

[Date] 2019

To: Transpower New Zealand Limited  
PO Box 1021  
WELLINGTON

**[DRAFT] Notice to supply information to the Commerce Commission under section 53ZD(1)(e) of the Commerce Act 1986 – Cost estimation information**

*Background*

1. In our August 2019 decision and reasons paper for the individual price-quality path that will apply to Transpower New Zealand Limited (**Transpower**) from 1 April 2020, we (the Commerce Commission – the **Commission**) identified that we would issue an information request to **Transpower** under section 53ZD(1) of Commerce Act 1986 (the **Act**) to provide us with information on the variances between cost estimates in a proposal, those in **Transpower's** delivery business case, and the actual costs of **commissioned** projects.<sup>1</sup>
2. We now require this information from **Transpower** under section 53ZD(1)(e) of the **Act** to:
  - 2.1 enable us to investigate and assess the efficiency of **Transpower's** cost estimation process and systems over **RCP2** and **RCP3**; and
  - 2.2 assist our reset of **Transpower's** individual price-quality path for the **regulatory control period** following **RCP3**.
3. The information is to assist us in our cost estimation considerations for the **regulatory control period** following **RCP3**.
4. We note that section 103 of the **Act** provides that no person shall:
  - 4.1 without reasonable excuse, refuse or fail to comply with a notice under section 53ZD of the **Act**;
  - 4.2 in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
  - 4.3 attempt to deceive or knowingly mislead the **Commission** in relation to any matter before it.

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<sup>1</sup> Commerce Commission “Transpower’s individual price-quality path from 1 April 2020 – Decisions and reason paper” (29 August 2019), at [H31] to [H32].

5. It is an offence to contravene section 103 of the **Act** and any person who does so is liable on summary conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in the case of a body corporate.

*Purpose of the Notice*

6. Under section 53ZD(1)(e) of the **Act**, we require **Transpower** to provide us with the information specified in Schedule A.
7. We require the information to:
- 7.1 enable the **Commission** to investigate and monitor the extent to which **Transpower** is improving the efficiency of its cost estimation process; and
  - 7.2 assist our reset under section 53P of the **Act** of **Transpower's** individual price-quality path for the **regulatory control period** following **RCP3**.
8. The information will assist our reset of **Transpower's** individual price-quality path by providing a clearer picture of **Transpower's** actual costs that will comprise the individual price-quality path.

*Place, date and format of responses*

9. **Transpower** must produce the information specified in Schedule A and the certificate specified in Schedule B by:
- 9.1 supplying the information and certification directly to the **Commission** by email to [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz) (Attention: Manager Price-Quality Regulation), with the subject line "Transpower – Response to section 53ZD Notice – Cost estimation: Issued November 2019"); or
  - 9.2 making the information and certification publicly available on **Transpower's** website, and notifying the **Commission** that it has done so, by no later than 4.30pm on the day that is 105 **working days** from the following dates:
    - 9.2.1 30 June 2020, in relation to the **completed capex programmes** completed in **RCP2**;
    - 9.2.2 30 June 2021, in relation of **completed capex projects** completed during the **disclosure year** 1 July 2020 to 30 June 2021;
    - 9.2.3 30 June 2022, in relation of **completed capex projects** completed during the **disclosure year** 1 July 2021 to 30 June 2022;
    - 9.2.4 30 June 2023, in relation of **completed capex projects** completed during the **disclosure year** 1 July 2022 to 30 June 2023;
    - 9.2.5 30 June 2024, in relation of **completed capex projects** completed during the **disclosure year** 1 July 2023 to 30 June 2024;
    - 9.2.6 30 June 2025, in relation of **completed capex projects** completed during the **disclosure year** 1 July 2024 to 30 June 2025; and

9.2.7 30 June 2025, in relation to the **completed capex programmes** completed in **RCP3**.

10. Narrative information is to be provided or published in Adobe PDF format. Numerical information is to be provided or published in electronic form in MS Excel file format.
11. The **Commission** may, at its absolute discretion, on **Transpower's** application, grant **Transpower** an extension to the time limits set out in clause 9.2 of this notice.
12. For the purposes of clause 11:
  - 12.1 where Transpower applies for an extension, its application must:
    - 12.1.1 explain why **Transpower** considers that an extension to the time limit is reasonably justified having regard to the circumstances; and
    - 12.1.2 be made no later than 15 **working days** before the applicable time limit is due to expire; and
  - 12.2 in circumstances where the **Commission** decides to grant **Transpower** an extension:
    - 12.2.1 the extension shall be effected by giving or posting notice of the extension to **Transpower**; and
    - 12.2.2 the notice effecting the extension must specify the period of the extension and the reasons for the extension.

*CEO's certificate*

13. Subject to clauses 11-12, for the last **disclosure year** of **RCP2** and for each **disclosure year** of **RCP3**, **Transpower** must provide to the **Commission** a **CEO's certificate** in respect of the information required under this notice in the relevant **disclosure year**, by the day that is 105 **working days** from the end of the relevant **disclosure year**.

*Interpretation*

14. In this notice, unless the context otherwise requires—
  - 14.1 terms used in this notice that are defined in the **Transpower IM Determination** or the **Capex IM Determination** but not in this notice have the meaning given in the **Transpower IM Determination** or **Capex IM Determination**, as applicable.
  - 14.2 financial items must be measured and disclosed in accordance with GAAP, unless otherwise required by this notice, the IM Determination or the **Capex IM Determination**.
  - 14.3 non-financial items must be measured and disclosed in accordance with standard industry practice unless otherwise required in this notice, the **Transpower IM Determination** or the **Capex IM Determination**.
  - 14.4 a word which denotes the singular also denotes the plural and vice versa.
  - 14.5 words in **bold** type have the following meanings:

- 14.5.1 **base capex project** has the same meaning as defined in the **Capex IM Determination**;
- 14.5.2 **base capex programme** has the same meaning as defined in the **Capex IM Determination**;
- 14.5.3 **Capex IM Determination** means *Transpower Capital Expenditure Input Methodology Determination [2012] NZCC 2*;
- 14.5.4 **CEO's certificate** means a certificate signed by the chief executive of **Transpower** in respect of the information required under this notice, in the form specified at Schedule B of this notice;
- 14.5.5 **commissioned** has the same meaning as defined in the **Transpower IM Determination**;
- 14.5.6 **completed capex project** means:
- (a) a **base capex project** (including **listed projects commissioned** in **RCP2** or in **RCP3**) completed in **RCP3**, for which the estimated cost was greater than \$5 million; or
  - (b) a **major capex project** completed in **RCP3**;
- 14.5.7 **completed capex programme** means a volumetric **base capex programme** where the estimated cost was greater than \$20 million over the relevant **regulatory control period**.
- 14.5.8 **delivery business case cost estimate** means, in relation to a **project**, the estimate of the cost included in **Transpower's** business case that was used to seek approval to proceed with the implementation and construction phases of that **project**;
- 14.5.9 **disclosure year** has the same meaning as defined in the **Transpower IM Determination**;
- 14.5.10 **listed project** has the same meaning as defined in the **Capex IM Determination**;
- 14.5.11 **major capex project** has the same meaning as defined in the **Capex IM Determination**;
- 14.5.12 **programme** has the same meaning as defined in the **Capex IM Determination**;
- 14.5.13 **project** has the same meaning as defined in the **Capex IM Determination**;
- 14.5.14 **proposal cost estimate** means, in relation to a **project**:
- (c) the expected cost **Transpower** initially proposed in its **RCP3** proposal for that **project** or **programme**;
  - (d) in its **listed project** application for that **project**; or

- (e) in the **major capex proposal** for that project, whichever is relevant;
- 14.5.15 **RCP2** means the regulatory period prior to **RCP3**, being the period from 1 April 2015 to 31 March 2020, provided that references to the final disclosure year in **RCP2** means the disclosure year ending on 30 June 2020; and
- 14.5.16 **RCP3** means the regulatory period from 1 April 2020 to 31 March 2025, provided that references to the final disclosure year in **RCP3** means the **disclosure year** ending on 30 June 2025; and
- 14.5.17 **regulatory control period** has the same meaning as defined in the **Transpower IM Determination**; and
- 14.5.18 **Transpower IM Determination** means *Transpower Input Methodologies Determination* [2012] NZCC 17.

*Use of supplied information and confidentiality*

15. If **Transpower** considers that, for confidentiality reasons, the **Commission** should not publish or publicly refer to any particular part of **Transpower's** response, **Transpower** must:
- 1.2 specify the relevant part of the information and provide it to the **Commission**; and
  - 1.3 give clear reasons why **Transpower** considers that part of the information is confidential.
16. If **Transpower** indicates that we should not publish or publicly refer to part of its response, we will discuss this with **Transpower** before deciding whether to do so.
17. Where information is not publicly disclosed by **Transpower**, it must provide an unredacted version of the information to the **Commission** at the following email address: regulation.branch@comcom.govt.nz (Attention: Manager Price-Quality Regulation) at the same time the redacted version of the report is published on **Transpower's** website.
18. Please note that all responses we receive, including any parts that we decide not to publish, can be requested from the **Commission** under the Official Information Act 1982. This means that, if requested, we would be required to release material (whether published or not) unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult before releasing any material that **Transpower** requests not to be published.

Dated at Wellington: [XX XXXX] 2019

Signed by:

[XXXX]  
Deputy Chair



## Schedule A: Information required

*Transpower is to produce information on variances between cost estimates in a proposal, those in the delivery business case, and the actual costs of commissioned projects*

A1. **Transpower** must produce the following information:

A1.1 in relation to each **completed capex project** that is completed during **RCP3**:

A1.1.1 the variances between the cost estimate in the proposal document,<sup>2</sup> the **delivery business case cost estimate**, and the actual costs, for each **completed capex project** that is:

- (a) a **base capex project** included in **Transpower's** capital expenditure proposal for its **base capex** for **RCP3**, and for which assets were **commissioned** during **RCP3**;
- (b) a **listed project** for which assets were **commissioned** during **RCP2** or **RCP3**; or
- (c) a **major capex project** for which assets were **commissioned** during **RCP2** or **RCP3**.

A1.1.2 a print-out of **Transpower's** Enterprise Estimating System cost report for the **proposal cost estimate** and **delivery business case cost estimate** phases of each **completed capex project** included in A1.1.1(a) to (c) above; and

A1.1.3 where the variance for a **completed capex project** in A1.1.1(a) to (c) above, between the **proposal cost estimate** and the **delivery business case cost estimate**, exceeds 30%, a detailed narrative explaining the reasons for the cost variance.

A1.2 in relation to **completed capex programmes** for which assets were **commissioned** during **RCP2** or **RCP3**:

A1.2.1 the variance between the cost estimate of each **completed capex programme** in the applicable individual price-quality path proposal and the actual cost of the **completed capex programme** at the end of **RCP2** or at the end of **RCP3**;

A1.2.2 where the variance for a **completed capex programme** between the **completed capex programme's** cost estimate and the actual cost of the **completed capex programme** at the end of **RCP2** or at the end of **RCP3** is greater than 20%, a detailed narrative explaining the reasons for the cost variance.

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<sup>2</sup> 'Cost estimate in the proposal document' is the cost estimate included in the **base capex proposal** or in the **major capex** or **listed project** applications to the **Commission**, whichever is applicable to the **completed capex project**.

## **Schedule B: Certification of Information**

**Transpower** must provide the **Commission** with CEO certification for the information provided in response to this notice in the format set out below:

### **CEO Certificate**

I, [insert full name of CEO], being the Chief Executive Officer of Transpower New Zealand Limited (Transpower) certify that, having made all reasonable enquiry, to the best of my knowledge and belief, the attached information, dated [insert date], complies in all material respects with the Commerce Commission's cost estimation information requirements, which were issued by notice in writing to Transpower under section 53ZD of the Commerce Act 1986 on [insert date]\*[except in the following respects:].

\*[insert description of non-compliance if applicable]

[Signature of CEO]

[Date]

\*Delete if inapplicable.