



Securities Act (Powerco Limited) Exemption Notice 2005

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

- 1 Title**
This notice is the Securities Act (Powerco Limited) Exemption Notice 2005.
- 2 Commencement**
This notice comes into force on its notification in the *Gazette*.
- 3 Expiry**
This notice expires on the close of 30 June 2005.
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

CentralPower Group means CentralPower Limited and its subsidiaries that amalgamated with the former Powerco group on 1 September 2000

company means Powerco Limited

excluded provisions means,—

- (a) for the purposes of clause 5, the provisions specified in the second column of the Schedule; and
- (b) for the purposes of clause 8, the provisions specified in the second column of that clause

Facilities Agreement means the \$180,000,000 Facilities Agreement dated 22 December 2004 entered into between—

- (a) the company, as borrower; and
- (b) Westpac Banking Corporation, as lead arranger and facility agent; and
- (c) the banks and financial institutions listed in Schedule 1 of that agreement, as lenders

former Powerco group means the company formerly known as Powerco Limited and its subsidiaries that amalgamated with CentralPower Group on 1 September 2000

group means the company and its subsidiaries

Note Purchase Agreements means the 19 Note Purchase Agreements dated 25 November 2003 entered into between the company and a number of subscribers of the senior unsecured notes issued by the company

Regulations means the Securities Regulations 1983

specified debt securities means subordinated bonds to be issued by the company

specified material contracts means,—

- (a) for the purposes of clause 5, the contracts referred to in the Schedule; and
- (b) for the purposes of clause 8, the contracts referred to in that clause; and
- (c) for the purposes of clause 9, the contracts referred to in the Schedule

Standby Facility Agreement means the \$160,000,000 Standby Facility Agreement dated 2 August 2004 entered into between—

- (a) the company, as borrower; and

- (b) Westpac Banking Corporation, as lead arranger and facility agent; and
- (c) the banks and financial institutions listed in Schedule 1 of that agreement, as lenders

subordinated bonds means the unsecured, subordinated, interest bearing debt securities of the company, to be issued under a trust deed dated on or about 11 March 2005

Term Loan Facility Agreement means the \$160,000,000 Term Loan Facility Agreement dated 2 August 2004 entered into between—

- (a) the company, as borrower; and
 - (b) Westpac Banking Corporation, as lead arranger and facility agent; and
 - (c) the banks and financial institutions listed in Schedule 1 of that agreement, as lenders.
- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions from regulation 7(1)(a) of Regulations and clause 33(b) of Schedule 2 of Regulations

- (1) The company and every person acting on its behalf are exempted from—
- (a) regulation 7(1)(a) of the Regulations in respect of any specified debt securities in so far as that paragraph requires a prospectus that contains the offer of the specified debt securities to have endorsed on it, or attached to it, or to be accompanied by, a copy of the specified material contracts; and
 - (b) clause 33(b) of Schedule 2 of the Regulations in respect of any specified debt securities in so far as that paragraph applies to any of the specified material contracts.
- (2) The exemptions in subclause (1) are subject to the conditions in clause 9.

6 Exemption from clause 7(3) of Schedule 2 of Regulations

- (1) The company and every person acting on its behalf are exempted from clause 7(3) of Schedule 2 of the Regulations in respect of any specified debt securities.

- (2) The exemption in subclause (1) is subject to the condition that the registered prospectus that contains the offer of the specified debt securities contains—
 - (a) the information required under clause 7(3) of Schedule 2 of the Regulations in respect of—
 - (i) the company;
 - (ii) the former Powerco group;
 - (iii) the CentralPower Group; and
 - (b) a brief description of the merger and asset transactions undertaken by the former Powerco group and the CentralPower Group during the period from 1 April 1999 to 31 March 2000.
- (3) The information referred to—
 - (a) in subclause (2)(a)(i) must be for the periods from 1 September 2000 to 31 March 2001, 1 April 2001 to 31 March 2002, 1 April 2002 to 31 March 2003, 1 April 2003 to 31 March 2004, and 1 April 2004 to 30 September 2004; and
 - (b) in subclause (2)(a)(ii) and (iii) must be for the periods from 1 April 1999 to 31 March 2000, and 1 April 2000 to 31 August 2000.

7 Exemption from clause 9(b) of Schedule 2 of Regulations
The company and every person acting on its behalf are exempted from clause 9(b) of Schedule 2 of the Regulations in respect of any specified debt securities in so far as that paragraph requires a registered prospectus to contain the names of the parties (other than the company) to the Note Purchase Agreements.

8 Exemption from clause 13(2) of Schedule 2 of Regulations

- (1) The company and every person acting on its behalf are exempted from clause 13(2) of Schedule 2 of the Regulations in respect of any specified debt securities in so far as that subclause requires a registered prospectus to contain particulars of any restrictions on the ability of any member of the borrowing group to borrow arising from the following provisions:

Contract	Provision
Each Note Purchase Agreement dated 25 November 2003 between the company as issuer and a subscriber of the senior unsecured notes issued by the company.	The percentage of consolidated total debt to consolidated total capitalisation in clause 10.7, the ratio of EBITDA to interest expense in clause 10.6, and the minimum amount of consolidated net worth in clause 10.5.
Term Loan Facility Agreement.	The interest cover ratio in clause 10.3(a). The leverage ratio in clause 10.3(b).
Standby Facility Agreement.	The interest cover ratio in clause 10.3(a). The leverage ratio in clause 10.3(b).
Facilities Agreement.	The interest cover ratio in clause 10.3(a). The leverage ratio in clause 10.3(b).

- (2) The exemption in subclause (1) is subject to the conditions in clause 9.

9 Conditions of exemptions in clauses 5 and 8

- (1) The exemptions in clauses 5 and 8 are subject to the conditions that the prospectus that contains the offer of the specified debt securities that is delivered to the Registrar of Companies—
- (a) has endorsed on it, or attached to it, or is accompanied by, a copy of the specified material contracts excluding the excluded provisions; and
 - (b) contains a prominent statement to the effect that the directors of the issuer warrant to investors that non-disclosure of the excluded provisions does not make the prospectus or investment statement misleading in any material particular by failing to refer or give proper emphasis to any adverse circumstances; and
 - (c) states the times and places in New Zealand where a copy of the specified material contracts (excluding the excluded provisions) may be inspected without fee by any person who so requests during the currency of the prospectus; and
 - (d) includes a prominent statement to the effect that the financial covenants in each Note Purchase Agreement, the Term Loan Facility Agreement, the Standby Facility Agreement, and the Facilities Agreement may be amended at any time without the need to obtain the

- approval or consent of holders of the specified debt securities or the trustee and that in the opinion of the directors of the company these financial covenants are not material information on which investors should rely when considering whether or not to apply for the specified debt securities; and
- (e) contains a statement that certain provisions of specified material contracts have not been reproduced in the copies filed with the Registrar of Companies; and
 - (f) contains a statement of reasons why those provisions have not been reproduced; and
 - (g) contains a statement of the general nature of those provisions.
- (2) Subclause (1)(a) requires the prospectus to have endorsed on it, or attached to it, or to be accompanied by, a copy of only 1 Note Purchase Agreement if the material terms of the Note Purchase Agreement (except the names of the parties other than Powerco Limited) are identical to the material terms of the other Note Purchase Agreements and the prospectus includes a prominent statement to the effect that 19 identical Note Purchase Agreements were signed with various subscribers.

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Schedule

Specified material contracts

Contract

Gas Distribution Establishment Deed (Stage 1) dated 30 April 2003 between the Crown in Right of the State of Tasmania, Powerco Holdings Limited, and Powerco Limited.

Excluded provisions

The entirety of clause 2.2, excluding the heading.
 The entirety of clause 3, excluding the heading.
 The amount shown in clause 5.2(a).
 The amount shown in the tenth line of Schedule 1.
 In the attached Gas Distribution Development Agreement (Stage 1), the first 2 words set out in the third line of clause 3.3(a)(ii).
 In the attached Gas Distribution Development Agreement (Stage 1), the entirety of clause 3.8(a)(i).
 In the attached Gas Distribution Development Agreement (Stage 1), the entirety of clause 5.3, including the heading.
 In the attached Gas Distribution Development Agreement (Stage 1), the entirety of clause 11, excluding the heading.

Contract

Excluded provisions

- In the attached Gas Distribution Development Agreement (Stage 1), the details set out in the columns headed “Milestone” and “Milestone Date” in the table in clause 12.1(b), excluding the column headings.
- In the attached Gas Distribution Development Agreement (Stage 1), the entirety of clause 13, excluding the heading.
- In the attached Gas Distribution Development Agreement (Stage 1), the entirety of clause 18.5(a).
- In the attached Gas Distribution Development Agreement (Stage 1), the entirety of clause 20.5, including the heading.
- In the attached Gas Distribution Development Agreement (Stage 1), the entirety of clause 21.1, including the heading, and the entirety of clause 21.2, including the heading.
- In the attached Gas Distribution Development Agreement (Stage 1), the entirety of clause 21.4, including the heading, and the entirety of clause 21.5, including the heading.
- In the attached Gas Distribution Development Agreement (Stage 1), the entirety of clause 24, excluding the heading.
- In the attached Gas Distribution Development Agreement (Stage 1), the entirety of Schedule 1, Part A, excluding the details on page 63 of that agreement.
- In the attached Gas Distribution Development Agreement (Stage 1), the entirety of Schedule 1, Part B, excluding the details on page 64.
- In the attached Gas Distribution Development Agreement (Stage 1), the entirety of Schedule 2, including the heading.
- In the attached Gas Distribution Development Agreement (Stage 1), the details set out in the columns headed “Town Serviced”, “Estimated DASI Customers passed by distribution network”, “Estimated DASI Customers to be connected per town”, “Conditional or Unconditional”, and “Industrial Customer” in Schedule 5, excluding the column headings.

Contract**Excluded provisions**

<p>Gas Distribution Development Agreement (Stage 1) dated 30 April 2003 between the Crown in Right of the State of Tasmania, Powerco Tasmania Pty Limited, and Powerco Limited.</p>	<p>The first 2 words set out in the third line of clause 3.3(a)(ii).</p> <p>The entirety of clause 3.8(a)(i).</p> <p>The entirety of clause 5.3, including the heading.</p> <p>The entirety of clause 11, excluding the heading.</p> <p>The details set out in the columns headed “Milestone” and “Milestone Date” in the table in clause 12.1(b), excluding the column headings.</p> <p>The entirety of clause 13, excluding the heading.</p> <p>The entirety of clause 18.5(a).</p> <p>The entirety of clause 20.5, including the heading.</p> <p>The entirety of clause 21.1, including the heading.</p> <p>The entirety of clause 21.2, including the heading.</p> <p>The entirety of clause 21.4, including the heading.</p> <p>The entirety of clause 21.5, including the heading.</p> <p>The entirety of clause 24, excluding the heading.</p> <p>The entirety of Schedule 1, Part A, excluding the details on page 63.</p> <p>The entirety of Schedule 1, Part B, excluding the details on page 64.</p> <p>The entirety of Schedule 2, including the heading.</p> <p>The details set out in the columns headed “Town Serviced”, “Estimated DASCi Customers passed by distribution network”, “Estimated DASCi Customers to be connected per town”, “Conditional or Unconditional”, and “Industrial Customer” in Schedule 5, excluding the column headings.</p>
<p>Gas Distribution Funding Deed (Stage 2A) dated 30 September 2003 between the Crown in right of the State of Tasmania, Powerco Holdings Limited, and Powerco Limited.</p>	<p>The third and fourth words set out in the second line of clause 1.3(a).</p> <p>The details set out in the columns headed “Amount” and “When payable” in the table in clause 3.2, excluding the column headings.</p>
<p>Gas Distribution Development Agreement (Stage 2A: Core Urban Network)—Restated dated 27 September 2004 between the Crown in Right of the State of Tasmania, Powerco Tasmania Pty Limited, and Powerco Limited.</p>	<p>The entirety of clause 2.2(b)(ii).</p> <p>The entirety of the date set out in the second line of clause 3.3(b).</p> <p>The entirety of clause 3.7(a)(i).</p> <p>The entirety of clause 6.1, including the heading.</p> <p>The entirety of clause 7, including the heading.</p> <p>The entirety of clause 11, excluding the heading.</p> <p>The details set out in the columns headed “Milestone” and “Milestone Date” in the table in clause 12.1(b), excluding the column headings.</p> <p>The entirety of clause 13, excluding the heading.</p> <p>The entirety of clause 20.5, including the heading.</p> <p>From the fifth word to the ninth word (inclusive) of the heading to clause 21.</p>

Contract**Excluded provisions**

	The entirety of clause 21.1, including the heading.
	The entirety of clause 21.2, including the heading.
	The entirety of clause 21.4, including the heading.
	The entirety of clause 21.5, including the heading.
	The entirety of clause 21.6, including the heading.
	The entirety of clause 24, excluding the heading.
	The amount set out in clause 29.2(a).
	The amounts set out in the fourth, fifth, sixth, and seventh lines in clause 29.3.
	The entirety of Schedule 2, including the heading.
	From the sixth word in the third line to the fourth word in the sixth line (inclusive) in Schedule 3(c).
	The third and fourth words in the heading to Exhibit A and all the remaining details on page 79 and all of the following pages of Exhibit A.
Each Note Purchase Agreement dated 25 November 2003 between Powerco Limited as issuer and a subscriber of the senior unsecured notes issued by Powerco Limited.	<p>The names of the individual subscribers who are a party to each Note Purchase Agreement as they occur throughout the agreement (and any schedules).</p> <p>The interest rate payable on the 3 different types of senior notes, which occurs throughout the agreement (and any schedules).</p> <p>The amount shown in the second line of clause 10.5.</p> <p>The ratio shown in the second line of clause 10.6.</p> <p>The percentage shown in the first line of clause 10.7.</p>
Term Loan Facility Agreement.	<p>The definition of "Margin" in clause 1.1.</p> <p>Clause 10.3 paragraphs (a) and (b).</p> <p>The percentage shown in the fourth line of clause 22.1.</p>
Standby Facility Agreement.	<p>The definition of "Margin" in clause 1.1.</p> <p>Clause 10.3 paragraphs (a) and (b).</p> <p>The percentage shown in the fourth line of clause 22.1.</p>
Facilities Agreement.	<p>The entirety of clause 22.2(a).</p> <p>The definition of "Margin" in clause 1.1.</p> <p>Clause 10.3 paragraphs (a) and (b).</p> <p>The entirety of clause 22.1.</p> <p>The percentage rates set out in the table under the heading "Establishment Fee % (flat)" in clause 22.2.</p>

Contract	Excluded provisions
Deed of Amendment Agreement to Term Loan Facility Agreement dated 11 March 2005 between Powerco Limited, Westpac Banking Corporation, and the banks and financial institutions listed in Schedule 1 of that agreement.	The definition of "Margin" in clause 2.1(a)(iv).
Deed of Amendment to the Standby Facility Agreement dated 11 March 2005 between Powerco Limited, Westpac Banking Corporation, and the banks and financial institutions listed in Schedule 1 of that agreement.	The definition of "Margin" in clause 2.1(a)(v). Clause 2.1(h).

Dated at Wellington this 9th day of March 2005.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

J. Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on its notification in the *Gazette*, exempts Powerco Limited from certain provisions of the Securities Regulations 1983, subject to conditions, in the case of an offer of specified debt securities.

The Securities Commission considers that the exemption from clause 7(3) of the Schedule 2 of the Securities Regulations 1983 is appropriate for the following reasons:

- under the proposed conditions of exemption Powerco Limited will provide appropriate alternative financial information to potential investors:
- Powerco Limited has not previously presented any combined CentralPower Limited/former Powerco Limited financial

information for the accounting periods ending prior to 1 September 2000:

- it would be difficult from an accounting perspective, and expensive for Powerco Limited to combine the separate financial information for CentralPower Limited and the former Powerco Limited given the limited base information that is currently held by Powerco Limited in relation to CentralPower Limited;
- in the circumstances of this offer, the presentation of combined historical financial data for the period from 1 April 1999 to 31 August 2000 would be of limited relevance to potential investors in relation to the offer.

The Securities Commission considers that the exemptions from regulation 7(1)(a) of the Securities Regulations 1983 and clauses 9(b), 13(2), and 33(b) of Schedule 2 of those regulations are appropriate for the following reasons:

- the exemptions from regulations 7(1)(a) of the Securities Regulations 1983 and from clauses 9(b), 33(b), and 13(2) of Schedule 2 of those regulations meet the criteria stated in the Securities Commission's Exemption Policy Note for "Applications to Exclude Commercially Sensitive Information from Material Contracts". (The Exemption Policy Note can be viewed on the Commission's website at www.sec-com.govt.nz/notices/exemption-policy.shtml);
- the detriment to the commercial interests of Powerco Limited by the disclosure of the excluded provisions would outweigh any benefit to prospective investors from their disclosure;
- directors of the issuer must warrant that the non-disclosure of the excluded provisions does not make the relevant prospectus misleading in any material particular by a failure to refer, or give proper emphasis, to any adverse circumstances;
- the prospectus must state that information has been deleted from the contracts in question, the reasons why that information has been deleted, and the general nature of the material information that has been deleted;
- in respect of certain deleted material, Powerco Limited's prospectus must contain additional warnings for investors to the effect that they should not give weight to certain borrowing covenants as they can be changed by Powerco Limited.

**Securities Act (Powerco Limited)
Exemption Notice 2005**

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Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 11 March 2005.
This notice is administered by the Securities Commission.
