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Via email: [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)

Dear Keston

**Re: Transpower capex input methodology review: draft decision**

**Introduction**

1. Thank you for the opportunity to engage with the Commission in its review of Transpower's capex input methodology.
2. We would also like to thank Transpower for their willingness to engage with us and we acknowledge and welcome Transpower's thinking around what the grid of the future may look like, and the publication of Transmission Tomorrow which traverses some of the challenges, changes and trends Transpower has identified.
3. The focus of our advocacy in relation to this review has been to highlight the increasing importance of non-transmission solutions. As major capex projects become a smaller percentage of Transpower's regulated spending, and technology increasingly provides options to defer or avoid traditional network investment, the time is right to require that Transpower follows an explicit, structured and comprehensive external consultation for base capex projects <\$20m.
4. The decisions that are to be made by the Commission are significant and important. They will be the basis for price path determinations into the future and will be the baseline against which investment decisions by Transpower will be presented to the public from 2020 onwards. The opportunity to review IMs arises infrequently in the legislation. When the opportunity arises to make adjustments that promote the best outcome for consumers, these opportunities should be taken.
5. The Commission's draft decision looks to retain the existing arrangements for base capex investment. We are disappointed in this outcome and see this as an opportunity missed.

Our proposal sought to further the objectives of the legislation by broadening consumer participation in important capex decision-making. By explicitly requiring the consideration of third party non-transmission solutions in this process, and external consultation on Transpower's investment analysis and decisions, we believe that lower costs ought to result for all transmission users.

6. We encourage the Commission to reflect again on our earlier submission and on the five submissions that we develop below arising from our consideration of specific parts of the Commission's draft determination.

#### **Executive summary**

7. We seek that the Commission revise its determination to mandate, in relation to base capex, a project-specific, three phase consultation process, which is integrated into Transpower's investment decisions, including:
  - third party consultation on non-transmission solutions
  - external consultation on draft investment analysis, and
  - external consultation on Transpower's final investment decision.

We refer the Commission to our previous submission for more detailed consideration on the development of an appropriate consultation process for base capex.

#### **Submission One: How can an interested third party ever provide evidence that Transpower is rejecting alternatives to base capex? Information disclosure and third party consultation on non-transmission solutions need to be required**

8. The Commission says this in its draft determination:

*"There is no strong evidence that the investment settings (eg, incentive rates) are causing significant bias towards opex or capex investment by Transpower. [269.1]"*

*"At this stage we have no significant evidence that more efficient alternative investments are being rejected by Transpower under the current process. [277]"*

9. The draft determination goes on to impose no further information disclosure on Transpower in relation to base capex.
10. Transpower's existing information disclosure (including the integrated transmission plan) provides third parties only with information on Transpower's base capex needs and, in some cases, an initial options identification. These are planning documents. By definition they do not include any options analysis. There is no cost/benefit analysis of shortlisted options and no preferred option analysis based on maximum net benefit or least net cost.

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11. Without this sort of disclosure for base capex, it is impossible for a third party to evaluate the merits of the options Transpower selects for itself.
12. Information disclosure on its own is not enough. Mandatory and focused consultation on Transpower's base capex investment analysis and decision-making is a proportionate way to achieve a consumer-focused outcome.
13. Compounding the issue is that, even if this information was disclosed, in the absence of Transpower running an external consultation on non-transmission alternatives for base capex, neither Transpower, nor any other party, has sufficient information on the economics of any non-transmission solution to be able to undertake an assessment of its merits against the preferred traditional capex solution.

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*A relevant parallel can be drawn from Powerco's Customised Price Path proposal (CPP). In the absence of the CPP proposal, Powerco would not have needed to disclose the major project information contained in each Project Overview Document (POD) and Options Analysis and Economic Evaluation Tool (OAEET).*

*This disclosure has enabled third parties to review Powerco's major project investment analysis and confirm from this disclosure evidence of how network alternatives and other reasons have been considered.*

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14. Without any of this information for Transpower's base capex, everyone is operating without the full range of possible alternatives that are both relevant and important to consider.

***What needs to happen?***

15. For the Commission to regulate and consult effectively, it needs to mandate the disclosure of relevant information and the process that it requires Transpower to follow. The ground rules are important and must be set clearly to require responsive information provision. This is the only way to make consultation and engagement that takes place in the IM review effective and meaningful.

***Proactive or wait and see?***

16. The Commission’s approach to wait for evidence of a problem or a market failure before acting is at odds with its regulatory peers, and is a passive way for a regulator to go about regulating the industry in the way the Act requires. With the electricity market being increasingly disrupted by technology, regulation must take a forward-looking approach and ensure market settings reflect the realities of the way the markets evolve. This is the only way to ensure that outcomes will be in the best interests of consumers.

17. In our previous submission we provided an overview of a streamlined external consultation process for base capex. The Commission appears to recognise the importance of this in its draft determination as it says at paragraph 275 that:

*“a greater focus on effective consultation would allow for a wider variety of investment options, enhance protection for consumers against inefficient investment, and ensure the full benefits of innovation in the electricity industry are realised”.*

18. Against its acceptance of the benefits of effective consultation, the Commission has declined to regulate to require Transpower to take this beneficial step.

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*Transpower has demonstrated that it will not do this without being required to. The incentives for it to do this do not exist. This is exactly the point of regulation.*

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19. Transpower has demonstrated that it will not do this without being required to. The incentives for it to do this have been shown not to exist. This is the point of regulation. Mandatory consultation and consideration of available non-transmission solutions is one of the tools that the regulator has to compel Transpower to look outside itself and behave as it might be expected to in a competitive market.

**Submission Two: Transpower’s planning documents are not designed for evaluating transmission alternatives**

20. The Commission says this in relation to base capex engagement at paragraph 276:

*“We appreciate the submissions on this issue, including one from Contact on how a more formalised process could be implemented for base capex projects including a public request for proposals to solve specific transmission requirements. However, after reviewing the material available, we consider that Transpower provides a significant amount of information about the ongoing needs of the network in its network planning report and integrated transmission plan.”*

21. This response does not engage with the issues we raised in our earlier submission; rather, it sidesteps them. There is nothing in the draft determination to indicate how the Commission has formed the view that the integrated transmission plan documents are or could be sufficient. We do not think that because Transpower provides some information

the Commission should not require more, and a better process. It is one of the requirements of any process that information that is provided enables engagement on the things that matter. If relevant material is not engaged by the existing requirements (as we suggest is the position that will exist on the present draft determination), the subsequent processes will always be sub-optimal.

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22. The documents that Transpower is required to provide are able to (and do) omit:
- (a) any form of responsive information that might enable third parties to assess whether non-transmission solutions might be a credible option
  - (b) any consideration of third party non-transmission solutions
  - (c) any comparison or assessment or analysis of the potential benefits of these solutions, and
  - (d) an informed assessment of what the preferred option might be on a project-specific basis.

***The key problem – existing requirements are planning focused, not engagement and assessment focused***

23. The key problem is that the integrated transmission plan documents relate to upfront planning, not project-specific investment processes and decisions.
24. The exercise the Commission seeks to endorse is like trying to fit round pegs in square holes. It excludes from consideration matters that effective regulation ought to be requiring. The incentives have been shown not to exist for Transpower to volunteer to follow this sort of process. Regulation requiring it must fill the gap to be effective.

***Can it easily be done?***

25. We assume that Transpower's existing base capex investment process will include the preparation of documentation similar to Powerco's PODs and OAEETs. Requiring disclosure of this information for consultation would require little effort by Transpower and could only result in better outcomes for consumers.
26. It is a short (but necessary) step to require the integration of this information with a process requiring external consideration of credible network alternatives. This outcome

will enable robust and informed evaluation and oversight of Transpower's base capex investment decisions.

***Added benefits***

27. The process we proposed in our original submissions has the added benefit of providing stakeholders with sufficient information to review Transpower's base capex investment decisions. Through wider dissemination of relevant information, people who are interested are empowered and enabled to engage more with the Commission, to present informed and relevant evidence of their own, and to 'police' Transpower should it not be considering relevant alternatives or making sub-optimal investment decisions in general.

**Submission Three: Lack of cost-benefit analysis**

28. The Commission says this in its draft determination:

*"... formal requirements to increase engagement and scrutiny for base capex projects would not provide benefits that outweigh the administrative cost of implementing such requirements. [269.2]*

*"We note that there is a trade-off between greater formalised processes for engagement to increase stakeholder involvement, but this comes at the expense of greater administrative costs for Transpower. [277]"*

29. The draft decision provides no detail on any cost-benefit analysis undertaken by the Commission. We assume that there is some data or analysis that would justify the comments that are made, yet this has not been provided.
30. The apparent focus and concern for administrative costs that Transpower might be put to largely seems to miss the point. If the exercise is worthwhile and can result in better outcomes for consumers then it should be done. Cost concerns can be dealt with by the detail of the process that is adopted. The nature of regulation is that there will always be some costs and some burdens placed on Transpower.
31. The Commission has a responsibility to justify its view that the administrative costs of greater base capex engagement would outweigh the benefits that would come from it, and is asked to do so.

#### **Submission Four: The Commission’s proposed look-back reporting on base capex engagement is not a solution**

32. The Commission says at paragraphs 266 and 271:

*“We want to ensure third parties have the opportunity to engage with Transpower about potential transmission investments so that the most appropriate investment options are identified on an ongoing basis. [266]*

*“Therefore, we propose to make a change to Transpower’s information disclosure requirements that will require Transpower to report annually in relation to base capex on: whether it has engaged with stakeholders and, if so, how it has engaged with stakeholders; how effective it considers that engagement has been; and how satisfied stakeholders were with the engagement process based on the views expressed by stakeholders. [271]”*

33. We are not aware of any stakeholders requesting an after-the-fact base capex engagement annual reporting mechanism, and we see no value in this. We also query how the Commission has weighed up the benefits of this approach versus the administrative costs placed on Transpower.

34. Transpower has advocated strongly against any change to the base capex engagement process. A mechanism of the sort proposed in the draft determination is highly unlikely to result in an effective project-specific base capex consultation process. Indeed, it is a poor substitute for it.

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35. The Commission should require a structured consultation process that will mandate Transpower to inform itself and others so that all available options are identified and evaluated in an informed way.

36. The proposal of the Commission to “leave it up to Transpower” to determine what it believes might be suitable is no substitute for this. Effective regulation to achieve the requirements of the Act requires the Commission to mandate certain behaviour, information and conduct on the part of the monopoly. It has been shown that there is no incentive for Transpower, and no reason to think that its view of a suitable consultation process will in some way coincide with (or even produce) the best outcome. It is the Commission’s role to ensure that not only are consultation processes implemented, but

that there is standardisation across the industry. This is especially the case when there are also 29 distribution networks.

**Submission Five: It is unclear why the Commission is proposing to reduce information disclosure for base capex**

37. The Commission says this in Attachment B:

*“Transpower proposed change: Increase the threshold for categorising minor capex to \$5 million from \$1 million. Draft decision: Our draft decision is to lift the need to describe the rationale for any forecast base capex to \$5 million. The proposed change will reduce cost and complexity. [Attachment B, Table 4, F9 – Other capex]”*

38. This is a major change.

39. There is no discussion in the draft determination itself about the rationale or reasons for this change. Neither the Commission’s previous focus areas of consultation, nor the emerging views on incentives mechanism consultation raised this proposed change. It is our view that non transmission alternatives may be highly competitive in the \$1 million to \$5 million range.

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*As things stand, the lack of any previous notice or information on this aspect is a concerning departure from our expectations of the Commission, and our entitlements to a fair and open process.*

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40. This is surprising to us, given the threshold being set by the Commission for other stakeholders who are proposing changes to information disclosure for base capex. We are interested to understand why no detail has been provided, and would like to understand more about the reasons for this change so we can give proper input. As things stand, the lack of any previous notice or information on this aspect is a concerning departure from our expectations of the Commission, and our entitlements to a fair and open process.



We thank the Commission for its time and efforts in this process, and would be happy to discuss or engage further if it would be of assistance.

Yours sincerely

**Louise Griffin**

**Head of Regulatory Affairs and Government Relations**