



Premier & Cabinet

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

28 JAN 2011

Dear Ms McMichael

I refer to your correspondence to the Premier dated 18 January 2011 concerning the inquiry of the General Purpose Standing Committee No 1 into the Gentrader transactions.

Answers to each of the forty-five additional Questions on Notice from the Committee dated 17 January 2011 are attached.

Answers to Questions taken on notice during the evidence given on 17 January 2011 are also attached.

Minor editorial corrections to the transcript of evidence given on 17 January 2011 are marked up in the attached uncorrected proof.

Yours sincerely



Vicki D'Adam

Deputy Director General (Policy and Strategy)

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 20I of the State Owned Corporations
Act 1989

I, Kristina Keneally, Premier of the State of New South Wales, in pursuance of section 20I 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.

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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.