

**Submission on
Information Disclosure for
Electricity Distribution Businesses**

From the Electricity Networks Association

11 September 2009

Table of Contents

1. Introduction	1
2. Summary of Submission	1
• Any new proposals for additional information disclosures for EDBs are carefully reassessed against the section 53A purpose for information disclosure.	1
3. Purpose of Information Disclosure Regulation	3
Assessments of Compliance	3
Commission’s Summary and Analysis	4
External Audit and Review	5
4. Overall Purpose of Part 4	6
Implementation Principles	7
5. The Sequencing of Consultations	12
Input Methodologies	12
DPP Reset	15
Information Disclosure	15

1. Introduction

1. This submission, from the Electricity Networks Association (ENA), is in response to the Commerce Commission's (the Commission's) 29 July 2009 Discussion Paper on Information Disclosure (Discussion Paper) as part of the implementation of Part 4 of the Commerce Act (the Act).
2. The Discussion Paper is another step in a series of consultations between the Commission and interested persons on the new provisions of Part 4. The ENA has recently responded in detail to Discussion Papers on Input Methodologies (IMs), the Reset of the Default Price/Quality Path (DPP) for EDBs and the Regulatory Provisions of the Act. A number of the issues raised and proposals put forward by the Commission are interrelated with and have implications for information disclosure regulation. In this submission we do not re-work points made in previous submissions. In addition, and in the interests of brevity and clarity of message we have not answered the detailed 164 questions posed in the Discussion Paper.
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2. Summary of Submission

4. The ENA recommends that:

Purpose of Information Disclosure Regulation

- The existing information disclosure requirements for EDBs are carefully reviewed and amended to ensure the information requirements are limited to those required to meet the new section 53A purpose for information disclosure. This purpose is to assess performance, not assess compliance or actively promote the efficient operation of markets.
- Any new proposals for additional information disclosures for EDBs are carefully reassessed against the section 53A purpose for information disclosure.

Overall Purpose of Part 4

- Information disclosure requirements be specified to provide interested persons with information to assess performance against the section 52A purpose statement using the following disclosures:

Purpose Statement Criteria	Information to Be Disclosed
52A(1)(a) Innovation and Investment	AMPs Investment Performance Indicators Statistics
52A(1)(b) Efficiency and Quality	AMPs Operational Performance Indicators Quality Performance Indicators Statistics
52A(1)(c) Prices	Tariff Schedules Pricing Methodologies Standard Customer Contracts
52A(1)(d) Profits	Profit Performance Indicators

- The Commission discloses information for interested persons to assess whether it has met its obligations in respect of the section 54Q requirements.
- The proposals for information disclosure for EDBs be modified to exclude the following disclosures which are not necessary to meet the purpose of information disclosure for assessing performance against the section 52A purpose statement and are not consistent with the implementation principles:
 - AMP review rating indicators
 - Detailed financial and asset valuation disclosures
 - Consumer group price or average revenue information
 - Non standard contracts
 - Service specific measures
 - Consolidation statements
 - Other business policies
 - Duplicated AMP forecasts in annual disclosures.

Sequencing of Consultations

- The Commission delay the consultation on the information disclosure requirements to apply to EDBs until after the IMs and the DPP Reset have been determined.

3. Purpose of Information Disclosure Regulation

5. The purpose for information disclosure regulation is set out in section 53A of Part 4 of the Act as follows:

The purpose of information disclosure regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of this Part is being met.

6. This differs to the previous Part 4A purpose for information disclosure regulation for the electricity industry, which was set out in section 57T as follows:

The purpose of this subpart is to promote the efficient operation of markets directly related to electricity distribution and transmission services by ensuring that large line owners and large electricity distributors make publicly available reliable and timely information about the operation and behaviour of those businesses, so that a wide range of people are informed about such factors as profits, costs, asset values, price (including terms and conditions of supply), quality, security, and reliability of supply of those businesses.

7. The purpose of information disclosure regulation is now to provide information to enable interested persons to assess whether the purpose of the Part (as set out in section 52A) is being met. Under Part 4A the purpose for information disclosure regulation was to directly promote the efficient operation of markets. Under Part 4 however an assessment of whether the section 52A Purpose Statement is being met does not require information disclosure regulation to explicitly and actively ensure that the purpose of the Part is met. Assessment of performance is achieved by publication of information which demonstrates performance for interested persons and monitoring of that information by them.
8. This change in purpose for information disclosure regulation introduces an important distinction between the information disclosure regulation which has applied to EDBs since 2001 and that which is to be developed and implemented under Part 4. It is therefore necessary for any information disclosure requirements which have applied in the past to be reassessed in the context of the new purpose statement for information disclosure regulation.

Assessments of Compliance

9. We also believe that the proposals in the Discussion Paper confuse assessment of performance with assessment of compliance. The proposed disclosures for EDBs are essentially the same as the existing Electricity Distribution (Information Disclosure) Requirements 2008 with proposals for additional

information to also be disclosed. Components of these and of the existing disclosure requirements include information which is not required for an assessment of performance.

10. The detailed derivation of the Regulatory Asset Base (RAB), Regulatory Investment Value (RIV), regulatory tax, replacement cost values, depreciated replacement cost values and the duplicated AMP forecasts in annual disclosures are examples of information which is disclosed within the existing requirements which is not required for performance assessment purposes. We acknowledge that RAB and RIV values for example should be disclosed; however the considerable amount of derivation detail which is currently disclosed in respect of these values is not required in order to assess performance. In addition, the proposals for additional disclosure of consolidation statements and business policies incorporate information which is not required for assessment purposes. Existing disclosures which are not required include the detailed derivations of the:
 - RAB
 - RIV
 - Regulatory tax
 - Replacement cost values
 - Depreciated replacement cost values
 - AMP forecasts duplicated in annual disclosures.

Commission's Summary and Analysis

11. In addition, the Commission's intentions in respect of its summary and analysis obligations under section 53B(2) appear to be unduly influencing the proposals. Section 53B(2) states that:

If a supplier of goods and services is subject to information disclosure regulation, the Commission –

(a) may monitor and analyse all information disclosed in accordance with the information disclosure requirements; and

(b) must as soon as practicable after any information is publicly disclosed, publish a summary and analysis of that information for the purpose of providing greater understanding of the performance of individual regulated suppliers, their relative performance, and the changes in performance over time.

12. The purpose of this analysis is to assist interested persons to assess performance, consistent with the section 53A purpose for information disclosure, against the section 52A purpose statement. The Commission's

analysis should therefore provide summary and analysis of information consistent with this objective. It should not include summary and analysis of compliance, nor should it include summary and analysis of information not relevant for the purpose. Any summary and analysis of the proposed consolidation statements for example is not relevant to the purpose of information disclosure and represents unnecessary regulatory scrutiny. The same applies to business policies.

External Audit and Review

13. The Discussion Paper proposes that external audit and reviews are undertaken for disclosures to ensure compliance with the disclosure requirements. These processes already exist for EDB disclosures. Auditors of annual disclosures are required to opine on whether the disclosures have been prepared in accordance with the requirements. The requirements include guidance for auditors and regulated suppliers in the form of definitions, templates, examples and Handbooks. In addition, the Commission undertakes a review of AMP disclosures to monitor compliance with the requirements. In the past the Commission has also reviewed the pricing methodology disclosures of EDBs for this purpose and proposes that this continues.
14. We support these external assurance processes because they ensure that regulatory compliance is achieved in a cost effective manner. They also utilise the skills of auditors in an appropriate way. We note that it is not appropriate for auditors to review AMPs or pricing methodologies, and the Commission has access to other experts, where required, to assist them in this process.
15. Accordingly, disclosure requirements should reflect only that information which is required to assess performance. By eliminating information which demonstrates compliance and only disclosing information which demonstrates performance, interested persons will be able to focus on that information which is of most relevance for its intended purpose. This avoids unnecessary duplication with the audit and review processes which are an inherent component of information disclosure regulation and ensure compliance with the requirements.

Recommendation

16. The ENA recommends that:
 - The existing information disclosure requirements for EDBs are carefully reviewed and amended to ensure the information requirements are limited to those required to meet the new section 53A purpose for information disclosure. This purpose is to assess performance, not assess compliance or actively promote the efficient operation of markets.

- Any new proposals for additional information disclosures for EDBs are carefully reassessed against the section 53A purpose for information disclosure.

4. Overall Purpose of Part 4

17. The section 53A purpose for information disclosure regulation refers to an assessment of performance against the “*purpose of this Part*”. This is a reference to the section 52A purpose statement which applies to all forms of regulation imposed by Part 4 to the suppliers of regulated electricity lines, gas pipelines and specified airfield services. The section 52A purpose statement is defined as follows:

(1) The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in section 52 by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services—

(a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and

(b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and

(c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and

(d) are limited in their ability to extract excessive profits.

18. The section 52A purpose statement supersedes the previous section 57E purpose statement, which set out the purpose of Part 4A for the electricity industry as follows:

The purpose of this subpart is to promote the efficient operation of markets directly related to electricity distribution and transmission services through targeted control for the long term benefit of consumers by ensuring that suppliers –

(a) are limited in their ability to extract excessive profits; and

(b) face strong incentives to improve efficiency and provide services at a quality that reflects consumer demands; and

(c) share the benefits of efficiency gains with consumers including through lower prices.

19. We acknowledge and support the Discussion Paper’s consideration of the information required to assess performance against each of the four branches of the overall purpose statement. In our view, assessment of performance against the section 52A purpose statement can most effectively be met in the context of information disclosure regulation by the disclosures set out in the following table:

Purpose Statement Criteria	Information to Be Disclosed
52A(1)(a) Innovation and Investment	AMPs Investment Performance Indicators Statistics
52A(1)(b) Efficiency and Quality	AMPs Operational Performance Indicators Quality Performance Indicators Statistics
52A(1)(c) Prices	Tariff Schedules Pricing Methodologies Standard Customer Contracts
52A(1)(d) Profits	Profit Performance Indicators

20. In addition, section 54Q of Part 4 introduces a new regulatory requirement for all regulatory instruments (including information disclosure regulation) applying to suppliers of regulated electricity services, as follows:

The Commission must promote incentives, and must avoid disincentives, for suppliers of electricity lines services to invest in energy efficiency and demand side management, and to reduce energy losses, when applying this Part in relation to electricity lines services.

21. Accordingly, any new information disclosure requirements developed and implemented under Part 4 for EDBs must reflect due consideration of not only the new section 53A purpose for information disclosure as noted above, but the new overall purpose statement for Part 4 and the specific requirements for the Commission to demonstrate that the regulatory instruments applying to EDBs comply with section 54Q. In our view the section 53A purpose statement and the section 54Q requirement suggest that it is the responsibility of the Commission, not EDBs, to disclose information to allow interested persons to assess whether the Commission has met its obligations in respect of the section 54Q requirements.

Implementation Principles

22. The Discussion Paper acknowledges that information disclosure is the most light-handed regulatory instrument available under Part 4. In paragraph X7

the Discussion Paper indicates that the Commission is mindful of the need to implement a least-cost regime that sufficiently informs interested persons whether the purpose of Part 4 is being met.

23. In addition the Discussion Paper sets out the implementation principles (consistency, transparency, cost-effectiveness and flexibility) it has used to assess the options considered. These implementation principles are the same as those used to assess IMs and options for the DPP Reset. The ENA supports the application of consistent implementation principles across the range of regulatory instruments to apply to EDBs.
24. We are extremely concerned however that although the implementation principles have been outlined in detail in Chapter 2 of the Discussion Paper, the proposals developed in subsequent chapters do not adequately reflect these underlying principles. We note for example the following objectives for the implementation principles included in section 2.4.2 of the Discussion Paper:
 - Consistency – *consistency is only desirable in so far as it is achieved in a cost effective manner* (paragraph 80)
 - Flexibility – *providing for sufficient flexibility to allow regulated entities to disclose a fair reflection of their performance* (paragraph 81)
 - Transparency – *the rationale for including indicators must be clearly explained* (paragraph 82)
 - Cost Effectiveness – *Disclosure of some information would imply additional costs, even for efficient suppliers. In these cases requirements have only been proposed to the extent they are considered to be required to allow interested persons to assess whether the purpose of Part 4 is being met* (paragraph 87).
25. We believe that the Discussion Paper’s proposals for information to be disclosed are excessive and inconsistent with the implementation principles particularly the scope of the information to be disclosed and the level of detail to be disclosed. The existing information disclosure requirements for EDBs imposes significant compliance costs on them as most of the information that must be disclosed cannot be readily sourced from other reporting systems such as statutory financial accounts or billing systems. Disclosed information must be created and manipulated to meet the Commission’s specifications. The Discussion Paper has not adequately reassessed the existing requirements against the implementation principles and also proposes additional disclosures for EDBs, as illustrated in Table 17 of the Discussion Paper.
26. As stated previously we believe the information disclosure specifications confuse assessments of compliance with assessments of performance. This is

inconsistent with the section 53A purpose for information disclosure and does not adequately recognise the role of the auditor.

27. The manner in which each of the components of disclosure should be specified needs to be mindful of the implementation principles and the intention for information disclosure regulation to be a relatively light handed and cost-effective form of regulation. The Commission has wide powers under section 53ZD to obtain information for the carrying out of its functions under Part 4 of the Act. It is section 53 ZD which provides the basis for obtaining information necessary in order to support the Commission's activities under subpart 6. The Commission's proposed disclosures appear to confuse the two, and go wider than is necessary or permitted for information disclosure purposes. The Commission will be aware that the Supreme Court has recently confirmed in *AstraZeneca Limited v Commerce Commission* [2009] NZSC 92 that a strict approach to the interpretation of the Commission's information gathering powers is required.
28. The proposals for information to be disclosed by EDBs are inconsistent with these objectives, as summarised above, and reflect undue regulatory scrutiny on EDBs. In the following table we have summarised the aspects of the proposed disclosures which the ENA does not support and the reasons why we believe these disclosures are inconsistent with the purpose for information disclosure and the implementation objectives:

Proposed Disclosure	Inconsistent with Purpose for Information Disclosure	Inconsistent with Implementation Principles
AMP review rating indicators	Not required to assess performance and difficult to define in an objective manner. AMP reviews are sufficient.	Does not meet the flexibility principle, including the provision of comparable information and fair performance assessments due to the subjective nature of the proposed ratings.
Detailed financial and asset valuation disclosures to support assessments of subparts (1)(a), (1)(b) and(1)(c) of the purpose statement	Not required to assess performance against these subparts. Financial and asset related performance indicators are required for subpart (1)(d)	Detailed schedules are not required in order to derive the proposed performance indicators and therefore assess performance. Inconsistent with the cost-effectiveness principle.
Consumer group price or average revenue information	Not required to assess performance against subpart (1)(b) or (1)(c) of the purpose statement. The proposed information (including the relative price index currently disclosed) is meaningless, misleading and unable to be derived by some EDBs.	Other pricing disclosures fully meet the performance assessment objectives. Does not meet the flexibility principle as the proposed indicators cannot be specified to provide a fair reflection of performance in a cost effective manner.
Non standard contracts	Inconsistent with behaviour in competitive markets. Not required to assess performance as non standard contracts reflect commercial arrangements between suppliers and consumers.	Not cost effective as minor contract variations are common in order to meet site specific needs. Disclosures are not meaningful to interested persons therefore inconsistent with the flexibility principle.

Proposed Disclosure	Inconsistent with Purpose for Information Disclosure	Inconsistent with Implementation Principles
Service specific measures	Not relevant for EDBs, most of whom have interposed arrangements with customers through retailers and the proposed measures do not measure the service quality of the regulated business. Reliability and supply quality measures are the most valid measures of quality of service for the regulated services of EDBs.	Does not meet the flexibility principle for a fair performance assessment. Not cost effective as other measures of quality are more relevant, and already disclosed.
Consolidation statements	Not required to assess performance against the purpose statement. Related party transaction disclosures provide transparency over relationships between the regulated and non regulated businesses of an EDB.	Duplicates the audit function and therefore is not cost effective. Does not meet the transparency objective as the rationale for the disclosure is not apparent and the information cannot be presented in a manner that is easy for interested persons to understand.
Other business policies	Not required to assess performance against the purpose statement.	Inconsistent with the transparency principle as there is no clear rationale for the disclosure. Not consistent with assessing performance.
Duplication of AMP forecasts in annual disclosures		Duplicates disclosures therefore inconsistent with the cost effectiveness principle.

Recommendation

29. The ENA recommends that

- Information disclosure requirements be specified to provide interested persons with information to assess performance against the section 52A purpose statement using the following disclosures:

Purpose Statement Criteria	Information to Be Disclosed
52A(1)(a) Innovation and Investment	AMPs Investment Performance Indicators Statistics
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52A(1)(d) Profits	Profit Performance Indicators

- The Commission discloses information for interested persons to assess whether it has met its obligations in respect of the section 54Q requirements.
- The proposals for information disclosure for EDBs be modified to exclude the following disclosures which are not necessary to meet the purpose of information disclosure for assessing performance against the section 52A purpose statement and are not consistent with the implementation principles:
 - AMP review rating indicators
 - Detailed financial and asset valuation disclosures
 - Consumer group price or average revenue information
 - Non standard contracts
 - Service specific measures
 - Consolidation statements
 - Other Business Policies
 - Duplicated AMP forecasts in annual disclosures.

5. The Sequencing of Consultations

Input Methodologies

30. Subpart 3 of Part 4 of the Act sets out provisions for input methodologies to be developed and included in the regulatory determinations made under Part 4 for regulated suppliers, including EDBs. Section 52R sets out the purpose of input methodologies as follows:

The purpose of input methodologies is to promote certainty for suppliers and consumers in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of goods or services under this Part.

31. Section 52T(1) lists the matters to be covered by input methodologies as follows:

The input methodologies relating to particular goods or services must include, to the extent applicable to the type of regulation under consideration –

(a) methodologies for evaluating or determining the following matters in respect of the supply of the goods or services

(i) cost of capital:

(ii) valuation of assets, including depreciation, and treatment of revaluations:

(iii) allocation of common costs, including between activities, businesses, customer classes, and geographic areas: and

(iv) treatment of taxation; and

(b) pricing methodologies; and

(c) regulatory processes and rules, such as –

(i) the specification and definition of prices, including identifying any costs that can be passed through to prices (which may not include the legal costs of any appeals against input methodology determinations under this Part or of any appeals under section 91 or section 97); and

(ii) identifying circumstances in which price-quality paths may be reconsidered within a regulatory period; and

(d) matters relating to proposals by a regulated supplier for a customised price-quality path, including –

(i) requirements that must be met by the regulated supplier, including the scope and specificity of information required, the extent of independent verification and audit, and the extent of consultation and agreement with consumers; and

(ii) the criteria that the Commission will use to evaluate any proposal.

32. Section 53F provides for limited exemptions from the pricing methodology and cost of capital input methodologies for suppliers which are subject only to information disclosure regulation. This will apply to those EDBs which are exempt from price-quality regulation due to their “consumer owned” status.
33. IMs are currently being consulted upon and IM determinations will be made in 2010. These will apply to EDBs. As IMs have not yet been determined and as they must be included in the information disclosure regulation determinations made under Part 4, the ENA does not believe that it is appropriate for the Commission to be consulting on the detailed components of information disclosure regulation at this time. The IM consultation process must be permitted to run its course. Information disclosure regulation consultation cannot presuppose the outcomes of the IM consultations for EDBs.
34. IM determinations will impact on information disclosure in the following ways:
 - The specification of the regulatory profit measure and the monitoring of this in the context of the cost of capital IM
 - The valuation of assets, including depreciation, additions, disposals and revaluations as well as the scope of the assets to be included in the RAB and the treatment of shared assets
 - The allocation of common costs
 - The specification and measurement of regulatory tax (and associated variables such as deferred tax balances)
 - The definition of prices and pass through costs
 - Pricing methodologies.
35. We are extremely concerned that the Discussion Paper includes a number of references to the Commission’s preliminary views on IMs and that these form the basis of the proposals for information disclosures. The Commission must take the views of interested persons into account before making its determinations. Its preliminary views are not an appropriate basis on which to undertake consultation on information disclosure regulation and accordingly we believe this consultation is premature.
36. As stated in our submission on the IMs we are increasingly concerned at the time frames which the Commission has set for itself in its planned consultations. There is a considerable amount of material to be worked

through and complex issues to be resolved. The issues are too important to rush. Accordingly the Commission needs to prioritise its work streams in respect of EDBs over the forthcoming months to ensure adequate time is allocated to each component and the interrelationships between each of the regulatory instruments is fully addressed before changes to the regulatory requirements for EDBs are implemented. IMs must be determined before meaningful consultation on information disclosure regulation can be undertaken.

DPP Reset

37. In addition we note that the DPP Reset will specify prices, quality standards and other parameters such as pass through costs for the purpose of price/quality regulation to be applied to EDBs which do not meet the “consumer owned” exemption criteria. It is possible that the specification of these parameters could be usefully incorporated into disclosure requirements for EDBs. At the very least we believe that it is important to consider the extent to which the DPP parameters can be incorporated into disclosure requirements, where relevant. It is not possible to do this however until after the DPP determination has been made.

Information Disclosure

38. Section 54I(1) states that the Commission must make a section 52P determination for information disclosure regulation as soon as practicable after 1 April 2009. Section 54W states that the existing Requirements which were implemented under Part 4A continue to apply to EDBs until a section 54(I)(1) determination is made. Thus EDBs are currently and will continue to be subject to existing information disclosure requirements until a new determination is made. The current Requirements were only recently introduced (in 2008) after a prolonged consultation process. They introduced substantial changes to the previous disclosure requirements. EDBs invested a significant amount of effort in the consultation process including assisting with the definitions and specification of the indicators that the Commission deemed should be disclosed. These new disclosure requirements were finalised less than a year ago. It is not an efficient use of EDB or Commission time, in our view, to be reconsidering in detail these requirements at this time.
39. We acknowledge that the Act places time constraints on the Commission in respect of an information disclosure determination for specified airport services. There are however no such constraints for electricity distribution suppliers or gas pipeline suppliers and accordingly we submit that the Commission does not need to maintain the same work stream for gas or electricity suppliers, as it does for airports, in consulting on and making its information disclosure determinations.

40. As Part 4 provides for the existing requirements to apply until new ones are determined there is no obligation on the Commission to prepare draft determinations for EDBs until the IMs have been determined. For this reason we have not considered or responded to the detailed proposals in the Discussion Paper at this stage.

Recommendation

41. The ENA recommends that the Commission delay the consultation on the information disclosure requirements to apply to EDBs until after the IMs and the DPP Reset have been determined.