



Premier of New South Wales

Minister for Western Sydney

Reference: A1208082

Ms Tina Higgins
Principal Council Officer
Select Committee on the Leasing of Electricity Infrastructure
Parliament House
Macquarie St
Sydney NSW 2000

Dear Ms Higgins

Thank you for providing me with the transcript from my appearance before the Select Committee on the Leasing of Electricity Infrastructure on Monday 11 May. I am pleased to confirm the accuracy of the transcript, with the exception of some minor amendments which are attached at Attachment A.

I also attach answers to the questions taken on notice during the hearing (Attachment B), along with answers to the additional supplementary questions which were received (Attachment C).

I look forward to the findings of the Inquiry in due course.

Yours sincerely,

MIKE BAIRD MP
Premier

INQUIRY INTO THE LEASING OF ELECTRICITY INFRASTRUCTURE

Attachment B – Responses to questions taken on notice by the Premier

- 1. *(asked by the Hon Peter Primrose)* Does the Premier have a letter from Federal Treasury confirming that the State will continue to receive tax equivalent payments?**

The State will continue to receive dividends and tax equivalent payments from Essential Energy – which will remain wholly Government-owned – as well as from the partially leased businesses (Ausgrid and Endeavour Energy) equal to its retained interest in those businesses.

The State has had an ongoing dialogue with the Australian Taxation Office (ATO) on the key taxation implications. To date, the ATO has not raised any concerns regarding the preferred structures presented by the State.

ActewAGL is an example of a partnership which is 50 per cent owned by the private sector (ASX listed AGL) and 50 per cent owned by the public sector (the ACT Government). The ACT Government holds its 50 per cent stake in the partnership through a 100 per cent Government owned corporation. This 100 per cent owned entity is exempt from Commonwealth income tax and is subject to tax equivalent payments under the National Tax Equivalent Regime. Accordingly, the ACT Government continues to receive tax equivalent payments from its 50 per cent stake in ActewAGL.

- 2. *(asked by the Hon Peter Primrose)* How much did the State budget receive from those TCorp fees this financial year?**

Government Guarantee fees for 2014-15 will be reported in the annual financial statements of the Crown Entity once the financial year has been completed.

Government Guarantee fee income is compensation paid to the State for taking on risk of lending money to a Government business. A reduction in GGF income is offset, dollar-for-dollar, by a reduction in the risk-adjusted profile of the State's balance sheet.

- 3. *(asked by the Hon Robert Borsak)* Who will be the trustees of the new government entity? Will the trustees or Government/Minister be able to sell down any of those shares in the future?**

The procedures for appointment of Governors to the new government entity to hold the State's retained interests will be established by legislation. Any sell down of the retained interests would require legislation.

- 4. *(asked by the Hon Robert Borsak)* Can the Committee get further advice on whether NSW will receive tax equivalents in the future? Do you have any guarantee from the Federal Treasurer about that?**

Refer to Q1.

INQUIRY INTO THE LEASING OF ELECTRICITY INFRASTRUCTURE

Attachment C – Responses to supplementary questions for the Premier

- 1. From what date was UBS engaged by the NSW Government in connection with the proposed electricity network transaction(s)?**

The Financial Advisers signed the contract with NSW Treasury on 22 July 2014 for nil consideration for Phase 1. The contractual obligations for Phase 2, covering the actual transaction, commenced when the new Government was sworn in on 30 March 2015 and therefore actual paid engagement started on 30 March 2015.

- 2. How much has UBS been paid to date for their work on the electricity transaction?**

UBS has not been paid to date.

- 3. What is the present estimate of the total value of the engagement of UBS in connection with the proposed electricity network transaction(s)?**

Contract details for UBS will be disclosed as per policy on the eTender and/or NSW Treasury website by 28 May 2015.

- 4. How much has Deutsche Bank been paid to date for their work on the electricity transaction?**

Deutsche Bank has not been paid to date.

- 5. What is the present estimate of the total value of the engagement of Deutsche Bank in connection with the proposed electricity network transaction(s)?**

Contract details for Deutsche Bank will be disclosed as per policy on the eTender and/or NSW Treasury website by 28 May 2015.

- 6. What other advisors and consultants have been appointed to work on the transaction?**

As in the case with all transactions, contract details for all advisers with contract value over \$150,000 will be disclosed on the eTender and/or NSW Treasury website.

- 7. How much has each one been paid to date?**

Contract details for all advisers with contract value over \$150,000 will be disclosed on the eTender and/or NSW Treasury website.

- 8. What is the estimated total value of the contracts for the engagement for each advisory and consultant firm?**

Contract details for all advisers with contract value over \$150,000 will be disclosed on the eTender and/or NSW Treasury website.

- 9. Is it appropriate for the Liberal Party to take donations from companies involved in the transaction – either as advisers or bidders?**

Donations are subject to the *Election Funding Expenditure and Disclosures Act 1981*. For the first time, following legislative amendments introduced by the Liberal and Nationals Government in 2014, an additional disclosure of donations was required prior to the 28 March 2015 election for donations received in the lead up to the election, between 1 July 2014 and 1 March 2015.

- 10. Will the Auditor General be involved in reviewing the sale before it is completed?
The Auditor General has the discretion to review**

The Auditor General has the discretion to review the lease transactions.

- 11. Will the Auditor General be given access to the scoping study before the transaction is completed?**

The scoping study is cabinet-in-confidence. The Auditor-General is able to request access to cabinet documents.

- 12. If the answer to either questions above is no, why will you not allow this?**

N/A

- 13. Will you provide to the Committee the draft legislation that will facilitate/govern the transaction at a time when it can consider it before it reports?**

The legislation governing the transactions is currently being drafted. Once prepared, the Government will introduce the Bill into Parliament.

- 14. If not, why will you not do this?**

As is standard practice with legislation, once it is drafted it will be presented to Parliament for consideration, and the Parliament will have the opportunity to consider the legislation.

- 15. Will you provide the draft legislation regarding the role and power of your proposed Price Commissioner at a time when it can consider it before it reports?**

The legislation regarding the role and power of the Price Commissioner is currently being drafted. Once prepared, the Government will introduce the Bill into Parliament. Further information on the Price Commissioner is available at:
<http://nsw.liberal.org.au/guaranteed-lower-prices-for-electricity-customers/>.

- 16. If not why not?**

As is standard practice with legislation, once it is drafted it will be presented to Parliament for consideration, and the Parliament will have the opportunity to consider the legislation.

- 17. Will you provide the draft legislation setting out the proposed new licensing arrangements and the new powers of the Energy Minister at a time when it can consider it before it reports?**

The legislation regarding the new licensing arrangements and the new powers of the Energy Minister is currently being drafted. Once prepared, the Government will introduce the Bill into Parliament.

- 18. If not, why not?**

As is standard practice with legislation, once it is drafted it will be presented to Parliament for consideration, and the Parliament will have the opportunity to consider the legislation.

- 19. Will you provide the scoping study for the transactions to the Committee so it can consider it before the Committee reports – either in strict confidence, or with sensitive parts redacted?**

As per standard practice, the Scoping Study document is Cabinet-in-confidence and commercial-in-confidence. The Government wants to achieve the best commercial outcome for taxpayers and releasing the commercially sensitive Scoping Study report could reduce proceeds. The Government, and previous Governments, have not released Scoping Studies for previous transactions.

- 20. If not, why not?**

The Scoping Study document is Cabinet-in-confidence and commercial-in-confidence. The Government wants to achieve the best commercial outcome for taxpayers and releasing the commercially sensitive Scoping Study report could reduce proceeds. The Government, and previous Governments, have not released Scoping Studies for previous transactions.

- 21. Has the claimed \$300 billion uplift in the economy arising from the transaction been reviewed by any Government agency such as the Treasury, IPART, or the Auditor General?**

The Department of Premier and Cabinet, NSW Treasury and Infrastructure NSW commissioned Deloitte Access Economics to undertake modelling and prepare a report.

- 22. If yes, what was their view? Please provide to the Committee any and all documents that bear on this.**

The report is available on the Rebuilding NSW website.

<http://www.nsw.gov.au/sites/default/files/miscellaneous/economic-impact-of-state-infrastructure-strategy.pdf>

- 23. The claimed increase in State Government revenue in your presentation assumed State revenue as a proportion of the State economy remains unchanged. Has any Government agency, including Treasury, reviewed the assumption and the modelling?**

Treasury provided the assumption.

- 24. If yes, which agencies and what is the outcome of any review or advice? Please provide to the Committee any and all documents that bear on this.**

Not applicable.

- 25. What is your response to the resolution of the 2014 NSW Local Government Conference seeking, prior to any leasing or privatisation by the State Government, the development of a detailed policy that requires consultation being required by private operators with local councils prior to the installation or upgrading of electricity infrastructure, in particular on road reserves?**

The transaction legislation will set out environmental planning and assessment requirements. It is proposed that compliance with a Code of Practice be a requirement under the EP&A Regulations as well as being a condition of the network operator's licence.

- 26. Will employment protections be included in any enabling legislation? If so, please provide details, including the duration.**

The legislation governing the transactions is currently being drafted. The detail of the employment protections arrangements is being considered by the Government.

- 27. Do you support Rev. The Hon Fred Nile's proposal for a five year employment guarantee?**

Refer to Q26.

- 28. Will employment guarantees apply to the entire workforce? If not which category of employees will employment protections apply?**

Refer to Q26.

- 29. If they are to be offered, will the employment guarantees be extend to cover the 2,751 "unfunded jobs for 2015/16" identified by Networks NSW Chief Executive Officer Vince Graham?**

Refer to Q26.

- 30. Will guarantees be included for the provision of future apprentice positions?**

Refer to Q26.

- 31. Will guarantees be provided to current apprentices coming to trade over the next four years for ongoing full time employment?**

Refer to Q26.

- 32. Will you guarantee that there will be no forced redundancies during the life of any employment guarantee period?**

Refer to Q26.

- 33. How will any employment guarantee and protections package be enforced? Will it be by regulation, shareholder agreements, licence conditions or industrial instruments?**

Refer to Q26.

- 34. How will the trustees of the new government holding corporation be selected and appointed?**

The procedures for appointment of Governors to the new government entities to hold the State's retained interests will be established by legislation.

- 35. Who will the new government holding company report to?**

The State's two Retained Interest Corporation will be managed by separate Boards of Governors with a mandate to protect the value of the State's retained interest. The governance for the State's retained interests will be established by legislation.

- 36. Will the trustees be able to act independently of government? Will the government or the parliament be required to approve any decision deemed not to be an operational decision including those such as future ownership levels, sell downs or buy backs?**

The Boards of Governors will be able to act independently.

Any sell down of the retained interests would require legislation.

- 37. As the major shareholder in Ausgrid, Endeavour Energy and TransGrid will the lease holder have full managerial control?**

Under the proposed governance structure for the long-term lease of the Ausgrid and Endeavour Energy networks the private sector will control the operation of the businesses previously conducted by Ausgrid and Endeavour Energy. The Boards of Governors will maintain a range of rights to protect the long term value of the State's retained interest in the businesses, such as in relation to capital structure and dividend policy.

TransGrid will be 100 per cent leased and the private sector investors will have full managerial control.

The lessees will be subject to strict conditions imposed by legislation and license and lease conditions. These include safety, reliability and performance requirements, and an obligation to operate and maintain the network in accordance with the regulatory regime. The Independent Pricing and Regulatory Tribunal will be appointed to ensure compliance with licence conditions and safety and reliability standards. The Energy Minister will also be able to trigger new 'step in rights' should a breach of licence or electricity regulatory obligation threaten the safe, secure or reliable supply of electricity.

- 38. What will happen to the almost \$20 billion in current debt held by the network businesses? Will it be paid down as part of the lease transaction?**

As in previous State transactions, the businesses' debt will be paid down as part of the lease transaction.

- 39. Will the NSW Government continue to underwrite future superannuation liabilities for NSW power workers impacted by the transaction or will this responsibility be transferred to the new lease holders?**

Consistent with past transactions the State will arrange for defined benefit schemes to be fully funded as at the date of transfer.

After completion of the transaction, any employer contribution towards future service liabilities will be an obligation of the new employer.

The superannuation fund will continue to be administered by the trustees on behalf of beneficiaries. The trustees are required to ensure that future liabilities are funded by the relevant employer on an ongoing basis.

- 40. Are there any outstanding superannuation liabilities under either accumulation or defined benefit schemes owed to employees of Ausgrid, Endeavour Energy, TransGrid and Essential Energy? Will the NSW Government fully fund outstanding liabilities and if so when will these liabilities be paid?**

Currently, two lease entities have defined benefit obligations which are fully funded and the other is in a marginal net deficit position. The Government will follow the precedent of past transactions and will ensure defined benefit obligations are fully funded as at the date of transaction.

- 41. How will potential liabilities such as the Blue Mountains bush fire class action against Endeavour Energy be treated under the transaction? Will NSW taxpayers underwrite and pay any future liability or settlement resulting from this or other actions?**

Endeavour Energy maintains insurance to cover its bushfire liability exposure.

- 42. If the Australian Competition and Consumer Commission or the Foreign Investment Review Board or any other regulatory body recommends against the proposed transaction, will you give a commitment to abide by those decisions and not appeal them to any court as your government did with the sale of Macquarie Generation to AGL?**

ACCC and FIRB approval is required in accordance with their statutory obligations. To clarify, the Macquarie Generation process was not an appeal of the ACCC's informal decision to oppose acquisition, but rather an independent application to the Australian Competition Tribunal that AGL Energy Limited (AGL) be granted an authorisation pursuant to s95AT of the *Competition and Consumer Act 2010 (Cth)* to acquire the assets of Macquarie Generation. The application was made by AGL. The Government was not a party to this application.

- 43. Will you guarantee that the practice of “Load Shedding” will not increase above current levels following the transaction?**

The license conditions for distribution reliability remain unchanged, and the incentive and penalty schemes for transmission and distribution administered by Australian Energy Regulator remain unchanged.

- 44. Will you rule out any redrawing of current franchise boundaries for Ausgrid, Endeavour Energy and Essential Energy?**

There are no plans to redraw franchise boundaries for the distribution businesses as part of the proposed lease.

- 45. If boundary amendments are made to Ausgrid, Endeavour Energy or Essential Energy what process will be undertaken to determine new boundaries?**

Not applicable.

- 46. What options will be available to workers impacted by any such boundary changes?**

Not applicable.

- 47. What has been the total cost of network investment, network expansion and network upgrades since March 2011, broken down by year and by network business, Ausgrid, Endeavour Energy, Essential Energy and TransGrid?**

The annual reports of the businesses disclose capital expenditure. Annual information on actual additions recognised in the Regulatory Asset Base, broken down year by year by asset class, is also available in the responses to the Regulatory Information Notices published on the AER's website.

- 48. Please provide further details of the role of the proposed Price Commissioner? In particular, will his position continue after the transaction has been concluded? If so, what powers will he have to force electricity retailers to reduce retail prices in line with reductions in network costs?**

Professor Allan Fels will report on each transaction to confirm the transactions will not put upward pressure on network charges in the short, medium and long term. In addition, following completion of the transactions, the Commissioner will review annual reports provided by the leased businesses to ensure compliance with their price guarantees.

- 49. The Price Commissioner's powers are limited to the impact on the transmission and distribution charges to the retailers. How will the Price Commissioner or the NSW government be able to ensure that his "downward price guarantee" is reflected in the retail prices paid by households and small businesses?**

The Price Commissioner is responsible for monitoring the impact of the transactions and the compliance of the leased businesses only with regards to total network charges. These make up over 50 per cent of the total cost of typical residential electricity bills. While the reduction in network charges will place downward pressure on overall electricity bills, the Price

Commissioner and the NSW Government are not responsible for, and do not regulate, retail electricity prices. Retail electricity prices are subject to a competitive market between private providers, monitored by both IPART and the Australian Energy Market Commission.

- 50. How much additional funding or other new resources will IPART receive to allow them to adequately police and enforce electricity licence conditions?**

The amount of additional funding and resources to be received by IPART is yet to be determined. However, IPART will have adequate resources to perform these functions.

- 51. Over what time period and what interest rate will transaction proceeds be invested in order to generate the claimed \$5 billion in interest?**

The investment earning figure was calculated by Treasury based on the assumption that the proceeds in Restart NSW would earn a rate equivalent to that forecast as the cost of debt borne by the general government sector over a 10 year period.

The Parliamentary Budget Office reviewed this methodology and considered it to be "reasonable and conservative".

- 52. Please provide at least one indicative spending pattern and interest rate to show that it is possible to invest and spend \$13 billion over ten years and earn \$5 billion in interest.**

Refer to Q51.

- 53. After the transaction has been completed, will the NSW Government underwrite any claims, damages or payments resulting from exposure to asbestos or other hazardous materials by electricity workers and how will future claims be handled?**

No decision has been made as yet as to where these liabilities will ultimately reside. However, employees will continue to be able to make claims. Claims will be able to be made either against the successful lessee, or if the relevant liabilities are retained, against the relevant State-owned entity.

- 54. What was the basis for the 49% lease figure for the entire industry? Was this regulated asset value, revenue, profitability or turnover?**

The lease figure will be calculated on the basis of the financial year 2014-2015 closing regulated asset base (RAB) values as published in the AER final determination.

- 55. Will you mandate as a license condition that a new owner must supply automated external defibrillator devices to all company vehicles by 2018?**

The businesses will continue to be responsible for determining how to manage Workplace Health and Safety under the current regulations and standards.

- 56. Will the leases, licences and other agreements with the lessees impose any limits or charges on consumers seeking to disconnect from the network and provide for their own electricity needs?**

The current arrangements for disconnection will not be changed as a result of the transaction.

- 57. Can the Premier provide a guarantee that throughout the duration of the leases consumers will not be restricted from or penalised for disconnecting from the grid and providing for their own power needs?**

The current arrangements will not be changed as a result of the transaction.

- 58. Will the leases, licences or other agreements provide flexibility for the government to direct the network businesses to adjust their business models, investments and operating procedures to connect and provide economic return for grid-connected renewable generation and energy storage?**

The current arrangements will not be changed as a result of the transaction.

- 59. Will the leases, licences or other agreements provide flexibility for the government to direct the network businesses to adjust their business models, investments and operating procedures to encourage and reward improvements in consumer energy efficiency and demand responsiveness?**

The current arrangements will not be changed as a result of the transaction.

- 60. Will the leases, licences or other agreements provide flexibility for the government to direct the network businesses to adjust their business models, investments and operating procedures to improve demand management activities?**

The current arrangements will not be changed as a result of the transaction.

- 61. What modelling assumptions have been used to predict that leases could be sold for \$13 billion?**

Transaction net proceeds are based on financial forecasts developed by the State's Financial Advisors.

- 62. Given the predictions of dramatic declines in the dividends that the business will pay, what changes to business operations does the Premier understand the leases can make to increase profits and justify a large investment in purchasing the leases?**

Any potential lessee will make an assessment of future dividends on the basis of anticipated future AER determinations.