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CPP and in-period adjustment mechanisms topic paper

Part 4 Input Methodologies Review 2023 – Final decision

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13 December 2023	ISSN: 1178-2560	Transpower Capital Expenditure Input Methodology (IM Review 2023) Amendment Determination 2023 [2023] NZCC [39]

All above documents can be found on our website.

Commerce Commission

Wellington, New Zealand

Glossary

Abbreviation	Definition
ACA	Anticipatory Connection Asset
ACOD	Avoided Cost of Distribution
AMWEE	Alternative Methodologies with Equivalent Effect
the Act	Commerce Act 1986
AER	Australian Energy Regulator
AMP	Asset Management Plan
ANR	Allowable Notional Revenue
BBAR	Building Blocks Allowable Revenue
Capex	Capital Expenditure
CCRA	Climate Change Response Act 2002
CPP	Customised Price-quality Path
DER	Distributed Energy Resources
DPP	Default Price-quality Path
DSO	Distribution System Operator
EDB	Electricity Distribution Business
EV	Electric Vehicle
Fibre IMs	Fibre IMs set under Part 6 of the Telecommunications Act 2001
FMCP	Foreseeable major capex project
FNAR	Forecast Net Allowable Revenue
GAAP	Generally Accepted Accounting Practice
Gas IMs	Input Methodologies for gas pipeline businesses
GDB	Gas Distribution Business
GPB	Gas Pipeline Businesses, comprising GDBs and the GTB
GTB	Gas Transmission Business
ID	Information Disclosure
IMs	Input Methodologies (refers to Part 4 IMs which are the subject of the IM Review, unless identified otherwise)
IM Review	Input Methodologies Review 2023
IPP	Individual Price-quality Path
IRIS	Incremental Rolling Incentive Scheme
kWh	Kilowatt hour
LCC	Large Connection Contract
LV	Low Voltage
MAR	Maximum Allowable Revenue
MW	Megawatt
Non-exempt EDBs	EDBs that are not consumer-owned and are subject to price-quality regulation

Ofgem	The Office of Gas and Electricity Markets
Opex	Operating expenditure
Part 4	Part 4 of the Commerce Act 1986
PQ	Price-quality
Price-quality path	Refers to the maximum revenues (or weighted average prices) regulated suppliers can recover from their consumers and the minimum quality standards they must meet when delivering electricity and/or gas transmission and distribution services.
PV	Present Value
RAB	Regulated Asset Base
TF	Timing Factor
TFrev	Timing Factor for revenue
Totex	Totex regimes (total expenditure rather than treating capex and opex separately)
WACC	Weighted Average Cost of Capital
UMCP	Unforeseeable major capex project

Contents

Executive summary

X1 This paper sets out how:

X1.1 the CPP IMs and the in-period adjustment mechanism IMs for CPPs and DPPs apply as a package to address changed or unexpected circumstances requiring changes to price-quality path during a regulatory period;

X1.2 we applied the IM Review decision-making framework to identify issues and problems with that package;[1] and

X1.3 we assessed changes to the IMs that will meet one or more of the IM Review's overarching objectives.[2]

X2 In our consideration of the overarching objectives of the framework, we also had regard to the following factors where they were relevant and promoted the s 52A purpose more effectively:[3]

X2.1 whether there were alternative ways to address the identified issues with the relevant IM that do not involve changing the IMs as part of our review;

X2.2 the permissive considerations under s 5ZN of the Climate Change Response Act 2002 (**CCRA**);

X2.3 decisions made under the Electricity Industry Act 2010, in accordance with s 54V of the Commerce Act 1986 (**the Act**); and

X2.4 promoting incentives and avoiding disincentives for regulated suppliers to invest in energy efficiency, demand-side management, and reduce energy losses, in accordance with s 54Q of the Act.

X3 The changes to the CPP IMs and price-quality path in-period adjustment IMs will apply to non-exempt EDBs and, where specified, to GDBs, the GTB, and Transpower. These IM changes do not apply to specified airport services, as airports are not subject to price-quality regulation.

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1 Commerce Commission "IM Review 2023 - Decision-making Framework paper" (13 October 2022), para X21-X22.

2 Commerce Commission "IM Review 2023 - Decision-making Framework paper" (13 October 2022), para X21-X22.

3 Commerce Commission, "Part 4 Input Methodologies Review 2023 – Framework paper", (13 October 2022), para X21.2.

X4 One of our changes applies generally and in a standardised and consistent way to the EDB, GDB, GTB and Transpower IMs. We have restructured and clarified the process for DPP, CPP and IPP price-quality path reopeners to align this process with the Fibre IMs for improved clarity. Outside of the reopener process changes which apply generally, our other changes apply more specifically.

X5 Most of our changes are for the EDB DPP IMs, as we concluded EDBs are likely to have a greater need for price-quality path adjustments. This is due to the likelihood of changing circumstances during a regulatory period driven by decarbonisation and greater electrification. Because CPPs and the IPP are more tailored, they already allow greater ability to respond in an appropriate and timely way, so our focus has been on the DPP.

X6 We have made some changes for the gas sector where these are appropriate in that sector context. The gas sector is faced with the prospect of declining demand due to the transition away from gas and therefore is unlikely to require price-quality path adjustments at the scale required by EDBs. Most of the IM changes for GDBs and the GTB relate to maintaining incentives to invest, which is discussed in the *Financing and incentivising efficient expenditure during the energy transition* topic paper.[4]

X7 Only a subset of the IM changes apply to Transpower, as it is on an IPP and has existing specific in-period adjustment mechanisms. Apart from the more general changes to the price-quality path reopener process, the changes applicable to Transpower in this topic paper are for the general suite of in-period adjustment mechanisms that also apply to EDBs, GDBs, and the GTB.

Context for this topic

Why in-period adjustment mechanisms are necessary

X8 DPP/CPP regulation and IPP regulation are types of price-quality regulation provided for in Part 4 of the Act. Part 4 promotes the long-term benefit of consumers by promoting outcomes consistent with those in workably competitive markets.[5] The outcomes sought are that suppliers have incentives to innovate and invest, improve efficiency and provide services at a quality that reflects consumer demands, share efficiency gains with consumers including through lower prices and are limited in their ability to extract excessive profits.

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4 Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition Topic paper" (13 December 2023).

5 Commerce Act (1986), s 52A.

X9 We set price-quality paths for a four-to-five-year period for DPPs and IPPs, and a three-to-five-year period for CPPs. These price-quality paths provide certainty to suppliers about limits on revenue, quality standards and incentive mechanisms for efficiency and quality over the regulatory period.[6]

X10 Subject to the IMs and other relevant statutory provisions, we are not restricted in the way we set DPPs. In particular, neither Part 4 nor the IMs specify how we may determine forecasts of expenditure in a DPP. For instance, a DPP could be reset using an entirely forward-looking approach to forecasting expenditure, or by including a different or increased percentage cap applied to historical levels of expenditure, without requiring any change to the current IMs. However, the Act requires that we must have (to the extent applicable to the type of regulation under consideration) an IM that identifies the circumstances in which price-quality paths may be reconsidered within a regulatory period.

X11 A supplier can face changed or unexpected circumstances during a regulatory period that, without any in-period adjustment to the price-quality path, could:

X11.1 require the supplier to incur additional expenditure that it may not be able to accommodate within the settings of its price-quality path by reprioritising its expenditure;[7] and/or

X11.2 result in an unavoidable breach of its quality standards or a penalty under the quality incentive scheme.

X12 Mechanisms to change the price-quality path during the regulatory period may be needed:

X12.1 to address changed circumstances; or

X12.2 if the price-quality path we have set excluded expenditure forecasted by suppliers that:

X12.2.1 was uncertain in terms of need, timing or cost but for which there is new information that resolves the uncertainty;

X12.2.2 was insufficiently justified but for which new evidence is available; or

[6] Commerce Act (1986) s 53M(4) and (5); s 53W; s53ZC.

[7] The price-quality paths we set do not restrict a regulated supplier in their extent of spending. If an EDB or Transpower chooses to spend and, in doing so, exceeds the revenue limits set by our price-quality paths, a percentage of the overspend is shared with consumers. If the spend was within the revenue limits set by our price-quality path, it is fully recoverable from consumers.

X12.2.3 had, in the case of a DPP, a significant impact on consumer prices and/or quality that warranted a relatively higher level of scrutiny.

X13 Once a price-quality path has been set, the IMs set out:

X13.1 which costs may be directly passed through to consumers under the price-quality path (ie, 'pass-through costs' and 'recoverable costs');

X13.2 the circumstances in which the price-quality path may be reconsidered (ie, ‘reopeners’); and

X13.3 requirements that a regulated supplier subject to a DPP must meet if it applies to shift from a DPP to a CPP (ie, CPP requirements).

X14 The simplified regulatory continuum for the DPP/CPP regime in Figure X1 shows the package of existing regulatory tools and mechanisms for EDBs, GDBs and the GTB. The Transpower IPP operates in a similar customised way to a CPP and has similar pass-through costs, recoverable costs, and reopeners to an EDB CPP.

Figure X1 Current Regulatory Continuum

Context for our IM decisions

X15 The suppliers we regulate under Part 4 are managing the pressures of an ageing asset base and rising input costs. In forthcoming regulatory periods, they are likely to face greater uncertainty of their future expenditure requirements. This is expected due to decarbonisation activities and the energy transition.[8] These activities are expected to increase expenditure in the electricity networks, and over time to decrease demand in the gas sector. In the electricity sector the shift towards greater use of flexibility services, including distributed generation, is an additional uncertainty.[9]

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8 Transition risks as discussed in Commerce Commission "IM Review 2023 - Decision-making Framework paper" (13 October 2022), para A18.1.

9 In the IM amendments we are introducing the following definition of ‘flexibility’ to describe flexibility services: “means the ability to modify energy generation injection or consumption patterns (or both)”.

X16 Suppliers are also considering whether they need to increase spend on their networks to be better prepared for natural disasters, adverse weather events as the result of climate change, and to manage a landscape of increasing risks (such as from other natural hazards, cybersecurity threats and supply chain constraints).[10]

X17 Where possible and appropriate, we consider it may be best to deal with uncertainties in forecasting expenditure at the next DPP and IPP resets when we expect to have additional information from suppliers. We also want to ensure that at the time of those resets, we have the mechanisms in place to respond to forecasting uncertainties during the regulatory period appropriately and in a timely way.

X18 We consider we generally do have sufficient ability to respond appropriately at the right time and in the right way through the tools currently available to us. Where we consider the risk is sufficiently known now and some refinement to our tools is desirable in accordance with the Framework, we have made some targeted changes to the IMs.

X19 We have considered whether changes are required to our in-period adjustment mechanism and CPP IMs in view of changes to the external environment in which the sectors operate. Introducing new mechanisms or expanding the scope of existing ones involves making trade-offs in our regime between certainty and responsiveness to change, while keeping in mind the purposes of price-quality path regulation.

X20 The IM changes we have made and outlined in this IM Review topic paper, such as the price-quality path reopener processes and the various updated reopeners will, in most cases, apply to EDBs in the DPP regulatory period commencing in 2025, the Transpower IPP regulatory period commencing in 2025, and the GDB and GTB DPP regulatory periods in 2026.[11]

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[10] Physical risks as discussed in Commerce Commission "IM Review 2023 - Decision-making Framework paper" (13 October 2022), para A18.2.

[11] Amended IMs can apply to a CPP if that CPP is set part way through a DPP regulatory period for electricity distribution, gas distribution or gas transmission.

Our final IM decisions

Our decisions as a package

X21 We looked at the roles of the DPP, the CPP and the various price-quality path in-period adjustment mechanisms, how they work together, and how they address the current and anticipated future operating contexts of suppliers.

X22 As a package, the existing IMs and our changes to them provide a suitable regime under which suppliers should be able to manage much of the future change and uncertainty they might be expected to face.

X23 In designing our IM changes, we aimed to enable price-quality paths to be set without requiring additional funding to be provided upfront to mitigate all uncertainty risks. The changes will ensure we retain required scrutiny of any additional funding later sought by suppliers during a regulatory period. This approach will help ensure consumers are only subject to price increases where these are justified and represent value for them.

X24 Figure X2 shows a visual of our IM changes at a glance. The changes are primarily based on the DPP reopeners, but for consistency the changes have, where relevant, been applied to the CPP reopeners.

Figure X2 Our IM changes at a glance

New IM provisions		Amended IM provisions	Unchanged IM provisions

IM status	IM decision	Applicability
Chapter 4: Whether changes to CPP IMs are necessary		
Unchanged	Not amend CPP IMs for the purposes of streamlining CPPs	EDB, GDB, GTB
Unchanged	Not allow for a single-issue CPP	EDB, GDB, GTB
Chapter 5: Improving the price-quality path reopener processes		
New	Define a 'reopener event'	EDB, GDB, GTB, Transpower
New	Require suppliers who nominate a reopener event to provide sufficient information	EDB, GDB, GTB, Transpower
New	Require the Commission to publish notices after a significant step in the reopener process	EDB, GDB, GTB, Transpower
New	Prescribe factors the Commission must have regard to when deciding whether to amend a price-quality path	EDB, GDB, GTB, Transpower
New	Provide the Commission with the option to identify reopener applications that are better suited to CPPs	EDB, GDB, GTB
New	Identify how the Commission will handle confidential information in a reopener application	EDB, GDB, GTB, Transpower
New	Require the Commission to take into account the expenditure objective when determining the extent of a price-quality path amendment	EDB, GDB, GTB
New	Provide a 'reopener event allowance' recoverable cost	EDB, GDB, GTB, Transpower
New	Provide the Commission with the option to reconsider and amend the grid output targets, caps, collars and grid output incentive rates associated with revenue-linked grid output measures following approval of Major Capex or base capex as a listed project.	Transpower
Unchanged	Not to list the E&D reopener, Major Capex approvals or base capex as listed project approvals as reopener events	Transpower
Unchanged	Not include timeframes for the Commission to evaluate reopener applications	EDB, GDB, GTB, Transpower
Unchanged	Not provide detailed prescription about the types of information required in reopener applications	EDB, GDB, GTB, Transpower
Unchanged	Not include application windows for reopeners	EDB, GDB, GTB, Transpower
Unchanged	Not prescribe when consultation is required and when it is not	EDB, GDB, GTB, Transpower
Unchanged	Not include a 'modification or exemption' provision for DPP or IPP reopeners	EDB, GDB, GTB, Transpower
Unchanged	Not include a pre-application stage for the process of applying for a reopener	EDB, GDB, GTB, Transpower
Unchanged	Not include a reopener for the purposes of assessing programme financeability	EDB, GDB, GTB, Transpower
Unchanged	Not allow price-quality path reopeners to apply across more than one regulatory period without suppliers having to reapply	EDB, GDB, GTB, Transpower
Unchanged	Not allow a single CPP application to cover multiple parties	EDB, GDB, GTB
Unchanged	Not allow a single reopener application to cover multiple parties	EDB, GDB, GTB

Chapter 6: Whether the reopeners will cover future circumstances		
	Allow opex solutions for system growth	EDB, GDB, GTB
	Allow consequential opex and consequential capex for Foreseeable large project, Unforeseeable large project, and Capacity event reopeners	EDB, GDB, GTB
	Include resilience-related expenditure in EDB Foreseeable large project and Unforeseeable large project reopeners and a separate resilience and asset relocation reopener for GDBs and the GTB	EDB, GDB, GTB[12]
	Provide a risk event reopener for EDBs	EDB
	Change how the impact of GAAP changes is assessed in the Change event reopener to remove the potential for windfall gains and losses	EDB, GDB, GTB, Transpower
	Retain the current IMs on general growth by not defining "general growth" within system growth and not specifying the treatment of general growth in the Unforeseeable large project reopener or the Foreseeable large project reopener	EDB
	Not to allow for (create) a specific connection cost reopener and not to specify the scenarios or use cases to which the connection 'limb' in the Unforeseeable and Foreseeable large project reopeners would apply.	EDB
	Not to change the Catastrophic event reopener criteria. We have changed the reopener test from a revenue test to a cost of remediation test and have changed the reopener threshold (see Chapter 7).	Transpower
	Not include a reopener to cover Government policy changes, Local Government policy changes and legislation affecting others in the supply chain	EDB, GDB, GTB, Transpower
	Not include a general reopener or a general escalating costs reopener	EDB, GDB, GTB
	Not include a 'contingent projects reopener' for DPPs	EDB, GDB, GTB
	Not include a reopener to address digitalisation and data	EDB, GDB, GTB
	Not include a reopener to address monitoring of Low Voltage (**LV**) networks	EDB, GDB, GTB
	Not include a reopener to address changes to a system operator's approach to security	EDB, GDB, GTB
	Not include a reopener to address software as a service (SaaS)	EDB, GDB, GTB
	Not include a reopener to address avoided cost of distribution payments (**ACOD**)	EDB, GDB, GTB
	Not include a reopener to address increased insurance premiums	EDB, GDB, GTB
	Not include a reopener to address Distribution System Operation (**DSO**) type services	EDB, GDB, GTB
Chapter 7: Reviewing our approach to reopener thresholds		
	Change the test and materiality threshold which applies to Catastrophic event and Change event reopeners (not GAAP changes) for all suppliers	EDB, GDB, GTB, Transpower

[12] We are also providing for resilience related expenditure in the E&D reopener for Transpower. This decision is covered in: Commerce Commission "Input methodologies review 2023 - Final decision - Transpower investment Topic paper" (13 December 2023) Chapter 11, Issue 4.

	Change the test and materiality threshold which applies to Change event reopeners relating to GAAP changes	EDB, GDB, GTB, Transpower
	Change the Error event lower materiality threshold for all suppliers to $100,000 for errors related to the price path	EDB, GDB, GTB, Transpower
	Raise the existing dollar thresholds which apply to Foreseeable large project and Unforeseeable large project reopeners	EDB
	Retain the percentage of revenue threshold for all EDB reopeners apart from Error event	EDB
	Change the 'relevant expenditure' test for the Gas Capacity event reopener threshold to include consequential opex	GDB, GTB
	Retain existing threshold values which apply to Gas reopeners, apart from Error event	GDB, GTB
	Not implement a lower threshold for high consumer benefit projects	EDB, GDB, GTB, Transpower
	Not implement a change in requirements to specifically allow for cumulative application of any of the lower thresholds	EDB, GDB, GTB, Transpower
	Remove the $30 million upper threshold for Foreseeable large project and Unforeseeable large project reopeners	EDB
	Retain the upper thresholds that apply to Capacity event and Risk event reopeners	GDB, GTB
	Apply reopener thresholds for new and extended reopeners on a consistent basis with other reopeners	EDB, GDB, GTB
Chapter 8: Large Connection Contract Mechanism		
	Introduce a 'large connection contract' mechanism	EDB
Chapter 9: Whether other in-period adjustment mechanisms are necessary		
	Apart from the new connection wash-up mechanism, not allow additional volume wash-up mechanisms	EDB
	Not allow new pass-through costs or recoverable costs to manage increased forecasting uncertainty	EDB, GDB, GTB, Transpower
	Not to codify into the IMs the ability for the Commission to introduce uncertainty mechanisms prior to the IPP reset, which would be treated as recoverable costs	Transpower
	Not incorporate new contingent expenditure allowances as recoverable costs	EDB, GDB, GTB, Transpower
	Not incorporate new use-it-or-lose-it allowances	EDB, GDB, GTB, Transpower
Appendix A: Necessary drafting improvements		
	Include price path wash-up mechanisms as one of the components that need to be updated at a CPP WACC reset	EDB, GDB, GTB

X25 Our changes to the existing price-quality path reopeners target situations where the forecasting uncertainty risk is highest and would, where appropriate:

X25.1 extend the scope of reopeners;

X25.2 extend the application of reopeners to regulated sectors where they currently do not exist; and

X25.3 make the coverage of reopeners more explicit.

X26 We have introduced some new in-period adjustment mechanisms in this IM Review which will help support the price-quality path reopeners:

X26.1 a large connection contract mechanism for EDBs which will address connection forecast uncertainty in situations, where the EDB and the connecting party agree in writing that the terms and conditions of the contract between them (including terms and conditions relating to charges for electricity distribution services) are reasonable.

X26.2 a connection wash-up mechanism for EDBs on a CPP to reduce the exposure of the EDB and consumers to uncertainty in future network growth of new connections (the 'new connection wash-up mechanism').[13]

X27 We have concluded that at the more complex and relatively higher cost end of price-quality path adjustments the CPP regime is generally fit for purpose. The CPP regime remains appropriate where the scope and scale of individual supplier need is more complex than the DPP reopeners allow.

X28 We have made changes to the CPP reopeners that are consistent with those made for the DPP reopeners.

X29 In order to set a better platform for existing, amended and new reopeners, we have updated the DPP, CPP and IPP reopener processes in line with the Fibre IMs. These process improvements will make it easier for suppliers to prepare for a reopener and provide clarity to suppliers on the evaluation and assessment process we follow when we receive a price-quality path reopener application.

X30 Figure X3 shows the updated regulatory continuum, including the key changes we have made.

[13] Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition Topic paper" (13 December 2023), Topic 3c in Chapter 3.

Figure X3 Updated regulatory continuum showing our key IM changes

DPP

Pass-through & recoverable costs

- EDB & GPB New reopener event allowance recoverable cost *(also applies to Transpower)*

New EDB large connection contract mechanism

- **MORE TARGETED APPLICATION**
  Large new connections projects or programmes that:
  - Have not been provided for in price-quality path expenditure allowances
  - Meet both a size of connection (5MW) and value threshold

DPP Reopeners

- EDB & GPB Changes to Reopener Process IMs to improve clarity *(also applies to Transpower)*
- **MATERIALITY THRESHOLDS**
  - Reduce the use of thresholds tests which assess impact on price-path & introduce tests which consider costs incurred
  - Reduce error event lower threshold to $100k
  - Raise dollar value lower thresholds for EDB large project reopeners
  - Remove $30 million upper threshold for EDB large project reopeners

Refinement of DPP Reopeners

- **NEW REOPENERS**
  - GPB resilience & asset relocation reopener
  - EDB Risk Event Reopener
  - *(Transpower anticipatory capacity project reopener)*
- **EXTEND SCOPE OF REOPENERS**
  EDB Unforeseeable & Foreseeable large project reopeners to include:
  - Opex solutions for system growth
  - Consequential opex and capex
  - Targeted resilience-related spend

  GPB capacity event reopener to include:
  - Opex solutions for system growth
  - Consequential opex and capex

  (Transpower Enhancement & Development (E&D) project reopener to include Targeted resilience)
- **MAKE COVERAGE OF REOPENERS MORE EXPLICIT**
  EDB & GPB change event reopeners to include impacts of:
  - GAAP changes

  (also applies to Transpower)

CPP

- EDB New connections volume wash-up mechanism

CPP Reopeners

- EDB, GPB Changes to CPP Reopener Process IMs to improve clarity
- EDB, GPB change event reopener to better reflect impact of GAAP changes
- **MATERIALITY THRESHOLDS**
  - Reduce the use of thresholds tests which assess impact on price-path & introduce tests which consider costs incurred
  - Reduce error event lower threshold to $100k

Key:
- Existing mechanisms
- Changes as a result of IM Review decisions

X31 The main benefits for consumers from the changes we have made are to:

X31.1 support the resilient, safe and reliable supply of electricity and gas by -

X31.1.1 allowing for resilience-related expenditure. This will reduce the vulnerability of electricity lines and gas pipelines to adverse weather events from the impacts of climate change, other natural disasters, and cybersecurity events;

X31.1.2 minimising the exposure of consumers to potentially longer and more frequent power outages, and reducing the exposure to safety incidents due to degraded assets; and

X31.1.3 allowing required network investment to be delivered more quickly and helping to ensure the continued supply of safe and reliable electricity and gas services.

X31.2 promote investment including to support electrification, by -

X31.2.1 providing suppliers with the ability to access additional funding in a regulatory period when required and appropriate, which will mean consumers are more likely to only pay for projects that are both warranted and efficient;

X31.2.2 providing suppliers with a wider choice of solutions to alleviate network constraints, allowing efficient solutions to be procured;

X31.2.3 providing incentives for suppliers to invest and innovate;

X31.2.4 ensuring that proportionate scrutiny is retained over additional decarbonisation-related investment expenditure sought by suppliers, and that consumers will only be subject to price increases where these are justified and represent value for them; and

X31.2.5 maintaining incentives for suppliers to operate efficiently by prioritising work programmes within their revenue allowances.

X31.3 supporting changes in consumer preferences over time by-

X31.3.1 maintaining an appropriately defined boundary between a DPP and a CPP. This will encourage suppliers to consult with their customers when they forecast a significant change in network expenditure.

X32 We set out a summary of our key changes and our rationale for these changes below.

We have made changes to the CPP IMs

X33 We have made changes to the CPP IMs to clarify the reopener application and consideration processes.

X34 Apart from those changes, we are not making any other changes to streamline the CPP IMs. Our view is that the CPP IMs allow us to accept, evaluate and determine a CPP in a streamlined manner where appropriate. For example, under the existing IMs suppliers can apply in a CPP proposal, for the Commission's approval:

X34.1 for modifications or exemptions from certain IM requirements;

X34.2 to apply alternative methodologies with equivalent effect (**AMWEEs**) and use information that is more closely aligned to their business information and accounting practices; and

X34.3 for IMs to be varied.

X35 We apply proportionate scrutiny in our assessment approach and we accept a CPP application if it is compliant “in all material respects”.

X36 We encourage suppliers contemplating a CPP to engage early with us so we can provide guidance on the application process and to support streamlining where relevant and appropriate. Our changes to the reopener process within the CPP IMs should also assist suppliers.

X37 We have not amended the IMs to explicitly provide for a single-issue CPP. Our view is that the starting point for all CPPs is that they be "full scope".[14]

X38 We have introduced a new connection wash-up mechanism for EDBs on a CPP to reduce the exposure of the EDBs to uncertainty in future network growth of new connections. The connection wash-up mechanism will provide for the difference between the forecast and actual number of new connections (allowing for multiple types of connections with different unit costs). The mechanism is also symmetrical, ie, if actual quantity of new connections is lower than forecast, it protects consumers from unnecessarily higher prices, and if higher than forecast, the EDB on a CPP will not be exposed to incentive amounts due to factors outside its control.

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[14] By "full scope" we mean that the scope of the CPP application will encompass all inputs needed to set the price-quality path and that these inputs are potentially subject to scrutiny.

X39 We do not consider the mechanism is appropriate for EDBs on a DPP due to the lack of verifiable connection cost information available. We discuss this mechanism in our *Financing and incentivising efficient expenditure during the energy transition* topic paper, published alongside this paper.[15]

We have made improvements to the reopener process IMs

X40 The price-quality path reopener process refers to a series of provisions that outline the 'how' of reopening a price-quality path. Specifically: when a price-quality path may be reopened, the procedural requirements for reopening a price-quality path, our considerations when deciding whether to amend a price-quality path and any constraints on us when amending a price-quality path.

X41 We have made improvements to the reopeners in the DPP, CPP and Transpower IMs to align with the Fibre reopener IMs for better clarity and consistency of the reopener processes. We consider the improved clarity will result in better processes and more certainty for suppliers. These changes specifically cover the information required to support our assessment of reopener events and the factors we must consider when evaluating reopener applications. These improvements should help address timeliness concerns, which were raised by submitters in an early stage of the review.

We have made changes to reopeners where appropriate to improve coverage of future circumstances

X42 We mapped the circumstances or situations relating to forecasting uncertainty that we noted in submissions, in early stages of the review, against the coverage provided by the existing reopeners. Based on that analysis, we have made changes to the DPP reopeners to address material gaps in the DPP/CPP regime where these better meet the overarching objectives of the IM Review. In particular, these refinements will better provide for the increasing role of opex-based solutions and should help mitigate concerns about the potential need for increased resilience expenditure.

X43 We have made changes to the existing price-quality path reopeners to address targeted situations where we consider the forecasting uncertainty risk is highest.

[15] Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023), Topic 3c in Chapter 3.

X44 The changes we have made will:

X44.1 extend the scope of certain reopeners by allowing for:

X44.1.1 opex solutions in response to system growth;[16]

X44.1.2 consequential opex and consequential capex in appropriate reopeners; and

X44.1.3 allow for resilience-related expenditure.

X44.2 extend the application of selected reopeners to regulated sectors:

X44.2.1 introducing for EDBs a reopener similar to the GDB and GTB Risk event reopener.

X44.3 make the coverage of certain reopeners more explicit:

X44.3.1 modifying the Change event reopener in all sectors to include the impact of GAAP changes.

We have made changes to the reopener materiality thresholds

X45 We assessed the appropriateness of reopener materiality thresholds and the tests applied in determining these. We considered whether changing these thresholds would enable DPP reopeners and CPPs to work better together as a package, while still balancing the need to appropriately limit the circumstances or events under which a price path should be reconsidered. Submitters, in an early stage of the review, suggested that reopener materiality thresholds would benefit from recalibration to enable greater use of reopeners.

X46 We have reduced the use of materiality threshold tests which assess the impact on the revenue allowance and have introduced tests which consider costs incurred in response to an event. This change will make it easier for suppliers to assess whether they have met the threshold. We note that in general, the application of 'cost' tests rather than 'revenue' tests will result in thresholds being met at a lower level of expenditure.

X47 Our decision raises or introduces a dollar value lower materiality threshold for the Catastrophic event, Change event (not GAAP change), Unforeseeable large project and Foreseeable large project EDB reopeners from $2 million to $5 million for Vector Limited and Powerco Limited, and from $2 million to $2.5 million for other EDBs. This better reflects our expectation of EDBs’ ability to reprioritise within expenditure allowances and changes made to reopeners which allow a greater set of costs to be included in a reopener application.

[16] This change will better promote incentives for EDBs, GDBs and the GTB to invest in demand side management consistent with s 54Q of the Act.

X48 We have amended the lower materiality thresholds for Transpower's Catastrophic event and Change event reopeners from a % revenue threshold to a dollar value threshold of $5 million. We have not changed the limits which apply to GDBs and the GTB, as these were more recently set.

X49 We have reduced the threshold for error event reopener applications to $100,000 which applies also to EDBs, GDBs, the GTB and Transpower.

X50 We have not allowed for cumulative application of the lower thresholds noting that related projects are already allowed to be requested as a programme of work.

X51 We have removed the $30 million upper materiality thresholds for the Unforeseeable and Foreseeable large project reopeners (EDBs) to better reflect that the delineation between DPPs and CPPs is not purely based on a dollar threshold and to avoid the potential deferral of desirable projects.

X52 We have added a new clause to the reopener IMs to enable us to decline DPP reopener applications that we consider should be considered as CPPs. In those cases, the supplier will be encouraged to submit a CPP application.[17] We encourage suppliers considering making a DPP reopener application to engage with us early before formally applying for a DPP reopener, especially in circumstances where the boundary between a DPP reopener and a CPP might not be clear. We are applying reopener thresholds to the new and amended reopeners on a consistent basis with other reopeners. This will maintain certainty for suppliers because there will be consistency with the way thresholds are applied and will not add unnecessary complexity.

We have introduced a ‘large connection contract’ mechanism for EDBs to help address increased connection forecast uncertainty

X53 Suppliers, in an early stage of the review, identified that large new customer-initiated connections are a key source of expenditure uncertainty for EDBs. They also raised concerns about our ability to deal with a potentially higher volume of reopener applications related to this.

X54 To apply proportionate scrutiny to costs associated with a contract where the connecting party has agreed that the terms and conditions of the contract are reasonable, we have introduced an EDB ‘large connection contract’ mechanism. This mechanism is optional and can apply where a large new connection project has not been provided for in the price-path expenditure allowances and meets the required thresholds.

[17] Suppliers are only able to apply for one CPP per regulatory period. If we exercise this clause, it will not give a supplier the ability to make an extra CPP application in the regulatory period.

No other in-period adjustment mechanisms

X55 Reopeners are not the only possible tool to address forecasting uncertainty. We considered the potential viability of a range of other potential in-period adjustment mechanisms for addressing forecasting uncertainty. These mechanisms allow for recovery of costs but are not reopeners.

X56 Submitters, in the early stages of the IM Review, told us that the existing suite of mechanisms does not adequately address future forecasting uncertainty and they suggested we assess whether other mechanisms should be considered so the regulatory continuum would operate as a cohesive package.

X57 We considered increasing the scope of pass-through costs or recoverable costs, contingent expenditure allowances, use-it-or-lose-it allowances and quantity wash-ups.

X58 With the exception of the large connection contract mechanism outlined in Chapter 8, which supports the reopener regime but which is not an in-period adjustment mechanism, and the new connection wash-up mechanism outlined in Topic 3c in Chapter 3 of the *Financing and incentivising efficient expenditure during the energy transition* topic paper, we have not identified any of those other changes which would meet the IM Review decision-making framework.[18]

[18] Commerce Commission “IM Review 2023 - Decision-making Framework paper " (13 October 2022), para X21-X22.

Chapter 1 Introduction

Purpose of this paper

1.1 This topic paper sets out the reasons for our amendments to the input methodologies (**IMs**) for:

1.1.1 customised price-quality paths (**CPPs**) for EDBs, GDBs and the GTB;

1.1.2 the price-quality path mechanisms applying to default price-quality paths (**DPPs**) for EDBs, GDBs and the GTB; and

1.1.3 the Transpower individual price-quality path (**IPP**).

1.2 The amendments have been made under the IM Review process we commenced for considering the CPP, DPP and IPP IMs under s 52Y(1) of the Commerce Act 1986 (the Act).

1.3 This paper considers:

1.3.1 the issues we have identified;

1.3.2 the decisions we have made to address those issues, including any IM changes;

1.3.3 the reasons for our decisions; and

1.3.4 how we have taken stakeholders' submissions into account in considering the issues.

Structure of this paper

1.4 Table 1.1 details the structure of the chapters and attachments in this paper.

Table 1.1 Structure of this paper

Section	Title	Description of content
Chapter 1	Introduction	Sets out the purpose of this paper, what it covers and how it is structured. Explains the process we have followed in arriving at our decisions.
Chapter 2	Decision-making framework	Describes the high-level framework we have applied in making our decisions for the 2023 IM Review.
Chapter 3	How in-period adjustments can address changed or unexpected circumstances	Summarises the context for the decisions we have made. Sets out the issues we have identified for this IM Review, high-level problem definitions for these issues and locates where these issues are discussed in this paper.

Section	Title	Description of content
Chapter 4	Whether changes to CPP IMs are necessary	Summarises our decisions on suggested improvements to the CPP IMs, a single issue CPP or whether specific reopener mechanisms could be made more effective.
Chapter 5	Improving the price-quality path reopener processes	Summarises our decisions on changes to the process regarding application for, and our consideration of, price-quality path reopeners.
Chapter 6	Whether the reopeners will cover future circumstances	Summarises our decisions on current price-quality path reopeners and how they provide for a sufficient range of future solutions.
Chapter 7	Reviewing our approach to reopener thresholds	Discusses our decisions on price-quality path reopener thresholds.
Chapter 8	Introduction of a large connection contract mechanism for EDBs	Describes the amendment we have made to introduce a large connection contract mechanism for EDBs similar to the Transpower new investment contract (NIC).
Chapter 9	Whether other potential in-period adjustment mechanisms are necessary	Summarises our decisions on a range of mechanisms for addressing forecasting uncertainty to allow for recovery of costs, but which are not reopeners.
Attachment A	Necessary drafting requirements	Addresses other practical points raised in submissions and implementation of related drafting refinements.

Our IM Review final decisions

1.5 This paper forms part of a package of final decisions papers on the IM Review. Alongside this paper, we have published:

1.5.1 our final EDB, GDB, GTB, Transpower and Transpower Capex IM amendment determinations. These documents give legal effect to our IM decisions;

1.5.2 a Summary and Context paper;

1.5.3 three other topic papers, which explain our final IM policy decisions relevant to the following key topics:

1.5.3.1 Financing and incentivising efficient expenditure during the energy transition;

1.5.3.2 Cost of capital;

1.5.3.3 Transpower investment; and

1.5.4 our Report on the IM Review, which summarises for every IM policy decision:

1.5.4.1 any changes we have made;

1.5.4.2 where we have considered changes but not made them; and

1.5.4.3 where we have not found reason to consider changes.

Previously published papers and other materials relevant to this topic

1.6 On 23 February 2022 we published our Notice of Intention.[19]

1.7 On 20 May 2022 we published the IM Review Process and issues paper.[20]

1.8 On 13 October 2022 we published the Decision-making Framework paper.[21]

1.9 On 7 November 2022 we held a 'Forecasting and incentivising efficient expenditure for EDBs' workshop.[22]

1.10 On 29 November 2022 we held a Price-quality path in-period adjustment mechanisms workshop where:

1.10.1 we provided stakeholders with discussion slides;[23] and

1.10.2 we asked follow-up questions at the workshop on 5 December 2022.[24]

1.11 On 21 December 2022 we provided a Clarification note with respect to our Framework paper and s 5ZN of the Climate Change Response Act 2002.[25]

1.12 On 1 March 2023 we published an amended notice of intention.[26]

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[19] Commerce Commission "Input Methodologies Review 2023: Notice of intention to commence IM Review" (23 February 2022).

[20] Commerce Commission "IM Review 2023 - Process and issues paper" (20 May 2022).

[21] Commerce Commission "IM Review 2023 - Decision-making Framework paper" (13 October 2022).

[22] Commerce Commission "IM Review 2023: Role of price-quality path in-period adjustment mechanisms - 'Workshop slides'" (7 November 2022).

[23] Commerce Commission "IM review 2023 – In period adjustment mechanisms – Workshop 'Discussion slides'" (29 November 2022).

[24] Commerce Commission "IM review 2023 – In period adjustment mechanisms – Workshop follow up questions" (5 December 2022).

[25] Commerce Commission "IM Review 2023 - Decision-making Framework Clarification note- s5ZN of the CCRA" (21 December 2022).

[26] Commerce Commission "IM Review 2023 – Amended Notice of intention for IM Review 2023" (1 March 2023).

1.13 On 14 June 2023 we published our Draft topic paper; [27] Report on the IM Review; [28] and Context and Summary of Draft Decisions paper.[29]

1.14 On 14 June 2023 we published our Draft Amendment determinations for Electricity Distribution;[30] Gas Distribution;[31] and Gas transmission services,[32] and published on 21 June the Draft Amendment determination for Transpower.[33]

1.15 On 19 July 2023 we published submissions on our draft decisions

1.16 On 22 August 2023 we published cross-submissions on our draft decisions.

1.17 On 22 August 2023 we amended our notice of intention.[34]

Introduction to the topic of this paper

1.18 Part 4 of the Act specifies at a high level how DPP/CPP regulation and IPP regulation function. It gives us a discretion as to how we design and set the DPP, CPP and IPP price-quality path mechanisms.

1.19 The DPP/CPP regime is one of the key regulatory mechanisms in Part 4 to promote the long-term benefit of consumers by promoting outcomes consistent with those in workably competitive markets. Price-quality paths are set for a four-to-five-year period for DPPs and IPPs, and a three-to-five-year period for CPPs, and provide certainty over that period about limits on revenue, quality standards, and incentive mechanisms for efficiency and quality.

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[27] Commerce Commission "Input methodologies review 2023 - Draft decision - CPPs and in-period adjustments topic paper" (14 June 2023).

[28] Commerce Commission "Input methodologies review 2023 - Draft decision - Report on the Input methodologies review 2023 paper" (14 June 2023).

[29] Commerce Commission "Input methodologies review 2023 - Draft decision - Summary and context paper" (14 June 2023).

[30] Commerce Commission "Input methodologies review 2023 - [Draft] Electricity Distribution Services Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC [35]" (14 June 2023)

[31] Commerce Commission "Input methodologies review 2023 - [Draft] Gas Distribution Services Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC [37]" (14 June 2023)

[32] Commerce Commission "Input methodologies review 2023 - [Draft] Gas Transmission Services Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC [36]" (14 June 2023)

[33] Commerce Commission "Input methodologies review 2023 - [Draft] Transpower Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC [38]" (21 June 2023)

[34] Commerce Commission "IM Review 2023 - Amended Notice of Intention for IM Review 2023" (22 August 2023).

1.20 There are uncertainties about what will happen during a regulatory period due to changes in circumstances faced by suppliers and there are mechanisms in the regime to manage the impacts of uncertainty where appropriate. Once we have set a price-quality path, the IMs provide certainty about when the price path can automatically adjust, or may be adjusted or changed during the regulatory period, in particular by setting out:

1.20.1 which costs may be directly passed through to consumers under the price path (ie, **pass-through costs** and **recoverable costs**);

1.20.2 the circumstances in which we may reconsider the price-quality path (ie, **reopeners**); and

1.20.3 requirements that a regulated supplier must meet if it applies to move from a DPP to a CPP during a regulatory period (**CPP requirements**).

1.21 In this topic paper we describe changes we have decided to make to our in-period adjustment mechanisms IMs and CPP IMs in view of accelerated changes to the external environment in which the EDBs, GDBs, the GTB and Transpower operate.

1.22 DPPs are not intended to meet all circumstances that regulated suppliers may face, especially if the circumstances suggest the need for significant scrutiny of costs and/or quality targets of a particular supplier.

1.23 DPPs allow for expenditure where it is well-justified and evidenced and does not require significant detailed scrutiny. Within the revenue limits, suppliers can choose to spend their allowable revenue how they wish, irrespective of whether we have included specific investments or expenditure in forecasts when setting those revenues. Suppliers may also choose to spend more than the revenue limit explicitly provides for if they are not able to prioritise and reprioritise expenditure as they see fit.

1.24 In setting a price-quality path we might decide not to include expenditure that was uncertain in need, timing or cost, or expenditure that is not well justified or evidenced.

1.25 For changed circumstances during a regulatory period, suppliers can make use of price-quality path reopeners. Reopeners exist so that a price-quality path can be reconsidered by us during the regulatory period.

1.26 A supplier on a DPP could also apply for a CPP, subject to the exceptions in s 53Q(3) of the Act.[35] A CPP offers a supplier the opportunity to propose an alternative price-quality path that better meets its individual circumstances. CPPs are designed to better meet the particular circumstances of a supplier, there is a greater emphasis on supplier-specific costs in setting a CPP than in setting a DPP, and a CPP proposal involves a higher degree of scrutiny by us than a DPP.

[35] Commerce Act, s 53Q(1).

Chapter 2 Decision-making framework

Purpose of this chapter

2.1 The purpose of this chapter is to explain how we have applied the IM Review 2023 decision-making framework (**Framework**) in reaching our decisions on the topic of CPPs and in-period adjustment mechanisms.

Decision-making framework

2.2 Our decision-making in the IM Review is driven by achieving the three overarching objectives of our Framework:

2.2.1 promoting the Part 4 purpose in s 52A of the Act more effectively;

2.2.2 promoting the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the s 52A purpose); and

2.2.3 significantly reducing compliance costs, other regulatory costs, or complexity (without detrimentally affecting the promotion of the s 52A purpose).

2.3 Section 52A(1) states that the purpose of Part 4 is to promote the long-term benefit of consumers in markets referred to in s 52 by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services:

2.3.1 have incentives to innovate and to invest, including in replacement, upgraded, and new assets;

2.3.2 have incentives to improve efficiency and provide services at a quality that reflects consumer demands;

2.3.3 share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and

2.3.4 are limited in their ability to extract excessive profits.

2.4 Section 52R provides that the purpose of IMs is to promote certainty for suppliers and consumers in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of goods or services under Part 4.

2.5 For further detailed discussed on the Framework, see the IM Decision Making Framework Paper.[36]

[36] Commerce Commission "IM Review 2023 - Framework paper" (31 October 2022), para X20-X22.

2.6 In applying the Framework's overarching objectives, we have had regard to whether our IM decisions promote the s 52R purpose of the IMs more or less effectively than the status quo in providing certainty for regulated suppliers and consumers in relation to the rules, requirements, and processes applying to regulation under Part 4.[37]

2.7 In reflecting the differences in approach in setting a DPP versus a CPP, we have made decisions having regard to s 53K where we have considered it relevant and consistent with promoting the s 52A purpose of Part 4. Section 53K sets out the purpose of providing a relatively low-cost way of setting and amending price-quality paths for suppliers of regulated goods or services under a DPP, while allowing the opportunity for individual regulated suppliers to have alternative price-quality paths that better meet their particular circumstances under a CPP.

2.8 Some of our decisions have involved tension between making IM changes to improve the regime and better promote the s 52A Part 4 purpose on the one hand, and certainty in terms of the s 52R IM purpose on the other. In such cases, we have taken careful account of the certainty effects, while ensuring that promoting s 52A remains at the forefront of our decision-making – both in considering which IMs to change and in reaching decisions on changing IMs.[38]

2.9 Where we consider it relevant and consistent with promoting the s 52A purpose of Part 4, we may have regard to:

2.9.1 whether there are alternative ways to address the identified issues with the relevant IM that do not involve changing the IMs as part of the review;

2.9.2 the permissive considerations under s 5ZN of the Climate Change Response Act 2002;

2.9.3 promoting incentives and avoiding imposing disincentives for suppliers of electricity lines services to invest in energy efficiency and demand-side management, and to reduce energy losses, when applying Part 4 in relation to electricity lines services (per s 54Q of the Commerce Act); and

2.9.4 decisions made under the Electricity Industry Act 2010 (per s 54V of the Commerce Act).

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[37] Commerce Commission "IM Review 2023 - Framework paper" (31 October 2022), para X21.

[38] Commerce Commission "IM Review 2023 - Framework paper" (31 October 2022), para X22.

Chapter 3 How in-period adjustments can address changed or unexpected circumstances

Purpose and structure of this chapter

3.1 This chapter sets out:

3.1.1 the context and background information for our final decisions on changes to the CPP IMs and the in-period adjustment mechanism IMs;

3.1.2 issues we have aimed to address in this IM Review by enhancing the in-period adjustment mechanisms in the regulatory continuum, comprising the DPP, pass-through costs, recoverable costs, price-quality path reopeners, and the CPP/IPP requirements; and

3.1.3 how our updated in-period adjustment mechanisms work together to address circumstances now faced by regulated suppliers.

Context and background information for the decisions in this paper

Why in-period adjustment mechanisms are necessary

3.2 DPP/CPP regulation and IPP regulation are types of regulation provided for in Part 4 of the Act. Part 4 promotes the long-term benefit of consumers by promoting outcomes consistent with those in workably competitive markets.[39] The outcomes sought are that suppliers have incentives to innovate and invest, improve efficiency, and provide services at a quality that reflects consumer demands, share efficiency gains with consumers including through lower prices and are limited in their ability to extract excessive profits.

3.3 We set price-quality paths for a four-to-five-year period for DPPs and IPPs and a three-to-five-year period for CPPs. These price-quality paths provide certainty to suppliers about limits on revenue, quality standards and incentive mechanisms for efficiency and quality over the regulatory period.

[39] Commerce Act 1986, s 52A.

3.4 A supplier can face changed or unexpected circumstances during a regulatory period that, without any in-period adjustments to the price-quality path, could:

3.4.1 require the supplier to incur additional expenditure that it may not be able to accommodate within the settings of its current price-quality path by reprioritising its expenditure;[40] and/or

3.4.2 result in an unavoidable breach of its quality standards or penalty under the quality incentive scheme.

3.5 Mechanisms to change the price-quality path during the regulatory period may be needed:

3.5.1 to address changed circumstances; or

3.5.2 if the price-quality paths we have set excluded spend forecasted by suppliers that:

3.5.2.1 was uncertain in terms of need, timing or cost but for which there is new information that resolves the uncertainty;

3.5.2.2 was insufficiently justified but for which new evidence is available; or

3.5.2.3 had, in the case of a DPP, a significant impact on consumer prices and/or quality that warranted a relatively higher level of scrutiny.

3.6 Once a price-quality path has been set, the IMs provide ex ante certainty about when the path can automatically 'adjust', or may be adjusted or changed, during a regulatory period. In particular, they set out:

3.6.1 which costs may be directly passed through to consumers under the price path (ie, 'pass-through' costs and 'recoverable' costs);

3.6.2 the circumstances in which the price-quality path may be reconsidered (ie, 'reopeners'); and

3.6.3 requirements that a regulated supplier subject to a DPP must meet if it applies to shift from a DPP to a CPP ('CPP requirements').

[40] The price-quality paths we set do not restrict a regulated supplier from spending. For example, if an EDB chooses to spend and in doing so, exceeds the revenue limits set by our price-quality paths, a percentage of the overspend is shared with consumers. If the spend was within the revenue limits set by our price-quality paths, it is fully recoverable from consumers.

We considered whether our existing mechanisms are still appropriate for the current and future operating environment

3.7 The suppliers that we regulate under Part 4 are managing the pressures of an ageing asset base and rising input costs. In forthcoming regulatory periods, they are likely to face greater uncertainty of their future expenditure requirements. This is expected due to decarbonisation activities and the energy transition.[41] These activities are expected to increase expenditure in the electricity networks, and over time to decrease demand in the gas sector. In the electricity sector the shift towards greater use of flexibility services, including distributed generation, is an additional uncertainty.

3.8 Suppliers are also having to consider whether they need to increase spend on their networks to be better prepared for natural disasters, adverse weather events as the result of climate change, and to manage a landscape of increasing risks (such as from other natural hazards, cybersecurity threats and supply chain constraints).[42]

3.9 Where possible and appropriate, we consider it may be best to deal with forecasting uncertainties at the next DPP and IPP resets when we expect to have additional information from suppliers. We also want to ensure that at the time of those resets, we have the mechanisms in place to respond to forecasting uncertainties during the regulatory period appropriately and in a timely way.

3.10 We consider that we generally do have this sufficient ability through the tools currently available to us. Where we consider the risk is sufficiently known now and some refinement to our tools is desirable in accordance with the Framework, we have made some targeted changes to the IMs.

3.11 We have considered whether changes are required to our in-period adjustment mechanism and CPP IMs in view of changes to the external environment in which the sectors operate. Introducing new mechanisms or expanding the scope of existing ones involves making trade-offs in our regime between certainty and responsiveness to change, while keeping in mind the purposes of DPP/CPP regulation.

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[41] Transition risks as discussed in Commerce Commission "IM Review 2023 - Decision-making Framework paper" (13 October 2022), para A18.1.

[42] Physical risks as discussed in Commerce Commission "IM Review 2023 - Decision-making Framework paper" (13 October 2022), para A18.2.

3.12 Any IM changes we have outlined in this IM Review, such as the price-quality path reopener processes and the various updated reopeners, will in most cases apply to EDBs in the DPP regulatory period commencing in 2025, the Transpower IPP regulatory period commencing in 2025, and the GDB and GTB DPP regulatory periods commencing in 2026.[43] [44]

Overview of in-period adjustment mechanisms

Regulatory continuum

3.13 The simplified regulatory continuum in Figure 3.1 shows the existing regulatory tools and mechanisms for EDBs, GDBs and the GTB. The Transpower IPP operates in a similar customised way to a CPP and has similar pass-through costs, recoverable costs and reopeners to an EDB CPP. We describe each tool and mechanism in the EDB/GDB/GTB regulatory continuum below.

Figure 3.1 Existing Regulatory Continuum

DPPs

3.14 We set DPPs for all regulated suppliers in a relatively low-cost way. DPPs are not intended to meet all circumstances that regulated suppliers may face, especially if these circumstances require significant scrutiny of costs and/or quality targets of a particular supplier.

3.15 The price-quality path set in a DPP limits revenues that a supplier can recover from its consumers and provides efficiency incentives to outperform the path. DPPs also set minimum quality standards and incentives (for EDBs and Transpower) to ensure that services to consumers do not suffer (ie, outages of higher frequency and duration) due to excessive cutting of costs.

[43] Amended IMs can apply to a CPP if that CPP is set part way through a DPP regulatory period for electricity distribution and gas distribution or transmission.

[44] Application dates for IM changes are discussed in more detail in the Commerce Commission "Input methodologies review 2023 - Final decision - Report on the Input methodologies review 2023 paper" (13 December 2023), paras 1.35-1.39

3.16 DPPs allow for expenditure where it is well-justified and evidenced. Within the revenue limits, suppliers can choose to spend this revenue however they want, irrespective of whether we have included specific investments or expenditure in forecasts when setting revenues. Suppliers may also choose to spend more than the revenue limit explicitly provides for if they are not able to prioritise and reprioritise expenditure as they see fit.

3.17 Traditionally we have set DPPs using:

3.17.1 a “revealed costs” approach for opex, with historic expenditure levels as a base, increased by step changes and forward-looking trend factors; and

3.17.2 for capex, allowed expenditure consistent with AMP forecasts based on the quality of supporting information with a % cap applied in aggregate relative to historic levels.

3.18 Subject to the IMs and other relevant statutory provisions, we are not restricted in the way we set DPPs. In particular, neither Part 4 nor the IMs specify how we may determine forecasts of expenditure in a DPP. For instance, a DPP could be reset using an entirely forward-looking approach to forecasting expenditure, or by including a different or increased percentage cap applied to historical levels of expenditure, without requiring any change to the current IMs.

Pass-through costs and recoverable costs

3.19 There are costs we allow suppliers to “pass-through” to their consumers which are generally outside a supplier’s control, eg, Transpower’s transmission charges and local body rates. There are also specific costs that can be recovered from consumers such as efficiency incentive payments under IRIS, quality incentive amounts, or various other ‘wash-up’ amounts set by us. These amounts are collectively called pass-through costs and recoverable costs.

3.20 Suppliers can recover these full costs without sharing the cost or benefits of over/under spend with consumers, regardless of whether the costs are greater or smaller than expected. Categories of pass-through costs and recoverable costs that a supplier is permitted to recover are specified in the IMs, with the more detailed calculation of the actual amounts usually set out in a DPP determination.

DPP Reopeners

3.21 For changed circumstances impacting on the price-quality path in the regulatory period, suppliers can avail themselves of price-quality path reopeners. Reopeners allow that price-quality path to be reconsidered by us during the regulatory period when a material change in circumstances occurs. They can be instigated by the Commission or suppliers and are intended to be used on a justified basis in accordance with their criteria, rather than routinely.

3.22 This approach of limiting the circumstances in which DPPs can be reconsidered is consistent with s 53K of the Act which sets out that the purpose of a default price-quality regulation (ie, a DPP) is to provide a relatively low-cost way of setting and amending price-quality paths for suppliers of regulated goods or services.

3.23 Reopener applications by suppliers generally involve less scrutiny than a CPP proposal and, by way of general and high-level guidance, may be more appropriate in circumstances that:

3.23.1 are separately identifiable or discrete;

3.23.2 are targeted to address a specific, rather than a general issue;

3.23.3 have less interdependence with the rest of the supplier's network;

3.23.4 are likely to affect a smaller number of consumers (especially if supported by them); and

3.23.5 are not likely to require wide consultation with consumers and other stakeholders.

3.24 The outcome of a price-quality path reopener application is not guaranteed. A reopener application is subject to a three-stage decision-making process by us:

3.24.1 Consider whether the reopener trigger criteria specified in the IMs are met;

3.24.2 Decide whether the price-quality path should be amended; and

3.24.3 Decide how the price-quality path should be amended.

3.25 Table 3.1 summarises the current price-quality path reopeners for EDBs, GDBs, the GTB and Transpower. There are common reopeners which apply across each of these sectors, reopeners which are specific to the circumstances of individual sectors and CPP specific reopeners. [45]

[45] Under s 53ZC of the Act we have wide discretion on setting an individual price-quality path like Transpower's IPP, but we must use the IMs that apply to the supply of services to which the individual price-quality path applies. In addition to including some of the common reopeners, the Transpower IPP IMs include Transpower- specific reopeners that cover large buildups in the EV account balance, the use of Enhancement and Development projects, and the reconsideration of the Transpower IPP for the price path impacts of approved Major Capex and approved Listed Project Base Capex.

Table 3.1 Summary of current price-quality path reopeners

Reopeners common to all sectors and price-quality paths (DPP/CPP/IPP)	
Catastrophic event	For events beyond the control of suppliers that have unforeseeable timing and with adverse consequences that need to be rectified
Change event	Change in, or new legislative or regulatory requirement applying to a supplier
Error event	Either incorrect data was used, or data was incorrectly applied to set the price-quality path
False or misleading information	Where we relied on false or misleading information provided in setting the DPP or CPP
Major transaction (except for Transpower)	For situations where consumers are acquired or no longer supplied, and this results in assets used to serve consumers being acquired or sold
Sector-specific price-quality path reopeners	
Quality standard variations (EDB)	Proposal to vary quality standards to better reflect the realistically achievable reliability performance of a supplier
Unforeseeable major capex project (EDB)	Unforeseeable capex project or programme for connection, system growth, combination of connection and system growth, or asset relocation
Foreseeable major capex project (EDB)	Foreseeable but under-forecasted or underfunded capex project or programme for connection, system growth, combination of connection and system growth, or asset relocation
Capacity event (GDB, GTB, Aurora CPP)	Need for additional capacity (established or reasonably anticipated demand for connection, system growth, combination of connection and system growth, or asset relocation) that was uncertain in timing or could not have reasonably been foreseen
Risk event (GDB, GTB, Aurora CPP)	Asset deterioration impacting quality standards or safety that is either unforeseen or foreseeable but not sufficiently certain
Large build up in EV account balance (Transpower)	The EV account balance builds up to a level that means there is likely to be a price shock impact from this regulatory period to the next regulatory period
Enhancement & development (E&D) projects (Transpower)	Transpower may apply once in a regulatory period for an additional base capex allowance with respect to two or more Unforeseeable Enhancement and Development Projects and/or Foreseeable Enhancement and Development Projects where that base capex was not included in the base capex allowances for the regulatory period
Reconsider the IPP for the revenue impact of major capex and listed project base capex approved by the Commission (Transpower)	When the Commission approves Transpower's major capex or any base capex that is shown as a listed project in the IPP, the price-quality path is amended to reflect the forecast price path revenue effect of this capex for the remaining complete pricing years of the regulatory period

Reopeners specific to CPPs only	
Unforeseen projects (EDB, GDB, GTB)	Unforeseeable large project or programme at the time of submitting a CPP proposal
Existing CPP Contingent project (EDB, GDB, GTB)	Project that is reasonably required but is contingent on a trigger being activated

CPPs

3.26 A supplier on a DPP could alternatively apply for a CPP. A CPP offers suppliers the opportunity to propose an alternative price-quality path that better meets its individual circumstances. Since CPPs are designed to better meet the particular circumstances of a supplier, there is a greater emphasis on supplier-specific costs in setting a CPP than in setting a DPP. All inputs needed to set a CPP are potentially subject to scrutiny.

3.27 The information to be provided as part of a CPP proposal must therefore be sufficient to support this analysis, test whether the CPP application meets the evaluation criteria, and enable us to determine a CPP. A CPP application must comply with process and content requirements for the CPP proposal and must apply or adopt all relevant IMs unless the supplier obtains our approval for IMs to be modified, exempted from or varied.

3.28 Not all supplier circumstances would require the higher level of scrutiny typical of a CPP. A CPP may be more appropriate for circumstances:

3.28.1 where the price or quality impact on consumers is significant;

3.28.2 that affect a large number or proportion of consumers rather than a smaller subset;

3.28.3 that require wide engagement with consumers and stakeholders;

3.28.4 which have upstream or downstream effects on the supplier's wider network; and

3.28.5 where the scale of investment required to respond to demand for connections, system growth, a combination of connection and system growth, asset relocation is sufficiently large (eg, exceeds $30 million) that it warrants a higher level of scrutiny.

CPP Reopeners

3.29 For changed circumstances after a CPP is set, a range of CPP reopeners are available to suppliers. These were summarised in Table 3.1 above.

Issues we addressed to improve the in-period adjustment mechanisms

3.30 We considered the following factors when deciding which IMs we should change and why:

3.30.1 changes in the current and future operating environments of the electricity distribution and gas sectors as discussed earlier in this chapter at paras 3.7 to 3.11;

3.30.2 opportunities we identified to improve IMs between the 2016 IM review and this review;[46]

3.30.3 what we heard from stakeholders in submissions; and

3.30.4 feedback we have received from suppliers on CPP applications and DPP reopener applications.

What stakeholders told us

3.31 A number of key themes we heard from submitters in the earlier stages of this IM Review were that they consider:

3.31.1 that they need to respond in a more timely manner to electrification and to other areas of uncertainty;[47]

3.31.2 at if the forecasting approach of the DPP was more forward-looking, rather than what they characterise as the previous historical approach, there would be less need for in-period adjustment mechanisms;[48]

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[46] From creating the Fibre IMs in 2020, various DPP and CPP resets, Unison Tauhara DPP reopener application.

[47] Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Horizon Energy Group "Submission on Price-quality path workshop" (20 December 2022); Vector "Submission on Price-quality path workshop" (20 December 2022); Unison "Submission on Price-quality path workshop" (20 December 2022); Powerco "Submission on Price-quality path workshop" (20 December 2022); Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022); Aurora Energy "Submission on Price-quality path workshop" (20 December 2022); Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022).

[48] Electricity Networks Association "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022) ; Methanex – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022) ; Wellington Electricity – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022) ; Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Horizon Energy Group "Submission on Price-

3.31.3 CPPs to be complex and would benefit from streamlining, and question their viability especially for smaller suppliers. A single-issue CPP may be helpful if price-quality path reopeners stay as they are;[49]

3.31.4 that in-period adjustment mechanisms should allow for greater coverage of current and future scenarios and should include opex solutions;[50]

3.31.5 that reopener materiality thresholds need to be recalibrated to allow suppliers to better respond to changed circumstances;[51]

3.31.6 that the process for applying for and assessing reopeners is not timely enough and more guidance is required for suppliers;[52] and

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quality path workshop" (20 December 2022); Vector "Submission on Price-quality path workshop" (20 December 2022); Aurora Energy "Submission on Price-quality path workshop" (20 December 2022); Unison "Submission on Price-quality path workshop" (20 December 2022).

[49] Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p 15; Electricity Networks Association "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 16; Orion "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 37; Vector "Submission on the Process and issues paper" (11 July 2022), p. 26; Wellington Electricity – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022) p. 27; Vector "Submission on Price-quality path workshop" (20 December 2022), p. 10; Powerco "Submission on Price-quality path workshop" (20 December 2022), p. 7; Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022).

[50] Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Electricity Networks Association "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 15; Orion "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 5; Vector "Submission on the Process and issues paper" (11 July 2022); Wellington Electricity – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022) ; Vector "Submission on Price-quality path workshop" (20 December 2022), p. 7; Transpower NZ Ltd "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Aurora Energy "Submission on Price-quality path workshop" (20 December 2022); Unison "Submission on Price-quality path workshop" (20 December 2022); Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022); Horizon Energy Group "Submission on Price-quality path workshop" (20 December 2022); Vector "Submission on Price-quality path workshop" (20 December 2022); Orion "Submission on Price-quality path workshop" (20 December 2022); Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022).

[51] Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 16; Orion "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 38; Unison – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Vector "Submission on the Process and issues paper" (11 July 2022), p. 26; Wellington Electricity – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Vector "Submission on Price-quality path workshop" (20 December 2022); Unison "Submission on Price-quality path workshop" (20 December 2022); Powerco "Submission on Price-quality path workshop" (20 December 2022); Orion "Submission on Price-quality path workshop" (20 December 2022); Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022); Aurora Energy "Submission on Price-quality path workshop" (20 December 2022).

[52] Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Chorus "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Electricity Networks Association "Submission on IM Review Process and issues paper and draft

3.31.7 other in-period adjustment mechanisms which are not currently available could be beneficial.[53]

Issues we targeted for this topic in this IM Review

3.32 We targeted eight issues to address for CPPs and in-period adjustment mechanisms in this IM Review:

3.32.1 whether adjustments to the IMs are required for the initial setting of the DPP to respond to potential increased forecasting uncertainty;

3.32.2 whether improvements can be made to the CPP IMs;

3.32.3 review if there is a need for a single-issue CPP or whether specific reopener mechanisms would be more effective;

3.32.4 whether changes to the processes regarding the application for, and consideration of, reopeners are required;

3.32.5 whether reopeners provide adequate coverage for current and future supplier circumstances;

3.32.6 whether the current reopeners provide for a sufficient range of solutions;

3.32.7 review our existing approach to reopener thresholds; and

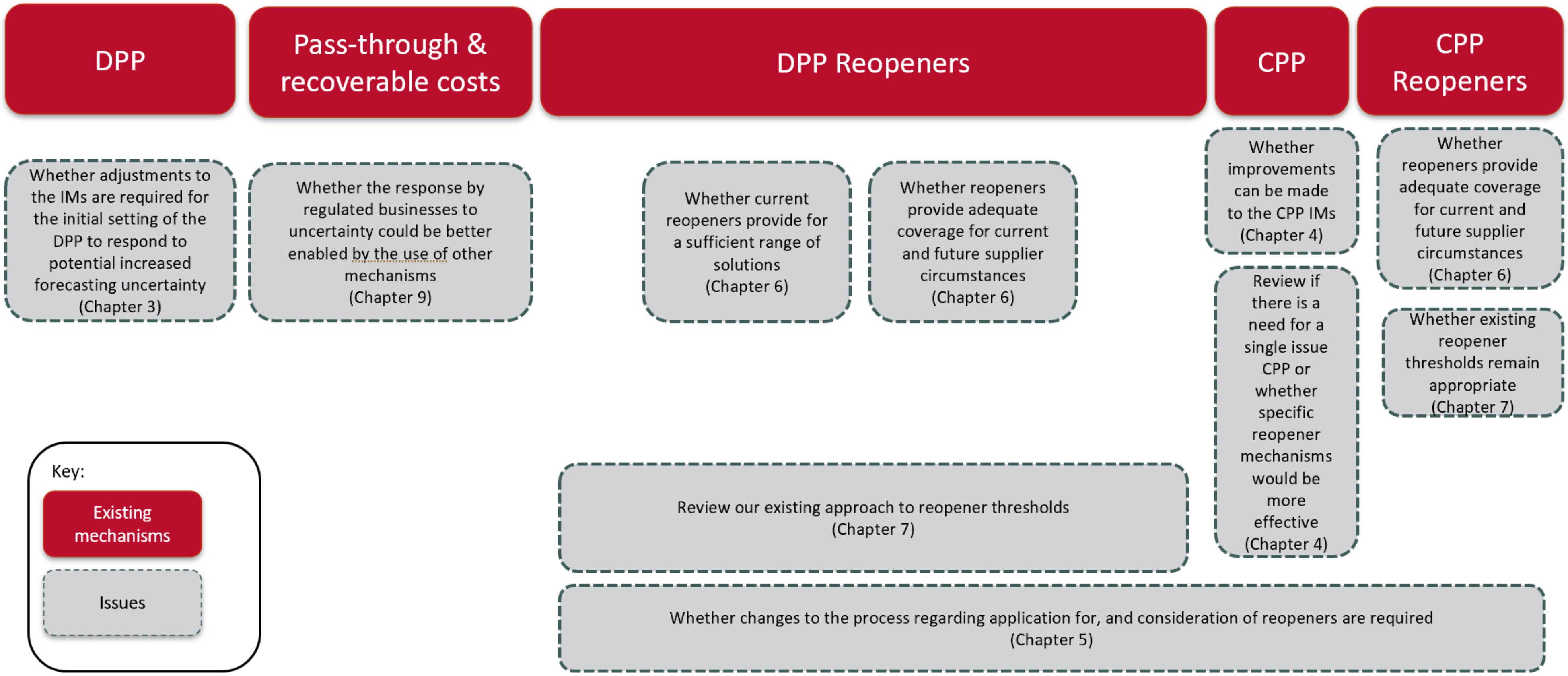
3.32.8 whether the response by regulated businesses to uncertainty could be better enabled by the use of other mechanisms.

Framework paper" (11 July 2022); Unison – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Wellington Electricity – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Vector "Submission on Price-quality path workshop" (20 December 2022); Unison "Submission on Price-quality path workshop" (20 December 2022); Powerco "Submission on Price-quality path workshop" (20 December 2022); Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022); Aurora Energy "Submission on Price-quality path workshop" (20 December 2022); Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022); Horizon Energy Group "Submission on Price-quality path workshop" (20 December 2022); Transpower NZ Ltd "Submission on Price-quality path workshop" (20 December 2022).

53 Electricity Networks Association "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 6; Vector "Submission on the Process and issues paper" (11 July 2022), p. 26; Chorus "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Vector "Submission on Price-quality path workshop" (20 December 2022); Unison "Submission on Price-quality path workshop" (20 December 2022); Horizon Energy Group "Submission on Price-quality path workshop" (20 December 2022); Transpower NZ Ltd "Submission on Price-quality path workshop" (20 December 2022); Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022); Aurora Energy "Submission on Price-quality path workshop" (20 December 2022); Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022); Orion "Submission on Price-quality path workshop" (20 December 2022).

3.33 Figure 3.2 shows the issues mapped against the regulatory continuum and identifies where further discussion is contained in this paper.

Figure 3.2 Issues mapped against the regulatory continuum and discussion chapter references



3.34 We describe each issue at a high-level below, including some of the factors we took into account when applying the Framework.

Whether adjustments to the IMs are required for the initial setting of the DPP to respond to potential increased forecasting uncertainty.

3.35 We consider it will be best to decide on a forecasting approach at the time of setting future DPPs when we have additional information from suppliers. Neither Part 4 of the Act nor the IMs specify how we may determine forecasts of expenditure, hence the approach to DPP forecasting is not within the scope of this IM Review. Accordingly, no change to the IMs is required to respond to increasing forecasting uncertainty with regards to DPP forecasting approaches.

Whether improvements can be made to the CPP IMs

3.36 There appears to be a general perception by suppliers that the CPP mechanism is complex, time and resource intensive and that streamlining the CPP requirements might make the CPP mechanism more workable. The issue we have considered is whether, applying the IM Review decision-making framework, the current CPP provisions could and should be further streamlined without undermining the intent of the CPP mechanism.

Review if there is a need for a single issue CPP or whether specific reopener mechanisms would be more effective

3.37 In the 2016 IM Review we concluded that CPPs should always be full scope and that we did not consider single-issue CPPs to be appropriate.[54] A “single-issue CPP” would be a reduced-scope CPP (compared to a regular CPP) where customisation is sought only in respect of one part of the supplier’s DPP, which could be a single project or several projects that make up a programme of work. The single-issue CPP would attract wider scrutiny than a DPP reopener but narrower scrutiny than a full scope CPP.

3.38 The issue we considered in this IM Review is whether there is a gap in the regulatory continuum that is not covered by DPP reopeners or a regular CPP, particularly given CPP IMs may be varied with the agreement of the CPP applicant, and the CPP IMs already provide for certain modifications and exemptions.

Whether changes to the process regarding application for, and consideration of, reopeners are required.

[54] Commerce Commission “Input methodologies review decisions. Topic paper 2: CPP requirements.” (20 December 2016), para 67.

3.39 The IMs for reopener process, including the provisions that cover the application and evaluation of a reopener, have been developed and amended progressively over the years. The process as it is currently prescribed in the IMs is not as clear as it could be because the amendments have been done in a piecemeal manner.

3.40 The current Fibre reopener process IMs are an improvement on the Part 4 reopener process IMs. We considered whether and how we might align the Part 4 reopener process IMs with the improved Fibre reopener process IMs, and further ideas for improving the reopener process based on submitter feedback.

Whether reopeners provide adequate coverage for current and future supplier circumstances

3.41 Submitters raised a range of different costs which they considered reopeners should be extended to cover such as resilience, demand, material changes in cost structure and legislative and regulatory change. We considered whether additional reopeners may be warranted to address circumstances not covered by the existing suite of reopeners due to the potential increased levels of forecasting uncertainty. We did this while being mindful of the impact of new or extended reopeners on supplier incentives to be efficient, innovate, reprioritise expenditure, and the purpose in s 53K of the Act that regulation via DPPs and CPPs is to provide a relatively low-cost way of setting the price-quality paths while allowing the opportunity for individual regulated suppliers to have alternative paths that better meet their particular circumstances.

Whether the current reopeners provide for a sufficient range of solutions

3.42 The existing capex-based reopeners, (ie, the EDB Unforeseeable and Foreseeable major capex project reopeners and the Gas capacity reopener), may not always provide incentives for suppliers to adopt the most efficient solutions. Increasingly, there are opex solutions available as an effective substitute for capex.

3.43 Consequential opex related to capex can be significant and is currently also not provided for. We considered whether the reopeners should be extended to allow for opex solutions, opex which is consequential to capex-based solutions, and capex which is consequential to opex-based solutions.

Review our existing approach to reopener thresholds

3.44 Recalibration of reopener thresholds could enable suppliers to better respond to changed circumstances during the regulatory period. We considered whether the current reopener materiality thresholds continued to be appropriate, whether finetuning these thresholds would provide better responsiveness to change and appropriately limit the circumstances or events under which a price path will be reconsidered.

Whether the response by regulated businesses to uncertainty could be better enabled by the use of other mechanisms

3.45 Reopeners are not the only tool to address forecasting uncertainty. We considered the potential viability of other in-period adjustment mechanisms that do not exist currently in the regulatory continuum, such as increasing the scope of pass-through costs or recoverable costs, contingent expenditure allowances, use-it-or-lose-it allowances and quantity wash-ups.

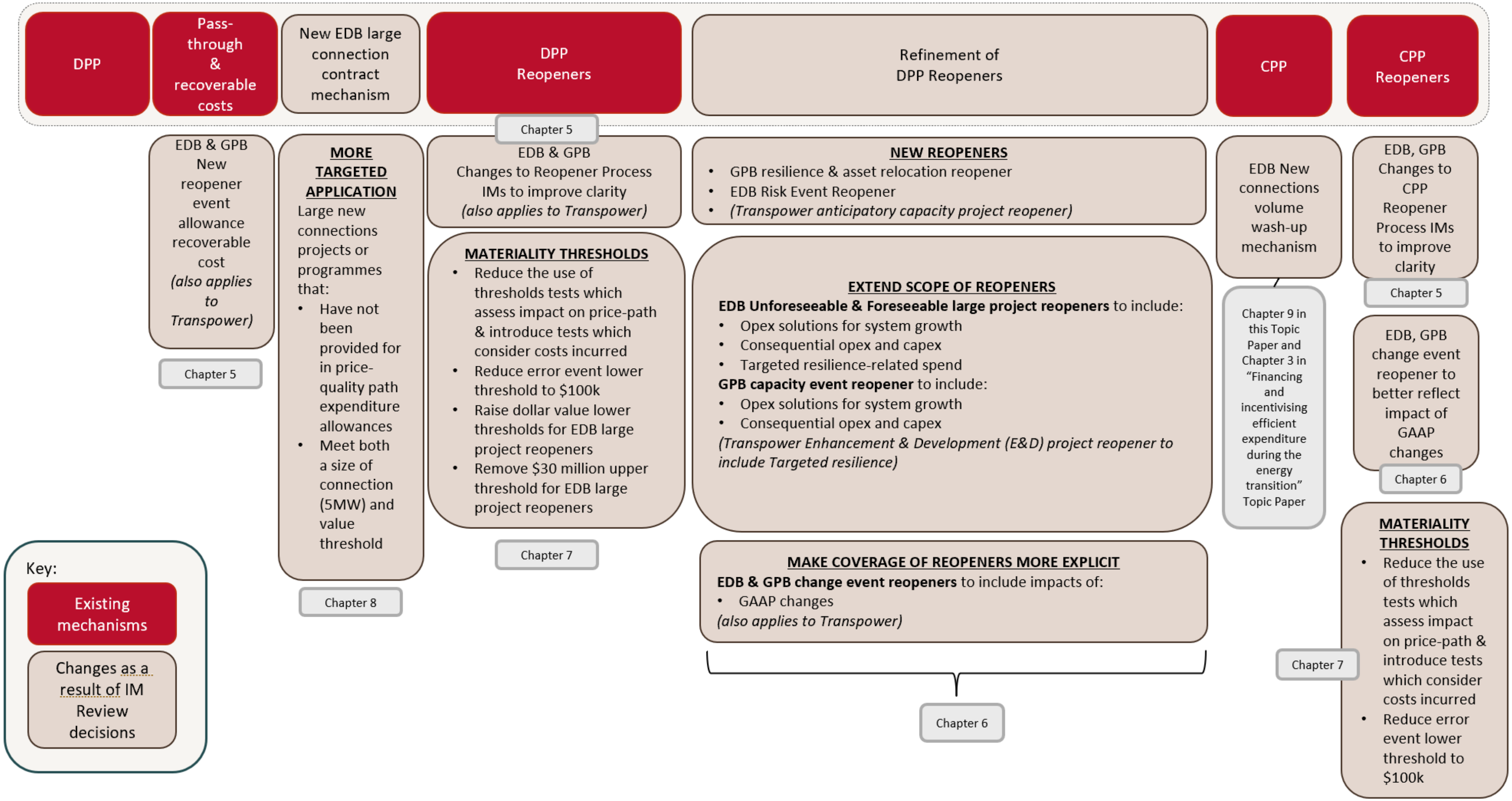
How our updated in-period adjustment mechanisms work as a package

Updated regulatory continuum showing our IM changes

3.46 Figure 3.3 shows the regulatory continuum which has been updated with the key changes from our final decisions and identifies where to find further discussion in this paper.

3.47 This updated regulatory continuum includes the 'large connection contract' mechanism for EDBs which, although not in the reopener IMs, will help address increased connection forecast uncertainty. We set out the details of the 'large connection contract' mechanism in Chapter 8.

Figure 3.3 Updated regulatory continuum showing our key IM changes and chapter discussion reference



3.48 In submissions on our draft decisions, suppliers requested that we provide additional guidance. Table 3.2 provides some examples to help suppliers engage with the updated design of the regime by setting out how some more likely and more material circumstances faced by regulated suppliers might potentially be addressed by our updated package of in-period adjustment mechanisms. This list of circumstances is non-exhaustive. The potential solution for each circumstance is indicative only and each example assumes that the circumstance meets all criteria for that in-period adjustment mechanism.

Table 3.2 Examples of potential solutions for circumstances

Circumstance faced by the regulated supplier	Potential solution/option for the circumstance
Work in the short to medium term that cannot be delayed without quality standards being breached and addresses adverse consequences of an event that could not have been foreseen, such as natural disasters	Catastrophic event reopener
Retrospective recovery of costs (costs incurred in the time period between the event occurring and when the price path is amended) for work undertaken in the immediate aftermath of an event that could not have been foreseen such as natural disasters (eg, to restore electricity after a cyclone)	Reopener event allowance recoverable cost applied via a catastrophic event reopener
New or amended legislation or a judicial interpretation of legislation that results in additional reasonable costs	Change event reopener
New or changed GAAP requirements that when applied to a regulated supplier results in a change in how expenditure, assets, liabilities, revenue or taxation are recognised or measured	Change event reopener
Changes in a local authority plan that apply to a regulated supplier and result in required additional reasonable costs.	Change event reopener

Circumstance faced by the regulated supplier	Potential solution/option for the circumstance
A new connection point to the network is required for a new dairy factory that is being constructed. This connection project is not provided for in DPP allowances. The size of the connection is 8MW and the forecast expenditure exceeds $2.5 million. Capacity investment is required on the network to support the new dedicated connection.	LCC for the new connection assets, only if the connecting party and the regulated supplier are able to reach an agreement. Any related network capacity investment that is also required is able to be applied for using the system growth expenditure subcategory of the Foreseeable large project reopener. If an LCC is not agreed for the new connection assets, the Foreseeable large project reopener may apply for a combination of connection capex (for the dedicated new connection) and system growth expenditure (for the capacity investment required) subcategories.
An existing meat processing plant on the regulated supplier's network brings forward their plan to electrify several coal-fired boilers. Network upgrades are required to support this earlier than the scheduled electrification project. This project was identified in the AMP and indicated as being required in approximately 12 years' time, and therefore not included in AMP forecasts.	EDB Unforeseeable large project reopener - system growth expenditure subcategory
Increased EV uptake causes an increase in demand requiring network capacity investment. This scenario was forecasted in the AMP schedules. It was not provided for in DPP allowances due to uncertain timing and cost. The need for the network capacity investment is now more certain.	EDB Foreseeable large project reopener - system growth expenditure subcategory
A new connecting party (or parties) require the GDB to enhance part of its network to meet the forecast gas capacity increase	GDB capacity event reopener - combination of customer connection capex and system growth expenditure subcategory
A gas compressor manufacturer identifies an engineering design fault that has caused deterioration (or likely to cause deterioration) that will likely result in premature failure of a component in the compressor within 18 months if not replaced. The GTB receives notification of this from the manufacturer along with recommendations for it to replace the component in four compressors. It performs a risk assessment which concludes that action is required. Replacement of this component is not indicated in the AMP.	GTB Risk event reopener
A zone substation needs to be relocated due to flood risk.	EDB Foreseeable large project reopener resilience capex subcategory
Transpower identifies that additional capacity should be added to a connection asset transformer due to be installed under a New Investment Contract in anticipation of future generation.	Transpower Anticipatory Connection Asset (**ACA**) capacity project reopener

Chapter 4 Whether to make changes to the CPP IMs

Purpose and structure of this chapter

4.1 This chapter considers whether we need to make changes to the CPP IMs for EDBs, GDBs and GTBs.

4.2 Our IM decisions address whether:

4.2.1 improvements can be made to the CPP IMs; and

4.2.2 there is a need for a single-issue CPP or whether specific reopener mechanisms would be more effective.

CPP Background

4.3 A customised price-quality path is tailored to a supplier's specific plans when the supplier does not consider that the default price-quality path meets its needs and the Commission approves the application. A customised price-quality path allows a regulated business to apply for a unique price-quality path that better meets its specific needs, particularly in terms of its future investment requirements.

4.4 The key difference between a DPP and CPP is that the DPP is established using a relatively low-cost industry-wide regulatory approach whereas CPP regulation is addressed to a supplier's particular circumstances. It is available where a supplier does not expect to earn a normal return on the DPP and its particular circumstances are not able to be dealt with through a DPP reopener.[55]

4.5 An EDB, GDB or GTB supplier on a DPP may propose a CPP. At any time after a DPP is set by the Commission, a supplier that is (or is likely to be) subject to the DPP may make a proposal to the Commission for a CPP to apply to that supplier.[56] A supplier may make only one CPP proposal during a regulatory period and may not make a proposal within the 12 months before a default price-quality path is due to be reset[57].

4.6 Table 4.1 provides an overview of the CPP applications we have processed to date. Since the 2016 IM Review, there have been two "full scope" CPPs, Powerco and Aurora and a streamlined one, Wellington Electricity.[58]

[55] Commerce Commission "Input methodologies review decisions. Framework for the IM Review" (20 December 2016).

[56] Commerce Act (1986) s 53Q(1).

[57] Commerce Act (1986) s 53Q(3).

[58] By "full scope" we mean that the scope of the CPP application will encompass all inputs needed to set the price-quality path and that these inputs are potentially subject to scrutiny.

Table 4.1 CPP decisions to date

Supplier	Primary driver of CPP
Orion 2014-2019	Address the impact of the Canterbury earthquakes
Wellington Electricity 2018-2021	Delivery of a more resilient network that is less susceptible to earthquake damage
Powerco 2018-2023	Asset renewal to ensure safety and resilience. Enable and support economic growth in regions. Enable customers to take up benefits from smart grid technologies
Aurora 2021-2025	Repair and upgrade network to address safety and reliability

4.7 Wellington Electricity's CPP proposal was for very specific circumstances, ie, it was focused on urgent resilience-related expenditure. In this respect the Government issued a policy statement, which we had regard to under s 26 of the Act. As a result, we used a streamlined approach in setting its CPP, enabled by approved modifications and exemptions under clause 5.1.6 of the IMs and IM variations under s 53V of the Act.

CPP Streamlining

4.8 There are stakeholder views that the CPP application and approval processes are complex, time- and resource-intensive, and that we should allow for the application process and information requirements to be streamlined based on the applicable CPP driver.

Our final decision

4.9 Our final decision is not to amend the current CPP IMs for the purposes of streamlining CPPs.

Problem definition

4.10 Suppliers hold the view that CPPs are costly, require significant time and resources to prepare, submit and assess and are not flexible enough nor workable for a smaller supplier.

4.11 Suppliers, especially EDBs, consider they are likely to experience greater uncertainty on their future expenditure requirements than in previous periods. They expressed the view that, unless the IM reopeners are modified and our DPP expenditure-setting approach changes we could receive a higher number of CPP applications in future.

Analysis and our solution

4.12 Section 53K of the Commerce Act 1986 describes the purpose of default/customised price-quality regulation. It is “to provide a relatively low-cost way of setting price-quality paths for suppliers of regulated goods or services, while allowing the opportunity for individual regulated suppliers to have alternative price-quality paths that better meet their particular circumstances.”

4.13 Unlike a DPP, CPPs are designed to better meet the particular circumstances of the supplier so there is a greater emphasis on supplier-specific costs. The information to be provided as part of a CPP proposal must therefore be sufficient to support this analysis.[59]

4.14 A CPP offers suppliers the opportunity to propose a price-quality path that better meets their individual circumstances. Setting a customised path naturally is a more intensive and complex process when compared to the default path.[60]

4.15 A CPP is usually appropriate in circumstances where the price or quality impact on consumers is significant, requiring wider engagement with the consumers and stakeholders and where there is either upstream or downstream effects on the wider network or supplier’s business.

4.16 The current CPP regime allows us to accept, evaluate and determine a CPP in a streamlined manner. Suppliers can:

4.16.1 apply for modifications and exemptions from certain IM requirements relating to the process for preparing, [61] and content of, CPP proposals (content of a CPP application, information required in a CPP proposal, requirements relating to consumer consultation, verification, audit and certification);

4.16.2 apply to use alternative methodologies with equivalent effect (**AMWEEs**) in CPP proposals; and

4.16.3 apply under s53V(2)(c) of the Act for IMs to be varied.

[59] Commerce Commission “Input methodologies (electricity distribution and gas pipeline services) Reasons paper” (22 December 2010).

[60] Commerce Commission “Input methodologies review decisions. Topic paper 2: CPP requirements.” (20 December 2016), para 26.

[61] The modification and exemption provisions, proposed by the applicant, allow us to agree with an applicant to modify or remove specific information requirements prior to a CPP application being submitted, provided it does not detract from our ability to assess a CPP proposal in a way that is more than minor (IM Determination, cl 5.1.6(2)).

Modifications and Exemptions

4.17 Suppliers have successfully applied for modifications and exemptions as part of their CPP applications in the past. For the Powerco and Aurora CPPs, for example, modifications and exemptions were used mainly to tailor requirements relating to the content of CPP applications and the information required in the proposals.

Alternative methodologies with equivalent effect (AMWEEs)

4.18 Suppliers may propose alternative methodologies to those specified in certain IMs that contribute to the core ‘building blocks’ for determining allowable revenue, ie, cost allocation, asset valuation, treatment of taxation or the estimation of term credit spread differentials.[62] AMWEEs can also be used for a more flexible and cost-effective approach to determining a CPP as they allow the use of information that is more closely aligned to a CPP applicant’s business information and accounting practices.[63] No CPP applicants have applied for AMWEEs to date.

4.19 ENA submitted that relevant IM clauses requiring alternative methodology to "produce an equivalent effect within the CPP regulatory period to the methodology that would otherwise apply"[64] is almost impossible to demonstrate and needs to be amended to a more reasonable test.

4.20 We consider, in situations where we have applied this provision in practice, including in the Fibre context, we have not needed to perform a calculation using the IMs to determine the equivalency of an alternative methodology. ENA has not provided any suggestions or examples on what a more reasonable test could be, and we have not identified a better alternative.

IM Variations

4.21 Orion, Wellington Electricity, Powerco and Aurora applied for IM variations in their respective CPPs. Given IMs are intended to promote certainty for regulated suppliers and consumers, we adopt a high threshold for agreeing to IM variations.

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[62] *Electricity Distribution Services Input Methodologies Determination 2012 (consolidated 20 May 2020),* clause 5.3.26(1) and *Gas Distribution Services Input Methodologies Determination 2012 (consolidated 9 September 2022),* clause 5.3.23(1), *Gas Transmission Services Input Methodologies Determination 2012 (consolidated 9 September 2022),* clause 5.3.19(1).

[63] Commerce Commission “Input methodologies review: Amendments to input methodologies for customised price-quality paths - Final reasons paper for Limb 1 of the CPP fast track.” (12 November 2015), para 66.

[64] Electricity Networks Aotearoa (ENA) "Appendix D - IM Practicality Issues Log" (19 July 2023).

Our assessment and acceptance approach

4.22 We apply proportionate scrutiny in our assessment approach ie, the scrutiny that an element of a CPP proposal receives should be commensurate with the potential impact of that element on price and quality.

4.23 We accept a CPP application if it is compliant "in all material respects", ie, the proposal is substantially complete in that all information material to our evaluation and determination of a CPP has been provided. [65]

Streamlining

4.24 We considered whether to amend our current CPP provisions by streamlining CPP requirements and have decided that instead our existing reopeners could be amended to cover a wider set of circumstances, which may particularly be helpful for smaller suppliers. These reopeners are discussed in Chapter 6.

4.25 Some stakeholders saw benefit in a "streamlined" CPP like Wellington Electricity's 2017 CPP for earthquake resilience (ie, use of modifications and exemptions, variations of IMs and/or AMWEEs) but were concerned that the application and assessment burden would still be similar to a full CPP.

4.26 Wellington Electricity agreed with our draft decision reasoning about the need for a higher level of scrutiny for a CPP,[66] to be able to reflect quality of supply and the impact on customer prices unique to each application. It voiced its concern regarding the impact that future demand growth and uncertainty may have on the level of precision in a future CPP proposal. However it expressed that "this clarity can be provided by guidelines supporting the IMs, rather than changes to the IMs themselves".

Allowing large EDBs to be regulated under IPP

4.27 In its submission on our draft decisions, Wellington Electricity proposed that large EDBs that would otherwise apply for multiple back-to-back CPPs, should be able to be regulated under an IPP following our draft decision.[67] It recognised that this would require legislative change and that we cannot achieve this through amending our current IMs.

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[65] *Electricity Distribution Services Input Methodologies Determination 2012 (consolidated 20 May 2020),* clause 5.4.1 and *Gas Distribution Services Input Methodologies Determination 2012 (consolidated 9 September 2022),* clause 5.5.1(1), *Gas Transmission Services Input Methodologies Determination 2012 (consolidated 9 September 2022),* clause 5.1.1(2).

[66] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p.36.

[67] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p.35.

Summary

4.28 CPPs are not seen as a routine adjustment mechanism and should only be used for a supplier's particular circumstances. The CPP information requirements are therefore tailored depending on a supplier's circumstances and on the key reasons or drivers for the CPP.

4.29 We consider there is sufficient flexibility to respond appropriately within the CPP regime. This has been used for past CPPs and suppliers can continue to rely on tools such as modifications and exemptions, which can be used in the process of preparing for, and the content of, CPP proposals.

4.30 The current prescriptive approach for a CPP assessment helps to ensure relevant statutory considerations are taken into account and the conditions that have led a supplier to apply for a CPP are in accordance with Part 4 of the Act. The alternatives proposed by stakeholders would not better achieve our IM Review overarching objectives. They would not more effectively promote certainty and the long-term benefit of consumers as set out in the Part 4 purpose in s 52A of the Act and IM purpose in s 52R.

Single issue CPP

4.31 We considered whether there was a gap in the regulatory continuum, which could be filled by a potential single issue CPP.

Our final decision

4.32 Our final decision is to not amend our current CPP IMs to allow for a single-issue CPP.

Problem definition

4.33 A single issue CPP would be a reduced scope CPP (compared to a regular CPP) where customisation is sought only in respect of one part of the supplier's DPP, which could be a single project or several projects that make up a programme of work. This "single issue" would attract wider scrutiny than a DPP but there would not be a review of all other aspects of a supplier's business as would occur with a "full scope" CPP.

4.34 In our IM Review process and issues paper, we asked for feedback on whether there is a gap in the regulatory continuum that is not covered by DPP reopeners or a regular CPP. There was relatively limited engagement on this topic compared to the depth of submissions on other topics.

Stakeholder views

4.35 Some submitters on our Price-quality path workshop saw benefit in a “streamlined” CPP similar to Wellington Electricity’s 2017 CPP for earthquake resilience (ie, making use of 'modifications or exemptions', IM variations, and/or AMWEEs) but were concerned that the CPP application and assessment burden would be similar to a full CPP.

4.36 Submitters did not view DPP reopeners in their current form as a useful substitute for potential single-issue CPPs unless they were modified to include opex, include more primary drivers (or triggers) and thresholds were reset.[68]

4.37 Suppliers said that they do not believe reopeners in their pre-review form are a useful substitute for single-issue CPPs unless they were modified to include opex, include more primary drivers (or triggers), and price-quality path reopener thresholds are reset. These substitutes are discussed in Chapter 6.

4.38 Wellington Electricity added that unlike a single-issue CPP, the window of delivery for reopeners is limited to the current regulatory period and this requirement limits the use of reopeners to smaller projects that can be planned and delivered before the end of the regulatory period, suggesting a single-issue CPP may be a viable alternative.

4.39 Following our price-quality path workshop (on 29 November 2022), we asked submitters for examples of scenarios that are not covered by DPP reopeners, which might require a single-issue CPP. Overall, submitters were unable to provide clear examples of scenarios.

4.40 Powerco[69] and Vector[70] were of the view that setting the upper thresholds for the EDB Unforeseeable major capex project and Foreseeable major capex project reopeners higher than the current $30 million cap value for the forecast value of commissioned assets attributable to major capex project would enable DPP reopeners to fulfil a similar purpose to a single-issue CPP.[71] Reopener thresholds are discussed in Chapter 7.

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[68] Aurora Energy “Submission on Price-quality path workshop” (20 December 2022); Powerco “Submission on Price-quality path workshop” (20 December 2022).

[69] Powerco “Submission on Price-quality path workshop” (20 December 2022).

[70] Vector “Submission on Price-quality path workshop” (20 December 2022).

[71] *Electricity Distribution Services Input Methodologies Determination* (20 May 2020), clause 4.5.6(4).

Analysis and our solution

4.41 The EDB, GDB and GTB IMs identify the events or circumstances, which allow a DPP to be reopened. There are currently ten reopener provisions in the EDB, GDB and GTB IMs.[72] If a supplier does not consider the DPP that is set, or the DPP reopener provisions, meet their particular circumstances, they can apply for a CPP.

4.42 In the 2016 IM Review we considered whether there was value in providing for a single issue CPP but concluded they are problematic due to DPP/CPP regulatory period alignment, asymmetry between suppliers and consumers, interdependencies of inputs with other aspects of the path, and suppliers using their one CPP opportunity for the regulatory period to tailor the price-quality path for a single issue.

4.43 Our view is that the starting point for suppliers seeking a price-quality path adjustment amendment to fit their circumstances would be the DPP reopeners, especially with our extensions and refinements (discussed in Chapter 6). We expect there would only be limited cases where the expanded range of DPP reopeners might not provide a possible solution to a specific circumstance involving a single issue.

4.44 We consider the CPP IMs are flexible enough to cater for circumstances where suppliers have a single material issue requiring focused scrutiny on that issue. We are therefore not explicitly amending the IMs to provide for a single-issue CPP. We do not consider that amending the IMs to permit a single issue CPP would better achieve our IM Review overarching objectives. In particular, it would not more effectively promote the Part 4 purpose in s 52A, nor would it promote the IM purpose in s 52R, for the reasons outlined above.

4.45 Suppliers submitted on our draft decision, stating that a single-issue CPP could be beneficial in offering more targeted focus, efficiency, flexibility, and cost effectiveness.[73] After considering the submissions and whether they would better achieve our IM Review overarching objectives, we have decided not to change our draft decision for the reasons outlined above. In addition, submitters have not offered sufficient practical examples of when a single-issue CPP would be more appropriate than the suite of mechanisms otherwise available to them or the benefits offered by removal of the $30 million upper reopener threshold for some reopeners. This is discussed in Chapter 7.

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[72] We have separately assessed whether these reopeners are likely to cover the future circumstances that may be faced by regulated suppliers in Chapter 6.

[73] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p.61; Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 22-23.

Chapter 5 Improving the price-quality path reopener processes

Purpose and structure of this chapter

5.1 This chapter explains our decisions to make IM changes to improve the Part 4 price-quality path reopener processes. These cover the EDB, GDB, GTB and Transpower reopener processes.

5.2 The chapter covers the process of how a price-quality path may be reopened. However, it does not cover the 'what' of reopeners, this is covered in Chapter 6 (Whether the reopeners will cover future circumstances) and Chapter 7 (Reviewing our approach to reopener thresholds).

5.3 Our decisions:

5.3.1 address the key issue of whether changes to process regarding application for, and consideration of reopeners are required; and

5.3.2 include other refinements to the price-quality path reopener process IMs.

5.4 Our final decisions are to:

5.4.1 change the Part 4 price-quality reopener processes to:

5.4.1.1 align the EDB, GDB, GTB and Transpower price-quality path reopener processes with the reopener process outlined in the Fibre IMs; and

5.4.1.2 implement other improvements to the reopener processes of the EDB, GDB and GTB IMs; and

5.4.1.3 make drafting consistency changes to the various reconsideration event allowance recoverable cost provisions of the EDB, GDB, GTB and Transpower IMs.

Aligning the price-quality path reopener processes and other improvements

Our final decisions

Aligning the Part 4 price-quality path reopener processes with the reopener process in the Fibre IMs

5.5 Our final decision is to amend the price-quality path reopener process IMs to follow the structure of the Fibre IMs reopener process. This introduces new provisions that are in the Fibre IMs but not in the EDB, GDB, GTB and Transpower IMs. Specifically:

5.5.1 amending the EDB, GDB, GTB and Transpower IMs to:

5.5.1.1 define a 'reopener event' as an event, or series of related events, of a type specified that occurs in the period that:

5.5.1.1.1 begins on the date that is 12 months before the start of the DPP regulatory period;[74] and

5.5.1.1.2 ends at the end of the DPP regulatory period.

5.5.1.2 require a supplier who nominates a reopener event to provide sufficient information to enable the Commission to assess whether a reopener event has occurred and whether a price-quality path should be amended;

5.5.1.3 require the Commission to publish notice on our website after a significant step in the reopener process has been carried out (eg, a reopener event has been nominated by a supplier, the Commission decides to reconsider a price-quality path, or the Commission decides to amend a price-quality path);

5.5.1.4 prescribe a list of factors the Commission must have regard to when deciding whether to amend the price-quality path if we are satisfied that a reopener event has occurred; and

5.5.2 amending the EDB, GDB and GTB IMs to:

5.5.2.1 require the Commission to take into account the expenditure objective when determining the extent of any amendments to the price path.

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[74] A reopener event may cover the period commencing up to 12 months before the commencement of the DPP regulatory period. The consideration of whether to amend the price path applies in the DPP regulatory period and the period prior to the effective date of the reopener is considered under the reopener event allowance.

Other possible improvements to the reopener process

5.6 Our final decision is to amend the EDB, GDB and GTB IMs to include a new clause to provide the Commission with the option to decline DPP reopener applications that are better suited to a CPP application. This clause applies to the Catastrophic event, the Change event, a Proposal of a quality standard variation, an Unforeseeable large project, a Foreseeable large project, a Capacity event, a Resilience or asset relocation event and a Risk event reopener application.

5.7 Our final decision is to amend the EDB, GDB, GTB and Transpower IMs to include a clause on the handling of confidential information.

5.8 Our final decision is to not amend the EDB, GDB, GTB and Transpower reopener IMs to do any of the following:

5.8.1 include timeframes for the Commission to evaluate reopener applications;

5.8.2 provide templates for the types of information required in reopener applications;

5.8.3 include application windows for reopeners;

5.8.4 prescribe when consultation is required and when it is not;

5.8.5 include a modification or exemption provision for DPP or IPP reopener information requirements;

5.8.6 include a pre-application stage for the process of applying for a reopener;

5.8.7 include a reopener for the purposes of assessing programme financeability; and

5.8.8 allow reopeners to be moved across regulatory periods or to be extended between two regulatory periods without having the supplier reapply for approval.

5.9 Our final decision is to also not amend the EDB, GDB and GTB IMs to allow either of:

5.9.1 a single CPP application to cover multiple parties; or

5.9.2 a single reopener application to cover multiple parties.

Consistency changes to reconsideration event allowance recoverable cost provisions

5.10 Our final decision is to amend the IMs to introduce a 'reopener event allowance' recoverable cost in the EDB, GDB, GTB, and Transpower IMs, which enables these regulated suppliers to recover costs incurred as a result of any 'reopener event' up until the date the reconsidered price-quality path takes effect.

Problem definition

5.11 Section 52T(1)(c)(ii) requires the IMs to include regulatory processes and rules, such as identifying circumstances in which price-quality paths may be reconsidered within a regulatory period.[75] Reconsideration of a price-quality path is commonly referred to as reopening a price-quality path. The price-quality path reopener process refers to a series of provisions that outline the 'how' of reopening a price-quality path. The current drafting of the reopener process for the EDB, GDB, GTB and Transpower IMs outlines when a price-quality path may be reopened and constraints on the Commission when amending a price-quality path.

5.12 The price-quality paths we set under Part 4 provide certainty to suppliers about limits on revenue, quality standards and incentive mechanisms for efficiency and quality over the regulatory period. The regime also provides mechanisms to respond to change that occurs during the regulatory period. There is a relatively high level of uncertainty at present. This highlights the importance that the process of applying for and assessing reopeners and other changes during the regulatory period is clear.

5.13 The IMs for reopener process, the provisions that cover the application and evaluation of a reopener, have been developed and amended progressively over the years. Because the amendments have been done in a piecemeal manner, the process as currently described in the IMs is not as clear as it could be.

5.14 The Fibre reopener process IMs were developed more recently with a focus on clarity and coherence. We considered whether and how we might align the Part 4 reopener process IMs with the Fibre reopener process IMs, and further ideas for improving the reopener process based on submitter feedback.

5.15 We set out below our solution for the reopener process and discuss a number of standard key features of the process. In that discussion we include for each key feature a description of the problem that feature is aiming to address.

[75] Commerce Act, s 52T(1)(c)(ii).

Stakeholder views on our Process and issues paper

5.16 Submissions on our Process and issues paper for this topic mainly focused on the timeframes for reopener decision-making and the lack of clarity on the quality of the information required to fulfil reopener application requirements. Submitters were particularly concerned about the time it took to process the Unison reopener in 2021. Specifically:

5.16.1 Aurora suggested the inclusion of a specified timeframe in which we would make a decision and the inclusion of a more prescriptive list of information required for a reopener application were needed;[76] and

5.16.2 Wellington Electricity submitted that not all reopeners would require the same level of assessment and questioned the need for consultation on applications where the connecting customer is funding the majority of the connection costs.[77]

5.17 At the reopener workshop on 29 November 2022,[78] we outlined Commission staff's views on the broad approach we proposed taking for all in-period adjustments (not just reopeners). We explained that the process would include three clear stages – trigger, consideration and amendment stages.

5.18 We asked for submitter views on specific questions after the reopener workshop. While submitters were generally supportive about proposed updates to the reopener process,[79] one submitter thought it was not a material improvement[80] and another submitted that we should not make the process more onerous than it is.[81]

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76 Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022).

77 Wellington Electricity – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022).

78 Commerce Commission "Workshop: Price-quality path in-period adjustment mechanisms" (29 November 2022).

79 Aurora Energy "Submission on Price-quality path workshop" (20 December 2022), para 18; Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022), p. 2; Powerco "Submission on Price-quality path workshop" (20 December 2022), p. 2.

80 Aurora Energy "Submission on Price-quality path workshop" (20 December 2022), para 21.

81 Vector "Submission on Price-quality path workshop" (20 December 2022), p. 2.

Our solutions

5.19 We consider improved clarity will result in a better process and more certainty for suppliers and will go some way towards improving timeliness of reopener decisions being made. This will streamline the process and reduce implementation and transaction costs, which is an important consideration when reopeners are likely to be sought more frequently. The adoption of the Fibre IM process will also require suppliers to provide sufficient information to support our assessment of reopener applications. These requirements will likely speed up the process and improve timeliness of reopener decisions being made.

5.20 The changes promote the Part 4 purpose in s 52A and the IM purpose in s 52R more effectively without detrimentally affecting the promotion of the s 52A purpose through improved clarity and certainty as well as reducing complexity. This benefits suppliers and the Commission by improving the coherence and ease-of-use of the reopener provisions, which should speed up process times for suppliers and the Commission and in turn promote the outcomes listed in s 52A(a)-(d) by making the reopener process more accessible in the right circumstances.

5.21 Our changes and analysis relating to the reopener process can be split into two categories:

5.21.1 structure and provisions imported from the Fibre IMs; and

5.21.2 other possible improvements to the reopener process.

Aligning the Part 4 reopener processes with the reopener process in the Fibre IMs

5.22 The changes add the following steps to the reopener process:

5.22.1 the specification of a time window within the definition of reopener event (paragraphs 5.24 to 5.28);

5.22.2 the requirement of suppliers to provide sufficient information for the Commission's assessment (paragraphs 5.29 to 5.32);

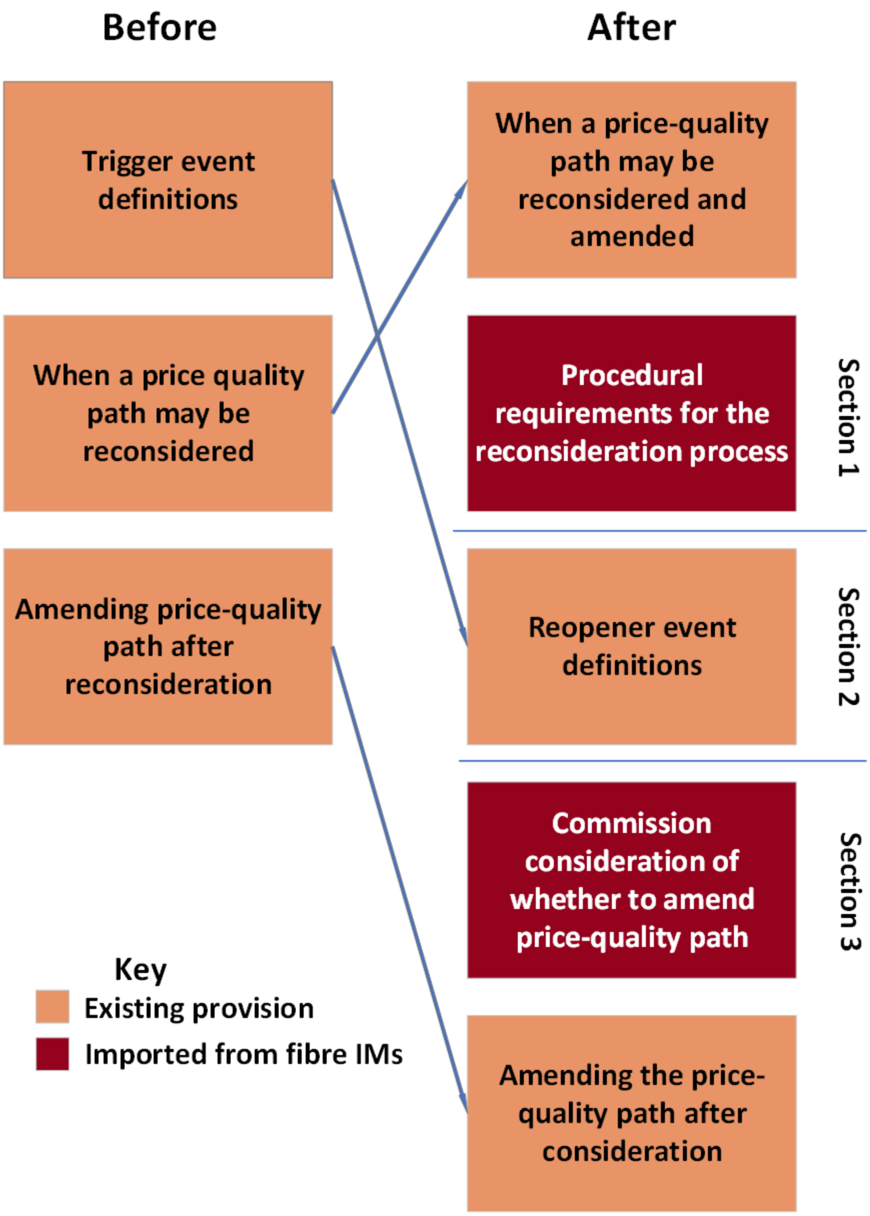
5.22.3 the specification of the Commission's notification requirements for reopener event applications (paragraphs 5.33 to 5.35);

5.22.4 the specification of a list of considerations the Commission must have regard to when deciding whether to amend the price path (paragraphs 5.36 to 5.39); and

5.22.5 require the Commission to take into account the expenditure objective when determining the extent of any amendment to the price path (paragraphs 5.40 to 5.48).

5.23 The adoption of similar price-quality path reopener process to the reopener process from the Fibre IMs involves rearranging the structure of the reopener provisions as well as importing and adapting provisions from the Fibre IMs. Figure 5.1 below illustrates the new structure of the reopener process, showing the new order of provisions and the provisions that have been imported from the Fibre IMs.

Figure 5.1 Updated structure of reopener process



Time window within reopener event definition

5.24 Our final decision is to amend the EDB, GDB, GTB and Transpower IMs to define a 'reopener event' as an event, or a series of related events, of a type specified that occurs in the period that:

5.24.1 begins on the date that is 12 months before the start of the DPP regulatory period; and

5.24.2 ends at the end of the DPP regulatory period.

5.25 The current drafting of the EDB, GDB, GTB and Transpower IMs does not consistently set out the timeframe for which the reopener applies, with "Change event" stating this "must take place during the current regulatory period" and no representative statement for the timing of "Catastrophic event".

5.26 We consider providing a timeframe for reopener events which starts in advance of the DPP regulatory period is appropriate and allows the application of the reopener provisions to events which may not be able, due to timing relative to when the price-quality path is being set for the next regulatory period, to be appropriately reflected in the price-quality determination for that next period. This better reflects a timeframe by which changes could be accommodated within a price-quality path reset and more effectively promote the s 52R purpose by giving suppliers certainty over the timeframe when a reopener event may occur (without detrimentally affecting the promotion of the s 52A purpose).

5.27 The Fibre IMs define a reopener event that occurs within six months before or during the regulatory period.[82] We think extending this to twelve months for the purposes of Part 4 is beneficial, and promotes the s 52R purpose without detrimentally affecting the promotion of the s 52A purpose, as it reduces the risk of a significant event not being recognised in expenditure allowances if this were to occur during a price-quality path reset process. Submitters supported our draft decision and agreed that this would improve clarity and reduce complexity.[83]

5.28 Transpower further submitted that the definition should be made clearer, so that it is clear the time window includes the 12 months preceding the regulatory period as well as the term of the regulatory period.[84] We have made this clear in the final IMs.

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[82] *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, clause 3.9.1(2).

[83] Submissions by Powerco, PowerNet and Orion on Commerce Commission "Input methodologies review 2023 - Draft decisions" (19 July 2023). Submissions are available our website.

[84] Transpower "Submission on IM Review 2023 Transpower IM Draft Determination" (26 July 2023), p. 62.

Requirement on suppliers to provide sufficient information

5.29 Our final decision is to amend the EDB, GDB, GTB and Transpower IMs to require a supplier who nominates a reopener event to provide sufficient information to enable the Commission to assess whether a reopener event has occurred and whether a price-quality path should be amended. This clause cross references the list of factors the Commission must have regard to when deciding whether to amend the price-quality path (see paragraphs 5.36 to 5.39). This has been adapted from the Fibre IMs.[85]

5.30 The requirement to provide information to support the reopener application is not clearly stated in the current EDB, GDB, GTB and Transpower IMs, with the existing statement being the supplier "applies to the Commission and satisfies the Commission that an event has occurred."

5.31 Wellington Electricity submitted following our workshop in favour of a clear process and providing examples of the type of information needed.[86] Requiring a supplier to provide the information (and cross referencing our mandatory considerations) signals to suppliers what information is required. PowerNet[87] and Orion[88] submitted on our draft topic paper on this decision and while they both supported it, Orion gave qualified support and submitted that it would be better if clear guidance was required as to what 'sufficient information' would constitute.

5.32 We have considered the submissions received on this issue and our final decision is to confirm our draft decision. This approach requires a supplier to provide enough information to support the consideration stage, and therefore more clearly outlines the type of information a supplier will need to provide. This should minimise any back-and-forth requests for information between the supplier and the Commission which will speed the process up, thereby more effectively promoting the s 52R purpose of the Act without detrimentally affecting the promotion of the s 52A purpose.

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85 *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, clause 3.9.2(2).

86 Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022), p. 2.

87 PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 14

88 Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 25

Requirement to publish notice for reopener event applications

5.33 Our final decision is to require the Commission to publish notices on our website after:

5.33.1 a reopener event has been nominated; and

5.33.2 the Commission decides whether:

5.33.2.1 it is satisfied a reopener event has occurred;

5.33.2.2 to reconsider the price-quality path; and

5.33.2.3 to amend a price-quality path.

5.34 The EDB, GDB, GTB and Transpower IMs currently do not specify those requirements. The change mirrors reopener provisions from the Fibre IMs.[89] For the Unison Tauhara reopener, our notifications largely followed the Fibre prescribed approach, with the only difference being we did not separately notify that the Unison reopener application had been received. Instead, we published the Unison application at the same time as publishing our draft reopener decision.

5.35 Our decision provides certainty and transparency to other stakeholders about the reopeners that are being considered, which promotes the s 52R purpose more effectively (without detrimentally affecting the promotion of the s 52A purpose) and is consistent with natural justice and process-related principles. Submitters were in support of this decision and felt that it ensures consumers are aware of proposed changes and have the opportunity to engage.[90] We note that the Fibre IMs do not address how confidential information is dealt with in respect of reopener applications, but it is addressed in the subparts relating to capital expenditure.[91] As part of our decision, we have included a clause outlining our process for confidential information. This is discussed below in paragraphs 5.57 to 5.59.

Considerations the Commission must have regard to

5.36 Our final decision is to amend the EDB, GDB, GTB and Transpower IMs to prescribe a list of factors the Commission must have regard to when deciding whether to amend the DPP, CPP or IPP if we are satisfied that a reopener event has occurred.

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89 *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, clause 3.9.2(3) and (4).

90 Submissions by PowerNet, MEUG and Orion on Commerce Commission "Input methodologies review 2023 - Draft decisions" (19 July 2023). Submissions are available our website.

91 *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, clauses 3.7.6 and 3.8.4.

5.37 This has been imported from the Fibre IMs, adjusted for context.[92] Although there are no such mandatory considerations in the current EDB, GDB, GTB and Transpower IMs, these would feature in any case through our assessment and decision-making process.

5.38 Orion[93] and PowerNet[94] supported our draft decision. Wellington Electricity submitted it was concerned that the considerations we must have regard to when making reopener decisions may make these decisions more subjective and the outcomes less certain. It submitted the criteria should be removed from the IMs but if they were retained, they should be made more objective.[95]

5.39 We have considered the submissions received on this issue and our final decision is to confirm our draft decision. We consider this decision will promote the s 52A purpose and s 52R purpose more effectively than the status quo by giving greater clarity and certainty to suppliers about how we make decisions, and what constrains our decision making in regard to amending the price-quality path.

Specification that any expenditure will be assessed against the expenditure objective

5.40 Our final decision is to amend the EDB, GDB and GTB IMs to require the Commission to take into account the expenditure objective when determining the extent of any amendment to the price path (ie, whether the opex and capex reflects the efficient costs that a prudent supplier of electricity lines services or gas pipeline services would require to meet or manage expected demand for its services, at appropriate service standards).

5.41 A similar clause exists in the Fibre IMs that requires the Commission to evaluate whether the proposed capital expenditure meets the capital expenditure objective,[96] and the current EDB IMs state the Commission will not amend the price path in respect of a Foreseeable major capex project or an Unforeseeable major capex project more than an amount that reflects the efficient costs that a prudent non-exempt EDB would incur in undertaking that project (ie, similar to the expenditure objective).[97] To similar effect, the current EDB, GDB and GTB IMs also require the Commission to take into account the expenditure objective when considering CPP reopeners. It is also relevant to some specific Gas reopeners.

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92 *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, clause 3.9.8.

93 Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 26

94 PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 14

95 Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 38-39

96 *Fibre Input Methodologies Determination 2020, as amended on 29 November 2021*, clause 3.9.9(3)(a).

97 *Electricity Distribution Services Input Methodologies Determination 2012,* clause 4.5.7(3).

5.42 Our draft decision was to amend the price-quality path reopener process IMs to follow the structure of the Fibre IMs reopener process. We proposed to introduce new provisions that are in the Fibre IMs but not in the EDB, GDB and GTB IMs, to require the Commission to take into account the expenditure objective when determining the extent of any amendments to the price path following a DPP reopener. We did so for the EDB, GDB and GTB IMs, but not the Transpower IMs.

5.43 PowerNet, Orion and Wellington Electricity submitted their support for our draft decision for EDBs.[98]

5.44 We did not receive any submissions on the draft decision from GDBs and the GTB.

5.45 Transpower submitted that it agreed with the alignment with the Fibre IMs generally to create clarity and transparency for the reopener event process, noting part of that alignment includes requiring the Commission to take into account the expenditure objective when determining the extent of any price-quality path amendments.[99] However, Transpower separately noted that it disagreed with requiring the Commission to take into account the expenditure objective when considering amendments, explaining that the term 'expenditure objective' is not a term used for Transpower regulation.[100]

5.46 We consider that requiring the Commission to take into account the expenditure objective is consistent with the EDB, GDB and GTB CPP evaluation criteria and it promotes the s 52R purpose more effectively by setting out our reopener considerations up front (without detrimentally affecting the promotion of the s 52A purpose). It will also more effectively promote the s 52A(1)(b) purpose by allowing for scrutiny of any proposed expenditure, which will encourage suppliers to be efficient and the s 52A(1)(d) purpose by limiting excessive profit.

5.47 We considered all of the submissions on this issue and our final decision is to amend the EDB, GDB and GTB IMs to require the Commission to take into account the expenditure objective when determining the extent of any amendment to the price path.

98 PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 15; Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 27; Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 39.

99 Transpower "Submission on IM Review 2023 Draft Decisions" (19 July 2023)p. 39, para 165.

100 Ibid, p. 40, Table 4.

5.48 Our final decision is also to not require the Commission to take into account the 'expenditure objective' when determining the extent of any reopener amendments to the price path for Transpower. Referencing the expenditure objective could result in broader changes than just the insertion and use of the defined term and could impact other expenditure assessment processes in the Transpower IMs and in the Capex IM, creating uncertainty for Transpower and other stakeholders, contrary to the IM purpose set out in s 52R and potentially undermining the Part 4 purpose in s 52A, therefore promoting neither more effectively.

5.49 We have adopted the following related features in drafting the Transpower IM amendment determination for amendments to the IPP after consideration of a reopener event:

5.49.1 the Commission will not amend the IPP more than is reasonably necessary to account for specified matters, such as mitigating the effect of the reopener event on the IPP; and

5.49.2 the Commission will not amend the IPP by more than the prudent net additional expenditure incurred in responding to the reopener event.

Other ideas considered to improve the Part 4 reopener processes

5.50 In addition to provisions imported from the Fibre IMs, we also considered other ideas to improve the Part 4 reopener processes. Specifically:

5.50.1 including a new clause to provide the Commission with the option to decline a DPP reopener application because we consider it is better suited to a CPP application;

5.50.2 specifying how the Commission will deal with confidential information;

5.50.3 specifying timeframes within the price-quality path reopener process IMs;

5.50.4 more detailed prescription to guide price-quality path reopener applications;

5.50.5 including reopener application windows;

5.50.6 the need for consumer consultation;

5.50.7 the need for a modification or exemption provision;

5.50.8 the inclusion of a pre-application stage for a reopener application into the IMs;

5.50.9 the inclusion of a reopener to support project or programme financeability;

5.50.10 allowing reopeners to be moved across regulatory periods, or to be extended between two regulatory periods without having the supplier reapply for approval;

5.50.11 allowing a single issue CPP application to cover multiple parties; and

5.50.12 allowing a single reopener application to cover multiple parties.

Consideration of whether an application is better suited to a CPP

5.51 Our final decision is to amend the EDB, GDB, and GTB IMs to include a new clause to provide the Commission with the option to decline DPP reopeners that are better suited to CPPs. This clause applies to the Catastrophic event, Change event, Foreseeable major capex project, Unforeseeable major capex project, Quality standard variation, Capacity event, Resilience or asset relocation event and Risk event reopener applications.

5.52 Any DPP reopener application we identify as one being better suited to a CPP may be declined and the supplier would be encouraged to submit a CPP application. Suppliers are only able to apply for one CPP per regulatory period. If the Commission declines the DPP reopener application, it does not give the suppliers an additional CPP application.

5.53 Submitters responded to our draft topic paper and felt that the new clause gives the Commission too much discretion and makes reopener decisions more subjective.[101] They felt that this decision would make outcomes less certain and add unnecessary costs and time contrary to the IM purpose in s 52R, with Vector submitting that it "gives the Commission too much discretion not to consider a reopener application". MEUG was in support of this decision and agreed that there are sufficient specifications to guide suppliers in making applications.[102]

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[101] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 66; Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 39-40; Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 5; Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 25.

[102] Major Electricity Users Group (MEUG) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 4.

5.54 Our final decision is to amend the requirements for a reopener applicant to provide information in relation to a reopener. We have added this requirement to enable us to decide, among other things, whether the Commission considers a CPP proposal more appropriate. Having consideration factors will guide EDBs and avoid them making a proposal that might be declined as a DPP reopener.

5.55 We have excluded the error event, major transaction and false or misleading information reopener events from this provision, as we consider based on the nature of these reopener events, they are unlikely to represent a programme of work which is better considered as a CPP.

5.56 Allowing for the option to decline reopener applications that are better suited to CPPs, does not give the Commission discretion not to consider a reopener application. Providing clearer criteria when considering a reopener application promotes the IM purpose of certainty and clarity more effectively than the status quo by signalling to suppliers up front the factors to consider regarding whether their application is better suited to a CPP. This also gives effect to the s 53K purpose more effectively than the status quo by ensuring the more suitable price-quality regulation is utilised (DPP or CPP). Those outcomes do not detrimentally affect the promotion of the s 52A purpose.

Confidential information

5.57 Our final decision is to amend the EDB, GDB and GTB IMs to include a new clause on confidential information into the reopener process IMs. The clause has been adopted from the Fibre IMs and the Transpower Capex IMs. This new clause will be included in the "Procedural requirements for the reconsideration process" section which has been imported from the Fibre IMs and Transpower Capex IMs.

5.58 The EDB, GDB and GTB IMs are silent as to how we deal with confidential information, while for Transpower only the Transpower Capex IM contains a clause on confidentiality.

5.59 Submitters welcomed this addition to ensure customers' interests are sufficiently protected.[103] They agreed including a confidentiality clause more effectively promotes the s 52R purpose by giving certainty and clarity to suppliers on how we deal with confidential information (without detrimentally affecting the promotion of the s 52A purpose).

[103] Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 3; Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 26; PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 14.

Timeframes within the reopener process IMs

5.60 Our final decision is to not amend the EDB, GDB, GTB and Transpower IMs to include timeframes for the Commission to evaluate reopener applications. The current drafting of the EDB, GDB, GTB and Transpower IMs, as well as the Fibre IMs, do not prescribe a timeframe for processing reopener applications.

5.61 Several submitters following our Price-quality path in-period adjustment mechanisms workshop suggested we prescribe a time limit for processing an application within the IMs.[104] Following our draft decision paper, certain submitters reiterated their preference for timeframes saying, they felt that introducing timeframes would provide greater clarity and consistency in DPP reopener processes.[105]

5.62 PowerCo and Vector both acknowledged the resourcing issues the Commission could face if multiple reopener applications with time pressures for consumers were sent to the Commission all at once.[106]

5.63 We think our improved, clearer process will positively influence turnaround time because it means a regulated supplier has clarity about what information is required and what to expect from the process. However, we do not consider specified timeframes to be practical as there are factors outside of our control that would impact our turnaround time. The number of applications we have to consider at a particular time will impact processing times. The extent and quality of information provided by reopener applicants, and consequently our requests for further information from applicants, could impact our ability to process reopener applications within specified timeframes.

5.64 We understand that suppliers would like timeframes implemented so that we can provide them and their customers with a higher level of confidence about whether their reopener application will be approved.

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[104] Aurora Energy “Submission on Price-quality path workshop” (20 December 2022), para 25.3; Electricity Networks Association (ENA) “Submission on Price-quality path workshop” (20 December 2022), p. 2; Wellington Electricity “Submission on Price-quality path workshop” (21 December 2022), p. 1.

[105] Submissions by Electricity Networks Association (ENA), Vector, Powerco, FlexForum, Aurora, Orion, Wellington Electricity, Major Electricity Users Group (MEUG), Independent Electricity Generators Association (IEGA), Unison on the Commerce Commission “IM Review 2023 - Draft Decisions” (19 July 2023). Submissions are available on our website.

[106] Vector "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p 35-37; PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 13;

5.65 We do not think introducing a timeframe for the Commission to consider reopener applications within the reopener IMs would more effectively promote certainty (s 52R purpose) as there are several factors outside of the Commission's control, that could result in these timelines not being met unless set with a significant degree of flexibility. Prescribing timelines with that flexibility or that we may not be able to meet for reasons outside of our control would not promote certainty and clarity for suppliers. Some submissions mentioned that timeframes could be adopted outside of the IMs as a guideline, which is something we can consider after this IM Review process.[107] We do encourage early engagement with the Commission on any reopener application.

More detailed prescription to guide reopener applications

5.66 Our final decision is to not amend the EDB, GDB, GTB and Transpower IMs to provide more detailed prescription about the types of information required in reopener applications, beyond the guidance provided by the reopener event criteria and the mandatory requirements in the consideration stage.

5.67 Several submitters, following our Price-quality path in-period adjustment mechanisms workshop, suggested we provide more detail and guidelines for the information required for a reopener.[108]

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[107] PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 13; Vector "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p 35-37; Orion "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), pp. 8-9.

[108] Aurora Energy "Submission on Price-quality path workshop" (20 December 2022), para 25.1; Vector "Submission on Price-quality path workshop" (20 December 2022), p. 2; Horizon Energy Group "Submission on Price-quality path workshop" (20 December 2022), p. 2; Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022), p. 3.

5.68 Five submissions (two of which were from Vector)[109] and three cross-submissions (one from Vector)[110] were received on our draft decision not to amend our IMs to provide more prescription about the types of information required in applications. Except for Wellington Electricity,[111] submitters did not support our draft decision. Submitters stated that more prescription would provide them with more certainty about the amount of information they were required to provide in their reopener applications. MEUG,[112] Vector,[113] and Wellington Electricity[114] submitted that the Commission should provide guidelines (or guidance) and that such information would not only benefit EDBs, but also the Commission.

5.69 We have considered the submissions received on this issue and our final decision is to maintain our draft decision not to amend the EDB, GDB, GTB and Transpower IMs to provide more *detailed* prescription about the types of information required in reopener applications. We consider the reopener event criteria already provide a guide as to the information required from applicants to satisfy the criteria. Our decision to change the structure of the reopener process IMs and include mandatory considerations that we must take into account when considering whether to amend the price path (discussed above at paragraphs 5.36 to 5.39), should provide sufficient clarity for regulated suppliers to know what information is required. We consider these changes are more effective than providing guidelines or more prescription.[115]

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[109] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 5; Vector "In-period adjustments" (6 April 2023), para 33; Aurora Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 35; Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 62; Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), section 5.2.6

[110] Independent Electricity Generators Association (IEGA) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 3;Major Electricity Users Group (MEUG) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), para 21-22; Vector "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023) para 169.

[111] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), section 5.2.6

[112] Major Electricity Users Group (MEUG) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), para 21-22

[113] Vector submitted that the guidance document could be outside of the IMs: Vector "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023) para 169; Vector "In-period adjustments" (6 April 2023), para 33.

[114] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), section 5.2.6.

[115] The IMs require a regulated supplier that nominates a reopener event to provide sufficient information to enable us to assess whether a reopener event has occurred, and whether the price-quality path should be amended. For example, the requirements for EDB reopeners are set out in clauses 4.5.2(3), 4.5.13(1) and 4.5.15 of the EDB IMs.

5.70 These changes more effectively promote the s 52R purpose than the current IMs and the alternative of being more prescriptive (and do so without detrimentally affecting the promotion of the s 52A purpose) by providing clarity and certainty to suppliers as to what information is required to successfully apply to reopen a price-quality path while avoiding adding further detail into the IMs that could make the process more onerous.

5.71 We have recently seen high levels of pre-engagement from suppliers ahead of applications being submitted for reopeners. This has included suppliers seeking clarification of the information that is required. We expect this to continue. We encourage the use of pre-existing and currently available information which suppliers have used for their internal approval processes. This should reduce delays in processing future reopener applications and address concerns about what information should be provided.

Need for reopener application windows

5.72 Our final decision is not to amend the EDB, GDB, GTB and Transpower IMs to include application windows for reopeners.

5.73 We outlined at our reopener workshop that we were considering the use of reopener windows during the regulatory period.[116] We compared our approach to overseas jurisdictions, specifically Ofgem in the UK which limits reopener applications to a one-week application window.

5.74 Reopener windows have benefits. They can increase certainty for regulated suppliers and the Commission, to allow for appropriate resourcing and prioritisation for completing/processing applications. However, the concentration of applications into a reopener window could slow the process down by leading to a large number of reopeners being received around the same time and then needing to be processed. The inclusion of application windows could cause significant delays to investment or other projects where work is not well aligned with application windows.

[116] Commerce Commission "IM Review 2023: In-period adjustment mechanisms – Workshop 'Discussion slides'" (29 November 2022), slide 22.

5.75 Wellington Electricity supported our draft decision not to include application windows, and our view that reopener windows do not suit all types of reopeners (eg, catastrophic event) and can act as a barrier to reopeners.[117] Reopener windows may affect the ability of a regulated supplier to invest in the network (s 52A(1)(a)) and its ability to provide services at a quality that reflects consumer demands (s 52A(1)(b)), and those effects do not promote the Part 4 purpose more effectively than the alternative of not having reopener application windows.

Need for consultation

5.76 Our final decision is not to amend the EDB, GDB, GTB and Transpower IMs to prescribe when consultation is required and when it is not. The only information about the consultation requirements in the reopener IMs is in relation to the quality standard variation reopener in the EDB IMs. When applying in respect of this type of reopener, the EDB's proposal must demonstrate any consumer consultation that has been undertaken and the results of that consultation for our consideration.

5.77 Vector and Wellington Electricity submitted in favour of our draft decision to not prescribe consultation requirements in the IMs.[118] MEUG submitted in support of having customer consultation as part of the prescribed reopener process and that this would be consistent with testing that any changes to the price path are in the long-term benefit of end-users.[119]

5.78 Our view is that we do think it is necessary to amend the IMs to prescribe consultation. Since EDBs have the opportunity to engage early with the Commission on the reopener application, they can get an indication about next steps.

5.79 Section 52Q(1) of the Act requires the Commission to consult with interested parties before amending a s 52P determination in a material way. Most reopener requests are for a material change to the determination, and therefore require us to consult. As a reopener request would usually involve a material change to the DPP determination, we would usually consult on the application.

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[117] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 41.

[118] Vector "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 62; Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 36-37.

[119] Major Electricity Users Group (MEUG) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 5.

5.80 Aurora questioned the need for consultation in instances where one connecting customer is funding the majority of the connection costs.[120] We have introduced the large connection contract mechanism to deal with such situations provided all criteria are met, and if the supplier and contracting party opt to use that mechanism, negotiation of the contract will take place with the connecting customer. Consultation is not a requirement of the large connection contract mechanism (see Chapter 8 for more discussion of the large connection contract).

Modification and exemption provisions

5.81 Our final decision is not to amend the EDB, GDB, GTB and Transpower IMs to include a modification or exemption provision for DPP or IPP reopeners.

5.82 At our reopener workshop,[121] we sought feedback on the usefulness of including a modification or exemption provision that would apply to DPP IM provisions, as currently provided for in the CPP IMs for CPP applications. Feedback at the workshop was positive.

5.83 Our view is that the information we ask for in a reopener application is needed by us to be able to evaluate the proposal and therefore the status quo provides certainty for suppliers and promotes the s 52R purpose, more than introducing a modification or exemption provision for DPPs or IPPs (without detrimentally affecting the promotion of the s 52A purpose). We consider that the list of information required is not unduly long or onerous. Pre-application discussions with suppliers provide an opportunity for guidance to be provided on information required to satisfy the requirements.

Inclusion of a pre-application stage

5.84 Our final decision is not to amend the EDB, GDB, GTB and Transpower IMs to include a pre-application stage for the process of applying for a reopener.

5.85 At the reopener workshop,[122] we raised the idea of including a pre-application stage to the reopener process where suppliers would engage with us prior to submitting a reopener application. Powerco submitted in support of this idea.[123] In our draft decision, we proposed not to include a step like this as this is something that can be done informally, if appropriate, and does not need to be codified into the IMs. If it was added to the IMs, it may lengthen the process.

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[120] Aurora Energy "Submission on Price-quality path workshop" (20 December 2022), para 20.

[121] Commerce Commission "IM Review 2023: In-period adjustment mechanisms – Workshop 'Discussion slides'" (29 November 2022), slide 42.

[122] Commerce Commission "IM Review 2023: In-period adjustment mechanisms – Workshop 'Discussion slides'" (29 November 2022), slide 22.

[123] Powerco "Submission on Price-quality path workshop" (20 December 2022), p. 2.

5.86 Wellington Electricity and Vector supported our draft decision not to prescribe a pre-application stage.[124]

5.87 Rather than codify a pre-application stage, we have reviewed whether changes are required to the defining of reopener events to make them clearer for suppliers. This includes reopener thresholds, which are discussed in Chapter 7. We think clarifying the drafting regarding reopener events and the consideration and amendment stages, more effectively promotes certainty over the requirements and processes (and therefore the s 52R purpose and significantly reducing compliance costs and complexity without detrimentally affecting the promotion of the s 52A purpose), than formalising a pre-application stage.

Reopeners to support project or programme financeability

5.88 Our final decision is not to amend the EDB, GDB, GTB and Transpower IMs to include a reopener for the purposes of assessing programme financeability.

5.89 Vector submitted in response to our workshop and were supported by ENA's submission,[125] that the Commission should:[126]

> "introduce a re-opener to support financeability for specific projects (for example, by allowing suppliers to propose a different cashflow profile or rate of return) where current regulatory arrangements do not allow the project to be funded and this would result in sub-optimal outcomes for consumers"

5.90 These types of reopeners would require a change in IMs during the regulatory period to implement. Section 53ZB(1) prohibits default or customised price-quality paths being reopened within a regulatory period on the grounds of a change in an input methodology, aside from those changes as a result of an appeal.

5.91 An alternative approach considered was that the IMs could specifically allow an application for accelerated depreciation for financeability reasons.

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[124] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 41; Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 62.

[125] Electricity Networks Aotearoa (ENA) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 2.

[126] Vector – Cover letter – "Submission on Price-quality path workshop" (20 December 2022), para 20.

5.92 This has been considered within the section titled "We considered and rejected an option of depreciation loadings in DPPs to address financeability concerns" in the *Financing and incentivising efficient expenditure during the energy transition* topic paper.[127] There we outline that we consider that in the absence of evidence of a widespread, industry-wide financeability problem, CPPs remain the preferred means of enabling a price-quality path that better meets an individual supplier's particular circumstances, in line with s 53K.

5.93 Vector noted that the mechanism could apply where a full CPP application would not be justifiable for individual smaller scale projects.[128] We consider that assessing financeability for an individual project or programme would materially increase the complexity and compliance costs of the DPP reopeners, as it may require wider assessment of other aspects of an EDB's operations beyond the specific project to appropriately consider financeability. A whole business analysis is an element of a CPP, not the lower cost DPP reopener process. We consider this would therefore not be consistent with the purpose of DPP/CPP regulation under s 53K and be at odds with the IM Review overarching objective of significantly reducing compliance costs without detrimentally affecting the promotion of the s 52A purpose.

5.94 In its submission on our draft decision, Vector reiterated the points made in response to the Price-quality workshop.[129] We have considered the points raised by Vector and for the reasons outlined above, our final decision is to maintain our draft decision to not amend the EDB, GDB, GTB and Transpower IMs to include a reopener for the purposes of assessing programme financeability.

Allowing reopeners to be moved across regulatory periods

5.95 Our final decision is not to amend the EDB, GDB, GTB and Transpower IMs to allow price-quality path reopeners to be moved across regulatory periods, or to be extended between two regulatory periods. This will require the supplier to, either in the DPP process or via a subsequent reopener application, seek approval for the subsequent regulatory periods.

5.96 When price-quality path reopeners are approved by us, the price path is amended for the current regulatory period. The ‘approval’ only applies for the current regulatory period. It is foreseeable that any additional expenditure relating to a reopener could be delayed for various reasons, both within and outside of a supplier’s control. This might mean delivery of the investment carries over into the following regulatory period.

[127] Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023)

[128] Vector – Cover letter – "Submission on Price-quality path workshop" (20 December 2022), para 24.

[129] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 62.

5.97 Wellington Electricity submitted prior to our draft decision that reopeners should cover projects that bridge more than one regulatory period and that a reopener, which has been provided for in one regulatory period, should be able to apply in the next regulatory period as well without the need for the regulated supplier to make another application.[130]

5.98 Wellington Electricity stated in that pre-draft decision submission that “reopeners in their current form are of limited value because they have to be approved, the investment designed and built, and the final assets commissioned within the same regulatory period. Practically, this limits the use of reopens [sic] to smaller projects that can be started early in the regulatory periods so that they can be completed before the regulatory period ends.”

5.99 In setting a DPP we set a spend envelope but are not explicit about what it covers. The expenditure in the allowed revenue under a DPP is fungible, ie, the supplier has the freedom to prioritise the projects, programmes and expenditure it undertakes throughout the regulatory period.

5.100 The approval of a DPP reopener and the amended price path resets the spend envelope. It is then up to the supplier whether it chooses to deliver the project or programme of work that the reopener relates to, based on its business priorities. If the project or programme of work that the reopener relates to was deprioritised, this would not be reflected in its actual spend. If all else was equal, an underspend would result, with the ‘savings’ shared with consumers in future periods according to the IRIS retention rate.

5.101 The expenditure forecasts in a supplier’s annual AMP, or AMP update, detail the funding that the supplier considers it requires. This should include projects, programmes or categories of expenditure related to past reopeners that might have been deprioritised or deferred into future regulatory periods. We would set the DPP for the next regulatory period taking into account information disclosed in AMPs. Costs for non-delivered or partly delivered past reopeners would be subjected to the DPP expenditure setting approach that applies to all expenditure.

5.102 The ENA submitted that it is concerned about how much of a supplier’s “investment for decarbonisation will involve large multi-year projects which will extend over more than one regulatory period”.[131] However, despite the uncertainties and the need for change that will be faced by EDBs, we expect that the AMPs will include the necessary forecasts for multi-year projects and that no IM change is required.

[130] Wellington Electricity “Submission on Price-quality path workshop” (21 December 2022), pp. 6-7.

[131] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 4.

5.103 If the DPP we set does not include the roll-over of past reopeners, and the supplier considers that the expenditure is insufficient, it could apply for a subsequent reopener provided it has not exceeded the time limit prescribed in the definition of 'reopener event' (and other applicable criteria). A mechanism that allows rollover of reopeners between regulatory periods does not incentivise investment or efficiency improvements more than the status quo and therefore does not more effectively promote the s 52A purpose of the Act.

Allowing single CPP applications to cover multiple parties

5.104 Our final decision is not to amend the EDB, GDB and GTB IMs to allow a single CPP application to cover multiple parties.

5.105 In their submissions on our Process and issues paper, ENA and Orion proposed that the IMs should be amended to allow a co-joined single CPP application to address issues impacting multiple suppliers, resulting in a CPP for each impacted supplier.[132]

5.106 Vector disagreed with our draft decision. It submitted that this is a missed opportunity to streamline the CPP process.[133] However, the Act does not allow for one CPP application to cover multiple parties.

5.107 Although one CPP application cannot cover multiple parties under the Act, we consider that if there is a common issue that requires individual CPPs from multiple suppliers, there is nothing preventing those suppliers from collaborating on the work required to put together their respective CPP applications to minimise effort and for efficiency. We would be open to accepting common materials or analysis shared across multiple suppliers in consideration of CPP applications, for example, verification.

5.108 We note that a supplier is able to apply for an IM modification to or exemption from CPP application requirements which can help speed up the application process.

[132] Electricity Networks Association "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 16; Orion "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), para 118.

[133] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 237.

Allowing single reopener applications to cover multiple parties

5.109 Our final decision is not to amend the EDB, GDB and GTB IMs to allow a single reopener application to cover multiple parties.

5.110 ENA and Orion submitted on our Process and issues paper that a single reopener application covering multiple parties should be able to be made to reopen the price-quality path in response to situations that impact multiple suppliers concurrently.[134]

5.111 ENA and Vector submitted disagreeing with our draft decision. Vector submitted that it is a missed opportunity to streamline the reopener process.[135] ENA submitted this would simplify and lower costs by reducing duplication.[136] While allowing for joint reopener applications may lower costs in some instances, we do not think this would lower compliance costs sufficiently to justify changing our draft decision as the effect of a reopener on a supplier's price path will vary.

5.112 Although the Act does not expressly prevent a reopener application covering multiple parties to be made, our EDB, GDB and GTB IMs currently envisage that a supplier will apply for a reopener on its own behalf.[137]

5.113 The IMs do not prevent multiple suppliers working collaboratively on reopener applications to share information and minimise costs. However, the price-quality paths that are reset in response to reopeners are unique to each supplier and even if a reopener event occurs that affects most, or even all, suppliers, the impact on each supplier's business is likely to be different given their exposure to the event, location, and specifics of their networks. We are therefore of the view that allowing for a single reopener application for multiple parties would not promote the IMs purpose more effectively as it does not reduce compliance costs or complexity enough to justify changing the IMs (ie it would not do so more effectively than what is being implemented).

[134] Electricity Networks Association "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 16; Orion "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), para 118.

[135] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 237.

[136] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 4.

[137] For example, clause 4.5.6(1) of the *Electricity Distribution Services Input Methodologies Determination 2012,* refers to ""the EDB applies", rather than "an EDB or EDBs apply" and clause 4.5.5(1) of the *Gas Distribution Services Input Methodologies Determination 2012 (consolidated 9 September 2022), re*fers to "the GDB applies", rather than "a GDB or GDBs apply".

5.114 Although we are not amending the IMs so that they explicitly state that one reopener application can cover multiple parties, suppliers can work together and use some of the same information in their applications, where relevant. Where multiple suppliers supply the same information in their respective applications, the Commission may consider the information together but will separately assess whether each applicant’s price path needs to be adjusted.

Considering whether and how to amend the price-quality path

5.115 In its submission on the draft Transpower IM amendment determination, Transpower submitted that clause 3.7.10(1)(d) of the Transpower IM amendment determination should be deleted, as it repeats or has the same sense as clause 3.7.10(1)(c)(iii).[138]

5.116 We disagree with Transpower's submission. Clause 3.7.10(1)(c)(iii) refers to all event reopeners that are nominated by Transpower, whereas clause 3.7.10(1)(d) specifically applies to a Catastrophic event reopener and includes more specific requirements than clause 3.7.10(1)(c)(iii).

5.117 Under clause 3.7.10(1)(c)(iii), the Commission must have regard to the extent to which Transpower's planned capex and opex for the remainder of its regulatory period has been appropriately reviewed and reprioritised, whereas clause 3.7.10(1)(d) requires the Commission to consider the extent to which Transpower has reviewed its planned opex and capex and made the substitutions that are possible without adversely affecting its ability to meet the grid output targets associated with revenue-linked grid output measures.

5.118 The EDB, GDB and GTB Determinations do not have the equivalent of clause 3.7.10(1)(d) in their IMs relating to our consideration of whether and how to amend the DPP in response to a reopener application. This is appropriate, as clause 3.7.10(1)(d) refers to "grid output targets associated with grid output measures" which are specific to Transpower.

[138] Transpower "Submission on IM Review 2023 Transpower IM Draft Determination" (26 July 2023), p. 67.

Amending the price-quality path after consideration

5.119 Our final decisions are:

5.119.1 to not change the drafting of the E&D reopener, major capex projects reopener or the listed projects reopener events in the Transpower IMs:

5.119.1.1 Transpower submitted that the E&D reopener, major capex approvals and listed projects approvals should be included in the list of reopener events in the Transpower IM amendment determination.[139] It suggested the determination should list the events before describing all of the conditions for each.[140]

5.119.1.2 We disagree, the E&D reopener is already covered in the drafting of the IMs and does not require any further amendment. Major capex approvals and base capex approvals as a listed project are specifically dealt with in the IMs. The changes proposed by Transpower would complicate the reopener process, thereby not more effectively promoting the s 52R purpose.

5.119.2 to change the annual reopener process by adding that, in addition to reconsidering and amending the price path, the Commission may reconsider and amend the grid output targets, caps, collars and grid output incentive rates associated with revenue-linked grid output measures following approval of major capex or base capex as a listed project:

5.119.2.1 Transpower submitted to include (with respect to the Transpower IMs) "…as per current clause 3.7.5, potential to amend the (a) price path: or (b) grid output targets, caps, collars and grid output incentive rates associated with revenue-linked grid output measures, no more than is reasonably necessary to take account of the change in costs net of any insurance or compensatory entitlements, arising from major[capex], E&D reopener and Listed".[141]

[139] Transpower "Submission on IM Review 2023 Transpower IM Draft Determination" (26 July 2023), p. 69.

[140] Transpower "Submission on IM Review 2023 Transpower IM Draft Determination" (26 July 2023), p. 63.

[141] Transpower "Submission on IM Review 2023 Transpower IM Draft Determination" (26 July 2023), p. 69.

5.119.2.2 We agree with Transpower regarding this change, which will promote the purpose in s 52A more effectively by allowing appropriate adjustments to be made through the reopener process.

'Reopener event allowance' recoverable cost

Our final decision

5.120 Our final decision is to amend the IMs to introduce a 'reopener event allowance' recoverable cost in the EDB, GDB, GTB, and Transpower IMs, which enables these regulated suppliers to recover costs incurred as a result of any 'reopener event' up until the date the reconsidered price-quality path takes effect.

Problem definition

5.121 As part of the EDB DPP3 reset, the Commission introduced a recoverable cost called the 'reconsideration event allowance', permitting regulated suppliers to recover for expenditure resulting from the provision of false or misleading information, an Error event or Change event that was incurred from the date of the event until the reconsidered price-quality path took effect. The 'catastrophic event allowance' relates to allowance for the recovery of costs in responding to catastrophic events.[142]

5.122 The current recoverable costs for costs and impacts resulting from reopener events are inconsistent across electricity and gas. The EDB, GDB and GTB IMs allow for the recovery of a 'catastrophic event allowance',[143] while the EDB IMs also allow for the recovery of a 'reconsideration event allowance'. Currently, the GDB and GTB IMs do not include a recoverable cost for any 'reconsideration event allowance'.

Draft decision

5.123 Our draft decision was to amend the EDB, GTB and GDB IMs to introduce a 'reopener event allowance' recoverable cost, which enables EDBs, GDBs and the GTB to recover costs incurred as a result of any 'reopener event' up until the date the reconsidered price-quality path takes effect.

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[142] *Electricity Distribution Services Input Methodologies Determination 2012,* clauses 1.1.4(2) and 6.1.1(4).

[143] *Electricity Distribution Services Input Methodologies Determination 2012,* clause 3.1.3(1)(m); *Gas Distribution Services Input Methodologies Determination 2012,* clause 3.1.3(i); *Gas Transmission Services Input Methodologies Determination 2012,* clause 3.1.3(1)(j).

Reasons for our draft decision

5.124 We considered that our draft decision promoted the overarching objectives for the IM Review by:

5.124.1 reducing complexity and compliance costs through having one recoverable cost which covers all reopener events (as opposed to being split across different recoverable costs); and

5.124.2 more effectively promoting the s 52A(1)(a) purpose by maintaining incentives to invest through allowing regulated suppliers to be compensated for prudent and efficient costs in responding to reopener events (not just catastrophic events, as is the case under the GDB and GTB IMs).

5.125 We saw benefit in incorporating the 'catastrophic event allowance' into the 'reconsideration event allowance' to simplify the EDB IMs and create a clearer link between catastrophic events and reconsideration events – by making a catastrophic event a type or subset of a reconsideration event. We renamed this the 'reopener event allowance' to reflect that it covers all reopener events.

5.126 We also brought across the 'reopener event allowance' to the GDB and GTB IMs to:

5.126.1 enable GDBs and the GTB to recover costs resulting from all reopener events, not just catastrophic events; and

5.126.2 create cross-sector consistency between the EDB, GDB and GTB IMs.

5.127 We considered maintaining the status quo but determined that this does not deal with the difference between the EDB, GDB and GTB IMs and risks continuing uncertainty in the regulatory rules and requirements under the Act. In addition, extending the reopener event allowance to the GDB and GTB IMs promotes the Part 4 purpose more effectively than the status quo.

5.128 We also considered removing the allowances entirely, but we saw them as a useful tool to have as part of the reopener processes. The reopener event allowance allows for the recovery of expenditure between the time of the event and the point at which a reconsideration of the price-quality path takes effect.

Stakeholder views

5.129 Our draft decision was supported by PowerNet, Orion and Wellington Electricity.[144]

5.130 Transpower submitted that this allowance should also apply to it:[145]

> By not making this decision apply also to Transpower we assume the Commission has concluded this provision is already available to Transpower. Otherwise, Transpower should have this provision too. If the Commission decides against the event being a reopener event, these (sunk) costs should still be recoverable.

Analysis and final decision

5.131 Our final decision is to maintain our draft decision to introduce a 'reopener event allowance' recoverable cost for EDBs, GDBs and the GTB, but also extend this recoverable cost to apply to Transpower.

5.132 We agree with Transpower that the 'reopener event allowance' recoverable cost should apply to it.

5.133 The current Transpower IM allows Transpower to recover an amount specified by the Commission following reconsideration of the price-quality path for prudent net additional operating costs incurred in responding to a 'catastrophic event'[146]. This is analogous to the 'catastrophic event allowance' in the current EDB, GDB and GTB IMs.

5.134 As with GDBs and the GTB, this means that Transpower does not currently have a recoverable cost in relation to costs incurred in responding to other 'reopener events'.

5.135 We consider that, for the reasons outlined above in respect of our draft decision relating to EDBs, GDBs and the GTB, Transpower should be able to recover costs incurred as a result of any 'reopener event' up until the date the reconsidered price-quality path takes effect.

5.136 In particular, introducing a 'reopener event allowance' recoverable cost for Transpower:

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[144] PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 11.; Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 21; Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 45.

[145] Transpower "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 22.

[146] Commerce Act (Transpower Input Methodologies) Determination 2010, clause 3.1.3(1)(e).

5.136.1 more effectively promotes the s 52A(1)(a) purpose by maintaining incentives to invest through allowing Transpower to be compensated for prudent and efficient costs in responding to reopener events (not just catastrophic events)

5.136.2 ensures cross-sector consistency between the Part 4 IMs.

Chapter 6 Whether the DPP reopeners will cover future circumstances

Purpose and structure of this chapter

6.1 This chapter identifies the amendments we have made to the DPP price-quality path reopeners to provide greater ability to address forecasting uncertainty as a result of decarbonisation and resilience requirements and promote investment in energy efficiency and design side management.

6.2 Our decisions address the following key issues:

6.2.1 whether DPP reopeners provide adequate coverage for current and future supplier circumstances; and

6.2.2 whether current DPP reopeners provide for a sufficient range of solutions.

6.3 Our decisions cover:

6.3.1 Amendments to current reopener provisions

6.3.1.1 inclusion of opex.

6.3.2 Additions to reopener provisions

6.3.2.1 resilience; and

6.3.2.2 risk event.

6.3.3 Clarification of coverage

6.3.3.1 GAAP changes.

6.4 We also considered whether amendments needed to be made to the reopeners to cover electricity distribution system growth, connection costs, Local Government legislation, Government policy changes or legislation affecting others in the supply chain, escalation of costs, contingent projects and categories of expenditure.

Background

6.5 The IMs contain reconsideration provisions, which allow us to 'reopen' the DPP price-quality path. We refer to these as DPP reopeners. The reopeners allow us to respond in a timely way to material changes in the circumstances facing individual suppliers. DPP reopeners involve a lower level of scrutiny than a CPP application and may be more appropriate in circumstances that are targeted to address a specific problem, rather than a general problem. Before the IM Review there were ten DPP reopener provisions in the EDB, GDB and GTB IMs.

6.6 There are a number of common reopeners which apply across each of these sectors and many also apply to Transpower. There are also reopeners which are specific to the circumstances of individual sectors, and this is even more the case under the Transpower IPP IMs.[147]

6.7 During the next regulatory period,[148] regulated suppliers are likely to experience greater levels of uncertainty in relation to their future expenditure requirements due to different views on the speed, nature and location of decarbonisation activities, their use and availability of new energy sector technologies (the "energy transition") and increased resilience requirements.

6.8 For example, the Electricity Network Association (**ENA**) submitted following our December 2022 workshop that:

> The electricity sector is undergoing a once-in-a-century transformation. The pace, scale, and path of the transformation is and will remain uncertain. Government energy policy to support the transformation is in the early stages of development. The most impactful policies are likely to be the phase-out of fossil fuel use including, gas and coal. These scenarios should be covered by uncertainty mechanisms such as re-openers, contingent allowances, or wash-ups.[149.]

6.9 Chorus submitted in the early stages of the IM Review that:

> We support reviewing types/extent of re-openers to address the anticipated greater-than-normal uncertainty and provide greater flexibility – eg, from a transition to a low carbon emissions economy and associated changes in the demand.[150]

6.10 Regulated suppliers will face different challenges based on their network characteristics (eg, capacity availability) and underlying consumer drivers. They will also be dealing with high levels of supply chain disruption and a global drive for decarbonisation which raises concerns on the deliverability of significantly elevated expenditure.

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[147] Under s 53ZC of the Act we have wide discretion in setting an individual price-quality path like Transpower's IPP, but we must use the IMs that apply to the supply of services to which the individual price-quality path applies. Apart from including most of the common reopeners, the Transpower IPP IMs include specific reopeners that cover large build-ups in the EV account balance, the use of Enhancement and Development projects, and the reopening of the Transpower IPP for the price path impacts of approvals of Major Capex applications and approvals of Listed Project Base Capex applications.

[148] The next regulatory period for EDBs and Transpower is due to take effect from 1 April 2025. The next regulatory period for GDBs and GTB is due to take effect on 1 October 2026.

[149] Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022), response to question C3, p. 4.

[150] Chorus "Options to address the gap in CPI inflation correction" (11 July 2022), para 30c.

6.11 Table 6.1 summarises how we have extended the suite of DPP reopeners to address the key concerns raised by submitters. These amendments will better provide for the increasing role of opex-based solutions and mitigate concerns about the potential need for increased resilience expenditure.

Table 6.1 Assessment of reopener coverage

Circumstance	Coverage provided by current reopener	Final Decisions on IM changes	Location of further discussion on the IM changes
Inability to select the most appropriate/efficient solution	Partial coverage by Unforeseeable and Foreseeable major capex project and Capacity event reopeners - capex costs only	Extend current DPP reopeners by inclusion of opex (EDB, and GDB and GTB IMs)	Paras 6.12-6.30
Security of supply	No coverage provided	Extend current EDB DPP reopener by including resilience expenditure. Provide a new, separate GDB and GTB resilience expenditure DPP reopener	Paras 6.83-6.96
	Partial coverage Risk event reopener (GDB and GTB DPP only)	Provide new EDB Risk event DPP reopener	Paras 6.97-6.108
Clarification of coverage	Coverage by Change event reopener	Amend Change event reopener by clarifying GAAP and tax assessment process (EDB, GDB, GTB and Transpower IMs for DPP, CPP and IPP)	Paras 6.114-6.164

Amendments to current reopener provisions

Inclusion of opex

6.12 The current DPP Unforeseeable and Foreseeable major capex project reopeners (EDBs) and the DPP Capacity event reopener (GDBs and GTB) provide for the ability to reconsider a price path if identified capex costs meet the trigger conditions and the threshold. However, unlike other reopeners in the EDB, GDB, GTB and Transpower reopener IMs, opex solutions and costs are not covered by these reopeners, which may lead to a capex bias.

Our final decision

6.13 Our final decision is to amend the EDB Unforeseeable major capex project and the Foreseeable major capex project reopeners in the EDB IMs, by providing for predominantly opex solutions in relation to system growth, and by including opex consequential to the implementation of capex-based solutions, and capex consequential to the implementation of opex-based solutions.[151]

6.14 These changes are in respect of large system wide impacts and while we do not see an immediate need for them for GDBs and the GTB, they are consistent with the purpose of s 52A to make provision for the medium to longer term. Our decision is also to provide for these solutions for the Capacity event reopeners in the GDB and GTB IMs .

6.15 The Unforeseeable major capex project reopener and the Foreseeable major capex project reopener in the EDB IMs and the Capacity event reopeners in the GDB and GTB IMs have been amended by:

6.15.1 changing the defined term 'system growth capex' to include it in the new term 'system growth expenditure', to provide for recovery of the costs of a capex capacity investment or an opex solution (eg, through the procurement of flexibility services for EDBs);[152]

6.15.2 extending the covered expenditure to include opex that is directly associated with the implementation of a capex solution, providing the expenditure would not have been incurred but for that particular project or programme (ie, 'consequential opex'); and

6.15.3 extending the covered expenditure to include capex that is directly associated with the implementation of an opex solution, providing it would not have been incurred but for that particular project or programme (ie, 'consequential capex').

151 When an application for consequential opex is made, we expect the regulated supplier to sufficiently demonstrate why the opex increase is required by providing evidence supporting that increase and an explanation covering those consequential opex costs that are one-off costs and those that are ongoing costs.

152 We are also proposing to amend and expand the innovation allowance (IPA) into the ‘innovation and non-traditional solutions allowance’ to enable more scope to set a wider range of schemes to provide better incentives for innovation and non-traditional solutions, at DPP resets or when setting a CPP. These allowances are intended to provide funding for trials or relatively small-scale solutions. The scale, application and reporting requirements for these allowances would be detailed in the DPP (not in the IMs). More information on these allowances can be found in Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023), s 6b.

6.16 To better reflect their new scope, the names of the EDB Unforeseeable major capex project and Foreseeable major capex project reopeners in the EDB IMs have been amended to refer to them as the Unforeseeable large project reopener or Foreseeable large project reopener respectively.

Problem definition

6.17 The current DPP Unforeseeable and Foreseeable major capex project reopeners (EDB IMs) and the DPP Capacity event reopener (GDB and GTB IMs) are currently restricted to the recovery of capital expenditure (capex).

Stakeholder views at an early stage of the review

6.18 Some submitters stated in an early stage of the review, that restricting the DPP Unforeseeable and Foreseeable major capex project reopeners (EDB IMs) and the DPP Capacity event reopener (GDB and GTB IMs) to capex may mean that regulated suppliers do not make use of the most efficient solutions. For example, Vector said in response to our Process and issues paper:

> Currently some re-opener provisions are limited to capex only. We consider all reopener provisions should be neutral as to whether opex or capex (or a mixture of the two) is provided to ensure regulated businesses are able to adopt the most efficient solutions.[153]

6.19 Wellington Electricity also stated prior to the release of our draft decision that while reopeners are an effective tool for capturing unforeseen events like unexpected new customer connections, the mechanism needs to be refined:

> The current re-opener excludes opex expenditure. This restriction limits any network solution to traditional wire network designs and excludes using flexibility services that could provide a more efficient option. It also excludes the ability for an EDB to recover any related opex costs like insurance increases.[154.]

6.20 The exclusion of opex from some of the reopeners was also identified as a problem by the Electricity Network Association (ENA) before our draft decision:

> The current re-opener provisions exclude the recovery of opex. This is a significant oversight, as highlighted by the recent Unison re-opener decision. Opex must be included in all re-opener mechanisms to remove any potential capex bias and allow greater consideration of opex-based non-network solutions.[155.]

153 Vector "Submission on the Process and issues paper" (11 July 2022), p. 26.

154 Wellington Electricity – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 28.

155 Electricity Networks Association "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 15.

6.21 The ENA also submitted that:

> Non-network solutions can provide mechanisms to defer capex. Under the current IMs these solutions won't be able to be taken into account as regulated capex or opex. Consideration should be given to whether costs incurred to efficiently defer capex investment should be considered as part of reopener applications, if thresholds are met.[156]

Reasons for our draft decision

6.22 The EDB IMs currently provide for Unforeseeable and Foreseeable major capex projects in the DPP reopeners where the primary driver of the project or programme is to meet demand for connection capex, system growth capex, asset relocation capex or a combination of connection capex and system growth capex. The GDB and GTB IMs use similar terminology within the Capacity event DPP reopener.

6.23 We considered that the reopener IMs should, to the extent possible, minimise capex bias in order to be technology agnostic, and that extending the scope of solutions under the current reopeners to include alternative opex approaches will encourage regulated suppliers to use the most efficient solutions and promote energy efficiency and demand side management.

6.24 We considered that the system growth definition should include opex as an allowable alternative to capex. We have not extended connection capex or asset relocation capex in the same way, as it is our understanding that it would not be possible to provide an alternative to establishing a new connection with an opex solution, nor would it be possible to provide an opex solution in response to a request to physically relocate assets.

6.25 EDB submitters, in an early stage of the review, stated a desire to increase the use of flexibility services as an alternative to capex but have reflected that it is not clear how quickly this market will develop or whether the reliability and consistency of the service will meet their expectations and accordingly allow for the deferral of capex.[157] Wellington Electricity identified that:

> Flexibility services are currently immature – they have not been developed to the point that the industry understands how effective they will be at delaying network investment.[158]

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[156] Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022), response to question C5, p. 5.

[157] In the IM amendments we have introduced the following definition of 'flexibility' to describe flexibility services: "means the ability to modify energy generation injection or consumption patterns (or both)".

[158] Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022), response to question D1.

6.26 Submitters[159] argued that opex associated with a capex solution is often significant. We agreed and considered that opex that is incurred in connection with a capex project or programme and would not otherwise be incurred but for that project or programme, ie, "consequential opex", could be considered as part of an Unforeseeable large project, Foreseeable large project or Capacity event reopener application. For example, traffic control costs directly associated with the relocation of assets may be considered to be consequential opex. The on-going maintenance and operating costs of an asset would not be considered.

6.27 We also noted that there may be capex costs associated with implementation of an opex solution, such as flexibility services where they have been externally procured. An example is the installation and implementation of IT assets that can automatically communicate with (and respond to) an external flexibility services provider. We therefore considered that capex costs that are consequential to the implementation of an opex solution should also be able to be considered as part of reopener application.

Stakeholder views on the draft decision

6.28 Submitters on our draft topic paper welcomed our proposed amendment, recognizing that it would afford suppliers more flexibility and efficiency.[160]

Analysis and final decision

6.29 Our final decision is to amend the EDB Unforeseeable major capex project and the Foreseeable major capex project reopeners in the EDB IMs, by providing for predominantly opex solutions in relation to system growth, and by including opex consequential to the implementation of capex-based solutions, and capex consequential to the implementation of opex-based solutions.[161]

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[159] Aurora Energy "Submission on IM Review Process and Issues paper and draft Framework paper" (11 July 2022) para 72, Vector "Submission on the Process and Issues paper" (11 July 2022) , para 16.3, Unison "Submission on Price-quality path workshop" (20 December 2022) , response to question C5.

[160] Chorus "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 15-16; Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023) p. 24; Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), section 5.3.1; PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023) ,p.13; PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023) p. 15.

[161] When an application for consequential opex is made, we expect the regulated supplier to sufficiently demonstrate why the opex increase is required by providing evidence supporting that increase and an explanation covering those consequential opex costs that are one-off costs and those that are ongoing costs.

6.30 Providing for predominantly opex solutions in relation to system growth will promote the Part 4 purpose in s 52A more effectively by providing an incentive for EDBs, GDBs and the GTB to innovate and invest, to improve efficiency and to provide services at a quality that reflects consumer demands.[162] It will also provide incentives for EDBs, GDBs and the GTB to invest in energy efficiency and demand side management consistent with s 54Q of the Act (and the s 52A Part 4 purpose).

6.31 Allowing for the recovery of consequential opex (and the equivalent for capex in respect of an opex solution) will promote the Part 4 purpose more effectively. It will provide a greater incentive for EDBs, GDBs and GTB to invest, including in replacement, upgraded and new assets, which will promote the Part 4 purpose in s 52A, particularly the outcome described in s 52A(1)(a), more effectively.

Electricity distribution system growth

Overview

6.32 EDBs have stated that consumer demand will be uncertain over the next decade and that they will need to respond promptly when network capacity investment or system growth expenditure is required.[163]

6.33 We have seen various forecasts that indicate likely increases in electricity usage, which would have consequential impacts on system growth expenditure requirements over future periods. The ability of demand management services to mitigate the need to significantly expand the size and capacity of networks to cater for the potential increase in loads is currently unclear.

6.34 System growth covers network investment required for capacity reasons, to be able to connect and manage significant new demand for electricity. This includes rising demand for low carbon technologies as New Zealand increases its focus on decarbonisation, while maintaining network reliability and meeting the long-term interests of consumers.

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[162] Chapter 7 of this topic paper covers our approach to reopener thresholds. The threshold for opex solutions will be calculated based on lifetime solution costs, which are discounted into a net present value equivalent.

[163] System growth expenditure is defined in the EDB IM determination. It includes capex other than connection capex where the primary driver is either a requirement for additional capacity at a particular location or a change in the requirement for services as a result of new or emerging technologies. It also includes opex for flexibility services where the primary driver is a requirement for additional capacity at a particular location.

6.35 System growth largely relates to:

6.35.1 an increase in network capacity requirements at a particular location due to connections growth from:

6.35.1.1 multiple new connections (referred to as “general growth” in this section of the paper); and

6.35.1.2 a large individual new connection; and

6.35.2 changes in network requirements as a result of new or emerging technologies.

6.36 System growth expenditure is one of five primary drivers of the Unforeseeable major capex project and Foreseeable major capex project reopeners.[164] These reopeners were introduced as part of the 2019 EDB DPP3 reset.[165] These have been renamed as the Unforeseeable large project reopener and Foreseeable large project reopener through this IM Review.

6.37 The Unforeseeable large project reopener applies to projects or programmes that were not in an EDB's forecast used by the Commission to set a DPP, provided it was reasonable for those not to be included.

6.38 The Foreseeable large project reopener applies to projects and programmes that were forecasted but either not provided for, or only partly provided for in DPP allowances.

System growth due to general growth

Our final decision

6.39 Our decision for system growth reopeners in relation to general growth is not to amend the EDB DPP IMs to:

6.39.1 define “general growth” within system growth; or

6.39.2 specify the treatment of general growth in the Unforeseeable large project reopener or the Foreseeable large project reopener.

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[164] The other existing primary drivers of these reopeners are connection capex, asset relocation capex, and, a combination of connection capex and system growth expenditure. A new primary driver, introduced in this IM Review is resilience capex.

[165] Commerce Commission "Default price-quality paths for electricity distribution businesses from 1 April 2020. Final decision Reasons paper" (27 November 2019), para 6.64

Problem definition

6.40 System growth capex is relatively broadly defined within the current IMs. The IMs do not make a distinction between system growth due to multiple new connections and system growth due to a single large individual connection.

6.41 The May 2020 EDB IM amendment consolidated determination, which was amended in November 2019 ahead of the EDB DPP3 reset, does not include a "general growth" definition under system growth for either the Foreseeable or Unforeseeable major capex project reopeners (ie, the precursors to the Unforeseeable and Foreseeable large project reopeners).

6.42 In the 2019 EDB DPP3 Reasons paper we said that we did not intend for system growth, required as a result of general growth in demand due to decarbonisation, to be covered by the Foreseeable or Unforeseeable major capex project reopeners.[166]

6.43 The 2019 IM amendment reasons paper, published alongside the EDB DPP3 final reasons paper, stated in relation to the Unforeseeable major capex and Foreseeable major capex reopeners that:

6.43.1 the types of projects that would be viewed as most appropriate for a reopener are those that were forecast by the EDB prior to the DPP being set but were not provided for by the low-cost approach to DPP setting; and

6.43.2 a reopener application for a system growth project that had not been forecast by the distributor (EDB) before the DPP but arises due to general growth in demand that the EDB had not expected or taken into account would be unlikely to be successful.[167]

6.44 In this IM Review we have:

6.44.1 assessed whether we should further develop our 2019 policy decisions on general growth; and

6.44.2 reassessed whether general growth should be covered by EDB DPP reopeners and, if so, under what circumstances.

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[166] Commerce Commission "Default price-quality paths for electricity distribution businesses from 1 April 2020 Final decision Reasons paper" (27 November 2019), para 4.37 - 4.39.

[167] Commerce Commission "Amendments to Electricity Distribution Services Input Methodologies Determination Reasons paper" (26 November 2019), para 3.122-3.123.

Application to Gas pipeline businesses

6.45 System growth expenditure is available for GDBs and the GTB as a sub-category under the Capacity event reopener. The application of system growth DPP reopeners for general growth is not expected to be relevant for GDBs and the GTB. Accordingly, we have decided that we did not need to consider an amendment to the GDB and GTB IMs in relation to this issue.

6.46 The rationale of application of system growth reopeners in the Gas context as presented in the May 2022 Gas DPP3 Reasons paper is still appropriate.[168] We said in that paper that in investing in their networks for growth purposes, Gas suppliers needed to understand that these investments risked being stranded in future due to the expected fall in demand for piped natural gas. We explained that this stranding risk may mitigate supplier over-investment in growth and incentivise suppliers to seek greater contributions from new connecting parties including for wider network reinforcement.

6.47 We did not receive any submissions on the applicability of the general growth issue to gas pipeline businesses.

Draft decision and reasons for our draft decision

6.48 In our draft decision we were:

6.48.1 explicit in the reopener criteria of the Foreseeable large project reopener, that it allowed general growth only where the projects or programmes had been forecasted and appropriately evidenced in the AMP used for setting the DPP, but were not provided for in the DPP; and

6.48.2 explicit in the reopener criteria of the Unforeseeable large project reopener that it did not allow applications relating to general growth, which was a new term that we had introduced into the draft EDB IM Determination.[169]

[168] Commerce Commission "Amendments-to-input-methodologies-for-gas-pipeline-businesses-related-to-the 2022-default-price-quality-paths-Reasons-paper(30-May-2022), para 3.81.

[169] *Commerce Commission "Input methodologies review 2023 - [Draft] Electricity Distribution Services Input Methodologies (IM Review 2023) Amendment Determination 2023* [2023] NZCC [35]" (14 June 2023), clauses 4.5.10(1)(k)(ii) and 4.5.9(1)(m)(iii).

6.49 Our rationale for only allowing general growth under the Foreseeable large project reopener in our draft decisions was to achieve the following objectives:

6.49.1 encourage good planning;

6.49.2 provide reopeners for situations where the planning was appropriate but the investment need in the current period was uncertain; and

6.49.3 clearly identify where characteristics do not meet reopener requirements and better align with a CPP.

6.50 Our rationale for not providing for general growth under the Unforeseeable large project reopener was that this might disincentivise EDBs to plan and forecast well.

6.51 We reasoned in our draft decision that improving clarity about what is covered by a system growth reopener should promote s 52R of the Act more effectively by promoting certainty for suppliers in relation to the rules, requirements, and processes applying to the regulation (ie, the proposed EDB Unforeseeable and Foreseeable large project reopeners in the EDB DPP IMs), without detrimentally affecting the promotion of the s 52A purpose.

6.52 In our draft decision we concluded that increasing the capacity of networks to support connections could improve the quality of service to consumers and that should be encouraged. We considered that this would promote the Part 4 purpose in s 52A(1)(a) and (b) of the Act more effectively by incentivising suppliers to innovate and to invest in replacement, upgraded and new assets, and to improve efficiency and provide services at a quality that reflects consumer demands.

Stakeholder views on our draft decision

6.53 Nine submitters did not support our draft decision to restrict the inclusion of general growth to the Foreseeable large project reopener and to explicitly exclude general growth from the Unforeseeable large project reopener.[170] Key concerns raised by submitters were that:

[170] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 5; PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 12-13; Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023) p.23;;Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 45-46; Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 18-21; Horizon Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 14-21; Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023) para 47; Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 13 and Appendix D section 4; Aurora Energy "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), para 5.1-5.3.

6.53.1 scenarios such as faster than expected electrification due to external drivers might not be able to be covered under a Foreseeable large project reopener if these are not reflected in the AMP because of timing assumptions. Examples of external drivers quoted by submitters included the timing of the transition from gas to electricity, Government policy announcements and incentives, step changes in the development of technology, price breaks on electric vehicles, organic growth responding to an event and an external innovation that impacts electricity use.[171]

6.53.2 while general growth can be planned, there may be situations where some general growth is unforeseen and networks will not be able to plan for all general growth.[172]

6.53.3 because the AMP only captures investment required within a ten-year AMP planning window, general growth investment that currently falls outside of this ten-year window would not be reflected in the AMP, which would mean the investment would not be eligible for a reopener application in the future.[173]

6.54 Some submitters said the distinction between the Unforeseeable and Foreseeable large project reopeners should be removed, including to not limit general growth eligibility for future reopener applications.[174]

6.55 Aurora and Wellington Electricity were concerned about the impact of the draft decision on the integrity and confidence of the AMP forecasting process.[175] [176] They expressed concern that the requirement to identify potential general growth scenarios within AMPs may result in EDBs being overly conservative in their AMPs, unnecessarily inflating capex forecasts.

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[171] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 45-46; Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 18-21.

[172] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 5; Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 45-46.

[173] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023) pp. 45-46; Aurora Energy "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), para 5.1-5.3.

[174] Wellington Electricity "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), section 4.2 p. 12, Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 4; Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 47; Aurora Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 5.1-5.3.

[175] Aurora Energy "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), para 5.2.

[176] Wellington Electricity "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), section 4.2 p. 12.

6.56 Submitters also raised other points and queries for clarification, including:

6.56.1 that reopeners need to allow for general growth programmes of work in addition to projects, and queried the definition of "programme";[177] and

6.56.2 concern that bringing the upgrade of an asset forward earlier in the timeline would not be covered.[178]

Analysis and reasons for our final decisions

6.57 Our final decision is to make no change to the EDB DPP IMs to:

6.57.1 define "general growth" within system growth; or

6.57.2 specify the treatment of general growth in the Unforeseeable large project reopener or the Foreseeable large project reopener.

6.58 We consider the 2019 policy intent remains relevant, which was to:

6.58.1 encourage or incentivise EDBs to undertake better planning and forecasting; and

6.58.2 clearly identify where general growth projects and programmes would be more appropriate and better scrutinised as a CPP rather than a DPP reopener.

6.59 We have taken into account the above submitter views on our draft decision. We assessed the 2019 policy intent and the proposed implementation of it, as proposed in our draft decision and as suggested alternatively in submissions, against our IM Review overarching objectives. We now consider the 2019 policy intent remains appropriate and the proposed implementation in our draft decision would not better achieve our IM Review overarching objectives more than the status quo.

6.60 We have concluded that amending the EDB IMs to define general growth and specify the treatment of it in the Unforeseeable and Foreseeable large project reopeners would unnecessarily add complexity and not materially promote s 52R nor s 52A of the Act more effectively than the status quo. There is sufficient clarity in the current EDB IMs.

[177] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 45-46; Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023) pp. 18-21.

[178] Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 18-21.

6.61 Though not defined in the EDB IMs, general growth remains part of the system growth expenditure subcategory of the reopeners and is available for EDBs to apply to recover general growth expenditure, promoting the Part 4 purpose in s 52A (a) and (b). EDBs will still have incentives to invest in the capacity of their networks to support the growing need for electrification by consumers.

Better planning and forecasting

6.62 A reopener application evaluation process involves three stages:

6.62.1 the “trigger” stage, which evaluates whether reopener criteria have been met;

6.62.2 the “consideration” stage, which assesses whether to amend a price-quality path based on certain consideration factors; and

6.62.3 the “amendment” stage, which having decided to amend a price-quality path, decides the extent to which the price-quality path should be amended.

6.63 Our draft decision proposed a solution to achieve the 2019 policy intent of encouraging better planning and forecasting at the “trigger" stage, ie, the first stage. We proposed specifying eligibility/ineligibility for general growth within the Foreseeable and Unforeseeable large project reopener criteria by:

6.63.1 explicitly defining “general growth” within system growth;

6.63.2 explicitly including additional reopener criteria to make it clear that the Foreseeable reopener would cover general growth only where the projects or programmes have been sufficiently identified, outlined, and justified in AMP forecasts; and

6.63.3 explicitly excluding general growth from the Unforeseeable large project reopener criteria.

6.64 The current Foreseeable and Unforeseeable large project reopener criteria already include the consideration of whether a project or programme has been forecasted by the EDB:

6.64.1 The Foreseeable large project reopener considers projects and programmes as *eligible* for reopener application *only if these are forecasted;* and

6.64.2 The Unforeseeable large project reopener considers projects and programmes as *eligible* for reopener application *only if it was reasonable* for the EDB *not to have included* these in its forecasts.

6.65 Since the existing reopener criteria already include forecasting considerations, we consider that the 2019 policy intent of encouraging EDBs to undertake better planning and forecasting would still be achieved without the additional 'brightline' exclusion and inclusion clauses we had proposed in our draft decision:

6.65.1 An EDB would not be eligible to apply for any project or programme under the Unforeseeable large project reopener if it should have reasonably included the project or programme in its forecasts. The Unforeseeable large project reopener already includes this eligibility requirement as part of its existing criteria. The additional reopener criteria we proposed in the draft decision explicitly excluding general growth from the Unforeseeable large project reopener to incentivise EDBs to plan and forecast better duplicates this and are unnecessary to achieve our intention.

6.65.2 The Foreseeable large project reopener already includes the requirement that projects and programmes need to be forecasted for those to become eligible for a reopener application. The additional reopener criteria explicitly included in our draft decision to make it clear that the Foreseeable large project reopener would cover general growth only where the projects or programmes have been sufficiently identified, outlined, and justified in AMP forecasts is therefore unnecessary.

6.65.3 There is consequently no need for the term "general growth" to be defined or used in the EDB IMs.

General growth may be more appropriately considered under a CPP proposal rather than a reopener application

6.66 The 2019 policy decision intended that general growth scenarios that had not been forecast by the EDB before the DPP is set might be more appropriate for, and better scrutinised under, a CPP.

6.67 We have amended the IMs to include factors that will help us to consider whether a CPP is more appropriate for the circumstance rather than a DPP reopener. These consideration factors apply to all reopeners.[179] We discuss these consideration factors in Chapter 5.

[179] The Commission retains the discretion to decline a reopener application on the basis the reopener application is more appropriate as a CPP proposal through Clause 4.5.13(1)(d) of the EDB IMs which apply to all reopeners.

6.68 Our view is that, as a result of those new consideration factors, it is more appropriate to consider whether a general growth project or programme should be a CPP instead of a DPP reopener at the “consideration stage” of a reopener application rather than disallowing reopener applications for projects and programmes at the “trigger” stage through additional reopener criteria. We consider that this is a good use of the CPP consideration factors, and it achieves the 2019 policy intent.

6.69 Based on the analysis set out above, we have concluded that amending the EDB IMs to include specific treatment of general growth at the trigger stage of a reopener would not promote the s 52A and s 52 purposes more effectively than the status quo.

Our response to other submitter views

6.70 The majority of submitter views on general growth are addressed through our final decision to not restrict eligibility for general growth in the Unforeseeable large project reopener.

6.71 Table 6.2 sets out our responses to other general growth-related matters raised in submissions.

Table 6.2 Responses to other submitter views

View or query raised	Our response
Distinction between Foreseeable and Unforeseeable large project reopeners should be removed to not limit general growth eligibility for future reopener applications	Our view is that these reopeners should still exist as two distinct reopeners, as they have deliberately different qualifying criteria. The point raised about general growth eligibility is addressed by our final decision to not limit general growth in the Unforeseeable large project reopener.
Reopeners need to allow for general growth programmes of work in addition to projects. Queried definition of "programme"	The Unforeseeable and Foreseeable large project reopeners already allow for programmes of work to be included in addition to discrete projects. "Programme" is defined in the IMs as meaning "a group of related projects with a common purpose". Wellington Electricity and Unison have quoted examples in their submissions, which based on the limited description seem like they could be considered a "programme'. We consider that the assessment of whether a circumstance would meet the definition of a "programme" is best done on a case-by-case basis. A key consideration for a "programme" of work would also be whether the impact on the EDB's wider network is such that it should be a CPP application, instead of a reopener.
Concern that bringing the upgrade of an asset forward earlier in the timeline will not be covered	Unison's interpretation of our draft decision was than an upgrade of an asset needing to be brought forward to resolve an upcoming network constraint would not be covered. Our view is that Unison may have incorrectly understood that system growth expenditure is not available for network capacity growth unless the solution involved acquiring flexibility services. This is not the case. System growth expenditure includes both capex and opex for additional capacity required at a particular location.

System growth due to a large individual connection

Our final decision and reasons

6.72 Our final decision for system growth reopeners relating to a large individual connection is that IM amendments are not required. We received no submissions on this topic. The Foreseeable and Unforeseeable large project reopeners already provided for system growth expenditure for projects or programmes attributed to changes in large individual connections.

6.73 We consider that system growth expenditure required due to changes in large individual connections are appropriate to be provided for both Foreseeable and Unforeseeable system growth DPP reopeners. Large industrial connection requirements can arise quickly on a network and are accordingly more difficult to forecast.

6.74 Increasing the capacity of the network to support large individual connections could improve the quality of service to consumers and that should be encouraged. This promotes the Part 4 purpose in s 52A(1)(a) and (b) of the Act more effectively by incentivising suppliers to innovate and to invest in replacement, upgraded and new assets, and to improve efficiency and provide services at a quality that reflects consumer demands.

System growth due to a change in network requirements as a result of new or emerging technologies

Our final decision and reasons

6.75 Our final decision for system growth reopeners relating to a change in network requirements as a result of new or emerging technologies is that IM amendments are not required. We received no submissions on this topic. The Foreseeable and Unforeseeable large project reopeners (as they are now known) already provide for system growth capex for project or programmes relating to a change in network requirements as a result of the introduction of new or emerging technologies.

6.76 Allowing system growth capex for changes in network requirements for providing new or emerging technologies could improve the quality of service to consumers and that should be encouraged. This promotes the Part 4 purpose in s 52A(1)(a), (b), and (c) of the Act more effectively by incentivising suppliers to innovate and to invest in replacement, upgraded and new assets, and to improve efficiency and provide services at a quality that reflects consumer demands, while also enabling suppliers to share with consumers the benefits of efficiency gains via the new or emerging technology.

6.77 We note that system growth reopeners relating to new and emerging technologies are likely to be more challenging for the EDB to evidence and the Commission to assess.

6.78 In consideration of applications for reopeners based on emerging technology-projects that were not forecast, consideration will need to be given as to the certainty of expenditure requirements, particularly where these reflect services of a more anticipatory nature. We note the innovation and non-traditional solutions allowance may be more appropriate in some instances.

6.79 A CPP may be more appropriate than a DPP reopener where the impact of new technologies on the network and the associated expenditure requirement is significant, particularly where it is unique to that network. In that instance it may be difficult to assess this on a project or programme basis and maintain consistency with the expectation of a low-cost DPP.

Connection cost reopener

Our final decision

6.80 Our final decision is not to amend the IMs to allow for (create) a specific connection cost reopener and not to specify the scenarios or use cases to which the connection 'limb' in the Unforeseeable and Foreseeable large project reopeners would apply to.

Stakeholder views

6.81 Drive Electric submitted that the reopener provision for connection capex be extended to specifically include public charging connections (this issue was not identified or raised in pre-draft submissions).[180] Drive Electric's submission was made on behalf of its Charge Point Operator (CPO) subgroup who are customers of EDBs. It stated that the cost and processes associated with network connections are significant barriers to the establishment of a network of public charging stations.[181]

Analysis

6.82 Connection cost (ie, the cost of connecting to the network) is already within the scope of coverage of the Unforeseeable and Foreseeable large project reopeners.

6.83 Inclusion of a connection cost reopener would not more effectively promote the Part 4 purpose under s 52A of the Act or the IM purpose in s 52R, as system growth expenditure for specific growth is already provided for by the current IM drafting. So, adding a specific reopener would complicate the regime without any material improvement in coverage or clarity.

[180] Drive Electric "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 35.

[181] Ibid, para 1.

Additions to the reopener provisions

Resilience expenditure

6.84 The current Part 4 price-quality path DPP reopeners cover the occurrence of specific events (for example, a Catastrophic event or Change event), false or misleading information, quality standard variations, or are growth focussed. They do not cover resilience-related expenditure which may be needed to maintain reliability and security of supply.

Our final decision

6.85 Our final decision is to:

6.85.1 amend the EDB IMs to extend the drivers in the EDB Foreseeable and Unforeseeable large project DPP reopeners to include resilience-related expenditure; and

6.85.2 amend the GDB and GTB DPP IMs by including a new (separate) reopener for expenditure relating to resilience and asset relocation, and include within the expenditure for resilience and asset relocation, opex that is directly associated with the implementation of a capex solution provided it would not have been incurred but for that particular project or programme preceding it.[182]

Problem definition

6.86 Pre-emptive expenditure in relation to natural disaster readiness, climate change adaptation or cyber security preparedness is not covered by the current DPP reopeners. Such expenditure may reduce the effect of such events by maintaining reliability and security of supply.

Stakeholder views at an early stage of the review

6.87 Submitters advised that while increased costs associated with resilience expenditure are not unexpected, their magnitude and when such expenditure will be required may be unknown. Submitters also stated that there is no ability for suppliers to apply for a DPP reopener for a step change in resilience expenditure related to, for example, cyber security preparedness.

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[182] A resilience driver has also been added to Transpower's E&D base capex reopener: Commerce Commission "Input methodologies review 2023 - Final decision - Transpower investment topic paper" (13 December 2023), Chapter 11, issue 4.

6.88 The ENA submitted after our December 2022 workshop that:

> The need for expenditure by EDBs on cybersecurity, digitalisation and data is foreseeable, but the scale and timing of this expenditure is unknown. These costs are not entirely controllable by EDBs due to the discovery nature of some of these projects.[183.]

6.89 The ENA also submitted that:

> Resilience expenditure is an area that is not adequately covered by the IM re-openers. Provision for re-opening projects with a resilience driver should be made. [184]

6.90 Aurora submitted that increased expenditure on disaster readiness is likely to be foreseeable, but the expenditure growth may be greater than other opex growth, and therefore the Commission's 'step and trend' forecasting processes need to be responsive to this. In relation to cybersecurity costs, Aurora submitted that while under most circumstances these costs should be foreseeable, it is a fast-moving arena where new threats can emerge at short notice and can be expensive to counter. The relatively short timeline over which new threats may emerge makes cybersecurity a reasonable candidate for a new reopener category.[185]

6.91 In relation to electrification scenarios that need to be accounted for by reopeners, Vector identified climate change in terms of net zero expenditure and adaptation of resilience.[186]

6.92 Vector and Wellington Electricity submitted that resilience related investment programmes are not always foreseeable.[187] [188] Wellington Electricity identified that unforeseen investments could be driven from:

> local government sea level adaption programmes (sea level rise rezoning decisions) that also require electrical assets to be shifted [and] Wider earthquake resilience programmes that also capture electrical assets. An example of this type of unexpected investment was Wellington Lifeline Group earthquake readiness programme which drove WELL's single issue CPP.

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183 Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022), response to question c4, p. 4.

184 Electricity Networks Aotearoa (ENA) "Submission on Price-quality path workshop" (20 December 2022), response to question D4, p. 6.

185 Aurora Energy "Submission on Price-quality path workshop" (20 December 2022), para 30.

186 Vector "Submission on Price-quality path workshop" (20 December 2022), response to question C2, p. 5.

187 Vector "Submission on Price-quality path workshop" (20 December 2022),response to question C1, p. 4.

188 Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022), response to question C1, p. 4.

Stakeholder views on our draft decision

6.93 Our draft decision was to make these changes to reopeners for resilience-related expenditure. Stakeholders submitted their support, noting that this amendment would provide them with more flexibility.[189]

Analysis and final decision

6.94 In general, most resilience expenditure should occur as part of a regulated supplier's ordinary asset replacement and renewal programme of work. Accordingly, a resilience reopener is designed to cover a step change in proactive capex beyond the intended programme (at an EDB, GDB and GTB DPP reset) of asset replacement and renewal. It does not include regular asset replacement and renewal capex that is consistent with appropriate lifecycle and asset management planning, or regular expenditure for cybersecurity.

6.95 Resilience expenditure that qualifies for the resilience reopeners will be limited to a capex project or programme, and any consequential opex, that has a primary driver relating to "resilience capex". Resilience capex means capex for the purpose of preparing to mitigate or respond to one or more future events that, if the preparation is not done promptly, may have a significant impact on the suppliers' ability to maintain current security or quality of supply standards. However, it does not include the things described in the previous paragraph.

6.96 Our final decision is to:

6.96.1 amend the EDB IMs to extend the drivers in the EDB Foreseeable and Unforeseeable large project DPP reopeners to include resilience-related expenditure; and

6.96.2 amend the GDB and GTB DPP IMs by including a new (separate) reopener for expenditure relating to resilience and asset relocation, and include within the expenditure for resilience and asset relocation, opex that is directly associated with the implementation of a capex solution provided it would not have been incurred but for that particular project or programme preceding it.[190]

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[189] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 5; Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 23-24; PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 13; Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 46-47.

[190] A resilience driver has also been added to Transpower's E&D base capex reopener: Commerce Commission "Input methodologies review 2023 - Final decision - Transpower investment topic paper" (13 December 2023), Chapter 11, issue 4.

6.97 Extending the DPP reopeners for EDBs, and the inclusion of a new separate DPP reopener for GDBs and the GTB, to provide for resilience expenditure and asset relocation will more effectively promote the Part 4 purpose in s 52A of the Act, as it will provide incentives for innovation and investment and to provide services at a quality that reflects consumer demand, promoting the long-term benefit of consumers.

Risk events

6.98 The GDB and GTB IMs already include a risk event DPP reopener covering the deterioration of one or more assets which would have a materially adverse effect on a GDB's or the GTB's ability to meet its quality standards, and/or compromise safety for any person, equipment or the network. Although EDBs may be exposed to similar risks, there is not the equivalent DPP reopener in the EDB IMs.

Our final decision

6.99 Our decision is to confirm our draft decision to amend the EDB IMs to include a Risk event DPP reopener for expenditure relating to the deterioration of one or more of an EDB's network assets or their immediate surrounds, if this would have a materially adverse effect on the EDB's ability to meet its quality standards, and/or compromise safety for any person, equipment or the network.

Problem definition

6.100 The EDB IMs do not have a DPP reopener which covers risk management expenditure. The absence of a DPP reopener covering asset replacement and renewal expenditure to address significant safety or quality issues could result in EDBs delaying such expenditure, which may be detrimental to consumers.

Reasons for our draft decision

6.101 The addition of a Risk event DPP reopener in the EDB IMs would more effectively promote the Part 4 purpose by providing better incentives for suppliers to invest and provide services at a quality that reflects consumer demands.

6.102 The Risk event DPP reopener would enable necessary asset replacement and renewal to occur by:

6.102.1 minimising the exposure of consumers to potentially longer and more frequent power outages that could result from deferred or delayed investment; and

6.102.2 minimising the exposure of consumers, EDB staff and contractors to a safety incident as a result of degraded assets.

Stakeholder views on draft decision

6.103 Four submissions were received on our draft decision to amend the EDB IMs by including a Risk event DPP reopener:

6.103.1 Wellington Electricity expressed its strong support.[191]

6.103.2 PowerNet's submission related to the proposed threshold for the Risk event reopener, which is covered in the next chapter.[192]

6.103.3 Orion gave qualified support, but sought clarification as to whether the draft decision meant that EDBs do not have to apply for a CPP or whether this reopener would relate to slips or landslides that pose a risk.[193]

6.103.4 Unison raised issues with the drafting of the clause, which it claimed would undermine the intent of the reopener, as EDBs would not be able to calculate the potential impact of risk on quality standards.[194] It stated that where a deterioration is identified and it has or will have a materially adverse effect on the EDBs ability to meet its quality standards under the DPP, or an effect that compromises safety for any person, any equipment, or the network, or both a precise timetable is unrealistic. The emphasis should be on whether a prudent operator would rectify the risk.

Analysis and final decision

6.104 A risk event reopener covers the deterioration of an asset or their immediate surrounds eg, due to a manufacturing fault or when asset expenditure forecasts are found to be insufficient.

6.105 A risk event arises when the deterioration has occurred or is likely to occur. We have understood from Unison's submission that its points relate to the requirement on an EDB to demonstrate using a probabilistic risk assessment that deterioration is likely to occur. We agree that the clause would be more workable if that test was simplified. Our final decision is to remove the probabilistic risk assessment requirement from the reopener requirements. The deterioration will have occurred, or the EDB will have demonstrated that the deterioration is likely to occur.

[191] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), section 5.3.

[192] PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 17.

[193] Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 24.

[194] Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 86-87.

6.106 Unison stated that it is unreasonable to expect EDBs to demonstrate the effect the deterioration has or will have on the quality standards within the remainder of the regulatory period, as this period may differ in length between four years and 11 months to just one month. In response we amended the IM drafting by specifying the test as "likely to have" in place of "will have". We consider that the amendment and the removal of the requirement to use a 'probabilistic risk assessment' will allow an EDB to decide, based on circumstances, what evidence to use to satisfy the Commission that the deterioration is likely to occur.

6.107 After considering the feedback from submitters, we decided to change the drafting of the clause to make it more workable. These amendments to the EDB IMs will reduce complexity from the addition of this reopener without detrimentally affecting the promotion of the s 52A purpose.

6.108 Unison proposed a prudent operator test in its submission. We do not consider that this further amendment is needed, as a prudent operator test is already included in clause 4.5.11(1)(d)(iii) of the EDB IMs through the requirement for the remedial costs in clause 4.5.11(1)(d)(i) having to meet the 'expenditure objective'.

6.109 The expenditure objective, as defined, requires the EDB to apply a prudent EDB test of '… efficient costs ... that a prudent non-exempt EDB would require to … meet or manage the expected demand for [services] … during the DPP regulatory period … and over the longer term'. This means that prior to applying for a risk event reopener, an EDB will need to have concluded that the costs proposed to address the likely asset deterioration would be incurred by a prudent operator and the Commission will need to agree.

Clarification of reopener coverage

Catastrophic event

Our final decision

6.110 Our decision is to make no change to the Catastrophic event reopener criteria that must be met.

6.111 There were no draft decisions relating to this decision. In our draft topic paper the only draft decisions made to the Catastrophic event reopener covered an amendment to the reopener threshold and minor amendments so that the IMs better aligned with the Fibre IMs.

Stakeholder views

6.112 Transpower submitted that the Catastrophic event reopener criteria wording in the draft Transpower IM amendment determination sets too high a bar.[195]

Analysis and final decision

6.113 The intent of Transpower's proposed amendment to the clause is unclear. We have interpreted its proposal as meaning that it would prefer not all reopener criteria should apply. Transpower has split the catastrophic event criteria into two branches and has suggested that only one of those branches needs to be satisfied.

6.114 Our position is that all of the Catastrophic event reopener criteria need to be satisfied. Diluting the Catastrophic event reopener criteria by allowing part of the criteria to be optional would lower the bar for using the Catastrophic event reopener. Transpower has not provided any justification or evidence for its proposed change. Our view is that proposed change would not promote s 52A more effectively.

GAAP changes

6.115 Generally accepted accounting practice (GAAP) changes are outside of the control of a regulated supplier. The Fibre IMs include a GAAP change reopener. However, the EDB, GDB and GTB, and Transpower IMs do not currently include such a price-quality path reopener in relation to their DPP, CPP or IPP.

Our final decision

6.116 Our decision is to change how the impact of GAAP changes is assessed in the Change event reopener in the EDB, GDB and GTB DPP and CPP reopener IMs, and Transpower IPP reopener IMs to remove the potential for windfall gains and losses.

6.117 Our final decision confirms our draft decision.

Problem definition

6.118 Having a separate GAAP reopener in the Fibre IMs, but not specifically identifying GAAP changes in the EDB, GDB, GTB and Transpower IMs may give the impression that GAAP changes are not covered by the DPP, CPP or IPP reopener provisions in the EDB, GDB GTB and Transpower IMs. Both Vector and the ENA, for example, identified that the costs associated with a GAAP change are beyond the control of a regulated supplier and as such should be covered in the IMs.

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[195] Commerce Commission "Input methodologies review 2023 - [Draft] Transpower Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC[38]" (14 June 2023).

Stakeholder views at an early stage of the review

6.119 The ENA and Vector submitted that the costs that are outside the control of an EDB as a result of GAAP changes could be subject to a washup mechanism. Vector noted in its submission that:

> the Fibre IM contains a re-opener for GAAP changes although this is subject to a 1% threshold. In the context of EDBs and IRIS, we do not consider a threshold appropriate. Lower value cost changes could still result in perverse outcomes under IRIS.[196]

Reasons for our draft decision

6.120 For the purpose of this reopener, GAAP means the same as it is defined in the Financial Reporting Act 2013.[197] As a legislative requirement, a GAAP change may already be covered by the Change event reopener. We did not think that there was a need for a separate GAAP change DPP, CPP or IPP reopener in the EDB, GDB GTB and Transpower IMs.

6.121 However, we considered that it would be beneficial from the position of certainty if the Change event DPP, CPP or IPP reopener was amended to better reflect the potential impacts of a GAAP change as a Change event. We considered that a GAAP change may not necessitate a regulated supplier incurring a significant increase in costs, but changes may allow material changes in recognition criteria which could potentially result in windfall gains or losses.

6.122 GAAP and taxation changes can materially change the revenue path which a supplier would be entitled to, or the impacts of IRIS without significantly changing the costs incurred by the regulated supplier.

6.123 As GAAP changes can be applied by a regulated supplier before the change is a mandatory requirement, the impact of GAAP changes on a supplier's revenue which are calculated from the time the GAAP changes are given effect to by early adopters could also potentially result in windfall gains.

6.124 We proposed in our draft decision to amend the Change event reopeners in the EDB, GDB, GTB and Transpower IMs to include a subclause similar to clause 3.9.5 in the Fibre IMs and to defined a GAAP change as a change event that amounts to a change in the recognition or measurement (including timing) of operating expenditure, capital expenditure, assets, liabilities, forecast net allowable revenue, actual net allowable revenue, and taxation, including deferred tax.

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[196] Vector – Cover letter – "Submission on Price-quality path workshop" (20 December 2022), para 30.

[197] Financial Reporting Act 2013, sections 5 and 8.

6.125 We considered that clarifying and changing the approach to assessing the impact of GAAP changes would more effectively promote the Part 4 purpose under s 52A. One impact is that it would limit the ability of regulated suppliers to extract excessive profits. The approach would also promote the s 52R IM purpose more effectively (without detrimentally affecting the promotion of the s 52A purpose) by providing greater certainty for regulated suppliers and consumers in relation to the impact of GAAP changes.

Stakeholder views on draft decision

6.126 Submitters supported our draft decision to change how the impact of GAAP changes are assessed in the Change event reopener in the EDB, GDB, GTB and Transpower IPP IMs to remove the potential for windfall gains and losses.[198]

6.127 Transpower sought clarification as to whether a GAAP change would be implemented under either Transpower's interpretation of the GAAP change or an enforced change. Transpower stated that GAAP can be an area for interpretation and (unforced) changes in accounting policies can be frequent, eg, capitalisation policy.[199]

6.128 Transpower also asked, in relation to clause 3.7.5(3)(b) of the Transpower IM amendments determination, whether GAAP would be linked to revenue rather than the incentive mechanisms themselves:

> SAAS change net impact would presumably meet this (immediate opex offset by reduction in return on/depreciation at 20%) but it isn't immediately obvious (i.e. it's not as simple as saying - here is $10m of capex which is now opex). Also should reference SMAR.[200]

Analysis and final decision

6.129 Following consideration of the submissions, our final decision is to confirm our draft decision to change how the impact of GAAP changes are assessed in the Change event reopener in the EDB, GDB and GTB DPP and CPP reopener IMs and Transpower IPP reopener IMs to remove the potential for windfall gains and losses.

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[198] PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 14; Transpower "Submission on IM Review 2023 Draft Decisions" (19 July 2023),p. 41; Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 27.

[199] Transpower "Submission on IM Review 2023 Transpower IM Draft Determination" (26 July 2023), comment on clause 3.7.5(3).

[200] Transpower "Submission on IM Review 2023 Transpower IM Draft Determination" (26 July 2023), comment on clause 3.7.5(3)(b).

6.130 The GAAP changes that can be considered as meeting the reopener test are restricted to a change in a requirement that applies to the regulated suppliers under GAAP. Changes in a regulated supplier's interpretation of GAAP or the application of other GAAP changes that do not impose requirements will not meet the test.

6.131 Restricting the GAAP reopener test to the rules that regulated suppliers must comply with will more effectively promote the Part 4 purpose under s 52A. It will also promote the s 52R IM purpose more effectively without detrimentally affecting the promotion of the s 52A purpose by promoting certainty for regulated suppliers and consumers as to the rules and requirements that apply.

6.132 With respect to Transpower's comment on clause 3.7.5(3)(b) of its IMs: in principle, it is intended that when GAAP changes the treatment as between capital or revenue account, the recognition of the effect on the SMAR is assessed in the way identified by Transpower in its submission (ie, it is the immediate opex cost offset by the reduction in return on capital and depreciation). However, we do not consider that a change in Transpower's accounting policy that is not required by a GAAP change would meet the reopener test, which requires there to be "a change in a requirement that applies to Transpower (or other regulated suppliers) under GAAP". The specific SAAS change example provided was not a GAAP change.[201]

6.133 Restricting the GAAP reopener test to the rules regulated suppliers must comply with will promote the s 52R IM purpose more effectively (without detrimentally affecting the promotion of s 52A purpose) by promoting certainty for regulated suppliers and consumers as to the rules and requirements that apply.

6.134 We do not agree that the Transpower IMs should refer to the change event impacts on the forecast SMAR (ie, the smoothed revenue calculation). They currently refer to the forecast MAR (ie, the unsmoothed building blocks revenue calculations), which is consistent with our decision to exclude IRIS impacts from the measurement of the reopener threshold amounts. The forecast SMAR includes forecast recoverable costs, including forecast incentive amounts. We do not consider that changing the reopener threshold to refer to the impact on the forecast SMAR would promote the s 52A purpose more effectively than our final decision.

[201] The SAAS change referred to is a change in Transpower’s accounting policy as a result of the IFRS Interpretations Committee Agenda decision on Configuration or Customisation Costs in a Cloud Computing Arrangement (IAS 38 Intangible Assets) (Agenda Decision). The Agenda Decision states at p 2 that it does not add or change requirements in IFRS Standards, and as such does not satisfy either limb of the definition of GAAP set out in section 8 of the Financial Reporting Act 2013.

Government policy changes, Local Government rule changes or legislation affecting others in the supply chain

Our final decision

6.135 Our decisions are:

6.135.1 to not amend the EDB, GDB, GTB and Transpower IMs to include DPP, CPP or IPP reopeners to cover Government policy changes, Local Government policy changes or legislation affecting others in the supply chain, unless otherwise covered by the Change event reopener; and

6.135.2 to not amend in the EDB, GDB, GTB and Transpower IMs the Change event reopener (not GAAP change) to state that the Change event reopener includes new or changed requirements in a local authority plan, such as a district plan or regional plan, that apply to a regulated supplier, as we consider that this is already covered by the Change event reopener.

Problem definition

6.136 Submitters on our December 2022 Price-quality Path Workshop submitted that Government policy changes, Local Government rule changes and legislation affecting parties in the supply chain other than a regulated supplier can affect the cost of supplying a regulated service.[202]

Government policy changes

6.137 The Change event reopener covers a change in, or a new, legislative, or regulatory requirement that necessitates a regulated supplier incurring additional reasonable costs. Some submitters proposed that the scope of this reopener should be broadened to include Government policy relating to climate change, as such announcements can impact on regulated suppliers' behaviour, before or even without regulatory change occurring.

[202] Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022), response to question C3; Horizon Energy Group "Submission on Price-quality path workshop" (20 December 2022), response to question C4, p. 5; Unison "Submission on Price-quality path workshop" (20 December 2022) response to question C2, p. 4; Vector "Submission on Price-quality path workshop" (20 December 2022) response to question C1, p. 4; Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022), response to questions C1, C3 and C4; Aurora Energy "Submission on Price-quality path workshop" (20 December 2022), para 30.6; First Gas Limited "Submission on IM Review Process and issues paper and draft Framework paper" (13 July 2022), p. 4, para 3.1.1, p 11, para 3.1.4, pp. 11-12; Orion "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), para 19.2, p. 5.

Local Government rule changes

6.138 Some submitters thought that the scope of the Change event reopener should be amended to cover Local Government rules such as land use zone changes and amended traffic management requirements.

Draft decision

6.139 Our draft decision was to not amend the EDB, GDB and GTB IMs to include DPP reopeners to cover Government policy changes, Local Government policy changes or legislation affecting others in the supply chain, unless otherwise covered by the Change event reopener.

Reasons for our draft decision

Government policy changes

6.140 With respect to Climate change policy covered by the Climate Change Response Act 2002 (**CCRA**), the Commission is expressly allowed to take into account “the 2050 target”, “an emissions budget” and “an emissions reduction plan” under s 5ZN of the CCRA. The extent to which these provisions can be taken into account has been considered by the Commission. As outlined in the clarification note we issued, we can take into account the permissive considerations under s 5ZN of the CCRA where they are relevant and where doing so is not inconsistent with promoting s 52A of the Act.[203]

6.141 Future gas policy such as the Gas Transition Plan, the Emissions Reduction Plan and the Aotearoa NZ Energy Strategy, may affect the future of reticulated gas. However, until policies are announced we are not able to assess their impact, and we do not consider that the prospect of those policies justifies an expansion to the suite of the reopeners. The regulatory period for GDB and GTB was set at four years as part of DPP3 to enable us to review price-quality path settings at the earliest opportunity, ie, at the GDB and GTB DPP4 reset, after further gas policies are scheduled to be announced.

6.142 For our draft decision, we did not consider that the scope of the Change event reopener should be amended to include Government policy more generally. We considered costs arising in response to Government policy are more appropriately managed within reprioritisation of current expenditure allowances, as suppliers are able to make decisions on whether to respond or not. We considered that providing for a reopener covering Government policy changes would not promote the Part 4 purpose in s 52A more effectively as it would reduce the incentives for regulated suppliers to improve efficiency for the long-term benefit of consumers.

[203] Commerce Commission “IM Review 2023 - Decision-making Framework Clarification note- s5ZN of the CCRA” (21 December 2022)

Local Government rule changes

6.143 Local Government rules that are legislative or regulatory requirements and relate to the supply of a regulated service are already covered by the Change event reopener (provided that the reopener's other requirements are met).

Legislation affecting others in the supply chain

6.144 Legislation affecting others in the supply chain, but which does not have a direct impact on the regulated service provided by the regulated supplier, is not covered by the Change event reopener.

6.145 For our draft decision we were of the view that considering the impact of legislation affecting others in the supply chain would be complex, as regulated suppliers may use different models for delivering services, ranging from entirely in-house to nearly entirely outsourced. We thought it would be hard for a regulated supplier to determine whether the increase in costs from its provider is due to the change in legislative or regulatory requirements, or a cost increase has been simply attributed to it.

6.146 For our draft decision we were also of the view that providing for a reopener that covers legislation affecting others in the supply chain would not promote the Part 4 purpose in s 52A of the Act more effectively as it may reduce the incentives for regulated suppliers to improve efficiency for the long-term benefit of consumers. We considered that such a reopener would also not promote the s 52R purpose of the IMs more effectively, as it may reduce certainty for suppliers and consumers in relation to the rules, requirements and processes.

Stakeholder views on our draft decision

6.147 The ENA submitted on our draft decision:

> ENA is disappointed the Commission has rejected...the introduction of reopeners for Government policy, and rule changes that affect others in the supply chain. These common-sense mechanisms have been adopted in comparable regulatory regimes where regulators have recognised the benefits they deliver in building flexibility into their regimes to respond to events beyond the control of regulated businesses and consequently, enhance their ability to deliver long-term benefits to consumers.[204]

6.148 Alpine Energy said:

> However, we urge the Commission to reconsider its draft decision to not extend the DPP reopeners to capture central government policy and local government rule changes.[205]

[204] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 4.
[205] Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 10-11.

6.149 The Oxera submission on behalf of FirstGas, PowerCo & Vector on our draft decision commented:

> One option to deal with uncertainty over future government policies is to include re-openers within the regulatory regime. This would allow the NZCC to amend allowances within the regulatory period if certain triggers (e.g. in terms of policy changes) were met. Such re-openers are being used in other jurisdictions. For example, in Great Britain where Ofgem introduced a heat policy and a net zero re-opener in RIIO-GD2116, and in Northern Ireland where the Utility Regulator has introduced uncertainty mechanisms to release funding to enable flexibility and a degree of financeability to meet the Energy Strategy requirements.[206]

6.150 Vector submitted on our draft decision:

> 240. In our view, an appropriately qualified re-opener for government policy changes would be appropriate. Executive action (e.g. Ministers exercising statutory powers of decision) can have a significant impact on the cost of delivering regulated services and therefore in principle a re-opener should be available.
>
> 241. But our more significant concern is that the Commission currently construes the change event re-opener so narrowly it has no real effect. We were disappointed, for example, with the Commission's response to our health & safety re-opener request. The HSWA created a new legislative framework for health & safety and was intended to change the way suppliers approached their health and safety obligations. The introduction of that legislation prompted a sector-wide change in approach to working on live lines. The costs were immediate, significant and quantifiable. Nonetheless the Commission declined to re-open the price-quality path.
>
> 242. If the Commission is not going to extend the change event re-opener, it is important that the Commission at least:
>
> a. clarify what it understands to be the scope of the re-opener;
>
> b. confirm that any amendments to, or new, primary or secondary legislation (including, for example, the Electricity Industry Participation Code) constitute a "change in or a new" legislative requirement for which a re-opener is in principle available (subject to meeting the remaining criteria); and
>
> c. explain in more detail what the Commission considers are qualifying "regulatory" changes that trigger a re-opener.[207]

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[206] Oxera "Response to Commission's draft decision for IM Review 2023 on the cost of capital relating to gas sector" (report prepared for FirstGas, PowerCo & Vector, 19 July 2023), pp. 54-55.

[207] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 63-64.

Analysis and final decision

6.151 We considered three issues in response to the submissions on our draft decisions:

6.151.1 Whether to extend the scope of the Change event reopener to also include the effects on regulated suppliers of policy announcements by Central Government or by Local Authorities;

6.151.2 Whether to extend the scope of the Change event reopener to also include the consequential effects on regulated suppliers where legislation, rules or policy announcements have had effects on others who supply to regulated suppliers; and

6.151.3 Whether to bring "local authority plans" more explicitly into the scope of the Change event reopener.

6.152 The wording we used in the draft EDB IM amendment determination was:[208]

> "The first type is a change in a regulatory or legislative requirement that applies to an EDB as a result of new or amended **legislation**, or judicial clarification of the interpretation of legislation" (our emphasis added)

6.153 Vector submitted the following update to that proposed wording, which captures some but not all of the issues:[209]

> "a change in a regulatory or legislative requirement that applies to an EDB as a result of new or amended legislation and government or local government **policy or plan**". (our emphasis added)

6.154 On the first issue (ie, whether to extend the scope of the Change event reopener to also include the effects on regulated suppliers of policy announcements), there are questions of timing and certainty of the required response by a regulated supplier to policy announcements. The decision on when to act and by how much to act, if at all, would be in the hands of the regulated supplier and it would be very difficult to meet the IM purpose of certainty in s 52R. Our final decision is not to make an IM change in this respect.

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[208] Commerce Commission "Input methodologies review 2023 - [Draft] Electricity Distribution Services Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC [35]" (14 June 2023), clause 4.5.5(2) for EDB DPPs and clause 5.6.5(2) for EDB CPPs.

[209] We note that Vector omitted from the draft determination wording "judicial clarification of the interpretation of legislation".

6.155 On the second issue (ie, to include the consequential effects on regulated suppliers where legislation, rules or policy announcements have had effects on others who supply the regulated suppliers), we explained in our draft topic paper that these circumstances were not covered by this reopener, because the expression "regulatory or legislative requirement that applies to an EDB" means a requirement that applies directly to the EDB in its supply of regulated services.

6.156 We had already addressed above in our reasons for our draft decision the substance of submitter comments later received on how local authority plans apply to others who supply to regulated suppliers. There were no additional substantive points on this question in the submissions. We confirm as final our draft decision not to make an IM change in this respect.

6.157 On the third issue (ie, whether to bring "local authority plan" more explicitly into the scope of the Change event reopener), we have considered the merit in making this clarification. By "local authority plan" we mean regional plans and district plans under the Resource Management Act 1991, including natural and built environment plans under the Natural and Built Environment Act 2023 (NBE plans).

6.158 Our view is that a change will be in scope of the Change event reopener if:

6.158.1 by law, a regulated supplier has to comply with a requirement in a local authority plan;

6.158.2 the legal obligation on the regulated supplier arises as a result of a change relating to that plan itself (ie, a new or amended plan, or judicial clarification of the interpretation of the plan); and

6.158.3 that change results in material additional, direct costs for the regulated supplier.

6.159 We consider that the Change event reopener should be available in those circumstances because that would more effectively promote the s 52A purpose, particularly the incentive for suppliers to invest and improve efficiency in response to the new local authority requirement. We then considered whether any amendment to the IMs was needed to achieve that outcome. We have concluded that no change is required, as changes to local authority plans are appropriately covered by the existing drafting.

6.160 The Change event reopener applies to changes relating to "legislation". For the purposes of the Change event reopener, the term legislation is defined in section 5 of the Legislation Act 2019. That definition includes "secondary legislation".[210] As a result, the local authority plans are already covered to the extent they are secondary legislation.

6.161 The rules in NBE plans are secondary legislation.[211]

6.162 The regional plans and district plans under the Resource Management Act 1993 are secondary legislation to the extent they have "significant legislative effect".[212] The meaning of that term is set out in sections 161B and 161C of the Local Government Act 2002. It essentially means that those plans will be "legislation" under the Change event reopener to the extent they:

6.162.1 create, alter, or remove rights or obligations; and

6.162.2 determine or alter the content of the law applying to the public or a class of the public.

6.163 A change that is intended to be covered by the Change event reopener would meet those requirements. No amendment is therefore required to ensure local authority plans are covered by the Change event reopener.

6.164 We have considered whether we should amend the IMs to promote the section 52R purpose more effectively. We do not think so. While the change might provide more certainty in respect of local authority plans, it could make things less clear for other secondary legislation that qualifies via the "significant legislative effect" test. It might give rise to the implication that other instruments made by a local authority that would be legislation under that test are not legislation for the purposes of our reopener, which is not our intent.

6.165 Our final decision is therefore not to change the EDB, GDB, GTB and Transpower IMs to amend the Change event reopener (not GAAP) to expressly state that the Change event reopener includes new or changed requirements in a local authority plan, such as a district plan or regional plan, that apply to a regulated supplier, as we consider that this matter is already covered by the Change event reopener.

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[210] In response to a question from Vector, we confirm that the Electricity Industry Participation Code is "legislation" due to being secondary legislation - see section 33 of the Electricity Industry Act 2010.

[211] Natural and Built Environment Act 2023, section 167(2).

[212] Local Government Act 2002, section 161A(2).

General reopener/General escalating costs

Our final decision

6.166 Our decision is not to amend the EDB, GDB and GTB IMs to include a general DPP reopener or a general escalating costs price-quality path DPP reopener, including those costs driven by supply chain delays. Our final decision confirms our draft decision.

6.167 Submitters in early stages of the IM Review identified that they consider they will be faced with a wide range of escalating costs during the next regulatory period which will be difficult to forecast. [213]

6.168 Wellington Electricity and Vector reiterated their disagreement in their submissions on our draft decision.[214] We recognise suppliers may face challenges with escalating costs, as has recently occurred. We note the difference between inflation, which we consider is compensated for within the DPP regime, and costs which are increasing beyond the rate of inflation.[215]

6.169 We consider that suppliers' expenses, particularly those of EDBs, may rise quicker than inflation. The global growth of decarbonisation strategies, for example, is likely to increase the cost of key network infrastructure components and drive higher competition for skilled labour.

6.170 A general DPP reopener provision has the potential to address the concern that there may be significant increases in expenditure during the regulatory period, which is unanticipated and not able to be covered by one of our current DPP reopeners. A general DPP reopener provision could give the Commission discretion to reopen the price path for unanticipated circumstances not covered by current DPP reopeners.

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[213] Aurora Energy “Submission on IM Review Process and issues paper and draft Framework paper” (11 July 2022); Orion “Submission on IM Review Process and issues paper and draft Framework paper” (11 July 2022); Unison – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Vector “Submission on the Process and issues paper” (11 July 2022); Wellington Electricity – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022); Horizon Energy Group “Submission on Price-quality path workshop” (20 December 2022); Orion “Submission on Price-quality path workshop” (20 December 2022); Powerco “Submission on Price-quality path workshop” (20 December 2022); Vector “Submission on Price-quality path workshop” (20 December 2022).

[214] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 47-48; Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 68.

[215] Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023) , Chapter 5 covers our review of the IMs that relate to the method for forecasting inflation, and to exposure to inflation risk and associated compensation.

6.171 We maintain, however that neither a general DPP reopener nor a broad general escalating costs provision would provide suppliers with any certainty about the types of categories of expenditure which we may consider appropriate for a DPP reopener. Such a provision may also disincentivise suppliers from reprioritising and managing their costs.

6.172 We consider the lack of specificity about what may be covered by a general DPP reopener or a general escalating costs DPP reopener would not promote the IM purpose in s 52R of the Act more effectively as it would not provide certainty for suppliers and consumers in relation to the rules, requirements, and processes (without detrimentally affecting the promotion of the s 52A purpose) and may be inconsistent with s 52T because of the lack of detail.

Contingent project reopener

6.173 Further reopeners could be provided where project or programme allowances are provided contingent on certain events occurring. This may allow the regime to respond to increasing levels of uncertainty appropriately and in a timely way.

Our final decision

6.174 Our decision is not to amend the EDB, GDB and GTB IMs to include a new DPP contingent project reopener.

6.175 Our final decision confirms our draft decision.

Problem definition

6.176 At a DPP reset suppliers may be able to identify, in their AMPs, projects that need to be undertaken during the regulatory period but because the timing and costs are uncertain the projects are not provided for within the DPP.

6.177 It also may not be clear to suppliers which projects or programmes are either explicitly or implicitly included within the DPP. This may mean suppliers do not know which projects or programmes may be appropriate to apply for as a reopener. This may be a particular issue for those projects that are foreseeable and were forecasted within an AMP.

Analysis and final decision

6.178 In response to our Process and issues paper some submitters raised concerns about the uncertainties associated with reopener coverage. For example, First Gas submitted:[216]

> The Commission notes issues related to reopener mechanisms including: ambiguity in the evidential requirements for certain trigger events; and uncertainty about reconsiderations and the framework it applies when assessing whether to amend a price-quality determination. The current uncertainty means:
>
> We may expend management effort on considering whether or not to seek a reopener – the need to incur such costs is likely to be inefficient and could be avoided with greater clarity.

6.179 We considered whether particular projects which may be readily identifiable as being required, but which were dependent on an external trigger occurring during the regulatory period, could be identified as being a contingent project in a DPP Determination.

6.180 A contingent project reopener already exists in the EDB, GDB and GTB CPP IMs and we have used that for reference as to how a contingent project mechanism might work in a DPP context.

6.181 Specific identification of a contingent project within a DPP Determination could provide a clearer and more streamlined process allowing a supplier to access additional funding where an external trigger has been met indicating additional expenditure is required.

6.182 A contingent projects reopener would be subject to the same process steps as the other reopeners, but the application and assessment processes may be more straight forward as it should be clearer that:

6.182.1 a reopener event has occurred, given the trigger which drives the contingent project would be verifiable and stated within the DPP Determination; and

6.182.2 the relevant price-quality determination did not provide, either explicitly or implicitly, for the contingent project.

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[216] First Gas Limited "Submission on IM Review Process and issues paper and draft Framework paper" (13 July 2022), section 4.4.2, p. 21.

6.183 If the quantum of a project was able to be established with sufficient confidence and limited additional effort at the time of DPP reset, a quantum could also be included within the DPP Determination, removing the requirement for this to be assessed at the time of consideration of the reopener. In addition, other considerations within the reopener criteria that we think current documentation may have already addressed, may be identified within the DPP Determination on the same basis, expectations of reprioritisation etc.

6.184 We note a contingent project mechanism would not be able to be used for significant step changes in expenditure requirements or for projects which require significant scrutiny and necessitate more information, consumer consultation and verification requirements as required under a CPP. Further information regarding the types of projects or programmes which are better suited to a CPP application is outlined in Chapter 5.

6.185 While there are potential benefits to a contingent project reopener mechanism, we consider this would be difficult to operationalise in a DPP context, given the lower level of scrutiny which is provided compared to proposed expenditure under a CPP.

6.186 The potential application of this mechanism may also be limited, particularly, if the base expenditure for all suppliers and for all types of expenditure is not able to be thoroughly scrutinised at a DPP reset. Therefore, we may not know the extent to which the incremental expenditure is already accommodated in the DPP.

6.187 The potential application of the mechanism would also be limited to readily identifiable projects given creating an exhaustive listing of all possible contingent projects would not be consistent with a relatively low-cost DPP.

6.188 ENA, Powerco, Vector and Unison submitted on our draft decision paper that they still saw a need for this reopener but did not offer examples that would not already be accounted for under our current and new reopeners.[217] In addition to adding potential complexity and costs we therefore concluded that the reopener would not provide additional coverage as the types of projects which could be covered by a contingent project mechanism are already covered by the current Foreseeable major capex project reopener for EDB IMs (ie, the precursor to the Foreseeable large project reopener) and Capacity event reopeners for GDB and GTB IMs.

[217] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 4; PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 1; Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 62-64; Unison Networks "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), pp. 4-5.

6.189 Given these factors, we are not implementing a contingent project reopener within the DPP IMs for EDBs, GDBs and the GTB, as we consider it would not promote the Part 4 purpose in s 52A more effectively than the suite of other reopeners. The contingent project reopener would also not be consistent with the relatively low-cost purpose of DPP regulation, as specified in s 53K of the Act, given the complexity and cost that would likely be involved.

6.190 We note there is a distinction between a contingent project reopener and contingent allowances, which have been requested by some stakeholders. We have separately assessed the potential introduction of contingent expenditure allowances, which are a recoverable cost rather than a reopener, in Chapter 9.

Categories of expenditure

6.191 The price-quality path reopener IMs currently cover specific events or are focussed on expenditure on the network, rather than non-network expenditure. As outlined in Table 6.2 below, submitters, in the earlier stages of the IM review, suggested that the DPP reopeners should be amended to cover other wider particular material changes in cost structures.

Our final decision

6.192 Our final decision, which confirms our draft decision, is not to amend the price-quality path DPP reopener IMs to specifically address changes in the following specific categories of costs:

6.192.1 digitalisation and data;

6.192.2 monitoring of Low Voltage (**LV**) networks;

6.192.3 changes to a system operator’s approach to security;

6.192.4 software as a service (**SaaS**);

6.192.5 avoided cost of distribution payments (**ACOD**);

6.192.6 increased insurance premiums; and

6.192.7 Distribution System Operation (**DSO**) type services.

Reasons for our draft decision

6.193 Submitters, in earlier stages of the review, identified particular categories of costs which they considered are likely to be more volatile during upcoming regulatory periods.

6.194 Whilst we recognise there may be a level of uncertainty, regulated suppliers will forecast each of these cost elements and include these forecasts in their AMPs for the purposes of the DPP resets. Forecasted variations in forecast expenditure requirements will then be considered as part of the DPP reset process.

6.195 Unlike other DPP reopeners, these requests appeared to be based on uncertainty regarding the ability to accurately forecast costs in the short-term rather than an on-going requirement.

6.196 If there is variability in these costs during the regulatory period, then the variation in costs (and not the total costs themselves) may be able to be addressed by reprioritisation of expenditure.

6.197 We considered that providing for DPP reopeners for specific categories of costs would not promote the Part 4 purpose in s 52A of the Act more effectively, as it might reduce incentives to improve efficiency for the long-term benefit of consumers.

6.198 In Table 6.2 we identify the costs, which submitters, in earlier stages of the IM Review, said were so uncertain that specific DPP reopeners were needed.

Table 6.2 Response to submissions on specific material changes in cost structure

Cost structure issue	Final Decision	Reasoning
Digitalisation and data[218]	Not to amend the EDB, GDB or GTB IMs to include digitalisation and data reopeners.	Some of these costs will be outside of the control of suppliers, but a significant proportion will be driven by supplier choices, including network strategy and the use of outsourcing compared to internal delivery of services.

218 Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022), response to question C4; Vector "Submission on Price-quality path workshop" (20 December 2022), response to question C4, p. 6; Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022), response to question C4; Powerco "Submission on Price-quality path workshop" (20 December 2022), response to question C4, p. 5 (ENA and Powerco refer to digitisation and data).

Cost structure issue	Final Decision	Reasoning
Monitoring of LV network[219]	Not to amend the EDB IMs to include reopeners to cover LV monitoring	A step change in costs may be incurred, but it is not clear that on-going volatility is likely to be an issue or that funding at a DPP reset could not be sufficient.
System operator's approach to security[220]	Not to amend the EDB IMs to include reopeners to cover a system operator's approach to security.	Depending on the mechanism used to provide system security at the request of the system operator, this may be a regulatory change under the Change event DPP reopener.
Software as a service (SaaS)[221]	Not to amend the EDB, GDB or GTB IMs to include reopeners to cover SaaS.	Increased move to SaaS will increase opex costs, but this should be offset in part by reduction in capex in the longer term. We consider this is able to be forecasted and can be considered as part of a DPP reset process.
Avoided Cost of Distribution (ACOD)[222]	Not to amend the EDB IMs to include reopeners to cover ACOD payments	These payments should be reflected and well documented in the AMPs, and accordingly considered as part of the DPP reset process
Increases in insurance premiums[223]	Not to amend the EDB, GDB or GTB IMs to include reopeners to cover increases in insurance premiums	These costs should be reflected in the Report on forecast operational expenditure[224] and considered as part of the DPP reset process.

219 Horizon Energy Group "Submission on Price-quality path workshop" (20 December 2022), response to question C4, p. 6; Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022), response to question C4.

220 Vector "Submission on Price-quality path workshop" (20 December 2022), response to question C3, p. 6.

221 Vector "Submission on Price-quality path workshop" (20 December 2022), response to question C5, p. 7.

222 Horizon Energy Group "Submission on Price-quality path workshop" (20 December 2022), response to question C5, p. 6.

223 Wellington Electricity "Submission on Price-quality path workshop" (21 December 2022), response to question C4.

224 *Electricity Distribution Information Disclosure Determination 2012*, schedule 11b.

Cost structure issue	Final Decision	Reasoning
DSO type services[225]	Not to amend the EDB IMs to include reopeners to cover the costs of preparing for DSO type services	Insufficient evidence in submissions that adding the proposed reopener would achieve our IM Review overarching objectives, taking into account the extent to which the costs are forecastable or controllable. Also there is an issue of whether DSO type services are a regulated service under s 54C(1) (or are an input attributable to the regulated service).

Other solutions considered

6.199 There may be categories of expenditure where suppliers are less likely to be able to provide robust justification to support a step change to expenditure as part of a DPP reset, but where material cost increases may occur during a DPP regulatory period.

6.200 Extending the scope of DPP reopeners to cover more costs could recognise the difficulty in forecasting certain specified classes of costs.

6.201 Specific material changes in costs are likely to be clearest at the time of setting a DPP. We therefore considered whether it was possible to provide for categories of expenditure within the current Foreseeable major capex project reopener (EDBs) and Capacity event reopener (GDBs and GTB), with the specific categories defined within a DPP Determination.

Analysis and final decision

6.202 In the submissions we received on our draft topic paper, submitters acknowledged that these categories of expenditure (identified above) may be considered as part of the next DPP reset.[226] It would be premature for the Commission to consider these costs as reopeners at this stage, especially considering that some of the costs are new functions which add a layer of uncertainty.

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[225] Vector "Submission on the Process and issues paper" (11 July 2022), para 142, p. 36.

[226] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 247-250, Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 24,Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), section 5.3.7.

6.203 The ENA identified three steps to address uncertainty and recommended that the Commission adjust the existing reopener structures (step 1), add uncertainty mechanisms (step 2) and adjust the IRIS (step 3) (if material problems remain after the completion of steps 1 and 2).[227] New re-opener triggers for digital specific or regulatory change were identified as two of the additional uncertainty mechanisms identified in Step 2. The ENA stated that the addition of a trigger for digital specific or regulatory change uncertainty mechanism would improve efficiency and the ability to address uncertainty by giving clarity on the reopeners for digital-type expenses.[228]

6.204 A general categories of expenditure reopener, would not be consistent with the requirement in s 52T(1)(c)(ii) of the Act that the IMs identify the circumstances in which price-quality paths may be reconsidered. It would not promote the IM purpose in s 52R more effectively, as it may reduce certainty for suppliers and consumers in relation to the rules, requirements and processes under Part 4.

6.205 Vector and Wellington Electricity both requested that if some of the categories of expenditure are not covered or provided for by a reopener, that the Commission should ensure that these costs are provided for in DPP4 allowances. We recognise this and we note that suppliers also have a role in providing well-justified expenditure forecasts to enable such costs to be considered for provision in DPP allowances. Suppliers can also reprioritise expenditure to meet these costs.

[227] The ENA identified that the three steps were hierarchical and interdependent and that the need for steps two and three is dependent on the success of step one: Electricity Networks Aotearoa (ENA) "Further submission to the Commerce Commission on Uncertainty Mechanisms" (3 May 2023), p. 1-2.

[228] Electricity Networks Aotearoa (ENA) "Further submission to the Commerce Commission on Uncertainty Mechanisms" (3 May 2023), p. 5.

Chapter 7 Reviewing our approach to reopener thresholds

Purpose and structure of this chapter

7.1 This chapter sets out the reasons for our final decisions regarding our approach to thresholds for the EDB, GDB, GTB and Transpower price-quality path reopeners.

7.2 The decisions we have made address these issues:

7.2.1 whether the current lower reopener thresholds are appropriate;

7.2.2 whether the lower reopener thresholds should be applied cumulatively;

7.2.3 whether the current upper reopener thresholds that apply are appropriate; and

7.2.4 how thresholds should apply for any new reopeners or reopeners with increased scope.

Overview on reopener thresholds

7.3 We have a set of materiality thresholds in the reopener provisions that establish where it would, or would not, be appropriate to consider an amendment to the price-quality path.

7.4 Reopeners have a minimum/lower threshold because suppliers should be able to manage relatively small changes in expenditure requirements within the price path we have set for them. We set the levels of the lower thresholds to ensure that the benefits of the reopeners will outweigh the administrative and compliance costs associated with suppliers making reopener applications and us assessing those applications.

7.5 Upper thresholds have existed for some EDB, GDB and GTB reopeners, because it was our view that larger projects and programmes that are out of step with historic expenditure or forecasts require a level of scrutiny that is not consistent with DPPs, and a CPP would be more appropriate than a DPP reopener. The discussion on upper thresholds commences at paragraph 7.69.

Lower Materiality Thresholds

7.6 In our 2023 IM Review Process and issues paper we said we would review our current policy on the use of reopener lower materiality thresholds and consider how that policy would apply to any new reopeners.

7.7 For lower materiality thresholds, we assessed:

7.7.1 whether the test which applies for the calculation of the materiality threshold is appropriate;

7.7.2 the appropriateness of the lower thresholds for the different reopeners; and

7.7.3 whether the lower thresholds should be applied cumulatively.

Our final decisions

7.8 Our decisions on the reopener lower thresholds for EDBs, GDBs, the GTB and Transpower are to:

7.8.1 change the basis for establishing the threshold for the Catastrophic event reopener from an 'impact on revenue' test, to an 'incurred cost' test:

7.8.1.1 For EDBs the threshold is that the remediation costs (ie, capex or opex or both) incurred during the regulatory period in responding to the reopener event exceeds 1% of Forecast Net Allowable Revenue (**FNAR**) for the regulatory period, or $5 million for Vector Limited and Powerco Limited, or $2.5 million for all other EDBs;

7.8.1.2 For GDBs and the GTB the threshold is that the remediation costs (ie, capex or opex or both) incurred during the regulatory period in responding to the reopener event exceeds $100,000 for GasNet Limited or $2 million for all other GDBs and the GTB; and

7.8.1.3 For Transpower the threshold is that the remediation costs (ie, capex or opex or both) incurred in responding to the reopener event exceeds $5 million.

7.8.2 change the basis for establishing the threshold for the Change event reopener, but not that relating to Generally Accepted Accounting Practice (**GAAP**) changes, from an 'impact on revenue' test, to an 'incurred cost' test:

7.8.2.1 For EDBs the threshold is that the additional reasonable costs (capex, opex or both) incurred in the regulatory period in responding to the event exceeds 1% of FNAR for the regulatory period, or $5 million for Vector Limited and Powerco Limited, or $2.5 million for all other EDBs;

7.8.2.2 For GDBs and the GTB the threshold is that the additional reasonable costs (capex, opex or both) incurred in the regulatory period in responding to the event exceeds $100,000 for GasNet Limited or $2 million for all other GDBs and the GTB; and

7.8.2.3 For Transpower the threshold is that additional reasonable costs (capex, opex or both) incurred in responding to the event exceeds $5 million.

7.8.3 maintain the current 'impact on revenue' test for the Error event reopener threshold for EDBs, GDBs, the GTB and Transpower, but change the threshold to $100,000 for errors related to the price path for all entities;

7.8.4 retain the current '1% of FNAR revenue' threshold applied using an incurred cost test for the EDB Foreseeable large project and Unforeseeable large project reopeners, and raise the current total cost (capex and opex) dollar thresholds to $5 million for Vector Limited and Powerco Limited, and $2.5 million for all other EDBs;

7.8.5 change the 'relevant expenditure' test for the Capacity event reopener threshold for GDBs and the GTB to include consequential opex; and

7.8.6 for GDBs and the GTB, align the expenditure components comprising their reopener lower thresholds with the components in the relevant EDB reopener thresholds and retain the current lower threshold values which apply to the Capacity event, Risk event and Unforeseen projects reopeners.

7.9 We have also decided:

7.9.1 not to implement a reduced threshold for 'high consumer benefit' projects; and

7.9.2 not to implement a change in requirements to specifically allow for the cumulative application of any of the lower thresholds.

Summary of changes to lower materiality thresholds

7.10 Table 7.1 is a simplified view of the changes to the lower thresholds for the current reopeners for EDBs, GDBs, GTB and Transpower. The IM Determinations reflect the details of how values should be calculated and include more than are set out in this table.

Table 7.1 Current reopeners showing changes in the lower thresholds

Reopener	Current lower threshold	Final decision threshold
Quality standard variation (EDBs) - DPP only	No dollar value. Test is whether it better reflects the realistically achievable performance of the EDB.	No change
False/misleading information reopener (EDBs, GDBs, GTB, Transpower)	None	No change
Catastrophic event and Change event- not GAAP change (EDBs)	Requires costs with impact on price path of 1% of FNAR for disclosure years in which the costs will be incurred.	The sum of total expenditure incurred in response to the event (net of any insurance or compensatory entitlements) exceeds: 1% of EDB's FNAR for the DPP regulatory period; or $5 million for Vector Limited and Powerco Limited or $2.5 million for all other EDBs
Catastrophic event and Change event - not GAAP change (GDBs, GTB)	Requires costs with impact on price path of 1% of FNAR for disclosure years in which the costs will be incurred.	The sum of total expenditure incurred in response to the event (net of any insurance or compensatory entitlements) exceeds: $100,000 for GasNet Limited or $2 million for all other GDBs and GTB
Catastrophic event and Change event – not GAAP change (Transpower)	Requires costs with impact on price path of 1% of forecast MAR for disclosure years in which the costs will be incurred.	Sum of total expenditure incurred in response to the event (net of any insurance or compensatory entitlements) exceeds $5 million.

Reopener	Current lower threshold	Final decision threshold
Error event - quality (EDBs, GDBs, GTB, Transpower)	No threshold	No change
Error event - price path (EDBs, GDBs, GTB, Transpower)	Impact on price path of 1% of FNAR (EDB and GTB); allowable notional revenue (GDB); or forecast MAR (Transpower) for affected disclosure years.	Revenue test - whether the impact of the error on FNAR for EDBs and the GTB, allowable notional revenue for GDBs, or forecast MAR for Transpower exceeds $100,000
Unforeseeable major capex project (now Unforeseeable large project) (EDB) - DPP only	Incurred capex exceeds 1% of EDB's FNAR for the DPP regulatory period; or $2 million (whichever is lower)	For an opex solution for system growth, discounted lifetime solution costs plus consequential capex For all other cases, forecast total value of commissioned assets (net of forecast capital contributions) for the project or programme plus forecast consequential opex for the DPP regulatory period Exceeds 1% of that EDB's FNAR for the DPP regulatory period; or $5 million for Vector Limited and Powerco Limited or $2.5 million for all other EDBs
Foreseeable major capex project (now Foreseeable large project) (EDB) - DPP only	Incurred capex exceeds 1% of EDB's FNAR for the DPP regulatory period; or $2 million (whichever is lower)	For an opex solution for system growth, discounted lifetime solution costs plus consequential capex For all other cases, forecast total value of commissioned assets (net of capital contributions) for the project or programme plus forecast consequential opex for the DPP regulatory period Exceeds 1% of that EDB's FNAR for the DPP regulatory period; or $5 million for Vector Limited and Powerco Limited or $2.5 million for all other EDBs

Reopener	Current lower threshold	Final decision threshold
Capacity event (GDBs, GTB) - DPP only	Sum of incurred capex exceeds $100,000 (GasNet) or$2 million (other GDBs and GTB)	Forecast total lifetime solution costs in respect of an opex solution plus any consequential capex, or, in other cases, the forecast total value of commissioned assets (net of capital contributions and forecast capex included in the DPP) plus forecast consequential opex for the DPP regulatory period, is at least: $100,000 (GasNet); or $2 million (other GDBs and GTB)
Risk event (GDBs, GTB) - DPP only	Sum of incurred costs exceeds at least $100,000 (GasNet)/$2 million (other GDBs and GTB)	Sum of incurred opex, capex or both exceeds at least $100,000 (GasNet); or $2 million (other GDBs and GTB)
Unforeseen project (EDB, GDB, GTB) - CPP only	Sum of forecast costs exceeds 10% of annual revenue in most recent completed disclosure year	No change
Major transaction	10% opening RAB value	No change
CPP Contingent project (EDBs, GDBs, GTB) - CPP only	Incur costs >10% of Annual Revenue	No change

Problem definition

7.11 We assessed whether the current lower reopener materiality thresholds appropriately reflected when it may be appropriate to reconsider a price-quality path.

7.12 This included assessing whether the logic of the various threshold tests is appropriate, whether having different threshold values applying to different suppliers is appropriate and the appropriateness of the value of those thresholds.

Stakeholder views

7.13 Submissions in the earlier stages of the IM Review on the lower reopener thresholds included:

7.13.1 One submitter argued that the reopener lower thresholds favour smaller suppliers and result in larger suppliers absorbing significant costs, suggesting that the scaled element of the threshold to % of revenues could be removed, and the absolute value threshold should be lowered from $2 million to $0.5 million;[229]

7.13.2 One submitter stated that the 1% of net allowable revenue threshold may not capture expenditure that is below the threshold but has a high impact and value for consumers;[230] and

7.13.3 Several submitters asked for the lower threshold of $2 million to be applied cumulatively for multiple projects.[231]

Draft decisions

7.14 Our draft decisions on the reopener lower materiality thresholds for EDBs, GDBs, the GTB and Transpower were to:

7.14.1 change the basis for establishing the lower threshold for the Catastrophic event reopener from an 'impact on revenue' test, to an 'incurred cost' test:

7.14.1.1 For EDBs the threshold is that the total cost incurred in responding to the reopener event exceeds either 1% of Forecast Net Allowable Revenue (FNAR) for the regulatory period, or $5 million for Vector Limited and Powerco Limited, or $2.5 million for all other EDBs;

7.14.1.2 For GDBs and the GTB this threshold is that the total cost incurred in responding to the reopener event exceeds $100,000 for GasNet Limited or $2 million for all other GDBs and the GTB; and

[229] Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), para 69.

[230] Vector "Submission on Price-quality path workshop" (20 December 2022), response to question B1; Vector – Cover letter – "Submission on Price-quality path workshop" (20 December 2022), paras 5 -7.

[231] Orion "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), Para 110; Unison – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), para 46.

7.14.1.3 For Transpower the threshold is that the total cost incurred in responding to the event exceeds $5 million.

7.14.2 change the basis for establishing the lower threshold for the Change event reopener, not relating to Generally Accepted Accounting Practice (GAAP) changes, from an 'impact on revenue' test, to an 'incurred cost' test:

7.14.2.1 For EDBs the threshold is that the total cost incurred in responding to the event exceeds the lower of 1% of FNAR for the regulatory period, or $5 million for Vector Limited and Powerco Limited, or $2.5 million for all other EDBs;

7.14.2.2 For GDBs and the GTB the threshold is that the total cost incurred in responding to the event exceeds $100,000 for GasNet Limited or $2 million for all other GDBs and the GTB; and

7.14.2.3 For Transpower the threshold is that the total cost incurred in responding to the event exceeds $5 million;

7.14.3 maintain the current 'impact on revenue' test for the Error event lower materiality threshold for EDBs, GDBs, the GTB and Transpower, but to change the threshold to $100,000 for errors related to the price path for all entities;

7.14.4 retain the current '1% of FNAR revenue' lower threshold applied on a 'cost incurred' test for the EDB Foreseeable large project and Unforeseeable large project reopeners, and raise the current dollar thresholds that could apply to $5 million for Vector Limited and Powerco Limited, and $2.5 million for all other EDBs; and

7.14.5 for GDBs and the GTB, align the expenditure components comprising their reopener lower thresholds with the components in the relevant EDB reopener thresholds and retain the current lower threshold values which apply to the Capacity event, Risk event and Unforeseen projects reopeners.

7.15 Our draft decisions were also:

7.15.1 not to implement a reduced threshold for 'high consumer benefit' projects; and

7.15.2 not to implement a change in requirements to specifically allow for the cumulative application of any of the lower thresholds.

Reasons for our draft decisions

Impacts of different assessment approach applying across different types of reopeners.

7.16 The current drafting of the Catastrophic event, Change event and Error event IMs for EDBs, GDBs, the GTB and Transpower applies a test which assesses whether the event has an impact on the price path of an amount equivalent to at least 1% of the FNAR for EDBs and the GTB, allowable notional revenue for GDBs, or aggregated forecast MAR for Transpower for the affected disclosure years of the DPP, CPP or IPP.

7.17 This test requires the “impact on the price path” to be assessed, ie. how much the price path changes if new inputs to the price path model were to be included. We refer to this here as a “revenue test”.

7.18 The implication of this test is that it requires adjusted opex and capex values (or for an Error event, any value) to be populated into the DPP, CPP or IPP price path model to determine if the movement in FNAR, allowable notional revenue or forecast MAR exceeds the threshold.

7.19 The revenue test is not used for all reopeners. Some thresholds consider whether the forecast total value of commissioned assets for that project or programme, but excluding capital contributions, exceeded either a percentage of FNAR or a stated dollar value. We refer to these as a “cost test”.

7.20 We note the Major transaction event reopener which applies for EDBs, GDBs and the GTB applies a different threshold of 10% of RAB value.[232] Our draft decision was not to change this threshold value. Further information regarding the Major transaction reopener is contained in the Report on the Review.[233]

7.21 Requiring reopener applications to be considered against a revenue test raises complexities, in particular:

7.21.1 It is more difficult for a supplier to assess the impact of a reopener event on the price path (ie, the revenue test) than it is for the supplier to assess a cost incurred or a forecast cost in response to an event against a known threshold (the cost test).

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232 Given the very different nature of this reopener, the comparison with the other reopeners is not directly relevant.

233 Commerce Commission "Input methodologies review 2023 - Final decision - Report on the Input methodologies review 2023 paper" (13 December 2023)

7.21.2 The price path models have relatively limited sensitivity to capex, but opex is immediately passed through to consumers. This may create a perverse incentive to undertake or forecast less efficient opex in order to meet the threshold. Further, in the case of EDBs and Transpower, this does not reflect financial neutrality between capex and opex due to IRIS.

7.21.3 Having both revenue tests and cost tests could provide inconsistent outcomes with an equivalent project meeting the threshold for a cost test for large project reopeners for EDBs or Capacity event reopeners for GDBs and the GTB, but not meeting the revenue test under Catastrophic event or Change Event reopener provisions.

Approach for assessing lower threshold for Catastrophic Event, Change Event and Error event reopeners

7.22 Our draft decision was to amend the EDB, GDB, GTB and Transpower IMs for Catastrophic event reopeners, and some parts of the Change event reopeners. The change applied a test which assessed whether total expenditure in response to the event exceeded a stated threshold, rather than making an assessment against an impact on the revenue allowance. The relevant materiality threshold for these reopeners is outlined in the following sections.

7.23 To apply a cost test, total expenditure incurred would be summed, which would be incentive neutral between opex and capex. In addition, having a consistent approach to reopener tests, to the extent possible, would remove potential distortions between the categories of reopeners.

7.24 In general, the application of 'cost tests' rather than 'revenue tests' would result in thresholds being met at a lower level of expenditure.

7.25 Under a 'cost test', the full value of capex is considered, rather than only the return on and of capital (which would be the result arising from inputting revised expenditure values into the price path model to establish a level of change in FNAR, actual allowable revenue or forecast MAR under a 'revenue test'). This would mean capex-based expenditure would more likely meet a specified threshold level under a 'cost test' than a 'revenue test'. As opex would be immediately passed through the price path to pricing, there would be limited impact from the change from a 'revenue test' to a 'cost test', compared to capex, although there would be limitations for some reopeners regarding what opex is allowed to be recognised.

7.26 We considered that this would more effectively promote the Part 4 purpose. It would provide incentives to invest, where capex investments in response to catastrophic events would be treated equally to opex, and would promote efficiency because a potential bias, in this case opex, would be removed.

7.27 We also considered that the amendment would reduce complexity and compliance costs for both suppliers and the Commission in establishing whether a Catastrophic event or Change event (not GAAP change) had met the required materiality threshold.

7.28 Unlike for the Catastrophic event reopener and the Change event reopener, there is not an equivalent cost test which could be applied for Error events. Error events require changes to inputs used within the building block models applied to establish the price path. They are not events which necessitate a supplier incurring responsive costs. Accordingly, our draft decision was that a cost test would not be appropriate.

7.29 Our draft decision was to continue to use a revenue test for assessing Error event reopeners. We proposed to reduce the threshold which applies for Error event reopeners for all entities to $100,000.

Reopener lower thresholds

7.30 For EDBs the lower materiality threshold for Foreseeable large project and Unforeseeable large project reopeners was set both as a percentage of FNAR and an absolute value of $2 million (whichever is lesser).

7.31 For GDBs and the GTB Capacity event and Risk event reopeners, the lower bound materiality threshold was based on proportionate size of the suppliers, with the threshold which applied for GasNet Limited being lower than other GDBs and the GTB.

7.32 For Transpower, the draft decisions on threshold values for the Enhancement & Development (**E&D**) reopener provisions and the base capex threshold are discussed in Chapter 7 of the *Transpower Investment* topic paper.

Scaling of revenue thresholds based on supplier size

7.33 Aurora suggested in its submission on our Process and issues paper that we should remove the scaled revenue threshold which applies to EDBs and adopt a lower absolute value threshold (say to $0.5 million).[234] It stated that for an equivalent level of investment, an investor in a large EDB must wait for up to 5 years to be compensated for its investment, while an investor in a small EDB can be compensated much earlier through the reopener mechanism. Aurora considered that the reopener thresholds could be improved by removing the scaled element and setting a lower uniform threshold of $0.5 million.

[234] Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), para 69.

7.34 Our draft decision was to retain the scaled revenue threshold as it would prevent larger suppliers applying to reopen the path for projects that are proportionately less material. A project of a given dollar level would be proportionately less material for a large supplier.

7.35 We explained that we expect suppliers to reprioritise their expenditure allowances during a regulatory period. Larger suppliers can reprioritise within their larger funding allowances for proportionately smaller projects more easily. This is reflected in the consideration stage of the reopener process (discussed in Chapter 5) which requires the Commission to have regard to whether the planned capex and opex for the remainder of the period has been appropriately reviewed and reprioritised. This would also avoid a higher volume of low value reopener applications that would otherwise increase compliance costs.

7.36 Vector stated in its submission on our December 2022 workshop that there were significant limitations with the reopener threshold of 1% of FNAR, and it may not appropriately capture expenditure with high consumer benefit.[235]

7.37 We noted that the reopeners for EDBs had both a 1% of FNAR for the regulatory period, or dollar caps, whichever is the lesser. For Vector, this would be the dollar cap. Regardless, we considered suppliers should be reprioritising within their revenue limits to accommodate high consumer benefit projects, particularly those which do not require significant levels of expenditure.

7.38 We noted as part of our draft decision that we had not been provided with sufficient evidence on high consumer benefit projects that are not currently delivered and that an alternative revised threshold could enable. The examples provided were broad and included costs related to decarbonisation, cybersecurity, data and resilience. In our draft decision we said that if this was to be considered further, a definition of "high consumer benefit projects" would need to be established along with a process to identify how these differed from programmes of work which an EDB, GDB or GTB was delivering as part of its business as usual.

Draft decisions on lower threshold values

7.39 Our draft decision was to amend the EDBs, GDBs and GTB IMs for the Catastrophic event and Change event reopeners to set threshold values consistent with the thresholds used for Foreseeable and Unforeseeable large projects for EDBs, and the Capacity event reopener for GDBs and the GTB.

[235] Vector "Submission on Price-quality path workshop" (20 December 2022), Response to Question B1; Vector – Cover letter – "Submission on Price-quality path workshop" (20 December 2022), paras 5-7.

7.40 We considered applying a consistent approach to assessing materiality thresholds where possible, and applying consistent threshold values, would reduce complexity for suppliers.

7.41 For EDBs, our draft decision was to introduce an additional threshold of $5 million which would apply to Vector Limited and Powerco Limited to reflect the more significant FNAR and associated expenditure allowances for these entities, and accordingly their greater ability to reprioritise within expenditure allowances compared to other EDBs.

7.42 We also proposed to raise the dollar threshold applying to EDBs other than Vector Limited and Powerco Limited from $2 million to $2.5 million.

7.43 We reasoned that the draft increases in threshold values reflected other changes to reopeners which allowed a greater scope of costs to be included in the reopener application. In particular, the inclusion of consequential opex for capex projects and opex solutions which would allow more projects to meet the lower threshold without adjustment. This is discussed further in Chapter 6.

7.44 For opex solutions for system growth, we proposed for the threshold to be calculated based on lifetime solution costs which are discounted into a present value equivalent. This would be undertaken because capex is incurred upfront, but opex is spread across all periods in which the solution is in place. In the absence of consideration of future period costs, there would likely be a bias towards capex solutions in order to meet the thresholds.

7.45 We recognised, consistent with those earlier submissions, that depending on the extent of forecast growth, the purchase of flexibility services may not be a permanent solution, but a temporary deferral of the requirement for capex.[236] To address this issue, the draft definition of lifetime solution costs provides for the inclusion of forecasted capex where it is anticipated that opex will not, by itself, be able to delay capex that is part of the project or programme beyond the end of the next regulatory period. We considered that this approach would allow for temporary opex solutions for system growth which provide value to consumers to also be appropriately considered against the threshold.

7.46 When the reopener thresholds were initially set for the Foreseeable and Unforeseeable large projects in 2019, these values were not indexed, and accordingly we stated that periodic adjustments to the values would be required otherwise the thresholds in real terms would decline over time.

[236] Aurora Energy "Submission on Price-quality path workshop" (20 December 2022), para 13.

7.47 We considered the revised limits for reopener applications would maintain the incentive for suppliers to prioritise within their revenue allowances.

7.48 Our draft decision was not to change the lower threshold for the Capacity event reopener in the GDB and GTB IMs, as this specifically applies when a "network needs additional capacity". We explained that we were not aware of significant opex solutions in the gas context to necessitate moving the threshold and the threshold values for GDBs and the GTB. They were set more recently than EDBs for the Capacity event and Risk event reopeners in 2022.

7.49 For Transpower, our draft decision was to implement new lower thresholds for Catastrophic event and Change event reopeners which require the total opex and capex incurred in response to the event to exceed $5 million.

7.50 We considered that the application of a lower threshold for the Catastrophic event and Change event reopeners compared to other thresholds which apply to Transpower would be appropriate. The threshold for Major Capex under the Transpower Capex IM determination is different in nature to the threshold for a reopener, as it relates to a threshold for greater scrutiny of expenditure. The draft threshold for Catastrophic event and Change event reopeners for Transpower would also be aligned with the larger EDBs.

7.51 We considered that these threshold values would promote the s 52A purpose more effectively, as they provided an appropriate balance of incentives to invest, as reopeners are available for more material events whilst maintaining an incentive on suppliers to efficiently prioritise work programmes for smaller events or programmes of work.

7.52 If the thresholds were set at lower values, there would be a risk that there would be significant increases in the volume of reopener applications, which would increase compliance costs and complexity in the reopener regime. This would be inconsistent with the intent of a DPP which is to set price-quality paths in a relatively low-cost way, as specified in s 53K of the Commerce Act.

7.53 As noted earlier, the current materiality threshold for Error events related to the price path is applied against a revenue test which assesses the impact of the error on the price path that would have otherwise applied. Our draft decision was that a revenue test would be appropriate to maintain, as a cost test would not be relevant for all instances of potential errors.

7.54 We considered the appropriateness of having a materiality threshold for EDBs, GDBs, the GTB and Transpower for price path related error events, and what an appropriate materiality threshold may be.[237]

7.55 We considered that there was value in maintaining a threshold to ensure that suppliers do not apply for reopeners for errors that are immaterial, or at a level that the Commission would not need to consider them. However, we considered there was value in reducing the current materiality threshold so that suppliers are not negatively impacted by clearly unintended errors.

7.56 We considered that the costs associated with considering, processing and amending a price path as a result of an Error event reopener application are not directly related to the size of the supplier and so a consistent threshold should be applied across EDBs, GDBs, the GTB, and Transpower. Our decision was to set this value as an impact on FNAR for EDBs and the GTB, actual allowable revenue for GDBs or forecast MAR for Transpower exceeding $100,000 when revised values are included in the appropriate price path model.

7.57 We noted that there was a distinction to other reopener thresholds which have reference to supplier size. We considered that for Error events, it would not be appropriate to expect suppliers to reprioritise expenditure.

7.58 We considered that this draft decision would promote the s 52A purpose more effectively, as errors which may otherwise distort the incentives would be able to be considered and addressed at a lower threshold level. The maintenance of a lower threshold level ensures errors which are not material, and therefore do not detrimentally affect the promotion of the s 52A purpose, would not need to be considered. A reopener that covered immaterial errors could otherwise increase regulatory costs for limited benefit.

Cumulative application of the lower thresholds

7.59 Submitters in the earlier stages of the IM Review asked for the lower threshold of $2 million which applies to the EDB Foreseeable and Unforeseeable large project reopeners to be applied cumulatively for multiple projects.[238]

[237] We note that Error events which relate to quality standards or quality incentive measures do not have a materiality threshold, aside from the requirement the error represents an error in the value of the metric.

[238] Orion “Submission on IM Review Process and issues paper and draft Framework paper” (11 July 2022), Para 110; Unison – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), para 46.

7.60 There was some support from submitters at those stages for the cumulative application of the default lower materiality threshold.[239] Their support was mainly to address system growth, electrification and digitalisation projects.

7.61 Cumulative application of projects that are individually below the lower threshold for the EDB Foreseeable and Unforeseeable capex project reopeners currently exist, at least in part, as these reopeners allow for 'programmes' of work (ie, a group of related projects with a common purpose) in addition to 'projects'. This is the same for the GDB and GTB Capacity event reopener which provides for 'programmes' of work and the Risk event reopener for GDBs and the GTB, which is based on costs in response to an event which could include a number of related projects.

7.62 We considered that cumulative application of the lower thresholds across different unrelated programmes of work, or relating to a similar scenario which may be broadly defined, could have an effect of significantly lowering the limit. This could result in a substantial increase in the number of reopener applications, and therefore would be likely to remove the incentive for efficient reprioritisation of expenditure. In addition, establishment of whether a large volume of individually immaterial programmes of work were provided for either explicitly or implicitly within a price path would be difficult.

7.63 Our draft decision was to not allow for cumulative application of the lower threshold, beyond what is already provided for within the IMs. We stated that the draft decision promotes the IM purpose in s 52R more effectively, without detrimentally affecting the promotion of the s 52A purpose, by providing certainty for suppliers and consumers. This would avoid a high volume of reopener applications for low value projects which would otherwise significantly increase regulatory costs. Significant increases in the volume of reopener applications for lower value projects would also be inconsistent with the intent of a DPP as a relatively low-cost way of setting price-quality paths.

[239] Electricity Networks Association (ENA) "Submission on Price-quality path workshop" (20 December 2022); Vector "Submission on Price-quality path workshop" (20 December 2022); Unison "Submission on Price-quality path workshop" (20 December 2022); Aurora Energy "Submission on Price-quality path workshop" (20 December 2022).

Stakeholder views on our draft decisions

7.64 We received submissions on the following points on our draft decisions:

7.64.1 There was no opposition to the form of the threshold tests, but a number of dissenting views from EDBs on the specific values that we proposed for the thresholds; and

7.64.2 Submitters also asked that we implement requirements that specifically allowed for the cumulative application of any of the lower thresholds.

7.65 Submitters questioned our reasons for the increase in the default EDB lower threshold dollar value for the EDB Catastrophic event, Change event (both excluding and including GAAP changes), Unforeseeable large project, Foreseeable large project, and Risk event reopeners. We received a range of suggestions from $1.5 million to $2 million (versus our draft decision of $2.5 million).

7.66 Submissions covered matters relating to our lower threshold draft decisions, including:

7.66.1 that EDBs should not be required to absorb the costs of catastrophic events in the application of their DPP expenditure allowances. This submission point implies that no lower threshold should apply to catastrophic events and that remediation expenditure should, subject to testing, essentially be a pass-through cost. The suggestion was made to consider removing expenditure on catastrophic events from the IRIS calculation. We received submissions on these points from Unison,[240] Powerco,[241] PowerNet,[242] and Alpine.[243]

7.66.2 ENA submitted requesting clarification on whether the 1% revenue threshold for reopening a DPP/CPP in response to a Catastrophic, Change or Error event includes the financial impacts arising from regulatory incentives like IRIS and quality incentives.

[240] Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 23-24.

[241] PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 14.

[242] PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 15.

[243] Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 12.

7.66.3 That we should implement requirements to specifically allow for the cumulative application of any of the lower reopener thresholds. We received submissions on this point from the ENA,[244] Vector,[245] and Alpine.[246]

7.66.4 Questioning about the Vector and Powerco lower threshold dollar values for the EDB Catastrophic event, Change event (both excluding and including GAAP changes), Unforeseeable large project, Foreseeable large project, and Risk event reopeners. The suggestion was made that we should keep Vector and Powerco at the default dollar value lower threshold that applies to other EDBs. We received submissions on this point from the ENA,[247] Vector,[248] Powerco,[249] and MEUG.[250]

7.66.5 Questioning our reasons for the increase in the default EDB lower threshold dollar value for the EDB Catastrophic event, Change event (both excluding and including GAAP changes), Unforeseeable large project, Foreseeable large project, and Risk event reopeners. We received a range of suggestions from $1.5 million to $2 million (versus our draft decision of $2.5 million). We received submissions on this point from the ENA,[251] Orion,[252] Alpine,[253] and PowerNet.[254]

7.66.6 Orion suggested a materiality-based error event reopener threshold (versus our draft decision to apply a standard $100,000 fixed threshold for all sectors).[255]

[244] Electricity Networks Aotearoa (ENA) "Further submission to the Commerce Commission on Uncertainty Mechanisms" (3 May 2023), p. 4.

[245] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 13.

[246] Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 12.

[247] Electricity Networks Aotearoa (ENA) "Appendix D - IM Practicality Issues Log" (19 July 2023), p. 5-6.

[248] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 66-67.

[249] PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 14.

[250] Major Electricity Users Group (MEUG) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 5.

[251] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 6.

[252] Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 28-30.

[253] Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 12.

[254] PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 13-16.

[255] Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 8.

Analysis and final decision

7.67 In response to the submissions, we reviewed our analysis of the threshold values that supported our draft decisions. We concluded that:

7.67.1 The EDB DPP, the DPP reopeners, the new LCC mechanism, and the CPP regime need to work together as a package. We consider the threshold tests and values are appropriate for the package of reopeners.

7.67.2 The threshold values have been set at levels where we consider applications for reopeners will not be made until applicants have considered whether to reprioritise their expenditure to potentially accommodate the effects of an event.

7.67.3 We consider that the IRIS is an appropriate tool that has the effect of encouraging EDBs to work within their expenditure allowances. Our final decision is to not change our current approach of applying the expenditure incentive mechanisms to all categories of opex and capex allowances. This decision is discussed in detail in Topic 5e of Chapter 5 of our *Financing and incentivising efficient investment* topic paper.

7.67.4 We considered that the draft determination is explicit that the 1% of FNAR threshold means 1% of FNAR, which is before any forecast pass-through costs or recoverable costs (such as 'IRIS incentive adjustment' and 'quality incentive adjustment') are added on in order to form the 'forecast allowable revenue'. The 1% of FNAR revenue threshold that must be met therefore excludes forecast IRIS and QIS amounts. We consider that IRIS and quality incentive amounts are not direct costs and those amounts should not be included in the calculation when assessing whether an event has met the relevant thresholds for the Catastrophic event, Change event and Error event reopeners.

7.67.5 With respect to the error event threshold, we consider it is better for errors to be corrected provided they are not immaterial. This is consistent with supporting the purpose in s 52A.

7.67.6 A reopener is not intended to address an accumulation of minor unrelated events. We note that in the case of the Unforeseeable large project reopener and the Foreseeable large project reopener, these refer to both projects and programmes, which could allow for a broader application of those reopeners than if they referred only to a single project.

7.67.7 We are not persuaded that cumulative application of events should apply in other circumstances, for the reasons set out above.

7.67.8 Whether two or more instances of weather events or other natural conditions are an 'event' for the purposes of the catastrophic event reopener will depend on the facts of how connected those instances are.

7.68 Taking submissions and these matters into account we stand by our draft reasoning and we confirm our draft decisions on the lower thresholds as our final decisions. In particular:

7.68.1 the threshold values promote the s 52A purpose more effectively, as they provide an appropriate balance of incentives to invest, as reopeners are available for more material events whilst maintaining an incentive on suppliers to efficiently prioritise work programmes for smaller events or programmes of work; and

7.68.2 if the thresholds were set at lower values, there is a risk that there would be significant increases in the volume of reopener applications, leading to an increase in compliance costs and complexity in the reopener regime. This would be inconsistent with the intent of a DPP, which is to set price-quality paths in a relatively low-cost way, as specified in s 53K.

Upper Materiality Thresholds

7.69 We considered whether the current reopener upper materiality thresholds remain appropriate for the:

7.69.1 EDB Unforeseeable and Foreseeable major capex project reopeners; and

7.69.2 Capacity event and Risk event reopeners for GDBs and the GTB.

Our final decision

7.70 Our decision is to:

7.70.1 remove the $30 million upper threshold for the EDB Unforeseeable and Foreseeable large project reopeners; and

7.70.2 retain the upper thresholds ($350,000 for GasNet and $10 million for all other GDBs and the GTB) in the Capacity event and Risk event reopeners.

Problem definition

7.71 The current upper thresholds apply to the following reopeners:

7.71.1 EDB Unforeseeable and Foreseeable major capex project reopeners; and

7.71.2 GDB and GTB Capacity event and Risk event reopeners.

Stakeholder views

7.72 Submissions in the earlier stages of the IM Review on the reopener upper thresholds provided feedback on the upper thresholds for the EDB Unforeseeable and Foreseeable major capex project reopeners (now renamed as the Unforeseeable large project reopener and the Foreseeable large project reopener respectively).

7.73 Those submitters questioned whether the upper threshold for the EDB Foreseeable and Unforeseeable major capex project reopeners should be raised to accommodate scenarios that are not complex enough to warrant a CPP and are better suited to reopeners.

7.74 In particular, Powerco encouraged us to consider whether increasing the upper threshold for the EDB Foreseeable and Unforeseeable major capex project reopeners is a potential alternative solution to a single-issue CPP, to accommodate scenarios that include large levels of expenditure, but not complex enough to warrant a full CPP and accordingly are better suited to reopeners.[256]

Draft decision

7.75 Our draft decision was to:

7.75.1 remove the $30 million upper threshold for the EDB Unforeseeable and Foreseeable large project reopeners; and

7.75.2 retain the upper thresholds of $350,000 for GasNet and $10 million for all other GDBs and the GTB in the Capacity event and Risk event reopeners.

Reasons for our draft decision

7.76 We originally introduced a cap (ie, an upper threshold) to what were then the EDB Unforeseeable and Foreseeable major capex project reopeners because we considered that, particularly with inclusion of system growth and asset relocation capex, the reopeners could otherwise apply to situations when a CPP is more appropriate.

[256] Powerco "Submission on Price-quality path workshop" (20 December 2022).

7.77 The level of scrutiny applied under these reopeners, in line with the relatively low-cost nature of DPPs, may not be appropriate for larger projects and programmes that are out of step with original forecasts or historic expenditure. Our previous view was that $30 million is the appropriate level to achieve this. However, we considered that the cap of $30 million may be too low for some larger projects, such as replacement of a substation and that it may result in desirable projects being deferred by suppliers to the detriment of consumers. In these circumstances, we considered that a CPP may not be an appropriate option and removing the cap would provide an alternative to the “single-issue” CPP that some suppliers had suggested.

7.78 We considered that removing the upper threshold for EDBs would result in EDBs having better incentives to innovate and invest and provide services at a quality that reflects consumer demands, promoting the s 52A purpose more effectively. By removing the $30 million cap we would likely have:

7.78.1 better visibility of the scale of investment required, especially for future CPP applicants; and

7.78.2 greater assurance that investment is not being deferred to the detriment of consumers.

7.79 We noted that we will be able to decline reopener applications if we think the expenditure is better suited to a CPP application. This is discussed further in Chapter 5.

7.80 We did not receive any submissions during the earlier stages of the IM review regarding removing the upper threshold which applies for Capacity event and Risk event reopeners for GDBs and the GTB. We considered there was a different context between EDBs and the GDBs and the GTB, and that the provisions operate differently. Accordingly, we did not consider that there was a sufficiently compelling case for change for GDBs and the GTB when the IM Review decision-making framework was applied.

7.81 The $30 million cap for EDBs apply on a cumulative basis of all unforeseeable and foreseeable large projects across a disclosure year. The threshold caps for GDBs and the GTB do not apply on a cumulative basis but are related to the specific event the reopener seeks to address.

7.82 In the Gas DPP3 IM Reasons paper, which accompanied the introduction of these reopener mechanisms for GDBs and the GTB, we noted that in investing in their networks for growth purposes, suppliers needed to understand that the investments risked being stranded in future due to the expected fall in demand for piped natural gas.[257]

7.83 We stated that this risk may mitigate supplier over-investment in growth and incentivise suppliers to seek greater contributions from new connecting parties including for wider network reinforcement. We also expected that, for large new connection and asset relocations capex not covered by capital contributions, suppliers would need to provide us with an undertaking from the third party driving the expenditure that it was committed to the project in the reopener application.

7.84 We considered maintaining the upper threshold for GDBs and the GTB, given its different application, did not negatively impact the GDBs' and the GTB's incentives to innovate and invest consistent with s 52A of the Act.

7.85 We noted that while there will not be a cumulative limit for EDBs, the changes to reopener provisions (discussed in Chapter 5) identified under the 'consideration of whether and how to amend the DPP' section provide the Commission with the ability to have regard to whether a CPP proposal is more appropriate than a DPP, which may limit the likelihood of a number of cumulatively material reopener requests.

Stakeholder views and our final decision

7.86 Our draft decision to remove the EDB $30 million upper threshold was supported by submissions from the ENA,[258] Vector,[259] Powerco,[260] PowerNet,[261] Wellington Electricity,[262] and Orion,[263] and a cross-submission from Unison.[264]

7.87 We received no submissions on our decision to retain the GDB and GTB upper thresholds.

7.88 Our final decision is to confirm our draft decisions for the reasons noted above.

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257 Commerce Commission “Amendments-to-input-methodologies-for-gas-pipeline-businesses-related-to-the-2022-default-price-quality-paths-Reasons-paper(30-May-2022), para 3.81.

258 Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 6.

259 Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023) p. 66.

260 PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 14-15.

261 PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 16.

262 Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 49.

263 Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 29.

264 Unison Networks "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 4-5.

Application of thresholds to new and extended reopeners

7.89 Having made threshold decisions for the current reopeners, we then considered how reopener thresholds should apply to new reopeners and any reopeners where the scope of application has been extended in our decisions.

Our final decision

7.90 Our decision is to:

7.90.1 apply reopener thresholds for the new and extended reopeners on a consistent basis with other reopener provisions; and

7.90.2 revise the impact on revenue test for Change event reopeners relating to GAAP changes to be based on if the changes had been in place at the time of the price path reset, there would have been a different price path, rather than a cost incurred test, with thresholds being;

7.90.2.1 for EDBs, the lower of 1% of FNAR for the regulatory period, or $5 million for Vector Limited and Powerco Limited, or $2.5 million for all other EDBs;

7.90.2.2 for GDBs and the GTB, the impact of the event exceeds $100,000 for GasNet Limited or $2 million for all other GDBs and the GTB; and

7.90.2.3 for Transpower, the impact of the event exceeds $5 million.

Problem definition

7.91 The following new and extended reopeners are outlined in Chapter 6:

7.91.1 adding a Risk event reopener for EDB DPPs similar to the current GDB and GTB Risk event reopener (ie, new EDB reopener);

7.91.2 adding a resilience or asset relocation event reopener for GDBs and the GTB (ie, new GDB and GTB reopeners);

7.91.3 inclusion of revised drivers in the EDB Unforeseeable and Foreseeable large project reopeners to include resilience-based capex (ie, extension of current EDB reopeners);

7.91.4 inclusion of opex solutions within system growth for the EDB Unforeseeable and Foreseeable capex project reopeners, and consequential capex (ie, extension of current EDB reopeners);

7.91.5 inclusion of consequential opex for the EDB Unforeseeable and Foreseeable capex project reopeners (ie, extension of current EDB reopeners); and

7.91.6 inclusion of consequential opex for the GDB and GTB Capacity event and Risk event reopeners (ie, extension of current GDB and GTB reopeners).

7.92 The problem definition for this section comprises two parts:

7.92.1 whether the new reopeners should adopt the comparable thresholds for current reopeners; and

7.92.2 whether the reopener thresholds should be consequentially amended for the extended reopeners.

Draft decisions

7.93 Our draft decisions were to:

7.93.1 apply lower reopener thresholds for the new and extended reopeners in our final decisions on a consistent basis with other reopener provisions; and

7.93.2 revise the impact on revenue test for Change event reopeners relating to GAAP changes to be based on if the changes had been in place at the time of the price path reset, there would have been a different price path, rather than a cost incurred test, with thresholds being;

7.93.2.1 for EDBs the lower of 1% of FNAR for the regulatory period, or $5 million for Vector Limited and Powerco Limited, or $2.5 million for all other EDBs,

7.93.2.2 for GDBs and the GTB, the impact of the event exceeds $100,000 for GasNet Limited or $2 million for all other GDBs and the GTB; and

7.93.2.3 for Transpower the impact of the event exceeds $5 million.

Reasons for our draft decisions

7.94 For the new Risk event reopener for EDBs and new Resilience based reopener for GDBs and the GTB, we considered it was appropriate to apply a lower threshold consistent with that applying to current reopeners.

7.95 Applying a different threshold may create a perverse incentive to identify particular projects or programmes as being more applicable to a particular reopener than the underlying driver would indicate. We did not consider that either the new Risk event reopener or the new Resilience based reopener were sufficiently distinct from the other reopeners to justify a different threshold, given the threshold relates to expectations of a supplier's ability to reprioritise its expenditure.

7.96 For the EDB reopeners that we extended, we applied the increased lower materiality threshold values as discussed earlier in this Chapter. For the extended Gas Capacity and Risk event reopeners, we considered that it was appropriate to apply current thresholds to these reopeners as discussed earlier in this Chapter.

7.97 Similar to the Error event reopener, there is not an equivalent cost test which could be applied for Change events relating to changes in generally accepted accounting practice in New Zealand (GAAP). GAAP driven Change events require changes to inputs used within the Building Block models applied to establish the price path, they are not events which necessitate a supplier incurring responsive costs. Accordingly, a cost test would not be appropriate.

7.98 Our draft decision was to continue to use a revenue test for assessing Change events relating to a change in GAAP. However, we amended how the value was established for a change in GAAP requirements from a cost incurred in response to the change, to an approach which considered the impact on FNAR using revised inputs into the price path. The Change event relating to GAAP uses the same dollar threshold as applies to other reopeners.

7.99 Change events relating to a change in GAAP are discussed in more detail in Chapter 6.

7.100 Table 7.2 below shows our new and extended reopeners and how thresholds apply to these. An explanation of the operation and coverage of the expanded reopeners, and their rationale, are discussed in Chapter 6.

Table 7.2 New and extended reopeners

Reopener	Extensions	Lower threshold
New Reopeners		
Risk event (EDBs)	New risk event reopener for EDBs.	Sum of incurred opex, capex or both exceeds: 1% of EDB's FNAR for the DPP regulatory period; or $5 million for Vector Limited and Powerco Limited or $2.5 million for all other EDBs
Resilience or asset relocation event reopener (GDBs and the GTB)	New resilience reopener for GDBs and the GTB, including asset relocations not related to capacity growth.	Forecast total value of commissioned assets (net of forecast capital contributions and any amounts in the forecasts used to set the DPP) for the project or programme plus forecast consequential opex for the DPP regulatory period exceeds: $100,000 (GasNet); or $2 million (other GDBs and the GTB)
E&D ACA capacity reopener (Transpower)	New Transpower "anytime" E&D reopener.	A project of at least $10 million (Transpower)
Amended reopeners		
Foreseeable large project (EDBs)	Includes opex solutions for system growth; with value calculated based on discounted lifetime cost; Includes consequential opex for implementing a capex solution (and vice versa); Includes resilience-related expenditure.	For an opex solution for system growth, discounted lifetime solution costs plus consequential capex; and for all other cases, forecast total value of commissioned assets (net of forecast capital contributions) for the project or programme plus forecast consequential opex for the DPP regulatory period exceed: 1% of that EDB's FNAR for the DPP regulatory period; or $5 million for Vector Limited and Powerco Limited or $2.5 million for all other EDBs

Reopener	Extensions	Lower threshold
Unforeseeable large project (EDBs)	Includes opex solutions for system growth with value calculated based on discounted lifetime cost; Includes consequential opex for implementing a capex solution (and vice versa); Includes resilience-related expenditure.	For an opex solution for system growth, discounted lifetime solution costs plus consequential capex; and for all other cases, forecast total value of commissioned assets (net of forecast capital contributions) for the project or programme plus forecast consequential opex for the DPP regulatory period exceed: 1% of the EDB's FNAR for the DPP regulatory period; or $5 million for Vector Limited and Powerco Limited or $2.5 million for all other EDBs
Capacity event (GDBs and the GTB)	Includes consequential opex for implementing a capex solution	Forecast total value of commissioned assets (net of forecast capital contributions and any amounts in the forecasts used to set the DPP) for the project or programme plus forecast consequential opex for the DPP regulatory period exceed: $100,000 (GasNet) or $2 million (other GDBs and the GTB)
Change event – GAAP (EDBs)	GAAP is now separately identified within Change event. Test basis is whether change would have caused the price path to have differed	If FNAR would have differed by: 1% of EDB's forecast net allowable revenue for the DPP regulatory period or $5 million for Vector Limited and Powerco Limited or $2.5 million for all other EDBs
Change event – GAAP (GDBs and the GTB)	GAAP now separately identified within Change event. Test basis is whether change would have caused the price path to have differed	If FNAR would have differed by: $100,000 thousand for GasNet Limited or $2 million for all other GDBs and the GTB
Change event – GAAP (Transpower)	GAAP now separately identified within Change event. Test basis is whether change would have caused the price path to have differed	If forecast MAR would have differed by $5 million

7.101 We considered that setting the thresholds across different reopeners in a consistent manner, considering the type of reopener and the different sectors, would promote the Part 4 purpose in s 52A more effectively than the alternative. It would provide consistency with the way thresholds are applied, reducing complexity. This approach would also promote the IM purpose in s 52R more effectively by promoting certainty in relation to the rules, requirements, and processes when compared with the alternative of taking a less coherent approach. Those things are achieved without detrimentally affecting the promotion of the s 52A purpose.

Stakeholder views and our final decisions

7.102 We received no submissions on our draft decisions on reopener thresholds for new and extended reopeners, specifically, but did receive submissions that are relevant to how these thresholds are set (as set out above). We have decided to confirm our draft decisions on new and extended reopeners as our final decisions for the reasons outlined above.

7.103 We have set the $10 million lower threshold for the new Transpower Enhancement & Development anticipatory connection asset (E&D ACA) capacity reopener using a similar estimated basis relative to the allowable revenues as we did for the EDB Unforeseeable large project reopener and EDB Foreseeable large project reopener, which are the most similar EDB large project reopeners to this Transpower reopener. This new Transpower E&D ACA capacity reopener and the setting of its lower threshold are discussed in more detail in Chapter 6 of the Transpower investment topic paper.[265]

[265] Commerce Commission "Input methodologies review 2023 - Final decision - Transpower investment topic paper" (13 December 2023)

Chapter 8 Introduction of a large connection contract mechanism for EDBs

Purpose and structure of this chapter

8.1 This chapter describes our decision to introduce a 'large connection contract' (LCC) mechanism, where the connecting party has agreed that the terms and conditions of the contract are reasonable.

Introduction of a large connection contract mechanism for EDBs

Final decision

8.2 Our final decision is to introduce a 'large connection contract' (LCC) mechanism into the EDB IMs where:[266]

8.2.1 the large new connection projects or programmes have not been provided for in price-quality path expenditure allowances;

8.2.2 the contract enables the supply of new electricity distribution services for connection of new generation capacity or load that is at least 5MW; and

8.2.3 the LCC asset costs exceed at least one of the following thresholds:

8.2.3.1 1% of the EDB's 'forecast net allowable revenue' (FNAR) for the regulatory period; or

8.2.3.2 $5 million for Vector Limited and Powerco Limited, or $2.5 million for any other EDB; and

8.2.4 the connecting party has agreed in writing that the terms and conditions (which include the price) of the contract are reasonable.

8.3 LCC asset costs for the purposes of the LCC threshold in relation to assets to be constructed and operated under an LCC are the sum of:

8.3.1 the forecast value of the assets, which is the cost of the assets determined by applying the value of commissioned assets IM, treating the assets as if they were commissioned, and subject to any other necessary modifications, on the assets' forecast commissioning date;[267] and

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[266] We do not consider the mechanism is needed for gas pipeline connections, given it is designed to respond to large increases in connection capex as a result of increased demand arising from decarbonisation.

[267] The "other necessary modifications" referred to in this case are modifications to the value of commissioned assets IM (which is based on assets that have been commissioned), to enable the forecast value of assets for an LCC applies that IM to calculated forecast commissioned asset values.

8.3.2 any operating costs for the DPP or CPP regulatory period that are forecast to be incurred in connection with the assets to be constructed and that would not otherwise be incurred.

8.4 The LCC mechanism is not intended to cover the replacement of existing connection assets, which we expect to be reasonably predictable. An asset replacement can be forecast with an acceptable degree of estimation to be included as part of the DPP or CPP capex process.

8.5 Other key features of an LCC in the EDB IMs are:

8.5.1 the LCC will set out how the EDB will recover the LCC asset costs and any operating costs specific to the LCC assets over the term of the connection contract;

8.5.2 because the costs of the connection assets will be recovered by the EDB through the terms of the contract, to avoid double counting the recovery of the cost of the assets through the contract, as well as otherwise through the EDB's building blocks allowable revenue, the contract assets included in the RAB that are commissioned to provide electricity distribution services under an LCC have a nil value in the RAB;

8.5.3 the forecast value of commissioned assets for forecast capital expenditure and in the RAB roll forward in respect of LCC assets is nil;

8.5.4 because a capital contribution made by the connecting customer under the contract will essentially be an advance revenue instalment under the contract, the definition of capital contributions in the IM determination excludes contributions charged or received under an LCC;

8.5.5 because the operating costs for consequential opex and maintenance costs on the connection assets will be recovered by the EDB under the contract and not through the building blocks allowable revenue, to avoid double counting of the recovery of costs through the contract as well as otherwise through the other EDB pricing, the definition of operating costs excludes costs associated with the assets funded under an LCC;

8.5.6 the LCC may include a contribution, or the connecting customer may be charged separately from the LCC, for any system assets in relation to the connection assets;

8.5.7 the forecast revenue from prices and the forecast allowable revenue for a disclosure year will both include revenue which is forecast to be received by the EDB under an LCC;

8.5.8 income associated with the assets funded under an LCC is included in revenue from prices and is therefore excluded from other regulated income; and

8.5.9 for the purposes of the specification of price wash-up amounts in the DPP or CPP wash-up account balance:

8.5.9.1 the actual revenue in the wash-up formula for a disclosure year includes all revenue received from the connecting party in respect of the connection contract, irrespective of whether the contract meets the criteria to be an LCC contract;

8.5.9.2 the actual allowable revenue for a disclosure year includes actual revenue that may be received under a contract that the EDB can show meets the LCC definition, calculated on the same basis as the forecast allowable revenue;

8.5.9.3 the actual allowable revenue for a disclosure year will not include revenue from contracts that the EDB claims meets the LCC definition, but which do not meet that definition;

8.5.9.4 where the requirements of the LCC definition are satisfied and revenue is recovered in accordance with the terms of the LCC contract, the actual allowable revenue based on the calculation of that term for qualifying LCCs will equal the actual revenue under the contract and the wash-up calculation result will be zero; there will be no amount of over-recovery to return to other consumers through the wash-up account balance;[268]

8.5.9.5 where the contract does not meet the criteria set out in the definition of 'large connection contract', the actual allowable revenue based on the calculation of that term for qualifying LCCs will be less than the actual revenue received including the non-conforming contract and the wash-up calculation result will be less than zero. As a consequence, the amount of over-recovery relative to the actual allowable revenue will then be entered into the wash-up account balance and returned to customers; and

[268] Because an LCC only applies to large new connection projects or programmes that have not been explicitly or implicitly provided for in the DPP or CPP, an EDB considering a potential LCC will need to be clear about which of those connection projects and programmes in its forecasts have and have not been provided for in the EDB's forecast allowable revenue.

8.5.9.6 where the requirements of the LCC definition are satisfied and the revenue received under the contract is less than the actual allowable revenue (for example, due to some default in payment by the connection party), the amount of under-recovery relative to the actual allowable revenue will not be allowed to be recovered through the wash-up account balance, and the EDB will need to pursue its available revenue recovery steps under the LCC contract.

Problem definition

8.6 In the earlier stages of the IM Review, stakeholders raised concerns regarding expenditure forecasting uncertainty, especially due to decarbonisation. We understand that large new customer-initiated connections are a key source of such uncertainty for EDBs.[269]

8.7 This uncertainty could result in a higher volume of reopener applications, which can be time and resource intensive for both the applicant and the Commission therefore potentially delaying the connection being commissioned. Suppliers have raised concerns that the reopener process, in particular the timeframes and the level of scrutiny of proposed projects in reopener applications, may impact the viability of these new connection projects where the connecting party and supplier might otherwise be able to agree on contract terms.

8.8 If a connecting party agrees that the EDB is providing the connection on reasonable terms, including the contract price, then the Commission's scrutiny of the connection's associated capital and operating costs would likely provide limited added value.[270]

8.9 Where both the EDB and the connecting party are comfortable with the terms and conditions of connection, reducing any delay in commissioning (eg, removing the need to follow a potentially more lengthy process in a reopener application) could be a 'win-win' for both parties to the contract. This promotes the long-term benefit of consumers by expediting new large connections where the parties can agree to the terms (provided the thresholds are also met).

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[269] Vector – Cover letter – "Submission on Price-quality path workshop" (20 December 2022), para 15.

[270] As an example of the work involved, in early 2021, Contact Energy Limited (Contact) entered into an agreement with Unison Networks Limited (Unison) for the supply of electricity from Unison's network for the construction and operation of Contact's Tauhara generation station near Taupō (project). This project was not included in Unison's DPP capex forecast, as details of the project were uncertain at that time. On 29 June 2021, Unison applied to us to reopen the DPP3 Determination to increase its allowable revenue to cover the cost of the project of $7.3 million. We published our final decision on 4 March 2022: Commerce Commission "Reconsideration of default price-quality path for Unison Networks Limited - unforeseeable major capex project to supply Tauhara geothermal power station - Final decision" (4 March 2022).

Stakeholder views pre-draft decision

8.10 Vector submitted that the IMs should provide more scope for commercial arrangements to manage costs in line with the approach to Transpower's similar 'new investment contracts' (NICs).[271]

8.11 Vector suggested that this approach would support the long-term benefit of consumers by:[272]

8.11.1 mitigating forecast uncertainty;

8.11.2 allowing EDBs and connecting parties to negotiate contracts on commercial terms that would provide greater consumer options to new large connects; and

8.11.3 avoiding costs attributable to an individual connecting party being recovered from consumers through lines charges.

Draft decision

8.12 Our draft decision was to introduce an LCC mechanism into the EDB IMs that would allow connection assets, revenue and costs associated with the LCCs to be subject to a lower level of scrutiny where:

8.12.1 the maximum capacity required was at least 10MW;[273] and

8.12.2 certain terms and conditions relating to the contract were met.

Reasons for our draft decision

8.13 In our draft decision, we noted that the introduction of an LCC mechanism promoted the s 52R purpose more effectively, by providing greater certainty for regulated suppliers and consumers in relation to the rules, requirements, and processes applying to regulation under Part 4. Specifically:

8.13.1 the LCC mechanism would allow EDBs to enter into commercially negotiated contracts for new large connections without an extensive level of intervention by the Commission required under a reopener and would provide greater certainty to suppliers regarding the recovery of connection costs;

[271] Vector – Cover letter – "Submission on Price-quality path workshop" (20 December 2022), para 15-19; Vector "Submission on Price-quality path workshop" (20 December 2022), response to question D4.

[272] Vector – Cover letter – "Submission on Price-quality path workshop" (20 December 2022), para 19; Vector "Submission on Price-quality path workshop" (20 December 2022), response to question D4.

[273] In correspondence prior to reaching our draft decision, the EA stated that it considered the 10MW threshold as being reasonable.

8.13.2 the LCC mechanism would avoid the need for reopeners where certain conditions relating to workable competition and the size of the connection are met and provide a way of dealing with uncertainty in relation to new connections;

8.13.3 suppliers would be able to include appropriate terms within the contract, when agreed as commercially acceptable by the customer, that may not be available under a reopener;[274] and

8.13.4 suppliers and customers would have greater control over the timing of a decision. This could be important, for example, in relation to meeting decarbonisation targets. Once they have struck a commercial agreement, this would not need to be separately ratified by the Commission beyond the specified LCC criteria, in contrast to using a reopener mechanism.

8.14 Our draft reasoning was that the proposed change should also significantly reduce compliance costs, other regulatory costs, and complexity. This is because it would reduce the need to involve the Commission in the decision-making process via a reopener, which would avoid further cost (including costs that relate to demonstrating compliance) and complexity to the initial commercial agreement.

8.15 Our draft reasons recognised the risk that EDBs could utilise their bargaining power to extract excessive profits from these contracts, which would not promote the s 52A purpose. However, we considered this risk was mitigated by limiting the mechanism to contracts for 'large' connections, as these would generally be negotiated with larger customers with greater bargaining power.[275]

8.16 We also considered that providing for appropriate visibility of these contracts under information disclosure would assist in mitigating this concern.

[274] Commerce Commission "Reconsideration of default price-quality path for Unison Networks Limited - unforeseeable major capex project to supply Tauhara geothermal power station - Final decision" (4 March 2022) para 4.13.

[275] For the purposes of the threshold of 'large' in our draft decision, we included in the definition of 'large connection contract' the requirement that there is a supply of new electricity distribution services for which the maximum capacity required is at least 10MW.

Stakeholder views on our draft decision

8.17 We received 13 submissions and eight cross-submissions on our LCC draft decision.

8.18 Aurora,[276] ENA,[277] MEUG,[278] Orion,[279] Powerco,[280] PowerNet,[281] Alpine Energy,[282] Wellington Electricity,[283] Unison,[284] and Vector[285] all submitted in favour of our draft decision to introduce the LCC mechanism.

8.19 Contact and Mercury submitted their opposition to the introduction of the LCC mechanism and their concerns about EDBs exercising monopoly power over connecting customers.[286] Meridian had similar concerns as Contact and Mercury, but this appeared to have been based on an assumption that the LCC was not optional. It also stated that it could support LCCs if its suggested changes on making the mechanism optional and including aspects to mitigate the risk of monopoly pricing power were adopted.[287] IEGA urged the Commission to ensure the LCC regime enables competitive tension in the provision of new connections.[288] These concerns about monopoly power are addressed in our discussion of relevant points at paragraphs 8.28 to 8.29, 8.38 to 8.39 and 8.43 to 8.46.

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[276] Aurora Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 36.

[277] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 5.

[278] Major Electricity Users Group (MEUG) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 16.

[279] Orion "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), para 22.

[280] PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 15.

[281] PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 13.

[282] Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 16.

[283] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 50.

[284] Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 109.

[285] Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 251.

[286] Mercury "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 3; Contact Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 10.

[287] Meridian "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 3.

[288] Independent Electricity Generators Association (IEGA) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 2.

8.20 Of those that supported the LCC mechanism, MEUG submitted that the 10MW threshold was prudent.[289] Seven stakeholders submitted for a lowering or removal of the 10MW threshold. Specifically:

8.20.1 Orion submitted its support for a 5MW threshold;[290]

8.20.2 Powerco suggested the threshold be lowered to align with reopener thresholds, including a dollar value threshold;[291] and

8.20.3 Alpine Energy suggested a percentage of peak demand threshold in lieu of a MW threshold.[292]

8.21 We address below the other points put forward by submitters.

Analysis and final decisions

8.22 Our final decision is to retain our draft decision to have an LCC mechanism for EDBs, but make some changes to mitigate concerns about the potential exercise of monopoly power and to ensure that it is practically and robustly implemented in a way that meets our objective. The changes we have made from our draft to final decision are to:

8.22.1 the scope of the LCC mechanism;

8.22.2 the threshold for the LCC mechanism; and

8.22.3 the mode of implementation of the LCC mechanism.

8.23 In addition to explaining our final IM decision, we describe:

8.23.1 other practical LCC aspects raised by submitters; and

8.23.2 the ongoing price path compliance and ID monitoring obligations on which we intend to consult. They are notable features that will support the working of the mechanism, but which are outside of the scope of the IM Review.

[289] Major Electricity Users Group (MEUG) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 18.

[290] Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 14.

[291] PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 15.

[292] Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 16.

8.24 Our decision to introduce an LCC mechanism to the EDB IMs is consistent with the principle of proportionate scrutiny and more effectively promotes the s 52A (1)(d) purpose of limiting the ability of EDBs to extract excessive profits. In addition, introducing an LCC mechanism in the EDB IMs provides a new option that can potentially reduce compliance costs and complexity for EDBs and their large connecting parties. In our final decision we have also made the mechanism more straightforward and objective to assess which contracts will meet the LCC definition, promoting the s 52R purpose.

8.25 In-period adjustment mechanisms sit on a continuum from low scrutiny (pass-through costs) to high scrutiny (CPPs). This allows the Commission to direct its scrutiny of costs to where it is of most value to consumers in terms of price or quality outcomes. To qualify as an LCC, the connection contract needs to be one where the parties have agreed that the terms and conditions of the contract, including the price, are reasonable.

8.26 Introducing an LCC mechanism is intended to give large connection customers more control and countervailing negotiating power than under the current IMs. Previously, a large new connection that was not provided for in the price-quality path would need to be funded by a capital contribution from the connecting party or might involve a reopener. Consumers have limited ability to negotiate the terms and conditions of capital contributions. A reopener application is potentially time consuming and costly. The ultimate outcome might be that a consumer who is willing to pay a reasonable connection cost ends up not connected at all.

8.27 The LCC mechanism is expected to be faster and potentially not as resource intensive for the EDB or the customer as the EDB applying for a reopener. This provides an incentive for both parties to consider using the LCC mechanism, which could be a 'win-win' for both parties and by facilitating faster and more efficient investment will promote the long-term benefit of consumers.

8.28 Several stakeholders submitted that the size of the connection contract does not necessarily reflect the bargaining power of the connecting party. We agree that there is not a linear relationship between connection size and bargaining power.

8.29 We have given careful consideration to addressing the concerns about potential exercise of monopoly power raised by submitters.[293] The LCC mechanism in the IMs, combined with proposed new price-quality path compliance provisions and ID requirements, will promote the s 52A(1)(d) purpose in a number of ways:

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[293] Mercury "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 3; Contact Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 10; Meridian "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p.3; Independent Electricity Generators Association (IEGA) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 2.

8.29.1 First, the LCC mechanism will be restricted to contracts where the parties can agree that the contract is reasonable, so that excessive profits will not be associated with the contract. If the parties cannot agree on the terms and conditions to the contract, the reopener mechanism will still be available (provided the relevant threshold has been met). We intend consulting on introducing new compliance provisions that will allow us to verify that the agreement meets the criteria for an LCC;

8.29.2 Second, a 5MW threshold in the LCC definition, will act as a proxy for the likely greater bargaining power of larger connecting parties; and

8.29.3 Finally, we intend to consult on new ID requirements for LCC contracts to make the terms and conditions of those contracts more transparent, which would help us assess over time whether or not the LCC mechanism is being used as intended, and to monitor whether the LCC thresholds are set at appropriate levels. If we find that the LCC mechanism is not achieving the intended outcomes, then we can consult on modifications to the LCC mechanism that could apply to future regulatory periods.

Scope of the LCC mechanism

8.30 We indicated in our draft topic paper that the problem we were looking to address related to large new customer-initiated connections that had not been foreseen when the price path was set.[294]

8.31 We have realised that the drafting used for our draft determination could have inadvertently allowed for forecasted new large connections to qualify for the LCC. The main problem is that this could have allowed for the over-recovery of capex and opex by the EDB where a connection project that is funded in the price-path is then subsequently funded again, in whole or in part, through an LCC.

8.32 Our final decision is for the IM determination to explicitly define the LCC mechanism to make it clear that the LCC only applies to projects or programmes that have not been provided for in DPP or CPP expenditure allowances.

[294] Commerce Commission "Input methodologies review 2023 - Draft decision - CPPs and in-period adjustments topic paper" (14 June 2023), para 8.7.

8.33 The LCC mechanism will be available for new connections in respect of which expenditure is not explicitly or implicitly provided for in the DPP or CPP. In practice, this will mean that eligibility for an LCC contract relates to connection expenditure that:

8.33.1 the EDB did not include in its forecasts used by the Commission for setting the DPP or CPP; and

8.33.2 the EDB did include in its forecasts used by the Commission for setting the DPP or CPP but for which the Commission did not provide in DPP or CPP revenue settings.

8.34 Because the LCC only applies to connection projects or programmes that have not been explicitly or implicitly provided for in the DPP or CPP, an EDB considering a potential LCC will need to be clear about which of those connection projects and programmes in its forecasts have and have not been provided for in the EDB's forecast allowable revenue. In the DPP4 reset we intend to identify new large connections included in EDB forecasts, but which we did not provide for in the DPP4 revenue settings, ie, forecast net allowable revenue. These connections might then be eligible as an LCC in DPP4.

8.35 We consider that making it clear that the LCC mechanism only applies to projects or programmes that have not been provided for in DPP or CPP expenditure allowances will remove the risk of the LCC mechanism being used for forecast new large connections already funded through the DPP or CPP.

8.36 Our draft decision allowed for an LCC where:

8.36.1 the connecting party agrees in writing that the terms and conditions of the contract:

8.36.1.1 are reasonable; or

8.36.1.2 reflect workable or effective competition for the provision of the electricity distribution services; or

8.36.2 the EDB demonstrates beyond reasonable doubt that the terms and conditions of the contract were arrived at following a process that provided opportunities for:

8.36.2.1 the EDB’s affected customers to make or approve reasonable price-quality trade-offs; and

8.36.2.2 the competitive provision of new electricity distribution services by parties other than the EDB.

8.37 Our final decision is to change the EDB IM determination so that the LCC mechanism is available where the connecting party has agreed in writing that the terms and conditions of the contract are reasonable. For the avoidance of doubt, we have specified in the EDB IM determination that:

8.37.1 the relevant terms and conditions include the contract price(s); and

8.37.2 any variations of the contract must also be agreed in writing as being reasonable.

8.38 We have removed the other options so that an LCC is only available if both parties can agree that the terms of the contract are reasonable. As noted above, this more effectively promotes the s 52A(1)(d) purpose, as it provides less scope for an EDB to attempt to exert monopoly power and accordingly restricts the ability for an EDB to extract excessive profits. We invite any connecting customer who considers they are being inappropriately pressured to agree to an LCC, including agreement that is reasonable, to notify the Commission.

8.39 This change also promotes the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the s 52A purpose) by increasing certainty for suppliers and consumers in terms of when a contract qualifies for an LCC, given the other options would likely be more complex to assess.

Threshold for the LCC mechanism

8.40 Our draft decision was to have a 10MW minimum threshold for the capacity required for a connection to be eligible for the LCC mechanism.

8.41 Our final decision is to change the threshold by:

8.41.1 lowering the draft 10MW threshold to 5MW in respect of the new generation capacity or load; and

8.41.2 including an additional requirement that the LCC asset costs must exceed one of the following thresholds:

8.41.2.1 1% of the EDB’s forecast net allowable revenue (FNAR) for the regulatory period; or

8.41.2.2 $5 million for Vector Limited or Powerco Limited, or $2.5 million for any other EDB.

8.42 By reducing the MW threshold and expanding the wording of the IM to cover both new generation capacity or load, the MW aspect of the threshold will cover a wider variety of large new connections. By introducing an additional threshold that mirrors the Unforeseeable and Foreseeable large project reopener thresholds, we are then better targeting this to the objective of the mechanism, which is to avoid unnecessary reopener applications. Our final decision means large new connections that meet the thresholds could avoid a reopener where the need for the Commission's scrutiny is lesser than other circumstances given the customer agreement. This promotes the IM Review objective of significantly reducing compliance costs, other regulatory costs, or complexity (without detrimentally affecting the promotion of the section 52A purpose) by reducing costs and unnecessary delay, which in turn could more effectively promote the Part 4 purpose specified in s 52A(1)(b).

8.43 The purpose of the 10MW threshold (from our draft decision) was to act as a broad proxy for bargaining power, which was intended to limit the LCC mechanism to larger contracts where a level of bargaining power could be inferred. We recognise this is a broad proxy and involves a degree of judgement.

8.44 We changed the draft 10MW threshold to 5MW as suggested in Orion's submission.[295] Several other submitters also thought 10MW was too high and would result in very few connections being permitted under the LCC mechanism.

8.45 Lowering the MW threshold to 5MW provides an adequate proxy for size (and hence bargaining power). This mitigates against the risk of an EDB extracting excessive profits through an LCC (s 52A(1)(d)).

8.46 We have not removed the MW threshold altogether (as suggested by Vector [296] and Wellington Electricity)[297] as this would open the LCC mechanism to connections of any size (provided they met the other criteria). Our view is this would be too permissive and may result in situations where smaller connecting customers with lesser bargaining power may find themselves under pressure to negotiate with an EDB without an adequate balance of power in negotiations.

8.47 This is the initial introduction of the LCC mechanism, so we have taken a more conservative approach to setting the LCC thresholds. As with other IMs, we can review the threshold in the future, when we have been able to observe how it is operating in practice.

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295 Orion "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 14.

296 Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 253.

297 Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 50.

8.48 Our view is that a 5MW threshold (combined with the additional dollar value threshold) has the effect of balancing the need to limit the LCC mechanism to large connections (that would otherwise require a reopener) and having the threshold at a level that some connections are able to meet the threshold.

8.49 The additional dollar value and percentage of FNAR thresholds provide equivalence with the thresholds for the Unforeseeable and Foreseeable large project reopeners which reflects that the LCC is an alternative to large project reopeners and ensures incentives on the supplier are consistent.

8.50 Our decision is to not introduce a percentage of peak network demand threshold (suggested by Alpine Energy). We are of the view that our decision to set thresholds by reference to MW and a dollar amount/percentage of FNAR is preferable.

8.51 Our view is that a peak demand threshold will produce undesirable and complex inconsistencies between geographic regions when compared with a MW threshold.

Implementation

8.52 Our final decision is a change from our draft decision with respect to implementation:

8.52.1 Our draft decision was to nil-rate LCC assets with respect to the RAB and exclude any revenue and connection costs associated with the connection assets funded under an LCC from the EDB's forecast and actual allowable revenue.

8.52.2 Our final decision differs in that forecast LCC revenue is no longer excluded from forecast revenue from prices or forecast allowable revenue, and LCC revenue is included in the wash-up mechanism (the difference between actual allowable revenue and actual revenue). LCC assets are still nil-rated for the purposes of the RAB.

8.53 We have excluded ongoing operating costs associated with the assets funded under an LCC from the definition of 'operating cost' for the purposes of how the LCC works in relation to a price-quality path. Operating costs associated with the LCC assets will be recovered under the terms of the contract.

8.54 Assets under an LCC are nil-valued in an EDB's RAB where the assets are used solely in providing electricity distribution services under the LCC. The LCC asset costs will be recovered under the terms of the contract.

8.55 We have not specified the WACC rate that the EDB and the customer must apply for the setting of charges under the LCC. We consider this is a negotiable input under the contract, which might, for example, take into account the respective costs of capital of the customer and the EDB.

8.56 The EDB specification of price IM:

8.56.1 includes forecast LCC revenue within the assessment of maximum revenues that may be recovered by an EDB; and

8.56.2 provides for the wash-up mechanism to assess whether actual revenue reported as being from LCCs is from contracts that meet the LCC criteria.

8.57 The second specification of price requirement relating to the wash-up is important, because it is at this wash-up point where we can verify that any purported LCCs do in fact meet the LCC criteria, ie, in the customer agreement criterion, which acts in combination with the percentage of revenue/dollar value threshold and the 5MW threshold to give effect to the balance of negotiating power between the connecting party and the EDB.

8.58 The revenue forecast to be received under the LCC is excluded from the calculation of the revenue smoothing limit specified in the DPP determination or CPP determination because the revenue profile of the LCC is agreed by the connecting customer and the EDB.

8.59 The way we have given effect to the revenue wash-up reflects that the LCC revenue is the annual 'cost' represented by the LCC contract itself, which is also the LCC's price, rather than the asset costs and operating costs that that contract recovers. We have taken this approach because the LCC will specify the time profile of cost recovery, rather than necessarily being consistent with the IMs (eg, depreciation rules etc) and in the price-quality path operating expenditure allowances. LCC revenue is therefore defined as a component of 'actual allowable revenue' in the specification of price IM wash-up clause, representing the allowable LCC revenue needed to recover the LCC costs.

8.60 The revenue that the EDB receives from contracts that the EDB reports as an LCC will be a component of the 'actual revenue' defined in the specification of price IM wash-up clause.

8.61 Consistent with NICs for Transpower and with the intended outcome in our draft decision, to ensure the EDB bears the credit risk associated with the LCCs, any wash-up amount representing an under-recovery against allowed revenue in the contract for any individual LCC will not enter the wash-up account balance as an amount recoverable by the EDB in future pricing from other consumers.

8.62 Although the actual wash-up formula and associated price-quality path compliance provisions will be consulted on as part of the DPP4 reset process, we do anticipate in practice our approach to the wash-up as determined in the EDB IMs might result in practical outcomes such as the following:

8.62.1 In normal circumstances, where the EDB has appropriately met the LCC criteria, including customer agreement, the LCC revenue received will equal that year's 'cost' of the LCC, and the wash-up amount relating to LCCs will be zero.

8.62.2 However, if some of the revenue that the EDB reports to be from an LCC is from a contract that does not meet the LCC criteria, the correct wash-up amount associated with the contract will be a negative amount, which will enter the wash-up account balance and result in an adjustment to future prices for the benefit of other consumers.

8.63 If LCC criteria are met and LCC revenue is reported correctly in accordance with the wash-up requirements, there will be nothing to wash-up because allowed LCC revenue will equal the revenue received in respect of purported LCC.

8.64 In the event that the purported LCC does not meet the LCC criteria, the EDB would be required to add to its wash-up balance a negative amount equalling the revenue received that did not meet the LCC criteria. This would effectively require repayment of that amount to consumers in future.

Other practical aspects raised by submitters

8.65 Several submitters asked us to clarify whether the LCC mechanism is optional. The LCC mechanism is optional - there is no requirement that all new connections of the applicable size be implemented via the LCC mechanism. This is reinforced by the LCC criteria that require agreement in writing from the connecting customer that the terms and conditions of the contract are reasonable.[298] A connection may be allowed in the DPP or CPP where it is forecast, and the large project reopeners are also available.

8.66 We summarise in Table 8.1 other practical questions and suggestions from submissions and include our brief responses.

[298] Commerce Commission "Input methodologies review 2023 - [Final] Electricity Distribution Services Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC [35]" (13 December 2023), clause 1.1.4(2) definition of large connection contract.

8.67

Table 8.1 Our response to questions or suggestions from submissions

Suggestion or question	Our response
Contact and IEGA suggested the Commission should consult with the energy sector jointly with the EA before implementing the LCC mechanism.[299] Vector disagreed with the need for a separate joint project with the EA.[300]	We have consulted with the energy sector and other stakeholders during this IM Review process. That process has been robust and, as a result, we have sufficient information now to make a decision regarding the LCC and its implementation.
Aurora requested clarity as to whether payments for shared assets are to be treated as regulated income under an LCC.[301]	Our decision does not allow for charges for shared network assets to be split between an LCC and other consumer prices. Clarifying that charges for electricity distribution services cannot be split in the case of an LCC removes any doubt or confusion over what income is or is not included in the LCC and more effectively promotes the s 52R purpose of certainty for suppliers. Shared network assets (ie, other than connection assets) in these cases are in the RAB (but not at nil value) and lines charges will be made in the normal way. Depending on the circumstances, this may result in lines charges being made on the connecting customer who has the contract for the LCC in addition to the connection asset charges under the contract.
MEUG wanted clarification over how the MW threshold will be defined.[302]	The MW threshold is either the maximum load or generation capacity that can be connected to the LCC asset.
Aurora wanted clarification over what happens to stranded assets in the event of financial default of a connecting customer.[303]	Our decision is that a stranded LCC asset is not able to just be absorbed into the RAB in the event of financial default of a connecting customer. The asset stranding risk with an LCC asset lies with the EDB and the contractual arrangement could itself provide for such a risk.
Alpine Energy wanted clarification on how the LCC mechanism would apply to projects already under way.[304]	The LCC mechanism will not apply to connection projects that are already underway or that commences before DPP4, eg, for which the costs have already been provided for in DPP3 or via a reopener.

299 Contact Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 28; Independent Electricity Generators Association (IEGA) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 2.

300 Vector "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), para 143.

301 Aurora Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 10.

302 Major Electricity Users Group (MEUG) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 18.

303 Aurora Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 40.

304 Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 17.

Aurora wanted clarity over who will determine if the LCC criteria have been met.[305]	The LCC mechanism requires agreement from the connecting party that the terms and conditions of the contract are reasonable. The Commission will decide whether the relevant criteria have been met. The disclosure of LCC-related information, such as via ID requirements and compliance statements will provide visibility and transparency of LCC contracts. That will enable us to monitor in practice whether the LCC mechanism is working as anticipated.
PowerNet is concerned that the LCC may not be beneficial to all EDBs. It submitted that this will create a two-tiered approach and likely cause more complexity to the regulatory environment.[306]	While smaller EDBs are less likely to have connections that meet the 5MW threshold, our view is that it is important at this introductory stage to limit the LCC mechanism to larger contracts that meet the criteria given those criteria provide a blunt proxy for this. This promotes the s 52A(1)(d) purpose by limiting an EDB's ability to extract excessive profits from connecting parties.
PowerNet submitted that the Delivery Service Agreements are negotiated with customers with different levels of capital contributions and line charges. PowerNet is concerned that this will add complexity to the LCC mechanism.[307]	The LCC mechanism is intended to be a substitute for a reopener that allows a connecting party to negotiate commercial terms with the distributor if they wish. As such, the LCC mechanism is intended to reduce complexity in respect of an EDB's interaction with the Commission, in line with the proportionate scrutiny principle, which will reduce compliance costs, other regulatory costs and complexity.
Wellington Electricity suggested the LCC mechanism should be available for the remainder of DPP3.[308]	This is not possible. The current IMs apply to DPP3, and those IMs do not provide for an LCC mechanism. The LCC is given effect under our changes to the IMs and, consistent with s 53ZB(1), will not come into effect until the next EDB DPP regulatory period, which commences on 1 April 2025.
Alpine Energy wanted assurance that the rules that come about due to the introduction of the LCC mechanism remain consistent during the lifetime of an LCC asset.[309]	The LCC rules in the IMs are subject to the statutory provisions regarding when amendments may be made, as is the case for other IMs.
Unison wanted clarification over whether the connection assets can be delivered to the large customer through a combination of an LCC and normal lines charges.[310]	Our decision does not allow for this. The connection assets must be delivered all through the LCC or all through the RAB. Our view is that intermingling would undermine the cost and time-effectiveness of the LCC. Our decision reduces compliance costs and complexity.

[305] Aurora Energy "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 38.

[306] PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 22.

[307] PowerNet "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 26.

[308] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 50.

[309] Alpine Energy Ltd "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 17.

[310] Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 111(a).

Unison wanted clarification on whether an EDB has the choice of whether to fund connection assets for a large customer under an LCC or whether it can choose to keep connection assets in the RAB.[311]	An LCC contract is optional for both parties.
Unison wanted clarification over whether an EDB would have the flexibility to consider future customers when constructing the LCC assets.[312]	The LCC mechanism is not aimed at anticipatory capacity.

Ongoing monitoring

8.68 We intend to monitor the uptake of LCCs, including future ID requirements on LCC contracts, to check against the potential for abuse of bargaining power and ensure each LCC is calibrated appropriately. The disclosure of LCC-related information, such as via ID requirements and compliance statements will provide visibility and transparency of LCC contracts. That will enable us to monitor whether the LCC mechanism is working as anticipated, and it will allow us to consult on potential improvements to the LCC mechanism in future.

8.69 In particular, we will continue to monitor the uptake of the LCC mechanism to assess the setting of the MW threshold. This will allow us to consider adjusting the threshold and other settings in the future, if appropriate.

8.70 ID requirements on the LCCs are outside of the scope of the IM Review. However, this is something we intend consulting on in a future amendment to ID requirements. We will consider and consult in our ongoing ID regulation processes on whether to introduce requirements to provide visibility for stakeholders of these contracts, which we consider should help mitigate concerns that EDBs are able to extract excessive profits under an LCC.[313] At this stage, we consider the required disclosures for an LCC might include the following:

8.70.1 the title and a brief description of the contract;

8.70.2 the name of the contracting customer;

8.70.3 the date of the contract;

8.70.4 the electrical capacity of the LCC investment;

8.70.5 the estimated build cost of the LCC assets; and

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311 Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 110.

312 Unison "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 110.

313 An example of how ID may be used to monitor the contracts being undertaken are capturing the costs and associated connection capacity provided, which can be compared to other similar connections and costs to help us detect potential excessive profits. Transpower is currently required to disclose information on NICs under information disclosure requirements.

8.70.6 the terms and conditions of the contract (including price).

8.71 As part of the DPP4 reset process we intend to consult on the wash-up formula and compliance statement requirements that apply to an LCC under a DPP and a future CPP. Specifically, we intend to consult on DPP4 determination provisions that would:

8.71.1 require evidence to be included as part of the DPP or CPP compliance statement (or retained by the EDB) that demonstrates the LCC criteria have been met; and

8.71.2 allow us to identify if there has been a possible contravention of a DPP or CPP requirement if the EDB reports revenue as LCC revenue where the associated contract does not meet the criteria set out in the IMs in the definition of 'large connection contract'.

Chapter 9 Whether other in-period adjustment mechanisms are necessary

Purpose and structure of this chapter

9.1 EDBs, GDBs, GTB and Transpower are likely to experience greater levels of forecasting uncertainty for upcoming regulatory periods than has historically been the case.

9.2 We have considered how this increased level of uncertainty should be accommodated within the price-quality pathways whilst staying consistent with the purpose of default/customised price-quality regulation as outlined in s 53K of the Act.

9.3 In this context, the ENA has represented:[314]

> A wide gulf exists between the current low-cost (generic) DPP process and the bespoke, high-cost CPP process. ENA believes there is scope for the IMs to enable regulatory tools that bridge this gulf by allowing the Commission's determinations to adapt during a regulatory period to respond to changing circumstances and new information.
>
> The existing regime provides for both limited re-openers and resource-intensive customised price-quality path applications. ENA recommends the Commission consider development of contingent allowances, pass-throughs, or other flexibility mechanisms that automatically trigger on the occurrence of specific events. These flexibility mechanisms should allow for collective application.[315]

9.4 This suggests that future uncertainty may not be adequately provided for in DPPs by the current suite of reopeners or other mechanisms, and that the DPP forecasting approach and price path adjustment mechanisms need to be considered as a cohesive package.

9.5 Consumers can also benefit from in-period adjustment mechanisms that allow the price path to be amended as circumstances change, as these mechanisms potentially allow a lower price path to be initially set. This means that consumers are more likely to only pay for projects that are undertaken.

9.6 In Chapter 3 of this topic paper, we outlined the regulatory continuum and indicated where we considered different mechanisms may be used to address forecasting uncertainty.

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[314] Electricity Networks Aotearoa "Submission on IM Review Process and Issues paper and draft Framework paper" (11 July 2022), p. 6.

[315] Electricity Networks Aotearoa "Feedback on the impact of decarbonisation on electricity lines services" (21 December 2021), p. 2.

9.7 In this chapter we introduce and consider a range of potential mechanisms for addressing forecasting uncertainty which allow for recovery of costs, but which are not reopeners.

9.8 We then consider whether the response by regulated businesses to uncertainty can be better enabled by the use of other mechanisms and whether the implementation of mechanisms within the IMs may assist in addressing forecasting uncertainty in a DPP, CPP or IPP (issue 8 in Chapter 3 (How in-period adjustments can address changed or unexpected circumstances) of this topic paper).

9.9 We note that a CPP provides significant ability to respond in an appropriate and timely way, as outlined in Chapter 4, and an IPP has even greater responsiveness built in to include the possible use of in-period adjustment mechanisms in a way which is different to a DPP.

9.10 This chapter identifies potential issues which the in-period mechanisms could address. We assess the potential application of the mechanisms for addressing the issues outlined and include analysis of:

9.10.1 increasing the scope of pass-through costs or recoverable costs to cover a wider spectrum of categories of costs;

9.10.2 contingent expenditure allowances;

9.10.3 use-it-or-lose-it allowances; and

9.10.4 quantity wash-ups.

9.11 Whilst this chapter considers the potential application of in-period adjustment mechanisms, including those proposed by suppliers, it is not exhaustive of all potential applications. The design and application of in-period adjustment mechanisms depends on the nature of the forecasting uncertainty to be addressed. The cost, complexity, and accuracy of the mechanisms will vary according to the specific variables or inputs available and accordingly the suitability of any adjustment mechanism needs to be individually assessed against our IM Review framework.

Other considerations

9.12 We acknowledge the ENA submission on the IM Review Process and issues paper which stated:[316]

> While expenditure allowances are the domain of DPP and CPP Determinations, the IM Review should consider how the Commission will undertake future expenditure forecasting requirements, as this has implications for reopeners, pass-through and contingent allowances.

9.13 In assessing the potential application of other in-period adjustment mechanisms we have not pre-determined what DPP expenditure forecasting approach may be used in future price-quality path resets or the potential drivers of CPP and IPP proposals. We consider this approach still provides for appropriate consideration of the potential application of a variety of in-period adjustment mechanisms and does not require establishment of what future expenditure forecasting approaches will be.

9.14 We acknowledge the viability of different mechanisms will be dependent on expenditure forecasting practices, and the quality of information available to establish mechanisms and to then assess them, during the regulatory period.

9.15 We consider that for specific categories of costs or expenditure requirements increased automation such as the inclusion of a financial sum and triggers in the price-quality path determination could be beneficial, where possible and consistent with the Act and IM Review framework. This is because an adjustment or allowance could result in less time spent in subsequent consideration and accordingly be more consistent with the relatively low-cost nature of a DPP. We note potential concerns where significant effort is required in establishing mechanisms which are not required as the trigger condition is not met.

Increasing the scope of pass-through costs or recoverable costs to cover a wider spectrum of categories of costs

9.16 Pass-through costs and recoverable costs are able to be passed through to prices, ie, they are netted-off the notional revenue allowance in assessing compliance annually under either a DPP, CPP or IPP.[317] These are costs which by their nature are outside of the control of a supplier and are uncertain in terms of amount and accordingly are not subject to the same incentives as costs provided for within the notional revenue allowance.

[316] Electricity Networks Association "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), p. 16.

[317] Pass-through and recoverable costs are added, along with other factors to forecast net allowable revenue to establish forecast allowable revenue.

9.17 This topic paper does not cover the role and application of the current pass-through costs and recoverable costs. Other changes and refinements to current costs are discussed in Chapter 7 of the Report on the IM Review with the reclassification of transmission costs as a pass-through cost, discussed in Part 1 in the Report on the Review.[318] We have extended the 'reconsideration event allowance' recoverable costs to cover all reopener events in the EDB IMs and introduced it as the revised 'reconsideration reopener event allowance' recoverable cost into the EDB, GDB, and GTB and Transpower IMs. This is discussed in Chapter 5 of this paper.

Our final decisions

9.18 We have not identified any new pass-through costs or recoverable costs which we consider should be introduced to manage increased forecasting uncertainty for EDBs, GDBs, the GTB or Transpower.

9.19 Whilst greater use of pass-through costs or recoverable costs may reduce regulatory costs, we consider this would not more effectively promote s 52A as it may remove the incentive for active cost management by suppliers, who in most cases are best placed to manage the risk. It could expose consumers to volatility in the underlying costs and overlap with the boundary and rationale for reopener mechanisms, which would not promote the s 52R IM purpose of providing certainty more effectively.

9.20 Our final decision is not to codify into the IMs the ability for the Commission to introduce uncertainty mechanisms prior to the IPP reset, which would be treated as recoverable costs.

[318] Commerce Commission "Input methodologies review 2023 - Final decision - Report on the Input methodologies review 2023 paper" (13 December 2023).

Problem definition

9.21 The current suite of pass-through costs which apply to EDBs, GDBs, the GTB, and Transpower covers local authority rates and industry levies,[319] with recoverable costs covering a wider range of incentives, costs and wash-ups.[320]

9.22 One option would be to expand the scope of application of recoverable costs within the IMs to cover further specified categories of opex and/or capex. This would remove these categories of expenditure from the allowable revenue component of the price path, reducing risks associated with forecasting uncertainty as changes in costs are able to be passed through.

9.23 Inclusion of a cost as a recoverable cost would reflect that whilst the nature of the cost may be reasonably foreseeable, there is a relatively high level of exposure to changes in quantum, which are outside of the control of the supplier.

Stakeholder views

9.24 In its submission on our Process and issues paper Vector requested a significant broadening of the suite of in-period adjustment mechanisms, stating:[321]

> Amend the IMs to make better use of pass-through and recoverable costs. This should include allowing more ex-post costs to be passed-through (in line with the approach the IM currently takes for gains and losses on disposed assets).

9.25 The ENA requested a new pass-through cost or recoverable cost for an EDB's carbon abatement cost under the Climate Change Response Act 2002.[322]

9.26 In its submission on our draft decisions Vector proposed the introduction of a pass-through cost for storm response, with the purpose of ensuring that EDBs are being funded efficiently to respond to severe weather events. They stated:

> Currently covered by the Catastrophic Event re-opener which is administratively burdensome, bound by regulatory periods and subject to interpretation of the IMs for its application. Climate change will result in more severe weather events. It is not practical or efficient for EDBs to always use the Catastrophic event re-opener to recover costs incurred responding to these events…EDBs can invest in the best interest of consumers without having to apply for ex post funding which is uncertain, and the process is slow. [323]

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[319] *Electricity Distribution Services Input Methodologies Determination 2012*, clause 3.1.2; *Gas Distribution Services Input Methodologies Determination 2012*, clause 3.1.2; *Gas Transmission Services Input Methodologies Determination 2012*, clause 3.1.2.

[320] *Electricity Distribution Services Input Methodologies Determination 2012*, clause 3.1.2; *Gas Distribution Services Input Methodologies Determination 2012*, clause 3.1.2; *Gas Transmission Services Input Methodologies Determination 2012*, clause 3.1.2.

[321] Vector "Submission on the Process and issues paper" (11 July 2022), p. 26.

[322] Electricity Networks Association "Feedback on the impact of decarbonisation on electricity lines services" (21 December 2021), p. 2.

[323] Vector "In-period adjustments" (6 April 2023), para 34 and item 3 before para 34.

9.27 Vector also commented that:

> For RIIO-ED2, Ofgem made Severe Weather 1-20 costs a pass-through item. Previously DNOs had specific allowances specifically for these events but due to the difficulty in forecasting their frequency and impact, they changed it to pass-through.

9.28 Wellington Electricity also disagreed with our draft decision not to allow more costs to be passed through. In its view if specific costs meet the pass-through cost test, then it is in the customers' long-term benefit to pass them through ie, where an EDB cannot avoid or control cost fluctuations, it may have to then reprioritise cost over the other essential functions needed to provide services at a level customers want. Specifically, Wellington Electricity submitted that insurance costs should be a pass-through cost as insurance cost fluctuations are generally outside of the control of the supplier. Wellington Electricity stated that:

> Insurance is also ultimately for the benefit of the customers - reducing the amount of any future price increases needed to repair equipment damage after a natural disaster. …. Currently networks are incentivised to reduce coverage and increase a customer's exposure to post-event recovery costs in response to an insurance cost increase. Customers are the beneficiary of a network maintaining prudent levels of insurance coverage and are therefore best placed to bear the risk of cost fluctuations. [324]

Introduction of uncertainty mechanisms prior to an IPP reset

9.29 Transpower proposed, in its submission on our draft decision, new clauses in the Transpower Capex IM to codify the ability for it to propose, and for the Commission to evaluate, uncertainty mechanisms prior to an IPP reset.[325] Transpower proposed this so that for future IPP resets, new uncertainty mechanisms could be prescribed within the IPP determination without a future amendment needing to be made to the IMs.

9.30 In the new clauses proposed by Transpower, it suggested that the uncertainty mechanism be treated as a recoverable cost (outside of the price path) and for actual opex to exclude any opex incurred in relation to the uncertainty mechanism.[326]

9.31 Transpower stated that although the Commission can amend the IMs after reviewing an IPP proposal, providing certainty now that the IMs allow the Commission to introduce uncertainty mechanisms better achieves the IM purpose in section 52R.[327]

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[324] Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023) , para 5.6.1.

[325] Transpower "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 161.

[326] Transpower "Submission on IM Review 2023 Transpower IM Draft Determination" (26 July 2023)), clause 3.6.3(8)(c).

[327] Transpower "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 41.

9.32 Transpower has proposed the above amendments, as it considers that the IMs should have more flexibility to allow for uncertainty mechanisms and that the best place to set out the detailed prescription for the uncertainty mechanisms is within the individual price-path (IPP) determination.[328]

Analysis – Consistency of extending the scope of pass-through costs or recoverable costs with our economic principles

9.33 Our decision-making framework identifies key economic principles which provide guidance on how we might more effectively promote the purpose of Part 4 under s 52A through our decisions.[329]

9.34 Our risk allocation principle is that, ideally, particular risks should be allocated to suppliers or consumers depending on who is best placed to manage them. Options for managing risks include:

9.34.1 taking actions to influence the probability of occurrence where possible;

9.34.2 taking actions to mitigate the costs of occurrence; and

9.34.3 the ability to absorb the impact where it cannot be mitigated.

9.35 Regulated suppliers have various risk management tools at their disposal, including investment in network strengthening/resilience, contracting arrangements, and delaying certain decisions. Some of these tools may have associated costs to suppliers.

9.36 Increasing the spectrum of categories of costs which are recognised as pass-through costs or recoverable costs would reduce uncertainty for suppliers but would mean consumers would be exposed to volatility in the underlying costs.

9.37 We note there could be some partially controllable costs that it may be appropriate to allow to be fully recoverable from consumers. This may be the case where the costs associated with applying a mechanism to provide incentives for the supplier to manage the risk are unlikely to outweigh the benefits to consumers of doing so, based on currently available information.

9.38 Accordingly, any potential increase in the scope of pass-through costs or recoverable costs will need to consider who is best placed to manage risks, with consideration given to the supplier's ability to control costs.

[328] Transpower "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 34.

[329] Commerce Commission “IM Review 2023 - Decision-making Framework paper" (13 October 2022), Chapter 4.

Cross-over with other reopeners

9.39 When evaluating whether to extend pass-through costs and recoverable costs, we have considered what the appropriate boundary is between the role of reopeners and these other mechanisms.

9.40 We consider the reopener mechanism is more appropriate to use instead of pass-through costs or recoverable costs where the costs are at least partially controllable by the supplier. Accordingly, it would be appropriate to apply the reopener assessment framework in order to assess the efficiency and prudency of the costs before they could be recovered.

9.41 For example, in the case of catastrophic events or legislative change, although the event may be outside of the control of a supplier, the costs associated with responding to the event are not.

Analysis – extension of pass-through costs

9.42 The IMs currently provide for additional pass-through costs to be specified by way of a DPP, CPP or IPP determination where the cost in question must-[330]

(a) be-

(i) associated with the **supply** of **electricity distribution services**;

(ii) outside the control of the **EDB**;

(iii) not a **recoverable cost**;

(iv) appropriate to be passed through to **consumers**; and

(v) one in respect of which provision for its recovery is not otherwise made explicitly or implicitly in the **DPP** or, where applicable, **CPP**; and

(b) come into effect during a **DPP regulatory period** or, where applicable, **CPP regulatory period.**

9.43 Accordingly, the IMs already provide for additional pass-through costs to be recognised where they meet these criteria. Extending the application of pass-through costs would not promote IM purpose in s 52R more effectively without detrimentally affecting the promotion of the s 52A purpose.

[330] This representation is in the context of *Electricity Distribution Services Input Methodologies Determination 2012 (consolidated 20 May 2020),* clause 3.1.2(3), but a similar clause exists for *Gas Distribution Services Input Methodologies Determination 2012 (consolidated 9 September 2022)* at clause 3.1.2(3), and *Gas Transmission Services Input Methodologies Determination 2012 (consolidated 9 September 2022)* at clause 3.1.2(3) and *Transpower Input Methodologies Determination 2010 (consolidated 29 January 2020)* at clause 3.1.2(3).

9.44 We disagree with Vector's proposal to introduce into the IMs a pass-through cost for storm response. We stated at paragraph 9.34 that in assessing possible pass-through costs we take into account who is best placed to manage risk as per our risk allocation principle and the ability of suppliers to control costs, as well as the IM Review Framework generally. We consider that suppliers are the parties best placed to manage the risk of storm response costs. Allowing storm response costs as a pass-through cost in the IMs would disincentivise suppliers to proactively manage costs, and as a consequence Vector's proposal would not promote the Part 4 purpose in s 52A more effectively, particularly s 52A(1)(b) and (d).

9.45 While storms are outside the control of suppliers, costs associated with responding to storm events are partially controllable by suppliers. A supplier can proactively make planning and operational decisions as to how it would respond to such events or whether it chooses to insource or outsource personnel to respond to those events, etc. We consider that because suppliers have the ability to manage and mitigate some of the risks associated with responding to storms they are best placed to manage these costs.

9.46 We note that suppliers already have a mechanism available to them for recovering costs associated with responding to a reopener event, the "reopener event allowance" recoverable cost, which now includes what was previously the ''catastrophic event allowance''. This recoverable cost allows regulated suppliers to be compensated for prudent and efficient costs in responding to reopener events, including catastrophic events like storms, up until the date the reconsidered price-quality path takes effect.

9.47 We discuss this in detail in Chapter 5 of this Topic paper.

9.48 We disagree with Wellington Electricity's proposal that insurance costs should be a pass-through cost specified in the IMs. We consider that treating insurance as a pass-through cost in the IMs may disincentivise EDBs from efficiently managing the risks, including in respect of which risks they choose to insure against and the way they choose to insure against these risks, so the proposed change would not promote the Part 4 purpose in s 52A more effectively, particularly s 52A(1)(b). For example, considering whether to self-insure would be a more efficient way of managing risk than insurance provided by a third party. We do not think a pass-through cost should be material to whether suppliers are maintaining prudent levels of insurance.

Analysis – extension of recoverable costs, general

9.49 The decision to make certain expenditure a recoverable cost implies that suppliers have limited control over the level of expenditure whilst still meeting good industry practice. In practice, the level of control will vary depending on the expenditure category, but network design or operational decisions will drive, at least in part most expenditure requirements not already provided for as recoverable costs.

9.50 Where the level of expenditure incurred is at least in part driven by supplier choices, inclusion of the cost as a recoverable cost may change supplier behaviour. In particular suppliers could:

9.50.1 focus less on active cost control for particular categories of costs, as all costs, efficient or not, are able to be recovered in full;

9.50.2 choose to invest more in this type of category than would otherwise be required to provide network services; or

9.50.3 less actively manage the risk of adverse outcomes, given they are not exposed to the consequences.

9.51 Extension of categories of recoverable costs may also increase revenue volatility with limited ability for the Commission to reassess if significant volumes of costs were allocated. To the extent any extension was made, we consider the role of recoverable costs would need to be tightly defined. Extending the categories of recoverable costs would not promote the Part 4 purpose in s 52A more effectively, as suppliers would not be incentivised to invest and improve efficiency for the long-term benefit of consumers.

Analysis – extension of recoverable costs, specific requests

9.52 Vector identified a number of specific costs which it considered should be established as pass-through costs or recoverable costs:[331]

> Both cyber security costs and data costs are two prime examples of areas that are rapidly changing and/or where efficient costs are being established. We also consider all legislative, regulatory and government policy driven costs would be appropriate to be included as passthrough costs.

9.53 We acknowledge that technological transformation may result in increases in cyber security costs and data costs for some suppliers. However, as suppliers have substantial control over the quantum of these costs based on network design decisions and operating models, they are not well suited to being recoverable costs.

[331] Vector "Submission on the Process and issues paper" (11 July 2022), pp. 26-27.

9.54 In addition, the current information lacks specificity to identify what is anticipated to be covered by the request and the extent these are outside the control of suppliers. In particular, “data costs” is a wide-ranging term which could capture a substantial amount of a supplier's operations.

9.55 We have similar concerns on the lack of specificity regarding what is anticipated to be covered by the request for inclusion of “all legislative, regulatory and government policy driven costs”.

9.56 We note the current suite of pass-through costs and recoverable costs already include a number of these costs which are outside the control of suppliers:

9.56.1 rates on system fixed assets paid or payable to a local authority under the Local Government (Rating) Act 2002;

9.56.2 levies payable-

9.56.2.1 under regulations made under s 53ZE of the Act;

9.56.2.2 under regulations made under the Electricity Industry Act 2010;

9.56.2.3 under regulations made under the Gas Act 1992;

9.56.2.4 the Commerce (Levy for Control of Natural Gas Services) Regulations 2005;

9.56.2.5 by all members of the Electricity and Gas Complaints Commissioner Scheme by virtue of their membership; and

9.56.2.6 by all members of the approved scheme under Schedule 4 of the Electricity Industry Act 2010.

9.56.3 any levy payable to Fire and Emergency New Zealand under the Fire and Emergency New Zealand Act 2017.[332]

9.57 Further specificity is required on what specific legislative or regulatory requirements would be appropriate to include as a pass-through cost or recoverable cost and the underlying logic for this. We note that a Change event reopener already exists for changes in, or new, legislative and regulatory requirements which are material and not explicitly or implicitly provided for within a price path. Further discussion on the coverage provided by the Change event reopener is in Chapter 6 of this topic paper.

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[332] The Fire and Emergency levy is only a recoverable cost in the *Electricity Distribution Services Input Methodologies Determination 2012 (consolidated 20 May 2020)*, (clause 3.1.3(1)(w)).

9.58 Government policies can be framed in quite broad terms, and accordingly it is difficult to envisage how these may relate to direct expenditure requirements on a supplier which are outside of a supplier's control.

9.59 In addition, introduction of a Government policy may not require a supplier to incur costs, or they may have more discretion in response, unlike a change in legislative or regulatory requirements.

9.60 Given the lack of specificity associated with the costs identified by Vector and the uncertainties as to the impact of Government policy changes on suppliers, we do not consider that Part 4 purpose as outlined in s 52A would be promoted more effectively by amending the IMs to cover these costs.

9.61 We have separately assessed whether changes in Government policies may be appropriate to include as a reopener, given this is particularly relevant for GDBs and the GTB in the current context. This has been considered within Chapter 6 of this topic paper.

9.62 The ENA's submission on the decarbonisation workshop stated:[333]

> flexibility mechanisms should allow for collective application. Specifically, the regime must include a pass-through of EDB's carbon abatement costs under the Climate Change Response Act 2002.

9.63 Carbon abatement costs could be managed by a number of practices which are within the control of an EBD, including but not limited to, use of circuit breakers which do not use SF6 gases, and purchase of carbon credits etc. Accordingly, we have not extended the scope of recoverable costs to provide for carbon abatement costs as suppliers would not be incentivised to innovate and invest, which would be contrary to s 52A(1).

Analysis - introduction of uncertainty mechanisms prior to an IPP reset

9.64 Transpower has the ability to propose new in-period adjustment mechanisms or uncertainty mechanisms as part of its IPP proposal prior to an IPP reset. The Commission is also able to propose new in-period adjustment mechanisms via an IM amendment for a reset if there is justification to do so.

[333] Electricity Networks Association "Feedback on the impact of decarbonisation on electricity lines services" (21 December 2021), p. 2.

9.65 Transpower proposed an uncertainty mechanism should be formalised in the IMs in a permissive manner, which would allow for the uncertainty mechanism to be set out in the IPP rather than the IM and that the uncertainty mechanism be a recoverable cost. This proposal was supported by the ENA who considered that it should be established for EDBs as well.[334]

9.66 We do not agree that an uncertainty mechanism should be formalised in the IMs in a permissive manner. The price-quality path reconsideration IMs are not a fundamental IM and are able to be amended prior to an IPP reset. Transpower does not need a permissive clause in the IMs to be able to propose that an uncertainty mechanism be added ahead of an IPP reset.

9.67 Transpower's proposal would not promote the s 52A purpose more effectively than the status quo, nor would it promote the s 52R purpose (without detrimentally affecting the s 52A purpose) more effectively than the amended IMs or status quo.

9.68 Transpower's proposal to make the uncertainty mechanism a recoverable cost would mean that these costs would not be subject to the Commission's scrutiny or incentive mechanisms. The s 52A purpose would not be promoted more effectively by this proposal.

9.69 For the reasons outlined above, our final decision is not to codify into the IMs the ability for the Commission to introduce uncertainty mechanisms prior to an IPP reset, which would be treated as a recoverable cost.

Contingent expenditure allowances

9.70 The current DPP, CPP and IPP regimes have limited mechanisms, outside of the reopener process, to account for events that were foreseeable at the time of setting a price-quality path but where there was uncertainty regarding the timing of the requirement for investment.

9.71 Inclusion of an expenditure allowance which is contingent on a specified trigger or driver occurring may provide a faster process for suppliers to receive increased expenditure allowances during the regulatory period.

[334] Electricity Networks Aotearoa (ENA) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 2.

Our final decision

9.72 Our decision is to not extend the EDB, GTB, GDB or Transpower IMs to incorporate new contingent expenditure allowances as recoverable costs.

9.73 The introduction of contingent expenditure allowance as a recoverable cost may reduce regulatory costs, in comparison to consideration of costs through the reopener process if the contingent allowances are able to be considered and established at limited cost at the time of undertaking a price path reset. However, we are not satisfied that there would be material savings in analysis costs, and there is a risk that required analysis to establish the mechanism is undertaken, but the mechanism itself may never be triggered.

9.74 We consider the incorporation of new contingent expenditure allowances as recoverable costs would not more effectively promote the s 52A purpose. It would be likely to reduce the incentives on suppliers to actively manage their costs. As discussed further below, the expansion would not be consistent with the purpose of relatively low-cost DPP regulation, as specified in s 53K of the Commerce Act.

Problem definition

9.75 Contingent expenditure allowances, as a recoverable cost could be used where the need and cost of a particular expenditure is well established but there is uncertainty regarding timing. A contingent expenditure allowance would provide for increased expenditure dependent on a specified trigger or driver occurring.

9.76 Recoverable costs allow suppliers to recover specified costs. A “contingent expenditure allowance” recoverable cost mechanism is distinct from the “Contingent project” reopener discussed in Chapter 6, as it does not have the same process requirements of a reopener, and its impact on the price path is different. Reopeners adjust the FNAR and IRIS forecasts (if applicable) but for recoverable costs these costs are passed on to consumers and are outside the FNAR (or forecast MAR).

9.77 The ENA requested the Commission include contingent allowances or similar mechanisms stating:[335]

> Contingent allowances should be incorporated into the IMs for events that were foreseeable at the time of forecasting but uncertain or were outside the control of EDBs. Typical trigger events for contingent allowances should include large-scale DG and load connections, as the timing and investment decisions are determined by customers and therefore outside EDBs’ control.

[335] Electricity Networks Association “Submission on IM Review Process and issues paper and draft Framework paper” (11 July 2022), pp. 15-16.

9.78 Vector represented that contingent allowances could be an alternative to reopeners and make the regime less costly and complex:

> The introduction of contingent allowances as an alternate to re-openers or CPPs would also remove cost and complexity from the regime and administrative burden on the Commission (as recently observed in the delayed Unison reopener decision).[336]
>
> Vector: Consider amending the IM to provide contingent allowances for expenditure reasonably expected (but not certain) during the period. For example, the Commission could provide a certain amount of expenditure to deal with eg, EV connections with access to the allowance triggered only once sufficient EV connections were seeking access to the network.[337]

Our reasons for our draft decision

9.79 Contingent expenditure allowances are a mechanism which could apply where the Commission considered the cost of specified projects was material but not provided for in a DPP, CPP or IPP as they represented significant costs, and the commencement dates could not be forecast with an appropriate degree of certainty. A contingent expenditure allowance could provide for increased revenue during the period when a specified trigger occurred.

9.80 There is likely to be a high degree of overlap between the mechanism and the EDB Foreseeable large project reopener and Transpower expenditure proposal mechanisms.

9.81 The potential value of this mechanism, implemented as a recoverable cost, is a reduction in the requirement for reopeners if the project is identified as conditional on a clearly identifiable trigger or driver that can be appropriately specified in a price-quality path determination and the analysis of the need can be undertaken at lower cost at the time of the reset. They would most likely occur where there is high confidence on the need and cost, but the timing is uncertain.

9.82 Contingent expenditure allowances would require a trigger or driver to be specified in the price-quality path determination. The triggers or drivers would need to tie directly to expenditure requirements, with a clear causal relationship to the underlying expenditure requirement.

9.83 We think it would be preferable that a contingent expenditure allowance, if used, provided a stated dollar value in the determination for each contingent project or programme that is allowed to be recovered.

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[336] Vector "Submission on the Process and issues paper" (11 July 2022), para 143.

[337] Vector "Submission on the Process and issues paper" (11 July 2022), p. 36.

9.84 We consider if a contingent expenditure allowance warranted a more than limited degree of verification on costs, then it is better established and assessed as a reopener and should be considered under that process.

9.85 However, there are a number of challenges related to contingent expenditure allowances which may make this an undesirable mechanism.

9.86 A contingent expenditure allowance established as a recoverable cost would not be subject to the same incentives as other expenditure provided for within the price-quality path. This is different to the reopener mechanism, which adjusts the price path and IRIS value to maintain incentives on suppliers.

9.87 An increased use of contingent expenditure allowances could create a perverse incentive to represent a wider range of expenditure as being contingent on events than is practically the case and avoid IRIS incentives.

9.88 We consider the requirement for a project specific expenditure assessment to establish contingent expenditure allowances in setting a price-quality path may present a challenge, and be inconsistent with a relatively low-cost DPP particularly where more than a limited degree of verification of the costs is required and where specified amounts are provided for within a DPP Determination.

9.89 Depending on its implementation, a contingent expenditure allowance may require detailed assessment of specific projects given the need to set specified trigger or driver values and expenditure values in the Determination, this is unlikely to be consistent with the relatively low-cost nature of the DPP.

9.90 We note that if contingent expenditure allowances were to be implemented, consideration would need to be given to the accounting for capex-based programmes of work. Without this, capex costs could be recovered immediately in their entirety. This could provide a large change in prices year-on-year and would need rules established to ensure where already recovered as a recoverable cost that expenditure is also not capitalised within the Regulatory Asset Base (**RAB**).

9.91 Vector identified an example for consideration as a contingent allowance, with access to an allowance triggered once sufficient EV connections were seeking access to the network.[338] Whilst we understand an increase in EV connections may drive increased network expenditure requirement, the type and extent of investment required will be driven by the capacity available on specific parts of the network and could be extensive. Whilst EVs will be a driver of potentially increased expenditure requirements, a specified trigger point with direct causal costs would need to be established at a more granular level.

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[338] Vector "Submission on the Process and issues paper" (11 July 2022), p. 36.

9.92 We have not identified any submitted changes that would better achieve our IM Review overarching objectives set out in the IM decision-making framework.

Stakeholder views draft decision

9.93 Four submissions were received on our decision not to extend the EDB, GTB, GDB or Transpower IMs to incorporate new contingent expenditure allowances as recoverable costs. Wellington Electricity[339] agreed with our draft decision. PowerCo[340] agreed that while there could be limited use for contingent allowances, it recommended that we reconsider [341]our position as the mechanism could prove to be highly effective and simple if appropriate. The ENA stated that while the Commission has given some consideration to the introduction of flexibility mechanisms, it was disappointed that we had rejected the use of contingent allowances.[342] Vector[343] did not support our decision.

Analysis and final decision

9.94 We have considered the submissions on this issue and our final decision is to confirm the draft decision not to extend the EDB, GTB, GDB or Transpower IMs to incorporate new contingent expenditure allowances as recoverable costs.

9.95 We consider the incorporation of new contingent expenditure allowances as recoverable costs would not more effectively promote the s 52A purpose. It would be likely to reduce the incentives on suppliers to actively manage their costs. The expansion would not be consistent with the purpose of a relatively low-cost DPP regulation, as specified in s 53K of the Commerce Act.

Use-it-or-lose-it allowances

9.96 Use-it-or-lose-it allowances are a targeted allowance or fund that provides funding for a specified type of activity against a pre-established allocated funding pool.

9.97 The mechanism could be used to:

9.97.1 encourage activities in areas which may otherwise be under-delivered; or

9.97.2 provide a simpler process for suppliers to access additional funds where the costs of a reopener were determined to be a disincentive to desired investments.

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339 Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 52-53.

340 PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), pp. 13-14.

341 Unison Networks "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 4, supported PowerCo's recommendation that we reconsider our decision.

342 Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 4.

343 Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 13.

Our final decision

9.98 Our decision is to not amend the IMs to incorporate new use-it-or-lose-it allowances.

9.99 We consider that additional use-it-or-lose-it allowances would not better achieve our IM Review overarching objectives as set out decision-making framework, as there are other mechanisms which provide appropriate incentives to innovate and invest consistent with s 52A and the submitted additions would not promote the Part 4 purpose in s 52A more effectively.[344]

Problem definition

9.100 There may be particular activities which are beneficial to consumers which are not appropriately incentivised by the current regime, either by explicit or implicit incentives associated with the price path or by the perceived costs in applying for certain regulatory tools ie, reopeners.

9.101 There is also a risk that smaller suppliers may be proportionately less likely to apply for reopeners, due to the perceived cost or complexity in engaging in the process. Providing a use-it-or-lose-it allowance may provide a lower cost mechanism for smaller suppliers to access additional funding.

9.102 The NERA Economic Consulting submission, earlier in the IM Review, referred to this as uncompensated outputs (or outcomes), stating these:[345]

> are problematic because the EDB will innovate too little to improve these outputs/outcomes. Recall that by uncompensated outputs we mean outputs or outcomes that are desired by customers but EDBs are either not funded to deliver (through their allowances) or provided rewards for good performance (through revenue linked outcome/quality incentives). In other words, there is a conflict between minimising costs compared to improving quality or delivering these outputs/outcomes. Therefore, one type of solution is to reward the EDB for delivering these outputs that are currently not measured.

Our reasons for our draft decision

9.103 Use-it-or-lose-it allowances are a targeted allowance or fund that provide funding for a particular activity against a pre-established cap, which could either be established as:

9.103.1 funding for expenditure provided in advance, which is subsequently removed at the next reset if expenditure did not occur; or

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[344] The potential role of use-it-or-lose-it allowances is also discussed within Attachment C, Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023).

[345] NERA Economic Consulting "Innovation under the DPP - potential barriers and solutions" (report prepared for 'Big six' EDBs, 20 December 2022), para 46.

9.103.2 a pool of funding which is available on application, and if the supplier does not draw all or part of that allowance down (within a regulatory period or specified timeframe) it does not get the remainder.

9.104 Ofgem identifies use-it-or-lose-it allowances as one of the uncertainty mechanisms that it is using in the RIIO-2 price control, with the use-it-or-lose-it allowance used:

> to adjust allowances where the need for work has been identified, but the specific nature of work or costs are uncertain.[346]

9.105 We considered that a use-it-or-lose-it allowance needed to be a targeted allowance with specified criteria against which specific projects or expenditure could be assessed. In the absence of criteria for assessment, it would simply operate as a true-up of actual expenditure versus expenditure forecasted, which would remove the efficiency incentive and would be inconsistent with our regime design of setting allowances in advance.

9.106 Our approach relating to incentivising certain activities is consistent with that outlined by Ofgem in terms of how it represents the role of use-it-or-lose-it allowances within its RIIO-2 framework:[347]

> Purpose: We set UIOLI allowances for certain non-transferable qualifying activities where the need for expenditure has been identified, but there is uncertainty about volumes and costs for those qualifying activities.
>
> Benefits: UIOLI provides licensees with allowances and flexibility in delivering qualifying activities, whilst protecting consumers by ensuring that unspent allowances are returned to consumers.

9.107 Ofgem’s application of use-it-or-lose-it allowances allows licensees to recover actual expenditure subject to the expenditure incurred being efficient. The recovery of the actual expenditure is subject to a cap set out in the supplier's licence condition. Any underspend is clawed back, and licensees bear the costs of overspends.

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[346] Ofgem "RIIO-2 Final Determinations - Core Document (Revised)", (3 February 2021), para 7.2.

[347] Ofgem "RIIO-2 Final Determinations - Core Document (Revised)" (3 February 2021), para 7.35.

9.108 The submission from NERA Economic Consulting also provided a useful summary of the potential role and international application of targeted allowances and funds:[348]

> Targeted allowance or fund: which is an allowance that can only be spent on a specific category that is difficult to measure in the allowance setting process. The purpose is to incentivise innovation in the direction of generating the uncompensated outputs/outcomes.
>
> For precedent, Ofgem has several use-it-or-lose-it allowances for specific purposes. Regarding examples, there is a visual amenities allowance (to address environmental impacts eg, pollution) and the worst served customer allowance (to mitigate the number of interruptions experienced by customers who experience unusually poor service)."

Application of use-it-or-lose-it allowances to encourage investment in targeted areas

9.109 We considered that a use-it-or-lose-it allowance mechanism could be useful where uncertainty exists around the extent of expenditure which may be required, but increased investment in that targeted area may be beneficial. This could be relevant in areas with lower levels of expenditure historically, which could be encouraged in a capped environment.

9.110 Use-it-or-lose-it allowances require clear definitions, where allowances apply, the type and extent of any ex-post verification required and a balance of prescriptiveness to meet the criteria for the allowance whilst providing suppliers with the ability to deliver qualifying activities in the most efficient way.

9.111 We decided against introducing use-it-or-lose-it allowances as a way of encouraging investment in targeted areas. We considered that the innovative and non-traditional solutions allowance would be a more effective way of encouraging targeted investment than use-it-or-lose-it allowances. The addition of use-it-or-lose-it allowances to encourage investment in targeted areas would not promote the Part 4 purpose in s 52A more effectively. [349]

[348] NERA Economic Consulting "Innovation under the DPP - potential barriers and solutions" (report prepared for 'Big six' EDBs, 20 December 2022), p. 21.

[349] Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023), section 6b.

Application of Use-it-or-lose-it-allowances to reduce regulatory costs

9.112 Following our reopener workshop, we asked for feedback on whether a use-it-or-lose-it mechanism in a DPP context may help cater to different supplier size, reducing the number of potential reopener applications. We included the following question:[350]

> Do you consider that there may be value in us considering a range of in-period adjustment mechanisms, eg, reopeners used for larger suppliers and as part of the DPP, use-it-or-lose-it allowances for smaller suppliers, and if so, why?

9.113 Feedback from stakeholders indicated that suppliers saw potential benefit in the application of a use-it-or-lose-it mechanism, but its application should not be restricted to only smaller suppliers with:

9.113.1 Aurora stating that large EDBs have more capacity to absorb the costs of preparing a reopener application, but a reopener project has a greater consumer price impact for small EDBs owing to scale effects;[351]

9.113.2 Vector stating it did not see any benefit in preventing larger EDBs from using alternative adjustment mechanisms to manage uncertainty where the need arises;[352] and

9.113.3 Horizon stating the concept of a use-it-or-lose-it allowances would enable it to respond to changing consumer needs that may not have been forecast at the start of the DPP period.[353]

9.114 We noted that targeted refinements to our reopener process and further communication on its expectation are expected to reduce the burden for all reopener applications, large or small. We also noted that the proposed introduction of the Large Connection Contract (**LCC**) mechanism for EDBs would be likely to reduce the volume of potential reopeners required for customer connection expenditure. This is discussed further in Chapter 8.

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[350] Commerce Commission "IM review 2023 – In period adjustment mechanisms – Workshop follow up questions" (5 December 2022), question D3.

[351] Aurora Energy "Submission on Price-quality path workshop" (20 December 2022), para 42.

[352] Vector "Submission on Price-quality path workshop" (20 December 2022), p. 9.

[353] Horizon Energy Group "Submission on Price-quality path workshop" (20 December 2022), p. 7.

Draft decision regarding application of use-it-or-lose-it allowances

9.115 Our draft decision was not to introduce a use-it-or-lose-it allowance for smaller suppliers to reduce the potential requirement for reopeners. We noted the design of use-it-or-lose-it allowances required specificity of where allowances might apply, confirmation these are not implicitly or explicitly provided for in the price path, or were covered by other mechanisms ie, innovation and non-traditional solutions allowance, and targeted consideration of the type and extent of any ex-post verification which may need to apply.

9.116 We considered that the regime provided appropriate incentives to innovate and invest and that the added complexity of use-it-or-lose-it allowances relative to the size of the uncertainty issue was not warranted. We did not consider they would promote the Part 4 purpose in s 52A more effectively, nor would they significantly reduce compliance costs, other regulatory costs, or complexity.

Stakeholder views on our draft decision

9.117 Six[354] submissions and two cross-submissions[355] were received on our decision not to include use-it-or-lose it allowances. All the submitters disagreed with our decision except for Wellington Electricity.

9.118 Vector submitted that use-it-or-lose it allowances are in the best interests of consumers and that they can be introduced and applied in a low-cost manner. It proposed that these allowances be used for resilience and worst served feeders. Vector considered that the Commission relies heavily on the use of reopeners to provide flexibility in the price paths but that there are other uncertainty mechanisms, which would work well or better and that reopeners are resource intensive for both EDBs or GDBs and the Commission.[356]

[354] Vector "In-period adjustments" (6 April 2023), p. 1 and p. 5, Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), paras 269-270, Electricity Networks Aotearoa (ENA) "Further submission to the Commerce Commission on Uncertainty Mechanisms" (3 May 2023), p. 6, Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 3.1, PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 1, Wellington Electricity "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 5.6.2, Transpower "Submission on IM Review 2023 Draft Decisions" (19 July 2023), Appendix A tables 5 and 6.

[355] Electricity Networks Aotearoa (ENA) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p2, Vector "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 38.

[356] Vector "In-period adjustments" (6 April 2023), p. 1 and p. 5 and Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 269-270.

9.119 The ENA identified a three staged process to improve IM flexibility to deal with uncertainty. If, after adjusting reopeners (stage 1) residual problems remain the ENA recommended that the Commission introduce new uncertainty mechanisms, including use-it-or-lose allowances to capture necessary but uncertain opex that crystallises during the period (avoiding the need for a burdensome reopener).[357] Vector, in its cross-submission supported the ENA's proposals (as well as the points that it had made in its own submissions).[358]

9.120 PowerCo recommended that contingent and/or use-it-or-lose-it allowances be kept in the Commission's toolkit should they be an appropriate mechanism to address unforeseen circumstances that occur at future resets.[359] Transpower proposed a use-it-or-lose-it allowance to apply to identified resilience workstreams with the mechanism only covering the workstreams identified in its resilience portfolio management plan (PMP).[360]

9.121 The ENA (in its cross submission) supported Transpower's proposal to have a use-or-lose-it mechanism for selected resilience projects and considered that the same mechanism should be established for EDBs.[361]

9.122 Vector also identified that another option for the Commission would be to set up a work programme in parallel to the DPP reset, which reviews possible new uncertainty mechanisms to implement at the time of the reset.[362]

Application of a use-it-or-lose-it allowance for Transpower

9.123 Transpower submitted that the Capex IM should include what it called uncertainty mechanisms for expenditure that could be passed through in a 'use-it-or-lose-it' fashion. Transpower suggested that these could apply for certain categories of expenditure, such as pro-active resilience capex, major IST renewals projects, and to address the First Mover Disadvantage type 2 investments following introduction of the new Transmission Pricing Methodology.[363]

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[357] Electricity Networks Aotearoa (ENA) "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 3.1, Electricity Networks Aotearoa (ENA) "Further submission to the Commerce Commission on Uncertainty Mechanisms" (3 May 2023), p. 8.

[358] Vector "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 38.

[359] PowerCo "Submission on IM Review 2023 Draft Decisions" (19 July 2023), p. 1.

[360] Transpower "Submission on IM Review 2023 Draft Decisions" (19 July 2023), Appendix A, tables 5 and 6.

[361] Electricity Networks Aotearoa (ENA) "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 2.

[362] Vector "Cross-submission on IM Review 2023 Draft Decisions" (9 August 2023), p. 38.

[363] Transpower NZ Ltd “Submission on IM Review Process and Issues paper and draft Framework paper” (11 July 2022), p. 30

9.124 We have addressed these submitted use-it-or-lose it mechanisms in the *"Transpower Investment"* topic paper and determination changes. For example, we have amended the Capex IM to ensure Transpower has a means to economically test and cost-recover First Mover Disadvantage type 2 investments.

9.125 Similarly, cost uncertainties surrounding major IST projects have been addressed by allowing these to be removed from base capex proposals and categorised as Listed Projects, while resilience capex can be either a major capex proposal (**MCP**) or as enhancement and development (E&D) capex in a base capex proposal. There is also an E&D reopener available to Transpower in each regulatory period.

Analysis and final decision

9.126 Submitters have proposed that the IMs should be amended to include use-it-or-lose-it allowances. They state that use-it-or-lose-it allowances would be more flexible, less resource intensive and less costly than reopeners. Three examples of expenditure where submitters think that use-it-or-lose-it allowances could be used have been identified ie, resilience, worst served feeders and uncertain opex that crystallises during the regulatory period. It is unclear why these three examples have been chosen. The magnitude of any such allowances (should they be provided in the IMs) has not been identified.

9.127 Vector identifies that these allowances could be used for resilience, but we have included a specific resilience driver for targeted expenditure as part of this IM review, for Unforeseeable large project reopeners and Foreseeable large project reopeners for EDBs, and a new (separate) reopener for expenditure relating to resilience and asset relocation for the GDB and GTB DPP IMs. It also proposes that worst served feeders should be a use-it-or-lose-it allowance. However, specific projects/programmes to improve the security of supply to those consumers that experience the most outages (worst served feeders), could be identified in regulated suppliers' AMPs with the justification for the projects considered at the time of the DPP reset.[364]

9.128 Use-it-or-lose-it allowances provide upfront funding at the start of a regulatory period. While it is true that regulated suppliers would not have to apply for a reopener should they incur expenditure covered by a use-it-or-lose-it allowance, which may reduce the compliance/regulatory burden on both the regulated suppler and the Commission, the provision of a use-it-or-lose-it allowance would not be able to be provided without sufficient information from regulated suppliers, an assessment process by the Commission and, at a minimum, a reporting process, which identified what the allowances have been spent on.

[364] Vector "In-period adjustments" (6 April 2023), p.1 and p.5 and Vector "Submission on IM Review 2023 Draft Decisions" (19 July 2023), para 269-270.

9.129 Section 52T(1)(c)(i) (which provides for the regulatory processes and rules covered by the IMs) in conjunction with ss 52A and 52R and the decision-making framework requires a certain level of specificity of costs. Use-it-or-lose-it allowances, without supporting detail on what particular costs would be subject to the allowance would not meet the specificity requirements and would not provide sufficient confidence that they are being used in the interests of consumers.

9.130 While Ofgem provides for use-it-or-lose-it allowances, it has more detailed information on the suppliers that it regulates and does more scrutiny in the first instance before use-it-or-lose-it funds are identified and assigned to suppliers.

9.131 Our final decision is to maintain our draft decision not to amend the IMs to incorporate new use-it-or-lose-it allowances.

9.132 We consider that additional use-it-or-lose-it allowances would not better achieve the IM Review overarching objectives that are set out the IM Review decision-making framework, as there are other mechanisms which provide appropriate incentives to innovate and invest consistent with s 52A and the submitted additions would not promote the Part 4 purpose in s 52A more effectively.[365]

Quantity wash-up mechanisms

9.133 The current DPP, CPP and IPP regimes forecast potential drivers of costs relating to forecasted increases in quantities. It does not have an automated mechanism for revenue adjustments to be undertaken ex-post where these forecasts do not represent actual outturn values.

Our final decision

9.134 Our decision is to amend the EDB IMs to provide for a 'new connection wash-up mechanism', applying to the volume of new connections (washing up the capex amount based on unit costs), which CPP applicants may propose to be implemented as part of their CPP, is discussed in Topic 3c in Chapter 3 of the *"Financing and incentivising efficient expenditure during the energy transition"* topic paper.[366]

9.135 Quantity wash-up mechanisms are generally discussed in the Report on the IM Review.[367]

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[365] The potential role of use-it-or-lose-it allowances is also discussed within Attachment C, Commerce Commission "Part 4 Input methodologies Review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023).

[366] Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023), Topic 3c in Chapter 3.

[367] Commerce Commission "Input methodologies review 2023 - Draft decision - Report on the Input methodologies review 2023 paper" (13 December 2023).

9.136 The introduction of quantity wash-up mechanisms may reduce the risks associated with providing appropriate expenditure allowances which are related to quantities which are difficult to forecast. However, we have not identified other quantity wash-up mechanisms which would be sufficiently beneficial to implement, when compared to the potential design and implementation issues.

9.137 There is a risk that the design or implementation of further quantity wash-up mechanisms may increase complexity of the regime without directly promoting s 52A more effectively. We also do not consider that applying this mechanism to DPPs would better achieve our decision framework's overarching objectives, given the information asymmetry due to the low-cost nature of a DPP.

Problem definition

9.138 Supplier expenditure forecasts are based upon several underlying quantity forecasts which are subject to intra-period volatility, including but not limited to customer connections, energy delivered (MWh) and maximum coincident system demand (MW) for EDBs and Transpower and customer connections, maximum daily load (GJ per day) and total gas conveyed (GJ per annum) for GDBs and the GTB.

9.139 These expenditure forecasts are subject to uncertainty due to uncertainty of input costs, but also the uncertainty regarding underlying quantity forecasts. Submissions from EDBs stated prior to our draft decision:

> There is likely to be significant uncertainty about the pace and scale of customer capex driven by decarbonisation. Under current DPP capex forecasting approaches, EDBs must estimate their customers' requirements for network connections and upgrades for the purpose of determining DPP capex allowances.[368]

> There is increasing understanding of the types of investment that EDBs will need to make to enable electrification; however, the timing and scale of investment remains subject to uncertainty.[369]

9.140 Similarly, both FirstGas and Vector prior to our draft decision noted for GDBs and the GTB that there was the potential for material change arising from Government policy or other relevant matters related to the future of reticulated gas.[370]

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[368] Unison – "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), para 46(c).

[369] Aurora Energy "Submission on IM Review Process and issues paper and draft Framework paper" (11 July 2022), para 61.

[370] First Gas Limited "Submission on IM Review Process and issues paper and draft Framework paper" (13 July 2022), p. 2; Vector "Submission on the Process and issues paper" (11 July 2022), para 63.

9.141 The GDB and GTB exposure to demand risk is considered in the form of control section in Topic 3e in the *"Financing and incentivising efficient expenditure during the energy transition"* topic paper.[371]

9.142 The assessment of the potential use of quantity wash-up mechanisms within this section is focussed on targeted drivers of expenditure which may be more difficult to forecast, rather than broader quantity variation risks.

Analysis and final decision

9.143 We received no submissions on our draft decision on quantity wash-up mechanisms.

9.144 A quantity wash-up mechanism is an uncertainty mechanism which allows revenue to vary as a function of a volume measure. This results in adjusted expenditure allowances in line with actual values where the volume of work required over the regulatory period is uncertain.

9.145 The mechanism could be used to partially address quantity forecasting risks inherent in setting a price-quality path. The objective would be to place the supplier in approximately the same position as it would have been if the actual quantity was known at the commencement of the regulatory period when prices were set.

9.146 The wash-up mechanism returns to, or recovers from, a supplier's consumers any under- or over-recoveries of revenue resulting from differences between actual and forecast values.

9.147 Design of quantity wash-up mechanisms needs to consider how directly related the volume metric is to the expenditure requirement. Some measures ie, kWh consumption or EV uptake, may have an indirect correlation to expenditure requirements as it will depend on available network capacity which will vary across locations. This may be practically challenging given the requirement for establishment of a proxy cost to equate to the volume requires the cost of each unit to be relatively stable.

[371] Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023), Topic 3e

9.148 We have noted a number of issues which would need to be considered and addressed in the design of quantity wash-up mechanisms if further expansion of this type of mechanism were to be applied:

9.148.1 The quantity measure would need to directly align with the expenditure requirement, with a direct causal relationship to the change in network investment requirements. The nature of infrastructure means investment to provide a step-change in capacity often occurs at the start and is then progressively utilised over time. Accordingly, metric design would need to consider the timing of the metric compared to network investment timing requirement.

9.148.2 There are significant variations in network characteristics both within and across networks. Metrics may be difficult to design without resulting in the risk of windfall gains or losses.

9.148.3 The use of proxy costs may provide an incentive for a supplier to only deliver those services which can be provided at less than the standardised unit of cost. This could result in a focus on the delivery of projects which are easy to deliver, rather than those of highest benefit to the network.

9.148.4 Metric design would need to consider incentives on suppliers, particularly where additional revenue is provided for increases in quantity metrics. A wash-up would need to be designed to ensure it encourages appropriate network management ie, ensure it does not disincentivise managing load growth, discourage flexibility services-based solutions etc.

9.148.5 Proxy costs may be difficult to establish and may be reflective of historic network requirements, rather than anticipated network requirements. Establishing what the value for an additional unit of quantity will be challenging, particularly with restriction on benchmarking although use of external verification processes may help.[372]

9.148.6 Any quantity wash-up would need to be separable from what we have funded suppliers for either explicitly or implicitly within the price path.

9.148.7 There is the potential for quantity wash-up mechanisms to drive volatility in pricing if significant amounts of expenditure were subject to a wash-up.

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[372] Section 53P(10) of the Commerce Act states: The Commission may not, for the purposes of this section, use comparative benchmarking on efficiency in order to set starting prices, rates of change, quality standards, or incentives to improve quality of supply.

9.149 Whilst we have identified a number of challenges to consider in the implementation of any quantity wash-up there is precedent for a quantity wash-up within a revenue cap within our regime. The Fibre IMs provide for an adjustment to be made to the connection capex baseline allowance that reflects changes in Chorus' actual connection volumes during the regulatory period.[373]

9.150 Aside from the new connection wash-up mechanism in the IMs for EDB CPPs, which is discussed in more detail at Topic 3c in Chapter 3 of the *"Financing and incentivising efficient expenditure during the energy transition"* Topic paper[374], our final decision is not to introduce additional quantity wash-up mechanisms as the potential benefits do not outweigh the complexity and risks around design and implementation, and the submitted change would not promote the Part 4 purpose in s 52A more effectively due to the issues listed above.

[373] *Fibre Input Methodologies Determination 2020, as amended on 29 November 2021*, clause 3.7.

[374] Commerce Commission "Input methodologies review 2023 - Final decision - Financing and incentivising efficient expenditure during the energy transition topic paper" (13 December 2023), Topic 3c in Chapter 3.

Attachment A Necessary drafting improvements

Purpose and structure of this attachment

A1 This attachment's purpose is to confirm the implementation of IM drafting improvements for workability and address other practical issues raised in submissions where we have decided not to make IM changes.

A2 We have also made some minor technical amendments to the drafting of the in-period adjustment IM provisions to improve readability and clarity. These are reflected directly in the determination and are not discussed in this attachment.

Allocators

Final drafting decision

A3 We have not made any drafting changes for this matter.

Stakeholder views

A4 Submitters raised a concern regarding forecasting of expenditure under a CPP. They felt that it is unclear how to treat allocators when causal allocations are changing over time.

Analysis and final drafting refinement

A5 We understand that change is a challenge when it comes to forecasting, but what we have explained in the past regarding allocators still stands:

> If possible,[375] cost and asset allocators need to be based on a current causal relationship. A causal relationship is: in relation to asset values, a circumstance in which a factor influences the utilisation of an asset (during the 18 month period terminating on the last day of the disclosure year for which the cost allocation is carried out); and in relation to operating costs, a circumstance in which a cost driver leads to an operating cost being incurred during the 18 month period terminating on the last day of the disclosure year for which the cost allocation is carried out). If a supplier does not use a causal allocator it must use a proxy cost allocator, ie a proportion of a quantifiable measure used to allocate costs for which a causal relationship cannot be established (and the amount is based on factors that existed during the 18 month period terminating on the last day of the disclosure year for which the cost allocation is carried out).

[375] Commerce Commission "Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: categorising and allocating operating costs and asset values" (17 April 2013).

CPP Recoverable Costs

Final drafting decision

A6 Our decision is to make no drafting changes for this matter. We have clarified the point where the ENA requested further clarity, ie, the timing of the recovery of CPP recoverable costs.

Stakeholder views

A7 The ENA submitted that it is not clear when CPP recoverable costs (specified at clause 3.1.3(d) - (h)) can be recognised and recovered; whether it is in the year the expenditure is incurred, or during the CPP period.

Analysis and final drafting refinement

A8 We have interpreted that ENA's question is in the context of costs incurred during the regulatory period prior to the CPP regulatory period, as the CPP recoverable costs that the ENA is referring to at clauses 3.1.3(1)(d) - (h) in the EDB CPP IMs are the costs associated with preparing a CPP and of having the CPP assessed, ie, the CPP application fee, CPP assessment fee, verifier fee, auditor's fee and engineer's fee.

A9 We assume the scenario being referred to by the ENA is where an EDB that is a CPP applicant is in Year 4 of its DPP, approaching Year 5 (last year of its DPP), before it moves to a CPP. The EDB is expecting to incur the costs referred to at clauses 3.1.3(1)(d) - (h) in Year 5. The EDB is setting prices for the upcoming Year 5.

A10 The CPP application fee and the CPP assessment fee can only be claimed as recoverable costs if the CPP application is not discontinued. This condition cannot be satisfied with certainty until the CPP determination has been made, hence these costs can only be recovered during the CPP regulatory period, and not in the year that it is incurred (likely Year 5 of the DPP). The IMs require that the verifier fee, auditor's fee, and engineer's fee must be specified in a CPP determination before these can be claimed as recoverable costs hence these costs also can only be recovered during the CPP regulatory period.

Amalgamations and RAB

Final drafting decision

A11 We have not made any drafting changes to reflect how Amalgamations rules in the IMs and the asset valuation rules in the IMs (ie, the accounting for the RAB) work together.

Stakeholder views

A12 ENA submitted that it is not clear how RABs get combined in the event of an amalgamation,[376] merger or major transaction. It questioned whether the RAB assets are to be treated as disposed, commissioned, or added together as a result of a company amalgamation, and when this would occur.

Analysis and final drafting refinement

A13 We believe that matters of timing and transfer of assets will be determined by the specific transaction arrangements between the parties, subject to IM asset valuation rules and applicable legislation. Under the Companies Act 1993 the amalgamated company succeeds to all the property, rights, powers, and privileges of each of the amalgamating companies at the time of amalgamation.

WACC change reopener event

Final drafting decision

A14 Our decision is to make no change to the drafting of the WACC change reopener event in response to ENA's submission.

Stakeholder views

A15 ENA commented that there is ambiguity about what is in scope for the WACC reopener and how it is applied.[377]

Analysis and final drafting refinement

A16 The IM is clear about the scope for a WACC change reopener and how it is triggered. ENA has not offered an alternative proposal for improved determination wording. There is no new information or rationale provided for us to consider amending the IM.

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[376] Electricity Networks Aotearoa (ENA) "Appendix D - IM Practicality Issues Log" (19 July 2023).

[377] Electricity Networks Aotearoa (ENA) "Appendix D - IM Practicality Issues Log" (19 July 2023), Cost of capital tab, Row 5.

A17 In the 2016 IM Review,[378] we decided to no longer estimate a specific CPP WACC and to instead apply the prevailing DPP WACC to a CPP. The IMs were amended to introduce a WACC change reopener that enables the updated DPP WACC rate (as a result of a DPP reset) to be applied to an existing CPP for the remaining years of that CPP's regulatory period. This is the only purpose and scope of the WACC change reopener. It is not intended to be used for any other purpose.

A18 We have decided that no IM amendment is required in response to ENA's submission. The ENA's concern appears to be with ambiguity, but our view is that relevant IMs contain sufficient detail to meet the s 52R IM purpose and s 52T requirements.

How the different components of a CPP price-path are amended at a CPP WACC reset

Final drafting decision

A19 Our decision is to make drafting amendments to the EDB, GDB and the GTB IMs to reflect how the CPP price-quality paths need to be amended when the CPP WACC changes part way through a regulatory period as a result of a new DPP WACC being set. The drafting amendments required are in respect of wash-up account balances for EDBs and the GTB, and capex wash-up adjustments for GDBs.

Stakeholder views

A20 ENA suggested that there is a gap in the EDB CPP IMs. The clause that details the different components of the CPP price path that need to be updated after a CPP WACC change event, omits a reference to wash-up account balances.[379]

A21 No submitters from the Gas sector raised similar issues.

Analysis and final drafting refinement

A22 We agree with ENA that there is a gap in the current EDB CPP IMs. The clause in the current EDB IM determination that details the different components of the CPP price path that need to be updated after a CPP WACC reset omits references to wash-up account balances.

A23 Although no submitters from the Gas sector raised similar issues, similar gaps are also applicable to the GDB and GTB CPP IMs. The current GTB IM determination omits reference to wash-up account balances. The current GDB IM determination omits reference to capex wash-up adjustments.

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[378] Commerce Commission "Input methodologies review decisions - Topic paper 4 - Cost of capital issues" (20 December 2016), para 620-627.

[379] Electricity Networks Aotearoa (ENA) "Appendix D - IM Practicality Issues Log" (19 July 2023), DPP & CPP Process & Rules tab, Row 22.

A24 We have decided to address these gaps by including additional sub-clauses that refer to wash-up account balances in the EDB and GTB CPP IMs, and refer to the capex wash-up adjustment in the GDB CPP IMs. The changes promote the s 52R purpose more effectively by providing certainty for regulated suppliers.

Other drafting matters raised in submissions on our draft decisions

Final drafting decision

A25 We will not be making any further drafting changes for the points raised on the topics in Table A1.

Table A1 Other drafting matters

Topic	Stakeholder views	Analysis and Final Decision
Receipts	Would like "receipts for payment by the CPP applicant" to be deleted in the clause on 'Information on proposed recoverable costs relating to costs of making CPP application'. They believe since this information is audited, it makes it duplicate evidence, and it is unusual for business transactions to be recognised via receipt.	In order to promote certainty in accordance with Part 4 of the Act, we consider that the prescriptive approach that we have for CPPs is appropriate. We need detailed information.
Schedule E Templates	The presentation of these templates could be improved and provided additionally in an Excel template.	We do not consider this change to the templates would assist with the objective of certainty or the workability of the IMs.
Capital contributions	Suggested adding "for the avoidance of doubt…" clarifications around capital contributions regarding permanent vs temporary differences.	Tax rules apply to determine the treatment of capital contributions for regulatory tax purposes. Where they have been deducted from asset values for tax purposes, then this will affect the adjusted tax value of those assets. Otherwise, they must be treated as income in accordance with tax rules.
Leases	Since the terms 'finance lease' and 'operating lease' are the same for a lessee, the ENA would like the terms to be defined in the IMs for a lessor.	We have previously explained the treatment of leases and see no value in refining drafting.
Quality standard variation	The parameters for the quality standard variation are too prescriptive.	For the purposes of promoting certainty, we consider the parameters are appropriately prescriptive.
Discounts	The clause states "must include a discount taken up by consumers". The term discount should be changed to non-discretionary discount (and include a definition of this term in clause 3.1.1 (11)) to better reflect the type of discount it is referring to.	We have made recent changes to the IM definition of discount.

Topic	Stakeholder views	Analysis and Final Decision
Recoverable costs	All recoverable costs should be given a defined term to make it clear what cost the IM is referring to.	We have made drafting changes to the IM definitions of recoverable costs and what it is referring to. We do not consider this proposal to label each recoverable cost would assist at this time with the objective of certainty of the IMs.
Transmission charges	It is unclear how to determine the value of a cost that is paid to a third party, and there is no involvement of Transpower.	We consider that this cost can be determined by the third party or by reasonable estimate by the EDB if the third party does not provide the cost attributed to Transpower. We do not think that an IM change is necessary, as this could be potentially solved by guidance.
Capex wash-up adjustment depreciation	Asked for the paragraph on 'capex wash-up adjustment' to be moved under clause 3.1.3 (8) as both commissioned assets and depreciation need to reflect actuals to correctly calculate the capex wash-up adjustment and for it to also be reworded for clarity.	We have made recent changes to the EDB IMs and the 'capex wash-up amount' has been combined into the 'wash-up accrual amount'.
Revenue wash-up draw down amount formulas	Suggested that the clauses could be replaced with formulas for simplicity.	We have made changes to the EDB IMs wash-up provisions, which are aimed to provide added clarity. We have used formulas where we consider this appropriate.
Merger	Would like the term 'merger' to be defined in clause 1.1.4.	This term is already defined in the EDB DPP determination. In that determination a merger is to apply as if it were an amalgamation as defined in the IMs. We see no gain in promoting our overarching objectives by defining this in the IMs as well.
Major transaction	There is ambiguity in the treatment of price-quality paths following a merger or amalgamation, where the transaction is below the major transaction event thresholds of 10% of the EDB's total opening RAB value for a price-quality path reopener. This ambiguity should be addressed in the IMs to improve regulatory certainty.	The amalgamation provisions in the EDB IMs do not have a qualifying threshold. Where transactions other than an amalgamation are under the major transaction thresholds for a price-quality path reopener, asset valuation IM rules apply.
Building blocks allowable revenue before tax formula	Raised that "(Tfrev - corporate tax rate * TF)" is repeated twice in this formula. However, the whole formula could just be divided by "(Tfrev - corporate tax rate * TF)" once and be mathematically equivalent.	We do not consider this proposed change to the established formulas would assist at this time with the objective of certainty of the IMs.

Topic	Stakeholder views	Analysis and Final Decision
CPP MAR vs BBAR	Submitted that CPP MAR is derived by equating the PVs of MAR and BBAR in after-tax terms. However, the DPP MAR has to date always been derived by equating the PVs of MAR and BBAR in before-tax terms. Using the after-tax method is computationally more difficult and less intuitive and is mathematically equivalent to the before-tax method.	We do not consider this proposed change to the established formulas would assist at this time with the workability of the IMs.
System operations and network support opex	Raised that definition of 'system operations and network support opex' in Schedule D includes 'network asset site expenses and leases'. Suggested leases are right-of-use assets and hence should not be part of opex.	This is an information disclosure determination matter. No IM refinements are necessary.
Right-of-use assets	Stated that there is a gap in Schedule D regarding right-of-use assets.	This is an information disclosure determination matter. No IM refinements are necessary.
Gain or loss on sale of assets	Stated that there is a gap in the IMs regarding the gain or loss on the sale of assets.	Asset disposals are defined in the EDB information disclosure determination. We do not consider this proposed change would assist at this time with the workability of the IMs.
Unforeseen projects	Submitted that they believe the definitions for the terms 'unforeseen projects' (clause 5.6.6) and 'unforeseeable major capex project' (clause 4.5.5A) are inconsistent.	It is intentional that the unforeseen project definition is different to the unforeseeable major capex project (now termed Unforeseeable large project). The unforeseen project in the CPP IMs allows for incremental expenditure for projects where timing, cost and scope were not known at the time the CPP was set. It is a general reopener and not specific to primary drivers of expenditure like the Unforeseeable large project reopener in the DPP IMs. The unforeseen project has a higher materiality threshold than the threshold for the Unforeseeable large project reopener in order to reflect this difference.