

4 October 2017

Keston Ruxton

Manager, EAD Regulation Development
Commerce Commission,
PO Box 2351,
Wellington 6140.

By email to regulationbranch@comcom.govt.nz

Re: Related Party Transactions IM review, cross submissions.

Dear Keston

Thank you for the opportunity to cross submit on matters raised in other party submissions on the Commission's Related Party Transactions IM - Draft Decision and Guideline, 30 August 2017.

ENA members generally remain supportive of the Commission approach to its review of the IMs in light of technical and market developments in the energy sector. Like the Commission, members consider that pre-emptive hard wiring of changes to the IMs may lead to unintended outcomes given that the scope and timing of these developments are still to evolve. Members believe this view is also shared by the majority of interested stakeholders.

We are therefore concerned by the ERANZ submission on the related party IM where they again consider that, in light of these developments, the only approach to EDB economic regulation is immediate ring fencing of EDB's regulated services from any other activities EDBs may undertake.

The related party IM is not about mandating business structure, be that to deliver regulated or unregulated business, but is about accounting for inputs to regulated services where the EDB has an interest in the input supplier, for whatever reason. We agree with the Commission that this IM, in conjunction with the cost allocation IM, is sufficient to manage the accounting of inputs, provided that it is re-drafted as per the ENA submission dated 27 September.

ERANZ submits (pages 2, 8 and 16) that EDBs have motive and means in pursuit of excessive profits by somehow manipulating related party opex, and possibly capex, transactions. Related party opex

transactions total about 6% of overall annual EDB regulated revenues, this is unlikely to amount to a plausible claim of excessive profits. Greater levels of related party opex transactions (as a proportion of total opex) are observed in only a small number EDBs that have low ICP counts, while for the remaining EDB's related party transactions are not material.

The suggestion on page 12 of the ERANZ submission that EDBs "load costs onto consumers" belies the very essential service mentality of EDB culture of a strong community focus (and in many cases ownership), with a very important social licence to operate. Moreover, EDBs recognise that technology developments and increasing energy choices for consumers over the network planning horizon of 40-50 years means that the concept of "loading costs on to consumers" is a throw-back to ancient text-book thinking about natural monopolies. EDBs are incentivised not just by regulation, but also through long-term competitive threats to be efficient and effective in their operations.

Members have been and, following the review of these submissions, remain sceptical that there really is a problem to be addressed in related party transactions but rather there are drafting improvements to the IM that would make the policy outcomes more achievable in application and at lower cost to consumers.

We note that ERANZ also supports the MEUG position of making compulsory both 'maps' of future network operational transactions and investments, and blanket disclosure of all related party transactions. For a range of reasons that are described in the ENA, and members 27 September submissions, neither of these ideas warrant serious consideration and should be disregarded by the Commission.

Some submitters (Unison and PwC in particular) note that the Commission has included guidelines to the interpretation of the IM, within the IM proper, and observe that this is likely to cause confusion with implementation and costs for consumers. We agree with these observations and, given that the review was aimed at reducing complexity and cost, urge the Commission to remove the guidelines from the IM.

We would also draw Commission attention to the submission from the PwC auditors who have concerns that the drafting of the IM as published needs considerable re-work to ensure that the definitions better align with accounting standards, that the wording of the auditor's report references auditing standards, and that the level of assurance is clarified.

Yours sincerely



David de Boer

Principal Advisor