

COMMERCE COMMISSION

Decision No. 360

Determination pursuant to the Electricity Industry Reform Act 1998 (the EIR Act) of an application for exemption of an involvement in an electricity lines business and an electricity supply business from the application of the EIR Act. The application is made by:

INFRASTRUCTURE AND UTILITIES NZ LIMITED

- The Commission:** K M Brown
E M Coutts
E C A Harrison
- Commission Staff:** D R Ainsworth
S P Brown
- Summary of Application** Infrastructure and Utilities NZ Limited, which is involved in electricity lines businesses and an electricity supply business, seeks an exemption, pursuant to section 81 of the EIR Act, from the application of the EIR Act and, in particular, from the application of section 35(1)(e), until 30 June 2000.
- Determination:** The Commission, pursuant to section 81 of the EIR Act, exempts Infrastructure and Utilities NZ Limited from the application of section 35(1)(e) of the EIR Act in relation to a prohibited cross-involvement in an electricity lines business and an electricity supply business until 30 June 2000. The exemption is subject to the conditions stated in this Decision.
- Date of Determination:** 1 July 1999
- Date of Exemption:** On publication of the Notice of Exemption in the *Gazette*

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CONTENTS

INTRODUCTION	3
THE PARTIES	3
INFRATIL.....	3
POWERCO	4
CENTRALPOWER	4
TRUSTPOWER.....	5
INVOLVEMENTS OF INFRATIL	5
ELECTRICITY LINES BUSINESSES	5
Powerco and CentralPower as Lines Businesses.....	5
Infratil and New Plymouth District Council as Associates	5
Infratil Exceeds 10% Threshold in Powerco.....	6
Infratil’s Involvement in Powerco	6
Infratil’s Involvement in CentralPower.....	6
ELECTRICITY SUPPLY BUSINESS	6
TrustPower as a Supply Business.....	6
Infratil’s Involvement in TrustPower.....	7
PROHIBITED CROSS-INVOLVEMENTS	7
COMMISSION PROCEDURES	8
GENERAL	8
CRITERIA USED BY THE COMMISSION TO CONSIDER EXEMPTION APPLICATIONS	9
RELEVANT MARKETS	10
INFRATIL’S ARGUMENTS	10
[].....	11
[].....	12
[].....	13
[].....	13
EXAMINATION IN TERMS OF THE COMMISSION’S CRITERIA	13
THE COMMISSION’S DECISION	15
NOTICE OF EXEMPTION	16
THE EXEMPTION IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:	16

INTRODUCTION

- 1 On 7 May 1999 the Commerce Commission (the Commission) received an application from Infrastructure & Utilities NZ Limited (Infratil) for exemption from the application of the EIR Act.
- 2 The Commission's powers to exempt businesses, involvements or interests from the application of the EIR Act or persons from compliance with any provisions of any regulations made under the EIR Act are specified in section 81 of the EIR Act.

THE PARTIES

Infratil

- 3 Infratil is a company registered under the Companies Act 1993 and listed on the New Zealand Stock Exchange. Its shares are widely dispersed with only Utility Investments Ltd (UIL) holding more than 10% of the shares in the Company. It has a number of wholly owned subsidiaries including Infratil Investments Ltd and Infratil Securities Ltd.
- 4 The principal activity of Infratil and its subsidiaries is investment in listed and unlisted securities in the New Zealand infrastructure and utilities sector. In particular, Infratil has investments in the electricity, ports and airports sectors. It often seeks to enter into preferred or cornerstone shareholder arrangements with the companies it invests in.
- 5 Its electricity sector investments are in shareholdings of TrustPower Ltd (TrustPower), Powerco Ltd (Powerco) and CentralPower Ltd (CentralPower). These shareholdings are quantified in Appendices One, Two and Three.
- 6 Infratil has informed the Commission that it intends to maintain its shareholdings in TrustPower but wishes to sell its entire shareholdings in Powerco and CentralPower.
- 7 Subsequent to 23 June 1998, the date on which the ownership separation rules of the EIR Act came into force, Infratil has acquired additional shareholdings in TrustPower, and CentralPower. These acquisitions were notified to the Commission pursuant to section 35(d) of the EIR Act.

Infratil has [] agreements with Alliant International New Zealand Limited (Alliant) all dated 17 February 1999. These are:[

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- the Investment Agreement in Relation to Investments in the New Zealand Electricity Sector. This agreement is to disclose to each other investment opportunities in electricity businesses, to decide together the manner in which to pursue such investment opportunities and to invest in TrustPower; and

- the Infracore Investment Agreement by which Alliant agreed to buy not less than 9.0% and not more than 10.9% of Infracore.

Powerco

- 8 Powerco is a company registered under the Companies Act 1993. Although it is not listed on the New Zealand Stock Exchange, a secondary market for the shares of the company exists.
- 9 Powerco is an electricity lines business¹. Its electricity distribution networks (networks) provide line function services to electricity consumers in Taranaki, in the Wanganui region and in the Wairarapa. Powerco distributes about 1,200 gigawatt-hours of electricity over its networks. Powerco is an entity made up from mergers of the former New Plymouth City Council Electricity Department, the Taranaki Electric Power Board, Egmont Electricity Ltd, the Wanganui based Powerco Ltd and Wairarapa Electricity Ltd. Powerco has also publicly announced its interest in, and active attempts to promote, a merger with CentralPower.
- 10 Powerco's shareholders are as shown in Appendix One. A Shareholders' Agreement dated 17 March 1997 exists between the New Plymouth District Council and Infracore. The agreement, to hold their respective interests in Powerco through Pukeariki Holdings Ltd (Pukeariki) to ensure ongoing stability of the Powerco share register and corporate governance structure, also supports in principle the concept of the establishment of a regional company through a merger with CentralPower and other energy related companies or associated businesses. Where Pukeariki is to vote on certain matters as a shareholder of Powerco, the New Plymouth District Council and Infracore, in terms of the Shareholders' Agreement, must be in agreement on the matter, otherwise Pukeariki shall vote against the matter.
- 11 A similar but not identical agreement exists between Pukeariki and the Taranaki Electricity Trust.

CentralPower

- 13 CentralPower is a company registered under the Companies Act 1993. Although it is not listed on the New Zealand Stock Exchange, a secondary market for the shares exists.
- 14 CentralPower is an electricity lines business. Its electricity networks provide line function services to electricity consumers in the Rangitikei District and in the city of Palmerston North. CentralPower distributes about 680 gigawatt-hours over its networks. CentralPower merged with the Palmerston North City Council's electricity company in 1997.
- 15 CentralPower's shareholders are shown in Appendix Two. A Shareholders' Deed dated 16 December 1996 exists between Infracore, the Palmerston North City Council and the CentralPower Electricity Trust. The Deed requires the three parties to vote

¹ It also owns natural gas networks in Taranaki but such ownership is not relevant to the consideration of Infracore's application.

against shareholders' resolutions unless they unanimously agree otherwise in respect of any material transaction concerning CentralPower or to any merger proposal, and gives right of first refusal to the other two parties should one of them decide to sell their shares in CentralPower. It also requires the parties to cooperate concerning the appointment of directors.

TrustPower

- 16 TrustPower is a company registered under the Companies Act 1993. It is listed on the New Zealand Stock Exchange.
- 17 TrustPower is an electricity supply business. Its assets include a number of electricity generation stations and the retail electricity sale contracts of a number of groups of electricity consumers, which it purchased from various electricity companies in 1998 and 1999. TrustPower sold its networks² to United Networks Ltd in 1999.
- 18 TrustPower's shareholders are shown in Appendix Three. Investment Agreements exist between Infratil and Alliant in relation to their respective holdings in TrustPower.

INVOLVEMENTS OF INFRATIL

Electricity Lines Businesses

Powerco and CentralPower as Lines Businesses

- 19 Powerco and CentralPower are the owners and operators of networks. In terms of the EIR Act they:
- own businesses that convey electricity by line in New Zealand (s4(1)(a));
 - own and operate, directly, lines in New Zealand and other core assets of electricity lines businesses (s4(1)(b)); and
 - have no activities excluded from the definition of an electricity lines business by section 4(2).
- 20 Therefore Powerco and CentralPower are electricity lines businesses in terms of the EIR Act. Infratil agrees with this interpretation of the EIR Act.

Infratil and New Plymouth District Council as Associates

- 21 In respect of Powerco, Infratil, is a party to the Shareholders' Agreement with the New Plymouth District Council. That agreement:
- is between Infratil and the New Plymouth District Council, a person holding more than 10% of the control rights in Powerco and relates to more than 20% of the control rights in Powerco (section 12(1)(f)(ii)); and

² Which provide line function services to consumers in the Taupo, Rotorua, Tauranga and Bay of Plenty areas.

- requires Infratil and the New Plymouth District Council, in certain circumstances, to act jointly or in concert in voting Pukeariki's shares in Powerco (section 12(1)(g)).

22 Therefore, Infratil and the New Plymouth District Council are associates in terms of section 12 of the EIR Act. Infratil agrees with this interpretation of the EIR Act.

Infratil Exceeds 10% Threshold in Powerco

23 Infratil is one of two associates who, in aggregate, have 50.4% of the control rights in Powerco. Therefore, Infratil exceeds the 10% threshold in respect of Powerco (section 8(c)).

Infratil's Involvement in Powerco

24 Infratil exceeds the 10% threshold in section 8 of the EIR Act in respect of Powerco. It is therefore involved in Powerco in terms of the EIR Act (section 7(1)(b)). Infratil agrees with this interpretation of the EIR Act.

Infratil's Involvement in CentralPower

25 As a result of its 21.2% shareholding in CentralPower and Shareholders' Deed with the Palmerston North City Council and the CentralPower Electricity Trust, Infratil:

- has more than 10% of the control rights in the business (section 8(a)); and
- has more than 10% of the equity return rights in the business (section 8(b)); and
- is one of three associates³ (by a similar analysis to that in paragraphs 21 and 22), who in aggregate, have 63.6% of the control and equity return rights in CentralPower (sections 8(c) and (d)).

26 Therefore, Infratil exceeds the 10% threshold of section 8 of the EIR Act in respect of CentralPower and is involved in CentralPower (section 7(1)(b)). Infratil agrees with this interpretation of the EIR Act.

27 Therefore, Infratil is involved in electricity lines businesses in the terms of the EIR Act.

Electricity Supply Business

TrustPower as a Supply Business

28 TrustPower, in terms of the EIR Act:

- sells electricity in New Zealand (s5(1)(a)(i));
- generates electricity in New Zealand (s5(1)(a)(iii));
- owns and operates directly generators in New Zealand (s5(1)(b));

³ Palmerston North City Council, CentralPower Electricity Trust and Infratil.

- owns and operates directly core assets of an electricity retail business which include the benefit of contracts to sell electricity (s5(1)(c)); and
- has no other activities excluded from the definition of an electricity supply business by section 5(2).

29 Therefore, TrustPower is an electricity supply business in terms of the EIR Act. Infratil agrees with this interpretation of the EIR Act.

Infratil's Involvement in TrustPower

30 As a result of its 26% shareholding in TrustPower, Investment Agreements with Alliant, and the relationship between Alliant and UIL, Infratil:

- has more than 10% of the control rights in the business (section 8(a)); and
- has more than 10% of the equity return rights in the business (section 8(b)); and
- is one of three associates⁴ (by a similar analysis to that in paragraphs 19 and 20), who in aggregate, have 37.4% of the control and equity return rights in TrustPower (sections 8(c) and (d)).

31 Therefore, Infratil exceeds the 10% threshold of section 8 of the EIR Act in respect of TrustPower and is involved in TrustPower (section 7(1)(b)). Infratil agrees with this interpretation of the EIR Act.

32 Therefore, Infratil is also involved in an electricity supply business in terms of the EIR Act.

PROHIBITED CROSS-INVOLVEMENTS

33 Section 17 of the EIR Act provides:

- “(1) No person involved in an electricity lines business may be involved in an electricity supply business.
- (2) No person involved in an electricity supply business may be involved in an electricity lines business.”

34 Infratil is involved in both electricity lines businesses and electricity supply business. Infratil has, in terms of section 17 of the EIR Act, a prohibited cross-involvement.

35 Section 30 of the EIR Act is a general prohibition on the expansion of cross-involvements after 23 June 1998. However, section 35 of the EIR Act provides an option for persons who wish to expand their cross-involvements. Such people must, after expanding, notify the Commission of the expansion, and either carry out ownership separation or revert to the previous level of their cross-involvements before 1 July 1999. An expansion of a cross-involvement removes the option, which cross-involved persons have, to delay ownership separation until 31 December 2003.

⁴ Alliant, UIL and Infratil.

- 36 Infratil has notified the Commission of expansions of its cross-involvements as follows:
- on 28 August 1998 of its acquisition of 681,000 shares in TrustPower and 156,884 shares in CentralPower;
 - on 18 November 1998 of its acquisition of 750,000 shares in TrustPower and 165,740 shares in CentralPower;
 - on 12 May 1999 of its acquisition of 82,710 shares in CentralPower; and
 - on 1 July 1999 of its acquisition of 10,760 shares in CentralPower and 11,453,331 shares in TrustPower.⁵
- 37 Infratil does not wish, pursuant to section 35(1)(e)(ii) of the EIR Act, to revert to its former shareholding in TrustPower before 1 July 1999 as it wishes to be a long term investor in that company. It states that it wishes to comply with section 35(1)(e)(i) and sell its Powerco and CentralPower shares. Infratil has not yet sold these share because it cannot obtain prices for its shares that it considers reflect their true values. It believes it will be able to effect such a sale by 30 June 2000.
- 38 Infratil has, therefore, applied to the Commission for exemption from the application of the EIR Act. In particular, it wishes to be exempted until 30 June 2000 from the requirement because of its expansion of cross-involvements it must comply with the ownership separation rules before 1 July 1999.

COMMISSION PROCEDURES

General

- 39 For the purpose of considering this application for exemption, pursuant to section 58 of the EIR Act which applies section 105 of the Commerce Act 1986 to the EIR Act, the Commission has delegated its powers under section 81 of the EIR Act to K M Brown, E C A Harrison, and E M Coutts.
- 40 The Commission's decision is based on an investigation conducted by its staff and their subsequent advice to the Commission.
- 41 During their investigation into this application for exemption, Commission staff interviewed and obtained information from:
- Powerco;
 - CentralPower;
 - the Palmerston North City Council;
 - the CentralPower Electricity Trust;
 - Infratil; and
 - Alliant.

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Criteria Used by the Commission to Consider Exemption Applications

42 The EIR Act gives the Commission wide powers of enforcement, extension and exemption. To provide assistance to parties affected by the EIR Act, the Commission sets out its role and processes in Practice Note No.3.⁶

43 The Commission stated in Practice Note No.3 that:

“The EIR Act provides for the Commission to make exemptions in terms of section 81 of the Act. In considering applications for exemptions, the Commission will have specific regard to the particular purpose of Parts 1 to 5 of the EIR Act as defined in section 2(2) of the EIR Act. The Commission is likely to grant an exemption in respect of a business or involvement or interest only where doing so:

- (a) would not result in certain involvements in electricity lines businesses and electricity supply businesses which may create incentives or opportunities:
 - (i) to inhibit competition in the electricity industry; or
 - (ii) to cross-subsidise generation activities from electricity lines businesses; and
- (b) would not result in relationships between electricity lines businesses and electricity supply businesses which are not at arms length.

In determining exemptions, the Commission will also have regard to the overall purpose of the EIR Act as set out in section 2(1) of the Act. That is, the purpose of the EIR Act is to reform the electricity industry to better ensure that:

- (a) costs and prices in the electricity industry are subject to sustained downward pressure; and
- (b) the benefits of efficient electricity pricing flow through to all classes of consumers by –
- (c) effectively separating electricity distribution from generation and retail; and
- (d) promoting effective competition in electricity generation and retail.”

44 The Commission noted in Practice Note No.3 that:

“...the EIR Act provides for maximum cross-ownership limits and specific structural and behavioural requirements to ensure that the purposes of the Act are met. Strict compliance with these limits and requirements is, other than in exceptional circumstances,⁽⁷⁾ expected.”

45 The Commission stated in Practice Note No.3 that:

“On receipt of an application in the proscribed form, the Commission will determine whether granting an exemption would be contrary to any element of the particular purpose of Parts 1 to 5 of the EIR Act or the overall purpose of the Act.

The Commission’s tests would necessitate obtaining and evaluating objective answers to the following three questions in relation to the particular purpose of Parts 1 to 5 of the EIR Act:

- Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to inhibit competition in the electricity industry?

⁶ Practice Note No.3, September 1998, Electricity Industry Reform Act 1998 Commission’s Role and Processes.

⁷ For example, of the types provided for in section 19 of the EIR Act.

- Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to cross-subsidise generation activities from electricity lines businesses?
- Would the Commission permit, by granting an exemption in respect of a business or involvement or interest, a relationship between an electricity lines business and an electricity supply business which is not at arms length?

In relation to these questions, the Commission will consider factors such as:

- Relevant market(s)⁸ within the electricity industry;
- The nature of any incentives or opportunities created;
- The temporal nature of any incentives or opportunities created;
- The nature of any relationship which is not at arms length; and
- The temporal nature of any relationship which is not at arms length.”

RELEVANT MARKETS

- 46 The national electricity generation market and the national retail electricity markets appear relevant to the application of the Commission’s criteria to the facts of Infratil’s application for exemption.⁹

INFRATIL’S ARGUMENTS

- 47 Infratil wishes to sell its entire investment holdings in Powerco and CentralPower in order to comply with the ownership separation rules in the EIR Act. However, Infratil states that in spite of strenuous efforts to effect a sale, it will be unable to do so by 1 July 1999.
- 48 Infratil states that it is a passive investor in Powerco and CentralPower, and that it has no managerial or directorial control of either of the two companies. It is, therefore, not in a position where it can cause conflicts with the purposes of the EIR Act, particularly as it only seeks a temporary exemption for one year. It submits the purposes of the EIR Act are directed at electricity businesses, themselves actively involved in electricity markets, rather than a passive and temporary investor such as Infratil. Infratil says that it has no opportunity to inhibit competition in any electricity market as a result of its cross-ownerships. Infratil instances the major decisions made by Powerco and CentralPower to become electricity lines businesses rather than electricity supply businesses, in respect of which agreement from Infratil was not required, as an example of the minor influence it has on the two companies.
- 49 Infratil has offered an undertaking to the Commission that in the event of its application being granted it will not seek to exercise its rights under its two shareholders’ agreements with other Powerco and CentralPower shareholders to influence and/or veto the persons appointed as directors to the two companies.
- 50 Infratil argues that it has no directors on the boards of either Powerco or CentralPower, nor does it have any ability to make decisions regarding the operations

⁸ Defined using the same process as used for market definitions in respect of Commerce Act matters.

⁹ Other markets in the electricity industry, for example local distribution markets, wholesale electricity market, the electrical construction and maintenance market and the market for the reticulation of new subdivisions, do not appear to be relevant to this application for exemption.

of the companies. It says that it is not in any position to inhibit competition in electricity markets. Likewise, it insists it has insufficient influence on the operations of Powerco and CentralPower to induce the two companies to offer TrustPower as a generator such favourable terms for the provision of line function services that would lead to a cross-subsidy from an electricity lines business to an electricity generator. Infratil argues that any exemption granted to it would not lead to the creation of a relationship not at arms length between an electricity supply and an electricity lines business in respect of the relationships either between TrustPower and Powerco/CentralPower or between Infratil and Powerco/CentralPower. Infratil notes that it has no knowledge of any contractual arrangements between TrustPower and Powerco/CentralPower in respect of the provision of line function services to TrustPower as both a generator and electricity retailer.

- 51 Infratil argues that even if it did have the opportunity to inhibit competition, cross-subsidise electricity generation activities or establish a relationship between an electricity lines and an electricity supply business which is not at arms length (although it asserts it has no such opportunity) such prohibited activities would all operate to promote TrustPower's interests over those of Powerco and CentralPower. Infratil then would have no incentive to promote the prohibited activities because the value of Powerco and CentralPower shares which Infratil wishes to sell would decline in value.
- 52 Infratil argues that it has made strenuous attempts to sell its shareholdings in Powerco and CentralPower since the middle of 1998 at a value it regards as fair. That value, in its view, has been established by the recent sales of the networks of TransAlta New Zealand Ltd, TrustPower and Central Electric Ltd together with a recent offer by GPU International Inc (GPU)¹⁰. It states that the sale is complicated by the existence of complex shareholder agreements, and by the presence of shareholders whose motives may be other than the maximisation of the value of their shareholdings.
- 53 Infratil says that it has had [] offers for its shares in Powerco and CentralPower. One offer was part of an offer from GPU to Powerco and CentralPower for the assets of the companies. [

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¹⁰ A United States based subsidiary of GPU Inc, a large utility holding company which owns and operates generation, transmission and distribution facilities in the United States. It is among the top 20 United States electricity utilities in size.

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EXAMINATION IN TERMS OF THE COMMISSION'S CRITERIA

73 The focus of the Commission's analysis is on those parts of the national electricity generation and national retail electricity markets in which Infratil's cross-involvement between TrustPower and Powerco/CentralPower:

- has the potential to create incentives or opportunities to inhibit competition;
- has the potential to create incentives or opportunities to allow the cross-subsidisation of generation activities from an electricity lines business; and
- has the potential to create a relationship between electricity lines and supply businesses which are not at arms length as defined in the EIR Act.

- 74 The results of Infratil's cross-involvement might include:
- the negotiation of more favourable terms for the provision of line function services for TrustPower, as both a generator connected to the networks of Powerco and CentralPower and as a retailer to consumers connected to the networks, than other generators and retailers are able to negotiate;
 - a cross-subsidy between the electricity lines businesses of Powerco and CentralPower and TrustPower's generators; and
 - a breach of the arms length rules of Schedule 1 of the EIR Act¹¹.
- 75 The issues for the Commission are whether:
- in a practical sense, Infratil is able to eliminate its cross-involvements to achieve compliance by 1 July 1999; and
 - given Infratil's arguments that, in practical terms, it is unable to influence those operations of either Powerco or CentralPower which are relevant to the purposes of the EIR Act, the granting of a limited time period exemption would result in the creation of the aforesaid incentives or opportunities or breaches of the arms length rules which were more than minimal and which would result in the suborning of the purposes of the EIR Act.
- 76 The Commission does not accept Infratil's argument that any use of its cross-involvement to suborn the purposes of the EIR Act would act to its disadvantage in the sale of its Powerco and CentralPower shares by lowering the value of those shares. It is not possible for the Commission to judge whether the net benefit of any anti-competitive behaviour, cross-subsidies or breach of the arms length rules would reside with Powerco/CentralPower or TrustPower. Infratil of course is a shareholder of all three companies.
- 77 This application for exemption is one in which there are:
- cross-involvements in the form of minority shareholdings rather than as wholly owned electricity lines and supply businesses. The ownership separation which has occurred as the result of the enactment of the EIR Act has been of wholly owned electricity lines and supply businesses. This application and that of Alliant and UIL are the first, and to the Commission's knowledge, the only potential cases which involve minority shareholdings;
 - the presence of other shareholders who may have non-commercial imperatives;
 - the existence of complex agreements between the shareholders of Powerco and CentralPower containing provisions, amongst other things, allowing pre-emptive rights in respect of the shares of the parties to the agreements and "piggy-backing" of offers to purchase some of those shares;

¹¹ The Commission considers that the Arms Length Rules in Schedule 1 to the EIR Act can be used to determine whether a relationship not at arms length exists.

- one offer for purchase of the assets of Powerco and CentralPower which Infratil's co-shareholders in the two companies have rejected;
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- another offer for the purchase of Infratil's shares which has the potential to allow Infratil to achieve compliance with the EIR Act but which requires time for pre-emptive rights and other procedures to occur; and
 - undertakings by Infratil not to interfere in the operation and management of Powerco and CentralPower by the mechanism of influence on directorial appointments.

78 In addition, this application is for exemption for a defined period of one year.

79 The Commission considers that incentives or opportunities to inhibit competition, to cross-subsidise and to breach the arms length rules are likely to be present whenever cross-involvements exist. However, given *the combination* of facts revealed by the investigation of Infratil's application, the Commission considers that a limited time exemption for Infratil will have a minimal effect on these criteria, such as to not suborn the purposes of the EIR Act.

THE COMMISSION'S DECISION

80 Infratil's application passes the Commission's three criteria it uses for considering applications for exemption.

81 In making its decision the Commission notes that section 81(5) provides that the Commission may vary or revoke any exemption at any time.

82 Therefore, having considered the stated criteria, the Commission exempts Infratil from the application of section 35(1)(e) of the EIR Act, subject to the terms and conditions specified in the Notice of Exemption.

NOTICE OF EXEMPTION

The Commission, pursuant to section 81 of the Electricity Industry Reform Act 1998, exempts Infrastructure & Utilities NZ Ltd from the application of section 35(1)(e) of that Act in relation to a prohibited cross-involvement in an electricity lines business, comprising the electricity distribution networks owned and operated by Powerco Ltd and CentralPower Ltd, and an electricity supply business owned and operated by TrustPower Ltd.

THE EXEMPTION IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- (a) Infrastructure & Utilities NZ Ltd will continue to use all reasonable endeavours to cease its involvement in CentralPower Ltd and Powerco Ltd by procuring the prompt sale of its shares in CentralPower Ltd and its shares in Pukeariki Holdings Ltd and by becoming non-associated with the New Plymouth District Council in respect of Powerco Ltd.
- (b) During the period of the exemption, Infrastructure & Utilities NZ Ltd will maintain an arms length relationship with both CentralPower Ltd and Powerco Ltd. Maintaining an arms length relationship means complying with the arms length rules defined in Schedule 1 of the Electricity Industry Reform Act 1998.
- (c) Infrastructure & Utilities NZ Ltd will not exercise any right it may have to promote or veto the appointment of any director in CentralPower Ltd or Powerco Ltd. In particular, in respect of Powerco Ltd, it will allow New Plymouth District Council, the other major shareholder in Pukeariki Holdings Ltd, to make any determinations on directors that are required to be made under the Pukeariki Holdings Ltd structure. Similarly, it will allow Palmerston North City Council and the CentralPower Electricity Trust to make the same decisions with respect to the appointment of directors to CentralPower Ltd under the Shareholders' Deed in respect of CentralPower Ltd.
- (d) The exemption expires at midnight on 30 June 2000 unless any variation or earlier revocation in terms of section 81(5) occurs.
- (e) Infrastructure & Utilities NZ Ltd will notify the Commission two weeks in advance of additional involvement in any electricity lines or supply business, as defined in the Electricity Industry Reform Act 1998, which provides it on its own, or together with an associate, with an additional 0.5% of the assets, control rights or equity return rights of the electricity business.
- (f) Infrastructure & Utilities NZ Ltd will provide the Commission with monthly written reports beginning one month after the date of this Decision on the progress it is making to achieve compliance with the Electricity Industry Reform Act 1998.

The Commission may vary or revoke this exemption at any time in accordance with section 81(5) of the EIR Act.

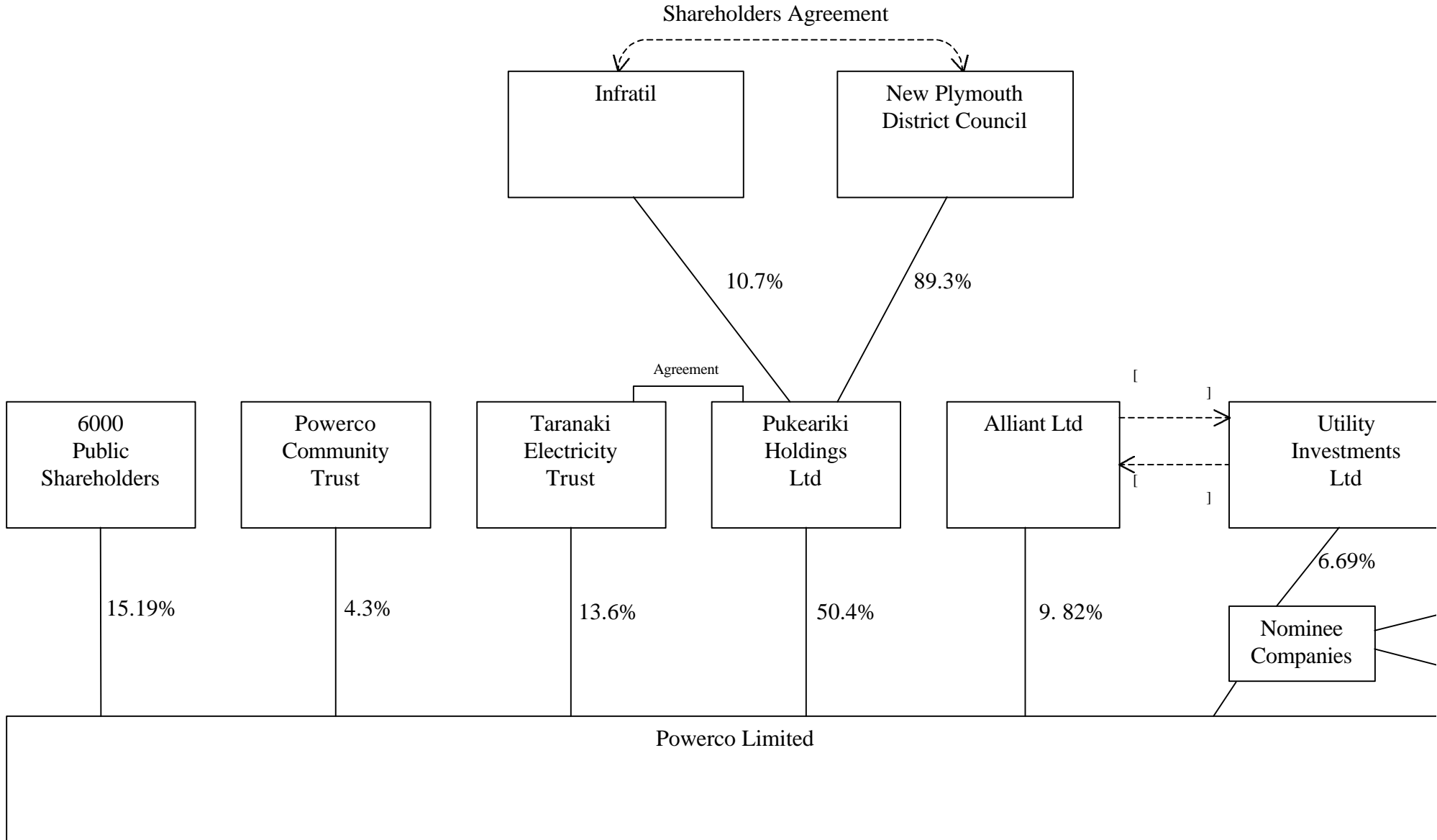
The exemption takes effect from the date of publication of this Notice in the Gazette.

Dated this day of July 1999

The Commission

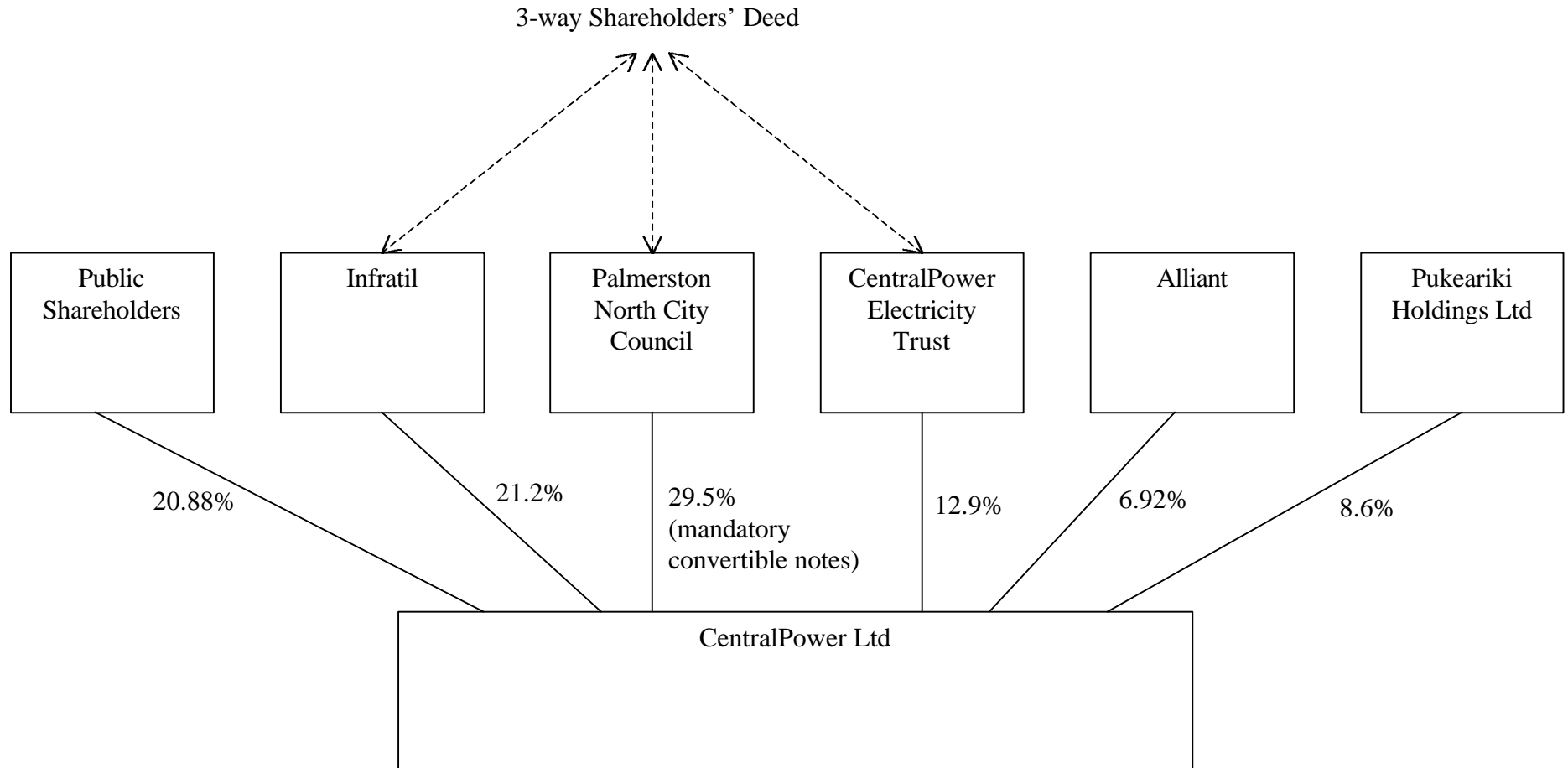
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APPENDIX ONE: OWNERSHIP DIAGRAM: POWERCO LTD



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APPENDIX TWO: OWNERSHIP CENTRAL POWER LTD



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APPENDIX THREE: OWNERSHIP DIAGRAM: TRUSTPOWER LIMITED

