



9 November 2007

Transpower Post-Breach Inquiry
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Networks Branch
Commerce Commission
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To whom it may concern,

Draft Decisions for Not Declaring Pricing Control on Transpower

Introduction

1. Mighty River Power welcomes the opportunity to make a submission in relation to the Commerce Commission's "*Draft Decisions and Reasons for Not Declaring Control & Draft Decision on Resetting Transpower's Thresholds*", 5 October 2007 (the "*Transpower Decision Paper*").
2. No part of our submission is confidential and we are happy for it to be publicly released.

Opening comments

3. During the Commerce Commission's original consultation on its initial intention to place Transpower under price control, Mighty River Power expressed concern about aspects of Transpower's conduct e.g. the way it was determining its revenue requirement, and the apparent pre-funding of (unapproved) investments. We expressed the view that the Commerce Commission needed to have assurance these aspects of Transpower's conduct would be remedied; be it by placing Transpower under price control or through formal undertakings made by Transpower.¹ Mighty River Power still holds this view.
4. Mighty River Power is pleased that a number of key aspects of the Transpower Decision Paper reflect an emphasis on "*long-term benefit of consumers*" (as per the purpose in section 57E of the Commerce Act 1986) and, related, on the importance of ensuring future investment in network infrastructure:
 - a. The qualitative reasoning for accepting the Administrative Settlement Offer over price control;

¹ Mighty River Power submission "*Submission in response to the Commerce Commission's Intention to declare price control on Transpower New Zealand Ltd*". 2 May 2006.

- b. Implicit acknowledgement that the price thresholds may not always be sufficient to enable Transpower or electricity lines businesses (ELBs) to recover their costs (including a “commercially realistic” return); and
 - c. The addressing of concerns that have previously been expressed about the risk of Transpower facing double jeopardy whereby the Electricity Commission may approve an investment (ex ante), and then that investment face further (ex post) scrutiny from the Commerce Commission as to its appropriateness.
5. As a corollary to this, Mighty River Power believes the Transpower Decision Paper recognises and accounts for the need for substantial investment in the transmission grid. Mighty River Power has previously expressed the view that the matter of transmission investment is the most pressing issue faced by the electricity industry.²
6. Mighty River Power **notes** that we are reasonably ambivalent as to whether the Commerce Commission places Transpower under price control, or accepts an Administrative Settlement. We do not consider that the Transpower Decision Paper provides a clear basis for concluding the superiority of price control over an Administrative Settlement or vice versa:
 - a. The Commerce Commission released a draft intention to declare price control in 2005 which included a positive (quantified) net benefit of price control. The quantified Cost Benefit Analysis was effectively tautological as it assumed that the threshold price was the efficient price.³
 - b. As a consequence, we question the Commerce Commission’s claim that the original calculation of the net benefits of price control was “conservative”. The net benefits could have been higher or lower, depending on whether the price threshold was too low or too high. As the Commerce Commission has expressed a willingness to accept prices above the price thresholds this suggests the threshold was too low, and the net benefit calculation too high.
 - c. The Commerce Commission has stated that “*Because Transpower’s 31 August 2007 Offer is being assessed in the context of the Commission’s prior intention to declare control, the Commission has drawn, where appropriate, on the analysis of the Factual*

² Mighty River Power “*Submission in response to the Electricity Commission’s Draft Decision on: Transpower’s Auckland 400kv Grid Investment Proposal*”, 23 June 2006.

³ Accordingly, we agreed with CRA’s view that “*The Commission has not specified a factual against which a counterfactual can be compared. Without this, it is not possible to carry out a rigorous cost benefit analysis of control of Transpower. In particular, the form of regulation under the factual matters, as it affects incentives and therefore efficiency*” (page 1 of Charles River Associates’ submission on behalf of Transpower “*The Costs and Benefits of Regulating Transpower*”, 27 February 2006).

*and Counterfactual scenarios already presented in its Intention Paper*⁴. Mighty River Power does not believe that a draft assessment that is now almost two years out-of-date should be relied on.

- d. The Commerce Commission is now making a qualitative only assessment of the merits of a Settlement Offer against an unclear and out-of date counterfactual under which price control is imposed.

7. Mighty River Power also have concerns about:

- a. The length of time it has taken the Commerce Commission to reach its draft decision to accept a Settlement Offer, nearly two years after its original announcement that it intended to place Transpower under price control. Has the delay in making a decision been to the long-term benefit of consumers?
- b. Related to the above, the uncertainty over what Transpower's actual prices will be given Transpower's use of rebates and ex-post price adjustments.
- c. It is unclear why allocation of costs between HVDC and AC assets is being dealt with in the Administrative Settlement rather than by the Electricity Commission as part of the Transmission Pricing Methodology (TPM).
- d. It is unclear why Transpower's price thresholds should now include a separate System Operator threshold.
- e. We disagree with some of the Commerce Commission's views about the Avoidable Cost Allocation Methodology (ACAM).
- f. We question whether the additional Electricity Commission scrutiny of Transpower's "non-Part F" investments is warranted and have concerns this may result in less timely investment.
- g. In addition, we note we have previously raised issues about the switch to a Depreciated Historic Cost (DHC) valuation methodology, while Optimised Deprival Valuation (ODV) is used by the Electricity Commission as part of the TPM.⁵

8. Some of these points are elaborated on below.

✓ Reasoning for accepting the Administrative Settlement Offer

9. It appears that a key consideration for the Commerce Commission is that, while the Commission may have been more aggressive (lower price etc) if it enacted actual price control, the Administrative Settlement Offer reflects something Transpower is comfortable with, and willing to continue investing under.

⁴ Paragraph 371 of the Transpower Decision Paper.

⁵ Mighty River Power submission "Submission on Valuation of the Regulatory Asset Base", 10 November 2005.

10. This is reflected in various comments made in the Transmission Decision Paper, for example:

If Transpower's proposed $X = 0\%$ is adopted, there can be no justification in the future for claims by Transpower that the constraint on its operating expenditure is inhibiting it fulfilling its investment and other obligations.⁶

The Commission favours accepting Transpower's WACC estimates for two reasons. First, these are the WACC estimates that Transpower considers necessary to operate an efficient system, and due to the asymmetrical nature of information and the fact that the estimates for WACC are not higher than those estimated by Professor Lally after the 2006/07 year, these present a net benefit of the proposal and should be accepted.⁷

11. The Commerce Commission understandably takes comfort in this given the inevitable information asymmetries that exist between the regulated and regulated businesses, and the risk of regulatory error. The Commission also concludes that "*indirect costs are also likely to be lower, given the voluntary nature of the business's proposed actions*".⁸ Mighty River Power agrees with both these propositions. Mighty River Power **notes** that we believe it is reasonable to assume Transpower would make an Administrative Settlement Offer it expected to: (i) be commercially sustainable; and (ii) enable Transpower to recover the costs of future (and existing) investment. This is not to say the Settlement is riskless for Transpower given uncertainty, for example, over future Operating Expenditure requirements.

✓ The price thresholds and investment signals

12. Mighty River Power believes the Transpower Decision Paper sends positive signals to ELBs about the operation of the thresholds regime under Part 4A of the Commerce Act 1986. The draft decision to accept a Settlement Offer from Transpower whereby the price Transpower can set is in excess of what it would have been under the original thresholds effectively acknowledges:

- a. The thresholds regime by its very nature is somewhat crude and imprecise:
- b. For some ELBs the thresholds will be generous (allow returns – at least for a period of time – in excess of WACC even with minimal efficiency gains) while for other ELBs it may be the case that the pricing under the thresholds is inadequate to recover costs (including cost of capital).
- c. Where ELBs can reasonably demonstrate the thresholds are too harsh and prevent them from earning a "*commercial realistic*" return the Commerce Commission is willing to accept prices in excess of the thresholds/threshold breaches without invoking price control.

⁶ E.27 of the Transpower Decision Paper.

⁷ E.28 of the Transpower Decision Paper.

⁸ Paragraph 179 of the Transpower Decision Paper.

13. Mighty River Power believes this is consistent with the Government's economic policy objective *"that regulated businesses have incentives to invest in replacement, upgraded and new infrastructure"*.⁹ As the Government's policy recognises, ELBs will only have incentives to invest if they are able to earn *"commercially realistic"* rates of return.¹⁰ Over time the precedent value of different Commerce Commission decisions under Parts 4, 4A and 5 of the Commerce Act shall provide guidance to regulated businesses as to what is required to demonstrate the level of pricing needed to recover costs, and earn a commercial rate of return.
14. Mighty River Power **notes** that we consider that there may be circumstances where the price thresholds are too onerous for an efficient service provider to recover its costs (including WACC).

✓ **Boundary between the Commerce and Electricity Commissions: Investment approval**

15. The Transpower Decision Paper appears to address the concerns previously expressed about the risk of Transpower facing double jeopardy whereby the Electricity Commission may approve an investment (ex ante), and then that investment faces further (ex post) scrutiny from the Commerce Commission as to its appropriateness.¹¹
16. With this in mind, Mighty River Power is pleased to see that, under the Settlement Offer, the Commerce Commission will automatically accept any expenditure approved by the Electricity Commission without making its own judgement as to whether the investment is reasonable. We see this as positive for encouraging Transpower to invest in the transmission grid.

⁹ Clause 7 of the Government section 26 *"Statement to the Commerce Commission of Economic Policy of the Government: Incentives of regulated businesses to invest in infrastructure"*, 7 August 2006.

¹⁰ Mighty River Power's view is that *"regulated rates of return being commercially realistic ..."* means that an 'efficient service provider' should be able to earn a normal rate of return (that is, recover its Weighted Average Cost of Capital (WACC)). It does not mean the Commerce Commission should guarantee that an inefficient regulated business be able to recover its full WACC, or receive returns in excess of WACC. We would expect any regulator to operate price control in such a manner, regardless of whether the Government had issued a s 26 statement to this affect.

¹¹ In response to the Commerce and Electricity Commission's consultation on its draft Memorandum of Understanding we expressed concern about how ex-ante grid investment approval by the Electricity Commission under Part F of the Electricity Governance Rules would fit with the Commerce Commission's ex post thresholds regime under Part 4A of the Commerce Act. We expressed concern that there is a risk that Transpower could face 'double jeopardy' from the risk that the Commerce Commission would not necessarily accept transmission price increases resulting from grid investments approved by the Electricity Commission. Such an outcome would conflict with both Commission's objectives, and the Government's emphasis on the importance of investment in infrastructure. (See Mighty River Power's *"Submission to the Commerce and Electricity Commissions on: Memorandum of Understanding between the Electricity commission and the Commerce commission"*, 16 May 2007.)

17. Mighty River Power considers that the Administrative Settlement Offer appropriately deals with transmission investments approved by the Electricity Commission under Part F of the Electricity Governance Rules 2004.
18. Mighty River Power **notes** that we do not consider it appropriate to have two regulators (the Commerce and Electricity Commission) making separate decisions on the same matter (acceptance of Transpower investment).

x The time it has take for the Commerce Commission to reach a decision

19. On a less positive note, Mighty River Power is concerned about the length of time it is taking the Commerce Commission to reach a decision on how to deal with Transpower's threshold breaches:
 - a. The original breach of the thresholds occurred in 2003.
 - b. The Commerce Commission announced an intention to declare price control in December 2005.
 - c. The Commerce Commission announced that it expected to be able to reach a Settlement Agreement in March 2006.
 - d. It then took until October 2007 before the Commerce Commission was in a position to consult in the Settlement Agreement.
 - e. It will not be until 2008 before the Commerce Commission makes a final decision, nearly 5 years after the original breach.
20. Observing the debate over whether a new Auckland waterfront stadium should be built or Eden Park upgraded for the 2011 Rugby World Cup Final, and the challenges that can be faced with gaining resource consent and building such developments, Mighty River Power is conscious that sometimes making a decision can be just as important as what the decision is. It would not matter how good the final stadium is if it was not completed until after the World Cup!
21. To that end, given the net benefits the Commerce Commission originally saw in price control (which it now believes were "*conservative*"), and given it has taken nearly two years to reach a draft decision to accept a Settlement Offer over price control (which it describes as a "*finely balanced*" decision, with "*a small yet significant net benefit*"¹²), it would appear that the Commission should have stuck with its original decision. (Price control could have been up and running some considerable time ago.) We would hope, though, that the extra time will mean a more robust outcome, regardless of whether the Commission ended up accepting the Settlement Offer or implementing price control.

¹² E.29 of the Transpower Decision Paper.

22. If the original breach(es) of the thresholds warranted price control then potentially a considerable amount of benefits to end-consumers has been lost from the delay in introducing price control. This is only partly offset by the price rebates Transpower agreed with the Commerce Commission in 2005, pending a final decision.
23. In the meantime, Transpower's customers (ELBs, generators and direct connect customers) and downstream customers (retailers and end-customers) have faced uncertainty as to what the actual prices they will incur (after the Commerce Commission makes its final decisions) will actually be.
24. This has been the biggest frustration for Mighty River Power in the whole process of the Commerce Commission determining whether to impose price control on Transpower. Mighty River Power has already gone through a process of backdating a Transpower rebate onto every retail customer's bill, because of the transitional arrangements Transpower put in place pending a Commerce Commission decision. This was a very time and resource consuming exercise for both ELBs and Retailers. The Commerce Commission should ensure this situation does not eventuate again. If it did, Mighty River Power would need to reconsider its approach to the rebates, including the possibility of withholding any tariff rebate until after final decisions have been made by the Commerce Commission on price control, and/or implicitly 'paying back' through lower retail prices (or lower retail price increases, depending on the circumstances).
25. This problem has arisen due to a combination of the time it is taking the Commerce Commission to make a decision, and the rebating arrangements that Transpower put in place in order to preserve its position that it should be allowed to increase prices by 19%. Mighty River Power does not believe such arrangements were appropriate. The Commerce Commission should have only been willing to consider a possible Settlement Offer if Transpower had cancelled the price increase altogether.
26. Mighty River Power **notes** that we do not consider it to the long-term benefit of consumers for the Commerce Commission to delay a decision on price control by two years in order to consider a potential Administrative Settlement Agreement.
27. Mighty River Power **recommends** that, in the future, the Commerce Commission:
 - a. Apply tight time-bounds to investigations of whether to apply price control; and
 - b. Not operate its price control powers in a manner that enables retrospective adjustment of prices.

x Boundary between the Commerce and Electricity Commissions: Transmission Pricing Methodology

28. Mighty River Power is puzzled as to why the Settlement Offer goes beyond determining how Transpower's revenue requirement is set, and into the determination of the separate revenue requirements for HVDC and AC assets. Mighty River Power considers that

allocation of costs between different assets/services is the proper domain of the Transmission Pricing Methodology administered by the Electricity Commission.

29. We raised this with the Electricity Commission when it was consulting on the proposed Transmission Pricing Methodology (TPM)¹³; and it was indicated this aspect of the pricing methodology would be dealt with in the Settlement Agreement between the Commerce Commission and Transpower.
30. Now that the TPM has been determined (leaving the allocation to the sole discretion of Transpower's Board) it somewhat circularly follows that it should be dealt with by the Settlement Agreement. Mighty River Power is none the wiser though as to why this matter should be dealt with by the Commerce Commission, and not by the Electricity Commission. All the more so, given the controversy around the allocation of HVDC costs to South Island generators which itself is a function of the size of the HVDC costs to be allocated.
31. We do not understand why the Settlement Agreement between the Commerce Commission and Transpower should determine how costs are allocated between HVDC and AC assets, and then the Transmission Pricing Methodology decided on by the Electricity Commission determining how to allocate these costs (between South Island generators for HVDC assets, and between connection and interconnection assets for AC assets).
32. Mighty River Power **notes** that we consider the matter of the splitting of Transpower's revenue requirement between AC and HVDC assets should have been dealt with by the Electricity Commission under the Transmission Pricing Methodology.

x System operator services threshold and ACAM

33. Transpower's Settlement Offer proposes the price threshold be split into two, with a separate system operator services threshold. The Settlement Offer proposes the system operator services threshold be set equal to the price under its System Operator Service Provider Agreement with the Electricity Commission.¹⁴ Transpower also proposes to allocate only the incremental costs to the system operator function using the ACAM.¹⁵
34. It is unclear why Transpower's price thresholds should now include a separate System Operator threshold. It appears to be redundant. If Transpower does not comply with its System Operator contract the Electricity Commission can enforce it as it would any other contract. Does the Commerce Commission have concerns that Transpower will overcharge the Electricity Commission for System Operator services in the future?

¹³ At the Electricity Commission's Auckland seminar on the proposed TPM, November 2006.

¹⁴ Paragraph 348 of the Transpower Decision Paper.

¹⁵ Paragraph 349 of the Transpower Decision Paper.

35. Mighty River Power finds the separating out of System Operator services as a separate threshold particularly interesting in view of the Commerce Commission's comments as to whether it should provide for a separate price cap for metering services as a part of the price control of Gas Pipeline Businesses. We consider the issues to be broadly analogous. In reaching the Commission's view it argued:¹⁶
- ... there is no clear incentive for Powerco to cross subsidise between the distribution and metering services' customers as neither activity is competitive.
 - ... there are lower administrative and implementation costs in a single price cap ...
 - ... the costs of disaggregating the metering business with accuracy relative to the size of the business would likely be high.
36. The words Powerco, distribution, metering cap could readily be substituted for Transpower, transmission, system operator and threshold. The arguments would remain valid.
37. The Commerce Commission also makes a number of critical comments about the application of ACAM.
38. It is unclear to Mighty River Power why the Commerce Commission has concerns about Transpower using ACAM/incremental costing to set the price for providing system operator services to the Electricity Commission. Does the Commerce Commission consider that Transpower should be pricing above this level? If so, how does this fit with the introduction of a system operator service price cap?
39. Leaving aside the matter of the relevance of Transpower's system operator arrangements to the matter of price control or implementation of an Administrative Settlement, Mighty River Power has concerns about the Commerce Commission's views on ACAM. We consider they reflect a misunderstanding of the function of ACAM.
40. The Commerce Commission criticises ACAM on the grounds that it *"allows the electricity lines business to retain all of the efficiency benefits that might be achieved through economies of scope, which is potentially inconsistent with provisions under Part 4A requiring efficiency gains to be shared with consumers over time."*¹⁷
41. The function of ACAM, however, is purely to identify whether ELBs are: (i) using their natural monopoly to extract monopoly rents (pricing above stand-alone cost); or (ii) using any such monopoly rents to cross-subsidise services in other (competitive) markets (pricing below incremental cost). To this end, ACAM sets appropriate floors and ceilings for pricing.

¹⁶ Paragraph 1191 of the Commerce Commission's draft decision paper *"Authorisation for the Control of Supply of Natural Gas Distribution Services by Powerco Ltd and Vector Ltd"*, 4 October 2007.

¹⁷ Paragraph 351 of the Transpower Decision Paper

42. The Part 4A mechanisms (e.g. price control) are the mechanisms for ensuring the purpose in s 57E of Part 4A of the Commerce Act are met not ACAM.
43. The Commerce Commission also criticises ACAM *“as currently prescribed”* for effectively allowing ELBs to subsidise the cost of providing competitive services and, for multi-network (gas plus electricity) utilities, double count common costs.¹⁸ These are not problems with ACAM per se. They are matters that should be able to be readily dealt with. The Ministry of Economic Development, for example, consulted on how the matter of multi-network utilities could be dealt with, to avoid double counting, in its review of the Gas Information Disclosure Regulations, in 1999-2000.¹⁹
44. Mighty River Power **notes** that it supports the application of ACAM for identifying monopoly pricing, but that there is scope to improve its application.

Other matters: Treatment of “Non-Part F Capex”

45. The Commerce Commission has noted that it *“and the Electricity Commission have agreed that the Electricity Commission will work with Transpower to develop procedures for it to efficiently scrutinise and approve expenditure”* in the categories of replacement and refurbishment of existing transmission assets, minor development and enhancements of transmission assets and operation network information and technology services.²⁰
46. Mighty River Power **notes** that we question whether the additional Electricity Commission scrutiny of Transpower’s *“non-Part F”* investments is warranted and we have concerns this may result in less timely investment. We have previously commented to the Electricity Commission that there should be a materiality threshold for any investment to be considered under Part F.
47. Regardless of the merits or otherwise of extending the transmission investments that are required to go through Part F scrutiny by the Electricity Commission, and potential decision on any such extension should not be made until after the Electricity Commission has consulted with interested and affected parties. No such consultation has occurred. Likewise, the Electricity Commission should not be undertaking any work on how such a policy would be implemented until after it has consulted with interested and affected parties on the merits of the proposal.

¹⁸ Paragraph 351 of the Transpower Decision Paper.

¹⁹ Ministry of Commerce discussion paper *“Proposals for Amending the Gas (Information Disclosure) Regulations 1997”*, 13 October 1999:

http://www.med.govt.nz/templates/MultipageDocumentPage_10153.aspx

See also *“Amendments to the Gas (Information Disclosure) Regulations 1997”*, 1 May 2000:

http://www.med.govt.nz/templates/MultipageDocumentTOC_10110.aspx

²⁰ Paragraph 247 of the Transpower Decision Paper.

Other matters: Transmission corridors

48. The Commerce Commission has specifically sought submissions on whether Transpower should be allowed to recover the costs of land and easements and transmission corridors in advance of them being 'used and useful'.²¹
49. Transpower has proposed that such investments should be able to enter the regulatory asset base when approved by the Electricity Commission and the expenditure has taken place. Mighty River Power is comfortable with this proposal. We agree with the Commerce Commission's reasoning for concluding it should accept this proposal. In addition, our support is based on the following benefits of procuring transmission corridors in advance actual need:
- a. We note the views expressed from the Retail/Generator – Line Company CEO Forum that:²²

We strongly support [Transpower] proceeding with the easement now because to stop this process is likely to prevent the acquisition of an easement for a very long time, given the complexities of the RMA and the level of engagement by the community. In addition, whichever way you look at the range of possibilities, they all require an easement somewhere in the next 10 years.
 - b. We agree with the Electricity Commission that *"...establishing such a corridor would provide greater certainty to landowners and to Transpower in its grid planning function"*.²³
 - c. Due to factors such as population growth the earlier transmission corridors are procured the lower the likely cost, and the easier it is likely to be to procure. Transpower may have to settle for a more costly transmission route and/or apply more costly options (such as greater use of under-grounding) if it delays in seeking a transmission corridor.
50. The point regarding the increasing cost of transmission corridors/easements is illustrated by the following diagram produced by the National Bank which shows that the annual increase in the value in rural land averaged over 10% in the last 15 years, and was even higher over the last 40 years.

²¹ Paragraph 229 of the Transpower Decision Paper.

²² Joint letter from the Chief Executives of Contact Energy, Genesis Energy, Mighty River Power, Orion, Powerco, Trustpower, Unison and Vector – from the Retail/Generator – Line Company CEO Forum e to the Minister of Energy and Chair of the Electricity Commission entitled *"Auckland transmission strengthening"*, 11 May 2006.

²³ Paragraph 3.3.2 of the Electricity Commission's *"Draft decision on Transpower's Auckland 400kV grid investment proposal"* (draft decision), 27 April 2006.



Source: Quotable Value New Zealand/National Bank

51. Mighty River Power **notes** that we support Transpower procuring transmission corridors in advance of their need.
52. The question of when Transpower should be able to recover such costs illustrates the boundary issues that exist between the Commerce and Electricity Commission's. The Electricity Commission has already consulted on this matter, including whether recovery of transmission corridors (prior to a proposal for building an actual transmission line) can or should be recovered under Part F.²⁴
53. Transpower has expressed the view that the current EGRs enable it to engage in interim and preparatory work. In Transpower's submission to the Electricity Commission on the matter they expressed the view that:²⁵
- The definition of 'reliability investments' and 'economic investments' can reasonably be interpreted as including interim or preparatory work associated with a grid project, so the need for the Commission to specifically or separately approve such expenditure is obviated if the cost of all interim or preparatory work is included in the project costs when the GIT is applied. Notwithstanding this view, if there is a problem with the definitions of 'reliability investments' and 'economic investments' in the Rules, then those definitions – rather than the Rules governing investment approval – should be amended.
54. If this is correct – the EGRs are ambiguous – the Settlement Offer will enable Transpower to recover the costs of transmission corridors through the existing Part F of the EGRs. Mighty River Power **recommends** that the Commerce Commission liaise with the Electricity Commission over the scope of Part F of the Electricity Governance Rules to deal with transmission corridors.

²⁴ Refer to the Electricity Commission's consultation papers "*Recommended Amendments to the Rules for Grid Upgrade Plans under Section III of Part F of the Electricity Governance Rules 2003*" (23 December 2005), and *Draft decision on Transpower's Auckland 400kV grid investment proposal*" (27 April 2006).

²⁵ Paragraph 155 of Transpower's "*Submission in response to the Electricity Commission's Consultation Paper: Recommended Amendments to the Rules for Grid Upgrade Plans*", February 2006.

Concluding remarks and recommendations

55. Mighty River Power is reasonably ambivalent as to whether the Commerce Commission places Transpower under price control, or accepts an Administrative Settlement. We do not consider that the Transpower Decision Paper provides a clear basis for concluding the superiority of either option.
56. What is more important is that the Commerce Commission's decisions are to the "*long-term benefit of consumers*" and encourage network utilities to continue to invest in infrastructure. We believe key aspects of the Transpower Decision Paper reflect an emphasis on these matters.
57. We are also concerned that the Commerce Commission ensures its decisions are made expeditiously to ensure certainty for all concerned and, in particular, to avoid the problems that can arise from not knowing (ex ante) what the actual transmission charges will be.
58. We appreciate that the Commerce Commission and the industry are on a learning curve as to the operation of price control, and this means decision processes may take longer than they otherwise would. It appears, however, a key reason for the delays that have occurred is the negotiation between Transpower and the Commerce Commission over a possible Administrative Settlement.
59. Related to this has been the frustration and administrative costs that we have incurred as a consequence of Transpower's rebating scheme. This was put in place solely for the benefit of Transpower; to enable Transpower to preserve the option of maintaining its price increase(s)/price threshold breach(es) while the Commerce Commission decided on whether to impose price control, and on what would be an acceptable level of prices for Transpower. Mighty River Power went through a process of backdating a Transpower rebate onto every retail customer's bill, because of these arrangements. This was a very time and resource consuming exercise for both ELBs and Retailers. The Commerce Commission should ensure this situation does not eventuate again. If it did, Mighty River Power would need to reconsider its approach to the rebates, including the possibility of withholding any tariff rebate until after final decisions have been made by the Commerce Commission on price control, and/or implicitly 'paying back' through lower retail prices (or lower retail price increases, depending on the circumstances).
60. Mighty River Power's recommendations are repeated in full below.
61. Mighty River Power **notes** that we are reasonably ambivalent as to whether the Commerce Commission places Transpower under price control, or accepts an Administrative Settlement.

62. Mighty River Power **notes** that we believe it is reasonable to assume Transpower would make an Administrative Settlement Offer that expected to (i) be commercially sustainable; and (ii) enable Transpower to recover the costs of future (and existing) investment.
63. Mighty River Power **notes** that we consider that there may be circumstances where the price thresholds are too onerous for an efficient service provider to recover its costs (including WACC).
64. Mighty River Power **notes** that we do not consider it appropriate to have two regulators (the Commerce and Electricity Commission) making separate decisions on the same matter (acceptance of Transpower investment).
65. Mighty River Power **notes** that we do not consider it to the long-term benefit of consumers for the Commerce Commission to delay a decision on price control by two years in order to consider a potential Administrative Settlement Agreement.
66. Mighty River Power **recommends** that, in the future, the Commerce Commission:
- a. Apply tight time-bounds to investigations of whether to apply price control; and
 - b. Not operate its price control powers in a manner that enables retrospective adjustment of prices.
67. Mighty River Power **notes** that we consider the matter of the splitting of Transpower's revenue requirement between AC and HVDC assets should have been dealt with by the Electricity Commission under the Transmission Pricing Methodology.
68. Mighty River Power **notes** that it supports the application of ACAM for identifying monopoly pricing, but that there is scope to improve its application.
69. Mighty River Power **notes** that we question whether the additional Electricity Commission scrutiny of Transpower's "*non-Part F*" investments is warranted and we have concerns this may result in less timely investment.
70. Mighty River Power **notes** that we support Transpower procuring transmission corridors in advance of their need.
71. Mighty River Power **recommends** that the Commerce Commission liaise with the Electricity Commission over the scope of Part F of the Electricity Governance Rules to deal with transmission corridors.
72. If the Commerce Commission has any queries regarding this submission or Mighty River Power's views please do not hesitate to contact me.

Yours sincerely,



Robert Allen
Regulatory Manager