

18 December 2024

To: Chorus Limited
Level 10, 1 Willis Street, Wellington, 6011
[REDACTED]

By e-mail only: [REDACTED]

Tēnā koutou,

Response to Chorus Limited's request for exemption from public disclosure requirements under the Fibre Information Disclosure Determination 2021

1. In response to a letter from Chorus Limited (**Chorus**) dated 9 September 2024,^{1, 2} the Commerce Commission (the **Commission**) is granting Chorus an exemption under the Fibre Information Disclosure Determination 2021, as amended (the **ID Determination**), from including certain wash-up accrual information within the Report on Regulatory Profit, as set out in Schedule 2 of the ID Determination.³
2. This notice provides Chorus an exemption for disclosure years 2024 and 2025 from completing and publicly disclosing "wash-up accrual" information in row 7 of Schedule 2. This information is currently used as an input to total regulatory income calculations.⁴
3. We accept Chorus' concern regarding the inclusion of wash-up accruals as part of regulatory income in light of the guidance issued by Audit New Zealand to Electricity Distribution Businesses (**EDBs**) in May 2024.⁵ The guidance indicates that wash-up

¹ Chorus, *Fibre Information Disclosure amendment or exemption: wash-up income reporting*, (9 September 2024).

² Chorus requested an amendment to this reporting requirement and proposed an exemption as an alternative option.

³ Commerce Commission, [Fibre Information Disclosure Determination 2021](https://comcom.govt.nz/__data/assets/pdf_file/0029/288722/Fibre-Information-Disclosure-Determination-2021-Consolidated-Version-1-May-2024.pdf), as amended, (1 May 2024). Found here: https://comcom.govt.nz/__data/assets/pdf_file/0029/288722/Fibre-Information-Disclosure-Determination-2021-Consolidated-Version-1-May-2024.pdf

⁴ We note that wash-up accrual information generally is also considered within ROI calculations within the Report on ID FFLAS Return on Investment and Report on PQ FFLAS Return on Investment, as set out in Schedule 1a and Schedule 1b of the ID Determination respectively.

⁵ Audit New Zealand, [Guidance for financial reporting by electricity distribution businesses in 2024](https://auditnz.parliament.nz/resources/mfs-and-commentary/edb/guidance-edb-2024), (2 May 2024). Found here: <https://auditnz.parliament.nz/resources/mfs-and-commentary/edb/guidance-edb-2024>

accruals should not currently be recognised as income (by way of creating a liability or asset at balance date in line with other accruals) because of the uncertainty as to its recovery, as indicated by Chorus.⁶ We acknowledge that excluding the wash-up accrual from the regulatory income, given the guidance from Audit New Zealand, may better inform an interested person's assessment of whether the purpose of Part 6 is being met with respect to assessing whether regulated providers are extracting excessive profits.⁷

4. However, we note the guidance from Audit New Zealand also mentions that the International Accounting Standards Board is currently reconsidering how it treats regulatory assets and regulatory liabilities and if these changes were to come into effect, they would replace International Financial Reporting Standard 14 (IFRS-14).^{8,9} Given this may include changes to require the current year wash-up to be treated as income, a possible outcome noted by Chorus, we consider it appropriate to retain the existing Schedule 2 disclosure requirement. As indicated by Chorus, we recognise that consequential amendments to certain Schedule reporting requirements may also be necessary.
5. We also acknowledge Chorus' underlying concern that, in scenarios where double recognition of income represented by the accrual occurs, an interested person would have a less accurate view of regulatory income (and therefore profit). However, given the advice from Audit New Zealand and signalling of upcoming potential changes to the treatment of wash-up accruals, we consider it more appropriate to consider such changes as part of an amendment project (and in consultation with stakeholders).
6. We will aim to consider the mechanics of the wash-up reporting requirements in Schedule 2 as part of our next material ID amendment process.
7. Our full notice is below, including an outline of the background surrounding this exemption, and the basis for our decision.

⁶ Chorus, *Fibre Information Disclosure amendment or exemption: wash-up income reporting*, (9 September 2024), para 3.

⁷ Section 162(d), the Act

⁸ Audit New Zealand, [Guidance for financial reporting by electricity distribution businesses in 2024](https://auditnz.parliament.nz/resources/mfs-and-commentary/edb/guidance-edb-2024), (2 May 2024), para 15. Found here: <https://auditnz.parliament.nz/resources/mfs-and-commentary/edb/guidance-edb-2024>

⁹ IFRS, [Rate-regulated Activities](https://www.ifrs.org/projects/work-plan/rate-regulated-activities/#current-stage), (July 2024). Found here: <https://www.ifrs.org/projects/work-plan/rate-regulated-activities/#current-stage>

Background

8. Fibre providers are subject to information disclosure (**ID**) regulation as a result of regulations made by the Governor-General under s 226 of the Telecommunications Act 2001 (the **Act**).¹⁰ The fibre providers are Chorus, Enable Networks Limited, Northpower Fibre Limited, and Tuatahi First Fibre Limited.
9. Fibre providers must complete and publicly disclose information relating to income no later than five months after the end of each disclosure year.^{11,12} This includes wash-up accrual, regulatory income and regulatory profit information contained within the Report on Regulatory Profit in Schedule 2 of the ID Determination. Certain aspects of these information are considered within Return on Investment (**ROI**) calculations within the Report on ID FFLAS Return on Investment (Schedule 1a) and Report on PQ FFLAS Return on Investment (Schedule 1b) of the ID Determination.
10. Schedule 23 of the ID Determination sets out the definitions used for certain line items within these schedules. Some of these definitions reference corresponding definitions under the Fibre Input Methodologies Determination 2020, as amended (the **IM Determination**)¹³.

Exemption request from Chorus

11. In September 2024, Chorus sent us a letter that requested an amendment (or alternatively an exemption) to the wash-up reporting requirements within row 7 of Schedule 2.
12. Chorus reasoned that wash-up accruals should not be included in the calculation for total regulatory income because it creates “double counting” of wash-up accruals, and over or understates regulatory income (therefore distorting regulatory profit reporting).¹⁴
13. As part of its request, Chorus noted that this Fibre ID requirement diverges from how EDBs complete their disclosures within ID reporting requirements under Part 4 of the Commerce Act 1986.¹⁵ Chorus also cited guidance issued by Audit New Zealand to EDBs that they should not recognise a wash-up balance as a provision or liability, or an asset for future recovery:

¹⁰ Telecommunications (Regulated Fibre Service Providers) Regulations 2019, regulation 5.

¹¹ Commerce Commission, [Fibre Information Disclosure Determination 2021](https://comcom.govt.nz/__data/assets/pdf_file/0029/288722/Fibre-Information-Disclosure-Determination-2021-Consolidated-Version-1-May-2024.pdf), as amended, (1 May 2024). ID Determination Clauses –2.3.1 and 2.4.2. Page 27 and 31. Found here: https://comcom.govt.nz/__data/assets/pdf_file/0029/288722/Fibre-Information-Disclosure-Determination-2021-Consolidated-Version-1-May-2024.pdf

¹² Commerce Commission, [Part 4 & Part 6 Information Disclosure Annual Public Due Dates](https://comcom.govt.nz/__data/assets/image/0023/324680/Part-4-and-part-6-information-disclosure-annual-public-due-dates.jpg), (23 June 2023). Found here: https://comcom.govt.nz/__data/assets/image/0023/324680/Part-4-and-part-6-information-disclosure-annual-public-due-dates.jpg

¹³ Such as “wash-up accrual”.

¹⁴ Chorus, *Fibre Information Disclosure amendment or exemption: wash-up income reporting*, (9 September 2024), para 4.

¹⁵ Chorus, *Fibre Information Disclosure amendment or exemption: wash-up income reporting*, (9 September 2024), para 9 and 10.

We considered the impact, if any, that the wash-up mechanism would have on revenue recognition and disclosure for EDBs subject to the DPP. Our conclusion on this remains that, under existing New Zealand generally accepted accounting practice, an EDB cannot recognise:

- a provision/liability at balance date for the amount that it exceeded its maximum allowable revenue in the financial year; or
- an asset for any additional revenue that can be charged in the future where its revenue was below its cap.

However, although EDBs cannot recognise an amount for these wash-ups, they should disclose those that are material, along with the impact on future revenue, in the notes to the financial statements.

14. Chorus separately noted that the formula for “wash-up accrual” in row 7 of Schedule 2 was changed with the updated format of the ID schedule templates,¹⁶ in that it now incorrectly includes “total wash-up accruals” within current disclosure year reporting rather than the amount attributable to that disclosure year only.

Legal framework

15. Clause 2.10.1(1) of the ID Determination allows the Commission to, by written notice to a provider, exempt the provider from any requirement of the ID Determination, for a period and on such terms and conditions as the Commission specifies in that notice. Furthermore, clause 2.10.1(2) gives the Commission the power to amend or revoke any such exemptions.

Exemption granted

16. Using its exemption powers under clause 2.10.1(1) of the ID Determination, the Commission has decided to grant an exemption to Chorus, for disclosure years 2024 and 2025, from completing and publicly disclosing “wash-up accruals” information as set out in row 7 of Schedule 2 of the ID Determination.¹⁷
17. This exemption pertains to the “wash-up accrual” being included in the “total regulatory income” calculation as defined in Schedule 23 of the ID determination.
18. We have considered the impact of the exemption on the purpose of ID under section 186 of the Act and have concluded that the purpose will still be met if this exemption is granted.¹⁸ For interested persons to assess whether the purpose of Part 6 is being met, they need to understand whether Chorus is limited in its ability to extract excessive profits (section 162(d)). As such, it is important that regulatory income

¹⁶ Commerce Commission, [April 2024 amendments to the disclosure requirements](https://comcom.govt.nz/regulated-industries/fibre/information-disclosure-requirements-for-fibre/amendments-to-information-disclosure-requirements), (3 April 2024). Found here: <https://comcom.govt.nz/regulated-industries/fibre/information-disclosure-requirements-for-fibre/amendments-to-information-disclosure-requirements>

¹⁷ We note that at paragraph 13 of Chorus’ letter, Chorus indicated that a consequential change (exemption) to Schedule 1 may be required. We consider this unnecessary as the exemption applies only to the wash-up accrual reporting requirement in Schedule 2 (cell F7), which does not link to the requirements in Schedule 1.

¹⁸ Section 162(d), the Act.

reporting requirements accurately reflect Chorus' year-on-year profitability for interested persons to be able to determine whether this is consistent with expectations.

19. We note that the same amount of information will exist in the public domain as a result of the exemption as Chorus will still be required to disclose the exempted wash-up information elsewhere within Schedule 2 (row 48). While we acknowledge that information will be slightly less readily available, we consider that it would not be overly onerous for interested persons to recalculate Chorus' regulatory income to include wash-up accruals by modifying the formula in row 7 of schedule 2 (if this was required for specific analysis).
20. We consider that granting this exemption is reasonable given that it will align the wash-up accrual reporting with guidance issued by Audit New Zealand in 2024 for Electricity Distribution Businesses.¹⁹ As recognised by Chorus, this guidance indicates that a wash-up accrual should not be recognised as income because of uncertainty as to its recovery.
21. While we acknowledge that excluding wash-up accruals in this way may currently give a more accurate representation of Chorus' year-on-year regulatory profit, we note the Audit New Zealand guidance also indicates that there may be a new international regulatory standard in the near future that would replace IFRS-14. Given this may include changes to require the current year wash-up to be treated as income, a possible outcome noted by Chorus, we consider it appropriate to retain the existing Schedule 2 disclosure requirement. As indicated by Chorus, we recognise that consequential amendments to certain Schedule reporting requirements may also be necessary.²⁰
22. We also understand Chorus' concern that the way wash-up accruals are currently included in regulatory income under the Schedule 2 requirements does mean that there is potential for the same revenue to be recognised multiple times.
23. As noted in paragraph 5, in our next material amendment of the ID Determination, we aim to consider whether changes to reporting requirements related to wash-up accruals are appropriate.
24. We may also consider in the future whether an amendment to this exemption to modify its scope might be required. This would depend on the timing and nature of updated IFRS guidance and whether we have already considered permanent changes at this time through an ID amendment process.

¹⁹ Audit New Zealand, [Guidance for financial reporting by electricity distribution businesses in 2024](https://auditnz.parliament.nz/resources/mfs-and-commentary/edb/guidance-edb-2024), (2 May 2024), para 10-14. Found here: <https://auditnz.parliament.nz/resources/mfs-and-commentary/edb/guidance-edb-2024>

²⁰ Chorus, *Fibre Information Disclosure amendment or exemption: wash-up income reporting*, (9 September 2024), para 11-13.

Further information

25. This exemption may be revoked or amended by the Commission at any time in accordance with clause 2.10.1(2) of the ID Determination.
26. A copy of this exemption response letter will be published on the Commission's website.
27. If you have any questions regarding this matter, please contact Kaleb Boyce at infrastructure.regulation@comcom.govt.nz.

Nāku iti noa, nā



Tristan Gilbertson

Telecommunications Commissioner