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Dear Filomena

Cross submission: UCLFS connection charges s30R review

Thank you for the opportunity to comment on Chorus' UCLFS connection charges submission.

The submissions indicate that there is significant agreement between the parties – all agree that UCLL and UCLFS connection costs are likely to be the same and that it makes sense to align UCLL and UCLFS connection charges. This was the approach agreed by all parties in 2011 and the Commission's UCLFS Determination makes it clear that the intention is that the two sets of prices are to be aligned.

There are differing views, however, relating to whether connection charges could be set by reference to actual costs incurred and whether the Commission should defer aligning charges until the UCLL FPP process has been completed.

Actual costs incurred

Chorus suggest it is open to the Commission to set additional charges, such as connection charges, on the basis of Chorus's actual costs incurred where satisfied they are a good indication of efficient costs. However, this proposal was considered by the Commission in the context of the UCLL and UCLFS price reviews. Access seekers noted that connection charges are core to the service and questioned whether the Commission was able to depart from the IPP for setting core charges, and were concerned that contracted Chorus rates may not be or remain efficient over time.

We don't support Chorus' proposed approach. The Commission set what it considers to be appropriate connection charges in the UCLL pricing review and these would apply to UCLFS. Accordingly, there is nothing to suggest UCLL connection charges are not appropriate and, therefore, any reason for the Commission to defer finalising its draft s30R decision.

Aligning prices

We also disagree with Chorus' view that the Commission should defer aligning the charges until the UCLL FPP has been completed. The UCLL connection charges may well change as part of the current FPP process. However, contrary to Chorus' submission, no party knows what connection charges will result from the UCLL pricing review process nor what approach the Commission will ultimately take to backdating updated UCLL prices. All we can know is that the UCLL connection charges determined in the December 2012 pricing review remain the Commission's best estimate of appropriate connection charges.

It has been 14 months since the UCLL re-benchmarking decision and, with Chorus' proposed approach, it could be a further 18 months before UCLFS and UCLL connection charges are aligned. The regulatory framework would be completely out of alignment if the Commission were to delay this price reset. This would mean that implementing a Commission determined approach that was agreed by all parties would be delayed by over 30 months, and be contingent on yet another, separate pricing review process. This can only undermine the regulatory process. Therefore, rather than defer the matter further, the Commission should finalise its proposed s30R review approach and update UCLFS connection charges as agreed.

Backdating

In our submission we pointed to precedent under which the Commission has previously considered backdating as part of a section 30R review. We agree with Chorus that the Commission has the discretion to backdate. It should exercise that discretion taking in to account the facts in each case and the section 18 purpose. We set out the reasons in support of the Commission's proposed backdating in our earlier submission. However, we did not suggest that there were "assumed efficiencies" that require the Commission to backdate in every case in which they conduct a section 30R review. The s30R process is different from that of an FPP. In our earlier submission, we pointed to specific and valid considerations which militate in favour of backdating. The circumstances we pointed to, in our view, make the case for backdating compelling.

Any decision on backdating made in the UCLL determination must stand on its own merits and be dealt with separately.

Yours sincerely



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