

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF

SECTION 87B

BY

AUSTRALIAN GAS LIGHT COMPANY (ACN 052 167 405),
GREAT ENERGY ALLIANCE CORPORATION PTY LIMITED (ACN 105 266 028) and
GEAC OPERATIONS PTY LIMITED (ACN 105 367 888)

Background

1. A consortium comprising The Australian Gas Light Company, Tokyo Electric Power Company International B.V. (TEPCO) and certain financial investors including the Commonwealth Bank of Australia (Financial Investors) proposed to acquire the electricity generation business in Victoria currently conducted by the partners in the Loy Yang Power Partnership and known as Loy Yang A, with AGL holding a 35% interest, and, at the time of acquisition, the Financial Investors holding a 30% interest and TEPCO holding 35% interest in that business through Great Energy Alliance Corporation Pty Limited and GEAC Operations Pty Limited (GEAC).
2. The Federal Court Decision of 19 December 2003 in the matter of The Australian Gas Light Company v The Australian Competition and Consumer Commission included an Undertaking (the **Court Undertaking**) upon which a Declaration was made. A further undertaking was given in addition to the Court Undertaking solely for the purpose of ensuring compliance with the Court Undertaking and the Trade Practices Act (the **s 87B Undertaking**). The undertaking below replaces the s 87B Undertaking.

Definitions

3. Definitions in these Undertakings are as in the Court Undertaking upon which Declaration was made, and the following additional definition.

Hedge Position Statement means information in relation to hedge contracts, derivative contracts or power purchase agreements in the form set out in Schedule 1 or such other information or form that would be relevant to hedging arrangements, as the Commission, acting reasonably, may request in writing.

AGL Undertakings

- 4.1 AGL must provide the Commission with a Hedge Position Statement in respect of all hedges, derivative transactions and power purchase agreements relating to its Victorian load with all of its counterparties (excluding information which would identify counterparties other than Loy Yang Power Station) at the written request of the Commission which can only be made if and when the independent auditor states in its review that information has come to its attention that indicates that Market Management Company has not contracted with AGL, in all significant respects, on an arm's length basis during the review period, as required under clause 3.2(c) of the Court Undertaking.
- 4.2 The Commission may at any time request in writing that AGL provide such written information that the Commission reasonably requires for the purpose of ensuring compliance with paragraphs 3.1 to 3.4 of the Court Undertaking.
- 4.3 AGL must promptly comply with any reasonable requests made by the Commission under paragraphs 4.1 and 4.2.

GEAC Undertakings

- 5.1 GEAC will procure that the entity appointed pursuant to clause 3.2(a) (the Agent) of the Court Undertaking will provide the Commission with a Hedge Position Statement in respect of all hedges, derivative transactions and power purchase agreements relating to the Loy Yang Power Station with all of its counterparties (excluding information which would identify the identity of non-AGL counterparties) at intervals of six months commencing from the date of this Undertaking; and as and when reasonably requested by the Commission in response to market circumstances which would not ordinarily be expected to occur in the ordinary workings of the NEM.
- 5.2 The Commission may at any time request in writing that GEAC provide such written information that the Commission reasonably requires for the purpose of ensuring compliance with paragraphs 3.1 to 3.4 of the Court Undertaking.
- 5.3 GEAC must promptly comply with, and procure the Agent to promptly comply with, any reasonable requests made by the Commission under paragraphs 5.1 and 5.2.

Independent Audit

- 6 GEAC and AGL undertake that they will jointly appoint an independent auditor (at their expense) from among the major accounting firms to undertake a review (in

accordance with Australian Accounting Standards) on a six monthly basis of compliance with Clause 2.3(c) of the Court Undertaking. Such appointment is to be approved by the Commission before the independent auditor who has been appointed under these or any antecedent undertaking is replaced. The Commission shall approve an auditor by selecting one auditor from two alternative auditors nominated by GEAC and AGL. The independent auditor will provide a report substantially in the form of Schedule 2, which GEAC and AGL will then provide to the Commission. In the event that the independent auditor's report notes any instance of non-compliance, at the written request of the Commission, AGL and GEAC will provide, and where appropriate GEAC will procure the Agent to provide, to the Commission all of the information provided by or on behalf of AGL and GEAC to the independent auditor.

Confidentiality

7. The Commission will ensure that all information received by it pursuant to these Undertakings will be kept confidential and not disclosed to any person, save and except as may be required in relation to any proceedings before a Court in respect of these Undertakings, the Court Undertaking or any enforcement action under the Trade Practices Act.

Enforcement Action Clause

8. For the avoidance of doubt, the Commission may take enforcement action at any time whether:

- (a) during the period of these Undertakings; or
- (b) after the period of these Undertakings,

in respect of any breach by AGL Energy or GEAC of a term of these Undertakings which occurred before the expiry of these Undertakings.

Commencement and Cessation

9. These Undertakings commence on the date which is the later of their execution by AGL and GEAC and the acceptance of these Undertakings by the Commission.
10. Subject to clause 8, these Undertakings apply only for the period that the Court Undertaking is in force and these Undertakings cease if the Court Undertaking ceases.

11. By consent of the Commission, upon the commencement of this undertaking, the undertaking given to the Commission on 2 February 2004 is withdrawn. **The Commission**

Name: The Australian Competition and Consumer Commission
Address: PO Box 1199, Dickson ACT 2602; 470 Northbourne Ave, Dickson, ACT 2602
Fax number: (02) 6243 1211
Attention: The Chairman

AGL

Name: The Australian Gas Light Company
Address: Level 13, 111 Pacific Highway, North Sydney
Fax number: 02 9922 3352
Attention: General Counsel

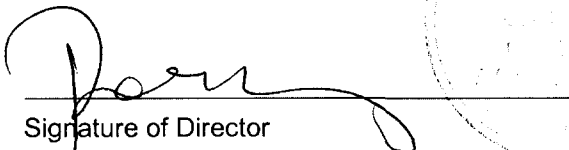
GEAC

Name: Great Energy Alliance Corporation Pty Limited
Address: Level 42, 101 Collins Street, Melbourne, Vic 3000
Fax number: 03 9288 1567
Attention: The Company Secretary

Name: GEAC Operations Pty Limited
Address: Level 42, 101 Collins Street, Melbourne, Vic 3000
Fax number: 03 9288 1567
Attention: The Company Secretary

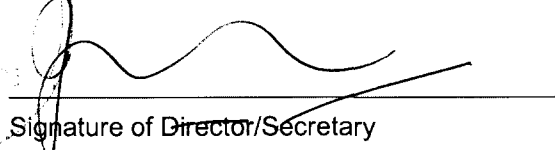
**The Common Seal of THE AUSTRALIAN
GAS LIGHT COMPANY ACN 052 167 405**

is fixed in the presence of:



Signature of Director
PAUL ANTHONY

Name of Director (print)



Signature of Director/Secretary
JANE MCALOON

Name of Director/Secretary (print)

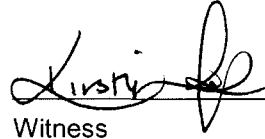
Signed on behalf of **GREAT ENERGY ALLIANCE CORPORATION PTY LIMITED**
ACN 105 266 028 in the presence of:



Signature of

Ian G. NETHERCOTE

Name (print):



Witness

KIRSTYN SMITH

Name of Witness:

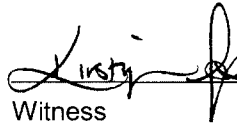
Signed on behalf of **GEAC OPERATIONS PTY LIMITED** ACN 105 367 888 in the presence of:



Signature of

Ian G. NETHERCOTE

Name (print):



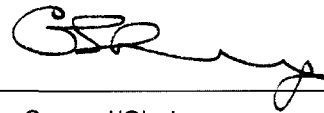
Witness

KIRSTYN SMITH

Name of Witness:

DATED 18/6/06

**ACCEPTED BY THE AUSTRALIAN
COMPETITION AND CONSUMER
COMMISSION**



Graeme Samuel/Chairman

DATED 1st August 2006

Schedule 1
Hedge Position Statement

Part A: For each contract entered into with AGL:

Total peak quantity (MWh)*

Total off-peak quantity (MWh)*

Start date

Finish date or duration

Contract type (power purchase/swap/ cap/ other (including captions/swaptions and any other types of contract under which the price of electricity is hedged))

Part B: For each contract entered into with a party other than AGL:

Total peak quantity (MWh)*

Total off-peak quantity (MWh) *

Start date

Finish date or duration

Contract type (power purchase/swap/ cap/ other (including captions/swaptions and any other types of contract under which the price of electricity is hedged))

* *If the total quantity cannot be ascertained at the time of filing the Statement, a best estimate of the quantity will be provided*

Schedule 2
Form of Auditor's Report

To:

GEAC
Great Energy Alliance Corporation
Level 42, 101 Collins Street, Melbourne, VIC 3000
Fax: 03 9288 4567
Attention: Company Secretary

AGL Limited
AGL Centre, 72 Christie Street, St Leonards, NSW 2065
Fax: 02 9921 2096
Attention General Counsel

Strictly Confidential

Dear Sirs

**Independent report on compliance by AGL and GEAC with enforceable
undertaking pursuant to Section 87B of the Trade Practices Act 1974 (Cth)**

We have conducted a review of the compliance by AGL Limited ("AGL") and Great Energy Alliance Corporation Pty Limited ("GEAC") with Clause 3.2(c) of the Court Undertakings dated [] pursuant to Section 87B of the *Trade Practices Act 1974* (Cth) ("Court Undertakings") for the period [] to [] ("the review period").

Clause 3.2(c) of the Court Undertakings requires that the terms on which [*insert name of Market Management Company*] is appointed must include a requirement that any dealings between AGL and GEAC are to be conducted on an arm's length basis.

Scope

[*Description of information reviewed and procedures followed to be inserted*]

We have performed a review in order to state whether, on the basis of the procedures described, anything has come to our attention that would indicate that [*insert name of Market Management Company*] has not contracted with AGL, in all significant respects, on an arm's length basis as required under Clause 3.2 (c) of the Court Undertakings.

The directors and management of AGL and GEAC, acting through its agent [*insert name of Market Management Company*], are responsible for the information provided for this review, and for ensuring that all transactions between AGL and [*insert name of Market Management Company*] are conducted on an arm's length basis as required by Clause 3.2(c) of the Court Undertakings.

For the purpose of the review:

- 'customer contracts' has the same meaning as the use of the term in the Court Undertakings and comprises new or amended hedge contracts, (electricity) derivative or power purchase agreements transacted during the review period; and
- an 'arm's length arrangement' has been defined as a customer contract that would be negotiated on commercial terms in an open and unrestricted market between a knowledgeable, willing but not anxious buyer (energy retailer/ hedge counterparty) and a knowledgeable, willing but not anxious seller (generator/ hedge counterparty) in accordance with their risk management policies and at a price consistent with the contract's fair value having regard to the terms and conditions of the contract.

In the case of GEAC, any reference to the risk management policies has the same meaning as contained in the Appendix to the Court Undertakings.

The fair value of a contract may be different to the indicative or theoretical value derived from generally accepted valuation techniques and observable market parameters and other factors typically used by market participants in pricing energy contracts due to:

- the illiquid nature of the over-the-counter market in electricity derivatives; and
- the particular circumstances of each party's hedging position that may lead either party to offer or accept a different price or premium for load shape to enter into a contract for the energy volume specified, maturity or other terms and conditions at the time of negotiating the contract.

[Auditor may include reasonable statement limiting liability to third parties for contents of report, in accordance with commonly accepted industry practice]

[Auditor may include other material that he/she considers appropriate to elaborate on or clarify the description of their processes or output.]

Inherent limitations

Our review has been conducted in accordance with Australian Auditing Standards applicable to review engagements.

A review does not provide all the evidence that would be required in an audit, thus the level of assurance provided is less than that given in an audit.

[Auditor may insert any other reasonable inherent limitations]

Statement

Based on our review, which is not an audit, nothing has come to our attention that causes us to believe that AGL did not contract, in all significant respects, with *[insert name of Market Management Company]* on an arm's length basis as required under Clause 3.2 (c) of the Court Undertakings during the review period.

Yours faithfully