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COMMERCE ACT (DECISION NOT TO DECLARE CONTROL: THE POWER COMPANY LIMITED) NOTICE 2009

PURSUANT TO PART 4A
OF THE COMMERCE ACT 1986

**COMMERCE ACT (DECISION NOT TO DECLARE CONTROL:
THE POWER COMPANY LIMITED) NOTICE 2009**

Part 4A of the Commerce Act 1986 (“the Act”) came into effect on 8 August 2001 and, among other things, requires the Commerce Commission (“Commission”) to implement a targeted control regime for the regulation of large electricity lines businesses (“lines businesses”)—namely electricity distribution businesses and Transpower New Zealand Limited.

The targeted control regime

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

The process for making decisions on declarations of control is set out in section 57H, which provides 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.

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.

The Act has been amended by the Commerce Amendment Act 2008 and consequently Part 4A will be repealed on 1 April 2009. The Act provides transitional provisions that allow the Commission to publish a notice of intention to declare control under Part 4A for any breach of a threshold that occurred on or after 1 April 2007 and before the close of 31 March 2009. In assessing The Power Company’s 2007/08 breach, the Commission has considered the purpose of Part 4 as contained in section 52A of the Act.

Assessment and identification of The Power Company’s threshold breaches

The Power Company owns and operates network assets for the provision of electricity distribution services to around 32,500 consumers in the Southland region. Of the 29 lines businesses, The Power Company is the fifth largest in terms of system length, but has the second lowest customer density per kilometre of lines.

The Commission has assessed The Power Company against the price and quality thresholds set from 6 June 2003 to 31 March 2008. The Commission has identified The Power Company as breaching the price path and quality thresholds in 2007/08.

Decision not to declare control

The Commission has determined that it is consistent with section 52A of the Act not to make a declaration of control under Part 4A in respect of electricity distribution services supplied by The Power Company for its breach of the 2007/08 price path and quality threshold for the following reasons:

- The Power Company is not earning excess returns, despite its five years of price increases implemented to raise its rate of return; and
- The Power Company's normalised network reliability performance trend, and the 2007/08 breach, excluding extreme events, is well below the SAIDI and SAIFI criteria of the quality threshold;
- the Commission's experts have advised that The Power Company's network reliability, level of planned capital expenditure, and maintenance and engineering practices appear sound; and
- the Commission has no other section 52A concerns.

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.