

Title: To sell or not to sell; that is the question? Stakeholders' Supremacy in New Zealand Electricity Industry.

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**To sell or not to sell; that is the question?
Stakeholders' Supremacy in New Zealand Electricity Industry.**

'The Maori Council has told Ministers that if the Government does not follow the Tribunal's recommendations – which include a national hui [meeting] on water rights – it will take the Government to the High Court to attempt to halt the partial sale of Mighty River Power.'

John Key, Prime Minister of New Zealand, 3 September 2012, The Press.

The Government was compelled to delay partial state asset sales of energy companies until March 2013, after a recommendation from the Waitangi Tribunal. This was in response to water right claims launched by a number of local Maori tribes. State asset sales were one of the contentious issues in last year's general election in New Zealand. Having won the election, and though clearly controversial, the National party led Government decided to go ahead with its proposed Mixed Ownership Model for state assets. However, resistance to the proposal continues nationwide. On top of the list was the sale of assets from the three electricity state-owned enterprises – Meridian Energy Limited, Mighty River Power and Genesis Power Limited.

CHANGE IS INEVITABLE

The electricity industry in New Zealand is not unfamiliar with reorganisation. Winds of change first impacted the electricity industry in 1984 when New Zealand was engulfed in rising public debt, higher unemployment and increasing inflation. New Zealand embarked on radical economic reforms with the election of new Labour government in 1984. Changes included corporatizing electricity. The Electricity Corporation of New Zealand (ECNZ) was set up as a State Owned Enterprise (SOE) in 1987 with commercial objectives. It was not long before the Government realised generation and transmission of electricity should be managed separately, which led to the creation of the state-owned transmission company Trans Power. With the election of a National government, reforms continued during the 1990s following recommendations from experts that there be greater competition in the industry. Initially, ECNZ was split and a competing SOE, Contact Energy, was formed in mid-1995. However, Contact Energy was later privatised when it was sold to United States based Edison Mission Energy in 1999. This was followed by another significant change, the separation of ECNZ into three

competing SOEs – Meridian Energy Limited, Mighty River Power and Genesis Power Limited. ‘A Better Deal for Electricity Consumers’ boasted the government in April 1998, arguing that the suggested reforms would benefit consumers by increased retail competition. The number of retailers increased significantly, but cost benefits to consumers are still a debatable matter. The industry has continued to evolve over the years but a decision by the government in May 2011 brought it back into the limelight. The Government plans to pursue a Mixed Ownership Model by selling 49 per cent of shares in the power generating SOEs. However, as the involvement of the Waitangi Tribunal (Tribunal) demonstrates, this is not likely to be so easy.

WHO OWNS THE WATER?

The Government’s decision was condemned by the opposition, but a more significant event occurred. The New Zealand Maori Council, along with ten claimants, approached the Tribunal and filed the National Water and Geothermal Resources claim in February 2012. The Tribunal was established under the Treaty of Waitangi Act of 1975. It is charged with making recommendations in response to claims brought by Maori relating to actions or omissions by the Crown that may breach the promises made in the Treaty of Waitangi (Treaty) in 1840. The Treaty was signed between local Maori and British representatives and provided the British Crown with governing rights over Maori land and waters in New Zealand.

While the Crown argues that Maori rights in water are not fully defined and no one can claim water, the Treaty has clearly indicated that Maori remain the proprietors of land and water in New Zealand (as these were held by Maori in accordance with their customary values and practices), until they wish to sell them to the Crown as per Article 2. The recent interim report of the Waitangi Tribunal highlights that Maori also have spiritual and cultural reasons for valuing water bodies, as these could be seen as a living being or as ancestors. Some have argued that it is more a matter of Maori responsibilities and duties than rights. The failure to recognize Maori authority over water challenges their ability to fulfil duties as ‘kaitiaki’ – caretakers of the environment.

After hearing the evidence and submissions, the Tribunal recommended halting the sale of state assets until the matter of proprietorship is resolved with Maori claimants. Although the recommendation of the Tribunal is not binding upon the Crown, the Government decided to delay the sale of Mighty River Power through public offering until March 2013.

STAKEHOLDERS' SUPREMACY

The significance of Maori as primary stakeholders in industry is not unrecognised, especially considering the number of water-related claims that have been made by Maori since the formation of the Tribunal. In 1995, the Government consulted with Maori before restructuring and separating ECNZ and Contact into two separate SOEs, as this involved transfer of generation assets. The Government also consulted with Maori in February 2012 before proposing legislative changes to the SOE Act in order to pursue the Mixed Ownership Model. However, Annette Sykes, an activist, accused the Government of 'elitism' over the way it chose Maori leaders to speak to in this regard. Eddie Durie from the Maori council, who lead the claim to the Tribunal, also suggested that the Government has treated the country's big and wealthy Maori leaders as de-facto Treaty partners, but the fact is these groups have already had their Treaty claims settled. The Government chose to speak to them instead of the Maori Council and it was also in a position to pass appropriate legislation due to its majority in the Parliament; however, it could not proceed further than passing the legislation. Following the interim report of the Tribunal, the Government has decided to discuss the 'shares plus' concept highlighted in the report with the Maori claimants. The shares plus option states the idea of providing certain Maori with rights and powers in relation to the company, which will be above and beyond the rights of other shareholders.

The Government continues to argue that pursuing a Mixed Ownership Model will provide an investment opportunity for all New Zealanders, as they can invest by purchasing shares in the SOEs slated for sale. The Government also suggests it is beneficial for New Zealanders as taxpayers because it is expecting to generate between \$5 billion and \$7 billion in proceeds which can contribute to new public assets like schools and hospitals; it can thereby avoid borrowing money from overseas to cover budget deficits. However, many New Zealanders think otherwise, as they have signed a Keep Our

Assets Coalition petition. This effort was launched in May 2012 to collect 310,000 valid signatures that would trigger a citizen's initiated referendum on asset sales. By July 2012, the coalition had collected 200,000 signatures, with the Green Party alone collecting around 100,000 signatures.

THE HEAT IS ON!

Critics have lashed out, asking 'if no one owns water, how can anyone profit from it?' (Tapu Misa, NZ Herald, 16 Jul 2012). However, Prime Minister John Key maintains the Government's position by stating 'in common law, no-one owns water' (The Press, 3 September 2012). The Prime Minister also stated that 'within Maoridom there are a number of views on this issue – there is no one voice' (The Press, 3 September 2012); but the recent events are suggesting otherwise. Following the Tribunal recommendation and the Government's decision to delay asset sales, the Maori King Tuheitia convened a national hui (meeting) on 13 September 2012 in order to unite all Maori. The size of the hui may have surprised the Government, as around 1000 Maori turned up to it against a scanty number which turned out to the Finance Minister's hui held on 18 September. At the King's hui there was enormous support for negotiations between the Government and Maori on their own terms over Maori rights and interest through the creation of a new national body. With the king reiterating that Maori have always remained owners of water as it had been handed down from generation to generation, the intention to re-establish their mana (authority) over water continues to grow. This is coupled with the possibility of a citizen-initiated referendum triggered by the petition initiated by the Green Party. Amongst all this commotion, the future direction of the electricity industry in New Zealand is little but certain.

SUGGESTED FURTHER READINGS

- Mitchell, RK, Agle, BR, & Wood, DJ Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts. *The Academy of Management Review* 22 (4): 853-886.
- Evans, LT & Meade, RB (2005) *Alternating Currents or Counter-Revolution? Contemporary Electricity Reform in New Zealand*. Victoria University Press, Wellington.

QUESTIONS

Q1. Along with Maori, what other potentially powerful stakeholder groups might be able to influence the direction of New Zealand electricity industry?

Ans: Groups listed in the following table outline the key stakeholders and their possible interests.

STAKEHOLDER	REASON FOR STAKE
The Government	The Government is responsible for effective and efficient functioning of the state-owned enterprises. Therefore, it has power over them and the ability to affect their functioning and objectives.
New Zealanders including Maori	All New Zealanders have moral claim on the state owned enterprises as taxpayers and consumers. Maori in particular are important stakeholders as recognised by the Treaty of Waitangi.
Businesses – Electricity generation, transmission, distribution and retailing companies	These companies are another powerful group as the industry depends on them for proper functioning.
Lobbyists	They have the ability to influence legislation and decision-making by the Government; hence making them another important stakeholder.

Q2. What are the key strategic issues that the Government is facing with the implementation of the Mixed Ownership Model?

Ans: It is necessary to look at the larger question of state-owned asset sales. Students may identify a wider range of issues. The following list highlights the fundamental issues and provides space for further possible discussions.

1. Economical: Hydro-electricity plants strategic assets because they have significant relevance to the growth and development of a nation. Is the Government's argument for selling of state-owned assets in order to pay off budget deficits justified?
2. Socio-cultural: The number of New Zealanders signing Keep Our Assets Coalition's petition indicates relatively widespread discontent with the idea. Moreover, it is important to acknowledge the customary rights of Maori over water resources may have been violated by the decision; this controversy has made matters more complex.
3. Environmental: The NZ Government's Energy Policy for 2011-2021 pays special attention to the use of renewable energy to meet the basic needs to New Zealander. There is no guarantee

that removing the ownership of water resources from public ownership to partial private ownership will assure sustainable and efficient use of these assets in the future.

Q3. Considering the current situation, what options does the NZ Government have in order to progress?

Ans: Students can highlight a list of possible options for the Government. Some of the following alternatives may be identified:

- Follow the recommendation of the Tribunal by conducting a joint national meeting in order to recognise Maori rights and negotiate by offering better deals.
- Re-evaluate the percentage of ownership to be sold in the state-owned enterprise. This should also involve proper consultation with Maori to avoid conflicts later.
- Initiate a national referendum as this will allow all New Zealanders, including Maori, to decide the future of the state owned enterprises.
- The Government needs to consider other options to reduce its budget deficits.

Q4. According to you, what should the NZ Government do, and why?

Ans: Responses should consider the range of stakeholders affected by the decision and the impact any action may have upon them.