

Consultation on two technical changes to our draft determination for Aurora’s proposal to customise its prices and quality standards

Draft decision

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We seek your views on two technical changes to our draft determination for Aurora’s customised price-quality path

We are in the process of making our final decision on Aurora’s proposal for a CPP

- 1 In November 2020, we published our draft decision on Aurora Energy Limited’s (**Aurora**) proposal for a customised price-quality path (**CPP**) to increase its regulated revenues to repair its electricity lines network and recover the cost of its spending from its customers (**draft CPP decision**).¹
- 2 Our draft CPP decision was that Aurora had largely made the case for increased investment in replacing old and failing assets, but that Aurora could do this with a lower amount of spending compared to what it proposed.²
- 3 Our draft CPP decision also proposed a package of measures in response to Aurora’s proposal and some broader requirements to improve Aurora’s accountability to customers.
- 4 We have received and published submissions and cross-submissions on our draft CPP decision.³ We appreciate submitters’ efforts to share their views with us, which will inform our final CPP decision. We are still considering those views, and we intend to make our final decision by 31 March 2021.

We are consulting on two technical changes to our draft CPP determination

- 5 Since publishing our draft CPP decision, we have identified two technical changes we propose to make to the draft CPP determination and which we would like your views on.⁴
- 6 The two changes proposed in this paper are ‘technical’ in nature because they focus on parts of how the CPP operates rather than specifying its key features – Aurora’s maximum regulated revenue and quality standards.
- 7 The two technical changes relate to:

¹ Commerce Commission, *Aurora Energy’s proposal to customise its prices and quality standards – Draft decision*, 12 November 2020, available at:

https://comcom.govt.nz/data/assets/pdf_file/0017/228023/Draft-decision-Aurora-Energy27s-proposal-to-customise-its-prices-and-quality-standards-12-November-2020.pdf.

² Our draft CPP decision was to lower Aurora’s proposed spending from \$609.3 million to \$523.1 million – a reduction of \$86.2 million (14.1%). This would be made up of:

- \$315.5 million of the \$356.3 million proposed for capital expenditure
- \$207.7 million of the \$252.9 million proposed for operating expenditure.

³ Submissions and cross-submissions from our consultation on the draft CPP decision can be viewed here:

<https://comcom.govt.nz/regulated-industries/electricity-lines/projects/our-assessment-of-aurora-energys-investment-plan>.

⁴ The draft CPP determination that we published with our draft CPP decision can be viewed here:

https://comcom.govt.nz/data/assets/pdf_file/0017/228014/5BDraft5D-Aurora-Energy-Limited-Electricity-Distribution-Customised-Price-Quality-Path-Determination-with-IM-variations-2021-12-November-2020.pdf.

- 7.1 how the CPP determination treats certain business transactions Aurora enters into, where Aurora either acquires or disposes of network assets, and which involve a transfer of consumers to or from Aurora’s network; and
- 7.2 allowing Aurora, which is currently on our default price-quality path (DPP),⁵ to set its prices for the year starting 1 April 2021 (**2021-22 year**) based on its allowed revenue under our final CPP decision.
- 8 The purpose of this paper is to:
- 8.1 describe the two technical changes we would make to the draft CPP determination; and
- 8.2 seek your submissions on the two changes we propose, to help inform the final decision we will make on Aurora’s CPP proposal.
- 9 We have included as Attachment A of this paper an updated version of the draft CPP determination, which is the same as the version we consulted on with our draft CPP decision,⁶ except that it includes marked-up changes (in ~~strike through~~ and underline) showing the two technical changes proposed in this paper. We welcome submissions on any of the marked-up drafting as part of this consultation.

We are not reconsulting on other aspects of our draft CPP decision

- 10 Aside from the two technical changes, this paper does not seek views on the other aspects of our draft CPP decision that we recently consulted on. As noted above, we are still considering submitters’ views from that consultation, so any changes we make to our draft CPP decision (including the final CPP determination) from considering those views will be reflected in our final CPP decision in March 2021.
- 11 The paper’s narrow focus is why our timeframe for submissions set out below is shorter than that used for the draft CPP decision. It also means we will only take account of views we receive on this paper that respond to one or both of the proposed technical changes.
- 12 We are consulting on the two technical changes now so that, if, after considering your views, we decide to proceed with the two changes, we can include them in our final CPP decision.

⁵ *Electricity Distribution Services Default Price-Quality Path Determination 2020* [2019] NZCC 21, consolidated at 20 May 2020, available at: https://comcom.govt.nz/_data/assets/pdf_file/0025/216862/Electricity-distribution-services-default-price-quality-path-determination-2020-consolidated-20-May-2020-20-May-2020.pdf.

⁶ The draft CPP determination we released with our draft CPP decision can be viewed at: https://comcom.govt.nz/_data/assets/pdf_file/0017/228014/5BDraft5D-Aurora-Energy-Limited-Electricity-Distribution-Customised-Price-Quality-Path-Determination-with-IM-variations-2021-12-November-2020.pdf.

How to make a submission on the two technical changes

- 13 To allow us to meet our statutory timeframe for making a final decision on Aurora's CPP proposal, we ask that if you wish to submit on these proposed technical changes, you provide email your submission to us by **18 February 2021**. Please email your submission to feedbackauroraplan@comcom.govt.nz with 'CPP Technical changes consultation' in the subject line of your email.
- 14 We will take account of all submissions we receive on the two technical changes by the above deadline. Given the limited period remaining in our statutory timeframe for determining the Aurora CPP, and the defined technical nature of the changes upon which we are consulting, we do not intend to seek cross-submissions as part of this process.
- 15 All submissions will be published on our website, unless you indicate that your submission, or parts of it, are confidential. If you consider your submission to be confidential, please clearly mark which parts of the submission are confidential and provide your reasons for why this is the case. All personal information, other than submitters' names, will be redacted from the submissions we publish on our website.

Technical change #1: Adjusting the CPP for the effects of transfers

If Aurora buys or sells network assets, the CPP should provide for the impact on Aurora's allowed revenue and quality standards

- 16 When an electricity distribution business (**EDB**) such as Aurora buys or sells network assets from or to another EDB, this transaction will result in them supplying more or fewer consumers. If the EDB involved is price-quality regulated,⁷ adjustments should be made to its price path and quality standards to reflect the changes in the scale of the regulated services the EDB will supply after the transfer.
- 17 Such adjustments ensure the EDB's price path and quality standards reflect the scope and scale of the regulated services the EDB supplies at any stage in the regulatory period. This helps limit the EDB's ability to make excessive profits and encourages it to provide services at a price and quality that reflects consumer demands – which is to the long-term benefit of those consumers.⁸
- 18 Our input methodologies (our upfront rules and processes) already allow us to reopen a CPP or DPP to adjust the relevant price path and quality standards for a transaction in which:
- 18.1 two price-quality regulated EDBs merge (**merger**);⁹ or

⁷ That is, an EDB for which we set maximum revenues and quality standards, through the operation of s 54G of the Commerce Act 1986 (**Act**) (also known as a 'non-exempt EDB' or 'price-quality regulated EDB'). We do not set maximum revenues and quality standards for the other 'exempt' EDBs.

⁸ Section 52A(1)(d) and (a) of the Act, respectively.

⁹ Clause 3.2.1 of the *Electricity Distribution Services Input Methodologies Determination 2012* [2012] NZCC 26 (**IMs**). A consolidated version (as at 20 May 2020) of the IMs can be viewed at:

- 18.2 a price-quality regulated EDB acquires or disposes of network assets with a value equivalent to more than 10% of the total value of the EDB's regulated assets at the start of the relevant year (**major transaction**).¹⁰
- 19 If Aurora was to enter into a transaction that was not a merger or a major transaction ('transfers')¹¹ during the CPP period, the CPP determination in its current draft form would not adjust Aurora's price path or quality standards to reflect the change to the scope and scale of the regulated services Aurora would supply after that transfer. The draft CPP determination would also not require Aurora to provide information and calculations in its annual compliance statement on any transfer Aurora entered into during a CPP assessment period (a year running from 1 April to 31 March of the next calendar year).

We consider that the CPP determination should adjust Aurora's price path and quality standards following a transfer, even if the value of the transaction is not more than 10% of Aurora's regulated assets

- 20 Our draft CPP decision took the streamlined approach of only providing for changes to Aurora's price path and quality standards from a transaction in the event of a merger or major transaction – that is, the existing reopeners available under the IMs. The draft CPP determination also required Aurora to notify us in the event of a transfer, and provided that Aurora's forecast revenue from prices for the assessment period immediately following a transfer must not exceed the forecast allowable revenue for that period.¹²
- 21 Our initial view was that this streamlined approach was appropriate given Aurora's primary focus in its CPP proposal on repairing its network and recovering the cost of doing so in revenues from lines charges. While this primary focus has not changed, we have revised our initial view and now consider there is no persuasive reason to take a different approach to transfers under the CPP determination than under the DPP determination – which adjusts an EDB's price path and quality standards after a transfer (not just a merger or major transaction via the IMs).¹³ We note Aurora has been subject to the DPP, and would continue to be so in the absence of the CPP.
- 22 We consider the policy behind the DPP's approach to transfers should be applied to the CPP, and for that reason, our proposed change to the draft CPP determination follows the approach of the DPP determination.¹⁴ This includes following the DPP's approach for transfers Aurora might make with an exempt EDB,¹⁵ and for amalgamations and mergers that are not major transactions.¹⁶

https://comcom.govt.nz/_data/assets/pdf_file/0017/60542/Electricity-distribution-services-input-methodologies-determination-2012-consolidated-20-May-2020-20-May-2020.pdf.

¹⁰ Clauses 4.5.4 and 4.5.6—4.5.7 and clauses 5.6.4 and 5.6.7—5.6.8 of the IMs.

¹¹ For ease of reference, this paper refers to transactions which are not mergers or major transactions as 'transfers'.

¹² Clauses 10.1 and 8.6 of the draft CPP determination, respectively.

¹³ Clause 10 of the DPP determination.

¹⁴ In resetting the DPP, we consulted on the policy behind the DPP's approach to transfers, which we consider applies to Aurora's CPP, at paragraphs 6.59—6.66 of our *Default price-quality paths for*

- 23 Enabling Aurora’s CPP to be adjusted for the effects of all types of transfers, and for mergers and amalgamations that are not major transactions, would be consistent with the DPP and would ensure that at all times the CPP best reflects the scope and scale of the regulated services Aurora supplies.
- 24 We also consider the CPP should adopt the DPP’s annual reporting requirements relating to transfers occurring in the previous assessment period.¹⁷ This would align the CPP with the DPP in this regard and allow Aurora’s customers to understand the effects of a transfer (or a major transaction, amalgamation, or merger) on Aurora’s price path and quality standards.
- 25 The changes to the draft CPP determination in Attachment A providing for this technical change are in clauses 10 and 11.4.

Technical change #2: A better basis for setting prices for the 2021-22 year

Aurora is currently required to set prices for the year starting 1 April 2021 using the DPP’s rules, but Aurora is moving to a CPP

- 26 In December 2020, Aurora sought guidance from us on the basis it should use for setting its prices for the 2021-22 year.¹⁸ Because Aurora must set those prices before we finalise our CPP decision, the potential solutions included using its allowed revenue under the DPP or its allowed revenue under the draft CPP determination.
- 27 The DPP governs Aurora’s allowed revenue until a CPP comes into force. Under clause 8.4 of the DPP determination, Aurora must set its prices based on its allowed revenue under the DPP for the 2021-22 year. Aurora must also provide a price-setting compliance statement before the start of the 2021-22 year confirming it has set its prices according to the DPP determination.¹⁹

electricity distribution businesses from 1 April 2020 – Draft decision, 29 March 2019, available at: https://comcom.govt.nz/_data/assets/pdf_file/0023/149801/Default-price-quality-paths-for-electricity-distribution-businesses-from-1-April-2020-Draft-Reasons-paper-29-May-2019.pdf. We received no submissions on that approach and finalised it in our *Default price-quality paths for electricity distribution businesses from 1 April 2020 – Final decision*, 27 November 2019, available at: https://comcom.govt.nz/_data/assets/pdf_file/0020/191810/Default-price-quality-paths-for-electricity-distribution-businesses-from-1-April-2020-Final-decision-Reasons-paper-27-November-2019.PDF.

¹⁵ See above n 7 for our description of exempt EDBs vs. non-exempt EDBs.

¹⁶ ‘Amalgamation’ and ‘major transaction’ are defined in the IMs, and our draft CPP determination contains a definition of ‘merger’.

¹⁷ Clause 11.6(i) of the DPP determination.

¹⁸ Aurora’s letter of 21 December 2020 to us on this matter and our response can be viewed at: <https://comcom.govt.nz/regulated-industries/electricity-lines/projects/our-assessment-of-aurora-energys-investment-plan?target=documents&root=231108>.

¹⁹ Clauses 11.1–11.3 of the DPP determination.

- 28 Given Aurora will be subject to a CPP from the start of the 2021-22 year,²⁰ and the CPP determination will set a different allowed revenue (and basis for setting prices) for Aurora compared to the DPP, we consider it would not be practical or sensible to enforce the above DPP price-setting requirements.
- 29 We also consider it appropriate to propose a solution at this point to address this matter:
- 29.1 given Aurora must give notice of any price change to electricity retailers on its network; and
- 29.2 so that, if, after considering submissions, we decide to adopt the proposed solution, we can incorporate it into our final decision on Aurora's CPP proposal.

Our proposed solution: changes to the draft CPP determination to allow Aurora to set prices based on our final CPP decision

- 30 In our letter of 23 December 2020 replying to Aurora's letter, we confirmed to Aurora that given it will be subject to a CPP from the beginning of the 2021-22 assessment period, we do not intend to enforce the price-setting provisions of the DPP determination.²¹
- 31 As signalled in our letter, we now also propose changes to the draft CPP determination to:
- 31.1 allow Aurora, if necessary, to change the prices it sets before 1 April 2021 for the 2021-22 year²² *during* the 2021-22 year so that its forecast revenue from prices for that year will not exceed its allowed revenue for that year under our final CPP determination;
- 31.2 set a fixed timeframe of 60 working days after 1 April 2021 for Aurora to:
- 31.2.1 make those changes to its prices for the 2021-22 year; and
- 31.2.2 provide us with a CPP price-setting compliance statement to show that its updated prices comply with the allowed revenue for the 2021-22 year; and

²⁰ Under section 53T of the Act, once we decide that a CPP proposal complies with the IMs relating to the process for, and content of, CPP proposals, we must make a CPP determination within 150 working days, subject to sections 53U and 53Z of the Act. We issued a notice advising that Aurora's CPP proposal was complete and compliant with the IMs on 7 August 2020.

²¹ See above n 18.

²² Under clause 11.1(a) of the DPP, Aurora must provide its annual price-setting compliance statement for the 2021-22 year before that year starts.

- 31.3 if Aurora changes its prices at any other time during an assessment period in the CPP period, require Aurora to provide us with a CPP price-setting compliance statement before the updated prices take effect.²³
- 32 The changes outlined above would enable Aurora to align its prices for the 2021-22 year with our final decision on the allowed revenue for that year after we have published our final CPP decision. This in turn would ensure Aurora complies with the final CPP determination and would enable a smoother transition from the DPP to the CPP.
- 33 Allowing Aurora to set its prices based on its allowed revenues during the CPP period encourages it to invest in repairing and upgrading its network by enabling it to recover the costs of doing so in an appropriate timeframe.²⁴
- 34 Likewise, if Aurora changes its prices at any other time during an assessment period in the CPP period, we consider it appropriate to require Aurora (before the updated prices take effect) to publish and provide us with a CPP price-setting compliance statement showing compliance with the allowable revenue for that assessment period. Setting a requirement to this effect would give Aurora’s customers comfort upfront that Aurora’s updated pricing complies with our price path.
- 35 The main changes to the draft CPP determination in Attachment A providing for this technical change are in clauses 8.5, 8.6 and 11.1.

Our next step: taking your views from this consultation into account in making our final decision on Aurora’s CPP proposal by 31 March 2020

- 36 We will take into account your views on whether to adopt the two technical changes proposed in this paper as part of our final decision on Aurora’s CPP proposal.
- 37 Our analysis and decision on whether to adopt the two technical changes will be set out in the reasons paper we will issue for our final decision on Aurora’s CPP proposal and will be reflected in our final CPP determination.

²³ Under clause 2.4.19 of the *Electricity Distribution Information Disclosure Determination* [2012] NZCC 22 (ie, the EDB ID determination), Aurora must publicly disclose information and notify consumers of any changes in prices. Our proposed technical change here complements that requirement by requiring Aurora to also provide certification of its continued compliance with the CPP price path after a change in prices.

²⁴ This promotes the section 52A(1)(a) limb of the purpose of Part 4 of the Act by giving Aurora “incentives to innovate and to invest, including in replacement, upgraded and new assets”.