5 September 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. Vector Limited ("Vector") has requested that the Commerce Commission ("Commission") re-open its *Electricity Distribution Services Default Price-Quality Path Determination 2015* ("DPP").

2. The basis for Vector’s re-opener request is that it considers that new policies and practices relating to live lines and downed lines it has adopted are necessitated by changes to health and safety law ("Vector’s Policies").

3. This letter sets out the Commission’s initial view on Vector’s re-opener request. Our initial view is that we are not satisfied that Vector’s circumstances meet the re-opener requirements, and accordingly that we are not able to consider Vector’s re-opener request further.

4. The Commission will make this letter expressing our position publically available, and invite submissions on it.

**Re-opener provisions**

5. The *Electricity Distribution Services Input Methodologies Determination 2012* (IMs) set out various circumstances in which the Commission may reconsider Vector’s DPP. Vector’s reopener request relies on those provisions that allow the Commission to reconsider its DPP if a change event has occurred. Clause 4.5.2 sets out that the requirements for the Commission to consider re-opening a DPP on the basis of the change event, as follows:

*Change event means—*

(a) a change in (a); or

(b) a new,

---

1 Clause 4.5.4 of Appendix Pat 4. It is the transitional provisions in Appendix 4 that apply to Vector’s request due to clause 1.1.2(9)
legislative or regulatory requirement applying to an EDB subject to a DPP the effect of which—

(c) must take place during the current regulatory period;
(d) is not explicitly or implicitly provided for in the DPP; and
(e) will necessitate incursion of costs in response, which costs, over the disclosure years of the DPP remaining on and after the date at which they are reasonably incurred have an impact on the price path by an amount at least equivalent to 1% of the aggregated allowable notional revenue for the disclosure years of the DPP in which the cost was or will be incurred.

(We will refer to this as the “Re-Opener Test”)

6. Accordingly, for the Commission to be able to consider Vector’s re-opener request it needs to be satisfied that each element of the Re-Opener Test has been met.

7. If every element of the change event Re-Opener Test is met, then it is at the Commission’s discretion whether to allow the re-opener or not.

8. In exercising its discretion, the Commission will have regard to the purpose set out in s52A of the Commerce Act.

Vector’s re-opener request

9. Vector is seeking a reopener in light of the Vector Policies (which we will refer to the “Live Lines Policy” and the “Downed Lines Policy” where we refer to them individually), that were explained to us as follows²:

The first change is that Vector has adopted a new “live-lines” works policy. This policy requires lines to be de-energised before work on those lines is undertaken. While live-line work can still be undertaken by exception, this requires sufficient justification and the vast majority of work is now undertaken on de-energised lines. This is a change from the previous position, which allowed for live-line work to be conducted much more regularly...

The second change is that Vector has adopted a new policy in respect of the remote de-energising of low or downed lines. This policy required lines to be de-energised remotely upon receiving a report of low lines before an on-site investigation is conducted.

10. Vector says that the introduction of the Vector Policies meets the change event re-opener test because it is required by the Health and Safety at Work Act 2015 (“HSW Act”), which came into force on 1 April 2016. In particular, Vector refers to s30 of the HSW Act which provides that businesses such as Vector must “eliminate risks to health and safety, so far as is reasonably practicable”.

11. Vector put forward some initial estimates³ regarding whether the impact of the Vector Policies would have had an impact on the price path by an amount at least equivalent to 1% of its aggregated allowable notional revenue. However, given that it would take significant work for Vector to satisfy the Commission of the impact of

---

² Letter to Commerce Commission from Vector dated 21 July 2017
³ Letter to Commerce Commission from Vector dated 17 November 2017
the Vector Policies, Vector indicated that it would prefer the Commission to determine whether it had met those parts of the Re-Opener Test that do not rely on meeting the 1% threshold first. If the Commission had been satisfied that the other parts of the Re-Opener Test were met, then Vector would have provided information on the impact of the Vector Policies and the Commission would have considered that information.

Our consideration of the re-opener request

12. Vector has identified s30 of the HSW Act as the new or changed legislative or regulatory requirement that it relies on for its re-opener request.

13. Our view is that Vector’s circumstances have not met the Re-Opener Test. That is because we are not satisfied that any requirement that Vector adopt the practices set out in the Vector Policies, is a new or changed requirement.

14. Vector relies on s30 of the HSW Act. To determine whether that requirement in the HSW Act is a new or changed requirement, we must compare it with any comparable provision in the HSW Act’s predecessor, the Health and Safety in Employment Act 1992 (“HSE Act”).

14.1 Section 30 of the HSW Act provides that Vector must “eliminate risks to health and safety, so far as is reasonably practicable”.

14.2 By comparison, s6 of the HSE Act provides that Vector must “take all practicable steps to ensure the safety of employees”.

15. Our initial view based on the advice we have received is that, although the words of s30 of the HSW Act differ from the words of s6 of the HSE Act, the underlying requirements are not significantly different in the context of Vector’s Policies. We consider that to the extent that Vector’s Live Lines Policy and Vector’s Downed Lines Policy are required by s30 of the HSW Act, those policies were also required under the HSE Act.

16. Given that our initial view is that Vector’s Policies are not necessitated by a new or changed legislative or regulatory requirement, it is not currently necessary for us to consider other aspects of the Re-Opener Test. For this reason we do not require Vector to compile information addressing whether it has met the 1% threshold for the purpose of its re-opener request.

17. 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.

The upcoming DPP reset presents an opportunity for the industry to engage on the matter

18. As you know, over the next year the Commission will be considering the default price-quality path that will apply from 1 April 2020.

19. We intend to further consider the issue of practices such as those outlined in Vector's Policies as part of our process for deciding the default price-quality path to apply from 1 April 2020. Accordingly, as part of that process, we may seek further information from Vector and other EDBs (possibly including with respect to the cost of implementation).

Yours sincerely

Sue Begg

Encl.