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COMMERCE ACT

**(DECISION NOT TO DECLARE CONTROL – 1 APRIL 2006
TO 31 MARCH 2007: ALPINE ENERGY LIMITED, AURORA
ENERGY LIMITED, COUNTIES POWER LIMITED,
ELECTRICITY ASHBURTON LIMITED, ELECTRICITY
INVERCARGILL LIMITED, MAINPOWER NEW ZEALAND
LIMITED, ORION NEW ZEALAND LIMITED, TOP
ENERGY LIMITED; 1 APRIL 2003 TO 31 MARCH 2006:
NELSON ELECTRICITY LIMITED, NETWORK WAITAKI
LIMITED, SCANPOWER LIMITED) NOTICE 2009**

**PURSUANT TO
PART 4A OF THE COMMERCE ACT 1986
AND
SECTION 13 OF THE INTERPRETATION ACT 1999**

**COMMERCE ACT
(DECISION NOT TO DECLARE CONTROL – 1 APRIL 2006 TO
31 MARCH 2007: ALPINE ENERGY LIMITED, AURORA ENERGY
LIMITED, COUNTIES POWER LIMITED, ELECTRICITY ASHBURTON
LIMITED, ELECTRICITY INVERCARGILL LIMITED, MAINPOWER
NEW ZEALAND LIMITED, ORION NEW ZEALAND LIMITED,
TOP ENERGY LIMITED; 1 APRIL 2003 TO 31 MARCH 2006: NELSON
ELECTRICITY LIMITED, NETWORK WAITAKI LIMITED, SCANPOWER
LIMITED) NOTICE 2009**

Pursuant to Part 4A of the Commerce Act 1986 and section 13 of the Interpretation Act 1999, the Commerce Commission (the “Commission”) gives the following notice.

NOTICE

1. Title

- (1) This notice is the Commerce Act (Decision Not to Declare Control: Electricity Distribution Businesses) Notice 2009.
- (2) This notice supersedes the Commerce Act (Decision Not to Declare Control: Electricity Distribution Businesses) Notice 2008 (2nd) (*New Zealand Gazette*, 29 September 2008, No. 146, page 3965).

2. Long title

Commerce Act (Decision Not to Declare Control – 1 April 2006 to 31 March 2007: Alpine Energy Limited, Aurora Energy Limited, Counties Power Limited, Electricity Ashburton Limited, Electricity Invercargill Limited, Mainpower New Zealand Limited, Orion New Zealand Limited, Top Energy Limited; 1 April 2003 to 31 March 2006: Nelson Electricity Limited, Network Waitaki Limited, Scanpower Limited) Notice 2009.

3. Background

Part 4A of the Commerce Act 1986 (“the Act”) came into effect on 8 August 2001 and, among other things, required the 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.

Section 57E of the Act provided that the purpose of subpart 1 of Part 4A was to promote the efficient operation of markets directly related to electricity distribution and transmission services through targeted control for the long-term benefit of consumers by ensuring that suppliers:

- (a) are limited in their ability to extract excessive profits; and
- (b) face strong incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
- (c) share the benefits of efficiency gains with consumers, including through lower prices.

Under section 57G(1)(b) of the Act, the Commission was required set thresholds for the declaration of control in relation to lines businesses.

On 6 June 2003, after consulting with interested parties as to possible thresholds, the Commission set two thresholds—a CPI-X price path threshold and a quality threshold—applicable until 31 March 2004 for distribution businesses. These initial thresholds were set by the *Commerce Act (Electricity Lines Thresholds) Notice 2003* published as a Supplement to the *New Zealand Gazette*, 6 June 2003, No. 62, page 1685.

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* (the Thresholds Notice) published as a Supplement to the *New Zealand Gazette*, 31 March 2004, No. 37, page 927.

The process for making decisions on declarations of control was set out in section 57H of the Act, 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
 - (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 57K(1) 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.

In September 2008, the Commission published its decisions in relation to breaches of the Thresholds Notice under Part 4A of the Act. The decisions were published in the *New Zealand Gazette*, 29 September 2008, No. 146, page 3965, as the *Commerce Act (Decision Not to Declare Control: Electricity Distribution Businesses) Notice 2008 (2nd)* (the 2008 Notice). This notice supersedes the 2008 Notice to correct errors (in respect of price path breaches) in the 2008 Notice, in accordance with section 13 of the Interpretation Act 1999.

4. Assessment and identification of threshold breaches

The Commission has assessed the 11 distribution businesses, and their respective threshold breaches, contained in Table 1 and Table 2, during the assessment period ended 31 March 2007.

Table 1: Breaches Assessed

	2006/07	
EDB	Price	Quality
Alpine Energy		Breach
Aurora Energy		Breach
Counties Power		Breach
Electricity Ashburton		Breach
Electricity Invercargill		Breach
Mainpower		Breach
Network Waitaki		Breach
Orion		Breach
Top Energy	Breach	

Table 2: Breaches assessed in this paper for the 2003/04 to 2005/06 assessment years

	2003-2004		2004-05		2005-06	
EDB	Price	Quality	Price	Quality	Price	Quality
Nelson Electricity					Breach	
Network Waitaki		Breach		Breach		Breach
Scanpower			Breach		Breach	

5. Decisions Not to Declare Control

The Commission has determined that it is consistent with section 57E of the Act to not make a declaration of 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 breach of the reliability threshold during the 2006/07 assessment period is significantly reduced when the SAIDI and SAIFI values are normalised and there is evidence that an extreme weather event (a snow storm) disproportionately impacted its SAIDI and SAIFI, both directly during the event and indirectly from repairs of the resulting damage;
- the Commission's 2004 review found Alpine's network management and investment levels appeared to be satisfactory;
- Alpine's reliability results do not indicate deterioration in its SAIDI or SAIFI performance against its thresholds. However, the Commission will continue to monitor both Alpine's SAIFI and SAIDI statistics to identify any long term decline in reliability; and
- the Commission has no other section 57E concerns.

Aurora Energy Limited

- Aurora's breach of its quality threshold during the 2006/07 assessment period is relatively minor, with only its SAIFI threshold breached by 0.07 times (4.4%) and does not indicate a deterioration in its network;
- the Commission has no other section 57E concerns.

Counties Power Limited

- Counties Power's breach of its SAIFI threshold during the 2006/07 assessment period does not indicate a deterioration in reliability;
- this is supported by the fact that Counties Power did not breach its corresponding SAIDI threshold; and
- the Commission has no other section 57E concerns.

Electricity Ashburton Limited

- Electricity Ashburton's breach of the reliability threshold during the 2006/07 assessment period was caused by an extreme event which contributed over 1500 SAIDI minutes to its annual total;
- Electricity Ashburton's reliability results do not indicate deterioration in its SAIDI and SAIFI performance against its thresholds. However, the Commission will continue to monitor both Electricity Ashburton's SAIFI and SAIDI reliability performance trend; and
- the Commission has no other section 57E concerns.

Electricity Invercargill Limited

- When Electricity Invercargill's five-year running averages for SAIDI and SAIFI are assessed, its performance remains consistently below the threshold;
- Electricity Invercargill's reliability results do not indicate deterioration in its SAIFI and SAIDI performance against its thresholds. However, the Commission will continue to monitor both Electricity Invercargill's SAIFI and SAIDI reliability performance trend; and
- the Commission has no other section 57E concerns.

Mainpower New Zealand Limited

- As the SAIDI and SAIFI thresholds for the 2006/07 assessment period are no longer exceeded after applying the Beta Method and replacing MEDs with the boundary value, Mainpower is within Safe Harbour for this breach;
- Mainpower's reliability (SAIDI and SAIFI) results do not indicate a deterioration in its network reliability against its thresholds; and
- the Commission has no other section 57E concerns.

Nelson Electricity Limited

- The price path breach at the 2005/06 assessment date is predominantly explained by Nelson Electricity's actual loss rental rebates being higher than budgeted;
- Nelson Electricity has returned the full amount of the 2005/06 price path breach to its customers by setting its prices to earn a notional revenue below its allowable notional revenue in 2006/07 and 2007/08; and
- the Commission has no other section 57E concerns.

Network Waitaki Limited

- Although Network Waitaki's reliability results from 2003/04 to 2006/07 do indicate a deterioration in its performance against its thresholds, based on level of growth the network is experiencing and the findings of the engineering report provided by PBA, the Commission considers the explanation for Network Waitaki's breaches of the quality thresholds as acceptable;
- The Commission will continue to monitor both Network Waitaki's SAIFI and SAIDI statistics to identify any further long term decline in reliability; and
- the Commission has no other s 57E concerns.

Orion New Zealand Limited

- In the 2006/07 assessment period, the SAIDI reliability threshold is no longer exceeded after removing the effects of extreme events – Orion is within Safe Harbour for this breach;
- Orion's reliability (SAIDI and SAIFI) results do not indicate a deterioration in its network reliability against its thresholds; and
- the Commission has no other section 57E concerns.

Scanpower Limited

- Scanpower's price path breach during the 2004/05 assessment period was caused by a combination of differences between budgeted and actual pass-through transmission costs, and a pricing structure not being in place for the full 12 month period;
- the price path breach during the 2005/06 assessment period was solely caused by differences between budgeted and actual pass-through transmission costs;
- Scanpower has initiated a pricing strategy that will return the full amount of the 2004/05 and 2005/06 breaches to its customers, by achieving a notional revenue deliberately lower than its allowable notional revenue; and
- the Commission has no other section 57E concerns.

Top Energy Limited

- The price path breach during the 2006/07 assessment period was caused by an overestimation of the CPI, which resulted in a lower than expected allowable notional revenue.
- Top Energy returned the full amount of the breach back to consumer through its retailers. The Commission considers that Top Energy appropriately dealt with the breach; and
- the Commission has no other section 57E concerns.

A more 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, Aurora Energy Limited, Counties Power Limited, Electricity Ashburton Limited, Electricity Invercargill Limited, Mainpower New Zealand Limited, Nelson Electricity Limited, Network Waitaki Limited, Orion New Zealand Limited, Scanpower Limited, Top Energy Limited* dated 29 September 2008 (updated to reflect this notice as at 14 December 2009). 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 Network Performance Branch, Commerce Commission, P.O. Box 2351, Wellington; or by facsimile (04) 924 3700.