

**REQUEST SENT TO THE PUBLIC REPRESENTATIVE (“OMBUDSMAN”)
OF THE ICELANDIC PARLIAMENT ON JULY 13TH, 2010**

This memorandum concerns the process that has led to the sale of the greater part of HS Orka to Magma Energy Sweden AB (MES). By selling the shares of Geysir Green Energy and Reykjavík Energy to MES, 98.53% of the capital shares of HS Orka will belong to MES. If MES becomes the major shareholder of HS Orka, the company will retain rights over the utilization of important energy sources in Iceland for the next 65 years at minimum.

Based on Article 5 of Act No. 85/1997 on the Althing Ombudsman, we request that the Althing Ombudsman investigate the process this of sale and the administrative decisions that have been made in this process. We also request that the Ombudsman review the opinion of the Committee on Foreign Investment regarding the purchase by MES of the shares of Geysir Green Energy and Reykjavík Energy.

In light of the fact that this process of sale has been both controversial and opaque, we feel that it is urgent that the Althing Ombudsman review this process and investigate whether public interest has been compromised in any way and whether administrative procedure in this matter has been of both sufficient legality and sufficient quality.

This matter is of essential public interest for Iceland. The experience of other nations that have privatized their energy sources or their utilization is that the price of energy has greatly increased. References on this subject are abundant and we direct attention to the writings of Jerrold Oppenheim and Theo MacGregor, as well as the research of Professor David Hall at Greenwich University in London.

We believe it is important to point out several issues for general consideration, though it is clear that not all of these issues fall under the purview of the Ombudsman, even if the Ombudsman decides to investigate this matter further.

The administration has not utilized the various derogating provisions in the Agreement on the European Economic Area that deal with the uniqueness of the energy sector, and we ask whether the administration has by its failure to do so also failed to guard the interest of the general public (see Elvira Mendez, accompanying document 2).

We will present various points to support our argument in the following pages, and we would like to remind the reader that the events which led to the collapse of the Icelandic financial system in the fall of 2008 should serve as a grim reminder that any future transactions in Iceland that directly impact Icelandic financial, energy and sovereign independence should be closely scrutinized.

The Report of the Special Investigation Commission, established by Act No.

142/2008 by the Althing, delivered a heavy judgment over Icelandic administration and governance. The report criticized administrative decisions in the privatization of public utilities and companies and highlighted the lack of quality in the preparation of the acts of the administration. We have a new administration in the Althing today, but we see little indication that the quality of operating procedures has improved in any way.

Arguments for reviewing the sale of HS Orka to Magma Energy Sweden AB

1.

Magma Energy Sweden AB (MES) is a fairly young company and has little experience in the utilization and operation of geothermal power plants and energy trading. Originally, MES was described as a Canadian company that later founded a subsidiary in Sweden when it became clear that companies outside the European Economic Area are not legally allowed to own energy companies in Iceland.

MES is registered at law offices in Gothenburg, Sweden, and it has been claimed (for example, by the dissenting opinion of the Committee on Foreign Investment) that MES is a shell corporation specifically founded to circumvent Icelandic legislation.

We direct attention to the memorandum written by Lára Hanna Einarsdóttir about the visit of Teitur Atlason to the alleged headquarters of MES. Atlason spoke with an employee of the law offices of Glimstedt in Gothenburg and this employee confirmed that no activity takes place in the building that MES claims as its registered place of operations (see Einarsdóttir's memorandum at: <http://blog.eyjan.is/larahanna/2010/07/10/afhjupun-eda-ekki-afhjupun>).

The establishment of Magma Energy Sweden AB is a nominal establishment, implemented to circumvent the provisions of the Agreement on the European Economic Area. The majority of the Committee on Foreign Investment, in their opinion dated March 22, 2010, states that the Committee sees no reason to comment on this nominal establishment.

2.

The opinion of the Committee on Foreign Investment is based on issues of law that are controversial among specialists in European law. The Committee consulted with Dóra Guðmundsdóttir at the Law Institute of the University of Iceland in writing their opinion. The Committee also consulted Kristín Haraldsdóttir, the director of the Research Institute for Natural Resource Law at Reykjavík University, but the Committee's opinion does not refer to Haraldsdóttir's opinion or conclusions. It appears that the opinion of the Committee on Foreign Investment is fully based on that of Guðmundsdóttir.

Dóra Guðmundsdóttir is an adjunct at the Law Department at the University of Iceland. She does not appear to be formally employed by the Law Institute at the University of Iceland. We argue that anyone affiliated with the Law Institute cannot be considered a neutral party regarding Magma Energy Sweden AB, as one of the two research centers of the Law Institute is funded by the organization of energy corporations in Iceland, Samorka.

The minority of the Committee on Foreign Investment issued a dissenting opinion, which states that the Committee also consulted with Elvira Méndez Pinedo, a docent in European law at the University of Iceland and the director of the Research Institute in European Law at the University of Iceland. Pinedo has a doctorate in European law and is a premier specialist in European law in Iceland. It is alarming to note that Pinedo's opinion is never referenced in the majority opinion of the Committee. Pinedo wrote a memorandum about this matter and published it on her website on March 17, 2010, five days before the publication of the Committee's opinion (see <http://elvira.blog.is/blog/elvira/entry/1031681> as well as accompanying document 2).

Comparing the reasoning of Guðmundsdóttir's opinion as referenced in the majority opinion of the Committee on Foreign Investment and the reasoning of Pinedo's opinion as published on her website, it seems clear that Guðmundsdóttir bases her conclusions on older legal cases that have appeared before the European Court of Justice while Pinedo bases her conclusions on newer cases, for example, a case from January 2010.

It appears that the reasoning of the majority opinion of the Committee on Foreign Investment is based on outdated precedents and that this opinion ignores the points of view that might support other conclusions than the one reached by the majority of the Committee. This procedure is reprehensible considering the financial and public implications of the issue for the Icelandic people.

3.

The announcement of the purchase by Magma Energy Sweden AB of HS Orka's shares, published on the website of the Ministry of Economic Affairs on March 25, 2010, states:

“The Minister of Economic Affairs is by law compelled [*sic*] to abide by the decision of the Committee on Foreign Investment. The Minister has notified the buyer of the decision of the Committee that the investment of MES in HS Orka is legal.”

Article 12 of Act No. 34/1991 on foreign investment only states that the Committee should be an “advisor” to the Minister of Economic Affairs in the licensing process (see clause 3, paragraph 1 of Article 4 of the Act).

According to Act No. 34/1991 the Minister of Economic Affairs is by law

responsible for and must make the final decision whether or not foreign corporations or individuals are licensed to invest in the Icelandic energy sector.

We would like to question whether the Minister has fulfilled his duty to investigate the matter fully, an investigative duty detailed in Article 10 of the administrative Act No. 37/1993, when he delegated the investigation and licensing process to the Committee on Foreign Investment.

We also direct attention to the fact that Act No. 34/1991 does not specify any competency requirements in appointments to the Committee on Foreign Investment. This is a strange oversight when we consider the importance of the issues and matters that fall under the purview of the Committee.

4.

It has been argued that the purchase of HS Orka by Magma Energy Sweden AB (MES) provides a necessary influx of capital into the Icelandic market and that increased foreign investment is the basis for financial recuperation after the financial collapse of 2008. However, the contract with MES is written in such a way that very little financial capital will enter the country, and MES will finance the greater part of its purchase of HS Orka with a loan from an Icelandic financial institution.

According to the purchase contract the greater part of the purchase price is financed with a domestic bullet loan—with shares in MES as security. When this purchase contract is examined it is hard to see how this purchase benefits Icelandic society and markets.

Considering the fact that MES is most likely a shell corporation, we must establish what responsibility, if any, the Canadian parent corporation is legally bound to bear.

Geysir Green Energy was originally established by FL Group (35%), Glitnir (25%), VGK Design (10%), and the municipality of Reykjanesbær (2.5 %). In light of the financial catastrophe that has befallen the largest shareholders of Geysir Green Energy, we question the real value of Geysir Green Energy's shares. We also question the authority of the board of directors of Geysir Green Energy to sell Geysir Green Energy's shares in HS Orka. We finally question how Geysir Green Energy could finance its purchase of shares in HS Orka in 2009 in light of the financial troubles of Geysir Green Energy's largest shareholders.

The OECD has published a report on privatization, "Privatisation in the 21st Century: Recent Experiences of OECD Countries. Report on Good Practices" (see accompanying document 3), which emphasizes that the process of privatization should provide the seller, the public, with real capital. This does not appear to be the case with the sale of HS Orka. This raises the question whether the implementation of this sale fulfills the demands of good administration and governance.

5.

The second International Monetary Fund (IMF) review report of Iceland published on April 8, 2010 states:

“There are headwinds to the recovery, although some upside is also possible. The main short-run risks are further delays in investments in energy-intensive sectors, high fiscal multipliers (to the extent that the distressed private sector cannot offset the impact of necessary fiscal restraint on domestic demand), and possible emigration. Constraints on the reallocation of resources from non-tradable to tradable sectors lack of financing and certain aspects of regulatory policies—may impede recovery in the medium term. On the other hand, there is ample potential for higher FDI in response to the improvements in competitiveness. And program projections for current account related income receipts are very conservative (and to the extent they are higher, this would mean less pressure for adjustment through the trade balance, more real appreciation, and a balance sheet related boost).” (See p. 7, IMF Country Report No. 10/95, April 2010:

<http://www.imf.org/external/pubs/cat/longres.cfm?sk=23806.0>)

In light of this declaration by the International Monetary Fund, we question whether IMF policies have unduly influenced the actions and/or inactions of the administration in the sale of HS Orka, and whether the interference of foreign institutions are consistent with Icelandic administrative and constitutional law.

6.

The website of Think Geo Energy publishes information about the shareholders of Magma Energy Corp.:

“A rough list of the shareholders of Magma Energy Corp.: Ross Beaty/ Sitka Foundation 46.4%, Springleaf Enterprises/ Saudi Interests 7%, AltaGas Income Fund about 5%, Cascade Investment (a fund by Bill Gates) 2.5% and other institutional holders representing about 34.5%. Individual investors are holding around 4.6%.” (See <http://thinkgeoenergy.com/archives/2294>)

Despite extensive search on the Internet we can find no information about some of these corporations, such as Springleaf Enterprises and the Sitka Foundation.

Paragraph 1 of Article 5 of Act No.34/1991 clearly states that it is the responsibility of the Ministry of Economic Affairs to obtain detailed information about the owners of foreign corporations that have invested in Icelandic companies. We ask the Althing Ombudsman to investigate whether detailed information has been collected about the identity of the shareholders of MES and its parent company Magma Energy Corp., and to investigate the real division of ownership in shares of HS Orka.

Judging by the media’s reporting on the sale of HS Orka to MES, it appears that key individuals connected with the sale have a joint vested interest in the sale. We direct attention to an article in *DV* from July 2009 titled “S-hópurinn fer með völd í Geysir

Green Energy” where Jóhann Hauksson details the alleged network which ties prominent individuals in politics and business to Geysir Green Energy (see accompanying document 4).

It is our opinion that it is necessary to investigate this aspect of the sale and whether the network of individuals who benefit from the sale negotiated the purchase contract in a legal and prudent manner. However, we fully realize that this investigation might not fall under the purview of the Althing Ombudsman.

We would also like to direct attention to the website of Lára Hanna Einarsdóttir, who has investigated the privatization of the energy sector. Einarsdóttir has collected reference material relating to the sale of HS Orka and has studied the media’s reporting on the sale. She has written several articles about the sale exposing the ties between the network of individuals and corporations that benefit from the sale and their attempts to cover up the details of the transaction. Einarsdóttir’s articles are shocking and they alone should give sufficient reason to investigate and/or revoke the sale of HS Orka.

7.

Finally we would like direct the attention of the Ombudsman to Article 12 of Act No. 34/1991 on the investment of foreign corporations or individuals in Icelandic markets. In light of the dire financial situation in Iceland today, we believe that this article directly obligates the administration to review the sale of HS Orka to Magma Energy Sweden AB. Article 12 states:

“If the Minister of Economic Affairs believes that a foreign investment jeopardizes the security of the country or violates public policy, public safety or public health; or if serious financial, social or environmental difficulties arise in distinct economic sectors or distinct areas and these difficulties are likely to be persistent, the Minister may halt this investment.”

The financial collapse of 2008 has led to a diminished standard of living for the public in Iceland. Companies and corporations formerly owned by the public have been privatized in the last twenty years, and sold and bankrupted by private individuals in a matter of only a few years. We still have time to stop the gambling of public resources within the energy sector, a gamble which has uncomfortable parallels with the privatization and sale of the financial and public institutions that led to the financial collapse in the fall of 2008.

In conclusion

The decisions we make now about the utilization of our energy sources will not only impact us, but also our children and generations to come.

We stand on the threshold of a new era and we must stop and ponder the future direction of our country.

Do we want to sell the utilization of our energy sources and forfeit the future profits from these sources to foreign corporations?

What is the public benefit in such an arrangement?

These are questions that can be answered neither by a committee appointed by a ministry nor by individual politicians.

The nation as a whole must have exclusive jurisdiction over this matter.