

Fair Trading and Commerce Acts

# Electricity and the Commerce Commission's role



This fact sheet gives an overview of the Commerce Commission's role in the electricity industry. It is designed to give consumers an understanding of what we can and can't do under the Fair Trading and Commerce Acts.

Getting power to your home or business is a complex process. Electricity is first generated from a variety of sources, before being transmitted across the national grid, distributed down the power lines and sold to you. More than 50 businesses across New Zealand play their part in that process.

There are a number of other organisations that also have a role to play in the electricity industry. The Commerce Commission is one of those organisations. We are responsible for enforcing the Fair Trading and Commerce Acts, which help promote competition. Like all other businesses in New Zealand, the electricity industry is subject to these laws.

Electricity transmission and distribution businesses are also subject to specific additional regulation because they are natural monopolies.

We regularly receive enquiries and complaints about the electricity industry, ranging from issues about pricing and sales techniques, through to concerns about competition in the industry and regulatory decisions we have made.

While we are sometimes able to deal with these issues, many fall outside our role. Where we can, we'll suggest who might be able to help you instead.

## What we can do





- Look into concerns an electricity business has misled or deceived you in certain situations. We may use this information to open an investigation.
- Look into concerns an electricity business is using its market power to drive a competitor out of business or to prevent a new competitor from starting up.
- Provide information to consumers and the industry about how distribution businesses and Transpower are performing.
- Set the maximum average price that some distribution businesses and Transpower can charge and require them to meet certain quality standards.
- Require distribution businesses and Transpower to publish information about their performance.

## What we can't do

- Tell electricity retailers what they can and can't charge their customers.
- Control what distribution businesses or Transpower charge individual customers or groups of customers.
- Get involved in a dispute between you and your electricity retailer or distribution business.
- Take action on your behalf. While your complaint may spark an investigation, we won't be acting on your behalf – we'll be acting in the wider public good.



# The electricity industry

Generation	Transmission	Distribution	Retail
			
<p>Generators produce electricity from sources such as wind, gas, hydro, thermal, solar and coal.</p>	<p>Transpower runs the national grid, transporting high voltage electricity from the generators to the distributors. It also supplies electricity directly to some large industrial companies.</p> <p>We regulate Transpower under the Commerce Act.</p>	<p>Distribution businesses (or lines businesses) transport electricity to homes and businesses. Part of their charge goes towards maintaining and investing in the network. Distribution businesses may choose to bill customers directly.</p> <p>We regulate distribution businesses under the Commerce Act.</p>	<p>Retailers compete to buy wholesale electricity and then sell it to consumers. They charge consumers for electricity use, as well as for the cost of transmission and (in most cases) distribution.</p>

## The Fair Trading Act

We are responsible for enforcing the Fair Trading Act (FTA), which helps ensure consumers get accurate information when making purchasing decisions. Consumers and businesses can also rely on and take their own legal action under the FTA.

The FTA applies to all aspects of the promotion and sale of goods and services. So, it includes anything an electricity business might say about the service it's providing, either verbally or in writing. It also includes any impression you might get from an electricity business's advertising, promotional material or sales pitch, or by something which it doesn't tell you – that is, by important information being left out.

The FTA makes it illegal for businesses to mislead consumers, give false information, or use unfair trading practices. The FTA does not tell businesses what they can or can't charge customers, but it does tell businesses that their prices and how they represent those prices must be clear, accurate and unambiguous.

### Door-to-door sales and telemarketing

Electricity retailers often use door-to-door sales or telemarketing campaigns to attempt to switch customers from another retailer. Electricity retailers need to make sure

their staff and agents know enough about what they are selling to represent it accurately to customers. This means that if a telemarketer or door-to-door salesperson tells you something misleading or inaccurate in order to get you to switch retailers, both they and the retailer they represent may be breaching the Fair Trading Act. Your electricity retailer can't claim it's not responsible for what someone working for it has said.

🔗 You can read more in our fact sheet *Door-to-door and telemarketing sales* at [www.comcom.govt.nz](http://www.comcom.govt.nz)

#### EXAMPLE

An electricity retailer used telemarketers and door-to-door sales agents to attempt to switch customers from another supplier. The agents made misleading claims about pricing and false claims about a competitor's ability to continue to supply electricity. A number of customers were also switched without their agreement. The retailer was convicted and fined.

## Reasons for price changes

If an electricity retailer or distribution business gives you a reason for why it is increasing its prices, that explanation must be accurate. A business can't say that its supplier or a regulator is to blame for a price increase if the business is even partly responsible.

🔗 You can read more in our fact sheet *Pricing at* [www.comcom.govt.nz](http://www.comcom.govt.nz)



## EXAMPLE

Several electricity retailers incorrectly implied to their customers that increases in electricity prices were caused by increases in network charges for the use of electricity lines. In settlements with the Commission, the retailers admitted they had breached the Fair Trading Act, advised the affected customers of the correct reasons for the price increases and, in some cases, paid compensation.

## The Commerce Act

We are responsible for enforcing the Commerce Act which is intended to promote competition in markets for the long term benefit of consumers. We also play a role regulating markets where competition is limited. When competition is limited, there is the risk that consumers are overcharged or don't receive the quality of service they require.

For electricity, this means we:

- investigate anti-competitive behaviour across the electricity industry (generation right through to retail)
- regulate transmission and distribution services.

These two roles are explained below.

### Anti-competitive behaviour under the Commerce Act

The Commerce Act makes a range of anti-competitive behaviour illegal. This includes certain types of agreement between two or more businesses (known as collusion) or where a business uses its market power anti-competitively.

### Market power

It is illegal for any business with a substantial degree of market power to take advantage of that market power to prevent rival businesses from competing effectively. For example, a business with market power could lower prices in the short term to drive a competitor out of business, or to prevent a new competitor from starting up. This could be an abuse of market power if the pricing was below cost and resulted in higher prices or a lower quality of goods or services for consumers in the long term. Having market power, however, does not necessarily mean that market power is being abused.

🔗 You can read more in our fact sheet *Taking advantage of market power at* [www.comcom.govt.nz](http://www.comcom.govt.nz)

### High prices

We receive many complaints about high prices. However, just because prices are high, or have risen, does not mean there is anti-competitive behaviour. High prices only concern us when they have an anti-competitive effect – in other words, if a business's behaviour prevents a rival from competing effectively. High prices may be a result of a business facing high costs, which the business needs to recover. Your electricity bill includes costs relating to generating and transporting electricity. These costs reflect the need for electricity companies to maintain and invest in their infrastructure to deliver the quality of services that consumers demand.

### Connection costs

We sometimes receive complaints from consumers or small businesses about the cost of connecting to a distribution network. A distribution business, as the owner, has the right to decide who connects to its network and under what terms. A distribution business needs to ensure there are no risks to its network and that there is enough capacity. Often it will allow only approved contractors to make connections to its network. This means that a consumer or small business wanting to make a new connection only has a limited ability to shop around for the cheapest deal. The complaints we receive are typically that approved contractors charge more than other electricians would for this work. This is unlikely to breach the Commerce Act. We require electricity distribution businesses to disclose information about connection charges, and to provide reasons for them in response to customer enquiries.

Where a proposed connection is large, it may exceed the existing capacity of the network and a distribution business may ask the potential customer for a financial contribution towards increasing the capacity of the network. Each distribution business has its own formula for calculating such a charge and existing customers should not be expected to subsidise the new connection.

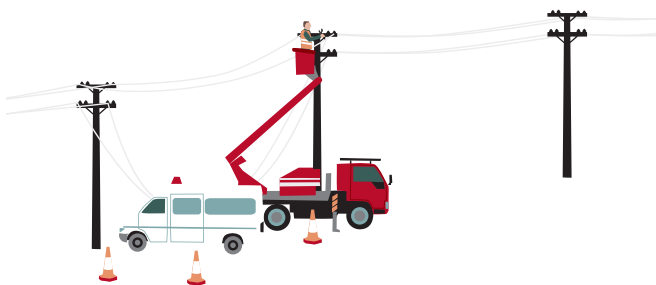
## Regulation of transmission and distribution services

Under Part 4 of the Commerce Act we have a role regulating markets where there is little or no competition (and little prospect of future competition). Our aim is to mimic the effects seen in competitive markets so that consumers benefit in the long term.

Among other things, Part 4 is intended to ensure that regulated businesses have incentives to innovate, invest, and meet customers' quality demands, but are also limited in their ability to earn excessive profits. Parliament decided that transmission and distribution businesses should be subject to regulation under Part 4 because there is little or no competition in the markets for these services.

### Why is there little or no competition?

New Zealand's geography and the nature of the electricity industry mean that Transpower (the only transmission business) and distribution businesses are natural monopolies. A monopoly is where a single business has all or nearly all of the market for a certain product or service. In the case of electricity transmission and distribution, it makes sense to have monopolies as it would be very expensive to invest in two (or more) sets of power lines that run side by side.



### Public disclosure of performance

We set requirements for Transpower and all distribution businesses to publish information about their performance. This is called 'information disclosure' regulation. The purpose of this form of regulation is to give transparency about how the regulated businesses are performing and provide a check that regulation is working.

The businesses must publish information such as data on prices, measures of quality, financial information, and forecasts of future expenditure (including investment planned in the network). We also produce a summary and analysis of this information to help people understand the performance of individual businesses, how they're performing compared to each other and any changes over time.

[You can read this information on our website at www.comcom.govt.nz](http://www.comcom.govt.nz)

## Regulating price and quality

We also set price and quality controls for Transpower and distribution businesses that aren't consumer-owned. Distribution businesses that are consumer-owned (13 of 29) are exempt from these controls as Parliament has decided that their consumers have enough input into how the business is run.

The 'non-exempt' businesses are subject to 'price-quality paths'. These restrict the revenue these businesses can earn or the maximum average prices they can charge and require them to deliver services at a quality that consumers would expect.

We don't control what distribution businesses or Transpower can charge individual consumers or groups of consumers.

### What we don't regulate – individual prices and pricing methodologies

While default price-quality paths limit total average price increases, they do not constrain prices for individual services, classes of services, or for different customer groups. In other words, the Commission doesn't control what distribution businesses or Transpower can charge individual consumers or groups of consumers (these charges are usually passed on through electricity retailers, although in some parts of the country, distribution businesses bill their customers directly).

We also don't regulate what pricing methodology a distribution business might adopt. This means distribution businesses have the right to decide what pricing plans they offer customers and what their charges are based on. This could include any combination of:

- fixed charges (usually a set dollar amount per day)
- variable charges, based on how much electricity (kwh) a customer uses each day, and at different times of the day
- demand-based charges, based on the demand a customer puts on the network at specific times of the year (such as during high demand periods).

The Electricity Authority also has distribution pricing principles to encourage electricity distribution businesses to adopt efficient pricing approaches.

[You can read more at www.ea.govt.nz/operations/distribution/pricing](http://www.ea.govt.nz/operations/distribution/pricing)

# Common questions about the electricity industry

## **If the Commission can regulate distribution businesses, why can't you regulate electricity retailers?**

Under the Commerce Act we have a role regulating markets where there is little or no competition. These include markets for electricity transmission and distribution services but not electricity retail.

## **Why is my electricity company allowed to put my price up?**

Pricing is a commercial decision that your electricity retailer is entitled to make. As long as it doesn't mislead you about its pricing, it is not illegal for an electricity retailer to put up its prices.

Distribution businesses may also make changes to their pricing. While some distribution businesses are constrained in what revenue they can earn or the maximum average prices they can charge, they are still largely free to decide how much they charge individual customers. For example, a distribution business might have different pricing for industrial customers than for domestic customers, or might charge different prices depending on where a customer is located.

## **My distribution business charges me based on how much electricity I use during peak times rather than how much electricity I actually use over the course of the year. Can it do that?**

Distribution businesses are entitled to choose how they charge individual customers. While many distribution businesses adopt pricing methodologies that are based on a customer's electricity usage, some businesses base their pricing on customer demand on the network at certain times. As long as you have not been misled about the prices you are being charged, your distribution business has the right to choose the basis of its charging.

## **I have a problem with my electricity bill – what should I do?**

First, you should contact your electricity retailer and try to resolve the problem with them. If you can't come to an agreement with your retailer, you can contact Utilities Disputes Ltd, which offer a free and independent dispute resolution service for consumers, on 0800 22 33 40

[www.utilitiesdisputes.co.nz](http://www.utilitiesdisputes.co.nz)

## **What charges make up my electricity bill?**

Your electricity bill reflects the amount of electricity you use and covers all the different processes involved in getting electricity from a power station to your home – generation, transmission, distribution and retail. It also includes a small levy for the Electricity Authority (you can read more about the levy at [www.ea.govt.nz/consumers/my-electricity-bill](http://www.ea.govt.nz/consumers/my-electricity-bill)). In some parts of New Zealand, distribution businesses bill customers separately for distribution charges, so this isn't included in the bill from your electricity retailer.

## **If a distribution business is providing my electricity, why do I need an electricity retailer?**

Distribution businesses don't supply electricity, they provide you with access to electricity. They do this by maintaining the lines that connect to your property, allowing your retailer to supply you with electricity when you need it. Retailers buy wholesale electricity and then sell it to consumers. They charge you for your electricity usage, as well as the cost of transmission and distribution – these are often called daily charges. In some cases, distribution businesses bill customers directly for distribution.

## **What's the difference between your role and the Electricity Authority's?**

The Commerce Commission is New Zealand's competition authority and regulatory agency. We enforce laws relating to competition, fair trading and consumer credit, and have regulatory responsibilities in the electricity sector and a number of other sectors.

The Electricity Authority is responsible for the efficient operation of the New Zealand electricity market. It does this through market design, overseeing market operations and monitoring and enforcing compliance with market rules.

## **How do I know if I am getting the best price from my current electricity retailer?**

You can visit Consumer NZ's Powerswitch website at [www.powerswitch.co.nz](http://www.powerswitch.co.nz). It will help you work out which power company and pricing plan is best for you and help you switch.



## So who does what?

There are a number of organisations that have a role to play in the electricity industry.

### Utilities Disputes Ltd

If you have an issue or problem with your electricity or gas supplier you can contact Utilities Disputes Ltd. They offer a free, independent dispute resolution service for consumers. It can look into most complaints, including billing (but not the amount electricity retailers or distribution businesses charge), disconnections, damaged property, property access issues and difficulties in switching companies.

[www.utilitiesdisputes.co.nz](http://www.utilitiesdisputes.co.nz) 0800 22 33 40

### The Electricity Authority

The Electricity Authority promotes competition, reliable supply and efficient operation in the electricity sector. It does this through market design, overseeing market operations and monitoring and enforcing compliance with market rules. The Electricity Authority also runs the *What's my number* campaign, which encourages consumers to shop around for power. It is linked to Consumer NZ's Powerswitch website.

[www.ea.govt.nz](http://www.ea.govt.nz) [www.whatsmynumber.org.nz](http://www.whatsmynumber.org.nz)

### Powerswitch

Powerswitch is a free service run by Consumer NZ which works out which power company and pricing plan is best for you and helps you switch.

[www.powerswitch.org.nz](http://www.powerswitch.org.nz)

### Energy Efficiency and Conservation Authority

The Energy Efficiency and Conservation Authority promotes energy efficiency and provides advice on using less energy.

[www.eeca.govt.nz](http://www.eeca.govt.nz) [www.energywise.govt.nz](http://www.energywise.govt.nz)

### Citizens Advice Bureau

Your local Citizens Advice Bureau can help you if you're having problems with your power bill and want to understand what your rights and options are.

[www.cab.org.nz](http://www.cab.org.nz) 0800 367 222

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

You can subscribe for information updates at [www.comcom.govt.nz/subscribe](http://www.comcom.govt.nz/subscribe)

Contact us with information about possible breaches of the laws we enforce:

**Phone:** 0800 943 600 **Write:** Enquiries Team, PO Box 2351, Wellington 6140 **Email:** [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)

