

BEFORE THE BOARD OF INQUIRY

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of applications for resource
consent and notices of
requirement by
Transpower New Zealand
Limited for the North Island
Grid Upgrade

**OUTLINE OF SUBMISSIONS ON PROCEDURAL MATTERS ON BEHALF OF
TRANSPOWER NEW ZEALAND LIMITED**

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INTRODUCTION

1. **THE** following preliminary procedural issues have arisen from memoranda by, or discussions between, counsel:
 - (a) filing of further evidence;
 - (b) form of evidence;
 - (c) timing of evidence;
 - (d) "testing" of evidence (and whether the Board should commission reports itself); and
 - (e) route visit by the Board.

FILING OF FURTHER EVIDENCE

2. **THE** Board's timetable for filing submitter evidence (by 26 February 2008) has been in place since 3 December 2007. An extension of time to 14 March 2008 was given by the Board, via its Minute of 3 March 2008. That recorded (para 56):

Up to (but no later than) 14 March, any submitter may lodge with the Board statements of evidence to be given, or revisions of statements of evidence already lodged.

3. **IT** is submitted that leave should be sought by any submitter seeking to adduce evidence after 14 March, and that good reason for delay (together with the absence of prejudice) would need to be demonstrated.
4. **TRANSPOWER** will be complying with para 56 of the Board's Minute in respect of rebuttal evidence.

FORM OF EVIDENCE

5. **IN** accordance with the Board's direction, Transpower has given notice of those witnesses whose evidence should be taken as read. A schedule listing Transpower's witnesses, and whether their evidence is to be read and cross-examined, is annexed to Transpower's opening submissions.

6. **THE** Board's Minute on Hearing Procedures is explicit that parties who have filed evidence may not thereafter enlarge on the evidence filed (paras 14 and 18). The sole exception might be where a matter has arisen in the course of the hearing. Again, it is submitted that leave should be sought first.

7. **THE** content of para 24 of the same Minute is also noted:

Cross-examination of witnesses will be allowed, subject to direction by the Chairperson to ensure that time for cross-examination is used efficiently.

TIMING OF EVIDENCE

8. **A** number of counsel have sought clarification of when (1) certain Transpower witnesses are likely to be called; and (2) when their own witnesses are likely to be called.

9. **THE** likely length of evidence-in-chief of Transpower's witnesses can be estimated; the answer to these questions therefore really depends on the length and efficiency of cross-examination. To assist the Board and other parties, Transpower has prepared a schedule recording the likely length of evidence-in-chief, and will consult with those parties who have notified that they wish to cross-examine as to the likely length of that enterprise. That should assist the Board prepare a provisional programme, as contemplated by para 8 of the Minute on Hearing Procedures.

10. **MOST** of the witnesses who provide evidence on electric and magnetic fields and potential health issues are based overseas. Due to their other commitments, we have arranged for these witnesses to be in New Zealand, and available, for the period 5-9 May 2008.

TESTING OF EVIDENCE (AND WHETHER THE BOARD SHOULD COMMISSION REPORTS ITSELF)

11. **PARAGRAPH** of a joint memorandum dated 17 March 2008), lodged by counsel for certain submitters, suggests that:

[T]here are aspects of the evidence for Transpower that are not accepted, but for which no competing evidence is available. The Board has been requested to commission independent review evidence to assist in those respects.

12. **THE** reference to requests appears to relate to a letter from one counsel to the Minister for the Environment in December 2007 and subsequent concerns expressed in memoranda of counsel on Mr McQueen's application for an adjournment of proceedings.

13. **THERE** are two issues:

(a) jurisdiction; and

(b) the appropriateness of and necessity for any such order.

14. **AS** to jurisdiction, the Board's powers are laid down in sections 41A ("procedure that is appropriate and fair in the circumstances") and 41C(4) and (5) of the RMA. The latter provides:

*"(4) At the hearing, the authority **may commission a consultant or any other person employed for the purpose to prepare a report on any matter on which the authority requires further information, if all the following apply:***

*(a) the activity that is the subject of the hearing may, in the authority's opinion, have a **significant adverse environmental effect; and***

*(b) **the applicant is notified before the authority commissions the report; and***

*(c) **the applicant does not refuse to agree to the commissioning of the report.***

(5) The authority must provide copies of the report to the applicant and any person who made a submission."

15. **IT** follows that if that power is to be exercised, that is to occur at the hearing, and is subject to the agreement of the applicant (here, Transpower).

16. **AS** to appropriateness, Transpower submits that:

(a) The Board has before it a range of submitters, some substantial and well-funded (both regional and local authorities, corporations and at least one well-endowed pressure group), and others who clearly are not. It

can reasonably expect those who are well-funded to have taken appropriate steps to commission expert evidence on those issues that are really important.

(b) In fact that is exactly what has occurred in relation to visual and landscape evidence, where the following expert witnesses are being called:

- (i) Mr Gavin Lister for Transpower;
- (ii) Dr Michael Steven for Transpower;
- (iii) Mr Dennis Scott, for Manukau CC;
- (iv) Ms Di Lucas for South Waikato DC;
- (v) Ms Mary Buckland for Waipa DC;
- (vi) Mr David Mansergh for Waipa DC;
- (vii) Ms Sally Peake for Franklin DC and Auckland RC; and
- (viii) Ms Bridget Gilbert for Matamata-Piako DC.

17. **ACCORDINGLY**, Transpower submits that further reports:

- (a) are not required given the extent of evidence generally, and also that lodged in respect of key issues; and
- (b) will only give rise to real difficulties in terms of natural justice (in contrast, for instance, to a section 42A pre-hearing report).

ROUTE VISIT BY THE BOARD

18. **A** route visit by the Board will be invaluable.

19. **THE** questions arising are:

- (a) when?
- (b) who should participate?

20. **IT** is submitted that the appropriate time for the visit would be before the first visual and landscape evidence – i.e. before Mr Lister's evidence.

