



24 June 2011

The Hon Brian Tamberlin QC
Special Commissioner
Special Commission of Inquiry
Electricity Transactions
PO Box A1150
Sydney South NSW 1235

Dear Justice Tamberlin

Inquiry into the NSW Electricity Transactions

1. The National Generators Forum (NGF) welcomes the opportunity to contribute to the Special Commission of Inquiry into the NSW Electricity Transactions.
2. The NGF represents the majority of Australia's electricity generators, including the three State owned generators in NSW, accounting for some 70 per cent of generation in the National Electricity Market (NEM) and the Western Australian Electricity Market.
3. The NGF wishes to provide comment on the Special Commission's term of reference six and seven, relating to options for future action that could be undertaken to further the public interest in a competitive NSW electricity sector, including options to:
 - Address any issues identified in relation to the electricity transactions; and
 - Promote competitive electricity prices and ensure reliability of supply.
4. The NSW Government's electricity reform strategy, announced in 2007, was intended to achieve two key outcomes — significantly increased private sector investment in new electricity generation capacity in the State and increased competition in the NSW electricity market.
5. As it emerged in 2009, the *New South Wales Energy Reform Strategy: Approach to transaction implementation* (the Strategy) outlined a framework for the restructure of the electricity industry which included the following elements for the generation sector:
 - continued Government ownership and operation of existing power stations;
 - contracting the electricity trading rights of power stations to the private sector through Generator Trading agreements, commonly referred to as the 'GenTrader' model; and
 - selling key power station development sites around the State.

6. In July 2010 the electrical output of the existing State owned generators was offered for sale in four GenTrader Bundles — Eraring, Delta West, Delta Coastal and Macquarie Generation. The Eraring and Delta West Bundles were sold while the Macquarie Generation and Delta Coastal Bundles remained State owned.
7. The NGF notes that the Boards of Eraring Energy and Delta Electricity determined that it was *not* in the commercial interests of their businesses to comply with the Government's request to enter into the GenTrader agreements and did so only once a formal Direction under the *State Owned Corporations Act 1989* was issued.¹
8. Output from the NSW generation sector is now controlled by either privately owned vertically integrated businesses (5,330 MW) or State owned merchant generators (7,227 MW). This structure presents risks for the merchant generators which lack the natural hedge available to the vertically integrated businesses operating in the NSW market.
9. The industry structure in NSW created by the GenTrader agreements is far from optimal. In particular, the structure as it now stands fails to achieve the two objectives set for reform of increasing private sector investment in new generation capacity in the State and increasing competition.
10. For these reasons, the NGF believes that reform of the State's electricity industry remains incomplete. There seems little if any benefit in maintaining a partially privatised market which inhibits the capacity of one set of generators to invest and compete. Completing the privatisation of the State's generation assets would address this incongruous situation and deliver many benefits for the taxpayers of NSW and the electricity market itself.
11. The former State Government had the policy objective of transferring the financial risk for the operation of the State's generation fleet to the private sector. However, under the GenTrader agreements the NSW Government retains responsibility for, inter alia:
 - owning, operating and maintaining the power stations, including associated capital works and managing coal from receipt to burn;
 - plant shut down costs and remediation of the power station sites;
 - retaining all power station employees;
 - paying liquidated damages if power station availability targets are not met; and
 - shortfall payments if the Miner is unable to deliver agreed amounts of coal.²

Furthermore, the agreements do not require the GenTraders to develop the power station sites within specified timeframes.

Privatisation would remove these obligations and risks from the State's balance sheet, relieving NSW taxpayers of significant financial liabilities. It would also provide the Government with proceeds which could be used to retire any outstanding debt held by the generators.

¹ The Audit Office of New South Wales, *Auditor-General's Report to Parliament 2011 Volume One*, 22 February 2011, p. 62. Available online, viewed 20 June 2011,

<<http://www.audit.nsw.gov.au/publications/reports/financial/2011/Vol01/contents.htm>>.

² *Ibid.*, p. 58.

12. Successive State governments have indicated that public funds will not be committed for investment in new (State owned) electricity generation capacity, thereby constraining merchant generators from expanding their operations and from competing effectively in the market. Privatisation would allow these businesses access to finance for new investment, thereby enabling them to grow.
13. Privatisation of the generation businesses may also attract a new entrant(s) into the NSW electricity market. If this were to occur, competition in the wholesale energy market would be enhanced, both in the State and in the wider NEM.
14. The NGF wishes the Special Commission of Inquiry well with its deliberations. If the Forum can be of any further assistance please contact me on 02 6232 7789 or malcolm.roberts@ngf.com.au.

Yours sincerely



Malcolm Roberts
Executive Director