



MAJOR ELECTRICITY USERS' GROUP

4 April 2008

Mr Ross Milner
Ministry of Economic Development
By email to electricity@med.govt.nz

Dear Ross

Submission on draft Government Policy Statement on Electricity Governance

1. This is a submission by the Major Electricity Users' Group (MEUG) on the *draft Government Policy Statement on Electricity Governance* (the "draft GPS") published 12 March 2008. It is acknowledged that an amended GPS will replace the current GPS dated October 2006.
2. The opening section of this submission comments on the GPS as part of the governance matrix against which the Electricity Commission (the "Commission") is held accountable. The balance of the submission comments on specific aspects of the draft GPS and concludes with recommendations including reference to a separate request to the Minister for information arising from items in the draft GPS.

Policy issues regarding the GPS

3. There are three main governance instruments defining the objectives of the Commission and accountability of Commissioners. Those are:
 - a) The principal objectives and specific outcomes in s.172N of the Electricity Act;
 - b) The Ministerial established objectives and outcomes which are delivered via the GPS (refer s.172K); and
 - c) The annual Statement of Intent agreed between the Commission and the Minister.
4. The approach of a broader statutory objective supplemented by an annual Statement of Intent is the convention for a number of government entities including the Commerce Commission. In respect of the Electricity Commission there appears to be multiple means by which the Minister can direct the Commission.
5. The concept of Government Policy Statements is not unique to the Commission. Government Policy Statements similar to that on Electricity Governance can be found in the gas, transport and science sectors. The phrase "government policy statement" is frequently used, almost on a daily basis, when describing various written policies across all sectors of the economy.
6. However the electricity sector GPS attempts to impose a higher level of accountability than any other "policy statement." The draft GPS requires the Commission to prioritise its work schedule to meet the Ministers or Governments objectives and expected outcomes. Notwithstanding the principal objectives and specific outcomes specified in s.172N of the Electricity Act, the draft GPS attempts to create new objectives which have not been tested through the legislative process.

7. The draft GPS adopts a prescriptive approach and also strays into operational detail on how the Commission might go about its business of meeting the requirements of the Act. There are serious concerns with Ministers engaging in micro management of Crown entities. The draft GPS proposes that the Commission report every three months to the Minister of Energy, so in addition to the existing accountability requirements a new layer of reporting is imposed. If the outcomes do not suit the Minister it is possible monthly or even weekly reporting will be added to the requirements for the Commission.
8. In effect the Minister may attempt to impose his objectives and desired outcomes through increasingly prescriptive GPS and reporting requirements on the Commission thereby effectively replacing those in s.172N of the Electricity Act. In this case the Commission will increasingly focus on the Ministers objectives set through the GPS rather than the objectives set by Parliament through statute. There is a high risk to the public of poor policy outcomes because the Ministers objectives will have been set in a less robust and rigorous process than the objectives set by Parliament.
9. When the first GPS on Electricity Governance was issued in October 2004 it was accompanied by a Regulatory Impact and Business Compliance Cost statement. This seems appropriate because the GPS has many parallels with developing legislation, regulations and rules. It is recognised that the consultation document is a draft GPS but it is impossible for stakeholders to comment on the respective merits of the replacement GPS without the Government revealing its assessment of benefits and costs relative to the status quo GPS. Publishing a Regulatory Impact Statement (RIS) with the final GPS without an opportunity for consultation on a draft RIS is, in our view, poor public policy practice. In the absence of a RIS having been released, MEUG has requested from the Minister copies of all RIS relevant to the replacement GPS considered by Cabinet.
10. MEUG believes it is timely for Government to consider what role a GPS should have, if any, in the context of the existing statutory requirements describing the objectives and outcomes for the Commission. The temptation for the Minister to become involved in prescriptive micro management activities and to in effect override the objectives set in statute by Parliament should be resisted.

Specific comments on the draft GPS

11. Comments follow:
 - a) In the foreword to the draft GPS the Minister describes a range of other factors, for which the Commission does not have accountability, which will impact on the electricity sector. These include:
 - The economic transformation agenda;
 - Climate change policy;
 - Framework for an Emissions Trading Scheme;
 - National Policy Statements and National Environmental Standards under the Resource Management Act 1991;
 - Sustainable Development for New Zealand Programme of Action; and
 - Policy and regulatory settings for the gas sector, including the Government Policy Statement on Gas Governance and measures to encourage petroleum exploration.

MEUG also notes that the Government expects the Commission to take these into account and contribute as appropriate to the Government's wider policy objectives. However the GPS also states "that for the avoidance of doubt the GPS does not include the foreword."

MEUG assumes that the Commission will be as confused as everyone else on how to interpret this. On the one hand Government expects the Commission to take these factors into account but the foreword is not official Government policy pursuant to s.172ZK or s.172N of the Electricity Act and therefore the Commission can ignore these factors.

- b) The current GPS has the legislative objectives set out in s.172N of the Electricity Act for the Commission at the opening of the GPS. The draft GPS has the legislative objectives in an appendix. Given the priority of the legislative objectives over the GPS, that is the legislative objectives have been subject to parliamentary scrutiny, MEUG suggest the status quo of including s.172N of the Electricity Act at the beginning of the GPS be retained.
- c) Paragraph 13 mentions a new Senior Energy Officials Group. It is unclear what policy or governance issue the formation of this group is intended to solve and what its relationship with the Commission will be. To provide some clarity an Official Information Act request has been made to the Minister for details of the group considered by Cabinet to date.
- d) Paragraph 38 notes the government expects the EC to use EECA "unless there is a good reason to contract another party." This would appear to be contrary to the requirement of separate government agencies to tender work. MEUG suggest this requirement be removed from the GPS.
- e) Paragraph 38 ends with the statement "... EECA will work as the delivery agent for more actions developed and funded by the Commission". MEUG believe this requirement is not consistent with the powers of the Commission pursuant to the Electricity Act. The Commission correctly funds work it is responsible for in terms of the Act but it is not a tax gathering agency to fund the work of EECA. Paragraph 38 needs to be re-drafted.
- f) The Commission should determine its own view of the assumptions for the various economic analyses it is accountable for. Expecting the Commission to use differential discount rates as set out in paragraphs 42 and 43 that favour energy efficiency projects when there has been no robust academic evidence to support that approach is very poor policy making. MEUG recommend these paragraphs be removed from the draft GPS.

In case there has been work by government on the discount rate that we are unaware of, an Official Information Act request has been made to the Minister to source that work.
- g) Bullet points 3 and 4 of paragraph 52 sets an absolute requirement for grid planning to facilitate renewable generation. There must be a point when the costs of achieving such absolute outcomes exceed the benefits. These bullet points need to reflect the careful balancing of facilitating renewables while at the same time achieving the other objectives of s.172N of the Electricity Act such as economic efficient use resources.
- h) Section 8 covering transmission is a good example of how the GPS has become too detailed and intrudes on the operational detail that the Commission is already obliged to operate within and improve on. The original GPS helped provide some guidance on the then un-populated Part F of the Rules. Part F of the Rules is now populated and the Commission itself through its annual consultation on Big Picture Issues and draft appropriations evaluates when and how Part F can be improved. Section 8 of the GPS is essentially redundant as the higher level objectives of s.172N of the Electricity Act are sufficient.

Conclusions

12. MEUG recommend:
 - a) The role of the GPS needs to be reviewed; and
 - b) Consultation on a draft Regulatory Impact Statement be undertaken along with an opportunity for parties to make supplementary submissions on the draft GPS after viewing the RIS.
13. Attached to this submission is a letter to the Minister of Energy requesting, in terms of the Official Information Act, copies of all Cabinet papers and Cabinet meeting minutes in relation to:
 - a) Any Regulatory Impact Statements relevant to the draft GPS;
 - b) The establishment and role of the Senior Energy Officials Group mentioned in paragraph 13 of the draft GPS; and
 - c) The proposal for differential discount rates in paragraphs 42 and 43 of the draft GPS.

Yours sincerely



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