

Memorandum of Understanding between the Electricity Authority and the Commerce Commission

December 2010

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This **Memorandum of Understanding** (memorandum) is made on the *9th* day of *December* 2010

between (1) **Electricity Authority** (the Authority)
and (2) **Commerce Commission** (the Commission)

Background

- 1 The Authority is an independent Crown entity established under section 12 of the Electricity Industry Act 2010, and is the regulator of the electricity industry. The objective of the Authority, as set out in section 15 of the Electricity Industry Act, is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.
- 2 The Commission is also an independent Crown entity established under section 8 of the Commerce Act 1986. The Commission has certain functions, powers and duties in relation to the electricity industry, particularly (but not exclusively) under Part 4 of the Commerce Act. The Commission's jurisdiction under Part 4 includes setting regulation of the price and quality, and information disclosure requirements, for goods or services regulated under the Commerce Act.

Purpose

- 3 The Authority and the Commission recognise that they share certain common interests in relation to their respective statutory functions with regard to the electricity industry. This memorandum explains how the Authority and the Commission intend to coordinate their respective roles under the Electricity Industry Act and the Commerce Act.
- 4 Nothing in this memorandum is intended to limit or affect the independence of each party or the requirement that each party act to fulfil its legal functions and obligations.

How we will work together

- 5 The Authority and the Commission will work closely together in the spirit of this memorandum to ensure that their respective roles are well coordinated, and to minimise any scope for uncertainties regarding jurisdictional issues.
- 6 The Authority and the Commission agree that there are a number of principles which will govern the relationship under this memorandum. Specifically, but without limitation, the two parties agree to:

- a. work together to coordinate activities to avoid potential overlaps or duplication of effort between the parties, and to maximise efficiency and effectiveness;
 - b. keep each other informed in a timely manner on any matter that may affect the other party's roles and/or responsibilities, powers and/or functions;
 - c. work together to clearly communicate our respective roles and responsibilities to stakeholders and minimise the potential for confusion in that regard;
 - d. share information, knowledge and skills to increase the overall capability of both parties;
 - e. adopt a no surprises approach, by advising each other early of any identified issues that might affect the other party; and
 - f. seek to minimise any scope for uncertainties regarding jurisdictional issues.
- 7 Staff from both parties will meet as required to give effect to the requirements of this memorandum.
- 8 This memorandum will be made available on both the Authority's and the Commission's websites.

Roles and responsibilities in areas of common interest

Monitoring and promoting competition

- 9 One of the Authority's functions under section 16 of the Electricity Industry Act is to undertake industry and market monitoring. The Authority's objectives for this function are to promote competition, reliability and efficiency in the electricity industry for the long-term benefit of consumers.
- 10 In regard to monitoring competition the Authority's focus is on the competitiveness of electricity markets, rather than on the conduct of any particular market participant or group of market participants. The Authority's focus in promoting competition is on effecting pro-competitive measures through Electricity Industry Participation Code (Code) amendments and market facilitation measures, where doing so is consistent with the Authority's statutory objective.
- 11 The Commission's role under the Commerce Act is to promote competition in markets for the long-term benefit of consumers within New Zealand by prohibiting contracts or arrangements by businesses that could lead to a substantial lessening of competition, the taking advantage of substantial market power to deter or eliminate competition, and mergers or acquisitions that would substantially lessen competition. The Commission enforces, adjudicates and provides information and advice relating to generic competition law that prohibits anti-competitive behaviour and structures in markets. The Commission also conducts regulatory inquiries where there is little or no competition and little or no likelihood of a substantial increase in competition, to determine whether to recommend that goods or services should be regulated.

Regulating lines services

- 12 The Authority and the Commission acknowledge that from time to time they may have areas of common interest in regard to the regulation of Transpower and any other line owner, particularly with respect to the:
- a) approval of Transpower's grid upgrade plan proposals, including setting and applying grid reliability standards and the value of lost load;
 - b) price and quality of goods and services provided by Transpower;
 - c) pricing methodologies applicable to Transpower or any other line owner; and
 - d) information disclosure requirements that apply to suppliers of electricity lines services.
- 13 Section 52A of the Commerce Act provides that the purpose of Part 4 of the Commerce Act, which relates to controlled goods or services (including electricity lines services), is to promote the long-term benefit of consumers, by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services:
- a) have incentives to innovate and to invest, including in replacement, upgraded and new assets; and
 - b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
 - c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and
 - d) are limited in their ability to extract excessive profits.
- 14 The Commission's responsibilities under Part 4 of the Commerce Act include:
- a) determining input methodologies relevant to the various forms of regulation of goods or services under that Part, including an input methodology for Transpower's capital expenditure proposals;
 - b) setting price-quality paths for those suppliers of goods or services that are subject to price-quality regulation;
 - c) requesting and approving grid upgrade plan proposals by Transpower in accordance with:
 - i. the Electricity Governance Rules (as they were immediately prior to their revocation by the Electricity Industry Act) from 1 November 2010 and until the capital expenditure input methodology is determined; and
 - ii. the capital expenditure input methodology once that input methodology is determined.
 - d) monitoring compliance with price-quality paths;

- e) requiring the disclosure of certain information by those suppliers of regulated goods or services that are subject to information disclosure regulation; and
 - f) publishing a summary and analysis of the publicly disclosed information for the purpose of promoting greater understanding of the performance of individual regulated suppliers, their relative performance, and the changes in performance over time.
- 15 The parties agree, that in order to coordinate their respective roles and responsibilities:
- a) the Commission will take into account, before exercising any of its powers under Part 4 of the Commerce Act, the matters specified in section 54V of the Commerce Act, and any Commission requirements relating to Transpower quality standards in a section 52P determination will be based on, and be consistent with, quality standards set by the Authority (as required under section 54V(6) of the Commerce Act);
 - b) the Authority will take into account the price-quality paths set by the Commission in relation to suppliers of electricity lines services, and the information disclosure requirements imposed by the Commission on suppliers of electricity lines services under Part 4 of the Commerce Act;
 - c) the Authority will consult with the Commission where a new or changed rule under the Code may have an impact on or introduce uncertainty surrounding the determinations on price-quality and information disclosure regulation under the Commerce Act; and
 - d) the Authority and Commission will coordinate their respective initiatives in the following areas to ensure that there is consistency in any information requirements to be provided by suppliers of electricity lines services to avoid duplication and imposition of unnecessary administrative costs:
 - i. establishing guidelines for the calculation and management of distribution losses; and
 - ii. developing policies to reduce non-technical losses.

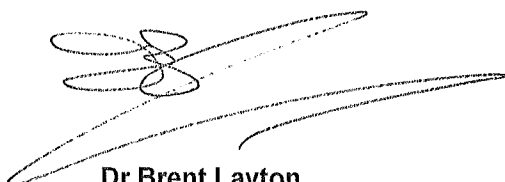
Term of memorandum

- 16 This memorandum becomes effective when signed by the Authority and the Commission, and remains effective unless terminated by either party.
- 17 This memorandum may be amended at any time during its term by written agreement between the two parties.

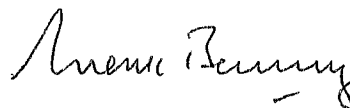
Issue resolution

- 18 Both parties will use their best endeavours to resolve any issue in a timely manner and in the way that best supports the delivery of the government's strategy and policy, in particular to the long-term benefit of consumers.
- 19 In the event of issues arising between the parties they will be resolved, or if necessary escalated for resolution, in accordance with the following order and timeframe:
- a. the Authority and Commission personnel and, if unresolved within two weeks, then escalated to;
 - b. the responsible managers and, if not resolved within two weeks, then escalated to;
 - c. the Chief Executive of the Authority and the Chief Executive of the Commission, who will agree on what further action is required.
- 20 Solutions to issues need to be consistent with the roles and mandates of each party.

Signatures

A stylized, handwritten signature in black ink, consisting of several loops and a long, sweeping horizontal stroke at the end.

Dr Brent Layton
Chair
Electricity Authority

A handwritten signature in black ink, appearing to read 'Mark Berry' with a stylized flourish at the end.

Dr Mark Berry
Chair
Commerce Commission