



COMMERCE COMMISSION

Starting Price Adjustments for Default Price-Quality Path for Non-Exempt Electricity Distribution Businesses

Consultation Paper on Draft Information Request and Process Update

Background

1. A default price-quality path ('DPP') for Electricity Distribution Businesses ('EDBs') was set by the Commerce Commission ('Commission') under Part 4 of the *Commerce Act 1986* ('Act') on 30 November 2009 for the period 2010-2015.¹ The DPP applies to EDBs that are not exempt from default/customised price-quality regulation on the basis of being 'consumer owned' under section 54D of the Act ('non-exempt EDBs').
2. For the 2010-2015 DPP, starting prices for non-exempt EDBs were initially 'rolled-over' by the Commission from 1 April 2010 in accordance with 53P(3)(a) of the Act. In its November 2009 *Decisions Paper* the Commission indicated that adjustments to these starting prices would then be considered in accordance with section 53P(3)(b) following publication of input methodologies.² The Commission intends to consider making starting price adjustments for non-exempt EDBs with a view to making its decision by 20 October 2011.
3. In its August 2010 *Discussion Paper*,³ the Commission proposed that the first adjustment to starting prices was to be made using information prepared consistent with input methodologies applying to EDBs. As new information disclosure requirements applying the input methodologies were not likely to be implemented by then, the Commission considered that an information request issued to suppliers

¹ The Commission published the *Commerce Act (Electricity Distribution Default Price-Quality Path) Determination 2010* on 30 November 2009 applying for the period from 1 April 2010 until 31 March 2015 ('2010-2015 DPP').

² Commerce Commission, *Initial Reset of the Default Price-Quality Path for Electricity Distribution Businesses Decisions Paper*, 30 November 2009. Section 54K permits the Commission to reset the DPP if an input methodology is published after 1 April 2010 and, had it applied at the time the DPP was reset, would have resulted in a materially different path being set. However, the Commission may not do this later than 9 months after the date of publication of the input methodology. A summary of the input methodology determinations was published in the *Gazette* on 20 January 2011.

³ Commerce Commission, *Starting Price Adjustments for Default Price-Quality Paths Discussion Paper*, 5 August 2010.

under section 53ZD to obtain information relevant to assessing profitability would likely be required.⁴

4. The Commission invited submissions on its proposals in the *Discussion Paper* from interested parties. A number of submitters requested that the Commission consult on the form and content of any section 53ZD information request. In response to those submissions, the Commission has published this *Consultation Paper*, which includes a draft section 53ZD information request notice ('Draft Notice'), and invites submissions from interested parties. 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 facilitate compliance with the information request.

Section 53ZD Information Request Notice

5. The Draft Notice attached to this *Consultation Paper* has been designed to obtain information from non-exempt EDBs that is consistent with the type of financial information that would be made available via information disclosure requirements that utilise input methodologies, had those requirements been in place at the time the 2010-2015 DPP was set. The information disclosure requirements have not yet been updated to reflect the publication of input methodologies, hence the need to issue this information request at this time.
6. It is proposed that the information obtained pursuant to the final section 53ZD notice ('Notice') will be used to inform starting price adjustments, should such adjustments be appropriate. The Commission considers that the information that will be required under the Notice is likely to be required for these purposes independently of how the details of starting price adjustments are finally determined. The Commission intends to publish a separate *Update Paper* in late March 2011 / early April setting out its views on the starting price adjustment process, including how the information obtained pursuant to the final Notice will be employed.
7. The Draft Notice relates to information relevant to the disclosure year ending 31 March 2010, including the results of the asset adjustment process in order to establish the opening regulatory asset base ('RAB') values for that disclosure year (if elected by the non-exempt EDB). The Commission considers that 2009/10 data is a relevant data set in exercising its powers under section 54K(3) because it is the data associated with prices for the year immediately prior to any starting price adjustment being made. The 2009/10 data has already been disclosed under the current information disclosure requirements, however the Notice enables this data to be available to the Commission and interested parties in a form consistent with input methodologies. Further information requests pertaining to 2009/10 data or any other data may be issued throughout the process of making starting price adjustments.

⁴ *ibid.*, paragraph 1.10.

Relevance to Gas Pipeline Businesses

8. Although the Draft Notice has been designed for non-exempt EDBs, interested persons should note that it provides guidance as to the type of information that is likely to be required from gas pipeline businesses ('GPBs') should starting prices under the initial DPP for GPBs be adjusted.
9. The Commission welcomes views from submitters on these matters, together with any other differences relevant to GPBs that should apply in respect of information required by way of a section 53ZD information request notice.

Process Update

10. On 23 December 2010, the Commission published on its website for comment its proposed timeline for making starting price adjustments for non-exempt EDBs. Following comments from interested parties, the Commission has revised this timeline as discussed below. The Commission's indicative timeframe for the information request is set out in the following table:

Key Step	Date
Finalise and issue section 53ZD notice to non-exempt EDBs	mid-March 2011
Require section 53ZD notice to be completed by non-exempt EDBs	27 May 2011

11. The Commission's indicative timeframe for decisions on starting price adjustments for non-exempt EDBs is set out in the following table:

Key Step	Indicative Date
Publish Update Paper setting out the Commission's updated thinking on its starting price adjustment process	late March 2011
Consultation on the Update Paper (five weeks for submissions / two weeks for cross-submissions)	April / May 2011
Publish Draft Decisions Paper setting out the Commission's proposed starting price adjustment process and proposed adjustments	mid-late July 2011
Consultation on the Draft Decisions Paper (five weeks for submissions / two weeks for cross-submissions)	August / September 2011
Publish Decisions Paper setting the Commission's decisions on the starting price adjustment process and final adjustments	By 20 October 2011.

12. Submitters on the December 2010 proposed timeline considered that the details of the starting price adjustment process should be finalised before any information request is consulted on or before the requested information is provided to the

Commission.⁵ The Commission's view at this stage, however, is that the financial information obtained through the Notice is likely to be relevant irrespective of how the exact process for adjusting starting prices is arrived at. As set out above, the Commission intends to provide opportunities for interested parties to submit on its proposed starting price adjustment process.

13. The Commission does not consider that the consultation on, or issue of, the section 53ZD notice should be delayed beyond March 2011. 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 following the release of the December 2010 proposed timeline).⁶ It also allows affected suppliers to consider how the cost allocation process for allocating asset values and operating expenditure will be complied with.⁷ 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.
14. The December 2010 proposed timeline indicated the potential for a workshop on the Draft Notice. Given the form of the Draft Notice and that non-exempt EDBs should be familiar with the type of information being requested, the Commission considers that a workshop is not warranted at this time. The Commission has not scheduled any other workshops at this time, but will review whether a workshop would assist the Commission's decision-making process following the publication of its *Update Paper*.
15. The December 2010 proposed timeline also indicated separate consultation steps on its updated views in May / June 2011 and proposed adjustments in early August 2011. To provide an opportunity for interested parties to make submissions on the proposed starting price adjustment process and the proposed magnitude of any adjustments from applying this process at the same stage, the Commission now intends to replace these separate consultation steps with a *Draft Decisions Paper* in mid-late July 2011.
16. Please note that further information requests may be issued throughout the process of making starting price adjustments, including where the Commission considers that further information is required to assess compliance with the requirements of the Notice.

⁵ Powerco Limited, *Updated timeframes for DPP starting price adjustments*, Letter to Anthony Merritt, 28 January 2011; and Wellington Electricity Lines Limited, *Re. Revised timelines for starting price adjustments*, Letter to Dr Mark Berry, 28 January 2011, p. 2.

⁶ Refer 'Important Notice' under the Project Timelines segment at <http://www.comcom.govt.nz/2010-2015-default-price-quality-path/>

⁷ The Commission notes that should an EDB 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 Schedule D of the draft information request.

Submissions

17. Submissions on the Draft Notice should be received by the Commission by no later than 5.00pm, **Monday, 28 February 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 been granted, the Commission may not be in a position to adequately consider submissions received after the due-date.
18. 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.
19. Submissions should be sent to:
regulation.branch@comcom.govt.nz
or
Matthew Lewer
Regulation Branch
Commerce Commission
P.O. Box 2351
Wellington

Confidentiality

20. 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. It 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.
21. 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 in both electronic and hard-copy formats. 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.
22. 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, including the principles that are applied when

considering requests for such orders. 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.