

AGL ENERGY LIMITED

of 2014

RE: PROPOSED ACQUISITION OF MACQUARIE GENERATION (A CORPORATION ESTABLISHED UNDER THE ENERGY SERVICES CORPORATIONS ACT 1995 (NSW))

ANNEXURE CERTIFICATE

This is the annexure marked "**BAR 28**" annexed to the statement of **BRETT ALAN REDMAN** dated 23 March 2014

Annexure BAR28

Filed on behalf of (name & role of party)	<u>AGL Energy Limited</u>		
Prepared by (name of person/lawyer)	<u>Liza Carver</u>		
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[Form approved 01/08/2011]



Contact: Kerry Schott
Telephone: (02) 9228 5347
Our Reference:

20 March 2014

Mr Brett Redman and Paul Frazer
AGL Energy Limited
Level 22,
101 Miller Street
Sydney NSW 2060

Dear Brett & Paul,

Sale and Purchase Agreement (Macquarie Generation Assets)

We refer to the Sale and Purchase Agreement (Macquarie Generation Assets) of 12 February 2014 (**SPA**), the letter agreement of 5 March 2014 (**Letter Agreement**) and to our subsequent discussions regarding the notification from the ACCC on 4 March 2014 that it would oppose the acquisition of the Macquarie Generation Assets by AGL (**ACCC Decision**).

The effect of the Letter Agreement is that neither AGL Macquarie Pty Limited (**AGL**) nor the State were entitled to terminate the SPA under clause 2.6 before 12 March 2014.

The State understands that AGL may wish to make an application to the Australian Competition Tribunal seeking authorisation for the acquisition of the Macquarie Generation Assets notwithstanding the ACCC Decision. Such an application would likely be lodged over the next few weeks and AGL would seek an expeditious determination of the matter, however given the statutory timeframes involved, we understand a determination may not be made for up to six months after the application is filed.

As matters currently stand AGL would not be in a position to move to Completion under the SPA unless and until an authorisation is granted by the Australian Competition Tribunal. In these circumstances, the State wishes to confirm its intentions with respect to the SPA as discussed at our recent meetings and the basis on which the State is willing to proceed from the date of this letter, namely that:


1. The State has and will continue to re-engage with other participants in the Macquarie Generation Sales Process with a view to establishing whether any of those parties would be able to transact the Macquarie Generation Assets on terms acceptable to the State, including that the transaction value exceeds the State's retention value.
2. The State reserves all such rights as it may have to terminate the SPA, including under clause 2.6, at any time from the date of this letter. Without limitation and for the avoidance of doubt, the State may terminate the SPA to enter into a transaction such as contemplated in paragraph 1 above or for any other reason. Any delay by the State in exercising its rights under clause 2.6 of the SPA or other conduct consistent with the continued existence of the SPA is not and will not be a waiver of its right to


terminate the SPA, or an election not to exercise that right or preclude the State from exercising its right. .

- 3. Any application by AGL to the Australian Competition Tribunal for authorisation of the acquisition of Macquarie Generation will be at AGL's cost and the State will have no liability to AGL arising out of any potential future termination of the SPA by the State except as expressly provided for in the SPA.
- 4. If the SPA does remain on foot and AGL advises that either the ACCC Approval (as defined in the SPA) is obtained or the authorisation is granted by the Australian Competition Tribunal, the State would expect the Scheduled Completion Date to be a date approximately one month after the date AGL confirms it can proceed. [REDACTED]
- 5. Finally we note that a number of operating restrictions continue to apply to Macquarie Generation under the SPA. We wish to meet with AGL to discuss amending these restrictions and any other changes considered appropriate in the context of an extended period between signing and potential completion.

We would appreciate it if AGL would confirm that it understands and accepts the basis upon which the State is willing to proceed from the date of this letter as set out above by signing and returning the enclosed copy of this letter.

Yours sincerely


 Kerry Schott
 Project Director
 NSW Electricity Generation Assets Project
 Task Force


 John Mackay
 Project Manager
 NSW Electricity Generation Assets Project
 Task Force

The terms of this letter are acknowledged and accepted for and on behalf of AGL by Michael Fraser who in signing warrants that he acts with the authority of AGL:

Signature

Date

 Michael Fraser
 Managing Director and Chief Executive