

**PROPOSED APPROACH TO  
CONSUMER-OWNED ELECTRICITY DISTRIBUTION BUSINESSES  
UNDER THE  
INITIAL DEFAULT PRICE-QUALITY PATH**

**Consultation Paper**

*16 March 2009*



COMMERCE COMMISSION

Networks Performance Branch  
Commerce Commission  
Wellington  
NEW ZEALAND

16 March 2009

## Overview

- 1 This document outlines the Commission's proposed approach to consumer-owned electricity distribution businesses ("EDBs") during the initial default price-quality path ("DPP") that applies from 1 April 2009 to 31 March 2010. The proposed approach includes accounting for those EDBs that become consumer-owned during the regulatory period. The Commission is seeking submissions on its proposed approach.

## Introduction

- 2 From 1 April 2009, suppliers of electricity lines services are subject to default/customised price-quality regulation under subpart 9 of Part 4 of the *Commerce Act 1986* ("the Act") (as amended by the *Commerce Amendment Act 2008*). Default/customised price-quality regulation replaces the Part 4A thresholds that applied to EDBs.
- 3 Section 54J of the Act sets out how default/customised price-quality regulation applies for the period from 1 April 2009 to 31 March 2010. The thresholds, set under Part 4A, are deemed to be section 52P determinations that apply to EDBs as if they were the initial DPP. Section 54J(2) provides that:

*On and after 1 April 2009, the thresholds for large electricity lines businesses that expire on 31 March 2009 are deemed to be section 52P determinations that:*

- (a) *apply those thresholds to each supplier as if the thresholds were default price-quality paths; and*
  - (b) *state that the regulatory period for each supplier ends on 31 March 2010; and*
  - (c) *comply with sections 52P and 53O; and*
  - (d) *were notified in the Gazette under section 52P(7)(b) at least 4 months before 1 April 2009.*
- 4 Under section 54G(2) of the Act, EDBs that meet the consumer-ownership criteria set out in section 54D of the Act ("consumer-owned EDBs"), are exempt from default/customised price-quality regulation.
- 5 On 19 December 2008, the Commission released for consultation its *Regulatory Provisions of the Commerce Act 1986 - Discussion Paper* ("Discussion Paper"). The Discussion Paper set out the Commission's initial views on implementing the new regulatory provisions. It invited interested parties to give their views on a proposed approach to consumer-ownership based exemptions.<sup>1</sup> The Commission has taken these views into account when considering its proposed approach to consumer-owned EDBs. Submissions have been posted on the Commission's website.

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<sup>1</sup> Commerce Commission, *Regulatory Provisions of the Commerce Act 1986 - Discussion Paper*, paragraph 466.

## **Proposed Approach to Consumer-owned EDBs**

- 6 Prior to finalising its proposed approach to consumer-owned EDBs during the initial DPP, the Commission is seeking views on the following:
  - a. the Commission's interpretation of section 54D of the Act;
  - b. an indicative list of EDBs considered to be consumer-owned; and
  - c. assessment and notification requirements for EDBs, including a proposed approach to EDBs that meet the section 54D criteria during the regulatory period.
- 7 The Commission's views on these issues are discussed below.

### ***Interpretation of Section 54D***

- 8 Submissions on the Discussion Paper included requests that the Commission clarify its interpretation of the definition of "consumer-owned", as set out in section 54D of the Act. Ambiguity appears to stem from the criterion under section 54D(1)(b), which requires trustees (or, in the case of a co-operative company, the directors) to be "elected solely by the persons who are consumers of the suppliers".
- 9 By way of background, the definition of "consumer-owned" in the Commerce Amendment Bill as originally introduced, provided for trustees/directors to be "elected or appointed" solely by the persons who are consumers of the suppliers and at least 90% of the persons who are consumers are eligible to vote in the election. The provision for appointments was removed from the definition of "consumer-owned" by the Select Committee that considered the Bill.
- 10 In the Commission's view, for an EDB to satisfy the criterion in section 54D(1)(b) each trustee of a trust or community trust, or director of a customer cooperative, must have been elected by the consumers of the supplier, no one other than a consumer must have voted in the election, and at least 90% of consumers must have been eligible to vote with each consumer having an equal vote. The appointment of a trustee/director by the remaining trustees/directors, or by a committee wholly or partly elected by consumers, will result in the trust/company being outside the definition of consumer-owned.
- 11 The Commission considers that the specific circumstance where the number of nominations for election does not exceed the trustee/director positions available and the nominees are declared elected without an election being held, would meet the criteria under section 54D(1)(b) of the Act.

### ***List of Consumer-owned EDBs***

- 12 On 12 March 2009, the Minister of Commerce published in the *New Zealand Gazette* a list of EDBs that are consumer-owned at that date ("Minister's List"). The Minister's List was published in accordance with section 54D(3) of the Act. As stated under section 54D(4), the Minister's List has no legal effect and thus in itself does not determine whether a supplier is subject to default/customised price-quality regulation.
- 13 Provided as Appendix A is an indicative list of EDBs considered to be consumer-owned. This list is consistent with the Minister's List. It is proposed that this list will be updated annually and published on the Commission's website.

## ***Assessment and Notification Requirements***

- 14 In the Discussion Paper<sup>2</sup>, the Commission proposed that:

*Following the end of the assessment period on 31 March 2010, EDBs would be required to submit a compliance statement or demonstrate that they meet the "consumer-owned" criteria.*

- 15 Submissions received by the Commission on this matter supported this proposal, for example, PwC stated:

*"...it is appropriate that each EDB submits a confirmation of its consumer ownership status at the same time that non exempt EDBs submit their annual assessments of performance against default or customised price-quality regulation. This could also include an indication of whether the business anticipates any change to their exempt status for the forthcoming period."*

- 16 The Commission's proposal for the initial DPP is that within 35 working days after the assessment date (31 March 2010), EDBs submit either:

- a. a compliance statement in accordance with the *Commerce Act (Electricity Distribution Thresholds) Notice 2004* ("Thresholds Notice"); or
- b. where an EDB considers itself to be exempt from default/customised price-quality regulation, a statutory declaration signed by two directors, with all necessary supporting information/documentation, demonstrating that the "consumer-owned" criteria in section 54D of the Act have been met.

- 17 The provision of evidence demonstrating "consumer-ownership" is intended to be on a voluntary basis, however, if this information is not supplied the Commission will request information regarding an EDB's ownership status under section 98 of the Act.

- 18 The Commission recognises that an EDB's ownership status may change during the regulatory period. EDBs that become consumer-owned subsequent to the beginning of the regulatory period will be exempt from default/customised price-quality regulation from the time when they meet the definition of "consumer-owned" in section 54D. Noting this, the Commission considers that it has an obligation to monitor EDBs in respect of the period during which they are subject to the DPP. The Commission has considered a number of options by which it can fulfil this obligation, including amending the DPP. The Commission considers that the appropriate mechanism by which it can carry out its monitoring obligation is to seek from EDBs, whose ownership status changes between 1 April 2009 and 31 March 2010, a compliance statement that includes information up until 31 March 2010.

- 19 Compliance assessments are required under clause 7 of the Thresholds Notice. The Commission considers that despite the assessment only applying to that part of the regulatory period for which the EDB is non-exempt, clauses 5(5) and 6(4) of the Thresholds Notice could be applied under these circumstances.

- 20 Under the exemption clause in the Thresholds Notice (clause 9(1)(a)(iii)) the Commission has a degree of discretion when seeking compliance assessments from EDBs. The Commission encourages EDBs to inform the Commission of any change in status prior to the end of the 2009/10 regulatory period. In view of the circumstances of individual EDBs which become exempt during the regulatory period, for instance where an EDB has only been subject to the DPP for a matter of a few weeks, the Commission may consider that seeking compliance assessments is not warranted. In such a case, a written notice would inform the EDB of the exemption and seek a consumer ownership declaration, with supporting evidence. Notwithstanding this discretion, the

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<sup>2</sup> Ibid.

Commission's proposed approach is to request that EDBs, which become exempt during the 2009/10 regulatory period, submit a compliance statement for the full 2009/10 regulatory period.

## **Consultation**

- 21 Submissions are invited on the Commission's proposed approach to consumer-owned EDBs during the initial DPP. Submissions should be received by the Commission no later than 5pm Friday, 3 April 2009. All submissions should be supported by documentation and evidence, where appropriate.
- 22 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

David Healy  
Chief Adviser  
Network Performance Branch  
Commerce Commission  
P.O. Box 2351  
Wellington

## **Next Steps**

- 23 The Commission intends finalising its approach to consumer-owned EDBs during the initial DPP following consideration of submissions on this paper. It intends setting out further detail on the form of assessment and notifications relating to consumer-owned EDBs under the initial DPP during the regulatory period.

## **APPENDIX A**

### Indicative List of Consumer-owned EDBs

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Buller Electricity Limited  
Electra Limited  
Marlborough Lines Limited  
Network Waitaki Limited  
Northpower Limited  
The Power Company Limited  
WEL Networks Limited  
Westpower Limited