

Roles and Responsibilities of Trustees

ENERGY AND / OR POWER TRUSTS

Trustees formal role is set out prescriptively in various pieces of legislation including:

The Trustee Act 1956

The Energy Companies Act 1992

The Commerce Amendment Act 2008

The Electricity Amendment Act 2010

The Proposed Trust Bill 2018 now before Parliament, and

The Waitaki Power Trust Deed

Shareholding

Energy Companies Act 1992 allowed that Trustees of power / electricity trusts could also hold shares in an electricity distribution company,

Waitaki Power Trust trustees are also the 100% shareholder of Network Waitaki Limited.

Key aspects of the Trustee role are:

- Know, understand and never violate the terms of the Waitaki Power Trust Deed
- Always act to promote the best interests of beneficiaries who in our case, are Network Waitaki Limited's consumers and never act from self interest
- Encourage the company to be a successful business
- Never try to interfere with the running of the Company

Responsibilities as Shareholders include:

- Approving the company's Statement of Corporate Intent
- Appointing Directors to Network Waitaki Limited's Board
- Amending the company's Constitution
- Assessing the company's performance annually in relation to its objectives

The Golden Rule is:

Never lose sight of the formal requirement to always act in the best interests of the Trust's beneficiaries, in our case, Network Waitaki Limited's consumers

Trustees Role as Consumer / Beneficiary Advocates

- Since all Waitaki Power Trust Trustees are elected by NWL Consumers, each Trustee has an additional role, that of advocating on behalf of consumer / beneficiaries' best interests
- Trustees advocacy role is wide ranging and presupposes that Trustees are well informed
- Energy Trusts of New Zealand Incorporated has a role to play in providing “big picture” information
- Trustees from the 22 Electricity / Power Trusts from throughout New Zealand that are affiliated to ETNZ have an opportunity to attend two ETNZ Conferences annually
- Each Conference opens with updates on:
 - Current issues in the electricity sector
 - ETNZ's response and concerns; and
 - A summary of the latest mutterings by Parliament and the regulators on energy / electricity matters generally
- It is important that all Trustees, especially newly elected ones, attend ETNZ conferences

What the updates show is:

- That no electricity distribution business in New Zealand operates in a vacuum;
- That the environment in which electricity distribution businesses operate is not only highly regulated, it also is continually changing;
- That activity by electricity distribution businesses is largely governed by two regulators working in tandem:
 - the Electricity Authority drawing up policies and rules and
 - the Commerce Commission interpreting these policies and rules and assessing line company performance against the outcome, combined with Commerce Act requirements.
- That the four big generators / retailers in New Zealand which operate in an unregulated market dominate the electricity sector.

The Importance of Networking

- In 2008 government amended the 1986 Commerce Act resulting in full regulatory control lifted from 12 out of the 29 electricity lines businesses in New Zealand
- The so-called exempt businesses are those which are 100% consumer trust owned, which includes Network Waitaki Limited
- Trustees of the Waitaki Power Trust subsequently realised that shareholder / trustees of exempt companies faced a raft of different issues compared with those faced by their majority only, shareholder colleagues
- For example, Trust owned EDB's focus more strongly on service levels than profit, hence the rate of return on the value of a trust owned company's assets is lower

Establishment of a Consumer Trust network

- Waitaki Power Trust decided to take the lead and establish a 100% consumer trust network and to further extend the network to include the Commerce Commission
- By late 2013 arrangements were in place for trustee representatives to meet with the Commerce Commission in May 2014
- Annual meetings, between trustees from 100% consumer trusts and the Commerce Commission have continued since - proving worthwhile to trustees and to the Commerce Commission

Waitaki Power Trust Advocating on behalf of the Best Interest of Network Waitaki Ltd – A Case Study

- Since 2006 Network Waitaki Limited has been mindful of the fact that continuing growth in demand for more electricity will result in the need for Transpower to increase its transmission supply to NWL network
- By 2009 Transpower also recognised the growing problem and held a series of workshops hosted alternatively by NWL and Alpine
- Waitaki Power Trust was represented at these workshops by Trustees Dennis Norman and Dr Helen Brookes
- Despite much discussion of proposed solutions, Transpower continually maintained that none of the solutions considered would pass a cost/benefit test which all new transmission infrastructure was required to meet

Waitaki Power Trust reading of the Grid Investment Test (GIT)

- The test, administered by the Commerce Commission, called the “Grid Investment Test” is essentially a cost benefit analysis
- Trustee reading of the Grid Investment Test document, suggested a range of problems depending on how the terms and conditions involved were to be interpreted
- The only certainty was the purpose statement of the 2008 Commerce Amendment Act bound the Commerce Commission
“to promote the long term benefits of consumers ... such that suppliers of regulated goods or services ... have incentives to ... provide services that reflect consumer demands”
- Trustees were confident that neither power cuts nor any other form of unreliable power supply would reflect consumer demands

A Case Study – Network Waitaki Limited and its Consumers' woes!

Following discussions with NWL's CEO at the time (Graham Clark), and fellow trustees, this case study was prepared

Nine appendices were attached detailing efforts by Transpower, NWL and Alpine to resolve NWL's transmission supply problem

Two main points:

- There are circumstances under which a one-size-fits-all interpretation of the GIT results in unacceptable outcomes
- That as a consequence the GIT needs to be amended to take account of the varying circumstances under which Electricity Distribution Networks operate

Circulation and Discussion of the Case Study

- The case study was:
 - Tabled by WPT at the Trustee / Commerce Commission meeting in May 2018
 - Circulated to the Commerce Commission policy section
 - Forwarded to the Chairman of the Commerce Commission Board
- Three months later WPT dispatched a follow-up letter to the Commerce Commission seeking comment on the correctness of a specific interpretation of one aspect of the GIT cost benefit analysis
- A progress report was requested on 3 May 2019 in this regard
- The Commerce Commission answered that a meeting of the CEO's of Transpower, NWL and Alpine Energy had been organised for the following week
- Outcome - NWL and Alpine Energy are now working collaboratively on the issue, with oversight from the Commerce Commission which will sign off on the final solution

Conclusion

- The general point is that trustees as advocates on behalf of NWL's consumers / beneficiaries interests have a special role to play
- That role stands outside of, and is separate from the role and responsibilities of both directors and the CEO of the company
- Hence it is important that trustees try to understand the so-called “big picture” issues, rather than shy away from the legislative and regulated environment within which electricity distribution networks are required to operate
- Finally as an advocate on behalf of the interests of the people you represent, a trustee needs always to remember “Doing Nothing is Never an Appropriate Option”!