

22 February 2002

Mr Bill Naik
Chief Adviser
Business and Competition Branch
Commerce Commission
PO Box 2351
WELLINGTON

Dear Mr Naik

Submission – Authorisation Application for Electricity Governance Board Limited

This initial submission is in response to the authorisation application by the Electricity Governance Board Limited (EGBL) dated 6 December 2001.

In summary, while Comalco believes that the Commission has jurisdiction to consider the application, Comalco does not support this application for authorisation. Comalco naturally supports self-governance over regulation, but this is qualified by the premise that self-governance must be balanced and representative. The proposed arrangements are neither balanced nor representative.

Comalco supports the submissions being made by the Major Electricity Users' Group (MEUG) and the Consumer Coalition on Energy (CC93).

Background – Comalco

Comalco is the largest consumer of electricity in New Zealand, through the Tiwai Point aluminium smelter, near Invercargill. It purchases in excess of 5,000 GWh per annum, around 15% of total national demand. This power is supplied through two significant sets of agreements – with Meridian Energy Limited for delivered energy and indirectly with Transpower New Zealand Limited. These contractual obligations, in part, date back to 1963, and all have a current expiry date of 2022. The smelter has typically been New Zealand's largest export earning production facility, with total export sales for 2001 of about \$1.1 billion. We therefore have a major stake in the industry and want to ensure the industry as a whole is as efficient as possible.

Comalco has been an active participant in the electricity reform process since the mid-1980's, but has been frustrated by the outcomes of many of the processes and results. Our objective throughout this process has been to achieve an efficient electricity supply industry which provides electricity at least sustainable cost to all consumers, with costs properly allocated amongst consumers, and with investors receiving a fair, risk adjusted rate of return for efficient performance.

Reflecting this approach, we have worked closely with the Major Electricity Users' Group since the mid 1980's, as well as the Consumer Coalition on Energy (CC93) and its various members.

Comalco voted against the NZEM rule introduction in 1996 because it was established through a process dominated by supply-side interests, particularly generators, who were able to design the rules, governance structure and the pricing arrangements to meet their objectives.

More recently, Comalco has been directly involved through working group and committee participation in the MACQS/Grid Security Project (GSP), the New Zealand Electricity Market (NZEM), and the Electricity Governance Establishment Project (EGEP). We believe that the MACQS arrangement has been the only arrangement that has notably advanced the interests of NZ consumers.

Comalco supported the second authorisation application by Transpower for MACQS governance arrangements and is a member of the MACQS arrangement.

If these proposed EGB arrangements are authorised and then become operational, Comalco will not wish to be part of those arrangements. Comalco will not consider itself to be in any way bound by an authorised, operational EGB arrangement.

The Application

Jurisdiction

Comalco believes that the Commission has jurisdiction to consider the application. Due especially to the intent to bind all electricity industry participants, and specific cost allocation and fee provisions, it appears the rules of the proposed arrangement represent a restricted trade practice.

Counterfactual

While the counterfactual proposed by the Applicant may possibly be viable, Comalco does not believe it to be the most likely counterfactual. The regulated counterfactual is too difficult to reasonably quantify, and is open to significant subjectivity. For example, a regulated rule book arrangement, if different to the existing arrangements by taking into account some (or all) of the consumer requirements raised throughout the EGEC process, then it is very unlikely the current application would have a net public benefit over that counterfactual. However, another variation of the regulatory counterfactual may be the proposed EGB rulebook is used as the regulated rulebook, with the existing supply side governance arrangements removed and replaced by a government body with executive powers. This wide variation in the regulatory counterfactual demonstrates that is very subjective.

A counterfactual that is less open to subjectivity and variation, is the continuation of the three existing arrangements, with MACQS operational. This is the counterfactual that Comalco believes the Commission should adopt when considering the EGBL application.

This more appropriate counterfactual is very close to the status quo, except for the additional of an operational MACQS arrangement.

Net Public Benefit

If the Applicant's counterfactual is considered, it is a very difficult assessment to establish whether there are net benefits under the proposed rulebook. The question is whether consumer interests are better represented by a generator dominated governance arrangement or by a regulator. Due to consumer experiences with the existing NZEM arrangement it is conceivable that consumers may be better served under a regulated arrangement.

As the required detail of any regulatory EGB is very much unknown, it is very difficult to make an assessment of net benefits. We however believe that there is the real possibility that a regulatory EGB may result in a net public benefit.

If the counterfactual we have proposed were adopted, we believe the proposed EGB arrangements would not result in a net public benefit. The proposed EGB rulebook substantially reduces the consumer governance for

common quality. There is a major dilution from the MACQS arrangement to Part C of the proposed rulebook. Also, the NZEM arrangement is designed to become a mandatory arrangement under the proposed rulebook. This restricts the ability of parties to by-pass the Trading arrangements, which are unsatisfactory. Therefore, the proposed arrangement appears to be less beneficial to consumers.

The EGEC project team, as part of the first consultation on the rulebook, outlined the likely costs of the new arrangement versus the cost of the existing arrangements with MACQS operational. Unfortunately, the new arrangements are planned to cost more than the existing arrangements. This in part defeats the whole purpose to the EGEC process.

As we believe the consumer benefits will be less under the proposed rulebook, and clearly the costs are higher, there is no net benefit, but a net cost.

Conclusion

We conclude that:

- it is unlikely that the proposed arrangement will result in a net benefit, over and above those that may be realised under the applicants counterfactual argument, and
- the proposed arrangement will not result in a net benefit, over and above those that may be realised under the more appropriate counterfactual outlined in our submission, and
- Commerce Commission has jurisdiction, and
- the application should be declined.

We look forward to discussing with you in further detail this submission and the EGBL application.

Yours sincerely

Jason Franklin
Power Manager