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COMMERCE ACT

**(DECISION NOT TO DECLARE CONTROL –
1 APRIL 2008 TO 31 MARCH 2009: ALPINE ENERGY
LIMITED, CENTRALINES LIMITED, COUNTIES POWER
LIMITED, EASTLAND NETWORK LIMITED, ELECTRA
LIMITED, ELECTRICITY ASHBURTON LIMITED,
HORIZON ENERGY DISTRIBUTION LIMITED,
MAINPOWER NEW ZEALAND LIMITED,
MARLBOROUGH LINES LIMITED, NELSON
ELECTRICITY LIMITED, NETWORK TASMAN LIMITED,
NORTHPOWER LIMITED, OTAGONET JOINT VENTURE,
POWERCO LIMITED, THE POWER COMPANY, TOP
ENERGY LIMITED, WELLINGTON ELECTRICITY LINES
LIMITED AND WESTPOWER LIMITED)**

NOTICE 2010

**PURSUANT TO PART 4A
OF THE COMMERCE ACT 1986**

COMMERCE ACT**(DECISION NOT TO DECLARE CONTROL – 1 APRIL 2008 TO 31 MARCH 2009:
ALPINE ENERGY LIMITED, CENTRALINES LIMITED, COUNTIES POWER
LIMITED, EASTLAND NETWORK LIMITED, ELECTRA LIMITED,
ELECTRICITY ASHBURTON LIMITED, HORIZON ENERGY DISTRIBUTION
LIMITED, MAINPOWER NEW ZEALAND LIMITED, MARLBOROUGH LINES
LIMITED, NELSON ELECTRICITY LIMITED, NETWORK TASMAN LIMITED,
NORTHPOWER LIMITED, OTAGONET JOINT VENTURE, POWERCO LIMITED,
THE POWER COMPANY, TOP ENERGY LIMITED, WELLINGTON
ELECTRICITY LINES LIMITED AND WESTPOWER LIMITED)
NOTICE 2010**

Part 4A of the Commerce Act 1986 (“the Act”) came into effect on 8 August 2001 and, among other things, required the Commerce Commission (“Commission”) to implement a targeted control regime for the regulation of large electricity lines businesses (“lines businesses”)—namely electricity distribution businesses (“distribution businesses”) and Transpower New Zealand Limited. The Commerce Amendment Act 2008 (“the Act”) repealed Part 4A, however certain provisions of Part 4A continue to apply in connection with the breach of thresholds set under Part 4A before its repeal, including when those thresholds apply as default price-quality paths¹.

The targeted control regime

Under section 57G(1)(b) of Part 4A (repealed), as applied by section 54N, the Commission was required to set thresholds for the declaration of control in relation to lines businesses.

The Commission reset the thresholds for all distribution businesses for a five-year regulatory period from 1 April 2004. These reset thresholds were set by 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 54J(2)(a) of the Act provides that on and after 1 April 2009, the thresholds for large electricity lines business 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. 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 54N², which provides that the purpose of section 52A must be taken to be the purpose of Part 4A. For such a breach, and for breaches occurring on or after 1 April 2007 until 31 March 2009, 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 Section 54N of the Act.

² Section 54J(3) 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 is 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 18 distribution businesses, shown in Table 1, as having breached one or more thresholds at the 2008/09 assessment.

Table 1: Breaches at the 31 March 2009 assessment

EDB	2008/09	
	Price	Quality
Alpine Energy	Breach	Breach
Centralines	Breach	
Counties Power		Breach
Eastland Network	Breach	
Electra		Breach
Electricity Ashburton	Breach	Breach
Horizon Energy	Breach	Breach
Mainpower	Breach	
Marlborough Lines	Breach	Breach
Nelson Electricity	Breach	Breach
Network Tasman		Breach
Northpower		Breach
OtagoNet	Breach	Breach
Powerco		Breach
The Power Company	Breach	
Top Energy	Breach	Breach
Wellington Electricity		Breach
Westpower	Breach	Breach

Decisions Not to Declare Control

The Commission has determined that it is consistent with section 52A of the Act to not publish a notice of intention to declare control under Part 4A in respect of electricity distribution services supplied by those electricity distribution businesses contained in Table 1, for the following reasons:

Alpine Energy Limited

- The price path threshold breach during the 2008/09 assessment period is fully explained by the difference between actual and budgeted pass-through costs;

- Alpine Energy confirmed to the Commission that it had returned the full amount of the breach, plus interest to energy retailers on 30 June 2009. Once the amount returned to consumers is removed from Alpine Energy's notional revenue, it no longer exceeds the price path threshold;
- the Commission considers that Alpine Energy appropriately dealt with the breach of the price path threshold by returning the full amount, plus interest to its consumers; and
- Alpine Energy's quality threshold breach during the 2008/09 assessment period does not appear to provide prima facie evidence of a sustained problem.

Centralines Limited

- Centralines' disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period.

Counties Power Limited

- The breach of the reliability threshold is significantly reduced when the SAIDI value is normalised using Counties Power identified major event days (MEDs)⁴; and
- Counties Power's quality threshold breach during the 2008/09 assessment period does not appear to provide prima facie evidence of a sustained problem.

Eastland Network Limited

- Eastland Network's disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period.

Electra Limited

- Electra's quality threshold breach during the 2008/09 assessment period does not appear to provide prima facie evidence of a sustained problem.

Electricity Ashburton Limited

- Electricity Ashburton's disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period; and
- Electricity Ashburton's quality threshold breaches during the 2008/09 assessment period do not appear to provide prima facie evidence of a sustained problem.

Horizon Energy Distribution Limited

- Horizon Energy's disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period. Horizon Energy's performance will be monitored under the DPP and should it breach at a future compliance date the Commission would be able to assess the circumstances surrounding the breach and if necessary address any performance concerns at that time; and
- Horizon Energy's quality threshold breach during the 2008/09 assessment period does not appear to provide prima facie evidence of a sustained problem.

⁴ Where the cumulative effect of individual outages per day exceeds the boundary value these days are deemed MEDs. These days are normalised by replacing each MED with the boundary value.

Mainpower New Zealand Limited

- The price path breach during the 2008/09 assessment period is predominately explained by Mainpower's actual pass-through costs being lower than budgeted; and
- Mainpower's disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period.

Marlborough Lines Limited

- Marlborough Lines' disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period; and
- Marlborough Lines' quality threshold breaches during the 2008/09 assessment period do not appear to provide prima facie evidence of a sustained problem. However, the Commission will continue to monitor Marlborough Lines' performance.

Nelson Electricity Limited

- The price path breach during the 2008/09 assessment period is predominately explained by Nelson Electricity's actual pass-through costs being lower than budgeted;
- Nelson Electricity's disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period; and
- Nelson Electricity's quality threshold breaches during the 2008/09 assessment period do not appear to provide prima facie evidence of a sustained problem.

Network Tasman Limited

- Network Tasman's quality threshold breach during the 2008/09 assessment period does not appear to provide prima facie evidence of a sustained problem.

Northpower Limited

- Northpower's quality threshold breach during the 2008/09 assessment period does not appear to provide prima facie evidence of a sustained problem.

OtagoNet Joint Venture

- OtagoNet's disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period; and
- OtagoNet's quality threshold breaches during the 2008/09 assessment period do not appear to provide prima facie evidence of a sustained problem. OtagoNet's performance will be monitored under the DPP and should it breach at a future compliance date the Commission would be able to assess the circumstances surrounding the breach and if necessary address any performance concerns at that time

Powerco Limited

- The breach of the reliability threshold is significantly reduced when the SAIDI value is normalised using Powerco's identified MEDs; and
- Powerco's reliability results do not indicate deterioration in its performance against its threshold.

The Power Company Limited

- The Power Company's disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period.

Top Energy Limited

- Top Energy confirmed to the Commission that it had returned the full amount of the breach to consumers on 12 May 2009. Once the amount returned to consumers is removed from Top Energy's notional revenue, it no longer exceeds the price path threshold;
- the Commission considers that Top Energy appropriately dealt with the breach of the price path threshold by returning the full amount, plus interest to its consumers;
- the breach of the reliability threshold is significantly reduced when the SAIDI value is normalised using Top Energy's identified MEDs; and
- Top Energy's reliability results do not indicate deterioration in its SAIDI performance against its threshold.

Wellington Electricity Lines Limited

- Wellington Electricity's quality threshold breach during the 2008/09 assessment period does not appear to provide prima facie evidence of a sustained problem. However, the Commission will continue to monitor Wellington Electricity's performance.

Westpower Limited

- Westpower's disclosed ROI results do not appear to provide prima facie evidence that it consistently earned excessive profits over the regulatory period;
- Westpower's SAIDI result is below the threshold and the SAIFI result is significantly reduced when the results are normalised using Westpower's identified MEDs; and
- Westpower's quality threshold breaches during the 2008/09 assessment period do not appear to provide prima facie evidence of a sustained problem.

A comprehensive explanation of the reasons for the Commission's decisions not to declare control of the above electricity lines businesses is contained in the paper titled *Commerce Commission, Regulation of Electricity Lines Businesses Targeted Control Regime Reasons for Not Declaring Control of the Electricity Distribution Businesses: Alpine Energy Limited, Centralines Limited, Counties Power Limited, Eastland Network Limited, Electra Limited, Electricity Ashburton Limited, Horizon Energy Distribution Limited, Mainpower New Zealand Limited, Marlborough Lines Limited, Nelson Electricity Limited, Network Tasman Limited, Northpower Limited, OtagoNet Joint Venture, Powerco Limited, The Power Company, Top Energy Limited, Wellington Electricity Lines Limited and Westpower Limited* dated 16 February 2010. A copy of this paper can 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.