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THE PARLIAMENTARY STANDING COMMITTEE ON PUBLIC WORKS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON FRIDAY, 17 JUNE 2022

HYDRO TASMANIA AND THE TERMINATION OF THE BASSLINK SERVICES AGREEMENT

Mr GUY BARNETT, MINISTER, WAS CALLED; **Mr GRANT EVERY-BURNS**, CHAIRMAN, HYDRO TASMANIA; **Mr ANTON VOSS**, CHIEF EXECUTIVE OFFICER, RENEWABLES, CLIMATE AND FUTURE INDUSTRIES TASMANIA; AND **Mr IAN BROOKSBANK**, ACTING CHIEF EXECUTIVE OFFICER, HYDRO TASMANIA WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR - Thanks, Minister, for appearing at the Public Accounts Committee inquiry into the termination of the Basslink Services Agreement. I'll invite you to introduce the members of your team at the table and ask that they then take the statutory declaration. I believe you want to make an opening statement.

This is a public hearing. The evidence you give is covered by parliamentary privilege. It will be transcribed and form part of the public record. If you wanted to mention something that was considered of a confidential nature, you can make that request to the committee and the committee will consider that, otherwise it is a public hearing and [inaudible]. I'll hand over to you, Minister.

Mr BARNETT - Thanks very much, Madam Chair, and I welcome the opportunity to be here today with Hydro Tasmania and Anton Voss to assist the committee with its deliberations on this important matter. Other colleagues here have opening remarks as well, if that's satisfactory to the committee.

We want to support the committee's work. We've been working hard over a considerable period of time to protect Tasmania's interests in this matter. We think it is important that the community, through the PAC, gains an insight into how we have been doing that.

The Basslink situation is complex and the current positions including the Basslink Services Agreement (BSA) termination, which is the focus of the committee's terms of reference, have a history.

To assist the committee, I've asked Anton Voss to make an opening statement to provide that context, because I think it will be of great assistance to the committee, and for those Tasmanians who might be taking an interest in this matter but are less familiar with the detail. Having an overview of how matters have proceeded over the past few years leading up to the BSA termination earlier this year, and where matters are currently, will provide useful framing for answering the questions that have been provided by the committee, and to any further questions the committee might have. I am more than happy to answer the questions put today and if there are further questions to answer those, if appropriate, on notice.

Before I ask Anton to provide the overview, I would like to highlight some of the constraints that the state and Hydro Tasmania face in delving into some of the matters that will be central to the committee's deliberations, particularly in an open forum like this hearing.

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I have set this out in a confidential letter to the committee earlier this week but it might be worth highlighting some of the issues in this public hearing.

It is public knowledge that in February this year, Hydro Tasmania terminated the BSA and that the state and Hydro Tasmania terminated the Basslink Intercreditor Agreement. It is also in the public domain that the Basslink receivers have brought action before the Federal Court on these matters. I also informed the committee of these matters in my response to the committee's initial set of questions earlier this year.

Given these matters are now sub judice, the state and Hydro Tasmania need to be very careful in how we can provide the committee some insight into the context behind the state and Hydro Tasmania's decision to terminate the intercreditor agreement and Hydro Tasmania's decision to terminate the BSA, particularly in a public forum. It is in the state's and Tasmania's interests that we ensure that we don't prejudice those proceedings. As the Federal Court proceedings relate to Hydro Tasmania's termination of the BSA, it would be inappropriate for the state and Hydro Tasmania to offer extensive public commentary on the rationale and circumstances of the BSA termination and related decisions.

In addition to protecting the state party's legal position, a sale or recapitalisation of Basslink Pty Ltd is likely to occur this year. It is preferable to avoid disclosure of confidential and commercial-sensitive information outside this process, to avoid prejudicing any party's position.

Additionally, there is a reasonable possibility of negotiations between Basslink purchasers or BPL receivers in respect of new commercial arrangements with Hydro Tasmania to hedge or fix the market price risk of BPL operation as a market network service provider.

To the extent that new arrangements are negotiated, these may be relevant to an overall consideration of the financial consequences of terminating the BSA. The committee's inquiry at this time may, in that regard, be premature.

Further, given the potential for such negotiation to provide intelligence to commercial counterparties negotiating with Hydro Tasmania, it may damage Hydro Tasmania's commercial negotiating position and returns to the state.

With these constraints in mind, it would be my and Hydro Tasmania's strong preference if questions relating to these matters are taken on notice and responses provided accordingly, rather than matters being progressed by way of a public hearing in the period which the commercial and legal matters are current.

The committee has recently provided a list of 23 questions which I understand are to be the focus of today's hearing. That has been a very useful approach and I thank the committee for so doing, as it enables us to provide considered answers to the committee's questions and minimise the risk of firstly, inadvertently compromising the state party's legal position in relation to the Federal Court matters; secondly, compromising our commercial position in relation to any forthcoming sale or recapitalisation process; and thirdly, compromising Hydro Tasmania's position in relation to any new commercial arrangement with Basslink. It will also enable Hydro Tasmania and/or the state to communicate with relevant third parties in order to seek permission to disclose any responsive information over which it owes any obligations of

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confidentiality. Where the committee has questions that don't touch on the legal or commercial matters to which I've referred, we'll do our best to answer them, Chair.

With that, unless the committee has any other questions, I will pass to Anton Voss to provide a contextual overview for the benefit of the committee.

CHAIR - Thank you, minister, for explaining the process that we'll be undertaking here, and your agreement to do so. The committee respects that request, and I'll take that approach.

Mr BARNETT - Thank you.

Mr VOSS - Thank you, Chair. Before we dive into the recent history on matters central to the terms of reference, it's worthwhile to identify the commercial agreements in question. First is the intercreditor agreement. As part of financing the link, Basslink Proprietary Limited granted security interests over all its property in favour of its financiers, Hydro Tasmania, and the state of Tasmania. As is common in such situations, an intercreditor agreement was entered into between the parties which documents the rights and obligations of the parties with respect to the enforcement of their securities.

The second key agreement is the Basslink Services Agreement - or the BSA - it was the key contractual agreement between Hydro and BPL that effectively funded the link. Under the BSA, BPL swaps the revenue it earns from transporting electricity across Basslink with Hydro Tasmania in return for the facility fee. The agreement also required Basslink to make all the link capacity available both northwards and southwards at a zero price unless otherwise specified by Hydro Tasmania. The BSA also contained a set of key performance requirements that the link needed to meet.

Turning to the history and the current position. Current legal and commercial positions all arise out of the 2020 arbitration. In December 2020, Hydro Tasmania, BPL and the state of Tasmania received a decision from the arbitrator in respect of the disputes that were referred to arbitration in 2018. Of key importance, the arbitrations established that the Basslink facilities do not meet the minimum technical specifications, minimum megawatt rating capacity requirements within the BSA, and as a consequence, BPL was in breach of a number of key provisions of the BSA. In addition, the arbiter ordered BPL to undertake a number of actions to improve the operational performance of the cable, and to mitigate the risk of future cable failure.

Following delivery of the award, the arbitrator also awarded Hydro Tasmania \$22.25 million in costs, and also made an award to the state of around \$47 million. Following the arbitrations, BPL, the state, and Hydro Tasmania agreed in good faith to enter into a standstill agreement, preserve the rights of the parties and create a framework for negotiations to take place on commercial and engineering matters, while BPL attempted to refinance its debt and meet its commitments arising from the arbitrations. Prior to its expiry on 28 May 2021, the parties agreed to extend the standstill agreement until October 2021. Throughout the standstill period, the state and Hydro Tasmania sought to reach a holistic resolution to the matters in dispute, but ultimately this was unsuccessful.

At the time of expiry of the standstill agreement in October 2021, BPL remained in breach of a number of key provisions of the BSA; BPL had not satisfactorily progressed the actions to improve operational performance as ordered by the arbitrator; BPL had not paid

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either the state or Hydro Tasmania the costs awarded by the arbitrator; and BPL owed Hydro Tasmania other amounts under the BSA as a consequence of the cable's ongoing operation at around 500 megawatts since the date of the arbitration award.

BPL's failure to pay Hydro Tasmania's costs and the other outstanding amounts constituted further breaches of the BSA. I do note there is a disagreement between Hydro Tasmania and BPL, and now the receivers, with respect to the calculation of the amounts BPL owes Hydro as a result of its underperformance. The state and Hydro Tasmania elected not to provide a further extension to the standstill agreement, and it expired on its existing terms.

Following its expiry, Hydro Tasmania issued BPL with default notices under the BSA in respect of BPL's breaches. On 12 November 2021 voluntary administrators were appointed by BPL's directors. The administrators are three partners at Ernst & Young. In parallel BPL's banking syndicate appointed receivers, namely three partners from KPMG.

Following the receiver's appointment, Hydro Tasmania and the state engaged directly in discussions with receivers and the finance trustee and the agents for BPL's lenders about the matters still in dispute. However, no holistic resolution in respect of the outstanding breaches was reached.

Further, the finance trustee had a range of responsibilities under the intercreditor agreement that it failed to perform. Again, as this is currently before the courts, I'm reluctant to provide more specifics other than to say, these are very important obligations that in the state's and Hydro Tasmania's view, go to the heart of how the intercreditor agreement was supposed to function.

So, faced with the situation of, one, ongoing breaches under the BSA as a consequence of the Basslink facilities remaining unable to meet the minimum technical specifications; and two, ongoing breaches of the BSA arising from non-payments of amounts owed by BPL to Hydro Tasmania and a repudiation of the intercreditor agreement by the finance trustee, Hydro Tasmania and the state were in a position where they were not getting what they bargained for under either of these material contracts.

Despite efforts by the state and Hydro, no commercial resolution was reached with the receivers or the finance trustee in respect of these matters.

After careful consideration of the state and Hydro Tasmania's legal rights and with Hydro Tasmania assessing the commercial implications of terminating BSA, on 10 February 2022, Hydro Tasmania and the state terminated the intercreditor agreement and Hydro Tasmania subsequently terminated the BSA and related contracts.

Later in February, BPL's receivers commenced proceedings in the Federal Court, challenging the validity of Hydro Tasmania and the state's termination of the intercreditor agreement.

Given this action fundamentally shifts the relative credit priority of the parties, it was possible that the receivers might seek to challenge that termination. The state and Hydro Tasmania are prepared to defend their course of action.

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Also, in February this year, APA acquired control of Basslink's bank debt from its previous banking syndicate. It makes APA Basslink's single largest secured creditor and APA is on the public record as having an interest in being the owner of the link.

This week, APA retired the three KPMG partners as receiver and has replaced them with principals from FTI Consulting.

In relation to the legal matters surrounding the termination of the BSA and the ICA, the next directions hearing has been set by the court for 1 August 2022. Currently, the parties to the dispute are finalising their pleas.

At the hearing in August it is expected the court will set a timetable for the exchange of evidence.

Finally, there is the matter of the sale or recapitalising of Basslink which will provide the funds available to satisfy outstanding debt BPL owes to its creditors, including the state and Hydro. As the appointed receivers, KPMG did not commence the sale process for BPL or its assets during the term of their appointment.

The state parties have been advised by the administrators of multiple approaches by interested parties with an interest in recapitalising the business. Accordingly, in mid-May, the administrators sought an extension to the convening period from the court in order to provide time for them to conduct a competitive process, including the establishment of a data room to enable interested parties to undertake due diligence on the business.

The state party supported the establishment of the competitive process but did not take part in the legal proceedings. The Federal Court granted that application in mid-May. This week there was a further consideration of the matter by the court which did not reach a conclusion and a further hearing is set down for 1 July 2022.

CHAIR - Thank you. Mr Every-Burns do you want to speak as well?

Mr EVERY-BURNS - Chair, thank you very much for the opportunity to make some opening remarks to yourself and the committee. I thank the Minister and also ReCFIT for the comprehensive overview of the complex Basslink situation and the recent history of matters before you.

Hydro Tasmania welcomes the opportunity to participate fully in this parliamentary process, seeking to inform the committee and to assist in your deliberations.

Hydro Tasmania exists to efficiently generate, trade and sell electricity in the national electricity market (NEM) thereby providing an essential service to the people of Tasmania.

Ensuring our ongoing sustainability and future prosperity is vital. This has been our focus for 100 years of our history. Our board and executive leadership team follow high standards of corporate governance, ethics and prudent financial management to deliver against their objectives and provide strong returns to the state.

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All decisions made by the board are done with careful consideration and thorough analysis and risk assessments. Accordingly, the decision to terminate the Basslink Services Agreement was taken after careful consideration and commercial assessment by the board.

As has been outlined in detail in the previous remarks, this decision was preceded by three concurrent arbitrations between Hydro Tasmania, the State of Tasmania and Basslink Proprietary Limited and also unsuccessful commercial discussions between the parties.

This included provision by the state and Hydro Tasmania of a 10-month standstill of their respective legal rights emerging from those arbitrations to enable commercial approaches to be explored.

Hydro Tasmania carefully assessed the commercial implications of terminating the BSA and concluded that it was the most appropriate course of action in the circumstances. The rationale for terminating the BSA was that BPL had breached, and remained in breach, of the BSA in several respects, including the cable not meeting the minimum technical specifications required under the agreement and BPL had not paid costs awarded by the arbitrator and other amounts owed under the BSA. Further, BPL had not satisfactorily progressed actions to improve operational performance of the cable ordered by the arbitrator.

In good faith, Hydro Tasmania remained willing to discuss with receivers an alternate commercial model. We remain open to continuing discussions with the receivers about ongoing arrangements for Basslink and to whether a commercial resolution is possible in respect of ongoing matters of dispute.

However, since termination BPL's receivers have commenced Federal Court proceedings which will directly address and determine a range of matters, including the validity of the termination of the various contracts relating to Basslink, which include the Basslink Services Agreement. In light of this and as previously noted by the Minister, it would be imprudent to offer extensive public commentary on a rationale and circumstances of this decision to avoid the prospect of jeopardising matters before the court.

I do emphasise however, that it is Hydro Tasmania's intention to cooperate with this inquiry to the best of our ability within that context. I would also like to assure the committee that given the current strong storage situation and the ongoing operation of Basslink there are no material energy security considerations for Tasmania arising from the BSA termination.

There is also no direct impact on BPL's telecommunication business.

Thank you again, Chair, for the opportunity to make the remarks.

CHAIR - Thank you. Did the CEO want to hand back to the Minister or is it okay for us to commence?

Mr BARNETT - All good, Chair. We have finished our opening remarks and are happy to proceed to questions when you are ready.

CHAIR - Thank you. I should have said at the outset, we do appreciate the previous response you gave which did provide some of the information you have reiterated and members of your team have in your responses. It is really helpful to have all that history on the record

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and members of the community broadly do appreciate the circumstances that have led you to the decisions that have been made. It is appreciated to have that information.

The key focus of the questions that were sent - and we will go through those one by one in just a moment - is more about the financial impact which is the third term of reference if you like, the impact on Hydro Tasmania's financial position. I hope that these questions steer predominantly away from matters in contention. It is about the decision that is made and the impact that will have on the financial position of the board, acknowledging we are not at the end of the financial year yet and we accept that too.

So if you are happy to begin I will put the questions to you that were sent to you. I am not sure who wants to answer, you Minister or members of your team but I am sure you can handle that from there.

Mr BARNETT - Thank you, Chair.

CHAIR - Some of this might have been answered in the opening comments, but I think in terms of getting it on the record in a succinct way we will go through this process if that is all right.

The first question is, when did the termination formally occur and when was the notice to terminate given and on what day did or does the termination take effect?

MR BROOKSBANK - Thank, you Chair. I will take that question. The BSA termination notice was hand delivered to BPL at 4.41 p. m. on 10 February 2022.

CHAIR - That took effect immediately?

Mr BROOKSBANK - Yes.

CHAIR - What were the grounds for termination, giving the nature of any performance defaults conveyed by the operator? We have talked about that quite extensively but I don't know if you want to add anything or just answer the question as put.

Mr BROOKSBANK - If it pleases, I will answer the question as put and probably that will cover off a number of the other factors. The grounds for termination were set out in the termination notice. The termination was a result of certain ongoing performance defaults and financial defaults, as described in the BSA. The performance defaults were notified to BPL in a performance default notice, dated 29 October 2021, namely:

- Breaches of the BSA in that BPL had failed to ensure and could not ensure that the Basslink facility met the minimum technical specifications set out in the BSA.
- Secondly, BPL could not comply in any reasonable respects with the project's requirements.
- Thirdly, the works are incapable of achieving and maintaining the operational requirements set out in schedule 7 of the Basslink development agreement for a design life of no less than 40 years.

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- Fourthly, BPL failed to and could not operate and maintain Basslink undertake the Basslink operations in accordance with the Basslink operations agreement and the Basslink development agreement.

The financial defaults were notified to BPL by default notices dated 11 and 22 November 2021 being firstly, BPL's failure to pay certain amounts when due and payable under the BSA, namely, outstanding arbitration costs awards and commercial risk-sharing mechanisms and availability adjustments; and, secondly, an insolvency event occurring.

CHAIR - If members on the panel wish to clarify, if we can ask, as our Minister has indicated, they may wish to take that question on notice, if we go through. I will move on to question 3. Was there provision in the BSA for the operator to cure the default in a given time? If so, was the operator unable to cure the default in that time to the satisfaction of Hydro? And is that what finally led to the termination notice?

MR BROOKSBANK - The BSA provided a process for addressing events of default. The process included the provisions of a cure plan, as conveyed to BPL in the termination notice in relation to the performance defaults under the BSA that were the subject of the performance defaults notice. BPL did not provide a draft cure plan. BPL did not provide details of the performance defaults. BPL had not cured or rectified the performance defaults or all of them. BPL was not curing or rectifying the performance defaults or all of them. BPL had not diligently pursued and was not diligently pursuing rectification of those performance defaults or all of them. BPL had evidenced an intention not to cure or rectify those performance defaults or all of them. Those performance defaults, or one or more of them, were or had become incapable of being cured in the sense of rectification. And/or BPL otherwise did not have the financial capacity to cure or rectify those performance defaults or any of them.

Furthermore, the financial defaults that were the subject of various financial default notices were not satisfied, cured or otherwise remedied.

Hydro Tasmania consequently terminated the BSA, pursuant to clause 12.6 of the BSA on 10 February 2022, with immediate effect.

CHAIR - Okay. If anyone could let me know if you want to say anything further?

Question 4 - Once the termination had taken effect, (a) does Hydro no longer pay the facility fee to Basslink; and (b) is Hydro no longer entitled to inter-regional revenues earned by Basslink?

Mr BROOKSBANK - From termination of the BSA, Hydro Tasmania no longer pays any fees under the BSA to BPL. Secondly, inter-regional revenues accruing to BPL from its operation in the NEM, National Energy Market, reside with BPL.

CHAIR - Question 5 - Does Hydro expect the outcome, that's in response to the question you've just answered, will mean Hydro is better off? And will Hydro be forgoing future profits by terminating? In other words, will Hydro be better off as a result of this?

Mr BROOKSBANK - Prior to exercising its contractual rights, Hydro Tasmania assessed the commercial implications of termination of the BSA and related contracts, and concluded that it made commercial sense to terminate the BSA and related contracts, taking

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into effect all of the circumstances. It is not accurate to state that Hydro Tasmania will be forgoing future profits.

CHAIR - Question 6 - Did the BSA give Hydro certain rights to control the way in which Basslink bids its interconnector capacity, either flowing in or flowing out of Tasmania? If so, with the end of the BSA, what does this mean for the way Basslink will operate the cable without any input from Hydro and how is this likely to change?

Mr BROOKSBANK - Thank you. The BSA did not provide Hydro Tasmania with any rights to control the operation of Basslink. The BSA required Basslink to make all the link capacity available, both northwards and southwards, at a zero price, unless otherwise specified by Hydro Tasmania. Basslink is no longer under that contractual obligation. Hydro Tasmania is not able to comment on how BPL will operate Basslink into the future.

CHAIR - Okay. Question 7 - Are future inter-regional revenues estimated to be less than the future expected facility fees?

Mr BROOKSBANK - Hydro Tasmania is not willing to comment or make forecasts on future events in the NEM.

CHAIR - Especially at the moment, I guess. (indistinct) It's a bit of a different circumstance we're in at the moment.

Question 8 - Has still got the Minister publicly, or Basslink communicating that electricity across Basslink: (a) when exporting, is it likely Basslink will be acquiring electricity from what Hydro offers into the NEM?; and (b) are Hydro's offers likely to change due to the fact that we no longer receive the benefit of inter-regional revenue when Basslink exports into the Victorian market?

Mr BROOKSBANK - Hydro Tasmania is not able to comment on how BPL will operate Basslink into the future. With respect to sub-question (a), it is based on a false premise. Basslink is a market network service provider. It does not procure electricity from either Victorian or Tasmanian regions, nor from the generators directly. Basslink merely makes its services available to transport energy from one region to another. The energy dispatched in each region is determined by AEMO's - the Australian Energy Market Operator's - dispatch algorithms. BPL receives inter-regional revenues from AEMO when there is a price separation between the regions. These revenues are based on differences in price and the quantum that flows across Basslink.

In regard to sub-question (b), it is not appropriate for Hydro Tasmania to discuss its offers because it may place Hydro Tasmania at a competitive disadvantage. The NEM is a complex market.

CHAIR - (inaudible) Question 9 - As a virtual monopoly generator in Tasmania, what constraints are put on Hydro by NEM regulations? Will any of these constraints change with Basslink operating another regular asset under its own account in a market dominated by a monopoly supplier?

Mr BROOKSBANK - The NEM regulations provide a framework for dispatch and settlement of the market by AEMO. The Australian Energy Regulator, AER, monitors the

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market and may take enforcement action should there be a breach of the NEM rules. The premise of the question appears to be grounded on the basis that the NEM rules govern how parties should conduct themselves in the market. This is only partly correct and it is important to note that the NEM does not operate in isolation of other key laws, including the Competition and Consumer Act 2010.

CHAIR - Question 10 - If Hydro is no longer entitled to inter-regional revenues that it banked previously, will the asset listed as Basslink financial asset at \$409 million at 30 June 2021 be written off? If so, how will this be shown in financial accounts, as a loss or fair-value loss, or other means?

Mr BROOKSBANK - We note that the 2021-22 financial year is still ongoing. Once accounts are closed following expiration of the 2021-22 financial year on 30 June 2022, they will be audited and then published in Hydro Tasmania's Annual Report which is tabled in parliament later in the year. Accordingly, it would be premature to answer this question until the accounts are audited.

CHAIR - Question 11 - If Hydro Tasmania no longer has to pay the facility fee will the liability listed under Basslink Services Agreement, \$583 million as at 30 June 2021 be written off? If so, will this be shown in the financial accounts as a loss or fair-value loss, or other means?

Mr BROOKSBANK - As with question 10, we refer to the answers to question 10.

CHAIR - Question 12 - We get this same question always. [inaudible] facility fee [inaudible] liability listed under the Basslink facility spot fee at \$320 million at 30 June 2021 be written off?

Mr BROOKSBANK - As per answer to question 10.

CHAIR - We may come back with other questions about that at a later time.

Question 13 - What is the nature of those parts of the Basslink facility fee (BFFS) which will be written off and what is the nature of the parts of the (inaudible) liability (inaudible) determines how much will be written off and how much will be retained as a liability, acknowledging there are many aspects to the facility fee?

Mr BROOKSBANK - As per answer to question 10.

CHAIR - Question 14 - Given that the Basslink liabilities currently exceed Basslink assets, will there be a safe termination resulting in Hydro improving its balance sheet and, if so, what is the likely level of improvement?

Mr BROOKSBANK - As per answer to question 10.

CHAIR - Question 15 - Given that the Basslink liabilities are a significant proportion of the Hydro's liabilities, how will TASCORP assess the termination of the BSA and subsequent revised balance sheet and what will it mean for Hydro's ability to finance more debt?

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Mr BROOKSBANK - Hydro Tasmania's borrowings are funded by TASCORP under the borrowing limit, currently supported by a guarantee provided by Treasury. Although the termination of the BSA is expected to improve Hydro Tasmania's net equity position and the capital adequacy ratio, it is not expected to have any direct implications on the borrowing capacity of Hydro Tasmania.

CHAIR - Question 16 - Will the end of the BSA have any effect on Hydro not (inaudible) for example, will its generation asset need to be revalued?

Mr BROOKSBANK - As per answer to question 10.

CHAIR - Question 17 - What is the status of the Basslink Operations Agreement (BOA) between Basslink and the state of Tasmania?

Mr VOSS - I will take that one, Madam Chair, if that's okay.

CHAIR - Yes.

Mr VOSS - The Basslink Operations Agreement remains on foot and it's not impacted by any of the recent developments.

CHAIR - There may be follow-up questions to some of these that we will put in writing to you as we agreed.

Question 18 - When Basslink becomes a regulated asset, which seems likely, does this mean that whatever price determination as awarded by the AER will result in a new [inaudible] Basslink [inaudible] income fund for NEM on a newly regulated asset? If so, will the increase in cost need to be paid for by higher electricity prices? How will the new arrangement work?

Mr VOSS - Whether Basslink is converted to a regulated interconnector is a matter for the owners of the asset and the Australian Energy Regulator (AER). The receivers appointed to BPL have indicated they intend to pursue regulation. APA has expressed an interest in purchasing Basslink, as I said earlier, and said that if it is successful in securing Basslink, it would seek to convert it into a regulated asset.

Basslink is currently the only non-regulated interconnector in the National Energy Market (NEM), as the committee is probably aware. All other interconnectors in the NEM are regulated under the National Electricity Rules administered by the AER and it's the AER that determines the allowable revenue for the use of their assets. Any application by the owner of Basslink to convert the interconnector to a regulated link will go through a robust assessment and consultation process which is led by the AER. It's a public process; it's a complex process and obviously, we're not in a position to express views on the likely outcomes of that.

As an unregulated interconnector, BPL retains the revenues received when price separation occurs between Victoria and Tasmania and electricity is flowing across the link. When the BSA was in place, BPL swapped that income in return for the facility fee with Hydro Tasmania. Now the BSA is terminated, that swap is no longer in place. If Basslink was to become a regulated interconnector, its primary source of income would be by way of regulated customer charges, which is the case for transmission assets generally. However, in the case of regulated interconnectors there is another stream of income, that being inter-regional revenues

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created through price separation between the NEM regions that the link connects to. The rights of these revenues are sold through a regular AEMO auction process, with proceeds being applied to reduce the costs of the interconnectors to end-use consumers.

CHAIR - Thank you. Question 19: If and/or when Basslink becomes a regulated asset, does this mean electricity prices for Tasmanian consumers are likely to rise, and if not, can you please explain why not? If prices may fall, could you please explain how that would occur? It is about the mechanism rather than [indistinct].

Mr VOSS - The process for regulation is up to the asset owners, and how it proceeds is up to the AER, and it's obviously not even commenced at this stage, so it's premature to speculate on the nature of the price outcomes that could be experienced by Tasmanian customers as a result of regulation being approved - if it is approved. Ultimately, the impact of Basslink regulation on Tasmanian transmission charges will be a function of three things: value of the regulated asset base for Basslink as determined by the AER; the allocation of the annual revenue requirement between Victoria and Tasmania under the national rules; and the value of the inter-regional revenues accruing to the link and sold through the auction process, which offsets the revenue from the above factors.

CHAIR - Question 20, if Marinus does subsequently come online and it too becomes a regulated asset or partially regulated, doesn't this mean necessarily that whatever is extracted from wholesale sales in the NEM and paid to the overall regulated asset, that higher retail prices must result? If not, could you please explain why not?

Mr VOSS - Similar to the previous answer, commentary about matters which have yet to be determined or are not forecast to occur for some years into the future - with regard to Marinus - there remains considerable work ahead on the funding of Marinus and how any regulated cost would be distributed across, and in, jurisdictions. It is hard to provide any definitive advice to the committee at all on Marinus. It would be speculative. It's a long way into the future, if it occurs.

CHAIR - Question 21 - In the GBE hearings completed, Hydro and the state rank as secured creditors for Basslink. Where exactly in the rankings do the state and Hydro sit?

Mr VOSS - Thank you. The state and Hydro are secured creditors of BPL. As part of financing the link, BPL granted security interest over all its property in favour of the financiers, Hydro Tasmania and the state of Tasmania. As is common in such situations, an intercreditor agreement was entered into between the parties which documented the rights and obligations of the parties with respect to the enforcement of their securities. The state and Hydro both terminated the intercreditor agreement in February. The state's position is that the consequence of that action is that general law applies to the ranking of secured credit priorities, which in summary is that the earliest dated security has the first ranking. The state's charge, which secures Hydro Tasmania's outstandings as well, pre-existed to the security of Basslink's financiers. Given the ICA is currently the centre of the current legal matters, it's difficult to provide much more information than that, Madam Chair.

CHAIR - Question 22 - This relates to answers you've provided previously in questions 18, 19, and 20. In the *Mercury* of 9 March 2022, the former Hydro director said when talking about APA having acquired the rights to procure all Basslink's debt and converting Basslink to a reclaimed asset, I'll quote from that article:

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through this regulation process Tasmanians can look forward to bearing something less than half of the ongoing cost of Basslink. Its costs are finally shared with Victorian consumers, rather than fully borne through Hydro Tasmania. [TBC].

Does the Minister or Hydro agree with this, that half of the cost of Basslink as a regulated asset will be borne by Tasmanian consumers, whereas the Basslink deal all was borne by Hydro?

Mr VOSS - Thank you, Chair, I'll just refer to my answer from question 19. The regulation process hasn't commenced, it's premature to discuss that and as outlined earlier, there's a range of things that are considered in the impact on transmission charges in Tasmania.

CHAIR - The question was, does the Minister have an opinion on that?

Mr BARNETT - Thank you, Chair. I do not wish to add to the answer provided by Anton Voss.

CHAIR - Question 23 - As Hydro is a generator which trades on the NEM and is probably otherwise a factor in determining Tasmanian retail prices and if half the cost of Basslink can be shifted onto consumers in other jurisdictions, won't the same apply with Marinus?

Mr VOSS - Hydro's profitability or otherwise is not a matter that feeds directly into Tasmanian retail prices. Hydro Tasmania offers regulated wholesale contracts and the price of these contracts is a key input into retail prices.

Those prices are determined in accordance with the regulatory model under the wholesale contract regulatory instrument. The instrument has been subject to a series of independent reviews by the Tasmanian Economic Regulator with the latest review concluded in March 2021 last year. Broadly, that methodology references Victorian prices and inflows as well, amongst other things.

Regulated retail and wholesale pricing methodologies do not refer in any way to Hydro Tasmania's profitability. Regulated retail prices are determined by the Tasmanian Economic Regulator through a process which takes into account the retailers' wholesale costs, network costs, metering costs and other retailing costs. In determining the wholesale cost component, the regulator refers to pricing published under that Tasmanian wholesale regulatory instrument which is all available on the regulator's website. With regard to Marinus, again, I think I will refer to the previous answer about the uncertainties around Marinus and talking about things that are going to happen potentially in the future.

CHAIR - The premise behind these questions, Minister, again it is hard to understand the potential of Marinus, or otherwise, without understanding the performance and outcomes for Basslink. It is part of the motivation for asking some of these questions during (inaudible) this process, just to make that point. There may be other questions that follow from those responses that we'll put in writing to you, Minister, acknowledging the sensitivities you outlined earlier.

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Mr BARNETT - Thank you very much, Chair, that is appreciated.

CHAIR - Did any other member of the committee want to add anything or ask anything before we wrap this up? No? Okay, well thank you for your time today, Minister. No doubt we will be in touch with you and let you know what we are doing.

Mr BARNETT - Thank you very much, Chair, and members of the committee.

CHAIR - Thank you.

THE WITNESSES WITHDREW.

The committee suspended at 11.53 a.m.
