

22 May 2002

Bill Naik  
Commerce Commission  
PO Box 2351  
WELLINGTON

Dear Mr Naik,

## **Genesis Submission relating to the Commerce Commission's Draft Determination on the Electricity Governance Board Limited (EGBL) Application**

### **1. Introduction**

- 1.1 Genesis Power Limited (Genesis) is a generator, wholesaler and retailer of electricity. It owns and operates the following generation plants:

|                             |         |              |
|-----------------------------|---------|--------------|
| Huntly                      | 1000 MW | Gas and Coal |
| Tongariro Power Development | 360 MW  | Hydro        |
| Waikaremoana                | 142 MW  | Hydro        |
| Hau Nui Wind Farm           | 3.5 MW  | Wind         |
| Kourarau Hydro Scheme       | 0.9 MW  | Hydro        |
| Te Awamutu Cogeneration     | 54 MW   | Gas          |

- 1.2 Genesis is also New Zealand's largest electricity retailer.
- 1.3 Genesis has actively contributed to the industry process that formulated the arrangements proposed in the EGBL application.

### **2. Background**

- 2.1 The EGBL made an application to the Commerce Commission on 7 December 2001, requesting authorisation to enter into an arrangement to give effect to various provisions of a Rulebook that determine the way that the electricity industry trades electricity.
- 2.2 The Commerce Commission issued a draft determination on the EGBL's application on 26 April 2002. In its draft determination, the Commerce Commission stated that it was not completely satisfied the public benefits of the proposed arrangements would likely outweigh the competitive detriments. The Commerce Commission also stated that it was not completely satisfied that the pricing mechanisms contained in the Rulebook did not fall within the ambit of section 30.

- 2.3 Before making its final decision, the Commerce Commission has asked for further submissions on these issues.
- 2.4 Whilst it is the responsibility of the Applicant (EGBL) to address the 64 questions raised in the draft determination, Genesis would like to draw attention to a number of key areas:
- Concessions / Compromises;
  - Pro-Competitive Rule Changes;
  - Case Law Decisions; and
  - Transmission Issues

### **3. Genesis Key Observations**

#### ***Concessions / Compromises***

- 3.1 We reiterate that Genesis has already made a number of significant concessions during the EGBL reform process that led to the development of the Application.
- 3.2 We accepted the concessions because we believe that this process, involving many parties with differing commercial viewpoints, requires compromise from all involved to ensure that progress is made.

#### ***Pro-Competitive Rule Changes***

- 3.3 Genesis notes the major concern of the Commerce Commission in paragraph 452 of its draft determination. This paragraph refers to the potential for proposed desirable and pro-competitive rule changes to be voted down by existing market participants. We disagree with the weighting the Commission has placed on this for the following reasons:
- There is no evidence that the industry to date under the NZEM/MARIA/MACQS governance regimes has voted down pro-competitive rule changes. To the contrary, the major rule changes since the inception of NZEM demonstrate a track record of progress in the pursuit of efficiency:
    - Next day final pricing – prices available next day rather than a month later. Helped improve consumption and production decisions whilst maintaining a quality price discovery process.
    - Constrained on payments – eliminated the possibility of generators receiving constrained on payments where no dispatch instruction had been issued.
    - Reduction in 4-hour rule to 2-hour rule - helped improve consumption and production decisions closer to real time whilst maintaining grid security and quality.

- Real time dispatch – provided more optimal matching of supply with demand in real time, reducing need for dispatcher discretion and potential sub optimal dispatch.
- Dispatch prices – publishing a more accurate price signal, helped improve consumption and production decisions.
- If pro-competitive rule changes were to be voted down under an Industry EGB, it is most unlikely to be continual because of the checks on the EGB by government. Ultimately government can replace the Industry EGB with the Crown EGB if they are not satisfied with the performance of the EGB.

### ***Case Law Decisions***

- 3.4 We note that the original Application and the draft determination refer to a number of case law decisions. The Application highlights Decision 280 (Electricity Market Company Limited, 13 September 1996) to support its submission that the pricing mechanisms in the Rulebook do not constitute price fixing under section 30 of the Commerce Act.
- 3.5 In the draft determination, the Commerce Commission acknowledges the similarities between the pricing mechanisms in the Rulebook and the NZEM rules that were dealt with in Decision 280. However, the Commerce Commission points to a number of other cases that were decided after Decision 280, and suggests that these decisions impact on the interpretation of section 30.
- 3.6 Genesis disagrees with this suggestion, as the cases referred to by the Commerce Commission deal with different issues and arose in different contexts. Consequently, it is our opinion, that nothing in the later case decisions affects the applicability of Decision 280. We refer you to the NZEM submission for more details on this issue.

### ***Transmission Issues***

- 3.7 Another key area of contention from the Application and draft determination is transport. The crucial factor in the structure and process rules of the EGB is to ensure that both under-investment and over-investment in transmission is avoided.
- 3.8 In the past 10 years there has been no major new investment in the national grid against a backdrop of continual demand growth. The grid is being placed under increased strain, resulting in higher transmission losses and more frequent transmission constraints. Fortunately new investments in generation have been sited close to load centres, otherwise continuity of supply would have been compromised. Genesis has supported grid investment in a number of forums, including promoting upgrading the backbone of the grid from 220kV to 330kV. The 110kV system is inadequate in regions such as the Bay of Plenty as evident in system constraints.
- 3.9 Under the current industry governance arrangements the threshold for new grid investment to occur is extremely high – Transpower requires unanimous support from all those impacted. With such a high threshold it is not surprising that no new investment has occurred. There is a clear need for some

transmission investments that are in national interests and it is not realistic to ask for individual firms to fund these.

- 3.10 Under the proposed new arrangements, Part F, the threshold for a service change (i.e. new investment) is lowered from unanimous to 75% of the votes cast by transmission purchasers. In our opinion this will be sufficient to unlock the current holdout environment.
- 3.11 In paragraph 328, an Industry EGB is favoured by the Commerce Commission because a Crown EGB arrangement “may lead to a greater likelihood over-investment in the grid could occur”.
- 3.12 Conversely however, in paragraph 330, the Commerce Commission considers that the voting and appeal process of an Industry EGB “may lead to some efficient investments not proceeding”.
- 3.13 As stated under paragraph 3.3 above, Genesis believes that the concerns over the voting and appeal process under an Industry EGB can be resolved to ensure that efficient transmission investments are not out-voted. However, the potential for gold-plating of the transmission system under a Crown EGB is not as easy to address. In addition, we consider that an Industry EGB would be able to provide a more balanced assessment of potential transmission investment against the location of prospective new generation investment.
- 3.14 Consequently, we conclude that an Industry EGB would be the more effective body to ensure that optimal levels of investment in transmission are made.

#### **4. Conclusion**

- 4.1 Based on our statements above, Genesis reiterates its support for the EGBL Application, and recommends that the Commerce Commission reverses its draft determination.
- 4.2 We believe that this viewpoint will be further endorsed by the more comprehensive submission from the EGBL, which will address each of the 64 questions raised in the draft determination.
- 4.3 We are available to answer any questions the Commission may have on our submission and would like the opportunity to speak at the upcoming public conference.

Yours faithfully

Murray Jackson  
CHIEF EXECUTIVE