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Reconsideration of default price-quality path for Wellington Electricity Lines Limited 2024

Draft decision

Date: 21 May 2024

Overview

WELL applied to us to reconsider and amend its DPP3 price path for two unforeseeable major capex projects

1 Wellington Electricity Lines Limited (WELL) applied to us to reconsider and amend its Electricity Distribution Services Default Price-Quality Path Determination 2020 [2019] NZCC 21 (DPP3 price path) to cover two projects WELL considers are 'unforeseeable major capex projects'.

2 WELL is subject to price quality-quality regulation by the Commission under Part 4 of the Commerce Act. As such, the revenue it can recover from its consumers is limited. It has applied to the Commission for these limits to be reconsidered to take account of two major capex projects that were unforeseeable at the time the original revenue limits were set. Reconsideration of revenue limits is only permitted under certain circumstances and this paper sets out our draft view on WELL's applications.

Our draft decision is to reopen WELL's DPP3 price path as applied for

3 Our draft decision is:

3.1 <u>the projects are unforeseeable major capex projects</u>. Attachments A and B outline our assessment against the clause EDB IMs criteria; and

3.2 <u>to reopen WELL's DPP3 price path</u> as proposed in these circumstances as it promotes the s 52A(1)(a) and (b) limbs of the purpose of Part 4 of the Commerce Act (Act). Detailed reasons for our draft decision to amend and how we amend the DPP3 price path are outlined at Attachment C.

4 Interested parties may provide their views by no later than 04 June 2024. Further details on how views can be provided are set out in attachment D. We intend issuing our final decision in July 2024.

Table 1: Summary of WELL's reopener applications

	Weta FX project	Disaster recovery project
Reopener type	Unforeseeable major capex project	Unforeseeable major capex project
Sub-type	Combination of connection capex and system growth capex	Asset relocation capex
Project description	Customer request for additional capacity	Relocation of WELL's primary data centre, back-up control room, and disaster recovery services
Application link	Weta FX project application	Disaster recovery project application
Specific consultation questions	We have not included specific consultation questions. We welcome views on all aspects of the draft decision.	
Project materiality		
Project cost	Capex $2.2m (net of capital contributions)	Capex $8.0m
Impact on revenues	Less than 1%	Less than 1%
Estimated consumer bill impact	Less than 1% ($0.5 per month)	Less than 1% ($0.5 per month)

Contents

Attachment A: Assessment of WELL's Weta FX project

A.1 Our draft decision is that the Weta FX project meets the 'Unforeseeable major capex project' criteria. This attachment sets out our assessment of the Weta FX project application[1] against the Electricity Distribution Services Input Methodologies Determination 2012 [2012] NZCC 26 (EDB IMs)' criteria for an 'Unforeseeable major capex project'.[2]

A.2 Table 2 below:

1.2.1 summarises the EDB IM criteria, which are set out in full at Attachment E;

1.2.2 sets out WELL's views and evidence on whether the EDB IM criteria have been met; and

1.2.3 sets out our assessment of that evidence for the purposes of our draft decision.

A.3 The view and evidence set out in the middle row of the table are those presented by WELL in its application. Additional text added to assist the reader is denoted by []. Further information on WELL's Weta FX project can be found in WELL's application at link.

A.4 We were not able to initially assess all criteria as being met. Where we were unable to assess whether the criterion was met based on WELL's view and evidence as set out in their application, we discussed this with WELL. Set out below the table in paragraphs A.8 to A.17 are details of the additional information we requested or additional analysis we performed to complete our assessment.

A.5 Our draft decision to amend WELL's DPP3 price path to include the additional costs incurred in undertaking the Weta FX project is set out in Attachment C.

Table 2: Assessment of WELL's Weta FX project against criteria

Criteria	WELL's view and evidence[3]	Our assessment
EDB IMs, clause 4.5.5A – Unforeseeable major capex project		
(d) project has a primary driver of meeting demand for a combination of connection capex and system growth capex;	A combination of connection capex and system growth capex. Other customers on the Miramar peninsula will benefit from the additional capacity the system growth capex will provide	Criterion has been met

1 Wellington Electricity, DPP3 reopener application (Weta FX), 16 February 2024 (Weta FX application).

2 EDB IM, clause 4.5.5A defines 'unforeseeable major capex project'. The definition's criteria are set out in Attachment E.

3 Weta FX application, above n 1, Figure 11.

Criteria	WELL's view and evidence[3]	Our assessment
(e) EDB's capex forecast used by the Commission for setting the DPP to which the reopener relates did not include that project;	The 2020 AMP growth forecast, used to calculate DPP3 capex allowances, reflected growth projects known at the time the forecasts were developed. Reinforcement of this area of Miramar was not included in the AMP forecast. While this part of the network did not have head room for large new connections, no new demand was forecast that would need new capacity in the DPP3 period. Section 3.2 [of the Weta FX application] lists the 2020 AMP[4] growth projects that were included in this section of the network. Reinforcement of the wider Miramar areas (stage 2 of the build) is provided in the 2023 AMP and will be included in DPP4 work programme. The customer letter provided in Appendix A [of the Weta FX application] provides that the request for more capacity was made March 2023, after the 2020 AMP [was] submitted.	Criterion has been met
(f) it was reasonable for that EDB not to have included that project in that capex forecast;	The additional customer load is a result of the success of the movie Avatar in 2022 and the decision to commence filming the sequels. The additional load requirements were not known in 2020 when the capex budget used to calculate DPP3 allowances were set. It was also reasonable to have not included growth capex in the 2020 AMP. The ERP which confirms that governments plans to decarbonisation was released in 2022, after the 2020 AMP. The request for more capacity for the Moa Point wastewater plant was not formally made until 2023. This new capacity will be provided in the DPP4 programme by stage 2 (see section 2 [of the Weta FX application]).	Criterion has been met
(g) amount of capital contributions to be received by the EDB for that project is sufficient in the circumstances, and is in accordance with that EDB's usual policy on capital contributions;	Consistent with Customer Capital Contribution Policy [provided in Appendix C of the Weta FX application] which calculates a customer capital contribution as the difference between the incremental revenue provided by a new connection, less incremental cost of the new connection, less a contribution towards the shared network costs. This ensures the Customer Capital Contributions Policy principle – that existing customers should be made no worse off by the new connection – is met.	Criterion has been met. Refer paragraphs A.6 to A.7.

4 https://www.welectricity.co.nz/disclosures/asset-management-plan/document/213

Criteria	WELL's view and evidence[3]	Our assessment
	Also consistent with the contribution policy, the wider network reinforcement will be funded by network tariffs. The network tariffs is provided in section 6 [of the Weta FX application]. The Miramar network is constrained (it does not have the capacity to add the additional load) and the new high voltage capacity will benefit existing customers in Miramar in the future, to meet new demand from Electric Vehicles and the transition away from gas. In addition, there are other large new load forecasts on this part of the network that will also help fund the additional high voltage capacity – this includes the airport upgrade and Moa point waste treatment plant.	
(h) forecast total value of commissioned assets for project (excluding capital contributions) exceeds either 1% of that EDB's forecast net allowable revenue for the DPP regulatory period in which the asset is forecast to be commissioned, or, two million dollars;	The $[2.2]m project cost (net of contributions) exceeds the $2m reopener threshold	Criterion has been met
(l) authorised officer of the connecting party has confirmed in writing to the Commission that it is committed to the project or programme and the EDB has provided sufficient evidence to the Commission that the project or programme for system growth capex is prudent	A letter from the connecting customer, Weta, has been provided in Appendix A [of the Weta FX application]. The letter confirms they are committed to the project by providing that: They agree to fund the project cost and contribute towards the shared costs by paying an upfront capital contribution and then on-going network tariffs. They agree to the key commercial terms provided in the offer to connect provided in Appendix B [of the confidential version of the Weta FX application]. The investment is prudent because: (1) The solution selected provides the best long-term benefits to consumers by staging the investment so that capacity is provided only when its needed (customers aren't paying earlier than needed). The solution is also the least expensive option.	Criterion has subsequently been met. Refer paragraphs A.8 to A.14.

Criteria	WELL's view and evidence[3]	Our assessment
	Section 2.1 [of the Weta FX application] provides alternative options considered, and why the proposed solution was selected. (2) The cost of the selected solution reflects market rates. An initial request for expressions of interest provided that only two contractors had both the competencies to do the work and were available to complete the work in the desired timeframe. We used a direct engagement model with third party price verification to agree the prices. Section 4.1 [of the Weta FX application] provides the methodology used to determine the project costs reflect market prices.	
(m) any proposed additional revenue sought will be apportioned appropriately between different parties.	WELL's customer contribution policy means that $0.4m of the $2.6m project cost is funded by an upfront customer contribution and [$2.2m] is funded by network tariffs of which Weta FX will contribute $93k p.a. in network tariffs (assuming 2023 prices). Section 5 [of the Weta FX application] provides the methodology to apportion the costs between customer contribution and tariff revenue. WELL's cost allocation and tariff structures sets customer tariffs based on the level of services used – those who are driving new demand (and the need for new capacity) will pay more and large users of electricity will also pay more. See WELL's Pricing Methodology which can be found on [WELL's] website at https://www.welectricity.co.nz/disclosures/pricing/2023-pricing/. The 1.5MW connection means that the GTX1501 network tariff will apply to Weta FX. As highlighted in section 5 [of the Weta FX application], it is estimated that, in addition to the $0.4m capital contribution, Weta will contribute $93k p.a. towards • some 30% of the connection costs (the average proportion of all connection costs included in the RAB) • A share of the ongoing costs to operate the network, including contributing towards network reinforcement/growth. Section 6 [of the Weta FX application] estimates the overall network price impact this connection and the wider high voltage growth will have on network tariffs.	Criterion has been met

Criteria	WELL's view and evidence[3]	Our assessment
EDB IMs, clause 4.5.6 – When price-quality path may be considered		
(1) the EDB applies to the Commission and satisfies the Commission that a project or programme of that EDB is an unforeseeable major capex project	Refer Figure 11 of the Weta FX application and further information discussed in this draft decision paper.	Criterion has been met
(4) Commission will not reconsider an EDB's DPP in respect of an unforeseeable major capex project if reconsideration would result in the total forecast value of commissioned assets attributable to unforeseeable major capex projects application by that EDB in a disclosure year exceeding thirty million dollars.	WELL has combined [two] applications to streamline the consultation and reopening process. These are WELL's first applications and they total some [$10.2m], less than the annual $30m threshold.	Criterion has been met
(5)(a) For the purposes of subclause (4), disregard capital contributions received by the EDB in respect of that unforeseeable major capex project;	The requested increase in allowances is net of customer contributions. The total project value is $[2.6m], customer contribution is $0.4m and the requested increase in allowance is $[2.2m]	Criterion has been met
(5)(b) For the purposes of subclause (4), disregard any amounts included in respect of that unforeseeable major capex project in the EDB's capex forecast and provided by the Commission in setting the DPP to which the reopener relates;	The project was not included in the 2020 capex forecast that the DPP3 allowance calculation was based on.	Criterion has subsequently been met. Refer paragraphs A.15 to A.17.

Capital contributions

A.6 In considering this application, we are not taking any particular view on WELL's customer capital contribution policy. We are only establishing whether the contributions are sufficient and consistent with that policy.

A.7 Based on WELL's response and its intended pricing approach to recover the costs of the project, we are satisfied that contributions are sufficient and consistent with the policy.

Connecting party confirmation

A.8 WELL's application included a letter from Weta FX addressed to WELL confirming they are committed to the project.

A.9 Clause 4.5.5A(l) of the EDB IMs requires the connecting party to confirm to the Commission their commitment to the project. We requested and WELL have subsequently provided a confirmation letter from Weta FX that is addressed to the Commission. We now consider clause 4.5.5A(l) to have been met.

Evidence system growth capex is prudent

A.10 Clause 4.5.5A(l) of the EDB IMs also requires the EDB to provide sufficient evidence to the Commission that the project or programme for system growth capex is prudent.

A.11 WELL outlined in their application that the investment is prudent because:

1.11.1 The solution selected provides the best long-term benefits to consumers by staging the investment so that capacity is provided only when its needed (customers aren't paying earlier than needed). The solution is also the least expensive option.

Section 2.1 of the application provides alternative options considered, and why the proposed solution was selected.

1.11.2 The cost of the selected solution reflects market rates. An initial request for expressions of interest provided that only two contractors had both the competencies to do the work and were available to complete the work in the desired timeframe. WELL used a direct engagement model with third party price verification to agree the prices.

Section 4.1 of the application provides the methodology used to determine the project costs reflect market prices.[5]

[5] Weta FX application, above n 1, Figure 11.

A.12 The information set out in WELL's Weta FX application was not sufficiently clear for us to assess whether the prudency requirement had been met. Accordingly, we requested additional information and clarifications from WELL.

A.13 WELL has subsequently clarified:

1.13.1 information included in the application, and confirmed that the current feeder is exceeding WELL's security limits and with the additional load from Weta FX the forecasted load will exceed the feeder capacity rating;

1.13.2 other options considered were discounted due to known load increases from Wellington International Airport, Moa Point treatment plant and Metlink's electric bus depot;

1.13.3 project costs for protection equipment is for the purchase and installation of equipment that allows for surface mount connection of cables and protection equipment; and

1.13.4 expenditure has been independently assessed and civil risks understood by contractors.

A.14 After consideration of the additional information provided, we are now of the view that WELL has demonstrated the prudency criterion of clause 4.5.5A(l) has been met.

Project amounts not included in DPP forecast

A.15 For the purposes of clause 4.5.6(4) of the EDB IMs,[6] clause 4.5.6(5)(b) requires any amounts included in in the EDB's capex forecast provided to the Commission in setting the DPP to be disregarded in calculating the total forecast value of commissioned assets attributable to the unforeseen major capex project.

A.16 WELL's application noted the project was not included in WELL's capex forecast but not whether any of the individual project cost items were.

A.17 WELL have subsequently confirmed that none of the Weta FX project costs were included in the 2020 capex forecast. We now consider clause 4.5.6(5)(b) to have been met.

[6] Clause 4.5.6(4) of the EDB IMs provides that the Commission will not reconsider an EDB's DPP in respect of an unforeseeable major capex project or a foreseeable major capex project if the total forecast value of commissioned assets attributable to unforeseeable major capex projects or foreseeable major capex projects which either have already resulted in a reconsideration of the DPP by the Commission or are the subject of a reconsideration application by that EDB in a disclosure year exceeds thirty million dollars.

Attachment B: Assessment of WELL's Disaster Recovery project

B.1 Our draft decision is that the Disaster Recovery project meets the 'Unforeseeable major capex project' criteria. This attachment sets out our assessment of WELL's Disaster Recovery project application[7] against the EDB IMs' criteria for an 'Unforeseeable major capex project'.[8]

B.2 Table 3 below:

1.2.1 summarises the EDB IM criteria, which are set out in full at Attachment E;

1.2.2 sets out WELL's views and evidence on whether the EDB IM criteria have been met; and

1.2.3 sets out our assessment of that evidence.

B.3 The view and evidence set out in the middle row of the table are those presented by WELL in its application. Additional text added to assist the reader is denoted by []. Further information on WELL's Disaster Recovery project can be found at Disaster recovery project application.

B.4 We were not able to initially assess all criterion as being met. Where we were unable to assess whether the criterion was met based on WELL's view and evidence as set out in their application, we discussed this with WELL. Set out below the table in paragraphs B.8 to B.13 are details of the additional information we requested or additional analysis we performed to complete our assessment.

B.5 Our draft decision to amend WELL's DPP3 price path to include the additional costs incurred in undertaking the Disaster Recovery project is set out in Attachment C.

Table 3: Assessment of WELL's Disaster Recovery project against criteria

Criteria	WELL's view and evidence[9]	Our assessment
EDB IMs, clause 4.5.5A – Unforeseeable major capex project		
(c) project has a primary driver of meeting demand for asset relocation capex;	The project described in section 2 of [the Disaster Recovery project] application fits the IM description of an asset relocation – i.e asset relocation capex means capex on assets involving the relocation of those assets at the request of a relocating party, including , but not limited to, relocation for the purpose of allowing road widening or undergrounding of previously above ground assets;	Criterion has been met

[7] Wellington Electricity, DPP3 reopener application - Disaster recovery service relocation, 16 February 2024 (Disaster recovery application).

[8] EDB IM, clause 4.5.5A defines 'unforeseeable major capex project'. The definition's criteria are set out in Attachment E.

[9] Disaster recovery application, above n 7, Figure 5.

Criteria	WELL's view and evidence [9]	Our assessment
	Where • The proposed expenditure is for the relocation of WELL's disaster recovery site and primary data centre services from the existing Transpower Haywards site to a new purpose-built site. • The relocation capex includes the relocation of some disaster recovery and primary data centre equipment, the replacement of equipment that can't be relocated and a new building to host the functions. • The decision to relocate these services was out of WELL's control. The timing of the relocation was also out of WELL's control – the relocation of the service could not be delayed until the next regulatory period. • The capex is at the request of a relocating party, the request being Transpower's notice to exit the current site. • The Relocating party being the current landlord, Transpower	
(e) EDB's capex forecast used by the Commission for setting the DPP to which the reopener relates did not include that project;	The 2020 AMP relocation forecast, used to calculate DPP3 capex allowances, was based on historic expenditure extrapolated forward with known large connections added on to the base forecast. This project was not included – WELL did not know about the project in 2020 when the capex forecast was produced.	Criterion has been met
(f) it was reasonable for that EDB not to have included that project in that capex forecast;	WELL did not know that Transpower would notify WELL that it had to exit the current DR site at the time of the 2020 AMP capex forecast finalisation. See the Transpower letter dated 24 February 2022 [in the confidential version of the Disaster recovery application] giving notice for WELL to exit the current Haywards site.	Criterion has been met
(g) amount of capital contributions to be received by the EDB for that project is sufficient in the circumstances, and is in accordance with that EDB's usual policy on capital contributions;	This investment falls outside of the Customer Capital contribution Policy [provided in Appendix C of the Weta FX application]. Transpower has no contractual obligation under the terms of the current lease agreement to fund any part of the relocation costs. No contribution will be made by Transpower.	Criterion has been met. Refer paragraphs B.6 to B.7

Criteria	WELL's view and evidence [9]	Our assessment
(k) authorised officer of the relocation party has confirmed in writing to the Commission that it is committed to the project or programme;	Appendix B of the [confidential version of the] Disaster Recovery project application provides a letter from Transpower confirming that they require us to exit our current Disaster Recovery site at Haywards and the exit date cannot be delayed until the next regulatory period.	Criterion has subsequently been met. Refer paragraphs B.8 to B.10.
(m) any proposed additional revenue sought will be apportioned appropriately between different parties.	The relocation cost will be added to the regulatory asset base (RAB) and funded by network tariffs. It is estimated that the investment will have a 0.3% impact on network tariffs, assuming all other inputs to the tariff-setting process remains constant.	Criterion has been met
EDB IMs, clause 4.5.6 – When price-quality path may be considered		
(1) the EDB applies to the Commission and satisfies the Commission that a project or programme of that EDB is an unforeseeable major capex project	Refer Figure 5 of the Disaster recovery application and further information discussed in this draft decision paper.	Criterion has been met
(4) Commission will not reconsider an EDB's DPP in respect of an unforeseeable major capex project if reconsideration would result in the total forecast value of commissioned assets attributable to unforeseeable major capex projects application by that EDB in a disclosure year exceeding thirty million dollars.	WELL has combined [two] applications to streamline the consultation and reopening process. These are WELL's first applications and they total some [$10.2m], less than the annual $30m threshold.	Criterion has been met
(5)(a) For the purposes of subclause (4), disregard capital contributions received by the EDB in respect of that unforeseeable major capex project;	No customer capital contributions	Agree assessment is n/a

Criteria	WELL's view and evidence [9]	Our assessment
(5)(b) For the purposes of subclause (4), disregard any amounts included in respect of that unforeseeable major capex project in the EDB's capex forecast and provided by the Commission in setting the DPP to which the reopener relates;	The project was not included in the 2020 capex forecast that the DPP3 allowance calculation was based on.	Criterion has subsequently been met. Refer paragraphs B.11 to B.13.

Capital contributions

B.6 In considering this application, we are not taking any particular view on WELL's customer capital contribution policy. We are only establishing whether the contributions are sufficient and consistent with that policy.

B.7 Based on WELL's response and its intended pricing approach to recover the costs of the project, we are satisfied that contributions are appropriate and consistent with the policy.

Relocation party confirmation

B.8 WELL's application included a letter from Transpower addressed to WELL confirming that the relocating party is committed to the project.

B.9 Clause 4.5.5A(k) of the EDB IMs requires the connecting party to confirm to the Commission their commitment to the project.

B.10 We requested and WELL have subsequently provided a confirmation from Transpower that is addressed to the Commission. We are now of the view that WELL has demonstrated that the criterion of clause 4.5.5A(k) has been met.

Project amounts not included in DPP forecast

B.11 For the purposes of clause 4.5.6(4) of the EDB IMs, clause 4.5.6(5)(b) requires any amounts included in in the EDB's capex forecast provided to the Commission in setting the DPP to be disregarded in calculating the total forecast value of commissioned assets attributable to the unforeseen major capex project.

B.12 WELL's application noted the project was not included in WELL's capex forecast but not whether any of the individual project cost items were.

B.13 WELL have subsequently confirmed that none of the Weta FX project costs were included in the 2020 capex forecast. We now consider clause 4.5.6(5)(b) to have been met.

Attachment C: Our draft decision is to amend WELL's DPP3 price path

C.1 This attachment outlines our draft decision under clause 4.5.7(1) of the EDB IMs to amend WELL's DPP3 price path to include the additional costs incurred in undertaking the Weta FX and Disaster recovery projects.

C.2 We first set out how the DPP3 price path is amended by updating the forecast net allowable revenue (FNAR) and forecast aggregate value of commissioned asset (FAVCA) for the last year of the DPP3 regulatory period.

C.3 We then discuss the matters we considered in applying our discretion to reopen the price path including how we:

3.3.1 assessed that our decision would not amend the price path by more than an amount that reflects the efficient costs that a prudent non-exempt EDB would incur in undertaking that project;

3.3.2 estimated the impact on revenue and consumer bills; and

3.3.3 the level of scrutiny we applied to our assessment of WELL's applications.

C.4 Finally, we set our how we adjusted the actual net allowable revenue (ANAR) to allow WELL to retain the additional revenue for the reopener and give effect to our policy intent for the reopener.

Our draft decision is to reopen WELL's DPP3 price path

C.5 Having established that WELL's Weta FX and disaster recovery projects meet the criteria under clause 4.5.5A (Unforeseeable major capex project) and 4.5.6(4) of the EDB IMs, our draft decision under clause 4.5.7(1) is to reconsider and reopen WELL's DPP3 price path as outlined in tables 4-5 below.

Table 4: FNAR ($000s) for WELL per assessment period[10]

	31 March 2021	31 March 2022	31 March 2023	31 March 2024	31 March 2025
FNAR in DPP3[11]	n/a	91,109	92,954	94,813	96,709
FNAR after reconsideration of the DPP3 price path	n/a	91,109	92,954	94,813	97,023

[10] The DPP3 determination uses the term 'assessment period' which covers the same 12-month period (commencing 1 April and ending on 31 March of the following year) as the EDB IMs' term 'disclosure year'. For ease of reference, we have used 'disclosure year' in the rest of this paper.

[11] DPP3 Price path as amended by Commerce Commission, *Electricity Distribution Services Default Price-Quality Path (Wellington Electricity transition) Amendments Determination 2020* [2020] NZCC 25, 26 November 2020.

Table 5: FAVCA ($000s) for the DPP regulatory period

	31 March 2021	31 March 2022	31 March 2023	31 March 2024	31 March 2025
Capex allowance in DPP3[12]	n/a	36,754	42,296	39,859	42,399
Capex allowance after reconsideration of the DPP3 price path	n/a	36,754	42,296	39,859	52,599

We have applied our discretion to reopen the price path

C.6 We consider our draft decision will enable WELL to undertake investment required to meet these one-off needs that were reasonable for WELL not to have included in its DPP3 capex forecast.

C.7 We likewise consider that reopening WELL's DPP3 price path in these circumstances promotes, in particular, the s 52A(1)(a) and (b) limbs of the Part 4 purpose. It does so by, respectively enabling WELL to:[13]

C.7.1 invest and, without undue delay, recover revenue for costs that were not reasonably foreseeable at the DPP3 reset. This in turn gives WELL incentives to innovate and to invest, including in replacement, upgraded, and new assets; and

C.7.2 provide services in a timely manner at a quality that reflects consumer demands.

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12 WELL DPP3, above n 9, at paragraph (2) of Schedule 2.2.

13 Section 52A(1) of the Act provides: 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—

(a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and

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

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

(d) are limited in their ability to extract excessive profits.

Our proposed price path amendment provides for the efficient costs a prudent non-exempt EDB would incur in undertaking the project.

C.8 Having decided to reconsider and reopen the DPP3 price path, our amendment must comply with clause 4.5.7(3) of the EDB IMs, which requires us to amend WELL's price path by no more than the amount reflecting the efficient costs a prudent non-exempt EDB would incur in undertaking the project.

C.9 Given the evidence outlined below, our draft decision is that amending WELL's DPP3 price path as outlined in Tables 4 and 5 above will not amend the price path by more than the amount that reflects the efficient costs a prudent non-exempt EDB would incur in undertaking the projects.

Assessment of the Weta FX project costs

C.10 The WELL Weta FX application states the project costs reflect efficient costs because the:

C.10.1 design and equipment requirements are provided by an experienced external designer;

C.10.2 design has been reviewed by WELL's Engineering Planning team;

C.10.3 equipment has been ordered using standard equipment prices in line with other new connections; and

C.10.4 contractor prices have been reviewed by a third party, confirming they reflect market prices.[14]

C.11 We also discussed with WELL what other steps they undertook to assess the efficiency of the Weta FX project costs and WELL subsequently confirmed in writing that an independent assessor completed a pre-tender walkover of the Weta FX civils programme to confirm the scope and conditions, to reduce the uncertainty in pricing. The independent reviewer also reviewed the tenders.

C.12 We also considered the additional information provided by WELL in response to our questions on the prudency of the system growth capex as set out in paragraph A.13.

C.13 Given the steps taken by WELL in assessing the efficiency of costs and their responses to our questions, we are satisfied that our amendment to WELL's DPP3 price path for the Weta FX project represents no more than the efficient costs that a prudent non-exempt EDB would incur in undertaking that project.

Assessment of the Disaster recovery project costs

C.14 The WELL Disaster recovery application states the project cost reflects an efficient cost because the:

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[14] Weta FX application, above n 1, Figure 11.

C.14.1 lowest cost build in the seismic zone selected;

C.14.2 equipment purchased by tender ensuring market rates; and

C.14.3 equipment is re-purposed where possible.[15]

C.15 We also discussed with WELL what other steps they undertook to assess the efficiency of the Disaster recovery project costs and WELL subsequently confirmed in writing that:

C.15.1 the design and layout of the building space is designed to host a skeleton crew only. The expectation is that less critical staff members will work remotely from home;

C.15.2 building cost for the fit out was provided by the developer's fit-out team who were already on site for the other buildings on the complex. WELL confirmed these rates were at or less than market rates;

C.15.3 equipment relocation cost was provided by WELL's incumbent IT contract holder and uses existing rates;

C.15.4 relocation of equipment rates for within Haywards substation have been provided by Transpower's contractors Ventia who are the authorised contractors for the site. Any other contractor would require a stand over from Ventia adding to cost; and

C.15.5 the cost items for relocation of assets within Haywards.

C.16 Given the steps taken by WELL in assessing the efficiency of costs and their responses to our questions we are satisfied that our amendment to WELL's DPP3 price path for the Disaster recovery project represents no more than the efficient costs that a prudent non-exempt EDB would incur in undertaking that project.

WELL's investment would impact revenue and consumer bills

C.17 If we finalise our draft decision WELL's investment will impact revenues and consumer bills. Our estimate of the impact is set out in table 6.

Table 6: Impact on revenues and consumer bills

	Weta FX project	Disaster recovery project	Total
Impact on revenues	Less than 1%	Less than 1%	Less than 1%
Estimated monthly consumer bill impact	Less than $0.5 (1%)	Less than $0.5 (1%)	Less than $0.5 (1%)

15 Disaster recovery application, above n 7, Figure 5.

C.18 While the investment will impact FNAR in the final year of DPP3, the full impact is not realised until the assets have been included in the FNAR calculation from the beginning of the regulatory year. To determine the full impact on revenues we have used the Wellington Electricity CPP to DPP model and added the project costs to the 2023/24 commissioned assets and measured the change in BBAR before tax for the 2024/25 regulatory year. Adding the commissioned assets to the 2023/24 year allows us to see the full impact of the investment on prices through analysis of the 2024/25 year. This calculation is performed to understand the impact of the investment on revenue and prices. It does not reflect how WELL's DPP3 price path is reopened.

C.19 The consumer bill impact is estimated to be significantly less than 1% of WELL average consumer's monthly bill. This is less than $0.50 per month.

Scrutiny applied to WELL's applications reflects the relatively low materiality of the changes to WELL prices

C.20 Applying our proportionate scrutiny principle,[16] we have applied a level of scrutiny to our assessment of WELL application which reflects the low materiality of the proposed changes to WELL's prices. This aligns with the relatively low-cost approach applied in setting the original WELL DPP price path which is in line with the purpose of DPP regulation under s 53K of the Act.

C.21 Reopeners that would lead to material increases in prices or a material change in the quality of service may attract greater scrutiny.

ANAR adjusted to allow WELL to retain the additional revenue

C.22 To give effect to our decision and amend actual net allowable revenue (ANAR) for disclosure year five, our DPP amendment also amends WELL's FNAR for the first disclosure year.

C.23 In amending the FNAR for the first disclosure year of the DPP regulatory period:

C.23.1 clause 3.1.1(6) of the EDB IMs requires us to specify the FNAR at the start of a DPP regulatory period. However, under clause 4.5.7(1) of the EDB IMs, to give effect to our draft decision, we consider we must also amend the DPP3 determination to specify an additional FNAR value for WELL for the first disclosure year to correctly calculate the ANAR for the fifth disclosure year;

C.23.2 the additional FNAR value we have specified for the first disclosure year is based on a CPI figure that does not exist at the time of this draft decision. We have accordingly specified a formula that will produce the additional FNAR value, and enable ANAR to be calculated in respect of that disclosure year once the CPI data becomes available; and

16 Commerce Commission, "Default price quality paths for electricity distribution businesses from 1 April 2025 Issues paper (DPP4 Issues Paper)", (2 November 2023), paragraph B42.

C.23.3 we have ensured the additional FNAR value for WELL calculated for the first disclosure year will not affect price path compliance for that year. We have done this by providing that the additional FNAR value specified for the first disclosure year only enables the calculation of WELL's ANAR for disclosure year five.

C.24 To provide for the above adjustments, our draft amendment to the DPP3 determination:

C.24.1 amends DPP3's definition of "forecast net allowable revenue" so that WELL has an additional FNAR value solely for the purpose of calculating WELL's ANAR for the fifth disclosure year; and

C.24.2 specifies in Schedule 1.6 of DPP3:

(a) the formula for calculating WELL's additional FNAR value for the first disclosure year; and

(b) how WELL's additional FNAR value fits into the formula for calculating ANAR for the remaining disclosure year of the DPP3 regulatory period.

Attachment D: How you can provide your views

D.1 Before making our final decision, we seek your written views on our draft decision and our draft amendment determination, published alongside this paper, within the timeframe below:

1.1.1 Submissions by 5pm Tuesday, 4 June 2024.

D.2 Please address your submission to Ben Woodham c/o infrastructure.regulation@comcom.govt.nz with 'WELL DPP UMCP reopener consultation' in the subject line of your email.

D.3 While we discourage requests for non-disclosure of submissions so that all information can be tested in an open and transparent manner, there may be cases in which submitters wish to provide information in confidence.[17] We offer the following guidance:

1.3.1 if it is necessary to include confidential material in a submission, the information should be clearly marked, with reasons why it is confidential;

1.3.2 where commercial sensitivity is asserted, submitters must explain why publication of the information would be likely to unreasonably prejudice their commercial position or that of another person who is the subject of the information;

1.3.3 both confidential and public versions of the submission are required to be provided.

1.3.4 the responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission; and

1.3.5 we request that you provide multiple versions of your submission if it contains confidential information or if you wish for the published electronic copies to be 'locked'. This is because we intend to publish all submissions on our website. Where relevant, please provide both an 'unlocked' electronic copy of your submission, and a clearly labelled 'public version'.

D.4 We prefer submission in both a format suitable for word processing (such as Microsoft Word document) as well as a 'located' format (such as PDF) for publication on our website.

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[17] Parties can also request that we make orders under s 100 of the Act in respect of information that should not be made public. Any request for an s 100 order must be made when the relevant information is supplied to us and must identify the reasons why the relevant information should not be made public. We will provide further information on s 100 orders if requested by parties. A key benefit of such orders is to enable confidential information to be shared with specified parties on a restricted basis for the purpose of making submissions. Any s 100 order will apply for a limited time only as specified in the order. Once an order expires, we will follow our usual process in applying the Official Information Act 1982 in respect of any request for information provided to us in relation to this matter.

Attachment E: Legal framework

DPP3's price path and quality standards may only be reconsidered in limited circumstances

E.1 We determined the DPP3 price path under the EDB IMs on a forecast, *ex-ante* basis to cover the regulatory period of 2020 to 2025. Once determined, DPP3's price path and quality standards may not be reconsidered (or reopened) within the regulatory period except in limited circumstances,[18] which, under s 52T(1)(c)(ii) of the Act, include those specified in Subpart 5 of Part 4 of the EDB IMs.

E.2 Under clause 4.5.6(1)(a)(vi) of the EDB IMs, one of the specified circumstances where we may reconsider the DPP3 price path is if an EDB identifies a project or programme that meets the criteria for an 'unforeseeable major capex project' under clause 4.5.5A of the EDB IMs.

E.3 We set out the policy basis and the legal criteria for the 'unforeseeable major capex project' reopener under the next two subheadings.

The unforeseeable major capex project reopener enables an EDB to undertake a significant capex project that was unforeseeable at the DPP3 reset

E.4 When setting the DPP3 price path, we recognised that the changing nature of the electricity sector, largely driven by decarbonisation and the uptake of new technology, may require additional investments in electricity networks during the DPP3 regulatory period, beyond that provided for in the price path. The extent, timing and impact of these changes is uncertain, and the need or cost of such investments may have been unforeseeable at the DPP3 reset.

E.5 In our consideration of this uncertainty at the DPP3 reset, we amended the EDB IMs to introduce reopeners for large system growth and new connection projects and programmes that were unforeseeable, or for which the costs were under forecast, at the reset.[19]

E.6 The aim of the unforeseeable major capex reopeners is to ensure, where possible, that distributors are able and incentivised to undertake the investment required to meet the one-off needs of stakeholders. The reopeners enable distributors to connect and manage significant new demand and low-carbon technologies as New Zealand increases its focus on decarbonisation, while maintaining network reliability and meeting the long-term interests of consumers.[20]

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[18] Sections 52T(1)(c)(ii) and 53ZB of the Act.

[19] Commerce Commission, *Default price-quality paths for electricity distribution businesses from 1 April 2020 – Final decision Reasons Paper*, 27 November 2019 (DPP3 reasons paper), at [4.18] – [4.20].

[20] DPP3 reasons paper, above n 19, at [4.37].

Reopener criteria under clause 4.5.5A of the EDB IMs

E.7 Clause 4.5.5A of the EDB IMs define an ‘unforeseeable major capex project’ as an EDB’s project or programme that has a primary driver of meeting demand for:

E.7.1 connection capex;

E.7.2 system growth capex;

E.7.3 asset relocation capex; or

E.7.4 a combination of connection capex and system growth capex,

E.8 where,

E.8.1 the EDB’s capex forecast used by the Commission for setting the DPP to which the reopener relates did not include that project or programme;

E.8.2 it was reasonable for that EDB not to have included that project or programme in that capex forecast;

E.8.3 the amount of capital contributions to be received by the EDB for that project or programme is sufficient in the circumstances, and is in accordance with that EDB’s usual policy on capital contributions;

E.8.4 subject to clause 4.5.6(4) of the EDB IMs, forecast total value of commissioned assets for that project or programme, but excluding capital contributions, exceeds either:

(a) 1% of that EDB’s forecast net allowable revenue for the DPP regulatory period in which the asset is forecast to be commissioned; or

(b) two million dollars;

E.8.5 for connection capex (as is case for the project), an authorised officer of the connecting party has confirmed in writing to the Commission that it is committed to the project or programme; and

E.8.6 the EDB will apportion any proposed additional revenue sought appropriately between different parties.

E.9 Clause 4.5.6(4) of the EDB IMs also states that we will not reconsider a reopener in respect of an unforeseeable major capex project if the total forecast value of commissioned assets attributable to projects, which either have already resulted in a reconsideration of the DPP by the Commission or are the subject of a reconsideration application by that EDB, in a disclosure year exceeds thirty million dollars.

Our discretion to reopen and amend the DPP3 price path

E.10 Our decision making to reopen and amend the DPP3 price path is a two-step process: first, we assess whether the project meets the criteria for an 'unforeseeable major capex project' under clause 4.5.5A of the EDB IM. Then, if we decide the project meets the clause 4.5.5A criteria, under clauses 4.5.6(1)(a)(vi) and 4.5.7(1) of the EDB IMs, we exercise our discretion on whether to reopen and amend the DPP3 price path.

E.11 Our discretion on whether to reopen the price path is guided by the extent to which reopening the price path in these circumstances would promote the s 52A purpose of Part 4 of the Act.

E.12 If we decide to reopen the price path under clause 4.5.7(1), then under clause 4.5.7(3) of the EDB IMs, we must not amend the price path in respect of an unforeseeable major capex project by more than an amount that reflects the efficient costs that a prudent non-exempt EDB would incur in undertaking that project.

Reopening the DPP3 price path would involve amending FNAR, and FAVCA for calculating capex incentives

E.13 If we reopen the DPP3 price path, then we must amend the components of the price path that together set WELL's allowable revenue, which are:

E.13.1 FNAR for disclosure year five of the regulatory period, that WELL will use *ex ante* to set its prices;[21]

E.13.2 FAVCA for the disclosure years in which project assets are forecast to be commissioned;[22] and

E.13.3 ANAR for disclosure year five of the regulatory period, which determines the revenue that WELL can retain for each of those disclosure years.[23]

E.14 Recalculating and amending WELL's FNAR and FAVCA is straightforward, since these price path components are specified values in the DPP3 price path. However, amending the ANAR is less straightforward. This is because, under the EDB IMs, changes to the FNAR for disclosure year five will not automatically flow into ANAR for that year because:

E.14.1 under clause 3.1.3(13)(h) of the EDB IMs, ANAR for the first disclosure year is calculated using the FNAR for the first disclosure year; but

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[21] DPP3 price path, above n 11, at Schedule 1.4.

[22] DPP3 price path, above n 11, at paragraph (2) of Schedule 2.2.

[23] DPP3 price path, above n 11, at paragraph (3) of Schedule 1.6.

E.14.2 under clause 3.1.3(13)(i) of the EDB IMs, ANAR for each disclosure year after the first disclosure year is ANAR for the preceding disclosure year adjusted for the actual CPI for that year and any applicable X factor.

E.15 If an EDB's ANAR does not change, the EDB will not retain any additional revenue from the reopener.[24] Accordingly, if we decided to reopen WELL's price path, we would need to amend WELL's ANAR for the first disclosure year to allow WELL to retain the additional revenue for the reopener and give effect to our policy intent for the reopener. This would draw on the approach we took to implement the change in the weighted average cost of capital which we determined and published for DPP3 for EDBs on customised price-quality paths,[25] and also with the approach we took to reopen and amend Unison Networks Limited's DPP3 price path.[26]

[24] In effect, unchanged ANAR means that increased revenues (from FNAR changes) for disclosure year five are washed up under Schedule 1.7 of DPP3 and do not flow into forecast allowable revenue. Under Schedule 1.7, there is a two-year delay between calculating a wash-up amount and the disclosure year in which that amount becomes part of an EDB's forecast allowable revenue.

[25] Commerce Commission, *Reconsideration of customised price-quality paths of Powerco Limited and Wellington Electricity Lines Limited following change to weighted average cost of capital – Final decision*, 31 March 2020, at [6.1] – [6.5], available at: https://comcom.govt.nz/__data/assets/pdf_file/0024/213774/Reconsideration-of-Powerco-Limited-and-Wellington-Electricity-Lines-Limiteds-CPPs-following-change-to-WACC-Final-decision-31-March-2020.pdf.

[26] 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, at available at [4.20] – [4.23]: https://comcom.govt.nz/__data/assets/pdf_file/0027/278109/Final-Decision-Reconsideration-of-default-price-quality-path-for-Unison-Networks-Limited-04-March-2022.pdf.