

House of Representatives
Supplementary Order Paper

Wednesday, 5 May 2010

Electricity Industry Bill

Proposed amendments

Hon Gerry Brownlee, in Committee, to move the following amendments:

Heading above clause 123 and clause 123

To omit this heading and this clause (lines 2 to 15 on page 72) and substitute the following heading and clause:

State-owned enterprise asset reconfiguration: General provisions

123 Interpretation for subpart

In this subpart, unless the context otherwise requires,—

board means the board of directors of a State generator

consent authority means the consent authority under the Resource Management Act 1991

Genesis means Genesis Power Limited, and includes any subsidiary of that company

Meridian means Meridian Energy Limited, and includes any subsidiary of that company

Mighty River means Mighty River Power Limited, and includes any subsidiary of that company

permit means a water permit or a discharge permit granted, or deemed to be granted, under the Resource Management Act 1991

shareholding Ministers means the Minister of Finance and the Minister for State Owned Enterprises

State generator means each of Genesis, Meridian, and Mighty River

Waitaki Power Scheme means the activities allowed by the resource consents numbered from CRC905301.1 to

CRC905366.1 relating to the generation of electricity within the Waitaki River system.

Compare: 1998 No 88 s 97

New clauses 124A to 124H and new heading

To insert the following clauses and heading after *clause 124* (after line 6 on page 74):

*Asset reconfiguration provisions in respect of Waitaki
Power Scheme*

124A Purposes of sections 124B to 124H

The purposes of **sections 124B to 124H** are—

- (a) to facilitate the transfer to Genesis of the permits in the Waitaki Power Scheme relating to the Tekapo A and Tekapo B generating stations; and
- (b) to maintain current effects on the environment and rights and obligations in respect of the Waitaki Power Scheme, despite Meridian no longer controlling the entire Waitaki Power Scheme.

124B Direction to enter into contracts about Waitaki Power Scheme

The shareholding Ministers may include, in a direction given under **section 124(2)(b)**, 1 or more of the following for the purposes set out in **section 124A**:

- (a) a direction requiring Meridian and Genesis to enter into 1 or more contracts with each other (such as water management agreements);
- (b) a direction specifying some or all of the terms and conditions of any contract required under this section.

124C Process for Meridian and Genesis to recommend changes to permit conditions in respect of Waitaki Power Scheme

- (1) Meridian and Genesis must, in consultation with the consent authority, identify, and agree if possible, any recommended changes to the conditions of the permits that are, in the opinion of Meridian and Genesis, necessary to meet the purposes set out in **section 124A**.
- (2) The Minister, by notice to Meridian and Genesis, may specify a date by which the recommended changes must be provided to the Minister.
- (3) Genesis and Meridian may provide separate or joint recommendations.
- (4) Meridian and Genesis must provide the recommended changes to the Minister by the date specified by the Minister.

- (5) The Minister must, as soon as practicable after receiving any recommended changes, notify the consent authority of the recommended changes, and specify a date by which the consent authority may make representations to the Minister about whether those changes would maintain the current effects on the environment in respect of the Waitaki Power Scheme or any other matter.

124D Minister may change permit conditions by order

- (1) The Minister may, after consultation with the Minister for the Environment, make an order changing 1 or more of the conditions of a permit.
- (2) The Minister may make an order only if the Minister is satisfied—
 - (a) that the changes to the conditions are needed only because of the transfer of the Tekapo A and Tekapo B generating stations; and
 - (b) that it is not reasonably practicable to achieve the purposes set out in **section 124A** by means of a direction requiring Meridian and Genesis to enter into 1 or more contracts with each other; and
 - (c) that changes to the conditions achieve the purpose set out in **section 124A(b)** in all material respects; and
 - (d) that either or both of Meridian and Genesis have recommended changes to the conditions after consultation with the consent authority; and
 - (e) that the Minister has considered any representations made by the consent authority by the date specified under **section 124C(5)**.
- (3) An order under this section—
 - (a) must be notified in the *Gazette*, and publicised by the Minister and the consent authority, as soon as practicable after it is made; and
 - (b) takes effect on a date specified in the order (which may be at or before the date that the permits are transferred to Genesis under the Resource Management Act 1991 but may not be before the date of the notice in the *Gazette*); and
 - (c) takes effect as if it were a change to a condition that had been made by the consent authority; and
 - (d) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but not for the purposes of the Acts and Regulations Publication Act 1989.
- (4) The Minister must present a copy of the order to the House of Representatives in accordance with section 4 of the Regulations (Disallowance) Act 1989.

124E Existing agreements with other parties in respect of Waitaki Power Scheme

- (1) This section and **section 124F** apply to the agreements listed in **Schedule 4A** (the **existing agreements**).
- (2) No existing agreement is terminated only because Meridian no longer controls the entire Waitaki Power Scheme.
- (3) However, a party to an existing agreement (other than Meridian or Genesis) may, by notice in writing to the Minister, Meridian, and Genesis, terminate the party's involvement in the agreement in accordance with **section 124F(2)(c) or (8)**.

124F Reconfiguration of existing agreements

- (1) The shareholding Ministers may include, in a direction given under **section 124(2)(b)**, 1 or more of the following:
 - (a) a direction requiring Meridian and Genesis to negotiate the retention or transfer, or the sharing or splitting (as the case may be), of the existing agreements in a way that meets the purposes set out in **section 124A**;
 - (b) a direction requiring either or both of Meridian and Genesis to offer to any other parties that have rights or obligations under the existing agreements (**third parties**) any replacement contracts that are necessary to meet the purposes set out in **section 124A**;
 - (c) dates by which things must be completed, for example,—
 - (i) dates by which replacement contracts must be offered;
 - (ii) dates by which choices must be made under **subsection (2) or (8)**.
- (2) A third party that has rights or obligations under an existing agreement may choose, by the date specified under **subsection (1)(c)**,—
 - (a) to enter into any replacement contract that is offered; or
 - (b) for the existing agreement to continue in accordance with a direction to be given under **subsection (4)**; or
 - (c) to terminate the existing agreement.
- (3) If a third party chooses to enter into any replacement contract that is offered, the existing agreement ceases to have effect to the extent that it is replaced by the replacement contract.
- (4) If a replacement contract has not been entered into by the date specified in a direction under **subsection (1)(c)**, the shareholding Ministers may give to the boards of Meridian and Genesis a further direction specifying—
 - (a) which existing agreements Meridian must remain a party to; and

- (b) which existing agreements Genesis must become a party to; and
 - (c) which agreements are to be shared between the generators by Genesis becoming a party to the agreements in addition to Meridian.
- (5) If a direction is given under **subsection (4)(a)** in respect of an existing agreement, Meridian and the third parties to the agreement remain subject to the agreement as if this Act had not been passed.
 - (6) If a direction is given under **subsection (4)(b)** in respect of an existing agreement, all rights, liabilities, and entitlements of Meridian under the agreement become rights, liabilities, and entitlements of Genesis.
 - (7) If a direction is given under **subsection (4)(c)** in respect of an existing agreement, all rights, liabilities, and entitlements of Meridian under the agreement become joint and several rights, liabilities, and entitlements of Meridian and Genesis.
 - (8) However, a party to an existing agreement in respect of which a direction is given under **subsection (4)** (other than Meridian or Genesis) may terminate the party's involvement in the agreement, by notice in writing to the Minister, Meridian, and Genesis given by the further date specified under **subsection (1)(c)**.

124G Other provisions about directions

- (1) **Section 124(3) to (9)** apply to any direction given under **section 124B or 124F(1) or (4)**.
- (2) This section, and **sections 124B and 124F**, do not limit **section 124**.

124H No application or notification requirements or rights of appeal

- (1) Sections 88 to 121 and 127 of the Resource Management Act 1991 do not apply in respect of any matters under **sections 124B to 124F**.
- (2) There are no other appeal rights in respect of any matters under **sections 124B to 124F**.

New heading above clause 125

To insert the following heading above *clause 125* (before line 7 on page 74):

Asset reconfiguration provision in respect of Whirinaki

New Schedule 4A

To insert the following schedule after *Schedule 4* (after line 16 on page 120):

Schedule 4A **s 124E**
Existing agreements in respect of Waitaki
Power Scheme

- 1 Agreement between Electricity Corporation of New Zealand Limited and Transit New Zealand, dated 26 November 1990, entitled “Agreement in relation to water rights”.
- 2 Agreement between Meridian Energy Limited and Transit New Zealand, dated April 2008, entitled “Agreement in relation to water rights”.
- 3 Agreement between Meridian Energy Limited and Her Majesty the Queen acting by and through the Director-General of Conservation, dated September 2006, entitled “Compensatory funding agreement”.
- 4 Agreement between Electricity Corporation of New Zealand Limited and the Mackenzie District Council, dated 26 November 1990, entitled “Agreement in relation to water rights”.
- 5 Agreement between Meridian Energy Limited and the Mackenzie District Council, dated January 2008, entitled “Agreement in relation to water rights”.
- 6 Agreement between Electricity Corporation of New Zealand Limited and the South Canterbury Branch of Royal Forest & Bird Protection Society of New Zealand Incorporated, dated 26 November 1990, entitled “Agreement in relation to water rights”.
- 7 Agreement between Meridian Energy Limited and Royal Forest & Bird Protection Society of New Zealand Incorporated, undated, entitled “Agreement in relation to water rights”.
- 8 Agreement between Electricity Corporation of New Zealand Limited and South Canterbury Fish and Game Council, dated

- 26 November 1990, entitled “Agreement in relation to water rights”.
- 9 Agreement between Meridian Energy Limited and Central South Island Fish and Game Council, dated 24 September 2008, entitled “Agreement in relation to water rights”.
 - 10 Agreement between Meridian Energy Limited and New Zealand Recreational Canoeing Association Incorporated and Tekapo Whitewater Trust, dated 30 September 2009, entitled “Agreement in relation to water rights”.
 - 11 Agreement between Electricity Corporation of New Zealand Limited and Lower Waitaki Irrigation Company Limited, Maerewhenua District Water Resource Company Limited and Morven Glenavy Ikawai Irrigation Company Limited, dated 26 November 1990, entitled “Agreement in relation to water rights”.
 - 12 Agreement between Electricity Corporation of New Zealand Limited and Benmore Irrigation Company Limited, dated 26 November 1990, entitled “Agreement in relation to water rights”.
 - 13 Agreement between Meridian Energy Limited and Te Rūnanga o Ngāi Tahu, dated 2 August 2000, entitled “Waitaki catchment deed of agreement”.
 - 14 Agreement between Meridian Energy Limited and Mount Cook Salmon Limited, dated 24 May 1999, entitled “Agreement to lease”.
 - 15 The Head agreement between Electricity Corporation of New Zealand Limited and—
 - (a) Her Majesty The Queen acting by and through the Minister of Conservation; and
 - (b) South Canterbury Fish and Game Council; and
 - (c) Ngai Tahu Trust Board; and
 - (d) Benmore Irrigation Company Limited; and
 - (e) The New Zealand Canoeing Association Incorporated; and
 - (f) Mackenzie District Council; and
 - (g) Lower Waitaki Irrigation Company Limited; and
 - (h) Maerewhenua District Water Resource Company Limited; and

- (i) Morven Glenavy Ikawai Irrigation Company Limited; and
 - (j) Transit New Zealand; and
 - (k) South Canterbury Branch of Royal Forest & Bird Protection Society of New Zealand Incorporated; and
 - (l) New Zealand Salmon Anglers Association Incorporated, dated 26 November 1990, entitled “Agreement to Electricity Corporation’s water rights”.
- 16 Agreement between Meridian Energy Limited and Mackenzie Irrigation Company Limited, dated 31 October 2006, entitled “Agreement in relation to the allocation of water for irrigation”.
-

Explanatory note

Clause 124(2)(b) of the Electricity Industry Bill currently entitles shareholding Ministers to direct Meridian Energy Limited (**Meridian**) to transfer Tekapo A and Tekapo B power stations to Genesis Power Limited (**Genesis**). Clause 124(2)(d) of the Bill currently also allows those Ministers to specify some or all of the terms and conditions of any of the contracts required for the transfer.

This Supplementary Order Paper makes legislative amendments in connection with the transfer to Genesis of resource consents and other agreements relating to Tekapo A and Tekapo B power stations.

Resource consents

The Government proposes that all of the consents in the Waitaki Power Scheme (**WPS**) package that relate to the operation of Tekapo A and Tekapo B will transfer to Genesis in order to allow it to operate those stations. The remainder of the WPS consents will stay with Meridian. The normal process will be followed and the consents will be transferred to Genesis using sections 136 and 137 of the Resource Management Act 1991 (**RMA**).

The difficulty is that, as the WPS consents were granted to a single consent holder, they do not anticipate 2 generators in the WPS, and it may be difficult for one party to meet some consent conditions if they do not control the entire catchment.

The parties may endeavour to deal with this problem by agreement, eg, by using a water management agreement. This Supplementary Order Paper allows the shareholding Ministers to set some or all of the terms and conditions of such an agreement between Meridian and Genesis.

However, it may be impracticable to meet some consent conditions. The proposal is that the Bill will enable the Minister of Energy and Resources, after consultation with the Minister for the Environment, to change the consent conditions by order. This process may be used in place of section 127 of the RMA in

order to meet the policy objective of minimising costs, delays, and risks, while still meeting the policy objective of maintaining current environmental outcomes and rights and obligations until the consents expire in 2025.

Agreements

Meridian has agreements with other parties in the Waitaki catchment that were originally negotiated alongside resource consents in 1991, and has agreements that relate to water use in the Waitaki River.

The proposal is that Meridian and Genesis should enter into agreements to meet the generators' obligations that are affected by the Tekapo A and Tekapo B asset reconfiguration. However, there is a risk that Meridian and Genesis could fail to reach agreement in relation to the agreements, or that the generators could reach agreement but that the other parties to the agreements may not want to enter into new agreements.

Therefore, the amendments to the Bill proposed by this Supplementary Order Paper provide that the shareholding Ministers may direct Meridian and Genesis to negotiate the retention, transfer, sharing, or splitting of the agreements between themselves and then to offer to any third parties, before a specified date, any necessary replacement agreements that maintain the rights and obligations in the existing agreements.

If this does not result in a satisfactory outcome, this Supplementary Order Paper proposes that those Ministers may direct Meridian and Genesis as to—

- which agreements are to remain with Meridian:
- which agreements are to transfer from Meridian to Genesis:
- which agreements are to be shared between the generators by Genesis becoming a party to the agreements.

The amendments enable the parties to the existing agreements (other than Meridian and Genesis) to terminate their agreements by notice to the Minister, Meridian, and Genesis.
