

1. **Summary:** Residential consumers' submissions to Powerco's CPP application reject the company's request to invest \$1.32 billion on assets over the next five years, about \$0.39 billion more than the previous five years. Consumers don't want to pay more to expand assets which boost shareholder value on the pretext of increasing reliability. Significant numbers are investing in rooftop solar, and some in batteries, to reduce their power bills and provide their own backup power. Consumers who want some of the action must not be blocked by a monopolist's growth strategy. There is widespread and increasing international precedent for regulators to require alternatives to network expansion to be facilitated when these are more cost-effective. I therefore believe the Commerce Commission should reject the Powerco CPP application, and require it revert to the default price path until processes are developed for generation and demand-side response to compete on their merits with network asset expansion.
2. I thank MEUG for its consistent support of consumer input to Commerce Commission processes.
3. Powerco is the first network company to propose a Customised Price Path for network expansion to meet claimed growing demand and to remediate previous maintenance neglect. It is thus a critical test case. An unprecedented proportion of consumer submissions demonstrates the extent of consumer concern.

#### 4. Consumer concerns expressed in submissions

- 4.1. Above all consumers want no further price increases:
  - 4.1.1. Grey Power: "We note with concern that excess winter mortality amongst the elderly is directly correlated with the ability to heat homes adequately".
  - 4.1.2. [I add that cold damp houses have even longer lasting impacts on households with babies – the first 1000 days of an infant's life are critical.]
  - 4.1.3. A second larger price increase foreshadowed by Powerco is vehemently opposed by Grey Power: "we are vehemently opposed to the "likely ... second and more material price increase""
- 4.2. Powerco wants to further improve reliability as measured by the standard quality indicators (SAIFI and SAIDI), despite the fact that performance is already improving rather than declining.
  - 4.2.1. I agree with MEUG: "The Commission has not provided a strong or clear rationale for giving so little weight to consumers' unwillingness to pay more in exchange for improved future reliability."
- 4.3. Consumers don't want increased reliability if that leads to price increases.
  - 4.3.1. Duigan's submission notes: "Powerco states 'Our customers advise us they do not expect improved reliability where this comes at a cost (other than in poor performing pockets of the network) [yet] Powerco assert that "Our proposed CPP investments reflect [customers' preference], by seeking to arrest

deteriorating asset performance and stabilise SAIDI and SAIFI at present levels.’ This contradicts the Verifier’s advice to the Commission: “the historical data shows a distinct trend of improving reliability.”

- 4.4. Powerco’s motive appears to be to increase its asset base and therefore its shareholder returns:
  - 4.4.1. Wilson: “the company, while producing healthy profits and large dividends for many years, has suddenly discovered that it has, over those many years, been neglecting to adequately fund the renewals of its equipment ... Powerco has had the choice of pleasing its shareholders or sustainably funding equipment renewals.”
  - 4.4.2. Davies: “Powerco have failed to keep their network up to date and fit for purpose at all times they should not now be imposing increased costs onto the consumers to catch up while more than likely still paying dividends to their shareholders.”
  - 4.4.3. Grey Power: “we can only assume that PowerCo has deliberately avoided both OPEX and CAPEX expenditure on maintaining assets in order to bolster or maintain shareholder returns.”
- 4.5. The proposed increase in asset base is not justified by demand forecasts: – I agree with Contact: “This view on future demand is problematic. Powerco has not tested the market for demand side responses.”
- 4.6. More appropriate network pricing will change consumer behaviour and enable more cost-effective asset management. Davies: “Grey Power believe it is the pricing imposed by the Network companies that needs investigation and therefore the Commerce Commission and the methodology used in approving proposals such as Powerco’s CPP.”
- 4.7. New technology is driving change and changing networks from monopolies to competitors.
  - 4.7.1. Grey Power: “We consider on the basis of available evidence that the evolution of microgrids and the continuing exponential fall in the cost of battery storage, that distribution networks’ need to over build for peak capacity (spikes) will reduce drastically within the lifespan of the proposed CPP.”
- 4.8. Network Evolution funding:
  - 4.8.1. I agree with Contact’s assessment: “The task we believe lies in front of networks is looking to transition to intelligent, dynamic networks that can act as a platform for services. Hence we support network evolution funding. . . . Distributed generation assets have a role to play in providing wholesale, distribution and transmission services. Costs to consumers can be minimised when distributed generation assets are optimally used, rather than only providing a service to one party. For this to occur, the assets must be owned by non-regulated entities.”
  - 4.8.2. My submission said much the same: “I consider it essential for non-network solutions to be developed especially to improve reliability. Note that Vector is evolving its network as part of its normal business planned expenditure, as it should be.”

## **5. I agree with Contact's proposed specific remedy –**

- 5.1. Contact seeks a new process involving external consultation: “The Commission’s determination on this CPP gives you an opportunity to promote the development and implementation of an effective investment decision-making template process. This template can and should ensure third party alternatives are rigorously tested . . . Any process must be project specific, based on consultation at the appropriate time for each of the major projects as part of Powerco's investment decision process for that major project.”
- 5.2. “A request for proposals is distributed seeking non-network options. [these] matters are the critical things that serve the purpose of Part 4, as they ensure Powerco's project options analysis results in optimal investment outcomes for consumers. If options are not generated in the first instance, there is little hope that they will be considered at any later stage.”
- 5.3. “... The analysis we have been able to carry out on the Tauranga and Whangamata major projects demonstrates oversights in the Commission and Powerco’s own project investment analysis. These are oversights which, left unchanged, will result in outcomes that will see consumers paying more for the network service than necessary. These oversights can be overcome through project-specific, external consultation processes to consider third party network support alternatives, and subsequent external verification of investment analysis and decisions through information disclosure such as the PODs and OAEETs.”

## **6. Must avoid ratcheting up of asset values**

- 6.1. I agree with Grey Power’s recognition of the circular ratcheting up of asset values and allowed returns on investment: “The practice of assessing a ‘reasonable’ ROI on the asset value of a monopoly supplier is tantamount to the encouragement of rent seeking. . . . To be explicit, in this case PowerCo seeks to recover the cost from consumers of bringing its’ asset base up to current standards of quality and resilience, and then argues that the out years cost to consumers of service delivery should be based on that re-valued asset base. We consider this proposed practice not only anti-competitive but directly exploitative and urge the Commission to reject this part of the proposal outright.”

## **7. My submission went further and considered the purposes of regulation.**

- 7.1. Grey Power notes: “the purpose of Part 4 of the Commerce Act (the Act) – to promote the long-term benefit of consumers.” and feels “that the draft determination regarding price increases fails to meet this objective.”
- 7.2. My submission noted that the purpose statement of the 2010 Electricity Industry Act removed the previous purposes of “fair” and “sustainable”. Less obvious is that the EA’s Interpretation of its Statutory Objective<sup>2</sup> confirms that condoning monopoly profits are taken to be part of the long-term benefits to consumers. This affects Commerce Commission decisions as much as Electricity Authority ones.

- 7.3. I gave two international sources describing regulatory developments for electricity that respond to the same technology challenges now faced by New Zealand – the Rocky Mountain Institute, and the Regulatory Assistance Project.<sup>3</sup>
- 7.4. Submissions by MEUG, NZIER and Duigan gave emphasis to the need for more rigorous cost-benefit analysis to assure benefits to consumers.
- 7.5. I consider, instead, that the Code Amendment Principles<sup>4</sup> lead to an exaggerated focus on cost-benefit analysis. Because of the condoning of monopoly profits, the technocratic regulatory procedures will serve the interests of companies rather than consumers.
- 7.6. We now need to reassess how we should define and describe “long term benefits to consumers.” This is a political not a regulatory task, one which can and should be addressed by the new government.
8. **It was the regulatory lawyer Scott Hempling, invited to New Zealand by the Electricity Authority in 2013, who simply nailed the task facing New Zealand.** Quoting from his talk, “Regulation and Politics: How Well Do We Manage the Mix?”<sup>5</sup>
- 8.1. “Politics comes in two flavors. Public interest politics refers to the need to make tradeoffs among meritorious but conflicting goals. Private interest politics refers to the pressures from forces seeking benefits for themselves. As applied to regulation's mission, these two forms of politics have opposite effects: one supports, the other undermines. Understanding the distinction is essential to effective regulation.”
- 8.2. He gives examples of public interest language disguising private interest motives. His first is: “Deregulation” – The term is hopelessly ambiguous. To the extent it means “authorizing competition,” “authorized” competition is not “effective” competition. After a century of monopoly, we need regulation to check the new suppliers' fitness, to detect and penalize fraud, and to prevent those who control the transmission highways from blocking their competitors. If we fail to do these things, we will end up with “regulation”: regulation of the market by the incumbent to protect its monopoly position, rather than commission regulation of the monopoly to protect the consumer.’
- 8.3. He equally cautions against yielding to consumer pressure: “Rates must reflect costs—costs caused and costs incurred. To make affordability a factor, to relieve customers of the costs they cause, is to jigger the numbers—lowering rates for the unfortunate by raising rates for others, compromising cost causation to redistribute wealth. It is like taxation, with this difference: With taxation, citizens can retire representatives whose votes offend; but with utility service, captive customers are stuck with the rates regulators set.”
- 8.4. He directly addresses regulatory capture: ““Capture” is an extreme form of persuasion. To achieve persuasion is to obtain what the persuader wants ... based on the persuader's identity rather than an argument's merits ... Capture is enabled by those who ignore it, tolerate it, accept it or even encourage it: legislators who underfund the commission or restrict its authority, governors who appoint commissioners

unprepared for the job, stakeholders who treat proceedings like win–loss contests rather than building blocks in a policy edifice. These actions and inactions feed a forest where private interest trees grow tall, while the public's needs stay small.”

9. In his address to Commerce Commission international conference shortly afterwards,<sup>6</sup> Hempling gave specific examples of US regulation that are relevant to NZ network regulation. He noted the statutory requirements of the US Federal Energy Regulatory Commission (FERC) “that the rates and charges for transmission be "just and reasonable," and that transmission providers not "make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage...." He said that this implies, amongst other things -
  - 9.1. “Transmission providers "have an affirmative obligation ... [to] evaluate alternatives that may meet the needs of the region more efficiently or cost-effectively [than transmission solutions]."
  - 9.2. In the regional processes there must be "comparable consideration of transmission and non-transmission alternatives.... [T]ransmission providers are required to identify how they will evaluate and select from competing solutions and resources such that all types of resources are considered on a comparable basis."
  - 9.3. “... FERC has ordered regional transmission organizations to give demand response bids access and pricing treatment comparable to that given generators, including receiving compensation equal to the locational marginal price applicable at the place and time that demand response is bid (provided the demand response offer satisfies FERC's "cost-effectiveness" test).”
  - 9.4. “... FERC has stated that unless demand response can compete in organized wholesale generation markets, the prices produced by those markets will not satisfy the statutory "just and reasonable" standard.”
10. I consider that the Contact Energy submission on the Powerco CPP application reflects the same considerations –
  - 10.1. “We think third party alternatives must be considered by Powerco and processes should enable this.”
  - 10.2. “A requirement to evaluate other load control solutions will require more than Powerco's internal analysis. Powerco can only put itself in a position to evaluate the most economical solution by engaging with the market for third party network support. We ask that your final determination make this point more explicit.”
  - 10.3. “...Diesel generation and battery storage are contestable assets and there is nothing preventing Powerco utilising regulated opex to procure services from a competitive market. It seems highly likely that this approach will reduce the cost of the regulated network service for Powerco consumers, by more efficiently optimising the use of generation assets.
  - 10.4. And I noted before that Contact’s submission says: “Powerco has not tested the market for demand side responses.”

11. In the U.S., transmission planning is entrusted in most large regions to separate Regional Transmission Organisations, with boards nominated by the separate investor-owned utilities (most of them privately owned).
  - 11.1. “Transmission providers must have in place "processes that provide all stakeholders the opportunity to provide input into what they believe are transmission needs driven by Public Policy Requirements, rather than the public utility transmission provider planning only for its own needs or the needs of its native load customers."
  - 11.2. Transmission providers "have an affirmative obligation ... [to] evaluate alternatives that may meet the needs of the region more efficiently or cost-effectively [than transmission solutions]."
12. Based on the U.S. examples, I consider that Contact Energy’s proposals regarding Powerco’s planning process should be supported by an “affirmative obligation” to consider not only generation alternatives (to which Contact would undoubtedly offer competing bids), but also customer-owned PV generation and batteries. These, as Contact notes, can do far more than simply augment reliability when called on by Powerco – it would also enable consumers to play the wholesale energy market, and perhaps more important, augment for themselves the reliability of the inevitably less-than-perfect bulk electricity supply system.
13. The Commerce Commission should therefore reject the Powerco CPP application, and require it revert to the default price path until processes are developed for generation and demand-side response to compete on their merits with network asset expansion

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<sup>1</sup> Draft decision and submissions are at <https://www.comcom.govt.nz/regulated-industries/electricity/cpp/cpp-proposals-and-decisions/powercocpp/powerco-customised-price-quality-path-draft-decision/>

<sup>2</sup> <https://www.ea.govt.nz/dmsdocument/9494> sections A5, A6, A7, see also A24, A25

<sup>3</sup> “Smart Rate Design for a Smart Future”, by Jim Lazar and Wilson Gonzalez , Regulatory Assistance Project July 2015: [www.raponline.org/document/download/id/7680](http://www.raponline.org/document/download/id/7680)

[https://rmi.org/wp-content/uploads/2017/05/RMI\\_Document\\_Repository\\_Public-Reppts\\_2014-26\\_eLab-RateDesignfortheDistributionEdge-ExecSum-highres.pdf](https://rmi.org/wp-content/uploads/2017/05/RMI_Document_Repository_Public-Reppts_2014-26_eLab-RateDesignfortheDistributionEdge-ExecSum-highres.pdf)

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<sup>4</sup> <https://www.ea.govt.nz/dmsdocument/14243> section 2.5, Principles 2 and 3

<sup>5</sup> <https://www.ea.govt.nz/dmsdocument/15939>

<sup>6</sup> <https://www.comcom.govt.nz/dmsdocument/11556>