

22 February 2002

Commerce Commission
Landcorp House
101 Lambton Quay
WELLINGTON

APPLICATION FOR AUTHORISATION OF PROPOSED ARRANGEMENT – ELECTRICITY GOVERNANCE BOARD LIMITED

Thank you for your letter dated 14 December 2001 inviting us to make submissions on the application for authorisation of the proposed arrangement submitted by Electricity Governance Board Limited (the **Application**).

1. Mighty River Power as an interested party

Mighty River Power Limited is a state-owned enterprise, formed in 1999, to compete in the then emerging electricity market. We have taken a lead role in the industry as both a generator and retailer (through the *Mercury Energy* and *First Electric* brands) of electricity. We are involved in on and off market generation. For the year ended 30 June 2001 we generated over 4000 gigawatt hours of electricity resulting in operating revenue of 646 million dollars. We service 284,000 retail electricity customers.

As a user of the wholesale market, and as a major industry participant generally, we have an interest in the outcome of the Application.

We are also interested in the Application as we made submissions on the proposed arrangements to the Electricity Governance Establishment Project and were directly represented on the committee responsible for preparing the rules of the new arrangement. To this extent we are not an impartial commentator.

2. Mighty River Power support

For the reasons set out briefly below, Mighty River Power supports the Application.

3. Benefit to the public determined by Government Policy Statement

You indicated in your letter that the Commerce Commission may only grant the authorisation sought if it is satisfied that in circumstances where it considered that the arrangements set out in the Application lessen competition, the benefit to the public outweighs the detriment from that lessening of competition.

It is our view that the Government Policy Statement released on 7 December 2000 and promulgated as economic policy to which the Commerce Commission must have regard pursuant to section 26 of the Act (the **Policy Statement**) forms the criteria against which the reforms will be measured and, as such, must be premised on the basis that a benefit to the public will result from implementation of its objectives.

It is our view that the arrangements set out in the Application substantially achieve the requirements of the Policy Statement and accordingly must confer a net benefit on the public.

4. **Benefits to the public relative to counterfactual**

Notwithstanding our view that the arrangements set out in the Application substantially achieve the objectives of the Policy Statement and are therefore of net public benefit, we are also of the view that the proposed arrangement confers a net benefit relative to the form of regulatory alternative envisaged by the Electricity Amendment Act 2001. Section 32.1 of the Application highlights a number of these public benefits and we endorse them and add the following comments:

- (a) The industry is more likely to make efficient decisions and rules:

We believe as a general principle that it is appropriate that the parties bearing the risks under the new arrangement should, as much as possible, be the parties who make governance decisions.

- (b) Competitive pressure remains:

Although it is not clear that the counterfactual would mandate that a particular service provider be utilised by all industry participants, we believe that the arrangements proposed in the Application preserve competitive pressure.

- (c) Participants have incentives to comply:

We have invested significant time and money into contributing to the new arrangements. As a result we wish to ensure that the regime is a success in all aspects.

- (d) Service provider contracts are to be contestable:

As noted above, the shape of the regulatory counterfactual is not clear but, in our view, all service provider contracts should be contestable in due course. As a first step towards that contestability framework, we support the separation of system operation from asset/grid ownership as the most practicable method for ensuring appropriate contestability in due course.

- (e) Absence of investor of last resort:

As noted above, we believe that it is appropriate that the parties bearing the risks under the new arrangement should, as much as possible, be the parties who make decisions, including on matters of new investment.

5. **Mandatory regime of benefit to the public**

The Policy Statement requires that:

[c]ompliance with the rules ... be compulsory for generators, distributors, retailers, directly connected end-users and Transpower, to the extent that they are applicable to these parties, and to the extent necessary to give effect to Government policy in [the] Government Policy Statement.

In order to ensure compliance with the rules of the proposed arrangement, all industry participants will need to be party to the rules. We do not believe that it is in the interests of the industry as a whole, nor in the interests of customers of non-members, to exclude non-members. We believe that the proposed economic incentive towards membership (whereby non-members are charged a premium against products and services supplied by members) is an efficient means of achieving the requirements of the Policy Statement while retaining the benefits and efficiencies of a voluntary regime.

For this reason we believe that the incentive towards membership (which the applicant notes may be considered as a contract, arrangement or understanding within the scope of section 30 of the Act) confers a net benefit on the public.

We hope that these views have been of assistance. Please feel free to contact Doug Heffernan, Chief Executive or Bruce Waters, Legal Counsel and Corporate Affairs if you wish to discuss any matter raised in this letter in further detail.

Yours faithfully

Bruce Waters
LEGAL COUNSEL & CORPORATE AFFAIRS