

24 March 2016



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Keston Ruxton
Manager, Input Methodologies Review
Regulation Branch
Commerce Commission
Wellington

By email: im.review@comcom.govt.nz

Dear Keston,

Emerging views on customised and default price paths

1 This letter sets out Vector's comments on the Commerce Commission's (the Commission) emerging views outlined in the paper, "Emerging views on opportunities to improve the way default and customised price-quality paths work together", dated 29 February 2016 (the "paper").

2 Vector's contact person for this submission is:

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3 No part of this submission is confidential and we are happy for it to be publicly released.

4 Overall, Vector believes the emerging views will deliver positive improvements to both default (DPP) and customised (CPP) price-quality path processes.

5 We particularly support the proposal to widen the scope of DPP reopeners and replace the quality-only CPP with a DPP reopener. However, we submit that the Commission should not have the power to initiate a DPP reopener. Regulatory certainty is crucial to the ability of suppliers to operate within what is a highly regulated environment. If widening the scope of DPP reopeners created the opportunity for a Commission-initiated reopener, regulatory certainty would be significantly reduced.

EV 1: We are open to taking a more tailored approach to setting the DPP where this can be done without significantly increasing cost

6 As acknowledged in the paper, this is more likely to be relevant to gas pipeline businesses where the small number of regulated suppliers means it will be more likely that a tailored approach will be achievable without significant cost.

7 However, the possibility should not be excluded that a set of circumstances may emerge where it is appropriate to tailor a DPP for EDBs, or for a subset of EDBs (avoiding the need for each of them to apply individually for a CPP).

EV2: We consider that "single issue" CPPs are not appropriate

8 This emerging view and EV4 (expanding the role of DPP reopeners) are mutually dependent – it would only be appropriate to remove single issue CPPs if DPP reopeners are expanded. We support both proposals.

EV3: We should apply a proportionate scrutiny principle in continuing to refine the CPP requirements and in assessing CPP proposals

9 In principle, this proposal could reduce barriers of cost and complexity for parties seeking a CPP but it will be important when setting the process to strike the right balance between prescription and the ability of the Commission to exercise discretion. If there is inconsistency in the level of scrutiny applied to individual cases, this will lead to a lessening of confidence in the process.

10 As to the continued refinement of CPP requirements, we suggest the Commission consider making special provision for the contents of a "rollover" CPP application. That is, where a supplier already subject to a CPP wishes to apply for a second or subsequent CPP on substantially similar grounds, there should be no need to replicate the original application. Rather, the application should focus only on updating the information supplied in the original application.

EV4: We are open to expanding the role of DPP reopeners

EV5: The quality-only CPP option should be replaced with a DPP reopener

11 Vector believes an expanded DPP reopener process will enable a DPP to better and more fairly reflect an EDB's circumstances if those change over the course of the regulatory period.

12 However, we believe that the initiator of DPP reopener should be the supplier. Suppliers should be entitled to operate their businesses within a framework of regulatory certainty.

13 The paper points out that the fact an application could result in either a favourable or unfavourable outcome should limit the number of DPP reopener applications as suppliers will only apply where they believe there is a strong likelihood of a favourable outcome. Factors influencing a supplier's decision to apply for a reopener will not only include the likelihood of an unfavourable outcome but also the costs and benefits to itself and to its consumers in the long term. If the Commission can reopen the DPP anyway, the business has no control over the

management of its regulatory risk, or its costs of compliance – including the cost of responding to a Commission-initiated reopener.

14 The Commission has asked for our views on specific matters set out in paragraph 57. They are as follows:

14.1. *Whether new reopeners could be implemented in a way that appropriately deals with the factors listed at paragraph 54*

Providing for a narrow set of trigger events could be achieved by amending (and expanding) the definition of “change event” in clause 4.5.2 of the IMs to include the circumstances contemplated at paragraph 60 of the paper – i.e. where the quality standards do not reflect the realistically achievable performance of the EDB of the DPP period. That should include as a result of a substantive change in an EDB’s network management policies or procedures.

For example, during the current DPP period Vector has reduced the amount of work we carry out on live lines to ensure worker and public safety. Under the current IMs the only option available to us to change our quality measures is to apply for a quality-only CPP. We believe this scenario should be provided for within the proposed expanded DPP reopener provisions.

Reopeners on the basis of a catastrophic event or change event should be at the discretion of the supplier, who is best placed to evaluate the regulatory risks, costs and benefits for its own business and consumers.

We do not believe that any further amendment is required to enable the Commission’s decision to be favourable or unfavourable, as that possibility is not currently excluded under the existing drafting. We believe the restriction on the Commission not to amend more than is necessary to mitigate the reason for the reopener should be retained.

14.2. *Whether you agree that the CPRG and the quality standards are the only inputs that might lend themselves to a reopener based on the factors listed at paragraph 48*

We agree, although the possibility that other factors might be identified in the future which would make it appropriate to amend other inputs should not be excluded.

14.3. *How we should define the trigger events for any reopeners*

For quality changes, we have set out our views above. For CPRG, it may be appropriate to apply a short window to these applications.

14.4. *Whether we should prescribe an application window for reopeners after the DPP is set, and if so, what length should it be?*

We believe an application window could apply to cases such as the those considered in paragraph 48.4 of the paper – e.g. where there is information relevant to the

CPRG that was not able to be taken into account because of time/resource constraints, a different method of forecasting was subsequently found to be more appropriate or because relevant information came to light too late in the process. A window of 12 months could be appropriate. In other respects, there need not be a set application window for DPP reopeners.

EV6: We are open to considering a CPP reopener for contingent and unforeseen projects

- 15 We support the inclusion of a CPP reopener for contingent and unforeseen projects, and this would be consistent with the approach for gas transmission businesses.

EV7: We are open to considering approval of net additional costs incurred prior to CPP approval

- 16 We agree that prudently incurred costs should be able to be recovered and to the extent this is not already covered in clause 3.1.3 of the IMs, additional provision may be required.

EV8: We are open to providing for the expansion of the range of pass-through costs that can be added when setting the DPP

- 17 We support this proposal, which improves the flexibility of the IMs while retaining the ability of the Commission to control what is treated as a pass-through cost.

Yours faithfully
For and on behalf of Vector Limited

A handwritten signature in blue ink, appearing to read 'Richard Sharp', with a question mark to the right.

Richard Sharp
Head of Regulatory