REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

INQUIRY INTO THE GENTRADER TRANSACTIONS

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At Sydney on Monday 17 January 2011

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The Committee met at 10.00 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

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, TRUenergy 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 -$1,000 to $12,500 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 transactions. 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 McKenzie, 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 Electricity, 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 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 quorum. 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.

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—

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 is 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.

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 is 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.

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 apportions 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 to 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 M 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 and boards. 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 TRUenergy 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.

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.

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?

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 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 its 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.

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:

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 Dermody and Mr Yeadon had been appointed to that board and I think by that stage also Mr Lilley was appointed to that board?

Dr GELLATLY: No, Mr Lilley 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 Dermody?

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 risky. 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 TRUenergy 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 TRUenergy, 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 TRUenergy, 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 TRUenergy 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 TRUenergy 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 TRUenergy is listed on the Hong Kong exchange. I think it is important to remind the Committee—

Dr JOHN KAYE: China Light and Power is; TRUenergy is not.

The Hon. GREG PEARCE: TRUenergy 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 of 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 than 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.**)