

27 February 2006

Mr Rodney Doyle
Chief Advisor
Transpower Post-Breach Inquiry
Network Performance Group
Networks Branch
Commerce Commission

By email to electricity@comcom.govt.nz

Dear Rodney

This submission by Business New Zealand¹ on the Commerce Commission's intention to declare control of Transpower's transmission services does not purport to represent the views of its full membership or its Affiliated Industries Group membership. None the less it aligns with Business New Zealand policy objectives.

The Commerce Commission has sighted a number of factors influencing its decision to control Transpower. While Business New Zealand can accept that a 19% increase from April 2006 may be a reason to control, it does not consider that speculation by Transpower that they will need a 13% increase each year for the next five years is justification for control. Similarly, historical price increases which at the time provided no reason for control cannot now be used as a reason.

It is of concern to Business NZ that Transpower is subject to a number of regulatory measures including Part 4a of the Commerce Act, Part F of the Rules of the Electricity Commission, the Government Policy Statement, its Statement of Corporate Intent (SCI), the Electricity Act 1992 and Amendments, and its Pricing Methodology Regulations 2004. The ability of Transpower to operate in a commercial manner is severely constrained in that it is prohibited by its SCI from obtaining additional shareholder funding and at the same time must maintain an AA credit rating. The Commerce Commission threshold regime requires Transpower to maintain any increase in its revenue within the consumer price index – 1% but it may be permitted to exceed this limit providing the Electricity Commission has approved any proposed investments in the Grid.

The influence of the Electricity Act 1992 and Amendments and Transpower Pricing Methodology Regulations 2004 will cease as soon as the Electricity Commission has implemented an agreed pricing methodology for transmission.

¹ Refer to attached Background Information on Business New Zealand

However the relationship between the Government Policy Statement, the Statement of Corporate Intent, the role of the Electricity Commission and the role of the Commerce Commission, as they affect the ability of Transpower to operate in an acceptable manner, requires further clarification. It may be that consideration should be given to adopting a longer term approach both to planning and pricing. In Australia the period is five years in recognition of the scale of transmission projects undertaken and the need to ensure business is able to consider investment opportunities in a stable environment.

Business NZ accepts the need for some control over the behaviour of monopolies, in particular the ability a monopoly has to extract excessive profits, but it also recognises that there can be perverse outcomes from regulatory intervention.

Transpower maintains that the bulk of the proposed increase in charges relates to interim grid reinforcement and augmentation measures which are critically necessary until such time as major projects are approved by the Electricity Commission. It would be unfortunate if the Commerce Commission's actions were to expose grid users to a reduction in security of supply that they neither wanted nor were consulted on while still paying the proposed increase to their retailer who falls outside the control of the Commerce Commission.

In 2004 Transpower proposed a Regulation that not only extended the timeframe for Transpower to secure payment in full from their customers but aligned the process with its financial year. The move from 1 April to 1 July was opposed at the time by distribution companies on the grounds that their financial year ended on 31 March each year. They argued that the proposed change would have resulted in two price increases each year instead of one. However had this regulation taken effect it is likely that the Electricity Commission would have completed its technical investigations and approved a number of the proposed upgrades. It would seem sensible to give consideration to aligning end of financial years across the industry.

Although the Commerce Commission has indicated that they opened their inquiry into the reported breaches of the price path threshold by Transpower in 2003/2004, 2004/2005 and 2005/2006 involving a total of \$113.4 million they acknowledge there can be no retrospective recovery by consumers.

Transpower maintain that they operate an Economic Value Added account where any profit greater than that included in their Business Plan is parked and used to dampen any increase in revenue in the following year. The Commerce Commission agree that Transpower operates this account and has accepted the Transpower explanation of how it has been operated but reserved the right to review this decision should the Commerce Commission decide to control Transpower.

It is the Commerce Commission's intention to make a final decision on whether to proceed with a declaration of control and publish it by 5pm Friday 31 March 2006.

While this may be adequate to restrain the behaviour of Transpower it is likely that electricity retailers will have already increased their prices taking account of the increases advised by the distribution companies. Consumers may therefore be exposed to increased costs and reduced level of security of supply.

Not with standing these issues Transpower has not provided sufficient information to satisfy Business New Zealand that the 19% price increase is justified and Business New Zealand recommends that the Commerce Commission undertake the investigation necessary to determine what if any price increase can be justified before deciding whether control is desirable.

Yours sincerely

George J Riddell
Manager Energy Environment and Infrastructure

BACKGROUND INFORMATION ON BUSINESS NEW ZEALAND

Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 61 member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

The health of the economy also determines the ability of a nation to deliver on the social and environmental outcomes desired by all. First class social services and a clean and healthy environment are possible only in prosperous, first world economies.