



**BELL GULLY**

# Wish list for electricity market reform

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The recently announced Ministerial Review presents a significant opportunity for the electricity industry to have a spring clean – to really stand back and see what is working, what can be improved, and what can be cleaned up... and what can be thrown away.

As lawyers, we by no means have all the answers – this is the role of the Technical Advisory Group and requires widespread consultation, hard economic analysis and an understanding of relevant comparative international best practice. However, our involvement in providing legal advice to every segment of the energy industry: from upstream discovery and production, through the supply chain of generation, transmission, and distribution and supply to end consumers, including some of New Zealand’s largest industrial users of electricity – means we are in a position to have a well informed perspective. Against this background we have distilled our wish list for reform coming out of the Ministerial Review.

## REFORM 1: OVERALL APPROACH

We agree with what we see as being the two fundamental cornerstone principles of the Ministerial Review.

The first is the recognition and commitment to security of supply<sup>1</sup>. This has always been the core issue for the electricity industry. Many in the industry will see it as a breath of fresh air for energy policy to be designed and/or reviewed against this core objective, rather than having climate change policy dressed up as energy policy being promoted at the expense of the underlying goal of generating enough energy to supply consumers at the most efficient price. That is not to say New Zealand cannot have a clear preference for renewable energy or that the concept of price efficiency should not build in externalities, such as the cost of carbon emissions. It just means a balanced approach focussed on maximising benefits to New Zealand as a whole, as dictated by appropriate market signals, should be taken.

As reconfirmed in the Terms of Reference and in the recent LECG Report<sup>2</sup>, the second cornerstone principle is that a market-based system is the right one for New Zealand, and better than any other alternative.

With these two cornerstone principles in mind we think the review should then take the approach of measuring any proposed reform of the current industry structure and regulatory framework against three critical success factors:

1. **Certainty:** Does the proposed reform increase certainty for the industry and consumers? This is particularly important to the electricity industry given the long term nature of investment decisions.
2. **Efficiency:** Does the proposed reform promote economic efficiency? The LECG Report provides a good discussion on the benefits of efficiency in market design in the context of the New Zealand electricity industry. In essence, policy settings need to be directed to maximising the welfare of New Zealand by facilitating sustainable competition and only intervening when the benefits from doing so clearly outweigh the costs, i.e., a focus on the real economic value-add provided by regulatory intervention.
3. **Simplicity:** Does the proposed reform reduce the current complexity of the structure of the industry or the regulatory framework? The electricity industry is very complex; it is confusing to consumers, even to sophisticated industry players.

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<sup>1</sup> It is pleasing to see this is also published in the new Government Policy Statement released by the Government on 11 May 2009. For a summary, please see below.

<sup>2</sup> LECG Report dated 4 February 2009, prepared for Business New Zealand entitled “Determining outcomes on facilitating effective market processes: a review of regulation and governance of the electricity sector”.

## MINISTERIAL REVIEW - SUMMARY AND TERMS OF REFERENCE

On 1 April, the Government announced a Ministerial Review of the electricity sector with a view to implementing any required structural reform by June 2010.

The Terms of Reference<sup>3</sup> state that the objective of the review is to “*improve the performance of the electricity market and its institutions and governance arrangements in order to better achieve the Government’s objectives for the electricity sector*”. These are to ensure that the electricity sector contributes to economic growth by providing security of supply and efficient prices.

The Review is required to identify any early improvements which can be made from streamlining transmission investment decisions and the current overlap between the Electricity Commission’s role and EECA’s similar role in promoting energy efficient programmes.

The wider Review is required to:

- assess the current performance of the electricity industry and governance arrangements;
- identify any problem areas; and
- have a particular focus on the current institutional and governance aspects with a focus on the industry’s involvement in rule making and the role of the Electricity Commission.

The Technical Advisory Group is required to undertake its analysis on a cost benefit basis and to have regard to a number of important industry reports including the LECG report on the electricity sector regulatory and governance arrangements released in February and the recently released New Zealand Commerce Commission’s findings and recommendations into competition in the wholesale and retail electricity markets.

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Importantly, the review is required to use the current market design as a starting point and to focus on improvements to the model. It is not mandated to move away from a market-based approach.

The Minister has appointed six experts to the Technical Advisory Group, being Brent Layton as Chair, David Russell, Lewis Evans, Stephen Franks, Toby Stevenson and Miriam Dean QC.

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<sup>3</sup> [http://www.parliament.nz/en-NZ/SC/Details/EmissionsTrading/9/b/e/00SCETS\\_TOR\\_1-Terms-of-reference-of-the-Emissions-Trading-Scheme-Review.htm](http://www.parliament.nz/en-NZ/SC/Details/EmissionsTrading/9/b/e/00SCETS_TOR_1-Terms-of-reference-of-the-Emissions-Trading-Scheme-Review.htm)

## **GOVERNMENT POLICY STATEMENT OF ELECTRICITY GOVERNANCE - MAY 2009:**

The Government Policy Statement on Electricity Governance (GPS) came out on 11 May 2009 setting out the objectives and outcomes the Government wants the Electricity Commission to give effect to.

We briefly summarise the Government's recommendations for the Electricity Commission to action in respect of security of supply and electricity efficiency.

### **SECURITY OF SUPPLY**

Under the Electricity Act 1992, a function of the Electricity Commission is to use reasonable endeavours to ensure security of supply. In light of this, Government recommends the Electricity Commission should:

- ensure that the generation and transmission system maintains a mean winter margin of 17% for New Zealand overall and 30% for the South Island. Also, the Government recommends the Electricity Commission work with stakeholders to identify industry contingencies and develop strategies to manage the supply and demand during these contingencies;
- as the Electricity Commission's primary means of creating its security of supply objective, if the New Zealand or South Island mean year energy margin is unlikely to be met by market participants, contract for reserve energy in order to maintain the reserve energy margin. The energy available to meet the shortfall should also be available to meet unexpected supply deficiencies i.e. grid disruptions;
- publish a security of supply policy in order to provide market participants with a high degree of certainty on how the Electricity Commission intends to meet its security of supply objectives;
- carry out and publish detailed annual forecasting to provide information on both short-term and long-term security of supply which includes alternative fuels and generation options being available in a range of circumstances;
- monitor resource availability in relation to demand to ensure the market has delivery capacity to meet demand, especially peak demand. If it is found that the market is failing to meet demand, the Electricity Commission should make recommendations in terms of arrangements and policies to the Minister that it considers will result in better outcomes;
- develop and publish a set of hydro storage guidelines which provide estimates of different hydro storage levels that trigger different levels of shortage risk. These guidelines should also include emergency storage guidelines that will trigger a range of emergency response measures i.e. a conservation campaign; and

carry out a review, with interested parties, of the security standards and policies suggested in the GPS and make recommendations to the Minister of Energy by 2012.

## ELECTRICITY EFFICIENCY

In relation to electricity efficiency, the Government recommends the Electricity Commission should:

- continue to carry out research and information activities with the Energy Efficiency and Conservation Authority (EECA) on the potential of electricity efficiency contributing in a cost-effective manner in achieving the Government's electricity objectives;
- work closely with the EECA, the intended service delivery agency for energy efficiency programmes, to complement the EECA's work and avoid duplicated efforts and in good time as the EECA builds on its capability, the EECA will become the delivery agent of more of the Electricity Commission's energy efficient programmes;
- formalise purchases of services from the EECA and make such formalised arrangements available to the public on the Electricity Commission's website;
- review the memorandum between itself and the EECA; and
- implement arrangements and programmes to promote efficiency in the generation, conveyance and end-use parts of the electricity sector.

## REFORM 2: FIX THE TRANSMISSION GRID

Of all the structural imperfections of the New Zealand electricity market, the key one we keep coming back to is that the National Grid is not at the standard it needs to be to ensure the efficient distribution of electricity to support and enhance New Zealand's economic needs.

In the last six weeks we have had both good and bad news. On the good side, the Electricity Commission has approved Transpower's North of Auckland and Northland investment proposal and its Waikato upgrade proposal, having previously declined those. The bad news – pole 2 of the North and South Island HVDC link was down for three days with limited back up with the result that Transpower had to declare a grid emergency. New Zealand's economy was again vulnerable to potential transmission grid failure.

From a regulatory design perspective, there appear to be two competing factors at play here which have resulted in regulatory confusion.

The first appears to be a legacy policy design perception/fear that Transpower will over engineer (“gold-plate”) the solution and, given Transpower's monopoly position, that the cost to the industry/consumers of any particular upgrade will be excessive.

The second, and diametrically opposed factor, is a general recognition (including by Transpower) that there has been a severe lack of investment by Transpower in the National Grid over the last 25 years or so.

It seems to us that it can only have been against the first policy concern that the current grid investment test applied by the Electricity Commission could have been developed in the first place.

Standing back a bit however, we observe that the perceived risk of Transpower gold-plating the grid has to be balanced against becoming moribund in red tape, as we seem to have become.

At some point, we think the electricity industry should rely on the management and board of Transpower to simply get on with it, i.e., the policy environment should be much more “*your job is to keep the lights on to ensure your customers' needs are met*”. In policy terms, we think the perception of gold-plating should be explicitly recognised as being of secondary importance to allowing Transpower to build and maintain a sustainable and robust National Grid.

On this basis, the logic of the LECG Report that the cost/benefit analysis undertaken by the Electricity Commission in the form of the grid investment test is currently too narrow is compelling. We think it important that the Ministerial Review is able to have a fresh look at the test and come up with something more workable, including taking into account the cost of not doing the relevant upgrade. This can be against the background of the industry having further input into what constitutes an acceptable standard of transmission service to provide the agreed level of security of supply. We also agree it makes total sense to have a minimum threshold below which any form of review is not required.

To deal with any residual concern regarding consumers being required to “over pay” for National Grid upgrades, the Technical Advisory Group could investigate whether it would be beneficial/practicable to establish a regulated charge that Transpower can invoice its customers for utilising the National Grid. This could be set by the Commerce Commission against agreed price and quality thresholds (i.e. so as to remove any legitimate concern the industry could have about the price of utilising the system). The charge could be structured to compensate Transpower for its cost of capital but not require a “full” profit return (we appreciate this goes against the overriding philosophy of “let the market decide” but raise for consideration whether this would be a justifiable exception to the general rule).

In the same way it has undertaken this in relation to roading, the Crown could also identify National Grid upgrades of national significance to focus prioritisation and to assist in Resource Management Act consenting processes. It would be important that this included consultation with industry participants, including Transpower and generator retailers impacted by constraints on the network.

Transpower and the Crown have an equally important role of assisting New Zealanders' understanding of the need for transmission grid upgrades in the national interest having regard to the visual impact of new pylons on local community interests. There is no doubt that this debate will be real and already plays out on a regular basis in relation to local wind farm visual impacts where local interests often find it difficult to set aside their individual concerns to facilitate nationally significant generation proposals.

The Government and Transpower need to be sensitive to this and some cost trade-off may need to be allowed for in the cost/benefit analysis to site the pylons in as visually-sensitive manner as is possible within reasonable cost boundaries. We may be unduly optimistic but we think that the debate can and should be moved to recognition of the critical nature of the transmission upgrades for the New Zealand economy in the context where Transpower is permitted to and does undertake the roll-out in a sensitive manner. If this value-set is established and appreciated, the general acceptability and speed of roll-out will be enhanced.

## REFORM 3 - MITIGATION OF DRY YEAR VULNERABILITY

**Why?** The accepted industry view appears to be that climate change is more likely than not to result in an increased likelihood of dry year risk. We got through the 2008 winter by the skin of our teeth. The New Zealand economy cannot be held hostage to whether it rains at the right time, in the right place.

**What to do about it?** (An obvious statement) build more generation capacity to comfortably meet predicted economic growth in demand for electricity and to improve the safety margin between supply and demand.

**How to do this?** We think the industry would say that the best way of doing this is to seek to provide price signal certainty for potential generation projects, including:

1. Provide certainty of the regulatory framework, including as the Government has now done, adopting security of supply as the core policy platform.
2. As noted earlier, provide a more certain outlook in terms of the National Grid.
3. Provide certainty around the methodology and timing of pricing of carbon and its impact on generation projects via the spot price of electricity be this via the ETS, a carbon tax or a cap and trade system (we understand that at least to some extent this has happened already as the electricity price futures index seeks to predict where New Zealand will come out on the ETS debate having regard to international price of carbon emission units). *Please also see in the boxed section below a summary of the current ETS review being undertaken by the Emissions Trading Scheme Review Select Committee.*
4. Investigate the role of Whirinaki in light of the Winter Review report<sup>4</sup> and the recommendations of the LECG Report. We note the contention that the key problem with Whirinaki is that it caps the peak spot price at \$387 per Mwh (previously \$200 per Mwh). An artificial cap on the spot price does not send correct market signals for the need for peaking plant. For this reason, our own take on what to do about Whirinaki is:
  - a) convert Whirinaki to run on gas and site it close to the National Grid;
  - b) have the Crown procure a gas supply agreement for as long a term as possible at a reasonable rate of return for the gas provider and with a gas supply profile which the Crown believes will best deliver value on the sale of Whirinaki;
  - c) have the Crown pay the cost of conversion to gas and the re-siting cost;
  - d) have the Crown tender the re-configured Whirinaki package to the market (as ECNZ once did in the early '90s in relation to the TCC combined cycle power station); and
  - e) the new owner to then dispatch Whirinaki as it sees fit, having regard to its gas supply profile.

The intended impact of this reconfiguration is to provide more and cleaner generation into the system while removing what is argued to be the distortion of the cost of Whirinaki being borne by the entire industry exposed to dry year risk. Intuitively we think this is the right outcome, but we see the need for the Technical Advisory Group to be satisfied that this approach in itself (in combination with any other reforms that are put in place) will not have unforeseen consequences as can sometimes be the case when a safety valve such as Whirinaki (some would argue a somewhat ungainly safety valve) is removed from the market.

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<sup>4</sup> The Electricity Commission released a report on the "Review of Winter 2008" in response to the 2008 dry year. To access the report, visit the Electricity Commission's website at [www.electricitycommission.govt.nz/consultation/winter08](http://www.electricitycommission.govt.nz/consultation/winter08). To see the Bell Gully commentary on the report, please visit [www.bellgully.com/newsletters/14corporate/utilities\\_1.asp](http://www.bellgully.com/newsletters/14corporate/utilities_1.asp).

## THE EMISSIONS TRADING SCHEME AND ELECTRICITY

The Emissions Trading Scheme (ETS) came into effect from 1 January 2008 following the Climate Change Response (Emissions Trading) Amendment Act 2008's (Act) enactment by the then Labour-led government in September 2008. Although the ETS remains in effect, the review which is currently being carried out by the ETS Review Committee means that businesses with, or soon to have, compulsory or voluntary compliance obligations under the ETS have little certainty as to how to proceed in the short-term with the necessary commercial and strategic planning to meet their compliance obligations, and manage their risk.

The ETS is a price-based measure for reducing greenhouse gas emissions associated with specified activities, including activities in the stationary energy and electricity sector (for example mining, importing or purchasing natural gas or coal above certain threshold amounts, or using geothermal fluid for the purpose of generating electricity or industrial heat). Participants with compliance obligations have a responsibility to surrender emission units equivalent to all emissions from specified activities, and participants carrying out one of the limited removal activities specified in the Act (such as growth in post-1989 forests, or activities embedding carbon) are awarded units for emission reductions.

The design of the ETS enables participants and other market players to trade, both domestically and internationally, emission units surplus to a participant's compliance requirements, units awarded by the Government for removal activities, and other Kyoto-compliant units awarded domestically and internationally. Participants are generally not awarded units for any emission reductions achieved with an ETS activity, save for removal activities. However, the requirement for such participants to pay for units in order to meet their compliance obligations for all emissions associated with their compliance activity and the associated pass-through of that cost to downstream participants (where possible) provides a price incentive encouraging emission reductions.

Under the current provisions of the Act, there is a staggered entry for the various sectors in to the ETS. Forestry entered with effect from 1 January 2008, with the stationary energy sector and most industrial processes due to be the next off the rank from 1 January 2010. Liquid fossil fuels (primarily fuels for shipping and land transportation) are to enter the ETS on 1 January 2011, with the remaining sectors to follow on 1 January 2013 (being agriculture, waste and the remaining industrial processes).

With the Government announcing its expectation to amend the Act by September 2009, following the receipt of the findings of the ETS Review Committee, there is warranted uncertainty as to how businesses should proceed in the meantime. Although the stationary energy sector itself does not enter the ETS until the start of next year, participants with compliance obligations need certainty in order to obtain approval from their boards for their compliance strategies (including the acquisition of units to meet compliance obligations whilst the carbon price remains low) and already have faced the dilemma of whether to apply to opt in to the ETS on 1 January 2010 by applying to do so from 1 January 2009 (given the 12 month lead time until an application to opt in, if accepted by the Government, comes into effect).

The lack of certainty around the commencement date for obligations in the stationary energy sector, whether there will in fact remain to be an ETS and, if so, the shape such an ETS will take has dominated written and oral submissions made to the ETS Review Committee. Three major electricity retailers' gave oral submissions to the Committee in April 2009 in support of their written

submissions. In summary, the key points made by each of the retailers in their oral submissions are:

- *Genesis Energy* supports the ETS (and prefers it over the alternative of a carbon tax) but proposes a number of small improvements, including deferring the introduction of the electricity sector until 2012 and a price cap to act as a safety valve against the volatility of the international carbon price.
- *Meridian Energy* supports the ETS however, it is concerned that the lack of certainty of the commencement of the ETS impacts on the timing of investments and the choice of technologies. Also, Meridian views the current incentives to invest in new technologies to reduce carbon emissions as inadequate and that additional measures are required to encourage widespread behaviour change for homeowners and small businesses.
- *Contact Energy* stressed the need for certainty of policy direction to be able to make long-term investment decisions. Contact expects the outcome of the ETS review will support current and planned geothermal generation and the ETS would likely result in a 4% increase in price resulting in an additional \$70-80 annually per New Zealand household.

Overall it appears the three electricity retailers are in favour of receiving certainty as to the price-based measure to be used for carbon emissions and the shape such measure will take, and in general support an ETS similar to the form of the current ETS. However, the lack of certainty of the commencement and the details of the ETS is a shared concern.

**Commentary:** The ETS Review Committee was expected to report back by 31 May 2009 however this date has been pushed back to the end of June. Irrespective, it currently remains the Government's intention that revised legislation will be passed by 30 September 2009. That said, forest land owners facing allocation and exemption deadlines from June 2009 are likely to put pressure on the Government to provide a level of certainty or comfort around any possible amendments to the Act prior to that date. Similarly, the stationary energy sector participants who have had the ability to apply to opt-in from 1 January 2009 as Schedule Four participants with effect from 1 January 2010 have also been seeking some level of certainty as to the eventual framework of the ETS (and indeed whether an ETS will even be retained) before taking the plunge and opting in. Accordingly, we would expect the Government to be providing some level of guidance or comfort to such sectors.

We consider that the ETS is most likely to remain in place with few substantive amendments to its framework. Some suggest that the Government may struggle with ACT's stance on the ETS to find the necessary numbers to pass amendments to the Act.

However, despite recent comments from ETS Review Committee members, it is possible in the current economic climate and in light of the volatile carbon market that the Government may seek to provide greater financial certainty for business, notably around the price of carbon, by providing for a price cap. A price cap, even as a temporary measure in the initial years of an emissions trading scheme, provides certainty as to the highest price of carbon and in effect imposes a carbon tax on participants once a threshold market price has been exceeded.

The Government recently announced the latest Net Position Report for the first commitment period of the Kyoto Protocol. New Zealand is now expected to exceed its Kyoto target by 9.6 million tonnes – which is a surplus worth approximately \$241 million, as compared to the previously reported 21.7 million tonnes deficit with its associated estimate cost of \$546 million. Although this

is purportedly unlikely to result in the Government having a surplus itself (given its award of units to post-1989 foresters who opt in to the scheme), it does mean that the Government may now entertain the possibility of pushing out the entry date of the stationary energy sector (and perhaps the industrial processes sector) to 1 January 2011 if it appears that other substantive amendments to the Act will not be passed by 30 September 2009. This would be consistent, in part at least, with the recent announcement of the Australian Government to delay to implementation of the CPRS until 2011. However, it would require an amendment to the Act to do so.

If an amendment to the Act is passed to delay the stationary energy sector's entry in to the ETS, this would remove the current uncertainty some electricity retailers still face as to whether to opt into the ETS prior to the release of a bill to amend the Act or the enactment of such amendment legislation, and greatly reduces the financial impact of an energy sector participant's compliance exposure for the period to 2012 under the ETS. Further, it would delay the date on which the cost of carbon would be passed-through to downstream parties, and therefore delay the impact on the spot price of electricity and indeed the electricity futures price from 1 January 2010.

***So what is the impact of all this on the spot price of electricity?*** What has been observed to date is the almost immediate impact that announcements providing certainty about an ETS have had by driving up the electricity futures price, and similarly that the review of the ETS and associated uncertainty as to the operation of the ETS following the outcome of the ETS Review Committee's review has subsequently resulted in the electricity futures price dropping. We expect it will rise again following any announcements at the end of the Select Committee review, and the release of any amendment legislation or further regulations.

The spot price of electricity is expected only to reflect a cost of carbon from the first date of compliance (currently 1 January 2010). It is expected that electricity retailer's will be estimating the cost that will be passed through to them, or their compliance costs (where they have opted into the ETS), on a megawatt basis from 1 January 2010 and will simply build this in to the spot price, taking the risk (if units for compliance purposes are yet to have been purchased or carbon costs have yet to be passed through) for any increase in the price of carbon. Those electricity retailers with sound commercial and strategic planning to meet their compliance obligations are likely to have contracts in place to manage and mitigate such risks.

## What else can be done?

1. Task the Technical Advisory Group with investigating what it would take to develop a longer term and more liquid hedge market.
2. Enact the proposed reforms to the Resource Management Act processes to improve the existing call-in procedure for nationally significant generation and transmission projects to determine consent applications in order to balance local and national interests in a fair way.
3. Continue to promote energy saving, especially house insulation, increased public and industry awareness of energy saving initiatives including on a contract basis, design the ETS or other carbon pricing system to reward consumers and industry participants for energy saving initiatives by reference to reduced carbon emissions.

4. Have a single body monitor dry year risk and coordinate New Zealand's response. We note the LECG Report recommends that this should be the System Operator rather than the Electricity Commission. We are not convinced about this and look forward to the Technical Advisory Group's recommendation in this regard. Intuitively, we think the body undertaking this critical role needs to take a holistic and independent view. Perhaps an alternative would be to require the System Operator to collate the information and to provide recommendations to the Electricity Commission but have the Electricity Commission take overall carriage of the response.

## REFORM 4: SIMPLIFY THE INDUSTRY

The hallmark of good industry regulation and structure is one that can be easily understood. This feels like a forlorn hope for the electricity industry, but the Ministerial Review has an opportunity to see if any of the current complexity of the industry can be reduced without significant cost.

We believe there are some obvious candidates for review.

1. ***The EIRA has had its day?*** The structural requirement to separate line network companies from energy supply companies instigated in 1998 has been gradually watered down over the years and has now essentially been replaced by price and quality thresholds for line network companies and some arguably artificial barriers around what a line network company can and cannot do based on whether it wishes to be involved in renewable generation. Now is the opportunity to ask if this distinction is still valid/necessary. We think there is a good case to be made for scrapping the EIRA in its entirety, instead relying on the price/quality thresholds and disclosure regime to regulate any potential competition law impacts from allowing integrated electricity companies again. To achieve the appropriate policy balance, we think the EIRA should be replaced with:
  - a) a requirement for transparency of dealings between the network side and supply side of the business (e.g. posting any pricing or contractual arrangements including use of system agreements on the electricity company's website); and
  - b) possibly having the ability to allow consumers to refer any anti-competitive type behaviour, including any perceived cross-subsidisation between the line network side of the business and the electricity supply side of the business, to the Commerce Commission for review against competition law principles.
2. ***Encourage the integration of network line companies.*** Currently there are around 28 local line network companies. We see benefits in encouraging local line network companies to combine their operations either by contractual means via operation and management arrangements or by way of full merger. Operational or merger structures can still entrench existing local community benefits while having the benefit of simplifying the number of players in the industry, making the approach to contracting with customers more uniform, potentially realising cost savings and freeing up balance sheet capacity for investment in the local network, dark fibre broadband or generation projects.
3. ***Role of the Electricity Commission.*** A number of the conclusions reached by LECG have been picked up in the Terms of Reference for the Ministerial Review as matters for the Technical Advisory Group to consider. A central theme of the LECG report is to question the role and responsibilities of the Electricity Commission. We look forward to seeing the conclusions reached by the Technical Advisory Group in this regard. Our observation is that, given its mandate, the Electricity Commission has undertaken its role in a professional and competent manner. However, from a pure regulatory design perspective, the regulatory framework in which the Electricity Commission is required to operate is not optimal. Our key concern is that the Electricity Commission needs to be independent of the Crown and not have a statutory obligation to implement government policy. It also has multiple and conflicting roles and responsibilities. In this context, the four highest priority initiatives that make sense to us for further investigation by the Technical Advisory Group are:
  - a) make the Electricity Commission an independent Crown entity and have its role include responsibility for administering EGRs and monitoring dry year risk and response;

- b) make EECA the sole regulatory agency charged with running demand-side energy savings programmes (i.e., clarify this as not being a responsibility of the Electricity Commission, except in an overview role in coordinating dry year response);
- c) re-establish industry rule-making groups but retain the Electricity Commission as the final arbiter of the rule-setting process and as the monitor/enforcer of the rules. We believe the Electricity Commission can play a valuable role here as the electricity industry in the past has shown an inability to agree self-regulation, particularly in relation to transmission issues; and
- d) confirm or otherwise whether the Electricity Commission remains the appropriate approval body in relation to Transpower funding requests under any new investment test which may be recommended by the Technical Advisory Group.

We think it legitimate for the Technical Advisory Group to consider whether the residual roles of the Electricity Commission are best kept with an (independent) Electricity Commission or whether the Electricity Commission becomes a division of the Commerce Commission. We see this being part of the overall cost/benefit analysis required by the Terms of Reference.

### **An opportunity too good to miss**

Our thoughts are based on our many years of experience dealing with the electricity industry and its participants. We hope they can add to the debate. A properly functioning, efficient and as simple as possible industry is key to the electricity sector supporting New Zealand's economic recovery and performance. The Ministerial Review is an opportunity for industry participants to have appropriate input into the future of the industry in what we see as a receptive policy environment. It is an opportunity too good to be missed!

**For further recent discussion from Bell Gully on the electricity industry please refer to the following articles available on our website, [www.bellgully.com](http://www.bellgully.com)**

[Summary of Electricity Policy Initiatives since 2000 – document prepared by Ministry of Economic Development, as updated by Bell Gully for the period from May 2008 to January 2010](#)

[New approach for dry winters: report calls for power companies to pay for their own mistakes](#)

[Changes to the Government Policy Statement on Electricity Governance – the first step in the National Party's reform of the electricity industry](#)

[Labour's ETS still in place but undergoing comprehensive review](#)

[Commerce Commission seeks views on applying new price control law](#)

[Emissions trading scheme – is it here to stay?](#)

[Improved rules for electricity lines businesses now in place](#)

[Government policy statement on electricity governance – May 2009](#)

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