TXU

8 November 2002

John Kluver
Executive Director
Corporations and Markets Advisory Committee
GPO Box 3967
SYDNEY NSW 2001.

By Email: john.kluver@camac.gov.au

Dear John

TXU Comments on the CAMAC Insider Trading Proposals Paper dated September 2002

I apologise for this late submission and hope you are still in a position to take account of our views.

TXU has a large physical presence in the National Electricity Market through its retail, generation and regulated networks activities. It is also a major participant in the OTC markets of electricity hedging instruments. We have conducted numerous trades with most, if not all, the participants of these markets. We would describe ourselves, and all our trading counterparties as "sophisticated" participants of the secondary market.

TXU wishes to lend support to the views expressed by Snowy Hydro Ltd and the Electricity Supply Association of Australia in their submissions to you regarding the Insider Trading Proposals Paper.

TXU considers that the OTC electricity market and electricity futures exchanges should be exempted from insider trading laws. The benefits of insider trading bans has relevance to equity markets where enterprises are seeking capital from a broad community of unsophisticated investors. The electricity derivative market is primarily concerned with the hedging of price risks between sophisticated physical participants.

Insider trading laws are likely to harm these markets through

- an inefficient derivatives market caused by enforced trading delays,
- clashes with the confidentiality requirements of instruments with a physical influence such as demand management contracts and power purchase agreements,
- confusion regarding the practical definition of inside information ,
- general costs of compliance.

TXU concurs that the practical examples presented in the snowy hydro submission show the application of insider trading laws in our industry would be unworkable. TXU currently optimises its physical and contractual portfolios simultaneously considering the current markets for each, but an insider trading regime anticipates that physical decisions always precede and drives derivative trading decisions. Contrarily, TXU's physical decisions are more often than not efficiently driven by the outcomes of the derivatives market. For example, should our traders observe derivatives markets to be weaker than our view of fair value, we may buy up contracts and then subsequently take advantage of the resulting length to plan generator maintenance or acquire more retail customers.

Such rational behaviour is questionable under an insider trading regime and exposes us to litigious claims from counterparties alleging we mislead them by not accurately forecasting our physical behaviour at the time of trade.

We also note the tension between trading markets regulators' desires to enforce more disclosure, and competition regulators' desires for more opaque markets to diminish market power. The ACCC has on several occasions questioned any role for physical market forecasting and has recently suggested NECA propose code changes to limit the release of NEM physical market data. Similar issues are raised in relation to the Texas electricity market that has little public information release. Regulators are concerned that should physical information be provided to the market (such as upcoming generation outages) there is an opportunity for competitors to exploit their resulting increased market power by raising prices on the derivative market.

We hope these comments are useful to your deliberations. For any questions please contact me on (03) 8628 1280.

Regards,

(signed)

Ben Skinner
Regulatory Manager, Electricity Trading