

TASMANIA

TAMAR VALLEY POWER STATION BILL 2008

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TAMAR VALLEY POWER STATION BILL 2008

(Brought in by the Minister for Energy and Resources, the Honourable David Edward Llewellyn)

A BILL FOR

An Act to provide for the purchase by Aurora Energy of the Tamar Valley Project and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Tamar Valley Power Station Act 2008*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Purposes of Act

The purposes of this Act are to –

- (a) provide for Aurora Energy and any subsidiary of Aurora Energy to acquire and take a transfer of shares in the

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- Company and assets, rights or liabilities related to the Tamar Valley Project; and
- (b) provide for the future sale of shares in the Company and assets, rights or liabilities related to the Tamar Valley Project; and
- (c) amend the *Government Business Enterprises Act 1995* to allow the transfer of assets and liabilities between Government businesses.

4. Interpretation

In this Act, unless the contrary intention appears –

“**asset**” has the same meaning as in section 10A of the *Government Business Enterprises Act 1995*;

“**Aurora Energy**” means Aurora Energy Pty Ltd (ABN 85 082 464 622);

“**Babcock and Brown Power**” means Babcock and Brown Power Limited (ABN 67 116 665 608);

“**Bell Bay Power Station**” means the two existing 120 megawatt gas-fired thermal generating units with steam turbines located at Bell Bay;

“**Company**” means Alinta Energy (Tamar Valley) Pty Ltd (ABN 29 123 391 613);

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“liability” has the same meaning as in section 10A of the *Government Business Enterprises Act 1995*;

“members of Aurora Energy” means the Minister and the Treasurer;

“Minister” means the Minister administering the *Energy Co-ordination and Planning Act 1995*;

“right” has the same meaning as in section 10A of the *Government Business Enterprises Act 1995*;

“subsidiary” has the same meaning as in the Corporations Act;

“Tamar Valley Power Station” means the power station to be constructed by the Company, including the planned new 203 megawatt combined cycle gas turbine, the three existing 35 megawatt open cycle gas turbines, the planned new 60 megawatt open cycle gas turbine and all ancillary plant, equipment and facilities;

“Tamar Valley Project” means the Tamar Valley Power Station, the Bell Bay Power Station, the land on which the Tamar Valley Power Station and the Bell Bay Power Station are located and all ancillary plant, equipment and facilities.

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Part 2 – Purchase of Company

PART 2 – PURCHASE OF COMPANY

5. Power to purchase Company

- (1) The members of Aurora Energy may give written directions to Aurora Energy requiring the Board of Aurora Energy to do all things necessary to enable Aurora Energy or a subsidiary of Aurora Energy to purchase, and take a transfer from Babcock and Brown Power and its subsidiaries of, all or any of the following:
 - (a) shares in the Company;
 - (b) assets, rights or liabilities related to the Tamar Valley Project.
- (2) The Board of Aurora Energy must comply with any direction given under subsection (1).
- (3) Any tax, duty, fee or charge under any law of Tasmania is not payable in respect of the purchase by Aurora Energy or any subsidiary of Aurora Energy, or the transfer to Aurora Energy or any subsidiary of Aurora Energy, of any shares in the Company or any assets, rights or liabilities related to the Tamar Valley Project.

6. Power to operate generation assets

Notwithstanding anything in the *Electricity Companies Act 1997*, on the purchase by Aurora Energy or any subsidiary of Aurora Energy, or

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the transfer to Aurora Energy or any subsidiary of Aurora Energy, of any shares in the Company or any assets, rights or liabilities related to the Tamar Valley Project, Aurora Energy, that subsidiary and the Company may have as one or more of their purposes the activity of generation of electricity using the assets of the Tamar Valley Project.

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Part 3 – Sale of Company

PART 3 – SALE OF COMPANY

7. Aurora Energy may sell Company

Subject to the approval of the members of Aurora Energy, Aurora Energy and any subsidiary of Aurora Energy may sell or transfer its shares in the Company and any assets, rights or liabilities related to the Tamar Valley Project.

8. Directions to Board of Aurora Energy

- (1) The members of Aurora Energy may give written directions to the Board of Aurora Energy requiring Aurora Energy to sell or transfer, or to require a subsidiary of Aurora Energy to sell or transfer, its shares in the Company or any assets, rights or liabilities related to the Tamar Valley Project.
- (2) The Board of Aurora Energy must comply with any direction given under subsection (1).

9. Provisions of *Electricity Companies Act 1997* do not apply

- (1) The provisions of the *Electricity Companies Act 1997* do not apply in relation to the sale or transfer by Aurora Energy or any subsidiary of Aurora Energy of any shares in the Company or any assets, rights or liabilities related to the Tamar Valley Project.

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- (2) The members of Aurora Energy may by special resolution alter, add to or omit a provision of the constitution of Aurora Energy in order to reflect the purpose referred to in section 6, and that resolution has immediate effect in accordance with its terms notwithstanding the provisions of the *Electricity Companies Act 1997*.

10. Proceeds of sale

Aurora Energy is to return to the Consolidated Fund the net proceeds from the sale of any shares in the Company or any assets, rights or liabilities related to the Tamar Valley Project.

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Part 4 – Government Business Enterprises Act 1995 Amended

**PART 4 – GOVERNMENT BUSINESS ENTERPRISES
ACT 1995 AMENDED**

11. Principal Act

In this Part, the *Government Business Enterprises Act 1995** is referred to as the Principal Act.

12. Part 2A inserted

After section 10 of the Principal Act, the following Part is inserted:

PART 2A – NOTICE OF TRANSFER

10A. Notice of transfer

(1) For the purposes of this section and Schedule 1A –

“**asset**” includes any, and any part of any, property, business, operation and right;

“**government business**” means a Government Business Enterprise, a State-owned company or a subsidiary of either of them;

“**liability**” means any liability, duty or obligation whether actual,

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contingent or prospective,
liquidated or unliquidated;

“notice of transfer” means a notice of
transfer referred to in
subsection (2);

“property” means –

- (a) any legal or equitable
estate or interest (whether
present or future and
whether vested or
contingent) in real or
personal property; and
- (b) money, documents and
securities; and
- (c) shares in a subsidiary; and
- (d) any other rights;

“right” means any right, power,
privilege or immunity whether
actual, contingent or prospective;

“State-owned company” means a
company established under the
Corporations Act, the members of
which are Ministers of the Crown
and the beneficial ownership of
which rests with the Crown;

“State tax” means any of the
following if imposed by any Act
or law of Tasmania:

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Part 4 – Government Business Enterprises Act 1995 Amended

- (a) a fee, including an application fee and registration fee;
- (b) a tax, including a duty;
- (c) a charge;

“transferee” means the Crown or a government business to which any assets, rights or liabilities are transferred;

“transferor” means the Crown or a government business from which any assets, rights or liabilities are transferred.

- (2) The Treasurer may by notice of transfer, published in the *Gazette*, transfer any assets, rights or liabilities of the Crown or a government business to another government business or the Crown as specified in the notice.
- (3) A notice of transfer may be made on such terms and conditions as specified in the notice.
- (4) Schedule 1A applies to the transfer of assets, rights and liabilities under this section.

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13. Section 15 amended (Delegation)

Section 15 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “employee.” and substituting “employee;”;
- (b) by inserting the following paragraph after paragraph (d):
 - (e) a subsidiary.

14. Schedule 1A inserted

After Schedule 1 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 1A – TRANSFER OF ASSETS, RIGHTS
AND LIABILITIES**

Section 10A

1. Effect of notice of transfer

- (1) A notice of transfer takes effect on the day specified in the notice.
- (2) When any assets, rights or liabilities are transferred, the following provisions have effect:
 - (a) the assets of the transferor that are the subject of the notice of transfer vest in the transferee by virtue of this clause and without

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Part 4 – Government Business Enterprises Act 1995 Amended

- the need for any further conveyance, transfer, assignment or assurance;
- (b) the rights or liabilities of the transferor that are the subject of the notice of transfer become by virtue of this clause the rights or liabilities of the transferee;
 - (c) any legal or other proceedings relating to the assets, rights or liabilities that are the subject of the notice of transfer, commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer, are taken to be proceedings pending by or against the transferee;
 - (d) any legal or other proceedings relating to the assets, rights or liabilities that are the subject of the notice of transfer, which could have been commenced before the transfer by or against the transferor or a predecessor of the transferor, may be commenced by or against the transferee;
 - (e) a judgment or order of a court or other tribunal, obtained before the transfer by or against the

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transferor or a predecessor of the transferor relating to the assets, rights or liabilities that are the subject of the notice of transfer, may be enforced by or against the transferee;

- (f) any document, relating to legal or other proceedings relating to the assets, rights or liabilities that are the subject of the notice of transfer, that has been served on or by a transferor or a predecessor of the transferor before the transfer is taken, where appropriate, to have been served on or by the transferee;
- (g) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities that are the subject of the notice of transfer before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee;
- (h) a reference in any Act, in any instrument made under any Act, in any contract, agreement, arrangement or undertaking, or in any document of any kind to –

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Part 4 – Government Business Enterprises Act 1995 Amended

- (i) the transferor; or
- (ii) any predecessor of the transferor –

to the extent to which the reference relates to the assets, rights or liabilities that are the subject of the notice of transfer, is taken to be, or include, a reference to the transferee.

- (3) The notice of transfer may specify the consideration on which a transfer is made and the values at which the assets, rights or liabilities are transferred.
- (4) No compensation is payable to any person or body in connection with a transfer except to the extent (if any) to which the notice of transfer giving rise to the transfer so provides.
- (5) A notice of transfer is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (6) State tax is not payable in respect of any document prepared to give effect to a notice of transfer.
- (7) A person is not entitled to –
 - (a) terminate or modify the operation or effect of a contract; or
 - (b) claim that there has been a breach of or default under a contract; or

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Part 4 – Government Business Enterprises Act 1995 Amended

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(c) claim any remedy –

by reason only of the transfer of that contract (or rights or liabilities under that contract) under a notice of transfer.

(8) A notice of transfer has effect despite any other law or instrument.

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Part 5 – Miscellaneous

PART 5 – MISCELLANEOUS

15. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.