



MAJOR ELECTRICITY USERS' GROUP

16 February 2009

Mr David Healy
Chief Adviser
Networks Performance Branch
Commerce Commission
By email to NPB@comcom.govt.nz

Dear David

Submission on Regulatory Provisions of the Commerce Act 1986 Discussion Paper

1. This is a submission by the Major Electricity Users' Group (MEUG) on the Commerce Commission discussion paper, "*Regulatory Provisions of the Commerce Act 1986*," dated 19th December 2008 (the "discussion paper")¹.
2. Answers to some of the questions are in the appendix. References to "the Act" refer to the Commerce Act 1986 and subsequent amendments.

Yours sincerely

Ralph Matthes
Executive Director

¹ Refer <http://www.comcom.govt.nz/IndustryRegulation/regulatoryprovisionsofthecommercea.aspx>

MEUG comments on Commerce Commission discussion paper, Regulatory Provisions of the Commerce Act 1986

Discussion paper question		MEUG comments
Chapter 4: Regulatory Purpose and Principles		
1.	Do you have any views on the new purpose statement in section 52A of the Act and how this might impact on the Commission's role?	The long-term benefit of consumers is the primary objective as clearly stated in paragraph 147 of the discussion paper: <i>"In other words, the primary regulatory purpose is to promote the <u>long-term benefit of consumers</u>. This must be achieved, in a general sense, by promoting the outcomes that are consistent with those produced in competitive markets. These outcomes are, in turn, to be achieved through objectives of ...</i> "the paper then lists the subsections of s52 of the Act.
6.	Are there other implementation principles that the Commission might apply in performing its functions under Part 4 of the Act? If so, please discuss.	Yes. Another principle could be termed "facilitating the transition to less regulation as opportunities arise." Three examples of opportunities to innovate and reduce regulation in the electricity sector follow. These factors are dependent and reinforcing: <ul style="list-style-type: none"> ▪ New metering and information technology to provide better and quicker information to owners and consumers of line services. Smart meters and the "Smart Grid" concept are likely to change how line and energy services are demanded and supplied in the next few years. ▪ New line management and demand side management technology to allow owners and consumers of line services to react to the improved information provided by new metering and information technology. As an example of new approaches and technologies, refer to the Transpower Upper South Island Demand Side Participation trial² in the winters of 2007. ▪ New contractual terms and conditions that build on the ability of new technology to differentiate and better define line services. The Transmission Benchmark Agreement that came into effect from 1 April 2008 is a useful regulated backstop to facilitate Transpower and its customers to leverage off the ability of new technology to better define services and create commercial incentives on Transpower to meet those.
Chapter 5: Input methodologies		
9.	Do you have any views on the proposed process to determine input methodologies? If so, please explain	Section 52V (2) (b) requires the Commerce Commission in developing an input methodology (text underlined is MEUG emphasis) <i>"<u>must give interested parties a reasonable opportunity to give their views on that draft methodology.</u>"</i> Consumers have very few resources to form a view. Even when a robust view is formed

² Refer web: <http://www.gridnewzealand.co.nz/n344.html>

		<p>by consumers, the overwhelming resources of line businesses to lobby, stall or confuse erodes consumers a reasonable opportunity to be heard. Electricity consumers therefore rely on the Commerce Commission to provide an impartial and robust countervailing view to the views of electricity line businesses.</p> <p>The Commission is considering Workshops on Specifications³. MEUG would be concerned if any Workshops involved only Commission and electricity line business staff. In our view there needs to be appropriate consumer representation also. By appropriate we suggest a person(s) that are expert in the particular specification being considered, eg an expert in cost of capital or asset valuation as the case may be. Consumers could not pay for such expertise. Therefore the Commission should consider paying for experts nominated by consumers.⁴</p>
12.	How might cost allocation methodologies prevent inefficient cross-subsidisation from occurring, while not unduly deterring investment by a supplier of regulated services in the provision of other services?	When separating the regulated and un-regulated businesses we suggest the Commission needs to consider how bi-lateral contracts for dedicated services are treated.
Chapter 7: Electricity Distribution Services		
43.	Are there any particular circumstances in which you consider that the Commission should adjust starting prices for electricity distribution businesses?	<p>Section 3(4) prohibits starting prices recovering prior period excessive profits. The assumption being that service levels in the prior period were adequate.</p> <p>If service levels in the earlier period were inadequate (eg breached thresholds), then consumers should have received a price discount. If no price discount was paid but the electricity distribution service provider earned average or above average economic profits; then in that case starting prices should be reset to provide compensation to consumers.</p>
50.	What measures do you consider appropriate to promote energy efficiency under the regulatory instruments applicable to electricity distribution businesses, particularly given the Electricity Commission's role regarding pricing methodologies?	<p>Any approach to give effect to s54Q⁵ is subordinate to the overall purpose of Part 4, that is "... <i>to promote the long-term benefit of consumers in markets</i> ...". "Long-term benefit" refers to economic wealth. Having the least cost possible electricity distribution service is a secondary objective to having a least cost electricity distribution service.</p> <p>A useful paper that discusses the importance of policy makers focusing on economic efficiency and the confusion by proponents of energy efficiency is a speech to the Gas Association of New Zealand Energy Symposium 2000 by Roger Kerr, Executive Director of the New Zealand Business Roundtable titled <i>Energy Efficiency</i>, August 2000⁶.</p> <p>For implementing s54Q MEUG suggest:</p>

³ The discussion paper mentions possible Workshops on Specifications will be held 2010Q1, refer table 3, p64.

⁴ There is a precedent for a regulator paying for consumer representation, Refer EC Annual Report, p55, lists payments to consumer representatives on their working groups, web reference: <http://www.electricitycommission.govt.nz/pdfs/publications/annual0708.pdf>.

⁵ Under s54Q the Commission must "Promote incentives, and must avoid imposing disincentives, for suppliers of electricity lines services to invest in energy efficiency and demand side management, and to reduce energy losses, when applying this Part in relation to electricity lines services."

⁶ Refer web: http://www.nzbr.org.nz/documents/speeches/speeches-2000/energy_eff.pdf

		<ul style="list-style-type: none"> Electricity lines businesses disclose all non-market or shadow prices assumed for externalities that influence the choice between solutions that are least cost (based on actual market prices for assets employed by the business) and solutions that are more energy efficient. The assumptions used for those non-market or shadow prices should also be disclosed. Electricity lines businesses disclose all instances when a decision is made to implement an energy efficient option rather than a least cost option.
Chapter 8: Electricity Transmission Services		
52.	What factors do you consider relevant in developing information disclosure requirements for Transpower under the new legislative regime?	<p>Since the WACC used in the settlement of mid 2008 was agreed, the risk free rate has collapsed. As the Commission analyses and make decisions on input methodologies, there may be some reconsideration of asset beta. MEUG suggest in designing an information disclosure requirement for transmission services that the measure of economic profit be based on the latest assessment of the value of the variables for WACC rather than those assumed when the settlement was agreed.</p> <p>Because of the significant collapse of the risk free rate and therefore of WACC since the settlement was agreed; there may be a case for the Commission to seek a re-negotiation of some terms of the settlement.</p>
55.	What measures to promote energy efficiency do you consider are appropriate under the potential mechanisms for Transpower?	The comments on question 50 above are also relevant to Transmission Services.