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Electricity Distribution Services Default Price-Quality Path Determination Amendment No. 3

Electricity Distribution Services Customised Price-Quality Path Proposal Submission Periods
and
Regulated Supplier Standard CPP Proposal Application Fee

Reasons Paper

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22 March 2012

Introduction

- 1 This reasons paper provides background and reasoning for our decisions on the setting of the periods in which electricity distribution businesses (EDBs) can submit a proposal for a customised price-quality path (CPP) to us and the standard application fee payable by a regulated supplier when submitting a CPP proposal. The submission periods are given effect by the *Electricity Distribution Default Price-Quality Path Determination Amendment No. 3* (the 2012 Determination).
- 2 As part of our process to set the submission periods and standard application fee we consulted with interested parties through our *Customised Price-Quality Path Application Window and Standard Application Fee, Draft Decisions Paper*, 15 December 2011 (draft decisions). In making our decisions, we have carefully considered the submissions that we received from interested parties. A copy of the draft decisions paper and submissions are available on the Commission's website.¹

CPP proposal submission periods

Summary of our decision

- 3 Our decision is that an EDB may only submit a CPP proposal to the Commission:
 - (a) for 2012, in the period beginning Monday, 2 July and ending Monday, 9 July.
 - (b) for 2013, in the period beginning Monday, 28 January and ending Monday, 4 February; or in the period beginning Monday, 6 May and ending Monday, 13 May.
 - (c) for 2014, in the period beginning Monday, 10 February and ending Monday, 17 February.
 - (d) following a catastrophic event (as defined in the EDB input methodologies²), at any time³ within the 24 months after the catastrophic event, except in the 12 months before the end of the regulatory period.⁴

¹ <http://www.comcom.govt.nz/customised-price-quality-paths/>

² Commerce Act (Electricity Distribution Services Input Methodologies) Determination 2010, Decision 710, 22 December 2010.

³ For the purposes of meeting the requirement of s 53Q(e) of the Commerce Act 1986 (the Commerce Act), this means at any time on or before 31 December of each year. All references in this reasons paper to the Act or provisions of the Act are to the Commerce Act unless otherwise specified.

⁴ Section 53Q(3) of the Act states that an EDB may not make a CPP proposal **within the 12 months before a default price-quality path is due to be reset** [emphasis added] .

Mid period 'reset'

- 4 Horizon Energy Distribution Limited (Horizon Energy) and Orion New Zealand Limited (Orion) asked that we clarify that the 12 month exclusion period does not apply in the case of a mid period reset of the DPP.⁵
- 5 The DPP is not due to be reset until the end of the regulatory period. We confirm that any starting price adjustment will be a one-off event and the 12 month restriction required by the Act does not apply with respect to a starting price adjustment. This has been covered in the drafting of the 2012 Determination.⁶
- 6 Accordingly, suppliers are not precluded from making a CPP application in the 12 months prior to the date on which a starting price adjustments is made.

July 2012 submission period

Draft view

- 7 In our draft decisions paper we proposed that for 2012, EDBs would be able to make CPP proposals to us in the first week of July 2012.

Submissions

- 8 Submissions expressed mixed views about the proposed July 2012 submission period.
- 9 Electricity Networks Association (ENA) and Horizon Energy did not support the proposed July 2012 submission period. ENA stated that it is unlikely that the period provides enough time from the time of this decision on the submission periods for businesses to prepare, consult on, and complete pre-verification unless EDBs have already started this process.⁷ Horizon Energy considered the submission period to be unusable for the majority of EDBs due to the timeframes required in considering a CPP proposal and the inability to notify customers of 2013/14 prices under the CPP determination before the price notification date of 1 December 2012.⁸

⁵ Horizon Energy Distribution Limited, *Submission to Commerce Commission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 4. Orion New Zealand Limited, *Submission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 2.

⁶ Refer clause 7.1(d) of the 2012 Determination.

⁷ Electricity Networks Association, *CPP Application Window and Fee*, 27 January 2012, page 3.

⁸ Horizon Energy Distribution Limited, *Submission to Commerce Commission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 2.

- 10 Vector Limited (Vector), on the other hand, stated that it had no comment on the proposed July 2012 submission period, noting that suppliers are unlikely to apply for a CPP in advance of the possible starting price adjustment under s54K(3) currently scheduled for November 2012.⁹
- 11 Powerco Limited (Powerco) supported the proposed submission period for 2012.¹⁰ Orion expressed the view that while it doubts that an EDB can prepare the necessary information and consult with customers within the three month timeframe,¹¹ some EDBs may have already consulted with customers, or may be in a position to do so at short notice, or may wish to apply for a CPP in relation to quality only.¹² On this basis Orion recommended that the July 2012 submission period be retained.¹³

Commission View

- 12 We acknowledge submitters' position that the July 2012 submission period gives those EDBs that have not already started to prepare the necessary information and consult with customers a short time in which to do so. Further, the Commission may be unable to determine a CPP prior to EDBs setting 2013/14 prices (and notifying customers by 1 December 2012). However, submissions did not propose an alternative 2012 submission period. While the July 2012 submission period has limitations, as described above, it provides an opportunity for EDBs that may have begun progressing a CPP proposal or those that might want to submit a quality proposal to us to do so.
- 13 Accordingly, our decision is that the submission period for 2012 is the period beginning Monday, 2 July and ending Monday, 9 July.

⁹ Vector Limited, *Customised Price-Quality Path Application Window and Standard Application Fee*, 27 January 2012, paragraph 3.

¹⁰ Powerco Limited, *Submissions on Customised Price-Quality Path Application Window and Standard Application Fee Consultation Document*, 26 January 2012, paragraph 2.

¹¹ Orion New Zealand Limited, *Submission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 5.

¹² Orion New Zealand Limited, *Submission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 7.

¹³ Orion New Zealand Limited, *Submission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 8.

2013 and 2014 submission periods

Draft view

- 14 In our draft decisions paper we proposed that for 2013 and 2014, EDBs would be able to make CPP proposals to us in the last week of January in the first instance, and in the first week of March, if fewer than four proposals were made during the January period in any one year.

Submissions

- 15 Horizon Energy asked that we consider a submission period later in 2013, for example May, to allow EDBs time to formulate a CPP proposal following the expected final decision on starting price adjustments in November 2012.¹⁴ ENA considered the proposed submission periods approach to be a pragmatic solution to the need to potentially prioritise proposals and the desirability of considering additional proposals if fewer than four were received within the first period. However, ENA considered the time between the first January period opening and a second March period to be too short, as EDBs would have to have completed their proposal, including verification, before being certain that a second period would be made available.¹⁵
- 16 ENA also proposed that we consider any CPP proposal received after the March submission period as long as we have not received more than four proposals for the regulated service, or where we have the capacity to deal with more than four proposals.¹⁶ Vector similarly suggested that where less than four proposals have been received at the end of the March period, we should consider CPP proposals on a first come, first served basis (up to four proposals in total).¹⁷

Commission view

- 17 Having taken submissions into account we consider it appropriate that the proposed March 2013 period be changed to May, and that the two proposed January and March submission periods in 2014 be changed to a single period in February 2014.

¹⁴ Horizon Energy Distribution Limited, *Submission to Commerce Commission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 5.

¹⁵ Electricity Networks Association, *CPP Application Window and Fee*, 27 January 2012, page 2.

¹⁶ Electricity Networks Association, *CPP Application Window and Fee*, 27 January 2012, page 2.

¹⁷ Vector Limited, *Customised Price-Quality Path Application Window and Standard Application Fee*, 27 January 2012, paragraphs 4, 11 and 16.

- 18 We recognise that for some EDBs the potential determination of starting price adjustments under the DPP may inform the decision whether to submit a CPP proposal to us in 2013. A second submission period that opens in May 2013 potentially gives EDBs more time to assess the impact of any starting price adjustment and to decide whether the DPP remains suitable for their purposes or if a CPP would better meet their individual needs.
- 19 The May period gives us sufficient time to assess the CPP proposals received during the January period against the input methodologies and to give notice of the proposals that are under consideration. EDBs have additional time (approximately seven weeks) to finalise a CPP proposal given that we may have sufficient capacity for us to consider additional CPP proposals to those received during the January period.
- 20 Suppliers should be aware that a CPP determined during May may not be completed until February 2014, and if allowable time extensions are agreed, the CPP may not be determined until late May 2014.¹⁸ However, if this proves to be the case, claw-back could be applied and spread over the CPP regulatory period ie over the three to five years as determined by the CPP.
- 21 It is not feasible to set two submission periods in 2014, due to the time constraints imposed by the Act. The Act prohibits us from setting a period that opens after 31 March 2014.¹⁹ There would not be sufficient time for us to have completed our initial assessment of CPP proposals against the input methodologies received in the first submission period before a second period could open. We consider that the level of flexibility required for 2013 is not necessary for the 2014 year. EDBs will not have the uncertainty of a possible starting price adjustment, most EDBs will have had a better chance to assess the appropriateness of the DPP to meet their individual needs, and EDBs will have put themselves in the best position to submit a CPP proposal to us during the submission period in 2014.
- 22 Submitters' suggestions to allow suppliers to submit proposals to us on a first-come-first-served basis, in the situation that we receive fewer than four proposals during the submission periods, appears pragmatic. However, the Act does not allow us to defer a CPP proposal on any basis other than by applying the prioritisation criteria in s 53Z. Therefore we must receive CPP proposals at approximately the same time in

¹⁸ Sections 52S(2)(b) and 53U of the Act.

¹⁹ Section 53Q(3)—a supplier may not make a proposal within the 12 months before a default price-quality path is due to be reset. As the regulatory period ends on 31 March 2015 and the default price-quality path is due to be reset with effect from 1 April 2015, that 12 month restriction runs from 1 April 2014 to 31 March 2015.

any one year, so that if need be, we can apply the prioritisation criteria and, if appropriate, defer some proposals to another year.

- 23 We have therefore removed the condition that the second submission period in 2013 would only be available in the event that fewer than four proposals are received during the first period, as proposed in our draft decision. We may find that having completed our assessment of the proposals received in the January period we have sufficient capacity to determine further CPPs.
- 24 The Commission is not required to consider any more than four CPP proposals from EDBs in any one year.²⁰ Should we receive four complete CPP proposals in the January period we will assess the completeness of the proposals that we receive in the May period, but may defer the consideration of a proposal to a subsequent year, depending on resources, with prioritisation of these May proposals determined in accordance with s 53Z(3).
- 25 Accordingly, our decision is that the submission periods for 2013 and 2014 are as follows:
- for 2013, in the period beginning Monday, 28 January and ending Monday, 4 February, and in the period beginning Monday, 6 May and ending Monday, 13 May.
 - for 2014, in the period beginning Monday, 10 February and ending Monday, 17 February.

Catastrophic events

Draft view

- 26 In our draft decisions paper we proposed that in circumstances relating to catastrophic events, a CPP proposal could be made at any time, except in the 12 months prior to a DPP reset, as required by the Act (the next reset being on 1 April 2015).

Submissions

- 27 Submitting parties did not object to our draft decision. ENA reiterated its view²¹ that CPP proposals in response to catastrophic events should be considered in the final year of the DPP period.²² Orion requested clarification of what, if any, time limits

²⁰ Section 53Z(1).

²¹ Electricity Networks Association, *Submission on 2010-15 Default Price-Quality Path for Electricity Distribution Businesses, Draft Decisions Paper*, 24 August 2011, paragraph 106.

²² Electricity Networks Association, *CPP Application Window and Fee*, 27 January 2012, page 2.

apply between the occurrence of a catastrophic event and the time in which an EDB may apply for a CPP.²³

Commission view

- 28 Section 53Q(3) precludes a regulated supplier from submitting a proposal in the 12 months before the DPP reset. The section however does not preclude us from considering a CPP proposal during the 12 month period before the reset. Provided we receive a CPP proposal more than 12 months before the DPP reset (ie before 1 April 2014) we may consider that CPP proposal in the period before the DPP reset (ie up until the end of the regulatory period on 31 March 2015).
- 29 We have decided that CPP proposals from EDBs that have experienced catastrophic events, as defined in the EDB Input Methodologies, must be made within 24 months of the event in order to obtain priority of consideration over applications made in the regular submission periods. A 24 month time frame reduces prolonged and unnecessary delays to any subsequent price increases, and will increase certainty for consumers and allow sufficient time for suppliers to firstly focus on responding to events, and then submit a CPP proposal.²⁴
- 30 Accordingly, our decision is that in circumstances relating to catastrophic events, CPP proposals can be made at any time within 24 months following a catastrophic event occurring, except within 12 months before the end of the regulatory period.

Implementation of the paths

Draft view

- 31 Our draft decision sought views about any implementation issues that may arise if a CPP was determined after 1 December in any year.²⁵

Submissions

- 32 ENA, Powerco, and Orion were of the view that we should work together with the CPP applicant to come to an agreement on how to implement the path.²⁶ Orion and

²³ Orion New Zealand Limited, Submission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper, 27 January 2012, paragraph 3.

²⁴ Commerce Commission, *Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons Paper*, 22 December 2010, paragraph 8.4.27.

²⁵ Commerce Commission, *Customised Price-Quality Path Application Window and Standard Application Fee, Draft Decisions Paper*, 15 December 2011, paragraph 16.

²⁶ Electricity Networks Association, *CPP Application Window and Fee*, 27 January 2012, page 3. Powerco Limited, *Submissions on Customised Price-Quality Path Application Window and Standard Application Fee Consultation Document*, 26 January 2012, paragraph 8. Orion New Zealand Limited, *Submission on 1327107.8*

Vector suggested that we consider addressing implementation issues that might arise with the price path by applying claw back.²⁷

Commission view

- 33 We support the views expressed by ENA, Powerco, and Orion, and will work with an applicant when considering their proposal in the situation that a CPP determination cannot be made in time to implement the path before the start of the pricing year.
- 34 In addition, we agree with submitters that the application of claw-back under s 53V of the Act may be appropriate in the situation where the price path is not determined before a supplier sets prices for the year to which the CPP would apply.²⁸
- 35 The EDB input methodologies specify that claw back may apply, in the case of a standard CPP proposal, to the period from when the CPP would have taken effect (ie the start of the first pricing period in the CPP regulatory period) and the actual date of the CPP determination, if later.²⁹
- 36 Accordingly, in the case of a delay in the implementation of a price path, any claw-back would relate to the time period of the delay in applying the price path under the CPP, and not the time since the beginning of the current DPP regulatory period.
- 37 The input methodologies further specify that in the case of a catastrophic event, claw back may apply for the period from the catastrophic event to the date of the CPP determination.³⁰ In practical terms this will not be an open-ended period, as the 24 month limitation on the ability to make a priority CPP proposal and the subsequent time limits to consider the proposal and make a CPP determination will act as effective constraints on the period for which claw back may apply.

Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper, 27 January 2012, paragraph 11.

²⁷ Orion New Zealand Limited, *Submission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 11. Vector Limited, *Customised Price-Quality Path Application Window and Standard Application Fee*, 27 January 2012, paragraph 15.

²⁸ Commerce Commission, *Input Methodologies (Electricity Distribution and Gas Pipelines Services), Reasons Paper*, 22 December 2012, Appendix K, paragraphs K1.20 to K1.22.

²⁹ Commerce Commission, *Commerce Act (Electricity Distribution Services Input Methodologies) Determination 2010*, 22 December 2010, clause 5.3.4(4)(a).

³⁰ Commerce Commission, *Commerce Act (Electricity Distribution Services Input Methodologies) Determination 2010*, 22 December 2010, clause 5.3.4(4)(b).

Standard CPP proposal application fee

Summary of our decision

- 38 Our decision is that the standard CPP proposal application fee be set at \$20,000, excluding GST, payable by a regulated supplier at the time that it submits a CPP proposal to us, and the MED is progressing regulation in accordance with s 108 of the Act.

Setting of the standard application fee

Draft view

- 39 In our draft decision we proposed to set the standard application fee for CPP proposals at \$20,000, excluding GST, payable by a supplier at the time that it submits a CPP proposal to us.

Submissions

- 40 Submissions generally supported our draft decision.³¹ Powerco identified that the most important issue was that the final amount paid equals the cost to the Commission to assess the proposal.³² Orion noted that the proposed standard application fee should be a good approximation of the Commission's expected costs.³³ ENA stated that the fee should be set with reference to the initial costs that the Commission believes it will incur up to the point where it determines whether or not the proposal will be discontinued.³⁴
- 41 Horizon Energy did not support the \$20,000 standard application fee and suggested that the fee be set lower; for example, at \$1,000 instead.³⁵ Horizon Energy rejected our position that a fee of \$20,000 does not impose a significant upfront burden on

³¹ Powerco Limited, *Submissions on Customised Price-Quality Path Application Window and Standard Application Fee Consultation Document*, 26 January 2012, paragraph 10. Orion New Zealand Limited, *Submission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 13. Electricity Networks Association, *CPP Application Window and Fee*, 27 January 2012, page 3.

³² Powerco Limited, *Submissions on Customised Price-Quality Path Application Window and Standard Application Fee Consultation Document*, 26 January 2012, paragraph 10.

³³ Orion New Zealand Limited, *Submission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 17.

³⁴ Electricity Networks Association, *CPP Application Window and Fee*, 27 January 2012, page 3.

³⁵ Horizon Energy Distribution Limited, *Submission to Commerce Commission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraphs 8 and 9.

the applicant, and that based on its interpretation of the Act, fees should not impose any financial burden whatsoever.³⁶

- 42 Powerco asked that we confirm the approach to the application fee if a proposal is deferred to another year.³⁷

Commission view

- 43 We consider that \$20,000 represents a good approximation of our costs to assess whether a proposal complies with the CPP input methodology within the 40 day time frame under the Act. We consider that \$20,000 strikes an appropriate balance between recovering our costs and applying a fee that does not impose a significant upfront burden on suppliers.
- 44 We appreciate Horizon Energy's view, but reject its suggestion of applying a standard application fee of \$1,000. The standard application fee is intended as a down-payment. We intend to invoice the applicant for our total costs, less the amount of the standard application fee, once we have completed our assessment of the CPP proposal and the CPP has been set for that supplier. Given that the costs in assessing a proposal must be met by the applicant,³⁸ reducing the amount of the standard application fee would, in the long term, be of little benefit to either the supplier or consumers.
- 45 Where a CPP proposal is deferred, we will consult with the applicant on whether to hold the balance of the standard application fee as at the date of the deferral, or to return it to the supplier.
- 46 Where we discontinue consideration of a proposal under s 53S(2) or (3), we will refund any amount by which the standard application fee exceeds our actual costs.
- 47 Should that supplier make a new proposal to us within the regulatory period under s 53S(4), another standard application fee would be payable at the time the second proposal is submitted to us.
- 48 An application fee under s 53Q, and the terms and conditions for returning the application fee, may be set only by way of regulation in accordance with s 108 of the

³⁶ Horizon Energy Distribution Limited, Submission to Commerce Commission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper, 27 January 2012, paragraph 8.

³⁷ Powerco Limited, Submissions on Customised Price-Quality Path Application Window and Standard Application Fee Consultation Document, 26 January 2012, paragraph 11.

³⁸ Section 53Y(1) of the Act.

Act. The Commission has commenced the process to have the appropriate regulation prescribed.

Cost estimate and timetable

- 49 Horizon Energy requested that we provide a cost estimate early on in the CPP assessment process, so that suppliers have an opportunity to provide for these costs.³⁹ This is a sensible request and we will aim, at the time that we give notice that the proposal is under consideration, to provide to that supplier a reasonable approximation of our likely costs to determine a CPP for that supplier.
- 50 ENA stated that during our assessment period we should regularly advise the applicant of the planned timetable progress and expected determination dates, including possible extensions or delays.⁴⁰
- 51 We intend to actively communicate with CPP proposal applicants as we progress their CPP proposals. Our aim is to regularly advise suppliers of our progress against the planned timetable and expected determination dates, including possible extensions or delays to their CPP determination.

³⁹ Horizon Energy Distribution Limited, *Submission to Commerce Commission on Customised Price-Quality Path Application Window and Standard Application Fee Draft Decisions Paper*, 27 January 2012, paragraph 11.

⁴⁰ Electricity Networks Association, *CPP Application Window and Fee*, 27 January 2012, page 3.