COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

19 July 2019

To:

All suppliers of electricity distribution services that are not exempt from default/customised price-quality regulation under section 54G of the Commerce Act 1986

Notice to supply information to the Commerce Commission under section 53ZD(1)(e) of the Commerce Act 1986

Background

1. On 6 June 2019, we (the Commerce Commission) published an issues paper on the treatment of operating leases, given changes required by the implementation of a new financial reporting standard – **NZ IFRS 16**.[1] The issues paper sought views on our understanding of the issues that the adoption of **NZ IFRS 16** could create for regulated suppliers.

2. We are now requesting information from **non-exempt EDBs** to enable the effect of the changes to be properly taken into account in respect of forecast **opex** and **capex** for decisions we are now making on the **DPP** for **non-exempt EDBs**.

3. This section 53ZD(1)(e) notice (the Notice) is the request for information referred to at paragraph 2.

4. We note that section 103(2) of the Commerce Act 1986 (the Act) provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it. It is an offence to contravene section 103(2) of the **Act** and any person who does so is liable on conviction to a fine not exceeding $100,000 in the case of an individual or $300,000 in the case of a body corporate.

Purpose of the Notice

5. Under section 53ZD(1)(e) of the **Act**, we require each **non-exempt EDB** to provide us with the information specified in Schedule A.

6. We require this information for the purpose of informing our decisions on the treatment of operating leases and setting the default price quality path for **non-exempt EDBs** under section 53P of the **Act**. Specifically, the information will enable

[1] Commerce Commission "Treatment of operating leases – Issues paper" (6 June 2019), available at: https://comcom.govt.nz/__data/assets/pdf_file/0017/152108/Treatment-of-operating-leases-Issues-paper-6-June-2019.pdf

us to properly consider the effect of the changes resulting from **NZ IFRS 16**, in respect of **non-exempt EDBs'** forecast **opex** and **capex**.

Date, place and format of responses

7. Each **non-exempt EDB** must provide the information specified in Schedule A as a response to the Notice in an 'unlocked' electronic Excel spreadsheet by email.

8. The response must be provided in the attached "Operating Leases: Information Request Workbook" Excel template.

9. The email must be addressed to Matthew Clark (Acting Manager, Regulatory Development) c/o regulation.branch@comcom.govt.nz, with the subject "[EDB name] – Response to section 53ZD Notice – Operating leases", by no later than **4:30pm** on **Friday 9 August 2019**.

Interpretation

10. In the Notice, unless the context requires otherwise:

    10.1 a word that denotes the singular also denotes the plural, and vice versa;

    10.2 words in **bold** type have the following meanings:

        10.2.1 **Act** means the Commerce Act 1986

        10.2.2 **asset life** means the **economic life** as determined under **NZ IFRS 16** applied at the commissioning date

        10.2.3 **capex** has the same meaning as defined in the **IM determination**

        10.2.4 **commencement date** has the same meaning as defined in **NZ IFRS 16**

        10.2.5 **commissioning date** means:

            (a) for **right of use assets** valued on the **date of initial application**, the **date of initial application** under **NZ IFRS 16**; and

            (b) in all other cases, the **commencement date**

        10.2.6 **commissioning value** means the capitalised value of the **right of use asset** in dollars in accordance with **NZ IFRS 16** on the **commissioning date** or forecast **commissioning date**

        10.2.7 **contract** means an **operating lease**

10.2.8 **cost allocation requirements** means the cost allocation requirements specified at subpart 1 of part 2 and subpart 1 of part 4 of the **IM determination**

10.2.9 **date of initial application** means the beginning of the annual reporting period in which the **EDB** first applies the **NZ IFRS 16**

10.2.10 **description** means description of **underlying asset**

10.2.11 **disclosure year** has the same meaning as defined in the **IM determination**

10.2.12 **discount rate** means the discount rate applied or forecast to apply in determining the capitalised value of the **right of use asset** under **NZ IFRS 16**

10.2.13 **DPP** means default price-quality path

10.2.14 **economic life** has the same meaning as defined in the **NZ IFRS 16**

10.2.15 **EDB** has the same meaning as defined in the **IM determination**

10.2.16 **electricity distribution services** has the same meaning as defined in the **IM determination**

10.2.17 **existing contract** means a **contract** that has already been capitalised

10.2.18 **forecast contract** means a **contract** that is forecast to be capitalised

10.2.19 **ID determination** means the *Electricity Distribution Services Information Disclosure Determination 2012* [2012] NZCC 22, including amendments in effect at the date of the Notice

10.2.20 **IM determination** means the *Electricity Distribution Services Input Methodologies Determination 2012* [2012] NZCC 26, including amendments in effect at the date of the Notice

10.2.21 **lease contract ID** means the name or number used to uniquely identify the **contract** or forecast **contract**

10.2.22 **lease payments** has the same meaning as defined in **NZ IFRS 16**

10.2.23 **non-exempt EDB** means an **EDB** that is not exempt from default/customised price-quality regulation under section 54G of the Act

10.2.24 **NZ IFRS 16** means the New Zealand Equivalent to International Financial Reporting Standard 16 Leases, issued on 11 February 2016 by the New Zealand Accounting Standards Board of the External

Reporting Board pursuant to section 12(a) of the Financial Reporting Act 2013 and including amendments to 12 July 2018

10.2.25 **operating lease** has the same meaning as defined in **NZ IFRS 16**

10.2.26 **opex** has the same meaning as defined in the **IM determination**

10.2.27 **payments** means the value in dollars of any **lease payments** made or forecast to be made in the relevant **disclosure year**, that are required to be capitalised in accordance with **NZ IFRS 16**

10.2.28 **percentage allocated to EDS** means the proportion of the **commissioning value** or **payments** allocated to **electricity distribution services** applying the **cost allocation requirements**

10.2.29 **revaluation assumptions** means any assumptions made in applying changes to the value of forecast **payments**

10.2.30 **right of use asset** has the same meaning as defined in **NZ IFRS 16**

10.2.31 **termination date** means the date on which the **contract** terminates or is forecast to terminate

10.2.32 **underlying asset** has the same meaning as defined in **NZ IFRS 16**.

Use of supplied information and confidentiality

11. As part of our decision-making and modelling on the **DPP** reset, we may use and publicly refer to particular information **non-exempt EDBs** provide in responding to the Notice.

12. If you consider that, for confidentiality reasons, we should not publicly refer to any particular part of your response, please:

    12.1 specify the relevant part;

    12.2 give clear reasons why you consider that part is confidential; and

    12.3 provide a PDF version of your response, redacting the part(s) you consider to be confidential.

13. If you indicate that we should not publicly refer to part of your response, we may discuss with you before deciding whether or not to do so.

14. However, please note that all responses we receive, including any parts that we decide not to publish, can be requested under the Official Information Act 1982. This means we would be required to release material (whether published or not) unless good reason existed under the Official Information Act 1982 to withhold it. We

would normally consult with you before releasing any material that you request not to be published.

Dated at Wellington: 19 July 2019

Signed by:

Stephen Gale
Commissioner

Schedule A: Information required

1. The **non-exempt EDB** must provide a list of its existing and forecast **contracts** including, for each **contract**, the following information:

    (a) The **lease contract ID**;

    (b) Whether the **contract** is an **existing contract** or **forecast contract**;

    (c) The **commencement date**;

    (d) The **termination date**;

    (e) The **asset life**;

    (f) Whether the **right of use asset** is included in actual **capex** disclosed under Schedule 6a of the **ID determination** or forecast **capex** disclosed under Schedule 11a of the **ID determination** and if so, the category it is included under;

    (g) The **commissioning value**;

    (h) The **commissioning date**;

    (i) The **discount rate**;

    (j) Whether **payments** are included in actual **opex** disclosed under Schedule 6b of the **ID determination** or forecast **opex** disclosed under Schedule 11b of the **ID determination**, and if so, the category it is included under;

    (k) The **payments**;

    (l) Any **revaluation assumptions**; and

    (m) The **percentage allocated to EDS**.

2. The **non-exempt EDB** must provide the **date of initial application**.

3. All financial values contained in the information provided in accordance with paragraph 1 of Schedule A should be included in nominal terms, after having applied the **cost allocation requirements**.

4. If there is a difference between the amounts disclosed in column H and column O of the 'Template' tab of the attached "Operating Leases: Information Request Workbook" Excel template, and the amounts disclosed under Schedules 11a and 11b of the **IM determination**, the **non-exempt EDB** must provide a separate line in the Excel template under the relevant contract ID, disclosing the amount of each difference and an explanation of the reason for each difference.