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Submission to:

2013 Review  
Electricity Group  
Energy and Communications Branch  
Ministry of Economic Development  
33 Bowen Street  
**Wellington**

Submission from:

Top Energy Consumer Trust  
Station Road  
**Kaikohe**

Date: 26 September 2007

**Electricity Act 1992, (the Act)  
Section 62 (the Section)**

**Continuance of Supply beyond 2013**

**Background**

The Top Energy Consumer Trust (TECT) holds 100% of the shares in Top Energy Limited (Top Energy). Top Energy is the lines company which distributes power in the Far North and covers an area similar to that managed by the Far North District Council.

The district has a population of approximately 55,000 people, of whom 44% identify as Maori. The average income in the district is \$19,200, compared to the national average of \$24,400.

Top Energy has 3,987 kms of distribution line and 28,500 customers. It is difficult to separate out data to exclude the impact of industrial and large consumers from the available published data on consumption but we believe that our average consumption per domestic consumer is about 6,500kW. This can be compared to the national average of 7630kW (year ended 31 March 2006) and the "low fixed

charge regime” threshold which uses a figure of 8,000 kW. The average number of customers per km of line is 7.1.

Top Energy is one of the companies named in the Discussion Paper as being the recipient of some of the highest levels of RERC (Rural Electricity Reticulation Council) contributions, up until the time that that scheme was terminated in 1997. It is suggested that over 35% of Top Energy’s distribution system was originally funded by RERC funding.

## **Introduction**

The objective of the review is stated to be [para 9] “The objective of the review is to consider what new arrangements, if any, should be put in place...”. There are a number of other references through out the paper that attempt to suggest that allowing the Section to run to its termination date with no change, and therefore the possibility of discontinuance of supply, is an option which can be considered.

The discussion paper also states, in the first paragraph of the Executive Summary, “The review presents a range of feasible options for consultation in order to ensure that affected consumers continue to have access to electricity after 2013 and...”. There are a number of other statements with a similar underlying theme.

As allowing the Section to reach its intended termination date, without amendment, is contrary to the Government Policy Statement on Electricity Governance (GPS 2006), it can only be assumed that the proviso in para 9 should be ignored.

Without the Section, the requirement to maintain supply to any consumer would never have existed post the passing of the Act. The reasons quoted in the discussion paper to explain why the Section was inserted into the Act [para 111] simply reinforce the perception that the Section was inserted for political reasons. In fact, bullet point three of that paragraph would have been achieved better (and sooner) by not passing the Section.

The quote from the GPS 2006 in paragraph 22 is a political position taken by the government. This is perfectly valid but there is no economic logic for the position and no justification has been provided by the government, to support this requirement. The wording of the discussion paper detailed above reinforces the view that the review is a further attempt to give economic credence to what remains a political issue.

## **Trust Obligations**

- **To Top Energy**

Section 36 of the Energy Companies Act 1992 requires all energy companies to be operated as a successful business. Section 39 (2) (a) of that Act requires the objectives to be included in the Statement of Corporate Intent. Further, the Trust Deed of this trust stipulates that one of the objects of the trust is “To encourage and facilitate the Company [Top Energy] in meeting its objective of being a successful business by optimising the Company’s return on its assets, and...”

This obligation seems to be in conflict with the statutory obligation to maintain supply to all power consumers connected to the company’s distribution system in 1993, including those that are uneconomic to supply.

- **To Our Beneficiaries**

The trust's Deed sets out the basis for income and capital distributions. These requirements focus on equitable treatment across all consumers. Recognising that there are power consumers (beneficiaries of the trust) who are not economic for Top Energy to supply, makes this equitable and even handed approach difficult to reconcile.

The Top Energy Consumer Trust is different from most other power trusts in that the trustees are not elected. A nomination, interview and selection process is used, but the Selection Panel is made up of three individuals holding political office. This process still exposes the trustees to the political reality that disconnection of individual power consumers, based on their geographic location, would be totally unacceptable to the community.

The trustees are of the opinion that they have a responsibility to ensure that all members of our community, who want access to electricity (and are prepared to pay for it), should be entitled to that access.

### **RERC Regime**

As noted in the Background, Top Energy was the recipient of significant funding from the RERC. The immediate conclusion from this is that, at least when built, these lines were uneconomic. With the passage of time, some of these will now be regarded as having value (from the addition of new consumers) but many will remain uneconomic and thus be a liability. There is a connection between the original requirement to build uneconomic lines (funded by the RERC) to the continued existence of those uneconomic lines which require on going maintenance and will, in due course, require rebuilding. Therefore the operation and rebuilding of these assets should be funded in the same way that the original assets were funded.

### **Capital Contributions**

It should be noted that Top Energy continues to construct supply lines and connect new consumers, where the cost of the new connection means that it is uneconomic. The Company operates a capital contribution scheme where the new consumer funds the uneconomic portion of the equipment. These capital contributions are refundable, in total or in part, when additional consumers connect to the new equipment. This regime looks to be similar to the previous RERC scheme, except that it is funded by the consumer. There is no attempt to address what the situation will be when the equipment required for these new connections, will have to be replaced. It should be noted however, that there is no undertaking given to maintain supply for any period or at any time. It must be presumed therefore, that when the equipment requires to be replaced at some point in the future, there may be a requirement for the consumer to again fund part of that cost, or lose supply.

### **Alternatives**

Although not explicit in the Discussion Paper, there seems to be an assumption associated with the decision to introduce the Section, that alternative energy supplies are viable for those consumers who would be disconnected if the Section was allowed to run its course. In almost all cases, the alternatives are very capital intensive.

As can be seen from the brief statistics shown in the Background section, the Far North is a district where a significant proportion of the population would be totally incapable of accessing the funds required to source alternative energy supplies. The only realistic result which can be anticipated is that many of these people will be disconnected from the power supply and will then have to live without proper heating, lighting and sanitation. Health standards in the Far North “are significantly worse than the rest of New Zealand”<sup>1</sup>.

Concern has been expressed in recent years at the alarming number of house fires in the Far North. On a number of occasions, these house fires have resulted in the deaths of some of their occupants. While a number of these situations have arisen from the use of candles due to power being disconnected for non-payment, they illustrate very graphically the likely outcome of allowing S62 to continue to its scheduled termination.

### **Responses to Questions 5.1 and 5.2**

- a) It should be openly acknowledged that it will never be politically acceptable to allow existing power consumers to be disconnected from the electricity system. Once this is acknowledged the obvious answer to the question is that the obligation must continue. Refer to the responses to question 5.6 for the conditions under which this should occur.
- b) Material increases in price are unsustainable, for the same reasons that private investment in alternative energy sources is not practical. The only feasible recognition of the uneconomic nature of the power connection is in the service levels delivered. It may be that the Commerce Commission will have to be directed to make allowances for lower levels of service in their monitoring of lines companies quality thresholds, where consumers are supplied from an uneconomic supply.
- c) It may be that there are parts of New Zealand where supply lines have been over built in the past. This is certainly not the case in the Far North. Top Energy has 18% of our system built as SWER. When these lines were built they were built as cheaply as they possibly could be, with the result that many of these now require replacement.

Alternative supply methods are unlikely to get significant traction in the foreseeable future. Government has spent a lot of money, through organisations such as EECA, to encourage the adoption of alternative power supplies. These programmes are as applicable to lines businesses searching for cost effective alternatives as they are to individual consumers. The cost and the operational inconvenience to the end users means that few are interested in pursuing these options. Until the cost of the equipment reduces significantly this is unlikely to change. The most likely driver for cost reduction will come from the international market, rather than within New Zealand.

- d) It appears that the proposal that cross subsidies between urban and remote rural could be removed stems from a belief that most remote rural (uneconomic) supplies are supplying farmers or other businesses where power is simply one of their input costs. In the Far North, this is not the

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<sup>1</sup> Northland District Hospital Board District Annual Plan 2007/8

case. Many of those affected by such a proposal will be residential consumers. In some cases these are households supported by government benefits. As stated previously, these consumers simply do not have the means to pay the much higher costs removal of cross subsidies would result in.

- e) For the same reasons detailed previously this would have to be the case. The introduction of the ability to allow lines businesses to determine how the energy requirements of consumers should be met is a sensible position. Our view is that the obligation to supply should be maintained indefinitely, but with a contribution to uneconomic supplies from all power consumers. In implementing this position there should be no restriction on how the lines company achieves this outcome. Minimisation of cost should always be part of any solution. [Ref Response to Question 5.6]
- f) We understand that there are no special provisions for customers connected after 1993.

### **Responses to Questions 5.3 and 5.4**

None of these proposals are acceptable. As noted previously, the majority of those likely to be affected by the termination of the obligation under the Section will not be in a position to finance alternative energy arrangements. This being the case, a deferral of the final date will change nothing other than to pass the problem to someone else, in the future.

We are concerned that statements such as those set out in para. 67 reflect a belief by the Ministry (and therefore government) that there is some sort of informed debate occurring on this subject. It is our belief that organisations like Federated Farmers have an understanding of the issue and have presumably kept their members informed. It is only in the last couple of months that any request for information has been received from local council. Other than these isolated cases there has been little debate and it must be assumed that the vast majority of consumers have no understanding of this issue.

As noted previously, a significant number of those who will be affected by the termination of the obligations under the Section are individual consumers, in many cases living on government benefits and with lower levels of education. This latter point also makes the suggestions in para 69 impractical and unworkable.

### **Responses to Question 5.5**

Having concluded that it is unacceptable to terminate the obligation to maintain supply, any provision that defers the final determination is unnecessary and inappropriate. Those affected will then have to live with the uncertainty for an extended period of time.

### **Response to Question 5.6**

The Top Energy Consumer Trust has been placed in a position of conflict by

- the provisions of the Act,
- the terms of our trust deed, and

- our general responsibilities to our beneficiaries.

This position started with a government direction (via the RERC scheme) that all power consumers should fund the construction of specific uneconomic supplies to individual consumers. The passing of the Act now requires the lines businesses to maintain supply to any of those consumers who continue to be regarded as uneconomic, with all the cost and service level implications associated with that.

We can not see how any government can seriously propose to allow significant numbers of consumers to be disconnected from the established power supply system. As trustees we also find such a proposal to be unacceptable.

It is acknowledged that there will be increased costs to lines businesses and the industry generally as a regime is developed to manage this scenario. However, the ODV valuation methodology and other information gathering and disclosure requirements imposed by the Commerce Commission under their various programmes mean that much of the data will already be available.

### **Conclusion**

We therefore believe that Option f (continuance of the obligation to supply but with a subsidy for uneconomic supplies, paid by all consumers) is the only viable way forward. As noted previously, this position should also allow the lines business to determine how the delivery of energy is achieved (e.g. small local generation, provision of solar heating, gas etc).

Yours faithfully



**S R James**  
Secretary

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