

Memorandum of Understanding

between

the Commerce Commission

and

Electricity Authority

Between the Commerce Commission (the Commission)

And the Electricity Authority (the Authority)

together, the Parties

Background

1. The Authority is an independent Crown entity established under section 12 of the Electricity Industry Act 2010 (the EI Act), and is responsible for overseeing and regulating the electricity industry in New Zealand. The main statutory objective of the Authority, as set out in section 15 of the EI Act, is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. The additional objective of the Authority is to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers. The additional objective applies only to the Authority's activities in relation to the dealings of industry participants with domestic consumers and small business consumers.
2. The Commission is also an independent Crown entity established under section 8 of the Commerce Act 1986 (the Commerce Act) with statutory functions under that and other statutes including the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Telecommunications Act 2001, the Fuel Industry Act 2020, the Dairy Industry Restructuring Act 2001, the Retail Payment System Act 2022, and the Grocery Industry Competition Act 2023. The Commission has certain functions, powers and duties in relation to the electricity industry, including setting and enforcing the regulation of the price and quality, and information disclosure requirements for electricity lines services, under Part 4 of the Commerce Act, and promoting competition in markets.

Purpose

3. The Authority and the Commission recognise that they share certain common interests in relation to their respective statutory functions with regard to the electricity industry and promoting the long-term benefit of consumers. This MOU explains how the Authority and the Commission intend to coordinate their respective roles under the EI Act and the Commerce Act.
4. This MOU sets out the framework for cooperation and information sharing. Schedules that accompany this MOU set out the protocols relating to specific activities.

Term

5. This MOU will commence when signed by the Authority and the Commission, and remains effective unless terminated. Either Party may terminate the MOU by giving three months' notice in writing to the other Party.

6. In the event of termination for any reason, any information obtained under this MOU will continue to be treated in accordance with clause 30 to 33 and Schedule 1 as applicable, which survive the termination of this MOU.
7. This MOU may be amended at any time during its term. Any modification or termination of this MOU shall first be discussed by the Senior Representatives, and then agreed in writing between the Parties.
8. The Parties agree that this MOU, once signed, replaces and terminates the Memorandum of Understanding made on 9 December 2010 between the Parties.

How we will work together

9. The Authority and the Commission will work closely together in the spirit of this MOU to ensure that their respective roles are well coordinated, and to minimise any scope for uncertainties regarding jurisdictional issues.
10. It is acknowledged that both organisations are key agencies in the energy markets regulatory system and are members of the Council of Energy Regulators, which has a role in ensuring the respective activities of energy system regulators are aligned and responsive to market developments.
11. The Authority and the Commission agree on the principles which will govern the relationship under this MOU. Specifically, but without limitation, the Parties agree to:
 - 11.1 work together to coordinate activities to avoid potential overlaps or duplication of effort between the Parties, and to maximise efficiency and effectiveness;
 - 11.2 keep each other informed in a timely manner on any matter that may affect the other Party's roles and/or responsibilities, powers and/or functions;
 - 11.3 work together to clearly communicate our respective roles and responsibilities to stakeholders and minimise the potential for confusion in that regard;
 - 11.4 work together to look for practical ways to make it simpler for stakeholders to engage with each Party and their work;
 - 11.5 work together to effectively plan and engage with consumers, including Māori, in areas of common interest;
 - 11.6 share information, knowledge and skills to increase the overall capability of both Parties;
 - 11.7 adopt a no surprises approach, by advising each other early of any identified issues that might affect the other Party; and
 - 11.8 seek to minimise any scope for uncertainties regarding jurisdictional issues.

12. Staff from both Parties will meet as required to give effect to the requirements of this MOU.
13. This MOU will be made available on both the Authority's and the Commission's websites.

Roles and responsibilities in areas of common interest

Promoting competition

14. The Authority's focus in promoting competition is in pursuit of its functions set out in section 16 of the EI Act, including effecting pro-competitive measures through Electricity Industry Participation Code 2010 (Code) amendments under section 32 of the EI Act, monitoring, investigating and enforcing compliance with the Code, the Electricity Industry (Enforcement) Regulations 2010 and with Parts 2, 3 and 4 of the EI Act and market facilitation measures, where doing so is consistent with the Authority's statutory objectives.
15. The Commission's role is to ensure New Zealand's markets are competitive, consumers and businesses are informed and empowered, and their interests protected, and sectors with little or no competition are appropriately regulated. The Commission enforces laws under the Commerce Act prohibiting anti-competitive conduct, including laws that prohibit contracts or arrangements by businesses that are likely to lead to a substantial lessening of competition, conduct by businesses with substantial market power that is likely to lead to a substantial lessening in competition, and mergers or acquisitions that are likely to lead to a substantial lessening in competition.
16. The Commission can conduct regulatory inquiries where there is little or no competition and little or no likelihood of a substantial increase in competition, to determine whether to recommend that goods or services should be regulated under Part 4 of the Commerce Act. In addition, the Commerce Commission has the ability to undertake competition (market) studies to determine how well competition is working and whether it could be improved.

Regulating electricity transmission and distribution

17. The Authority and the Commission acknowledge that from time to time they may have areas of common interest in regard to the regulation of Transpower and electricity distributors particularly with respect to the:
 - 17.1 quality or information requirements for Transpower or electricity distributors in relation to access to transmission or distribution networks;
 - 17.2 pricing methodologies for Transpower or electricity distributors; and
 - 17.3 Code provisions and decisions and market facilitation measures that are likely to be relevant to the Commission's powers and functions in relation to electricity lines services.

18. The Commission's role under Part 4 of the Commerce Act is to promote the long-term benefit of consumers for certain regulated services by promoting outcomes that are consistent with outcomes produced in competitive markets.
19. The Commission's responsibilities under Part 4 of the Commerce Act include:
 - 19.1 determining input methodologies relevant to the various forms of regulation of goods or services under that Part;
 - 19.2 setting price-quality paths for those suppliers of goods or services that are subject to price-quality regulation;
 - 19.3 promoting incentives (and avoid imposing disincentives) for suppliers of electricity lines services to invest in energy efficiency and demand side management, and to reduce energy losses, when applying Part 4 to electricity line services;
 - 19.4 requesting and approving grid upgrade plan proposals by Transpower in accordance with the capital expenditure input methodology;
 - 19.5 monitoring compliance with price-quality paths;
 - 19.6 requiring the disclosure of certain information by those suppliers of regulated goods or services that are subject to information disclosure regulation; and
 - 19.7 publishing a summary and analysis of the publicly disclosed information for the purpose of promoting greater understanding of the performance of individual regulated suppliers, their relative performance, and the changes in performance over time.
20. Under section 32(1) of the EI Act, the Authority may set Code requirements that are necessary or desirable to promote one or more of its statutory objectives, the performance of its functions, and/or any other matter specifically referred to in the EI Act as a matter for inclusion in the Code. This includes under section 32(4) of the EI Act:
 - 20.1 setting quality or information requirements for Transpower or one or more electricity distributors, in relation to access to transmission or distribution networks; and
 - 20.2 setting pricing methodologies for Transpower or one or more electricity distributors.
21. Alongside their obligations under section 54V of the Commerce Act, the Parties agree that in order to coordinate their respective roles and responsibilities:
 - 21.1 the Parties will consult each other, and work to provide clarity, on decisions which may have an impact on the other Party's regulatory role and responsibilities;

- 21.2 the Parties will advise each other of decisions that are likely to have an impact on the energy markets regulatory system; and
- 21.3 each Party will take into account any relevant decisions made by the other Party prior to exercising further decisions through their established powers.

Information sharing protocols

- 22. The Parties acknowledge the importance of sharing information where appropriate, in accordance with section 99AA of the Commerce Act and section 47A of the EI Act, and to the extent permitted by other laws.
- 23. Requests for information from the other Party should be made in writing to the Relationship Manager. Oral requests must be followed up by a written request as soon as practicable, or as agreed at the time of the request.
- 24. Requests for information will specify:
 - 24.1 the information requested (identifying the type of documents or information sought);
 - 24.2 the purpose for which the information is sought;
 - 24.3 the timeframe in which the information is needed, and the reasons for any urgency requested;
 - 24.4 any risks identified as part of any risk assessment, and any risk mitigation measures to be adopted; and
 - 24.5 any other relevant matters.
- 25. Subject to clause 26, the Parties agree to respond to requests for information as soon as is practicable, and within the timeframe requested if possible, or as otherwise agreed. In the case of an urgent request, the parties will consult to ensure a response to the request is expedited if possible.
- 26. Where a Party holds the information requested but declines to provide it to the other Party, it will (to the extent it is able to do so) inform the other Party of the reason for declining the request.
- 27. Before requesting information, a Party should consider whether the information is already in the public domain and can be obtained without the need for a formal request.
- 28. Obligations regarding the use, storage and retention of any information shared between the Parties are set out in Schedule 1 to this MOU.
- 29. The Parties may add further Schedules to the MOU from time to time as they develop further specific procedures or joint activities.

Confidentiality and Privacy

30. The Parties may share confidential information where permissible by law and in accordance with the providing party's policies.
31. Each party shall:
 - 31.1 treat as confidential all information of a commercially sensitive or security sensitive nature (together, Confidential Information) which it receives from the other Party in connection with this MOU;
 - 31.2 not disclose, and shall ensure that its respective employees, agents, and subcontractors do not disclose, such Confidential Information to any other person except:
 - 31.2.1 with the prior written consent of the other Party; or
 - 31.2.2 where required or permitted by law; and
 - 31.3 only disclose Confidential Information within its organisation on a need-to-know basis.
32. Notwithstanding clause 31, either Party may also require the other party to enter into a confidentiality agreement to maintain and protect the confidentiality of such information. In the event of any conflict between clause 31 and an executed confidentiality agreement between the Parties, the terms of the confidentiality agreement will prevail.
33. The Parties acknowledge that if any information to be provided under this MOU is personal information (as that term is defined in the Privacy Act 2020) then the Privacy Act 2020 (and any other applicable privacy laws and regulations) (Privacy Requirements) will apply in respect of such personal information. If any personal information is to be shared under this MOU, the parties agree that they will comply with such Privacy Requirements.

Consultation on media releases/statements

34. Where the Parties have a shared interest in a matter, each party will:
 - 34.1 where and to the extent appropriate and practicable, consult with the other before providing information or comment to the media on the matter; and
 - 34.2 raise any operational or policy concerns relating to the matter through appropriate internal channels at the other Party, rather than through the media.

Representatives and reviews

35. Each Party will appoint a Senior Representative and a Relationship Manager to assist with the implementation of this MOU and continued relationship between the Parties.

<p>Commerce Commission</p> <p>Senior Representative General Manager Infrastructure Regulation</p> <p>Relationship Manager:</p> <p>Principal Adviser, Performance and Understanding, Infrastructure Regulation</p>	<p>Electricity Authority</p> <p>Senior Representative Chief Executive</p> <p>Relationship Manager:</p> <p>Director Network Pricing</p>
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36. Relationship Managers will:
- 36.1 be the first point of contact between the Parties with respect to the day-to-day implementation of this MOU;
 - 36.2 meet when necessary and practicable, to discuss the progress of activities undertaken pursuant to this MOU and any other matters relevant to the relationship between the Parties;
 - 36.3 develop or amend protocols relating to specific procedures and activities, as required; and
 - 36.4 notify each other of any changes to their representatives under this MOU.
37. The Parties' Senior Representatives will meet every three years, or as otherwise agreed by the Parties, to review this MOU and schedules.

Issue or dispute resolution

- 38. All issues, disputes and differences between the Parties about the interpretation or performance of this MOU will be resolved at the earliest opportunity between the Relationship Managers themselves, wherever possible.
- 39. Only when matters remain unresolved or require further adjudication should they be referred to the Parties' Senior Representatives.
- 40. Each Party will raise any operational or policy concerns through appropriate internal channels at the other party.

Costs

- 41. Unless the Parties mutually determine otherwise, the cost of meeting the commitments of this MOU shall be met by the Party incurring the cost.

Legal

- 42. Nothing in this MOU shall:
 - 42.1 make either Party liable for the actions of the other;

- 42.2 constitute any legal relationship between the Parties;
 - 42.3 limit or affect the independence of each Party; or
 - 42.4 affect the terms, or interpretation of any other agreements (if any) between the Parties.
43. The provisions in this MOU are to be read subject to any Chief Executive, Public Service Commission or Cabinet directives, and any enactment, regulations, rules or applicable case-law. For the avoidance of doubt, nothing in this MOU should be interpreted or applied inconsistently with either Party's statutory functions, powers or obligations.
44. Where there are changes to legislation which affects the purpose and functions of this MOU or changes to Government policy which either Party must have regard to, each Party agrees to inform the other of those changes at the earliest possible time thereafter and both Parties agree to meet to re-negotiate, if necessary, any aspects of the MOU.

Signatures



SIGNED for and on behalf of **the Electricity Authority** by

Authorised Signatory

Anna Kominik
Chair

Date 09/04/2024

SIGNED for and on behalf of **the Commerce Commission** by



Adrienne Meikle
Chief Executive

Date 16/04/2024

Schedule 1: Use, storage and retention of information

1. Any information shared between the Parties will:
 - 1.1 be used and kept by the receiving Party for legitimate purposes and in line with the law and that Party's policies, processes and systems,
 - 1.2 be held in accordance with any stated sensitivity, terms or restrictions requested in writing by the Party at the time that the information is shared; and
 - 1.3 be stored with appropriate security measures, whether the information is in electronic form, hard copy or otherwise.
2. Each Party will upon request by the other Party provide the first Party with the other Party's internal guidelines and policies relating to the use, storage and retention of information, together with any other information required to verify that the other Party is meeting its obligation in paragraph 1 above.
3. The Parties will retain any information shared in accordance with this MOU as required by the Public Records Act 2005.
4. In addition to the obligations in respect of Confidential Information contained in the MOU, the Parties agree that any shared information may be disclosed by the receiving Party to a third party only where the receiving Party has first obtained the consent of the other Party or where required or permitted by law. Where a Party is legally required to disclose shared information, and to the extent it is able given the nature of the request, before making any disclosure, that Party will consult with the other Party to allow the other Party to raise concerns about the potential disclosure.
5. The Parties acknowledge that:
 - 5.1 If any criminal proceedings are initiated, the Criminal Disclosure Act 2008 will apply in relation to all relevant information held by the prosecuting Party; and
 - 5.2 If any civil proceedings are initiated, the High Court Rules 2016 will apply in relation to all relevant information held by either Party.