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COMMERCE COMMISSION

Decision No. 528

Decision under section 81(5) of the Electricity Industry Reform Act 1998 (“the EIR Act”), to vary Decision 503, a Determination pursuant to the EIR Act in the matter of an application for exemption of an involvement in an electricity lines business and an electricity supply business from the application of the EIR Act by:

EASTLAND NETWORKS LIMITED

The Commission: Donal Curtin

Summary of Application: In Decision 503, the Commission, pursuant to section 81 of the EIR Act, exempted Eastland Networks Limited from the application of section 17 of the EIR Act in relation to a prohibited cross-involvement in an electricity supply and an electricity lines business. Eastland Networks Limited has applied for the expiry date for the exemption to be extended.

Decision: Pursuant to section 81(5) of the EIR Act, the Commission has decided to vary the exemption to extend the expiry date until the earlier of midnight on 16 July 2005 or the date at which the Electricity and Gas Industries Act comes into force.

Date of Decision: 16 July 2004.

Date of Exemption: The variation to the exemption takes effect from 16 July 2004, which will also be the date of the Notice of Exemption published in the *Gazette*.

INTRODUCTION

1. On 17 July 2003, the Commission issued Decision 503, exempting Eastland Networks Limited (“ENL”) from the application of section 17 of the EIR Act in relation to a prohibited cross-involvement in an electricity lines business and an electricity supply business.
2. The exemption was subject to the following terms and conditions:
 - (1) Eastland Networks Limited will continue to use all reasonable endeavours to cease their involvement in the Waihi Hydro Scheme by securing the prompt sale of the Waihi Hydro Scheme.
 - (2) Eastland Networks Limited will provide the Commerce Commission with monthly written reports beginning one month after the date of the decision on the progress it is making to achieve compliance with (1) above.
 - (3) The exemption expires at the earlier of midnight on (17 July 2004) or the date at which the proposed legislative changes with respect to the increase in distributed generation from 5 megawatts to 25 megawatts permitted under s 5(2)(e)(i) of the Electricity Industry Reform Act 1998 announced by the Minister of Energy come into force, unless any variation or earlier revocation in terms of s 81(5) occurs.
3. The exemption also noted that the Commission may vary or revoke the exemption in accordance with section 81(5) of the EIR Act.
4. On 9 July 2004, ENL wrote to the Commission requesting an extension to the expiry date in the Notice of Exemption, on the basis that the Electricity and Gas Industries Bill (“the Bill”), which proposes to make the legislative change referred to in the exemption, has not been passed into law yet.
5. The Commission notes that to date Eastland Networks have been complying fully with the first two conditions listed above.

THE FRAMEWORK FOR THE DECISION

General

6. For the purpose of considering a variation to the exemption, the Commission, in terms of section 58 of the EIR Act which applies section 105 of the Commerce Act 1986 to the EIR Act, has delegated its powers under section 81 of the EIR Act to Donal Curtin.

Variation of exemption

7. Section 81(5) of the Act allows the Commission to vary or revoke any exemption issued, in a like manner as that provided in section 81 for granting an exemption.

COMMISSION DECISION UNDER SECTION 81(5) OF THE ACT

8. The proposed legislative changes to the EIR Act referred to in the Notice of Exemption are contained in the Bill, which currently provides new exemptions from the ownership separation rules for generation commissioned after 20 May 2003, if the generating capacity of the generation is no more than 50 MW or 20% of the maximum demand of the lines owned or operated by the person. Once this amendment is made, Eastland Networks' generation capacity will be well within the limit.
9. The expiry date specified in the Notice of Exemption was based on the assumption that the amendment to the EIR Act would be passed by January/February 2004. However, the Bill was only reported back by the Commerce Committee on 30 June 2004. To date, the Bill still needs to go through the Second Reading, Committee and Third Reading stages before it is assented to.
10. The Commission has revisited its original reasons for granting the exemption in Decision 503 and considers that the justification for granting an exemption to Eastland Networks still applies, both in terms of the additional generation being in line with the overall purpose of the EIR Act, and given the ongoing intention to amend the generating capacity limit.
11. Therefore, to prevent the exemption from expiring at midnight on 17 July 2004, the Commission considers that it is appropriate to extend the expiry date in the Notice of Exemption until the earlier of midnight on 16 July 2005 (allowing ample time for the legislation to be passed), or the date at which the Electricity and Gas Industries Act comes into force.
12. The Commission hereby makes the following variation to the Notice of Exemption, in accordance with section 81(5) of the EIR Act:
 - (3) The exemption expires at the earlier of midnight on 16 July 2005, or the date at which the Electricity and Gas Industries Act comes into force, unless any variation or earlier revocation in terms of section 81(5) occurs.
13. All other terms and conditions of the Notice of Exemption will continue to apply.
14. A Notice of Exemption incorporating this variation is attached to this Decision.

NOTICE OF EXEMPTION

On 17 July 2003, the Commission, pursuant to section 81 of the Electricity Industry Reform Act 1998 (“the EIR Act”) exempted Eastland Networks Limited (“ENL”) from the application of section 17 of the EIR Act in relation to a prohibited cross-involvement in an electricity lines business and an electricity supply business, comprising 6.5 megawatts of containerised mobile diesel generation sets and 4.88 megawatts of generation from the Waihi Hydro Scheme.

The Notice of Exemption expires at the earlier of midnight on (17 July 2004) or the date at which the proposed legislative changes with respect to the increase in distributed generation from 5 megawatts to 25 megawatts permitted under s 5(2)(e)(i) of the Electricity Industry Reform Act 1998 announced by the Minister of Energy come into force, unless any variation or earlier revocation in terms of s 81(5) occurs.

The Commission, pursuant to section 81(5) of the EIR Act, varies the exemption granted to ENL on 17 July 2003, to extend the expiry date of the exemption to the earlier of midnight on 16 July 2005, or the date at which the Electricity and Gas Industries Act comes into force, unless any variation or earlier revocation in terms of section 81(5) occurs.

The exemption is subject to the following terms and conditions:

- (1) Eastland Networks Limited will continue to use all reasonable endeavours to cease their involvement in the Waihi Hydro Scheme by securing the prompt sale of the Waihi Hydro Scheme.
- (2) Eastland Networks Limited will provide the Commerce Commission with monthly written reports beginning one month after the date of this decision on the progress it is making to achieve compliance with (1) above.
- (3) The exemption expires at the earlier of midnight on 16 July 2005, or the date at which the Electricity and Gas Industries Act comes into force.

The Commission may vary or revoke this exemption in accordance with s 81(5) of the Electricity Industry Reform Act 1998.

The exemption takes effect from 16 July 2004, which will also be the date of the Notice published in the *Gazette*.

Dated this 16th day of July 2004

Donal Curtin
Commissioner
Commerce Commission