

27 September 2017

Keston Ruxton  
Manager, EAD Regulation Development  
Regulation Branch  
Commerce Commission  
P O Box 2351  
Wellington 6140

By email: [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)

Dear Keston,

**RE: Input Methodologies Review – Draft decision on Related Party transactions**

Pioneer Energy Limited (Pioneer) appreciates the opportunity to make submissions on the Commerce Commission (Commission) draft decision on related party transactions.

We agree that transactions between related parties have the potential to impact the achievement of the Part 4 purpose. We are particularly concerned about the presence of related party transactions and the lack of information on what equivalent arm's-length terms would have been, and the incentive to innovate. We agree that there should be an onus on a regulated supplier to demonstrate that the cost of the underlying service is consistent with the input price that it would have otherwise paid in a transaction on arm's-length terms.

Pioneer supports the proposed principles-based approach for valuation of a related party transaction – described at a high level in paragraphs 4.7 to 4.9.

We agree with:

- linking the definition of 'arm's-length transaction' to the accounting definition
- auditors being required to assess arm's-length terms where there are imperfect local markets (paragraph 4.32). Figure 3.4 in the Commission's April 2017 "Invitation to contribute to problem definition" report<sup>1</sup> shows the ratio of related party transactions to total opex and capex in 2016. While the larger companies (for example, Vector, PowerCo, Orion, WEL Networks) had minimal or no related party transactions, the ratio for other network companies, operating in 'local markets', is very mixed.
- publication of a diagram showing the relationship between the regulated entity and its related party – including information about ownership, governance and senior management (paragraphs 5.5 to 5.7)

---

<sup>1</sup> Source: <http://www.comcom.govt.nz/dmsdocument/15357>

- requiring publication of procurement policies and processes behind the procurement of assets and services from related parties (paragraphs 5.7 to 5.15)
- publication of future opex and capex expenditure projects or possible projects on a map of anticipated network expenditure and network constraints. We agree this should assist third party providers proposing network or non-network solutions.

However, Pioneer has some concerns about the following aspects of the proposal.

The ComCom is not proposing providing prescriptive requirements as to how a regulated entity chooses to test the valuation of a related party transaction (paragraph 5.25). Pioneer suggests the ComCom could be more prescriptive above a certain dollar threshold. For example, a single opex or capex project above, say, 40% of the annual projected opex/capex spend must be tendered. This tender would reveal the value and terms of an arm's-length transaction. The related party could be contracted if its terms and cost are competitive / efficient compared with the bid from a third party.

We support the proposal for an independent report to provide additional assurance where related party transactions are a material proportion of the disclosure year's total opex or capex spend (paragraphs 4.37 to 4.43). However, we are concerned about the proposed frequency of these reports. The Commission is proposing that, where opex or capex is more than 65% of total opex/capex the regulated supplier will have to get an independent report:

- only once every 3 years **AND**
- only if the value of related party opex or capex increases by more than 5% since the last independent report. (emphasis added)

We suggest it should be OR rather than AND in the above. The increase in value of more than 5% should trigger an independent review even if the last review was written in the immediately preceding disclosure year.

We also suggest that an independent report is required in the first disclosure year of these provisions by any regulated supplier with opex or capex greater than 65% of total opex/capex in the disclosure year immediately prior to this change.

Pioneer is engaging in regulatory processes by the Commerce Commission and Electricity Authority to ensure, where possible, low entry barriers, equal access to network information and a regulatory regime that is simple enough to understand and ensure innovation by small companies.

Yours sincerely



**Fraser Jonker**  
Chief Executive