

1 February 2019

Dr Stephen Gale
Telecommunications Commissioner
Commerce Commission
By email to TelcoFibre@comcom.govt.nz

Dear Stephen

Cross-submission on Fibre input methodologies

1. This is a cross-submission by the Major Electricity Users' Group (MEUG) on the submissions by other parties that closed 21st December 2018 on the Commerce Commission's proposed approach to the new regulatory framework for fibre published 9th December 2018.¹
2. MEUG members have been consulted in the preparation of this submission. This submission is not confidential. Some members may make separate submissions.
3. Feedback on 2-submissions by Transpower follow:
 - First, Transpower submitted "Operation of Individual Price-Quality Path (IPP) type regulation in both Part 4 (Transpower) and Part 6 (Chorus) should be complementary. Decisions in one sector should provide useful precedent for the other and help enhance regulatory certainty. We will be particularly interested in the development of the Chorus' Capex IM, because the process for individual investment approval has, up until now, been unique to Transpower only."²

MEUG agrees with Transpower and requests the Commission keep both Transpower, MEUG and other interested parties abreast simultaneously of developments and precedents from development of the Fibre Input Methodologies (IM) that may have implications for IM governing regulated energy line services. We don't think closed discussions between Transpower and the Commission on any possible precedents ahead of socialising thoughts with other parties aligns with good regulatory practice.

- Second, Transpower submitted "Testing existing arrangements in a new regulatory setting would help clarify whether consumers' long-term interests would be promoted by putting both revenue allowance and pricing methodologies under the umbrella of Part 4 regulation, as some of the submissions to the Electricity Price Review, including our own, have suggested."

MEUG does not see it is the Commission's responsibility to justify Parliament's decision on the framework for fibre regulation compared to energy monopolies

¹ <https://comcom.govt.nz/regulated-industries/telecommunications/projects/fibre-input-methodologies?target=documents>

² https://comcom.govt.nz/_data/assets/pdf_file/0025/111976/Transpower-NZ-Ltd-Submission-on-new-regulatory-framework-for-fibre-19-December-2018.PDF

regulation in terms of responsibility for setting IM and pricing methodologies. Having raised that topic in submissions to the Electricity Price Review (EPR), then the EPR is the appropriate forum in the interim to address those submissions. If there were no EPR underway the appropriate party to consider Transpower's suggestion would be MBIE. MEUG note that if Transpower were conducting its business in the best of interests of consumers then they would have discussed the proposal put to the EPR to gain customer feedback and buy-in first. Had we and other customers rejected the idea then Transpower's justification for such a change would be exposed for what it is, namely protecting the value to shareholders of Transpower's existing overbuilt asset base, rather than the long-term benefit of consumers.

4. MEUG acknowledges the useful discussion on the complexity and quandaries for estimating a WACC for the Fibre IM for Crown financed suppliers in the submission by Pat Duignan.³ We look forward to the Commission considering the points raised by Mr Duignan including how to address the leverage anomaly in the simplified Brennan-Lally model and upwards bias of the regulated WACC that encourages higher leverage.
5. Cost of capital was also a significant topic in the submission by Chorus.⁴ That included many aspects of WACC including arguments supporting their view an uplift, like the 67th percentile used for regulated energy line services, was warranted. We look forward to the debate on which parts, if any, of Part 6 regulated businesses are subject to asymmetric consequences of investment and the evidence the Commission uses to support any decision to use a WACC other than the mid-point estimate.
6. MEUG suggests the comprehensive pan-utility decision on WACC by the Australian Energy Regulator (AER) published 17th December 2018 has important implications for determining regulated WACC in New Zealand.⁵ We are not aware of any submitter on the Fibre IM approaches paper specifically referencing the AER decision. MEUG has previously noted the AER submissions to the Commission on the DPP3 reset on 20th December 2018.⁶ Notable changes include material decreases in Market Risk Premium and the implied Asset Beta. The AER also have no explicit uplift for asymmetric risk. Just as the AER decision, in our view, is relevant to the WACC for regulated energy line services, so too we believe it is relevant for the new Part 6 WACC IM. Given the relevance of the AER decision, MEUG suggests a workshop on the AER WACC decision with representatives from the AER, the expert panel that assisted the AER and consumer representatives that made detailed submissions on WACC would be of interest to several stakeholders in the fibre and energy sectors. Setting aside the need to consider the merits of the AER analysis there is also the practical question of when any changes to WACC IM should be introduced for Part 4 to align with Part 6A given some entities will be regulated under both regimes. We think it is premature to discount undertaking an urgent IM review for Part 4 WACC IM give possible long-term benefits to consumers may exceed the costs of undertaking such a review.

Yours sincerely



Ralph Matthes
Executive Director

³ https://comcom.govt.nz/_data/assets/pdf_file/0025/111985/Pat-Duignan-Submission-on-new-regulatory-framework-for-fibre-21-December-2018.pdf

⁴ https://comcom.govt.nz/_data/assets/pdf_file/0020/111971/Chorus-Submission-on-new-regulatory-framework-for-fibre-21-December-2018.pdf

⁵ <https://www.aer.gov.au/news-release/aer-releases-final-decision-on-rate-of-return-for-regulated-energy-networks>

⁶ <http://www.meug.co.nz/node/971>