



# The Treasury

Ms Teresa McMichael  
Acting Director  
General Purpose Standing Committee No. 1  
Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Contact: Susanne Kennedy  
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Our Reference:

15 FEB 2011

Dear Ms McMichael

## **Questions from Parliamentary Committee – Inquiry into Gentrader Transactions**

General Purpose Standing Committee No. 1 has requested responses to the additional questions issued on 10 February 2011.

Please refer to attachment for further details.

Yours faithfully

Secretary

cc: The Hon. Eric Roozendaal MLC

## 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
<b>Financial Advisors</b>	<i>Lazard Carnegie Wylie</i>	Provides financial advice to the Project, SOC Vendor due diligence (Dec 2007 - present)	Actual	\$ 2,859,679
	<i>Credit Suisse</i>	Provides financial advice to the Project, SOC Vendor due diligence (Dec 2007 - present)	Actual	\$ 8,710,431
<b>Accounting &amp; Tax Advisor</b>	<i>Ernst &amp; Young</i>	Provides accounting and tax to the Project, SOC Vendor due diligence (Dec 2007 - present)	Actual	\$ 32,733,622
<b>Legal Advisors</b>	<i>Baker &amp; McKenzie</i>	Provides legal advice to the Project, SOC Vendor due diligence (Dec 2007 to present)	Actual	\$ 28,501,956
	<i>Gilbert &amp; 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 2009 - Feb 2010)	Actual	\$ 2,541,310
	<i>Johnson Winter &amp; Slattery</i>	Provided Gentrader legal advice to the Project (Mar 2010 to 31 Jan 2011)	Actual	\$ 9,845,634
<b>Market Consultant</b>	<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
<b>Communication Advisor</b>	<i>Cosway Australia</i>	Provides communications and issue management support to the Project (Mar 2008 - 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
<b>IT Advisor</b>	<i>KPMG</i>	Provides IT advice to the Project, SOC Vendor due diligence (Feb 2008 - present)	Actual	\$ 8,578,902
<b>Engineering &amp; Environment Advisor</b>	<i>WorleyParsons</i>	Provides engineering & environmental advice to the Project, SOC Vendor due diligence (Mar 2008 - present)	Actual	\$ 5,589,757
<b>Probity Advisor</b>	<i>RSM Bird Cameron</i>	Provides probity and conflict management advice to the Project (Feb 2008 - present)	Actual	\$ 1,248,111
<b>Auditor General</b>	<i>Probity Review, AG Report (Lexicon)</i>	Contracted to the AG, cost incurred by NSW Treasury	Actual	\$ 912,192
<b>Rural Community Impact Advisor</b>	<i>GHD</i>	Providing advice for the Rural Community Impact Statement	Actual	\$ 59,620
<b>Data room Provider</b>	<i>Ansarada</i>	Provides bidder data room facilities to the Project (Oct 2009 - present)	Actual	\$ 152,703
<b>Gentrader Financial Modelling Consultant</b>	<i>SFG Consulting</i>	Provided financial market advice to the Project (Jun - Dec 2010)	Actual	\$ 219,807
<b>Gentrader Insurance Consultant</b>	<i>AON Risk Services</i>	Provided insurance advice on the Gentrader contracts (Jul - Dec 2010)	Actual	\$ 44,000
<b>Actuarial Advisor</b>	<i>Mercer</i>	Provides actuarial advice to the Project (April 2008 to present)	Actual	\$ 98,981
<b>IPO Management Consultant</b>	<i>LEK Consulting</i>	Provides IPO advice (Jul - Dec 2010)	Actual	\$ 354,405
<b>Contractor</b>	<i>Col Gellatly &amp; Associates</i>	Chairman of the Energy Reform Steering Committee (Nov 2009 - present)	Actual	\$ 438,900
<b>Contractor</b>	<i>John Dermody &amp; Associates</i>	Project Direction (Feb 2010 - present)	Actual	\$ 625,040
<b>Contractor</b>	<i>Kim Yeadon Consulting</i>	Chairman, Gentrader Working Group (Feb 2010 - present)	Actual	\$ 423,001
<b>Other</b>			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.