

Electricity (Continuance of Supply) Amendment Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Electricity (Continuance of Supply) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Electricity (Continuance of Supply) Amendment Bill alters the continuance of supply provisions in the Electricity Act 1992, which are due to expire in 2013, to place a continuing obligation on electricity distributors to supply all places supplied as at 1 April 1993, using either line function services or electricity supplied from an alternative source.

This commentary covers the key amendments we recommend to the bill. The bill has been restructured into two parts, to accommodate the amendment to the Commerce Act 1986. For that reason clauses 3 to 5 appear as deleted. These clauses have been reproduced in the new draft with amendments. These amendments are covered in this commentary and for clarity the clause and section where they appear in the new draft of the bill are given.

This commentary does not cover technical or clarifying amendments.

Point of supply

We recommend amending clause 4, inserting new section 62, by redrafting the obligation to maintain line function services so that it would apply to a “place” supplied rather than to a “point of supply”. While the latter is a term defined in the Electricity Act, its use in the context of the obligation to supply electricity could have unintended consequences, such as requiring companies to maintain lines they do not own in order to meet the obligation, and could thus widen the scope of the current obligation

rather than merely continuing it. This would be contrary to the policy intent of the bill, which is simply to maintain the current obligation.

Consent to be given by the landowner

We recommend amending clause 4, new section 62(3)(a), so that consent to cessation of supply must be given by the landowner of a property, or, if the owner is not the electricity consumer, the landowner and consumer, rather than by every consumer who would be affected. As a decision to cease supply could affect the value of a property, we do not consider it appropriate for such a decision to be made by just the consumer, who may be a short-term tenant.

The Minister's ability to agree to cessation of supply as a final point of recourse remains unchanged.

Retailer and landowner to be informed

We recommend amending clause 4, new section 62B, so that, with any proposal to supply electricity from an alternative source, a lines company should give notice to relevant electricity retailers, as well as to affected consumers and the public, and should make reasonable endeavours to notify the landowner where the landowner is not the consumer. This would ensure that all relevant parties are kept informed of such a change in supply arrangements, at least to the extent reasonably possible in the case of absentee landowners.

Consequential amendment to Commerce Act

We recommend inserting a new Part 2 amending the Commerce Act 1986 to ensure the bill can fulfil its policy intention, which is to regulate supply of electricity from an alternative source within the same framework as supply by lines. The amendment would widen the definition of "electricity lines services" in Part 4 of the Commerce Act to include the supply of electricity from an alternative source.

If supply from an alternative source were not a regulated activity under the Commerce Act, it would have to be charged separately only to the recipients of that supply, who are likely to be predominantly in remote rural areas. This would be likely to conflict with Government policy that the prices charged to rural users be kept in line with those charged to urban users. It could also mean that lines companies were less likely to take up the option of fulfilling their obligation through supply from an alternative source. By providing for the costs of supply from an alternative source to be included by the Commerce Commission in the regulated revenue of lines companies, the proposed amendment would enable lines companies to spread these costs across all users of their services. This outcome would accord with the Government Policy Statement on Electricity Governance.

The proposed amendment would also have the effect of making supply from an alternative source subject to the information disclosure regulations of the Commerce Act. We consider this to be a desirable outcome.

Other issues considered by the committee

Funding of ongoing obligation to supply

The bill raises significant issues about the economics of supplying electricity to remote, rural areas.

Concern has been expressed by some submitters that the burden of continuing to fund maintenance of remote lines is too great on networks with a large proportion of uneconomic lines servicing rural areas, and will result in significant price increases for urban customers within such networks. Such issues are particularly relevant in areas where a large proportion of the lines were originally constructed using subsidies through the Rural Electrical Reticulation Council, funded from a levy on all electrical supply authorities.

Currently, lines companies spread the costs of supply across their networks in order to keep the prices charged to rural users in line with those charged to urban users. The consumers supplied by uneconomic lines effectively receive a cross-subsidy from other consumers on that particular network. Unfortunately, this produces an uneven result between lines companies. For example, Marlborough Lines estimates that 34 percent of the company's lines supply electricity to 10 percent of its consumers but contribute only 6 percent of its total line charge revenue.

We note that the issue of a national subsidy was raised during consultation on the policy underlying the bill. The main factor against an across-the-board subsidy is the high cost of administering a scheme.

Labour members are particularly concerned about the potential for low-income consumers in towns effectively subsidising the cost of supplying electricity for holiday homes in remote locations.

Relationship with Electricity Industry Reform Act 1998

We considered whether to clarify that supply from an alternative source does not count as connected generation for the purposes of the Electricity Industry Reform Act, which provides for the vertical separation of lines companies from retail and generation activities. We do not consider an amendment necessary as the Act specifically exempts generation that is not connected either directly or indirectly to the national grid.

The Labour members consider that a relatively minor amendment would clarify the issue of dual supply, and recommend the Minister consider introducing a Supplementary Order Paper during the Committee stage of the bill to remove the reference to a "trial or transition" in proposed new section 62A(3).

Obligation in relation to vacant property

We also considered whether the obligation to supply a property should cease if electricity has not been supplied for 12 months or more, as reconnection could be expensive for a lines company if a property had been disconnected for some time. We consider that the bill provides adequately for such a situation. Section 62(4) provides that

a lines company's obligation ends if the landowner agrees, so we would expect a lines company to first seek to negotiate with the landowner to end the obligation to supply. If agreement could not be reached, the lines company could apply to the Minister to end the obligation. The Minister would need to make a decision on the particular facts of the case.

Appendix

Committee process

The Electricity (Continuance of Supply) Amendment Bill was referred to the Commerce Committee of the 48th Parliament on 23 September 2008, and the committee called for submissions. The bill was reinstated in the 49th Parliament on 9 December 2008. We called again for submissions, with a closing date of 5 February 2009. We received and considered 17 submissions from interested groups and individuals. We heard seven submissions, and received advice from the Ministry of Economic Development.

Committee membership

Hon Lianne Dalziel (Chairperson)

John Boscawen

Charles Chauvel

Clare Curran

Jo Goodhew (to 24 June 2009)

Te Ururoa Flavell

Melissa Lee

Peseta Sam Lotu-Iiga

Katrina Shanks

Jonathan Young (from 24 June 2009)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Gerry Brownlee

Electricity (Continuance of Supply) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electricity (Continuance of Supply) Amendment Act **2008**.

2 Commencement

This Act comes into force on the date that is 6 months after the date on which it receives the Royal assent.

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3 Principal Act amended

This Act amends the Electricity Act 1992.

4 New sections 62 to 62B substituted

Section 62 is repealed and the following sections are substituted:

62 Continuance of supply obligation

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(1) ~~The purpose of this section is to ensure that line function services continue to be supplied to old points of supply unless or until electricity is supplied to them by alternative means.~~

(2) ~~In this section and **sections 62A and 62B**, unless the context otherwise requires,—~~

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~~**old point of supply—**~~

(a) ~~means a point of supply to which line function services were being supplied on 1 April 1993 by a person or body who was required, immediately before that date, to be licensed under section 20 of the Electricity Act 1968; and~~

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(b) ~~includes a point of supply that has at any time since 1 April 1993 replaced a point of supply referred to in **paragraph (a)** and to which line function services are being supplied~~

~~**supplying line function services** includes operating works used to supply line function services.~~

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(3) ~~A person who supplies line function services to an old point of supply on the date this subsection comes into force, or who was required to do so immediately before that date, must either—~~

(a) ~~continue to supply line function services to that old point of supply; or~~

(b) ~~supply electricity to that old point of supply by alternative means, after going through the process in **section 62B**.~~

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(4) ~~A person stops being obliged under **subsection (3)** to supply line function services or electricity if—~~

(a) ~~the Minister, or every consumer who would be affected by the cessation of supply, consents to the cessation of supply; or~~

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- (b) the obligation is assigned to, or assumed by, any person who is the successor in business to that person, in which case that successor becomes subject to the obligation instead.
- (5) The obligation to supply in **subsection (3)** does not apply if—
- (a) the supplier is entitled to cease supply because the consumer has failed to pay any money due on account for—
- (i) the supply of services by the supplier; or
- (ii) the supply of electricity by a different supplier; or
- (b) the supply needs to cease for reasons of safety or in order to carry out maintenance or upgrading work; or
- (c) the supply ceases as a result of circumstances beyond the control of the supplier (such as fire, earthquake, or inevitable accident).
- (6) If the supply of line function services or electricity ceases for any of the reasons in **subsection (5)**, the cessation may continue only for as long as the reason for cessation continues.
- (7) The obligation in **subsection (3)** is subject to anything to the contrary in this Act, or in any regulations made under section 169, or in any written agreement (whether made before or after 1 April 1993) between the supplier and a consumer who is or would, but for the agreement, be affected by the obligation.
- (8) Unless **subsections (5) or (7)** apply, every person who is subject to the obligation in **subsection (3)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000, and to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues, who, in contravention of **subsection (3)**,—
- (a) knowingly ceases to supply line function services or electricity (as the case may be) to an old point of supply; or
- (b) having been made aware that supply to an old point of supply has ceased, fails to resume supply as soon as is reasonable in the circumstances.
- 62A How certain enactments apply to persons subject to obligation in section 62(3)**
- (1) Any person who supplies either or both of line function services or electricity to an old point of supply under **section 62(3)** must be treated as if the person supplied those line function services or that electricity (as the case may be) to another person for the purpose of the definitions of electricity distributor and electricity retailer in section 2(1), and—
- (a) all of the obligations in this Act and any regulations made under it that apply to electricity distributors apply to any person who supplies line function services accordingly; and

- (b) all of the obligations in this Act and any regulations made under it (other than regulations made under section 172B (which are about low fixed charge tariff options)) that apply to electricity retailers apply to any person who supplies electricity accordingly.
- (2) A supplier who fulfils (or proposes to fulfil) the obligation in **section 62(3)** by supplying electricity by alternative means does not breach any of the provisions of the Electricity Industry Reform Act 1998 by supplying both line function services and electricity to the same point of supply, as long as the dual supply covers only the period of a trial or transition, and is temporary in nature. 5
- 62B Proposals to supply electricity by alternative means** 10
- (1) A supplier who proposes to fulfil the obligation in **section 62(3)** by supplying electricity to an old point of supply by alternative means must first give notice of the proposal to each affected consumer and to the public.
- (2) The notice to each affected consumer must— 15
- (a) outline the proposal; and
- (b) describe how, under the proposal, the consumer's reasonable electricity needs will be met; and
- (c) give the consumer a reasonable period in which to comment on the proposal.
- (3) The notice to the public must be by way of a notice published at least 6 months before the proposal takes effect— 20
- (a) in a newspaper that is published at least weekly and that circulates in the district to which the proposal relates; and
- (b) that outlines the proposal and specifies the time within which any person may comment on the proposal. 25
- (4) The supplier must have regard to any comments received in response to the proposal.
- 5 Electricity governance regulations**
- Section 172D(1) is amended by inserting the following paragraph after paragraph (9): 30
- (9A) requiring any person who fulfils the obligation in **section 62(3)** by providing electricity by alternative means to use a specified pricing methodology in setting the price for electricity supplied by alternative means:

Part 1

Amendments to Electricity Act 1992

3 Principal Act amended

This Part amends the Electricity Act 1992.

4 New sections 62 to 62B substituted

Section 62 is repealed and the following sections are substituted:

62 Continuance of supply obligation

- (1) This section applies to an electricity distributor who, in relation to any place,—
- (a) immediately before this section (as inserted by the **Electricity (Continuance of Supply) Amendment Act 2009**) comes into force, is prohibited from ceasing to supply line function services to the place without the prior consent of either the Minister or every consumer who would be affected by the cessation of those services; or 5
 - (b) is the successor in business to an electricity distributor referred to in **paragraph (a)**. 10
- (2) An electricity distributor to whom this section applies must, in relation to the place referred to in **subsection (1)**, either—
- (a) supply line function services to the place so that the place is within the distributor's local network; or 15
 - (b) supply the place with electricity from an alternative source.
- (3) An electricity distributor's obligation under **subsection (2)** comes to an end with respect to a place if—
- (a) the landowner and (if the landowner is not the consumer) the consumer, or the Minister, agree in writing to the obligation coming to an end; or 20
 - (b) the obligation is assigned to, or assumed by, a successor in business to the distributor.
- (4) The obligation in **subsection (2)** is subject to anything to the contrary in this Act, any regulations made under section 169, or any written agreement between the distributor and a landowner who is, or would be but for the agreement, affected by the obligation. 25
- (5) The obligation in **subsection (2)** is suspended in any of the following circumstances:
- (a) the supply of line function services or electricity from an alternative source has ceased as a result of circumstances beyond the control of the distributor (such as fire, earthquake, or inevitable accident): 30
 - (b) the supply of line function services or electricity from an alternative source needs to cease for reasons of safety or in order to carry out maintenance or upgrading work:
 - (c) the electricity distributor, or an electricity retailer, is entitled to cease supply (whether of line function services or electricity) because the consumer has failed to pay money due on account to the distributor or retailer. 35

- (6) If the supply of line function services or electricity from an alternative source ceases in any of the circumstances in **subsection (5)**, the cessation may continue only for as long as the reason for cessation continues.
- (7) An electricity distributor who is obliged under **subsection (2)** to supply line function services or electricity from an alternative source to a place commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000 and to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues, if the distributor,— 5
- (a) having been made aware that supply to the place has ceased in the circumstance described in **subsection (5)(a)**, fails to resume supply as soon as is reasonable in the circumstances; or 10
- (b) knowingly ceases to supply line function services or electricity (as the case may be) to the place, other than in circumstances described in **subsection (5)(b) or (c)**.
- (8) In this section and **sections 62A and 62B**,— 15
- landowner**, in relation to a place, means a person who owns the lines or electrical installations at the place, being lines or electrical installations to which an electricity distributor's lines are connected
- local network** has the same meaning as in section 3(1) of the Electricity Industry Reform Act 1998 20
- supplying electricity from an alternative source** means supplying a place with electricity from a source other than an electricity distributor's local network, and includes, if necessary, supplying the associated line function services to deliver that electricity.
- 62A Application of certain enactments to electricity distributors subject to obligation in section 62(2)** 25
- (1) The obligations in this Act and any regulations made under it (other than regulations referred to in **subsection (2)**) that apply to electricity retailers apply to an electricity distributor in connection with any supply by the distributor of electricity from an alternative source, if that supply is in fulfilment of the obligation in **section 62(2)**. 30
- (2) Regulations made under section 172B (which are about low fixed charge tariff options) do not apply to an electricity distributor who supplies electricity from an alternative source.
- (3) If an electricity distributor, during a trial or transition in the course of complying with **section 62(2)**, both supplies a place with line function services that connect the place to a local network and, at the same time, supplies the place with electricity from an alternative source, the distributor is not to be treated as thereby being involved in generation for the purposes of the Electricity Industry Reform Act 1998. 35 40

62B Proposal to supply electricity from alternative source

- (1) An electricity distributor to whom **section 62** applies, and who proposes to comply with **section 62(2)** by supplying a place with electricity from an alternative source, must give at least 6 months' notice of the proposal to—
- (a) every consumer affected by the proposal; and 5
 - (b) if the landowner is not the consumer, the landowner; and
 - (c) every electricity retailer who supplies electricity to the place; and
 - (d) the public in the district in which the place is situated.
- (2) The notice to each affected consumer and any landowner must—
- (a) outline the proposal; and 10
 - (b) describe how, under the proposal, the consumer's reasonable electricity needs will be met; and
 - (c) give the consumer and any landowner a reasonable period in which to comment on the proposal.
- (3) If the distributor is unable to locate a landowner of a place after taking reasonable steps to do so, the distributor is not required to give notice to the landowner under **subsection (1)**. 15
- (4) The notice to the public must be by way of a notice—
- (a) published in a newspaper that is published at least weekly and that circulates in the district to which the proposal relates; and 20
 - (b) that outlines the proposal and specifies the time within which any person may comment on it.
- (5) The supplier must have regard to any comments received in response to the proposal.

5 Electricity governance regulations 25

Section 172D(1) is amended by inserting the following paragraph after paragraph (9):

- (9A) requiring an electricity distributor who complies with the obligation in **section 62(2)** by supplying electricity from an alternative source to use a specified pricing methodology in setting the price for that electricity: 30

Part 2**Amendment to Commerce Act 1986****6 Principal Act amended**

This Part amends the Commerce Act 1986.

7 Meaning of electricity lines services

Section 54C is amended by inserting the following subsection after subsection (2):

(2A) However, despite anything in subsection (2), the supply of electricity from an alternative source in order to comply with **section 62(2)** of the Electricity Act 1992 is to be treated as a supply of electricity lines services.

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Legislative history

9 September 2008
23 September 2008

Introduction (Bill 296–1)
First reading and referral to Commerce Committee