know the numbers on the cost of maintenance, and we do not really know, despite Mr Baird's I think quite accurate estimates, the full detail about Cobbora. We all agree that there is a lot more to find out about Cobbora.

The second aspect is what the Keneally Government will do with Delta's coastal operations and MacGen. Can you separate them for the Committee? Which is the barrier to your announcing what the Coalition will do with the electricity industry? Is it a lack of knowledge about the details, which you think we might get from the directors? I think we will get part of that from the directors. You said that you are committed to an inquiry anyway after the election. Or is it that you do not know what will happen with Delta's coastal operations and MacGen?

Mr BARRY O'FARRELL: We do not know what the full shape of the sector will be when people vote on 26 March, or as we sit here today. We want to know where Labor is taking us. However, as I said, the purpose of this inquiry is clear to me. First, it goes to that issue of what value has been received. As you know, you get only one chance to sell a public asset. The obligation should be to get the maximum return if you go down that path. The second purpose is to uncover the concerns of those eight Labor directors. Thirdly, it should shed some light on what electricity consumers can expect in their next quarterly power bill and the bill after that.

Dr JOHN KAYE: I will get back to the last issue. You still have not told us which of those two tranches—

Mr BARRY O'FARRELL: I think they are the same and that you are splitting hairs.

Dr JOHN KAYE: With respect, Mr O'Farrell, they are not and I am not. We could ask you what you would do if the Keneally Government abandoned Delta coastal and MacGen and what you would do if it went ahead. They are two separate issues and they can be dealt with. However, my concern about your statement is that you say you cannot make an announcement until you know the full details of the damage. You are also saying that we need a judicial commission of inquiry to get to the bottom of it. The logical conclusion from those two statements is that you cannot tell the people of New South Wales what you are going to do until after the election and after the inquiry.

Mr BARRY O'FARRELL: We will unveil our plans before the election. However, as I have said, part of those plans is to have the judicial inquiry because it is important to get to the bottom of the whole process. Not only does the public have a right to get the answers but people must also be held to account for whatever wrongdoing has occurred, whether it be in terms of the advice or the outcome. I say it is the same process. We are happy to unveil our electricity plans according to our

timing when we see the extent of this Government's actions in relation to electricity. We have seen one part of it, and incredibly Eric Roozendaal and Kristina Keneally are pressing ahead with the second sale process. Once the Committee has reported and it is clear where they are going, the plan will be out there. We are committed, as we said in 2008, to putting our plans on the table, but we do need to see the extent to which this Government has proceeded before we put those finishing touches there.

Dr JOHN KAYE: As I understand what you are saying, you could now write two policies.

Mr BARRY O'FARRELL: I am sure there is probably a variety of ways to do it.

Dr JOHN KAYE: Yes, I will finish the question, if you do not mind. You could write the one if Macquarie Generation and Delta Central are sold, and you could write the one if they do not sell. There are really two possibilities.

Mr BARRY O'FARRELL: I do not accept that contention, but the answer is the same. We will unveil our plans when we see the extent to which this Government continues to sell off State electricity assets.

Dr JOHN KAYE: You talk about what happens to electricity bills in this quarter, in the next quarter and the quarter after that. Would you accept the proposition that what happens in the next quarter and the quarter after that, and as the quarters proceed, becomes increasingly your issue? By the way, electricity bills are now monthly, not quarterly, but we will get to that in a minute. You would appreciate that the terms of reference for this inquiry, which talk specifically about what will happen in the future, relate directly to what you will do?

Mr BARRY O'FARRELL: I must change my retailer because I get quarterly bills, but that is okay. That is the choice we have. What I have made clear—I have said it endlessly at press conferences and in radio interviews—is that if we are elected we cannot undo the damage, the incompetence, the mismanagement of Labor over the past 16 years. What we have seen over the past 16 years are revenues from electricity in terms of dividends and tax equivalent payments to the tune of billions of dollars—almost \$960 million a year ripped out of those energy companies, which is something like 40 per cent higher in terms of dividends than in the last Liberal Government.

So dividends ripped out, the energy companies not able to engage in proper investment for the future, not able to engage in proper maintenance. What is now being proposed in terms of energy prices—those massive price increases that people are putting up with—is because of their incompetence, their mismanagement. And once again, as usual, when Labor gets it wrong it is the families of this State, it is the businesses that suffer the consequences. So the point is that we cannot undo that damage. What we can do, what we are committed to do, what the judicial inquiry will help us do, is ensure we never again make those mistakes, we never again contribute as a government to those massive price increases that families are currently hurting from—massive price increases due to Labor's incompetence, neglect and the sorts of deals that have been uncovered by this Committee.

Dr JOHN KAYE: Let us go to the issue of the two existing gentrader contracts. You have heard evidence—you have looked closely at this inquiry—that they were exceptionally bad deals. Mr Baird refers to it as the worst sale of the century. I think we are all agreed that it was a devastatingly bad set of arrangements. Will you look at undoing those contracts?

Mr BARRY O'FARRELL: We have said the judicial inquiry will have all options available to it. I am determined, through the judicial inquiry—a judicial inquiry that will be the very first action I take should we be elected to establish. That inquiry will report to this Parliament. That inquiry will have the right to recommend whatever course of action, whatever recourse that protects public interest, that defends public value, because we are determined to get to the truth of this matter.

Dr JOHN KAYE: If such an inquiry says that the loss of value in those—and presumably that inquiry will have access to the contracts?

Mr BARRY O'FARRELL: That inquiry will have access to anything and everything it wants. That inquiry will offer the privilege to witnesses who appear. That inquiry will get to the bottom of this because that inquiry will start to hold people to account for these sorts of decisions.

Dr JOHN KAYE: I think that is a good thing. If it recommends that the escape clauses in the gentrader contracts are less expensive than the long-term loss of value associated with the gentrader contracts will you commit to repealing those gentrader contracts, with legislation if necessary?

Mr BARRY O'FARRELL: I have said better than that; I have said that we will not give this commission of inquiry any limitations. We reserve the right to pursue whatever remedy will protect public interest and defend public value. That clearly includes your option but obviously includes other options, but we will not second-guess this. We will finally do what should always be done, which is have that independent judicial inquiry to get to the bottom of this deal and to make clear what recourse is in the best interests of the State, not with political spin that we have been used to for 16 years, not with any ideological view that you might have, but what is in the best interests of this community.

Dr JOHN KAYE: Certainly but you did not answer my question. Will you—

Mr BARRY O'FARRELL: No, no, no, I did. What I am saying is that I will not put limits either way. What I have said consistently—

Dr JOHN KAYE: If the inquiry recommends that we repeal the gentrader contracts, buy them back, pay whatever compensation is required, because that will be cheaper than continuing with them, will you say now that that is an option that you will pursue if that is the recommendation?

Mr BARRY O'FARRELL: I said on 15 December, when we announced firstly that we believed the Government should pursue a judicial inquiry, which not surprising given her record to date the Premier rejected, that we would establish a judicial inquiry, we would have the inquiry report to the Parliament and we would abide by that inquiry's recommendations because we wanted to protect public interest and defend public value.

Dr JOHN KAYE: You still have not answered my question.

Mr BARRY O'FARRELL: I think I have.

Dr JOHN KAYE: My question is very straight forward. Will you entertain the option of repealing those contracts?

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Mr BARRY O'FARRELL: I have said that we will seek to abide by the recommendations put forward by the judicial inquiry. We are ruling nothing in and nothing out. We are putting no limits on that inquiry. We want to get to the bottom of this mess.

Dr JOHN KAYE: No, this is about you—

Mr BARRY O'FARRELL: No, this is about an inquiry.

Dr JOHN KAYE: The inquiry is important and I appreciate what you are saying but I want to know what you will do.

The Hon. GREG PEARCE: The question has been answered.

Mr BARRY O'FARRELL: I think it has been answered.

Dr JOHN KAYE: I have one last question. Will you rule out selling the wires and poles?

Mr BARRY O'FARRELL: Wait until our electricity plans are announced, but I say again: We are guided by public interest. The commission of inquiry, the judicial inquiry will have no restrictions placed on it, because I want to get to the truth, I want people held accountable and I want recommendations that seek to protect the public interest.

The Hon. GREG PEARCE: Do you want to table that chart?

Mr BARRY O'FARRELL: I am happy to table that chart if you like, absolutely.

Dr JOHN KAYE: For the record, the chart shows revenue from electricity over the past decade and a half.

Mr BARRY O'FARRELL: Yes, \$13.5 billion worth.

The Hon. GREG PEARCE: Can you outline your reaction to the efforts of the Premier and the Treasurer to shut down this inquiry?

Mr BARRY O'FARRELL: I think the Premier's decision to prorogue Parliament was cowardly, it was contemptuous, it was corrupt. It was clearly designed to stop the public learning information that they are entitled to know. It was clearly designed to prevent, as regrettably to date it has, people fronting up to this inquiry. The public have a right to know. A Liberal-Nationals government would not shut Parliament down early. A Liberal-Nationals government would not seek to shut Parliament ahead of the issuing of the writs. Let us be clear about this. We are meant to have a four-year term. Taxpayers are entitled to get four years out of this Government, and that is what a Liberal-Nationals government, should we be elected, would pledge to do.

The Hon. TREVOR KHAN: You previously referred to the Premier's apology. Were you convinced by the Premier's recent apology regarding the electricity transaction sale?

Mr BARRY O'FARRELL: I was not convinced, and I think it was clear from her evidence on day one that she did not have her heart in it. As I said, you can't have gone around this State, you can't have gone out and talked to people over the last nine months unless you understood people's anxiety

about rising power bills. Perhaps the Premier ought to spend some more time without the minders going into shopping centres, as I do, going on a walking tour in early January to have a chat to people, go to the Tamworth country music festival and walk Peel Street for the better part of the day on Saturday without any people beside you and see what they talk to you about. The number one issue is still power bills. Notwithstanding how well Kasey Chambers and Catherine Britt are singing, it is about power bills.

So I do not believe that her apology was sincere, any more than I believe that yesterday's apology was sincere. What we see from this State Labor Government, whoever the leader is, is a pattern of behaviour that after the event apologises and seeks to move on, where they express the same sort of distress that families feel except they do not feel it. They are clearly out of touch with it, and the Premier admitted as much two weeks ago. The concern I have is not just for the family from western Sydney I refer to, not just for the pensioner I refer to, but for what is happening to small businesses across this State that are facing massive increases. I read recently I think where Blacktown council has got a half a billion increase in its power bills. It is the ratepayers of Blacktown who are paying for that.

Dr JOHN KAYE: Half a million.

Mr BARRY O'FARRELL: Half a million dollars increase. It is the ratepayers who get stuck with that bill. I do not understand why the Premier has been kept away from that. It just reaffirms my view to appoint the judicial inquiry. It reaffirms my view to appoint an inquiry that will get to the bottom of it, that will uncover the truth, that will hold people to account and that will, in response to Mr Kaye's question, use whatever remedy is necessary in order to protect public interest, defend public value and try to avoid the sorts of massive price increases we have seen under this Labor Government.

The Hon. GREG PEARCE: I think we will reserve the rest of our time for the end of the inquiry because I am sure Government members want to ask some questions now.

CHAIR: Thank you. I have some general questions. You have mentioned a number of times about the directors who resigned and the legal advice we have had now from Bret Walker. Do you believe this Committee does provide that legal protection for witnesses?

Mr BARRY O'FARRELL: I do. I said, I think in late December, that in a sense the only independent person in this whole process has been the Clerk of the Parliaments. She has no vested interest. She is not running an agenda for you or for the Labor Party or the Greens or the Liberal-Nationals and she was very clear about her utterances. I know what the precedent federally is where another Labor Party, the Federal parliamentary Labor Party, during the Howard years, made the point—a point that was upheld by Harry Evans, the former Clerk of the Senate—that committees could proceed. We have seen our own advice, not just that the Committee was perfectly legal but advice suggesting that the Premier is in contempt of Parliament for her efforts at trying to intimidate witnesses, which regrettably to date appear to have worked.

So I say again what I said at the start. I congratulate you and the majority of the members of this Committee on pressing ahead because there is a public interest here. The public interest is to get the facts out. The only other suggestion I put on the table was that on 3 January I suggested that, given we are dealing in legal opinions—I am not a lawyer and we know that lawyers love opinions, but ultimately they are just that—they are opinions until such time as they are tested. What I suggested on 3 January was that there be a declaration sought from the Supreme Court so that the court would make a decision—a process that I understand would not take a lot of time, a process that could have been

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done before this Committee first met on 17 January. But, again, that was rejected by the Premier because the Premier, the Treasurer and the State Government have no interest in having all the facts on the table.

CHAIR: You have also announced that if you are elected on 26 March you will introduce retrospective legislation. Can you explain that?

Mr BARRY O'FARRELL: I simply wanted to put out there to try to support directors who want to front up, whether they are existing directors, continuing directors, or whether they are the eight directors in whom we are all interested, that if there were to be some legal doubt we would seek retrospectively to protect them. It is not something that I offered lightly because retrospective legislation is not something that is routine but it was something that I thought was important in order to give those directors the assurance. Now the concern I have is that we are still a number of weeks away from the caretaker provisions kicking in, which will kick in on about 4 or 5 March. My concern is that the offer of retrospective legislation may be of no comfort to those directors if they appeared and if straight after they appeared the Premier fulfilled her threat and they were sued for evidence that they gave. We have august lawyers around this Committee who could tell me how soon those proceedings would start, but I do not think anyone should come into any parliamentary committee and risk a penalty for simply telling the truth. Yet that is what the Premier has these directors under the belief of.

CHAIR: So obviously the Premier is using that as a threat to try to gag the directors who resigned en masse.

Mr BARRY O'FARRELL: I believe to rely on old advice in the first instance, to reject out of hand the advice of the Clerk of the Parliaments and to continue to talk about what at one stage she has termed an "unconstitutional committee" was designed to destabilise, designed to intimidate and discourage people from coming forward. Frankly, the two calls that I made late last year and early this year were for indemnity to be provided and for public servants to be told that they should come along and give the full unvarnished truth and they would not be penalised even if that truth and that evidence were politically inconvenient to the Government. What we have seen are two things. We have seen, over the past 16 years, not just the sort of approach of this State Government always knowing better than anyone else and attempting to shut down its critics, but we have seen within the public sector punishment for those who dare speak out.

CHAIR: Just following up that question: Would you therefore urge the Premier today to make a clear statement that she will indemnify the witnesses in the interests of natural justice and in the public interest of the State?

Mr BARRY O'FARRELL: The best result for the State today would have been for the eight directors to have appeared—not to have the games being played in relation to the Leader of the Opposition and the shadow Treasurer, but to have the eight directors appear. That can still be done this week, but only if the Premier finally understands that she needs to offer the indemnity, and only if the Premier finally understands that the interest here is beyond the Labor Party's interests on 26 March. It is about the people of New South Wales. But I fear, Chairman, given that the call has been made and given that that call overwhelmingly is supported by communities across this State and the Premier still persists in blocking people coming to this inquiry, that any offer that I make and any challenge that I lay down to the Premier will equally be ignored.

CHAIR: There is a strong belief in the community, and it has been stated in the media, that during the last six months the Labor Government has come to the conclusion that Labor will not win the next election, and that many of their actions and legislation they have put through the Parliament have been designed to tie the hands of an incoming coalition government. Do you see this rushed midnight sale in that category?

Mr BARRY O'FARRELL: I am aware of that view. I have seen it and I have heard it expressed. As I said in my opening statement, I wonder whether part of the reason that Eric Roozendaal has pressed ahead with the deal that this inquiry has so far found is not in the public interest is because, in some crazy way, he believes that tying an incoming Liberal-Nationals government, if that happens, to such a deal will cruel its chances—perhaps for the reason that Mr Kaye was alluding to earlier.

I believe what has been uncovered by this Committee to date makes some of those corporate cowboys of the eighties look like responsible citizens. I believe that what we have seen to date could well be a crime against the State. If it is confirmed that Eric Roozendaal has pressed ahead—against the advice of his Treasury officials, against the advice of industry which was publicly saying this was a lousy option simply—to handcuff an incoming government to a rotten deal, I have to say that he is one of those who should front up and pay for that crime against the State.

CHAIR: There also has been some criticism by some of the companies that could have tendered for the gentrader businesses that the whole sale was set up with a bias, that you needed already to have a consumer base or a customer base which gave you an edge, and any company that did not have that was competing unfairly with the other companies who already had that entrenched position. Do you have any view on that?

Mr BARRY O'FARRELL: I am aware of those. Mr Baird referred to some of those. My view, Chairman, is that ultimately, despite the obsession of the Greens and the Labor Party with ownership, what is significant in any of these issues is competition because ultimately it is competition that brings down prices, or at least keeps prices lower than they might otherwise have been. So that does not necessarily in any area of government mean that things are sold off. It means that you inject a contestability into the process.

I am aware of what you have outlined—Mr Baird has referred to it—but we need to see where you get to, or we may have to wait for a judicial inquiry before we get to the final evidence of that. In order to confirm that view you need witnesses to come along. You need witnesses to come along knowing that whatever evidence they give is not going to have them sued by the State Government because of some liability they may have created. People, whether they are directors of other energy companies or whether they are directors of unsuccessful bidders or whether they are Treasury officials or anyone else, should not be fearful about coming along to a Committee like this to give honest accurate information.

CHAIR: Do you have any views as to what others would have been the motivation for the Treasurer in ramming the sale through—

Mr BARRY O'FARRELL: I would not like to—

CHAIR: —at what for him was a most inconvenient time, as he had planned to go overseas and so on?

Mr BARRY O'FARRELL: Having read again the transcript of evidence, despite the protestations that the State-owned corporations knew all the way through what was expected, I was still scratching my head as to why on 14 December they left it until then to give them the full details, and why if there was so-called general agreement over the period leading up to it, this quarter-to-midnight rushed sale occurred. I think sometimes, Chairman, that whenever you think they could get no worse, they do. This has got to be the worst thing that I have seen in 16 years. What you unveiled last week makes it even more serious than that.

I do not know what was on Mr Roozendaal's mind. All we know is he said that he has persisted with it for two years. He claims that it had the best and brightest minds working on it and supporting it, yet you heard last Tuesday that the Treasury opposed it but he pressed ahead regardless. I do not know his motives, I do not know his thinking, all I know, on the basis of what has come out of this inquiry, is that the State is going to get something like less than 10 per cent of what the Treasurer and Premier claimed for a month they were going to receive. If there is nothing else this inquiry achieves, Mr Chairman—I certainly hope it achieves a lot more—it is the fact that you belled the lie, put out by Eric Roozendaal and Kristina Keneally from 15 December all the way through until 17 January, that taxpayers would benefit to the tune of \$5.3 billion as a result of this so-called sale.

The Hon. GREG DONNELLY: Mr Baird, in terms of looking at the issue of the electricity industry in New South Wales, I think the citizens of New South Wales can see that the position of the Coalition has fluxed and changed over time in terms of fully supporting privatisation sometime ago through to really not even knowing what the position of the Coalition is now. What is the position of the Coalition in terms of how the electricity industry in New South Wales should be operated?

Mr MIKE BAIRD: We have gone through this year in numerous ways and in numerous forms. It does not change, Greg. We all have some strong views. I cannot wait to outline some positive plans that we have, taking up Mr Kaye's point, while we are waiting to see what is left on the table. You are in the middle of still trying to pursue a sale in relation to this and still trying to change the dynamics. But we cannot wait to give some positive hope to the people of New South Wales because we do have some very strong ideas that again would absolutely make a difference day to day to the people of this State.

You know, it is a very different proposition from what we have seen from State Labor that, in the lead-up to the last election, signed letters publicly on television saying, "We're not going to sell the electricity assets", if you remember that. And yet, under various guises and forms, that is all you have been doing ever since, or trying. At every point and turn you have failed the public interest test, and that is the issue.

The Hon. GREG DONNELLY: There are about 61 days left between now and the State election. What you are saying is that you are going to be very crystal clear with the people of New South Wales about what your policy is as a coalition in terms of private sector versus public sector and its involvement in the electricity industry in New South Wales.

Mr MIKE BAIRD: You will see a stark difference; that is, we will articulate a policy that is taken to the election, as opposed to State Labor that articulated a policy, lied, and then did something entirely different for the next four years.

The Hon. GREG DONNELLY: The people of New South Wales would be generally aware that there is a need, looking to the medium term, for a new base load generator in New South Wales. Is the position of the Opposition that that base load generator should be run by the State or run by the private sector?

Mr MIKE BAIRD: In an ideal scenario, you would look to the private sector, but that does not mean—

The Hon. GREG DONNELLY: Can I ask you why you say "in an ideal scenario"?

Mr MIKE BAIRD: It is obviously going to be expensive. That is clear. With finances, if you go—

The Hon. GREG DONNELLY: How expensive?

Mr MIKE BAIRD: Can I just finish the answer to that question? If you go out to communities across New South Wales, as Barry suggested the Premier should do, and actually look for some of the infrastructure that is being built, it is not there. In terms of the finite balance sheet, ultimately what you want to do is, with each available dollar you can, start to build the infrastructure you need. In terms of if there is a capacity for the private sector to come in and meet that new generation that we are talking about—it has nothing to do with existing assets—it is new generation.

The Hon. GREG DONNELLY: That is right.

Mr MIKE BAIRD: In an ideal world, that is built. But it does not always work that way. The second thing you need to understand as well is that you actually start to look at some of the energy efficiency measures that are being run. I mean, basically California's energy consumption over the last 25 years compared with New South Wales' has gone up about 6 per cent whereas we have gone up 60 per cent.

The Hon. GREG DONNELLY: Are you saying now that there is not a need for a new base load generator in New South Wales?

Mr MIKE BAIRD: No, I am not saying that at all. I am just saying again that this State Labor Government, I think, was inept in its responsibilities by failing to pursue and push energy efficiency measures far quicker and earlier than it did just a couple of years ago. We have not even touched the surface in terms of what we should have been doing. I mean, California was well advanced in relation—

The Hon. GREG DONNELLY: What is the Opposition's position?

Dr JOHN KAYE: I am sorry, I want to hear the rest of that answer.

The Hon. GREG DONNELLY: What is the Opposition's position?

Dr JOHN KAYE: The rest of the answer is really important, Greg. Could you continue? I am sorry, if you would—Mr Chair, through you?

The Hon. GREG DONNELLY: It is my line of questioning, John.

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Dr JOHN KAYE: Well, I will take a point of order. I am taking a point of order. You have interfered with the witness giving an answer.

The Hon. GREG DONNELLY: You can take as many points of order as you like.

Mr MIKE BAIRD: I will finish it.

The Hon. GREG PEARCE: He loves references to California.

Mr MIKE BAIRD: But the point is—

CHAIR: Dr Kaye can ask that question in a moment.

Mr MIKE BAIRD: Yes. We can come back to it. But it was an opportunity, I think, when New South Wales could have been far more proactive in terms of energy efficiency, which would have taken pressure off future demand, and that is just a basic equation, okay?

The Hon. GREG DONNELLY: What would the cost of a new base load generator be, as you understand it?

Mr MIKE BAIRD: That is a hypothetical. You need to get to a position—

The Hon. GREG DONNELLY: Have you read the Owen report?

Mr MIKE BAIRD: I have read the Owen report.

The Hon. GREG DONNELLY: Do you accept the fundamental elements of the Owen report in terms of its parameters?

Mr MIKE BAIRD: I think you raise a good point because the Owen report talks about the supply and demand mismatch happening at about 2013 or 2014. Recent reports have actually pushed that out, which again becomes—

The Hon. GREG DONNELLY: What does the Owen report state—

Mr BARRY O'FARRELL: Hang on. He is giving you the answer. Let him finish.

Mr MIKE BAIRD: That again gets to my point. Once you have the full basis of the facts—

Mr BARRY O'FARRELL: Just make the point again because I think Mr Donnelly missed it in his repeated question.

Mr MIKE BAIRD: The Owen report refers to the supply and demand mismatch in 2013-14. That is when base load generation is required. That has been pushed out a few years.

Mr BARRY O'FARRELL: You are aware of that?

The Hon. GREG PEARCE: Out to 2018-19.

Mr MIKE BAIRD: Yes. So the question on that is: When do we need it? Your question was: How much does a generator cost? Well, when do we need it? My argument would be that we need to closely look at that timetable. But in terms of putting a cost on it, that is nonsense because we need to get to a position that we actually definitively—

The Hon. GREG DONNELLY: So just wait and see?

Mr MIKE BAIRD: No, you manage it. Well, this is again a fantastic State Labor case study because that is your approach to government—wait and see.

The Hon. GREG DONNELLY: It seems to me that that is the Coalition's approach.

Mr MIKE BAIRD: Not at all—no, no, no.

The Hon. GREG DONNELLY: They have moved from a model of privatisation a few years ago and we are now within weeks of the State election, but we still do not know what the position of the Coalition is.

Mr BARRY O'FARRELL: But we still do not know, Mr Donnelly, how far this Government is going in flogging off even more electricity assets. So if you can shed some light on match from your august position, we would like to hear it.

The Hon. GREG DONNELLY: We still do not know.

The Hon. GREG PEARCE: You do not know either.

The Hon. GREG DONNELLY: I mean, you come along here today—

Mr BARRY O'FARRELL: If you do not know, does Eric know? Does anyone know? "Who's on first?"

The Hon. GREG DONNELLY: In terms of the Opposition's position, I am trying to understand what the alternative government may well do in this area.

Mr BARRY O'FARRELL: With all due respect, Mr Chairman, this inquiry is about getting to the bottom of the deal signed off to.

The Hon. GREG DONNELLY: You have not read the terms of reference, Mr O'Farrell.

Mr BARRY O'FARRELL: The deal signed off to—

The Hon. GREG DONNELLY: Mr O'Farrell, the terms of reference—

Mr BARRY O'FARRELL: I hoped Mr Donnelly would know that.

CHAIR: Let Mr O'Farrell finish his sentence.

Mr BARRY O'FARRELL: Mr Chairman, the inquiry is to get to the bottom of this deal. I understand we have been called under the "other related matters" issue but, frankly, political point

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scoring and political gamesmanship at a time when families across the State are struggling with power bills is outrageous. If Mr Donnelly, Ms Griffin and Mr Foley were concerned about families, they would be demanding that their Premier release the Parry report—the report she commissioned last year, the report that was completed on 31 December.

That report was designed to look at ways that electricity bills could be lowered across this State and increases could be lessened. It sat there as we sit here for 24 days gathering dust in some office. The Premier would not call a meeting of Cabinet because apparently Cabinet Ministers are still on holidays. If they are concerned about the impact of energy costs on families, whether today or in the future, pick up the phone to the Premier, get her to have a meeting over the Parry report, get it out there so that those prices can be reduced.

The Hon. GREG DONNELLY: Mr O'Farrell, if you were so concerned about electricity bills of the families of New South Wales you would rule out here today in public the privatisation of the industry in New South Wales. You would rule that out.

The Hon. TREVOR KHAN: Ha! Oh dear.

Mr BARRY O'FARRELL: Mr Chairman, I find it a bit rich that that line comes from a member of the Labor Party who has just been part of what I think is the dud deal of the century, the biggest scam that this State has ever witnessed perpetrated by a Treasurer in its history. Mr Chairman, I do not know how many times I have to say it today, we will unveil our electricity plans—

The Hon. GREG DONNELLY: When are you going to do that, Mr O'Farrell?

Mr BARRY O'FARRELL: —but we are interested in this Committee's work. We are interested to the extent to which Eric Roozendaal does more damage.

The Hon. GREG PEARCE: Time is up, Greg, or it will be soon.

Mr BARRY O'FARRELL: It must have been terrible around Christmas time, Greg.

CHAIR: We will move on to questions from Dr John Kaye.

Dr JOHN KAYE: Mr Baird, I want to go back to your statements about the Owen inquiry report. Your criticism of the Owen inquiry report related to the fact that the date at which the supposed supply and demand balance tightens goes to 2018-19.

Mr MIKE BAIRD: No, it was not criticism. It was that their projection at that point was 2013-14.

Dr JOHN KAYE: Do you accept the Owen inquiry methodology of taking the market operators' reports and calling that a need for new baseload generation? Do you accept that?

Mr MIKE BAIRD: No, I do not accept that at all, John.

Dr JOHN KAYE: So you are critical of the Owen inquiry then?

Mr MIKE BAIRD: No, I am saying that in the Owen inquiry there was a forecast for when supply and demand were going to cross.

Mr BARRY O'FARRELL: And he is stating a fact.

Mr MIKE BAIRD: And that is the fact. The markets are now saying that it is not.

Dr JOHN KAYE: Do you accept the methodology used in the Owen inquiry to lead the State of New South Wales to a conclusion that there was a need for a new baseload generation?

Mr MIKE BAIRD: There are various questions that need to be answered. Recent events would suggest that more scrutiny is needed. That is another reason. A baseload generator is a significant amount of money. Before you make any decision in relation to that you need to be fully informed. At the moment—

Dr JOHN KAYE: Not to mention greenhouse gas emissions, but that is another story.

Mr MIKE BAIRD: Absolutely.

Dr JOHN KAYE: Mr Baird, what we want to know from you, and it is relevant to the third term of reference of our inquiry, is does a Coalition Government accept the methodologies, not the exact facts but the methodologies, within the Owen inquiry or would an incoming Coalition Government approach the issue of the energy needs of the State from a different and, might I say, more modern perspective?

The Hon. TREVOR KHAN: That is not loaded, is it?

Mr MIKE BAIRD: The point is, John: Is more work required? Absolutely. The more detail, the more analysis you can get into any decisions you make the better it is. The Owen report had a basis. There were broad issues raised in it. All I have pointed out is that the 2013-14 date has now been extended. Obviously that requires further scrutiny.

Dr JOHN KAYE: I want to ask you as the man who is most likely to be Treasurer in eight weeks time, what message do you have for the potential purchasers of the gentrader contracts at Delta Central and Macquarie Generation?

Mr MIKE BAIRD: With all things, my position is pretty clear on this. I do not like this deal. It is not in the interests of the people of New South Wales. Clearly, the preference is that we stop the sale in its current form. But that is not my decision to make. The Government is pursuing it relentlessly. The Government is, without rhyme or reason, happy to throw away billions of dollars. That is ultimately a decision for them.

Dr JOHN KAYE: As we sit here today, presumably—we can only guess this to be the case but it appears to be the case—Dr Gellatly and his crew, Mr Yeadon and co., are busy negotiating a contract with somebody, we do not know who and we do not know what the terms of those contracts are. You will be the Treasurer. You will be the frontline troops in terms of dealing with this contract. Are you prepared to say to those potential purchasers that they should be very wary of signing a contract?

Mr MIKE BAIRD: I think they have enough public statements and enough public view to draw their own conclusions. I do not think they need guidance from me. I will say that one of my remaining concerns is that one of the bidders, I understand the primary bidder, is a private equity firm which, for all intents and purposes, is a vulture fund. No wonder that a fund like that is lining up for these assets when you see the prices that are being paid. That is further concern for the people of New South Wales.

Dr JOHN KAYE: Would you accept that a statement from you now would have an impact on the likelihood of the sale going ahead?

Mr MIKE BAIRD: Again, that is totally up to the bidders and the Government. They are in the midst of it. I will also say about the Government signing up transactions like this, they do things well at midnight. We saw what the Treasurer did in relation to the sale and the directors at a quarter to midnight a few weeks ago. The financial close for the first tranche is supposed to be 1 March, which is three days before caretaker. What is the financial close going to be for this transaction? If ever a Government is out of mandate, this is it. We just have to go back to their comments before the election. They said they were not going to do anything. Yet here they are selling a deal like this, throwing away billions of dollars, an unknown impact on future electricity prices and impacts for families across the State. They are the ones who have lost the mandate. They will be held accountable for this transaction for many years to come.

Dr JOHN KAYE: Mr O'Farrell, you have been critical, quite rightly, of behind-closed-doors deals and not only the nature of the transaction but the way it has been carried out. Will you commit your government, when it comes into office, not to do that? Will you commit your government to be open and accountable—no more sudden shocks on things like liquidated damages and maintenance contracts that cost us millions of dollars? Will you commit to making sure that if you do change ownership in the electricity industry it will be with the agreement of both Houses of Parliament?

Mr BARRY O'FARRELL: I am happy to say, John, as I have said before, we will have a judicial inquiry and a report to Parliament and we will abide by its recommendations. They are not going to have any limits put on them in terms of the recourse that we need to undertake should we be elected to protect the public interest and defend the public value. I do not think I can be any clearer about this. We are committed to transparency and accountability. We do not believe that decisions behind closed doors are good decisions. A judicial inquiry will take public evidence, just as this inquiry is doing. Its work will be clearly seen by the community to be seeking out truth. Its work will be about ensuring that all the documents are available and that all the witnesses who want to come forward who have information can come forward with protection. It is about not only establishing that truth but also about setting out how we get that recourse that people talk about.

Dr JOHN KAYE: You are not prepared to give this inquiry a commitment that any change in ownership or any further privatisation will be done only with the approval of both Houses of Parliament?

Mr BARRY O'FARRELL: I respect the Parliament, I am happy to work with the Parliament. What we have said is that a commission of inquiry, the independent judicial inquiry we are committed to, will report to the Parliament.

Dr JOHN KAYE: That is not a commitment that you will go through both Houses of Parliament.

Mr BARRY O'FARRELL: Principally because I do not know what the judicial inquiry is going to report. You seem to have a lot of premonitions. Firstly, you seem to have already taken the election outcome for granted. We have not; we are working hard. Secondly, as I have said since 15 December when I proposed it, we are not going to put restrictions on a judicial inquiry which is designed to uphold the public interest and to defend public value.

Dr JOHN KAYE: With respect, Mr O'Farrell, this is not about a judicial inquiry. This is about what you will do after—

CHAIR: Do not interrupt the witness.

Mr BARRY O'FARRELL: We will not limit the recourse or the redress that it might recommend to the Parliament in terms of this whole sorry saga.

CHAIR: We will move on to one final question from the Opposition.

The Hon. GREG PEARCE: Mr Chair, today's inquiry was due to finish at 10.00 a.m. Mr O'Farrell and Mr Baird have other commitments. The Opposition is prepared to waive our time if we can allow them to get away.

CHAIR: Do you have a question?

The Hon. GREG PEARCE: The last question is to Mr O'Farrell. Is there anything you want to add to what you have said today?

The Hon. LUKE FOLEY: We all have to humiliate ourselves at times, Greg.

Mr BARRY O'FARRELL: I do not think so. With all due respect, Mr Chairman, to the great work you have done in your first two days of hearings, this has added nothing. This has been political point scoring and game playing.

The Hon. LUKE FOLEY: It has added a lot. You will not rule out selling the whole kit and caboodle, Barry. You have had six opportunities and you will not rule it out.

Mr BARRY O'FARRELL: Mr Chair, that is a classic piece of Labor scare. This is a bloke who is part of the party that has flogged off the State's asset in a fire sale. He now wants to go outside and run a scare campaign about the Liberal-National parties.

The Hon. LUKE FOLEY: There is no scare campaign if you rule it out.

Mr BARRY O'FARRELL: We will see lots of this between now and the election campaign. My answer is always going to be the same. Let them play their games. We will get on outlining the positive, practical plans we have. We will release our energy plan, particularly once we see how far this Committee gets to uncovering the details of the damage done by Eric Roozendaal. But we are not going to play the old politics of Labor.

The Hon. LUKE FOLEY: You are going to flog the lot.

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Mr BARRY O'FARRELL: The fears, the smears, the attacks.

The Hon. LUKE FOLEY: People's electricity prices will go through the roof. You will not rule it out. You are going to sell the whole kit and caboodle.

CHAIR: Mr Foley, let the witness finish.

Mr BARRY O'FARRELL: We are going to set out how we can make a positive difference to this State, how we can make it number one again. We will unashamedly do that. We are not going to do it according to his timetable. We are not going to do it according to his wishes because this is a bloke, on the evidence of what Rod Cavalier said, whose inaction over the last—

The Hon. LUKE FOLEY: Ferries, ports, desal, trains, electricity, transmission and distribution, water—all on the block.

The Hon. GREG PEARCE: Scare campaign, there they are.

CHAIR: I want to ask a couple of questions before we finish.

Mr BARRY O'FARRELL: Mr Chairman, feel free.

CHAIR: You mentioned earlier your concern about electricity prices. Mr Baird may answer this question. Are you concerned there could be a monopoly situation with 80 per cent of the consumers in the hands of one gentrader? Do you have some concern that prices could increase?

Mr BARRY O'FARRELL: I will start and Mike can finish. We have seen recently in this very building concerns expressed about bank competition and the lack of competition in terms of bank customers. We have significantly more banks in the field than what the Government has just sold 85 per cent of the State's electricity assets to. So absolutely I am concerned about the lack of competitive tension that this is going to create. I am concerned about that because of what I hear and what I have continued to hear from families and small businesses across the State about just how difficult and how much they are struggling in paying their power bills, whether they get them monthly, according to Dr Kaye, or as the O'Farrells do quarterly.

Mr MIKE BAIRD: My concerns were articulated at the beginning. This is not a comment about the remaining participants. The reality is we have gone from about half a dozen down to really three in the sector. By any stretch that is fewer people, which is a natural concern. I am yet to be convinced by anything the Government says on how that is competition. I understand there will be competition amongst those three. But the underlying concern in all of that is how this coal subsidy, which is 40 per cent of the generation costs, impacts the competitive playing field. Is that a huge enough barrier to keep people out and their ability to compete on electricity prices? That is one of the fundamental concerns.

CHAIR: Thank you very much for appearing before the inquiry today. Does the Government have one final question?

The Hon. TREVOR KHAN: No.

CHAIR: I believe the Opposition just gave you a cue.

The Hon. LUKE FOLEY: They have had six opportunities to rule it out. They will not. We know where they are coming from.

Mr BARRY O'FARRELL: Mr Chairman, I just say again in relation to that interjection from Mr Foley, one of the so-called Sussex Street heroes of defeating Morris Iemma's privatisation—there was Mr Foley, Mr Robertson and Mr Riordan; one at least has now been electrocuted—this issue is far too important. This inquiry and the work that it is doing are far too important for those sorts of political games to be pursued. What the families want to know is why it was sold. They want to know what—

The Hon. LUKE FOLEY: Families want to know that their bill will not go up if you sell the lot, Barry. Give the commitment.

Mr MIKE BAIRD: What have you done?

CHAIR: Let Mr O'Farrell finish his comment and then we will conclude the hearing.

Mr BARRY O'FARRELL: I have said on more than six occasions and I will say again, we will unveil our plans and I am very happy to unveil those plans. They will give confidence to the public of this State about the way in which we will manage the State's energy assets. The sort of political gamesmanship we have seen from the Labor Party today does them no service because it does not reflect the anger and the real distress in the community over electricity prices. For Mr Foley, who Mr Cavalier describes as the leader of the anti Morris Iemma push, to come in pretending that he is concerned when he said nothing against Eric Roozendaal's attempts, when he would not even tackle Eric Roozendaal on the Hunter coal issue—he would take it up to the Treasury Secretary but was not prepared to front his own Treasurer in relation to that issue—shows what a spineless creature he is.

The Hon. LUKE FOLEY: I am on the record, Mr O'Farrell, against electricity privatisation. I invite you to join me. Why won't you?

Mr BARRY O'FARRELL: Mr Chairman, I say again we will unveil our plans very happily. He might be on the record, but I notice he has been very quiet over the past two years, including since he joined Parliament, in standing up to his own Government on that issue.

CHAIR: Thank you again for appearing before the inquiry, Mr O'Farrell and Mr Baird. We will hear more from you in the future with the election day drawing closer.

(The witnesses withdrew)

The Committee adjourned at 10.45 a.m.

Appendix 7 Transcript of 10 February 2011

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

INQUIRY INTO THE GENTRADER TRANSACTIONS

At Sydney on Thursday 10 February 2011

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The Committee met at 11.00 a.m.

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PRESENT

Reverend the Hon. F. J. Nile (Chair)
The Hon. G. J. Donnelly
The Hon. L. A. Foley
The Hon. K. F. Griffin
Dr J. Kaye
The Hon. T. Khan
The Hon. G. S. Pearce

ALBERTO FABRINI, Managing Director, Hydro Aluminium Kurri Kurri Pty Ltd, and

TREVOR KENNETH COOMBE, Head of Global Alumina and Smelter Growth, Oceania Region, Hydro Aluminium Kurri Kurri Pty Ltd, sworn and examined:

CHAIR: Welcome to the fourth public hearing of the inquiry into the gentrader transactions. I refer attendees at today's proceedings to the statement I made on Monday 17 January concerning the Committee's proceedings and the prorogation of Parliament. The Clerk expressed the view that the Crown Solicitor's advice was a very restrictive view of the powers of the Legislative Council, however issued a cautionary note that the extent of committee powers during prorogation has yet to be tested before the courts. In summary, the advice to the Government by the Crown Solicitor is that standing committees cannot function during prorogation unless authorised by statute, and that there is a risk that statements made and documents provided to such a committee would not be protected by parliamentary privilege. However, the advice of the Clerk of the Parliaments, supported by an opinion by Bret Walker SC, is that the Crown Solicitor's advice was a very restrictive view of the powers of the Legislative Council and that instead the inquiry is lawful and therefore the proceedings are privileged.

I ask that while giving their evidence witnesses be mindful of this difference of views regarding the status of inquiry proceedings, and be cautious in any matters that may be defamatory or commercially sensitive. A full copy of my statement from 17 January and the advice of the Clerk is available from the table at the back of the room. Today the Committee will hear evidence from Hydro Aluminium Kurri Kurri Pty Ltd about the decision not to proceed with power contracts between the Kurri Kurri smelter and Delta Electricity. The Committee also has invited Professor Bob Walker, Dr Betty Con Walker and Professor Hugh Outhred to discuss the impact on Macquarie Generation and half of Delta Electricity now that the Government has announced that those organisations will not be privatised.

Before we commence, I will make some comments about procedural matters. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. In accordance with these guidelines, members of the Committee and witnesses may be filmed or recorded, but people in the public gallery should not be the primary focus of any filming or photographs. In reporting these proceedings, the media must take responsibility for what it publishes or what interpretation is placed on anything that is said before this Committee. Witnesses, members and their staff are advised that any messages should be delivered through the Committee clerks. I ask everyone to turn off any mobile telephones during the proceedings as they may interfere with some of the Hansard recordings. I am pleased to welcome our witnesses for today from Hydro Aluminium Kurri Kurri. Thank you for attending and at short notice. We appreciate that you are very busy. Do either of you wish to make an opening statement?

Mr FABRINI: Yes. Thank you for inviting us. We think it is a good opportunity. Hydro Aluminium has been a good corporate citizen of New South Wales and has worked well with the Government's various energy-related agencies and entities over many years. However, recent actions taken by the New South Wales Government and the energy reform group steering committee potentially have serious and far-reaching consequences on Kurri Kurri smelter, its work force and the regional economy. We provided a submission to the Committee to describe these actions and their potential implications.

The Hon. GREG PEARCE: Could you outline for the Committee your concerns regarding your dealings with Delta and the Government's electricity reform team?

Mr FABRINI: Yes. Our major concern is that the way we operate our business, we need a long-term view for our investments and for our future. A key point for that is our power contract. Normally our capital investment for modernisation and even for major maintenance has a horizon of 20 to 30 years. This is what we expect in terms of return of capital for what we invest. Kurri Kurri is a 40-year-old plant and we are competing in a very competitive market—not only externally but also internally with our smelters in Europe, Brazil and some other countries. So, it is important that we have this competitive edge in front of us. Then we can continue to modernise and we can continue to invest and we can assure a future for our company, for the region, for our employees and for the community where we operate. This is overall for that.

The Hon. GREG PEARCE: What was your understanding of what happened in the negotiations you were undertaking with Delta for your long-term contract?

Mr FABRINI: Mr Coombe will answer that.

Mr COOMBE: We negotiated with Delta Electricity over a period of somewhere between 18 months and two years. In July last year we came to a heads of agreement, which we all signed in Oslo. From that we then worked towards the contract. This is a contract that goes from 1 July 2017 to 30 June 2027. We came to a conclusion on those and finally both boards—the board of Delta and the board of Hydro—agreed to those contracts. The contracts are quite a complex exercise and we had worked with Delta to make sure that in any chance of the gentrader exercise coming up—at that stage that had not been developed fully—our contracts had to reflect the potential for this to happen. There was always interaction between, obviously, Delta and the Government to make sure that the contracts were congenial. This is where the time was spent. Finally, we were advised in early November that the energy reform committee had rejected the opportunity for Delta to sign those contracts. We do not know what statutory authority the energy reform committee has to actually tell a government company not to do those kind of things. As far as Delta was concerned, it was a commercial contract; they were happy with it, we were happy with it. We still to this day do not know why it was turned down.

The Hon. GREG PEARCE: Would it be fair to speculate that the gentrader contracts might have increased in value if your contract was not signed? Would that be something that might have been an influence?

Mr COOMBE: I have a personal view on that and I do not believe that is the case. As to that particular question, I think you would have to ask the Government as to whether there was a loss or gain in value.

The Hon. GREG PEARCE: You have written to the Premier and other people expressing concerns about what happened?

Mr COOMBE: Yes.

The Hon. GREG PEARCE: Who have you actually contacted in the Government?

Mr COOMBE: We have contacted Treasury. We have contacted and we have sent letters to the Treasurer requesting meetings. We have sent letters to the Premier, and in fact in our submission there is a copy of a letter that we sent to the Premier requesting meetings. We have had no response at all.

The Hon. GREG PEARCE: You said you wrote to Treasury?

Mr COOMBE: Yes. I am pretty certain that we did write to the Treasurer actually requesting a meeting.

The Hon. GREG PEARCE: Would you have expected that the Treasury secretary would have known of your concerns?

Mr COOMBE: I do not know how the paperwork goes on in Treasury, but certainly we wrote a letter. Whether they passed it on, I do not know.

The Hon. TREVOR KHAN: Are you able to indicate when, for instance, you wrote to the Premier?

Mr COOMBE: I think it is 26 November. There is a letter actually signed by Alberto as well as our chairman of the board of our company to the Premier on 26 November, and that copy is in our submission.

The Hon. TREVOR KHAN: You have received no reply to that letter of 26 November?

Mr COOMBE: No reply whatsoever.

The Hon. TREVOR KHAN: With regards to the size, am I right in saying that Kurri Kurri aluminium smelter has something in the order of 500 employees?

Mr FABRINI: Yes.

Mr COOMBE: There are at least 600 employees, but on any one day there would be at least 800 people at the smelter.

The Hon. TREVOR KHAN: Does that make it one of the larger employers in the Hunter Valley area?

Mr COOMBE: Excluding Tomago and maybe the University of Newcastle, we would be certainly in the regional sense by far the largest employer. But in the whole Hunter Valley it is a little different because you have coalmines as well, which have different things. But certainly for the Kurri-Cessnock region we are by far the largest employer.

The Hon. TREVOR KHAN: You have mentioned Tomago; am I right in saying that at the time you were negotiating your long-term electricity supply contract you were aware that Tomago also was in the process of negotiation with Macquarie Generation?

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Mr COOMBE: That is public record. There was an article in the paper that Tomago put in because the negotiations had stalled. That was about the same time. We actually had come to virtually a conclusion with our contract with Delta.

The Hon. TREVOR KHAN: Before Tomago concluded its negotiations?

Mr COOMBE: Yes, correct.

The Hon. TREVOR KHAN: Am I correct in saying also as a matter of public record that whilst the Tomago smelter negotiations may have stalled, it was successful in eventually signing a contract?

Mr COOMBE: We were advised on 5 November that the contract was not going to be honoured. The very next day Tomago's contract was honoured.

Dr JOHN KAYE: Can you make that clear—you were advised on 5 or 6 November?

Mr COOMBE: I think it was 5 November. Yes, on 5 November we were informed that the energy reform group steering committee had declined permission to Delta Electricity to proceed with our extension contracts.

The Hon. GREG PEARCE: Do I take it from your earlier comments that your current supply agreement runs to 2017?

Mr COOMBE: It is 30 June 2017.

The Hon. GREG PEARCE: In the absence of a new supply agreement after that, when would you have to stop operations or commence closing down the plant?

Mr FABRINI: Again, this is a matter of long term and if we do not have a supply. We are not going to wait until the last day to stop because what happens normally with this operation is that we will slow down the investments—not only the modernisation investments, but also the maintenance investments, of which we are talking millions of dollars per year. That is the major concern. That is why we like to have this contract signed with a certain time so we can keep up with our regular maintenance. That is our main concern and that is why we needed this contract in renegotiating. We started negotiating two years ago. So we are being proactive on that. That is very important for us to keep our operation in good standard, otherwise if we start deferring maintenance we can get to a point of no return. In two, three years time we can get to a point of no return in such a way that you have to put so much money to have the plant in a good position that it might not be viable when we compare with other smelters with which we are competing.

The Hon. GREG PEARCE: So if this is not resolved within a couple of years you could be at the point of no return—

Mr FABRINI: We could be at a point of no return, certainly.

The Hon. GREG PEARCE: And that would mean that even prior to that in the short term you may be deferring maintenance, so maintenance jobs will be gone very quickly?

Mr FABRINI: I can tell you that right now we are deferring modernisation projects—we started. We have projects in the pipeline that is very much needed for us. We have plans to creep our production and these projects have been deferred right now as we speak because there is no certainty. That is the start. Of course, if this continues we can have other effects, like I said, even in our regular maintenance. Of course, we will preserve the safety, we will preserve the environment, our values, but to keep up in the rhythm that we are now is going to be very difficult in two years time certainly.

CHAIR: You just mentioned about the plans you had for potential investment which you have now suspended. Roughly what would that amount be?

Mr FABRINI: We normally spend in the order of magnitude of \$50 million a year. Our budget this year is around \$64 million. As I said, we are still keeping up in our sustainable projects. We have all the intention to continue. We believe Kurri Kurri is a very important facility for hydro aluminium. We supply 70 per cent of our products to Australia so I think we are also very important in that portfolio, otherwise you may have to import material. So there are a series of benefits of having Kurri Kurri besides all that I already mentioned. We have plans to creep our production, as I said, gradually—we always do that—and it is very important to have available power for us to do that.

The Hon. TREVOR KHAN: Could I go back to July 2010 when the heads of agreement were signed? I think the evidence is that those heads of agreement were signed in Oslo, is that correct?

Mr COOMBE: That is correct.

The Hon. TREVOR KHAN: Was that a signing in a darkened room of only your own people or was it done in some formal sense?

Mr COOMBE: It was quite a formal exercise. We went to the head office in Oslo and the head of the aluminium section signed as well as the chairman of our company—he signed—as well as the CEO and chairman of Delta Electricity. Whilst it was July, the sun was shining in Oslo.

The Hon. LUKE FOLEY: The midnight sun.

Mr COOMBE: Yes, it was shining most of the time. There was certainly no darkness.

The Hon. TREVOR KHAN: In terms of the level of investment that your company makes in relation to, for instance, its ongoing annual maintenance and the like, have those figures been made aware to the New South Wales Government customer?

Mr COOMBE: I think in a letter to the Premier that is actually highlighted as well. Yes, in fact it is in the last paragraph of the first page.

CHAIR: It is \$80 million per year?

Mr COOMBE: That is in wages alone and then \$50 million in capital works that we do, and most of that capital works is actually spent in the regional area. We do not import stuff; most of it is done with local people doing the work.

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The Hon. TREVOR KHAN: So apart from the 500- or 800-odd employees that are at the plant each day are you able to indicate, in a sense, the knock-on of other workers that are dependent upon Kurri Kurri for employment?

Mr COOMBE: Depending on what multiplier you use—we use—as a rough number it is about 2,500. When I first went to the plant 15 years ago the list of contractors, which is people we use to come onto the plant every now and then, was up to 5,000 people. So there are a lot of people. Not all of them work there all the time, obviously, but we have a contact with a lot of people who are in some way reliant on our operation.

The Hon. TREVOR KHAN: You would have read in the *Newcastle Herald* in the last couple of days that the Premier was asked about this issue, I think in or about the vicinity of the Stockton ferry, when she was in Newcastle. Did you receive any communication that the Premier or any of her staff might perhaps be making some sort of an announcement with regard to the smelter on that day?

Mr COOMBE: No.

The Hon. TREVOR KHAN: Have you in any way any idea of what she may have been talking about when she said—in words or similar words—there were a few things to sort out before she could make some announcement with regard to the smelter?

Mr COOMBE: No.

The Hon. TREVOR KHAN: There has been no indirect communication either through the energy reform committee or anyone else with regard to what they are doing with your contract?

Mr COOMBE: I have had no contact from the energy reform committee—I would suggest it would go back almost 12 months—of any of the members of that.

The Hon. TREVOR KHAN: Has Delta communicated that something might be in the pipeline and all might be rosy?

Mr COOMBE: I have met with the CEO of Delta—it was in a phone call actually—and I said that we would like our contract honoured because since the announcement just recently that the reform has now stopped and that Delta Coastal and Mac Gen will stay in State hands, I phoned the CEO of Delta saying, "Now you are in the old system I have a contract that I would like honoured. How about signing the contract?" There was a discussion that occurred there. But, once again, the Delta Coastal units are not the most reliable units, so there are some issues with regard to the reliability of supply long-term. Once again, we are keen to get a contract. We want a contract. As Alberto has said, for sustainability of our business we need to have a horizon a little bit longer than seven years to make pretty substantial investments.

The Hon. GREG PEARCE: Have you had any advice as to potential compensation or claims for damages against the Government as a result of them renegeing on the deal?

Mr COOMBE: No. What we have though is we have put Delta on notice that there is a potential for us to seek compensation—

The Hon. GREG PEARCE: And that would be many millions of dollars?

Mr COOMBE: —and that would be quite substantial. We do not want to go into legal battles. That is not the easiest way of resolving an issue, in my view. But certainly there is that issue. We both worked in good faith to get a contract, both sides agreed to that contract—we have actually physically signed that contract. We delivered signed copies of the contract to Delta back in November. So they already have those contracts that have been signed and we would like them to sign that as well.

The Hon. GREG PEARCE: Could we go back to the circumstances? Could you just explain fully how you were advised that the electricity reform group had kyboshed the deal? Who actually spoke to whom and what did they actually say?

Mr COOMBE: We were advised by the CEO of Delta, who contacted a consultant that we use—he phoned him and then I got a phone call on a Friday evening on that. That is how we found out that our contract had been stopped. It was late Friday afternoon, maybe about six o'clock or seven o'clock at night.

The Hon. GREG PEARCE: You obviously have expressed a little bit of concern?

Mr COOMBE: I was quite upset about that exercise, yes.

CHAIR: So the committee never contacted you?

Mr COOMBE: No.

CHAIR: The committee contacted Delta and gave Delta an order and Delta then conveyed that order to you?

Mr COOMBE: Correct.

The Hon. TREVOR KHAN: Just so we are clear, the contracts that you signed, or your company signed, were contracts prepared by lawyers acting for Delta?

Mr COOMBE: That is correct.

The Hon. GREG PEARCE: And they were fully concluded?

Mr COOMBE: They were fully concluded and they had been approved by the board.

The Hon. TREVOR KHAN: And I take it that the contracts that you signed were contracts that were unaltered in the sense that what you were presented with at the end of the day by the solicitors acting for Delta you signed, or your company signed?

Mr COOMBE: Correct.

The Hon. TREVOR KHAN: So they got back what they asked for?

Mr COOMBE: Yes.

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Dr JOHN KAYE: I will just go back over some of the territory Mr Khan and Mr Pearce have covered just to clarify a few things. In the period between the July signing of the binding heads of agreement in Oslo and 5 November was there ever any discussion that there was a need to get the approval of, in the first instance, the Minister for Energy and subsequently the Treasurer because this was not a commercial undertaking of the board?

Mr COOMBE: No.

Dr JOHN KAYE: I should say, to make it clear, that what I am saying is the board of Delta Electricity?

Mr COOMBE: No. We knew that the shareholding Ministers had to agree to such a substantial contract, but the word coming from Delta was that it was a rubberstamp because this was a commercial deal.

Dr JOHN KAYE: So it was understood by you that Delta had negotiated this not as some kind of community service obligation to protect employment—

Mr COOMBE: Absolutely not.

Dr JOHN KAYE: —but purely as an activity that would enhance the value of Delta Electricity?

Mr COOMBE: I can assure you that the negotiations were not in any way a community exercise; they were quite a substantial power deal for Delta Electricity. The arrangements that we have are certainly very commercial.

Dr JOHN KAYE: Then we go to 5 November. At some stage late in the afternoon of Friday 5 November you are informed by the chair of the board or the managing director of Delta—

Mr COOMBE: No, the CEO.

Dr JOHN KAYE: You are informed by the CEO of Delta. Were you informed in writing or were you informed verbally?

Mr COOMBE: Verbally by phone.

Dr JOHN KAYE: Were you ever given any documents in writing that told you that the heads of agreement had been broken?

Mr COOMBE: No.

Dr JOHN KAYE: So to this day you have the heads of agreement and you have no document that contradicts the heads of agreement?

Mr COOMBE: No.

Dr JOHN KAYE: So you are only working on the basis of what you have been told?

Mr COOMBE: And by their actions. Because if they are going to honour the heads of agreement then why will they not honour the contracts?

The Hon. GREG PEARCE: It is now February and they have not signed.

Dr JOHN KAYE: You say they have not signed the contracts?

Mr COOMBE: They have not signed them. We signed contracts back in November and delivered them to Delta's head office.

Dr JOHN KAYE: Just to go back to 5 November, did you seek at any stage written confirmation or any written explanation as to why the heads of agreement were being broken?

Mr COOMBE: We have received no documentation—

Dr JOHN KAYE: Did you seek any documentation?

Mr COOMBE: We asked for meetings because we could not understand it, but we have not had any response either from anybody.

The Hon. TREVOR KHAN: Nor from Kristina on 26 November.

Dr JOHN KAYE: That is correct. Let us go to 6 November. Having been told on 5 November that your contract was not to be honoured, on 6 November you are told that documents—and you may not wish to tell us what those specific documents are—documents relating to your—

Mr COOMBE: Existing contract.

Dr JOHN KAYE: The existing contract, as in not the July 2010 contract but the contracts that would be in force until 30 June 2017?

Mr COOMBE: Correct.

Dr JOHN KAYE: Those documents were to be revealed to the—

Mr COOMBE: The data room.

Dr JOHN KAYE: The data room?

Mr COOMBE: That is correct.

Dr JOHN KAYE: You then sought a court injunction against that and you were successful in getting that court injunction?

Mr COOMBE: Yes.

Dr JOHN KAYE: Does that court injunction have an expiry date on it?

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Mr COOMBE: On 17 January there was an agreement reached between the State and Hydro and we got assurances that our documents were not going to be disclosed and so therefore our injunction and our legal proceedings ceased.

Dr JOHN KAYE: So at this stage you are on a promise and a prayer from the New South Wales Government that those documents would be not released?

Mr COOMBE: Correct. I think it is more than a promise; they have guaranteed that they will not, and I take it on its value that they will honour that.

Dr JOHN KAYE: That was in writing?

Mr COOMBE: That was in writing.

Dr JOHN KAYE: That one was in writing?

Mr COOMBE: That was in writing.

Dr JOHN KAYE: Can you tell us what documents they were that were to be released?

Mr COOMBE: It was all our power contracts.

Dr JOHN KAYE: Including price, terms and conditions?

Mr COOMBE: Everything; it was the total contracts that we have.

The Hon. TREVOR KHAN: The stuff that Eric would not tell us about.

Dr JOHN KAYE: Can you very briefly outline to this Committee your concerns about that information being released?

Mr COOMBE: Those contracts have a lot of confidentiality written into them so that the likes of Delta cannot expose them to public scrutiny because they are in confidence. They have sensitive terms. Obviously price is the most important, but certainly there are other things in it that are quite sensitive as well so we have a confidentiality agreement; we can't disclose, they cannot disclose and effectively that binds everybody else. So when we heard that the Government had actually requested—I am not sure whether it was the reform committee or not who had actually requested that those documents be delivered from Delta to the data room—we objected to that and took an injunction.

The Hon. GREG PEARCE: Who did you hear that from?

Mr COOMBE: I got a phone call on Saturday morning from the CEO of Delta. He phoned me telling me that he had been instructed to surrender our documents.

Dr JOHN KAYE: He had been instructed or requested?

Mr COOMBE: It is a moot point. He was told he had to deliver them.

Dr JOHN KAYE: He was told he had to deliver them?

Mr COOMBE: Yes.

Dr JOHN KAYE: Was there a section 20N order?

Mr COOMBE: I believe there was a section 20N issued.

Dr JOHN KAYE: Issued to?

Mr COOMBE: To Delta.

Dr JOHN KAYE: To deliver those documents?

Mr COOMBE: That's correct.

Dr JOHN KAYE: The Treasurer on a number of occasions has said to both this Committee and to the House that we should not be concerned about what happens in the data room because participants in the data room are bound by confidentiality agreements and all will be well. You clearly do not agree with the Treasurer on that. Could you explain why you think the Treasurer was not correct in saying that?

Mr COOMBE: We regard the price for power to be one of the most sensitive issues in our business and whilst there are confidentiality agreements written, the more people who know that information the more chance of it leaking. Even though there are confidentiality agreements signed, et cetera, et cetera, we are always suspicious genuinely that that sensitive information that is the most important information for us could be gotten through to the general area because we are in competition. The aluminium industry is a price taker, not a price maker so therefore our operating costs are very, very sensitive and therefore we want to keep as much of that information as private as possible because our competitors would know exactly where we sit on the curve.

Dr JOHN KAYE: So Hydro does not accept the assertion by the Treasurer that the confidentiality agreements signed by those people who have access to the data room are adequate to protect the confidentiality of the data provided by, in this instance, yourselves?

Mr COOMBE: I would say that is correct, yes, at the end of the day, yes.

Dr JOHN KAYE: That is interesting. Can I just go to one other issue, which is where do you go to from here? Well, let me ask you this: as I understand it, you now have two places to look for a future contract, one is to the gentraders and the other is to the publicly owned generators who will continue to trade into the market in the traditional sense. Do you see, for an energy-intensive industry such as yourselves, a complexity associated with that which will reduce your ability to negotiate a new contract?

Mr COOMBE: Not really. I think the issue always is we need a long-term contract and who can provide one. We believed that we had one up until the beginning of November and here we are now trying to rescue that contract, primarily. After spending two years of negotiating you really want to hang on to what you have got; you do not want to start that two years all over again, I can tell you.

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Dr JOHN KAYE: I appreciate and understand that concern but in the event it turns out that the controllers, that is the holders of the gentrader contract for the power stations where you thought you were getting your forward contracts on electricity will not deliver, if I am correct, you would then either have to go to the gentrader Eraring, who also owns their own load, or you would have to go to Macquarie Generation, who have signed a contract, ironically on 6 November, with your competitors?

Mr COOMBE: Correct.

Dr JOHN KAYE: Is that a complex situation for you? Is that a situation you would find difficult?

Mr COOMBE: Not really; it is an issue that I have to try to seek a power contract to give the longevity and the sustainability to the smelter at the end of the day, but the problem I have is that having spent two years negotiating, I do not want to throw that two years away because, as Alberto said, as you get closer and closer to the end of your existing contract you start to make decisions and these negotiations—it is not a standard contract like you go to your energy supplier and sign a bit of paper. It does not happen like that. These are quite complex and quite detailed negotiations and, as I said, they are two years usually in the making so I do not really want to spend another two years negotiating if I can actually secure a long-term contract with what I believe my existing contract that I had signed—

Dr JOHN KAYE: But your existing contract is with Delta Electricity?

Mr COOMBE: Correct.

Dr JOHN KAYE: Delta Electricity, as far as its front end to the market, is only half the body it used to be because half of its power stations, half of its capacity to generate is now no longer controlled by Delta Electricity; they could not sign a contract in respect of those power stations?

Mr COOMBE: I am not here to answer for Delta Electricity; I am only here to answer for Hydro Aluminium.

Dr JOHN KAYE: I completely understand that.

Mr COOMBE: Therefore, I am only really interested in making a contract with Delta. I already have an existing contract with Delta, which will go to 30 June 2017 and I would like that contract to be extended to 2027.

The Hon. TREVOR KHAN: And, indeed, you still may have a binding contract after that date?

Mr COOMBE: Most likely, I hope.

The Hon. TREVOR KHAN: As a matter of law.

CHAIR: Thank you for answering the questions. We appreciate your cooperation with the inquiry.

The Hon. LUKE FOLEY: The Government does have questions. Thank you, gentlemen, for appearing. I took the opportunity to question Treasury representatives who sit on the Energy Reform Group's Steering Committee about why they have treated your company like this and I do not think they shed much light on the reasons why. Could I put to you what I put to them that could it be that Tomago was allowed to proceed with its contract with Macquarie Generation whereas Delta was not allowed to proceed with its contract with Hydro because Tomago's parent Rio Tinto is a far larger player on the global scale than your company or its owners? Would you care to comment on that?

Dr JOHN KAYE: A bigger campaign donor to Labor.

The Hon. LUKE FOLEY: John, pipe down. If you had your way every aluminium smelter in the country would be shut tomorrow so don't start.

Mr COOMBE: I have no real comment on that. Really, it is for either Rio Tinto or Tomago to answer those questions.

The Hon. LUKE FOLEY: Can we turn to the future—

Mr COOMBE: Yes.

The Hon. LUKE FOLEY: —taking up from Mr Kaye's questions. Mr Chairman, I would like to table a news release from the Premier of New South Wales dated today and take the witnesses to it, if that would be acceptable to you?

CHAIR: Do you have copies for Committee members?

The Hon. LUKE FOLEY: Yes, I do.

Document tabled.

The Hon. LUKE FOLEY: If I could perhaps read from it and you will get a copy in a minute:

Thursday 10 February 2011

Premer Kristina Keneally today vowed to do everything in her power [to] protect jobs at Kurri Kurri's Hydro Aluminium Smelter.

The Hon. GREG PEARCE: Bit late.

The Hon. LUKE FOLEY: —

Ms Keneally today confirmed the NSW Government has written to Macquarie Generation regarding last week's cabinet decision to rule out further privatisation of electricity assets.

"The NSW Government has made its position clear - there will be no further energy asset sales," Ms Keneally said.

The Hon. TREVOR KHAN: Is this instead of her giving evidence, Luke—

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The Hon. LUKE FOLEY: —

"That decision clears the way for Macquarie Generation to enter into negotiations with the owners of Kurri Kurri's Hydro Aluminium Smelter for a new electricity supply contract.

"I encourage both Macquarie Generation and Hydro Aluminium to work quickly towards a mutually beneficial agreement.

"And let me be absolutely clear on this: I vow to do everything within my power to get these parties to reach a deal.

"This company has made a long-term contribution to NSW - and I thank them for their ongoing contribution to the Hunter Valley's economy and jobs in the region.

"With the completion of the energy reform process, the negotiation process can now begin again.

"The NSW Government has always supported job growth and security in the Hunter - that's a proud achievement we share with Hydro Aluminium.

The real threat to any future deal and therefore the job security of Hydro Aluminium's workforce is Barry O'Farrell's refusal to reveal his plans for [the] future of the remaining state owned electricity generators.

The Hon. GREG PEARCE: Is this serious or a joke?

The Hon. LUKE FOLEY: Mr Coombe, could I ask you, do you see a contract for a period beyond 30 June 2017 with Macquarie Generation or another generation company?

The Hon. TREVOR KHAN: Point of order: This is clearly an ambush by the Labor members.

The Hon. LUKE FOLEY: I am asking a question.

The Hon. TREVOR KHAN: It is clearly an ambush. It would be my point that this hearing should be adjourned at this point.

The Hon. LUKE FOLEY: You do not want the company fixed? We are trying to get a solution, Trevor, not grandstand politically. We are trying to get a solution for this company.

The Hon. TREVOR KHAN: What I don't want to see is, Luke—your blokes have stuffed up this deal from the start—

The Hon. LUKE FOLEY: Mate, I raised it here, you didn't. You didn't say a word.

The Hon. TREVOR KHAN: Your blokes have stuffed it from the start.

The Hon. LUKE FOLEY: I drilled Treasury about it; you didn't say a single word.

CHAIR: Can you all just be quiet. We have a point of order.

Dr JOHN KAYE: Point of order: My point of order is that I cannot hear the point of order.

The Hon. TREVOR KHAN: These witnesses should be given an opportunity to consider—

The Hon. LUKE FOLEY: On the whole that they might be fixed up; you wouldn't want that, would you?

The Hon. TREVOR KHAN: I absolutely do.

CHAIR: Let Mr Khan finish his point of order.

The Hon. TREVOR KHAN: These witnesses should be given the opportunity to go out of this room and consider this media release. They have not been provided with any communication from the Government up until you provide a media release. It is not appropriate for these witnesses to potentially be commercially damaged by your stunt.

The Hon. LUKE FOLEY: I want to ask them a simple question.

The Hon. TREVOR KHAN: They should have an opportunity to consider their position further before this hearing proceeds.

The Hon. LUKE FOLEY: I asked a simple question.

The Hon. TREVOR KHAN: It is just outrageous.

CHAIR: I think it is an abuse of the procedures of this Committee to drop this document on the Committee and also on the witnesses.

The Hon. LUKE FOLEY: It came out this morning.

CHAIR: As we have had a point of order, I am happy, as Chairman, for you to continue answering questions as to whether you feel you are in a difficult situation and you do not wish to continue or we can continue and after you have considered this information, you may wish to give us another submission in response to what the Premier has said because there may be still relevant information we should get from you today while you are here. I do not want to waste your time by terminating your appearance before the Committee.

The Hon. LUKE FOLEY: To the point of order—

The Hon. GREG PEARCE: He has already ruled.

The Hon. LUKE FOLEY: I have not asked my question yet. I have one question—one question only of the witnesses. I would be more than happy for them to go away, consider the company's position and make further submissions to the Committee. I would be more than happy. I am the one member of the Committee who raised this issue with other witnesses.

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The Hon. GREG PEARCE: No, I raised it before you did. Read the transcript.

The Hon. LUKE FOLEY: I think it is only fair that I be allowed, having heard all the other questioners in silence, to ask one question. It is only fair, Mr Chairman.

CHAIR: I make it clear to the witnesses, as this is new information, that you may reserve your right to answer the question until you have discussions with your board.

Dr JOHN KAYE: I move that we have a five-minute adjournment.

CHAIR: We will adjourn for five minutes.

(Short adjournment)

CHAIR: As the witnesses have returned we will resume the hearing. Are you happy to proceed with the question that Mr Foley was asking?

Mr FABRINI: Yes.

The Hon. LUKE FOLEY: I simply want to ask if you see a contract for a period beyond 30 June 2017 with Macquarie Generation or another generation company as a real solution to your plight and a real solution to securing the future of Hydro Aluminium Kurri Kurri Pty Ltd?

Mr FABRINI: Thank you for the five-minute break. We believe that we have a legal contract with Delta and also that we have a legal contract for the extension; however, we would be willing to discuss further possibilities for the future. One thing that is very important is that time is of essence. We saw here that the Premier mentioned that she would like to see this resolved quickly, which is positive. That is basically our position for now.

The Hon. LUKE FOLEY: Thank you, gentlemen.

CHAIR: As you have said you wish to persist with the contract that you had with Delta. You worked for two years to get a final contract and you have signed the contract. But Delta is now privately owned and that energy reform committee no longer has any authority to issue them directives. Is there any way for you to recommence negotiations with Delta now to sign the contract? What action have you taken to do that?

Mr COOMBE: As I said earlier I phoned Greg Everett, the CEO of Delta, earlier this week and advised him that as far as I was concerned the contract that we had signed for the extension was legal and binding and I asked him now that the reform process had stopped would he now mind signing the contract. He said that we could have some serious issues with regards to reliability because the only generating capacity that Delta now owns is the coastal ones and they are not as reliable. But certainly I raised it with him that it is still a viable—not necessarily viable but certainly an opportunity and an option for us to discuss this matter with him. It is not the best outcome.

CHAIR: He may be in a position where he cannot supply perhaps the full—

Mr COOMBE: Correct.

CHAIR: —amount of power that you require?

Mr COOMBE: Correct.

CHAIR: That would require some adjustment to the contract.

Mr COOMBE: Yes.

CHAIR: But you would be prepared to negotiate if necessary.

Mr COOMBE: We need to have a power supply that gives us the full volume of power that we need. We do not like to have bits and pieces. For us it is about the reliability of the power supply. That is really where the problem will be.

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CHAIR: If Delta cannot guarantee that now—

Mr COOMBE: Correct.

CHAIR: Then you may be forced to have two sources of power or re-negotiate with one large supplier?

Mr COOMBE: Correct.

CHAIR: Such as Macquarie?

Mr COOMBE: Correct.

The Hon. GREG PEARCE: In terms of the risk to the State and the liabilities left over from these transactions, we now have to add to the Cobbora Coalmine and add to all the other things the liability to supply your contract? Potentially Delta—

Mr COOMBE: Potentially.

The Hon. GREG PEARCE: If your contract is still valid and you say it is?

Mr COOMBE: Correct, yes.

The Hon. GREG PEARCE: Then Delta has the liability now, the Government, the people of New South Wales still have the liability to actually supply your electricity, which could be I assume several hundreds of millions of dollars per year?

Mr COOMBE: Correct.

The Hon. GREG PEARCE: Added on to the other liabilities that have been associated with this deal?

Mr COOMBE: Correct, yes.

CHAIR: You obviously worked very hard to get that contract. You said you worked for two years.

Mr COOMBE: Yes.

CHAIR: Do you think that underlying this delay or collapse is a desire to re-negotiate the price? That you actually did get a good deal and that is what is underlying this whole hesitation now in proceeding?

Mr COOMBE: Mr Chair, I would love to renegotiate the contract because I would like to have a lower price.

CHAIR: I know but I think the suggestion is that they want to renegotiate it upwards?

Mr COOMBE: Remember that with the deal that we did for the extension both Delta and ourselves believed it to be commercial. There was no doubt in anyone's mind at the negotiation table that the deal that was done was commercial in all regards.

CHAIR: It was good from both points of view: the supplier and the purchaser?

Mr COOMBE: I would say it was the deal that we did; I am not saying we are so happy about it but certainly I do not believe that Delta has got a problem with it.

The Hon. TREVOR KHAN: But there is no guarantee that Macquarie Generation will take the same view as Delta? That they would supply on the same terms as Delta? You do not know.

Mr COOMBE: The issue with Macquarie Generation is a brand new issue. I read the press release just a few minutes ago and that is the reason why we had the five-minute adjournment to work out what we would like to do because it is going to be a new exercise and, as Alberto said, timing is of the essence really here. These things take a long time.

The Hon. TREVOR KHAN: The first you know that a contract that is worth hundreds of millions of dollars is to be re-negotiated with another electricity supplier is when you are handed a media release by somebody from the government side?

Mr COOMBE: Yes.

The Hon. TREVOR KHAN: Is that how your company normally does business?

Mr COOMBE: No.

Dr JOHN KAYE: Mr Coombe will you take on notice the following question?

Mr COOMBE: Yes.

Dr JOHN KAYE: That media release was put out at 10.48 a.m. this morning, as I understand it. Had your company received any communication from the Premier or the Treasurer or the energy reform group in respect of the statements made in that media release?

Mr COOMBE: No.

Dr JOHN KAYE: You know for sure that prior to 10.48 a.m.—

Mr COOMBE: No.

Dr JOHN KAYE: —you had not been—

Mr COOMBE: No.

The Hon. TREVOR KHAN: Does the term "Keystone Cops" ring a bell?

CHAIR: You have indicated you have all these plans for maintenance, investment development and so on and that is on hold now, what time limit is there for you to have certainty? Do you need to

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have certainty within a month, two months or three months? The reason I am asking you that question is that you know that we are facing a State election on 26 March.

Mr COOMBE: Yes.

CHAIR: And that press release could be a worthless piece of paper.

Mr FABRINI: Yes. In terms of modernisation there is no project going and there will not be any project going as long as we do not have the contract—no project for future investments will go until we have the contract signed, and for a very simple reason: we cannot invest the money if we do not have a guaranteed long-term vision of at least 20 years, around 20 years. So it will not go. In terms of maintenance, we are keeping our normal maintenance at this moment. We re-evaluate on a quarterly basis and we do that also in comparison to the other companies of the corporation. On a quarterly basis we evaluate and we take decisions moving forward. This is how we operate at this moment.

CHAIR: It is clear that the Hunter Valley desperately needs all the investment it can get, and jobs made available to the workforce. So there are now \$130 million in doubt that may not be invested in that area unless your company can get some definite assurance that it can proceed.

Mr FABRINI: Correct.

CHAIR: I hope that by having you appear before this Committee it has given the Government a jolt, which is the reason for the media release—

The Hon. LUKE FOLEY: An electric shock!

CHAIR: A jolt to try to force it to seriously examine your predicament. It is a small beginning but I hope it brings about success for your company, which has made a great contribution to our nation through its work and its employees as well. We thank you for your faith in Australia and what you have been doing. That faith should be rewarded with cooperation by governments, Delta Electricity and other suppliers of power.

The Hon. GREG PEARCE: May I clarify one point? This Committee has uncovered the fact that, after taking out all of the liabilities, the coalmine and so on, this deal has probably yielded the people of New South Wales about \$300 million. What you have told us today is that if your contract with Delta has to be honoured, even that few hundred million dollars might go down the drain as well.

Mr COOMBE: Yes.

The Hon. GREG PEARCE: That is leaving aside the damage to the Hunter from lack of jobs and loss of investment?

Mr COOMBE: Yes.

CHAIR: Thank you, and may you be successful in the future.

(The witnesses withdrew)

HUGH OUTHRED, School of Electrical Engineering and Telecommunications, University of New South Wales, on former oath:

CHAIR: We thank Professor Outhred for agreeing to appear before the Committee again to give us a further update. The Committee wishes to hear your response to more recent developments in the power industry and the failure of the Macquarie gentrader offer to proceed with no tenders. Do you wish to make an opening statement?

Professor OUTHRED: Perhaps just very briefly. I think the decision not to proceed with the remaining sales creates an opportunity, of course, for Parliament to rethink the future of those particular power stations without encumbrances, and that is obviously, I think under the circumstances, a positive thing. However, of course there is a negative and the negative is to do with the sales that have already been made. So the future of the remaining power stations cannot be considered without taking into account the changed circumstances in which they will be operating. I think I will stop at that point and just leave it to questions to explore the issues.

The Hon. GREG PEARCE: Thank you again for coming in. As has been expressed before, the Committee is very grateful for your expert advice to us on these issues. What are the implications of having the gentraders on the one hand and the other generators still in State government ownership?

Professor OUTHRED: Given the present ownership structure of particularly the Delta portfolio, that now really has two parts to it. For one part, the western part of the portfolio, the board of the company presumably—assuming it all remains within one company—that is in charge of those assets for Delta West has an asset management role now; whereas for the remaining part of the portfolio, which is usually called Delta East, it really has to operate a full business with those assets. So it will still be undertaking the electricity trading, still undertaking fuel purchasing and making all decisions about those units. So as a practical matter if that situation is to continue, it may be worthwhile actually splitting that portfolio into two parts just to clarify the tasks the boards have.

Because of the reduced size of the full business—in other words, it is now Delta East, not Delta total as it was before—it will be a riskier business than it was before because it has fewer physical assets to operate and there will be less diversity with respect to breakdowns. There will be smaller volume of fuel to buy. There will be other issues of that type that will generally increase the costs of that particular full business compared to if the previous version of the full business which had the larger portfolio. So, roughly speaking, that would be the changes I would see for the Delta portfolio.

For Macquarie Generation it is another story of course. It remains as a full trading business as it did before. It is a very large business in the sense that it has a very large amount of generating capacity in the portfolio as well as a development site. But in terms of how that business is to be operated, there are now two kinds of complications. One would be the unresolved future for the business in the sense that Parliament had previously decided on a gentrader strategy and what will the new Parliament decide? What will future Parliaments decide? So I suggest there would be a new significant uncertainty there with respect to the intentions of the owners of the business. Secondly, in terms of the market into which it is operating an important part of the operation of the business—and this applies also to the remaining part of the Delta business, Delta East—is derivative trading.

Now the counter parties for generators for derivative trading are primarily the retailers. Having sold the retailers—EnergyAustralia, Integral Energy and Country Energy—that process has created

three dominant retailers on the buying side: the new Origin Energy portfolio, the new TruEnergy portfolio and the AGL portfolio. Apart from that, according to the latest figures I have seen from the March report last year of the Independent Pricing and Regulatory Tribunal, there is only about a 6 per cent market share for the remaining retailers. So essentially it is a triopoly that would be on the other side of the market. That will probably tend to suppress the derivative prices that Macquarie Generation would be able to attract compared to a previous situation where there was probably more open competition because there were the three State-owned retailers plus the private retailers—the previous versions of Origin and Tru and AGL—all competing for market share. So I would suggest that probably the cashflow, the income that Macquarie Generation can achieve now, has probably reduced compared to its previous circumstance.

There is the other complicating factor, which is: What do we make of the new coal arrangements? What is not clear—well, the concept as it is available in the public domain was that the new coal facility that is to be constructed and operated by the Government was to offer coal to the various owners of the buying side, if you like, of the gentrader contacts. How that is affected by this situation is hard to say. Does that mean, for example, Macquarie and Delta East now have to, as it were, fend for themselves in terms of acquiring coal? Do they get some share of that new arrangement? I do not know, but that is an important question. If they do not get any share of that arrangement then they will be faced presumably with higher coal costs because it certainly appeared that that arrangement would end up with coal prices lower than the general market. So they would then see, presumably, higher costs compared to the power stations that are operating under the gentrader agreements. So all of that would seem to imply that the financial future for the remaining assets will be less desirable than it would have been before the process commenced.

Now on the positive side, as I said, what we have got is a situation where at least there is a clear-cut possibility for the new Parliament deciding what to do with those assets. One option that really does not seem to have received much consideration is the climate change question, which I discussed in my earlier submissions. I just repeat more or less what I said then: sooner or later governments will have to take climate change seriously. When they do, one of the most important options for New South Wales is a strategic, planned, careful retirement of the existing coal-fired power stations. That is one of the most important options available to New South Wales to make a contribution to reducing climate change emissions. So if and when Parliament decides to do that it does mean that there are not encumbrances over Macquarie Generation assets or over the Delta East assets.

The Hon. GREG PEARCE: Professor, one of the issues that we talked about last time you were here was the Owen report—and thank you for your supplementary submission. I want to check that I have this right because it is very hard, to be honest, to read the statement of opportunities documents that are produced by the Australian Energy Market Operator [AEMO]. But my understanding of the last report is that the low reserve condition point in New South Wales based on existing and committed generation has moved out now from 2014-15 to 2018-19. Is that correct?

Professor OUTHRED: Well, all I can do of course is read the report. If you really want a definitive answer you should ask AEMO about that directly, but that is how I understand it.

The Hon. GREG PEARCE: Of course. That means if the proposed generation is taken into account there is sufficient supply available beyond 2018-19.

Professor OUTHRED: Yes. Also an important point to make is that in those assessments AEMO is concerned with the ability to meet peak demand so it is not really concerned about the type

of generation that is available to do that. The base-load generation is the most capital intensive form of generation that we have, apart from some of the renewables. But if we leave those out and just talk about fossil fuel generation, if there is an emerging problem with meeting peak load, the first response is to build much cheaper plant, which is combustion turbines. The lead time for that should be no more than two to three years, depending how much preparation has already been done by potential proponents.

The Hon. GREG PEARCE: To summarise, according to the Australian Energy Market Operator and your expert advice, there is no looming crisis in supply before 2018-19?

Professor OUTHRED: Absolutely not.

The Hon. GREG PEARCE: To summarise your earlier evidence, instead of de-risking the energy market in New South Wales you see that the outcome for Delta East—or Delta Coast, as I think it is actually called—is greater risk for that company, which has continued to remain in Government hands, that with the sale of the retailers Macquarie is likely to have reduced income and is more exposed at the derivative trading? Yes?

Professor OUTHRED: Yes.

The Hon. GREG PEARCE: Further, both Delta and Delta Coastal or Delta East and Macquarie are further exposed to risk in relation to coal supply and the cost of coal?

Professor OUTHRED: Possibly, yes. We do not know, or I do not know, how that will be dealt with.

CHAIR: I would like to clarify an answer you gave a moment ago. You referred to retiring the coal-fired power stations. What would they be replaced with—gas or nuclear power?

Professor OUTHRED: A range of options would be possible. However, the most important thing from a climate change point of view would be to replace them with a lower emission option; in other words, one that produces fewer CO₂ emissions per unit of energy generated. The options available would include gas-fired generation—for example, combined cycle gas turbines; renewables of various forms, such as wind, solar and perhaps biomass; and, as you pointed out, nuclear energy, subject to government policy.

The Hon. GREG PEARCE: With those additional risks to the government-owned assets and the overall transaction completed to date with the sale of the retailers, what is your outlook for future electricity prices given all of those factors?

Professor OUTHRED: We need to separate two things. The risks that the individual businesses are exposed to may or may not flow through to purchase of electricity. In a sense they are slightly decoupled ideas. We do know that very significant additional costs are being incurred that are very likely to cause electricity prices to rise whether or not we have the privatisation process. Those are because substantial investment has been approved by Australian Energy Regulator into both distribution and transmission networks. You can read about that in the reports from the Australian Energy Regulator. There are also, anecdotally at least, reports in various places of increasing capital costs associated with most forms of electricity generation due to international competition for their fundamental inputs such as steel, concrete and skilled labour. Of course, as well as that we see a trend

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towards rising fuel prices for internationally traded fuels such as coal and, looking to the future, gas. As a result, there are many inbuilt pressures that are very likely to increase costs.

It is unclear to what extent the privatisation process could or would reduce the cost seen by consumers because, first, those private companies would have to identify greater efficiencies than the prior owners and, secondly, they would have to be willing to pass them on to the consumers if any savings arise. They will pass them on to consumers only if there is adequate competition. If there is not adequate competition, why should they do that? They will keep the profits. They are the sort of things we need to look into. As I said last time I appeared, given the nature of the privatisation process in New South Wales and the way that the transactions have now been set up, it is unlikely that they will have the effect of increasing competition. Large players already in the industry have acquired the gentrader rights and retailers that have been sold and, therefore, the transactions that have been made do not of themselves increase competition. Rather, they tend to reduce it.

The Hon. GREG PEARCE: So, in your view the transactions as they have occurred will tend to reduce competition?

Professor OUTHRED: Yes.

The Hon. GREG PEARCE: Can you give us any guidance on the retention values of the assets that may now be with the State? Has there been an impact on that? Do you believe that the methodology used by Treasury to get retention values for the sale process is acceptable? Do you have any comment?

Professor OUTHRED: Yes, certainly. Retention value is both a key and a controversial issue. It is also one for which there can only be opinions, not objective facts, because we are talking about a future value. There is a number of different strategies for arriving at an estimate for retention value. One is to look at an estimated replacement cost for a new asset and then at the remaining life of an existing asset compared to its original design life. One would then simply take a fraction of that and say that the asset is now 20 years old and it has another 20 years life and if we were to replace it would cost x and therefore its remaining value is something of the order of x divided by two, or a little less allowing for the fact that in the second half of its life it will not be as useful as it was in the first half. That is a generalisation. Of course, some of the important assets that have been sold have different remaining lifetimes. However, if we worked that way, we would end up with estimates of about 40 per cent of the replacement value. That would tend to place the replacement value, according to the estimate that I ventured last time, probably about three times what it appears that they have been sold for. So, working out retention value that way, we would come to a position that the assets have been sold for something like one-third of their retention value calculated in that manner.

Another way of calculating retention value is to apply the type of calculation you might use if one owned, for example, a hotel. You would look at the occupancy rates and try to estimate what they would be in the future and what you might be able to charge per room and thereby estimate the future income stream and then discount that back to a present value and then say what the asset is worth is what the discounted future income stream amounts to and then subtract costs and so on. That is the way that the Treasury seems to have undertaken the calculation according to the evidence that I have seen.

If you are going to do that then the analysis is typically done using what is called a "discounted cash flow analysis". The critical question is the discount rate used. If you use a discount rate of zero,

you add up all the future income streams and you get a number. Normally economists would say that you should not do that; you should use a discount rate above zero. The higher the discount rate used, the more you are tending to discount or ignore the future income and you are looking at a shorter window of time. This comes down to a common type of criterion used in private industry, which is just payback time. A private company might have an investment criterion that says it will invest in something only if it will pay back in three to five years. That would be typical a payback time for a large industry. If you did the calculation with a zero discount rate, you would get a much higher value than if you used a payback time concept.

The third issue is again coming back to the climate change question: Are we talking about a carbon future that is unconstrained—that is, we do not care how much carbon we release—or a carbon-constrained future? As far as I can see from the evidence, Treasury has not considered a carbon-constrained future. I may be wrong; it just was not discussed in the evidence and my assumption therefore is that it did not do that. If it did look at a carbon-constrained future, it would be more or less equivalent to going to a higher discount rate. In other words, you would say, "In the not too distant future we will have to stop using this asset because it produces so much carbon." Then you would reduce the asset value. In a carbon-constrained future, you might say that the price that has been achieved is about right because these things may have only a few years of life left before rules and regulations come in that prevent them operating or apply such a high tax or permit purchase requirement that they are no longer profitable to operate. You can see how we can come up with almost any answer we want.

The Hon. GREG PEARCE: And they did.

Dr JOHN KAYE: You referred to a "carbon-constrained future" and said that the value of the power stations or value of control over the power stations is reduced. That appears not to be consistent with an earlier answer you gave about phasing out the power stations and the importance of having control over coal-powered power stations and being able to shut them down in a phased and carefully planned manner and to replace them with other forms of energy generation. Would it not be true or could you give consideration to the proposition that the retention value should be adjusted to account for the flexibility that public ownership or public control provides in terms in terms of climate policy?

Professor OUTHRED: That is an important issue. In my submission I referred to the option-value approach, which would certainly look at that. The option-value approach extends the discounted cash flow approach to try to provide a systematic method across all scenarios and all possible uses of the asset. It is correct to say that in the presentation I just made I did not raise an important point. In a carbon-constrained world, from the point of view of the owner of the asset it is simply an internal commercial decision as to when to stop using the asset or when to walk away from it. There is a lot of grey about when they would actually do it. However, from a societal point of view, given what we call the essential nature of electricity and the need to try to avoid blackouts, we would actually like to have a much clearer and predetermined retirement strategy that clearly took into account the public interest.

One of the weaknesses of schemes like carbon taxes or permit trading is that they do not really clarify when the retirement will take place. In other words, they do not truly take into account that aspect of the public interest. So, as I said in my initial statement, one of the benefits of not having sold all of the generation assets is that the New South Wales Parliament now has full control over when those assets are retired, if that becomes formally part of a climate change response strategy. That is an important value because it allows you to have much greater control over the reliability of supply question. Obviously, if you have a preannounced and clear-cut retirement strategy, that makes it easier

for private investors—if you are relying on them—to plan to commission new power stations in a manner that will fit in well with the strategy. From a business point of view, a private owner would tend not to release a proposed retirement date in the public domain because the uncertainty has commercial value to the person who has the knowledge about when that retirement will be. To be able to game that can certainly create problems for your competitors. Therefore, the uncertainty becomes a business asset in its own right. It is that sort of value that perhaps Dr Kaye had in mind.

Dr JOHN KAYE: Thank you for that. I refer to the issue you addressed with regard to Delta Central and Macquarie Generation. You outlined a number of reasons for a decline in the public value of the power stations in this quarter-privatised electricity industry. Can you also address the situation faced by Macquarie and Delta and the residual public owners of Delta where they are trading electricity into a market where their competitors own, by my calculations, about 75 per cent or 80 per cent of the load?

Professor OUTHRED: Yes. As I indicated before, I think the practical outcome would be that they would not be able to achieve the same cash flow from derivative trading that they would have in the prior state. That is what my statement was aimed at conveying. It is also important to note that the purchasers of the retail assets, plus the other major players—that is, AGL, Origin and TRUenergy—are in the business of building peaking capacity. That gives them additional flexibility in terms of their risk management in the spot market, or cash flows associated with that. Presumably they would design their business strategy through being able to consider the option of either entering into derivatives with the remaining fully State-owned generators or building their own peaking capacity or other means of managing the peak price risk. As a result, I suspect that the fully State-owned businesses would not be able to achieve the same revenue through derivatives that they might have in the past; in other words, they will become less profitable.

Dr JOHN KAYE: In other words, they have been thoroughly Cinderella-ed.

Professor OUTHRED: I am not sure whether Cinderella had that problem. I think it was more like a shoe problem, wasn't it?

Dr JOHN KAYE: I will turn briefly to your supplementary submission in which you refer to the Owen inquiry. I appreciate your having addressed a question on notice regarding the Owen inquiry that I had put you verbally during your previous appearance at the inquiry. Would it be fair to summarise your supplementary submission as stating that the Owen inquiry does not provide a valid underlying reason for the current power transactions?

Professor OUTHRED: Yes. I think the Owen report, or the report from the Owen inquiry, had important weaknesses with respect to what seems to be the key question—that the Government was interested, given its later statements; in other words, the privatisation process. The way in which it seems to have been used since that time in the Government's policy statements to me is not consistent with the material that was presented through the Owen inquiry process. In particular it is this issue of the criticality of selling the existing assets. I think that was an overused claim.

As I stated in, I think, my earlier evidence, from my point of view ownership is not the key issue in achieving a competitive market outcome. If you have private owners, you have a certain set of problems to manage. If you have public owners, you have other problems to manage. There is no simple "one is good" and "one is bad". In the case of private owners, what we find in any market situation is that the private players will try to influence government policy and they will try to influence

market rules. They will do one thing or another to try to improve their financial outcomes. In the case of, say, the State-owned assets, the State governments themselves, as representatives of the people, often get confused between the two roles they have; one as equity owner, and the other is protector of the broad public interest. So either way, you have the challenges to solve.

Dr JOHN KAYE: It would be fair to say, would it not, that the Owen inquiry failed to examine the difference between base load power and peaking power and failed to account for the Australian Energy Market Operator [AEMO] forecast being really about a peaking power problem, not a base load problem?

Professor OUTHRED: The inquiry was about more than just that issue. I think here I would like to distinguish between the inquiry process itself and some of the evidence that was brought forward on the one hand and the final report on another hand, and then the way the report has been used since. There are three separate issues here. The way the report itself was written tended to focus on certain issues which were a subset of the total issues it might have addressed. As a result, it certainly did not discuss some of the issues that I would have liked a report on, if I had been running the inquiry. In terms of the actual and language used in the report about issues that it did discuss, I would have used different language about those issues. But, as you can see, I am not really wanting to get into a blow-by-blow criticism of that report, for fairly obvious reasons. One of them is simply that that is now historical and I think we have to deal with what we are facing now.

Dr JOHN KAYE: Although, of course, you would have heard evidence given by the Treasurer, the Premier and the permanent director of Treasury that they were relying on the Owen inquiry report to justify the gentrader transactions. It is still true that that report has life in this debate.

Professor OUTHRED: Yes, and it may be that if that issue is really material to the report from this inquiry, then I think a formal assessment of the Owen report and the process would be the way to go rather than, if you like, a piecemeal picking out of individual issues. That may be something that the Parliament chooses to do, but I think it should be that—a formal assessment of the totality of the exercise, rather than picking on individual pieces.

CHAIR: One of the issues that came up during our inquiry and became a revelation was that the Government boasted its success in selling off the gentrader rights for \$5.3 billion but omitted to mention that it had to spend what could be \$1 billion in developing the Cobbora coalmine as well as providing subsidies for that coalmine. When we questioned the Treasurer he said, "We didn't bother deducting that \$1 billion from the \$5.3 billion because we are going to sell it at some future date and therefore it is still worth \$1 billion." Do you think the Government has made a miscalculation of the value of the coalmine in 10 or 20 years time, in view of the whole question of carbon and the impact of a possible carbon tax? Would there be many people who would want to buy a coalmine in 10 or 20 years time and pay \$1 billion plus the interest increase over that period?

Professor OUTHRED: That is a very important question. Unfortunately, if you read more broadly what people are saying about investment in electricity generating capacity throughout Australia and in other countries, all of the investors now are saying that their hands really are tied until societies come to the landing on whether or not to try and do anything about climate change. It really is a critical issue. Unfortunately, societies—and this of course applies at the individual level as well as through parliamentary processes and so on—are all conflicted on this issue. I am conflicted and everyone else is conflicted.

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I have just come back from teaching a two-day course in Melbourne, Victoria, for a Victorian public authority of the Victorian Government where exactly the same issue came up. It comes up in all the work I do now. We will have to make formal social choices about this because all that any private investor is trying to do is make a profit within the rules of the game. Society sets the rules of the game. If we leave aside the genuine crooks, who really are just looking for loopholes in the law, and if we stick to what I call legitimate business, what legitimate business needs is a clear-cut set of rules and it needs to cover the investment time frame. That is unfortunately where we are now at.

I sympathise with all of the conflicted organisations—whether it is Parliament or whether it is private companies or whether it is individuals. We are all conflicted around this, but somehow we are going to have to get away from this; otherwise, we will have problems going wrong in our society. It will just be the choice of one kind of problem or another. At the moment the kind of problem we have, if we just speak about electricity, is that no investor has a clear idea about what the best technology options are or what the best fuel options are. No-one does. Nobody can value a coalmine in a 10-year time frame. Everyone is just taking a punt on that.

CHAIR: So in a way it is misleading for the Treasurer to say that we would recoup that value and therefore deduct it?

Professor OUTHRED: Yes. He may be right, or he may be wrong. It is like me betting on a horserace at this stage. With my skills in horseracing, that would be a pretty random outcome. Maybe the Treasurer has better skills than I do.

CHAIR: Professor, have you been able to determine where Macquarie Generation and Delta Coastal access their coal? Are there any subsidies built into those arrangements that you are aware of?

Professor OUTHRED: No, I do not have knowledge about their particular contractual arrangements. These are normally regarded as commercial-in-confidence matters, but certainly the general scuttlebutt is that existing long-term contracts that they may have had are coming towards a close—not necessarily all at the one time—and that they will be needing to enter into new contracts for coal.

CHAIR: Do you see any advantages to the two corporations with a gentrader contract also having a retail arm?

Professor OUTHRED: I think we need to separate out the interests of the owners of the assets from the owner of the gentrader trading rights. The owners of the trading rights, assuming the purchase goes through to completion, are Origin Energy and TRUenergy. I guess they are now the owners of the gentrader rights that have been sold. Again we cannot be entirely sure about this because we are short on facts in the public domain, but it appears as though they are probably going to get a good deal. The risks probably have been asymmetrically placed, so to speak, with the owners of the assets with respect to risks associated with future ability to meet contractual obligations due to physical performance or poor physical performance of the plant. That seems to be where the main uncertainty lies. The other uncertainty—

The Hon. GREG PEARCE: That is still the Government?

Professor OUTHRED: Yes, that is still the Government. That is the asset owners. Also, as I understand the arrangement, they remain responsible for ongoing maintenance. We do not know to

what extent the commercial arrangements that have been set up adequately cover the costs of ongoing maintenance, taking into account the fact that maintenance costs tend to escalate through the lifetime of the generators. Certain items of equipment start to fail. It can be uncertain just what the replacement cost are because partly that has to do with the amount of damage that might be caused if an item fails. The example I used before is the Qantas A380 aircraft. If you have an engine explosion that goes out through the casing, then significant additional damage is done beyond replacement of the part. There are those sorts of uncertainties in it. What we do not know is how well they have even taken into account in the contractual arrangements that have been set up.

CHAIR: Through previous witnesses, we saw how it now has become very complicated by having half-privatised and half-public ownership. Do you believe that a future Government should pursue the sale of Macquarie Generation and Delta Coastal to have it all in private ownership rather than fifty-fifty?

Professor OUTHRED: I think there is a hard choice to be made. There is the sale choice or what I would call the retention and staged retirement choice. Those to me are the two key options that are available. They both have their strengths and weaknesses. It really depends on addressing that broad climate change policy question that we have already discussed. That is really the key issue. Ideally that decision would be made prior to making the choice as to whether to sell or retain the assets. You could still go down those two paths, sell or retain, having made such a decision. For example, if a decision was made about firm retirement dates, those could be built into the sale contract. I think what would be a mistake now would be to go ahead with sales without a full and thorough consideration of climate change response strategy.

The Hon. GREG DONNELLY: Professor, I wish to return to a question I asked at the previous hearing. I wish to revisit it to obtain some clarification. To refresh your memory, I mention that I was asking you a question about the location of base load power stations. I will read your answer and ask you to comment further. I was asking you the question about the location and you said:

It is a little more complex than that when you observe what governments do in practice. Most governments have regional development policies, other concepts about utilising resources within their state borders and so on, which mean that they still retain a legitimate interest in related matters. So they do have an interest in seeing large projects going to regional areas. But in deciding whether to give preference to a project of that type—

that is, a baseload station—

they should not be thinking about that purely as an electricity generation project. If they were thinking about the project purely from the point of view of electricity generation, they should be entirely indifferent about where it is located through the national electricity market as far as so-called baseload generation is concerned, except for the concern about the possibility of the transmission lines being somehow interrupted or broken.

That is the way you explained it in your evidence at the last hearing. Can you elaborate why you think there is a desire by State governments to have sufficient baseload generation in their jurisdictions to provide, I suppose, a sense of comfort that there is going to be a capacity to supply the persons living in that State or Territory?

Professor OUTHRED: Yes, and certainly that is observable in many countries. With the traditional model under which we used to operate in New South Wales with the Electricity Commission of New South Wales you see the power station serves a number of purposes. Obviously, if we are talking about a coal-fired power station, one is that it creates employment in the coalmines: of course, during construction there is job creation, jobs for the duration of the construction period, and then ongoing employment in the power station itself once it is built. All of those things are attractive to governments on a regional development basis. The other reason it has been attractive in where you have a cheap fuel—whether it be coal or hydro, which is typically what it is—is that it then becomes a basis for negotiating low electricity pricing arrangements with what we call electricity-intensive industry. The classic case of that is the aluminium industry.

In Australia prior to the commencement of the National Electricity Market the State governments of Queensland, New South Wales, Victoria and Tasmania all had electricity-intensive industry development policies. Those typically involved selling electricity at a low price, arguably too low, to the aluminium smelters as part of an overall State strategy. Now that we have created the National Electricity Market and a lot of the assets have been sold, the possibility for having ongoing arrangements of that kind—particularly the low electricity price for an aluminium smelter as an example—is not easily set up in the way it was in the past. In the past the Electricity Commission would have had a total cashflow from selling electricity to everyone in the State and the fact it was receiving less than reasonable cashflow from a relatively small fraction of that, roughly 15 per cent or 20 per cent, you could make up, as it were, by charging a bit more to the rest and nobody would really notice.

Typically, commercial and small industrials were paying more than they should on an economic efficiency basis, but because of their so-called inelastic pricing of elastic customers, it was perceived not to matter too much. That was the strategy. Now with our National Electricity Market arrangements it is less possible to do that. Instead, we have the combination of the National Electricity Market spot market into which generators sell electricity, plus derivative markets. If those derivative markets are open and competitive, then the aluminium smelter has to take its chance along with everyone else. So you would get a different commercial-operating environment.

It would still be possible for governments to continue to operate with an electricity-intensive industry policy if they so wished, but you can see now that the cashflow would have to come more from the State Government accounts, so to speak, rather than being quarantined specifically in the electricity industry, either because, if you were still owning and operating the power stations, you would get less return on assets back into the government accounts or because you were finding some other way of directly subsidising the industry out of State funds.

The Hon. GREG DONNELLY: On this issue of a new Parliament looking to the future, you raised the idea of gas turbine-type generators, wind/biomass and nuclear perhaps being part of a mix of generating power. Were you making that comment in the context of baseload power, peak power or a combination of both?

Professor OUTHRED: A combination really of all assets. For example, we could have a power system that operated using only natural gas, providing there were sufficient natural gas resources available. From that you would be supplying baseload, intermediate and peak requirements. It is possible to do that. It is possible also, of course, if you have appropriate renewable energy resources to do the same thing. Traditionally, for example, until we had the cable across Bass Strait, Tasmania operated as an island and most of the time all of the electricity was generated from water. There are a

range of different possibilities here and typically what has been done to date is to try to use the cheapest combination of resources to meet the electricity demand. The problem now with cheapest is that we have things like climate change impacts to consider. So, those issues should be thought about as part of the total cost structure. That tends to change the relativities between the different fuels you might use.

Under those scenarios it becomes less desirable to use carbon-rich fuels and more desirable to use ones that have lower carbon emissions per unit of energy. In general terms that would mean the worst in Australia would be brown coal, which we do not have to worry about in New South Wales, then black coal, which we have got, of course, in New South Wales. So black is better than brown coal; gas is better than coal in this sense; and then renewables and other low-emission technologies, such as nuclear, are better again in terms of your ranking in moving towards lower carbon emissions.

The Hon. GREG DONNELLY: Assume for a moment that we accept the premise of your argument as being correct, to the extent that there is not an established national position that comes to terms with this climate change argument you have presented, in your view, what is the likely impact on the current set of baseload generators operating in Australia, a number of which are coal power fired? To the extent that there is uncertainty at this level, what is your assessment about what is going to happen with those generators?

Professor OUTHRED: If we just look at the way they are operating technically and not worry about the climate change issue for the moment, the existing set of generators on the whole are performing their tasks very well. There are no real obvious problems there.

The Hon. TREVOR KHAN: Does Hazelwood fall into that category?

Professor OUTHRED: As I said, if we leave aside climate change, Hazelwood can keep operating until, like me, it falls apart. For the moment I am leaving aside climate change. The electricity statement of opportunities from AEMO that we referred to before essentially says that and talks about new capacity that would be needed and over time some retirements of those assets as they age and fall apart. That is the unconstrained carbon view. If we are not going to worry about climate change, then we can just let all that continue to run. Climate change comes in because we then need to think of it as a strategic campaign to reduce emissions. Ideally, we would shut down the oldest and dirties power stations first and move in order through towards cleaner ones. That would be the ideal strategy.

In that ideal strategy Hazelwood, which has been mentioned, would be an early retirement. So would some of the older power stations in New South Wales. Munmorah would probably be the first to retire in that strategy. But in that strategy the key thing is an orderly process because the orderly process of retirement is needed to create or to improve the certainty for new investment. Then, basically in any new investment one way or another through policies, carbon pricing or whatever, we want to ensure that any new capacity is low emission. In that strategy, gas is an intermediate position. It is certainly not zero emission, but it is a useful stepping stone towards a lower carbon future.

The Hon. GREG DONNELLY: To the extent that a particular coal-fired generator was slated as one that should be closed because it is a high emitter of CO₂ and actually was owned by private enterprise, how would you envision closing down that generator? What would be the map of dealing with that scenario?

Professor OUTHRED: Of course, the particularities are for the particular business to manage, but in the context of the National Electricity Market, any generator planning to retire is required to notify AEMO—the Australian Energy Market Operator—with sufficient notice of that process. Basically it is a two-year notice. Once it has made the decision, within a two-year window it is required to notify AEMO. That information then gets broadcast to the whole market and allows all potential new investors to plan their strategies to respond to the gap, if you like, that is opening up—that window of opportunity. That is the process. In practice, in New South Wales, of course, the Tallawarra power station illustrates how that works, also the present state of Munmorah power station and the old part of Vales Point power station illustrate that process in action. If we just take Tallawarra, which has now completed the process, the State Government retired the power station, the site was cleaned up and then it was sold to a private investor. That is really a very sensible strategy.

On the site of what used to be an old coal-fired power station we now have a modern combined cycle gas turbine plant and because of the more compact nature of that plant you can actually put more new megawatts onto the site than the old megawatts. It means that you do not have a space problem. You do not have to find space in the State for new capacity because the existing sites can be repowered to a higher power rating than they were before. In terms of the staging, what do you do in the middle once the power station is decommissioned before the new one arrives? That can be picked up by the remaining power stations. It just means that existing intermediate plants will operate a bit more. Also because we have the national grid, power stations in other States can increase their output a bit so that we do not have, as it were, a blackout for the duration of the time it takes between when the old power station is decommissioned and when the new one is built. There will be other facilities in place that will be able to fill the gap.

That is the type of strategy we want, but you can see that to make it orderly a key thing is when is that plant going to retire. That is a key issue. But for a commercial player, if it is previously owned by a private player, they will gain that and use that as part of their business strategy because it is valuable to them because they may wish to re-occupy the hole, so to speak, and make it difficult for their competitors to do so. That is the reason it is better in the broad public interest to have a clear predetermined retirement strategy; that will allow competition, you can then allow private companies to compete to replace them.

CHAIR: It sounds like your recommendation to any future New South Wales government.

Professor OUTHRED: It actually is a recommendation I made to a prior inquiry. You may recall that following the Owen inquiry there was a review and I made a formal submission along these lines to that review process and did meet with that committee and said more or less what I am saying now.

CHAIR: Thank you for appearing before our inquiry a second time and giving us the benefit of your professional knowledge of this issue. We appreciate it very much.

(The witness withdrew)

(Luncheon adjournment)

BETTY CON WALKER, Principal, sworn and examined:

ROBERT GRAHAM WALKER, affirmed and examined:

CHAIR: I declare the hearing open and I thank our witnesses for appearing before the Committee at short notice. We realise you are very busy people but you wrote such a very good submission we thought you should perhaps have the final word as you will be the last witnesses before the inquiry and you have got an overview of the whole inquiry now and all the issues.

As you are aware, at the beginning of each hearing I have read out a statement regarding the Committee and the issue of the prorogation of Parliament, and there are copies of the legal advice from Mr Bret Walker, SC, as well as the Clerk of the Parliament, supporting the inquiry's legitimacy in conducting the inquiry. Just for your benefit, those documents are at the rear of the room. Do you wish to make an opening statement?

Dr BETTY CON WALKER: Just a brief statement to say that because such an issue has been made of the financial needs of the State and that being one of the rationales for the sale of the electricity assets we thought we would take the opportunity to update a briefing note that we previously submitted as part of the inquiry. I think you may have a copy of that now. There has been further information since we last submitted that submission to the inquiry, so we felt we should update it because the picture presented following the release of further information is that the State is in an even better shape than at the time of the budget in June 2010. So what you will have in front of you is an update, for example, of the budget result, which at the time of the budget was shown to have turned around from a deficit of \$990 million to \$101 million surplus, but the State finances report, which was released in October 2010 shows an even bigger surplus of close to \$1 billion in the State's finances. So we have shown that information.

We also believe that the forward estimates presented for the budget results in the budget paper will be shown to have been underestimated as well. We also updated the information on the gains in general government revenues. You will see, and I will not go into any detail here, but in just one year—the 2009-10 year—there was an increase in the revenue estimated in the budget of almost \$3.4 billion. So there was \$3.4 billion more revenue in the Government's hands than estimated at the time of the budget. That is just from June to October. That kind of turnaround makes you wonder as to whether other revenue forward estimates are also underestimated. We also updated the issue of debt, which the general government sector as at June 2010 showed debt to gross domestic product a ratio of 2.2 per cent. That compares with the average for the OECD countries of just under 65 per cent. So based on all of that we have concluded certain things which we can discuss, but there are some other updates and some additional information presented in this paper which I will turn over to the professor now.

Professor ROBERT WALKER: Page 6 we start forward with some new information in an effort to address the Committee's questions, particularly looking at what might be the problems arising from the partial sale of energy agencies, that this can lead to additional risks which have not previously been incurred, on balance, by the Government. In particular, there are particular risks associated with the arrangements for the pricing of transmission and distribution services. It is not at all clear whether contractual arrangements for these have been used to sweeten the deal for private sector bidders, whether they will, in fact, lead to a future loss of revenues to the State. The State is continuing to own

the poles and wires; we do not know what has been charged for access and use of those, and what rates of return the residual businesses will earn as compared to what they might have been earning before.

In fact, I think Parliament has been kept a little bit in the dark because the annual reports of the electricity agencies have not disaggregated their profitability by business segments, even though I am aware that boards of those agencies have been given information about that. It has not been published and it has been quite a public policy issue, I think, for several years that if there are proposals for the Government to retain the poles and wires businesses Parliament has not been told what they are earning at the moment and what they might earn in future under these other arrangements where private firms will have access to them. We do not know what pricing arrangements have been put in place there.

Moving forward through the submission, one thing that might be noted is on page 8. Some time ago former Premier Iemma and former Treasurer Costa were arguing that we needed to spend \$15 billion to keep the lights on, and that was obviously an exaggerated report to anyone who read the detail of the Owen committee report. The detail of that is in the submission but we would just simply note that a recent statement by the Australian energy market operators in 2010 reported that the need for new generating capacity in New South Wales is less urgent than is claimed in that Owen report several years ago. They forecast the need for new capacity by 2016 or 2017 and possibly a year or so later, not 2013 as previously claimed. The report also detailed a substantial number of publicly announced gas-fired, wind and black coal generation proposals in various stages of development, matters that I think contradict earlier claims that unless the New South Wales Government sold off its electricity assets the private sector would not invest. Plainly the private sector is investing.

We go on to offer some commentary about the merits of privatising parts of businesses that are currently earning a real return of around 24 per cent per annum on shareholders' money. It does not make sense to us. It is also likely to make the State more dependent on volatile stamp duty revenues because if you lose a stable source of revenues from electricity then you are going to be more dependent on other own-source revenues. Finally, I just point out that we are very concerned about the failure of accountability in this area for executive government essentially to sell off valuable State-owned resources without disclosure to Parliament or the community. We cannot see the contracts, we do not know what the deal involves, we do not know what the transfer prices are with the retained businesses and, despite I read in the press a comment by the Treasurer that he would release retention value once the bidding process has concluded, I gather that has not occurred and claims are being made about commercial confidentiality.

In our submission earlier we made the point that, okay, if that is the case maybe Treasury could produce a statement outlining their methodology of calculating retention value—black out the figures; treat it like an FOI application, but show what are the components, what has been counted, whether it counts the subsidy on coal, whether the figures are risk-adjusted and, in particular, if you are calculating retention value—that is a term, incidentally, I think I invented some years ago when talking about privatisation—

The Hon. GREG PEARCE: You are to blame!

Professor ROBERT WALKER: Yes, in a paper published in the *Journal of Australian Political Economy*, reproduced in our book on privatisation. We indicated that retention value must count projected cash flows, including tax equivalents and other payments and guarantee payments. But in all of this exercise is a key element, which is the calculation of the discount rate to work out the present

value of future cash flows. I am aware from documents I have seen, including, for example, documents tabled about the Cross City Tunnel, that it has been common to use discount rates of 17 per cent or even more, and the higher the discount rate the lower the retention value. So I think it is critically important that we see at least the methodology that has been used to calculate retention value. Theoretically, I prefer to see a range of numbers, some kind of sensitivity analysis as well, but given the high discount rates that have been used in published guidelines and so forth within New South Wales it is instructive to look at what happens in other countries.

On page 11 we have set out some figures from a recent report from the UK Treasury indicating what discount rates they use. They range from 3.9 per cent up to around 10 for the riskiest of projects. So we conclude that if the New South Wales Treasury used a higher discount rate than 7 per cent, this either represents an acknowledgement that the State has retained responsibility for a high level of risks or, alternatively, they have managed the numbers to understate retention value.

Dr BETTY CON WALKER: There is also a comment about a response that the Committee has received from the Treasury Secretary.

Professor ROBERT WALKER: That is right—on page 10.

Dr BETTY CON WALKER: It starts at the bottom of page 9.

Professor ROBERT WALKER: I note the comments from the Treasury secretary saying that \$5.3 billion will strengthen the State's balance sheet and the proceeds are a cash financial statement and as such increase the assets by the full \$5.3 billion. Balance sheets do not only just show assets, they show liabilities. Secondly, we have had the experience in New South Wales of the sale of the State Bank of New South Wales by the former Coalition Government for a headline price around half a billion dollars, which ended up, because the State was guaranteeing bad debts over the first \$60 million, the net return to the State, for those who care to read the State accounts year after year, particularly the accounts of the Crown reporting entity—I am not sure that is one of the more esoteric midnight reads for many people—but we have calculated that the net return to the State has been \$80 million from a headline price of \$500 million.

Dr BETTY CON WALKER: 576 million.

Dr JOHN KAYE: Could you give us those figures again, please?

Dr BETTY CON WALKER: It started at \$576 million, that was the price of the sale—\$576 million. The Coalition Government guaranteed all bad debts in excess of after the first \$60 million, so each year, if you looked at the budget papers—

Professor ROBERT WALKER: Or a percentage?

Dr BETTY CON WALKER: Or a percentage of that, you then find out how much was paid out back to the purchaser out of that money. When you go through that process—our last count was that we were left with \$80 million, which, in private hands, it was about half the first year's profit.

Professor ROBERT WALKER: So the headline price was nothing near like what the State got. The details of this are set out in our update of the book *Privatisation: Sell off or sell out* published by Sydney University Press.

Dr JOHN KAYE: In two years we were worse off?

Dr BETTY CON WALKER: Yes.

Professor ROBERT WALKER: So we do not place much credence on figures talking about the gross proceeds, unless you look at what else is associated with these deals and particularly what guarantees or obligations the State might be assuming in future years. It is true that balance sheets—I mention they do not show the value of businesses. For example, State Lotteries, I think, was sold for around \$400 million but its net assets were under \$50 million. That is because balance sheets only show the assets and liabilities of a business; they do not attempt to value a business.

Dr BETTY CON WALKER: They show the fixed assets rather than the business.

Professor ROBERT WALKER: The sale of a business is going to involve proceeds as something which was not previously recognised on balance sheets and so a lot of that would be recorded as a profit. In fact, it is a bit illusory because of the conventions of accounting but even so the gentrader transactions, from what I have read, involve the sale of certain previously recognised assets, hence the claim that 100 per cent of those proceeds will increase the assets on the State balance sheet is plainly wrong. I also mention liabilities and so forth. One of the concerns I have got as a student of public sector finances is to note that the ownership of the electricity businesses has been a stable source of revenues for the State and if you sell it off the State is going to be more reliant on their residual own source revenues, which are the volatile property taxes, so it is going to be harder to manage the State's finances, I think, in future because there is likely to be a much more volatile revenue stream for the Government. Is there anything else?

Dr BETTY CON WALKER: No.

CHAIR: To clarify the point you are making, you quoted the State Bank example. With the claim of the gentrader sale of \$5.3 billion, what would you say is the real net figure then for the people of New South Wales?

Professor ROBERT WALKER: We cannot really tell because we have not seen the deal; we do not know what is the deal, what compensation will be paid to gentrader operators if there are outages, if the poles and wires have some difficulties; in other words, what are the contingent liabilities—

Dr BETTY CON WALKER: All you can say is that it will be significantly less from what we know from the information we have.

CHAIR: It could be as low as \$400 million, would that be an exaggeration?

Dr BETTY CON WALKER: Possibly not but we do not have enough information to give an absolute figure like we do with the State Bank after the event. Here we do not even have the information to make a judgement right now. We do have a number of indicators that erode the \$5.3 billion but we are not quite sure how many more other indicators there are that we have not been told about that the professor has just gone through.

CHAIR: Such as the Government has to actually build Cobbora coalmine and supply the coal at a discount rate?

Dr BETTY CON WALKER: Yes.

CHAIR: What does that equal in dollars?

Professor ROBERT WALKER: I have not seen the figures for the construction of the coalmine but essentially there is both the investment and the opportunity cost of selling something cheaply; likewise the subsidies on access to the transmission systems and distribution systems. I do not know what rate of return they have been earning to date. Plainly the directors of those companies have some idea but they have not published it. The Auditor-General has not insisted that it be published, so we are in the position where the Government has entered into deals and it is very hard to assess at what future cost to the taxpayer.

CHAIR: When you said the directors would know, would that possibly be the reason why eight directors resigned and would not sign the contracts?

Professor ROBERT WALKER: I expect so; I expect that they thought it was a bad deal.

CHAIR: We will move on to Mr Pearce.

The Hon. GREG PEARCE: Thank you, Professor Walker. I have seen some work you have done previously where you have taken the cash flows from some of the public trading enterprises [PTEs] and projected out values for those PTEs using normal valuation methodology.

Professor ROBERT WALKER: Can you remind me where that was; I cannot recall it?

The Hon. GREG PEARCE: You have done it at various stages, where you have taken the projected earnings of some of the PTEs and put a value against them in terms of return on equity.

Professor ROBERT WALKER: I have certainly done that for the water industry. I recall at that time that the industry commission was suggesting it was only earning a 2 per cent rate of return and I suggested that the figures should be corrected because the rate of return should count developer contributions and subsequently I think my view was confirmed by both the accounting profession and the Auditor-General. He made those agencies restate their accounts.

The Hon. GREG PEARCE: I was wondering whether you had actually done a similar exercise for the generators?

Professor ROBERT WALKER: No. I have calculated what their profitability has been, that is all, and the average profitability has been fairly stable.

The Hon. GREG PEARCE: Which is the figure that you quoted before—24?

Professor ROBERT WALKER: For the six agencies excluding TransGrid it is about 24 per cent per annum and I might explain that that includes the use of public sector accounting methods. In the private sector companies like BHP and Rio Tinto value assets at historical cost and depreciation charges are a percentage of historical cost. In the public sector assets for public trading enterprises are

valued based on replacement prices not historical cost. That means the depreciation charges are higher in the public sector than they would be for a private sector listed company and hence I would suggest that the rate of return of 24 per cent is probably very conservative. It could be nudging 30 per cent per annum at the moment.

The Hon. GREG PEARCE: I am trying to get you to a point where you might be able to help us a little bit more in understanding the methodology to get to retention values and whether the evidence we have had from Treasury in any way helps us in deciding whether they have actually come up with a retention value that is realistic or whether they have come up with something that suited the deal, to put it bluntly. If you have anything you can do in terms of helping us on that, I would be very appreciative.

Dr BETTY CON WALKER: What we do know is information published in the budget papers in terms of the payments to the budget from the electricity sector as a whole, including forecasts, these are estimates based on retaining all the assets, I presume, I am not sure because there is no—I think in the budget papers they actually do say they did not include sale of the assets but when you do look at that, on page 6 we do have a table which shows the actual payments to the State, table 9, from all the electricity agencies and you can see that the figure for 2009-10 was in excess of \$1.2 billion, and expected to increase significantly in the three years to 2013-14. Presumably that took account of the recent IPART increases in prices which would land in the lap of the Government if all assets were retained. The estimate for those five years up to 2013-14 is that the Government would earn over \$7.5 billion from these agencies.

Professor ROBERT WALKER: But the business could be more valuable than that.

Dr BETTY CON WALKER: Yes.

Professor ROBERT WALKER: Because it is increasing in value if you are rolling back extra money into new investment.

Dr BETTY CON WALKER: I was going to go on to say that additionally the Government has been spending on these agencies something like \$3.3 billion, around \$3 billion a year in investments, and improving. We know that in the current sale the beneficiaries of that investment will be Origin, for example, because the Government has been spending the money and that money has come from the agencies themselves because they are businesses that make profits and they retain some earnings. The \$1.2 is not all their profits; that is just what they pay the Government. They also retain earnings for their own investments. The combination of those shows you really how rich these agencies are in terms of their earnings and also their expenditure.

In fact, the Government itself is estimating an expenditure in the electricity sector of almost \$21 billion over the next five years. We were told by Costa and Iemma that there was a \$20 billion hole in the State's revenues that we had to fill by selling all these assets. It seems to me that the hole has been plugged. It is a craziness to be using these assets to do something that they were never intended to do.

Professor ROBERT WALKER: Theoretically, if you wanted to value those businesses you discount their projected cash flows using the Government's cost of capital. A crude method of arriving at a value that is widely used in the securities industry is to simply look at price earnings ratios. If you look at price earnings ratios for AGL or Origin Energy and do some sums around that, it is at least giving you some indicative range of prices. Perhaps another indication of value is what impact the

announcements of sales, if they are consummated, has already had on the prices of Origin Energy shares. It seems to have been regarded as a good deal for the private sector to buy assets very cheaply.

The Hon. GREG PEARCE: In your earlier comments you mentioned in terms of cash flows an element that was sort of missed. When Mr Roozendaal appeared, or it might have been the Treasury officials, they admitted lost dividends and tax equivalents were, I think, \$600 million, then in written replies to questions they actually put the figure at \$800 million because they added in the guarantee fees as well, so there are three elements, are there not, to the return?

Professor ROBERT WALKER: They are the three elements that were in my paper on how to calculate retention value.

The Hon. GREG PEARCE: Those guarantee payments are now gone as well?

Professor ROBERT WALKER: Yes, that is right.

The Hon. GREG PEARCE: You talked a little bit about Owen and suffice to say the Committee is not too impressed with how Owen sort of worked out, but on page 8 of your paper you talk about the AEMO 2010 report, suggesting the need for additional generation to 2017-2018. My reading—and Professor Outhred this morning agreed—that if you take into account planned or proposed generation, it actually shifts the supply out until after 2018-2019, would that possibly be right?

Dr BETTY CON WALKER: Even this Government document states that if you assume low growth in the economy it takes it out to 2017-18 anyway. The 2016-17 assumes medium or high growth, so it is not unrealistic to assume that it would go beyond that. If a number of these private investments go ahead, which are outlined in that same Government report, then that could be even further. It depends on what happens there. This Government paper actually lists all those planned or proposed at their various stages.

Professor ROBERT WALKER: That is assuming there are no initiatives on demand management.

Dr BETTY CON WALKER: Yes.

Dr JOHN KAYE: Which paper is that, please?

Dr BETTY CON WALKER: It is called "Electricity Statement of Opportunities".

Dr JOHN KAYE: That is the AEMO report?

Dr BETTY CON WALKER: The AEMO report, yes.

Dr JOHN KAYE: Which year?

Dr BETTY CON WALKER: It was published in October 2010.

The Hon. GREG PEARCE: I am not sure which was the chicken and which was the egg but Owen sort of coincided with Standard and Poor's coming to this view that the State needed to get rid of its electricity assets or put money aside to build baseload, which eventually led to going on credit

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watch when the original deal fell over, when the Labor Party members would not vote for it, and subsequently the mini budget and the rescheduling of capital expenditure and putting aside \$4 billion for potential baseload. What is your view on all of that fiction?

Dr BETTY CON WALKER: Firstly the State was never placed on watch—that is the first thing. Secondly, we have two major rating agencies that rate this State—that is, Moody's and Standard and Poor's. At the time that the Government was using—Costa was using Standard and Poor's there was a Moody's report that was very detailed and explained that the water and electricity agencies could take on more debt if they wanted to invest because they are self funding. That was never highlighted by the Government. We included a reference to that report in our submission to the Unsworth committee. On that day or the next day there was a link from Treasury to the Standard and Poor's statement, which was a one-pager, and there was a link to Moody's. From that day on I went back to check and see whether it was still there and it was not there.

The link to Standard and Poor's remains to date, the link to Moody's was deleted and remains deleted as of last week—I have not checked today so perhaps it is back. It seemed a rather selective process of using the comments by Standard and Poor's which was very pro-privatisation and Moody's which was a more reasonable analysis and detailed analysis—I can provide it if anyone is interested at some point—but it was many pages of analysis of that whole area. But even if our credit rating had been reduced by one element, one notch, with triple-A if we went to double-A plus the cost to the State would be miniscule. At that time Iemma and Costa and even subsequently Iemma unfortunately was also given this advice—sorry, Rees—they were claiming that one notch would add \$500 million per year in interest payments to the State.

The Hon. GREG PEARCE: That was Roozendaal's number.

Dr BETTY CON WALKER: An absolutely absurd statement. We did the sums. Firstly, the borrowings do not mature at the same time. There are different borrowings at different times so they will not mature overnight. We did some sums at the time and there were \$7 billion worth of borrowings that would mature within the next year. If we had that downgrading by one notch our calculation was that it would be between \$7 million to \$14 million per year—note, \$7 to \$14, not \$500 a year. We are talking about a budget of \$60 billion per year. I think that is pretty small if we are going to look after the infrastructure of the State, if that is the cost of not selling very valuable and essential services for the State. So there is no sense.

The Hon. GREG PEARCE: The Owen, Standard and Poor's, Iemma, Costa, Roozendaal song sheet was that unless the thing was privatised we would run out of baseload and the Government was going to lose its triple-A rating. That is all rubbish, is not?

Dr BETTY CON WALKER: All of that has been found not to be correct.

Professor WALKER: Yes.

The Hon. GREG PEARCE: That was a yes.

Dr BETTY CON WALKER: Yes; not only on the credit rating but also on the need, on the capacity need.

The Hon. GREG PEARCE: The key difference between Standard and Poor's and Moody's is that Standard and Poor's sees the investment in the private trading enterprises as a weakness whereas Moody's actually sees it as a strength—

Dr BETTY CON WALKER: Yes.

The Hon. GREG PEARCE: —because of the revenue arguments you have put before?

Professor ROBERT WALKER: Standard and Poor's does not rank highly in my estimation. I have had a couple of dealings with Standard and Poor's. The first instance was when I pointed out that Premier Greiner's claims to have a balanced budget were based on simply talking about the transactions of the Consolidated Fund, not of the budget sector—it is now known as the general government sector. Moody's immediately put the State of New South Wales on credit watch at that stage yet the information I was citing had been in the public domain from the Australian Bureau of Statistics for many years. So I do not think—you know, They used to fly people into New South Wales and spend a few nights talking to Treasury people and go home. More updated, a colleague of mine has calculated that Standard and Poor's managed to give a triple-A credit rating to packages of derivative securities one every 20 minutes just before the global financial crisis.

Dr JOHN KAYE: These are the CDOs are they?

Professor ROBERT WALKER: CDOs, yes, one every 20 minutes for a triple-A credit rating—that is quite shocking. When Standard and Poor's published the report to which you refer about electricity privatisation I looked at their website and they indicated that they would happily explain some of their reports. So I contacted their media office and I must say my requests were quickly shuffled from person to person, no-one was available to answer them and to this date I have not got an answer. The simple question I asked was: would you agree that capacity to repay is strengthened by having stable cash flows rather than volatile cash flows? If you agree with that, why then do you say that selling off a stable source of cash flows is going to enhance the credit rating? They still have not replied to that.

CHAIR: You are suggesting there has been some shopping for the most suitable rating agency to get the result you want?

Professor ROBERT WALKER: I would say that credit rating agencies and, in this case, governments have a symbiotic relationship: they get paid to rate. The Northern Territory does not get rated—it prefers to spend money on advertising.

Dr BETTY CON WALKER: No State was rated until the late 1980s, they borrowed happily until then without any issue as to whether they were rated or not. It is historically a relatively newish development. On the Owen report, if you look at the introduction you will note the final paragraph in the introduction—I do not have it with me—but it states that the report was actually written by various officers and they name the departments. So what we have here is a so-called independent person whose report was prepared by those who are most interested in this issue—namely, Treasury and any other department who was interested in this issue. It is a very specific paragraph—I am paraphrasing here—but it more or less tells you that the report was prepared by officers from these various departments. Now one might say you expect to get resources to do all this but it also tells you that obviously if people are research officers and working from a particular angle then they are going to write along those lines—

CHAIR: They are not going to be so critical?

Dr BETTY CON WALKER: Yes, nor is Professor Owen a financial expert so for a commentary on credit ratings—I think he is a technical person in that sense so he was not really an expert on the finances of the electricity industry. That is why there should be some caution as to how that report is interpreted.

Dr JOHN KAYE: Thank you for another excellent report. Can I take this somewhere slightly different? In the evidence presented by the Premier, the Treasurer and the head of the Treasury department, they all made a great show out of the fact that these transactions would de-risk the economy, de-risk the State—they would take the risk away from the State's budget. Can we unpack that statement fairly carefully? Starting with the issue—and leaving aside the fact that the Government owned both sides of the supply and demand equation—looking at the generators on their own can we ask the question: how volatile was the income from the generators and how bad in terms of running a State is a bit of volatility year from year?

Professor ROBERT WALKER: I do not have the figures in front of me. There was some volatility—sorry, I think some of the distributor's trading activities in the electricity market did lead some to show some liabilities that were pretty volatile. But just coming back to the question of de-risking, I think they were equating de-risking with avoiding the need to make capital investment. I do not see the need to make capital investment a risk; I see that as an opportunity if you are earning 24 per cent.

Dr BETTY CON WALKER: And adding to the asset base of the State and creating more potential for further returns.

Dr JOHN KAYE: You talk about hedging. You talk about the fact that owning different parts of the industry hedges the risk for the State. Can you expand on that for the Committee? Can you explain how the situation that obtained before 15 December when the State owned three generating companies and three retailing companies, how that hedged?

Professor ROBERT WALKER: Just to place it in context, I think under recent arrangements 95 per cent of electricity generated in New South Wales is consumed in New South Wales. So the national electricity market is really on the margin and most of the external sources probably come from baseload generated in Queensland, which is of course closer to the North Coast and there are energy losses if you wheel energy long distances. My understanding of it is, and from talking to people who have sat in front of the screens, that we have trading in those electricity markets and sometimes a generator experiences maintenance problems and goes down, the electricity price spikes and others make a motza out of it. I have heard people predict that this was likely to happen before we introduced the national electricity market because it has been the United Kingdom experience. If we look at the movie *The Smartest Guys in the Room*—the story of Enron—we see some colourful examples of traders saying: "Burn, baby, burn" when there was a bushfire bringing down distribution lines and generating capacity like that. So the traders are there to make money for themselves.

Where you have a number of generators and retailers and distributors all owned by the same party what is a gain by one is a loss by another so it is not totally a zero-sum game but might approach it. Once we start having a private sector player in there they are likely to make gains at the expense of the State. Personally I have reservations about the institution of the national electricity market per se

because it seems to have been advocated by the people interested in running trading businesses. It is not clear to me that it is actually producing a benefit for the citizens of this State. The first rationale for introducing it was to enable the sale of excess capacity within New South Wales. That is historically the story then some Treasury economists seem to think that competition is an end in itself. Indeed, I have seen that the mission statements of some electricity agencies and they have stated their aim had nothing to do with providing services to the community: their aim was to be an efficient trader in electricity in the national electricity market. It seems to me to lose sight of what government-owned businesses are there for.

Dr JOHN KAYE: Can I take you to the situation now faced by buying Macquarie Generation and Delta Coastal: two government-owned generators that do not have gen-trader contracts, so that trading is the responsibility of—

Dr BETTY CON WALKER: Or subsidised coal.

Dr JOHN KAYE: Sorry?

Dr BETTY CON WALKER: Or subsidised coal.

Dr JOHN KAYE: That is an interesting question and we do not know the answer to that. That is a very important question that you raise there but I specifically wanted to ask you what your opinion was of the situation that those two generators now find themselves in where they are selling electricity into a market where up to about 85 per cent of the retail customers are being supplied by retailers who are owned by their direct competitors in that generation market. Do you think that disadvantages those two government-owned generators in terms of their capacity to sell contracts?

Professor ROBERT WALKER: It places them in a very difficult situation for the reasons you have outlined.

Dr BETTY CON WALKER: We have gone from a government monopoly, well almost a monopoly, because the Government provides about 95 per cent or 97 per cent of the needs of the State, to somewhat of a duopoly, a private duopoly or oligopoly, if you like. Whereas a government monopoly has great benefits because it has a better interest in the welfare of its population, a private duopoly or oligopoly does not. It is a big difference in an essential service. I mean in something that is not such an essential service it is no big deal you know, but in such an essential service it augurs badly for the consumer in terms of pricing and service.

Dr JOHN KAYE: Professor Walker, you acknowledge that Macquarie and Delta found themselves in a difficult situation now trading against their competitors who own most of the retail market. Is there a way, in any meaningful sense, to put a number on the loss of value for Macquarie Generation to find themselves in such a hostile market?

Professor ROBERT WALKER: It would be very hard to quantify. I am just thinking of whether there would be some financial instruments they could buy to minimise their risks and whether there is a price on those in the market.

The Hon. TREVOR KHAN: Somebody will try to sell them something.

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Professor ROBERT WALKER: Certainly they face additional risks that were not there before.

CHAIR: Professor Walker you mentioned earlier that there is a big question mark over the retention value and that you are not aware of any methodology. Can you do a calculation of what you think was the retention value?

Professor ROBERT WALKER: No, because we do not have the detail about the side deals and what is involved in the contract. I come back to the point that I do not know what pricing is going to be put on access to transmission and distribution infrastructure.

CHAIR: If the sale price were \$5.3 billion—and the Committee knows that that is an exaggeration—the retention value must obviously be less than that? The Committee assumes it would have to be just like a reserve price, you would not sell it for less.

Professor ROBERT WALKER: The retention value would be what it would be worth if you did not have these deals going on and if you continued to actually own it and enjoy all the cash flows from it. As I said before, it would be the present value of the projected cash flows derived from that business, and an alternative crude estimate, such as used in the securities industry, is to look at price earnings ratios.

CHAIR: All the future profits and income to try to get that figure?

Professor ROBERT WALKER: Yes, so once you get over 10 years or so, you would look at the present value is only incrementally added to it, depending on what discount rate you use. All the signs are that this is a highly profitable industry that will continue to be highly profitable—

CHAIR: Sadly from the consumers' point of view because the prices will continue to go up?

Professor ROBERT WALKER: Indeed.

CHAIR: You said that the offer probably included some, but you do not know what, sweeteners that were in the deal. Would one of the sweeteners be a reduced coal price from the Cobbora coalmine?

Professor ROBERT WALKER: Yes.

CHAIR: It is hard to put a calculation on—

Dr BETTY CON WALKER: And a guaranteed supply.

CHAIR: What would that mean in dollar terms as a loss to the State, to the taxpayer as it is really money being given away if the coal sold for only \$30 a tonne, which is one of the figures?

Professor ROBERT WALKER: Yes, you could look at both the original investment and net it off against the projected future profitability if the coal were sold at market prices. So if you can quantify that at the difference between \$35 and, say, \$50 a tonne, it is \$15 a tonne adjusted for distribution costs times the projected output over future years.

CHAIR: Should that be deducted from the sale price of \$5.3 billion?

Professor ROBERT WALKER: Essentially yes, in terms of net economic effect, not necessarily in an accounting sense but in terms of its overall economic effect.

CHAIR: In many ways the Treasurer has deliberately confused the picture, as you said earlier, with the State Bank picture to get this grossly exaggerated figure of \$5.3 billion.

Professor ROBERT WALKER: I would not impute motives to the Treasurer—I am not sure he understands.

The Hon. GREG PEARCE: We are all sure he does not.

The Hon. GREG DONNELLY: On the issue of baseload generating capacity, given that we have this national network that operates at least on the east coast, is it necessary for States and Territories to have their own domestic baseload capacity, to use that phrase, given that we actually have an east coast network?

Professor ROBERT WALKER: The figures that I last looked at indicated that about 95 per cent of electricity consumed in New South Wales was generated within New South Wales and so it is not practical to wheel energy from northern Queensland to southern New South Wales. Could I just make the point which I think we mentioned in our book that there is a tendency in Australia for public policy to be derived from what has been adopted overseas. The idea of a national electricity market developed in Europe and North America where, as you understand, baseload power stations try and run at close to full capacity and if you wind them up and down they break and it costs more to run them, and you top that up with peaking and so forth generation capacity. The whole idea of an electricity market evolved where you had peak loads in different time zones east-west. In Australia we have got most of our population on the east coast and they are distributed north-south. Apart from the fact that Queensland does not go for daylight saving we do not have that same spread of time zones and so the attractions of having a national electricity market are far less here than they would have been in Europe and North America.

The Hon. GREG DONNELLY: How does a given State—I will take the major States, Queensland, New South Wales, Victoria—determine when it actually needs a new baseload power station?

Professor ROBERT WALKER: I guess it depends on what stage of the capacity cycle they need it. History suggests that when there has been major investment in generating capacity the agencies face incentives to try to flog as much electricity as possible to get their money back. It is a stepped-cost function technically. You have to make major, big investments in base load in order to meet demand but having met that often you have got excess demand which is the background to the establishment of a national electricity market. The claim was that Pacific Power had excess capacity so we need to be able to sell some. Thereafter once capacity becomes tight you tend to see electricity agencies throughout the world deciding we want to manage demand, and encourage people to use less and so forth.

I think the debate about global warming has just changed that whole debate a lot now. I think people are a lot more cynical and suspicious of claims about demand for more capacity that we need to actually look holistically at what can be done about demand management.

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Dr BETTY CON WALKER: Especially when in just two years since the Owen report we have gone from 2013-14 now to 2017-18 in such a short time. That is because of some increase in supply and a reduction in demand. So if that can be achieved in that short period then obviously there is scope for more reductions in demand.

CHAIR: There is a greater consumer consciousness to reduce their use of electricity.

Dr BETTY CON WALKER: Yes.

The Hon. GREG DONNELLY: On the issue of this future scenario of looking at a lower carbon generating electricity industry, it was put to the Committee by another witness that in terms of that framework looking into the future it would probably involve looking at the creation of power generation based on gas turbine technology, wind, biomass and nuclear perhaps. Do you agree with that statement?

Dr BETTY CON WALKER: According to this report—I refer again to the AEMO report—a number of publicly announced, as it calls them, investments are in gas and wind as well as coal. So the private sector is already thinking along those lines. These are private sector investments. So there is already a movement in that direction. Obviously that has to happen otherwise we will never move away from coal but it is going to take time. It is not something that can be done overnight or even within five years, it will take time.

The Hon. GREG DONNELLY: I am trying to clearly understand your position in relation to the electricity industry. If we treat generation, as the transmission, distribution and retail, those three segments that form the industry, is it your position that all of that should be publicly owned?

Dr BETTY CON WALKER: Absolutely. In this submission we have submitted today we actually ask that the Government renege on those contracts which apparently have not been signed finally yet.

The Hon. TREVOR KHAN: I do not know whether we know that.

Dr JOHN KAYE: We were told they were signed but not finalised.

Dr BETTY CON WALKER: Yes, the contracts have been signed but the settlement has not taken place.

Dr JOHN KAYE: That is correct.

Professor ROBERT WALKER: It could be a contingent sale—contingent on the Government providing further—

Dr JOHN KAYE: You need to ask Eric that.

Dr BETTY CON WALKER: Exactly.

CHAIR: So more sweeteners?

Professor ROBERT WALKER: I have got a bit of a view about contingent sales. I mean I noted that Bond Corporation used to record a profit from contingent sales of the Hilton Hotel and Rome Property, and that was totally inconsistent with accepted accounting practice internationally.

The Hon. GREG DONNELLY: In terms of a national energy market where there is, at least in other States, significant private ownership, how in the context of New South Wales we balance—

Dr BETTY CON WALKER: The problem we have with a partial privatisation of an essential service, as a matter of principle, takes you back to Telstra. The Coalition Government first sold the first tranche, which was one-third of Telstra, and no more was going to be sold but after that was sold we were told "We can't partially own this asset" and so the next tranche was sold and so on. So now we have a new Government that is trying to create a national broadband network—

CHAIR: A new Telstra.

Dr BETTY CON WALKER: And it needs Telstra. It is now buying into and having to negotiate with an asset it used to own. To our view, communications is another essential service, especially in this century where communications are such an essential part of industry and the community. We opposed the sale of Telstra as we oppose this because partial sale of any essential service leads to arguments and all sorts of rationalisations that the rest of it should go because we cannot half-own anything.

Professor ROBERT WALKER: I disagree with Betty a little bit on this.

The Hon. GREG DONNELLY: Complete government ownership of the generation, transmission, distribution and retail—is that your position?

Professor ROBERT WALKER: No, I would not take that strong position. We will argue about this later. I see merit in some public-private partnerships, for example, that involve co-generation where energy that would otherwise be wasted by going up the flue of a blast furnace is used to generate electricity. I find these are virtuous projects: they minimise waste.

Dr BETTY CON WALKER: Well, that does not argue against my point. You are saying retain our current assets but enter into other projects.

Dr JOHN KAYE: Do the witnesses want a five-minute adjournment?

Professor ROBERT WALKER: No, we are in violent agreement on this point, I think.

Dr BETTY CON WALKER: Yes.

Professor ROBERT WALKER: Obviously the private sector can have some place in generating electricity.

Dr BETTY CON WALKER: It does.

Professor ROBERT WALKER: I am not saying that they should be excluded from it. They already have a place and it is likely to increase.

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Dr BETTY CON WALKER: But I think the question was: are we in favour of selling any part of the currently owned government assets?

The Hon. GREG DONNELLY: No, that was not the question.

Dr BETTY CON WALKER: I am sorry, I misunderstood you.

The Hon. GREG DONNELLY: I am trying to gather an understanding of what role you see the private sector can play in an industry such as the electricity industry?

Professor ROBERT WALKER: It is likely, looking ahead 50 years, we are going to get away from these major networks and have more localised generating capacity using renewables. I think that is inevitable so any private sector participating in that I am sure governments would welcome but that is at least 50 years off. In the meantime, whatever we have in the future I do not think it is desirable to have private sector duopolies controlling the electricity market because they will just be seeking to maximise their profits and I think that government investment is likely to be more benevolent.

It is sometimes claimed that private sector involvement inevitably leads to greater efficiency. I do not share that view, particularly in relation to highly capital intensive industries where employees are a minimal proportion of the overall cost of providing the service. Even if they were inefficient, it would probably be a minimal cost compared to the massive capital investment required. The fact is that governments can acquire capital far cheaper than the private sector. That is not to say, as that argument is sometimes distorted, that that means the Government should own everything. I have heard Treasury officials and others make that claim. We are not saying that at all; we are simply saying that it is a key role of government to provide some basic services that involve capital intensive industries, and it is appropriate that it do so.

CHAIR: At page 9 of your submission you refer to what you say is a silly statement; that is, if the contracts were cancelled by the Treasurer's office the cost could ultimately run to billions of dollars. You say that that is a silly statement. Have you calculated what the cost of cancellation might be if the incoming Government considers that as an option?

Dr BETTY CON WALKER: There is something called the "public interest". If the Government decides that after the population at large has spoken—in fact, 80 per cent of the population opposes this sale—

The Hon. TREVOR KHAN: Only 80 per cent?

Dr BETTY CON WALKER: According to the last survey I saw. You may have more up-to-date data.

The Hon. LUKE FOLEY: But they want to sell the lot.

CHAIR: Let the witness finish.

Dr BETTY CON WALKER: On the basis of public interest, I believe that the Government has certain rights to cease something that it began which it now recognises is a mistake. The Premier said, "We will not sell any more of the electricity assets now or after the election." If it is wrong now or in the future then it was wrong to sell any of it.

Dr JOHN KAYE: Hear, hear!

The Hon. TREVOR KHAN: You are not suggesting she has had a Damascus-like conversion? I do not think that is the reason she has come up with that statement.

Dr BETTY CON WALKER: On the same day that the Premier claimed that we would lose hundreds of millions of dollars the Treasurer said it would be billions of dollars. That is so silly and it is not a very good way to run a big asset transaction. You either know or you do not. They are the ones who know best the content of the contract in terms of how they can get out of it. All contracts have exit clauses, even in the population at large. Governments have certain rights in determining that they do not wish to proceed. If it costs a couple of hundred million dollars, compare that one-off cost with the \$1.5 billion that all those agencies earn each year, and that figure is increasing. Let us put it into context.

Professor ROBERT WALKER: Richard Ackland had some interesting comments to make about governments' rights in relation to resumption of assets.

CHAIR: Thank you for appearing before the Committee. As I said, you are the final witnesses. Are you happy for your last submission to be made public?

Professor ROBERT WALKER: Yes.

Dr JOHN KAYE: I move:

That the submission be made public.

Motion agreed to.

CHAIR: Thank you again for your valuable contribution. I am sure the Committee will weigh up that information when it produces its final report.

Professor ROBERT WALKER: When do you expect the report to be available?

CHAIR: It will be tabled on 23 February.

(The witnesses withdrew)

The Committee adjourned at 3.04 p.m.

Appendix 8 Answers to questions on notice

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Questions No. 1

Transcript Page Reference: 9

Question from: The Hon. Greg Pearce

Ms KRISTINA KENEALLY: At the time of the execution of the transaction the shareholding Ministers were Minister Daley as Minister for Finance and the Treasurer.

The Hon. GREG PEARCE: And the portfolio Minister?

Ms KRISTINA KENEALLY: The portfolio Minister remains the Minister for Energy. However, I transferred some of the responsibility for direction making to the Treasurer approximately six weeks before the conclusion of the transaction. I would need to check the date for you. That was to enable the transaction to be carried out in an efficient manner. We were very mindful, as the Treasurer has outlined and we had advised the boards, that the Government was prepared to use its direction-making power should it be necessary to do so in order to conclude this important piece of economic reform.

The Hon. GREG PEARCE: Would that transfer of powers to the Treasurer have been pursuant to the State-owned Corporations Act?

Ms KRISTINA KENEALLY: I would need to check the advice that I was provided but I did receive preparation of the documentation for that from my department.

The Hon. GREG PEARCE: Are you aware that if you did use that power you are required to publish the details of that in the Government gazette?

Ms KRISTINA KENEALLY: From memory, it was gazetted at the time and indeed we had inquiries from at least one media outlet in relation to it.

The Hon. GREG PEARCE: So you did do it under that power then?

Ms KRISTINA KENEALLY: Yes. I would need to check the documentation. I do not have it with me today but I can assure you it was provided and prepared for me by the Department of Premier and Cabinet.

Answer:

The State Owned Corporations (Portfolio Minister) Further Order 2010 (the Order) was made on 17 November 2010. That Order appointed the Special Minister of State as the portfolio Minister for each of the State-owned energy generators and distributors. The Order was published in the Government Gazette on 19 November 2010, an extract of which is attached. That Order remains current.

**STATE OWNED CORPORATIONS
(PORTFOLIO MINISTER) FURTHER ORDER 2010**

Pursuant to section 201 of the State Owned Corporations
Act 1989

I, Kristina Keneally, Premier of the State of New South Wales, in pursuance of section 201 of the State Owned Corporations Act 1989, being of the opinion that a Minister other than the Minister who has the duty to administer the Energy Services Corporations Act 1995 should be the portfolio Minister of the electricity generators and the electricity distributors, make the following Order.

Dated, this 17 day of November 2010.

KRISTINA KENEALLY, M.P.,
Premier

1 Name of Order

This Order is the State Owned Corporations (Portfolio Minister) Further Order 2010.

2 Commencement

This Order commences on the date on which it is published in the NSW Government Gazette.

3 Revocation

The State Owned Corporations (Portfolio Minister) Order 2010 is revoked.

4 Portfolio Minister of certain energy services corporations

The Special Minister of State is nominated as the portfolio Minister of the statutory State owned corporations listed in Part 1 and Part 2 of the Schedule.

Schedule

Part 1: Energy Generators

Delta Electricity
Eraring Energy
Macquarie Generation

Part 2: Energy Distributors

Country Energy
EnergyAustralia
Integral Energy Australia

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Questions No. 2

Transcript Page Reference: 15

Question from: The Hon. Greg Pearce

Dr JOHN KAYE: When the reform process provided information about the transaction to boards of directors did they have to sign a confidentiality agreement in respect of that?

Dr GELLATLY: I am sure there was but I cannot recall exactly.

Dr JOHN KAYE: Mr Yeadon?

Mr YEADON: Yes, there was a confidentiality agreement. I think it was indicated earlier that there are differences of legal opinion as to the status of this Committee. I say to you that for my purposes I am not prepared to break confidentiality agreements in the current circumstances.

Dr JOHN KAYE: Mr Yeadon, that was not my question. I would like to know whether there is a clause in the agreement that states that if you give an answer to a lawfully constituted body, or you are compelled to do, you are not bound by that confidentiality.

Mr YEADON: I am not sure whether that provision was in the confidentiality agreement that I signed.

Dr JOHN KAYE: You do not recall whether it was in there?

Mr YEADON: Not off the top of my head, no. Do not quote me on that as it might be there.

CHAIR: Is it possible for you to table a copy of that agreement—not the one that was signed, but a pro forma agreement—for the benefit Committee members?

Dr JOHN KAYE: Could that be tabled today?

Ms KRISTINA KENEALLY: We give you our best undertaking to do so.

Answer:

An established requirement of the governance framework is a Board Charter. Such a Charter is consistent with the ASX Corporate Governance and Principles and with NSW Treasury's Guidelines for Board of Government Business. A copy is available from the relevant SOCs.

In accordance with the '*Board Charter*', each Director undertakes their role bound by the terms of confidentiality.

In respect the to confidentiality undertakings between the Stated-owned Corporation and the successful purchasers, we are unable to disclose these documents at this time. Such disclosure will prejudice the interests of the State.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Questions No. 3

Transcript Page Reference: 27 - 28

Question from: The Hon. Greg Pearce

The Hon. GREG PEARCE: Mr Roozendaal, when you exercised your section 20N power as portfolio Minister, you were required to do so with the approval of the Treasurer. I assume you had no trouble agreeing with yourself that this was a good idea?

The Hon. ERIC ROOZENDAAL: Yes.

The Hon. GREG PEARCE: Did you write a note, memorandum or minute to that effect?

The Hon. ERIC ROOZENDAAL: I signed the appropriate documentation as prepared by Treasury.

The Hon. GREG PEARCE: Are you prepared to table that documentation to the Committee?

The Hon. ERIC ROOZENDAAL: I would have to seek some advice if there are any commercial-in-confidence issues.

The Hon. GREG PEARCE: You are prepared to table it, subject to excluding anything that is commercially in confidence?

The Hon. ERIC ROOZENDAAL: Yes.

Answer:

The section 20N letters for the relevant State-owned Corporations were prepared by NSW Treasury's Energy Reform Project. A draft copy of the section 20N letters to Delta Electricity and Eraring Energy have been made available by NSW Treasury's submission to the Standing Order 208(c), General Purpose Standing Committee No. 1.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Questions No. 4

Transcript Page Reference: 27 - 28

Question from: The Hon. Greg Pearce

The Hon. GREG PEARCE: Mr Gellatly, could you tell us how much you are being paid for your role in the strategy?

Dr GELLATLY: As chairing the energy reform project?

The Hon. GREG PEARCE: Your total role?

Dr GELLATLY: I am getting paid nothing as a director of Eraring Energy. I made that clear on the evening. I have not put in all my invoices. I put in a monthly invoice.

The Hon. GREG PEARCE: What is the basis of the invoice? What are you entitled to charge?

Dr GELLATLY: I am entitled to charge \$3,000 a day.

The Hon. GREG PEARCE: How much have you charged so far for any invoices?

Dr GELLATLY: I would have to check my records. I do not keep a daily count of it.

The Hon. GREG PEARCE: Would you mind checking?

Dr GELLATLY: I think I worked on a basis of about two or three days a week.

The Hon. TREVOR KHAN: Did you not charge about \$18,000 for three days' work at one stage?

Dr GELLATLY: No. That is Canberra. Ex Canberra bureaucrats do that. At the State level we do not charge as much.

The Hon. GREG PEARCE: Could you take that on notice and let us know?

The Hon. TREVOR KHAN: So you did not charge \$18,000 for three days on one of the invoices?

Dr GELLATLY: No.

The Hon. GREG PEARCE: Could you take that on notice and let us know?

Dr GELLATLY: Yes.

The Hon. GREG PEARCE: Mr Yeadon, could you give us the same information?

Mr YEADON: Yes I can.

The Hon. GREG PEARCE: Mr Roozendaal, could you have the other members of the strategy team give us the same information?

The Hon. ERIC ROOZENDAAL: Sure.

Answer:

Col Gellatly of Col Gellatly & Associates has been paid, to date, \$363,000 inclusive of GST.

Kim Yeadon has been paid, to date, \$423,001 inclusive of GST.

John Dermody of John Dermody & Associates Pty Ltd, as Project Director, has been paid, to date \$624,968.91 inclusive of GST.

All costs are inclusive of GST and reasonable disbursements.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Questions No. 5

Transcript Page Reference: 33 - 35

Question from: Dr John Kaye

Dr JOHN KAYE: Treasurer, so far we have talked about a lot of what led up to the night of 14 December. I will now move beyond that. In the case of Delta, Mr Darmody and Mr Yeadon had been appointed to that board and I think by that stage also Mr Lillee was appointed to that board?

Dr GELLATLY: No, Mr Lillee was appointed the next day.

Dr JOHN KAYE: At some stage you issued a request to what was now effectively a new board that you wanted them to consider this transaction and if they did not do it there would be a section 20N directive to do it?

Mr YEADON: That is correct.

Dr JOHN KAYE: When you did that, did the new board notify you that they would not actually do it; they required a section 20N directive?

Dr GELLATLY: Yes.

Dr JOHN KAYE: What date did they do that?

Dr GELLATLY: The 14th.

Dr JOHN KAYE: That night they indicated that to you?

Dr GELLATLY: Yes.

Dr JOHN KAYE: Did that come by writing from Mr Darmody?

Dr GELLATLY: Yes, there were letters prepared to the Treasurer, yes.

Dr JOHN KAYE: There were letters prepared to the Treasurer?

Dr GELLATLY: Signed by the chairs.

Dr JOHN KAYE: Who prepared those letters?

Dr GELLATLY: There were legal advisers available to both boards.

Dr JOHN KAYE: They were employees of Delta and Eraring but not employees of Treasury? Is that correct?

Dr GELLATLY: They had their own legal representation but there was obviously access to the Baker and MacKenzie legal team.

Dr JOHN KAYE: Have you seen all of the letters that came from the board of Delta in respect to the section 20N process?

Dr GELLATLY: Yes.

Dr JOHN KAYE: Would you say there is anything unusual in any of those documents?

Dr GELLATLY: No.

Dr JOHN KAYE: How long was the letter saying that the pre-section 20N directive, the request, was going to be denied? How many pages?

Dr GELLATLY: It was fairly simple. There had been drafts around for months.

Dr JOHN KAYE: Was it just one page?

Dr GELLATLY: It could be in one, or possibly two, but they were not tomes.

Dr JOHN KAYE: Could it have been three pages?

Dr GELLATLY: I cannot recollect.

Dr JOHN KAYE: Treasurer, you would have seen that letter. Can you recollect it? Did you think there was anything unusual in the correspondence that came to you from the board of Delta?

The Hon. ERIC ROOZENDAAL: Not to my recollection.

Dr JOHN KAYE: You have seen the documentation?

The Hon. ERIC ROOZENDAAL: It has been across my desk.

Dr JOHN KAYE: How many pages was it?

The Hon. ERIC ROOZENDAAL: I cannot recall.

Dr JOHN KAYE: Could it have been three pages?

The Hon. ERIC ROOZENDAAL: I have already answered the previous question.

Dr JOHN KAYE: Dr Gellatly answered and I just want to know whether you know it was three pages.

The Hon. ERIC ROOZENDAAL: I have told you I cannot recall.

Dr JOHN KAYE: Are you prepared to table that letter?

The Hon. ERIC ROOZENDAAL: Subject to normal commercial considerations.

Dr JOHN KAYE: Will you release all of the correspondence from the board to the Minister on that matter?

The Hon. ERIC ROOZENDAAL: I will take advice in relation to that.

Answer:

As the completion for the Retail assets has not yet occurred, we are unable to disclose these documents at this time. Such disclosure will prejudice the interests of the State.

The Gentrader Agreements, were drafted in consistent manner across all Gentrader Bundle contemplated the by State. Due to the ongoing nature of the Project, including ongoing negotiations with bidders, we are not able to disclose such documents without prejudicing the interests of the State and impacting the maximisation of value for the remaining assets.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 1 - 7

Transcript Page Reference: N/A

Question from: Opposition

Consultant Costs

1. *How much has the taxpayer spent on consultants costs for this transaction?*
2. *How much has John Wylie and Lazard Carnegie Wylie (investment bank) been paid for their work on this transaction so far?*
3. *How much has Credit Suisse (investment bank) made out of the transaction so far?*
4. *How much has Baker and McKenzie made out of the transaction so far?*
5. *How much as Ernst and Young made out of the transaction so far?*
6. *How much is Col Gellatly being paid for the whole of this transaction process?*
7. *How much is Kim Yeadon being paid for the whole of this transaction process?*

Answer:

1. The total transaction costs from 17 December 2007 to 17 January 2011 are \$165.8 million (inclusive of GST).
2. Lazard has been paid, to date, \$2,859,679 inclusive of GST
3. Credit Suisse has been paid, to date, \$3,710,431 inclusive of GST
4. Baker & McKenzie has been paid, to date, \$28,501,956 inclusive of GST
5. Ernst & Young has been paid, to date, \$30,854,515 inclusive of GST
6. Col Gellatly & Associates have been paid, to date, \$363,000 inclusive of GST
7. Kim Yeadon has been paid, to date, \$423,001 inclusive of GST

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Question No. 8 - 13

Transcript Page Reference: Page 33 - 35

Question from: Opposition

Consultant Costs

8. *How did Mick Lilley come to be appointed to the Board of Delta Electricity?*
9. *Mick Lilley used to work at Macquarie Bank didn't he?*
10. *Is it correct that the transaction for the Delta Coastal Gentrader is still underway?*
11. *Is Macquarie Bank a bidder for the Delta Coastal Gentrader?*
12. *Is Macquarie Bank advising any of the other bidders for the Delta Coastal Gentrader?*
13. *Did you see any legal advice as to whether Mr Lilley's former employment with Macquarie Generation might constitute a conflict of interest?*

Answer:

8. Mr Lilley was interviewed and identified as a suitable candidate in late 2010 by NSW Treasury for a director's position with one of the energy state owned corporations. The Shareholding Minister appointed Mr Lilley in accordance with Energy Services Corporation Act.
 9. Mr Lilley's employment history is a matter for Mr Lilley.
 10. Yes, we can confirm the transaction for the Delta Coastal Gentrader is still underway.
 11. Due to confidentiality obligations and commercial sensitivities we are unable to disclose details about our bidders and their advisors.
 12. Due to confidentiality obligations and commercial sensitivities we are unable to disclose details about our bidders and their advisors.
 13. This is a matter between Mr Lilley and Delta Electricity to be managed through the conflict of Interest declaration process.
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QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Question No. 14 - 17

Transcript Page Reference: N/A

Question from: Opposition

14. *In proceeding with the GenTrader Transaction, has the Government proceeded on the basis of the Key Matters for Consideration (Page 5 of the Auditor General's Report pursuant to s 63G of the Public Finance and Audit Act 1963?. If not, why not?*
15. *What assumptions were applied in calculating the retention value?*
16. *What was the book value of these assets that were sold in the transaction?*
17. *At the beginning of the sale process in 2008, did the Government's financial advisers, Credit Suisse and Lazards, prepare preliminary valuation for the Government? What was this valuation? Could the Government provide to the Inquiry any valuation materials Credit Suisse and Lazards gave to the Government at the beginning of the process?*

Answer:

14. The AG wrote "I suggest that after the passing of enabling legislation and after Treasury and its advisers have conducted a marketing effort, further consideration be given to the following, which in my view could enhance the strategy:"

AG's Key matters: extract	Treasury's response
AG's proposals for "further consideration"	How the transaction unfolded in practice
Use simultaneous rather than sequential Generator/Retailer transactions	Simultaneous bidding was conducted
Hold separate tenders for (a) generation development site(s)	Separate tenders were held
Calculate a Retention Value for each Generator and Retailer using consistent assumptions prior to commencing each transaction	A retention value was calculated for each Generator and Retailer. The valuation approach for generators was consistent across each of the generation businesses. In addition, the valuation approach for the retailers was consistent across each

AG's Key matters: extract	Treasury's response
	of the retail businesses. The retention values were calculated prior to receiving any bids.
Document contingency plans prior to commencing the first transaction which inter alia include the setting of a reserve price for each transaction and considerations if the reserve price is not achieved	Contingency plans were developed for an IPO. A reserve price for the combined Gentraders/Retailers, was adopted by Government prior to receipt of any bids.
Treasury continuously evaluate the restructuring process after the marketing effort and before the first transaction	At the time of the AG's 2008 report, Treasury was managing the day-to-day transaction process. Subsequent to this, the Government established an "Electricity Reform Taskforce" reporting directly to the Responsible Minister, with a dedicated taskforce responsible for the day-to-day management of the transaction. The Energy Reform Steering Committee (comprising of representatives from NSW Treasury, Department of Premier and Cabinet and Department of Industry and Investment) is responsible for key decision making to meet the objectives of the Energy Reform Strategy. Where appropriate, recommendations from the Energy Reform Steering Committee will be presented to the Government for its consideration.
Treasury continuously evaluate the likelihood of success of subsequent transactions and whether contingency plans require executing	As per the previous response

15. This was matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential. The Auditor General will report on the transaction.
16. Energy Australia, Country Energy and Integral Energy, disclose the book value of assets of their combined retail and distribution businesses, in their Annual Report, but do not separately disclose the values attaching to their retail businesses.

For each of the State-owned Generation businesses, the book value of "property plant and equipment" and the book value of the inventories (primarily coal) are disclosed in the annual reports of each of the respective businesses.

Under the Gentrader Agreement, the economic services provided by the property plant and equipment are transferred to the benefit of the Gentrader. Under the 'Coal On-sale Agreements', the inventories of coal are sold to the Gentrader.

The Book values for these assets for the parent entities of Eraring Energy and Delta Electricity, as at 30th June 2010, are reported in their respective annual reports.

The book values of assets are not directly comparable with the Gentrader contracts and reflect different assumptions and are therefore not the right measure of comparison of value.

17. A preliminary valuation was provided to the Government in June 2008. The valuation was based on a process of leasing the existing State-owned Generation businesses to the private sector. We are unable to provide a copy of the report as it was considered by Budget Committee of Cabinet.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 18 - 19

Transcript Page Reference: N/A

Question from: Opposition

18. *What did the Directors of Eraring Energy assert was the affect of the Gentraders Transactions to have on the value of their company?*
19. *What did the Directors of Delta Electricity assert was the affect of the Gentraders Transactions to have on the value of their company?*

Answer:

The Gentrader Agreements, were drafted in consistent manner across all Gentrader Bundle contemplated the by State. Due to the ongoing nature of the Project, including ongoing negotiations with bidders, we are not able to disclose such documents without prejudicing the interests of the State and impacting the maximisation of value for the remaining assets.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Question No. 20

Transcript Page Reference: N/A

Question from: Opposition

Has the Government calculated what tax equivalent payments will be forgone as a result of the Gentrader Transaction through the length of the Gentrader contracts? What are those figures?

Answer:

The retention value for each business was derived from forecast dividends and tax equivalent payments. The estimated tax equivalent payments forgone over the life of the Gentrader contracts cannot be disclosed as those figures have been used to derive retention values in relation to the generation businesses.

Over the forward estimates period (financial years 2011 to 2014), the total financial distributions forgone (dividend plus tax equivalent payments), for the three retail businesses and the Earing and Delta West Gentrader bundles is estimated to be approximately \$600 million.

Lower dividend and tax equivalent payments will be off-set by reduced interest costs from a lower debt level (as the State-owned Generation businesses' debt will be paid off from the proceeds) and an increase in potential earnings from financial assets (if proceeds are invested in superannuation assets).

We are unable to provide the Committee with further information in respect to the retention value analysis as this was a matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential. The Auditor General will report on the transaction.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Question No. 21

Transcript Page Reference: N/A

Question from: Opposition

Has the Government calculated what dividends currently paid by the retailers will be forgone as a result of the transaction? What are those figures for in respect of Eraring Energy, Delta, and if Macquarie Generation is eventually sold, what those payments will be?

Answer:

The retention value for each business was derived from forecast dividends and tax equivalent payments. The estimated dividends forgone for the three retail businesses cannot be disclosed as those figures have been used to derive retention values in relation to the retail businesses.

Over the forward estimates period (financial years 2011 to 2014), the total financial distributions forgone (dividend plus tax equivalent payments), for the three retail businesses and the Eraring and Delta West Gentrader bundles is estimated to be approximately \$600 million.

Lower dividend and tax equivalent payments will be off-set by reduced interest costs from a lower debt level (as the State-owned Generation businesses' debt will be paid off from the proceeds) and an increase in potential earnings from financial assets (if proceeds are invested in superannuation assets).

As the transactions for the remaining Gentrader bundles (Macquarie Generation and Delta Coast) are still underway, we are unable to disclose details of financial forecasts.

We are unable to provide the Committee with further information in respect to the retention value analysis as this was a matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential. The Auditor General will report on the transaction.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 22

Transcript Page Reference: N/A

Question from: Opposition

What will be the impact of the transaction upon the receipt of tax equivalent payments from the generators through the length of the gentrader contracts?

Answer:

Given the generators revenue will be fixed under the Gentrader contracts to cover future operating and maintenance costs, it is prudent that the generators are withdrawn from the national tax equivalent regime.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 23

Transcript Page Reference: N/A

Question from: Opposition

What will be the overall impact of the transaction upon income received by the State year by year through the length of the Gentrader contracts?

Answer:

Lower dividend and tax equivalent payments will be off-set by reduced interest costs from a lower debt level (as the State-owned Generation businesses' debt will be paid off from the proceeds) and an increase in potential earnings from financial assets (if proceeds are invested in superannuation assets).

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 24 – 25

Transcript Page Reference: N/A

Question from: Opposition

24. *Will you confirm that in respect of Delta Electricity its forecast dividend is anticipated to decrease from \$60.3 million in 2011/12 to \$49.8 million in 2012/13, what modelling has been done to determine the impact of the sale of the Gentrader rights on the dividend stream from Delta Electricity.*
25. *Has Delta Electricity provided updated earnings before interest, tax and depreciation forecasts since the completion of the transaction?*

Answer:

This is a matter for Delta Electricity and reporting to NSW Treasury will be conducted through normal business practice and reporting processes for Parliament.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 26

Transcript Page Reference: N/A

Question from: Opposition

In respect of Eraring, what are the anticipated earnings before interest, tax and depreciation in 2010/11 and 2011/12?

Answer:

As stated in Eraring Energy's annual report, as at 30 June 2010, the forecasts earnings before interest and tax was \$122.8 million in 2010/11 and \$145.1 million in 2011/12. Note these figures exclude AASB139 fair value profit movements.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 27
Transcript Page Reference: N/A
Question from: Opposition

In respect of Eraring, have they undertaken an analysis of earnings before interest, tax and depreciation since the completion of the transaction?

Answer:

This is a matter for Eraring Energy and reporting to NSW Treasury will be conducted through normal business practice and reporting processes for Parliament.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Question No. 28

Transcript Page Reference: N/A

Question from: Opposition

What forecasts have been done on the impact of the transaction on the earnings of the generators, on the tax equivalent payments to the State and on the dividend stream to the State?

Answer:

Financial modelling has been undertaken to analyse the potential impact the contractual parameters set out in the Gentrader contracts (such as unavailability penalties) may have on the cashflow of the State-owned Generation businesses.

Over the forward estimates period (financial years 2011 to 2014), the total financial distributions forgone for the three retail businesses and the Eraring and Delta West Gentrader bundles is estimated to be approximately \$600 million.

Lower dividend and tax equivalent payments will be off-set by reduced interest costs from a lower debt level (as the State-owned Generation businesses' debt will be paid off from the proceeds) and an increase in potential earnings from financial assets (if proceeds are invested in superannuation assets).

These numbers do not take into account the benefit to the State of investing the proceeds of the transaction or from repayment of debt.

We are unable to provide the Committee with further information in respect to the retention value analysis as this was a matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential. The Auditor General will report on the transaction.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Questions No. 29

Transcript Page Reference: N/A

Question from: Opposition

In Origin's statement to the Stock Exchange they stated: "the Eraring GenTrader was purchased at \$313 per kilowatt, representing a significant discount to the new entrant cost to build" – why are you saying that the transaction was a success, when Origin are saying that they bought the assets at a "significant discount"?

Answer:

Fundamentally the value of the plant is the present value of discounted future expected net cash flows.

Eraring Energy is a 30 year old power station that you would expect to purchase (or sell) well below the cost of a brand new plant. Its remaining economic life is much less than for newly built plant.

The Eraring Gentrader was part of a bundled transaction with the Country Energy and Integral Energy retailers.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

18 JANUARY 2011

Question No. 30 - 31

Transcript Page Reference: N/A

Question from: Opposition

30. *Can you please clarify what amount of the \$5.3bn in stated proceeds is available in cash to the Government once the transaction has been completed?*
31. *How much of the \$5.3bn will not be available in cash upfront?*

Answer:

30. \$5.3 billion will be made available to the State at completion.
31. All proceeds will be available in cash upfront.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 32

Transcript Page Reference: N/A

Question from: Opposition

We understand that a coal supply contract from Cobbora coal mine has been or is intended to be entered into between the NSW Government and the successful bidders. Is this correct? How do those coal supply arrangements work? If so, what is the guaranteed coal supply price under the Cobbora coal contract? How does that compare to the current estimated long term domestic coal price of \$60/tonne?

Answer:

It is intended that the NSW Government enters into coal supply contracts with successful Gentrader bidders. This will be done through a newly established wholly owned corporation entity.

The "free on rail price" (ex mine) at Cobbora is fixed to all parties. The "free on rail price" is adjusted with regard to a number of published indices including CPI, materials, fuel and labour.

Cobbora Coal Contracts involve delivered costs of coal some 25% to 50% higher than current average delivered coal costs to the Central Coast and Hunter Valley power stations.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 33

Transcript Page Reference: N/A

Question from: Opposition

What estimates has the Government undertaken of the cost of these guarantees to the NSW taxpayer?

Answer:

It is intended that the Cobbora Coal Mine will cover the NSW Government's cost of funds.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Questions No. 34

Transcript Page Reference: N/A

Question from: Opposition

Are the Coal Contracts to be offered to Origin and TruEnergy (the successful Gentrader bidder) alone?

Answer:

To comply with fair and equal treatment, all bidders have been offered the Cobbora Coal Contracts.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Questions No. 35

Transcript Page Reference: N/A

Question from: Opposition

*What would the affect of offering below market coal contracts to the successful
Gentrader Bidders on the entrance of other competitors into the market?*

Answer:

Cobbora Coal Contracts involve delivered costs of coal some 25 to 50% higher than current average delivered coal costs to Central Coast and Hunter Valley power stations.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Question No. 36

Transcript Page Reference: N/A

Question from: Opposition

Is the current cost estimate for developing the Cobbora coal mine still \$1.3 billion? When was the last time the State government developed a coal mine? What experience does the government have in developing coal mines and what guarantees has it put in place for ensuring these costs do not run over?

Answer:

The current estimate for developing the Cobbora coal is about \$1.3-1.5 billion depending on final mine size. This will be done through a newly established wholly owned corporation entity.

The State Government has considerable experience in the development of the Cooranbong Colliery and Myuna Colliery mines in the early 1980s.

It is intended to ensure costs are held to budgets through strong project management and awarding contracts to highly competent companies within the framework required for good governance.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Questions No. 37

Transcript Page Reference: N/A

Question from: Dr John Kaye MLC

Will you take steps to put the sale of Delta Central and Macquarie Generation GenTrader bundle on hold until there can be a thorough investigation of the financial risks created for the State budget of the existing Eraring and Delta Western GenTrader bundles.

Answer:

The Government remains committed to the objectives of the Energy Reform Strategy.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Questions No. 38 - 39

Transcript Page Reference: N/A

Question from: Dr John Kaye MLC

38. *Have you held discussions with the board of Macquarie Generation in advance of presenting them with Section 20N directive?*
39. *Have any board members indicated they will resign if they are presented with a 20N directive in relation to the Gentrader transaction?*

Answer:

38. As the Government has not accepted a legally binding bid for the Gentrader bundle for Macquarie Generation, I, the Treasurer, have not met with Macquarie Generation regarding the Section 20N directive.
39. No.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Questions No. 40 - 41

Transcript Page Reference: N/A

Question from: Dr John Kaye MLC

40. *Why did the Government not provide any details in its briefings, media statements, to parliament or on its website of the structure of the Gentrader contracts and the payments between the Gentrader and the publicly owned Generator?*
41. *Why is it that Origin provides more information to its shareholders than you have to the public?*

Answer:

40. The Government, in its interest of openness and transparency, has provided regular updates on the transaction via the formal energy website, www.nsw.gov.au/energy. Refer to 'NSW Energy Reform Strategy, Delivering the Delivering the Strategy: approach to transactions and market structure' for details of risk allocation and key terms.

In terms of the actual details of the Gentrader Agreements, these documents have been issued to qualified bidders under the terms of confidentiality undertakings. As the process is ongoing, any disclosure of those documents at this stage will be in breach of the confidentiality undertakings executed with the successful parties.

41. As stated above, the Government has been open and transparent in all communication related to the transaction, where appropriate. As for Origin's communications with their shareholders, this is a matter for Origin.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

17 JANUARY 2011

Questions No. 42 - 44

Transcript Page Reference: N/A

Question from: Dr John Kaye MLC

42. *At what stage in the reform process was it decided to opt for fixed charges for operating and maintenance (O&M) costs that are fixed for the life of the contract subject to index escalation, rather than O&M charges that are renegotiated on a regular basis?*
43. *What were the factors leading to this decision?*
44. *Was this a decision taken by the Reform Project or by Cabinet?*

Answer:

The policy was adopted during the development of the Gentrader Agreement and was approved by Energy Reform Steering Committee (comprising of representatives of NSW Treasury, Department of Premier and Cabinet and Department of Industry and Investment) and recommended and adopted by Budget Committee of Cabinet, prior to the release of the pro-form Generation Trading Agreement (Gentrader) into the bidder data room for the Gentrader transactions.

The fixed charge regime with escalation was chosen as this preserved the separation of operational matters from trading decisions.

The risk exposure of actual costs deviating from forecast costs has been analysed as part of the financial modelling undertaken on the Gentrader contracts.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

17 JANUARY 2011

Question No. 45

Transcript Page Reference: N/A

Question from: Dr John Kaye MLC

In the event that the transactions with Origin and TRUenergy have not been finalised at the time the Government enters caretaker mode, will the Government delay finalisation until after the election?

Answer:

Legally binding Agreements were executed on 14 December 2010 with the successful bidders under which the Government is compelled to settle.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

18 JANUARY 2011

Question No. 1 - 15

Transcript Page Reference: N/A

Questions from: Dr John Kaye

1. *In the studies to determine the retention values of the assets and asset bundles, was a single scenario or multiple scenarios used?*
2. *If multiple scenarios:*
 - a. *What exogenous factors were varied? Did these include a variety of market conditions*
 - b. *Were they used to produce a range of retention values of the assets or a single retention value?*
3. *In the studies to determine the assess bids for the assets and asset bundles, was a single scenario or multiple scenarios used?*
4. *If multiple scenarios:*
 - a. *What exogenous factors were varied? Did these include a variety of market conditions; and*
 - b. *Were they used to produce a range values for each bid or a single value?*
5. *In assessing the retention value of the assets and bundles of assets, how did the evaluation committee place a value on the policy flexibility provided by public ownership?*
6. *In particular, did the committee place any value on the ability to close or modify a coalfired power station in response to climate policy that is afforded by public ownership?*
7. *Without revealing actual values, please explain how the reform project placed values on the downside risk for each of the following:*
 - a. *The maintenance costs against fixed but indexed maintenance payments*

Independent advice was sort from

 - b. *The Availability Liquidated damages*
 - c. *The Cobbora Coal Supply Contract*
8. *For each of the following, did the Energy Reform Project use a single scenario or multiple scenarios used to place values?*

- a. *The maintenance costs against fixed but indexed maintenance payments*
 - b. *The Availability Liquidated damages*
 - c. *The Cobbora Coal Supply Contract*
9. *If multiple scenarios:*
- a. *What exogenous factors were varied? Did these include*
 - i. *a variety of market conditions,*
 - ii. *a range of availability performance outcomes for generator units and equipment,*
 - iii. *a range of coal export costs*
 - iv. *other factors? Please enumerate.*
 - b. *Were they used to produce a range of values or a single value?*
10. *At what stage in the reform process was it decided to opt for fixed changes for operating and maintenance (O&M) costs that are fixed for the life of the contract subject to index escalation, rather than O&M charges that are renegotiated on a regular basis?*
11. *What were the factors leading to this decision?*
12. *Was this a decision taken by the Reform Project or by the cabinet?*
13. *Can you confirm that following breakdown of acquisitions and acquisition prices paid by TRUenergy?*
- a. *EnergyAustralia retail \$1,480 million*
 - b. *Gentrader contracts \$455 million*
 - c. *Fuel stocks held by Delta West power stations \$85 million*
 - d. *Power station development sites \$15 million*
14. *If any of these are incorrect, please supply the correct value.*
15. *Please provide a similar breakdown of acquisitions and prices paid by Origin Energy.*

Answer:

1. A base case retention value was used for the valuation of each of the assets. Sensitivity analysis was applied to various input assumptions when looking at the retention value.
2. This was matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential. The Auditor General will report on the transaction.

3. A "base case" retention value was used for the valuation of each of the assets. Sensitivity analysis was applied to various input assumptions when looking at the retention value.
4. This was a matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential. The Auditor General will report on the transaction.
5. This was a matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential. The Auditor General will report on the transaction.
6. This was a matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential. The Auditor General will report on the transaction.
7. Independent expert advice was sought on the downside risk of the charging regime for maintenance, the contractual provisions for ALD's and the Cobbara Coal Supply Contract.
8. This was a matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential. The Auditor General will report on the transaction.
9. The independent expert advice did incorporate an analysis of the uncertainty around a number of factors relevant to the decisions on value.
10. The policy to adopt fixed charges to cover the fixed operating and maintenance costs of the State-owned Generation businesses was approved by Budget Committee of Cabinet in June 2010, prior to the release of the pro-form Generation Trading Agreement (Gentrader) into the bidder data room for the Gentrader transactions.
11. This matter was a consideration of Budget Committee of Cabinet.
12. Budget Committee of Cabinet approved the Agreements incorporate a provision for fixed O&M costs for the life of the contracts subject to the escalation provisions.
13. This is a matter for TruEnergy.
14. This is a matter for TruEnergy..
15. This is a matter for Origin Energy.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

18 JANUARY 2011

Question No. 1

Transcript Page Reference: 16

Question from: Reverend the Hon. F. J. Nile (Chair)

Estimated technical life of power station

CHAIR: These documents also refer to a "contracted term" and to the "remaining technical life of the power station". In other words, you are guaranteeing that the power station will operate for a certain number of years. Can you explain how that would work? Is there a point at which the power station is written off—after 10 or 20 years?

Mr COSGRIFF: Throughout the transaction process engineering advice was taken as to the capacity that the power station would generate and what its technical life would be. That is reflected in the gentrader agreements. Effectively what we are saying is that the power station works for a period and that its technical life can be and has been estimated, and that is included in the gentrader contract.

CHAIR: Do you know offhand the estimated technical life?

Mr COSGRIFF: I do not have that in front of me, but that information is easily obtainable and I can provide it.

Answer:

The Technical Life of each NSW power station as estimated by the appropriate State Owned Corporation is:

- Munmorah mid 2014
 - Liddell 2022
 - Wallerawang 2028/2029
 - Vales Point 2028/2029
 - Eraring 2032
 - Bayswater 2035
 - Shoalhaven 2038
 - Colongra 2039
 - Mount Piper 2042/2043
-

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

18 JANUARY 2011

Question No. 2

Transcript Page Reference: N/A

Question from: Dr John Kaye MLC

Date for retirement of Munmorah coal-fired generator.

Mr COSGRIFF: The first significant coal-fired generator, Munmorah, will retire within the next few years.

Dr JOHN KAYE: That is not true. Are you not trying to get a contract to refurbish it?

Mr COSGRIFF: Yes. Delta notified the energy trading market that it would be decommissioned, from memory in 2014, but I will take that date on notice. That provides a refurbishment option. The Gentrader contract written for the life of that plant will be very short term.

Answer:

As published in AEMO's 2010 ESOO "Delta Electricity advised that Munmorah Power Station will be available until winter 2014 which is consistent with previous expectations". The Munmorah Gentrader Agreement has been prepared on the basis that it ends by June 2014. Following that time Munmorah is available to the private sector for rehabilitation as a development site.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

18 JANUARY 2011

Question No. 3

Transcript Page Reference: 19

Question from: Dr John Kaye MLC

Number of participants that dropped out of the Cobbora process?

Mr SCHUR: The Cobbora project was originally envisaged as a mine that would be developed by the private sector. The exploration area was determined and the generation businesses formed an unincorporated joint venture. The reason they did that was that Cobbora became essential in terms of further coal supply for those generating business, particularly in an environment in which export coal prices have been increasing, poor facilities, particularly at Newcastle, have improved and our generating businesses face this pressure of increasing fuel costs, given the demand for coal internationally. That was the underlying motive. The commencement of the procurement process for Cobbora coincided with the global financial crisis.

Effectively, that financial climate meant that the playing field was thinner than may otherwise have been the case. There was also a fair bit of merger activity that was happening at the time and one or two participants in the process dropped out at very late stages as well.

Dr JOHN KAYE: One or two?

Mr SCHUR: Can I take that on notice?

Dr JOHN KAYE: Yes please.

Mr TIMBS: I do not think we said publicly how many parties were bidding or how many dropped out. I am not sure that we would actually disclose that.

Dr JOHN KAYE: We now know that it is one or two.

Mr SCHUR: I am happy to take that on notice.

Answer:

We can confirm one tenderer withdrew at a very late stage in the process.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

18 JANUARY 2011

Question No. 4

Transcript Page Reference: 21

Question from: The Hon. Trevor Khan

Quantum of fees payable to institutions involved with the transaction?

The Hon. TREVOR KHAN: What is the amount of the fees that are payable to the various institutions that have made valuable contributions to this transaction?

Mr SCHUR: I do not have that information on me. I am happy to take that on notice.

The Hon. TREVOR KHAN: So whatever it is, we take \$5 billion, we take \$1.2 billion off for the repayment of the debt, is that right?

Mr SCHUR: Yes, roughly.

Answer:

The total transaction costs from 17 December 2007 to 17 January 2011 is \$165.8 million (including GST).

The Fees payable to advisers who have made valuable contributions to the transactions for the above time period are, as follows (cost inclusive of GST):

• Financial Advisor (Credit Suisse)	\$8,710,431
• Financial Advisor (Lazard)	\$2,859,679
• Accounting & Tax Advisor (Ernst & Young)	\$30,854,515
• Legal Advisor (Baker & McKenzie)	\$28,501,958
• Gentrader Legal Consultant (Johnson Winter Slattery)	\$8,191,642
• Market Consultant (Frontier Economics)	\$19,090,859
• IT Consultant (KPMG)	\$8,381,535
• Engineering & Environmental Consultant (WorleyParsons)	\$5,504,339
• Probity Advisor (RSM-Bird-Cameron)	\$1,177,614

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

18 JANUARY 2011

Question No. 5

Transcript Page Reference: 22

Question from: The Hon. Trevor Khan

What is the price for coal locked into the gentrader contracts?

The Hon. TREVOR KHAN: Sorry, that is the price for coal locked into the gentrader contracts?

Mr SCHUR: Yes.

CHAIR: It is the \$31 per tonne.

Mr SCHUR: I do not know. I do not have the details.

The Hon. GREG PEARCE: Against the current market value, which is \$70, \$80 or \$90.

The Hon. TREVOR KHAN: But you can get that detail for us?

Mr SCHUR: I am happy to get that detail for you. The current working assumption and the modelling that has been done to date suggests that that project will be able to recover its cost of funds, that is, before we contemplate any export potential associated with that mine. So that would be a further up side that would increase the return to government. So the view on Cobbora is that it is a commercially viable, stand-alone entity that will recover its costs of funds.

Answer:

When I answered the question my intention was to provide the Committee the Cobbora coal price information; however I have been advised that the price information is commercial in confidence and that I am unable to disclose the information at this time.

However, I can disclose that the "free on rail price" (ex mine) at Cobbora is fixed to all parties. The 'free on rail' price does not include transport to power stations or mining royalties. The price is adjusted with regard to a number of published indices including CPI, materials, fuel and labour.

Cobbora Coal Contracts involve delivered costs of coal some 25% to 50% higher than current average delivered coal costs to the Central Coast and Hunter Valley power stations.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 1

Transcript Page Reference: N/A

Question from: Reverend the Hon. F. J. Nile (Chair)

If the assets in the Eraring Energy and Delta West contract bundles are not sold, exactly how much compensation will be owed to Origin Energy and TRUenergy?

Answer:

The Government has signed legally binding contracts with both Origin Energy and TRUenergy.

A failure by the State to complete the transactions would be expected to amount to a breach of these binding contracts.

Any remedy for breach of contract would be a matter for the courts. Treasury is not in a position to speculate about what compensation a court may determine in the event of a breach of contract by the Government.

As an alternative to monetary compensation, it is also possible that a court might grant an order compelling the State Owned Corporations to proceed with the transactions.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 2, 3 & 4

Transcript Page Reference: N/A

Question from: Opposition

2. *Please detail the nature of the correspondence from Macquarie Generation to the Government Transaction team outlining their concerns about the structure of the sale.*
3. *How many pieces of correspondence were there from Macquarie Generation relating to their concerns about the structure of the sale?*
4. *Did the Government or the Government transaction team ever reply to the submissions in the correspondence from Macquarie Generation? If not, why not?*

Answer:

The Board of Macquarie Generation has been receiving regular reports from Treasury and their Management on the continuing development of the NSW Energy Reform process, and in particular, on the continuing development and understanding of the workings and implications of the proposed Gentrader Agreements (GTA).

In accordance with Government sale processes, a Due Diligence Committee was established, under the Energy Reform Taskforce, to oversee the sale process. Representatives from NSW Treasury, the State's advisers and Macquarie Generation Management attended weekly meetings to oversee the due diligence and transition process, and the development of the provisions of the proposed GTA for Macquarie Gentrader Bundle.

Correspondence between Macquarie Generation and the Government were exchanged in respect of the concerns that the operation of the GTA may result in significant funding and solvency issues for the Corporation in early December 2010. The Energy Reform Taskforce did advise Macquarie Generation Board in October 2010 of plans to recapitalise the Macquarie Generation Balance Sheet post execution of the GTAs.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 5

Transcript Page Reference: N/A

Question from: Opposition

Please give a breakdown in the transaction costs and separation costs associated with each part of the sale.

Answer:

Transaction costs

Transaction costs are estimated at \$200 million.

Separation Costs

Total separation costs are estimated as \$210 million in NPV terms, based on information provided by the retail State-Owned Corporations (SOCs).

Breakdown of these costs by SOC, as follows:

EnergyAustralia	\$120m
Integral Energy	\$60m
Country Energy	\$30m
Total	\$210m

Estimated separation costs are preliminary and subject to review.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

10 February 2011

Question No. 6

Transcript Page Reference: N/A

Question from: Opposition

Are there in existence any independent or other reports into cost/plans for developing the Cobbora coal mine. If so, please give an executive summary of those reports.

Answer:

Independent reports have been prepared on the Cobbora Project, including the mine, rail requirements and water requirements. However these are considered commercial-in-confidence as they may prejudice the offers resulting from the next invitations to tender.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 7

Transcript Page Reference: N/A

Question from: Opposition

Now that the Gentrader sale process has completed, please provide a final breakdown of all advisory and consulting fees in relation to the Gentrader process; including:

- a. the name of the person / organization;*
- b. the amount paid;*
- c. the nature of the advice; and*
- d. dates of services provided.*

Answer:

Financial close is anticipated 1 March 2011. It is anticipated the total transaction costs at financial close will be \$200 million, including success fees.

The total costs paid for period from 17 December 2007 to 1 February 2011 are \$170.6 million inclusive of GST.

Breakdown of advisory costs, as follows:

				Total Costs FY07-11 (inc GST)
				\$ 170,601,578
Financial Advisors	<i>Lazard Carnegie Wylie</i>	Provides financial advice to the Project, SOC Vendor due diligence (Dec 2007 - present)	Actual	\$ 2,869,879
	<i>Credit Suisse</i>	Provides financial advice to the Project, SOC Vendor due diligence (Dec 2007 - present)	Actual	\$ 8,710,431
Accounting & Tax Advisor	<i>Ernst & Young</i>	Provides accounting and tax to the Project, SOC Vendor due diligence (Dec 2007 - present)	Actual	\$ 32,733,622
Legal Advisors	<i>Baker & McKenzie</i>	Provides legal advice to the Project, SOC Vendor due diligence (Dec 2007 to present)	Actual	\$ 28,501,956
	<i>Gilbert & Tobin</i>	Provided advice on ACCC issues (Dec 2007 - 31 Mar 2008)	Actual	\$ 161,923
	<i>Freehills</i>	Provided legal advice on cross border lease (May 2008 - Dec 2009) and Gentrader legal advice (Mar 2003 - Feb 2010)	Actual	\$ 2,541,310
	<i>Johnson Winter & Slattery</i>	Provided Gentrader legal advice to the Project (Mar 2010 to 31 Jan 2011)	Actual	\$ 9,845,634
Market Consultant	<i>Frontier Economics</i>	Provided advice on ACCC and competition issues advice - (Dec 2007 - 31 Mar 08); provided market consultancy advice (01 Apr 2008 - 31 Jan 2011)	Actual	\$ 19,739,496
Communication Advisor	<i>Cosway Australia</i>	Provides communications and issue management support to the Project (Mar 2000 - present)	Actual	\$ 1,713,231
	<i>Gavin Anderson</i>	Provides communications and issue management support to the Project (Mar 2008 - present)	Actual	\$ 1,461,512
IT Advisor	<i>KPMG</i>	Provides IT advice to the Project, SOC Vendor due diligence (Feb 2008 - present)	Actual	\$ 8,578,902
Engineering & Environment Advisor	<i>WorleyParsons</i>	Provides engineering & environmental advice to the Project, SOC Vendor due diligence (Mar 2008 - present)	Actual	\$ 5,589,757
Probity Advisor	<i>RSM Bird Cameron</i>	Provides probity and conflict management advice to the Project (Feb 2008 - present)	Actual	\$ 1,248,111
Auditor General	<i>Probity Review, AG Report (Lexicon)</i>	Contracted to the AG, cost incurred by NSW Treasury	Actual	\$ 912,192
Rural Community Impact Advisor	<i>GHD</i>	Providing advice for the Rural Community Impact Statement	Actual	\$ 59,620
Data room Provider	<i>Ansarada</i>	Provides bidder data room facilities to the Project (Oct 2009 - present)	Actual	\$ 152,703
Gentrader Financial Modelling Consultant	<i>SFG Consulting</i>	Provided financial market advice to the Project (Jun - Dec 2010)	Actual	\$ 219,807
Gentrader Insurance Consultant	<i>AON Risk Services</i>	Provided insurance advice on the Gentrader contracts (Jul - Dec 2010)	Actual	\$ 44,000
Actuarial Advisor	<i>Mercer</i>	Provides actuarial advice to the Project (April 2008 to present)	Actual	\$ 98,981
IPO Management Consultant	<i>LEK Consulting</i>	Provides IPO advice (Jul - Dec 2010)	Actual	\$ 354,405
Contractor	<i>Col Gellatly & Associates</i>	Chairman of the Energy Reform Steering Committee (Nov 2009 - present)	Actual	\$ 436,900
Contractor	<i>John Dermody & Associates</i>	Project Direction (Feb 2010 - present)	Actual	\$ 625,040
Contractor	<i>Kim Yeadon Consulting</i>	Chairman, Gentrader Working Group (Feb 2010 - present)	Actual	\$ 423,001
Other			Actual	\$ 43,795,266

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 8

Transcript Page Reference: N/A

Question from: Opposition

Please outline a complete list of the 'retention values,' determined by NSW Treasury for each of the individual electricity assets and for the bundles.

Answer:

This is a matter for Budget Committee of Cabinet. Deliberations of Cabinet are confidential.

The Auditor General will report on the transaction and will be given access to the retention valuations under the provisions of commercial-in-confidence information.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

10 February 2011

Question No. 9

Transcript Page Reference: N/A

Question from: Opposition

At the beginning of the sale process, did either of the Government's financial advisers, Credit Suisse or Lazard prepare a preliminary valuation for the Government?

- a. What was this valuation?*
- b. Please release any valuation materials Credit Suisse or Lazard gave to the Government at the beginning of the process.*

Answer:

A preliminary valuation was provided to the Government in June 2008. The valuation was based on a process of leasing the existing State-owned Generation businesses to the private sector. We are unable to provide a copy of the report as it was considered by Budget Committee of Cabinet.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 10, 11 & 12

Transcript Page Reference: N/A

Question from: Opposition

To what extent were you involved in the process of designing the Gentrader model and sale?

On what dates did you brief the Premier on the Gentrader model?

On what dates did you brief the Treasurer on the Gentrader model?

Answer:

The Government's strategy of transferring trading rights of the State-owned generation businesses to the private sector (commonly known as 'Gentrader') was announced in early November 2008.

At that time, the former Minister for Finance, the Hon Joseph Tripodi MP, had Ministerial responsibility for the Project.

In developing the transaction strategy, there were frequent meetings involving Minister Tripodi, the Department of Industry and Investment, and Treasury.

Treasury briefed the Treasurer and the Premier's office on key aspects of the proposed strategy before its announcement on 10 September 2009.

Following the announcement of the Government's transaction strategy,

- Dr Col Gellatly was appointed as Executive Director and chairman of the Energy Reform Steering Committee, reporting directly to the Treasurer. Treasury was represented on the Steering Committee by two Deputy Secretaries, Mr Richard Timbs and Mr Kevin Cosgriff.
- The Treasurer was given responsibility for the Project, following the departure of Minister Tripodi from the Ministry on 17 November 2009:

The Treasurer received regular briefings from Dr Gellatly when the details of the Gentrader contracts were being developed throughout 2010.

As members of the Budget Committee of Cabinet, the Premier and Treasurer received briefing materials at key decision points throughout the process, such as:

- transaction strategy;
- employee and consumer protection packages;
- development of the Gentrader contracts and associated risk allocation;

-
- the evaluation of the Request for Expressions of Interest; and
 - the evaluation of the Request for Binding Bids.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 13

Transcript Page Reference: N/A

Question from: Opposition

Could you expand on what you meant by the phrase “next best option” with regards to the Gentrader model?

Answer:

Since late 2007, the Government had a clear desire to exit the competitive elements of the electricity industry, in order to encourage private sector investment in new generation capacity.

In August 2008, there was a lack of Parliamentary support for the original transaction strategy, which included long-term leases of the State-owned generation businesses. Given this legislative constraint and the continuing desire to encourage private investment, the Government moved to what successive Treasury Secretaries have described as ‘the next best option’.

The term ‘next best option’ represents more a statement of fact than an opinion, given that the Government’s originally preferred approach was no longer available.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 14

Transcript Page Reference: N/A

Question from: Opposition

Were the net proceeds of the Gentrader model, in your opinion, the best value outcome for the people of NSW?

Answer:

The Government received highly competitive binding bids from credible domestic and international organisations.

These transactions have been assessed against the retention value and for each package the proceeds significantly exceed retention value in totality.

As a result NSW taxpayers are financially better off as a result of these transactions when compared to the retention scenario.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 15 & 16

Transcript Page Reference: N/A

Question from: Opposition

Can you explain why the Loss of Financial Distributions and Government Guarantee Fees identified in the Update to the Statement of Uncommitted Funds, is forecast to decline to just \$123m in 2013/14?

Answer:

The projected Financial Distributions and Government Guarantee Fees reflect the underlying assumptions which impact the cashflow forecasts for the Government businesses. A material contributing factor to the change shown in 2013/14 is the assumptions around the commencement of carbon costs impacting the generation businesses.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 17

Transcript Page Reference: N/A

Question from: Opposition

When is the development of the Cobbora coal mine forecast to start and finish? Please provide a year-by-year breakdown of capital expenditure.

Answer:

The current estimated cost for developing the Cobbora coal is about \$1.3 to \$1.5 billion depending on final mine size. Expenditure will be undertaken through a newly established wholly owned incorporated entity.

Direct capital expenditure of \$43 million for the period ending June 2014 was included in the Half Yearly Review released in December 2010. It is anticipated that an additional \$40 million will be incurred on other activities, such as exploration drilling and invitations to tender over the Forward Estimates period.

Details of year by year expenditure are shown below.

Financial Year	2011 AUD \$m	2012 AUD \$m	2013 AUD \$m	2014 AUD \$m	Total AUD\$m
Mine Capex			10	27	37
Rail Capex			1	5	6
Total Direct Capex			11	32	43
Other Expenditure	19	11	10		40

Typical of mine developments of this type, the majority of the capital expenditure (approximately 60%), including costs for rail spur, will occur in the year before coal production commences (i.e. 2015).

The remaining capital expenditure will occur one to two years after production coal production commences with an estimated finish date of 2016-17.

Expenditure forecasts are preliminary and subject to review.

QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER TRANSACTIONS

10 February 2011

Question No. 18

Transcript Page Reference: N/A

Question from: Opposition

A key objective of the sale process was to introduce a new generator entrant into the NSW electricity market. By selling the assets to two existing suppliers, there is no new entrant. Is it your view that the Government failed this stated objective?

Answer:

The Government's objectives for its energy reforms, as outlined in the Strategy document released in September 2009, include to "*deliver a competitive retail and wholesale electricity market in NSW to increase the potential for the sector to respond dynamically and innovatively to market forces and opportunities.*"

The overarching objectives did not explicitly include introducing a new entrant. Securing a new entrant was however seen as a way of achieving the competition objective.

It is important to recognise that competition outcomes in any merger or acquisition are a matter for the ACCC. The NSW Government is the vendor in its electricity reform process, not the competition regulator.

The ACCC supported the first tranche transactions. In response to merger clearance requests from Origin and AGL, the ACCC announced in December 2010 that potential acquisitions were unlikely to result in a substantial lessening of competition. In addition, all bidders were required to obtain ACCC clearance as part of their binding offers.

**QUESTION ON NOTICE – INQUIRY INTO THE GENTRADER
TRANSACTIONS**

10 February 2011

Question No. 19

Transcript Page Reference: N/A

Question from: Opposition

Will Macquarie Generation and the half of Delta Electricity that are not being privatised still receive subsidised coal from Cobbora mine?

Answer:

Macquarie Generation and Delta Electricity 'Coastal' will be offered the Cobbora Coal Contracts, under the same conditions as the private sector Gentraders.

The Government will not be subsidising coal. Cobbora Coal Contracts involve delivered costs of coal some 25% to 50% higher than current average delivered coal costs to the Central Coast and Hunter Valley power stations.

Appendix 9 Minutes

Minutes No. 45

Thursday 23 December 2010

General Purpose Standing Committee No. 1

Members Lounge, Parliament House, Sydney, at 2.00 pm

1. Members present

Revd Fred Nile (*Chairman*)

Mr Trevor Khan (*Pavey*)

Mr Greg Pearce (*Mason-Cox*)

Mr David Shoebridge (*Kaye*)

2. Request from the media to film committee proceedings

Resolved, on the motion of Mr Shoebridge: That the media be permitted to take still photographs and silent film of the Committee prior to the commencement of the Committee's deliberations.

The Chairman advised that he had received advice from the Acting President that the media is not authorised to film proceedings in the Members Lounge.

Resolved, on the motion of Mr Pearce: That the Committee reconvene in the Parkes Room, and allow the media to film the Committee prior to the commencement of the Committee's deliberations.

3. Filming of Committee proceedings

The Committee reconvened in the Parkes Room, Parliament House.

The media were admitted.

The media proceeded to film and take photographs of the Committee.

The media withdrew.

4. Substitutions

Mr Shoebridge for Dr Kaye.

Mr Khan for Ms Pavey, for the duration of the Inquiry into the Gentrader transactions.

Mr Pearce for Mr Mason-Cox, for the duration of the Inquiry into the Gentrader transactions.

5. Procedural advice regarding the validity of the Committee

The Committee discussed the validity of the Committee and the proposed inquiry into the Gentrader transactions.

The Committee noted the procedural advice regarding the status of standing committees after prorogation in Lovelock & Evans' New South Wales Legislative Council Practice, and Odgers' Australian Senate Practice.

The Committee noted Standing Order 206 – that standing committees have power to sit 'during the life of the Parliament'.

The Chairman tabled the following documents:

- Advice from the Clerk of the Parliaments to the Chairman, regarding the effect of prorogation on General Purpose Standing Committee No. 1, dated 22 December 2010

- Email from Mr Michael Galderisi, Acting Chief of Staff, Office of the Treasurer of NSW, to the Chairman, regarding concerns about the potential impact of the proposed inquiry on the NSW Energy Reform transactions, dated 21 December 2010
- Advice from the Crown Solicitor to the Clerk of the Legislative Assembly, regarding the status of standing committees after prorogation, dated 13 December 1994
- Document from government members highlighting the following three concerns with the proposed Gentrader transactions inquiry: parliamentary privilege; confidential documents; and the power to compel witnesses.

Resolved, on the motion of Mr Shoebridge: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the Advice from the Clerk of the Parliaments, dated 22 December 2010.

Resolved, on the motion of Mr Pearce That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the email from Mr Michael Galderisi, Acting Chief of Staff, Office of the Treasurer of NSW, dated 21 December 2010.

Resolved, on the motion of Mr Khan: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the document from government members highlighting three concerns with the proposed Gentrader transactions inquiry.

Resolved, on the motion of Mr Pearce: That the Clerk prepare a statement on the contested status of committee proceedings after prorogation and the procedural protection of witnesses, to be read by the Chairman to witnesses during Gentrader transaction inquiry hearings.

Mr Khan tabled a media release from Mr Donnelly, Ms Griffin and Mr Foley, regarding their decision not to attend the Committee meeting.

6. Draft minutes

The Committee deferred consideration of Draft Minutes No. 44.

7. Correspondence

The Committee noted the following items of correspondence received:

- 22 December 2010 – Letter from Revd Nile, Mr Mason-Cox and Ms Pavey requesting a meeting of GPSC1 to consider a proposed self reference into the Gentrader transactions.
- 22 December 2010 - Substitution advice from Dr John Kaye that Mr David Shoebridge would be substituting for Dr Kaye for the deliberative meeting of 23 December 2010.
- 22 December 2010 – Substitution advice from the Government Whip advising that Mr Greg Donnelly would be substituting for Mr Ian West for the for the deliberative meeting of 23 December 2010.
- 22 December 2010 – Substitution advice from the Opposition Whip that Mr Trevor Khan would be substituting for Ms Melinda Pavey, and that Mr Greg Pearce would be substituting for Mr Matthew Mason-Cox, for the duration of the Inquiry into the Gentrader transactions.

8. Consideration of proposed self reference – Gentrader transactions

Resolved, on the motion of Mr Shoebridge: That the proposed terms of reference encompass the following two matters:

- The relationship of the Cobbora coal mine development with the Gentrader transactions, including the costs of developing the mine, subsidies to be given on the coal sold to power generators from the mine, and the impact of any subsidies on the renewable energy market; and
- The circumstances surrounding the appointment of new directors to the boards of Eraring Energy and Delta Electricity.

Resolved, on the motion of Mr Khan: That the Committee adopt the following terms of reference:

'That General Purpose Standing Committee No. 1 inquire into and report on the following aspects of the Government Energy Reform Strategy announced on 15 December 2010:

1. The details of the energy reform transactions completed on Tuesday 14 December 2010,
2. The circumstances that led to the resignation of directors from Eraring Energy and Delta Electricity,
3. The impact the transaction will have on current and future electricity prices, competition in the electricity market, and the value obtained for NSW taxpayers, and
4. Other related matters.'

Resolved, on the motion of Mr Pearce: That the closing date for submissions be Friday 14 January 2011.

Resolved, on the motion of Mr Shoebridge: That the inquiry and call for submissions be advertised at the earliest practicable date in:

- The Sydney Morning Herald
- Daily Telegraph
- The Australian
- Financial Review
- Newcastle Herald.

Resolved, on the motion of Mr Khan: That public hearings be held at Parliament House on Monday 17 and Tuesday 18 January 2011, with reserve dates set aside on Friday 21 January and Monday 24 January 2011 if needed.

Resolved, on the motion of Mr Pearce: That the following witnesses be invited to give evidence, together with a relevant expert as advised by email to the Clerk Assistant – Committees by 12pm on Friday 24 December 2010:

- The Treasurer
- Minister for Energy
- Mr Ross Bunyon AM, former Chairman, Eraring Energy
- Mr Michael Vertigan AC, former Director, Eraring Energy
- Mr Dean Pritchard, former Director, Eraring Energy
- Mr Tony Maher, former Director, Eraring Energy
- Dr Col Gellatly, Director, Eraring Energy
- Mr John Dermody, Director, Delta Electricity
- Mr Jim Henness, former Chief Executive and Director, Delta Electricity
- Mr Loftus Harris, former Director, Delta Electricity
- Mr Michael Knight AO, former Director, Delta Electricity
- Mr Paul Forward, former Director, Delta Electricity

- Ms Sandra Moait, former Director, Delta Electricity
- Ms Jan McClelland, Director, Delta Electricity
- Mr Kim Yeadon, Director, Delta Electricity
- Mr Grant Every-Burns, CEO and Managing Director, Macquarie Generation
- Mr Michael Schur, Secretary to the NSW Treasury
- Mr Kevin Cosgriff, Deputy Secretary Fiscal, NSW Treasury
- Dr Richard Sheldrake, Director General, Department of Industry and Investment.

Resolved, on the motion of Mr Shoebridge: That the inquiry reporting date be Monday 31 January 2011.

Resolved, on the motion of Mr Pearce: That the Chairman be authorised to make media statements on behalf of the Committee.

9. Adjournment

The Committee adjourned at 2:55 pm until 9:45 am on Monday 17 January 2011.

Steven Reynolds

Clerk to the Committee

Minutes No. 46

Monday 17 January 2011

General Purpose Standing Committee No. 1

Jubilee Room, Parliament House, Sydney, at 9.30 am

1. Members present

Revd Fred Nile (*Chairman*)

Ms Kayee Griffin (*Deputy Chair*)

Mr Greg Donnelly (*West*)

Mr Luke Foley

Dr John Kaye

Mr Trevor Khan

Mr Greg Pearce

2. Substitutions

Mr Donnelly for Mr West.

3. Draft minutes

Resolved, on the motion of Mr Khan: That draft Minutes No. 45 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence received:

- 2 January 2011 – Email from Mr Paul Miller, Department of Premier & Cabinet, to the Chairman, forwarding advice from the Crown Solicitor regarding the effect of prorogation on standing committees.
- 5 January 2011 – Email from Mr Michael Vertigan AC, former Director, Eraring Energy, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions, as he is unavailable until February.
- 8 January 2011 – Email from Mr Dean Pritchard, former Director, Eraring Energy, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions.

- 10 January 2011 – Letter from Mr Ross Bunyon AM, former Chairman, Eraring Energy, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions due to concerns about parliamentary privilege.
- 10 January 2011 – Letter from Mr Tony Maher, former Director, Eraring Energy, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions.
- 10 January 2011 – Letter from Mr Grant Every-Burns, CEO and Managing Director, Macquarie Generation, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions.
- 10 January 2011 – Letter from Mr Paul Forward, former Director, Delta Electricity, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions.
- 10 January 2011 – Letter from Mr Michael Knight AO, former Director, Delta Electricity, to the Chairman, declining the Committee's invitation to attend a hearing into the Gentrader transactions due to concerns about parliamentary privilege.
- 10 January 2011 – Email from Mr Loftus Harris, former Director, Delta Electricity, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions.
- 10 January 2011 – Email from Mr Kim Yeadon, Director, Delta Electricity, to A/Director, accepting the Committee's invitation to attend a hearing into the Gentrader transactions.
- 10 January 2011 – Email from Ms Sandra Moait, former Director, Delta Electricity, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions.
- 10 January 2011 – Letter from Mr Michael Schur, Secretary, NSW Treasury, to A/Director, accepting the Committee's invitation to attend a hearing into the Gentrader transactions, and advising that two Deputy Secretaries – Mr Kevin Cosgriff and Mr Richard Timbs – would accompany him.
- 11 January 2011 – Letter from Mr James Hennes, former Chief Executive and Director, Delta Electricity, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions.
- 12 January 2011 – Letter from Mr Richard Sheldrake, Director General, Department of Industry and Investment, to A/Director, declining the Committee's invitation to attend a hearing into the Gentrader transactions on the basis that he has no knowledge of the matters outlined in the Committee's terms of reference.
- 12 January 2011 – Letter from Ms Jan McLelland, Director, Delta Electricity, declining the Committee's invitation to attend a hearing into the Gentrader Transactions due to concerns about parliamentary privilege.
- 12 January 2011 – Procedural advice from the Clerk of the Parliaments, Ms Lynn Lovelock, to the Committee, regarding the summoning of witnesses.
- 13 January 2011 – Substitution advice from Government Whip advising that Mr Greg Donnelly will be substituting for Mr Ian West for the hearings into the Gentrader transactions on 17 and 18 January 2011.
- 13 January 2011 – Substitution advice from Government Whip advising that Ms Sophie Cotsis will be substituting for Ms Kayee Griffin for the hearings into the Gentrader transactions on 17 and 18 January 2011.
- 13 January 2011 – Email from Ms Katrina Cutajar, CFMEU Mining & Energy, in response to email of 13 January 2011 from A/Director (on behalf of the Chairman), advising that Mr Tony Maher, former Director, Eraring Energy, is still unable to attend a hearing into the Gentrader transactions as he is on annual leave and has family commitments.
- 13 January 2011 – Email from Mr Dean Pritchard, former Director, Eraring Energy, in response to email of 13 January 2011 from A/Director (on behalf of the Chairman), still declining the Committee's invitation to attend a hearing into the Gentrader transactions.
- 14 January 2011 – Email from Ms Sandra Moait, former Director, Delta Electricity, in response to email of 13 January 2011 from A/Director (on behalf of the Chairman), still declining the Committee's invitation to attend a hearing into the Gentrader transactions.

-
- 17 January 2011 - Advice from Government Whip advising that Ms Sophie Cotsis would no longer be substituting for Ms Kayee Griffin, as Ms Griffin can now attend all of the hearings into the Gentrader transactions.

The Committee noted the following items of correspondence sent:

- 24 December 2010 – Letter from A/Director to the following proposed witnesses, inviting them to give evidence before the Committee regarding its inquiry into the Gentrader transactions:
 - The Treasurer
 - Minister for Energy
 - Mr Ross Bunyon AM, former Chairman, Eraring Energy
 - Mr Michael Vertigan AC, former Director, Eraring Energy
 - Mr Dean Pritchard, former Director, Eraring Energy
 - Mr Tony Maher, former Director, Eraring Energy
 - Dr Col Gellatly, Director, Eraring Energy
 - Mr Kim Yeadon, Director, Delta Electricity
 - Mr John Dermody, Director, Delta Electricity
 - Mr Jim Henness, former Chief Executive and Director, Delta Electricity
 - Mr Loftus Harris, former Director, Delta Electricity
 - Mr Michael Knight AO, former Director, Delta Electricity
 - Mr Paul Forward, former Director, Delta Electricity
 - Ms Sandra Moait, former Director, Delta Electricity
 - Ms Jan McClelland, Director, Delta Electricity
 - Mr Grant Every-Burns, CEO and Managing Director, Macquarie Generation
 - Mr Michael Schur, Secretary to the NSW Treasury
 - Mr Kevin Cosgriff, Deputy Secretary Fiscal, NSW Treasury
 - Dr Richard Sheldrake, Director General, Department of Industry and Investment
 - Professor Hugh Outhred, School of Electrical Engineering & Telecommunications, University of New South Wales.
- 10 January 2011 – Letter from A/Director to the Premier, inviting the Premier to give evidence before the Committee regarding its inquiry into the Gentrader transactions.
- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Mr Ross Bunyon AM, former Chairman, Eraring Energy, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.
- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Mr Dean Pritchard, former Director, Eraring Energy, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.
- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Mr Tony Maher, former Director, Eraring Energy, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.
- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Mr Jim Henness, former Chief Executive and Director, Delta Electricity, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.
- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Mr Loftus Harris, former Director, Delta Electricity, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.
- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Mr Michael Knight AO, former Director, Delta Electricity, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.
- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Mr Paul Forward, former Director, Delta Electricity, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.

- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Ms Sandra Moait, former Director, Delta Electricity, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.
- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Ms Jan McLelland, Director, Delta Electricity, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.
- 13 January 2011 – Email from A/Director (on behalf of the Chairman) to Mr Grant Every-Burns, CEO and Managing Director, Macquarie Generation, forwarding advice from the Clerk of the Parliaments to the President re: effect of prorogation on committees.

5. Tabled documents

The Chairman tabled the following documents:

- Advice from the Clerk of the Parliaments, Ms Lynn Lovelock, to the President, regarding the effect of prorogation on committees, dated 11 January 2011.
- Statement by the President of the Legislative Council on the Gentrader transactions inquiry, dated 12 January 2011.

6. Broadcasting of hearings

Resolved, on the motion of Dr Kaye: That under the Legislative Council broadcasting guidelines, the Committee authorise the Sydney Morning Herald, Daily Telegraph, ABC2 and any other news outlet accredited by the Parliamentary Press Gallery, to broadcast the public proceedings of any of the hearings of the Gentrader Transactions Inquiry live on their news websites or digital television channels.

7. Inquiry into the Gentrader transactions

7.1 Submissions

Resolved, on the motion of Mr Khan: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submissions No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 43.

Resolved, on the motion of Mr Pearce: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the partial publication, with names suppressed, of Submissions No. 17, 19, 23, 27, 32 and 42.

7.2 Questions on notice

Resolved, on the motion of Mr Pearce: That answers to questions taken on notice during the hearings of 17 and 18 January 2011 be provided within 7 days.

7.3 Report format

Resolved, on the motion of Dr Kaye: That the Chairman's draft report consist of an introductory chapter, the transcripts of hearing and answers to questions on notice.

7.4 Date to consider Chairman's draft report

Resolved, on the motion of Mr Foley: That the Committee consider the Chairman's draft report at a deliberative meeting on Thursday 27 January 2011, commencing at 9am.

7.5 Summoning witnesses

Dr Kaye moved: That

1) Recognising that

a. the advice of the Clerk of the Parliaments that "the issuing of a summons is a significant coercive power that should only be used as a measure of last resort", but

b. the serious nature of this inquiry and the potential for substantial economic harm to the state of NSW from the gentrader contracts warrants the use of that power in the case of directors and former directors who could be able to provide important information,

the Committee resolves under s. 4(2) of the *Parliamentary Evidence Act 1901* to issue summonses to appear on the reserve date of Monday 24 January 2011 to the following witnesses:

- Mr Ross Bunyon AM, former Chairman, Eraring Energy
- Mr Tony Maher, former Director, Eraring Energy
- Mr James Henness, former Chief Executive and Director, Delta Electricity
- Mr John Dermody, Director, Delta Electricity
- Mr Michael Knight AO, former Director, Delta Electricity
- Mr Loftus Harris, former Director, Delta Electricity
- Mr Paul Forward, former Director, Delta Electricity

2) That the Clerk of the Parliaments be requested to obtain advice from leading senior counsel relating to the exposure to subsequent civil penalty of witnesses who:

- have been summoned to appear before a committee of the NSW Legislative Council,
- decline to appear before that committee, and
- then subsequently are ordered to appear by a Supreme Court Judge under sections 7 - 9 of the *Parliamentary Evidence Act 1901*.

The advice is to address the following question:

could any witness thus ordered to appear and answer questions subsequently be exposed to civil fines, damages or other penalties for the act of complying with the order and attending and providing answers to questions put to them by the committee.

The advice is to consider the particular circumstances of a committee of the NSW Legislative Council sitting after the Parliament has been prorogued.

The Clerk of the Parliaments is requested to obtain this advice and provide it to the Committee before Friday 21 January 2011.

Mr Donnelly moved that the motion of Dr Kaye be amended by inserting a new paragraph at the end of point 1) to read:

Any witnesses summoned before the Committee will be authorised under standing order 225 to be represented by counsel or a solicitor, at their own expense.

Amendment put and passed.

Original question, as amended, put.

The Committee divided:

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin.

Question resolved in the affirmative.

7.6 Public hearing

Witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding the effect of prorogation on committees, broadcasting of proceedings and other matters.

The Chairman noted that the Premier and the Treasurer did not need to be sworn as they had each had sworn an oath of office.

The following witnesses were sworn and examined:

- Dr Col Gellatly, Director, Eraring Energy
- Mr Kim Yeadon, Director, Delta Electricity.

Mr Roozendaal tendered the following documents:

- Chart 1 – Transaction Structure
- Chart 2 – Energy Reform Project
- NSW Energy Reform Project – Transaction Timeline 2009-2010
- NSW Energy Reform Project Board Briefing Chronology.

Resolved, on the motion of Dr Kaye: That the Committee accept the following documents tendered by Mr Roozendaal:

- Chart 1 – Transaction Structure
- Chart 2 – Energy Reform Project
- NSW Energy Reform Project – Transaction Timeline 2009-2010
- NSW Energy Reform Project Board Briefing Chronology.

The evidence concluded and the witnesses withdrew.

The public hearing concluded.

The public and media withdrew.

8. Submission 45

Resolved, on the motion of Mr Pearce: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submission No. 45.

9. Additional witnesses

Resolved, on the motion of Dr Kaye: That the Committee invite the Leader of the Opposition, Mr Barry O'Farrell MP, and Shadow Treasurer, Mr Mike Baird MP, to give evidence before the committee on either 18, 21 or 24 January 2011.

10. Media release

Resolved, on the motion of Mr Khan: That the secretariat prepare a media release regarding the Committee's decision to summon former directors and invite additional witnesses.

11. Adjournment

The Committee adjourned at 1:17 pm until 9:45 am on Tuesday 18 January 2011.

Teresa McMichael
Clerk to the Committee

Minutes No. 47

Tuesday 18 January 2011

General Purpose Standing Committee No. 1

Jubilee Room, Parliament House, Sydney, at 9.50 am

1. Members present

Revd Fred Nile (*Chairman*)
Ms Kayee Griffin (*Deputy Chair*)
Mr Greg Donnelly (*West*)
Mr Luke Foley
Dr John Kaye
Mr Trevor Khan
Mr Greg Pearce

2. Substitutions

Mr Donnelly for Mr West.

3. Tabled document

Resolved, on the motion of Dr Kaye: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of the advice from the Clerk of the Parliaments to the President of the Legislative Council, dated 11 January 2011.

4. Inquiry into the Gentrader transactions

4.1 Submissions

Resolved, on the motion of Mr Pearce: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submissions No. 44,²¹⁷ 46, 48, 49, 50, 51 and 52.

Resolved, on the motion of Mr Pearce: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the partial publication, with name suppressed, of Submission No. 47.

Resolved, on the motion of Mr Khan: That the Committee keep Submission No. 44 confidential.

4.2 Additional witnesses

Resolved, on the motion of Mr Pearce: That the Committee invite the directors from Delta Electricity and Eraring Energy who did not resign to give evidence before the committee on Friday 21 January 2011.

²¹⁷ Submission No. 44 was originally made confidential by resolution of the Committee on 18 January 2011, by request of the author. The Committee subsequently changed the submission to public on 10 February 2011, following a subsequent request from the submission author (see Minutes No. 52).

: -

Resolved, on the motion of Dr Kaye: That under s 4(2) of the *Parliamentary Evidence Act 1901*, the Committee issue summonses to the following witnesses to appear on the reserve date of Monday 24 January 2011:

- Ms Sandra Moait, former Director, Delta Electricity
- Mr Michael Vertigan AC, former Director, Eraring Energy
- Mr Dean Pritchard, former Director, Eraring Energy.

Resolved, on the motion of Dr Kaye: That the former directors be scheduled to appear in pairs or small groups over staggered timeslots, and that newly appointed director, Mr John Dermody, appear on his own.

Dr Kaye moved: That the Leader of the Opposition and Shadow Treasurer be invited to appear before the Committee from 9am - 11am on Monday 24 January 2011.

Mr Khan moved: That the motion of Dr Kaye be amended by omitting the words '9am to 11am' and inserting instead '9am to 10am'.

Amendment put.

The Committee divided.

Ayes: Mr Khan, Mr Pearce

Noes: Revd Nile, Mr Donnelly, Mr Foley, Ms Griffin, Dr Kaye.

Question resolved in the negative.

Original question, put and passed.

4.3 Public hearing

Witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from NSW Treasury were sworn and examined:

- Mr Michael Schur, Secretary
- Mr Kevin Cosgriff, Deputy Secretary, Fiscal and Economic Directorate
- Mr Richard Timbs, Deputy Secretary, Commercial Management Directorate.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Professor Hugh Outhred, School of Electrical Engineering and Telecommunications, University of New South Wales.

The evidence concluded and the witness withdrew.

The public hearing concluded.

The public and the media withdrew.

4.4 Hearing schedules

Resolved, on the motion of Mr Khan: That further to the Committee's earlier resolution, that the witnesses for Monday 24 January 2011 be summoned to appear according to the following schedule of times:

11am – 11.45am	Mr John Dermody, Director, Delta Electricity
11.45am – 12.45pm	Mr Michael Knight and Mr Paul Forward, former Directors, Delta Electricity
12.45 – 1pm	Lunch break
2pm – 3.15pm	Mr Ross Bunyon, Mr Tony Maher, Mr Michael Vertigan and Mr Dean Pritchard, former Directors, Eraring Energy
3.15pm – 3.30pm	Break
3.30pm – 4.45pm	Mr James Hennes, Mr Loftus Harris and Ms Sandra Moait, former Directors, Delta Electricity.

Resolved, on the motion of Mr Khan: That the hearing schedule for Friday 21 January 2011 be as follows:

10am – 11.30am	Current Directors of Delta Electricity
11.30am – 1pm	Current Directors of Eraring Energy.

Resolved, on the motion of Mr Pearce: That a copy of the proposed schedules be circulated to witnesses.

4.4 Additional questions on notice

Resolved, on the motion of Dr Kaye: That additional questions on notice be provided to the secretariat by 5pm Tuesday 18 January (for witnesses from 17 January), and 12pm Wednesday 19 January (for witnesses from 18 January).

4.5 Order for papers

Mr Khan moved:

1. That, under standing order 208(c), General Purpose Standing Committee No. 1 be provided with the following documents in the possession, custody or control of the Premier, the Department of Premier and Cabinet, the Treasurer, NSW Treasury, Eraring Energy, Delta Electricity, Macquarie Generation, and/or the NSW Electricity Reform Project Office:

- (a) all documents which record or refer to any communication since 1 December 2010, relating to energy reform transactions, between the Treasurer, the Office of the Treasurer, NSW Treasury, the Premier, the Office of the Premier, the Department of Premier and Cabinet or NSW Electricity Reform Project Office and:
 - (i) the Board of Directors, individual Directors, and/or the Chief Executive Officer of Eraring Energy
 - (ii) the Board of Directors, individual Directors, and/or the Chief Executive Officer of Delta Electricity
 - (iii) the Board of Directors, individual Directors, and/or the Chief Executive Officer of Macquarie Generation

- (b) all documents which record or refer to meetings held since 1 July 2010 between the Treasurer, the Office of the Treasurer, NSW Treasury, the Premier, the Office of the Premier, the Department of Premier and Cabinet or NSW Electricity Reform Project Office and:
- (i) the Board of Directors, individual Directors, and/or the Chief Executive Officer of Eraring Energy
 - (ii) the Board of Directors, individual Directors, and/or the Chief Executive Officer of Delta Electricity
 - (iii) the Board of Directors, individual Directors, and/or the Chief Executive Officer of Macquarie Generation
- (c) all documents which record or refer to communication since 1 December 2010 regarding the resignation or threat of resignation by any Director of Eraring Energy, Delta Electricity, or Macquarie Generation,
- (d) all document created since 1 July 2010 regarding the impact of the Gentrader transactions on:
- (i) current and future electricity prices,
 - (ii) competition in the electricity market,
 - (iii) the value obtained for NSW taxpayers,
 - (iv) the value of Eraring Energy, Delta Electricity, and Macquarie Generation, and
 - (v) any analysis of the impact of the transaction on the budget position and state revenues from dividends and tax equivalent payments, and
- (e) any document which records or refers to the production of documents as a result of this order of the committee.
2. A return under this order is to include an indexed list of all documents tabled, showing the date of creation of the document, a description of the document and the author of the document.
3. That the documents be provided to the clerk of the committee within 7 days of the passing of this resolution.
4. Where it is considered that a document required to be lodged with the committee is privileged and should not be made public by the committee:
- (a) a return is to be prepared showing the date of creation of the document, a description of the document, the author of the document and reasons for the claim of privilege,
 - (b) the documents are to be delivered to the Clerk of the House within 7 days and
 - (i) made available only to members of the committee, and
 - (ii) not published or copied without an order of the committee.
5. That in the event of a dispute by any member of the committee by communication in writing to the Clerk of the House as to the validity of the claim of privilege the Clerk is authorised to release the disputed document or documents to an independent legal arbiter, for evaluation and report within seven calendar days as to the validity of the claim.
6. The independent legal arbiter is to be appointed by the President and must be a Queen's Counsel, a Senior Counsel or a retired Supreme Court Judge.
7. A report from the independent legal arbiter is to be lodged with the Clerk of the House and:
- (a) made available only to members of the committee, and

(b) not published or copied without an order of the committee.

8. That this resolution be conveyed to the Director-General of the Department of Premier and Cabinet by the clerk to the committee.

The Clerk Assistant – Committees tabled advice from the Clerk of the Parliament dated 18 January 2011 regarding the power of committees to call for documents.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That the Chairman issue a media release regarding the additional witnesses and order for papers.

5. Adjournment

The Committee adjourned at 1.15 pm until 10.00am on Friday 21 January 2011.

Teresa McMichael

Clerk to the Committee

Minutes No. 48

Monday 24 January 2011

General Purpose Standing Committee No. 1

Jubilee Room, Parliament House, Sydney, at 9.00 am

1. Members present

Revd Fred Nile (*Chairman*)

Ms Kayee Griffin (*Deputy Chair*)

Mr Greg Donnelly (*West*)

Mr Luke Foley

Dr John Kaye

Mr Trevor Khan

Mr Greg Pearce

2. Substitutions

Mr Donnelly for Mr West.

3. Public hearing

Witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The Chairman noted that the Leader of the Opposition, Mr Barry O'Farrell MP, and the Shadow Treasurer, Mr Mike Baird MP, did not need to be sworn as they had each sworn an oath of office.

Mr Baird tendered the following documents:

- NSW Labor's Power Sale Objectives
- *Independent Expert Report*, by Grant Samuel
- *Recent Transaction Evidence – Electricity and Gas Retailing in Australia and New Zealand*, by Origin Energy Independent Expert Report, Appendix 9, 15 September 2008
- *Australian Utilities Coal Contracts Impact on NSW Privatisation: Industry Overview*, by Equity Australia Utilities, Merrill Lynch, 18 October 2010.

Mr O'Farrell tendered the following document:

- Revenue from Electricity - 1995/96 to 2013/14 (estimate).

The evidence concluded and the witnesses withdrew.

The public hearing concluded.

The public and media withdrew.

4. Inquiry into the Gentrader transactions

4.1 Minutes

Resolved, on the motion of Mr Khan: That draft Minutes Nos. 46 and 47 be confirmed.

4.2 Correspondence

The Committee noted the following items of correspondence received:

- 19 January 2011 – Email from Mr Ray Madden, Company Secretary, Delta Electricity, on behalf of Mr Greg Everett (Chief Executive and Director) and Mr Warren Phillips (Director), to A/Director, declining the Committee's invitation to give evidence on Friday 21 January 2011.
- 19 January 2011 – Email from Ms Rochelle Reynolds, Company Secretary, Eraring Energy, on behalf of Mr John Priest (Director) and Mr Murray Bleach (Director), to A/Director, declining the Committee's invitation to give evidence on Friday 21 January 2011.
- 20 January 2011 – Email from Professor Hugh Outhred, University of New South Wales, to Committee, providing a copy of his CV as requested by the Committee.
- 20 January 2011 – Letter from Blake Dawson law firm, acting on behalf of Mr Ross Bunyon AM (former Chairman), Mr Tony Maher (former Director), Mr Michael Vertigan AC (former Director) and Mr Dean Pritchard (former Director), Eraring Energy, to the Chairman, advising that the aforementioned clients would not be complying with the Committee's summons to give evidence on Monday 24 January 2011, and requesting to be notified if the Committee intends to take any action in relation to the failure of these clients to comply with the summonses.
- 20 January 2011 – Letter from Blake Dawson law firm, acting on behalf of Mr Michael Knight AO (former Director), Mr Loftus Harris (former Chairman), Mr Paul Forward (former Director) and Ms Sandra Moait (former Director), Delta Electricity, to the Chairman, advising that the aforementioned clients would not be complying with the Committee's summons to give evidence on Monday 24 January 2011, and requesting to be notified if the Committee intends to take any action in relation to the failure of these clients to comply with the summonses.
- 20 January 2011 – Letter from Blake Dawson law firm, acting on behalf of Mr John Dermody (Director), Delta Electricity, to the Chairman, advising that Mr Dermody would not be complying with the Committee's summons to give evidence on Monday 24 January 2011, and requesting to be notified if the Committee intends to take any action in relation to Mr Dermody's failure to comply with the summons.
- 20 January 2011 – Letter from Blake Dawson law firm, acting on behalf of Mr James Henness (former Chief Executive and Director), Delta Electricity, to the Chairman, advising that Mr Henness would not be complying with the Committee's summons to give evidence on Monday

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- 24 January 2011, and requesting to be notified if the Committee intends to take any action in relation to Mr Henness' failure to comply with the summons.
- 20 January 2011 – Substitution advice from Government Whip advising that Mr Greg Donnelly will be substituting for Mr Ian West for the hearing into the Gentrader transactions on 24 January 2011.
 - 20 January 2011 – Email from Clerk Assistant – Committees, to the Committee, forwarding the letter from the President to Blake Dawson law firm, in response to Blake Dawson's advice that the current and former directors would not be complying with the Committee's summonses.
 - 21 January 2011 – Email from Clerk Assistant – Committees, to the Committee, forwarding advice from Mr Bret Walker SC to the Clerk of the Parliaments regarding the effect of prorogation on committees.

The Committee noted the following items of correspondence sent:

- 18 January 2011 – Email from A/Director to Mr Ray Madden, Company Secretary, Delta Electricity, inviting Mr Greg Everett (Chief Executive and Director) and Mr Warren Phillips (Director) to give evidence before the Committee on Friday 21 January 2011.
- 18 January 2011 – Email from A/Director to Ms Rochelle Reynolds, Company Secretary, Eraring Energy, inviting Mr John Priest (Director) and Mr Murray Bleach (Director) to give evidence before the Committee on Friday 21 January 2011.

4.3 Witness summonses

The Clerk Assistant – Committees tendered affidavits confirming that summonses have been issued to the following people:

- Mr Ross Bunyon AM, former Chairman, Eraring Energy
- Mr Tony Maher, former Director, Eraring Energy
- Mr James Henness, former Chief Executive and Director, Delta Electricity
- Mr John Dermody, Director, Delta Electricity
- Mr Michael Knight AO, former Director, Delta Electricity
- Mr Loftus Harris, former Director, Delta Electricity
- Mr Paul Forward, former Director, Delta Electricity
- Ms Sandra Moait, former Director, Delta Electricity.

The Clerk Assistant – Committees advised that summonses had not been issued to the following people, because they were not within the jurisdiction of New South Wales:

- Mr Michael Vertigan AC, former Director, Eraring Energy
- Mr Dean Pritchard, former Director, Eraring Energy.

4.4 Submissions

Resolved, on the motion of Dr Kaye: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submission Nos. 24a, 53, 54, 55, 56, 57, 59, 60, 63, 64 and 65.

Resolved, on the motion of Mr Donnelly: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the partial publication, with names suppressed, of Submission Nos. 58, 61 and 62.²¹⁸

4.5 Publication of tendered documents

Resolved, on the motion of Mr Pearce: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of the following documents:

- Chart 1 – Transaction Structure, tendered by Mr Roozendaal on 17 January 2011
- Chart 2 – Energy Reform Project, tendered by Mr Roozendaal on 17 January 2011
- NSW Energy Reform Project – Transaction Timeline 2009-2010, tendered by Mr Roozendaal on 17 January 2011
- NSW Energy Reform Project Board Briefing Chronology, tendered by Mr Roozendaal on 17 January 2011
- NSW Labor's Power Sale Objectives, tendered by Mr Baird on 24 January 2011
- Revenue from Electricity - 1995/96 to 2013/14 (estimate), tendered by Mr O'Farrell on 24 January 2011.

4.6 Publication of legal advice

Resolved, on the motion of Mr Khan: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of the advice from Mr Bret Walker SC to the Clerk of the Parliaments regarding the effect of prorogation on committees, dated 21 January 2011.

Resolved, on the motion of Dr Kaye: That the Chairman be authorised to distribute copies of the advice from Mr Bret Walker SC to the Clerk of the Parliaments regarding the effect of prorogation on committees, dated 21 January 2011.

Resolved, on the motion of Dr Kaye: That the advice from Mr Bret Walker SC to the Clerk of the Parliaments regarding the effect of prorogation on committees, dated 21 January 2011, be published on the Committee's website.

4.7 Summoned witnesses

The Clerk of the Parliaments addressed the Committee on the procedures after a witness fails to answer a summons.

Resolved, on the motion of Mr Pearce: That, after circulating a draft of the correspondence to the Committee, the Chairman send correspondence to Blake Dawson law firm, as the legal representative of Mr Ross Bunyon AM, Mr Tony Maher, Mr James Henness, Mr John Dermody, Mr Michael Knight AO, Mr Loftus Harris, Mr Paul Forward, Ms Sandra Moait, Mr Michael Vertigan AC and Mr Dean Pritchard:

- noting that despite the issuing of summonses to the abovementioned individuals to appear before the Committee on 24 January 2011, no individual complied with their summons
- requesting that the abovementioned individuals appear instead before the Committee on Thursday 27 January 2011

²¹⁸ Submission No. 62 was originally made public by resolution of the Committee on 24 January 2011. The Committee subsequently changed the submission to partially confidential on 2 February 2011, following a request from the submission author to do so (see Minutes No. 50).

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- noting that other witnesses, including the Premier, the Hon Kristina Keneally MP, the Treasurer, the Hon Eric Roozendaal MLC, and NSW Treasury officials, have all given evidence to the Inquiry, and that where witnesses have declined to answer questions due to commercial-in-confidence, this has been accepted by the Committee
 - enclosing a copy of the advice received from Mr Bret Walker SC to the Clerk of the Parliaments regarding the effect of prorogation on committees
 - noting that while the Committee is reluctant to request the President of the Legislative Council to seek the issue of warrants from the Supreme Court to compel attendance before the Inquiry, the Committee may pursue this path should the abovementioned individuals not appear on Thursday 27 January 2011.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

The Chairman requested that the Clerk provide a written summary of advice to the Committee outlining the steps to be followed if a witness who has been summoned under s. 4(2) of the *Parliamentary Evidence Act 1901* fails to appear before a Committee.

4.8 Invited witnesses

Resolved, on the motion of Mr Foley: That no further action be taken in relation to the non-attendance of the invited current directors of Delta Electricity and Eraring Energy.

4.9 Report date

Resolved, on the motion of Mr Khan: That the inquiry reporting date be extended to Friday 11 February 2011.

Resolved, on the motion of Dr Kaye: That the Secretariat consult with members via email regarding their availability for a deliberative meeting in the week ending Friday 11 February 2011.

5. Adjournment

The Committee adjourned at 11.42 am until 9.00am on Thursday 27 January 2011.

Teresa McMichael
Clerk to the Committee

Minutes No. 49

Thursday 27 January 2011

General Purpose Standing Committee No. 1

Room 1102, Parliament House, Sydney, at 10.00 am

1. Members present

Revd Fred Nile (*Chairman*)

: -

Ms Kayee Griffin (*Deputy Chair*)
Mr Greg Donnelly (*West*)
Mr Luke Foley
Dr John Kaye
Mr Trevor Khan
Mr Greg Pearce

2. Substitutions

Mr Donnelly for Mr West.

3. Request from the media to film committee proceedings

Mr Khan moved: That under the Legislative Council broadcasting guidelines, the Committee authorise the media to take still photographs and silent film of the Committee for up to five minutes prior to the commencement of the remainder of the Committee's deliberations.

Debate ensued.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

4. Minutes

Resolved, on the motion of Mr Pearce: That draft Minutes No. 48 be confirmed.

5. Correspondence

The Committee noted the following items of correspondence received:

- 24 January 2011 – Letter from the Treasurer, the Hon Eric Roozendaal MLC, to the Chairman, submitting three publicly issued statements regarding the NSW Government's energy reform process and an analysis on the process by journalist Stephen Bartholomeusz.
- 24 January 2011 – Memorandum from the Clerk of the Parliaments to the Committee, providing a summary of advice on the procedures after a witness fails to answer a summons.
- 25 January 2011 – Letter from Blake Dawson law firm, acting on behalf of Mr Michael Knight AO (former Director), Mr Loftus Harris (former Chairman) and Mr Paul Forward (former Director), Delta Electricity, to the Chairman, advising that the aforementioned clients would not be appearing before the Committee on Thursday 27 January 2011, and requesting to be notified if the Committee intends to request the President of the Legislative Council to seek the issue of warrants from the Supreme Court to compel their appearance.
- 25 January 2011 – Letter from Blake Dawson law firm, acting on behalf of Mr John Dermody (Director), Delta Electricity, to the Chairman, advising that Mr Dermody would not be appearing before the Committee on Thursday 27 January 2011, and requesting to be notified if the Committee intends to request the President of the Legislative Council to seek the issue of a warrant from the Supreme Court to compel Mr Dermody's appearance.
- 25 January 2011 – Letter from Blake Dawson law firm, acting on behalf of Mr James Henness (former Chief Executive and Director), Delta Electricity, to the Chairman, advising that Mr Henness would not be appearing before the Committee on Thursday 27 January 2011, and

requesting to be notified if the Committee intends to request the President of the Legislative Council to seek the issue of a warrant from the Supreme Court to compel Mr Henness' appearance.

- 25 January 2011 – Letter from Blake Dawson law firm, acting on behalf of Mr Ross Bunyon AM (former Chairman), Mr Tony Maher (former Director), Mr Michael Vertigan AC (former Director) and Mr Dean Pritchard (former Director), Eraring Energy, to the Chairman, advising that the aforementioned clients would not be appearing before the Committee on Thursday 27 January 2011, and requesting to be notified if the Committee intends to request the President of the Legislative Council to seek the issue of warrants from the Supreme Court to compel their appearance.
- 25 January 2011 – Letter from Blake Dawson law firm, acting on behalf of Ms Sandra Moait (former Director), Delta Electricity, to the Chairman, advising that Ms Moait departed overseas on 22 January 2011 and would not be returning until 13 February 2011.
- 25 January 2011 - Substitution advice from Government Whip advising that Mr Greg Donnelly will be substituting for Mr Ian West for the deliberative meeting on 27 January 2011.
- 25 January 2011 - Letter from NSW Treasury clarifying the transcript of evidence of NSW Treasury officials from 18 January 2011, and requesting that the clarification be appended to and referenced in the transcript.

The Committee noted the following items of correspondence sent:

- 24 January 2011 – Letter from the Chairman to Blake Dawson law firm in regard to their clients, Mr Michael Knight AO, Mr Loftus Harris, Mr Paul Forward and Ms Sandra Moait, formerly from Delta Electricity, requesting that their clients reconsider their decision not to comply with the summonses of the Committee to attend a hearing on Monday 24 January 2011, offering for those clients to appear instead on Thursday 27 January 2011, and forwarding advice from Mr Bret Walker SC regarding the power of standing committees to meet during prorogation.
- 24 January 2011 – Letter from the Chairman to Blake Dawson law firm in regard to their clients, Mr Ross Bunyon AM and Mr Tony Maher, formerly from Eraring Energy, requesting that Mr Bunyon and Mr Maher reconsider their decision not to comply with the summonses of the Committee to attend a hearing on Monday 24 January 2011; offering for Mr Bunyon and Mr Maher, as well as Mr Michael Vertigan and Mr Dean Pritchard (also formerly from Eraring Energy) to appear instead on Thursday 27 January 2011; and forwarding advice from Mr Bret Walker SC regarding the power of standing committees to meet during prorogation.
- 24 January 2011 – Letter from the Chairman to Blake Dawson law firm in regard to their client, Mr John Dermody from Delta Electricity, requesting that Mr Dermody reconsider his decision not to comply with the summons of the Committee to attend a hearing on Monday 24 January 2011, offering for Mr Dermody to appear instead on Thursday 27 January 2011, and forwarding advice from Mr Bret Walker SC regarding the power of standing committees to meet during prorogation.
- 24 January 2011 – Letter from the Chairman to Blake Dawson law firm in regard to their client, Mr James Henness, formerly from Delta Electricity, requesting that Mr Henness reconsider his decision not to comply with the summons of the Committee to attend a hearing on Monday 24 January 2011, offering for Mr Henness to appear instead on Thursday 27 January 2011, and forwarding advice from Mr Bret Walker SC regarding the power of standing committees to meet during prorogation.

6. Submissions

Resolved, on the motion of Mr Pearce: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Supplementary Submission Nos. 45a and 63a.

7. Answers to questions on notice

Resolved, on the motion of Mr Pearce: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of the answers to questions on notice provided by NSW Treasury.

Resolved, on the motion of Ms Griffin: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of a letter from NSW Treasury, dated 25 January 2011, which clarifies the transcript of evidence of NSW Treasury officials, and that a footnote be inserted into the transcript to refer to the letter.

8. Returned papers

The Committee noted that while the Department of Premier and Cabinet provided some documents on 25 January 2011 in response to the Committee's order for papers, it did not provide any documents requested by the Committee which were privileged, nor did it provide an index of privileged documents.

Resolved, on the motion of Mr Khan: That to ensure compliance with the original resolution of the committee, that the Clerk of the Parliaments write to the Department of Premier and Cabinet seeking an indexed list of documents over which privilege is claimed, and that the index of documents and additional documents be provided no later than 5pm on Monday 31 January 2011.

9. Summoned witnesses

The Clerk Assistant – Committees tabled an article entitled 'Fitzpatrick and Browne: Imprisonment by a House of the Parliament', by Harry Evans, former Clerk of the Senate.

Mr Foley moved: That noting the correspondence from Blake Dawson law firm, that the Committee take no further action in regard to the former directors of Delta Electricity and Eraring Energy, or Mr John Dermody, current director, Delta Electricity.

Debate ensued.

Question put and negatived.

Dr Kaye moved: That pursuant to sections 7-9 of the *Parliamentary Evidence Act 1901*, in the Committee's opinion there is no just cause or reasonable excuse for Mr John Dermody's failure to answer his summons to appear before the Committee, and accordingly that the Committee notify the President of the Legislative Council and request the President to certify these facts to a Judge of the Supreme Court, in order for the Judge to issue a warrant for the apprehension of Mr Dermody.

Debate ensued.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Resolved, on the motion of Mr Foley: That noting that the legal representatives of Ms Sandra Moait have advised that she is outside of the jurisdiction of New South Wales for the duration of the Committee's hearings, that the Committee not request the President to take any action for the apprehension of Ms Moait, on the basis that she has provided a reasonable excuse not to attend.

Dr Kaye moved: That pursuant to sections 7-9 of the *Parliamentary Evidence Act 1901*, in the Committee's opinion there is no just cause or reasonable excuse for Mr Michael Knight's failure to answer his summons to appear before the Committee, and accordingly that the Committee notify the President of the Legislative Council and request the President to certify these facts to a Judge of the Supreme Court, in order for the Judge to issue a warrant for the apprehension of Mr Knight.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Mr Khan moved: That pursuant to sections 7-9 of the *Parliamentary Evidence Act 1901*, in the Committee's opinion there is no just cause or reasonable excuse for Mr Paul Forward's failure to answer his summons to appear before the Committee, and accordingly that the Committee notify the President of the Legislative Council and request the President to certify these facts to a Judge of the Supreme Court, in order for the Judge to issue a warrant for the apprehension of Mr Forward.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Dr Kaye moved: That pursuant to sections 7-9 of the *Parliamentary Evidence Act 1901*, in the Committee's opinion there is no just cause or reasonable excuse for Mr Loftus Harris' failure to answer his summons to appear before the Committee, and accordingly that the Committee notify the President of the Legislative Council and request the President to certify these facts to a Judge of the Supreme Court, in order for the Judge to issue a warrant for the apprehension of Mr Harris.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Mr Khan moved: That pursuant to sections 7-9 of the *Parliamentary Evidence Act 1901*, in the Committee's opinion there is no just cause or reasonable excuse for Mr James Henness' failure to answer his summons to appear before the Committee, and accordingly that the Committee notify the President of the Legislative Council and request the President to certify these facts to a Judge of the Supreme Court, in order for the Judge to issue a warrant for the apprehension of Mr Henness.

: -

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Dr Kaye moved: That pursuant to sections 7-9 of the *Parliamentary Evidence Act 1901*, in the Committee's opinion there is no just cause or reasonable excuse for Mr Ross Bunyon's failure to answer his summons to appear before the Committee, and accordingly that the Committee notify the President of the Legislative Council and request the President to certify these facts to a Judge of the Supreme Court, in order for the Judge to issue a warrant for the apprehension of Mr Bunyon.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Mr Khan moved: That pursuant to sections 7-9 of the *Parliamentary Evidence Act 1901*, in the Committee's opinion there is no just cause or reasonable excuse for Mr Tony Maher's failure to answer his summons to appear before the Committee, and accordingly that the Committee notify the President of the Legislative Council and request the President to certify these facts to a Judge of the Supreme Court, in order for the Judge to issue a warrant for the apprehension of Mr Maher.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That a public hearing be held from 10am on Wednesday 2 February 2011, with a deliberative meeting at 9.45am, to hear from the apprehended witnesses.

Mr Khan moved: That the Committee issue summonses under section 4(2) of the *Parliamentary Evidence Act 1901* for the following witnesses to appear on Wednesday 2 February 2011 at 2.15pm:

- Mr Dean Pritchard, former Director, Eraring Energy
- Mr Michael Vertigan AC, former Director, Eraring Energy.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Resolved, on the motion of Mr Pearce: That the relevant extracts of today's minutes be published and sent to Blake Dawson law firm.

10. Report dates

Resolved, on the motion of Mr Pearce: That the Committee consider the Chairman's draft report at a deliberative meeting on Wednesday 16 February 2011, commencing at 10am.

Resolved, on the motion of Mr Pearce: That the inquiry reporting date be extended to Friday 18 February 2011.

11. Media statements

Resolved, on the motion of Mr Donnelly: That the only person authorised to speak to the media regarding committee proceedings on the Gentrader inquiry be the Chairman.

12. Adjournment

The Committee adjourned at 11.50 am until 9.45am on Wednesday 2 February 2011.

Teresa McMichael
Clerk to the Committee

Minutes No. 50

Wednesday 2 February 2011
General Purpose Standing Committee No. 1
Room 1102, Parliament House, Sydney, at 9.45 am

1. Members present

Revd Fred Nile (*Chairman*)
Ms Kayee Griffin (*Deputy Chair*)
Mr Greg Donnelly (*West*)
Mr Luke Foley
Dr John Kaye
Mr Trevor Khan
Mr Greg Pearce

2. Substitutions

Mr Donnelly for Mr West.

3. Minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No. 49 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence received:

- 27 January 2011 – Letter from Clerk of the Parliaments to Department of Premier and Cabinet, cc'd to the Chairman, noting that the Government has not complied with its order for papers of 18 January 2011, and requesting that an indexed list of documents over which privilege is claimed and the additional documents be provided by 5pm Monday 31 January 2011.

- 27 January 2011 – Letter from the President to the Chairman advising that she would not be requesting the Supreme Court to issue warrants for the apprehension of Mr Michael Knight, Mr Paul Forward, Mr Tony Maher, Mr Loftus Harris, Mr Ross Bunyon, Mr John Dermody or Mr James Henness.
- 27 January 2011 – Letter from Blake Dawson law firm to the President, cc'd to the Chairman, requesting that their clients Mr Ross Bunyon AM and Mr Tony Maher, formerly from Eraring Energy, be given the opportunity to make submissions as to their just cause and reasonable excuse for not complying with their summonses, before a warrant is issued for their apprehension.
- 31 January 2011 - Substitution advice from Government Whip advising that Mr Greg Donnelly will be substituting for Mr Ian West for the deliberative meeting on 2 February 2011, and any future hearings or meetings for the Gentrader transactions inquiry.
- 1 February 2011 – Letter from Department of Premier and Cabinet to the Clerk of the Parliaments, forwarded to the Committee, advising that the Department would not be providing the privileged documents or index of privileged documents requested by the Committee on 27 January 2011.

The Committee noted the following items of correspondence sent:

- 27 January 2011 – Letter from the Chairman to the President requesting that the President issue a certificate to a Judge of the Supreme Court for the issue of warrants for the apprehension of Mr Michael Knight, Mr Paul Forward, Mr Tony Maher, Mr Loftus Harris, Mr Ross Bunyon, Mr John Dermody and Mr James Henness, under the process set out in sections 7-9 of the *Parliamentary Evidence Act 1901*.
- 27 January 2011 – Letter from the Chairman to Blake Dawson law firm advising that the Committee has requested the President to issue a certificate to a Judge of the Supreme Court for the issue of warrants for the apprehension of Mr Michael Knight, Mr Paul Forward, Mr Tony Maher, Mr Loftus Harris, Mr Ross Bunyon, Mr John Dermody and Mr James Henness, under the process set out in sections 7-9 of the *Parliamentary Evidence Act 1901*.

5. Submission

Resolved, on the motion of Dr Kaye: That the Committee change the status of Submission No. 62 from public to partially confidential, and that Minutes No. 48 be amended to reflect this change.

6. Publication of answers to questions on notice

Resolved, on the motion of Mr Khan: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of answers to questions on notice received from the Department of Premier and Cabinet on 28 January 2011.

7. Order for papers

Resolved, on the motion of Mr Khan: That the secretariat prepare a Special Report to the House regarding the Department of Premier and Cabinet's non-compliance with the Committee's order to produce privileged documents or an index of privileged documents relating to the Gentrader inquiry.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

8. Witnesses

The Committee noted that the President declined the Committee's request to seek the issue of warrants from a Judge of the Supreme Court for the apprehension of Mr Michael Knight, Mr Paul Forward, Mr Tony Maher, Mr Loftus Harris, Mr Ross Bunyon, Mr John Dermody and Mr James Henness.

Resolved, on the motion of Dr Kaye: That the Committee Chairman write to the President to thank her for her considered response to the Committee's request.

9. Further public hearing

Resolved, on the motion of Dr Kaye: That

1. The Committee notes that:
 - a. The Premier's media release of Tuesday 1 February indicated that the energy reform transactions would cease, and that it was not the intention of the Keneally Government to pursue any further privatisation either before or after the election,
 - b. the generation industry in New South Wales is thus half under public control and half under the control of private gentraders who also own a large proportion of the retail book in New South Wales,
 - c. Macquarie Generation and half of Delta Electricity now face an uncertain future in which they will have to sell electricity futures to retailers who are owned by their competitors in the wholesale market,
 - d. the Owen Inquiry asserted that new non-government investment in generation would not occur while there was a significant presence of publicly owned generation.
2. The Committee understands that the Cabinet decision opens new questions about the future of the electricity market in New South Wales and in particular about the economic environment in which Macquarie and Delta will operate.
3. The Committee resolves to invite the following witnesses to a hearing late in the week of 7 February:
 - a. The Premier, the Treasurer, Dr Col Gellatly, Mr Kim Yeadon
 - b. Mr Michael Schur and Mr Richard Timbs
 - c. The directors of Macquarie Generation.
4. It be made clear to the Directors of Macquarie Generation that there is no intention to seek answers to questions that would compromise their confidentiality agreements. The focus will be solely on the future in the semi-privatised electricity trading environment and the implications for the commercial viability of their corporation.

Debate ensued.

Question put.

The Committee divided.

Ayes: Revd Nile, Dr Kaye, Mr Khan, Mr Pearce.

Noes: Mr Donnelly, Ms Griffin, Mr Foley.

Question resolved in the affirmative.

Resolved, on the motion of Dr Kaye: That

- the Committee hold a fourth public hearing on Thursday 10 February 2011, from 10.00am until 5.00pm
- the deliberative to consider the Chairman's draft report be held on Wednesday 16 February 2011
- the reporting date be extended until Wednesday 23 February 2011.

: -

Resolved, on the motion of Dr Kaye: That the following groups of witnesses be invited to appear before the Committee on Thursday 10 February 2011, for one and a half hours per group

The Premier, the Treasurer, Dr Col Gellatly, Mr Kim Yeadon

Mr Michael Schur and Mr Richard Timbs

The directors of Macquarie Generation.

10. Media release

Resolved, on the motion of Dr Kaye: That the secretariat prepare a media release regarding the Committee's decisions to hold a further hearing and extend the reporting date.

11. Adjournment

The Committee adjourned at 10.17 am until 9.45am on Thursday 10 February 2011 (public hearing).

Teresa McMichael
Clerk to the Committee

Minutes No. 51

Tuesday 8 February 2011

General Purpose Standing Committee No. 1

Room 1102, Parliament House, Sydney, at 2.00 pm

1. Members present

Revd Fred Nile (*Chairman*)

Ms Kayee Griffin (*Deputy Chair*)

Mr Greg Donnelly

Mr Luke Foley

Mr Don Harwin (Khan)

Mr Greg Pearce

Mr David Shoebridge (Kaye)

2. Substitutions

Mr Harwin for Mr Khan.

Mr Shoebridge for Dr Kaye.

3. Questions on notice to NSW Treasury

The Committee noted that the Secretary of NSW Treasury, Mr Michael Schur, had offered to answer additional questions on notice.

Resolved, on the motion of Mr Pearce: That additional questions on notice for NSW Treasury be provided to the secretariat by 5pm Thursday 10 February, and that answers be returned by 5pm Tuesday 15 February.

4. Witnesses

The Committee noted that the Premier, the Treasurer, NSW Treasury officials and directors of Macquarie Generation had declined the Committee's invitation to give evidence at a public hearing on Thursday 10 February 2011.

Mr Shoebridge moved: That the Committee invite Professor Hugh Outhred to give evidence at the public hearing on Thursday 10 February 2011.

Question put.

The Committee divided.

Ayes: Revd Nile, Mr Harwin, Mr Pearce, Mr Shoebridge.

Noes: Mr Donnelly, Mr Foley, Ms Griffin.

Question resolved in the affirmative.

Mr Pearce moved: That the Committee invite Professor Bob Walker and Dr Betty Con Walker to give evidence at the public hearing on Thursday 10 February 2011.

Question put.

The Committee divided.

Ayes: Revd Nile, Mr Harwin, Mr Pearce, Mr Shoebridge.

Noes: Mr Donnelly, Mr Foley, Ms Griffin.

Question resolved in the affirmative.

Resolved, on the motion of Mr Harwin: That the Committee invite the following witnesses from Hydro Aluminium Kurri Kurri Pty Limited to give evidence at the public hearing on Thursday 10 February 2011:

- Mr Trevor Coombe, Head of Global Alumina and Smelter Growth, Oceania Region
- Mr Alberto Fabrini, Managing Director
- Mr Justin Kall, staff member
- Ms Annissa Kall, family of staff member (wife of Justin Kall).

Resolved, on the motion of Mr Pearce: That the Committee hear from each group of witnesses for up to one hour.

5. Adjournment

The Committee adjourned at 2.12 pm until 9.45am on Thursday 10 February 2011 (public hearing).

Teresa McMichael
Clerk to the Committee

Draft Minutes No. 53

Wednesday 16 February 2011

General Purpose Standing Committee No. 1

Room 1102, Parliament House, Sydney, at 10:04am

1. Members present

Revd Fred Nile (Chairman)

Ms Kayee Griffin (Deputy Chair)

Mr Greg Donnelly

: -

Mr Luke Foley
Dr John Kaye
Mr Trevor Khan
Mr Greg Pearce

2. Previous minutes

Resolved, on the motion of Dr Kaye: That Draft Minutes No. 52 be confirmed.

3. Tabled documents

Mr Khan tabled the following documents:

- Video footage of the Premier's Press conference broadcast on Sky news on 23 December 2010
- Briefing Note (DPC 10/03902) by the Department of Premier and Cabinet entitled: 'Effects of Prorogation on Committees'
- Media Release from the Premier dated 1 February 2011 entitled: 'No Further Privatisation of Energy Assets'
- Media release from the Premier dated 6 January 2011 entitled: 'Statement From the Office of the Premier'

Resolved, on the motion of Mr Khan: That the Committee accept the Premier's Press conference broadcast on Sky News on 23 December 2010.

Mr Khan moved: That the Committee accept the Briefing Note (DPC 10/03902) by the Department of Premier and Cabinet entitled: Effects of Prorogation on Committees

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That the Committee accept the Media Release from the Premier dated 1 February 2011, entitled 'No Further Privatisation of Energy Assets'.

Resolved, on the motion of Mr Khan: That the Committee accept the Media release from the Premier dated 6 January 2011 entitled 'Statement from the Office of the Premier'.

The Chairman tabled the following documents:

- Article entitled 'Release contradicts Premier on closure', *The Sunday Telegraph*, dated 13 February 2011
- Article entitled 'Power directors accused of conflict', *The Herald*, dated 5 January 2011
- Article entitled 'Trio paid big bucks by Labor', *The Sunday Telegraph*, dated 30 January 2011

Resolved, on the motion of Dr Kaye: That the Committee accept the following documents tabled by the Chairman:

- Article entitled 'Release contradicts Premier on closure', *The Sunday Telegraph*, dated 13 February 2011
- Article entitled 'Power directors accused of conflict', *The Herald*, dated 5 January 2011
- Article entitled 'Trio paid big bucks by Labor', *The Sunday Telegraph*, dated 30 January 2011

4. Chairman's report: The Gentrader transactions

The Chair tabled his draft report entitled: 'The Gentrader transactions', which, having been previously circulated, was taken as being read.

Chapter 1 read.

Resolved, on the motion of Dr Kaye: That paragraph 1.9 be amended by inserting 'greenhouse gas emissions' after 'NSW taxpayers', and that 'and' be omitted after 'electricity market' in the first sentence.

Mr Khan moved: That the following paragraph be inserted before paragraph 1.18:

Prior to the formal requisitioning of a meeting to establish the Inquiry speculation began to appear in the media that members the NSW Upper House were considering the establishment of an Inquiry into the Gentrader Transactions.

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Mr Khan moved: That the following paragraph be inserted after the new paragraph to be inserted before paragraph 1.18:

The Committee concludes that on 21 December 2010, the Premier received advice from the Department of Premier and Cabinet regarding the effect of the prorogation of Parliament on the operation of Committees.

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Mr Khan moved: That the following paragraph be inserted after the two new paragraphs to be inserted before paragraph 1.18:

In a briefing note prepared for the Premier the option of the immediate proroguing of Parliament was specifically considered, in the context of its effect on a Committee of the NSW Legislative Council to continue to sit and transact business. (Footnote: Department of Premier and Cabinet, 'Effects of Prorogation on Committees', Briefing Note DPC 10/03902)

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That the following paragraph be inserted after paragraph 1.19:

On the morning of 23 December 2010, Premier Keneally held a press conference in which the following exchange occurred:

JOURNALIST: Is the reason you prorogued parliament yesterday to prevent this inquiry from going ahead?

MS KENEALLY: No, no.

Resolved, on the motion of Mr Pearce: That the statement from the three Government members tabled with the Committee on 23 December 2010 be published.

Resolved, on the motion of Mr Khan: That the following paragraph be inserted after paragraph 1.21:

Shortly before the commencement of the meeting on 23 December 2010 the three Labor members of the Committee issued a statement in which they said:

"This is a decision that we have not taken lightly.

However, in view of the fact that the NSW Parliament was prorogued yesterday, we have solid advice from respected authorities that the meeting is illegally constituted, and that presents several risks.

'Witnesses cannot be compelled to attend and parliamentary privilege would not cover Members or witnesses. Witnesses may also be liable for revealing commercial-in-confidence decisions.' (Footnote: Statement from the Government members of the GPSC 1 Committee – Hon Greg Donnelly, Hon Kaye Griffin and Hon Luke Foley, 23 December 2010)

Resolved, on the motion of Mr Khan: That the following paragraph be inserted after the new paragraph to be inserted after paragraph 1.21:

At the meeting of 23 December 2010 the Committee resolved to determine a list of suitable witnesses to attend on the first days of hearing of the Committee. Subsequently invitations were issued to the following individuals:

- The Premier
- The Treasurer
- Minister for Energy
- Mr Ross Bunyon AM, former Chairman, Eraring Energy
- Mr Michael Vertigan AC, former Director, Eraring Energy
- Mr Dean Pritchard, former Director, Eraring Energy
- Mr Tony Maher, former Director, Eraring Energy
- Dr Col Gellatly, Director, Eraring Energy
- Mr Kim Yeadon, Director, Delta Electricity
- Mr John Dermody, Director, Delta Electricity
- Mr Jim Henness, former Chief Executive and Director, Delta Electricity
- Mr Loftus Harris, former Director, Delta Electricity
- Mr Michael Knight AO, former Director, Delta Electricity
- Mr Paul Forward, former Director, Delta Electricity
- Ms Sandra Moait, former Director, Delta Electricity

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- Ms Jan McClelland, Director, Delta Electricity
 - Mr Grant Every-Burns, CEO and Managing Director, Macquarie Generation
 - Mr Michael Schur, Secretary, NSW Treasury
 - Mr Kevin Cosgriff, Deputy Secretary Fiscal, NSW Treasury
 - Dr Richard Sheldrake, Director General, Department of Industry and Investment
 - Professor Hugh Outhred, School of Electrical Engineering & Telecommunications, University of New South Wales.

Mr Khan moved: That the following paragraph be inserted after the two new paragraphs to be inserted after paragraph 1.21:

The Committee notes that the Labor members did not attend the meeting on 23 December 2010 but thereafter took part in all other meetings and hearings of the Inquiry, and exercised their rights to ask questions of witnesses.

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Mr Donnelly moved: That paragraph 1.30 be omitted.

Question put

The Committee divided.

Ayes: Mr Donnelly, Mr Foley, Ms Griffin

Noes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Question resolved in the negative.

Mr Khan moved: That paragraph 1.30 be amended by omitting 'It is widely believed' and inserting instead 'The Committee concludes'.

Mr Donnelly moved: That the motion of Mr Khan be amended by omitting 'It is widely believed' and inserting instead 'The majority of the Committee concludes'.

Amendment put

The Committee divided.

Ayes: Mr Donnelly, Mr Foley, Ms Griffin

Noes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Amendment resolved in the negative.

Original question put

The Committee divided

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Resolved, on the motion of Mr Foley: That paragraph 1.30 be amended by inserting 'notwithstanding her denial,' after 'The Committee concludes that' at the beginning of the paragraph.

Resolved, on the motion of Mr Donnelly: That the following paragraphs be inserted after paragraph 1.30:

The prorogation of Parliament had the effect of casting doubt on the ability of the Inquiry to proceed, and on the protection of parliamentary privilege to witnesses – in particular, the resigned directors – if they gave evidence to the Inquiry.

It is noted the Premier and the Treasurer, along with key members of the energy reform transaction office, appeared before the parliamentary committee in January.

The Committee notes that the Premier has asserted that the Auditor-General will conduct a performance review into this transaction, regardless of the status of the Parliamentary inquiry.

Mr Donnelly moved: That paragraph 1.31 be amended by omitting 'Requests by the Committee to the Premier to give an undertaking not to sue the resigned directors if they gave evidence to the Inquiry were rejected by the Premier', and inserting instead:

In response to requests by the Committee, the Government would not give a blanket undertaking not to sue directors on the basis of their evidence to the Inquiry.

Question put

The Committee divided.

Ayes: Mr Donnelly, Mr Foley, Ms Griffin

Noes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That the following paragraphs be inserted after the Finding at paragraph 1.31:

Actions of the Premier Kristina Keneally following the establishment of the Inquiry

On 6 January 2011 the Premier issued a media release which provided in part:

“Premier Kristina Keneally, Treasurer Eric Roozendaal and key electricity bid project team members will appear before the Upper House committee.

“Ms Keneally and Mr Roozendaal will represent the NSW Government.

“While the Crown Solicitor’s legal advice is abundantly clear that the committee is unconstitutional and is unable to compel witnesses – I have decided that the Treasurer and I will attend voluntarily, along with members of the electricity bid project team, to answer any questions this group of MPs want to put to us.

“I have always said that I am confident that the transactions stand up to scrutiny, and I acknowledge this must happen before the March State election....” (Footnote: Hon Kristina Keneally MP, 'Statement from the Office of the Premier', *Media Release*, 6 January 2011)

The Premier in her evidence before the Inquiry on 17 January 2011 also gave evidence as to the circumstance surrounding the proroguing of Parliament. Unlike the flat denial given in her media conference of 23 December 2010 the Premier's evidence was instead, in the view of the Committee, more equivocal.

In response to questions from the Committee, the Premier replied:

I certainly knew, on the advice of the Department of Premier and Cabinet, that the effect of proroguing Parliament would be to stop committees from meeting, yes, that is correct. However, DPC in its advice also stated to me that there were competing legal views to that point. Indeed, the Clerk of this Chamber had a different view from the view of the Crown Solicitor. (Footnote: Hon Kristina Keneally MP, Premier, Evidence, 17 January 2011, p 12.)

The Clerk tabled responses to questions on notice received from the Treasury.

Resolved, on the motion of Mr Pearce: That the answers to questions on notice received from NSW Treasury be published.

Mr Khan moved: That the following paragraph be inserted after the new section entitled 'Actions of the Premier...' as a Committee comment:

Committee comment

The Committee notes that the contents of the briefing note of 21 December 2010 makes clear the advice received by the Premier related solely to the impact of proroguing parliament upon the work of the Committee and that the background to the provision of the Briefing Note was the knowledge of the possible establishment of this Inquiry. The Committee rejects suggestions by the Premier that other factors were considered beyond frustrating the work of this Committee.

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce
Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Mr Khan moved: That the following Finding be inserted before Finding 1

Finding X

The answers given by the Premier to the media conference held on 23 December 2010 regarding the reasons for the proroguing of Parliament were directly contradicted by the evidence available to the Committee.

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce
Noes: Mr Donnelly, Mr Foley, Ms Griffin

: -

Question resolved in the affirmative.

Mr Khan moved: That the following Finding be inserted after the new Finding to be inserted before Finding 1:

Finding X

Contrary to the evidence of the Premier, the Committee concludes that the Government prorogued the Parliament for the specific purpose of frustrating the Inquiry into the Gentrader transactions.

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Mr Khan moved: That the following Finding be inserted after the two new Findings to be inserted before Finding 1:

That the Inquiry was properly constituted pursuant to NSW Legislative Council Standing Order 206, with all the ancillary powers to compel attendance of and answers from witnesses and for the production of papers.

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Resolved, on the motion of Dr Kaye: That Finding 1 be amended by omitting 'edge' and inserting instead 'eve'.

Resolved, on the motion of Mr Donnelly: That any reference to Mr James Henness' name throughout the Report, include an acknowledgement that Mr Henness retired as CEO and director of Delta Electricity on 17 July 2010.

Resolved, on the motion of Mr Khan: That the following paragraph be inserted after paragraph 1.36:

The Committee had previously resolved, on 17 January 2010 to obtain advice from eminent Senior Counsel on the powers of Committee. The need for this advice followed the conflict between the positions of the Clerk of the Legislative Council and the Crown Solicitor. Added to this were the comments made by Premier Keneally which appeared designed to have the affect of discouraging potential witnesses from appearing.

The Committee believed that witnesses might have been encouraged to attend if the powers of the Inquiry were supported by an appropriate legal opinion.

Resolved, on the motion of Mr Khan: That the following paragraphs be inserted in paragraph 1.37 after 'have the power to meet during prorogation':

In that advice Mr Walker states:

"14. It follows, in my opinion, that Standing Order 206 is valid, and in terms empowers the Standing Committee (which was constituted as contemplated by the Standing Order) to transact business during the life of the Parliament which presently continues. That, in my opinion is the end of the question. All other matters flow consequently, in favour of the ancillary powers to compel attendance of and answers from witnesses, and for the production of papers (in accordance with rules such as discussed in *Egan v Willis* and *Egan v Chadwick* (1999) 46 NSWLR 563.

...

18. In other words, in the absence of any statutory or judicial pronouncement not susceptible to being superseded by parliamentary practice, in my opinion "the orderly conduct of [the Legislative] Council" certainly includes providing for continued inquiry, possibly in public proceedings, into the doings of the Executive notwithstanding prorogation.

19. It is clear from the reasoning of all justices in the High Court in *Egan v Willis*, various as their approaches were, that questions of parliamentary power depend not only on statutory wording but also on a broad, beneficial and purposive reading of provisions for such a central institution. And at the heart of that functional approach, in my opinion, lies a paramount regard for responsible government in the sense of an Executive being answerable to the people's elected representatives. It is not possible, in my view, to read any of the historical and especially English accounts and explanations of prorogation without noting the radical shift from a King against Parliament to Ministers responsible to democratically elected representatives of the people. What possible justification could there be, in modern terms, for permitting the Executive to evade parliamentary scrutiny by taking care to time controversial or reprehensible actions just before advising the Governor to prorogue the chambers?"

"Accordingly I agree with the answer to the questions raised as given by the Clerk of the Parliament, with great respect, and acknowledging the force of his reasoning, I disagree with the answers proposed by the Crown Solicitor."

Resolved, on the motion of Mr Khan: That the following paragraph be inserted after the new paragraphs inserted after paragraph 1.37:

The Committee notes that the Advice received from Mr Walker SC was wholly consistent with the advice previously provided to the Committee by the Clerk of the Legislative Council and also wholly consistent with the High Court decision *Egan v Willis* (1998) 195 CLR 424 and the Supreme Court decision of *Egan v Chadwick* (1999) 46 NSWLR 563.

Resolved, on the motion of Mr Khan: That the following paragraphs be inserted after paragraph 1.46:

The Committee, in light of the evidence given on 21 January 2011, anticipated that there would be issues relating to claims for privilege, particularly as they related to documents deemed by the Executive to be 'commercial-in-confidence'.

As a result of this potential conflict the Committee agreed to a mechanism for settling disputes to ensure that any privilege claims would be addressed.

The Committee noted that the dispute settling mechanism was similar to that used by the House when dealing with disputes as to privilege following a Call for Papers pursuant to Standing Order 52.

Mr Khan moved: That the following Committee comment be inserted after paragraph 1.49:

Committee comment

The Committee notes that the refusal to cooperate in the provision of documents is inconsistent with Premier Keneally's statements of 6 January 2010 that she was committed to 'openness and transparency', and her stated confidence that 'the transactions (will) stand up to scrutiny'.

Question put

: -

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Mr Khan moved: That the following Finding be inserted after the new Committee comment to be inserted after paragraph 1.49:

Finding X

The refusal to provide documents that the NSW Government asserted to be privileged, and an index of any such documents, was a deliberate attempt by the Government to prevent a full and proper analysis of the Gentrader transactions.

Question put

The Committee divided.

Ayes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Resolved, on the motion of Mr Pearce: That Chapter 1, as amended, be adopted.

Chapter 2 read.

Resolved, on the motion of Mr Khan: That paragraph 2.1 be amended by inserting a sub-heading entitled 'Introduction'

Resolved, on the motion of Mr Khan: That paragraph 2.2 be amended by:

- inserting a sub-heading entitled 'Cancellation of the second tranche of the Gentrader transactions',
- moving the final sentence to the last sentence of paragraph 1, and
- inserting the following words and quote after 'State's energy sector':

In her media statement the Premier said:

'Premier Kristina Keneally today announced the NSW Government would not proceed with any further privatisation of the state's energy sector and challenged the Opposition to detail their plans before the election.

Ms Keneally said this ended the matter and ruled out any further privatisation of electricity assets by the Government.' (Footnote: Hon Kristina Keneally MP, 'No further privatisation of Energy Assets', *Media Release*, 1 February 2011)

Resolved, on the motion of Mr Khan: That paragraph 2.3 be inserted at the end of paragraph 2.1.

Resolved, on the motion of Mr Khan: That the following paragraph be inserted after paragraph 2.2:

The Committee resolved that in light of the previous evidence given, it was appropriate to seek to recall a number of witnesses to further explain the impact of the decision not to proceed with the second tranche upon the electricity market.

Invitations were issued to:

- The Premier, the Treasurer, Dr Col Gellatly, Mr Kim Yeadon,
- Mr Michael Schur and Mr Richard Timbs, and
- the directors of Macquarie Generation.

The Premier and Treasurer did not agree to give further evidence.

Dr Kaye moved: That paragraph 2.2 be amended by inserting 'at least in the near future' after 'carried out,' in the second sentence.

Question put and negatived.

Mr Khan moved: That the following Committee comment be inserted after paragraph 2.3:

Committee comment

The refusal of key witnesses, including the Premier and Treasurer, to return to give evidence, are actions that materially impact upon the public's right to understand the implications of the Gentrader transaction upon the electricity market of New South Wales.

Question put

The Committee divided.

Ayes: Dr Kaye, Mr Khan, Revd Nile, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Resolved, on the motion of Mr Donnelly: That the following paragraph be inserted after paragraph 2.5:

The Owen Report found the combined impact of both the divestment of generation and retail and the avoidance of new generation investment means that total State new debt would be up to \$26 billion lower in 2020 compared to a 'retain and invest' scenario. (Footnote: See pp 1-13 of the Owen Report.)

Resolved, on the motion of Dr Kaye: That the first sentence of paragraph 2.6 be amended by omitting 'The Owen report suggested that private investment in power generation was the most efficient means of providing for the additional baseload, and therefore' before 'recommended', and inserting instead:

The Owen report suggested that public investment in new baseload power stations would compromise the state's credit ratings and impose unacceptable burdens on the economic future of New South Wales. Consequently private investment in power generation was the only means of providing for additional baseload. The Owen report also asserted that private sector investment would be unlikely under continued public control of both the generators and the retailers. The report therefore ...

Resolved, on the motion of Mr Donnelly: That the following paragraph be inserted after paragraph 2.6:

The Owen Report recommended in the event that the Government does not wish to sell generation, then it should implement an appropriately structured long-term leasing of current generation assets. The State would retain ownership of the assets, with operational and commercial control by the private sector.

: -

Resolved, on the motion of Mr Donnelly: That paragraph 2.10 be amended by including the qualifications of Ms Morrissey and Ms Trantor.

Resolved, on the motion of Mr Donnelly: That the following paragraph be inserted after paragraph 2.12:

The Owen Report noted each interconnector has a maximum limit to the amount of energy it can supply and that the amount of energy available to New South Wales also depends on the energy consumption in other regions of the National Electricity Market (NEM) and relative costs of supplying energy to each region.
(Footnote: See page 2-15 of Owen Report.)

Mr Donnelly moved: That paragraph 2.14 be amended by omitting 'However, the Committee also notes the suggestions that the Owen report is based on a 'misunderstanding' of information regarding generation capacity'.

Question put

The Committee divided.

Ayes: Mr Donnelly, Mr Foley, Ms Griffin

Noes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 2.14 be amended by inserting the following words at the end of the paragraph:

The ability of the public sector to invest in new generation capacity and the reluctance of the private sector to invest in an industry dominated by public sector retailers and generators.

Resolved, on the motion of Dr Kaye: That the first sentence in paragraph 2.15 be amended by omitting 'information from AEMO that indicated' and inserting instead 'the assumption'.

Resolved, on the motion of Dr Kaye: That Finding 2 be amended by omitting 'or' and inserting instead 'and'.

Mr Donnelly moved: That Finding 2 be omitted and inserting instead:

The NSW Government's energy reforms were in response to the Owen report which found the most efficient means of providing for baseload generation was to improve the commercial and policy signals for private sector investment.

Since late 2007, the Government had a clear desire to exit the competitive elements of the electricity industry, in order to encourage private sector investment in new generation capacity.

In August 2008, there was a lack of Parliamentary support for the original reform strategy, which included long-term leases of the state-owned generation businesses.

Given this legitimate constraint, and the continuing desire to encourage private sector investment, the Government moved on to another option.

The Owen Report also found that power station developments can take up to six years to reach the stage of letting a new power station.

Question put

The Committee divided.

Ayes: Mr Donnelly, Mr Foley, Ms Griffin

Noes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 2.16 be amended by inserting 'ownership of and responsibility for operating' after 'retaining'.

Resolved, on the motion of Dr Kaye: That paragraph 2.19 be amended by placing a full stop after 'NEM' and starting the next sentence with 'The risks associated with the ALDs', and that the latter sentence then be cut and inserted at the end of paragraph 2.20.

Resolved, on the motion of Dr Kaye: That paragraph 2.20 be amended by inserting 'scheduled to do so' after 'when' in the first sentence.

Resolved, on the motion of Mr Donnelly: That paragraph 2.22 be amended by inserting the following words and quote:

Mr Schur further informed the Committee:

In August 2008, there was a lack of Parliamentary support for the original transaction strategy, which included long-term leases of the State-owned generation businesses. Given this legislative constraint and the continuing desire to encourage private investment, the Government moved to what successive Treasury Secretaries have described as 'the next best option'.

The term 'next best option' represents more a statement of fact than an opinion, given that the Government's originally preferred approach was no longer available. (Footnote: Answers to additional questions on notice, Mr Michael Schur, Secretary, NSW Treasury, 10 February 2011, Question No 13.)

Resolved, on the motion of Dr Kaye: That paragraph 2.24 be amended by omitting 'maximum capacity rates' and inserting instead 'maintenance payments'.

Mr Khan moved: That the following new Finding be inserted before paragraph 2.25:

Finding X

The exposure of the Generator companies to claims for Availability Liquidated Damages creates a significant and uncertain future liability to the taxpayers of New South Wales.

Question put

The Committee divided.

Ayes: Dr Kaye, Mr Khan, Revd Nile, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Resolved, on the motion of Mr Donnelly: That the following paragraph be inserted at the end of paragraph 2.26:

The Government maintains that the risks faced by the state under the energy reform transactions and the Gentrader model are far reduced than the risks of full ownership under a retain and invest scenario.

Resolved, on the motion of Dr Kaye: That Finding 3 be amended by omitting 'residual' and inserting instead 'the electricity market, coal supply and'.

Resolved, on the motion of Mr Khan: That Finding 3 be amended by inserting at the of the sentence:

In the event that the NSW Government has failed to properly assess the future costs of operating and maintaining the generators, the NSW taxpayer will be required to meet these as yet unquantified costs.

Mr Donnelly moved: That the amended Finding 3 be omitted and replaced with:

Under a retain and invest scenario taxpayers are exposed to significant risks including operation and maintenance risk, outage risk, fuel risk, carbon risk and electricity market wholesale trading risk. The risks faced by taxpayers as a result of the energy reform transactions are far reduced compared with the risks of full ownership. The NSW Government outlined the risk allocation of Gentrader in Defining an Industry Framework²¹⁹ and Delivery the Strategy: approach to transactions and market structure.²²⁰

Question put

The Committee divided.

Ayes: Mr Donnelly, Mr Foley, Ms Griffin

Noes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce

Question resolved in the negative.

The Committee adjourned for lunch at 1.10pm.

The Committee resumed at 2.00pm.

The Committee noted that the report numbering had restarted after Finding 3, and that the Secretariat would note the page numbers next to any paragraphs after Finding 3 in the minutes.

Resolved, on the motion of Mr Donnelly: That the following footnote be inserted at the end of paragraph 2.3 (page 17):

See also the Institute of Public Affairs Energy Issues Paper No. 20 August 2001.

Resolved, on the motion of Dr Kaye: That the following Committee comment and recommendation be inserted after paragraph 2.9 (page 18):

Committee comment

The Committee acknowledges the advice of the Treasurer that retention values were established prior to the Gentrader reforms, and that prices obtained by the sales exceeded those values.

²¹⁹ Available at: <http://www.nsw.gov.au/sites/default/files/NSW-Energy-Reform-Strategy.pdf>

²²⁰ Available at: http://www.nsw.gov.au/sites/default/files/Strategy%20FINAL_NSW_Logo_Web.pdf

The Premier and Treasurer would not disclose the retention values as the NSW Government was (at the time) in the process of a live transaction. The Premier did suggest that the retention values would be released after the transaction was complete. However, the Treasurer is now refusing to publicly advise what the retention values are. In the interest of public accountability, the Committee believes that it is vitally important that the NSW Government publicly disclose the retention values, and the methodology used to determine those values.

Recommendation X

That the NSW Government disclose the retention values of the electricity assets and bundles of assets that were sold as part of the Gentrader transactions, and the methodology used to determine those values, prior to the NSW state election on 26 March 2011.

Mr Donnelly moved: That the second sentence in paragraph 2.10 (page 19) be omitted.

Question put

The Committee divided.

Ayes: Mr Donnelly, Mr Foley, Ms Griffin

Noes: Rev Nile, Dr Kaye, Mr Khan, Mr Pearce.

Question resolved in the negative.

Resolved, on the motion on Mr Pearce: That paragraph 2.10 (page 19) be amended to insert the word 'media' after 'One' in the second sentence.

Resolved, on the motion of Dr Kaye: That the title of Table 1 be amended by inserting 'Treasurer's evidence – ' before 'Energy reform proceeds'.

Resolved, on the motion of Dr Kaye: That the first sentence in paragraph 2.13 (page 19) be amended by inserting 'at least' after 'with speculation that'.

Resolved, on the motion of Mr Donnelly: That footnote 96 be amended to include Ms Tranter's qualifications.

Mr Donnelly moved: That the first sentence in paragraph 2.13 (page 20) be omitted.

Question put and negated.

Mr Donnelly moved: That paragraph 2.14 (page 20) be omitted.

Question put and negated.

Mr Donnelly moved: That paragraph 2.15 (page 20) be omitted.

Question put and negated.

Mr Donnelly moved: That paragraph 2.17 (page 20) be omitted.

Question put and negated.

Mr Donnelly moved: That paragraph 2.18 (page 21) be omitted.

Question put and negated.

Resolved, on the motion of Dr Kaye: That paragraph 2.22 (page 21) be amended by:

- omitting 'around' and inserting instead 'at least', and
- inserting 'and the risks associated with operations and maintenance' at the end of the paragraph.

Mr Donnelly moved: That Finding 4 be omitted and a new Finding inserted instead to read:

The proceeds of the transactions were \$5.3 billion. NSW Treasury's Update of Statement of Unallocated Funds dated 27 January 2011 clearly shows the state's Net Financial Liabilities improve by \$5.1 billion as a result of the electricity transactions and the WSN Environmental Solutions transaction.

Question put and negatived.

Resolved, on the motion of Dr Kaye: That a new Finding be inserted after Finding 4 to read:

Finding X

The decision to set maintenance payments for the life of the Gentrader contracts, subject only to certain fixed escalations, exposes the public sector to significant and unmeasurable risks associated with an unexpected decline in the condition of the generating plant. The decision to place all of the risk for unexpected maintenance costs in the hands of the generators is unusual and not in the best interests of the people of New South Wales.

The risks associated with both maintenance costs exceeding fixed payments from the Gentrader and the Availability Liquidated Damages could in any one year result in a negative net outcome for the State.

Resolved, on the motion of Mr Donnelly: That paragraph 2.24 (page 22) be amended by omitting 'rating' and inserting instead 'metrics' in the second sentence.

Resolved, on the motion of Mr Donnelly: That the following footnote be inserted at the end of paragraph 2.26 (page 22):

See Moody's report of 10 June 2008.

Resolved, on the motion of Dr Kaye: That paragraph 2.28 (page 22) be amended by omitting 'commencing' and inserting instead 'currently scheduled to commence'.

Mr Donnelly moved: That paragraph 2.32 (page 23) be omitted.

Question put and negatived.

Resolved, on the motion of Mr Donnelly: That paragraph 2.34 (page 24) be amended by inserting the following sentence at the end of the paragraph:

However Mr Cosgriff advised the Committee that the coal is priced differently because it is a different quality coal, with only some parts of it suitable for the export market. (Footnote: Mr Cosgriff, Evidence, 18 January 2011, p 23)

Resolved, on the motion of Mr Pearce: That paragraph 2.34 (page 24) be amended by inserting the following sentence after the new sentence to be inserted at the end of the paragraph:

The need for extending railways to transport the coal was also discussed during evidence. (Footnote: Mr Outhred, Evidence, 18 January 2011, p 30).

Mr Donnelly moved: That paragraph 2.38 (page 25) be omitted.

Question put and negatived.

Mr Donnelly moved: That paragraph 2.41 (page 25) be amended by omitting 'subsidised'.

Question put

The Committee divided.

Ayes: Rev Nile, Mr Donnelly, Mr Foley, Ms Griffin, Mr Khan, Mr Pearce

Noes: Dr Kaye.

Question resolved in the affirmative.

Mr Donnelly moved: That paragraph 2.43 (page 26) be omitted.

Question put and negatived.

Mr Donnelly moved: That paragraph 2.48 (page 27) be omitted.

Question put and negatived.

Resolved, on the motion of Mr Pearce: That paragraph 2.49 (page 27) be amended by omitting 'it was not known at the time of writing whether, as a result of' and inserting instead 'notwithstanding', and by omitting 'the subsidised' and inserting instead 'low-cost'.

Mr Donnelly moved: That paragraph 2.49 (page 27), as amended, be omitted.

Question put and negatived.

Resolved, on the motion of Mr Donnelly: That paragraph 2.50 (page 27) be amended by inserting at the end of the paragraph:

However NSW Treasury advised the Committee that the Cobbora coal contracts involve delivered costs of coal some 25 to 50 percent higher than current average delivered coal costs to the Central Coast and Hunter Valley power stations.

Resolved, on the motion of Dr Kaye: That Finding 5 be amended by omitting the second paragraph and inserting instead:

While it is difficult to accurately forecast the exact financial impacts of the Cobbora mine proposal, it is clear that:

- the mine will have substantial local and global environmental impacts,
- the costs of construction of the mine will be borne by the people of New South Wales and might not be recouped in any potential future sale of the mine, and
- the operational subsidy will be substantial and will largely become profits for the Gentraders, rather than reductions in electricity bills for households.

Resolved, on the motion of Dr Kaye: That a new Recommendation be inserted after Finding 5 to read:

Recommendation X

That development of the Cobbora mine proposal be suspended and subjected to an independent expert review where the terms of reference include

- estimating the total public subsidy to the mine, including establishment and opportunity cost on below-market-price coal,
- the efficiency of spending money on subsidising coal as a measure to contain household electricity bills, and
- the economic benefits of instead using a portion of that money to assist households become more energy efficient.

Resolved, on the motion of Mr Donnelly: That footnotes 148 and 149 be amended by inserting the qualifications of Mr Inshaw and Mr Butler.

Mr Khan tabled a Channel 7 news clip from 14 February 2011 which shows an interview with Professor Tony Owen discussing the partial privatisation of the NSW electricity industry.

Resolved, on the motion of Mr Khan: That the Committee accept the Channel 7 news clip from 14 February 2011 which shows an interview with Professor Tony Owen discussing the partial privatisation of the NSW electricity industry.

Mr Khan moved: That the following new paragraphs be inserted after paragraph 2.58 (page 29) to read:

On 14 February 2011 Professor Tony Owen, who recently was tasked by the NSW Government to Chair an inquiry into the need for new generation capacity in New South Wales, appeared in a Channel 7 news piece.

In the piece he said:

'Well this certainly is a 'second best solution', if not a third best solution ... the cost of electricity will rise quite significantly. The population of NSW will suffer from higher prices because of this half-pregnant solution.'

The statements by Professor Owen concerning a 'second best solution' are consistent with other evidence given to the Committee by the Treasury Secretary, Mr Schur and Professor Outhred.

Mr Foley moved: That the motion of Mr Khan be amended by omitting 'recently was tasked' and inserting instead 'in May 2007 was commissioned'.

Amendment put and passed.

Original question, as amended, put and passed.

Resolved, on the motion of Dr Kaye: That a new Recommendation be inserted after paragraph 2.61 (page 30) to read:

That the structure of the NSW retail electricity industry be subject to an Independent Pricing and Regulatory Tribunal inquiry with terms of reference including:

- the degree of concentration of ownership of retail created by the NSW Government's reforms and its potential impacts on household power bills,
- the potential for new competitors to enter the market and for existing competitors to increase their market share, and
- the impacts on the potential to contain household electricity bills and carbon footprints from the loss of public sector presence in electricity retailing in New South Wales.

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after paragraph 2.72 (page 32):

Evidence as to the reasons for the resignations of the eight directors was not however limited to the Treasurer. During evidence given on 17 January 2011, Mr Kim Yeadon, a member of the Energy Reform Project team, stated:

CHAIR: To answer my question: during those times were you aware of any directors raising objections or questioning the process?

Mr YEADON: There were concerns expressed by directors of the board in relation to the post transaction environment, but not in relation to the process that would occur on 14 December. In other words, when the deal was going to be transacted and they needed to make a decision, there was no concern expressed to me by any board member in those meetings nor, indeed, on 14 December. No director indicated to me directly that they had a problem with the approach that was being taken. In those meetings it was about the post environment, how they were going to be funded, how the situation worked and that was explained to them. (Footnote: Mr Yeadon, Evidence, 17 January 2011, p 25)

Similarly Mr Col Gellatly, Chair of the Energy Reform Project, stated:

Dr GELLATLY: I was present at a number of those briefings and it was a similar position as Mr Yeadon has outlined. The main issues were about the post-sale environment. Towards the end of the period, in the first couple of weeks of December, there was some questioning about wanting legal advice about the legality of the ministerial direction, and that was provided before the fourteenth. (Footnote: Dr Gellatly, Evidence, 17 January 2011, p 26)

It is noted that amongst the documents the NSW Government has refused to release to the Committee are section 20N notices and correspondence relating to section 20N orders between the company boards and the Government.

The Committee considers that the actions of the Government, in refusing to release these documents, are more likely than not to be consistent with conclusions reached elsewhere in this report. That is, the refusal to co-operate with the Inquiry was designed to restrict the damage done to the reputation of the Government in the run-up to the state election on 26 March 2011.

Resolved, on the motion of Mr Khan: That paragraph 2.73 (page 32) be amended by:

- inserting a full stop after 'before the Committee',
- omitting 'and were therefore unable to shed light on the circumstances which led to their resignations.', and
- inserting a new paragraph after paragraph 2.73 to read:

The Committee believes it is reasonable to conclude that, in the absence of evidence to the contrary, the decision of the directors to resign was based upon a concern for the viability of the generator companies to continue to operate solvently under the terms of the Gentrader Agreements.

The Committee divided.

Ayes: Dr Kaye, Mr Khan, Revd Nile, Mr Pearce

Noes: Mr Donnelly, Mr Foley, Ms Griffin

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That paragraph 2.75 (page 32) be amended by:

- inserting 'The Committee received evidence that' at the beginning of the paragraph,
- commencing as a new paragraph the sentence beginning 'This Agreement',
- inserting at the end of the sentence ending 'Delta Electricity' a new sentence that reads 'The heads of Agreement were executed at a formal ceremony in Oslo attended by representatives of both Hydro and Delta Electricity.', and
- continuing the rest of the paragraph with the words commencing 'Hydro noted', and ending with the words 'in the smelter'.

Resolved, on the motion of Mr Khan: That a new paragraph be inserted before paragraph 2.76 (page 32) to read:

Having executed the Heads of Agreement further negotiations resulted in the finalisation of the terms of the actual contract. In due course the contract, prepared by lawyers acting on behalf of Delta Electricity, was executed by Hydro and returned for formal execution by Delta Electricity.

Resolved, on the motion of Mr Khan: That paragraph 2.76 (page 32) be amended by inserting 'by telephone by the CEO of Delta Electricity' after 'informed' on the second line.

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after paragraph 2.76 (page 32):

Since the telephone call of 5 November 2010, Hydro has received no formal written advices from Delta Electricity.

Evidence was given before the Committee by Mr Trevor Coombe, Head of Global Alumina and Smelter Growth, Oceania Region that Macquarie Generation had been in negotiations with the owners of the Tomago Smelter at approximately the same time. (Footnote: Mr Coombe, Evidence, 10 February 2011, p 3)

He further gave evidence that on 6 November 2010, Tomago announced that it had successfully concluded contract negotiations with Macquarie generation. (Footnote: Mr Coombe, Evidence, 10 February 2011, p 3)

Mr Timbs, Deputy Secretary of the Treasury, also gave evidence on the direction given to Delta Electricity not to sign the contract, in answer to questions from the Hon Luke Foley MLC. (Footnote: Mr Timbs, Evidence, 18 January 2011, p 20)

On 26 November 2010, Hydro wrote to Premier Keneally seeking meetings regarding the situation. At the time of giving evidence before the Committee on 10 February 2011, Hydro had received no acknowledgement, yet alone a response to the letter sent.

Resolved, on the motion of Mr Khan: That paragraph 2.77 (page 33) be amended by:

- inserting 'and there are approximately 800 workers on the site on any one day. The Committee concludes that this indicates that in addition to direct employees there are a large number of part time and contract workers on the site at any time' after 'employees';
- commencing a new paragraph with 'In addition to the direct employment benefits, Hydro gave evidence of' before continuing with the remaining sentence beginning 'economic inflows';
- amending the new paragraph by inserting 'and capital maintenance expenditures of approx \$50 million per annum' after '\$80 million per year'; before continuing with the final sentence beginning 'Hydro notes that this investment'.

Resolved, on the motion of Mr Khan: That a new paragraph be inserted before paragraph 2.78 (page 33) to read:

The impact of this interference is to potentially put at risk the jobs of as many as 2,500 jobs in the Hunter Valley and the injection of approximately \$130 million per annum into the New South Wales economy.

Resolved, on the motion of Mr Khan: That paragraph 2.80 (page 33) be amended by inserting 'approximately ten minutes before the Hydro company representatives gave their evidence.' after 'that morning'.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after 2.80 (page 33):

The Hydro company representatives were unaware of the media release until their attention was directed to it by the Hon Luke Foley MLC.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.81 (page 34)

When asked by the Hon Greg Pearce MLC as to the potential damages that may be payable for any breach of contract that may be pursued by Hydro, Mr Coombe agreed with the proposition that if his contract with Delta was not honoured it could result in compensation claims of 'a few hundred million dollars'.

Mr Donnelly moved: That the final sentence in paragraph 2.82 (page 34) be omitted.

Question put and negatived.

Resolved, on the motion of Mr Khan: That the following paragraph be inserted before paragraph 2.82 (page 34):

On the basis of the evidence available, the Committee concludes that the Energy Reform Group Steering Committee directed Delta Electricity not to execute the contract with Hydro to maximise the price received from the successful bidder for the Delta Electricity Gentrader contract.

Mr Khan moved: That the following paragraph be inserted after the new paragraph to be inserted before paragraph 2.82 (page 34):

The Committee concludes that the intervention by the NSW Government has created significant risk to employment and investment into the Hunter Valley.

Mr Donnelly moved: That the motion of Mr Khan be amended by inserting 'potentially' before 'created'.

Amendment put and passed:

Original question, as amended, put and passed.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.82 (page 34):

The Committee is not satisfied that the invitation to enter into negotiations between Macquarie Generation and Hydro will result in the timely execution of an electricity supply contract. There is no certainty, on the evidence available to the Committee, that any contract would result in agreement being reached on the same terms and conditions as was reached with Delta Electricity.

Resolved, on the motion of Dr Kaye: That the following new Finding be inserted after paragraph 2.82 (page 34):

Finding X

The Gentrader transactions have left a remaining State-owned generator industry structure that does not contain an economically feasible contract supplier for Hydro. The residual Delta is too small and is already exposed to massive market risks. If Macquarie Generation were to take on the contract, combined with its existing contracts with Tomago, almost 50 per cent of its generation annual output would be tied up with aluminium smelters, exposing the State-owned generator to significant electricity and aluminium market risks.

Dr Kaye moved: That the following new Recommendation be inserted after paragraph 2.82 (page 34):

Recommendation X

That in the event that Hydro is unable to secure a suitable electricity supply contract as a result of the Gentrader transactions, the Government should commit resources to a just transition program for the smelter workforce and the Kurri Kurri community, including the creation of new industries and employment opportunities, direct economic support for affected workers, their households and the community and suitable retraining for the existing workforce.

Question put and negatived.

Mr Foley moved: That the following new recommendation be inserted after paragraph 2.82 (page 34):

That all parties involved be encouraged to resolve the uncertainty regarding the Hydro Aluminium Kurri Kurri Pty Limited supply contract as a matter of urgency, with the aim of securing the future of the company and jobs.

Committee divided.

Ayes: Rev Nile, Mr Donnelly, Mr Foley, Ms Griffin, Mr Khan, Mr Pearce

Noes: Dr Kaye.

Question resolved in the affirmative

Resolved, on the motion of Mr Donnelly: That paragraph 2.85 (page 34) be amended to insert a footnote after 'no bids' to read:

It is noted that Shadow Treasurer, Mr Mike Baird MP, called for bidders not to bid. See 'Baird calls for bids boycott', *Australian Financial Review*, 20 January 2011.

Mr Foley moved: That the following Committee comment, Finding and Recommendation be inserted after paragraph 2.95 (page 36):

Committee comment

The Committee is concerned that the Leader of the Opposition and Shadow Treasurer did not rule out further electricity privatisation despite being repeatedly invited to do so by members of the committee.

Finding X

There exists a real risk of privatisation of the state's electricity generation, transmission and distribution assets under the next government, given the refusal of the Leader of the Opposition to rule out such a course.

Recommendation X

That legislation be enacted to prohibit any privatisation, leasing out or other form of disposal of a principal undertaking of a state owned electricity company without the approval of both houses of parliament.

Debate ensued.

Mr Pearce made a point of order.

The Chair ruled the motion out of order on the grounds that the paragraphs are outside the Terms of Reference.

Mr Foley moved a following dissent from the Chair's ruling on the following basis:

My objection is that the Chair was in error in:
Ruling that the resolutions standing in my name are out of order.

Question that the Committee dissent from the ruling of the Chair was put.

The Committee divided.

Ayes: Mr Donnelly, Mr Foley, Ms Griffin, Dr Kaye
Noes: Revd Nile, Mr Khan, Mr Pearce.

Question resolved in the affirmative.

Mr Foley moved: That the following Committee comment be inserted after paragraph 2.95 (page 36):

The Committee is concerned that the Leader of the Opposition and the Shadow Treasurer did not rule out further electricity privatisation despite being repeatedly invited to do so by members of the committee.

Mr Pearce moved: That the motion of Mr Foley be amended by omitting 'The Committee is' and inserting instead 'Some members of the Committee were' before 'concerned'.

Amendment put

The Committee divided.

Ayes: Rev Nile, Mr Khan, Mr Pearce
Noes: Mr Donnelly, Mr Foley, Ms Griffin, Dr Kaye.

Amendment resolved in the negative.

Original question put and passed.

Mr Foley moved: That the following new Finding be inserted after paragraph 2.95 (page 36):

Finding X

There exists a real risk of privatisation of the State's electricity generation, transmission and distribution assets under the next government, given the refusal of the Leader of the Opposition to rule out such a course

Mr Pearce moved: That the motion of Mr Foley be amended by inserting a full stop after 'government' and omitting 'given the refusal of the Leader of the Opposition to rule out such a course'.

Amendment put

The Committee divided.

Ayes: Revd Nile, Mr Pearce, Mr Khan
Noes: Mr Donnelly, Mr Foley, Ms Griffin, Dr Kaye.

Amendment resolved in the negative.

Original question put and passed.

Dr Kaye moved: That the following Recommendation be inserted after paragraph 2.95 (page 36):

Recommendation X

That legislation be enacted to prohibit any privatisation, leasing out or other form of disposal of a principal undertaking of a state owned electricity company without the approval of both Houses of Parliament.

The Committee divided.

Ayes: Revd Nile, Mr Donnelly, Mr Foley, Ms Griffin, Dr Kaye

Noes: Mr Pearce, Mr Khan

Question resolved in the affirmative.

Mr Donnelly moved that paragraph 2.96 (page 36) be amended by omitting the paragraph and inserting instead "The transaction produced a good result for the taxpayers of NSW. The retention value for each of the two transactions was exceeded."

Question put and negatived.

Mr Donnelly moved that paragraph 2.97 (page 36) be amended by omitting the paragraph and inserting instead "The Government has achieved its objectives of improving the commercial environment for private sector investment and substantially reducing the risks taxpayers face under retained ownership including the risky businesses of electricity trading; increased competition in the retail sector; putting downward pressure on power prices; and secured the state's AAA credit rating."

Question put and negatived.

Mr Donnelly moved that paragraph 2.99 (page 37) be amended by omitting the paragraph and inserting instead:

The electricity asset sale contracts are fully binding contracts enforceable at law.

In addition to the critical sovereign risks that would be triggered by any move to overturn legally binding contracts, NSW taxpayers would face exposure to significant compensation claims for damages.

These damages could include bid costs, forgone profits, lost opportunity and contract value and could ultimately run to billions of dollars.

If a future Coalition government wants to pay billions in compensation to buy back power stations then they need to cut frontline services like police, teachers and nurses - or increase taxes.

Question put and negatived.

Resolved, on the motion of Dr Kaye: That the following new recommendation be inserted before Recommendation 1:

Recommendation X

That the full financial details of the Gentrader transactions be made publicly available immediately.

Resolved, on the motion of Mr Khan: That the following new Recommendation be inserted after the new Recommendation to be inserted before Recommendation 1:

Recommendation X

That the incoming government establish a full Judicial Inquiry into the energy reform transactions.

Resolved, on the motion of Mr Khan: That Recommendation 1 be amended by inserting 'immediately' before 'rescinded'.

Resolved, on the motion of Mr Khan: That the following Recommendation be inserted after Recommendation 1:

Recommendation X

That in the event that the Gentrader contracts are not rescinded by the Government, that the incoming NSW Government ask the Judicial Inquiry to examine the amount of damages that the State may be liable for if the Gentrader contracts were to be reversed.

Resolved, on the motion of Mr Khan: That the following Recommendation be inserted after the new Recommendation to be inserted after Recommendation 1:

Recommendation X

That the incoming NSW Government ask the judicial Inquiry to:

- a) Inquire into the circumstances surrounding and the reasons for the Energy Reform Group Steering Committee making a direction to Delta Electricity not to execute the contract between Hydro Aluminium Kurri Kurri Pty Ltd and Delta Electricity;
- b) Investigate the capacity of Macquarie Generation to enter into a contract with Hydro Aluminium Kurri Kurri Pty Ltd on similar terms to the Heads of Agreement with which Hydro Aluminium Kurri Kurri had with Delta Electricity;
- c) Determine what, if any, compensation would be payable to Hydro Aluminium Kurri Kurri in the event that a contract, as described in b), cannot be entered into; and
- d) Whether the NSW Government should make a direction under section 20N of the *State Owned Corporations Act* for Macquarie Generation to enter into a contract with Hydro Aluminium Kurri Kurri Pty Ltd on similar terms to the Heads of Agreement with which Hydro Aluminium Kurri Kurri had with Delta Electricity.

Resolved, on the motion of Mr Khan: That Chapter 2, as amended, be adopted.

Resolved, on the motion of Mr Khan: That the draft report, as amended, be the report of the Committee.

Resolved, on the motion of Mr Pearce: That the Secretariat be authorised to make any typographical and formatting corrections to the report.

Resolved, on the motion of Mr Donnelly: That dissenting reports be sent to the secretariat by 11am Tuesday 22 February 2011.

Dr Kaye moved: That the Special Report be the report of the Committee

Question put

The Committee divided

Ayes: Dr Kaye, Rev Nile

Noes: Mr Donnelly, Mr Foley, Ms Griffin, Mr Khan, Mr Pearce

Question resolved in the negative.

Resolved on the motion of Mr Pearce: That the Committee present the report to the House, together with transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the Inquiry, except for documents kept confidential by resolution of the Committee.

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The Chair advised that the report would be tabled at 12pm on Wednesday 23 February, and that he would hold a press conference at 12.30pm in the media room.

Resolved, on the motion of Dr Kaye: That the Secretariat be congratulated for its work on the report and its support over the past four years.

5. Adjournment

The Committee adjourned at 5.20pm.

Teresa McMichael
Clerk to the Committee

Appendix 10 Dissenting statements

DISSENTING STATEMENT – HON KAYEE GRIFFIN MLC AND HON LUKE FOLEY MLC

This inquiry was conducted during the lead up to a New South Wales election campaign. The report of the Committee can only be viewed in the context of the cut and thrust of an election campaign.

The report's findings and recommendations resemble the election campaign documents of political parties competing for votes, rather than a considered analysis of government decision making or public policy.

There is no evidence to warrant the Committee comment that the Premier's advice to the Governor to prorogue Parliament was a deliberate attempt to stop the Committee's inquiry. Nor is there evidence to support the finding that Parliament was prorogued for the specific purpose of frustrating this inquiry. Indeed, the Premier has denied this when asked. In other words, the Opposition and cross bench members of the Committee have chosen to ignore the Premier's evidence to the inquiry in favour of coming up with their own self serving conclusions.

We reject the Committee comment and finding regarding the provision of documents. The Clerk of the Parliaments provided the Committee with advice that the Government contested the power of committees to order the production of documents in 2003 and 2004. The Government has not responded to such orders since 2003, based on legal advice from the Crown Solicitor that only the House, rather than committees, has the power to make an order for papers under Standing Order 52.

Notwithstanding this, on this occasion the Government voluntarily returned papers to the Committee, consistent with the Premier's statement of 6 January 2011 that she was committed to openness and transparency. The response of the Opposition and cross bench members of the Committee, consistent with their overall approach of turning this inquiry into a party political point scoring exercise, was to condemn the Government for not providing more documents!

Similarly, the Committee comment regarding the "refusal" of the Premier and Treasurer to return to give further evidence ignores the fact that they voluntarily appeared before the Committee for over three hours, submitting themselves to extensive questioning.

The opposition and cross bench members of the Committee have been determined to turn every aspect of this inquiry into a partisan denunciation of the Government.

We note that the Standing Rules and Orders of the Legislative Council require that the report of a committee is, as far as practicable, to reflect a unanimity of opinion within a committee (SO 228(1)). We further note that it is the responsibility of a committee Chair and all members of a committee to seek to achieve unanimity of opinion (SO 228(2)), and that where unanimity is not practicable, a committee's report should be prepared so as to reflect the views of all members of the committee (SO 228(3)).

Those requirements of the Standing Orders have been blatantly disregarded by the Opposition and cross bench members of this Committee in the preparation of this report.

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The proper conduct of the Committee's workings was thrown out the window, in the heated atmosphere of an election campaign, in order to score political points against the Government.

Hon Kayee Griffin MLC (Deputy Chair) and Hon Luke Foley MLC

DISSENTING STATEMENT – HON GREG DONNELLY MLC

Overview

The Premier and the Treasurer, along with key members of the energy reform transaction office and NSW Treasury, appeared before the parliamentary committee in January to answer all questions put to them – notwithstanding the fact the committee's legal validity was in doubt.

The NSW Government's energy reforms were in response to the Owen Report which found the most efficient means of providing for baseload generation was to improve the commercial and policy signals for private sector investment.

Since late 2007, the Government had a clear desire to exit the competitive elements of the electricity industry, in order to encourage private sector investment in new generation capacity.

In August 2008, there was a lack of Parliamentary support for the original reform strategy, which included long-term leases of the state-owned generation businesses.

Given this legitimate constraint and the continuing desire to encourage private sector investment, the Government moved on to another option.

The Owen Report also found that power station developments can take up to six years to reach the stage of letting a new power station.

Demand for electricity in New South Wales continues to grow across all sectors and the fact remains the State needs to be prepared for new generation capacity.

The NSW Government will provide all relevant information to the Auditor-General to assist with his performance review of the transaction outcomes, which will be taken into account in the Auditor-General's final report to the NSW Parliament.

This report is littered with factual errors that must be corrected for the public record.

Transaction proceeds

The proceeds of the energy transactions were \$5.3 billion.

The State's balance sheet unambiguously improves by more than \$5 billion.

NSW Treasury's Update of Statement of Unallocated Funds dated 27th January 2011 clearly shows the State's Net Financial Liabilities improve by \$5.1 billion as a result of the electricity transactions and the WSN Environmental Solutions transaction.

The transaction produced a good result for the taxpayers of NSW. The retention value for each of the two transactions was exceeded.

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Cobbora Coal Mine

The Cobbora coal resource is owned by NSW taxpayers and has been set aside to secure long term fuel supplies for existing generators.

The development of the Cobbora resource is separate to the energy reform transaction and is a commercially viable, stand-alone entity that is intended to cover its costs of funds even before consideration of any export potential from the resource.

There is no subsidy.

The Cobbora coal contracts involve delivered costs of coal some 25 per cent to 50 per cent higher than current average delivered coal costs to Central Coast and Hunter Valley power stations.

Ongoing risks

The risks faced by the State under the energy reform transactions and the Gentrader model are far reduced than the risks of having done nothing and retaining full ownership.

Availability Liquidated Damages are only available where a generator does not deliver power when it is scheduled to do so and is called upon.

Availability Liquidated Damages are capped both by an amount significantly less than wholesale price risk and on an annual basis.

Interstate comparisons

The Victorian electricity privatisation involved the sale of its generation, transmission, distribution and retail businesses and resulted in total proceeds of \$23 billion and repayment of \$10 billion of government debt involved with the State Electricity Commission of Victoria.

The NSW energy reform transactions did not involve the transmission and distribution business which remain in government ownership, as do the generation businesses.

The Owen Report found selling the 'poles and wires' of the State's electricity and transmission and distribution networks was not a necessary condition to attract private investment in generation.

Overturing contracts

In addition to the critical sovereign risks that would be triggered by any move to overturn legally binding contracts, NSW taxpayers would face exposure to significant compensation claims for damages.

These damages could include bid costs, forgone profits, lost opportunity and contract value and could ultimately run to billions of dollars.

If a future Coalition government wants to pay billions in compensation to buy back power stations then they need to cut frontline services like police, teachers and nurses - or increase taxes.

Objectives met

The NSW Government has achieved its objectives:

- Putting downward pressure on power prices;
- Secured the state's AAA credit rating;
- Increased competition in the retail sector;
- Improving the commercial environment for private sector investment; and
- Substantially reducing the risks taxpayers face under retained ownership including the risky businesses of electricity trading.

The NSW Government will provide all relevant information to the Auditor-General to assist with his performance review of the transaction outcomes, which will be taken into account in the Auditor-General's final report to the NSW Parliament.

Future risks

There exists a real risk of privatisation of the State's electricity generation, transmission and distribution assets under an incoming Coalition Government, given the refusal of the Leader of the Opposition to rule out such a course.

Hon Greg Donnelly MLC