

27 September, 2007

2013 Review  
Electricity Group  
Energy and Communications Branch  
Ministry of Economic Development  
P O Box 1473  
WELLINGTON

Dear Sir/Madam

### **Submission on the Continuance of Supply Discussion Paper (2013 Review)**

Counties Power would like to thank the Ministry of Economic Development (MED) for producing the discussion paper on the “Continuance of Supply” review and for the opportunity to comment on it.

#### Terms of Reference not fulfilled

There are several points in the Minister of Energy’s terms of reference for the review that have not been covered in the MED’s discussion paper. The most significant of these is the requirement that the review must examine how the range of options will be affected by regulation of the electricity lines businesses under Part 4A of the Commerce Act. To be fair it is not possible to fully evaluate this currently because Part 4A is in the process of being reviewed. However, it is not possible to sensibly make decisions on the 2013 provisions in isolation without considering the broader regulatory environment. We believe that all lines companies should have the discretion to continue to provide line services to all existing customers, should this be the customers’ preference, and that the cost structure behind such continuance of supply must be taken into account fully by the regulator.

#### Provisions need to be fair to all stakeholders.

Counties Power is in agreement with the Government’s objective that remote rural consumers continue to have access to electricity after 2013 and that it is delivered efficiently, fairly, reliably and in an environmentally sustainable manner. We object however to any narrow definitions of “fair” that apply only to consumers. The example of “fair” given on page 11 of the discussion document raises some concern in this regard. Although we do not necessarily disagree with an explicit or implicit cross-subsidy between urban and rural customers we disagree strongly with any philosophical viewpoint that excludes lines companies from the contemplation of what “fair” entails.

### Counterparties will develop workable solutions.

Counties Power believes that, left to their own devices, lines companies and customers will work out fair and equitable solutions to keeping customers supplied with electricity irrespective of when they were connected. We are not aware of any lines companies that think it a good idea to disconnect customers post 2013. However, should short sighted decisions by an industry regulator put lines companies under significant and prolonged financial duress then it is inevitable that networks would run down and parts may need to be disconnected for safety reasons. As noted above, the issue of continuance of supply cannot be evaluated in isolation from the broader regulatory environment.

### Customers need peace of mind; legislation is a poor solution though.

Assuming a workable and sensible future regulatory regime we see no reason to anticipate any customers being disconnected subsequent to 2013, this however does not provide customers with assurance. We do believe that legislating an obligation to continue supply, in whatever form, is a poor solution and is subject to the inevitable mechanism of unintended consequences. In general trust begets cooperation and line companies need to be given an opportunity to demonstrate their willingness and ability to establish fair and equitable solutions – after all, if fair solutions were not forthcoming the minister would ultimately intervene anyway. We believe that option 5.3 in the discussion paper would provide adequate customer (and Government) peace of mind. Particularly if the lines company was required to give a five year advance notice prior to ceasing provision of any line services.

Also, we do not support option 5.6 whereby a subsidy would be gathered from all electricity users. New Zealand has a well established and well funded social welfare structure and we do not believe it would be in anybody's interest to create additional systems to parallel these objectives.

### Ownership and Access Rights – Often Unclear.

The history of the New Zealand electricity infrastructure growth and land development has been such that there are many portions of electricity lines where the ownership is unclear. To complicate the matter further, even when ownership is clear, access rights to access lines across private property are often less than clear. Intuitively it seems wrong that the ownership of a portion of line cannot be clearly established – yet this is a very real issue and an issue that line companies wrestle with on a daily basis.

Consider a simple example: There is single rural block of land across which traverses a privately owned service line supplying two houses on the land. The land is then subdivided and the service line now crosses four new titles, none of whom are supplied by the line, and the two original houses are now on separate titles too with the original landowner having sold and moved on. The line company may not even have been aware of the subdivision and nobody worries too much about the line until years later when a new owner of one of the properties across which the line traverses demands that the line be removed (or does remove it himself) or refuses others access to maintain it. Now suddenly there are six landowners, and their lawyers, all in disagreement about who owns the line. This is a relatively simple case, even though ownership cannot be established. Some cases are significantly more complex. (We believe that the intention was for the Electricity Amendment Act 2001 to address some of these issues. However, on the question of ownership this was not achieved; although the definition of “point of

supply” is comprehensive the act is silent on the issue of ownership, and the act cannot be used to establish ownership.)

Line ownership and access rights is an issue that needs to be addressed by all concerned, but for many decades to come there will be customers who lose supply, or whose supply is threatened, not because of any decision by a lines company to disinvest in a portion of the network, but because of unclear ownership and access issues. The MED, and any legislation, needs to be informed on this point in terms of line companies being “obligated” to maintain supply.

#### Counties Power’s Intention – Keep Customers Connected.

In order that the MED may be informed of our intention, we *advise that Counties Power intends to continue to offer supply to all customers*, irrespective of when connected. They may choose an alternative if they so desire, however we believe that there should be no mandate for us to supply by alternative means, unless this is mutually agreed between the customer and the lines business. To do otherwise would result in solutions that are inefficient and uneconomic.

There are however contradictory drivers between social interests (price parity) and commercial pricing principles (related to minimizing cross subsidies between tariff groups). We therefore believe that the Government should create or allow pricing flexibility as New Zealand lines companies vary tremendously in terms of network topography and other characteristics. Lines companies need to be able to create tariff solutions that take costs into account, and that also best meet the overall requirements of their respective communities and customer groups. The requirements of which often vary significantly from one company to another.

#### Summary

In summary Counties Power submits that:

1. As required by the terms of reference, the MED needs to expand the 2013 review to include analysis of how the options will be affected by potential industry regulation scenarios.
2. That no new obligations to supply, directly or indirectly, be imposed on line companies. The risk of perverse outcomes and unworkable solutions outweighs any potential benefits.
3. That the MED consider the need for allowing a reasonable degree of flexibility in the pricing policies adopted by lines companies.
4. That the MED, and any legislation, be informed on the point that line companies do not always have the right to maintain continuity of supply to every customer’s meter. Ownership and access rights of portions of line are often unclear.
5. Option 5.3 be considered as the most sensible solution with the provision that line companies provide a 5 year advance notice of an intention to cease provision of any line services function, including post 1993 connections.

Yours sincerely

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