9 May 2018

Open letter

Dear Stakeholder

Our intention to gather information relating to emerging technologies

Purpose of this open letter

1. The purpose of this open letter is to:

   1.1 inform stakeholders of our intention to gather information from electricity distribution businesses (EDBs) relating to emerging technologies;

   1.2 remind EDBs of their obligations under Part 4 of the Commerce Act 1986 (the Act), including reference to our previously published guidance and additional guidance on how EDBs should be accounting for costs and revenues relating to EV chargers; and

   1.3 remind EDBs of their obligations under Part 2 of the Act, including reference to our previously published guidance.

2. We welcome your feedback on this letter by 25 May 2018.

Input methodologies review outlined our intention to monitor emerging technologies

3. In our input methodologies (IM) review we recognised the need to continue engaging with stakeholders on how emerging technologies are developing in the electricity sector and any changes that may be required to the IMs or any other regulatory and policy settings in the future.[1]

4. This letter and subsequent next steps is one way we are fulfilling this commitment.

Developing our understanding of emerging technology activities

5. We intend to do further work to develop our understanding of emerging technologies. In particular, we aim to develop our understanding of:

   5.1 what emerging technology EDBs are investing in;

   5.2 what effect emerging technologies are having on the sector; and

[1] Commerce Commission "Input methodologies review decisions: Topic paper 3 – The future impact of emerging technologies in the energy sector" (20 December 2016), paragraph X7, available at http://comcom.govt.nz/dmsdocument/15108.

5.3 how emerging technology investments are being accounted for within the Part 4 regime.

6. The scope of the emerging technology considered by this open letter and information gathering process is the same scope of emerging technology considered during the IM review:

> These technologies, variously described as emerging, evolving, developing, or edge technologies, include for example, distributed and grid electricity storage, distributed electricity generation including solar photovoltaic (PV) and wind, electric vehicles, and home automation systems.[2]

7. We welcome feedback on the scope for the purposes of this piece of work.

We will gather information to develop our understanding

8. We will gather information to develop our understanding. Where possible we will use information already provided in accordance with the information disclosure (ID) requirements.

9. Information voluntarily provided through asset management plans (AMPs) will be used to develop our understanding, but in some instances we may require re-disclosure so information is provided in a uniform manner.

Intention to issue information requests

10. We will identify how our understanding can be developed with the provision of further information and will issue information requests to support this.

11. Our intention is to require the information responses to be approved by the CEO or equivalent personnel at each EDB. We do not intend to require Director certification or opinions from independent auditors. This will allow EDBs to provide the information in a timely manner.

12. As we may publish the responses, we anticipate that EDBs may choose to provide both public and confidential versions.

Intention to meet with stakeholders

13. We also intend meeting with stakeholders who can assist us in developing our understanding of emerging technologies. The purpose of these meetings is for us to gain a better understanding of the impacts emerging technologies are having and the issues faced by industry participants.

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[2] Commerce Commission "Input methodologies review decisions: Topic paper 3 – The future impact of emerging technologies in the energy sector" (20 December 2016), paragraph 18, available at http://comcom.govt.nz/dmsdocument/15108.

14. The meetings will focus on issues that may impact on how we develop and apply our regulatory responsibilities. We will look to meet with a broad representation of stakeholders.

15. We request stakeholders that are interested in sharing their experiences to register their interest in their response to this letter. To assist us in understanding who we should meet with, expressed interests should include an overview of the matters the entity can assists us with.

Summary of our process

Process step	Expected Dates
Open letter	9 May 2018
Submissions due on Open letter	25 May 2018
Issue information request	June 2018
Meetings with some stakeholders	July 2018
Information responses due	July 2018

Our improved understanding will inform next steps

16. The information collected through this process will inform our next steps for emerging technologies. This may include us providing further guidance on how emerging technology should be treated within the Part 4 regime, or amendments to the regime.

Guidance on how EDBs should comply with Part 4 in relation to emerging technology

17. We remind EDBs that when dealing with emerging technologies they are required to comply with Part 4 of the Act.

18. Our IMs and ID requirements specify how EDBs are to account for and report on regulated expenditure and revenues. We have previously issued guidance on how our requirements apply to emerging technologies, including:

    18.1 Emerging technology pre-workshop paper;[3]

    18.2 Emerging technologies in the electricity sector: Input methodologies review workshop power point slides;[4]

    18.3 Input methodologies review decisions: Topic paper 3 – The future impact of emerging technologies in the energy sector;[5] and

[3] Commerce Commission "Input methodologies review: Emerging technology pre-workshop paper" (30 November 2015), available at http://www.comcom.govt.nz/dmsdocument/13885.

[4] Commerce Commission "Emerging technologies in the electricity sector: Input methodologies review workshop" (14 December 2015), available at http://www.comcom.govt.nz/dmsdocument/13943.

18.4 Input methodologies review – related party transactions: Final decision and determinations guidance.[6]

Guidance on how EDBs should apply our rules in relation to EV chargers

19. We have also included in the attachment to this paper, further guidance on how EDBs should account for costs and revenues related to EV chargers. This builds on the guidance that we have already provided on other emerging technologies and acknowledges the increased importance of EV charging infrastructure as EV uptake increases.

20. As part of this information gathering process we will be investigating how emerging technology investments are being accounted for by EDBs. There is potential that our disclosure requirements do not adequately specify how EDBs are to treat emerging technology expenditure, including for EV chargers. Accordingly, we intend requesting information to inform us on how our requirements have been interpreted.

21. We welcome feedback on our guidance in submissions to this letter.

EDBs are also required to comply with Part 2 of the Act

22. We remind EDBs that when dealing with emerging technologies they are also required to comply with Part 2 of the Act. In relation to emerging technology, EDBs need to ensure that they are not taking advantage of their substantial market power in emerging markets that they are seeking to enter or are already participating in.

23. We have previously issued guidance on complying with provisions under Part 2 of the Act, which includes information on how and when agreements may substantially lessen competition and the prohibition on businesses with a substantial degree of market power taking advantage of that market power for an anticompetitive purpose. This guidance includes:

23.1 Agreements that substantially lessen competition;[7]

23.2 Taking advantage of market power;[8]

23.3 Competitor collaboration guidelines;[9] and

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5 Commerce Commission "Input methodologies review decisions: Topic paper 3 – The future impact of emerging technologies in the energy sector" (20 December 2016) Chapters 3 and 4, available at http://comcom.govt.nz/dmsdocument/15108.

6 Commerce Commission "Input methodologies review – related party transactions: Final decision and determinations guidance" (21 December 2017), available at http://www.comcom.govt.nz/dmsdocument/16046.

7 Commerce Commission "Agreements that substantially lessen competition" (2 October 2017), available at http://www.comcom.govt.nz/business-competition/fact-sheets-3/slc-agreements/

8 Commerce Commission "Taking advantage of market power" (2 October 2017), available at http://www.comcom.govt.nz/business-competition/fact-sheets-3/taking-advantage-of-market-power/

23.4 Authorisation guidelines.[10]

We welcome your feedback

24. We welcome your feedback on this letter by 25 May 2018. Please provide your feedback to: Keston Ruxton, EAD Regulation Development, Regulation Branch, c/o regulation.branch@comcom.govt.nz.

Yours sincerely

Keston Ruxton
Manager EAD Regulation Development
Commerce Commission

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9 Commerce Commission "Competitor collaboration guidelines" (31 January 2018), available at http://www.comcom.govt.nz/business-competition/guidelines-2/competitor-collaboration-guidelines/

10 Commerce Commission "Authorisation guidelines" (11 August 2014), available at http://www.comcom.govt.nz/business-competition/guidelines-2/authorisation-guidelines/

Attachment: Regulatory treatment of EV chargers costs and revenue

25. This attachment provides guidance on how EDBs are to apply Part 4, the IMs and ID requirements in relation to EV chargers.

26. We understand that there may be different interpretations of how these requirements are to be applied to EV chargers. This attachment therefore sets out our current expectations, with the intention of providing clarity to EDBs on our view of how our rules should be applied, and give confidence to consumers and other stakeholders active in these emerging markets that our rules are being applied appropriately.

Guidance on regulatory treatment of EV chargers costs and revenues

27. In 2015 we posed a series of questions that informed our view of how our rules should be applied to the costs and revenues of certain emerging technology-related investments.[11] The box below summarises this approach.

Box 1: Key questions

Within scope of the regulated service?

Is what the EDB doing part of the service of conveyance of electricity by line, and not excluded by any of the exceptions listed in s54C(2)?

Treatment of capital costs

Is the asset used for the service of conveyance of electricity by line (as described above in question 1)? If so, how are the capital costs associated with this investment treated?

Treatment of operating costs

Are the operating costs attributable to the service of conveyance of electricity by line? If so, how are the operating costs associated with this investment treated?

Treatment of revenues

Are the revenues attributable to the service of conveyance of electricity by line? If so, how are the revenues associated with this asset treated?

28. Below we apply this approach to the costs and revenues associated with EV chargers.

Within scope of the regulated service?

29. Is what the EDB doing part of the service of conveyance of electricity by line, and not excluded by any of the exceptions listed in section 54C(2)?

[11] Commerce Commission "Input methodologies review – emerging technology pre-workshop paper" (30 November 2015), available at http://www.comcom.govt.nz/regulated-industries/input-methodologies-2/input-methodologies-review/emerging-technology/

30. The main purpose of EV chargers is to charge cars, not the provision of the regulated service (defined as conveyance of electricity by line). Therefore, our starting point is that we would not expect the costs and revenues associated with EV chargers to be within the scope of the regulated service.

31. However, there are two main exceptions:

    31.1 where the EDBs have active control over the EV charger, such that it can be controlled to manage network load (eg, for the purpose of deferring capital expenditure on the distribution network), and the controller is not separable from the EV charger; or

    31.2 where the EDB installs the EV charger to charge the EDB's own electric vehicles and is therefore a cost incurred by the EDB in order to provide the regulated service.

32. Under the two exceptions, a proportion of the costs of the EV charger can be considered to be within the scope of the regulated service.

Treatment of capital costs where an EV charger contributes to providing network services

33. Is the asset used for the service of conveyance of electricity by line? If so, how are the capital costs associated with this investment treated?

34. Where the control equipment is separable from the EV charger, then none of the charger capital costs would be recorded in the regulatory asset base (RAB) – just the cost of the control equipment. This is similar to load control relays attached to a hot water heater where the cost of the load control relay may be recorded in the RAB, but not the cost of the water heater itself.

35. Where the control equipment is not separable from the EV charger, but is integrated within the EV charger, then the capital costs of the EV charger can be included in the unallocated RAB. However, as a purpose of the charger is to provide EV charging services, the EDB should include in the allocated RAB value only the portion of the EV charger capital cost that is attributable to the control equipment.[12]

36. Where the EDB installs the EV charger to just charge the EDB's electric vehicles used to provide the regulated service, then all of the charger's capital costs can be included in the allocated RAB.

37. Where the charger is available for public use or used to provide unregulated services, its costs will need to be allocated between the regulated and unregulated services.

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[12] Electricity Distribution Services Input Methodologies Determination 2012 [2012] NZCC 26 (consolidating all amendments as of 3 April 2018), clauses 2.2.4(4) and 2.1.1 http://www.comcom.govt.nz/dmsdocument/15235

Treatment of operating costs where the EV charger contributes to providing network services

38. Are the operating costs attributable to the service of conveyance of electricity by line? If so, how are the operating costs associated with this investment treated?

39. We assume that the main operating cost associated with EV chargers is the cost of purchasing energy in the wholesale market; the energy that ends up in the EV's batteries.

40. We do not consider that the cost of purchasing energy to charge EV batteries can be attributable to the service of conveyance of electricity by line unless it is used to charge EDB vehicles that are attributable to the service of conveyance of electricity by line.

41. However, other operating costs, to the extent they are attributable to controlling the EV charger to manage network load, can be considered to be regulated operating expenditure.

Treatment of revenues

42. Are the revenues attributable to the service of conveyance of electricity by line? If so, how are the revenues associated with this investment treated?

43. Our starting point is that any revenue from providing EV charging services is, by definition, not derived from providing the service of conveying electricity by line. Therefore, these revenues are outside the scope of the Part 4 regime.