

COMMERCE COMMISSION

Default Price-Quality Path for Gas Pipeline Businesses
Draft Information Requests and Process Update

Consultation Paper

3 June 2011



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Regulation Branch
Commerce Commission
Wellington
NEW ZEALAND
3 June 2011

ISBN: 978-1-869451-51-6

Purpose

1. The purpose of this paper is to seek views from interested parties on the technical details of the draft section 53ZD information request notices (Draft Notices) which will be applicable to gas transmissions services (GTBs) and gas distribution services (GDBs). These are collectively known as gas pipeline businesses (GPBs).
2. The Commission is to use the information provided through the final section 53ZD information request notices (Notices) to inform the setting of starting prices for the default price-quality path (DPP) for GPBs.

Summary of consultation package

3. This consultation package:
 - outlines the purpose of the Notices
 - explains the period to which the Notices relate
 - explains why the regulatory asset base (RAB), deferred tax and tax losses disclosures are required to be rolled forward
 - identifies other information that has not been included in the Draft Notices but which, dependent on the final process for setting starting prices, may be required in the Notices
 - outlines the process for consultation on the Draft Notices and updates the process for setting DPPs for GPBs
 - sets out the Draft Notices.

Background

4. A DPP is one of two types of price-quality regulation which apply to relevant GPBs under Part 4 of the Commerce Act 1986 (the Act).¹
5. Section 55E(2) of the Act provides that the Commerce Commission (Commission) must set the initial default price-quality path for GPBs (Initial DPP) as soon as practicable after 1 July 2010. In its Issues Paper, the Commission stated that it intends to make a section 52P determination in respect of the Initial DPP for GTBs and GDBs by 29 February 2012 to take effect from July 2012.²
6. A fundamental component of a DPP is the starting price which is specified for each regulated supplier and which will apply from the beginning of a regulatory period. The Act provides that the Commission must specify the starting prices for each supplier based on either: (i) the prices that applied at the end of the previous regulatory period, or (ii) those based on an assessment of the current and projected profitability of that supplier.

¹ Not all pipeline owners are subject to DPP regulation as some GPBs are exempt pursuant to s 55A(2) of the Act.

² Commerce Commission, *Initial Default Price-Quality Path for Gas Pipeline Businesses, Issues Paper*, 12 April 2010, p. 4.

7. The Commission considers it is appropriate to issue a section 53ZD information request to suppliers to obtain information relevant for assessing the profitability of each supplier of gas pipeline services in order to assist it to set the starting price for the Initial DPP. The information request is necessary because new information disclosure requirements that apply input methodologies relevant to GPBs are not yet in place.³
8. It is not usual practice for the Commission to consult on its statutory information requests. However, in this case the Commission considers that consultation on the technical details of the notice would assist compliance with the information request as it is the first time it will set a starting price for GPBs under Part 4.
9. In developing the draft information request, the Commission has considered previous consultation on DPPs for GPBs, including:
 - *Initial Default Price-Quality Path for Gas Pipeline Businesses, Issues Paper*, 12 April 2010
 - *Starting Price Adjustments for Default Price-Quality Paths, Discussion Paper*, 5 August 2010
 - *Initial Default Price-Quality Path for Gas Pipeline Businesses, Discussion Paper*, 1 April 2011 (April 2011 Discussion Paper).
10. The Commission has also considered previous consultation on the DPP for electricity distribution businesses (EDBs), including:
 - *Starting Price Adjustments for Default Price-Quality Path for Non-Exempt Electricity Distribution Businesses, Consultation Paper on Draft Information Request and Process Update*, 14 February 2011
 - *2010-15 Default Price-Quality Path Starting Price Adjustments and Other Amendments Update Paper*, 11 April 2011 (EDB Update Paper).

Section 53ZD Information Request Notice

Purpose of Section 53ZD Information Request Notice

11. The Commission is to use the information provided through the Notices to inform the setting of starting prices for the Initial DPP by assisting it to assess the profitability of each supplier.
12. The Commission intends publishing a discussion paper in late July or early August 2011 (Updated Discussion Paper) setting out, amongst other things, its views on setting starting prices for GPBs. The purpose of this consultation is to obtain feedback on the technical details of the Draft Notices. The Commission will consult on how it intends to use the information provided through these Notices in the Updated Discussion Paper.
13. The Commission's intention is to design notices which will enable it to obtain information from GPBs that is consistent with the type of financial information that

³ This view was set out in Commerce Commission, *Starting Price Adjustments for Default Price-Quality Paths Discussion Paper*, 5 August 2010, paragraph 1.10.

would be made available via information disclosure requirements that apply input methodologies, had those requirements been in place at this time.

Period to which the Notices Relate

14. The Draft Notices relate primarily to information relevant to the disclosure year ending 30 June 2011, except Maui Development Limited (MDL) which is for the year ended 30 December 2010 (2010 Disclosure Years). The 2010 Disclosure Years are aligned to the disclosure years specified in the *Gas (Information Disclosure) Regulations 1997* (Current Disclosure Requirements) for ease of reporting.
15. The Commission considers that the 2010 Disclosure Years data set is relevant because it will be the most recent data available when setting starting prices under section 53P(3).

Regulatory Asset Base, Deferred Tax and Tax Losses Disclosures

16. The Draft Notices include a requirement to provide information relating to the RAB, deferred tax and tax losses. As specified in the input methodologies relating to GPBs, the RAB for any given year is determined by rolling forward the RAB from the previous year with the initial RAB being determined as at the end of the 2009 disclosure year.⁴ The Draft Notices, therefore, include information relating to the roll forward of the initial RAB to the start of the 2010 Disclosure Years. Also included in the Draft Notices is information for the asset adjustment process used to establish the initial RAB, if elected by the GPB.
17. The determination of the tax expense as specified in the input methodologies relating to GPBs includes reference to the opening deferred tax (GDBs only) and opening tax losses.⁵ The Draft Notices therefore include a requirement for the provision of information that allows the opening deferred tax (GDBs only) and opening tax loss balances to be determined for the 2010 Disclosure Years.

Time Series Information

18. In the EDB Update Paper the Commission outlined its proposed approach for assessing supplier's profitability for non-exempt EDBs.⁶ The proposed approach incorporates assumptions about future changes in demand, opex and capex. The Commission has yet to decide what its proposed approach might be for assessing GPB profitability but it is possible that similar information about current profitability and future changes may also be required.
19. GPBs historic information, that is similar to the information used to assess EDB profitability and future changes, was used by Economic Insights in their report on

⁴ Commerce Commission, *Commerce Act (Gas Distribution Services Input Methodologies) Determination 2010*, Part 2 Subpart 2 and *Commerce Act (Gas Transmission Services Input Methodologies) Determination 2010*, Part 2 Subpart 2.

⁵ Commerce Commission, *Commerce Act (Gas Distribution Services Input Methodologies) Determination 2010*, Part 2 Subpart 3 and *Commerce Act (Gas Transmission Services Input Methodologies) Determination 2010*, Part 2 Subpart 3.

⁶ Commerce Commission, *2010-15 Default Price-Quality Path Starting Price Adjustments and Other Amendments Update Paper*, 11 April 2011, section 4.

gas sector productivity,⁷ made available to support the April 2011 Discussion Paper. In their report, Economic Insights concluded that data currently available for GPBs is not of sufficient completeness, consistency or accuracy to support robust total factor productivity (TFP) analysis. Given that data requirements for assumptions about future changes for various starting price adjustment processes are likely to be a subset of that data, it is possible similar inadequacies may be identified.

20. The Draft Notices do not include data to support assumptions about future changes as it is yet to be decided what approach would be followed in setting starting prices for GPBs. It is, however, possible that such data may be required. The Commission welcomes interested parties’ views on what data may support assumptions about future changes in profitability.

Publication of completed Notices

21. To foster an informed and transparent process, the Commission intends to publish completed Notices, including expert opinions and supporting information, on its website. The Commission has allowed for the completion of both public and non-public versions of certain templates in Schedule A. Either version may contain disclosure requirements that parties consider require the disclosure of confidential information. The Commission, however, discourages requests for non-disclosure of information, in whole or in part, and is unlikely to agree to any requests that information provided in response to Notices remains confidential, other than already provided for.

Process Update

22. In the April 2011 Discussion Paper the Commission outlined its proposed timeline for setting the Initial DPP. The Commission has revised the indicative dates in its proposed timeline as outlined below.

Proposed process for setting the Initial DPP

Key Step	Indicative Date
Cross-submissions on April 2011 Discussion Paper due	10 June 2011
Updated Discussion Paper Submissions And Cross-submissions due	late July/ early August 2011 September/ October 2011
Draft Decisions Paper and Draft Determination Submissions and Cross-submissions due	November 2011 January 2012
Final Reasons Paper and Final Determination (dependent upon start of DPP Determination on 2 July 2012)	February 2012

⁷ Economic Insights Pty Limited, *Regulation of Suppliers of Gas Pipeline Services – Gas Sector Productivity*, 10 February 2011.

23. The Commission’s indicative timeframe for the section 53ZD information requests is set out in the following table:

Key Step	Date
Submissions on Draft Notices due	17 June 2011
Finalise and issue section 53ZD notices to GPBs	early July 2011
Require section 53ZD notices to be completed by GPBs	30 September 2011

24. The Commission’s view at this stage is that the financial information obtained through the Notices is likely to be relevant irrespective of how the exact process for setting starting prices is determined. As set out above, the Commission intends to provide opportunities for interested parties to submit on its proposed process for setting starting prices for GPBs. Interested parties have also had opportunities to submit on the Commission’s proposed starting price adjustment process for non-exempt EDBs which the Commission will consider in coming to a view on a proposed process for setting starting prices for GPBs.
25. The Commission does not consider that the consultation on, or issue of, the Notices should be delayed beyond early July 2011. This provides GPBs some three months to complete the Notices and the Commission time to analyse the data for the purpose of the Draft Decisions Paper and Draft Determination.
26. One reason for consulting on and issuing information requests within this timeframe is to allow affected suppliers to make progress in engaging the necessary engineering expertise to carry out the asset adjustment process in respect of their RABs, if they had not already done so. It also allows affected suppliers to consider how the cost allocation process for allocating asset values and operating expenditure will be complied with.⁸ There is little scope for further flexibility in the consultation process given the short timeframes available, and the consultation on the draft form of the information request is intended to allow submitters to identify at an early stage any issues of a technical nature in terms of the consistency of the information requested with the relevant input methodologies relevant to GPBs.
27. Please note that further information requests may be issued throughout the process of setting the Initial DPP, including where the Commission considers that further information is required to assess compliance with the requirements of the Notice.

Submissions

28. Submissions on this consultation paper and the Draft Notices should be received by the Commission by no later than 5.00pm, **Friday, 17 June 2011**. In order to meet the timeframes prescribed in the Act, the Commission relies on submissions being provided by the due-date. The Commission will only allow extensions beyond the due-date if the submitter provides good reasons in writing. Unless an extension has

⁸ The Commission notes that should a GPB elect to apply arm’s length deductions or the optional variation to an accounting-based allocation approach, consistent with Part 2 Subpart 1 of the input methodologies, directors’ certifications will be required – refer to Schedule D of the Draft Notices.

been granted, the Commission may not be in a position to adequately consider submissions received after the due-date.

29. To foster an informed and transparent process, the Commission intends to publish all submissions on its website. Accordingly, the Commission requests an electronic copy of each submission and requests that hard copies of submissions not be provided (unless an electronic copy is not available). The Commission also requires that these electronic copies be provided in an accessible form (i.e., they are ‘unlocked’ and text can be easily transferred). If the submission contains confidential information or if the submitter wishes that the published version be ‘locked’, an additional document labelled ‘public version’ should be provided.
30. Submissions should be sent to:

regulation.branch@comcom.govt.nz;

or

Paul Mitchell
Regulation Branch
Commerce Commission
P.O. Box 2351
Wellington

Confidentiality

31. The Commission discourages requests for non-disclosure of submissions, in whole or in part, as it is desirable to test all information in a fully public way. The Commission is unlikely to agree to any requests that submissions in their entirety remain confidential. However, the Commission recognises there will be cases where interested parties making submissions may wish to provide confidential information to the Commission.
32. If it is necessary to include such material in a submission the information should be clearly marked and preferably included in an appendix to the submission. Interested parties should provide the Commission with both confidential and public versions of their submissions. The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
33. Parties can also request that the Commission makes orders under section 100 of the Act in respect of information that should not be made public. Any request for a section 100 order must be made when the relevant information is supplied to the Commission and must identify the reasons why the relevant information should not be made public. The Commission will provide further information on section 100 orders if requested by parties. A key benefit of such orders is to enable confidential information to be shared with specified parties on a restricted basis for the purpose of making submissions. Any section 100 order will apply for a limited time only as specified in the order. Once an order expires, the Commission will follow its usual process in response to any request for information under the Official Information Act 1982.