

**Default/Customised Price-Quality Regulation**

**Setting of the Default Price-Quality Path  
for Suppliers of Gas Pipeline Services**

**Process Paper**

*24 July 2009*



COMMERCE COMMISSION

Network Performance Branch

Commerce Commission

Wellington

NEW ZEALAND

24 July 2009

## **Introduction**

- 1 This paper (“Process Paper”) outlines the proposed process the Commerce Commission (“Commission”) intends to follow in setting the initial default price-quality path (“DPP”) for suppliers of gas pipeline services (“GPBs”).
- 2 The Commission invites submissions on the proposed process outlined in the Process Paper and will reflect its consideration of submissions in a Discussion Paper proposed for publication in February 2010.

## **Background**

- 3 From 1 July 2010, suppliers of gas pipeline services are subject to default/customised price-quality regulation under subpart 10 of Part 4 of the *Commerce Act 1986* (“the Act”), as amended by the *Commerce Amendment Act 2008*. Section 55A sets out the meaning of gas pipeline services, and Schedule 6 of the Act lists specified pipelines for exemption under Part 4.
- 4 In addition, section 55G provides that the gas (distribution) pipeline services of Vector Limited (Auckland) and Powerco Limited will transition to the DPP following the expiry of the Commerce (Control of Natural Gas Services) Order 2005 on 1 July 2012. The Act also provides that the Order may be revoked prior to expiry, in which case the suppliers involved will be subject to default/customised price-quality regulation as if the Order had expired.
- 5 The DPP must include starting prices, the rates of change in prices during the first regulatory period, the quality standards that apply during the first regulatory period, the date at which the DPP takes effect and the annual date by which any proposal for a customised price-quality path must be received<sup>1</sup>. The Commission may also, by written notice issued under section 53N of the Act, require information demonstrating compliance with the DPP, including written confirmation of compliance and the truth and accuracy of that information.
- 6 As noted in the Provisions Paper<sup>2</sup>, there is ambiguity in the Act as to the date by which the Commission is required to set the initial default price-quality path for suppliers of gas pipeline services (“gas DPP”). Vector submitted that the gas DPP may be set as soon as practicable after 1 July 2010. The Commission is aware that section 55E(2) contemplates that the gas DPP may be set after 1 July 2010. Having considered the matter further, the Commission’s view remains that there is an inconsistency in the relevant legislative provisions. Plainly, section 55E(2) contemplates that the DPP may come into effect after 1 July 2010, whereas section 55D on one interpretation suggests that this should be set by 1 July 2010. Against this background, an assessment must be made which of the express provisions is to be preferred. The Commission has decided that it will be guided by section 55E(2) and, therefore, proposes that the initial gas DPP comes into effect on 1 July 2011.

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<sup>1</sup> Section 53O.

<sup>2</sup> Commerce Commission, Regulatory Provisions of the Commerce Act 1986 - Discussion Paper, 19 December 2008.

- 7 This time line has been formulated to enable the Commission to fully consider the application of relevant input methodologies; to obtain a more comprehensive data set from regulated suppliers; to undertake better analysis of that data; and to give due consideration to sector-specific issues. It will also allow time for consultation with interested parties.

## **Outline of DPP Process**

- 8 This section describes the proposed project stages. Each project stage will contain progressively more detail on the proposed DPP and seek to address and draw conclusions on particular issues as the project proceeds. The Commission envisages that the process to set the DPP will consist of three stages, each with a significant consultative element. These stages are as follows:
- i. discussion stage;
  - ii. decision stage; and
  - iii. determination stage.
- 9 The three key outputs of the process to set the DPP are:
- a Determination, setting out how the DPP applies to GPBs;
  - a Decisions Paper that outlines how decisions relating to the Determination were made; and
  - a summary of the Determination, published in the Gazette by 1 March 2011.

### *Discussion Stage*

- 10 This Process Paper marks the beginning of the discussion stage and reflects the Commission's proposed process to set the DPP. This paper is subject to a two-week consultation process, which seeks the views of interested parties. An updated Process Paper may be published after submissions have been considered.
- 11 Following this Process Paper will be a "Discussion Paper", setting out the Commission's initial views on the DPP and how it should be determined. The Discussion Paper will cover issues such as:
- *Overall Form and Scope of the DPP*: a proposal on the likely form of the DPP;
  - *Information Requirements*: discussion of the required information needed for setting starting prices, rates of change and quality standards;
  - *Initial views*: on the following:
    - i. appropriate starting prices including potential use of claw-back to 1 January 2008;
    - ii. rates of change analysis; and
    - iii. appropriate quality standards.
- 12 Consultation with interested parties will follow the release of the Discussion Paper, inviting written submissions from interested parties.

## *Process Paper*

### *Decision Stage*

- 13 In the decision stage, the Commission will consider submissions on the Discussion Paper and prepare and consult on a “Draft Decisions Paper”. The paper will include initial decisions such as:
- *Overall Form*: the proposed overall form of the DPP given the preliminary work done and submissions received;
  - *Starting Prices*: whether there is a need for initial price adjustments and for which suppliers. This will include an indication of how these should be calculated and towards what level returns should be targeted;
  - *Rates of Change*: a preliminary view on the methodology for calculating the rate of change and whether alternative rates are necessary; and
  - *Quality Standards*: preliminary views on the methodology for determining appropriate standards.
- 14 Consultation with interested parties will be undertaken through the release of the Draft Decision Paper, inviting written submissions followed by cross-submissions from interested parties. To foster an informed and transparent process, the Commission intends to publish all submissions on its website.

### *Determination Stage*

- 15 The Commission will prepare a draft Determination and consult on its form and content. At the same time, it will also produce an Updated Decisions Paper. Following consideration of submissions, the Commission will publish the Final Determination, the Final Decisions Paper and a summary of the Determination in the *New Zealand Gazette*, by 1 March 2011.

## **Indicative Timetable**

- 16 Table 1 summarises the main consultative steps the Commission proposes to follow when setting the DPP. Milestone dates are indicative and may vary.

## **Next Steps**

- 17 The Commission will update its process following consideration of submissions relating to the use of workshops and/or conferences to aid the DPP process. The Commission is open to receiving proposals for additional interaction with stakeholders and will give consideration to the use of workshops and/or conferences to aid the DPP process. The Commission would welcome views on this by the due date for submissions on this paper.

Table 1: Indicative Timetable

Phase	Key Step	Indicative Date
Discussion	Submissions due on Process Paper	Mid August 2009
	Publish Discussion Paper	Early February 2010
	- Submissions due on Discussion Paper	Early March 2010
Decision	Publish Draft Decisions Paper	Early August 2010
	- Submissions due on Draft Decisions Paper	Mid September 2010
	- Cross-submissions due on Draft Decisions Paper	Early October 2010
	Publish Updated Decisions Paper	Mid December 2010
Determination	Publish Draft Determination	Mid December 2010
	- Submissions due on the technical drafting of the Draft Determination	Late January 2011
	Publish Final Determination and Summary of Final Determination in <i>Gazette</i> ; Publish Final Decisions Paper	1 March 2011

## **Submissions**

- 18 Submissions are invited on this Process Paper. Submissions should be received by the Commission no later than 5pm Monday, 10 August 2009 (“due-date”). All submissions should be supported by documentation and evidence, where appropriate.
- 19 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 if received after the due-date.
- 20 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). Submissions should be sent to:

[NPB@comcom.govt.nz](mailto:NPB@comcom.govt.nz)

or

Louise Allsopp  
Chief Adviser  
Network Performance Branch  
Commerce Commission  
P.O. Box 2351  
Wellington

## *Confidentiality*

- 21 Parties making submissions during the gas DPP process may wish to provide confidential or commercially sensitive information to the Commission. Parties can request that the Commission makes orders under s100 of the Act in respect of information that should not be made public. Any request for a s100 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 s100 orders if requested by parties, including the principles that are applied when considering requests for such orders. Any s100 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.
- 22 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.
- 23 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

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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.