

[Transpower response to CC consultation](#)

COMMERCE ACT
(TRANSPOWER
THRESHOLDS) NOTICE 2008

PURSUANT TO PART 4A
OF THE COMMERCE ACT 1986

Note:

Additions in blue font and underlined;

Deletions in blue font, with strikethrough

Comments in brackets and highlighted in yellow.

**COMMERCE ACT (TRANSPOWER THRESHOLDS)
NOTICE 2008**

Pursuant to Part 4A of the Commerce Act 1986, the Commerce Commission (“the Commission”) gives the following notice.

NOTICE

1 Title

This notice may be cited as the Commerce Act (Transpower Thresholds) Notice 2008.

2 Commencement

This notice comes into force on 1 July 2008.

3 Interpretation

(1) In this notice, unless the context otherwise requires—

AC means high voltage alternating current but for the purposes of this notice includes low voltage alternating current

AC customer means, in relation to an assessment period, any customer by or to whom AC transmission charges are payable in the relevant pricing year

AC or HVDC forecast revenue requirement means the AC forecast revenue requirement or HVDC forecast revenue requirement, as the case may be

AC or HVDC year end revenue requirement means the AC year end revenue requirement or HVDC year end revenue requirement, as the case may be

AC year end revenue requirement means, in relation to an assessment period, the AC or HVDC forecast revenue requirement for that assessment period recalculated (excluding the EV adjustment) as at the end of the assessment period substituting actual data for forecast data where appropriate and including any actual events impacting on Transpower's asset base (for example, stranding of assets) that were not anticipated at the time the AC forecast revenue requirement was determined but which occurred during the assessment period

AC revenue means, in relation to an assessment period, the summation of all AC transmission charges (inclusive of any rebates) for the relevant pricing year

AC forecast revenue requirement means, in relation to an assessment period, the amount determined by Transpower, prior to the start of the relevant pricing year, using a building blocks methodology and forecast data for the assessment period, together with any EV adjustment for the purposes of determining and recovering AC transmission charges applicable to the relevant pricing year

AC transmission charge means, in relation to an assessment period, any charge payable to Transpower by AC customers in respect of the use by Transpower of Transpower's AC transmission system for the purpose of providing specified services to customers.

Act means the Commerce Act 1986

assessment means assessment under section 57H(a) of the Act

assessment date means the date as at which Transpower is to be assessed against a threshold, being 30 June of each of the years 2009 to 2011 inclusive

assessment period means the period of 12 months ending on an assessment date

auditor, in relation to Transpower, means a person who—

- (a) is qualified for appointment as auditor of a company under the Companies Act 1993; and
- (b) has no relationship with, or interest in, Transpower, being a relationship or interest that is likely to involve that person in a conflict of interest; and
- (c) has the necessary expertise to properly undertake an audit required by *clause 9*; but
- (d) need not be the same person as the person who audits the accounts of Transpower for any other purpose

CPI means the Consumer Price All Groups Index SE9A figure published by Statistics New Zealand

combined event means in relation to non-Part F capex and an assessment period the occurrence in the assessment period of:

- (a) a number of events each of which would, but for the requirements in paragraphs (d) and (e) of the definition of force majeure event and the requirement in paragraph (c) of the definition of security of supply event, be either a force majeure event or a security of supply event; and
 - (b) the total non-Part F capex expenditure required to rectify the adverse consequences of all such events exceeds or is reasonably anticipated by Transpower to exceed \$10 million and is such that if it is all undertaken, it is reasonably likely (in the absence of any reduction other non-Part F capex expenditure planned for that assessment period) to result in total non-Part F capex expenditure for that assessment period exceeding the transmission (non-Part F capex) threshold for that assessment period
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customer means any generator, large electricity lines business, consumer, or other entity in New Zealand that is connected, or applies to be connected, to the national grid

customer account means a separate account maintained by Transpower in respect of AC or HVDC customers to record the balance, from time to time, of ex-post economic gains or losses accrued but not yet returned to or recovered from a customer

Electricity Commission levy, in relation to Transpower, means an industry levy paid or payable by Transpower in accordance with section 172ZC of the Electricity Act 1992

EV means economic value

EV adjustment means, in relation to an assessment period, an input to the AC or HVDC forecast revenue requirement for that assessment period so that a portion of the account balance in the AC and/or HVDC customer account is returned to or recovered from AC or HVDC customers, and which is calculated in accordance with the formula in *clause 8(3)* of schedule 1

excluded services means the goods and services referred to in paragraphs (c) to (i) of the definition of **specified services**

ex-post economic gain or loss means, for any assessment period and subject to *clause 5(3) of Schedule 1*, the difference (expressed as a positive or negative amount) between AC revenue or HVDC revenue (as the case may be) for that assessment period and the AC or HVDC year end revenue requirement (as the case may be) for that assessment period

force majeure event, in relation to non-Part F capex and an assessment period, means -

- (a) an event occurring during or prior to that assessment period that is beyond the reasonable control of Transpower (**event**) and the occurrence of that event at that time could not reasonably have been foreseen by Transpower at the time the transmission (non-Part F capex) threshold for that assessment period was set; and
 - (b) no forecast capital expenditure for the event was included in that threshold; and
 - (c) Transpower proposes to undertake non-Part F capex during that assessment period to rectify the adverse consequences of the event; and
 - (d) the total of the non-Part F capex required to rectify the adverse consequences of the event exceeds, or is reasonably anticipated by Transpower to exceed, \$5 million; and
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- (e) the non-Part F capex is such that, if undertaken, it is reasonably likely (in the absence of any reduction in other non-Part F capex) to result in the total actual non-Part F capex for that assessment period or any subsequent assessment period exceeding the non-Part F capex threshold for such relevant assessment period; and
- (f) a failure to rectify the adverse consequences of the event would be likely to materially adversely affect the reliability and security of Transpower's transmission system; and
- (g) Transpower can demonstrate that it is not able to reduce capital expenditure in other areas without materially adversely affecting the reliability and security of its transmission system

GAAP means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993

HVDC means high voltage direct current

HVDC customer means, in relation to an assessment period, any customer by or to whom HVDC transmission charges are payable in the relevant pricing year

HVDC revenue means, in relation to an assessment period, the summation of all HVDC transmission charges (inclusive of any rebates) for the relevant pricing year

HVDC forecast revenue requirement, in relation to an assessment period, means the amount determined by Transpower, prior to the start of the relevant pricing year, using a building blocks methodology and forecast data for the assessment period, together with any EV adjustment for the purposes of determining and recovering HVDC transmission charges applicable to the relevant pricing year

HVDC year end revenue requirement means, in relation to an assessment period, the HVDC forecast revenue requirement for that assessment period recalculated (excluding the EV adjustment) as at the end of the assessment period substituting actual data for forecast data where appropriate and including any actual events impacting on Transpower's asset base (for example, stranding of assets) that were not anticipated at the time the HVDC forecast revenue requirement was determined but which occurred during the assessment period

HVDC transmission charge means, in relation to an assessment period, any charge payable to Transpower by HVDC customers in respect of the use by Transpower of Transpower's HVDC transmission system for the purpose of providing specified services to customers

indexed opex means, in relation to an assessment period, an amount equal to \$199.61 million adjusted by the annual average change in the CPI over the period from 1 July 2007 to the end of that assessment period

insurance event, means an event which results in loss or damage to insured transmission assets used for the provision of specified services, which Transpower is entitled to make an insurance claim under an ~~existing~~ insurance policy [Don't want to preclude Transpower from changing its insurance arrangements in the future.]

interruption, in relation to the conveyance of electricity to a customer by means of a prescribed voltage electric line, means the cessation of conveyance of electricity to that customer for a period of 1 minute or longer, other than by reason of disconnection of that customer—

- (a) for breach of the contract under which the electricity is conveyed; or
- (b) as a result of a request from the customer; or
- (c) as a result of a request by the customer's electricity retailer; or
- (d) for the purpose of isolating an unsafe installation

national grid means the fixed assets used or owned by Transpower for the purpose of conveying electricity

non-Part F capex means capital expenditure on any of -

- (a) replacement and refurbishment of existing transmission assets, as described in *clauses 2 and 3 of Part 1 of Schedule 2*;
- (b) minor development and enhancements of transmission assets, as described in *clause 4 of Part 1 of Schedule 2*;
- (c) operational network information and technology services, as described in *clause 5 of Part 1 of Schedule 2* -

that is directly related to the provision, operation or maintenance of electricity works used to provide specified services, but excluding any such expenditure -

- (d) on business support assets;
- (e) relating to investments which are subject to a bilateral agreement with customers;
- (f) submitted to the Electricity Commission for approval under Part F;
- (g) associated with the provision of non-specified services; or
- (h) relating to system operator services

Part F means Part F of the Electricity Governance Rules 2003, as amended from time to time

Part F capex means capital expenditure that is submitted to the Electricity Commission for approval and has been approved under Part F

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pass-through costs means—

- (a) the rates and Electricity Commission levies paid or payable by Transpower for the assessment period, or other charges as determined by the Commerce Commission—

but does not include—

- (b) any amounts described in paragraph (a) if Transpower demonstrates beyond reasonable doubt that those amounts were passed on transparently to its customers

pricing year means the period of 12 months ending on 31 March in any year

publicly disclose, in relation to any information required by this notice to be made available, means to make that information available in the following ways:

- (a) by making copies of that information available for inspection, during ordinary office hours, at the principal office of the person making the information available; and
- (b) at the request of any person, by providing the person with a copy of that information (either free of charge or for a charge that is reasonably required to recover the cost of providing that copy, as set out in section 57W of the Act) either—
 - (i) by post; or
 - (ii) for collection, during ordinary office hours, from the principal office of the person making the information available,—

whichever the person requesting the information prefers;

and **public disclosure** has a corresponding meaning

rates, in relation to Transpower, means the rates on system fixed assets (as defined in the Requirements) paid or payable by Transpower to a territorial local authority under the Rating Powers Act 1988 or the Local Government (Rating) Act 2002

regulatory asset base is the asset base determined in a manner which is consistent with *clause 2* of Schedule 1 and which is used in determining the AC or HVDC year end revenue requirement

relevant pricing year, in relation to an assessment period, means the pricing year commencing on 1 April immediately before the start of that assessment period

Requirements means the Electricity Information Disclosure Requirements 2004 or any successor requirements published by the Commission under section 57T of the Act

security of supply event, in relation to non-Part F capex and an assessment period, means an event occurring during, or prior to, that assessment period having adverse consequences for the transmission system where -

- (a) the non-Part F capex required during the assessment period to rectify those adverse consequences -
 - (i) is not provided for in the amount specified in *clause 6(1)(a) or (b), or (c)* as the case may be (for example, non-Part F capex on replacement, refurbishment, development, or enhancement of transmission assets); and
 - (ii) will, or is likely to, cause Transpower to exceed the transmission (non-Part F capex) threshold in the assessment period; and
- (b) the amount or timing of the non-Part F capex required during the assessment period was not anticipated at the time the amount specified in *clause 6(1)(a), (b), or (c)*, as the case may be was set; and
- (c) the total amount of the non-Part F capex required as a result of the event exceeds, or is reasonably anticipated by Transpower to exceed, \$5 million; and
- (d) Transpower can demonstrate that the non-Part F capex is required during the assessment period to ensure the reliability and security of its transmission system, and that it is not able to reduce non-Part F capex in other areas without materially adversely affecting the reliability and security of the transmission system

specified services means all goods and services, provided by Transpower in New Zealand, that are electricity transmission goods or services or are directly related to the provision of electricity transmission, and includes—

- (a) the provision, operation, and maintenance of electricity works such as the high voltage direct current inter-island link and lines, cables, and substations that facilitate the national conveyance of electricity throughout the national grid; and
- (b) the sale of electricity conveyance services to customers—

but does not include—

- (c) any goods and services described in paragraph (a) or (b), if Transpower demonstrates beyond reasonable doubt that there is workable or effective competition for the provision of those goods and services; or
 - (d) non-conveyance goods and services, such as
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- (i) consultancy or information goods or services not directly related to the provision of electricity transmission, if Transpower demonstrates beyond reasonable doubt that those goods and services are not directly related to the provision of electricity transmission; or
 - (ii) land acquired or held by Transpower for the purpose of gaining an easement where Transpower has the intention of on-selling some or all of that land. For the avoidance of doubt, any easement established upon such land for the purposes of any specified services, together with any injurious affection on payments and all other costs of establishing the easement will, upon establishment of the easement, form part of the specified services.
- (e) the provision of system operator services under SOSPA; or
- (f) services for which loss and constraint rentals are paid, if Transpower demonstrates beyond reasonable doubt that amounts received for those services are passed on transparently and in full to its customers; or
- (g) financial services related to transmission, if Transpower demonstrates beyond reasonable doubt that the amounts arising from settlement of those services are passed on transparently and in full to its customers; or
- (h) goods and services provided by Transpower under new investment contracts but, in the case of new investment contracts entered into after 5 June 2003, only if the other party agrees in writing that the terms and conditions are reasonable or reflect workable or effective competition for the provision of the goods and services; or
- (i) goods and services provided by Transpower as a result of new investment, if Transpower demonstrates beyond reasonable doubt that the new investment was approved under a process (whether regulatory or otherwise) that provides for affected customers to make and approve price-quality trade offs and opportunity for competitive provision of new investment by parties other than Transpower

system minute means the number calculated in accordance with the formula “a/b” where—

“a” is energy not supplied (in megawatt minutes)

“b” is system maximum demand (in megawatts)

system operator services means co-ordination services for the control, dispatch, and security functions necessary to operate the transmission system

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SOSPA means the service provider agreement entered into between the Electricity Commission and Transpower for the provision by Transpower of system operator services dated 17 February 2007, as amended from time to time

threshold compliance statement means a statement of a kind described in *clause 9(1)*

transmission alternative services means services provided by Transpower which substitute for investment in connection assets or interconnection assets or both

Transpower means Transpower New Zealand Limited

unplanned interruption means any interruption in respect of which less than 24 hours' notice, or no notice, was given, either to the public or to all customers affected by the interruption

WACC means weighted average cost of capital as specified in *clause 4 of Schedule 1*

- (2) Terms used in this notice have, unless the context otherwise requires, the same meanings as in the Act or in the Requirements.

4 Thresholds for declaration of control in relation to Transpower

The Commission hereby sets the following thresholds for the declaration of control in relation to Transpower:

- (a) a transmission (revenue requirement) threshold as specified in *clause 5*;
 - (b) a transmission (non-Part F capex) threshold as specified in *clause 6*;
 - (c) a system operator services threshold as specified in *clause 7*;
 - (d) a quality threshold as specified in *clause 8*.
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5 Transmission (revenue requirement) threshold

The transmission (revenue requirement) threshold is that

- (a) the total of Transpower's AC year end revenue requirement and HVDC year end revenue requirement for an assessment period is to be determined in a manner consistent with Schedule 1; and
- (b) the AC and HVDC ex-post economic gain or loss for an assessment period is to be allocated to the AC customer account, HVDC customer account and Transpower account as at the assessment date and in a manner consistent with Schedule 1.

6 Transmission (non-Part F capex) threshold

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- (1) The transmission (non-Part F capex) threshold is that total non-Part F capex for an assessment period will not exceed the amount specified below:
 - (a) for the assessment period ending 30 June 2009, \$203.7 million;
 - (b) for the assessment period ending 30 June 2010, the amount determined by the Commission in accordance with *Part 2 of Schedule 2*;
 - (c) for the assessment period ending 30 June 2011, the amount determined by the Commission in accordance with *Part 2 of Schedule 2*;

- (2) If the Electricity Commission introduces procedures that allow it to approve all or any category, or any part of a category of non-Part F capex, then:
 - (a) all expenditure associated with such categories (or part categories) will be excluded from the transmission (non-Part F capex) threshold when the threshold is next set, subject to *subclause (b)*;
 - (b) where expenditure relates to a non-Part F capex project that has been included in a non-Part F capex plan which has been consulted on and forms the basis of the transmission (non-Part F capex) threshold for an assessment period in accordance with Part 2 of Schedule 1 prior to the Electricity Commission introducing its procedures, Transpower need not submit that expenditure to the Electricity Commission. The ~~approved amount of any~~ on-going project expenditure will continue to be treated as part of the non-Part F capex threshold. [The Commission is not approving particular projects, which is implied by the term 'approved amount'.]

7 System operator services threshold

- (1) The system operator services threshold is that the total of the revenue received from the Electricity Commission by Transpower for system operator service for an assessment period is not to exceed the amount calculated in accordance with the following formula:

$$B + V + FC$$

where:

B = the base fee under the SOSPA;

V = the variable fees under the SOSPA, which are compliance investigation and proceedings fees, development fees, identification costs, information system access fees, fees for technical advice and audit fees, as set out in schedule 1 of the SOSPA; and

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FC = any adjustment to the fee under the SOSPA made as a result of a fee change event agreed with the Electricity Commission under the SOSPA.

- (2) For the purposes of subclause (1) -
- (a) Transpower is to allocate costs to its system operator services business using the avoidable cost allocation methodology;
- (b) if the Commerce Commission publishes cost allocation guidelines during the term of the SOSPA, Transpower is to apply those guidelines transparently and in full so long as -
- (i) the allocation of costs in accordance with those guidelines results in no net reduction or increase in cost recovery by Transpower as a result of the application of those guidelines; and
- (ii) the Electricity Commission agrees to Transpower making such changes to its SOSPA fee as are necessary as a result of the application of those guidelines; and
- (iii) the indexed opex is adjusted to reflect the reallocation of operating costs to or from Transpower's transmission business as a result of the application of those guidelines.

8 Quality threshold

- (1) The quality threshold is as follows:
- (a) *number of unplanned interruptions*: the total number of unplanned interruptions of Transpower for the assessment period *is not to exceed* the five-year average total number of unplanned interruptions of Transpower to 30 June 2003 (calculated in accordance with the right-hand side of the following expression):

$$I_{year} \leq \left(\frac{I_{1999} + I_{2000} + I_{2001} + I_{2002} + I_{2003}}{5} \right)$$

where:

I_{year} is the total number of unplanned interruptions for the period of 12 months ending on 30 June in that calendar year;

- (b) *total interruptions*: the total interruptions, calculated in system minutes, of Transpower for the assessment period *is not to exceed* the five-year average total interruptions, calculated in system minutes, of Transpower to 30 June 2003 (calculated in accordance with the right-hand side of the following expression):
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$$SM_{year} \leq \left(\frac{SM_{1999} + SM_{2000} + SM_{2001} + SM_{2002} + SM_{2003}}{5} \right)$$

where:

SM_{year} is the total interruptions, calculated in system minutes, for the period of 12 months ending on 30 June in that calendar year;

- (c) *customer communication*: during the assessment period, Transpower is to—
- (i) properly advise (or ensure that another person properly advises on its behalf) its customers about the price-quality trade offs available to them in relation to the goods and services provided by Transpower; and
 - (ii) consult (or ensure that another person consults on its behalf) with its customers about the quality of goods and services that they require, with reference to the prices of those goods and services; and
 - (iii) properly consider the views expressed by customers during and after that consultation; and
 - (iv) adequately take these views into account when making its asset management decisions.
- (2) If, during the assessment period, fixed assets used for providing specified services (or rights to such assets) are transferred between Transpower and a distribution business, then *subclause (1)(a) and (b)* will apply as if the transfer occurred on 30 June 1998.
- (3) Despite the other provisions of this *clause 9*, if the Commission is satisfied that, because of lack of information, it is not practicable to determine whether Transpower has complied with *subclauses (1) and (2)*, Transpower will be regarded as having complied with the quality threshold if it demonstrates beyond reasonable doubt, by use of an alternative approach that has equivalent effect to those subclauses, that the substance of those subclauses has been complied with. The threshold compliance statement and the auditor's report need not state whether the Commission is satisfied as to the matters referred to in this clause. [Without this additional sentence, the auditor would be required to state whether s/he considered that the Commission is satisfied. It is not possible to offer such an opinion without seeking guidance from the Commission. An alternative to this addition would be to include the old clause 7(2) from the previous Gazette Notice.]
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9 Information Requirements

- (1) The Commission hereby requires Transpower to publicly disclose and publish on the Internet, no later than 30 September following each assessment date, a written statement that—
- (a) confirms Transpower's compliance, or otherwise, with each of the thresholds referred to in *clause 4* for the assessment period ending on that assessment date, and includes evidence to this effect in the form of data, information, and calculations, that fully supports and explains the confirmation; and
 - (b) without limiting paragraph (a), states -
 - (i) Transpower's HVAC year end revenue requirement and HVDC year end revenue requirement for the assessment period separately, and also demonstrates that the HVAC and HVDC year end revenue requirement has (or has not) been calculated consistently with *Schedule 1*;
 - (ii) for the assessment period the ex post economic gain or loss (including details of how it is calculated) and the allocation applied to each of the HVAC and HVDC customer accounts and Transpower, together with the annual movement in, and the opening and closing balances of, the HVAC and HVDC customer accounts;
 - (iii) the total amount of Transpower's non-part F capex, and also the total amount of Transpower's non-Part F capex for each of the categories listed in clause 1 of Schedule 2, for the assessment period;
 - (iv) Transpower's HVAC forecast revenue requirement, and HVDC revenue forecast requirement, for the assessment period separately, and also demonstrates that the HVAC and HVDC forecast revenue requirement has (or has not) been calculated consistently (on a forecast basis) with *Schedule 1*;
 - (v) the total number of unplanned interruptions and the total interruptions for the assessment period, and describes the process by which Transpower has determined the total number of unplanned interruptions and total interruptions for the assessment period; and
 - (vi) the total system operator revenue allowed under the SOSPA for the assessment period; and
 - (vii) the revenue received by Transpower for services provided under the SOSPA for the assessment period;
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(c) includes all such other information as is sufficient to enable the Commission to properly determine whether or not each of those thresholds concerned has been breached; and

(d) states the date on which it has been prepared.

(2) In respect of the transmission (non-Part F capex) threshold for an assessment period, if:

(a) Transpower becomes aware of, or anticipates, a force majeure event, a security of supply event or a combined event (each an "event" for the purposes of this clause 9(2)), and advises details of the event or anticipated event to the Commission before the public disclosure of the threshold compliance statement for that period; and **[This, together with the addition of the definition of combined event, effects the combined event provision.]**

~~(b) the total non-Part F capex incurred as a direct result of any such individual force majeure event or security of supply event notified to the Commission whether in that or an earlier assessment period, exceeds or is likely to exceed \$5 million, or the total non-Part F capex incurred as a direct result of all such force majeure events and security of supply events notified to the Commission, whether in that or any earlier assessment period, (combined event) exceeds or is likely to exceed \$10 million; and~~

~~(eb) the Commission confirms that the event is a force majeure event or a security of supply event or a combined event -~~

the threshold compliance statement must separately identify all expenditure incurred as a direct result of the event and omit that expenditure in determining compliance or otherwise with that threshold.

(3) In respect of the transmission (non-Part F capex) threshold for the assessment period ending on that assessment date, if:

(a) Transpower exceeds the transmission (non-Part F capex) threshold for an assessment period excluding expenditure separately identified under clause 9(2); ~~and~~ **[As previously worded, this provision would not have applied when a force majeure event occurred.]**

~~(b) the circumstances in clause 9(2) do not apply; and~~

~~(b) Transpower commits not to bring the amount of any such over-expenditure into the regulatory asset base during the period 1 July 2008 to 30 June 2011 -~~

the threshold compliance statement must identify the amount of over-expenditure that will not be brought into the regulatory asset base during that period and omit that expenditure in determining compliance or otherwise with that threshold.

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- (4) The Commission hereby requires Transpower to publicly disclose and publish on the Internet, no later than 30 September following each assessment date, -
- (a) a report on the statements required by *subclauses (1), (2) and (3)* in respect of that assessment date that is signed by an auditor and is in the form set out in *Schedule 3*; and
 - (b) a certificate in the form set out in *Schedule 4*, duly signed by two directors of Transpower.
- (5) Under (and without limiting) section 57U of the Act, Transpower is—
- (a) required to supply to the Commission, under subsection (1)(a) of that section, a copy of each statement and document disclosed under *subclauses (1) to (3)*; and
 - (b) requested to supply to the Commission, under subsection (1)(b) of that section, the auditor's report referred to in *subclause (4)(a)*—
- within 5 working days after the statement is first so disclosed.
- (6) Transpower need not include in a statement under *subclause 4(a) and (b)* any information that it considers is commercially sensitive if—
- (a) it has given the information concerned to the Commission and advised the Commission in writing of the reasons for the exclusion; and
 - (b) that information is covered by the auditor's report required under *subclause (4)(a)* and the certificate required under *subclause (4)(b)*; and
 - (c) the Commission has not objected to the exclusion of the information.
- (7) An auditor's report given for the purposes of *subclause (4)(a)* may be qualified only if—
- (a) the auditor considers that the threshold compliance statement concerned—
 - (i) fails to comply with this clause 9; or
 - (ii) fails to give a true and fair view of the matters to which it relates (having regard to any information or explanations that may have been provided by the directors of Transpower); and
 - (b) the auditor's report explains with full reasons the respects in which the statement so fails.
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SCHEDULE 1

SPECIFICATIONS FOR CALCULATION OF AC AND HVDC YEAR END REVENUE REQUIREMENTS

1 Building blocks methodology

Transpower uses a building blocks approach to calculate its revenue requirement. Transpower's AC year end revenue requirement, and its HVDC year end revenue requirement, is to be determined in a manner consistent with this Schedule 1.:

2 Regulatory asset base

- (1) In calculating the regulatory asset base used in determining the AC or HVDC year end revenue requirement for each assessment period -
 - (a) all of Transpower's transmission fixed assets (system fixed assets and other assets) used to provide specified services as at 30 June 2006 will be included in the asset base as at 30 June 2006;
 - (b) subject to *subclause (c)*, Transpower is to use depreciated historical cost accounting principles to value the fixed assets in the regulatory asset base;
 - (c) the depreciated historic cost value of the assets included in the regulatory asset base as at 30 June 2006 will be the optimised deprival value (**ODV**) of Transpower's AC or HVDC (as the case may be) system fixed assets as well as other assets used to provide specified service as at 30 June 2006;
 - (d) Transpower's AC or HVDC (as the case may be) system fixed assets and other assets acquired subsequent to 30 June 2006 and before the end of the assessment period, will be recorded at cost in a manner consistent with GAAP and brought into the regulatory asset base in accordance with *clause 3* of this Schedule.
 - (2) Fixed assets used solely for the purposes of providing system operator services are not to be part of the regulatory asset base.
 - (3) Transpower is to use the asset values in its financial accounts for the purposes of determining the regulatory asset base from 1 July 2006. To align these asset values to the ODV asset values as at 30 June 2006 Transpower is to create five "pseudo" assets which are to be depreciated over a period of four to ten years. The five pseudo assets will be the HVDC mercury arc valve pseudo asset, other HVDC pseudo assets, HVDC lines pseudo asset, AC lines pseudo asset, and AC substations pseudo asset. The value of the "pseudo" assets is to be the difference between the financial accounts asset values and the ODV asset values.
 - (4) From 1 July 2006, the value of the pseudo assets will be as follows:
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- (a) HVDC mercury arc pseudo asset \$21 million;
- (b) HVDC line pseudo asset negative \$4 million;
- (c) all other HVDC pseudo asset \$17 million;
- (d) the AC lines pseudo asset \$64 million;
- (e) AC substations pseudo assets \$14 million.

3 Capital Expenditure

- (1) A fixed asset acquired since 1 July 2006 cannot be included in the regulatory asset base unless the asset is used to provide specified services; and it
 - (a) has been approved by the Electricity Commission under the procedures in Part F; or
 - (b) is within a class of assets the Electricity Commission has for the time being explicitly identified as not requiring approval in accordance with Part F or;
 - (c) is an asset to which the transmission (non-Part F capex) threshold applies; or
 - (d) any non-Part F capital expenditure incurred as a direct result of a force majeure event or a security of supply event or a combined event separately reported by Transpower in accordance with 9(2) of the Notice; or
 - (e) any non-Part F capital expenditure which the Commerce Commission has otherwise determined to be justified notwithstanding that the expenditure incurred exceeded the transmission (non-Part F capex) threshold in the relevant assessment period; or [Without these paragraphs, such expenditure would be excluded from the regulatory asset base.]
 - (f) relates to business support assets; or
 - (g) relates to Part F expenditure which has not been approved under the Part F approval processes, but for which the Electricity Commission has formally communicated to the Commission that it considers such expenditure to be prudent; or
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(h) is non-Part F expenditure which is the result of an insurance event and has been recovered by insurance income, or is reasonably anticipated by Transpower to be so recovered.

(2) Subject to *subclause (3)*, Part F capex and non-Part F capex -

(a) is to be held in a works under construction account until the relevant assets are commissioned, and interest on this expenditure at Transpower's cost of debt is to be accrued and capitalised in accordance with GAAP; and

(b) may be included in the asset base used to determine the AC or HVDC year end revenue requirement once the relevant assets have been commissioned.

(3) Subject to *subclause (4)*, capital expenditure in relation to specified services associated with -

(a) transmission corridor investments; or

(b) land and easement investments, or

(c) any associated resource consents or designations that form part of, or are otherwise required for, investments that are subject to approval processes under Part F (whether such investments have been included in, or are acquired in anticipation of, a grid upgrade plan proposal) or that are acquired for strategic option value purposes for future grid investment -

is to be included in the regulatory asset base used to determine the AC or HVDC year end revenue requirement only when the purchase has been approved by the Electricity Commission and the capital expenditure has actually taken place and, in the case of land acquired for strategic option value purposes, meets the requirements of Rule 4.2 of the Grid Investment Test in Schedule F4 of Section III of Part F.

(4) Where Transpower purchases land to gain an easement with the intention of on-selling some or all of that land -

(a) the value of land held for re-sale, and the costs and income associated with purchasing, holding, developing, and selling the land, are to be excluded from the regulatory asset base;

(b) the capital value of easements over land held for re-sale, together with any injurious affection payments and all other costs of establishing the easements, are to be part of the regulatory asset base, subject to the approval of purchase costs by the Electricity Commission;

(c) the capital value of those easements and any injurious affection payments is to be valued by independent valuations;

(d) the inclusion within the regulatory asset base of the full costs of establishing those easements is to occur at the date of the next valuation of the regulatory asset base following either purchase of the land or the approval of the purchase by the Electricity Commission, whichever is the later.

(5) For the purposes of *subclauses (1) to (4)* -

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- (a) a reference to approval by the Electricity Commission means approval given under a Part F approval process or, if there is no applicable Part F approval process, a formal communication to ~~Transpower~~ the Commission from the Electricity Commission to the effect that it considers the capital expenditure (or, in the case of transmission alternative services, the costs) to be prudent, and in either case irrespective of whether approval is sought or given before, or subsequent to, the capital expenditure being incurred; and
 - (b) a reference to transmission corridor investments means investments in any of easements, access rights, access ducts, cable ways or tunnels, (in each case whether above or below ground), land, buildings or other improvements for the purpose of providing corridors for transmission assets and sites for substations;
 - (c) GAAP is to be used to determine the date on which assets are commissioned and their capital cost. Upon asset commissioning, Transpower may include the assets into its regulatory asset base for the purposes of determining its AC or HVDC year end revenue requirement.
 - (d) Transpower is to recover the lesser of actual costs incurred or the upper limit of costs as proposed by Transpower and approved by the Electricity Commission under Part F.
- (6) Easements are to be depreciated only when they have a limited life or are required for a known, limited period of time. Land is not to be depreciated.
- (7) Transpower may from time to time develop transmission alternative services. The costs of developing and funding transmission alternative services-
- (a) where these costs are operating expenditure and for the purposes of *clause 5* of this Schedule, are to be in addition to any indexed opex; and
 - (b) may be recovered from customers only if the Electricity Commission approves such expenditure under Part F.

4 Cost of Capital

- (1) Transpower is to use a post tax nominal WACC of 7.8% to calculate the AC or HVDC year end revenue requirement for the pricing years commencing 1 April 2008, 1 April 2009 and 1 April 2010.
- (2) The difference between Transpower's actual financing costs and the capital charge arising from application of the WACC specified in subclause (1) in any year is to be to the benefit of, or cost to, Transpower.

5 Operating costs

- (1) Operating costs are to be determined in accordance with *subclause (2)* before being allocated between the AC year end revenue requirement and HVDC year end revenue requirement.
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- (2) Operating costs to be allocated between the AC year end revenue requirement and HVDC year end revenue requirement in any assessment period are to be the sum of the following:
- (a) indexed opex for that assessment period less 75% of any saving in administration costs Transpower identifies as resulting from alignment of the regulatory and financial accounts; and
 - (b) operating lease costs, determined in accordance with *subclause (5)*;
 - (c) pass through costs (being Electricity Commission levies and local authority rates at the date of this notice) as defined by the Commerce Commission from time to time;
 - (d) any operating costs associated with transmission alternative services that have been approved by the Electricity Commission;
 - (e) operating expenditure ~~incurred which as a result of an insurance event for which and~~ has been recovered by insurance income, or is reasonably anticipated by Transpower to be so recovered. [Changed to be consistent with reference to insurance event elsewhere.]
- (3) If Transpower's actual operating costs in providing specified services for the relevant assessment period less the costs specified in *subclause (2)(b) to (e)* differs from the indexed opex for the relevant assessment period, the difference (whether positive or negative) is to be to the account of Transpower and is not to be recovered from or returned to customers.
- (4) For the purposes of *subclause (3)*, expenditure relating to investigation and feasibility work that is accounted for as an expense for financial reporting purposes is to be included as an actual operating expense.
- (5) Operating lease costs for assets are excluded from indexed opex. Future committed operating lease costs are to be capitalised and a WACC return on the average net present value of leased assets included in the AC or HVDC revenue requirement. A depreciation charge is also to be included in the AC or HVDC revenue requirement. The depreciation and net present value is to exclude the estimated financing component inherent in the operating leases. Any capitalised operating leases entered into after 30 June 2006 are to be treated as capital expenditure.

6 Depreciation, impairment and asset stranding

- (1) Transpower is to receive a return of capital through a depreciation charge based upon the life of the underlying assets. The calculation of the depreciation charge and any asset write off is to be consistent with GAAP and the depreciated historical cost valuation methodology, and is to include 'depreciation' relating to operating leases and pseudo assets.
- (2) Transpower is to adjust cash flows (using accelerated depreciation) to achieve a return of capital as asset stranding or impairment becomes apparent. Asset stranding may be handled through the relevant customer account with recovery achieved through an adjustment to the relevant customer account if stranding is not anticipated at the time the
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forecast revenue requirement is set. Transpower is not to earn a return on capital for stranded or impaired assets.

7 Tax

Transpower is to use a tax payable approach to calculate the AC or HVDC year end revenue requirement.

8 Economic value framework

- (1) The ex-post economic gains or losses in respect of the provision of specified services by Transpower is to be -
 - (a) calculated at the end of each assessment period on the basis that revenue received in the relevant pricing year is deemed to have been received in the assessment period; and
 - (b) allocated between customers and Transpower in a manner consistent with this Schedule; and
 - (c) subject to *subclause (3)*, accumulated in the customer accounts from year to year.
- (2) All ex-post economic gains or losses are to be allocated to the relevant customer account or Transpower account at the end of the assessment period concerned.
- (3) All insurance income received by Transpower for an insurance event will be credited to the relevant AC or HVDC customer account.
- (4) The EV adjustment to be used in the AC or HVDC forecast revenue requirement for an assessment period is to be calculated in accordance with the following formula:

$$1/3 [A + B + C]$$

where -

- A* is the total customer account balance at 30 June, nine months prior to the commencement of the relevant pricing year
- B* is the expected ex-post economic gain or loss for the assessment period, three months after the commencement of the relevant pricing year
- C* is the expected ex-post economic gain or loss for the assessment period, fifteen months after the commencement of the relevant pricing year

provided that -

- (a) the amount of any EV adjustment that results in an increase in recovery of AC revenue from AC customers or HVDC revenue from HVDC customers, will not exceed 10% of the AC or HVDC revenue requirement prior to the adjustment being made; and

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- (b) if $A + B + C$ is less than \$20 million, an EV adjustment may, but is not required to, be made.
- (5) Interest at WACC is to be calculated on the opening balance of the customer accounts in the assessment period and credited to the customer accounts as at 30 June in each year.
- (6) The balance of the existing customer accounts for AC customers and HVDC customers as at 30 June 2008 is to be carried forward and form the opening balance as at 1 July 2008 for each of the customer accounts for the purposes of the transmission (revenue requirement) threshold.

9 Cross border leases

Transpower is to retain the benefits of any future cross-border leases and structured finance arrangements that it undertakes and is also to assume the costs of developing such agreements whether or not final agreements are concluded.

SCHEDULE 2

MATTERS RELATING TO NON-PART F CAPEX

Part 1 Criteria for Non-Part F Capex

1 Introduction

- (1) In order to assist with ensuring compliance with the transmission (non-Part F capex) threshold, Transpower is, to the extent practicable, to record whether individual expenditure incurred for the purposes of providing specified services is non-Part F capex, directly in Transpower's project planning system (AMBD).
- (2) Expenditure falling into the following categories will be treated as non-Part F capex:
 - (a) asset replacement;
 - (b) asset refurbishment;
 - (c) asset enhancement & development (non-Part F);
 - (d) operational network information and technology services (IT)but does not include expenditure in any of these categories which is the result of an insurance event for which insurance income has been recovered, or is reasonably anticipated by Transpower to be so recovered.
- (3) To the extent practicable, Transpower is to use the criteria described below to assign expenditures as non-Part F capex.

2 Asset replacement

The key criterion which determines inclusion in this asset replacement category, is that the expenditure is to replace an existing asset where the primary driver is replacement due to the condition of the asset or performance issues (including replacement due to obsolescence). This is essentially replacement with the modern equivalent of the existing asset. Any incidental increase in performance (for example, the minimum conductor size available to mitigate noise issues being larger than that used when the asset was originally installed) is still considered to be replacement.

3 Asset refurbishment

Refurbishments are classified as capital works if the work extends the life of the asset. Examples include painting of buildings and towers; bus and structure refurbishment; renewal of switchyard gravel; reseal of access roads; current transformer and disconnecter refurbishment; transmission line refurbishment; and grillage foundation refurbishment.

4 Asset development and enhancement (Non-Part F)

- (1) Asset development and enhancement expenditure which is categorised as non-Part F capex relates to work required on an existing asset, or investment in a new asset, in order to –
 - (a) bring the performance, or security of service, of the asset up to a modern standard or industry good practice;
 - (b) ensure compliance with statutory or Electricity Governance Rules requirements;
 - (c) correct historical design or construction issues; or
 - (d) provide physical protection of assets.
 - (2) Transpower project investments with a total expected value below a financial limit, of \$1.5m, need not be submitted for Electricity Commission approval and any such projects not submitted to the Electricity Commission for approval may be submitted to the Commerce Commission for approval to form part of the transmission (non-Part F capex) threshold.
 - (3) A new work programme having an expected total cost of more than \$5 million, whose purpose is to enhance capacity or quality of service and that affects a large number of assets, is to be submitted to the Electricity Commission for approval under Part F (and will not therefore form part of non-Part F capex). Any departures from this requirement will be agreed between Transpower and the Commerce Commission when the threshold is set.
 - (4) Without limiting *clauses 4(1) and (2)*, examples of the types of work that would generally form part of non-Part F capex include the following:
 - (a) work required under Part C of the Electricity Governance Rules 2003, as amended from time to time;
 - (b) duplicating battery banks;
 - (c) installation of vibration dampers on overhead lines;
 - (d) increasing physical security for assets, for example fences, seismic upgrades, retaining walls, site and equipment earthing;
 - (e) installation of temperature control in buildings;
 - (f) installing or upgrading oil containment;
 - (g) installation of circuit breakers, fail protection, bus zone protection, and transformer protection; and
 - (h) improving the lightning protection of transmission lines.
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5 Operational network information and technology services (IT)

- (1) IT expenditure which is operations or network focused, and IT expenditure where the driver for investment is for business support purposes may be submitted to the Commerce Commission for approval to form part of the (non-Part F capex) threshold.
- (2) Anticipated operating lease costs associated with Transpower's telecommunication upgrade programme are to be capitalised by discounting the future cash commitment at the cost of debt to determine the implicit asset value. The value of the assets is then to be included in operating capital and capital invested by adjusting fixed assets and debt respectively. The interest component of the operating lease charge is to be estimated based upon the cost of debt implicit in the cost of capital. Depreciation expense is then to be calculated for the operating capital employed.

Part 2

Process for determining transmission (non-Part F capex) thresholds for assessment periods ending 30 June 2010 and 2011

For each of the assessment periods ending 30 June 2010 and 2011, the transmission (non-Part F capex) threshold is to be established as follows:

- (a) Transpower will record any material changes to its asset management, business planning, and capital works policies or processes relating to non-Part F capex that have occurred during the calendar year before the commencement of the assessment period. These records are to be provided to the Commission in January immediately preceding the commencement of the assessment period;
 - (b) during that January Transpower will make available to the Commission a schedule that shows, for non-Part F capex projects completed in the second half of the calendar year before the commencement of the assessment period, a comparison of actual expenditure in that second half versus budgeted expenditure for that second half. Reasons for variations will be provided for all projects that have exceeded 10% of budgeted cost;
 - (c) Transpower will make available to the Commission upon request a schedule which sets out significant movements of non-Part F capex projects into and out of the capital works plan which have occurred during the second half of the calendar year before the commencement of the assessment period as well as a forecast of similar movements for the first half of the following calendar year;
 - (d) Transpower will prepare its non-Part F capex plan and business plan forecasts for the assessment period in accordance with capital works and business planning processes and
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policies in the January/February immediately preceding the commencement of the assessment period;

- (e) Transpower will ensure contingency sums are adjusted to no more than 7.5% for IT and 0% for replacement, refurbishment, minor development, and enhancement expenditure;
 - (f) Transpower will make available to the Commission upon request project approval documentation, including a final schedule of all projects making up the proposed non-Part F capex, for the assessment period, together with the project approval status, in final non-draft form (**non-Part F capex plan**);
 - (g) the Commission (at its discretion) will consult on and review (or engage an independent third party to review) the non-Part F capex plan beginning in February immediately before the commencement of the assessment period in order, among other things, to provide assurance that -
 - (i) the levels of contingency included in the project budgets have been established in accordance with paragraph (e) above;
 - (ii) the expenditure forecasts have been prepared in accordance with Transpower's capital works and IT planning processes and policies;
 - (iii) Transpower's processes have considered and targeted appropriate least-cost, efficient, interventions;
 - (iv) Transpower has proactively pursued and implemented process improvements and delivered on commitments made to review the scope for improvement to its non-Part F capex processes relating to procurement audit, review of open book tendering for replacement and refurbishment, and project approval document templates;
 - (h) if, following consultation, the Commission finds that Transpower has complied with and provided for the above requirements in (a) to (g) then the resulting capital expenditure will be deemed appropriate for the transmission (non-Part F threshold);
 - (i) the Commission will provide Transpower with a draft copy of the Commission's (or their agent's) findings and any recommendations from the above review, for identification of any factual errors;
 - (j) the Commission will then determine the amount of the total non-Part F capex for the transmission (non-Part F capex) threshold for the assessment period, and will amend this notice to state that amount.
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SCHEDULE 3

Clause 9(4)(a)

FORM OF AUDITOR'S REPORT ON THRESHOLD COMPLIANCE STATEMENT

To the readers of the threshold compliance statement of Transpower New Zealand Limited for the assessment period ended on *[insert date]*.

I/We have examined the attached statement, which is a threshold compliance statement in respect of the transmission (revenue requirement) threshold, the transmission (non-Part F capex) threshold, the system operator services threshold and the quality threshold prepared by Transpower New Zealand Limited for assessment as at *[insert date]* and dated *[insert date]* for the purposes of information requirements set out in *clause 9* of the Commerce Act (Transpower Thresholds) Notice 2008 ("the Notice"). In this report the attached statement is called "the threshold compliance statement".

Directors' Responsibilities

Directors of Transpower New Zealand Limited are responsible for the certification of the threshold compliance statement in accordance with the Notice.

Auditor's Responsibilities

It is my/our responsibility to express an independent opinion (in the form prescribed in the Notice) on the threshold compliance statement and report my/our opinion to you.

I/We conducted my/our audit in accordance with the Auditing Standards issued by the Institute of Chartered Accountants of New Zealand.

Basis of Opinion – Transmission (revenue requirement) Threshold, Transmission (Non-Part F Capex) Threshold, System Operator Services Threshold and Quality Threshold: Number of Unplanned Interruptions and ~~Customer~~ Total Interruptions for the assessment period, and Quality Threshold: Customer Communication

My/Our audit included examination, on a test basis, of evidence relevant to the amounts and disclosures contained on pages *[xx]* of the threshold compliance statement and which relate to:

- the transmission (revenue requirement) threshold set out in clause 5 of the Notice; and
 - the transmission (non-Part F capex) threshold set out in clause 6 of the Notice; and
 - the system operator services threshold set out in clause 7 of the Notice; and
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- the number of unplanned interruptions and ~~customer~~ total interruptions for the assessment period which are relevant to those parts of the quality threshold that are set out in clause 8 of the Notice; and
- the customer communications criterion of the quality threshold set out in clause 8 of the Notice.

It also included assessment of the significant estimates and judgments, if any, made by Transpower New Zealand Limited in the preparation of the threshold compliance statement and assessment of whether the basis of preparation has been adequately disclosed.

I/We planned and performed my/our audit of the threshold compliance statement so as to obtain all the information and explanations which I/we considered necessary, including for the purpose of obtaining sufficient evidence to give reasonable assurance that the threshold compliance statement is free from material misstatements (whether caused by fraud or error). In forming my/our opinion I/we also evaluated the overall adequacy of the presentation of information in the threshold compliance statement.

Basis of Opinion – Quality Threshold: Number of Unplanned Interruptions and Total Interruptions for the Years Ended 30 June 1999, 2000, 2001, 2002 and 2003

In relation to the number of unplanned interruptions and total interruptions for the years ended 30 June 1999, 2000, 2001, 2002 and 2003 which are relevant to those parts of the quality threshold that are set out in clauses 8(1)(a) and 8(1)(b) of the Notice, I/we have undertaken procedures to provide reasonable assurance that:

- the amounts and disclosures in the threshold compliance statement relating to those performance measures have been correctly taken from the information disclosed by Transpower New Zealand Limited in accordance with the Electricity (Information Disclosure) Regulations 1999; and
- those performance measures have been calculated based on the source data provided to me/us. I/We have not performed audit procedures on the source data.

Relationship and Interests

I/We have no relationship with or interests in Transpower New Zealand Limited other than *[insert relationship and/or interests including statement verifying that no conflict of interest exists]*.

Opinions

I/We have obtained all the information and explanations I/we have required.

Transmission (revenue requirement) Threshold, Transmission (Non-Part F Capex) Threshold and System Operator Services Threshold

In my/our opinion, having made all reasonable enquiry, to the best of my/our knowledge, the amounts or details set out in the threshold compliance statement and related information have been prepared in accordance with the Notice, and give a true and fair view of the performance of Transpower New Zealand Limited against each of the above thresholds for the assessment period ended on *[insert date]*.

Quality Threshold

In my/our opinion, having made all reasonable enquiry, to the best of my/our knowledge –

- (a) the number of unplanned interruptions and total interruptions for the assessment period ended on *[insert date]* which are relevant to those parts of the quality threshold that are set out in clauses 8(1)(a) and 8(1)(b) of the Notice and related information have been calculated or prepared in accordance with the Notice and in accordance with Transpower New Zealand Limited's policies and procedures for recording the number of unplanned interruptions and total interruptions as disclosed in the threshold compliance statement, and fairly represent the performance of Transpower New Zealand Limited for the assessment period ended on *[insert date]*;
- (b) the number of unplanned interruptions and total interruptions for the years ended 30 June 1999, 2000, 2001, 2002 and 2003, which are relevant to those parts of the quality threshold that are set out in clauses 8(1)(a) and 8(1)(b) of the Notice, have been correctly taken from the information disclosed by Transpower New Zealand Limited in accordance with the Electricity (Information Disclosure) Regulations 1999. Those performance measures have been properly calculated based on the unaudited source data provided to us by Transpower New Zealand Limited;
- (c) the number of unplanned interruptions and total interruptions for the assessment period ended on *[insert date]*, together with the number of unplanned interruptions and total interruptions for the years ended 30 June 1999, 2000, 2001, 2002 and 2003, give a true and fair view of the performance of Transpower New Zealand Limited against those parts of the quality threshold that are set out in clauses 8(1)(a) and 8(1)(b) of the Notice for the assessment period ended on *[insert date]*.

Quality Threshold: Customer Communication

In my/our opinion, having made all reasonable enquiry, to the best of my/our knowledge the information set out in the threshold compliance statement relating to that part of the quality threshold that is set out in clause 8(1)(c) of the Notice has been prepared in accordance with the Notice, and gives a true and fair view of the performance of Transpower New Zealand Limited against that part of the quality threshold for the assessment period ended on *[insert date]*.

***[Qualification on Opinion]**

*[My/Our opinion is qualified as follows:]

[Insert the nature of and reason(s) for the qualification together with the impact on the threshold compliance statement].

My/Our audit was completed on *[insert date]* and my/our opinion is expressed as at that date.

[Signature of Auditor]

[Name of auditing firm]

[Address of auditing firm]

[Date]

*Delete if inapplicable.

Note: Section 103(2) of the Commerce Act 1986 provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to contravene section 103(2) and any person who does so is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual or \$30,000 in the case of a body corporate.

SCHEDULE 4

Clause 9(4)

FORM OF DIRECTORS' CERTIFICATE ON THRESHOLD COMPLIANCE STATEMENT

We, *[insert full names]*, being directors of Transpower New Zealand Limited certify that, having made all reasonable enquiry, to the best of our knowledge and belief, the attached threshold compliance statement of Transpower New Zealand Limited, and related information, prepared for the purposes of the Commerce Act (Transpower Thresholds) Notice 2008 complies with the requirements of that notice **[except in the following respects]*:

[insert description of non-compliance].

[Signatures of Directors]

[Date]

*Delete if inapplicable.

Note: Section 103(2) of the Commerce Act 1986 provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to contravene section 103(2) and any person who does so is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual or \$30,000 in the case of a body corporate.

SCHEDULE 5

Clause 9(8)

FORM OF STATUTORY DECLARATION IN RESPECT OF FURTHER INFORMATION
REQUESTED BY THE COMMERCE COMMISSION

I *[insert full name]*, of *[insert address]*, being a director of Transpower New Zealand Limited, solemnly and sincerely declare that having made all reasonable enquiry, to the best of my knowledge and belief, the information attached to this declaration—

- a) is the information *[specify]* requested by the Commerce Commission on *[insert date]* under section 57U(1)(b) of the Commerce Act 1986; and
- b) contains all the information *[specify]* in the possession, or under the control, of Transpower New Zealand Limited that relates to that request.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at [] this [] day of []

Justice of the Peace (or Solicitor or other person authorised to take a statutory declaration).

Note: Section 103(2) of the Commerce Act 1986 provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to contravene section 103(2) and any person who does so is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual or \$30,000 in the case of a body corporate.

EXPLANATORY NOTE

The purpose of this *Gazette* notice is to—

- (a) set thresholds for the declaration of control in relation to Transpower New Zealand Limited for the three years beginning 1 July 2008, pursuant to section 57G of the Commerce Act 1986; and
- (b) require Transpower New Zealand Limited, pursuant to sections 57T and 57U of that Act, to publicly disclose and publish on the Internet (and send to the Commission) a threshold compliance statement for each year stating whether or not it has complied during that year with the thresholds set in this notice and providing supporting evidence. A threshold compliance statement is to be accompanied by both an auditor's report and a directors' certificate.

The Commission, having conducted a comprehensive process of consultation, has decided to set new thresholds for Transpower New Zealand Limited – a transmission (revenue requirement) threshold, a transmission (non-Part F capex) threshold, a system operator services threshold, and a quality threshold. These thresholds will underpin the achievement of the purpose of the targeted control regime.

The thresholds contained in this Notice are set by the Commission as part of the administrative settlement agreed between Transpower and the Commission on **[insert date]**. Transpower proposed an administrative settlement on 11 April 2008 in the context of the Commission's Intention to Declare Control dated 23 December 2005. Upon accepting Transpower's proposal, the Commission determined not to declare control of Transpower's transmission services as implementation of the thresholds, would ensure the objectives of Part 4A were met.

The thresholds for declaration of control in relation to electricity lines businesses other than Transpower are set by the Commerce Act (Electricity Distribution Thresholds) Notice 2004, as amended by the Commerce Act (Electricity Distribution Thresholds) Amendment Notice 2006.

The Commission's thresholds are a screening mechanism. The Commission is required to assess one or more lines businesses and identify those that breach the thresholds and may further investigate their performance. Further investigation may lead to control of one or more lines businesses.

Copies of this notice are available for inspection free of charge at the Commission (during ordinary office hours) and on the Internet, or for purchase at a reasonable price at the Commission.

Further detail regarding the thresholds for the declaration of control in relation to large electricity lines businesses (including in relation to Transpower New Zealand Limited's thresholds) can be found in two Decision Papers, *Regulation of Electricity Lines Businesses, Targeted Control Regime, Threshold Decisions (Regulatory Period Beginning 2004)*, and

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Decision and Reasons for Not Declaring Control of Transpower New Zealand Limited and Decision to Reset Transpower's Thresholds (13 May 2008).