

13 December 2018

Richard Sharp
Head of Regulation and Pricing
Vector Limited
101 Carlton Gore Road
Auckland

Dear Richard

Vector's request that the DPP be re-opened

1. We write further to our enclosed 5 September 2018 letter ("Letter") where we provided our initial view on Vector Limited's ("Vector") request that we re-open our *Electricity Distribution Services Default Price-Quality Path Determination 2015* ("DPP").
2. In our letter we advised that our initial view was that we were not satisfied that Vector's circumstances met the re-opener requirements and so were not able to consider Vector's re-opener request further. We formed that view because we considered (on the basis of legal advice from Paul Wicks QC and our own analysis) that to the extent Vector's policies with respect to work on live lines are necessary under s 30 of the Health and Safety at Work Act 2015 ("HSW Act"), they were also required under s 6 of the Health and Safety in Employment Act 1992 ("HSE Act"), and accordingly there was no new or changed legislative or regulatory requirement.
3. We made the Letter public and invited submissions. We received submissions from the following parties:
 - 3.1 Vector (including a letter and report from Dupont);
 - 3.2 Robert Stewart QC on behalf of Vector;
 - 3.3 Northpower Limited;
 - 3.4 Electrix Limited;
 - 3.5 Aurora Energy Limited
 - 3.6 Wellington Electricity Limited; and
 - 3.7 Electricity Networks Association.

4. Generally, the submissions received disagreed with our initial view. They asserted that we were incorrect that the introduction of the HSW Act was not a new or changed regulatory requirement which meant that Vector's policies had become necessary.
5. We asked Mr Wicks QC to review his advice in light of the submissions received. Mr Wicks did so (his letter is enclosed) and he confirmed that his opinion remained that there was no new or changed legislative or regulatory requirement, advising that "there has been no substantial change in what an employer was required to do to address workplace hazards under the HSE Act".
6. We agree with Mr Wicks QC's view that the HSW Act did not significantly change the requirement on Vector in the context of the policies it has introduced. As we stated in the Letter, our view is that, to the extent that Vector's policies are required by s 30 of the HSW Act, they were also required by s 6 of the HSE Act.
7. Based on the considerations and arguments outlined in the Letter, and our assessment of the submissions on the Letter and the further advice from Mr Wicks QC, our final decision is to decline Vector's request that the DPP be re-opened.
8. We do reiterate two points that we made in the Letter:
 - 8.1 The Commission supports electricity distribution businesses (EDBs) taking steps that are necessary for 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 under the DPP and the Commission were satisfied that this was solely because the EDB had legitimately and efficiently de-energised lines for safety reasons, then it is very 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.
 - 8.2 We intend to consider further the issue of practices such as Vector's policies that formed the basis of its re-opener request as part of the process for deciding the default price-quality path to apply from 1 April 2020. The information provided by Vector and other parties will inform our approach to these issues in the DPP reset process.

Yours sincerely

Sue Begg

Encl.