
Snowy Hydro Limited

Briefing Paper to the National Competition Council

24 February 2005

1 Executive Summary

- 1.1 Snowy Hydro Limited (“**Snowy Hydro**”) provides electrical energy and electricity risk management services within the National Electricity Market (“**NEM**”). It owns and operates the Snowy Mountains Hydro Electric Scheme (“**Scheme**”). It is a company under the *Corporations Act*. Its shareholders are the Commonwealth, New South Wales and Victorian Governments.
- 1.2 The overwhelming majority of Snowy Hydro’s revenues are earned from the production of hydro-electricity and electricity risk management services for the NEM, not from water releases.
- 1.3 Lakes R Us Pty Limited ACN 108 826 133 (“**Lakes R Us**”) has applied for declaration of five water storage services and ten water transportation services provided, or to be provided, by Snowy Hydro.
- 1.4 If declared, Lakes R Us would purchase the declared services from Snowy Hydro and re-supply the services to downstream irrigators of the Murrumbidgee and Murray River Systems.
- 1.5 The purpose of this submission is to provide the Council with information at a preliminary stage that demonstrates that the Council cannot be satisfied about the matters listed in ss44B and 44G of the *Trade Practices Act 1974* in relation to the services and facilities identified in Lakes R Us’ application and any recommendation by the Council in respect of the services must be to not declare the services. Simply put:
 - (a) the Council’s power to make a recommendation in respect of the services is not enlivened because the services are part of a production process;
 - (b) declaration of the services would not promote competition in any market and would be contrary to the public interest in an efficient and reliable NEM and protection of the natural environment; and
 - (c) it would be economic to develop alternative water storage and transportation facilities.
- 1.6 Therefore, the application should not be accepted by the Council for consideration and it would place an unreasonable burden on the affected parties were the Council to accept the application for consideration.

Use of a production process

- 1.7 Snowy Hydro transports water through the Scheme for three purposes:
 - (a) to maximise the volume of inflows of water captured by the Scheme;
 - (b) to generate hydro-electricity and to produce electricity risk management services for the NEM; and

(c) to meet the company's legal obligations under the Snowy Water Licence. The Licence requires the company to release water for use by irrigators downstream of the Scheme.

- 1.8 Maximisation of the volume of inflows of water captured by the Scheme is undertaken by Snowy Hydro to obtain a sufficient amount of water to produce hydro-electricity and electricity risk management services for the NEM. That is, water is the energy source used by Snowy Hydro to produce electricity.
- 1.9 Thus, the storage and transportation of water through the Scheme is an integral part of a production process undertaken by Snowy Hydro to produce electricity and electricity risk management services for the NEM. It follows that the water storage and transportation services described in Lakes R Us' application are not "services" as defined by s44B of the Act and the Council's power to make a recommendation to the Minister in respect of declaration of the services is not enlivened.

Would not promote competition in another market

- 1.10 In any event, under the current legislative scheme for allocation of water rights to private parties, including individual irrigators, extractive use rights are not created in relation to water located anywhere in the Scheme. All water located in the Scheme is owned by the Crown, not Snowy Hydro or any private party and it is not subject to delivery rights held by irrigators. Rather, all of the extractive use rights which third parties have over the water in the Murray and Murrumbidgee river systems apply only to water located downstream from the Scheme.
- 1.11 There is no facility to transport water in which third parties have extractive use rights upstream into the Scheme dams in which storage services are sought.
- 1.12 Thus, even if Snowy Hydro were to offer the water storage and transportation services to third parties, third parties would not be able to use the services because they would not possess any extractive use rights over the water stored in the Scheme nor could they physically transport water, over which they have extractive use rights, into the Snowy Scheme.
- 1.13 It follows that declaration of the services could not and, therefore, would not promote competition in any market (other than markets for the services).
- 1.14 As the criterion in section 44G(2)(a) cannot be satisfied, the Council must recommend that the services not be declared.

Contrary to public interest in an efficient and reliable NEM and environmental protection

- 1.15 Even if the regulatory regime applying to the creation and allocation of water rights were to change so that water in the Scheme were to become subject to private extractive use rights, (of which there is no current likelihood known to Snowy Hydro), the criteria in s44G(2)(f) would not be satisfied because:
- (a) all water released from the Scheme dams is released through turbines that generate electricity, which is despatched into the NEM. Every

instruction by a user of the storage facility to store or release water would have a direct impact on the timing and amount of electricity sent out, spot prices, and existing obligations under derivative contracts in the NEM for Snowy Hydro as well as all other participants in the NEM. That impact would be contrary to the public interest in an efficient and reliable NEM; and

- (b) the rate of movement of water in the Scheme and the release of water into the Murray and Murrumbidgee river systems has a potential direct impact on the natural environment. Management of the release of water into those systems cannot be subject to the arbitrary directions of private individuals. To allow the release of water to be subject to the arbitrary decisions of private individuals would be contrary to the public interest of protecting the environment. It would, for example, increase the chance of spills which cause significant damage to the natural environment, and reduce the environmental benefits of the current scheme that caps the permitted amount of “carry-over” (ie stored) water so as to maintain minimum water flows through rivers.

1.16 Accordingly, the Council cannot be satisfied of the public interest criterion in s44G(2)(f).

Alternative facilities

1.17 Finally, the Applicant has:

- (a) failed to disclose existing proposals for the economic development of alternative storage facilities for allocated water in the Murray and Murrumbidgee river systems, downstream from the Snowy Hydro facilities; and
- (b) materially understated the role of existing water trading schemes which provide irrigators with the same ability to increase the yield of their current water allocations. The benefits for irrigators which the Applicant contends would result from declaration of the services are already available to irrigators through existing water trading schemes.

1.18 Therefore, Snowy Hydro also submits that the alternative facility criteria in s44G(2)(b) could not be satisfied.

2 Snowy Hydro Limited

The Company

- 2.1 Snowy Hydro is a company that owns and manages the Snowy Mountains Hydro Electric Scheme.
- 2.2 Snowy Hydro is jointly owned by the New South Wales Government (58%), the Victorian Government (29%) and the Commonwealth Government (13%).
- 2.3 Snowy Hydro is incorporated under the *Corporations Act* and is the successor in law to the Snowy Mountains Hydro-Electric Authority. The assets and liabilities of the Snowy Mountains Hydro-Electric Authority, including the Scheme, were transferred to Snowy Hydro using complementary Victorian, New South Wales and Commonwealth legislation. Snowy Hydro is subject to all applicable laws in the jurisdictions of each of its shareholders and pays both State and Commonwealth taxes.
- 2.4 Snowy Hydro's major physical assets include its dams and power stations. Inside the Kosciusko National Park, Snowy Hydro leases the land on which those assets are located from the New South Wales Government. Outside the Kosciusko National Park, Snowy Hydro owns all relevant real property. The Scheme's assets are dispersed over an area of 3,200 km².
- 2.5 The Scheme comprises seven hydro-electric power stations (which have a total generating capacity of around 3,756 MW), a pumping station, 16 major dams and 225 kilometres of interconnected tunnels and aqueducts. On average, the Scheme diverts approximately 1,200 gigalitres of water each year westward to the Murray and Murrumbidgee valleys.
- 2.6 The Scheme is used to generate hydro-electricity. The water collected, diverted and stored in the Scheme is used to drive the turbines which, in turn, operate the generators that generate electricity.
- 2.7 The electricity is dispatched by Snowy Hydro into the NEM. Snowy Hydro is a registered generator under the National Electricity Code and Snowy Hydro's operations are subject to the provisions of that Code.

3 Snowy Hydro's rights to collect, divert, store and release water

- 3.1 The Scheme is a complex, highly integrated set of assets that must (for engineering and regulatory reasons) be operated as two separate Developments, the Snowy-Murray Development and the Snowy-Tumut Development. The volume and timing of water released from the Scheme are governed by environmental laws, NEM dispatch rules and the terms of the Snowy Water Licence, which was issued by the New South Wales Water Administration Ministerial Corporation.
- 3.2 The Snowy Water Licence permits Snowy Hydro to collect, divert, store and release water flowing into the Scheme dams. The water in the Scheme is owned by the Crown.

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- 3.3 The terms of the Snowy Water Licence do not permit the storage, diversion or release of water “allocated” to private holders of extractive use rights.
- 3.4 All of the water released from the Snowy-Tumut Development into the Murrumbidgee River catchment is allocated to New South Wales under the Murray Darling Basin Agreement (“**the MDB Agreement**”). A Water Sharing Plan has been gazetted under the *Water Management Act 2000* (NSW) for the Murrumbidgee River. Under the Water Sharing Plan, water is allocated either to environmental uses or to extractive uses.
- 3.5 The situation is different with respect to water released from the Snowy-Murray Development into the River Murray catchment. Under the MDB Agreement, that water is shared 50:50 between New South Wales and Victoria. Once those States have met any obligations to South Australia under the MDB Agreement, each uses the water under its own laws. Therefore, in New South Wales, the Water Sharing Plan which has been gazetted under the *Water Management Act* determines whether the water is allocated either to environmental uses or to extractive uses. There is a similar allocation mechanism in Victoria.
- 3.6 Even if the MBD Agreement were to allow for the allocation of extractive rights over water in the Scheme, or the terms of the Snowy Water Licence were to permit the storage, diversion or release of water “allocated” to private holders of rights, the Scheme could not be used (and was not designed to be used) to transport water upstream in the Scheme.
- 3.7 The Scheme was principally designed to generate electricity. It is not a “run of river scheme” which has an electricity generation capability as an ancillary benefit. Unlike downstream dams, water is collected and transported in the Scheme primarily to generate electricity and not for irrigation.
- 3.8 In fact, all controlled releases of water from the Scheme (that is, all releases except spills) must be released through Snowy Hydro’s turbines and will therefore generate electricity: there is no means of diverting controlled water releases around the turbines.

4 Can Snowy Hydro provide the water storage and transportation services which are the subject of Lakes R Us’ application?

- 4.1 The 15 water storage and transportation services which are the subject of Lake R Us’ application comprise a storage service and two transportation services for each of Lake Eucumbene, Lake Jindabyne, Talbingo Reservoir, Tantangara Reservoir and Jounama Pondage.
- 4.2 Currently, Snowy Hydro stores and transports water as part of the process of generating electricity from each of Lake Eucumbene, Lake Jindabyne, Talbingo Reservoir, Tantangara Reservoir and Jounama Pondage. However, Snowy Hydro cannot transport water into Tantangara Reservoir. It can only transport water out of Tantangara Reservoir. Further, on the Snowy-Murray Development, below Lake Eucumbene, are Geehi Reservoir and Khancoban

Pondage. Geehi Reservoir and Khancoban Pondage are not the subject of Lakes R Us' application.

- 4.3 Water is only intermittently pumped through parts of the Scheme to generate hydro-electricity. There are no irrigation or water use benefits from the pumping.

5 If the services were declared, could third parties use them?

- 5.1 Under the current legislative scheme, extractive use rights for water are not created in relation to water whilst it is located in the Scheme.
- 5.2 The regulatory regime which applies to the water passing through the Scheme and into the Murray and Murrumbidgee river systems is three tiered. These tiers can be described as follows:
- (a) pursuant to the *Snowy Hydro Corporatisation Act 1997* (NSW), Snowy Hydro is entitled to the grant of a licence giving it the rights to collect, divert, store and release water within a defined area known as the Snowy Catchment Area. All water located in the Scheme is owned by the Crown, not Snowy Hydro or any private party;
 - (b) once water is released from the Scheme, the water is subject to the Murray Darling Basin legislative regime which is set out in complementary legislation enacted by the Commonwealth, the Australian Capital Territory and a number of States. This regime determines the allocation of the water between the States; and
 - (c) pursuant to the New South Wales Water Sharing Plans for each of the Murray and Murrumbidgee rivers, New South Wales grants irrigators extractive use rights over the water allocated to that State under the MDB Agreement.
- 5.3 Therefore, all rights which third parties have to use the water in the Murray and Murrumbidgee river systems are created and apply only to water located downstream from the Scheme, and only after water has been "allocated" to State Government authorities. For example, water released from the Scheme into the Murray river is allocated 50% to New South Wales and 50% to Victoria so that only one half of that water is available to New South Wales irrigators.
- 5.4 There is no facility to transport water upstream into any of the Scheme dams in which storage services are sought and the Scheme was not designed to allow for that.
- 5.5 Thus, even if Snowy Hydro were to offer the water storage and transportation services to third parties, third parties would not be able to use the services, because they would not be entitled to any water which could be stored and transported in the Scheme. For third parties to use the services which are the subject of the declaration, there would need to be significant changes to all three regulatory regimes.

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- 5.6 Snowy Hydro is not aware of any proposal to effect those changes to any of the three regulatory regimes.

6 Lakes R Us' proposal to use the services for swap contracts

- 6.1 Lakes R Us proposes that users of the storage and transportation services which it seeks from Snowy Hydro will utilise “swap” contracts to obtain commercial benefits. The application does not explain how the swaps will work.
- 6.2 The following paragraphs examine the possible meanings of the references in the proposal, and alternative swap arrangements that might be considered as the application proceeds.

Lakes R Us' proposal

- 6.3 Lakes R Us proposes that:

“water will be transferred into the Snowy Hydro Storages by swapping required release water coming out of the Snowy Hydro storages for water saved by the downstream stakeholders in that year”.

- 6.4 It is unclear exactly what is proposed. Is it intended that water be physically transferred from somewhere outside the Snowy facilities? Is it intended that irrigators will release saved water, stored locally downstream, into the river systems in lieu of release water?

Alternative meanings

- 6.5 The Applicant could intend any one of a number of arrangements. The likely alternatives appear to be as follows:
- (a) The Applicant could intend that individual irrigators will store water annually in small storage facilities, and then agree to release or use that water in the following year if an equivalent volume of water is held on their behalf in the Snowy Hydro dams from the following year's allocation. (This seems odd, but is the best interpretation of the actual words in the application.)
 - (b) The Applicant could intend that individual irrigators could elect to “save” some or all of their annual allocation by asking Snowy Hydro to reduce the volume of water released in the relevant year by the amount each individual wishes to “save”. (This seems to be the most straightforward interpretation, but it does not involve any “transfer” of water.)
 - (c) The Applicant could intend that “saved” water will be pumped from below the Snowy turbines, back up into the Snowy Hydro dams, rather than being released further downstream.

Problems created but not addressed

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- 6.6 There are several problems with each of these arrangements:
- (a) All alternatives would require water to be stored physically in the Snowy Hydro dams. Water can only enter the Scheme from either run-off or rain. It cannot be pumped from downstream of the Snowy Hydro dams, because there are no pumping facilities to do so, and the Applicant does not propose to build them.
 - (b) As explained above, the current regulatory regime does not allocate water until it has reached a point downstream from the Snowy Hydro storage facilities. The water in the Snowy Hydro facilities is owned by the Crown, not by Snowy Hydro, the irrigation authorities, or the individual irrigators. After it leaves the Scheme, water is first allocated between the States and second between the irrigators. Consequently, unless allocated water is pumped from downstream, for which there are no facilities existing or proposed, all water in the Scheme is and will continue to be owned by the Crown.
 - (c) Even if the regulatory regime operated so that “allocated” water could legally be held in the Scheme, without being pumped back upstream, there would still be significant impediments to arbitrary requests from individual irrigators for Snowy Hydro, or any other facility operator, to “hold” or “release” a volume of water equivalent to a portion of its allocation, in a storage facility. The management of volumes of water to be released is a complex process requiring consideration of a number of factors, including the impact on the generation of electricity (described further below) and on the natural environment within the Scheme and the river systems. The Applicant has not addressed any of these issues, and cannot do so.

Swaps using downstream storage

- 6.7 The Applicant claims that “there is currently no ability to carry over water from one year to the next” (p9). The statement is incorrect because water stored in Blowering Dam, Hume Dam or Burrinjuck Dam may be the subject of extractive use rights which can currently be (and are) held over to the following year, when the owner of the extractive use rights may exercise the rights.
- 6.8 It also claims that it would be uneconomical for anyone to develop another facility to provide any part of the “service” (p10). However, there are currently a number of proposals that are being considered for the development of downstream storage facilities for allocated water.
- 6.9 For example the New South Wales Department of Infrastructure, Planning and Natural Resources is conducting feasibility studies for the construction of additional off-stream storage facilities in the Murrumbidgee catchment. Additionally, Murrumbidgee Irrigation Limited is in the advanced planning stages for the development of a water storage facility at Barren Box Swamp (described further in section 10).
- 6.10 It is quite feasible to “save” and then “swap” allocated water by requesting that it be diverted and stored after it leaves the dams downstream from the Snowy Hydro turbines. The impact of diversion and storage will be exactly

the same as the sale of that volume of allocated water to an irrigator in the same location as the storage facility. The owner of the stored water can trade or swap that water against future allocations to it or other irrigators.

7 Council's power to recommend declaration of a service not enlivened

- 7.1 The Council's power to recommend that a service be declared, or not be declared, is only enlivened if the service is a "service" as defined by s44B of the Act. Section 44B expressly provides that a "service" does not include the use of a production process except to the extent that the production process is an integral but subsidiary part of the service.
- 7.2 Snowy Hydro transports water through the Scheme for three purposes:
- (a) to maximise the volume of inflows of water captured by the Scheme;
 - (b) to generate hydro-electricity and to produce electricity risk management services for the NEM in accordance with Snowy Hydro's contractual obligations and the spot price of electricity in the NEM; and
 - (c) to meet the company's legal obligations under the Snowy Water Licence. The Licence requires the company to release water for use by irrigators downstream of the Scheme.
- 7.3 Maximisation of the volume of inflows of water into the Scheme is undertaken by Snowy Hydro to obtain a sufficient amount of water to produce hydro-electricity and electricity risk management services for the NEM. That is, water is the energy source used by Snowy Hydro to produce electricity.
- 7.4 Thus, the storage and transportation of water through the Scheme is part of a production process undertaken by Snowy Hydro to produce electricity and electricity risk management services for the NEM.¹ The electricity and electricity risk management services could not be produced without the storage and transportation of water through the Scheme. Hence, the water storage and transportation services are an integral and not subsidiary part of Snowy Hydro's electricity production process.
- 7.5 It follows that the water transportation services described in Lakes R Us' application are not "services" as defined by s44B of the Act and the Council's power to make a recommendation to the Minister in respect of declaration of the services is not enlivened.

¹ The expression "production process" was held by Kenny J to be "the creation or manufacture by a series of operations of some marketable commodity" in *Hamersly Iron Pty Ltd v National Competition Council & Ors* (1999) ATPR ¶41-705 AT 43,033.

8 Council's power to recommend declaration of a service

- 8.1 Section 44G of the *Trade Practices Act 1974* provides that the Council cannot recommend that a service be declared unless it is satisfied of all of the following matters:
- (a) that access (or increased access) to the service would promote competition in at least one market (whether or not in Australia), other than the market for the service;
 - (b) that it would be uneconomical for anyone to develop another facility to provide the service;
 - (c) that the facility is of national significance, having regard to:
 - (i) the size of the facility;
 - (ii) the importance of the facility to constitutional trade or commerce; or
 - (iii) the importance of the facility to the national economy;
 - (d) that access to the service can be provided without undue risk to human health or safety;
 - (e) that access to the service is not already the subject of an effective access regime;
 - (f) that access (or increased access) to the service would not be contrary to the public interest.
- 8.2 Snowy Hydro submits that important issues, not addressed by the Applicant, relating to three of these factors mean that those factors cannot be satisfied in relation to the services. Those factors and issues are examined in the context of Lakes R Us' application in the sections below.
- 8.3 Two of the other factors are not in issue: the facilities comprising the Scheme are of national significance and access to the relevant services is not already the subject of an effective access regime.
- 8.4 Snowy Hydro has not been able to assess whether there would be any human health or safety issues associated with the declaration of the services, because of the lack of specificity of the services. There are, however, broad environmental issues arising from the application, which are identified elsewhere in this submission.

9 That access (or increased access) to the service would promote competition in at least one market, other than the market for the service

- 9.1 In determining whether certain conduct "would have" a particular effect, the Council must determine the matter:

*by reference to the ordinary standard of whether it was more likely than not that it would.*²

- 9.2 That is, the Council is required to consider whether access to the water storage and transportation services would be more likely than not to promote competition in a market (other than markets for the services) by comparing the state of competition which would exist if the services were declared with the state of competition which would exist if the services were not declared.
- 9.3 Under the current regulatory regimes for the allocation of water rights, declaration of the services would not affect competition in any market because (as set out in section 5 above) the services could not be used by third parties to store or transport water.
- 9.4 Thus, declaration of the services would not be likely to promote competition in any market (other than the market for the services) under the current legislative regimes for the allocation of water rights.

10 That it would be uneconomical for anyone to develop another facility to provide the service

- 10.1 In *Re Review of Declaration of Freight Handling Services at Sydney International Airport* (2000) ATPR 41-754, the Tribunal made the following findings in respect of assessing whether it would be uneconomical for anyone to develop another facility to provide the service:
- (a) it must be uneconomical to develop “another facility to provide the service” not simply “another facility”;
 - (b) the word “anyone” in s44H(4)(b) excludes the owner of the existing facility; and
 - (c) the assessment as to whether or not it would be uneconomical for anyone to develop another facility must be assessed from the perspective of the “costs and benefits to society as a whole” rather than from the perspective of what a private entity could afford (including what the access seeker could afford).
- 10.2 The Council applied the Tribunal’s statements when the Council considered an application for declaration of gas transportation services on the Eastern Gas Pipeline.³ In that application, the Council reasoned:
- (a) where an existing pipeline already provides, or could provide with minor modifications or enhancements, services which are competitive with the services of the pipeline the subject of the coverage application, s44G(2)(b) will not be satisfied;

² *Tillmans Butcheries Pty Ltd v Australian Meat Industry Employee’s Union* (1979) ALR 367 at 381; *Re Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2 at 75 and *AGL v ACCC (No 3)* [2003] FCA 1525 at [341].

³ *Eastern Gas Pipeline* (2001) ATPR (NCC) 70-007. On appeal, the Tribunal did not disagree with the Council’s approach: *Duke Eastern Gas Pipeline Pty Ltd* (2001) ATPR ¶41-821 at 43,058.

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- (b) access regulation should be confined to infrastructure which can “meet market demand at less cost than two or more facilities”; and
- (c) a “social” rather than a “private” test should be adopted. That is, would building a new facility represent an efficient use of resources from the viewpoint of the community rather than an individual’s investment decisions.
- 10.3 Thus, the analysis of the criterion in s44G(2)(b) is not correctly stated or analysed in Lakes R Us’s application. The correct test is not whether it would be uneconomical to duplicate the Snowy Hydro system itself, or whether the Murray and Murrumbidgee can be economically duplicated.
- 10.4 The correct test, which is correctly stated but misapplied by Lakes R Us in its supplementary submission, is whether there is another water storage facility (or whether one could be built) which can economically and efficiently deliver water into the Murray and Murrumbidgee River systems.
- 10.5 There are currently a number of proposals for the development of downstream storage facilities for allocated water. One example is the proposed Barren Box Swamp Project being pursued by Murrumbidgee Irrigation Limited. The Barren Box Swamp Project involves the construction of water storage facilities at Barren Box Swamp (including active storage capacity of 22,000 mega litres and immediate storage capacity of 5,000 mega litres), an en-route water storage facility (with 2,500 mega litre capacity) and various other inlet/outlet, regulating and transportation facilities en-route to Brays Dam. The project is aimed at improving the security of water supply to the Wah Wah Irrigation District and achieving on average a minimum of 20,000 mega litres in water savings per annum. An environmental impact assessment is currently being conducted into the proposal.
- 10.6 Further, the main economic benefits that Lakes R Us believes would be generated from the declaration of the services are already available under existing water trading schemes, which provide irrigators with the ability to increase the yield of their current water allocations. Lakes R Us contends that irrigators could use their water allocations more efficiently if they could store allocated water for future use. In fact, irrigators are already able to trade current allocations for future water rights, in relation to precisely the same volume of water, without any of the additional costs and significant consequences in the NEM that would result from declaration of the services. The existing water trading schemes are an alternative and economic means of achieving the same benefits for irrigators as Lakes R Us believes would result from declaration of the services.
- 10.7 The existence of the proposals for the development of downstream storage facilities for allocated water and of the current water trading schemes indicates that the criterion in s44G(2)(b) cannot be satisfied because it would be economic to develop another facility to provide the water storage and transportation services..

11 That access (or increased access) to the service would not be contrary to the public interest

- 11.1 Snowy Hydro has an important role in ensuring the efficiency of the NEM. Its role, which includes providing risk management services and providing critical ancillary services such as the ability to black start the NEM following a major blackout, is highly beneficial to the public.
- 11.2 If the water storage and transportation services are declared, the use of those services would have a direct and inevitable impact on the operation of Snowy Hydro's electricity generation activities.
- 11.3 All water released by Snowy Hydro is released through turbines that generate electricity and is subject to the NEM Rules.⁴ Therefore, any direction to Snowy Hydro to store or release water would affect the amount of electricity generated by Snowy Hydro and despatched into the NEM and could only be given subject to NEM Rules about dispatch and other supply requirements.
- 11.4 The directions would impact spot pricing in the NEM, causing potentially material economic consequences for Snowy Hydro and other participants in the NEM. For example, Snowy Hydro and other participants in the NEM write complex electricity derivative contracts. Any ability for irrigators to affect the volume of release water arbitrarily will have a direct impact on the aggregate amount payable to or by Snowy Hydro and other participants in the NEM under those contracts and the efficiency and reliability of the NEM.
- 11.5 The release of water from the Scheme also has a potential impact on the natural environment of the river systems and the environments within the Scheme. Currently, the Scheme is carefully managed to prevent spills of water (at all costs) so that environmental damage may be prevented. Declaration of the services would adversely affect Snowy Hydro's ability to manage the Scheme to prevent spills and to protect the natural environment.
- 11.6 The current limit⁵ on the ability of irrigators to "carry-over" allocated water use rights from one year to the next ensures that water in excess of the carry-over cap, "lost" to extractive uses, is a gain to the environment because that water flows through the rivers. The "in-stream" benefits of that water flowing through the rivers which has been "lost" to extractive use rights would not be realised if the water was stored in upstream storage facilities.
- 11.7 It would be contrary to the public interest if individual irrigators, or their representatives, were empowered to direct the aggregate volume of water released by Snowy Hydro.

⁴ Snowy Hydro is a registered generator in the NEM.

⁵ The "carry-over" limit is 15% of the irrigator's annual allocation.

12 Conclusion

- 12.1 For the reasons set out in this submission, the Council's power to make a recommendation in respect of the water storage and transportation services is not enlivened.
- 12.2 Even if the Council's power was enlivened, declaration of the services would not promote competition in any related market and would be detrimental to the public interest of an efficient and reliable NEM, and protecting the environment. Further, it would not be uneconomical for anyone to develop another facility to provide the services. Thus, the criteria in s44G(2) of the Act are not satisfied and any recommendation by the Council in respect of the services must be to not declare the services.