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**Sent:** Wednesday, 24 June 2009 1:16 p.m.  
**To:** 'tpcallin@riceres.co.nz'  
**Subject:** Response to Invitation for Comments on Draft report: Upper North Island Grid Upgrade Proposal  
**Attachments:** BOI\_Comments\_memo\_final.pdf

Good afternoon:

Attached please find Federated Farmers' response to the invitation made by the Board of Inquiry: Upper North Island Grid Upgrade Proposal for comments on its draft report.

Regards.

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**BEFORE THE BOARD OF INQUIRY**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of applications by Transpower New Zealand Limited for resource consents and notices of requirement for the North Island Grid Upgrade Project

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**MEMORANDUM**

**RESPONSE TO INVITATION FOR COMMENTS ON DRAFT REPORT**

**FEDERATED FARMERS OF NEW ZEALAND**

**FEDERATED FARMERS OF NEW ZEALAND (AUCKLAND PROVINCE) INCORPORATED**

**FEDERATED FARMERS OF NEW ZEALAND (WAIKATO REGION) 1999 INCORPORATED**

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## INTRODUCTION

1. This Memorandum is filed on behalf of Federated Farmers of New Zealand, Federated Farmers of New Zealand (Auckland Province Incorporated) and Federated Farmers of New Zealand (Waikato Region) 1999 Incorporated (collectively, "Federated Farmers" or "the Federation").
2. In accordance with section 148(4) of the Resource Management Act, the Board has invited the persons to whom it has sent its draft report, including Federated Farmers, to send their comments on any aspect of it to the Board.
3. This Memorandum comprises Federated Farmers' response to that invitation.
4. Federated Farmers made a submission on a large number of points to the Minister for the Environment when he called for submissions on the Notices of Requirement (the "NOR") and applications for resource consent (the "Consent Applications"), lodged by Transpower New Zealand Limited for the North Island Grid Upgrade Project (together, the "Proposal"). Subsequently when Federated Farmers representatives appeared before the Board on 9 September 2008, discussion on only four of the points raised in the submission was presented to the Board.
5. During the course of Federated Farmers' representations to the Board, the Board invited Federated Farmers to make further comment on matters to do with compensation. This was done by way of a Memorandum which was filed with the Board on 25 September 2008.
6. Federated Farmers takes the opportunity of thanking the Board for its consideration of Federated Farmers' submissions.
7. Federated Farmers also takes the opportunity to commend the Board on the clear and comprehensive nature of the Draft Report that it has produced.
8. Federated Farmers comments on aspects of the Board's Draft Report as follows.

## THE ELECTRICITY INDUSTRY REFORM ACT

9. In the Federated Farmers' submission, in its discussion of the "Consideration Given to Alternatives", the submission point is made that:<sup>1</sup>

The Proposal gives inadequate consideration to alternative sites, routes and methods of undertaking the work

In support of that submission point, in the submission the statement is also made that:<sup>2</sup>

Neither is any consideration given to the Electricity Industry Reform Amendment Act 2004, which (at s 5) empowers Transpower to contract with an electricity supplier for that electricity supplier to generate electricity for the purpose of deferring the need for investment by Transpower in the national grid.

10. The submission point and Transpower's response to it was discussed at length in Federated Farmers' representations to the hearing.<sup>3</sup>
11. The Board appears to have concluded that,<sup>4</sup> because Transpower is a requiring authority in respect of its transmission network operation only, its authority to contract for generation is outside the scope of its powers as a requiring authority. Later, the Board records that:<sup>5</sup>

The Board is not persuaded that the limits on Transpower's approval as a requiring authority prevented it from exercising its authority to contract for generation for deferring investment in the grid.

12. Nevertheless, the Board finds that the evidence establishes that:

Transpower did, by its request for information in September 2004, investigate the practicability of doing so.

13. Federated Farmers respectfully comments that the evidence discloses that Transpower did no more than seek information on what electricity generators had planned for generating electricity in Auckland and that Transpower has not considered the alternative of contracting with an electricity supplier to generate electricity for the purposes of deferring the need for its own investment in the national grid.

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<sup>1</sup> Page 13.

<sup>2</sup> Page 13.

<sup>3</sup> Paras 53 – 66.

<sup>4</sup> Para 359.

<sup>5</sup> Para 525.

14. Federated Farmers stands by the submission made in its representations to the Board that:<sup>6</sup>

Transpower has not given adequate consideration to the ability that it has to enter into a contract for the purpose of deferring the need for it to invest in the national grid, as an alternative to the proposal that is before the Board.

#### 220kV LINE INSTEAD OF 400kV LINE

15. Federated Farmers' basic submission point in relation to Transpower's consideration of alternatives is set out above.<sup>7</sup> In support of that submission point, in relation to Transpower's consideration of alternative methods of delivering the electricity along the route selected, in the submission the statement is also made that:<sup>8</sup>

There is almost no consideration of alternative sites and methods of ensuring the continued security and certainty of electricity supply to Auckland, Northland and parts of the Coromandel and Waikato.

16. The submission point was expanded on in Federated Farmers' representations to the hearing.<sup>9</sup> The context of the representations was that Transpower's proposal for a 400kV capable system rather than a 220kV system was not necessary to meet the reasonably foreseeable needs of future generations and would result in unnecessary additional adverse effects on the environment. The observation was made that:<sup>10</sup>

It would seem that no assessment has been done of the option of building no more than a 220kV capable line along the preferred route. It would seem that both Ms Allan and Mr Lister, who undertook such assessment as has been done, were engaged after the decision was taken to proceed with a 400kV capable line

17. The Board appears to have taken this as a submission,<sup>11</sup> and goes on to make the finding that:<sup>12</sup>

The assertion by Federated Farmers that no assessment had been made of an alternative of a 220-kV line is not substantiated, and is contradicted by [the evidence of Messrs George, Boyle and Taylor].

The Board notes that the evidence is summarised in paragraphs 565 – 572 of the Board's report.

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<sup>6</sup> Para 53.

<sup>7</sup> Para 9.

<sup>8</sup> Page 13.

<sup>9</sup> Para 91 - 96.

<sup>10</sup> Para 95

<sup>11</sup> Para 557.

<sup>12</sup> Para 574.

18. It is noted that in his evidence, Mr George describes himself as an engineer, and his evidence describes the process of selecting the 400kV capable line option; that in his evidence Mr Boyle also describes himself as an engineer, and his evidence describes the system planning aspects of Transpower's proposal; and that in his evidence Mr Taylor describes himself as a resource and environmental planner, and his evidence describes the identification of environmental constraints during the transmission option analysis.
19. The Board describes how much of the evidence it relied on to make its finding was prepared for the Electricity Commission process. The Board notes in its Draft report<sup>13</sup> that its processes are independent of the Electricity Commission process.
20. The Board also describes how Mr Taylor's evidence relies on the assumption that more than one line will eventually need to be built if the 400kV option was not chosen in order to demonstrate that more significant environmental impacts would be likely if the 220kV option was chosen.<sup>14</sup>
21. Federated Farmers stands by its observation that, in the context of the necessity of Transpower's proposal and the adverse effects of the proposal, no assessment in Resource Management Act terms has been done of the option of building no more than a 220kV capable line along the preferred route.

#### EXPERT AGRICULTURAL CONSULTANT HAD NOT ASSESSED ALTERNATE ROUTES

22. Federated Farmers' basic submission point in relation to Transpower's consideration of alternatives is set out above.<sup>15</sup> In support of that submission point, in relation to Transpower's consideration of alternative routes, in the submission the statement is also made that:<sup>16</sup>

It is noted that case law has determined that the provision requiring an assessment of whether adequate consideration has been given to alternative sites, routes or methods of undertaking the work requires no more than that an assessment be undertaken of whether an adequate process has been followed by Transpower in its consideration of the various alternatives, and of the considerations adopted by Transpower (*Waikanae Holiday Park v Kapiti Coast DC*<sup>17</sup>).

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<sup>13</sup> Para 1804.

<sup>14</sup> Para 569 - 572.

<sup>15</sup> Para 9.

<sup>16</sup> Page 13.

<sup>17</sup> High Court, Wellington, 27 October 2004, McKenzie J (CIV-2003-485-001764).

Nevertheless, despite the extensive assessment made by Transpower to alternative routes for the transmission lines, the Federation is of the view that the considerations adopted in the undertaking of that assessment are insufficient and are improperly balanced.

23. The submission point was expanded on in Federated Farmers' representations to the hearing.<sup>18</sup>

Federated Farmers submission is that the comparative assessment of the environmental effects of Transpower's proposed transmission line on alternative routes is insufficiently thorough to enable the conclusion to be drawn that Transpower has achieved its objective of identifying "an appropriate transmission line route".<sup>19</sup>

24. The Board has found that Mr Hall, who was engaged by Transpower as an agricultural consultant to assess physical effects of the construction and operation of the proposed transmission line on farm management activities, did not participate in the assessment of effects on farm management along any alternative routes.<sup>20</sup>

25. Nevertheless, the Board has accepted that to be adequate, the consideration of alternative routes might reasonably include consideration of the effects on farming, "at least at a broad level". The Board acknowledges Transpower's acceptance of that view, citing a passage from a report prepared in October 2004 by Ms Allan:<sup>21</sup>

Effects on dwellings are one of the most important aspects of route selection, along with individual farming operation considerations, so this remained an important evaluation consideration at Route stage.

26. From this the Board goes on to conclude:<sup>22</sup>

... the Board has already found that effects on farming along alternative routes had not been omitted in the consideration of alternative routes, so the more limited scope of Mr Hall's assessment is not an indication that the consideration of effects on farming on alternative routes was inadequate.

27. With respect, Federated Farmers' contention in its submissions on the point is that the effects on farming along alternate routes has not been assessed in a way that meets the objective Transpower set itself for that assessment.

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<sup>18</sup> Para 68.

<sup>19</sup> The objective being the objective of Transpower's ACRE process "... to enable the identification of an appropriate transmission line route".

<sup>20</sup> Para 632.

<sup>21</sup> Para 622.

<sup>22</sup> Para 633.

28. Accordingly, Federated Farmers respectfully comments that, if Transpower has not met the objectives it set for itself by way of the assessment of the comparative effects on farming on different routes, it cannot reasonably be concluded that its consideration of alternative routes was adequate.
29. Federated Farmers stands by the submission point its original submission that the considerations Transpower adopted in the undertaking of its assessment of alternative sites, routes or methods of undertaking the work are insufficient and are improperly balanced.<sup>23</sup>

#### ADEQUACY OF COMPENSATION AS A RELEVANT ISSUE FOR THE BOARD

30. Federated Farmers' original submission contains a lengthy discussion on "Sustainable Management".<sup>24</sup> The submission point made is that:

The Proposal does not promote the sustainable management of natural and physical resources and is contrary to the purpose and principles of the Act.

31. In the discussion on the submission point, the statements are made that:<sup>25</sup>

Transpower does not have systems and procedures in place to resolve issues of indemnity for landowners, liability of landowners and compensation for landowners across whose land the proposed lines are to run.

And tat:

Transpower has consistently refused to enter into any agreement that would properly compensate the land owners for the use made by Transpower of their land. Instead, Transpower proposes only that the compensation payable "... should reflect any difference between the current value of the property (ie before construction of the work), and the value of the property once the easement is in place (ie after construction of the work)".

32. The submission point was discussed at length in Federated Farmers' representations to the hearing<sup>26</sup> in a section headed "The Effects of Constraints on Property Use". Federated Farmers considers that it was clearly indicated that this discussion was made in relation to the sustainable management ethic of the Resource Management Act and

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<sup>23</sup> See note 16.

<sup>24</sup> Page 7.

<sup>25</sup> Page 7.

<sup>26</sup> Para 98 - 115.

therefore related to the submission point made about “Sustainable Management” when it was stated in the opening paragraph of that section that:<sup>27</sup>

It is Federated Farmers’ submission that Transpower’s proposed transmission line disables people and communities in the Auckland and Waikato regions that will be directly and adversely affected by the works to be undertaken from providing for their social, economic and cultural well being.

33. Later in Federated Farmers’ representations to the Board the statement is made that:<sup>28</sup>

It is Federated Farmers’ submission that matters to do with the terms of the easement and compensation offered to land owners are indeed matters that are relevant to the Board’s consideration of the [Notice of Requirement].

This is followed by the explanation that the issue of whether compensation payment by Transpower should be on a one-off basis or on-going, had been discussed earlier at the hearing:<sup>29</sup>

As has been discussed in cross-examination, much of the concern is about whether compensation payment by Transpower should be on a one-off basis or on-going.

34. The discussion on compensation was further developed in the Memorandum which was filed with the Board on 25 September 2008.

35. The Board appears to be of the view that Federated Farmers had not raised the matter of compensation in its original submission. The Draft Report states that:<sup>30</sup>

Although not a subject of its original submission on the designation requirements, at the hearing Federated Farmers questioned whether compensation paid in a lump sum would qualify as full compensation by not taking account of inflation, and urged that compensation would not be adequate unless assessed as annual payment amounts.

36. Federated Farmers is concerned about the implicit criticism in the Draft Report that the Federation raised matters during the hearing that it had not raised by way of submission. Federated Farmers considers that that matter of compensation and its context in the Board’s inquiry was raised fair and square in the submission and that the matter of whether compensation payment by Transpower should be on a one-off basis or on-going was an example of the inadequacy of matters to do with compensation in Transpower’s proposal.

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<sup>27</sup> Para 98.

<sup>28</sup> Para 102.

<sup>29</sup> Ibid.

<sup>30</sup> Para 1828.

37. Federated Farmers does not accept the Board's finding that matters to do with compensation are beyond the scope of its inquiry.<sup>31</sup> By way of summary, the points raised at various stages of the process that support this position are that:

- The application of the Public Works Act at the behest of a network utility operator is subject to the purpose of the RMA because:
  - the compulsory acquisition power to which Transpower has ultimate recourse is provided through the Resource Management Act, so that power is subject to Part 2 of the Act;
  - Parliament must have intended that application of the Public Works Act was to be subject to the purpose of the Resource Management Act;
  - Resource Management Act s 171(1)(b)(i) is a direction that consenting authorities are to consider how the requiring authority proposes to gain an interest in the land that is sufficient to enable it to undertake the work.
- Transpower is relying on its Memorandum of Easement and on the compulsory acquisition provisions of the Public Works Act to avoid, remedy or mitigate the adverse effects of its proposal in resource management terms, so while the Public Works Act process determines compensation, it is the Resource Management Act process that determines whether that compensation will adequately avoid, remedy or mitigate the adverse effects the proposal will have on the environment.
- In the case *Takamore Trustees v Kapiti Coast District Council*,<sup>32</sup> the High Court indicated that compensation was relevant in the consideration of Resource Management Act s 5 matters.

38. Federated Farmers respectfully asks that the Board reconsider its finding that matters to do with compensation are beyond the scope of its inquiry.

#### RESOURCE MANAGEMENT ACT SECTION 6(b)

39. In its discussion in Chapter 18: Ultimate Judgments, the Draft Report records that:<sup>33</sup>

Federated Farmers submitted that there is an obligation to apply section 6(b) on a national, regional or district basis according to the context, and to identify outstanding natural landscapes accordingly; and that outstanding natural

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<sup>31</sup> Paras 1790, 1827 – 1835.

<sup>32</sup> [2003] NZRMA 433.

<sup>33</sup> Para 2284.

landscapes are not limited to those natural landscapes which are nationally outstanding.

40. Federated Farmers takes the opportunity to record that its submission was that the Environment Court had made such a finding.<sup>34</sup> It is particularly noted that the context of the submission was that it was arguable that such a finding was incorrect in that s6(b) applied only to landscapes that are “nationally” outstanding,<sup>35</sup> and that aside from nationally outstanding landscapes, it was for regions and districts to determine for themselves whether matters to do with landscape were significant in their region or district.<sup>36</sup>
41. In this context it is noted that Federated Farmers disagrees with the observation made in relation to s 6(b) that:<sup>37</sup>
- No reasoning based on the law about interpretation of statutes was presented to the contrary.
42. Federated Farmers recognises that other views were presented to the Board on the matter,<sup>38</sup> and that it is open for the Board to make the findings that it has made in relation to s6(b).<sup>39</sup> Nevertheless, Federated Farmers asks the Board to reconsider its finding that the legal reasoning given in the case *Whakatipu Environmental Society and Others v The Queenstown-Lakes District Council*<sup>40</sup> is correct.
43. In particular, Federated Farmers asks that the Board reword paragraph 2284 to remove the implication that Federated Farmers accepts the findings in the *Whakatipu* case.

## AUCKLAND REGIONAL POLICY STATEMENT – PROPOSED CHANGE 8

44. In para 245 of the Draft Report, the statement is made that:

Following the hearing of submissions, the Auckland Regional Council notified a variation to the landscape component of Proposed Change 8. The Council restricted decisions to submissions on policies in respect to volcanic features in October 2007.

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<sup>34</sup> Submissions presented to the Board of Inquiry hearing, Para 40.

<sup>35</sup> Ibid para 41.

<sup>36</sup> Ibid para 46, 47.

<sup>37</sup> Para 1102.

<sup>38</sup> eg Draft Report para 1100.

<sup>39</sup> Paras 1102, 2289.

<sup>40</sup> [2000] NZRMA 59.

45. In the following para, 246, this is apparently contradicted by the statement that:

The intended variation on landscape has not yet been notified, nor have decisions been given on the submissions on the landscape policies originally notified.

And in para 1018 the statement that:

After submissions on proposed Change 8 were heard by the Council in May and June 2007, the Council decided to undertake and notify a variation to the landscape component of the proposed change. Decisions were not made on the landscape provisions, and the notification of the variation is still pending.

And in para 1945 the statement that

In respect of proposed Change 8 to the regional policy statement, the Regional Council reported that it had decided to vary the landscape component of the proposed change, and that this process is still pending. It accepted that the weight to be given to it must reflect that it is still at a relatively early stage.

46. Federated Farmers comments that it understands that the position described in paras 246, 1018 and 1945 is the correct position. Nevertheless, it is acknowledged that nothing turns on the comment.

## APPENDIX B - APPEARANCES

47. It is noted that at the hearing on 9 September 2008, the following:

Don Nicolson

Stew Wadey

John Sexton

Paul Le Miere

Richard Gardner

appeared on behalf of:

Federated Farmers of New Zealand

Federated Farmers of New Zealand (Auckland Province Incorporated)

Federated Farmers of New Zealand (Waikato Region) 1999 Incorporated.

## CONCLUSIONS

48. Federated Farmers requests that the Board reconsider the “ultimate judgment” it has made in Chapter 18 of its Draft Report in the light of the comments made in this

memorandum. It is respectfully submitted that Transpower's proposal does not promote sustainable management, and accordingly it is submitted that the Board should amend its Draft Report to withdraw the Notice of Requirement.

Dated at Auckland this 24<sup>th</sup> day of June 2009

Richard Gardner  
Senior Policy Advisor