

Introduction

1. Contact Energy Limited (“Contact”) is one of the largest electricity generators in New Zealand. It operates a diversified portfolio of geothermal, hydro and thermal generation plants that between them supply approximately 28% of New Zealand’s annual electricity demand. Mr Andy Sommerville, Contact’s Senior Environmental Advisor will describe the nature of its operations in greater detail.
2. For present purposes, the significant point is that approximately half of Contact’s annual generation is from renewable sources (hydro and geothermal). In addition, it is pursuing an active policy of development of additional renewable energy developments with projects covering the entire span from consented and under construction (a new geothermal binary plant near Taupo) through to initial scoping of development options for further hydro stations on the Clutha River.
3. Through the process of reconsenting its existing renewable stations and consenting proposed new developments, Contact has acquired considerable experience in the operation of the RMA as it relates to renewable energy developments. Some of that experience has been positive, and some of it less so.
4. In the last 13 years, Contact has also consented over 1,000 MW of new thermal (gas-fired) generation capacity. As Mr Sommerville will outline, it is notable that consenting a new thermal station is generally easier and quicker than consenting a new renewable project. They attract less opposition and the issues are narrower. Some might see this as ironic. Contact sees it as indicative of a defect of the RMA that this should be the case and that one of the key roles of the National Policy Statement is to make applications for renewable generation plant less fraught for applicants than is currently the case.
5. It is important to emphasise that this is quite a different thing from saying that all consent applications for renewable electricity generation should necessarily be granted. Manifestly that is not correct and would be inconsistent with the RMA.

6. Contact would say, however, that somewhere along the line, a sense of perspective has been lost, and some redressing of the balance is required.
7. It is not intended in these submissions to discuss in detail how Contact suggests that the National Policy Statement might be amended to better achieve that outcome. Mr Chrisp's evidence, which has already been circulated, discusses Contact's relief and the reasons why amendments to the proposed National Policy Statement are suggested.
8. Rather, I propose to look more broadly at what the National Policy Statement is seeking to achieve and how it might best be framed for that purpose.

Why does New Zealand need Renewable Electricity Generation?

9. New Zealand depends on a secure electricity supply for its social and economic wellbeing. As the Environment Court observed in *Genesis Power Limited v Franklin District Council*¹:

"Electricity is a vital resource for New Zealand. There can be no sustainable management of natural and physical resources without energy, of which electricity is a major component."

10. It is also beyond dispute, as recorded in the Preamble to the Proposed National Policy Statement, that electricity demand has steadily increased over a number of years, and can be expected to continue to increase. In *Upland Landscape Protection Society Inc v Central Otago District Council*², the High Court stated:

"This Court recognises the notorious fact that there is an ongoing risk of the demand for electricity not being matched for supply. This past winter and previous winters there have been low levels of stored water in the hydro electric systems. The Court also takes cognisance of the notorious fact that where supply cannot match demand in electrical systems there has to be a partial shutdown of the distribution networks. For these reasons it is in the public interests for power supply companies to increase generating capacity. The question is not whether generating capacity should be increased but rather by what means and where."

¹ [2005] NZRMA 541, 556.

² CIV 2008 412 000302 Judgment of Fogarty J, 16 September 2008 at paragraph 64

11. In answering Fogarty J's question, global climate change is clearly a factor pointing firmly towards renewable energy sources as the preferred means to meet future electricity demand. While debate continues as to the nature and scale of likely climate change, in its decision on Project Westwind³, the Environment Court quoted expert evidence to the effect that the RMA decision-makers needed to recognise that climate change is a reality and respond to that fact.
12. This is not to say that thermal generation does not have a role. As Mr Sommerville will discuss in his evidence, Contact is in the process of constructing a fast-start thermal station at Stratford that will provide peaking capacity to fill in the gaps in output from renewable hydro and wind plants.
13. Even if climate change were not a factor, the practical reality, as Mr Sommerville discusses, is that with Maui now rapidly running down, gas does not provide a viable option at present to provide the base load capacity required to meet increasing electricity demand. Renewable generation is therefore both the best option from a climate change perspective, and the most economic option.

What sort of Renewable Generation does New Zealand need?

14. Some of the submissions to the Board of Inquiry seek to advance a case for particular types of renewable generation, either explicitly or implicitly. This is done in a variety of ways. Some submissions take an overt position opposing use of particular renewable resources. The anti hydro submissions are the clearest example of this. Some advance positions that would less directly have this kind of effect - for example those seeking to favour only those generation sources producing no greenhouse gases when in operation, which would exclude geothermal generation. The Proposed National Policy Statement itself takes this kind of approach by pushing reversibility as a key issue, thereby favouring wind over hydro and (to a lesser extent) geothermal.
15. Mr Peter McIntyre, Contact's Regulatory Affairs Manager, addresses this issue in his evidence. In summary, New Zealand cannot afford to pick winners in this process. It needs a mix of renewable generation types to meet its future electricity needs. It needs significant new wind, geothermal and hydro generation sources, and if that new generation cannot be consented, the country will

³ *Meridian Energy Limited v Wellington CC W031/2007* at paragraph 392

inevitably turn to new thermal generation and in the absence of major domestic gas discoveries, that means imported gas, coal or lignite fuelled plants.

Why does renewable generation need a National Policy Statement?

16. One of the characteristics of renewable electricity generation plants is that they are typically built on a large scale and give rise to significant adverse effects of many different kinds.
17. Moreover, because such plants have to harness natural resources where they can be found, these adverse effects are typically adverse effects on the natural environment.
18. Thus it is simply not possible to convert large amounts of kinetic energy in a watercourse to electrical energy without significant effects on the natural character of the watercourse, and probably also on its ecological and cultural values.
19. Geothermal plants rely on large numbers of deep wells connected by large gleaming above-ground pipes - in one Contact hearing several years ago, one of the hearing panel described the Wairakei Steamfield as a plumber's nightmare. The drilling process is messy and noisy, and the power station discharges hydrogen sulphide (the characteristic rotten egg smell well known to Rotorua visitors) which can affect the local amenity.
20. Lastly, the wind farm that does not have a significant effect on natural character from a visual perspective is probably yet to be built. Less inevitably, but still likely, any viable wind farm site of any size will be in the clear view of a greater or lesser number of neighbouring residents, reducing the quality of their amenity to at least some degree. If there were no neighbours, the site would probably be unsuitable because of its wilderness qualities.
21. Any renewable generation plant of any size is inevitably going to run contrary to a number of section 6 and 7 matters, and potentially to section 8 as well.
22. Moreover, it will also inevitably run contrary to objectives and policies in relevant regional and district plans, which will faithfully recognise and provide for section 6 matters, have particular regard to section 7 matters and take account of the principles of the Treaty of Waitangi.

23. The enactment of section 7(j) was intended to alter that imbalance, and it has done so to a degree. Ultimately, however, the RMA is an effects-based statute, and while the definition of effects encompasses both positive and negative effects, in practice the primary focus of decision-making is on adverse effects and how those effects might be avoided, remedied or mitigated. That is particularly evident in the formulation of Policy Statements and Plans, which provide the framework for consent decisions.
24. Policy Statements and Plans turn in practice on the specification of issues. Objectives, policies and rules set out in such documents are the means to express and achieve desired environmental outcomes in relation to the issues as defined. Local and regional authority planners have largely regarded the specification of issues as being a process whereby environmental problems are identified i.e. areas where adverse effects on the environment are occurring and where regulatory action is required. It has proven extraordinarily difficult to gain material recognition in Policy Statements and Plans of the beneficial effect of commercial activity in general (and renewable electricity generation in particular)⁴.
25. In summary, because it is not perceived as a 'problem', a typical RMA Policy Statement or Plan will at best discuss the positive contribution of industry generally, and electricity generation in particular, in the context of a background overview discussion. It has proven very difficult to persuade local or regional authorities to define issues, objectives, policies and methods related to continued provision of the benefits renewable electricity generation provides which might then be of real assistance in a subsequent consent application process.
26. And without some positive recognition in relevant Policy Statements and Plans, an applicant for a substantial renewable generation project faces an uphill battle, ultimately dependent on a positive balancing/integration of considerations in the application of section 5. That situation creates substantial risks for applicants in the context of projects that typically require several years of analysis of effects (and associated costs) before an application can even be submitted.
27. Obviously there are exceptions. The one Contact is most familiar with is the Policy Statement and Plan provisions governing geothermal development in the

⁴ The most recent example of this that Contact has struck is Otago Regional Council's view that it is not appropriate to make any substantive reference to current hydro use in the context of the water allocation provisions of its Regional Plan.

Waikato Region. Those provisions provide clearly for development of nominated geothermal systems and an acceptance that in such systems, adverse surface effects cannot be expected to be avoided or remedied. But those provisions were only put in place after a 9 week hearing in the Environment Court⁵ and a multi month mediation process, guided by an experienced Environment Commissioner.

28. Contact's submission is that if the required new renewable generation projects are to be put in place, a National Policy Statement stating clearly that consenting of renewable electricity generation of all kinds is a matter of national importance.
29. Some submitters will doubtless say that the arguments I have presented only apply to large renewable projects, and that small distributed generation does not raise the same issues, which is true to a degree. It is also true, however, that New Zealand is now an urbanised society and the electricity demands of its cities will not be met by a myriad of micro hydros and small scale wind farms.
30. This is why Contact has sought amendments to Proposed Policy 1 to make it clear that the significance of renewable generation projects is a function of size - small scale renewable projects are only significant when viewed cumulatively. If New Zealand is to meet its electricity needs, that will only occur if larger projects are put in place and the National Policy Statement needs to support larger projects as much, if not more, than small ones.

What needs to be in a National Policy Statement?

31. I have put this question in the positive. It might equally put in reverse - what is not needed?
32. The first thing which is not needed is policies which can be used as a basis to oppose new renewable projects. Policy 3 is clearly in this category. It may not have been intended as an anti-hydro (and anti-geothermal) policy, but that is how it will be read by those seeking to oppose hydro and geothermal consent applications. One has only to look at the reasoning of the High Court in *Greenpeace New Zealand v Northland Regional Council*⁶ to see the line of logic which could be applied. As Mr Chrisp will discuss, if this policy is to remain, it should be drafted in the same way as section 104E of the Act, so that the

⁵ *Geotherm Group Ltd v Waikato RC* A047/2006

⁶ [2007] NZRMA 87

reversibility of wind farms is a positive, but the suggested irreversibility of large hydro is neutral, not a negative.

33. The National Policy Statement does not need new policies which would pose additional effects-based tests that would qualify the objectives and policies to the point where no new renewable generation project could in fact satisfy all their elements. The reality is that Part 2 of the RMA and Policy Statements and Plans throughout the country are full of effects-based tests already.
34. Some would say that without such qualifications the National Policy Statement will tilt the “playing field”, which is true to an extent. Ultimately though I would pose the rhetorical question - if the purpose of this exercise is not to tilt the playing field a little, to increase the chances of a new renewable project being consented, what is it? It is only tilting what I would submit to be a playing field which is out of balance.
35. The National Policy Statement does not need policies framed like the present Policy 2, which require particular regard to be had to a range of considerations but give little guidance as to whether the regard required to be had is intended to make it easier to consent new renewable projects, or harder. It is submitted that some plain English drafting is required in this regard.
36. Which brings me to the most important point. It is submitted that what is most required in the National Policy Statement is a clear policy that says in unambiguous language that consenting of new renewable projects is a desirable thing. Not something to be achieved at all costs, or irrespective of effects, but a desirable thing.
37. It is submitted that such a policy is required to address the NIMBY mentality seen in virtually every renewable consent hearing. This is the kind of thinking that has recently seen Contact’s proposals for a wind farm on the West Waikato Coast greeted by submissions that it should be pursuing its Clutha hydro options, currently the subject of preliminary consultation. And which will doubtless see any Clutha hydro applications Contact may file greeted by submissions that it should be looking at renewable development options closer to the major demand centres in the North Island.

38. Contact has sought additional policies in its submission to address particular issues it has found with reconsenting existing renewable plant, with transmission developments which are a necessary adjunct to renewable developments and to address reverse sensitivity issues. Mr Chrisp explains the relief sought in his evidence, and the rationale for it.
39. Aside from Mr Chrisp, as already foreshadowed, Contact's submissions are supported by evidence from Mr Peter McIntyre, Contact's Regulatory Affairs Manager and Mr Andy Sommerville, Contact's Senior Advisor (Environmental).
40. Finally, Contact would extend an invitation to the Board of Inquiry to tour its renewable generation stations if that would assist the Board in its deliberations.

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