

1 November 2022

Richard Fletcher
Chief Executive Officer
Aurora Energy Limited
10 Halsey Street
Dunedin Central
Dunedin 9016

By email only: [REDACTED]

Dear Mr Fletcher,

Aurora Energy Limited: Warning for contravention of the DPP minimum quality standard in the 2020 assessment period

Purpose

1. The purpose of this letter is to advise you of our enforcement decision on the contravention by Aurora Energy Limited (**Aurora**) of the minimum quality standard under the *Electricity Distribution Services Default Price-Quality Path Determination 2015* [2014] NZCC 33, as amended, (**DPP2**) for the assessment period (**AP**) ending 31 March 2020.¹
2. In summary, Aurora contravened the quality standard for AP2020, having exceeded the 'system average interruption duration index' (**SAIDI**) and 'system average interruption frequency index' (**SAIFI**) in AP2018, AP2019, and AP2020.
3. Having considered the information available and the context of the breach, we have decided that issuing Aurora with a warning is the appropriate response.

Quality standards under DPP2

4. Aurora's electricity lines services are subject to default/customised price-quality regulation under Part 4 of the Commerce Act 1986 (**the Act**). From 1 April 2015 to 31 March 2020, Aurora was subject to DPP2 which specified the quality standards with which it had to comply. Under DPP2, the quality standards were contravened

¹ For the remainder of this letter, where the term "AP" is combined with a year, this means the 12-month period ending on 31 March of that year. For example, "AP2020" means the 12-month period ending on 31 March 2020.

where an Electricity Distribution Business (EDB) exceeded either its SAIDI or SAIFI reliability limit in two out of three years.

5. Aurora reported its contravention of the quality standard for AP2020 to the Commission on 7 August 2020. Aurora contravened the quality standard for AP2020 because its:
 - 5.1 SAIDI assessed annual value of 186.7 exceeded its SAIDI limit of 83.4 for AP2020² having exceeded the annual reliability limit in the preceding AP; and
 - 5.2 SAIFI assessed annual value of 2.11 exceeded its SAIFI limit of 1.45 for AP2020³ having exceeded the annual reliability limit in the preceding AP.
6. Aurora complied with the quality standards under the *Electricity Distribution Services Default Price-Quality Path Determination 2020* [2019] NZCC 21, as amended, (DPP3) in AP2021.

Prior compliance history

7. In 2014 Aurora was warned for contravening a price-quality requirement applying to regulated goods or services as described in section 87(1)(a) of the Act by failing to comply with its quality standards for AP2012.⁴
8. Aurora did not comply with the annual reliability assessment in six consecutive APs, 2015 – 2020, which resulted in five contraventions of the quality standards in DPP2.⁵
9. Aurora's annual SAIDI and SAIFI performance from AP2016-AP2020 is set out in Table 1 below.

Table 1 - Aurora's quality standard results

Assessment period	Measure	Limit	Assessed	Outcome
2016	SAIDI	83.4	126.0	Exceeded
	SAIFI	1.45	2.01	Exceeded
2017	SAIDI	83.4	108.6	Exceeded
	SAIFI	1.45	1.54	Exceeded
2018	SAIDI	83.4	253.2	Exceeded
	SAIFI	1.45	3.18	Exceeded
2019	SAIDI	83.4	185.5	Exceeded

² *Electricity Distribution Services Default Price-Quality Path Determination 2015* [2014] NZCC 33, as amended, Schedule 4A.

³ *Electricity Distribution Services Default Price-Quality Path Determination 2015* [2014] NZCC 33, as amended, Schedule 4A.

⁴ https://comcom.govt.nz/_data/assets/pdf_file/0024/91680/Warning-letter-to-Aurora-Energy-Limited-26-June-2014.PDF

⁵ Aurora did not contravene the quality standards for AP2015 because it had complied with the annual reliability assessment for AP2013 and AP2014. See *Electricity Distribution Services Default Price-Quality Path Determination 2012* [2012] NZCC 35, clause 9.

Assessment period	Measure	Limit	Assessed	Outcome
	SAIFI	1.45	2.12	Exceeded
2020	SAIDI	83.4	186.7	Exceeded
	SAIFI	1.45	2.11	Exceeded

10. The Commission and Aurora presented an agreed summary of facts to the High Court, and in March 2020 Aurora was ordered by the High Court to pay a pecuniary penalty of almost \$5 million for not complying with the quality standards for APs 2016 – 2019 through an excessive level of power outages in those APs.⁶
11. The penalties for AP2018 and AP2019 were lower than for AP2016 and AP2017 to reflect Aurora’s significantly lower culpability in those years and the fact that Aurora had taken steps to address the historic underinvestment.

Circumstances of the AP2016 to AP2019 contraventions

12. The agreed summary of facts details the circumstances behind the contraventions, actions taken by Aurora to address non-compliance with quality standards, and additional matters that were taken into account, including Aurora’s appointment of WSP Opus to review the state of the network.
13. Aurora and the Commission agreed that the following failures to exercise the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced EDB contributed to Aurora’s contraventions between AP2016 and AP2019:⁷
 - 13.1 Aurora failed to fully implement recommendations arising out of its 2012 contravention, in particular with regard to asset management strategies and its budget for vegetation and asset management;
 - 13.2 aspects of Aurora’s data management practices fell short of good industry practice (**GIP**), including ensuring its asset condition data and fault cause data was of a sufficient standard and its data governance practices were adequate;
 - 13.3 Aurora’s asset life cycle management practices fell short of GIP, including its replacement or renewal forecasting not taking into account asset condition, without justification failing to spend \$36.7m of its forecast expenditure for asset replacement and renewal between 2010 and 2017, the lack of bottom up forecasts and the undue influence of affordability

⁶ https://comcom.govt.nz/_data/assets/pdf_file/0023/213575/Commerce-Commission-v-Aurora-Energy-Limited-High-Court-Judgment-23-March-2020.pdf

⁷ For the remainder of this letter, we have used the term “GIP” to capture the “degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced EDB”.

on budgets, the lack of sufficient analysis regarding asset replacement and renewal, and the lack of an appropriate risk mitigation approach;

- 13.4 Aurora's reliability management practices fell short of GIP, including it failing to undertake adequate post-event investigations, the lack of risk-based prioritisation of its work, the failure to mitigate the impact of planned outages on reliability performance and the failure to understand the contribution of equipment failures to SAIDI levels; and
 - 13.5 aspects of Aurora's vegetation management practices fell short of GIP, including its failure to increase its cutting activities earlier than it did, it not separately recording its forecast vegetation management expenditure prior to 2014, it not separately recording its actual vegetation management expenditure prior to 2013, and it failing to publish a vegetation management plan between 2013 and 2016.
14. Aurora accepted that it was at fault for the failures referred to above and that those failures had either caused the quality standards to be contravened or caused them to be greater than they otherwise would have been. It accepted it had knowledge of factors that increased the risk of contravention, that it failed to take the appropriate steps to address those factors and that, as a result, it significantly failed to exercise the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced EDB. It accepted that it knew there was a real risk of contravening the quality standards if it failed to take appropriate steps to address the factors, that it nevertheless took the risk and it was unreasonable for it do so.
15. The Commission accepted that Aurora had taken a number of steps to address matters from the end of AP2017 onwards and had initiated a major capital works programme. Aurora also:
- 15.1 appointed a new Chair in December 2016 and subsequently appointed a new Board and Chief Executive Officer;
 - 15.2 refrained from paying a dividend and drew on shareholder funding to finance network investment;
 - 15.3 undertook a comprehensive review of its Asset Management Plan; and implemented a structural separation of Aurora and Delta Utility Services Limited (**Delta**) effective from 1 July 2017.

Warning for contravening the quality standards

- 16. Our analysis focused on the facts and circumstances that led to the prior contraventions and correspondence with Aurora explaining its reasons for the contravention in AP2020.
- 17. We analysed Aurora's contravention of its quality standards under our enforcement criteria:

- 17.1 seriousness of conduct;
 - 17.2 extent of detriment; and
 - 17.3 the public interest.
18. Overall, our assessment is that Aurora's AP2020 contravention resulted from failure to meet GIP in many of its management practices in the years leading up to its 2016 to 2019 contraventions as described above in the agreed summary of facts. The situation that Aurora created was one where Aurora was unable to return to compliance with DPP2 in AP2020.
19. Considering the seriousness of the conduct that led to this situation, and the extent of the detriment to consumers of a prolonged period of contraventions, the Commission seriously considered whether it should seek penalties via the High Court for the AP2020 contravention.
20. However, ultimately the Commission considers it appropriate to warn Aurora for the 2020 breach noting:
 - 20.1 Aurora's AP2020 breach was largely inevitable due to its conduct in the years leading up to its earlier breaches, for which it has already been penalised (a total of almost \$5 million);
 - 20.2 the previous penalties against Aurora act as a deterrent to similar underinvestment by Aurora or other suppliers in the future, and we do not consider an additional penalty would significantly strengthen this deterrence; and
 - 20.3 by 2020 Aurora had already made significant investment to remedy the situation over several years and had committed to continuing to invest in its network via progressing an application for a customised price-quality path.
21. The impact on Aurora's consumers is still very real, however, and we consider a warning is therefore appropriate.
22. We note that, if Aurora contravenes a quality standard again in the future, this warning will be a relevant factor that may lead us towards a stronger enforcement response.

Further information

23. This letter is public information and will be published on our website.
24. Thank you for your assistance with this matter. Please contact Jo Lipscombe, Principal Investigator, by email at [REDACTED] if you have any questions about this matter.

Yours sincerely



Vhari McWha
Associate Commissioner