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**COMMERCE ACT
(DECISION NOT TO DECLARE CONTROL –
8 AUGUST 2001 TO 31 MARCH 2006:
ELECTRICITY DISTRIBUTION BUSINESSES:
ALPINE ENERGY LIMITED, AURORA ENERGY
LIMITED, ELECTRICITY INVERCARGILL
LIMITED, MAINPOWER LIMITED, NELSON
ELECTRICITY LIMITED, NETWORK TASMAN
LIMITED, NETWORK WAITAKI LIMITED,
NORTHPOWER LIMITED, ORION NEW ZEALAND
LIMITED, POWERCO LIMITED, SCANPOWER
LIMITED, TOP ENERGY LIMITED, THE LINES
COMPANY LIMITED, WAIPA NETWORKS
LIMITED AND WEL NETWORKS LIMITED)
NOTICE 2008**

PURSUANT TO PART 4A
OF THE COMMERCE ACT 1986

COMMERCE ACT
(DECISION NOT TO DECLARE CONTROL – 8 AUGUST 2001 TO
31 MARCH 2006: ELECTRICITY DISTRIBUTION BUSINESSES: ALPINE
ENERGY LIMITED, AURORA ENERGY LIMITED, ELECTRICITY
INVERCARGILL LIMITED, MAINPOWER LIMITED, NELSON
ELECTRICITY LIMITED, NETWORK TASMAN LIMITED, NETWORK
WAITAKI LIMITED, NORTHPOWER LIMITED, ORION NEW ZEALAND
LIMITED, POWERCO LIMITED, SCANPOWER LIMITED, TOP ENERGY
LIMITED, THE LINES COMPANY LIMITED, WAIPA NETWORKS
LIMITED AND WEL NETWORKS 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.

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.

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.

Before making a declaration of control, the Commission is required under section 57I(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 15 distribution businesses, and their respective threshold breaches, contained in Table 1, during the assessment periods ended 6 September 2003, 31 March 2004, 31 March 2005 and 31 March 2006.

Table 1: Breaches Assessed

	2001-2003	2003-04		2004-05		2005-06	
EDB	Price	Price	Quality	Price	Quality	Price	Quality
Alpine Energy		Breach	Breach			Breach	Breach
Aurora Energy		Breach					
Electricity Invercargill	Breach	Breach	Breach				
MainPower		Breach					
Nelson Electricity	Breach						
Network Tasman						Breach	
Network Waitaki	Breach						
Northpower						Breach	
Orion New Zealand		Breach		Breach			
Powerco		Breach	Breach		Breach		Breach
Scanpower			Breach				Breach
The Lines Company	Breach						
Top Energy	Breach	Breach				Breach	Breach
Waipa Networks	Breach		Breach				
WEL Networks		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, for the following reasons:

Alpine Energy Limited

- The price path threshold breach during the 2004 assessment period is fully explained by the difference in actual and budgeted pass-through costs;
- the 2004 Notice required Alpine to set its prices so that its initial allowable revenue would not have breached the price path threshold at the second assessment date. This in effect required Alpine to set its prices so that the reduction in pass-through costs was passed on to its customers going forward;
- the price path threshold breach at the 2006 assessment date is fully explained by the difference between actual and budgeted pass-through costs;
- Alpine returned the amount of the 2006 price path threshold breach to customers;
- the Commission concluded that Alpine's breach of the 2004 quality threshold was predominantly explained by an extreme event;
- the Commission review found Alpine's network management and investment levels appeared to be satisfactory;
- Alpine's breach of its quality threshold during the 2006 assessment period is sufficiently minor, with only its SAIFI threshold being breached by 0.02 interruptions (1.8%), to take no further action; and
- the Commission has no other section 57E concerns.

Aurora Energy Limited

- The price path threshold breach during the 2004 assessment period is fully explained by the difference in actual and budgeted pass-through costs;
- Aurora reduced its average price in line with the objective of the 2004 price path threshold;
- the 2004 Notice required Aurora to set its prices so that its initial allowable revenue would not have breached the price path threshold at the second assessment date. This in effect required Aurora to set its prices so that the reduction in pass-through costs was passed on to its customers going forward; and
- the Commission has no other section 57E concerns.

Electricity Invercargill Limited

- The price path breach at the 2003 assessment date was predominantly explained by Electricity Invercargill's inability to pass on an increase in transmissions costs on 1 April 2002;
- as Electricity Invercargill delayed passing on the increase in transmission charges, it, rather than its customers, absorbed these costs. Accordingly, Electricity Invercargill's 2003 price path breach caused no detriment to customers;
- the price path breach during the 2004 assessment period is fully explained by the differences between Electricity Invercargill's budgeted and actual pass-through costs. During the 2004 assessment period, Electricity Invercargill reduced its prices to account for the differences in the budgeted and actual pass-through costs;
- the 2004 Notice required Electricity Invercargill to set its prices so that its initial allowable revenue would not have breached the price path threshold at the second assessment date. This in effect required Electricity Invercargill to set its prices so that the reduction in pass-through costs was passed on to its customers going forward;
- by not increasing its average price during the 2004 assessment period, Electricity Invercargill was acting in accordance with the objective of the 2004 price path threshold;
- Electricity Invercargill's reliability performance since the 2004 assessment period quality breach does not indicate a deterioration against its thresholds; and
- the Commission has no other section 57E concerns.

MainPower New Zealand Limited

- The price path threshold breach at the 2004 assessment date is fully explained by the difference in actual and budgeted pass-through costs;
- by not increasing its average price during the 2004 assessment period, MainPower was acting in accordance with the objective of the 2004 price path threshold;
- the 2004 Notice required MainPower to set its prices so that its initial allowable revenue would not have breached the price path threshold at the second assessment date. This in effect required MainPower to set its prices so that the reduction in pass-through costs was passed on to its customers going forward; and
- the Commission has no other section 57E concerns.

Nelson Electricity Limited

- The 2003 price path breach was due to Nelson Electricity not passing on an increase in transmission charges on 1 April 2002 which resulted in its allowable notional revenue being lower than it would have been otherwise;

- if Nelson Electricity had passed on the higher transmission charges when they came into effect, it would not have breached the price path threshold;
- as Nelson Electricity delayed passing on the increase in transmission charges, it, rather than its customers, absorbed these costs. Accordingly, Nelson Electricity's 2003 price path breach caused no detriment to customers; and
- the Commission has no other section 57E concerns.

Network Tasman Limited

- The majority of the breach is explained by differences between budgeted and actual transmission costs;
- Network Tasman returned the amount of the 2006 price path breach to customers through discounts in August and September 2006; and
- the Commission has no other section 57E concerns.

Network Waitaki Limited

- Network Waitaki's breach of the price path threshold at the 2003 assessment date can be fully explained by difference between the budgeted and actual transmission costs;
- by not increasing its average price during the 2003 assessment period, Network Waitaki was acting in accordance with the objective of the 2003 price path threshold;
- the Commission has no other section 57E concerns.

Northpower Limited

- The 2006 price path breach was caused by an anomaly in clause 5(1)(b) of the 2004 Notice;
- if Northpower's 2006 price is tested under the revised clause 5(1)(b) of the 2006 Notice, then it would not have exceeded its 2006 price path threshold; and
- the Commission has no other section 57E concerns.

Orion New Zealand Limited

- The 2004 price path breach was caused by differences between budgeted and actual pass-through costs;
- by not increasing its average price during the 2004 assessment period, Orion was acting in accordance with the objective of the 2004 price path threshold;
- the 2004 Notice required Orion to set its prices so that its initial allowable revenue would not have breached the price path threshold at the second assessment date. This in effect required Orion to set its prices so that the

reduction in pass-through costs was passed on to its customers going forward;

- The 2005 price path breach was caused by an anomaly in clause 5(1)(b) of the 2004 Notice;
- if Orion's 2005 price is tested under the revised clause 5(1)(b) of the 2006 Notice, then it would not breach its 2005 price path threshold; and
- the Commission has no other section 57E concerns.

Powerco Limited

- The 2004 price path breach was caused by differences in budgeted and actual pass-through costs;
- Powerco did not change its prices over the 2004 assessment period;
- the 2004 Notice required Powerco to set its prices so that its initial allowable revenue would not have breached the price path threshold at the second assessment date. This in effect required Powerco to set its prices so that the reduction in pass-through costs was passed on to its customers going forward;
- Powerco's breach of its quality threshold during the 2006 assessment period is sufficiently minor, with only its SAIFI threshold being breached by 0.01 interruptions (0.4%), to take no further action;
- the breach of the reliability threshold during the 2004 assessment period is significantly reduced when the SAIDI and SAIFI values are normalised;
- in the 2006 assessment period, the reliability threshold is no longer exceeded after the SAIDI and SAIFI values are normalised – "safe harbour" provided for this breach;
- Powerco'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 reliability trend does not indicate a deterioration in its performance against its thresholds:
 - the breach of the SAIDI reliability threshold during the 2004 assessment period is reduced to 5.5 minutes (6.6%) when normalised and the SAIFI threshold is no longer exceeded;
 - the 2006 assessment period breach of the SAIFI reliability threshold is relatively minor and is further reduced when the SAIFI value is normalised; and
- the Commission has no other section 57E concerns.

The Lines Company Limited

- The 2003 price path breach was due to The Lines Company passing on the increase in rates and transmission charges on 15 May 2002 instead of 1 April 2002 when they came into effect. This resulted in its allowable notional revenue being lower than it would have been otherwise;
- as The Lines Company delayed passing on the increase in transmission charges, it, rather than its customers, absorbed these costs. Accordingly, The Lines Company's 2003 price path breach caused no detriment to customers; and
- the Commission has no other section 57E concerns.

Top Energy Limited

- The price path breach at the 2003 assessment date is predominantly explained by Top Energy not passing on the increase in transmissions costs, that came into effect on 1 April 2002, until 1 May 2002;
- as Top Energy delayed passing on the increase in transmission charges, it, rather than its customers, absorbed these costs. Accordingly, Top Energy's 2003 price path breach caused no detriment to customers;
- the price path threshold breach at the 2004 assessment date is fully explained by the difference between actual and budgeted pass-through costs and Top Energy did not increase its prices over this period;
- the 2004 Notice required Top Energy to set its prices so that its initial allowable revenue would not have breached the price path threshold at the second assessment date. This in effect required Top Energy to set its prices so that the reduction in pass-through costs was passed on to its customers going forward;
- the price path threshold breach at the 2006 assessment date is predominantly explained by the difference between actual and budgeted pass-through costs;
- Top Energy returned the amount of the 2006 price path threshold breach to customers;
- Top Energy's reliability results do not indicate a deterioration in its performance against its thresholds:
 - the breach of the reliability threshold during the 2006 assessment period is reduced to 17.1 minutes (3.7%) when the SAIDI value is normalised and the SAIFI threshold is not exceeded; and
- the Commission has no other section 57E concerns.

Waipa Networks Limited

- The price path breach at the 2003 assessment date is predominantly explained by Waipa Networks' failure to pass on an increase in transmissions costs on the 1 April 2002;

- as Waipa Networks delayed passing on the increase in transmission charges, it, rather than its customers, absorbed these costs. Accordingly, Waipa Networks' 2003 price path breach caused no detriment to customers;
- Waipa Networks' reliability performance since the 2004 assessment period quality breach does not indicate a deterioration against its thresholds; and
- the Commission has no other section 57E concerns.

WEL Networks Limited

- The 2004 price path breach was caused by differences between budgeted and actual pass-through costs;
- in line with the objective of the price path threshold for 2004, WEL Networks did not increase its prices during the 2004 assessment period;
- the 2004 Notice required WEL Networks to set its prices so that its initial allowable revenue would not have breached the price path threshold at the second assessment date. This in effect required WEL Networks to reduce its prices to pass on the reduction in pass-through costs going forward; 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 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, Electricity Invercargill Limited, MainPower Limited, Nelson Electricity Limited, Network Tasman Limited, Network Waitaki Limited, Northpower Limited, Orion New Zealand Limited, Powerco Limited, Scanpower Limited, Top Energy Limited, The Lines Company Limited, Waipa Networks Limited and WEL Networks Limited* dated 6 June 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.