
Submission

Commerce Commission: Response to Vector's
electricity distribution DPP reconsideration
request

2 October 2018

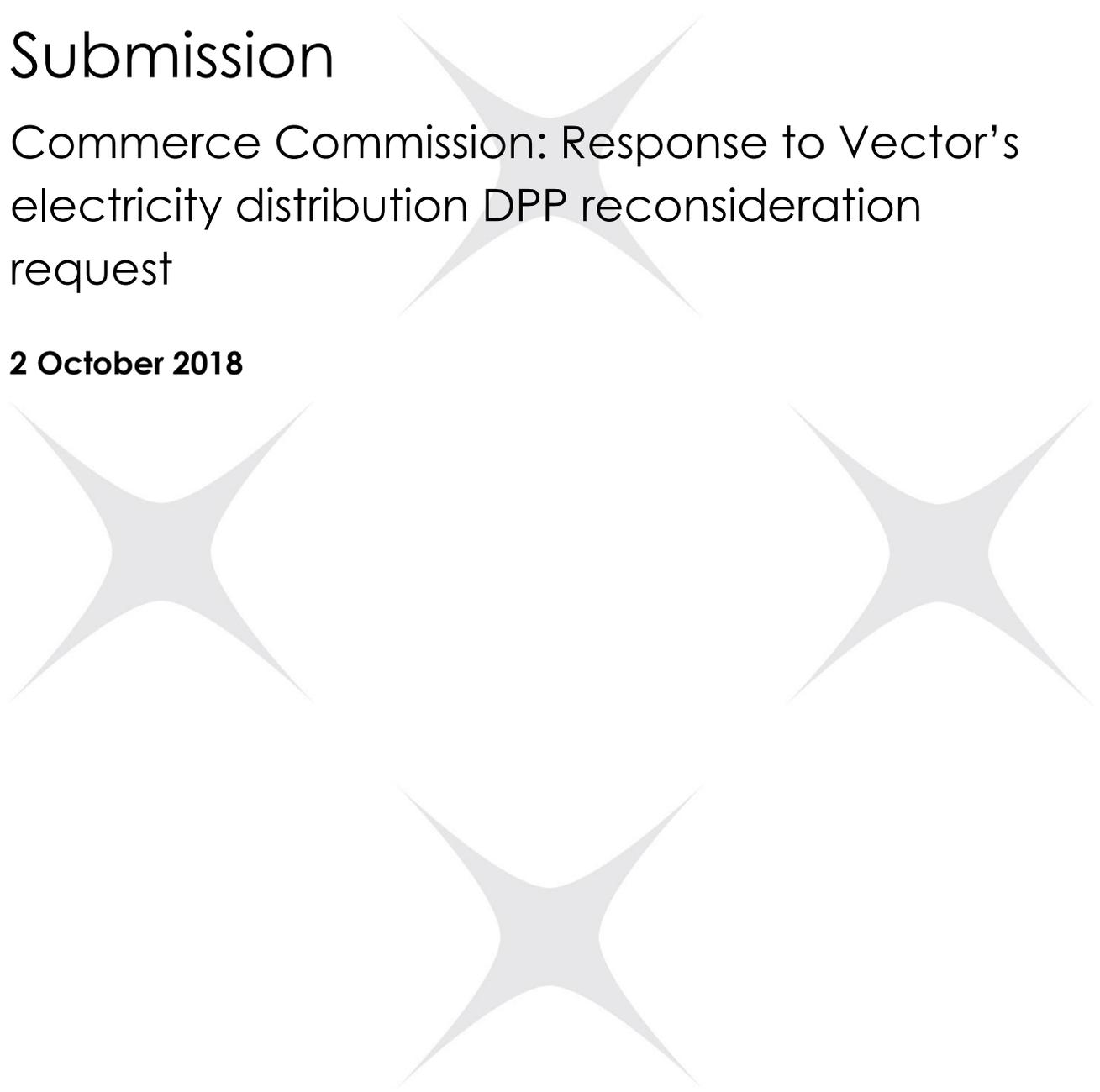


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1 Introduction

- 1.1 Aurora Energy welcomes the opportunity to submit on the Commerce Commission's (Commission) response to Vector's electricity distribution DPP reconsideration request (the Response).
- 1.2 No part of our submission is confidential and we are happy for it to be publicly released.
- 1.3 If the Commission has any queries regarding this submission, please do not hesitate to contact:
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2 Interpretation of the legislation

- 2.1 Section 3(1) of the Health and Safety at Work Act 2015 (the Act) states that:
"The main purpose of this Act is to provide for a balanced framework to secure the health and safety of workers and workplaces by ... (c) encouraging ... employer organisations to take a constructive role in promoting improvements in work health and safety practices ...; and ... (g) providing a framework for continuous improvement and progressively higher standards of work health and safety."
- 2.2 The Ministry of Business, Innovation and Employment (MBIE) summarises on its website that:
"The Act works to focus effort on what matters, based on business risk, control and size: ... It shifts from hazard spotting to managing critical risks – actions that reduce workplace harm rather than trivial hazards ... It changes the focus from the physical workplace to the conduct of work – what the business actually does and so what it can control"¹.
- 2.3 New and amended legislation is often intended to promote a change in behaviour, or to see action being taken to remedy undesirable situations. We are of the view that the Act is one such piece of legislation, and that its intention to drive changes and improvements in workplace practices and procedures is clearly identifiable from the Act's purpose statement (section 3), and from the policy intent summarised on MBIE's website.
- 2.4 In our opinion, the Commission's interpretation of the DPP reconsideration provisions within the Input Methodologies² is unnecessarily narrow. In addition to considering whether a legislative change directly cuts across the provisions of the DPP Determination³, the Commission should also consider whether (1) the purpose of the legislative change is to effect a behavioural response, and (2) whether that behavioural response is likely to drive (or has driven) a performance outcome that is inconsistent with the DPP Determination.
- 2.5 We recognise that EDBs will take different views of their responsibilities under the Act (although we would expect these to coalesce over time). However, we consider that Vector's response to the Act does not fall outside the range of responses that might reasonably be anticipated, especially when section 3(2) of the Act (purpose statement) provides clear guidance that:

¹ <https://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform>

² Commerce Commission. (2012). Electricity distribution Services Input Methodologies Determination 2012. 3 April 2018.

³ Commerce Commission. (2014). Electricity Distribution Services Default Price-Quality Path Determination 2015. 28 November 2014.

"...regard must be had to the principle that **workers and other persons** should be given **the highest level of protection against harm** to their health, safety, and welfare from hazards and risk arising from work or from specified types of plant **as is reasonably practicable.**" [Emphasis added].

- 2.6 We consider that Vector's behavioural response to the Act is not unreasonable, nor inconsistent with the purpose of the Act.

3 Regulatory certainty

- 3.1 We are further concerned by the following statement made by the Commission in the Response:

*"The Commission supports EDBs taking steps that are necessary to the safety of their workers and the public. Accordingly, prior to 1 April 2020, if Vector or another EDB were to exceed its quality standards and the Commission were satisfied that this was solely because it had legitimately and efficiently de-energised lines for safety reasons, then it is unlikely enforcement action would be warranted. In that regard, we encourage Vector and other EDBs to ensure appropriate records are kept so that the impact of health and safety practices on quality standard metrics can be robustly demonstrated."*⁴

- 3.2 In our view, a statement of this nature creates uncertainty as to the application of the regulatory framework. EDBs should be able to take comfort that the Commission will consistently apply the regulatory framework, and that enforcement will not be subject to unnecessarily subjective interpretation.
- 3.3 Where uncertainty is created, as has occurred consequent to the Commission's draft decision, we consider that the Commission must act quickly to provide clear guidance to the industry as to how it will interpret, apply, and enforce the regulatory framework.
- 3.4 We would also urge the Commission to consider whether the Re-Opener Test⁵ is sufficiently balanced to be considered fit for purpose. The Re-Opener Test focusses on the price path and ignores the quality standards entirely. This seems to us to be inconsistent with the concept of a price-quality path. While we appreciate that financial impacts might be determined more objectively, quality impacts should not be neglected; particularly as quality compliance is emerging as the single largest compliance risk to EDBs that are subject to price-quality regulation.⁶

4 The Commission's final decision

- 4.1 The Commission's final decision is important, and should demonstrate that regulatory instruments made under the Commerce Act 1986 are sufficiently flexible to appropriately coordinate with changes in Government policy in general, and with potentially conflicting legislative and regulatory instruments in particular.
- 4.2 As the Commission's decision hinges on the application of the Input Methodologies, the final decision will also be an important factor in promoting certainty⁷ regarding the approach that the Commission will take, both in terms of this specific issue, and in the Commission's more general approach to managing legislative change events where they impact the DPP Determination.

⁴ Commerce Commission. (2018). Letter to Vector Limited, Vector's request that the DPP be re-opened. 5 September 2018, para 17.

⁵ Commerce Commission. (2012). Electricity distribution Services Input Methodologies Determination 2012. 3 April 2018, clause 4.5.2, p122.

⁶ Commerce Commission. (2018). Summary of price-quality compliance for assessment periods between 2010 and 2018. Retrieved 28 September 2018 from <https://comcom.govt.nz/regulated-industries/electricity-lines/electricity-lines-price-quality-paths/electricity-lines-default-price-quality-path/complying-with-the-default-price-quality-path>

⁷ Section 52R, Commerce Act 1986.

4.3 Aurora Energy is firmly of the view that regulated suppliers should not be placed in a position where conflicting legislation / regulation creates a compliance dilemma.