



Australian Competition & Consumer Commission

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Our Ref: C2004/472
Your Ref:
Contact Officer: Isabelle Arnaud
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8 April 2004

Mr Stephen Price
General Manager
StateWest Power
PO Box 1459
CANNING VALE WA 6155

Dear Mr Price

**Re: Exclusive dealing notification N70381
lodged by StateWest Power Pty Ltd**

I refer to the above notification for exclusive dealing lodged with the Australian Competition and Consumer Commission (the Commission) on 31 March 2004, in relation to the Midwest Power Purchase Agreement entered by StateWest Power Pty Ltd (StateWest) with Western Power Corporation (WPC). Legal immunity provided by the notification commenced on 31 March 2004.

You have described the conduct as the supply of electricity by StateWest to WPC pursuant to the terms of the Midwest Power Purchase Agreement, on condition that:

- (a) in the event of curtailment of the capacity of StateWest to supply electricity, WPC will have priority of acquisition of electricity from StateWest over other customers of StateWest; and
- (b) WPC will not, except to a limited extent, purchase electricity from other third party energy providers for a period of 10 years, plus a further period not exceeding 1 year or a period not less than 5 years but not exceeding 10 years as nominated by WPC in the exercise of an option to renew.

On the basis of the information that you have provided, it is not intended that further action be taken in this matter at this stage. Please note that legal immunity provided by the notification commenced on the date of lodgement and does not apply to past conduct.



As with any notification, the Commission may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

I note that the exclusive dealing conduct in relation to the curtailment provision of the agreement is engaged in by WPC. As you would be aware, notification has the effect of affording immunity to the person who has lodged the notification and is engaging in the exclusive dealing conduct. As WPC lodged a notification (N70210) in relation to this conduct on 28 September 2001, legal immunity has been provided to this conduct since that date.

I further note that you have claimed confidentiality in relation to the terms of the Midwest Power Purchase Agreement Exmouth Region. As a person authorised to exclude documents from the public register for and on behalf of the Commission, I advise that confidentiality has been granted to the agreement as requested. The remainder of your submission, as well as this letter, have been placed on the Commission's public register.

Should you have any query in relation to this matter, please do not hesitate to contact Isabelle Arnaud on (02) 6243 1049.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Grimwade', written in a cursive style.

Tim Grimwade
General Manager
Adjudication Branch