



Wesfarmers Limited

ABN 28 008 984 049

AUST. COMPETITION &
CONSUMER COMMISSION
PERTH

06 JAN 2005

6 January 2005

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

ACCC	
MARS#:
DOC ID:	005/441.....
FILE:	20943.....

Dear Sir

Notification – Power Purchase Agreement with Western Power Corporation

I am writing to you on behalf of StateWest Power Pty Ltd (“StateWest”) to formally notify the conduct of StateWest in entering into a Power Purchase Agreement with Western Power Corporation (“Western Power”) dated 6 December 2004 and the future conduct of StateWest in supplying electricity to Western Power pursuant to the terms of that Power Purchase Agreement.

I understand that Western Power Corporation has or will also lodge a notification in relation to this conduct.

In StateWest’s view, its conduct in making and giving effect to the Power Purchase Agreement does not contravene Part IV of the *Trade Practices Act*. However, out of an abundance of caution, and without prejudice to StateWest’s position as set out above, we enclose a notification, application fee and a copy of the Power Purchase Agreement.

We maintain that the terms of the Power Purchase Agreement are confidential and therefore request that it be excluded from the public register. We understand that Western Power has provided, or will provide you, with information concerning the basis for the claim for confidentiality. Should you require further information in relation to the claim for confidentiality could you please inform us.

Otherwise, if there is further information that you require we would be pleased to provide a more detailed description of the conduct and its market context.

Thank you for your assistance.

Yours sincerely

A handwritten signature in cursive script that reads "V. Allars".

Vicki Allars

Legal Counsel

Wesfarmers Limited

Ph: (08) 9327 4443

Fax: (08) 9327 4290

FORM G

Regulation 9

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 proposed conduct of a kind referred to in sub-section 47(2) or (4) of that Act in which the person giving notice proposes to engage.

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

StateWest Power Pty Ltd (“StateWest”)
7-11 Catalano Road, Canning Vale
Western Australia

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

StateWest is an electricity supplier.

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

c/- Corporate Solicitor’s Office
Wesfarmers Limited
Floor 11, Wesfarmers House
40 The Esplanade
PERTH WA 6000
Attention : Vicki Allars

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

Electricity to be supplied by StateWest to Western Power Corporation (“WPC”) in 5 remote towns in Western Australia (Marble Bar, Nullagine, Laverton, Menzies and Gascoyne Junction) from generation facilities constructed, owned and operated by StateWest.

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

The supply of electricity by StateWest to Western Power pursuant to the terms of a power purchase agreement (“the PPA”):

- (a) on condition that in the event of curtailment of the capacity of StateWest to supply electricity, StateWest will supply Western Power with electricity in priority to the supply of electricity to other customers of StateWest (clause 11.4) (“the curtailment condition”); and

- (b) on condition that WPC will purchase from StateWest all of its requirements, at points of supply in Marble Bar, Nullagine, Laverton, Menzies and Gascoyne Junction for a period of 10 years plus a further period of 5 years, or such other period as negotiated between WPC and StateWest, other than up to 10% of WPC's electricity requirements which WPC may acquire from renewable energy providers (clauses 7.1, 7.2 and 10.1) ("the requirements condition").

Full details of the conduct are provided in annexure A and the PPA a copy of which is provided with this notification on a confidential basis.

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

- (i) in relation to the curtailment condition, other customers of StateWest (if any), whose electricity requirements during any curtailment will, in defined circumstances, not have priority to WPC's supply requirements; and
- (ii) in relation to the requirements condition, other actual or potential power producers who might seek to supply power to WPC in the Mid West region.

(b) **Number of those persons –**

Due to uncertainty as to the actual scope and effect of any power curtailment StateWest is unable to estimate the number of persons (if any) who might, on any occasion, be affected by the curtailment condition.

The parties affected by the requirements condition are the 2 other parties who expressed interest in supplying electricity to Western Power as part of the tender process that preceded the PPA and any additional electricity suppliers who may, seek to supply electricity to Western Power during the term of the PPA.

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

Burns and Roe Worley	Level 4, QVI Building, 250 St George's Terrace, Perth, Western Australia, 6000
Energy Developments Ltd	848 Boundary Road, Richlands, Queensland, 4077

Other potential suppliers of electricity in Australia who can not now be identified by StateWest.

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

Vicki Allars
 Corporate Solicitor's Office
 Wesfarmers Limited
 Floor 11, Wesfarmers House
 40 The Esplanade
 PERTH WA 6000

DATED 6 January 2005

N. Allan

Signed for and on behalf of
StateWest Power Pty Ltd



ANNEXURE "A"

1. The PPA relates to the supply of electricity in 5 remote towns in Western Australia – Marble Bar, Nullagine, Laverton, Menzies and Gascoyne Junction.
2. It was entered into following a tender process in which 20 parties were issued with request for proposal documentation and 3 parties responded to the request for proposal.
3. In order to supply the projected electricity requirements of Western Power in accordance with the PPA, it was necessary for the power stations to be constructed at the relevant remote towns to have a minimum operating life of 10 years.
4. In order to justify the capital investment in the new power stations and in order for Western Power to obtain a competitive price that reduced the premium that would be charged for the risk of stranded capital, it was necessary for Western Power to offer a long term commitment to purchase electricity.
5. Western Power is the supplier of last resort to customers in the relevant remote towns (and elsewhere in Western Australia). Western Power provides backup support where other suppliers are unable to meet the requirements of individual customers. The existence of such backup support is necessary to ensure that an interconnected electricity system remains stable. There is a public interest in contractual arrangements that ensure the availability of electricity through an interconnected system.
6. Under the PPA, StateWest may supply electricity to customers other than Western Power, provided that it first obtains Western Power's consent.
7. The PPA allows for early termination of the PPA in certain circumstances (see clauses 25.8, 27.3(a)(3), 27.4(a)(3), 27.5(c), 29 and 30).
8. The conduct relates to markets in which suppliers compete for the opportunity to supply electricity to customers by investing in generation facilities connected to distribution infrastructure. There are many participants in such a market who compete throughout Australia for such opportunities.
9. The PPA relates to a very small part of the electricity demand for which such suppliers compete. The electricity to be supplied under the PPA is substantially less than 1% of the total demand in Western Australia and involves installed capacity for approximately 3MW.
10. If Western Power had not entered into the PPA with StateWest then it would have entered into an agreement on similar terms with another supplier or constructed the generation equipment itself and in any such case the market effect would have been similar.
11. The evident purpose of the PPA is to provide sufficient security of supply in order to justify capital investment. It enables Western Power to secure supplies of electricity at a lower price than if it did not enter into a term requirements contract.
12. Any extension of the term of the PPA beyond the initial term of 10 years will be at the election of Western Power and it can be assumed that Western Power will only exercise those rights if it has no more favourable competitive alternative.
13. The curtailment provisions will apply in very limited circumstances and reflect the obligations of Western Power to maintain supply of electricity to the interconnected system.

Confidentiality is granted for the Remote Towns Power
Purchase Agreement between Western Power Corporation and
StateWest Power Pty Ltd