

COPY

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

**SUBMISSIONS ON BEHALF OF TRANSPOWER NEW ZEALAND LIMITED IN
RELATION TO THE STATUS OF GOVERNMENT POLICY INSTRUMENTS
AND THE RENEWABLES BILL**

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INTRODUCTION

1. **THESE** submissions consider the authority of the following Government policy instruments:

- (a) The National Policy Statement on Electricity Transmission;
- (b) The Government Policy Statement on Electricity Governance (**GPS**);
- (c) The Grid Reliability Standards (**GRS**) and Grid Investment Test (**GIT**);
- (d) The New Zealand Energy Efficiency and Conservation Strategy (**NZEECS**);
- (e) The New Zealand Energy Strategy (**NZES**); and
- (f) The Climate Change (Emissions Trading & Renewable Preference) Bill (**Renewables Bill**).

National Policy Statement on Electricity Transmission

2. **THE** National Policy Statement on Electricity Transmission (Opening Submissions, para 64) is a statutory instrument, consideration of which is of course mandatory under section 171(1)(a) of the Act.

Non-mandatory instruments

3. **THE** remaining instruments referred to below are relevant (rather than mandatory) considerations under Part II of the Act generally, and sections 7(ba), (i), (j), 104(1)(c) and 171(1)(d) in particular. They are significant in representing a consensual national aspiration in relation to matters such as climate change and preference for renewable generation and efficient transmission. They also indicate the likely course of future infrastructure investment.

4. **THERE** are several examples where the Court of Appeal and Environment Court have had regard to statutory and non-statutory policy instruments in determining applications under the Act. For example:

- *Genesis Power Limited v Greenpeace New Zealand Inc* (Court of Appeal, CA 372/07, 11 December 2007, W Young P, Chambers & Robertson JJ): the Court of Appeal took into account the NZES (see below) at [5] and the Renewables Bill [at 7], although in the latter case noting that enactment

and the precise framework remained uncertain. (In that case the Bill did not alter the issues in the appeal.)

- *Transit New Zealand v Auckland Regional Authority* (A 100/2000, 18/8/2000, Judge Sheppard, Cmmrs Catchpole & Easdale): in a matter involving a roading proposal and effects on conservation land, regard was had to the Regional Land Transport Strategy at [129] and the Conservation Management Strategy at [132], (both of which were statutory instruments).
- *Unison Networks v Hastings District Council* (W 058/2006, 18/7/2006, Judge Thompson, Cmmrs Howie & Edmonds): this appeal involved wind energy proposals and regard was had at [74] to the Sustainable Development Programme of Action (a whole of Government non-statutory instrument) and the NZEECS (see below). The jurisdictional basis was section 7(i) – effects of climate change – and 7(j) – benefits from use and development of renewable energy.
- *Meridian Energy Limited v Wellington Council* (W 031/2007, 14/5/07, Judges Kenderdine & Thompson, Cmmrs Howie & McConachy): with regard to another wind energy proposal reference was made by the Court to the NZEECS (see below) at [272] and [393], and to the Sustainable Development Programme of Action (see above) at [398].

5. IT is submitted to be apparent from the examples referred to that the relevance of non-statutory policy instruments or non-RMA documents is largely dependent upon the factual context and the subject matter of the proceedings.

The Government Policy Statement on Electricity Governance

6. **THE** GPS (Opening Submissions, para 55) is made under section 172ZK of the Electricity Act 1992. Compliance with the GPS is mandatory for both Transpower and the Electricity Commission.

Grid Reliability Standards (and Grid Investment Test)

7. **THE** GRS (and GIT) are made under Part F of the Electricity Governance Rules, in turn made under sections 172H, 172I and 172E(2) of the Electricity Act 1992. Both are binding on Transpower, and represent statutory constraints within which it must operate. They therefore have a direct bearing on the section 171 issue of adequacy of consideration of alternatives and reasonable necessity. They are found in the Common Bundle, tab 2, pages 182 and 187. Furthermore, the GRS is submitted to be directly relevant in terms of section 171(1)(c) of the Act to the extent that it is explicitly referred to in the common project objective for the NORs (Opening Submissions, para 63).

New Zealand Energy Efficiency and Conservation Strategy

8. **THE** NZEECS (Opening Submissions, para 62) is a statutory instrument made under sections 8 and 9 of the Energy Efficiency and Conservation Act 2000. It is the product of a public consultative process, prior to final notification.

The New Zealand Energy Strategy

9. **THE** NZES (Opening Submissions, para 55) is a non-statutory instrument, although its existence is directly recognised in the NZEECS (which is a statutory instrument). It is the progenitor of both Part I of the Renewables Bill (below) and the proposed NPS on Renewable Energy under the Resource Management Act, which the Government is progressing to a Board of Inquiry and proposes to gazette in late 2008.

The Renewables Bill

10. **THE** Climate Change (Emissions Trading & Renewable Preference) Bill was introduced to the House of Representatives on 11 December 2007. It received wide cross-party support (119 votes to 2 – the dissentients being the ACT MPs) for reference to a select committee. More fundamentally, there was broad cross-party support for the objectives of the Bill. Thus although, as the Court of Appeal noted in *Genesis* (see para 4 above), enactment and precise framework remain

uncertain, the values associated with the Bill are ones receiving broad political and popular support.

11. **ASIDE** from statutory interpretation, the Courts are willing to consider Bills when determining their jurisdiction; see e.g. *Star Holdings Ltd & Anor v Meridian Energy Ltd & Anor* HC TEK CIV-2003-476-000732 23 March 2004. Fogarty J at [48] of his judgment in *Star Holdings* ordered that proceedings be stayed until a Bill then before the House was enacted. His Honour did, however, go on to observe that if the Bill was “marooned” in the House for some reason and would not be enacted the Court would “consider” whether to proceed anyway.
12. **THE** Courts are also willing to consider Bills when determining what, if any, relief is appropriate in a given case; see e.g. *Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC); *R v Manawatu* CA111/05; CA112/05 10 November 2006 (leave to appeal to the Supreme Court refused in *Manawatu v R* [2007] NZSC 13 (8 March 2007)) and *Manukau Urban Maori Authority Incorporated et al v The Treaty of Waitangi Fisheries Commission et al* HC AK CP122/95 28 November 2003 at [148].
13. **IN** *Westco Lagan* McGechan J said at [72]:

A Judge must be able to self-inform from debates on Bills, as in the case of Acts, they must be able to take the content of the Bill into account as an aspect of a discretionary decision with due allowance for possibilities the Bill may change. Quite simply, the avoidance of injustice demands it.

DATED this 11th day of April 2008

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