

NOTICE OF FILING

Details of Filing

Document Lodged:	Concise Statement
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	30/06/2025 11:54:11 AM AEST
Date Accepted for Filing:	30/06/2025 12:50:29 PM AEST
File Number:	NSD1084/2025
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v DELTA POWER & ENERGY (VALES POINT) PTY LTD (ACN 162 696 335)
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form NCF1

Concise Statement

No of 2025

Federal Court of Australia

District Registry: New South Wales

Division: General

Commercial and Corporations NPA

Australian Securities and Investments Commission

Plaintiff

Delta Power & Energy (Vales Point) Pty Ltd (ACN 162 696 335)

Defendant

A. Introduction

1. The defendant (**Delta**) owned and operated the Vales Point Power Station in New South Wales, and was a registered market generator and retailer in the National Electricity Market.
2. This claim relates to market activity by Delta on the ASX 24 financial market for certain derivatives; namely, "New South Wales Peak Load Electricity Futures Contracts – Calendar Quarter" (**Quarterly Futures**).
3. Exchange traded derivatives such as Quarterly Futures are commonly used by traders to manage or limit the financial consequences to them of fluctuations in, among other things, the market price of the commodities underlying those derivatives; in this case, New South Wales peak load electricity.
4. ASIC contends that, on 30 occasions between 8 September 2022 and 6 October 2022 (the **Relevant Period**),¹ Delta placed an order on ASX 24 to buy a Quarterly Futures contract with the undisclosed intention and purpose of influencing the calculation by Australian Securities Exchange Limited (**ASX**) of the Daily Settlement Price (**DSP**) for the relevant Quarterly Futures and, thereby, ASX's calculation of the DSP for the relevant "New South Wales Peak Load Electricity Strip Product" (**Yearly Strip**).
5. ASIC contends that Delta engaged in that conduct to obtain more favourable commercial outcomes for Delta under a significant electricity offtake agreement. Under that agreement, the quantum of certain amounts payable to Delta was calculated by

¹ Unless otherwise specified, the allegations in this Concise Statement pertain to that period.

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission (Plaintiff)		
Prepared by (name of person/lawyer)	Rayma Gupta, Litigation Counsel, ASIC		
Law firm (if applicable)			
Tel	03 9280 3387	Fax	N/a
Email	rayma.gupta@asic.gov.au		
Address for service	Australian Securities and Investments Commission		
(include state and postcode)	Level 7 120 Collins Street, Melbourne, Victoria, 3000		
	Attention: Rayma Gupta/Katie Webber		

reference to, among other things, Yearly Strip DSPs. Delta's conduct achieved its intended effect, to the corresponding detriment of its contractual counterparty.

6. DSPs were official daily quotations calculated and published by ASX. They were used, inter alia, by ASX Clear (Futures) Pty Ltd for the purpose of margining derivatives such as Quarterly Futures (and, in doing so, valuing those derivatives), and more generally by ASX and brokers for the purpose of valuing derivatives such as Quarterly Futures.
7. The integrity of, and therefore public confidence in, ASX's determination of DSPs is intrinsic to the integrity of, and therefore public confidence in, Australian commodity derivatives markets.

B. Important facts giving rise to ASIC's claim

Background

8. Quarterly Futures were derivatives traded on ASX 24 under which the buyer was, at a specified future time, required to purchase, at an agreed price, units of electricity bought and sold during peak hours in the New South Wales region of the National Energy Market during a specified calendar quarter, and the seller was required to settle the agreement by selling those units of electricity at the agreed price.
9. Quarterly Futures were "cash settled", meaning that no physical delivery of electricity was required upon settlement. Instead, a "settlement amount" was paid, representing the difference between, on one hand, the price of the electricity units as agreed when the Quarterly Futures contract was entered into, and, on the other hand, a function of the spot prices of the electricity units over the relevant period preceding the settlement time.
10. On each trading day, immediately after the close of trading for Quarterly Futures, ASX calculated DSPs for Quarterly Futures (**Quarterly DSPs**). ASX performed those calculations in accordance with rules pursuant to which the price of a pending order to buy (or "bid") was capable of affecting the outcome of ASX's calculation of the relevant Quarterly DSP, provided that the order was maintained throughout the 10 seconds immediately before the close of trading (the **Settlement Order Window**).
11. On each trading day, ASX also calculated DSPs for Yearly Strips (**Strip DSPs**). Each Yearly Strip product was a bundle of four consecutive Quarterly Futures contracts for the calendar quarters in a specified calendar year, and ASX calculated each Strip DSP by reference to the Quarterly DSPs of the Quarterly Futures constituting the relevant Yearly Strip product. Accordingly, the price of a pending bid in respect of a given Quarterly Futures contract was capable of affecting the outcome of ASX's calculation of the relevant Strip DSP, provided that the order was maintained throughout the Settlement Order Window.
12. Delta was party to an electricity offtake agreement (the **Offtake Agreement**) with Shell Energy Retail Pty Ltd (ACN 126 175 460) (formerly ERM Power Retail Pty Ltd) (**Shell**). Under the Offtake Agreement, Shell was required, in respect of specified periods, to pay Delta the "Peak Fixed Amount". The Peak Fixed Amount for a specified period in a given calendar year was calculated by reference to certain Strip DSPs published by ASX on the five trading days immediately before the issuing to Delta by Shell of each "Peak Price Setting Notice" for that year (which Shell was entitled to issue without prior notice), subject to adjustments referable to an agreed price floor. All else being equal, the higher the relevant Strip DSPs, the greater the Peak Fixed Amount payable to Delta by Shell.

Conduct

13. On each of the 30 occasions specified in the Annexure to this Concise Statement, and in each case less than five seconds before the start of the Settlement Order Window, Delta placed an order through ASX 24 to buy one unit of electricity under a Quarterly Futures contract at a particular quoted price. In each case, Delta did so with the undisclosed intention and purpose of influencing ASX's calculation of the relevant Quarterly DSP, and thereby ASX's calculation of the relevant Strip DSP, such that the Strip DSP would be higher than it otherwise would be, but for Delta's order. In each case, that conduct occurred wholly in Australia.
14. None of those 30 orders constituted engagement by Delta in a genuine process of supply and demand: in each case, Delta's purpose in placing the order was not for Delta to purchase a Quarterly Futures contract at the lowest realisable price. Rather, each order was placed pursuant to Delta's price setting strategy, which it had adopted in or around January 2016, to manipulate the Strip DSP to Delta's commercial advantage under the Offtake Agreement.
15. That strategy was notified to Delta's board at least as early as 15 December 2016, when it was described as Delta's "*Trading Strategy for Managing ERM Contract Price Setting Notices*". The board was informed that "*Delta will post bids (1MW), focussing on illiquid contracts and/or contracts where the ASX settlement prices are significantly different to the forward contract price curve ... Delta has already been successful during the past week in supporting the Calendar Year 2018 and 2019 Peak prices ... Delta will generally post these bids near close of the trading day, in illiquid contracts, to assist with management of futures limits within [Energy Markets Risk Management] policy.*" That strategy was also explained by an employee futures trader shortly after the Relevant Period, in an email dated 13 October 2022: "*we submit bids in illiquid contracts to align them with the observed (OTC) market prices as our progressively priced hedging contracts use ASX settle prices for pricing. The illiquidity in peak contracts causes a big difference between the observed prices and ASX settle prices and our bids intend to correct this misalignment*".
16. At the time each impugned order was placed, it was at least likely to influence ASX's calculation of the relevant Quarterly DSP. Further, each impugned order had the effect intended by Delta: the relevant Quarterly DSP, and consequently the relevant Strip DSP, were each higher than they otherwise would have been but for the impugned order.
17. At any given time, the price for trading in each of the relevant Quarterly Futures was the price, as published by ASX, of the most recently effected trade on ASX 24 in respect of that derivative. In the alternative, the price for trading in each of the relevant Quarterly Futures was the most recently published Quarterly DSP for that derivative.
18. In the case of each impugned order, Delta's conduct had or was likely to have the effect of creating, or causing the creation of, a false or misleading appearance:
 - (a) that in placing the order, Delta's purpose was to purchase a Quarterly Futures contract at the lowest realisable price;
 - (b) further or alternatively, that the Quarterly DSPs and/or Strip DSPs subsequently calculated by ASX with reference to that order reflected the forces of genuine supply and demand in an open, informed and efficient market.

In each case, that appearance was false or misleading with respect to the market for, and/or the price for trading in, the relevant Quarterly Futures on ASX 24.

C. Summary of relief sought

19. ASIC relevantly seeks declarations of contraventions and pecuniary penalty orders against Delta, as set out in the Originating Process.

D. Primary legal grounds for relief sought

20. Section 908DA(1) of the *Corporations Act 2001* (Cth) prohibits a person from doing one or more acts, where the acts have or are likely to have the effect of influencing the level at which a financial benchmark is generated or administered, and the person intends for the acts to have that effect (whether or not the person also intends for the acts to have another effect).
21. Section 1041B(1)(b) prohibits a person from doing, or omitting to do, an act if the act or omission has, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market for, or the price for trading in, financial products on a financial market.
22. Sections 908DA(1) and 1041B(1) are civil penalty provisions.
23. Each Quarterly DSP was a financial benchmark within the meaning of section 908AB(1). Quarterly Futures were financial products traded on a financial market, being the ASX 24 market for Quarterly Futures, operated within this jurisdiction for the purposes of section 1041B(1).

E. Harm and gravity of Delta's offending

24. Delta's conduct described above:
 - (a) was deliberate and calculated, and was engaged in as part of a trading strategy, of which Delta's board had notice, to manipulate the Quarterly DSPs, and thereby the Strip DSPs, to the benefit of Delta and to the corresponding detriment of its contractual counterparty, Shell;
 - (b) occurred at the direction and with the approval of Delta's senior management;
 - (c) caused loss to Shell, and a corresponding benefit to Delta, by increasing the quantum of certain Peak Fixed Amounts payable by Shell to Delta under the Offtake Agreement;
 - (d) could have caused other participants (or their clients) in the ASX 24 market for Quarterly Futures to suffer detriment by reason of becoming liable to make margin payments in respect of their positions in the relevant products that were greater than they otherwise would have been; and
 - (e) undermined or had the potential to undermine the integrity of, and public confidence in, the ASX 24 market for Quarterly Futures, and Australian commodity derivatives markets more generally.

This Concise Statement was prepared by Olaf Ciolek of counsel, and settled by Michael Borsky KC.

Certificate of lawyer

I, Rayma Gupta, certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the Concise Statement.

Date: 30 June 2025



.....
Rayma Gupta
Lawyer for the plaintiff

Annexure — Schedule of Impugned Orders

Item	Order date	Product code	Order time	Order quantity	Last traded price for subject product	Order price	Side	Quarterly DSP pre-Order ²	Quarterly DSP ³	Δ Quarterly DSP ⁴
1.	2022-09-08	PNH5	15:59:47.001	1	\$179.22	\$184.50	Buy	\$178.95	\$184.50	\$5.55
2.	2022-09-08	PNM5	15:59:47.001	1	\$157.60	\$176	Buy	\$157.36	\$176	\$18.64
3.	2022-09-08	PNU5	15:59:47.001	1	\$184.14	\$205	Buy	\$183.86	\$205	\$21.14
4.	2022-09-08	PNZ5	15:59:47.001	1	\$183.19	\$203	Buy	\$182.91	\$203	\$20.09
5.	2022-09-20	PNH5	15:59:47.001	1	\$158.45	\$175	Buy	\$155.79	\$175	\$19.21
6.	2022-09-20	PNM5	15:59:47.001	1	\$151.16	\$172	Buy	\$148.62	\$172	\$23.38
7.	2022-09-20	PNU5	15:59:47.001	1	\$176.05	\$183	Buy	\$173.10	\$183	\$9.90
8.	2022-09-21	PNM5	15:59:47.001	1	\$151.16	\$175	Buy	\$172	\$175	\$3
9.	2022-09-21	PNU5	15:59:47.001	1	\$176.05	\$188	Buy	\$183	\$188	\$5
10.	2022-09-21	PNZ5	15:59:47.001	1	\$174.36	\$139.52	Buy	\$119.52	\$139.52	\$20

² “Quarterly DSP pre-Order” means the relevant Quarterly DSP that ASX would have calculated after the close of trading in Quarterly Futures on the relevant day, but for the relevant order, assuming that no further trading activity occurred after that order.

³ “Quarterly DSP” means the relevant Quarterly DSP as in fact calculated by ASX after the close of trading in Quarterly Futures on the relevant day.

⁴ “Δ Quarterly DSP” means the difference between: (i) the relevant Quarterly DSP; and (ii) the relevant Quarterly DSP that ASX would have calculated after the close of trading in Quarterly Futures on the relevant day, but for the relevant order, assuming that no further trading activity occurred after that order.

Item	Order date	Product code	Order time	Order quantity	Last traded price for subject product	Order price	Side	Quarterly DSP pre-Order ²	Quarterly DSP ³	Δ Quarterly DSP ⁴
11.	2022-09-23	PNH5	15:59:46.001	1	\$172.77	\$179	Buy	\$172.90	\$179	\$6.10
12.	2022-09-23	PNM5	15:59:46.001	1	\$172.77	\$175	Buy	\$172.90	\$175	\$2.10
13.	2022-09-23	PNU5	15:59:47.001	1	\$185.60	\$188.50	Buy	\$185.74	\$188.50	\$2.76
14.	2022-09-23	PNZ5	15:59:47.001	1	\$137.75	\$159.52	Buy	\$137.85	\$159.52	\$21.67
15.	2022-09-26	PNH5	15:59:47.001	1	\$173.23	\$179.25	Buy	\$173.24	\$179.25	\$6.01
16.	2022-09-26	PNM5	15:59:47.001	1	\$169.36	\$176	Buy	\$169.37	\$176	\$6.63
17.	2022-09-26	PNU5	15:59:46.001	1	\$182.42	\$189	Buy	\$182.44	\$189	\$6.56
18.	2022-09-26	PNZ5	15:59:46.001	1	\$154.37	\$179.52	Buy	\$154.39	\$179.52	\$25.13
19.	2022-09-27	PNH5	15:59:46.001	1	\$173.23	\$181	Buy	\$179.25	\$181	\$1.75
20.	2022-09-27	PNM5	15:59:47.004	1	\$169.36	\$177	Buy	\$176	\$177	\$1
21.	2022-09-27	PNU5	15:59:47.002	1	\$182.42	\$189.50	Buy	\$189	\$189.50	\$0.50
22.	2022-09-27	PNZ5	15:59:46.002	1	\$154.37	\$182	Buy	\$179.52	\$182	\$2.48
23.	2022-09-29	PNH5	15:59:47.001	1	\$173.23	\$185	Buy	\$181	\$185	\$4
24.	2022-09-29	PNM5	15:59:47.001	1	\$169.36	\$182	Buy	\$177	\$182	\$5
25.	2022-09-29	PNU5	15:59:47.003	1	\$182.42	\$193	Buy	\$189.50	\$193	\$3.50

Item	Order date	Product code	Order time	Order quantity	Last traded price for subject product	Order price	Side	Quarterly DSP pre-Order ²	Quarterly DSP ³	Δ Quarterly DSP ⁴
26.	2022-09-29	PNZ5	15:59:47.004	1	\$154.37	\$184	Buy	\$182	\$184	\$2
27.	2022-10-06	PNH5	15:59:47.001	1	\$173.23	\$205	Buy	\$185	\$205	\$20
28.	2022-10-06	PNM5	15:59:47.001	1	\$169.36	\$202	Buy	\$182	\$202	\$20
29.	2022-10-06	PNU5	15:59:47.001	1	\$182.42	\$206	Buy	\$193	\$206	\$13
30.	2022-10-06	PNZ5	15:59:46.001	1	\$154.37	\$197	Buy	\$184	\$197	\$13