



MAJOR ELECTRICITY USERS' GROUP

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Ministry of Economic Development
WELLINGTON

By email to electricity@med.govt.nz

Dear Mark

Submission on draft Electricity Industry Reform Amendment Bill 2007

1. This is a submission by the Major Electricity Users' Group (MEUG) on the draft Electricity Industry Reform Amendment Bill 2007 (the "daft Bill") published on 13 July 2007 by the Ministry of Economic Development (MED).
2. MEUG has previously (refer MEUG submission to MED of 25 May 2006) noted:
 - a) Concern on a lack of detail to adequately comment on the proposals at that date; and
 - b) That the counterfactual to amending the Electricity Industry Reform Act (EIRA) was the status quo allowing line businesses, their Directors and managers to seek exemptions from the Commerce Commission to limits on investment in generation, prohibition on buying and selling financial derivatives and the arms length rules.
3. Having now seen the detail in the Bill MEUG believes the status quo is adequate and the Bill is unnecessary. That is consumers are better protected from possible anti-competitive and inefficient practises by electricity line businesses if exemptions are granted on a case by case basis rather than the proposal in the Bill to broadly water down some of the current provisions in the EIRA. The more the EIRA is watered down the greater the risk the electricity line monopolies will find and exploit cracks in the regulatory regime to the detriment of consumers.
4. Another reason why MEUG is sceptical of the Bill is that the Regulatory Impact Analysis (RIA) assumed a counterfactual based on a decision in November 2006 to amend the EIRA¹. The RIA therefore only considered fine tuning to already made decisions to amend the EIRA. The correct counterfactual should have been the actual status quo regulatory regime not a hypothetical regime not yet considered by Parliament.

¹ Refer Minister of Energy paper, Investment in Generation by Lines Companies, to the Cabinet Economic Development Committee meeting of 20 June 2007.

5. MEUG also has concerns about whether the Bill is the best solution to the perceived policy problem of under-investment in small renewable generation projects. A comprehensive review of the Resource Management Act would, in the view of MEUG, be a far more practical way to unlock small renewable generation options.
6. Turning to the details of the Bill itself MEUG note:
 - a) It is essential the various information disclosure requirements in terms of the Commerce Act s57T will remain intact and that the Commerce Commission has adequate resources to enforce compliance. In particular the implementation of the arm's length requirements in terms of transfer payments (refer paragraph 3.1.1 of the Electricity Information Disclosure Handbook, published by the Commerce Commission 31 March 2004 as part of the Commerce Act (Electricity Information Disclosure Requirements) Notice 2004). The Commerce Commission will have to increase surveillance of electricity line businesses if the Bill is passed to cover new risks.

For example there will be a new risk that Line Company related supply businesses will have a lower cost of debt than other suppliers because lenders will assess the risk of the combined supply and line business rather than two separate entities. The line business with its lower risk will provide a cross-subsidy to the riskier supply business. If this occurs then the lower cost of debt to line company owned supply businesses will become a barrier to entry to competing suppliers whether they are inside or outside of the area supplied by the lines business.
 - b) We have concern that the Bill requires only 1 independent Director of a commonly owned line and supply businesses. This is a significant step change from the status quo whereby individual Directors must seek an exemption from the Commerce Commission. MEUG suggest that given the risks to the public from the monopolies exploiting their market power that a more measured approach is appropriate whereby common Directors are allowed provided a majority of Directors on the supply business are independent.
7. In conclusion MEUG recommend the government publish a RIA to support the draft Bill using as the counterfactual the status quo and failing that; then the draft Bill should be withdrawn. If the Bill proceeds then MEUG suggest the Commerce Commission be voted additional resources to ensure the arms length reporting requirements in Part 4A of the Commerce Act are adequately monitored to cover increased risks of anti-competitive and inefficient practices due to this Bill. MEUG also recommend a majority of Directors on Line Company owned supply company Boards be independent.

Yours sincerely



Ralph Matthes
Executive Director