Corporate social responsibility: Mercury Energy and its low-income electricity consumers

Folole Muliaga, a 45 year old Samoan woman, and her son Ietitaia were in their Mangere Bridge, Auckland home on the morning of 29 May 2007.[1] Mrs Muliaga was in the dining room and Ietitaia was seated at the computer in the living room. At around 10.25am, Ietitaia saw a man walk to the rear of the house and knock on the door, which he answered. "Good morning, I'm from Mercury Energy and Mercury Energy is disconnecting your power for arrears," said the man, an employee of VirCom Energy Management Services (hereafter VirCom) which was contracted to perform Mercury Energy's disconnections.[2] He handed Ietitaia a disconnection notice which he took to his mother, who told him to invite the man in to speak with her. By the time Ietitaia went outside again to do this, the contractor had cut the power supply to the house. Ietitaia asked him to come inside, and the man followed him to the dining room, stepping over a tube running from a machine in Mrs Muliaga's bedroom to the prongs attached to her nose.

Folole Muliaga was not a well woman. Since migrating to New Zealand in 2000 with her husband, Lopaavea and four children in search of better life, her health had deteriorated. A trained school teacher, she first received treatment at Auckland's Middlemore Hospital on 5 April, 2007 for breathing difficulties associated with her weight, which had risen to 212 kilograms. She was diagnosed with obesity hyperventilation syndrome, an illness which prevented her from breathing adequately to remove carbon dioxide from her body. Mrs Muliaga was treated with drugs and a

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This case was written by Dr Todd Bridgman, Senior Lecturer, Victoria Management School, Victoria University of Wellington. It has been prepared from published materials as a basis for class discussion rather than to illustrate either effective or ineffective handling of a managerial situation.

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[1] The events described in this section are based on the findings of Coroner Gordon Matenga released in September 2008 on the inquest into the death of Folole Muliaga.
[2] The name of the contractor was permanently suppressed by the Coroner because of possible threats to his own safety and that of his family.

ventilator and by the time of her discharge from hospital on 11 May, 2007, her weight had fallen to 184 kilograms. She was given two machines to continue oxygen treatment at home.

Eighteen days later, the contractor, a trained electrical installer, was led by Ietitaia into the dining room where his mother was seated. The contractor explained that he had disconnected the power on instruction from her power company, Mercury Energy, as the account was NZ$168.40 ($US87) in arrears. Mrs Muliaga asked “So how do I get my power on?” to which the contractor replied, “You either pay or ring Mercury Energy.” Ietitaia did not hear all of the conversation, but heard his mother say “Please give us a chance” to which the contractor replied “I’m just doing my job.” The contractor could see the plastic tubes coming from Mrs Muliaga’s nose, but he did not know what they were for and did not feel it was his business to ask about them. He did not see any oxygen machines, or any tubes on the floor. He also did not hear the alarm which was triggered when power supply to the oxygen machine was cut.

Once the contractor left the house, Mrs Muliaga’s health deteriorated rapidly. She took some pills, but Ietitaia and his brother Ruatesi, who had arrived home, were concerned. She asked Ietitaia to play a song on the guitar but halfway through the song she was struggling to breathe. Ietitaia went to the dining room to call an ambulance but their phone was disconnected. He returned to find his mother unconscious and Ruatesi attempting resuscitation. Ietitaia went to the neighbours’ house and an ambulance was called. Two ambulance staff arrived and continued attempts to resuscitate her but it was too late. Folole Muliaga was dead.

Exhibit 1: The Muliaga family

Left: Folole Muliaga. Right: Her husband, Lopaavea with his sons (from left) Tesi, Eden and Ietitaia (Source: *New Zealand Herald*)

The “blame game” begins

Mercury Energy was the third largest energy retailer in New Zealand, providing electricity and gas services to 315,000 residential business customers throughout New Zealand. It was a profitable business - between 2003 and 2007 its earnings nearly doubled to more than NZ$300 million, though its return on shareholders’ equity had fallen by more than half during this time to less than 6 percent (see *Exhibit 4*). Mercury Energy had a strong presence in Auckland, with more than 50 years of history supplying customers in the region. The Auckland region is ethnically diverse – of the population of 1.2 million, 15 percent identified as Pacific people, (for example Samoans, Tongans, Fijians), 19 percent Asian and 11 percent Māori.[3] Mercury Energy attributed its strong market position to "industry-leading levels of service, and customer-friendly initiatives and products."[4] Mercury Energy was active in community initiatives to support the company's goal of "the natural evolution of partnerships which genuinely benefit those local to its facilities and customers, bringing together the Company and surrounding communities so that the needs of each are mutually understood".[5] For example, in 2007 Mercury Energy insulated free of charge the homes of 50 patients of Auckland's Starship Children's Hospital who were suffering from respiratory illnesses, to make their houses warmer and drier.

The day following Mrs Muliaga's death news reports began to surface in New Zealand. These were soon picked up by international news outlets, including the BBC and CNN, their attention drawn by the apparent death of a woman over a $168.40 electricity bill. "Lopaavea Muliaga's wife died for the sake of less than £70" reported the BBC.[6] Politicians from New Zealand's Government and opposition parties were quick to start pointing the finger of blame. Prime Minister Helen Clark accused Mercury Energy of a "hard-nosed commercial attitude"[7] and said it was unbelievable the contractor had gone ahead with the disconnection even though he saw a tube coming out of Mrs Muliaga's nose. Ms Clark said it was intolerable that such heartlessness by a company and a contractor had conveyed a poor and inaccurate image of New Zealand around the world.[8] Former State Owned Enterprises Minister Richard Prebble said it was ironic Prime Minister Clark was attacking Mercury Energy, given that her Government owned it.[9]

Pressure intensified on Mercury Energy when it emerged that the company refused to reconnect the Muliaga's power later on the day of her death, even when told Muliaga had died.[10] Mercury Energy initially insisted it had done nothing wrong. Doug Heffernan, chief executive of Mercury Energy's parent company, Mighty River Power, said the company did not know of Mrs Muliaga's medical condition. Whilst the family had made two recent payments and the date for final payment on the outstanding amount of $168.40 was not until June 13, the family was using more power than the amount of the repayments, meaning they were getting further into debt, he said. Mercury Energy's general manager James Moulder said he felt sure the power supplier was not to blame. "Throughout the 6-7 week process of disconnecting the home, and on the day in question, we were not alerted that there was a person resident dependent on a medical device reliant on electricity," he said.[11]

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[3] 2006 Census of Populations and Dwellings. Available at http://www.stats.govt.nz/census/2006-census-data/regional-summary-tables.htm. Māori are the indigenous people of New Zealand.
[4] Available at http://www.mightyriverpower.co.nz/AboutUs/MercuryEnergy/ Downloaded 5 January 2009.
[5] Mighty River Power Limited, Annual Report 2007, p.28.
[6] "NZ Police probe power cut death", *BBC*, 30 May 2007. Available at http://news.bbc.co.uk/2/hi/asia-pacific/6703395.stm
[7] Dan Eaton, "Power-cut tragedy: The facts", *The Press*, 6 June 2007.
[8] "New Zealand embarrassed and devastated over fatal disconnect – PM", *Radio New Zealand Newswire*, 1 June 2007.
[9] Richard Prebble, "Look to Government over Mercury culture", *New Zealand Herald*, 14 June 2007.
[10] "Lights out at call centre", *Waikato Times*, 6 June 2007.
[11] "Mercury and family disagree over power cut death", *New Zealand Herald*, 30 May 2007.

In the days after Mrs Muliaga's death, Mercury Energy softened its stance, as further details of the case were revealed. Senior management visited the family's home to offer their condolences and a $10,000 cheque to cover funeral expenses.[12] They had been coached by members of their staff in the Samoan custom of *ifoga*, where the wrongdoer appears before the wronged. Dressed in traditional Samoan lava-lavas wrapped around their suits, they were left standing outside the house for more than two hours before being invited in by the family. Inside, the group sat cross-legged on mats in the living room surrounded by Muliaga family members, their eyes lowered as they were addressed by a Samoan high chief. Mr Heffernan told the family: "I hope the pain will pass and that you will be able to get strength from the memories you have of your wife, your mother," whilst Mr Moulder assured the gathering that the company's condolences were sincere. "We are deeply remorseful…Thank you very much for receiving us."[13] Mrs Muliaga's nephew Brenden Sheehan said the family accepted the executives' show of remorse as "human beings", but "as managers of companies, they should be sacked."[14]

Exhibit 2: Mercury Energy makes its apologies

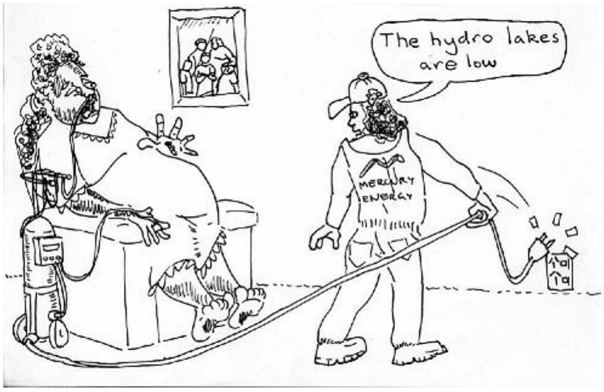
Mighty River Power chief executive, Doug Heffernan (far left) and chairwoman Carole Durbin (second from left) attend the Muliaga home to offer their condolences a $10,000 cheque to cover funeral expenses (Source: *New Zealand Herald*).

The question of who was most to blame for Mrs Muliaga's death became the subject of intense public debate, with several national media outlets running polls. One poll, taken before it became public that that the Muliaga family had sought help from Mercury Energy about their power bill weeks before her death, found that 40 percent of New Zealanders believed the Muliaga family was most to blame.[15] It was argued that Mrs Muliaga was responsible for letting her health deteriorate to the point it had and that her sons should have done more to seek medical attention once they saw her condition worsen after the power was disconnected. In the poll, 22 percent said Mercury Energy was most to blame because it ordered the disconnection, while 5 percent blamed the health system for failing to provide adequate care for Mrs Muliaga. While the public debated whether the Muliaga family or Mercury Energy were most to blame, sections of

[12] "Fine mats, tears and forgiveness", *New Zealand Herald,* 2 June 2007.
[13] "Power bosses kept waiting", *The Dominion Post,* Edition 2, Page 3, 2 June 2007.
[14] "Fine mats, tears and forgiveness", *New Zealand Herald,* 2 June 2007.
[15] "It's more the fault of the family: Poll", *New Zealand Herald*, 26 June 2007.

the media also raised the possibility that the regulatory structure of New Zealand's electricity sector might also have been a key contributor to the tragedy. According to an editorial in New Zealand's largest newspaper, "the contractor who pulled the plug in Mangere Bridge was the last link in a very long chain of policy-setting and decision-making that stretches back to Wellington and, through both Labour and National administrators, to 1984".[16]

Exhibit 3: Comment and protest



Mrs Muliaga's death ignited a public debate about the commercial attitude of state-owned Mercury Energy, as well as the actions of the contractor who disconnected power to the Muliaga home. Source: www.thestandard.org.nz/wp-content/uploads/2008/06/mercury-energy.jpg)

Brenden Sheehan (with megaphone), a relative of Folole Muliaga and spokesman for the family, addresses a public rally protesting at Mercury Energy's actions. (Source: www.scoop.co.nz)

[16] "Muliaga death still a tangle of unanswered questions", *New Zealand Herald*, 10 June 2007.

New Zealand's electricity industry reforms since 1984

Prior to 1984, electricity generation and transmission had been the responsibility of the Ministry of Energy, a government department, which was also responsible for policy advice and regulatory functions. The Ministry of Energy operated New Zealand's hydro-electricity network and its gas and coal-fired stations, as well as maintaining the transmission system that distributed electricity to local power board and councils, which sold it to consumers.

In 1984, the newly-elected Labour Government faced a foreign exchange crisis which provided the catalyst for a series of wide ranging neo-liberal economic reforms which transformed New Zealand from one of the most regulated economies in the OECD to arguably the least regulated. Treasury, the department which advised Government on economic policy, argued the Ministry of Energy was over-staffed and inefficient and suggested a number of market reforms for the sector.[17]

In 1987, the Electricity Corporation of New Zealand (ECNZ) was set up as a company under the State Owned Enterprises Act to own and operate New Zealand's generating stations and the transmission system. Policy and regulatory activities were separated out and largely retained within the Ministry of Energy. Section 4 of the State Owned Enterprises Act 1986 stated that

> "[1] The principal objective of every State Enterprise shall be to operate as a successful business and, to this end, to be –
> [a] as profitable and efficient as comparable businesses that are not owned by the Crown;
> [b] A good employer; and
> [c] An organisation that exhibits the sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so."

An Electricity Task Force was established in 1987 comprising members from government departments, ECNZ and local suppliers to advise the Government on the structure and regulatory environment for the industry. Amongst a series of recommendations made in 1989 was the development of a "light-handed" regulatory regime, which involved the use of the existing competition policy regime (the Commerce Act 1986) to deal with anti-competitive behaviour, together with extensive information disclosure and the threat of further regulation if dominant market players abused their position as a natural monopoly. "Light-handed" regulation was seen as preferable to "heavy-handed" regulation, such as price controls, which were considered complex, costly to administer and not always capable of producing the desired result. By maintaining a light-handed approach, regulations could be kept to a minimum, with additional measures introduced to overcome any weaknesses in the regulatory framework that arose over time.[18]

In 1989 the Ministry of Energy was abolished, with its policy, regulatory and other non-commercial roles transferred to the Ministry of Commerce. The National Government

[17] "Lights out" *The Dominion Post Weekend*, 6 December 2008, p7.
[18] Ministry of Economic Development, "Light-handed regulation of New Zealand's electricity and gas industries", 7 June 2006. Available at www.med.govt.nz

elected in 1990 continued to reform the electricity industry by introducing a range of competitive incentives in an attempt to improve efficiency and effectiveness. Wholesale and retail markets for electricity were created, so that instead of being able to buy electricity from one state-owned monopoly, wholesale customers now had a choice of power suppliers. In the competitive retail market, consumers were given choice from a range of electricity retailers. In 1998, ECNZ was split into four different generation companies – Meridian, Genesis, Mighty River and Contact, the last of which was privatised.

In 1999, the newly-elected Labour Government inherited an electricity industry that was largely self-regulating, with market participants subject to few legislative and government restrictions. Whilst it was Labour that had begun the neo-liberal reforms in 1984, its electoral success in 1999 was based on a pledge to curb the excesses of the free market, especially in the provision of essential services, such as electricity. The following year, the government announced a ministerial inquiry into the electricity industry, with the inquiry panel subsequently supporting the continuation of a light-handed regulatory approach. Government stated that it favoured industry solutions where possible, but signalled its intention to regulate if the industry failed to self-regulate responsibly. In late 2000 it announced a new governance structure for the industry, including a self-governance board. However, by 2003 industry participants had failed to reach agreement on self-governance arrangements, prompting Government to establish an Electricity Commission (EC) to take over governance of the industry.

Whilst the electricity reforms since 1984 had their supporters as well as critics, there was agreement that, for whatever reason, they had largely failed to benefit domestic consumers. In the mid 1990s electricity prices fell for residential, commercial and industrial users, but these gains did not last for residential customers. Between 2000 and 2007 real consumer prices (adjusted for inflation) increased nearly 40 percent, with the different between industrial and commercial prices continuing to increase.[19]

The Electricity Commission and its guidelines for low-income customers

The EC, funded by a levy on electricity companies, was responsible for overseeing the governance and operations of New Zealand's electricity market. The EC's principal objective was to ensure that electricity was produced and delivered to all classes of consumers in an efficient, fair, reliable and environmentally sustainable manner. Consistent with New Zealand's light-handed regulatory approach, the EC had extensive powers to regulate but was expected to use "its power of persuasion and promotion, and provision of information and model arrangements to achieve its objectives rather than recommending regulations and rules".[20] The Commission was governed by an executive chair and four other members appointed by the Minister of Energy.

In July 2005 the EC announced it was considering implementing a set of guidelines to assist low-income domestic consumers to ensure that minimal disconnections occurred, and to establish standards for these disconnections. It was hoped that by introducing guidelines all parties would benefit – retailers' bad debts would be reduced as well as the costs that resulted from enforcing them, social agencies would reduce the money

[19] "Lights out" *The Dominion Post Weekend*, 6 December 2008, p7..
[20] Electricity Commission profile. Available at http://www.electricitycommission.govt.nz/aboutcommission/comprofile

they were advancing to customers struggling to pay their bills and consumers would benefit from a continuous supply of electricity. The EC's preferred approach was "a series of guidelines that electricity retailers should be encouraged to implement…rather than regulation."[21] The EC noted that all retailers had initiatives in place for dealing with low-income customers, but some made more strenuous efforts than others before making a disconnection.

The proposed guidelines drew formal submissions from, amongst others, Contact Energy and Mighty River Power. Contact Energy was concerned that the guidelines would become de facto regulations. Whilst accepting that electricity retailers, such as themselves, had a role to play, they argued that "electricity retailers are first and foremost businesses (as are retailers of other life essentials such as food and clothing)" and additional costs caused by more stringent processes around disconnection would have to be passed on to other customers.[22]

Mighty River Power, parent company of Mercury Energy, supported the objectives of the guidelines but said that retailers already had processes around disconnection and the EC had failed to demonstrate there was a problem with them. Mighty River Power said that while disconnection was considered a "last resort",[23] the ability to disconnect was needed to ensure bad debts did get grow too big and to provide an incentive for bad debtors to pay their bills. Any actions which delayed disconnection would

> "distort the current prioritisation process by sending a very clear signal to low income and vulnerable individuals that electricity should be the last obligation that they should be concerned about."[24]

Both Contact Energy and Mighty River Power preferred guidelines to regulations, but this view was not shared by all who made submissions to the EC. Wellington resident Jim Delahunty argued for "an absolute right of heat and light"[25] and said that State Owned Enterprises should not be allowed to disconnect consumers. With regard to the proposed guidelines, Mr Delahunty concluded that "trying to make private or public capitalists into Mr Nice Guys is a waste of time".[26]

Grey Power, a lobby group for those aged 50+, also favoured regulations, saying electricity retailers might ignore guidelines they found difficult or costly to implement. The only way for the EC to ensure low-income consumers would be protected, they argued, was to regulate.[27]

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[21] Electricity Commission, "Consultation paper: Guidelines to assist low income domestic consumers, June 2005, p.5.
[22] Contact Energy, Submission to Electricity Commission on Guidelines to assist low income domestic consumers, 8 August 2005, p.1.
[23] Mighty River Power, Submission to Electricity Commission on Guidelines to assist low income domestic consumers, 8 August 2005, p.14.
[24] Mighty River Power, Submission to Electricity Commission on Guidelines to assist low income domestic consumers, 8 August 2005, p.5.
[25] Jim Delahunty, Submission to Electricity Commission on Guidelines to assist low income domestic consumers, 1 August 2005, p.1.
[26] Jim Delahunty, Submission to Electricity Commission on Guidelines to assist low income domestic consumers, 1 August 2005, p.1.
[27] Grey Power Federation of New Zealand, Submission to Electricity Commission on Guidelines to assist low income domestic consumers, 2005.

Findings of the Coroner's Inquest into the death of Folole Muliaga

Two weeks after Folole Muliaga's death, Police announced there was no evidence to justify any charge against either Mercury Energy or their contractors, VirCom, and they referred the case to the Coroner. The inquest was conducted by Coroner Gordon Matenga in May 2008 and his report, released in September 2008, concluded that Mrs Muliaga died of an arrhythmia caused by morbid obesity and that "the cessation of oxygen therapy and stress arising from the fact of the disconnection (as opposed to the way in which the power was disconnected) have contributed to her death."[28]

The VirCom contractor escaped blame, with the Coroner accepting that he knew nothing of Mrs Muliaga's medical condition, the oxygen machine or the need for power to keep it operating. The Coroner accepted that had the contractor been aware of the situation, he would have followed the standard procedure and telephoned Mercury Energy to advise them that the power should not be cut off. The contractor had given two examples when he had done this in the past, one case involving children with intellectual disabilities and the other a newborn child.

The Coroner also made a series of findings regarding the medical treatment Mrs Muliaga received from her local health provider, Counties Manukau District Health Board. He was concerned about communication between medical staff and Mrs Muliaga and her family, and investigated the extent to which she and her family knew the seriousness of her condition. The Coroner concluded that her children did not know how sick she was and that they did not know doctors felt resuscitation should not be attempted if she went into cardiac arrest. Counties Manukau District Health Board did not follow its own policy when the decision about the non-resuscitation order was made, since no discussion was held with Mrs Muliaga or her family. A series of recommendations for improving the health board's communication processes were included in the Coroner's report.

The remainder of the Coroner's report concerned the actions of Mercury Energy. The Coroner found that Mercury Energy sent a warning notice to the Muliaga household on 23 April, 2007 whilst Mrs Muliaga was in hospital. Her husband, Lopaavea, called Mercury Energy on 1 May to attempt to pay off the bill at $50 per week. He said his wife, who was the account holder,[29] was in hospital. The Mercury Energy employee who took the call advised Mr Muliaga that because of New Zealand's privacy laws she could not discuss the account with him. She said Mrs Muliaga would have to call back and that the overdue amount would need to be paid in full. The Coroner concluded that Mercury Energy's systems had failed, since the call-taker should have referred the call to her manager, which she did not. Once aware of Mrs Muliaga's health issues, further enquiries should have been made to assess whether the Muliaga family was a vulnerable customer. No such enquiries were made.

Critical to the Coroner's investigation were Mercury Energy's actions leading up to the disconnection being ordered, in relation to the EC's guidelines concerning low-income consumers. The guidelines involved a two-step process: first, the electricity retailer would inform its customers on how to identify themselves as a low-income domestic

[28] Coroner Gordon Matenga, "Findings of the Inquest into the death of Folole Muliaga", Office of the Coroner, 19 September 2008, p.33.
[29] Until her hospitalisation Mrs Muliaga was the sole income earner for her family, working as a teacher.

consumer who would face hardship if the electricity was disconnected. The obligation was then on vulnerable customers to follow the process. At the time of Mrs Muliaga's death, Mercury Energy did have a "Do Not Disconnect List" which included 59 customers with medical conditions, but she was not on the list. Mercury Energy accepted they had not fully complied with the guidelines. Whilst they did assist vulnerable customers who identified themselves, they did not provide information on the process of self identifying as a vulnerable customer. The Coroner concluded that:

> "It is perhaps no surprise that the Muliaga family did not advise Mercury Energy of Mrs Muliaga's medical condition. There is no evidence before me that the Muliaga family was aware that help was available to them."[30]

The Coroner concluded by congratulating Mercury Energy for acknowledging that their previous practices were not compliant with the 2005 guidelines and for voluntarily making changes to their disconnection practices in the weeks following Mrs Muliaga's death. The changes include treating all customers as vulnerable to ensure no one was missed and producing information brochures in six different languages (including Samoan). In addition, it was now routine that customers calling Mercury Energy were asked whether anyone in the household was either vulnerable or medically dependent on electricity.

EC's revised guidelines following the death

In June 2007, as a direct result of the death of Folole Muliaga, the Electricity Commission put out a revised set of guidelines for assisting low-income consumers, which included enhanced processes around disconnections. Whereas the 2005 guidelines were "advisory, in line with its objective to encourage rather than regulate",[31] the 2007 guidelines stated that "retailers must report annually on their level of compliance with the guidelines, and where the guidelines have been deviated from, provide reasons for each type of deviation".[32] This compliance information would be publicly available on the Commission's website.

Despite the tougher stance it had taken, the EC stopped short of imposing regulations. Consistent with the "light-handed" regulatory approach taken since 1984, the Commission's 2007 guidelines threatened regulation in the event that electricity retailers did not respond satisfactorily to the guidelines.

Some commentators, including Sue Bradford, Member of Parliament for the Green Party, believed the guidelines did not go far enough:

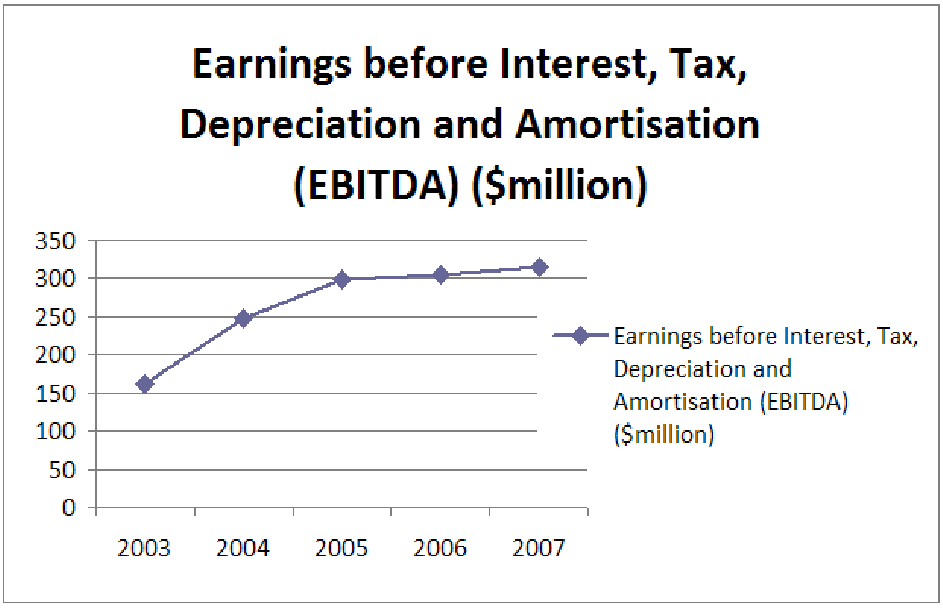
> "In this case it appears that the threat of regulation is considered to be more important that the possible consequence of not doing something more regulatory, leading to the consequence of possible further tragic circumstances.

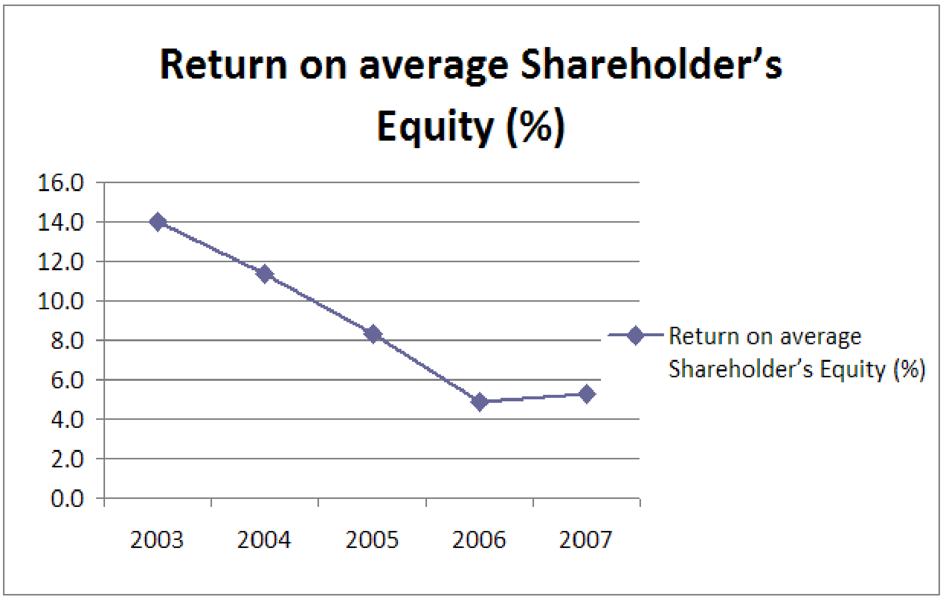
[30] Coroner Gordon Matenga, "Findings of the Inquest into the death of Folole Muliaga", Office of the Coroner, 19 September 2008, p.16.
[31] Electricity Commission, "Guidelines on arrangements to assist low income domestic consumers", June 2005, p.3.
[32] Electricity Commission, "Guidelines on arrangements to assist low income domestic consumers", July 2007, p.3.

> “Effectively, the companies are being slapped on the wrist and told: ‘Don't do it again’, when we have already had codes of responsibility and codes of practice for them that should have stopped them from doing this, but did not.”[33]

[33] Sue Bradford, “Urgent debate: Mercury Energy”, 12 June 2007. Available at http://www.greens.org.nz/node/16885

Exhibit 4: Financial data for Mighty River Power, owners of Mercury Energy[34]:





[34] Mighty River Power Limited, annual Report 2007