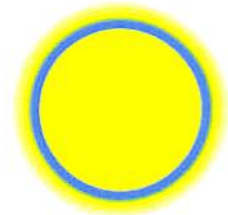


8 December 2005

Network Performance Group
Commerce Commission
P.O. Box 2351
Level 6, 44-52 The Terrace
Wellington

By email: gas@comcom.govt.nz

POWERCO



Dear Sir/Madam

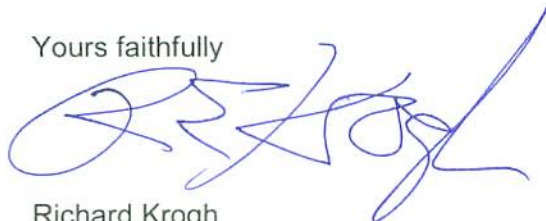
Submission on the Authorisation for the Control of Supply of Natural Gas Distribution Services by Vector Ltd and Powerco Ltd Proposed Process Paper dated 17 November 2005

1. The Commerce Commission (the Commission) has sought submissions on the "Authorisation for the Control of Supply of Natural Gas Distribution Services by Vector Ltd and Powerco Ltd Proposed Process Paper dated 17 November 2005" (Process Paper). In the limited time available Powerco offers the following comments and observations to assist the Commission with formulating its process.
2. Powerco's overriding concern is that the proposed process is premature in light of the substantial challenges Powerco has initiated in its judicial review. The Commission will be aware that the gas judicial review is set down for a hearing in May 2006. The Commission proposes completing several critical steps in its timetable ahead of May 2006. Powerco acknowledges that the Commission has the right to proceed with the authorisation process at this time (despite the detrimental effect on Powerco, should the court determine that the matters raised give rise to a finding that the control decision was flawed). It considers however that the proximity of the hearing means that the better course would be for the authorisation process to be delayed pending the outcome of that hearing. Otherwise the Commission runs the severe risk of undertaking an inefficient process by making further erroneous decisions and wasting both its own and Powerco's resources.
3. Notwithstanding the outcome of its judicial review, Powerco makes the following additional three points.
4. First, it is concerned that the proposed timeframe is too short. This will place considerable pressure on the companies and the Commission in the provision and analysis of data and information. This concern is compounded in that it will apply to both the workstreams as proposed in the Process Paper. Powerco is firmly of the opinion that this will result in an inefficient process and runs a serious risk of regulatory error.
5. Previous experience with the Commission shows that some degree of slippage in the timetable is likely and the proposed timetable does not allow for any breathing space. Of critical concern is the proposal for a "Final Determination" date of 1 September 2006. The Commission is aware of Powerco's commercial obligations in respect of consultation and notification of retailers operating on Powerco's network. Under these arrangements

Powerco is required to a) consult for 30 days and b) give 60 days notice of any changes in its tariffs. The 1 September 2006 date does not accommodate this.

6. Secondly, the timetable proposes two work streams. One for the form of control and the other for the information requirements. We note that the Commission has correctly identified that they overlap and that there is a need for them to be properly sequenced. However we do not believe it is efficient to attempt to define the information requirement ahead of the important decision on the "how to" (to borrow the language recently adopted at the Unison conference) as the Commission has indicated that it will.
7. Rather we believe that the interdependence of the two work streams requires that the "how to" work stream needs to be sufficiently advanced before the information requirements can be defined. It would be inefficient for the Commission to require information covering all possibilities for various hypothetical forms of control. The Commission also needs to be cognisant of the requirements for consultation and we believe that it would be indicative of a predetermined outcome to define the information requirements ahead of consultation on the form of control.
8. Finally, we note that the proposed process timetable does not allow for cross-submissions, which has been the usual practice. An opportunity for cross-submission is necessary for those circumstances in which the Commission consults on an issue and then decides on a different outcome having taken into account the views of various parties. We trust that the Commission will to alter the proposed timetable to accommodate these types of circumstances as necessary.
9. The Commission's paper is brief and this submission is therefore also limited insofar as it is difficult to respond beyond the brevity of the process paper provided. We would be pleased to comment further if that would assist.

Yours faithfully



Richard Krogh
Chief Operating Officer