

29 October 2009

David Healy
Chief Adviser
Network Performance Branch
Commerce Commission
PO Box 2351
WELLINGTON

By email to NPB@comcom.govt.nz

Dear David

Submission on the Draft Determination for the Initial Reset of the Default Price-Quality Path for Electricity Distribution Businesses

The Commerce Commission (Commission) has published a draft of its *Initial Reset Determination*¹ which sets out the proposed content and form of the reset Default Price-quality Path (DPP) to have effect from 1 April 2010. The Commission is required to make a (final) determination in accordance with s52P of the Commerce Act 1986 (the Act) by 1 December 2009.

The *Initial Reset Determination* is based on the Commission's preliminary views that were published in its *Draft Decisions Paper*². Various parties, including the Auckland Energy Consumer Trust (AECT), have made submissions and cross submissions in relation to this *Draft Decisions Paper*. It is therefore not clear how representative of the final determination this *Initial Reset Determination* will be.

This letter provides the AECT's submission on the *Initial Reset Determination*. AECT has avoided extensive comment on the technical aspects of the determination, and therefore its submission is relatively brief.

The key areas that the AECT wishes to comment on in this submission are:

- The Reset Process
- Requested Changes to the Commission's Draft Determination
- Miscellaneous Issues
- Responses to the Commission's Questions

¹ Commerce Commission; "Initial Reset of Default Price-Quality Path for Electricity Distribution Businesses: Initial Reset Determination (DRAFT)"; 16 October 2009.

² Commerce Commission; "Initial Reset of Default Price-Quality Path for Electricity Distribution Businesses: Draft Decisions Paper"; 8 September 2009.

1. *The Reset Process*

AECT appreciates that the Commission has gone out of its way to publish the *Initial Reset Determination* as an additional step in the consultation process. This was in response to requests from the wider industry for details of the draft determination to be published as early as possible – as, given the short time frames for the reset, this would help make the consultation process more efficient.

AECT does not believe that the *Initial Reset Determination* has achieved this objective. Whilst the Commission has been able to (helpfully) use the draft determination to clarify and refine several matters arising from the *Draft Decisions Paper*, the draft determination is nonetheless a technical translation of the Commission's draft decisions. In fact the *Initial Reset Determination* does not take into account submissions made on the *Draft Decisions Paper*, and was published before cross-submissions had been received. As such the *Initial Reset Determination* does not advance any understanding of the Commission's position from that outlined in its draft decisions. AECT finds it difficult to add much value to this step of the consultation process – as there is a need to repeat matters previously submitted on.

AECT looks forward to the 'Updated Decisions Paper' and an 'Updated Determination' which the Commission plans to release on 16 November 2009.

2. *Requested Changes to the Commission's Draft Determination*

The Commission has requested submitters to comment on the form and content of the draft determination, and to comment on positions taken in submissions on the *Draft Decisions Paper*.

In its submission and cross-submission on the *Draft Decisions Paper*, the AECT sought several changes. Those that relate to the potential reset of starting prices under s54K(3) of the Act are not repeated here, as they are relevant to an amended s52P determination rather than the initial reset determination³. Of particular relevance to the initial reset determination are:

- Allowing a more comprehensive set of pass-through costs (including regulatory costs).

In this regard, the AECT suggests that the Commission might adopt an additional clause, similar to that which was used in the definition of pass-through costs in the Vector Gas Authorisation – for instance:

"Clause 6.4 Pass through costs

6.4.1 The following costs are pass-through costs to the extent that they are applicable to the controlled services:

(a) local authority rates

...

³ AECT, however, still requests that the Commission give consideration to these matters.

(g) any category of cost that Vector has applied to be added under clause 6.4.3 and that the Commission has approved as pass-through costs, but only for the purpose referred to in that clause. ...

*6.4.3 Vector may apply to the Commission by [date 1] in any year to add a category of cost ... as pass-through costs under clause 6.4.1(g) for the purpose of setting prices from [date 2]."*⁴

- Specification of the Price Path

AECT notes that the Commission's refinements to the specification of the price path are improvements. However, notwithstanding these refinements, AECT requests the following additional changes be made:

- adopting a *t-2* approach to establishing quantities (instead of the proposed *t-1* approach) to avoid additional compliance uncertainty from reconciling estimated and actual quantities; and
- adopting the latest RBNZ CPI forecasts (as required) for setting the price path (instead of the lagged CPI approach proposed by the Commission).

Subject to the above comments and requested changes, and with the exception of clause 10 relating to mergers and acquisitions (which the AECT addresses more fully in section 3 below), the AECT is broadly happy with the form and content of the draft determination.

3. *Miscellaneous Issues*

AECT has identified two miscellaneous issues in relation to the *Initial Reset Determination*. These are:

- Future amendments to the s52P DPP determination

The determination, once finalised, becomes a s52P determination. This determination can be amended (rather than superseded) in certain situations. For instance, a Customised Price-quality Path (CPP) becomes an amendment to the DPP determination applying to that supplier.

AECT suggests that the first paragraph⁵ of the 'Explanatory Note' to the *Initial Reset Determination* should be amended to reflect that the DPP determination may be amended by any CPP in the future, and that the DPP determination may also be amended by the process set out in s54K(3) of the Act. This would provide a 'bridge' between the first and second paragraphs – especially as s53N of the Act requires Non-exempt EDBs to state whether they have complied with the applicable price-quality path (whether a DPP, CPP, or individual price-quality path).

⁴ Commerce Commission; "Commerce Commission Authorisation – Decision No. 657"; 30 October 2008

⁵ The first paragraph of the Explanatory note seems to finish with an unnecessary 'and'.

- Mergers and Acquisitions

The *Initial Reset Determination* has introduced the treatment of mergers and acquisitions (from a compliance perspective). Whilst this was also an issue under the previous Threshold Regime, it was not something previously discussed in the *Draft Decisions Paper*.

In AECT's view, Clause 10 of the draft determination (which deals with EDB merger and acquisition transactions) is not sufficiently clear as to the assessment of price path compliance after the Assessment Period in which the transaction occurred.

At a very minimum, in order to preserve incentives for efficiency, the AECT believes that the price path compliance test should not be any tighter than the compliance test for each individual EDB Network prior to the merger/acquisition transaction.

The *Initial Reset Determination* does not provide any indication on how demergers/sales of EDB Networks will be treated.

4. Responses to the Commission's Questions

AECT provides the following responses to some of the Commission's questions:

Q1. Are there any defined terms which you consider unclear in their description or inappropriate for the purposes of the draft determination?

A1. Without wishing to make extensive comment on the technical aspects of the draft determination, AECT considers that the definition of 'EDB Network' is potentially inappropriate following a merger of contiguous networks. AECT suggests that the proposed definition should be supplemented with the following words:

"... as at the Commencement Date"

The full definition therefore reads:

"EDB Network means a geographically distinct (i.e. non-contiguous) electricity distribution network owned by a Non-exempt EDB as at the Commencement Date."

Q3. Do you consider the Allowable Notional Revenue assessment formulae to reflect the Commission's draft decisions?

A3. Yes. AECT considers the refinements to be helpful. However, as noted in section 2 above, the AECT requests that the Commission reconsider the specification of quantities and CPI in the Allowable Notional Revenue assessment formulae.

Q4. Do you consider the definition of Allowable Notional Revenue for the first assessment period to be appropriate?

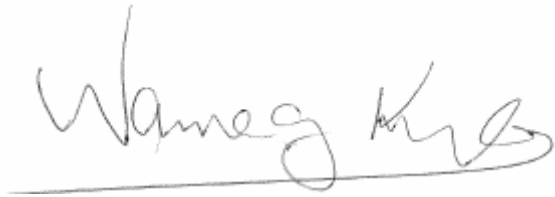
A4. Yes. AECT notes that Clause 8.4 is probably unnecessary, although it does help avoid any doubt over whether the 31 March 2010 prices can be inflated by the CPI-X term.

Q9. Are there additional matters which you consider should be addressed in the overall *Initial Reset Determination*?

A4. Yes. AECT has identified these in sections 2 and 3 above.

AECT appreciates the opportunity to make this submission and looks forward to these matters being taken into account in the Commission's 'Updated Decisions Paper' and 'Updated Determination'.

Yours sincerely
Auckland Energy Consumer Trust

A handwritten signature in black ink, appearing to read "Warren Kyd", written over a horizontal line.

Warren Kyd
Chairman