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Dear Keston

## Proposed amendments to information disclosure determinations

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Genesis Energy Limited (**Genesis**) welcomes the opportunity to comment on the Commerce Commission's (**the Commission**) proposed amendments to information disclosure determinations for airport services, electricity distribution services, and gas pipeline services, dated 30 June 2017 (**the Consultation Paper**).

We agree with the Commission's proposed changes as set out in the Consultation Paper and acknowledge that the current focus is on addressing consequential amendments arising out of the 2016 Input Methodologies Review, rather than constituting a full review of the Information Disclosure (**ID**) requirements.

Genesis however would like to take this opportunity to raise points regarding ID requirements more generally as it is our firm view that the current ID requirements are no longer effective nor meet the purpose for which they are intended under Part 4 of the Commerce Act 1986 (**Part 4**).

ID requirements are 'sunshine regulation', meaning their purpose is to "ensure that sufficient information is readily available to interested persons to assess whether the purpose of this Part [4] is being met."

As an interested person, Genesis has observed that information that is currently disclosed by electricity distribution businesses (**EDBs**) in respect of network investment decisions is neither sufficiently specific nor granular to allow useful analysis of whether these choices are delivering outcomes that would be

produced in the competitive market e.g. efficient procurement choices that promote the long-term benefit of consumers.

In the sections that follow we explain further our concerns, particularly in reference to emerging technologies including batteries, and propose amendments to the current ID regime that will better achieve the Commission's intention under Part 4.

We consider this to be an essential discussion that regulators, current industry participants and those looking to enter the industry must have to ensure that consumers can access emerging technology in a way that delivers the best outcomes for them, and look forward to further engagement on these matters.

#### **The significance of ID requirements in Part 4**

As you are aware, Part 4 provides for the regulation of the price and quality of services in markets where there is little or no competition. "Electricity lines services" are such a market and are declared to be regulated by Part 4. The purpose of Part 4 is to promote the long-term benefit of consumers by promoting outcomes that are consistent with outcomes produced in workably competitive markets.

As part of regulating electricity lines services, there are ID requirements as defined above. When ID requirements are effective, interested persons can assess whether the outcomes in the regulated market are consistent with outcomes that would be produced in a competitive market, including incentives for innovation, improvements in efficiency, sharing benefits with consumers and limits on excessive profit.

Amongst other things, ID requirements provide evidence for regulators and policy makers to enable them to intervene directly in the regulated market if such outcomes are not being achieved.

#### **The problem with the current ID requirements**

We acknowledge that the Commission's ability to require disclosure is restricted to disclosure of regulated goods and services and unregulated goods and services to the extent necessary to monitor compliance with the information disclosure requirements applying to regulated goods and services.

Genesis recognises that there are differences within the sector about the scope of the regulated service in the context of the Commission's consideration of emerging technologies during the Input Methodologies Review. For example, we acknowledge that the Commission has taken a different view from Genesis as to whether customer-sited storage batteries should be included in the Regulated Asset Base (**RAB**) of an EDB. We do not agree they should be included in the RAB,

however, we acknowledge that the Commission has taken a different view insofar as the current text of Part 4 and absent legislative structural intervention.

Irrespective of these differences, the disclosure sought in this letter is directed at the provision of information to allow Genesis, as an interested person, to assess whether competitive outcomes are occurring in the electricity lines services market. In particular, we seek to understand whether EDBs are making efficient procurement choices that promote the long-term benefit of consumers.

Genesis considers that the information currently disclosed does not allow us to assess this in any meaningful way. An area of great concern with the current ID requirements is a lack of specificity and granularity in respect of the information that is required to be disclosed. While the ID Determination currently requires EDBs to canvass the subject matter, the information required is for the most part qualitative and not capable of genuine independent scrutiny.

Very little is required in the way of quantitative information and, in our view, that which is provided is not sufficient to enable even a well-informed expert to, for example, evaluate the network development choices that an EDB is making. This is critical given the development of technology, the delivery of technology by competitive markets and the opportunities it can deliver in areas such as network development.

Currently disclosures about, for example, network development are predominantly achieved through an EDB's asset management plan (**AMP**). As you are aware, in an AMP we should see:

1. Policies on distributed generation and non-network solutions;
2. Demand forecasts to the zone substation level covering at least a five year forecast period, which identify network constraints that may arise due to anticipated growth in demand, and "discuss" the impact on the load forecasts of any anticipated levels of distributed generation in a network, and the projected impact of any demand management initiatives;
3. An analysis of the significant network level development options identified and details of decisions made to satisfy and meet target levels of service, including the reasons for choosing a selected option for projects where decisions have been made and the alternative options considered, "and the potential for non-network solutions described";
4. A description of the EDB's network development programme, including distributed generation and non-network solutions and actions to be taken, together with associated expenditure projects;

5. For projects included in the AMP where decisions have been made, the reasons for choosing the selected option should be stated and should include the way in which target levels of service will be impacted. For projects planned to start in the next five years, alternative options should be discussed, including the potential for non-network approaches to be more effective than network augmentations;
6. Complete schedules containing forecasts of capacity for each zone substation and forecast network demand, aggregated for their whole network.

Genesis observes that where this information [the items listed 1-6] is disclosed in AMPs, it is insufficiently specific or granular to allow useful analysis by interested persons. This fundamentally undermines the intent of the ID requirements under Part 4.

EDBs should also disclose financial reports that detail capital and operational expenditure, both for the disclosure and forecasted year, including expenditure on “energy efficiency and demand side management, reduction of energy losses” and “research and development”.

Again, as with the information above, the financial information is not compartmentalised or disaggregated in a way that would make it possible for an interested person to evaluate an EDB’s decision-making in respect of forecasted constraints.

#### **Proposed initial areas for change**

Therefore, Genesis proposes that the Commission consider amendments to the Electricity Distribution Information Disclosure Determination 2012 (ID Determination) which would:

1. Require EDBs to disclose more granular information about the planning and implementation of their network development projects such as information about an EDB’s forecasting of future network constraints and the way they identify and select options to deal with those constraints.

Such information would include detailed demand forecasts down to the level that an EDB holds the information. EDBs should not be able to aggregate up information they hold and disclose a less granular version than what they are using to forecast demand and network constraints.

2. Ensure greater disclosure of quantitative information rather than reliance on qualitative information as, we believe, is currently the case.

We understand EDBs do carry out detailed network and costs analyses in respect of options considered for projects yet there is no insight into these analyses made

available. ID requirements should be directed at providing an understanding to the reader of the key trade-offs that have been made for any given investment decision.

3. Mandate disclosure of procurement processes generally and actual disclosure of the details of the process where an investment is over a specified threshold.

This would increase the ability of interested persons to ascertain whether a robust procurement process was adhered to, particularly when procuring non-network solutions. At present, it is difficult to ascertain the extent to which EDBs give proper consideration to non-network solutions to deal with forecasted constraints and, in particular, whether EDBs adequately consider the use of customer-sited batteries.

It appears to us that, to the extent that customer-sited batteries are considered, EDBs only consider self-provision and use of the battery for their purposes. It also appears they do not evaluate the potential for a market transaction to provide a solution to a constraint issue, or consider how a large percentage of the value of the customer-sited battery is being untapped. This risks under-utilising the potential of such a battery not just for the benefit of the network but also the benefit it could, and should, provide to the customer on whose premises it is located.

In any given scenario, we are of the view that the application of a customer-sited battery for the single purpose of deferring investment in the distribution network will leave a substantial amount of the economic value on the table. By contrast, a market transaction involving customer-owned batteries that provides a stack of services to the electricity system may well shift the economics of the solution for a forecasted constraint in favour of batteries because the additional revenue generated by the batteries will have the tendency to decrease the cost of the distribution deferral service for the EDB.

However, even if our view is incorrect, current disclosures do not allow interested persons to assess whether or not the provision of a customer-sited battery by an EDB, rather than through a market transaction, is delivering long term benefit for consumers by promoting outcomes that are produced in competitive markets.

### **Proposed next steps**

In the recent Input Methodologies review, the Commission considered a detailed proposal put forward by ERANZ that sought to deliver a competitively determined market price for the services delivered by emerging technologies by placing restrictions on EDBs with respect to the assets they could include in their RAB.

The Commission's view was that Part 4 was not the appropriate instrument to implement a structural change of this kind. The Commission went on to say that, in any event, it did not consider that the case had been made for regulators to mandate market transactions in the place of integration. The Commission identified potential efficiency gains arising from economies of scope and co-ordination on the other side of the issue, and concluded that there was not enough information at this stage to justify intervention.

This letter is intended to facilitate steps to addressing the information deficit perceived by the Commission in this area and provide evidence that intervention is needed.

Again, we see this as an essential discussion for all sector participants existing and future. It is critical that ID requirements ensure that regulated parts of the industry are subject to appropriate scrutiny and the disciplines that competitive parts of the industry are required to adhere to in order to deliver what consumers want.

If you would like to discuss any of these matters further, please contact me on 04 495 3348.

Yours sincerely



Rebekah Cain  
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