

Submission
No 44

INQUIRY INTO GENTRADER TRANSACTIONS

Organisation: Hydro Aluminium Kurri Kurri Pty Limited

Date received: 14/01/2011



14 January 2011

The Director
General Purpose Standing Committee No. 1
Parliament House
Macquarie Street
Sydney NSW 2000

**COMMERCIAL IN CONFIDENCE
WITHOUT PREJUDICE**

By email: gpscno1@parliament.nsw.gov.au

Dear Sir,

**INQUIRY INTO THE GENTRADER TRANSACTIONS
KURRI ALUMINIUM SMELTER**

Purpose of this Letter

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 NSW Government and the Energy Reform Group Steering Committee potentially have serious and far-reaching consequences for the Kurri smelter, its workforce and the regional economy. We provide this submission to the Committee to describe these actions and their potential implications.

Binding Heads of Agreement

In July 2010, Delta Electricity and Hydro entered into binding and Board-approved Heads of Agreement in relation to the extension of the power contracts for the Kurri smelter. Since then, Hydro has been working with Delta Electricity to develop detailed contracts that give effect to the Heads of Agreement. These detailed contracts provide the Government the flexibility to implement its Energy Reform Process, but are not dependent on it. Treasury and the Energy Reform Group Steering Committee were briefed on the details of the contracts, and the contracts were finalised and approved for execution by the Boards of Delta Electricity and Hydro. The contracts provide long-term commercial benefits to Delta Electricity and provide Hydro with the long term power price predictability that is critical to Hydro's ongoing investment in the smelter.

Intervention by the Government and Energy Reform Group Steering Committee

On 5 November 2010 Hydro was informed that the Energy Reform Group Steering Committee had declined permission to Delta Electricity to proceed with our extension power contracts. The Energy Reform Group Steering Committee appears to have no power or authority in respect of Delta Electricity, and the Treasurer has not issued an instruction to Delta on this matter, but Delta has to date complied with the wishes of the Energy Reform Group Steering Committee.

On 6 November 2010, Hydro was advised that the State had directed Delta Electricity to release Hydro's commercially-sensitive and confidential documents to the State, so that the State could disclose these documents to bidders for the Delta West gentrader bundle. This was a clear breach of confidentiality obligations owing to Hydro under the terms of its existing contracts with Delta and the position agreed with the State's lawyers for the Energy Reform Process. To protect the confidentiality



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of its information, Hydro Kurri applied successfully for an injunction restraining the State from releasing its information to third parties. White J. indicated during the course of the hearing that there is a serious question to be tested as to whether the Government's actions, as described above, are valid.

Since that date, Hydro Aluminium had sought a dialogue with the Government and with its Energy Reform Group, with a view to understand their concerns, determine whether there is a mutually satisfactory solution and to avoid further legal action. Our numerous attempts to speak to the Premier, the Treasurer, the members of the Steering Committee, Treasury, and to the Treasurer's office, have been unsuccessful. I attach a copy of our letter dated 26 November 2010 to the Premier of New South Wales, for your information.

Potential Implications

This is a very serious matter for Hydro. The failure of Delta to execute the contracts in accordance with the Heads of Agreement has a significant impact on Hydro's investment in the smelter. The actions taken by the Steering Committee and the Government raise serious issues as to the risk of undertaking capital-intensive business activities in New South Wales.

Naturally, this issue is also causing substantial concern among our employees, the local community and the Hunter region. Hydro Kurri is a major employer in the Hunter region. The Kurri smelter has more than 500 full-time employees, employs more than 800 people directly, and thousands more are financially dependent on the smelter (including local tradesmen and small and medium-sized businesses). Economic inflows to the community from salaries and the use of local services at the smelter total over \$80 million per year. In addition, sustaining capital and maintenance expenditure at the smelter (historically in the order of \$50 million per year) predominantly goes to local businesses. 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 Steering Committee can have appreciated that its decision would risk such serious and far-reaching consequences for the local economy.

Attached to this letter are copies of some recent press coverage of this issue, demonstrating the level of community concern about this issue.

In Hydro's view, this matter can be easily solved by allowing Delta Electricity to enter into the power contracts, as it had intended to do and is contractually bound to do. All relevant agreements (already approved by the Boards of both Hydro and Delta) which are needed for this transaction to be valid are finalised, signed by Hydro and resting on Delta's table for signature. Further, the power contracts allow for their transfer to the acquirer of the Delta West Gentrader bundle, if required by Delta.

Finally, we note that Hydro has reserved all its rights and remedies against Delta Electricity, including potential legal proceedings, to enforce its rights under the Heads of Agreement. The potential cost to Delta Electricity of a successful action by Hydro in this regard may be very substantial.

Yours faithfully,

Alberto Fabrini
Managing Director



26 November 2010

Ms. Kristina Keneally
Premier of New South Wales
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

**COMMERCIAL IN CONFIDENCE
WITHOUT PREJUDICE**

Dear Premier,

COPY

KURRI ALUMINIUM SMELTER

Hydro Aluminium has been a good corporate citizen of New South Wales and has worked well with the Government's various agencies over many years. We seek an opportunity to meet with you and discuss the recent events relating to the Kurri smelter, which we believe threaten the viability of the smelter.

Delta Electricity and Hydro entered into binding and Board-approved Heads of Agreement in relation to the extension of the power contracts for the Kurri smelter in July of this year. Since then, Hydro has been working with Delta to develop detailed contracts that give effect to the Heads of Agreement. These detailed contracts provide the Government the flexibility to implement its Energy Reform Process, but are not dependent on it. The contracts were finalised and approved for execution by the Boards of Delta and Hydro at the beginning of November. The contracts provide long-term commercial benefits to Delta and provide Hydro with the long term power price predictability that is critical to our ongoing investment in the smelter.

On the day that these contracts were due to be executed, we were advised that the Energy Reform Group Steering Committee had declined permission to Delta to proceed with the extension power contracts. Subsequently, and contrary to the position we had reached with the Steering Committee / State on this issue, the Minister for Energy directed Delta to release our commercially-sensitive and confidential documents into the data room for the sale of the Delta West gentrader bundle.

As we are sure you can appreciate, this is a very serious matter for Hydro. The failure to secure these contracts has a significant impact on Hydro's investment in the smelter and this issue is causing substantial concern among our employees and the local community. Accordingly, we would appreciate the opportunity to meet with senior Government officials, on a without prejudice basis, with a view to understanding the Government's concerns and to investigate whether there may be a mutually satisfactory way forward.

The Kurri smelter has more than 500 full-time employees, employs more than 800 people directly, and thousands more are financially dependent on the smelter. Economic inflows to the community from salaries and the use of local services at the smelter total over \$80 million per year. In addition, sustaining capital and maintenance expenditure at the smelter (historically in the order of \$50 million per year) predominantly goes to local businesses. 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.



HYDRO

26 November 2010

We doubt the Steering Committee can have appreciated that its decision would risk such serious and far-reaching consequences for the local economy.

Our community of employees and contractors covers a broad catchment, which traverses a number of State electorates. Our employees and the affected communities are aware of the large economic impact the smelter has in the Hunter region and are justifiably concerned that a sensible outcome on this issue needs to be achieved.

We believe the issues of job certainty and securing substantial future investment in the State warrant the Premier's leadership and assistance in reaching a positive resolution. We would respectfully request your engagement on this matter.

We would welcome the opportunity to meet with you to discuss these matters in more detail and would see this as an opportunity to investigate the potential for a mutually beneficial way forward.

We look forward to hearing from you.

Yours faithfully,

Alberto Fabrini
Managing Director
Hydro Aluminium Kurri Kurri PTY

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Ola Sæter
Chairman of the Board
Hydro Aluminium Kurri Kurri PTY



OFFICE OF THE MAYOR

Mr Harald Bentzen
Plant Manager
Hydro Aluminium Kurri Kurri Pty Ltd
PO Box 1
KURRI KURRI 2327

Contact: The Mayor Clr Alison Davey
Our Ref: 514026
Your Ref:

COPY

Dear Mr Bentzen

SUPPORT FOR HYDRO ALUMINIUM KURRI KURRI PTY LTD

Cessnock City Councillors unanimously supported a resolution from a Mayoral Minute at its Extraordinary Meeting on 10 November 2010 to provide a letter of support to Hydro Aluminium Kurri Kurri Pty Ltd for their endeavours to obtain security of power supplies for the future operation of the plant.

Job security for employees and the continued operation of the Plant is very important to the City of Cessnock. The Cessnock Local Government Area has always struggled with unemployment levels and this issues raises concerns of the possibility of loss of jobs, which will affect the City of Cessnock and in particular the community of Kurri Kurri.

Council supports Hydro Aluminium Kurri Kurri Pty Ltd in its endeavours to secure power supplies for the future operation of its Plant.

Yours faithfully

ALISON DAVEY
MAYOR OF THE CITY OF CESSNOCK

11 November 2010