

[Date] 2019

To: Transpower New Zealand Limited

PO Box 1021

WELLINGTON

[DRAFT] Notice to supply information to the Commerce Commission under section 53ZD(1)(d), (e) and (f) of the Commerce Act 1986 – Customer consultation 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 regarding **customer** consultation.
2. We now require this information from **Transpower** under section 53ZD(1)(d), (e) and (f) of the **Act**, specifically:¹
 - 2.1 under section 53ZD(1)(d) of the **Act**, to prepare and produce a customer engagement plan for **RCP3 (customer engagement plan)**;
 - 2.2 under section 53ZD(1)(e) of the **Act**, to supply information annually on the extent and effectiveness of its consultation in relation to how it intends to spend its **base capex** in each **disclosure year** of **RCP3 (consultation information)**;
 - 2.3 under section 53ZD(1)(e) of the **Act**, to produce an annual report each **disclosure year** of **RCP3** on post-project reviews for **significant capex projects (post-project reviews)** (the **review report**);
 - 2.4 under section 53ZD(1)(f) of the **Act**, midway through **RCP3**, obtain and provide an opinion from an **independent expert** on its proposed customer engagement process leading up to its **RCP4** proposal (**expert opinion**); and

¹ Commerce Commission “Transpower’s individual price-quality path from 1 April 2020 – Decisions and reason paper” (29 August 2019), at [K7] to [K8].

- 2.5 under section 53ZD(1)(e) of the **Act**, to produce a report summarising the **post-interruption survey results** of affected **customers** to assist our investigation into the timeliness of **Transpower's** information provision following an **interruption (post-interruption survey report)**.²
3. The detailed requirements for the **customer engagement plan, consultation information, post-project reviews, expert opinion, and post-interruption survey results** are specified at Schedule A of this notice.
4. The information is to improve our understanding of **Transpower's customer** engagement during **RCP3** and to give us confidence in the evaluation process for **RCP4**.
5. We note that section 103 of the **Act** provides that no person shall:
- 5.1 without reasonable excuse, refuse or fail to comply with a notice under section 53ZD of the **Act**;
- 5.2 in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
- 5.3 attempt to deceive or knowingly mislead the **Commission** in relation to any matter before it.
6. 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

7. Under section 53ZD(1)(d), (e) and (f) of the **Act**, we require that Transpower provide us with the information specified in Schedule A.
8. We require this information to assist our function under section 53P of the **Act** of resetting of **Transpower's** individual price-quality path for **RCP4**. Specifically, the information on the effectiveness of **Transpower's customer** engagement, its consultation, and the information **Transpower** provides to **customers** following an **interruption** will help us to set an individual price-quality path that better incentivises **Transpower** to provide services at a quality that reflects consumer demands.

Date, place and format of responses

9. **Transpower** must supply its proposed high-level scope (**high-level scope**) for the **customer engagement plan** by 15 May 2020. The **Commission** will provide any comments to **Transpower** on the **high-level scope** by 1 July 2020.
10. **Transpower** must supply the **customer engagement plan** no later than 105 **working days** from the end of the final **disclosure year** of **RCP2**.

² Above n 1, at Table F2.

11. Each **disclosure year** of **RCP3, Transpower** must supply the **consultation information** no later than 105 **working days** from the end of the **disclosure year** to which the **consultation information** relates.
12. **Transpower** must supply the **expert opinion** no later than 105 **working days** from the **disclosure year** ending 30 June 2022.
13. Each **disclosure year** of **RCP3, Transpower** must supply a **review report** on all **post-project reviews** completed no later than 105 **working days** from the end of the **disclosure year** to which the **review report** relates.
14. Each **disclosure year** of **RCP3, Transpower** must provide the **post-interruption survey report** no later than 105 **working days** from the end of the **disclosure year** to which the **post-interruption survey report** relates.
15. The **Commission** may, at its absolute discretion, on **Transpower's** application, grant **Transpower** an extension to the time limits set out in clauses 10 to 14 of this notice.
16. For the purposes of clause 15:
 - 16.1 where **Transpower** applies for an extension, its application must:
 - 16.1.1 explain why **Transpower** considers that an extension to the time limit is reasonably justified having regard to the circumstances; and
 - 16.1.2 be made no later than 15 **working days** before the applicable time limit is due to expire; and
 - 16.2 in circumstances where the **Commission** decides to grant **Transpower** an extension:
 - 16.2.1 the extension shall be effected by giving or posting notice of the extension to **Transpower**; and
 - 16.2.2 the notice effecting the extension must specify the period of the extension and the reasons for the extension.
17. **Transpower** must provide the **Commission** with the information required under this notice by either supplying the information directly to the **Commission**, or by making the information publicly available on **Transpower's** website, and by notifying the **Commission** that it has done so.
18. Where information must be supplied, or where notice must be given to the **Commission**, this must be done by no later than 4:30pm on the date specified.
19. Where **Transpower** is required to provide information to, or notify, the **Commission**, it must do so by email to regulation.branch@comcom.govt.nz (Attention: Manager Price-Quality Regulation), with the subject line "Transpower- Response to section 53ZD Notice – Customer consultation: Issued November 2019".

Directors' certificate

20. Subject to clauses 15-16, for each **disclosure year** of **RCP3**, **Transpower** must provide to the **Commission** a **directors' certificate** in respect of the information required under this notice in the relevant **disclosure year**, no later than 105 **working days** from the end of the relevant **disclosure year**.
21. Clause 20 does not apply in respect of the **expert opinion** and the proposed **high-level scope**.
22. **Transpower** may combine the **directors' certificate** with the equivalent certification required for:
 - 22.1 the **annual compliance statement**; and
 - 22.2 the **Commission's** s 53ZD Notice – Requirements for asset health and risk modelling information: Issued November 2019.

Interpretation

23. Unless the context otherwise requires—
 - 23.1 terms used in this notice that are defined in the **Transpower IM Determination**, the **Capex IM Determination**, or the **IPP determination**, but not in this notice have the meaning given in the **IM Determination**, **Capex IM Determination** or **IPP determination** as applicable;
 - 23.2 a word which denotes the singular also denotes the plural and vice versa;
 - 23.3 **annual compliance statement** has the meaning specified in the **IPP determination**;
 - 23.4 **base capex** has the same meaning as defined in the **Capex IM Determination**;
 - 23.5 **base capex project** has the same meaning as defined in the **Capex IM Determination**;
 - 23.6 **Capex IM Determination** means *Transpower Capital Expenditure Input Methodology Determination [2012] NZCC 2*;
 - 23.7 **consultation information** means the information required under clause A3 of Schedule A of this notice;
 - 23.8 **customer** has the same meaning as defined in the **IPP determination**;
 - 23.9 **customer engagement plan** means the plan required under clause A2 of Schedule A of this notice;
 - 23.10 **directors' certificate** means a certificate signed by two directors of **Transpower** in respect of the information required under this notice, in the form specified at Schedule B of this notice, except that **Transpower** may modify the form in Schedule B to combine it with the equivalent certification for the **annual compliance statement** and the **Commission's** s 53ZD Notice – Requirements for asset health and risk modelling information: Issued November 2019;

- 23.11 **disclosure year** has the same meaning as defined in the **Transpower IM Determination**;
- 23.12 **expert opinion** means the expert opinion required under clause A5 of Schedule A of this notice;
- 23.13 **high-level scope** means the scoping document (for the **customer engagement plan**) that meets the requirements of clause AA1 of Schedule A of this notice;
- 23.14 **independent expert** means a person who-
- 23.14.1 has no relationship with, or interest in, **Transpower** that is likely to involve a conflict of interest between his, her or its duties to **Transpower** and his, her or its duties to the **Commission**;
- 23.14.2 possesses expertise in the field of **customer** engagement; and
- 23.15 **interruption** has the same meaning as defined in the **IPP Determination**;
- 23.16 **IPP determination** means the *Transpower Individual Price-Quality Path Determination* 2020 [2019] NZCC XX;
- 23.17 **listed project** has the same meaning as defined in the **Capex IM Determination**;
- 23.18 **major capex project** has the same meaning as defined in the **Capex IM Determination**;
- 23.19 **post-interruption survey report** means the report required under clause A6 of Schedule A of this notice;
- 23.20 **post-project review** means a review of a **significant capex project** which must include an assessment of the extent to which the **significant capex project** met the relevant measures of success established by **Transpower** prior to starting that **significant capex project**;
- 23.21 **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;
- 23.22 **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;
- 23.23 **RCP4** means the regulatory period following **RCP3**;
- 23.24 **significant capex project** means a capital expenditure project that required approval from **Transpower's** Board to proceed;
- 23.25 **Transpower IM Determination** means the *Transpower Input Methodologies Determination* [2012] NZCC 17;
- 23.26 **transmission alternative** has the same meaning as defined in the **Transpower IM Determination**;

23.27 **unplanned interruption** has the same meaning as defined in the **IPP determination**; and

23.28 **working days** is defined in the Commerce Act 1986.

Use of supplied information and confidentiality

24. If **Transpower** considers that, for confidentiality reasons, the **Commission** should not publish or publicly refer to any particular part of **Transpower's** response to this notice, **Transpower** must:
- 24.1 specify the relevant part of the response; and
 - 24.2 give clear reasons why **Transpower** considers that part of the response is confidential.
25. If **Transpower** indicates that we should not publish or publicly refer to part of its response, we will discuss with **Transpower** before deciding whether or not to do so.
26. Where information is not publicly disclosed by **Transpower**, it must provide an unredacted version of the report 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.
27. However, please note that all responses we receive, including any parts that we decide not to publish, can be requested 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]

Commissioner

Schedule A: Information required

Transpower to produce high-level scope and customer engagement plan

- A1 **Transpower** must produce a proposed **high-level scope** for a **customer engagement plan**, which identifies:
- A1.1 the business objective or objectives that are to be advanced;
 - A1.2 the **customer** communications/engagement objectives that support the business objectives;
 - A1.3 the success measures for each objective; and
 - A1.4 the expected timeframes and processes for the **customer** consultations **Transpower** intends to conduct during **RCP3**.
- A2 **Transpower** must produce a **customer engagement plan** that:
- A2.1 sets out how **Transpower** intends to:
 - A2.1.1 engage with **customers** on their preferences regarding price-quality trade-offs during **RCP3**; and
 - A2.1.2 take into account **customer** preferences in making asset management, planning and investment decisions during **RCP3**;
 - A2.2 explains the reasons for any material departures from:
 - A2.2.1 the **high-level scope**; and
 - A2.2.2 any feedback the **Commission** provides to **Transpower** on the **high-level scope**.

Consultation information each disclosure year

- A3 Each **disclosure year** of **RCP3**, **Transpower** must produce **consultation information** that includes:
- A3.1 whether and how **Transpower** consulted with **customers** and interested parties on how **Transpower** intends to spend its **base capex** in **RCP3**;
 - A3.2 what **base capex projects**, or aspects of a **base capex project**, in **RCP3**, **Transpower** consulted on;
 - A3.3 the extent of involvement in those consultations from providers of **transmission alternatives**;
 - A3.4 how effective **Transpower** considered the consultation was; and
 - A3.5 how satisfied **customers** and others were with the consultation processes, based on the feedback they provided.

Review report on post-project reviews for significant capex projects

- A4 Each **disclosure year**, **Transpower** must produce a **review report** that includes:
- A4.1 the measures of success for each **significant capex project** established by **Transpower** prior to starting work on that **significant capex project**; and
 - A4.2 an assessment of the extent to which each **significant capex project** met its measures of success.

Transpower to obtain the expert opinion

- A5 **Transpower** must obtain an **expert opinion** that:
- A5.1 assesses **Transpower's** proposed **customer** engagement processes leading up to the preparation and submission of its **RCP4** regulatory proposal; and
 - A5.2 sets out the qualifications, relating to **customer** engagement, of the **independent expert**, and how that **independent expert** meets the requirements in clause 23.13.

Reporting summaries of post-interruption surveys within each disclosure year

- A6 For each **interruption** in **RCP3**, **Transpower** must produce a **post-interruption survey report** that summarises:
- A6.1 the impact of **unplanned interruptions** on **customers** by reference to surveys undertaken of **customers** following **unplanned interruptions**;
 - A6.2 the information **Transpower** provided on **unplanned interruptions** to affected **customers**; and
 - A6.3 feedback from affected **customers** on the effectiveness of **Transpower's** communication on the **unplanned interruptions**.

Schedule B: Director Certification of Information

Directors' Certificate

We, [insert full name of first director] and [insert full name of second director], being directors of Transpower New Zealand Limited (Transpower), certify that, having made all reasonable enquiry, to the best of our knowledge and belief, the attached information, dated [insert date], complies in all material respects with the requirements of the Commerce Commission's customer consultation information notice, issued in writing to Transpower under section 53ZD(1) of the Commerce Act 1986 on [insert date]*[except in the following respects:].

*[insert description of non-compliance if applicable]

[Signature of director]

[Signature of director]

[Date]

*Delete if inapplicable.