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**BEFORE THE BOARD OF INQUIRY**

*In the matter* of a Board of Inquiry appointed under s146 of the Resource Management Act 1991 to consider an application by Mighty River Power Limited for resource consents to construct and operate a Windfarm at Turitea

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**AFFIDAVIT OF JEFFREY ALAN BAKER  
FOR PALMERSTON NORTH CITY COUNCIL**

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I, **JEFFREY ALAN BAKER**, planner, swear:

1. I have provided planning evidence in this matter and am responsible for coordinating experts for Palmerston North City Council. I confirm the factual matters contained in the Memorandum of Counsel dated 10 June 2009 relating to the new evidence. That memorandum accurately records the timeline under which MRP operated.
2. The timeline has been particularly tight. Nevertheless, PNCC has worked hard to comply with those directions and ensured that its witnesses were in a position to respond to any evidence filed in chief on behalf of MRP.
3. MRP has now served 25 rebuttal statements, 10 of which are from witnesses who did not provide evidence in chief.
4. Some of the evidence of new experts is corroborating the evidence of existing experts for MRP. By way of example,

(a) Mr Parson is an engineer. He says at paragraph 1.3

"I am providing this rebuttal evidence to comment on and respond to some of the primary evidence presented in respect of these applications that relate to civil engineering design and construction and environmental management matters. In particular, I will comment on the evidence of Christopher David James and Graham John Levy presented on behalf of Mighty River Power."

Therefore, his evidence is entirely corroborative of the principal evidence for MRP and not rebuttal evidence.

(b) Mr Watson is also from BECA. He also intends to corroborate primary evidence of MRP. However, he does not even provide a statement.

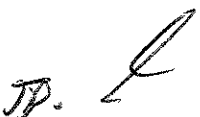
5. Some evidence is by experts who are new, rebutting evidence of an expert in another discipline. For example, Mr Brad Coombs is a landscape architect. He has given a statement rebutting the evidence of Mr Hindrup who is a planner. As Mr Hindrup is not giving evidence as a landscape architect, it is difficult to see how Mr Coombs' evidence could be described as rebuttal. Furthermore, his evidence is corroborative of existing MRP experts in the same discipline. By way of example, at paragraph 2.4 he states:

"I have reviewed the analysis of the appropriate usage of the amended Pigeon Bay criteria for the identification of ONFL's and amenity landscapes in paragraphs 28-40 of the evidence of Mr Brown, and I concur with his description and summary.

Furthermore, Mr Coombs dwells on the Proposed One Plan to which there own planning expert witness attaches little weight and I have agreed. There is no reason why these matters could not have been addressed by Mr Pollock who was the matching planning expert for MRP.

6. Two social scientists critique the evidence of PNCC's witness, Mr Baines. One of these is Ms Burns. These new witnesses did not give primary evidence. In addition, they corroborate the accuracy of the evidence in chief of the primary social impact evidence of Mr Kalafatelis for MRP. These two new statements are in addition, to the matching and responding brief of Mr Kalafatelis in rebuttal. By way of example, in the Burns rebuttal it is stated at paragraph 32:

"In conclusion, I consider that there are significant flaws in the way in which the data in Mr Baines' evidence has been presented. Further, in terms of measuring community effects as input to a social impact assessment, in my opinion, the RNZ Survey provides more robust sampling, methodology and questionnaire design, and hence the more reliable data."



The reference to RNZ is to the Kalafatelis primary statement. It is not apparent to me why in addition to Mr Kalafatelis, MRP require two additional social analysis to rebut PNCC's expert witness. Furthermore, had PNCC known that Ms Burns was going to corroborate Mr Kalafatelis's statement, then PNCC may have wished to call the experts from Massey University with whom Mr Baines consulted in preparing his survey questionnaire and analysis. PNCC did not at the time consider it necessary because it was considered Mr Baines evidence was able to stand on its own.

7. Professor Sims has provided an extensive statement on climate change. At paragraph 7 he sets out the scope of evidence:

7. This evidence rebuts the evidence of chief of Jeffrey Alan Baker and Marian Whitney Melhuish both of whom present their evidence on behalf of the Palmerston North City Council. Both of those witnesses have failed to assess or even acknowledge the benefits of renewable energy projects such as the Turitea Wind Farm Project with respect to mitigating the effects of climate change and securing progress toward meeting New Zealand's climate change objectives. Ms Melhuish provides an 'energy context' brief but does not address the very important issue of climate change mitigation in that energy context. Mr Baker at paragraph 80 acknowledges that the positive effects of the proposal must be properly weighed in the balancing of positive and negative effects of a proposal under part II of the RMA. However, he fails to even mention climate change and the reduction of carbon emissions as a positive effect of the Turitea Windfarm Project, thus rendering his balancing of effects and his overall planning analysis defective."




Professor Sims is an engineer, not a planner. I therefore consider it incorrect to describe his evidence as being in rebuttal to mine, as I neither dealt with his subject and nor is he qualified to deal with my subject. As he acknowledges, Ms Melhuish did not discuss climate change because it is not her expertise and therefore it cannot be described as rebuttal to her evidence.

8. It will be evident from the above examples that there is serious doubt as to the rebuttal nature of the evidence and its usefulness. I consider that there is material prejudice to PNCC for the reasons outlined in the memorandum filed on behalf of PNCC with this affidavit.
9. This evidence is seriously prejudicial to PNCC in the follow respects:
  - (a) There is limited time available for the experts to respond to this evidence and consult with the Council's lawyers (who are otherwise occupied with addressing the main body of evidence and preparing for the hearing) and there is no express provision in the directions for rebuttal to rebuttal. The experts would not have anticipated the need to review the evidence of new experts;
  - (b) PNCC may have wished to call additional evidence had it known of the new statements of evidence. For example, PNCC may wish to have evidence from the experts at Massey University specializing in social impact analysis that were consulted by James Baines to critique the analysis by MRP's two new social impact experts;




- (c) It is difficult to coordinate in the time available any meaningful response to this evidence including preparation to cross examine that evidence given its lateness.



Jeffrey Alan Baker

**SWORN** at Palmerston North this 10 day of June 2009 before me:



A solicitor of the High Court of New Zealand  
Barry Allen Britten Justice of the Peace  
Solicitor Registrar  
Palmerston North