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COMMERCE ACT
(DECISION NOT TO DECLARE CONTROL –
1 APRIL 2009 TO 31 MARCH 2010: ALPINE ENERGY
LIMITED, CENTRALINES LIMITED, EASTLAND
NETWORK LIMITED, HORIZON ENERGY DISTRIBUTION
LIMITED, NELSON ELECTRICITY LIMITED, NETWORK
TASMAN LIMITED, ORION NEW ZEALAND LIMITED,
OTAGONET JOINT VENTURE, POWERCO LIMITED, THE
LINES COMPANY LIMITED, TOP ENERGY LIMITED AND
WELLINGTON ELECTRICITY LINES LIMITED)
NOTICE 2011

PURSUANT TO PART 4
OF THE COMMERCE ACT 1986

COMMERCE ACT
(DECISION NOT TO DECLARE CONTROL – 1 APRIL 2009 TO 31 MARCH 2010:
ALPINE ENERGY LIMITED, CENTRALINES LIMITED, EASTLAND NETWORK
LIMITED, HORIZON ENERGY DISTRIBUTION LIMITED, NELSON
ELECTRICITY LIMITED, NETWORK TASMAN LIMITED, ORION
NEW ZEALAND LIMITED, OTAGONET JOINT VENTURE, POWERCO LIMITED,
THE LINES COMPANY LIMITED, TOP ENERGY LIMITED AND WELLINGTON
ELECTRICITY LINES LIMITED)
NOTICE 2011

All suppliers of electricity lines services (other than those supplied by Transpower New Zealand Limited) are subject to default/customised price-quality regulation under Part 4 of the Commerce Act 1986 (“the Act”), unless they are exempt.¹

Section 54J(2)(a) of the Act provides that on and after 1 April 2009, the thresholds for large electricity lines businesses that expired on 31 March 2009 are deemed to be section 52P determinations that apply those thresholds to each supplier as if the thresholds were default price-quality paths.

The thresholds for large electricity lines businesses that expired on 31 March 2009 are contained in the Commerce Act (Electricity Distribution Thresholds) Notice 2004, published as a Supplement to the *New Zealand Gazette*, 31 March 2004, No. 37, page 927.

Section 54N of the Act provides for the transition from the targeted control regime under Part 4A to price-quality regulation under Part 4. Part 4A continues to apply in connection with breaches of the default price-quality path that occur before 1 April 2010. The Commerce Commission (“Commission”) may take action in relation to a breach as if the Commerce Amendment Act 2008 (which repeals Part 4A) had not been enacted, except that the purpose in section 52A must be taken to be the purpose of Part 4A.²

Default price-quality paths applying from 1 April 2009

A breach of a default price-quality path that occurs before the close of 31 March 2010 must be dealt with in accordance with section 54N. For such a breach, the Commission may publish a notice of intention to declare control under Part 4A at any time before the expiry of 12 months after the end of the financial year in which the breach occurs.³

The process for making decisions on declarations of control was set out in section 57H of Part 4A (repealed), as applied by section 54N, which provided that the Commission must:

- (a) assess large electricity lines businesses against the thresholds set under this subpart; and
- (b) identify any large electricity lines business that breaches the thresholds; and
- (c) determine whether or not to declare all or any of the goods or services supplied by all or any of the identified large electricity lines businesses to be controlled, taking into account the purpose of this subpart; and
- (d) in respect of each identified large electricity lines business,—
 - (i) make a control declaration; or

¹ See section 54G of the Act – suppliers of electricity lines services that meet the “consumer-owned” definition in section 54D of the Act are exempt from default price-quality regulation. A list of consumer-owned businesses can be found on the Commerce Commission’s website. This list is for information purposes only and has no legal effect.

² See section 54N(4) of the Act.

³ See section 54N(2)(b) of the Act.

- (ii) publish the reasons for not making a control declaration in the *New Zealand Gazette*, on the Internet, and in any other manner (if any) that the Commission considers appropriate.

Before making a declaration of control, the Commission was required under section 57I(1) of Part 4A (repealed) as applied by section 54N, to:

- (a) publish its intention to make a declaration and invite interested persons to give their views on the matter; and
- (b) give a reasonable opportunity to interested persons to give those views; and
- (c) have regard to those views.

Identification of threshold breaches

The Commission identified 12 non-exempt suppliers of electricity lines services (Non-exempt EDBs), shown in Table 1, as having breached the default price-quality path at the 2009/10 assessment date.

Table 1: Breaches of the default price-quality path at the 31 March 2010 assessment date

Non-exempt EDBs	2009/10	
	Price	Quality
Alpine Energy Limited		Breach
Centralines Limited	Breach	
Eastland Network Limited	Breach	
Horizon Energy Distribution Limited	Breach	Breach
Nelson Electricity Limited	Breach	Breach
Network Tasman Limited		Breach
Orion New Zealand Limited	Breach	
OtagoNet Joint Venture	Breach	Breach
Powerco Limited		Breach
The Lines Company Limited	Breach	
Top Energy Limited	Breach	
Wellington Electricity Lines Limited	Breach	Breach

Decisions Not to Declare Control

The Commission has determined that it is consistent with section 52A of the Act not to publish a notice of intention to declare control under Part 4 in respect of electricity distribution services supplied by those non-exempt EDBs contained in Table 1.

A summary of the reasons is as follows:

The breach was sufficiently minor

- Network Tasman Limited breached the quality standards by less than 1% and Wellington Electricity Lines Limited breached the price path by less than 1%.
- The Commission considers the respective breaches to be minor and accordingly, has decided that no further action would be taken with regards to either breach during the 2009/10 assessment period.

Breaches of the price path

- The 2009/10 assessment period is a transition from the targeted control regime in the repealed Part 4A to default price-quality regulation under Part 4 of the Act. Accordingly, the Commission is of the view that strong evidence of excessive profits (above-normal returns) in this period would need to exist to warrant an intention to declare control.
- In assessing non-exempt EDBs performance against the price path, the Commission considered the return on investment disclosed by each non-exempt EDBs that breached the price path under the *Electricity Distribution Information Disclosure Requirements* issued 31 March 2004 (consolidating all amendments to 31 October 2008), as well as the effect of applying the input methodologies determined by the Commission under the *Commerce Act (Electricity Distribution Services Input Methodologies) Determination 2010, Decision No. 710*, 22 December 2010.
- The analysis undertaken by the Commission suggests that most of those non-exempt EDBs that reported a breach of the price path (as listed in Table 1 above) would not have been found to have earned above-normal returns for the assessment period if the input methodologies had applied during the assessment period. The Commission notes further that the asset valuation input methodology allows businesses to make some adjustments to their asset values that may result in an increase in their regulatory asset bases. Such increases, if they are realised, may also mean that returns that appear to be above-normal under the thresholds applying at the time, might not be considered above-normal in the future.
- Given that the price levels that led to the breach could be considered reasonable under the price-quality path applying from 1 April 2010, the Commission considers there is likely to be little benefit in declaring control for these businesses. Price levels that are found to be too high under the default price-quality path applying from 1 April 2010 could be addressed through the starting price adjustment provisions allowed under Part 4. Although starting price adjustments do not correct any over-recovery in the 2009/10 year, it will ensure that such over-recovery does not continue into the future. Given that non-exempt EDBs are now subject to control under Part 4, the Commission does not consider there will be any benefits from declaring control of any non-exempt EDBs under the transitional provisions of the Act.
- Accordingly, the Commission has decided not to take further action with respect to the breaches of the price path during the 2009/10 assessment period by the following non-exempt EDBs:
 - Centralines Limited
 - Eastland Network Limited
 - Horizon Energy Distribution Limited
 - Nelson Electricity Limited
 - Orion New Zealand Limited
 - OtagoNet Joint Venture Limited
 - The Lines Company Limited
 - Top Energy Limited

Breaches of the quality path

- Given the year-on-year variability in actual performance, the Commission is of the view that it will only take further action where evidence of sustained deterioration in reliability is exhibited by non-exempt EDBs.
- In assessing quality breaches, the Commission has followed the process outlined in its *Regulation of Electricity Lines Businesses Targeted Control Regime Assessment and Inquiry Guidelines*, 19 October 2004. Its analysis did not find evidence of a sustained problem for five of the non-exempt EDBs that reported a breach of the quality standard as listed in Table 1 above.

- Accordingly, the Commission has decided not to take further action with respect to the breaches of the quality standard during the 2009/10 assessment period by the following non-exempt EDBs:
 - Horizon Energy Distribution Limited
 - Nelson Electricity Limited
 - OtagoNet Joint Venture Limited
 - Powerco Limited
 - Wellington Electricity Lines Limited
- The Commission does, however, have some concerns about the performance trend exhibited by Alpine Energy Limited which has breached both the allowable SAIDI and SAIFI levels over a five-year period.
- The Commission has decided not to declare control of Alpine Energy Limited. Instead, the Commission intends to undertake an onsite engineering review of the network to gain a full understanding of the nature and extent of the breaches, and to understand Alpine Energy Limited's specific business needs, circumstances, and future intentions. The Commission considers that any concerns identified by the Commission in this review, can be addressed under the Part 4 regime.

An explanation of the reasons for the Commission's decision not to declare control of the above non-exempt EDBs is contained in the paper entitled *Commerce Commission Regulation of Electricity Lines Businesses Price-Quality Control Regulation Reasons for Not Declaring Control of the following Non-exempt Electricity Distribution Businesses: Alpine Energy Limited, Centralines Limited, Eastland Network Limited, Horizon Energy Distribution Limited, Nelson Electricity Limited, Network Tasman Limited, Orion New Zealand Limited, OtagoNet Joint Venture, Powerco Limited, The Lines Company Limited, Top Energy Limited and Wellington Electricity Lines Limited* dated 1 April 2011. A copy of this paper will be located on the Commission's website: www.comcom.govt.nz.

Any comments and questions on this notice may be sent by email to: electricity@comcom.govt.nz; or by mail to Regulation Branch, Commerce Commission, P.O. Box 2351, Wellington; or by facsimile (04) 924 3700.