

**AUST. COMPETITION &  
CONSUMER COMMISSION  
SYDNEY**

27 NOV 2009

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27 November 2009

Dr Richard Chadwick  
General Manager  
Adjudication  
Australian Competition and Consumer Commission  
Level 7  
Angel Place  
123 Pitt Street  
SYDNEY NSW 2000

By hand

Dear Dr Chadwick,

**Application for authorisation under Part VII of the *Trade Practices Act 1974* lodged by the Treasurer, the Hon. Eric Roozendaal MLC, for and on behalf of Delta Electricity, Eraring Energy and Macquarie Generation**

We refer to our recent communications with the Commission regarding the proposed authorisation of the co-insurance arrangement which is to be implemented as part of the NSW Government's Energy Reform Strategy.

Please find enclosed:

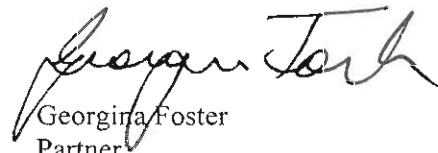
1. Forms A and B, being the application for authorisation by the Treasurer of New South Wales, the Hon. Eric Roozendaal MLC, for and on behalf of Delta Electricity, Eraring Energy and Macquarie Generation;
2. confidential supporting submission;
3. public version of the supporting submission for the public register; and
4. cheque for \$9,000.00 in payment of the applicable filing fees.

If you have any questions please do not hesitate to contact either of us.

Yours sincerely,



Andrew Christopher  
Partner  
+61 2 8922 5508  
andrew.christopher@bakernet.com



Georgina Foster  
Partner  
+61 2 8922 5329  
georgina.foster@bakernet.com

Encl

# Form A

Commonwealth of Australia

*Trade Practices Act 1974 — subsections 88 (1A) and (1)*

## **EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### **1. Applicant**

- (a) Name of Applicant:  
*(Refer to direction 2)*

A91198

The Treasurer, the Hon. Eric Roozendaal MLC, for and on behalf of Macquarie Generation, Delta Electricity and Eraring Energy

- (b) Description of business carried on by applicant:  
*(Refer to direction 3)*

Macquarie Generation is a State-owned corporation that owns and operates the Bayswater and Liddell power stations. Delta Electricity is a State-owned corporation that owns and operates the Mt Piper, Munmorah, Vales Point and Wallerawang power stations. Eraring Energy is a State-owned corporation that

owns and operates the Eraring power station, as well as a number of hydro power stations and wind farms.

- (c) Address in Australia for service of documents on the applicant:

c/- Andrew Christopher and Georgina Foster  
Baker & McKenzie  
AMP Centre  
50 Bridge Street  
Sydney NSW 2000  
Fax: 02 9225 1595

## 2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
(Refer to direction 4)

Authorisation is sought for the co-insurance arrangement to be made and given effect to pursuant to the Compensation Deed. Please refer to Part A, section 2.3 of the supporting submission attached to this Application (*Submission*) for an overview of the co-insurance arrangement and the Compensation Deed. A detailed description of the co-insurance arrangement to be given effect to pursuant to the Compensation Deed is at section 3 of Part B of the Submission.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:  
(Refer to direction 4)

The provisions of the Compensation Deed are set out at Part A, section 3.2 of the Submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The services to which the Compensation Deed relates are the provision of co-insurance pursuant to which each Gentrader who is party to the Compensation Deed will have the option of calling for compensation if an outage at a power station the subject of a Gentrader Contract results in the availability of the power station being less than its contracted firm capacity to that Gentrader. The co-insurance arrangement is described in detail in Part B of the Submission.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation is sought for a term of 10 years commencing from the date of commencement of the Compensation Deed, being the date on which all the Gentrader Contracts subject to the Compensation Deed are in force. The grounds supporting this period of authorisation are detailed in Part C, section 7 of the Submission.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

In addition to Macquarie Generation, Delta Electricity and Eraring Energy, the other parties to the Compensation Deed are the counterparties to the Gentrader Contracts for each of Bayswater, Liddell, Eraring, Mt Piper, Munmorah, Vales Point and Wallerawang power stations. The identities of the counterparties to the Gentrader Contracts are currently unknown. See Part A, section 2.5 of the Submission for further details regarding the businesses that will be carried on by the counterparties to the Gentrader Contracts pursuant to those contracts.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
*(Refer to direction 5)*

This application is made on behalf of Macquarie Generation, Delta Electricity and Eraring Energy. A description of the businesses of each of Macquarie Generation, Delta Electricity and Eraring Energy is set out at 1(b) above. The address of each of Macquarie Generation, Delta Electricity and Eraring Energy, together with further details of their businesses, is in at Part A, section 2.4 of the Submission.

### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
*(Refer to direction 6)*

Please refer to Part C of the Submission.

- (b) Facts and evidence relied upon in support of these claims:  
Please refer to Part C of the Submission.

## 5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

The markets in which the goods and services described in 2(c) are supplied are described at Part A, section 4.2 of the Submission.

## 6. Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

*(Refer to direction 8)*

Please refer to Part C of the Submission.

- (b) Facts and evidence relevant to these detriments:

Please refer to Part C of the Submission.

## 7. Contracts, arrangements or understandings in similar terms

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

No.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

*(Refer to direction 9)*

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

*(Refer to direction 10)*

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

## **8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

## **9. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Kevin Cosgriff  
Deputy Secretary, Fiscal and Economic Directorate  
NSW Treasury  
Level 27  
Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000  
Ph: 02 9228 5442

Signed by/on behalf of the applicant

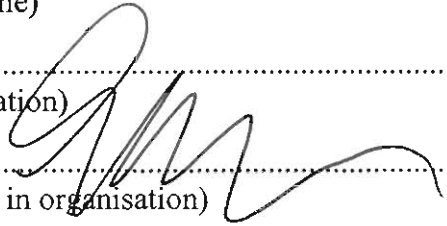
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(Signature)

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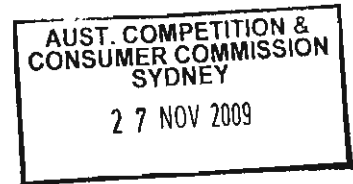
.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in organisation)



MON. ERIC ROOZENDAAL, MLC  
TREASURER OF NEW SOUTH WALES



## DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made 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 application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.



9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

## Form B

Commonwealth of Australia

*Trade Practices Act 1974 — subsections 88 (1A) and (1)*

### AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### 1. Applicant

- (a) Name of Applicant:  
*(Refer to direction 2)*

A91199

The Treasurer, the Hon. Eric Roozendaal MLC, for and on behalf of Macquarie Generation, Delta Electricity and Eraring Energy

- (b) Short description of business carried on by applicant:  
*(Refer to direction 3)*

Macquarie Generation is a State-owned corporation that owns and operates the Bayswater and Liddell power stations. Delta Electricity is a State-owned corporation that owns and operates the Mt Piper, Munmorah, Vales Point and Wallerawang power stations. Eraring Energy is a State-owned corporation that

owns and operates the Eraring power station, as well as a number of hydro power stations and wind farms.

- (c) Address in Australia for service of documents on the applicant:

c/- Andrew Christopher and Georgina Foster  
Baker & McKenzie  
AMP Centre  
50 Bridge Street  
Sydney NSW 2000  
Fax: 02 9225 1595

## 2. **Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
*(Refer to direction 4)*

Authorisation is sought for the co-insurance arrangement to be made and given effect to pursuant to the Compensation Deed. Please refer to Part A, section 2.3 of the supporting submission attached to this Application (***Submission***) for an overview of the co-insurance arrangement and the Compensation Deed. A detailed description of the co-insurance arrangement to be given effect to pursuant to the Compensation Deed is at section 3 of Part B of the Submission.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:  
*(Refer to direction 4)*

The provisions of the Compensation Deed are set out at Part A, section 3.2 of the Submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The services to which the Compensation Deed relates are the provision of co-insurance pursuant to which each Gentrader who is party to the Compensation Deed will have the option of calling for compensation if an outage at a power station the subject of a Gentrader Contract results in the availability of the power station being less than its contracted firm capacity to that Gentrader. The co-insurance arrangement is described in detail in Part B of the Submission.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation is sought for a term of 10 years commencing from the date of commencement of the Compensation Deed, being the date on which all the Gentrader Contracts subject to the Compensation Deed are in force. The grounds supporting this period of authorisation are detailed in Part C, section 7 of the Submission.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

In addition to Macquarie Generation, Delta Electricity and Eraring Energy, the other parties to the Compensation Deed are the counterparties to the Gentrader Contracts for each of Bayswater, Liddell, Eraring, Mt Piper, Munmorah, Vales Point and Wallerawang power stations. The identities of the counterparties to the Gentrader Contracts are currently unknown. See Part A, section 2.5 of the Submission for further details regarding the businesses that will be carried on by the counterparties to the Gentrader Contracts pursuant to those contracts.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
*(Refer to direction 5)*

This application is made on behalf of Macquarie Generation, Delta Electricity and Eraring Energy. A description of the businesses of each of Macquarie Generation, Delta Electricity and Eraring Energy is set out at 1(b) above. The address of each of Macquarie Generation, Delta Electricity and Eraring Energy, together with further details of their businesses, is in at Part A, section 2.4 of the Submission.

### **4. Public benefit claims**

- (a) Arguments in support of authorisation:  
*(Refer to direction 6)*

Please refer to Part C of the Submission.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to Part C of the Submission.

## 5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

The markets in which the goods and services described in 2(c) are supplied are described at Part A, section 4.2 of the Submission.

## 6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

*(Refer to direction 8)*

Please refer to Part C of the Submission.

- (b) Facts and evidence relevant to these detriments:

Please refer to Part C of the Submission.

## 7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

*(Refer to direction 9)*

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

## 8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

## 9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Kevin Cosgriff  
Deputy Secretary, Fiscal and Economic Directorate  
NSW Treasury  
Level 27  
Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000  
Ph: 02 9228 5442

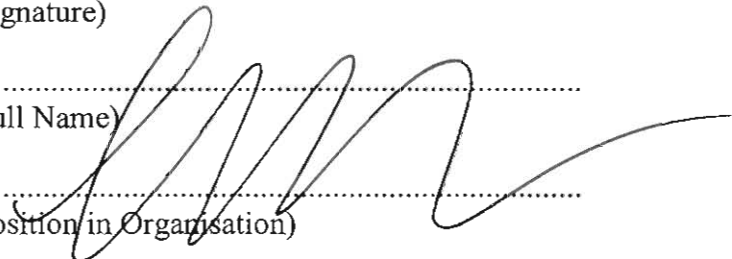
Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Position in Organisation)



AUST. COMPETITION &  
CONSUMER COMMISSION  
SYDNEY  
27 NOV 2009

HON. ERIC ROOZENDAAL, MLC  
TREASURER OF NEW SOUTH WALES

## DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made 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 application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
  8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or



understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.