

17 May 2017

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

By email: regulation.branch@comcom.govt.nz

Dear Keston,

RE: Related party transactions – invitation to contribute to problem definition

Pioneer Energy Limited (Pioneer) appreciates the opportunity to make submissions on the Commerce Commission (Commission) consideration of the problem definition relating to related party provisions in both the Input Methodologies and Information Disclosure regimes.

Pioneer supports this review by the Commission. We agree that:

- a) the related party provisions in the IM and ID regimes must be consistent; and
- b) the policy intent of the related party provisions are still relevant – as described in paragraph 2.54. We also agree with the policy assumption that transactions between related parties may not be on arm's length terms and that the input costs of the regulated business may not reflect costs that would otherwise apply in the absence of such a relationship¹.

The Commission describes² its concern that "... suppliers of the regulated services have the ability to use an unregulated related party to increase their combined profits by overcharging for inputs to the regulated service that are supplied by the related party."

Pioneer's interest in the related party provisions arises because we may be competing with related parties to provide services to a regulated EDB. Like the Commission, Pioneer is concerned about the price or input cost of a related party transaction. However, we are also concerned about the terms and conditions or details of the agreement between the two related parties³. This aspect might be best addressed via the Information Disclosure regime. We note that if an EDB owns

¹ Paragraph 2.2 of the consultation paper

² Paragraph 2.5 of the consultation paper

³ The Commission acknowledges the issue of terms and conditions in paragraph 2.29 but continues to convert this to input price

distributed generation (DG) it is required to publish its Use of System Agreement that governs the connection of that unregulated DG so that third party DG can connect on the same basis. There may be other instances where this type of disclosure is important.

The IM and ID treatment of related party transactions is becoming increasingly important as the boundary is blurring between regulated electricity lines services and other services or alternatives to physical lines that provide an equivalent function but are available from the competitive market. We understand MBIE is considering the policy intent of regulating monopoly network businesses (and the 'definition' of electricity lines services). The question about whether regulated EDBs should be investing in, for example, DG or batteries, which compete with physical lines to deliver electricity to consumers is a policy issue for MBIE.

The Commission's work is about ensuring if a regulated EDB wants to contract for, say, DG or batteries a competitive third party can tender to do this with the same information and on the same contractual terms as a related party. If the regulated EDB selects a related party to be the supplier, and not a third party, the related party provisions must make the details of a related party transaction transparent.

EDB's are monopolies and have the advantage of asymmetry of information. Pioneer's aim is to ensure that when EDBs undertake activities, such as aggregated demand management and/or activities that may arise from emerging technologies, the EDB's internal treatment of these activities is the same as if the EDB purchased these activities from an equivalent competing third party.

Pioneer's interest is to ensure a level playing field for all parties providing network services – whether owned by the EDB or not:

- at the time of an investment - EDBs may have more information about the customers on their network when investing in the competitive parts of the market than third parties,
- in the contracting terms and prices/charges paid by the EDBs to their own activities and third parties, and
- in the regulatory treatment of different activities undertaken by EDBs and third parties that achieve the same outcomes.

There may be a future where electricity networks are no longer monopolies but the overall function of delivering electricity is a competitive market. We agree the Commission's IM and ID regimes must have the ability to stay current. We also suggest consideration of whether EDBs should be required to undertake a competitive process if the cost of an investment in unregulated assets is greater than a particular threshold.

Yours sincerely



Fraser Jonker
Chief Executive