



New Zealand Gazette

OF THURSDAY, 25 SEPTEMBER 2008

WELLINGTON: MONDAY, 29 SEPTEMBER 2008 — ISSUE NO. 146

**COMMERCE ACT
(DECISION NOT TO DECLARE CONTROL –
1 APRIL 2006 TO 31 MARCH 2007:
ALPINE ENERGY LIMITED, AURORA ENERGY LIMITED,
COUNTIES POWER LIMITED, EASTLAND NETWORK
LIMITED, ELECTRICITY ASHBURTON LIMITED,
ELECTRICITY INVERCARGILL LIMITED, MAINPOWER
NEW ZEALAND LIMITED, NETWORK TASMAN
LIMITED, ORION NEW ZEALAND LIMITED, POWERCO
LIMITED, TOP ENERGY LIMITED, UNISON NETWORKS
LIMITED, VECTOR NETWORKS LIMITED, WAIPA
NETWORKS LIMITED; 1 APRIL 2003 TO 31 MARCH 2007:
NELSON ELECTRICITY LIMITED, NETWORK WAITAKI
LIMITED, SCANPOWER LIMITED)
NOTICE 2008**

PURSUANT TO PART 4A
OF THE COMMERCE ACT 1986

COMMERCE ACT
(DECISION NOT TO DECLARE CONTROL – 1 APRIL 2006 TO 31 MARCH
2007: ALPINE ENERGY LIMITED, AURORA ENERGY LIMITED,
COUNTIES POWER LIMITED, EASTLAND NETWORK LIMITED,
ELECTRICITY ASHBURTON LIMITED, ELECTRICITY INVERCARGILL
LIMITED, MAINPOWER NEW ZEALAND LIMITED, NETWORK TASMAN
LIMITED, ORION NEW ZEALAND LIMITED, POWERCO LIMITED, TOP
ENERGY LIMITED, UNISON NETWORKS LIMITED, VECTOR
NETWORKS LIMITED, WAIPA NETWORKS LIMITED;
1 APRIL 2003 TO 31 MARCH 2007: NELSON ELECTRICITY LIMITED,
NETWORK WAITAKI LIMITED, SCANPOWER LIMITED)
NOTICE 2008

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 (distribution businesses) and Transpower New Zealand Limited.

The targeted control regime

Section 57E of the Act provides that the purpose of subpart 1 of Part 4A is 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 must 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* 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 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.

Before making a declaration of control, the Commission is 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.

Assessment and identification of threshold breaches

The Commission has assessed the 17 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

EDB	2006/07		2007/08	
	Price	Quality	Price	Quality
Alpine Energy		Breach		Breach
Aurora Energy	Breach	Breach		Breach
Counties Power	Breach	Breach		
Eastland	Breach			
Electricity Ashburton	Breach	Breach		Breach
Electricity Invercargill	Breach	Breach		Breach
Mainpower		Breach		
Nelson Electricity	Breach			
Network Tasman	Breach			Breach
Network Waitaki	Breach	Breach		Breach
Northpower	Breach			Breach
Orion	Breach	Breach		
Powerco	Breach			Breach
Scanpower	Breach			Breach
Top Energy	Breach			Breach
Unison	Breach			
Vector	Breach			
Waipa Networks	Breach			

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

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

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 and Table 2, 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 to be satisfactory;
- Alpine's reliability results do not indicate deterioration in its SAIDI or SAIFI performance against its thresholds, but 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

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower;
- the Commission considers that Aurora appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers;
- when considered in conjunction with its reliability (SAIDI and SAIFI) results, 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; and
- the Commission has no other section 57E concerns.

Counties Power Limited

- When considered in conjunction with its overall trends, 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 did not breach the 2007/08 SAIFI threshold; and
- the Commission has no other section 57E concerns.

Eastland Network Limited

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower;
- the Commission considers that Eastland appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers; 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, but 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

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower.
- the Commission considers that Electricity Invercargill appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers;
- 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, but the Commission will continue to monitor both Electricity Invercargill's SAIFI and SAIDI reliability performance trend; and
- the Commission has no other s 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;
- the price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower;
- the Commission considers that Nelson Electricity appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers; and
- the Commission has no other s 57E concerns.

Network Tasman Limited

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower.
- the Commission considers that Network Tasman appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers; and
- the Commission has no other section 57E concerns.

Network Waitaki Limited

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower;
- the Commission considers that Network Waitaki appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers;
- 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

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower;

- the Commission considers that Orion appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers;
- 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 did not breach its quality threshold in 2007/08;
- 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.

Powerco Limited

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower;
- the Commission considers that Powerco appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers; 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;
- the price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower;
- the Commission considers that Scanpower appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers;
- although the trend in Scanpower's reliability results may indicate deterioration in its SAIFI performance against its threshold;
- the Commission is satisfied that this is not a material deterioration in quality but will continue to monitor both Scanpower's SAIFI and SAIDI statistics to identify any long term decline in reliability; 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 the Transpower's interim rebate, differences in budgeted and actual pass-through costs and a lower than expected Consumer Price Index (CPI);
- Top Energy returned the full amount of its 2006/07 price path threshold breach to customers through its retailers, including the full amount of the interim rebate plus interest;
- Top Energy's reliability results do not indicate a material deterioration in its SAIDI and SAIFI performance against its threshold, but the Commission will continue to monitor both Top Energy's SAIFI and SAIDI statistics to identify any long term decline in reliability; and
- the Commission has no other section 57E concerns.

Unison Networks Limited

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower;
- the Commission considers that Unison appropriately dealt with the interim rebate by returning the amount of the rebate after removing its under-recovery of transmission charges, plus interest, to its customers;
- the Commission has no other s 57E concerns.

Vector Networks Limited

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower; and
- the Commission considers that Vector appropriately dealt with the interim rebate by returning the amount of the rebate after removing its under-recovery of transmission charges, plus interest, to its customers.

Waipa Networks Limited

- The price path breach during the 2006/07 assessment period was solely caused by the interim rebate provided by Transpower;
- the Commission considers that Waipa Networks appropriately dealt with the interim rebate by returning the full amount, plus interest, to its customers;
- the Commission has no other s 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, Eastland Network Limited, Electricity Ashburton Limited, Electricity Invercargill Limited, Mainpower New Zealand Limited, Nelson Electricity Limited, Network Tasman Limited, Network Waitaki Limited, Orion New Zealand Limited, Powerco Limited, Scanpower Limited, Top Energy Limited, Unison Limited, Vector Networks, Waipa Networks Limited* dated 29 September 2008. 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.