

31 May 2022

To: Powerco Limited
Level 2 Npdc Civic Centre
84 Liardet Street
New Plymouth
4310

Notice to supply information to the Commerce Commission under section 53N of the Commerce Act 1986 – Compliance statements for the third regulatory period (01 October 2022 to 30 September 2026)

Background

1. The Gas Distribution Services Default Price-Quality Path Determination 2022 (PQ Determination) published on 31 May 2022 will apply to Powerco Limited (Powerco) for the period from 1 October 2022 to 30 September 2026. The PQ Determination requires Powerco to comply with the price path and quality standards specified in the PQ Determination.
2. Section 53N of the Commerce Act 1986 (Act) empowers the Commerce Commission (Commission) to issue a written notice to a regulated supplier requiring it to supply a range of information for the purpose of monitoring compliance with a price-quality path.

Purpose of this notice

3. The purpose of this notice is to require Powerco to provide information to the Commission periodically on Powerco's compliance with its price path and quality standards (and any instances of non-compliance) in the PQ Determination. This information is required as part of the Commission's monitoring of Powerco's compliance with the price-quality paths in the PQ Determination.
4. We require Powerco, under s 53N(a), (b), (c), and (d) of the Act, to provide the information set out in Attachment A of this notice.

Timeframes for responding to this notice

5. Powerco must supply the annually required information in paragraph A3 of Attachment A by 31 March.

Exemptions

6. The Commission may, at any time, by way of written notice to Powerco:
 - 6.1 exempt Powerco from any obligation in this notice, on such terms and conditions as the Commission specifies in the notice; and
 - 6.2 amend or revoke any such exemption.

Means of responding to this notice

7. Powerco must provide the Commission with the information required by sending it by email to infrastructure.branch@comcom.govt.nz (Attention: Manager, Transpower and Gas) with the subject line "Powerco – Response to section 53N Notice – Compliance statements for the third regulatory period".

Use of supplied information and confidentiality

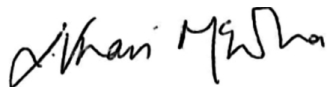
8. If Powerco considers that any information it provides to the Commission in response to this notice is confidential or commercially sensitive, and that the Commission should not publish or publicly refer to any particular part of Powerco's response, Powerco must:
 - 8.1 provide that information in a separate appendix;
 - 8.2 provide both an unredacted version and a redacted version with the confidential/commercially sensitive information removed;
 - 8.3 clearly mark the information as confidential or commercially sensitive (as applicable) in the unredacted version; and
 - 8.4 for each redaction of information provide reasons why Powerco considers that part or all of the response is confidential or commercially sensitive (as applicable) and why the Commission should not publish or publicly refer to it.
9. If Powerco indicates that we should not publish or publicly refer to part of its response, we will discuss with Powerco before deciding whether to do so.
10. Please note that all responses we receive, including any parts thereof 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 Powerco before releasing any material that Powerco has requested to not be published.

Offences under section 103 of the Commerce Act 1986

11. Section 103 of the Commerce Act provides that no person shall:
 - 11.1 without reasonable excuse, refuse or fail to comply with a notice under section 53N of the Act;
 - 11.2 in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
 - 11.3 attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
12. It is an offence to contravene s 103 of the Commerce Act and any person who does so is liable on conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

Dated at Wellington: 31 May 2022

Signed by:

A handwritten signature in black ink, appearing to read 'Vhari McWha', written in a cursive style.

Vhari McWha
Associate Commissioner

Attachment A Information required

- A1 Under section 53N(a), (b), (c) and (d) of the **Act**, **Powerco** must provide the information in paragraphs A3 to A10 of this Attachment.
- A2 In this Attachment , unless the context requires otherwise,—
- A2.1 terms used in this notice that are defined in the **IM Determination** or the **PQ Determination** (as applicable) but not in this notice have the same meanings as in the **IM Determination** or the **PQ Determination** (as applicable);
- A2.2 a word which denotes the singular also denotes the plural and vice versa;
- A2.3 any reference to “includes” means “includes, but is not limited to”; and
- A2.4 words or phrases in bold type have the following meanings:

A

Act	means the Commerce Act 1986;
Allowable Notional Revenue	means as calculated in accordance with clause 8.4(b) of the PQ Determination ;
Amalgamate	has the same meaning as in clause 1.1.4 of the IM Determination ;
Assessment Period	means a 12-month period commencing 1 October and ending on 30 September of the following year;
Auditor	means a person who: <ul style="list-style-type: none"> (a) is qualified for appointment as an auditor of a company under the Companies Act 1993 or, where the Powerco is a public entity (as defined in section 4 of the Public Audit Act 2001), is the Auditor-General; (b) has no relationship with, or interest in Powerco that is

likely to involve the person in a conflict of interest;

- (c) has not assisted with the preparation of the **Compliance Statement** or provided advice or opinions (other than in relation to audit reports) on the methodologies or processes used in preparing the **Compliance Statement**;
- (d) is not associated with nor directed by any person mentioned in (c) above;
- (e) has the necessary expertise to properly prepare the assurance report required by paragraph A3(d); but
- (f) need not be the same person as the person who audits **Powerco's** accounts for any other purpose;

C

Consumer	has the same meaning as in clause 1.1.4 of the IM Determination ;
Consumer Group	means the category of consumer used by Powerco to set a Price ;
Control	means the acquisition of rights similar to ownership, such as a long-term lease;
Commission	means the Commerce Commission as defined in section 2 of the Act ;
Compliance Statement	means the written annual statement required to be made by a Powerco under paragraph A3;

D**Director**

has the same meaning as in clause 1.1.4 of the **IM Determination**;

E**Emergency**

means:

- (a) an unplanned escape or ignition of gas that requires the active involvement of any emergency service (eg, fire service, ambulance);
- (b) an unplanned disruption in the supply of gas that affects more than five installation control points; or
- (c) an evacuation of a premises as the result of escape or ignition of gas;

G**Gas Distribution Services**

has the same meaning as in clause 1.1.4 of the **IM Determination**;

Powerco

means Powerco Limited or any subsidiary or successor to that company;

GDB

has the same meaning as in clause 1.1.4 of the **IM Determination** and save where the context requires otherwise, means **Powerco**;

I**IM Determination**

means the *Gas Distribution Services Input Methodologies determination 2012* as at the date of this notice;

ISAE (NZ) 3000

means the *International Standard on Assurance Engagements (New*

Zealand) 3000 (Revised), Assurance Engagements Other than Audits or Reviews of Historical Financial Information, issued by the New Zealand Auditing and Assurance Standards Board of the External Reporting Board in July 2014 and incorporating amendments up to the date of this notice under s 12(b) of the Financial Reporting Act 2013;

M

Major Transaction

has the same meaning as in clause 1.1.4 of the **IM Determination**;

Merger

means a transaction, other than an **Amalgamation**, whereby a **GDB** directly or indirectly:

- (a) acquires ownership or **Control** of all or substantially all of the assets of another **GDB**; or
- (b) acquires ownership or **Control** of another **GDB** by acquiring all of its share capital;

N

Notional Revenue

means as calculated in accordance with clause 8.4(a) of the **PQ Determination**;

P

Pass-through Cost

has the same meaning as in clause 1.1.4 of the **IM Determination**, and is determined in accordance with Schedule 5 of the **PQ Determination**;

Person

has the same meaning as in clause 1.1.4 of the **IM Determination**;

Price	has the same meaning as in clause 1.1.4 of the IM Determination ;
PQ Determination	means the <i>Gas Distribution Services Default Price-Quality Path determination 2022</i> [2022] NZCC 19, made on 31 May 2022;
Q	
Quantities	has the same meaning as in clause 1.1.4 of the IM Determination ;
R	
Recoverable Cost	has the same meaning as in clause 1.1.4 of the IM Determination , and is determined in accordance with Schedule 5 of the PQ Determination ;
Regulatory Period	has the same meaning as in clause 1.1.4 of the IM Determination ;
Restructure of Prices	includes any change in the allocation of connections to Consumer Groups by Powerco , the introduction of a new Consumer Group , or any change in Prices , but excludes: <ul style="list-style-type: none"> (a) a change to the value of a Price applicable to an existing Consumer Group; or (b) the movement of connections between existing Consumer Groups at the request of the Consumer or retailer;
RTE	means ‘response time to emergencies’, being the time between when an Emergency is reported to a Powerco representative and when Powerco’s personnel arrive at the location of the Emergency ;

S

SAE 3100

means the *Standard on Assurance Engagements 3100 (Revised) – Assurance Engagements on Compliance*, issued by the External Reporting Board in March 2017 and incorporating amendments up to the date of this notice under s 12(b) of the Financial Reporting Act 2013.

T

Transfer

means a transaction, other than an **Amalgamation** or **Merger**, whereby a **GDB** directly or indirectly transfers assets to another **Person** and **Consumers** are acquired by or no longer supplied by a **GDB** as a result of the asset transfer; and

W

Working Day

has the same meaning as in clause 1.1.4 of the **IM Determination**

Annual Compliance Statement

- A3 **Powerco** must, by 31 March following the end of an **Assessment Period**, provide to the **Commission** a written annual statement for that **Assessment Period** (the relevant **Assessment Period**) including:
- (a) the information in paragraphs A5, A6, A7 and A8;
 - (b) schedules reflecting relevant **Price** and **Quantities** disclosed in an electronic format that is compatible with Microsoft Excel;
 - (c) a certificate in the form provided under paragraph A9, signed by at least one **Director** of **Powerco**; and
 - (d) an assurance report meeting the requirements in paragraph A10 in respect of all information required by this notice.

- A4 For the purposes of paragraph A3, the **Assessment Periods** for which annual **Compliance Statements** are required, are the **Assessment Periods** beginning 1 October 2022, 1 October 2023, 1 October 2024 and 1 October 2025.
- A5 The annual **Compliance Statement** must—
- (a) state whether **Powerco** has:
 - (i) complied with the price path in clause 8 of the **PQ Determination** for the relevant **Assessment Period**;
 - (ii) complied with the quality standards in clause 9 of the **PQ Determination** for the relevant **Assessment Period**; and
 - (iii) implemented a **Restructure of Prices** during the relevant **Assessment Period**; and
 - (b) state the date on which the **Compliance Statement** was prepared.
- A6 The annual **Compliance Statement** must include any information reasonably necessary to demonstrate whether **Powerco** has, during the relevant **Assessment Period**, complied with:
- (a) the price path in clause 8 of the **PQ Determination**, including but not limited to:
 - (i) the amount of **Allowable Notional Revenue**, the amount of **Notional Revenue, Prices, Quantities**, units of measurement associated with all numeric data, and other relevant data, information and calculations;
 - (ii) the amounts of **Pass-through Costs** and **Recoverable Costs** that were used to calculate **Allowable Notional Revenue** and **Notional Revenue**, and supporting data, information, and calculations used to determine those amounts, including when each **Pass-through Cost** and **Recoverable Cost** amount was paid, and the period to which those costs relate;
 - (iii) if **Powerco** has not complied with the price path, the reasons for non-compliance; and
 - (iv) if **Powerco** has not complied with the price path, actions taken to mitigate any non-compliance and to prevent similar non-compliance in future **Assessment Periods**, including **Assessment Periods** associated with future **Regulatory Periods**;
 - (b) the quality standards in clause 9 of the **PQ Determination**, including but not limited to:

- (i) relevant incident data and calculations;
- (ii) a description of the policies and procedures **Powerco** has used for recording the **RTE** statistics for the relevant **Assessment Period**;
- (iii) a list of all **Emergencies** in respect of which the **Commission** has determined that **Powerco** can treat the **RTE** of the **Emergency** as having complied with the quality standard, and any requests under clause 9.2 of the **PQ Determination** that are pending a decision by the **Commission**;
- (iv) if **Powerco** has not complied with a quality standard, the reasons for not meeting the quality standard;
- (v) if **Powerco** has not complied with a quality standard, the actions taken to mitigate any non-compliance and to prevent similar non-compliance in future **Assessment Periods**, including **Assessment Periods** associated with future **Regulatory Periods**; and
- (vi) where a quality standard has not been met, for each **Emergency** which exceeded the **RTE** for that quality standard, a description of the **Emergency**, including the nature, cause, and location of the **Emergency** and the number of **Consumers** affected.

A7 If **Powerco**, implemented a **Restructure of Prices**, that first applied during the relevant **Assessment Period**, the immediately preceding **Assessment Period**, or in both **Assessment Periods**, the annual **Compliance Statement** must:

- (a) state the nature of each **Restructure of Prices** and identify the **Consumer Groups** impacted by such **Restructure of Prices**; and
- (b) if **Powerco** has derived **Quantities** under clause 8.8 of the **PQ Determination** for the purposes of calculating **Notional Revenue** and/or **Allowable Notional Revenue** for the relevant **Assessment Period**, include:
 - (i) the methodology used to derive the **Quantities** in place of the actual **Quantities** that correspond to each restructured **Price**;
 - (ii) the derived **Quantities** corresponding to each restructured **Price** determined by **Powerco** for the relevant **Assessment Period**, and the actual **Quantities**; and
 - (iii) an explanation for any differences between the actual **Quantities** and the derived **Quantities**.

A8 If **Powerco** participated in an **Amalgamation, Merger, Transfer, or Major Transaction** during a relevant **Assessment Period**, the annual **Compliance Statement** for that **Assessment Period** must:

- (a) state whether **Powerco** has complied with clauses 10.3, 10.4 and 10.5 of the **PQ Determination**;
- (b) include any information or calculations that are reasonably required to demonstrate compliance with clauses 10.3, 10.4 and 10.5 of the **PQ Determination**; and
- (c) if **Powerco** has not complied with clauses 10.3, 10.4 or 10.5 of the **PQ Determination** in any respects, identify how it has failed to comply and state the reasons for the non-compliance.

*Form of Director's certificate for annual **Compliance Statement***

A9 The **Director's** certificate referenced at paragraph A3(c) must take the following form:

I/We, *[insert full name/s]*, being director/s of Powerco Limited certify that, having made all reasonable enquiries, to the best of my/our knowledge and belief, the attached price path compliance statement of Powerco, and related information, prepared for the purposes of the *Gas Distribution Services Default Price-Quality Path determination 2022*, has been prepared in accordance with all the relevant requirements**[except in the following respects]*.

**[insert description of non-compliance]*

[Signatures of Director(s)]

[Date]

*Delete if inapplicable.

*Form of Auditor's report on annual **Compliance Statement***

A10 For the purposes of paragraph A3(d), **Powerco** must procure an assurance report by an **Auditor** in respect of the annual **Compliance Statement** that is prepared in accordance with SAE 3100 and ISAE (NZ) 3000, signed by the **Auditor** (either in their own name or that of their firm), and that—

- (a) is addressed to the **Directors** of **Powerco** and to the Commission as the intended users of the assurance report;
- (b) states—
 - (i) that it has been prepared in accordance with **SAE 3100** and **ISAE (NZ) 3000**;

- (ii) the work done by the **Auditor**;
 - (iii) the scope and limitations of the assurance engagement;
 - (iv) the existence of any relationship (other than that of auditor) which the **Auditor** has with, or any interests which the **Auditor** has in, **Powerco** or any of its **Interconnected Bodies Corporate**;
 - (v) whether the **Auditor** has obtained sufficient recorded evidence and explanations that he or she required and, if not, the information and explanations not obtained; and
 - (vi) whether, in the **Auditor's** opinion, as far as appears from an examination, the information used in the preparation of the **Compliance Statement** has been properly extracted from **Powerco's** accounting and other records, sourced from its financial and non-financial systems; and
- (c) states whether (and if not, the respects in which it has not), in the **Auditor's** opinion, **Powerco** has complied, in all material respects, with the **PQ Determination** in preparing the annual **Compliance Statement**.