

Developments

29 July 2004

By Express Post

The Regional Director
Australian Competition and Consumer Commission
3rd Floor
East Point Plaza
223 Adelaide Terrace
PERTH WA 6000

MAILS#:
PCPD:

Dear Sir

**Notification by EDL NGD (WA) Pty Ltd ("EDLNGD") - Form G
Power Purchase Agreement Dated 2nd July 2004 with Western Power Corporation**

EDLNGD wishes to notify the ACCC of conduct which potentially amounts to exclusive dealing under Section 47 of the Trade Practices Act and accordingly we enclose:

- (a) Form G; and
- (b) A cheque in the sum of \$2,500 payable to the Australian Competition and Consumer Commission for your fees for this Notification.

This Notification is in addition to the notification lodged on or about 26 July 2004 for Western Power Corporation in respect of the above Power Purchase Agreement and it is understood that Western Power Corporation has provided a photocopy of the Power Purchase Agreement for the ACCC's reference (including in respect of this Notification).

The Power Purchase Agreement is a significant commercial undertaking for EDLNGD, and includes information including in relation to pricing and tariffs which is commercially sensitive for EDLNGD. Accordingly EDLNGD requests that the Power Purchase Agreement be treated as confidential (including on a commercial in confidence basis), and be excluded from the public register. EDLNGD also concurs with the comments contained in the letter regarding the notification lodged for Western Power Corporation in relation to the background to the Power Purchase Agreement and in relation to market impact and the effect on competition where relevant and applicable to this Notification.

In support of this Notification, EDLNGD:

- (a) confirms that the selection of EDLNGD by Western Power Corporation to construct a power plant and supply electricity to Western Power Corporation in the West Kimberley region was a result of a competitive tender, securing the lowest prices practical for the supply of such electricity;
- (b) confirms that, but for the term of the Power Purchase Agreement and the exclusivity provisions in that agreement, EDLNGD could not have justified engaging in the project so as to secure a reasonable investment for EDLNGD and allow EDLNGD to charge relatively low prices for electricity; and

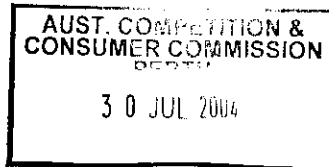
- (c) submits that the Power Purchase Agreement (including its exclusivity requirements and long term) will not substantially lessen competition.

If you have any queries, please do not hesitate to contact me.

Yours faithfully



Glen Marshall
Legal Counsel
Phone: 07 3275 5538
Fax: 07 3217 0711
Email: glen.marshall@edl.com.au



enc

FORM G

Regulation 9

[Front of Form]

COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 – Sub-section 93(1)

**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice**

EDL NGD (WA) PTY LTD ABN 35 941 721 070 (“EDLNGD”)
848 Boundary Road, Richlands Qld 4077

(b) **Short description of business carried on by that person**

The generation and supply of electricity, including in the West Kimberley towns of Broome, Derby, Halls Creek, Fitzroy Crossing and Camballin/Looma, such electricity to be generated from power facilities to be constructed and owned by EDLNGD.

(c) **Address in Australia for service of documents on that person**

The Company Secretary
848 Boundary Road
Richlands
Qld 4077

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates**

The supply of electricity by EDLNGD to Western Power Corporation (“WP”) in the West Kimberley towns of Broome, Derby, Halls Creek, Fitzroy Crossing and Camballin/Looma (“West Kimberley region”).

(b) **Description of the conduct or proposed conduct**

EDLNGD has entered into a Power Purchase Agreement (“PPA”) with WP for the supply of electricity by EDLNGD to WP in the West Kimberley region. The proposed conduct for the purposes of this Notification is:

- (1) The requirement that WP will, subject to certain qualifications, purchase its electricity requirements in the West Kimberley region from EDLNGD (clause 10.1) and not from another power producer. In this regard, the Power Purchase Agreement is for a term of 20 years, (with a 5 year extension option for WP) being a realistic period for the earning by EDLNGD of a reasonable return on its capital investment whilst keeping charges and tariffs to a reasonable level. It should be noted that the Power Purchase Agreement:

- (i) does not prevent EDLNGD from supplying to purchasers other than WP (clause 11.1);
 - (ii) acknowledges that there may be “contestable customers” who may access the relevant regional power system (and are thus able to purchase electricity from power suppliers other than WP) and to whom EDLNGD can supply (clause 10.5);
 - (iii) allows for termination by WP of the Power Purchase Agreement in certain circumstances including technical obsolescence (clause 29);
 - (iv) allows WP the opportunity to buy some of its energy requirements from other suppliers (clause 10.1(b)); and
 - (v) acknowledges that not all new customers will necessarily be supplied by WP via the Regional Power System.
- (2) The arrangement that in the event of a curtailment in supply of electricity such that EDLNGD is not able to meet both WP’s requirements and the instantaneous demand of each non-WP customer then:
- (i) if the curtailment was caused by EDLNGD failing to install sufficient capacity to meet the maximum instantaneous demand of all non-WP customers in addition to WP’s contracted maximum demand, then WP has priority in supply of electricity, up to its contracted maximum demand level, over the supply of electricity to non-WP customers; and
 - (ii) if EDLNGD has installed sufficient capacity to meet the maximum instantaneous demand of non-WP customers and the contracted maximum demand of WP, then, during the curtailment WP shall have priority over any non-WP customer up to certain prescribed levels during the period of the curtailment.
- (3) The arrangement that EDLNGD has agreed with WP that the PPA is subject to, and conditional upon, EDLNGD entering into a LNG Supply and Delivery Agreement in a form and substance to be first approved by WP (clause 3.2(a)) such that if this condition precedent is not satisfied, then WP would be entitled to refuse to proceed with the PPA.

3. (a) **Class or classes of persons to which the conduct relates**

- (i) In relation to the requirement that WP purchase its electricity requirements in the West Kimberley region from EDLNGD: WP and other actual or potential power producers who might seek to supply power to WP in the West Kimberley region in lieu of EDLNGD;
- (ii) In relation to the curtailment arrangement: other customers of EDLNGD, whose electricity requirements during any curtailment will, in defined circumstances, not have priority to WP’s supply requirements; and
- (iii) In relation to the PPA being subject to the LNG Supply and Delivery Agreement: EDLNGD by being knowingly concerned in this requirement of the PPA.

(b) Number of those persons

In respect of 3(a)(i), WP and the 11 persons named in the table below being the parties (other than EDLNGD) who responded to the request for Expressions of Interest for the Supply of Electricity to WP in the West Kimberley region.

In respect of 3(a)(ii), EDLNGD is (because of uncertainty as to the actual scope and effect of any power curtailment) unable to estimate the number of persons (if any) who might, on any occasion, be affected by the operation of the curtailment arrangement.

In respect of 3(a)(iii), 1 person being EDLNGD.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses

In relation to 3(a)(i), Western Power Corporation of 363 Wellington Road, Perth, WA, 6000 and the following persons:

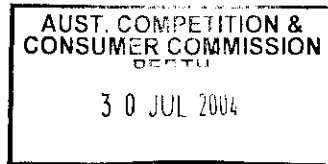
Burns & Roe Worley Pty Ltd	Level 4, QV1 Building, 250 St Georges Terrace Perth, Western Australia 6000
StateWest Power Pty Ltd	PO Box 1459, Canning Vale Western Australia 6970
Kimberley Power Pty Ltd	Level 22, Allendale Square, 77 St Georges Terrace, Perth Western Australia 6000
Power & Water Corporation	GPO Box 1921 Darwin, Northern Territory 0801
EDL Group Operations Pty Ltd	848 Boundary Road, Richlands, Queensland 4077
Carbon Cell Pty Ltd	Unit 2, 3 Industry Place Capalaba, Queensland, 4157
Global Project Group/Gas Turbine Engineering Services	PO Box 21, Subiaco, Western Australia, 6904
Powercorp Pty Ltd	3406 Export Drive Darwin, Northern Territory, 0822
WA Regional Energy Consortium	PO Box 133 Forrestfield, Western Australia 6058
Kimberley Tidal Power Consortium	1 Altona Street West Perth, Western Australia 6005
Pacific Hydro Limited	Level 8, 474 Flinders Street Melbourne, Victoria 3000

In relation to 3(a)(iii), EDLNGD of the address given in this notice.

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice.

EDL NGD (WA) PTY LTD
848 Boundary Road
Richlands
Qld 4077
Attention: Glen Marshall

Dated 29 July 2004



Signed by/on behalf of the applicant giving notice

(Signature)

Glen Elliott Marshall
(Full Name)

Legal Counsel duly authorised to sign this notice for and on behalf of EDLNGD
(Description)

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.