

Aurora CPP Submission

James Dicey

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This submission is in response to the Commerce Commission's (ComCom) draft decision on the Aurora CPP submission.

I am making this submission both as a consumer based in Central Otago but also on behalf of the businesses I that I manage vineyards for as well as for the Central Otago Winegrowers Association, who represent over 2000 hectares of grapes in Central Otago (which spans the territorial authorities of the QLDC and the CODC).

Item 1	Process issues
Issue	The process undertaken by the ComCom is flawed and the outcome will not result in a sufficient or adequate consultation. This will mean that consumers will not have an adequate opportunity to meaningfully contribute to the process. The reason for this is that the process is a very technical one and particularly complex and the consumer level documents prepared by the ComCom have been at an extremely high level with an insufficient explanation of the key issues which have driven the recommendation. The ComCom has also failed to provide sufficient time for all the issues to be raised and addressed in the consultations, stopping sessions whilst points were still to be made (in the sessions I attended and speaking to others the same thing occurred).
Remedy	The ComCom should have appointed consumer advocates during the process to more deeply engage with the affected communities. The ComCom should have funded this and ensured that the key technical and complex issues which drive the decision were presented in a manner that consumers could effectively engage with to ensure full participation. Instead, consumers have not fully engaged in the process and when the impact of the price rises becomes apparent this will result in an extremely negative impact on affected communities. I recommend that the process be stopped, and additional work be undertaken to ensure a deeper and more meaningful consultation. I further recommend that the critical components of the complex decision be translated into plainer language and more time be given.

Item 2	Lack of consideration of revenue collection options
Issue	The ComCom has different mechanisms to be able to determine the pricing model in its enabling legislation, specifically on a price per unit basis. The model decided on was a gross price cap which bundles all revenue and does not break it down. It is my view that the lack of investigation and consideration of the alternative revenue model and whether it could result in a more equitable outcome for consumers or give additional clarity on how Aurora earns its revenue and provide different controls is a procedural flaw by the ComCom. By not considering it the ComCom has not considered all the revenue pathways and associated control methods available to it.
Remedy	Perform a complete analysis of all options and analyse why they are not suitable. Ensure professional assistance from economists to analyse the different models is also provided to ensure that a full cost benefit analysis of the different options is performed.

Item 3	Setting the revenue cap by region
Issue	It was only after persistent questioning of the ComCom staff that there was a grudging

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	<p>admission that it within the ComCom's regulatory authority to set the revenue cap by region. The flippant rationale provided at the meeting was that the intent was not to look back at past Aurora behaviour and not to get too involved in dictating to Aurora on how to run their business.</p> <p>Aurora has consistently demonstrated predatory monopolistic behaviour and the current CEO has been publicly dismissive of the \$5m fine that the High Court imposed (I understand that the words used were "we are on the naughty step"!). Culturally the organisation has not evolved enough and there has not be demonstrative behaviour which favours a more trust-based approach. Until this changes I strongly suggest that a regulation first/trust second model is adopted.</p>
Remedy	By setting the revenue cap by sub-region and commensurately applying regional performance standards and regional expenditure requirements the ComCom will ensure that the funds collected by Aurora will be appropriately spent.

Item 4	Lack of penalties available to ComCom
Issue	Currently the ComCom is not able to apply penalties for non-performance or meeting of quality or performance metrics by Aurora. Apparently, there are no regulatory abilities/authority to enable this to occur. I wonder whether remedies are available relating to the revenue cap and withholding sums of revenue where the performance criteria are not met.
Remedy	A recommendation needs to be made to the policy team that this is a gap in regulatory powers. The ComCom should make clear to Aurora when they will pursue Aurora in the High Court for insufficient performance – effectively drawing a line in the sand. The criteria for this to occur and be published and then measured against to ensure that Aurora are permanently on notice regarding unacceptable performance or activities.

Item 5	Granularity of quality and performance criteria
Issue	<p>The quality measures proposed appear to be extremely high level and will mean there will be delays for continued poor performance will take considerable time to address and additional root cause analysis will be required to understand what has driven the failure. If the performance criteria adopted were sufficient granular, regionally specific and addressed both at an input level and the outputs that are generated more rapid analysis of a lack of performance or quality will be generated. Additionally, this will enable regional performance to be analysed. The current criteria appear to be too high level and will not rapidly enable progress to be analysed.</p> <p>I further understand from talking to Delta staff that, due to the negative company culture within Delta and antagonism with Aurora, staff are intentionally seeking to sabotage the performance of the company. This culture is emblematic of how toxic the environment is and should be a clear signal to the ComCom that a more direct and granular approach is needed to really gauge performance.</p>
Remedy	Develop highly granular quality and performance criteria. Benchmark these against global standards. Ensure they are both input, and outcome focussed. Require rapid and regular reporting, including to the public and the ComCom by Aurora to ensure

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	accountability. Ensure that there is an established escalation pathway for poor performance (see Item 4 above as well).
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Examples of this could include the following (all at a regional level + Month/Annual/Limit):

- SAIDI Minutes
- Zone Substation Outages
- Feeder Outages
- Pole Failures
- Line Faults
- Groundmount Switchgear Failure
- Cable Faults
- Low Voltage Complaints
- Tree Vs Line Incidents
- Lost Time Safety Incidents
- Near misses/Harm incidents
- Blue tag poles = # fixed per month
- Red tag poles= # fixed per month

Item 6	Valuation Methodology
Issue	<p>The valuation methodology is allowing for over valued assets. The ComCom representatives suggested that the methodology used by Aurora is a nationally accepted standard that is audited against. From investigation the difference between booked value and real cost is highly diverged and the system has been set up to impute as many costs and margins as possible. This results over valued assets and an ability to drive a higher return off these assets than is either equitable or justified. Further, it breeds an inefficient approach where the Aurora is rewarded for monopolistic behaviour, namely inefficiency.</p> <p>There are no public benchmarking exercises of cost metrics preventing clarity of the valuation results. This reduces accountability and clarity of the outcomes of the methodology employed</p>
Remedy	<p>Review the valuation methodology and audit the specific cost accumulation model Aurora is undertaking. Utilise technically capable and properly independent consultants to undertake this process – these people need to be sourced from outside NZ’s borders to ensure full independence. The NZ market is too small to ensure full independence. Publish per meter costings of the assets on Aurora’s books. As a government endorsed monopoly this should not be confidential information, rather publication of this will force greater scrutiny.</p>

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Examples of these benchmarks includes:

CFR categories

Values for comparison purposes

Categories to align with CFR categories

Item	Unit	Notes	Cost
LV cable	100m	Marker tape, no trench. 3ph state size.	
HV cable	100m	Magslab, marker tape, no trench. 3 phase state size.	
LV line (Wood)	100m	Pole, 3ph line, crossarm, state conductor type.	
LV line (Concrete)	100m	Pole, 3ph line, crossarm, state conductor type.	
LV Line (Steel)	100m	Pole, 3ph line, crossarm, state conductor type.	
HV line (Wood)	100m	Pole, 3ph line, crossarm, state conductor type.	
HV line (Concrete)	100m	Pole, 3ph line, crossarm, state conductor type.	
HV Line (Steel)	100m	Pole, 3ph line, crossarm, state conductor type.	
LV pole (Wood)	Per unit	Pole, 3ph line, crossarm, state conductor type.	
LV pole (Concrete)	Per unit	Pole, 3ph line, crossarm, state conductor type.	
LV pole (Steel)	Per unit	Pole, 3ph line, crossarm, state conductor type.	
HV pole (Wood)	Per unit	Pole, 3ph line, crossarm, state conductor type.	
HV line (Concrete)	Per unit	Pole, 3ph line, crossarm, state conductor type.	
HV pole (Steel)	Per unit	Pole, 3ph line, crossarm, state conductor type.	
Pole mount switchgear	Per unit	Include mounting hardware and earths.	
Ground mount switchgear	Per unit	Include pad and earths.	
Pole mount transformer	Per unit	State kVA, include pad, earths. No LV fit out.	
Ground mount transformer	Per unit	State kVA, earths. No LV fit out.	
Pole mounted voltage regulator	Per unit	Include mounting hardware	
Pole mounted recloser	Per unit	Include mounting hardware	

Item 7	Ignore history at your peril
Issue	As the expression goes – those who ignore history are doomed to repeat it. The ownership structure of Aurora has demonstrably influenced the behaviour of the organisation in the past. This has not changed during the CPP process and nothing in the proposal appears to acknowledge this and place additional controls to prevent this from happening again. The High Court did fine Aurora and consequently the ComCom has drawn a line under the past and is only taking a forward-looking stance, appearing to have ignored history. The fact that there is no regional revenue cap and the pricing for CODC (and to a lesser extent the QLDC) consumers are at a much higher level indicates that Aurora is planning to extract a much higher revenue from these consumers. This is a fundamental miscarriage of justice and indicates that Aurora is

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	planning to continue to practise monopolistic behaviour with the complicity of the ComCom.
Remedy	I recommend that a lower revenue cap for the CODC and QLDC regions should be set with the same performance criteria as for the DCC region. This will ensure that the revenue it taken from the DCC ratepayers and applied to the CODC and QLDC ratepayers, to address prior wrongs. Failing this, at worst, the rates charged to each consumer should be the same regardless of which region they reside in.

Item 8	Abuse of trust
Issue	<p>The current ComCom model is a trust-based model which applies a high <i>laissez faire</i> approach. Demonstrably and repeatedly, Aurora has abused that trust but the central approach from the ComCom has not altered. This can only be due to a lack of regulatory powers, the ComCom not undertaking their job properly or an inappropriately close relationship between the ComCom and Aurora.</p> <p>As a result of OI requests the close relationship between ComCom and Aurora has been discovered with what looks like a lack of appropriate distance between the two organisations. It appears that the ComCom is prepared to grant access to Aurora staffers to help shape messaging and communications. The integrity of the ComCom and its staff is compromised and a much more hands off and separated approach is required.</p>
Remedy	<p>The ComCom needs to justify why they have not altered their fundamental approach to Aurora and have continued with the loose “regulation light” approach. They should also ensure that staff with close personal relationships with Aurora staff are fully excluded from the process and the communications between Aurora and the ComCom should be subject to regular independent scrutiny to ensure that the relationship is appropriate. Furthermore the ComCom needs to take a much more hands-on, directive approach to regulating Aurora to ensure corporate behaviour of the government enabled monopoly is truly competitive.</p>

Item 9	Monopolistic Behaviour
Issue	<p>Utilities are common forms of government endorsed and controlled monopolies, typically due to perceived efficiency for there to be a sole provider of utility services. To ensure efficiencies and monopolistic behaviours are not undertaken (such as margin gouging) an effective regulatory environment is required. If monopolies are not effectively regulated then inefficiencies and high costs build due to a lack of effective competition and pricing and margin become bloated. The Commerce Commission as the regulator is meant to spur to stimulate competitive behaviour and ensure the excesses the build from a monopoly are avoided. The outcomes for consumers need to be the key measure of success of the role that the Commerce Commission plays. The chart which shows the outcomes for different consumers, shows disadvantages for consumers regardless of the rationale applied by Aurora that the Commerce Commission is complicit in supporting. Unless there is an equitable outcome which reflects both the history of how the current situation has arisen and a clear pathway that has a more equitable pricing and margin that equalises across all regions then the Commerce Commission has failed at effectively regulating Aurora.</p> <p>An analysis of the behaviour of Aurora and how this differs to a company behaving in a</p>

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	<p>true free market has not been undertaken by the ComCom. This needs to occur to give the consumers and key stakeholders confidence who the behaviours displayed by Aurora will be addressed to ensure the company acts in a manner befitting a company subject to the free market.</p>
Remedy	<p>Engage an economist to analyse the current situation and report on the level of organisational efficiency Aurora is displaying and report this to the public. Determine a set of organisation key performance indicators and regularly report this to the public. Determine what additional control and performance measures need to be imposed on Aurora and implement.</p>

Item 10	Interim review
Issue	<p>The CPP has a 5-year term. If the measures imposed on Aurora by the ComCom as part of this process and the reporting is not indicating a satisfactory direction or pace of travel the next opportunity the ComCom has to review the situation is at the end of the 5 year term. Given the past behaviour of Aurora this is too long – whilst I understand the need for certainty and time the period is too long and the ComCom should retain the ability to perform a mid-term review.</p>
Remedy	<p>The ComCom needs to reserve itself the ability within the 5-year period of the CPP to perform interim reviews of performance and adjust either performance measures or the revenue cap and how its allocated.</p>

Item 11	Understandability of performance and quality measures
Issue	<p>The CPP process, the nature of the business and how technical it is does not enable the easy development of performance and quality measures. Without appropriate scrutiny it will make it very difficult to hold Aurora to account.</p> <p>One of the ways to achieve this would be to have a consumer watch dog group set up. This group will need to include people with an appropriate technical background or skillset as well as people to operate the group. Without funding or the endorsement of the ComCom it is unlikely this will occur.</p>
Remedy	<p>Measures need to be defined which can be easily understood and communicated with the members of the general public.</p> <p>Aurora needs to fund a watchdog consumer group who has direct access to the ComCom to act as eyes and ears on the ground for breaches of quality and performance measures. Aurora needs to report to this group on a regular basis and provide funding to ensure it is sufficiently resourced with skilled, engaged and knowledgeable members of the general public (including providing training on the operation of the electricity market).</p>

Item 12	Ringfencing expenditure
Issue	<p>The ComCom suggested in the consultation meetings that they are unable to ringfence expenditure – it appears that there is precedent with this being undertaken in other processes (specifically, Wellington). Given the focus on ensuring the need to the CPP</p>

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	<p>process being undertaken to deliver on specific outcomes it seems illogical that they would not undertake such a process again. The reason suggested was that they were the regulator and did not want to tell Aurora how to spend their money. It's not inconceivable (and precedent would suggest this is a likely outcome) that Aurora would not spend all the additional money where it is needed – on upgrading infrastructure – or in the right parts of the network. By ringfencing money granted through revenue this would ensure the money spent was spent for the purpose intended.</p> <p>It certainly does not generate confidence that the ComCom are being selective about what they can and can not implement as part of this process. In fact this calls into question the integrity and intent of the people running the process for the ComCom.</p>
Remedy	<p>Ringfence the additional revenue and ensure the expenditure is on what is required. This will ensure that Aurora will not misappropriate funds (again). The ComCom should also apologise to consumers regarding the apparent selective nature of their communication regarding the full suite of options available to them. Additionally, the ComCom should, as part of this process formally acknowledge what suite of options they do have and justify why they have selected a particular pathway.</p>

Item 13	True Independence
Issue	<p>Truly independent experts within NZ are difficult, if not impossible, to find (as the electricity market is too small).</p> <p>To ensure the ComCom has examined all possible options available to it as part of this process the ComCom should engage truly independent overseas expertise to undertake a peer review of the process and outcomes.</p>
Remedy	<p>Technical analysis and review of performance and reporting should be undertaken by overseas experts who have no investment in the outcome of the performance of the NZ electricity market.</p>

Item 14	Customer Charter
Issue	<p>Aurora's customer charter is not enshrined in the regulatory framework – as a consequence it is a PR exercise that bears no weight or value. It is a PR exercise only that is subject to manipulation and without scrutiny it is not worthwhile.</p>
Remedy	<p>To ensure consumers are properly protected the charter should form part of the ComCom's recommendations.</p>

Item 15	Integrity of the process
Issue	<p>Several submissions have been made during this process, including a number from very well-informed people who have a deep technical knowledge. A scan of the responses to submissions and discussions with some of these people indicates that their submissions have not been carefully considered or addressed as part of the consultation. As such questions of natural justice and the integrity of both the process and the ComCom itself</p>

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	get raised.
Remedy	Additional effort needs to be expended to ensure these are properly addressed or the process is open to judicial review to ensure a proper and complete process has been undertaken. I recommend that a more complete table of analysis of the submissions be completed and reconciled to the report and recommendations. Furthermore, given the poor performance of the ComCom in this area this should be contracted out to an independent third party to ensure that there is confidence in the integrity of the process.

Item 15	Aurora Ownership Model
Issue	<p>The DCC through DCHL owns Aurora. This means that the Dunedin ratepayers who elect their council and hold them to account have a democratic control over the actions of their council and provides for a degree of accountability. The ratepayers of the CODC and QLDC have no such control or ability to demand accountability. The model in the past has resulted in funds from the ratepayers in the QLDC and CODC territorial authorities being rorted via a lack of maintenance to support dividend payments the DCC (via DCHL demanded).</p> <p>This is a FUNDAMENTALLY flawed ownership model, even acknowledged by John Crawford of the ComCom in public.</p>
Remedy	Additional controls on what monies are paid to the DCC is required as a condition of the CPP process. If this is not possible then it really reinforces the need for levelled revenue collection across all three territorial authorities as well as a requirement to spend additional revenue only for the purposes it is granted by the ComCom.