

# Submission To Ministry of Economic Development

Submission on: Review of Section 62 of the Electricity Act 1992  
“Continuance of Supply” (2013 Review)

Submitter: Waitaki Power Trust

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Copy to: Honourable David Parker, Minister of Energy

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## **SUBMISSION OVERVIEW**

1. Waitaki Power Trust strongly SUPPORTS the need to review Section 62 of the Electricity Act 1992 and the government objective on which the review is based,

“for all classes of consumer to have access to electricity that is delivered in an efficient, fair, reliable and environmentally sustainable manner.” (2013 Review, page 11, 2.5 (34))

2. Waitaki Power Trust considers that the concept of “fairness” as defined in the Discussion Document (see *ibid*, page 11 2.5 (35)), needs to be widened to include not only ‘reasonableness’ of line charging to remote rural users compared with other users, but also to take account of the ownership status of the line company supplying line service functions to the potentially affected consumers.
3. Waitaki Power Trust contends that if a one-size-fits-all approach is to be followed and one option only adopted, Trustees would OPPOSE either of Options (c), (d) being the preferred option.
4. Waitaki Power Trust further recommends that Options (e) and (f) be eliminated from serious consideration.
5. Waitaki Power Trust’s preferred option is Option (a)

“continuance of obligation to maintain lines function services with no expiry date” (*Ibid*, page 4)

6. Accordingly, Waitaki Power Trust further recommends that the Electricity Act 1992 be amended by repealing sub-section (6) of Section 62 and all reference to time-lines so that all electricity users now and in the future can be confident that they will have reliable access to electricity supply if need be except under clearly identified circumstances.

## **REASONS**

### **1. Section 62 of the Electricity Act 1992 and Continuance of Electricity Supply**

- 1.1 Trustees consider it is essential that the review of Section 62 of the Electricity Act 1992 (the Act) with particular reference to the so-called sunset clause, sub-clause 6 is carried out and that the review is completed in a timely way.
- 1.2 Legislative threats to the reliability and security of lines function services and thereby, electricity supply, to **any** category of existing and future consumers need to be addressed in a proactive manner.

It is simply unacceptable to create around any current New Zealand electricity users, a climate of uncertainty where none needs to exist. As the Minister of Energy puts it:

“We’ve decided against a ‘do-nothing’ option, which would prolong the uncertainty currently faced by many rural customers” (Hon. David Parker, media statement, 21 August 2007).

- 1.3 The implicit objective of Section 62 of the Act is ensuring continuance of supplying line function services to **all classes** of consumers except under well defined conditions which allow that service to be temporarily withdrawn for the duration that one or more of the reasons for withdrawing services continues to exist (2013 Review, Appendix 1).

### **2. Expiry of Legal Obligation to Maintain Line Function Services and Cessation of Supply to Consumers with a Financial Interest in the Electricity Lines Network Company.**

- 2.1 There are two scenarios under which current consumers in remote rural areas serviced by uneconomic lines have a financial interest in the electricity lines network bringing electricity to their property.

One is where the consumer holds shares in the lines company in his/her own name. The other relates to the situation where consumers are the ultimate owners of the electricity lines network but all shares in the company are held in trust by Trustees on behalf of the consumer owners.

- 2.2 It is counter-intuitive and also socially and economically unjust and unfair that legislation could create a situation permitting a service to be withdrawn, should a lines company so decide on economic grounds alone, when that consumer has a financial interest in the provisioning Company and needs and wants line function services by the Company to continue.
- 2.3 The expiry of Section 62 has the potential to raise complex legal issues if a 100% Consumer Trust owned lines company **chose to initiate** cessation of line function services to consumers connected to the Company's network by uneconomic lines, regardless of the consumers viewpoint.
- 2.4 A consumers financial interest in a lines network business, where all shares in the Company are held in trust by Trustees on consumers behalf, encompasses both benefiting from a share of:
- the Company's annual profit; and
  - capital realised if shares in the Company were to be sold.
- 2.5 But, in the 100% Consumer Trust owned situation, consumers retain their financial interest in the Company only as long as they remain 'consumers' receiving line function services from the Company.
- 2.6 Waitaki Power Trust anticipates that resolving the type of issue identified above would involve pursuing complex legal matters through the court system, a situation that is not in anyone's best interest.
- 2.7 On that basis alone and given that shares in the majority of electricity lines network companies in New Zealand continue to be held in 100% Consumer Trust ownership on behalf of consumers, Waitaki Power Trust urges that government does not allow Section 62 of the Act to expire.
- 2.8 To further support the retention of Section 62 sub-clauses 1-5 in an amended form, we reiterate our earlier point that Trustees consider the unstated objective and intention of Section 62 of the Act is ensuring that electricity lines network companies continue to supply line service functions to **all** classes of consumers.

While the so-called sunset clause is currently creating a level of uncertainty among consumers who live in remote rural areas, it is important to acknowledge that if Section 62 was allowed to expire and be deemed to be repealed on 1 April 2013, then security of line service functions currently enjoyed by many rural consumers, not only those in remote areas, connected to an electricity lines network as at 1 April 1993, is at risk also.

The number of consumers potentially affected by repealing Section 62 of the Act is considerable. By 1985, 16,229 additional rural consumers were connected to and receiving line function services from an electricity distribution network under a subsidy scheme funded by a levy on all Electrical Supply Authorities.

- 2.9 Waitaki Power Trust and presumably government too, would be concerned if anything like that number were not covered by a guaranteed provision for continuance of electricity reticulation supply, except under specified circumstances.

### **3. A One-size-fits-all Approach and Options based on Repealing Section 62**

- 3.1 It follows from the discussion at 2 above that if government proposed to adopt one preferred option, then Waitaki Power Trust would oppose adopting any option which involved repealing Section 62 of the Act in its entirety.

Hence, Trustees could not support options (c) and (d) considered by the discussion paper.

- 3.2 Waitaki Power Trust further considers that there are additional reasons why Section 62 needs to be amended and retained.

- 3.3 Firstly, the legal obligation that requires electricity distribution networks to continue to supply line function services to consumers, except as provided for by a written agreement with a particular consumer, reduces consumer uncertainty. Consumers are assured that '*ceteris paribus*' they will continue to receive line function services from the lines distribution network their property has been connected to.

- 3.4 Although all electricity users with the exception of those excluded by specified conditions, would find comfort in such an assurance, it is unclear whether Section 62 applies to all consumers.

According to the 2013 Review Discussion Paper:

“Section 62 of the Act does not apply to consumers who connected to lines after 1993” (Ibid, page 6, 1.1 (3)).

Not all Waitaki Power Trust Trustees agree. Some consider that Section 62 can be interpreted in a way which does imply that lines companies have a legal obligation to maintain line function services to consumers connected to a lines network both prior and subsequent to 1993.

This point will be picked up on further on in Waitaki Power Trust's submission.

3.5 Trustees are unanimous that to avoid doubt there are additional grounds which show that Section 62 needs to be retained in an amended form.

- Firstly they do not accept the assumption that security of line function services for all consumers connected to a lines distribution network after 1993 would be covered by the terms and conditions of a connection contract (see Ibid, page 6, 1.1 (3)).

Trustees who have been associated with the electricity distribution industry for many years and had responsibility for implementing changes required by the Electricity Act 1992 are confident that it is not true to say that all connections after 1993 would have been made under a contractual arrangement between the line company and the consumer.

- Secondly, there is no guarantee that government's objective relating to the need

“for all classes of consumer to have access to electricity that is delivered in an efficient, fair, reliable and environmentally sustainable manner” (Ibid, page 11, 2.5 (34)).

will be met by all lines companies including those that are publicly listed on the stock exchange, unless the objective is backed up by legal teeth.

After all, for strictly commercially driven publicly listed lines companies provision of services to consumers while meeting government's objective is unlikely to be a top priority. It is safe to assume that shareholder requirements will be met ahead of anything else.

3.6 Against this background, Waitaki Power Trust strongly recommends that Section 62 of the Act be amended to state the purpose of that Section to cover all consumers prior and post 1992 to avoid the potential for misinterpretation of sub-clause 2, and by repealing sub-clause 6 and all reference to time-lines.

#### **4. The 2013 Review and Options 'e' and 'f'**

4.1 Waitaki Power Trust cannot support either of options 'e' or 'f'.

4.2 Option 'e' says:

“Continuation of obligation to maintain supply, using lines or alternatives, for a limited time beyond 2013 (Ibid, page 4).

Adopting that option would simply delay decisions on extremely important matters which need to be made as soon as possible.

Furthermore, it is not in consumers best interest or government's either, to create a situation where lines companies would cease to plan ahead for maintenance work that needed to be done, if a particular line was tagged for decommissioning beyond a certain date.

- 4.3 Option 'f' attempts to deal with issues relating to cross-subsidisation of one category of electricity user by another user group. It says

“Obligation to maintain supply, using lines or alternatives with no expiry date subsidised by **all** electricity users” (Ibid, page 20, 5.6).

It is proposed that a subsidy fund could be established by a levy on all companies involved with the electricity industry, a strategy aptly described as

“socialisation of the costs of supplying uneconomic regions” (Ibid, page 20, (89)).

Comment by a Trustee who formerly worked at the corporate level implementing the installation of lines to rural areas under the subsidised lines construction scheme. The RERC subsidy scheme achieved the purpose for which it was set up. It provided a subsidy towards the capital costs of providing the reticulation asset. It would be an extremely different subsidy to provide on going subsidies, and that must be avoided at all costs.

There is little doubt that personal experience provided an awareness which many people don't have of the additional administrative time and expense all lines companies would face if preference was assigned to Option 'f'.

Trustees consider the better option is to select a proposal which provides a better balance between meeting the interests of consumers and of the lines network company.

## 5. Option 'a' and the Urban-Rural Cross Subsidisation Argument

- 5.1 Waitaki Power Trust recommends that option 'a'

“continuance of obligation to maintain line function services with no expiry date” (Ibid, page 14, 5.1).

be adopted and put forward as the preferred option to the Minister of Energy.

- 5.2 The urban-rural subsidisation argument is a potential stumbling block for final adoption of an arrangement which would bind all 28 electricity distribution network companies to a legal obligation to maintain line function services to consumers in perpetuity, **unless** as allowed for under Section 62, sub-clause (2) of the Act,

- the line was installed under terms and conditions of a written agreement or contractual arrangement with the consumer, or
- the electricity distributor was legally entitled to suspend the provision of line function services to a consumer for reasons identified by the Act.

In the Discussion Paper the view is expressed that the maintenance cost of network lines which do not generate a **commercial** rate of return will require an ever increasing level of cross subsidy by other consumers connected to the network, over time.

Trustees accept that this is a valid point. But in response, they make the following points:

- Historically, the subsidised construction of lines to rural areas was justified in terms of enabling farmers to increase productivity and grow GDP in post-war years. In other words, subsidising the cost of installing so-called uneconomic lines was regarded as promoting the ‘national good’.
- A similar point can be made relative to a local lines distribution area.

It is well recognised that where districts include a large rural area towns people benefit when the rural area is doing well financially and the reverse is true when they are not. So, while there may be some cross-subsidisation between urban and rural people connected to the same electricity lines network, urban people can and do receive pay back in other ways. For example, where local body rating policy is based on capital value, rural people pay considerably higher rates than most urban people do which results in a reverse flow of cross-subsidisation. Also, businesses in towns, servicing rural areas experience increased turn-over in a healthy rural economy which helps to keep community prices down for urban people as well.

- The extent of cross-subsidisation that actually occurs is uncertain. Ministry of Economic Development (MED) estimates are largely based on the number of connections to rural consumers under the earlier subsidised installation funding system. The conclusion is that around 16,000 customers New Zealand-wide are receiving line function services by electricity distribution lines, which at the time of installation were identified as ‘uneconomic’.
- It is paradoxical, therefore that under compliance rules which require line network companies to value network assets over time, and assess whether any segment of the network meets the criterion to be deemed uneconomic, MED reports not one of the 28 line companies in New Zealand has made any economic valuation adjustments. It follows from valuation requirements that currently less than 1% of the value of each company’s network assets can be formally described as uneconomic.

This would suggest that currently the number of consumers serviced by uneconomic lines could be actually quite small.

- The recently released Government Policy statement on relativity of changes in line charges to urban and rural consumers (see Ibid, page 4) is based on the

assumption that there will be a degree of cross-subsidisation of line charges to rural consumers by consumers who live in an urban area.

Waitaki Power Trust is confident that cross-subsidisation is only an issue for lines network companies which

- are fully or partially publicly listed on the stock exchange;
  - primarily seek a commercial rate of return on their assets; or
  - have either a majority or all shares in the company held by a local authority.
- One hundred percent Consumer Trust owned companies have, and we consider will continue to use, normal price averaging across the network because Company Directors and management are sensitive to consumer needs and the concern that would be generated if there was line charge differentials within the same category of consumers connected to the network.

Additionally, for networks, such as Network Waitaki Limited, the extent of cross-subsidisation is unclear.

The development of new pumped irrigation schemes has reduced the seasonality factor typically associated with electricity consumption, almost to zero. Hence, the Company does benefit financially from increased use of electricity during the summer by rural consumers.

- 5.3 The conclusion that Waitaki Power Trust has drawn is that the weight attributed to the cross-subsidisation argument has been significantly over-estimated.

Having provided cogent reasons for that decision Trustees reiterate the recommendations that:

- (a) Continuance of obligation to maintain line function services with no expiry date be adopted as the preferred option;
- (b) Sub-section (6) of Section 62 of the Act be repealed; and
- (c) Section 62 of the Act be amended to address the problem of uncertainty of supply for all consumers in rural areas with the exception of circumstances presently identified by subsections (2) and (3) of Section 62 of the Act.

## 6. **SUMMARY**

- 6.1 Waitaki Power Trust has considered the options identified to ensure continuance of electricity supply after 2013 against the background information available to Trustees, including personal experience.

6.2 The consensus is that Trustees consider that

- option (a) relating to the legal obligation electricity lines companies have to maintain lines service functions needs to be independent of line-times and the basis for amendments to Section 62 to generalise line companies legal obligation to maintain line function services to all consumers except under the circumstances identified by Section 62 where written agreements or individual contracts are in place or other clearly specified matters permit the cessation of line service functions for a period of time.

6.3 Trustees further consider that while there may be a grain of truth in the cross subsidisation argument, it is not sufficient to warrant rejection of option (a). Indeed, when the bigger picture is used as the point of comparison, the greater redistribution of wealth within a community may be from rural to urban areas.

6.4 Accordingly, Waitaki Power Trust urges that decision makers give due regard to the points made by this submission.

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