

24 February 2020

To: Transpower New Zealand Limited
Waikoukou
22 Boulcott Street
PO Box 1021
Wellington

Attention: Alison Andrew
Chief Executive

Notice to supply information to the Commerce Commission under section 53ZD(1)(d)(i), (e)(i) and (e)(ii) of the Commerce Act 1986 – Cost estimation information

Background

1. In our 29 August 2019 decisions 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 of Commerce Act 1986 (the **Act**) to provide us with information on the variances between **Transpower’s proposal cost estimates, delivery business case cost estimates**, and the **actual costs of completed capex projects and completed capex programmes**.¹
2. We require this information from **Transpower** under section 53ZD(1)(e)(i) and (ii) of the **Act** to:
 - 2.1 enable us to investigate and assess the efficiency of **Transpower’s** cost estimation process and systems over **RCP2** and **RCP3**;
 - 2.2 assist us in setting allowances for **major capex projects and listed projects**; and
 - 2.3 assist our reset of **Transpower’s** individual price-quality path for **RCP4**.
3. Under section 53ZD(1)(d)(i) of the **Act**, we require **Transpower** to prepare and provide a **cost tracking methodology** to allow the **Commission** to establish a line of sight (ie, tracing of specific **project or programme costs**) between the **proposal cost estimates, delivery business case cost estimates**, and the **actual costs of commissioned assets**.

¹ Commerce Commission “Transpower’s individual price-quality path from 1 April 2020 – Decisions and reason paper” (29 August 2019), at [H31] to [H32].

Offences under section 103 of the Act

4. We note that section 103 of the **Act** provides that no person shall:
 - 4.1 without reasonable excuse, refuse or fail to comply with a notice under section 53ZD of the **Act**;
 - 4.2 in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
 - 4.3 attempt to deceive or knowingly mislead the **Commission** in relation to any matter before it.
5. 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

6. Under section 53ZD(1)(d)(i), (e)(i) and (e)(ii) of the **Act**, we require **Transpower** to provide us with the information specified in Attachment A.
7. We require the information to:
 - 7.1 enable the **Commission** to investigate and monitor the extent to which **Transpower** is improving the efficiency of its cost estimation process;
 - 7.2 assist our function of setting capex allowances for **major capex projects** and **listed projects**; and
 - 7.3 assist our reset under section 53ZC of the **Act** of **Transpower's** individual price-quality path for **RCP4**.
8. The information will assist our reset of **Transpower's** individual price-quality path for **RCP4** and our approvals of **Transpower's** applications for **RCP3 major capex projects** and **listed projects** by providing a clearer picture of **Transpower's actual costs** that will comprise the individual price-quality path.
9. For the purpose of section 53ZD(1)(e)(i) and (e)(ii) of the **Act**, the cost estimation information we require under Attachment A is directly relevant to, and will assist, our investigation under section 53ZD(1)(b)(i) into the extent to which **Transpower** is improving the efficiency of its cost estimation process.

Means of responding to this notice

10. In accordance with the timeframes under clauses 12, 13 and 14 of this notice, **Transpower** must produce and provide the information specified in Attachment A by:
 - 10.1 supplying the information directly to the **Commission** by email to regulation.branch@comcom.govt.nz (Attention: Manager Price-Quality Regulation), with the subject line "Transpower – Response to section 53ZD Notice – Cost estimation: Issued November 2019"; or

- 10.2 making the information publicly available on **Transpower's** website and notifying the **Commission** that it has done so.
- 11. Narrative information is to be provided or published in Adobe PDF format. Numerical information is to be provided or published in electronic form in MS Excel file format.

Timeframes for responding to this notice

- 12. **Transpower** must produce and provide to the **Commission**, or make publicly available on **Transpower's** website:
 - 12.1 by no later than 4.30pm on 27 March 2020, a draft **cost tracking methodology**; and
 - 12.2 by no later than 4.30pm on 8 May 2020, a finalised **cost tracking methodology**, which addresses any comments it received on the draft **cost tracking methodology** from the **Commission** by 15 April 2020.
- 13. **Transpower** must produce and provide to the **Commission**, or make publicly available on **Transpower's** website:
 - 13.1 the information specified in clause A2 of Attachment A by no later than 4.30pm on the day that is 105 **working days** from the following dates:
 - 13.1.1 30 June 2020, in relation to **completed capex programmes** and **listed projects** completed in **RCP2**;
 - 13.1.2 30 June 2022, in relation to **completed capex projects** completed during **disclosure year 2021** and **disclosure year 2022** of **RCP3**;
 - 13.1.3 30 June 2023, in relation to **completed capex projects** completed during **disclosure year 2023** of **RCP3**;
 - 13.1.4 30 June 2025, in relation to **completed capex projects** completed during **disclosure year 2024** and **disclosure year 2025** of **RCP3**; and
 - 13.1.5 30 June 2025, in relation to **completed capex programmes** completed in **RCP3**.

Variations, extensions and exemptions

- 14. The **Commission** may, on **Transpower's** application, grant **Transpower** a variation to the information requirements set out in this notice to account for any practical limitations on **Transpower's** ability to provide the specified information at the specified time.
- 15. For the purposes of clause 14:
 - 15.1 if **Transpower** applies for a variation, its application must:
 - 15.1.1 be in writing;
 - 15.1.2 explain why **Transpower** considers that a variation to the information requirements is reasonably justified having regard to the circumstances; and

- 15.1.3 be made no later than 15 **working days** before the applicable time limit is due to expire; and
- 15.2 if the **Commission** decides to grant **Transpower** a variation, then:
 - 15.2.1 the approved form of the variation shall take effect by the **Commission** giving or posting written notice of the variation to **Transpower**; and
 - 15.2.2 the notice effecting the approved form of the variation must specify the reasons for the variation.
- 16. The **Commission** may, on **Transpower's** application, grant **Transpower** an extension to the timeframes set out in clauses 12 and 13 of this notice.
- 17. For the purposes of clause 16:
 - 17.1 if **Transpower** applies for an extension, its application must:
 - 17.1.1 explain why **Transpower** considers that an extension to the timeframe is reasonably justified having regard to the circumstances; and
 - 17.1.2 be made no later than 15 **working days** before the applicable timeframe is due to expire; and
 - 17.2 if the **Commission** decides to grant **Transpower** an extension, then:
 - 17.2.1 the approved form of the extension shall take effect by the **Commission** giving or posting written notice of the extension to **Transpower**; and
 - 17.2.2 the notice effecting the approved form of the extension must specify the period of the extension and the reasons for the extension.
- 18. The **Commission** may at any time, by way of written notice to **Transpower**:
 - 18.1 exempt **Transpower** from any obligation in this notice, for a period of time and on such terms and conditions as the **Commission** specifies in the notice; and
 - 18.2 amend or revoke any such exemption.

Interpretation

- 19. In this notice, unless the context otherwise requires—
 - 19.1 terms used in this notice that are defined in the **Transpower IM Determination** or the **Capex IM Determination** but not in this notice have the meaning given in the **Transpower IM Determination** or **Capex IM Determination**, as applicable.
 - 19.2 financial items must be measured and disclosed in accordance with GAAP (unless otherwise required by this notice), the **Transpower IM Determination** or the **Capex IM Determination**.

- 19.3 non-financial items must be measured and disclosed in accordance with standard industry practice (unless otherwise required in this notice), the **Transpower IM Determination** or the **Capex IM Determination**.
- 19.4 a word which denotes the singular also denotes the plural and vice versa.
- 19.5 words in **bold** type have the following meanings:
- 19.5.1 **actual costs** means the actual costs of a **programme** or **project** reported in accordance with GAAP;
 - 19.5.2 **base capex programme** has the same meaning as defined in the **Capex IM Determination**;
 - 19.5.3 **base capex proposal** has the same meaning as defined in the **Capex IM Determination**;
 - 19.5.4 **Capex IM Determination** means *Transpower Capital Expenditure Input Methodology Determination* [2012] NZCC 2, as amended;
 - 19.5.5 **capex programme** means a **base capex programme** that:
 - (a) has an estimated cost of greater than \$20 million over the relevant **regulatory control period**; and
 - (b) is included in the *Renewal* expenditure category in the **RCP2 Asset Class** or **RCP3 Asset Grouping**;
 - 19.5.6 **capex project** means:
 - (a) an **E & D base capex project** that:
 - (i) has an estimated cost of greater than \$5 million; and
 - (ii) is in the *Enhancement & Development* expenditure category in the **RCP2 Asset Class** or **RCP3 Asset Grouping**; or
 - (b) a **major capex project** for which assets were **commissioned** in **RCP2** or **RCP3**; or
 - (c) a **listed project** for which assets were **commissioned** in **RCP2** or **RCP3**;
 - 19.5.7 **commissioned** has the same meaning as defined in the **Transpower IM Determination**;
 - 19.5.8 **completed capex programme** means the **projects** or activities within a **capex programme** for which the assets have been **commissioned** and for which all costs are finalised and attributed;
 - 19.5.9 **completed capex project** means a **capex project** for which all assets have been **commissioned** and for which all costs are finalised and attributed;

- 19.5.10 **cost tracking methodology** means a method for regularly tracking and reporting the **actual costs** of **commissioned** assets of a **project** or **programme** against the cost estimates from earlier stages in the **project** or **programme** approval process;
- 19.5.11 **delivery business case cost estimate** means, in relation to a **project** or a **programme**, the estimate of the cost included in **Transpower's** business case that was used to seek **Transpower** approval to proceed with the implementation and construction phases of that **project** or **programme**;
- 19.5.12 **disclosure year** has the same meaning as defined in the **Transpower IM Determination**;²
- 19.5.13 **E & D base capex project** has the same meaning as defined in the **Capex IM Determination**;
- 19.5.14 **listed project** has the same meaning as defined in the **Capex IM Determination**;
- 19.5.15 **major capex project** has the same meaning as defined in the **Capex IM Determination**;
- 19.5.16 **programme** has the same meaning as defined in the **Capex IM Determination**;
- 19.5.17 **project** has the same meaning as defined in the **Capex IM Determination**;
- 19.5.18 **proposal cost estimate** means, in relation to a **project** or **programme**, the expected cost **Transpower** initially proposed:
- (a) in its **RCP3 base capex proposal** for that **project** or **programme**;
 - (b) in its **listed project** application for that **project**; or
 - (c) in the **major capex proposal** for that **project**,
- whichever is relevant;
- 19.5.19 **RCP2** means the **regulatory control 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;
- 19.5.20 **RCP2 Asset Class** means the asset classes listed under the heading 'RCP2 Asset Classes' in the *Mapping RCP2 to RCP3 – Capex* sheet 7 of the RCP3 Regulatory Template (RT01) dated November 2018 issued by **Transpower** as part of its **RCP3** proposal;

² **Disclosure years** are identified by the year in which the **disclosure year** ends. For example, **disclosure year** 2022 identifies the **disclosure year** from 1 July 2021 to 30 June 2022.

- 19.5.21 **RCP3** means the **regulatory control 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;
- 19.5.22 **RCP3 Asset Grouping** means the asset groupings listed under the heading 'RCP3 Asset Grouping' in the *Mapping RCP2 to RCP3 – Capex* sheet 7 of the RCP3 Regulatory Template (RT01) dated November 2018 issued by **Transpower** as part of its **RCP3** proposal;
- 19.5.23 **RCP4** means the **regulatory control period** following **RCP3**;
- 19.5.24 **regulatory control period** has the same meaning as defined in the **Transpower IM Determination**;
- 19.5.25 **Transpower IM Determination** means *Transpower Input Methodologies Determination* [2012] NZCC 17, as amended; and
- 19.5.26 **working days** has the meaning given in the **Act**.

Use of supplied information and confidentiality

- 20. If **Transpower** considers that, for confidentiality reasons, the **Commission** should not publish or publicly refer to any particular part of **Transpower's** response, **Transpower** must:
 - 20.1 specify the relevant part of the information when providing the response to the **Commission**; and
 - 20.2 give clear reasons why **Transpower** considers that part of the information is confidential.
- 21. If **Transpower** indicates that we should not publish or publicly refer to part of its response, we will discuss this with **Transpower** before deciding whether to do so.
- 22. Where information is not publicly disclosed by **Transpower**, it must provide an unredacted version of the information 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 either supplied to the **Commission** or published on **Transpower's** website, in accordance with clauses 12 and 13 of this notice.
- 23. Please note that all responses we receive, including any parts 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 before releasing any material that **Transpower** requests not to be published.

Dated at Wellington:
Signed by:

24 February 2020

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

Sue Begg
Deputy Chair

Attachment A: Information required

Transpower to produce a cost tracking methodology

- A1. Under section 53ZD(1)(d)(i) of the **Act**, **Transpower** must prepare and produce a **cost tracking methodology**.

*Transpower to produce information on variances between **proposal cost estimates**, **delivery business case cost estimates**, and the **actual costs of completed capex projects** and **completed capex programmes***

- A2. Under section 53ZD(1)(e)(i) and (ii) of the **Act**, **Transpower** must produce the following information:

- A2.1 in relation to each **completed capex project** that is not part of a **capex programme**:

- A2.1.1 the variances between the **proposal cost estimate**, the **delivery business case cost estimate**, and the **actual costs**, for each **completed capex project** that is:

- (a) an **E & D base capex project** included in **Transpower's RCP3 base capex proposal**, and for which assets were **commissioned** during **RCP3**;
- (b) a **listed project** for which assets were **commissioned** during **RCP2** or **RCP3**; or
- (c) a **major capex project** for which assets were **commissioned** during **RCP2** or **RCP3**; and

- A2.1.2 if the variance for a **completed capex project** in clause A2.1.1(a) to (c) above between the **proposal cost estimate** and the **delivery business case cost estimate** exceeds 30%, an explanation setting out the reasons for the cost variance.

- A2.2 the variance between the **proposal cost estimate** and the **actual cost** of:

- A2.2.1 each **completed capex programme** for which assets are **commissioned** in **RCP2**, reported according to the **RCP2 Asset Class**; and

- A2.2.2 each **completed capex programme** for which assets are **commissioned** in **RCP3**, reported according to the **RCP3 Asset Grouping**; and

- A2.3 if the variance between a **completed capex programme's proposal cost estimate** and the **actual cost** of the **completed capex programme** at the end of **RCP2** or at the end of **RCP3** is greater than 20%, an explanation setting out the reasons for the cost variance.