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Transpower Information Disclosure Requirements

Update Paper for Revised Draft Determination

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1. Introduction

Purpose

1. We are seeking suggestions on our revised draft determination that sets out the information disclosure requirements that will apply to Transpower New Zealand Limited (Transpower).

Proposed information disclosure requirements

2. On 21 October 2013, we published our draft decision on information disclosure requirements for Transpower, with supporting reasons, for consultation:
 - 2.1 Transpower New Zealand Limited Information Disclosure Draft Determination 2014 with accompanying schedules (referred to together as the draft ID requirements), and
 - 2.2 Information Disclosure Requirements for Electricity Transmission and the System Operator: Transpower New Zealand Limited, Reasons for Draft Decision.
3. We have now considered all the material received in response to our draft decision, and we expect to publish a final decision on 28 February 2014. Materials received in consultation on our draft decision are available on our website.¹

We now invite drafting suggestions for the final determination

4. Before we publish our final decision, we invite drafting suggestions on the determination. To this end, we have:
 - 4.1 published alongside this paper a revised version of the draft determination and schedules (“revised draft ID requirements”), and
 - 4.2 included in this paper a list of specific matters that should be reflected in the updated draft determination.
5. We welcome submissions on the extent to which the updated draft determination reflects the list of specific matters that are set out in Chapter 2.
6. If you consider that our proposed revisions have not been accurately reflected in the revised draft ID requirements, we ask that you include the drafting amendments you consider are necessary, with your submission. We have released Microsoft Word and Microsoft Excel versions of the revised draft ID requirements to enable you to directly mark-up proposed drafting changes.

How you can provide your views

7. Submissions on the proposed drafting of the ID determination are due by **5pm Friday, 14 February 2014**. We stress that there is unlikely to be time to take into account any submissions that are made after this deadline has passed.

¹ Refer: <http://www.comcom.govt.nz/regulated-industries/electricity/electricity-transmission/transpower-information-disclosure/>.

8. Submissions should be sent by email to regulation.branch@comcom.govt.nz. Please title the email "Submission on Revised Draft Transpower Information Disclosure Requirements."
9. Responses should be provided in both MS Word and PDF file formats.
10. We will not be seeking cross-submissions on matters raised in submissions on the drafting of the revised draft ID requirements.

2. Proposed revisions to draft information disclosure determination

11. This chapter sets out our response to specific matters raised by submitters on our draft decision. In particular, we respond to the legal opinion that accompanied Transpower's submission, and we set out our proposed revisions to our draft decision.

Material we received in consultation on the draft ID requirements

12. We received three submissions on the draft ID requirements.

12.1 Transpower provided a submission, plus three consultant's reports:

- Legal opinion from Webb Henderson
- Report from Harding and Katz in Australia
- Report from asset management consulting in the UK

12.2 Meridian Energy

12.3 Contact Energy

13. We also received two cross-submissions from Transpower and Genesis Energy.

How we have revised our draft decision

14. The following table sets out our proposed revisions to the information disclosure requirements for Transpower. The table also sets out our reasons for not changing an ID requirement where a submission was received to modify or remove it.
15. In addition to the revisions we have made to the information requirements, we have made a number of revisions to the schedules. We have made these revisions in response to submissions and after further internal review and consideration. These changes will achieve the intended aims of ID while reducing the costs of compliance for Transpower, avoiding duplication of disclosures, and maintain the distinction between ID and disclosures Transpower makes in complying with its individual price-quality path.

Topic	Change in ID requirements
Minimising additional cost and effort producing data sets	Transpower has suggested supplying some of schedules as “companion” data sets with other publications, such as the Annual Regulatory Report (ARR), as this will reduce the effort and cost of reporting, auditing, and certification. This is a pragmatic and sensible approach and the draft ID requirements have been revised to implement this.
Provision of data as a part of existing reports instead of templates	After reviewing the draft ID requirements in light of submissions we have concluded that there are some where there is little extra value created by requiring information to be disclosed by way of schedules. Some schedules have been removed with the determination now specifying what data is to be supplied, the formula it must be prepared in accordance with and, the document it is to be included in. Affected information is: Return on Investment (ROI), regulatory profit, related party transactions, customer investment contracts, major capex information, variance analysis of forecast and actual capex and opex, and efficiency adjustments.
Flexibility of data to be supplied in schedules	Transpower, Meridian and Contact submitted that they want to ensure that ID does not stifle innovation and that reporting requirements are flexible. Where information is to be supplied in a schedule, Transpower can disclose in a format different to the schedule we have developed as long as all the information included in the schedule is disclosed and that it is provided publicly in an Excel format for analysis purposes.
Review of data that is additional to existing sets	Transpower submitted that there was some information in the draft ID requirements that would be hard to produce. The schedules have been reviewed again and the benefits of the data reassessed. There were small number data items that had low benefit compared to the effort to obtain and these have been removed. For example, the core vs. non-core split for revenues and assets has been removed.
Simplification of the revenue schedules	The revenue data for the connected parties has been reviewed and the data set has been reduced so that Transpower is only required to publish the electricity distribution businesses (EDB) charges on a point of service basis with no regional or island summaries.

<p>Provision of all customers charges not just those levied under the Transmission Pricing Methodology (TPM)</p>	<p>Transpower submitted that it should only be required to publish the charges that are levied under the TPM and not the charges for separate investment contracts, as it considered these to be unregulated. We have discussed this matter further with Transpower. We consider that as these costs flow through to the consumers they should be disclosed, and that under section 53D(3) of the Commerce Act this information can be required from the supplier of regulated services. Transpower has now agreed to publish the information.</p>
<p>Removal of individual price-quality path (IPP) information</p>	<p>Transpower, Meridian and Contact submitted on the distinction between the information requirements of IPP and ID. We have removed some requirements from ID and these will form part of the Annual Compliance Monitoring Statement (ACMS) which is required by the IPP determination. This will be published later this year.</p> <p>There is no impact on how the information will be reported however, as the ACMS and ID will make up the ARR. Removing the IPP specific information ensures that the ID determination does not need to be amended when the IPP changes – ID is enduring and aimed at ensuring information is available to assess whether the Part 4 purpose is being met. The information requirements removed relate to the economic value (EV) account, tax, pass-through and recoverable costs, and the term-credit spread differential.</p>
<p>Rationalisation of the form and content of the Grid Management information to be supplied</p>	<p>The required Grid Management information has been reviewed and a number of changes made to the content and reporting frequency:</p> <p>The detailed grid information has been combined with the asset health information and this will only be supplied in a “mid-period” report and with expenditure proposals rather than annually. The mid-period report will be supplied between Reset Control Period (RCP) Proposals and update interested persons on how Transpower is tracking. It will build upon the Integrated Transmission Plan (ITP) requirements in the Capex input methodology (IM).</p> <p>A new schedule has been drafted to show the changes to the network over the past 12 months. This reports on the asset changes at a high level and is similar to information provided by other Transmission Network Service Providers (TNSPs) in Australia. It will be used for providing a high level view of the changes and also for benchmarking against other TNSPs.</p>

<p>Difficulties Transpower has in supplying detailed asset valuation information</p>	<p>The information that we requested for asset value was in the same categories as those used for the asset health information. The reason for requesting the information was to give an indication of expected work and expenditure profiles over the medium to long term (10 to 20 years).</p> <p>To be useful we would need replacement values and they would have to be more or less matched against the asset health data.</p> <p>Transpower can supply asset values but they will not be in the same categories as the asset health information, as the information comes from two different systems and is in different categories. We have concluded that the best way to meet the purpose of this information, to provide a longer term view of expenditure, is to develop a new template which details predicted expenditure for major asset categories which outlines likely expenditure that will be required in more than ten years into the future.</p>
<p>“Mid-period” report</p>	<p>Transpower submitted that it would be beneficial to produce a “mid-period” report. We agree with this approach and have included the requirement to publish certain information with the ITP published between expenditure proposals and with expenditure proposals. The information to be published with the ITPs is the biennial disclosures in the draft ID requirements as well as additional information on how Transpower is achieving what initiatives for the regulatory period, progress on individual portfolios of work, and whether there have been any changes to company policy or strategy.</p> <p>Transpower have also suggested delaying the implementation of the ID so that this report can be finalised. We have looked at the issue and do not think that there is any real need to delay the ID determination.</p>
<p>Provision of Asset health information in a standard format</p>	<p>Transpower submitted against the provision of asset health information in a standard form, or in a dataset.</p> <p>We have allowed a degree of flexibility as to how asset health information will be reported (see above topic on flexibility). We do, however, consider it important to be able to compare asset health information over a period of years to be able to trend how Transpower is managing its assets. As a result, the asset health categories included in the asset health schedule (and in Transpower’s RCP2 proposal) are a requirement. If Transpower considers that at some time in the future it would be beneficial to interested persons to change the categories, we can review this matter and potentially amend the ID determination.</p>

<p>Transpower publication of PA55 audit instead of completing the Asset Management Maturity Assessment Tool (AMMAT) survey</p>	<p>Transpower submitted that it should not be required to complete the AMMAT as it is in the process of becoming PASS-55 certified. Transpower submitted that they have been independently audited to a deeper level than the AMMAT.</p> <p>After reviewing Transpower's PAS 55 audit reports we have concluded that Transpower should be able to fulfil the requirements of the AMMAT by disclosing their PAS 55 audit reports. This should reduce Transpower's compliance costs, and could provide information of a similar value to interested persons. The Transpower asset management audit results would need to cover all of the areas in the AMMAT. Over time, the content of the audit and the way that the results are presented need to be consistent to help interested persons to understand trends in Transpower's asset management maturity. Transpower is still required to provide the numerical scores in an Excel format.</p>
<p>Revenue and charges</p>	<p>After discussions with Transpower as to the timing of customer charges disclosures for the coming pricing year, the revenue information will be published as a standalone document ie, not as a companion to an existing report. It will be required to be published by the end of December each year for the following pricing year beginning 1 April. This gives Transpower's customers enough time to calculate their prices for the coming pricing year.</p>
<p>Publication of customer satisfaction survey</p>	<p>Meridian submitted that publication of Transpower's annual customer satisfaction survey would be valuable. Transpower has indicated in its cross-submission and by email that it is willing to publish this on its website in the information disclosure portal. This is not a requirement of the revised ID requirements.</p>

Matters raised in Transpower's submission from Webb Henderson

16. Transpower's submission on our draft decision includes an attachment "Public law analysis of the Commerce Commission's draft information disclosure determination"² prepared by its solicitors Webb Henderson.
17. The memo argues that our approach to information disclosure for Transpower is vulnerable to challenge, and makes a number of arguments in support of that contention, including:
 - 17.1 That Transpower is subject to a unique regulatory context which distinguishes it from other entities regulated under Part 4, and that such a context impacts on the relevance and design of information disclosure requirements for Transpower;³ and
 - 17.2 That the purpose of information disclosure is to "ensure that "sufficient" information is "readily available" to interested persons"⁴, and this purpose is satisfied by existing information disclosure requirements in the case of Transpower.⁵

Statutory framework

18. The Act requires us to make a determination setting out how information disclosure will apply to Transpower.
19. The Act mandates that:
 - 19.1 *all electricity lines services* are subject to information disclosure regulation under Part 4;⁶
 - 19.2 Transpower, as well as EDBs, is subject to two different forms of regulation under Part 4, namely information disclosure and price-quality regulation. In contrast, airports are only subject to information disclosure regulation. It is clear from Part 4 provisions that Parliament intended for both light-handed and more heavy-handed forms of regulation to apply concurrently to specific regulated suppliers;⁷

² Webb Henderson Memorandum of Advice to Transpower "Public law analysis of the Commerce Commission's draft information disclosure determination", 20 December 2013.

³ See Webb Henderson Memorandum of Advice to Transpower "Public law analysis of the Commerce Commission's draft information disclosure determination", 20 December 2013 at paragraphs, 4, 7-11.

⁴ Webb Henderson Memorandum of Advice to Transpower "Public law analysis of the Commerce Commission's draft information disclosure determination", 20 December 2013, page 1, paragraph 4, bullet 1.

⁵ See Webb Henderson Memorandum of Advice to Transpower "Public law analysis of the Commerce Commission's draft information disclosure determination", 20 December 2013 at paragraph 4, bullet 2 and paragraphs 12-16.

⁶ Commerce Act 1986, s 54F.

⁷ Commerce Act 1986, Subpart 9.

- 19.3 We *must* make determinations *specifying how* the relevant forms of regulation apply to suppliers of regulated goods or services;⁸
- 19.4 Our determinations must set out, for *each type of regulation* to which the goods or services are subject, *the requirements* that apply to each regulated supplier;⁹
- 19.5 *Every* supplier of goods or services that are subject to information disclosure regulation *must* publicly disclose information in accordance with the information disclosure requirements set out in the relevant section 52P determination.¹⁰
20. The Act is clear in requiring us to set out information disclosure requirements for Transpower, and for Transpower to comply with them.

Regulatory context

21. We disagree that we have failed to properly take account of Transpower’s specific regulatory context. By way of example, in formulating Transpower’s ID requirements we considered the input from Transpower and interested persons during the Transpower ID workshop held in September 2012, the submissions provided, the input methodologies that apply to Transpower, Transpower’s current information disclosure reporting obligations, its current compliance reporting requirements in the IPP determination, annual information reporting requirements contained in the Capex IM, obligations under the ITP, additional information produced by Transpower, and the costs of compliance on Transpower.¹¹
22. We recognise that Transpower is the only supplier subject to individual price-quality regulation. However, we disagree that such a distinction merits either exclusion from a form of regulation it is explicitly subject to under the Act, or a much lower level of such regulation than EDBs.
23. The court recently considered Transpower’s submission regarding its unique position in the context of its appeals against its cost of capital input methodologies commenting that:
- None of the differences between the customised price-quality path (CPP) and the individual price-quality path IPP regimes suggest that the Commission should have approached the determination of Transpower’s cost of capital in a way different from the way it determined the EDBs cost of capital.
24. The differences between the IPP and a customised price quality-path are not sufficiently material to merit a different approach in relation to information disclosure. For instance, the obligation to consult under the Capex IM in relation to major capex is not materially different to the requirements to consult in the customised price-quality path context.

⁸ Commerce Act 1986, s 52P(1).

⁹ Commerce Act 1986, s 52P(3).

¹⁰ Commerce Act 1986, s53(b)(1)(a).

¹¹ In our Draft Reasons Paper, at paragraphs X9 – X10, we have set out all the various aspects of Transpower’s regulatory context that we have taken into account.

25. We also do not consider that the existence of reporting requirements elsewhere within the regulatory regime is a relevant consideration (such as requirements to report to the Electricity Authority or to the Commission under different regulatory instruments). As demonstrated in the statutory framework section above, Parliament's intention is clear. Had Parliament intended that other reporting requirements should be taken into account and inform Transpower's information disclosure, it would have directed us to do so.

26. Transpower's submission also argues that:¹²

Affording appropriate weight to the wider regulatory context ensures that ID regulation has meaningful incentive properties, and is not redundant in terms of promoting the purpose of Part 4.

27. As we note below, information disclosure regulation has a specific, standalone purpose. This purpose involves ensuring transparency and easy public access to information concerning Transpower's performance. We recognise that the existence of price-quality regulation affects the incentives relating to information disclosure (in contrast to suppliers who are only subject to information disclosure, such as airports). However, we do not consider that the existence of price-quality regulation removes the incentive properties of information disclosure regulation (both in case of Transpower, or EDBs). Price-quality regulation does not provide the visibility of supplier's broader performance in relation to all the different limbs of the Part 4 purpose. For example, it does not give a clear picture of whether and how a supplier may be innovating over time.

28. Transpower's submission argues that in Transpower's case, unlike in the case of other suppliers subject to information disclosure requirements (for example, airports, GPBs or EDBs); information disclosure regulation cannot provide a useful tool for comparisons between regulated suppliers in the same industry.¹³ Section 53B(2) (b) in fact places a mandatory requirement on the Commission to carry out summary and analysis of the disclosed information, namely:

...for the purpose of promoting greater understanding of the performance of individual regulated suppliers, their relative performance, and the changes in performance over time.

29. Consequently, information disclosure is intended as a tool for gaining visibility and conducting assessment of performance over time in relation to the parameters operating under the Part 4 purpose. The Act anticipates that there is value in monitoring how Transpower is performing in relation to entities that, while not necessarily the same, have sufficient similarities to offer useful comparisons within the electricity sector.

30. In summary, while we have taken into consideration the broader regulatory context within which Transpower operates, we consider that information disclosure

¹² Webb Henderson Memorandum of Advice to Transpower "Public law analysis of the Commerce Commission's draft information disclosure determination", 20 December 2013, paragraph 9.

¹³ Webb Henderson Memorandum of Advice to Transpower "Public law analysis of the Commerce Commission's draft information disclosure determination", 20 December 2013, paragraph 8(e).

requirements are still mandatory under the Act, and will operate to fulfil their separate purpose and to provide their specific incentives.

Purpose of information disclosure

31. We consider that Transpower's submission misconstrues the purpose of information disclosure.
32. As discussed in our Draft Reasons Paper¹⁴, information disclosure is a distinct form of regulation with its own distinct purpose. While all forms of regulation set up under Part 4 of the Act ultimately exist for the promotion of the Part 4 purpose, each one also has its own separate purpose statement and has been set up by Parliament deliberately as a separate form of regulation.
33. The purpose of information disclosure is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 is being met.¹⁵ While the emphasis in the submission is on understanding what threshold "sufficient" imposes, it misses the broader context of the purpose of information disclosure regulation.
34. In our view, the focus of information disclosure regulation is on the availability of information in the public sphere, so that any person with an interest in the operation and performance of the regulated supplier may have visibility of that supplier's performance. Our role under subpart 4, namely to set out the information disclosure requirements, monitor disclosures and provide summary and analysis of disclosed information, feeds into the achievement of that purpose.
35. Under price-quality regulation Transpower provides information to the Commission. However, such information is provided *to the Commission*, for our purpose of assessing compliance with the price path. In addition, much of that information is provided in response to s 53ZD information requests from us, when required. While we have recognised any overlaps and sought to avoid duplication of information being provided to us, we note that the existence of overlaps does not in any way negate the statutory requirements for a standalone information disclosure determination. While the efficiency of the regime, the minimisation of compliance costs, and the avoidance of any duplication of disclosures are relevant considerations for us, they must be balanced with ensuring the fulfilment of the statutory requirements.

¹⁴ See Draft Reasons Paper, chapter 2.

¹⁵ Commerce Act 1986, s 53A.