



14<sup>th</sup> April 2010

Australian Competition & Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

### **Co-insurance Arrangements between the Electricity Generators and Gentrader in NSW**

We refer to the Commission's Draft Determination of the 25 March 2010 and its intention to refuse the Applicant's proposed co-insurance arrangements.

By way of introduction, ERM Power is the largest privately owned energy company in Australia, albeit a small player in a business where there is potential for market power to be exercised by major entities. ERM Power has established more than 40% of Australia's new electricity generation and has established the most outstanding new-start electricity retail subsidiary in the NEM, as well as establishing a successful upstream gas exploration and procurement business.

We note the Commission has not determined a negative competition consequence associated with the introduction of the proposed co-insurance scheme but rather considers among other things that the proposed arrangement is unnecessary as there are sufficient existing market based risk mitigation options available.

We would like to point out that in our experience, existing market based insurance products are only available for a limited range of circumstances and then only on a short term basis. Given the age of the assets assigned to the NSW gentrader contracts, trading risk will be a threshold issue for smaller players and new entrant electricity companies unable to rely on the benefits of a portfolio of electricity assets to mitigate their risk and the suggestion that the market would in time develop the necessary products is not evident to ERM and will be of no comfort to these potential bidders.

Furthermore, the view that the smaller players and new entrants could independently arrange for an equivalent insurance with incumbent generators is in our experiences rare, and especially for forced outages of aged base-load generators. The suggestion that smaller players and new entrants are able to establish peaking plant to mitigate such risks is simplistic.

A refusal to approve the proposed gentrader co-insurance arrangements, despite the determination that it does not have negative competition consequences, will reduce the quantity of firm base-load generation capacity the NSW Government is able to offer in the gentrader packages. This will either increase power generation costs to NSW consumers or persuade the NSW Government to reduce the number of gentrader packages, leading to a reduction in competition because smaller players and new entrants will be effectively squeezed out of the process.



We also note the Commission's concerns about the liquidity of the non-firm capacity market. In our experience there is little demand for non-firm capacity. To the contrary, we would expect that additional firm capacity will create a more liquid firm capacity market and benefit electricity consumers through lower electricity prices.

The Commission will be aware that existing prudential and regulatory requirements already create a significant barrier for smaller players and new entrants and be supportive of any efforts to encourage more participation in the electricity market. Given the Commission's finding that the Applicant's co-insurance scheme would be unlikely to have a negative competition impact, we would encourage the Commission to permit the Applicant's request and allow New South Wales to enjoy the benefits of an effective and competitive market through the participation of new and innovative energy companies.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Andy Pittlik', is written over the typed name and title.

Mr. Andy Pittlik  
NSW Director  
ERM Power