

30 August 2023

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

By e-mail only: [REDACTED]

Kia ora [REDACTED],

**Request for exemption from the current deadline for audited information disclosures for the 2023 disclosure year under the Electricity Distribution Information Disclosure Determination 2012**

1. We refer to your email dated 7 August 2023<sup>1</sup> (**email**), requesting that the Commerce Commission (**Commission**) grant Westpower Limited (**Westpower**) an exemption from the current deadline for its 2023 Information Disclosures, as required under the Electricity Distribution Information Disclosure Determination 2012 (the **ID Determination**).<sup>2</sup>
2. You requested that your Information Disclosure deadline be extended to 30 November 2023 as you cannot meet your obligations for audit certification as required under the ID Determination for certain disclosures.<sup>3</sup>
3. You stated that the discovery of a prior period error during the statutory audit of your 2023 accounts and unforeseen staffing issues have resulted in a delay which means that you are not able to provide audited disclosures by the due dates of 31 August 2023 and 7 September 2023.<sup>4</sup>
4. Having considered this request, we have decided to grant Westpower this exemption with the condition attached that the unaudited information disclosures are submitted to the Commission by the original due dates of 31 August 2023 and 7 September 2023.

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<sup>1</sup> *Information Disclosure Exemption Application*, Westpower Limited, dated 7 August 2023.

<sup>2</sup> EDB ID Determination 2012, amended May 2023. Found [here](#) on our website.

<sup>3</sup> Clause 1.4.3 of the ID Determination defines 'Audited disclosure information' and the relevant clauses that apply.

<sup>4</sup> Email from Audit New Zealand to Westpower Limited, dated 3 August 2023.

## Background

5. The ID Determination specifies that audited disclosure information means information required to be disclosed under any of:
  - 5.1 clauses 2.3.1 and 2.3.2;
  - 5.2 the SAIDI and SAIFI information disclosed under clause 2.5.1;
  - 5.3 the related party transactions information disclosed under clauses 2.3.8 and 2.3.10-2.3.12; and
  - 5.4 the explanatory notes disclosed in boxes 1 to 11 of Schedule 14 under clause 2.7.
6. The due dates for the information required under clause 2.3.2 is 7 September 2023, for all other clauses above the due date is 31 August 2023.

## Exemption request

7. On 7 August 2023, Westpower notified the Commission that due to the delay in having its information disclosures audited by Audit New Zealand, it would not be able to meet the deadline to have its information disclosures completed by the relevant due dates.
8. Audit New Zealand had allocated time to complete the Westpower information disclosure audit during the week commencing 24 July 2023. However, this has been delayed due to an issue with a prior period error which requires further review by the Audit New Zealand Technical team.
9. Audit New Zealand have advised Westpower in writing that as this window has passed and they were not provided with the relevant information, they do not have resources to complete the Information Disclosure audit until November 2023.<sup>5</sup>
10. Westpower have acknowledged that recent staffing issues have negatively affected their ability to accelerate work and respond to the issues uncovered in the statutory audit. A telephone conversation with Westpower confirmed that the circumstances around this are indeed unforeseen and support the necessity of an exemption.<sup>6</sup>
11. Westpower have requested an exemption to the current deadline, instead requesting that the deadline be revised to 30 November 2023.
12. Westpower have advised that they aim to provide the unaudited information disclosures for the 2023 disclosure year by the original due dates.

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<sup>5</sup> Email from Audit New Zealand to Westpower Limited, dated 3 August 2023.

<sup>6</sup> Telephone call between [REDACTED] (Westpower Limited) and the Commerce Commission, on 10 August 2023.

**Conditional exemption granted**

13. Under clause 2.11.1(1) of the ID Determination, the Commission has the power to provide exemptions from any requirement of the ID Determination, for a period and on such terms and conditions as the Commission specifies.
14. By this notice, the Commission grants Westpower a conditional exemption from publicly disclosing the information required in paragraph 5 by the due dates outlined in paragraph 6.
15. The exemption is provided on two conditions:
  - 15.1 the draft information disclosures are provided to the Commission by the original due dates outlined in paragraph 6; and
  - 15.2 the disclosures required as outlined in paragraph 5 are publicly disclosed and provided to the Commission by 30 November 2023.
16. We consider this exemption for Westpower to be reasonable, given that:
  - 16.1 Westpower will be providing a full set of audited information disclosures by 30 November 2023,
  - 16.2 Westpower will be providing a full set of unaudited information disclosures to the Commission by the original due dates of 31 August and 7 September 2023, and
  - 16.3 the reasons for the delay appear to be largely outside of Westpower's control.
17. Westpower will publicly disclose the information disclosures that are due on 31 August 2023 that do not require audit certification.
18. Westpower has recruited temporary staff to assist with its information disclosures, which illustrates its efforts to remedy the situation.
19. We have considered the impact of the extension on the purpose of information disclosure under section 53A of the Commerce Act 1986 and have concluded that the purpose will still be met if this exemption is granted.

**Further information**

20. We note that Westpower's 2020 information disclosures were late by six days and this resulted in Westpower contravening the ID Determination. This was because its information disclosure audit was not completed on time.
21. Please ensure moving forward that adequate contingencies are implemented, so that if similar staffing issues do arise again in future, Westpower will be able to meet its information disclosure obligations.

22. The Commission is not minded to grant any further exemptions in relation to Westpower not meeting its audit requirements in accordance with the deadlines provided in the ID Determination. We may choose to pursue non-compliance action if Westpower is not able to meet its information disclosure obligations in relation to the information that does not require audit certification, due on 31 August 2023, and with those that do require audit certification and are now due on 30 November 2023.
23. When considering non-compliance, the Commission makes an assessment in alignment with our enforcement criteria, which are extent of harm, seriousness of conduct, and public interest.<sup>7</sup>
24. This exemption may be revoked or amended by the Commission at any time in accordance with clause 2.11.1(2) of the ID Determination.
25. A copy of this exemption response letter will be published on the Commission's website.
26. If you have any questions regarding this matter, please contact Joe O'Sullivan at [infrastructure.regulation@comcom.govt.nz](mailto:infrastructure.regulation@comcom.govt.nz)

Yours sincerely



Andy Burgess  
General Manager, Infrastructure Regulation

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<sup>7</sup> More information about the Enforcement Criteria can be found [here](#) on our website.