

Before the Board of Inquiry
at Wellington

under: the Resource Management Act 1991

in the matter of: a submission to the Board of Inquiry concerning the
Proposed National Policy Statement for Renewable
Electricity Generation

between: **Meridian Energy Limited**
(Submitter number 88)
Submitter

Outline of closing legal submissions on behalf of Meridian Energy Limited

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OUTLINE OF CLOSING LEGAL SUBMISSIONS ON BEHALF OF MERIDIAN ENERGY LIMITED

May it please the Board

INTRODUCTION

- 1 These closing submissions provide a wrap up of Meridian's position on various matters that arose during the course of the hearing of Meridian's submission on the National Policy Statement for Renewable Electricity Generation (*Proposed NPS or Renewables NPS*). These submissions are in addition to the Memorandum of Counsel (dated 30 June 2009) on various points to which the Board sought Meridian's responses.

OVERVIEW OF MERIDIAN'S SUBMISSIONS

- 2 The essence of the case Meridian has presented is as follows:
 - 2.1 An effective NPS is an important and timely (if not overdue) initiative to provide strategic policy direction on the development, upgrading, maintenance and operation of renewable electricity generation activities. Protecting the existing renewable generation base and substantially increasing investment in new generation plants is vital for New Zealand's wellbeing. A NPS on Renewable Electricity Generation is necessary to give effective direction and guidance to RMA decision-makers, not only in relation to resource consent processes, but also (and vitally) in relation to the making and amendment of regional policy statements and regional and district plans.
 - 2.2 The Proposed NPS would not be effective in its present form. To be truly effective, the Renewables NPS:
 - (a) Needs to correctly identify the benefits of renewable electricity generation – both fairly accounting for New Zealand's substantial existing renewable generation assets, and large scale new generation projects,
 - (b) Must go further and assist with how these benefits ought to be considered, under Part 2, as against potentially conflicting local effects and costs,
 - (c) Must recognise that the RMA is not a "no effects" statute, and sometimes it is necessary for the community to tolerate adverse effects of a project, in order for the regional or national benefits of that project to be realised,
 - (d) Must set clear, realistic and measurable timelines for its implementation through changes to regional policy

statements and regional and district plans. It also needs to guide RMA decision-makers to be more expeditious in processing consent applications,

- (e) Should work in tandem with the NPS for Freshwater Management (*Freshwater NPS*) and the operative NPS on Transmission.

2.3 However, despite its significant failings, the Proposed NPS is certainly capable of being amended so that it will effectively deliver on its intended purpose and assist to achieve the RMA's sustainable management purpose, as Ms Dawson's detailed evidence has demonstrated.

Memorandum of Counsel to the Board

- 3 The Memorandum of Counsel (dated 30 June 2009) responds to various points to which the Board sought Meridian's responses as per the questions recorded in the transcripts. It was prepared in discussion with Meridian's witnesses.
- 4 The Memorandum:
 - 4.1 Clarifies the assumptions in Figure 1 of the evidence of Ms Moss and addresses when carbon pricing would commence, whether a rising price for carbon is assumed, and whether the cost of storage and clean up had been included for nuclear generation,
 - 4.2 Responds to evidence from other submitters concerning Meridian's operations at Manapouri and in particular as to discharges to Doubtful Sound,
 - 4.3 In relation to Mr Truesdale's evidence:
 - (a) Gives further detail in relation to Figure 19 as to proportions for demand growth and for thermal replacement, and
answers questions:
 - (b) Concerning Demand Side Management,
 - (c) On the likelihood of projects contributing towards 19,000 GWh of new renewable energy developments required by 2030,
 - (d) In relation to the Long Run Marginal Cost (LRMC) of solar generation and marine generation options, and
 - (e) On the likely uptake of solar energy generation globally, and the likely price path (rather than current price path) for this.

4.4 Meridian also provided responses on:

- (a) The suitability of solar generation to New Zealand,
- (b) Whether wind and hydro work best if they are in a particular region,
- (c) Whether the role of rapidly changing technology for the generation of electricity has a role in the debate about relative reversibility,
- (d) Its views on the development of qualified 'no go' zones for renewable electricity generation proposals.

5 The Memorandum appends copies of various reports and documents requested by the Board:

- 5.1 At Annexure 1: Meridian's "Choices 06" and "Choices 09" reports,
- 5.2 At Annexure 2: Perth and Kinross Council's Supplementary Planning Guidance for Wind Energy Proposals in Perth and Kinross, and a Reporter's (person processing the application) assessment for the Calliachar Wind Farm,
- 5.3 At Annexure 3: Meridian's submission on the Proposed National Policy Statement for Freshwater Management,
- 5.4 At Annexure 4: Meridian's submission on the Proposed New Zealand Coastal Policy Statement 2008,
- 5.5 At Annexure 5: Meridian's submission on the Proposed Wairarapa Combined District Plan and consent documentation lodged with the Environment Court, and
- 5.6 At Annexure 6: Evidence of Mr Truesdale (on Demand Side Management).

SPECIFIC QUESTIONS ON WHICH THE BOARD SOUGHT RESPONSE

Water allocation and the roles of the Proposed NPS and proposed Freshwater NPS

6 The Board asked the following inter-related questions:

- 6.1 How the roles for a Freshwater NPS and a NPS for Renewable Electricity Generation should inter-relate, especially with regard to section 30(1)(fa) of the Resource Management Act 1991 (*RMA*), and

6.2 How the Board ought to address the relative timing of commencement of the two proposed NPS, given their inter-relationship.

Section 30(1)(fa) and the respective roles of the two NPS

7 A key to answering the first of these questions is Ms Dawson's explanation that water allocation issues need to be dealt with at the sub-catchment level. Within particular catchments, different allocation preferences may operate.

8 It is clearly the case that the demands for water are not the same throughout New Zealand. It is at the particular catchment and sub-catchment levels that the particular matters relevant to allocation of water between consumptive and non-consumptive uses are best identified and determined.

9 This intention is reflected in the language of section 30(1)(fa):

"if appropriate, the establishment of rules in a regional plan to allocate any of the following...". (emphasis added)

10 "If appropriate" are qualifiers showing an intention to leave discretion to Councils as to whether to establish allocation rules and, if so, what those rules will provide for in terms of allocation preferences.¹

11 Therefore, it is the more appropriate NPS to give general policy direction concerning section 30(1)(fa). The Proposed Freshwater NPS can deal with the subject of allocation preferences in a global way (rather than specific to renewable) and in a manner that directions Councils to apply a catchment by catchment approach.

12 This then takes us to the related role the Renewables NPS should play in regard to section 30(1)(fa) matters.

13 In Meridian's submission, the important complementary role of the Renewables NPS is to give recognition to the national significance which certain freshwater resources can have for the use and development of renewable energy, and the associated importance of protecting those resources.

14 In answer to the Board's enquiries concerning any specific matters that may pertain to section 30(1)(fa) function, Meridian's evidence highlights the significance of "the big four" existing hydro power schemes (Waitaki, Manapouri, Waikato, and Clutha) which together generate approximately 90% of New Zealand's current renewable electricity as illustrated in the evidence of Mr Truesdale. Any erosion of allocations for these physical resources would have

¹ It is also reflected in section 67(5), which requires that a regional plan "record how a regional council has allocated a natural resource under section 30(1)(fa) ... if the council has done so."

national implications (impacts on the smaller assets would probably not have the same level of national implications). As such, each of those schemes (together with the natural resources upon which each rely), would warrant particular recognition of being nationally significant for New Zealand's social, economic and cultural wellbeing.

- 15 Accordingly, if the Board were considering some specific policy recognition for the purposes of section 30(1)(fa), a possible refinement of the redrafting recommendations presented by Ms Dawson could be explicit reference to this matter, for example by way of an addition to proposed Policy 2A(i) such as:
- "i. maintenance of the generation output of existing renewable electricity generation activities requires protection of the assets, operational capability and full availability of the renewable energy resource, in particular the Waitaki, Manapouri, Waikato and Clutha Hydro-Electric Power Schemes [including through the exercise of functions under section 30(1)(fa)]".*
- The significance of timing of commencement of the NPSs***
- 16 Although the Renewables NPS and Freshwater NPS are clearly strongly inter-related insofar as section 30(1)(fa) is concerned, Meridian submits that this does not itself dictate that both commence together.
- 17 As Meridian has noted, the Renewables NPS is also very strongly related to the now-operative NPS on Electricity Transmission (*Transmission NPS*). The policy intent of the Transmission NPS cannot be fully realised until the companion Renewables NPS is also operative.
- 18 That fact itself suggests any delay to the commencement of the Renewables NPS should be minimised. But, it would not have been necessary or desirable to suspend the commencement of the Transmission NPS for that reason. The same logic extends to the relationship of the Renewables NPS and Freshwater NPS.
- 19 As to which should come into force first, Meridian submits there is stronger logic in this being the Renewables NPS. This will assist in giving fuller effect to the Transmission NPS to which it relates (bearing in mind Councils are now seeking to respond to it). Further, much of the Renewables NPS can be given full effect to regardless of the timing of commencement of a Freshwater NPS.
- 20 It would be inappropriate to link the commencement of the Renewables NPS to an NPS that may potentially take some time to come into force or may be decided that it will not come into force at all. This Renewables NPS should be decided and commence on its own merits.

How the Renewables NPS should address cross-boundary matters

- 21 The Board enquired as to how a NPS for Renewable Electricity Generation should guide and direct Councils to consider cross-boundary consequences of decisions (such as decisions in relation to section 30(1)(fa)). The Chairman gave the example of where water could supply a hydro generation scheme on land outside regional boundaries. The fact that renewable generation resources are often very remote from the communities which rely upon them further emphasises this issue.
- 22 Both of these examples emphasise the important role a Renewables NPS has for encouraging effective integrated management across district and regional boundaries, as a matter of national significance.
- 23 The fact that regional plans are generally not compulsory does not, itself, mean that a NPS is less capable of encouraging integrated management:
- 23.1 Firstly, the discretion Councils have on whether to make a regional plan (for example in regard to allocation preferences), and section 30(1)(fa), is qualified by section 55(3), RMA which directs that councils "must also take any other action that is specified in a national policy statement". Meridian submits, that a NPS could effectively direct a council to make a regional plan.²
- 23.2 Secondly, a NPS can make directions which regional policy statements must "give effect to" (see sections 62(1)(e), 62(3) RMA) including through the method of making plans. As compulsory regional instruments, regional policy statements are intended to "achieve integrated management of the natural and physical resources of the whole region".

Section 7(ba) – the efficiency of the end use of energy

- 24 The Board requested that Meridian comments on the relevance, if any, of section 7(ba), RMA to the Board's consideration of the Proposed NPS.
- 25 Section 7(ba) provides:

"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

...

(ba) the efficiency of the end use of energy".

² Under section 55(3), RMA, which provides for a local authority to "take any other action that is specified in the national policy statement."

- 26 The following extract from Hansard indicates Parliament intended "end use" to refer to the final consumption of energy³:
- "The Government's intention when explicitly providing for the efficient use of energy in section 7 of the Resource Management Act relates to efficiencies in the use or application of energy, rather than efficiencies in the initial conversion processes—for example, when planning land use activities and roading networks. Accordingly, the Government supports the clarification provided by the committee in narrowing the consideration to "end use"."*
- 27 The focus of section 7(ba) is therefore on the efficiency of consumption of energy, not its generation.⁴ As such, it is submitted that section 7(ba) does not have any particular relevance to the framing of the Proposed NPS, as it is intended to be confined to addressing renewable generation.
- 28 Of course, demand side management (DSM) relates to section 7(ba) to some extent. Mr Truesdale's evidence addresses DSM in some detail, bearing in mind that a realistic perspective on the influence of DSM is relevant in judging how much additional generation capacity will be needed (appreciating, as Mr Truesdale points out, that it is very difficult to forecast future energy use⁵).
- 29 It is only in this indirect sense, fully accounted for in the evidence of Mr Truesdale, that section 7(ba) has any relevance to the consideration of the Proposed NPS.
- 30 For completeness, it is noted that one Environment Court case concerning a renewable generation project (Genesis's Awhitu Peninsula wind farm proposal) did consider section 7(ba) to be a factor weighing in favour of the project. However, the case is really the exception proving the soundness of Meridian's submission. The decision records why section 7(ba) then had relevance⁶:

*"While this proposal generates rather than uses energy, ... the **electricity would be supplied directly into the local network at the point of demand**, so there is an aspect of efficient supply of electricity, as there are no transmission losses on the scale involved in the national high voltage network."* (emphasis added)

³ Hon Judith Tizard (Minister of Consumer Affairs), 17 February 2004: Resource Management (Energy and Climate Change) Amendment Bill, Second Reading, *Hansard*, Volume 615, 11040 at page 11041.

⁴ Section 7(j), of course addresses renewable generation.

⁵ Statement of Evidence of Mr Truesdale, paragraph 52.

⁶ *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 at para [220], at tab 1 in case book.

- 31 As Meridian's evidence demonstrates, the fact that Awhitu is able to supply direct to the local network means it only reflects a minority of renewable energy projects which are located close to actual demand. By contrast, in its later decision concerning the Unison wind farm proposal in Hawkes Bay⁷, the Environment Court stated that it would not place great weight upon arguments that the wind farm proposal would enhance the efficient end use of energy. Meridian submits that this view is more in line with the intent of section 7(ba), which is the "end use" of energy rather than the generation of energy.
- 32 As Meridian's evidence explains, renewable generation, by its nature, is often located remote from demand and sometimes remote from existing transmission. Wind generation will, for example, only be economic if correctly located. Therefore, the siting of renewable generation far from load is not driven by economics, but by resource availability.
- 33 This fact is recognised in a range of policy and other responses to New Zealand's energy challenges – including the "transmission to enable renewable" project initiated by the Electricity Commission and the Transmission NPS.
- 34 The Proposed NPS must be framed according to that practical reality, if it is to respond correctly to sections 7(i) and (j) and fulfil its statutory purpose of stating "objectives and policies for matters of national significance relevant to achieving the purpose of the Act".

OTHER MATTERS RAISED

- 35 In addition to those specific points, there were a range of other matters canvassed in questioning of Meridian witnesses. The following submissions address some of these.

Appropriateness of maintaining 90% target

- 36 The appropriateness of maintaining the 90% renewable electricity generation target in the NPS was raised in questioning, particularly of Mr Truesdale.
- 37 Mr Truesdale explained why this target remained appropriate, having regard to the NZES. That point is also reinforced by the evidence the Board received from Caroline Ryder, on behalf of the Ministry of Economic Development. As to the review of the NZES and its relevance to the Proposed NPS, she said:

"Review of the NZES. This will refocus the NZES on security of supply and economic development. No change is expected to the 90 percent renewable electricity target."

⁷ *Unison Networks Limited v Hastings District Council* (EnvC, W058/2006, 17 July 2006, Judge Thompson), page 25, at tab 6 in case book.

- 38 As Ms Dawson noted in reply to questions, it is important that the NPS sets a properly measurable target. It would seriously prejudice the effectiveness of the NPS to blur this target, such as by removing reference to 90%. In particular, this would make it far more difficult to monitor the effectiveness of the Proposed NPS's objectives and policies. In any case, it is submitted that this target is a matter that sits squarely within the realm of Government policy. If the Government wants to, it can, effect a change to the NZES policy regime (although there is no indication it intends doing so, as Ms Ryder explains). Nevertheless, were it to do so, it would be clearly open to the Minister to change this aspect of the Proposed NPS (under section 52(1)) or to review and change the NPS once it is operative (under section 53, RMA). Meanwhile, it is proper for the Board to take judicial note of the fact that the 90% target in the Proposed NPS is entirely consistent with current Government policy as reflected in the NZES (and its review).

Whether the NPS should encourage small scale local supply policy

- 39 Commissioner Gardiner referred to the benefits small remote communities, such as on the North Island East Coast, remote from the transmission network, could gain from policies enabling small scale electricity generation.
- 40 As Ms Dawson explained, Meridian does not oppose suitable policy recognition in the NPS of small scale generation. Commissioner Gardiner's example of remote small communities on the North Island East Coast is helpful in this respect. Therefore, Meridian has suggested as part of a revised Policy 4, the following as a matter to be provided for:

"enabling activities associated with the development and operation of small and community-scale distributed renewable electricity generation."

- 41 In essence, those are the same words as are used in Policy 5 of the Proposed NPS. Unlike Policy 5, however, the proposed revised Policy 4 does not give undue emphasis to small and community scale renewable generation at the expense of large scale types of renewable generation. As Ms Moss emphasised (at paragraph 67), it is important that the Renewables NPS does not favour one form of renewable generation over another, as the more options that are ruled out "the greater the overall cost will be of meeting the necessary demand for electricity". Mr Truesdale clearly explains the importance of large scale generation in order that New Zealand can meet its forecast energy needs.

Information on value of renewable resources in regional policy statements or regional/district plans

- 42 The Board enquired as to the value of using a district plan to provide accessible information about areas of good wind resource or other renewable resources.

- 43 Meridian sees little overall value in this approach.
- 44 In terms of the wind resource, Councils do not have the detailed data for such information to have any assured reliability. Wind developers will always gather their own site data before committing to a project, therefore, such an approach would have no value to them.
- 45 Given the concerns with the data being relied upon and the fact that there is no guarantee that a wind developer will look to develop these identified sites, it does not give any real signal to people looking to develop in these areas for other purposes, that they should be aware of the potential for a wind farm.
- 46 Therefore, Meridian considers that using a regional policy statement, regional plan or district plan to provide accessible information about areas of good wind resource or other renewable resources would be of little value to the community, developers and renewable electricity generators.

Relationship to Transmission NPS – recommended Policy 4(vi)

- 47 How the Renewables NPS ought to relate to the Transmission NPS was discussed in questioning of Ms Dawson. In response to questions from the Chairman and Commissioner Baumann, Ms Dawson highlighted as the key issue the need to provide spur line connection from windfarms and other renewable generation facilities to local electricity distribution networks and/or the national grid. The Transmission NPS only applies to the national grid and district plans can often be inconsistent in terms of how they address spur line connection issues.
- 48 Therefore, Meridian had proposed the following paragraph to be added to the revised Policy 4 as a new paragraph vi:

"vi. facilitating the connection of renewable electricity generation activities to the local electricity distribution network and/or the national grid."

Scope of NPS enquiry and purpose of NPS

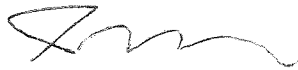
- 49 As a final point, Meridian respectfully reiterates its submissions in opening as to the statutory purpose of the Board's inquiry and of the NPS. In particular those opening submissions noted the factors relevant for inquiry under section 51 and the ultimate statutory purpose of a NPS as a national policy instrument under the RMA instruments (as set out in section 45, RMA) to "state objectives and policies for matters of national significance that are relevant to achieving the purpose of the Act." That contrasts with the statutory purpose of a National Environmental Standard (NES) as a regulatory, rather than policy, instrument.

- 50 These points are reemphasised mindful of two aspects of the Board's enquiries of Meridian's witnesses.
- 51 The first aspect was the broad ranging nature of some questioning on some aspects of economics and the bearing they have on investment choices in electricity generation. Related to this also were the enquiries concerning section 7(ba) addressed earlier in these closing submissions.
- 52 Meridian re-emphasises its observations that economic factors, and their bearing on the choices made about proceeding with and siting electricity generation projects, are not the concern of the RMA decision maker. They are of course important for individual generators to weigh, bearing in mind that the electricity market is a competitive market, rather than a central planning model. The relative economics of renewable energy projects will change over time and as developers bear the risk of the investment decision, they need to be able to make decisions as to the viability of renewable energy projects. While a resource consent being granted for a renewable energy project is enabling, it does not necessarily mean that the development will in fact be built. The developer will still need to make an assessment as to the economic viability of the project according to the market and demand. In the case of transmission investment, this is subject to some oversight by the Electricity Commission (as Transpower by contrast to energy companies, is a natural monopoly). However, it is not the province of RMA decision-makers to seek to direct or control the electricity market, including investment choices, through the RMA.
- 53 The purpose of the NPS is to give effective direction and guidance to RMA decision-makers in relation to resource consent processes and in relation to the making and amendment of regional policy statements and regional and district plans.
- 54 A second aspect concerns the enquiries made during the hearing as to whether the NPS ought to specify uniform standards, or policies directing such standards, on matters such as separation distances, heights and other performance standards, for example for wind farms. The Memorandum of Counsel records the planning reasons why such an approach is not desirable (as both Ms Dawson and Ms Moss also explained). The additional point, noted by counsel, is that this would confuse the true purpose of a NPS, as a policy rather than regulatory instrument.
- 55 Counsel makes those submissions appreciating that they probably express the obvious and mindful that the Board's enquiries on these matters may simply reflect early context setting bearing in mind that the hearing of Meridian's submission was early in the Board's enquiry.

CONCLUSION

- 56 An effective NPS for Renewable Generation is necessary and timely (if not overdue). Significant amendments are needed to the Proposed NPS for that purpose, but can be readily made as Ms Dawson has explained.
- 57 Meridian is happy to assist the Board in any further way as it forms its views for the purposes of its report and recommendation. In particular, Meridian would welcome further opportunity to respond to any draft report and recommendation if the Board considers that a useful step.
- 58 Subject to those comments, Meridian asks that the Board recommend to the Minister that he puts forward to the Governor-General a Renewables NPS amended in the manner recommended by Ms Dawson.

Dated at Wellington this 2nd day of July 2009



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