



From the Electricity Networks Association

Submission on proposed CPP IM amendments

CPP fast-track limb 1, Draft decision

25 September 2015

The Electricity Networks Association makes this submission along with the explicit support of its members listed below.

Alpine Energy Ltd
Aurora Energy Ltd
Buller Electricity Ltd
Centralines Ltd
Counties Power Ltd
Eastland Network Ltd
Electra Ltd
EA Networks Ltd
Electricity Invercargill Ltd
Horizon Energy Distribution Ltd
Mainpower NZ Ltd
Marlborough Lines Ltd
Nelson Electricity Ltd
Network Tasman Ltd
Network Waitaki Ltd
Northpower Ltd
Orion New Zealand Ltd
OtagoNet Joint Venture
Powerco Ltd
Scanpower Ltd
The Lines Company Ltd
The Power Company Ltd
Top Energy Ltd
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1. Introduction and Summary

1.1 Introduction

1. The Electricity Networks Association (ENA) appreciates the opportunity to comment on the Commerce Commission's (the Commission's) consultation paper "Proposed amendments to input methodologies for customised price-quality paths: Draft decision for limb 1 of the CPP fast track" (the draft decision paper).
2. This submission comments on the proposed changes and the proposed drafting of those changes as put forward in the draft decision paper. Appendix A contains marked-up drafting recommendations.
3. The ENA's contact person for this submission is:

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1.2 Summary

4. The ENA considers the changes proposed in the draft decision paper to be helpful interim measures to improve the usability of the CPP IMs. However, they do not address the underlying problems with the CPP IMs, which have been identified by submitters and acknowledged by the Commission. We support a detailed review of the CPP IMs as part of the full IM review to ensure they are fit for purpose from 2017.
5. The ENA supports the Commission's view that the IMs to be applied to a CPP decision are those that were in force at the time a CPP proposal was submitted.
6. In principle the ENA supports the draft decision to enable regulated suppliers to apply for a modification to or exemption from a process or content requirement in the CPP IMs. However, we consider that the following changes would improve the proposal:
 - a) the test the Commission applies when deciding whether to approve a modification or exemption should be a cost-benefit test
 - b) the IMs should specify the timeframe in which the Commission must make a decision on approving a modification or exemption request. Where a decision is not made within the timeframe (including any extension), the request should be deemed to be approved
 - c) approval of modification or exemption requests should be binding throughout the CPP review process, not just when determining if a CPP application is compliant.
7. The ENA supports the draft decision to enable regulated suppliers to apply alternative methodologies with equivalent effect for selected building block IMs. We consider that alternative methodologies should be permitted when they have a materially equivalent effect.
8. We also recommend that CPP applicants are able to request approvals of alternative methodologies with equivalent effect before they submit their CPP application.
9. The ENA supports the draft decision to accept CPP proposals that are complete in all material respects.

2. Context for review of CPP IMs

2.1 Full review of CPP IMs remains necessary

10. The fast track process is a useful step to make interim improvements to the CPP IMs before the full IM review is completed. The ENA considers that the amendments put forward in the draft decision paper are helpful but do not remove the need to reform the CPP IMs. For example, where a CPP IM is unduly onerous it is preferable to remove those unnecessary clauses rather than force a supplier to apply for exemptions, modifications or alternative methodologies.
11. We note the statement in paragraph 3.4.2 of the draft decision paper that:

*“a more detailed line-by-line review of the existing IMs for determining a CPP... **may** occur as part of the overall IM review”* [emphasis added].
12. We would be concerned if this means that the Commission does not intend to make further amendments to the CPP IMs beyond those made through the fast-track process. In our view, the CPP IMs are unnecessarily onerous and prescriptive and create barriers to suppliers making CPP applications and the ENA and others have made recommendations for improvements that should be considered. We therefore continue to support a detailed review of the CPP IMs as part of the full IM review.

2.2 Clarifying which IMs apply to a CPP

2.2.1 Summary of draft decision

13. The draft decision paper proposes that, when making a CPP determination, the Commission will apply the IMs that were in force at the time a CPP proposal is submitted. Any IM amendments made after the Commission receives a CPP application but before the CPP determination is made would not apply to the determination.

2.2.2 ENA supports the draft decision

14. The ENA agrees that the IMs that were in force at the time the application was made should be those that are applied to the CPP. If this is not the case, then suppliers may be less likely to apply for a CPP as they will be unsure what IMs will apply to their CPP proposal.
15. The ENA considers that it would be useful for the IMs to specify that the IMs that will apply to a CPP determination are those that were in force at the time of the application. This would provide improved certainty for suppliers and consumers.

2.3 Recommendations

16. The ENA considers the changes proposed in the draft decision paper to be helpful interim measures to improve the usability of the CPP IMs. However, they do not address the underlying problems with the CPP IMs, which have been identified by submitters and acknowledged by the Commission. We support a detailed review of the CPP IMs as part of the full IM review to ensure they are fit for purpose from 2017.
17. The ENA supports the Commission’s view that the IMs to be applied to a CPP decision are those that were in force at the time a CPP proposal was submitted.

3. Proposed amendments to CPP IMs

3.1 Modification of or exemption from CPP process or content requirements

3.1.1 Summary of draft decision

18. The draft decision paper proposes that a CPP applicant will be able to request a modification or exemption to the CPP process and content requirements in advance of making a CPP application. The CPP applicant will request the modification or exemption before the CPP proposal is submitted and the Commission will consider the proposed modification or exemption on a case-by-case basis.
19. The draft decision paper also noted that:
 - a) the Commission does not think it will generally be necessary to consult before deciding whether or not to grant a modification or exemption
 - b) the Commission would not expect to approve exemptions of such an extent that the application effectively becomes a "single issue CPP"
 - c) verification, audit, consultation and certification requirements are not intended to be substantially altered or removed.

3.1.2 ENA supports the draft decision in principle

20. In principle, the ENA supports the draft decision to enable CPP applicants to request modifications or exemptions to tailor the process or content requirements in the IMs to their particular requirements. We make some recommendations below that we believe would improve this proposal.

3.1.3 Test for approving modifications or exemptions

21. The draft decision paper proposes that the Commission could only grant a modification or exemption if it did not detract from Commission's evaluation of the CPP proposal and the ability of interested persons to review the proposal. This implies that any "detraction", however minor, would mean a modification or exemption is not approved even where the "detraction" is outweighed by the benefits of the modification or exemption.¹
22. In our view a better approach would be for the IMs to require an assessment of the cost-benefit implications or materiality of the requested modification or exemption, instead of the test put forward in the draft decision paper. We consider that the Commission should approve modifications or exemptions where the benefits of doing so outweigh the costs. In Appendix A we have marked-up suggested drafting changes to clauses 5.1.6(2) and 5.1.7(3)-(4) to address these points. Note that these drafting changes have moved the test for approving an exemption or modification from clause 5.1.6(2) to 5.1.7(3) – we consider this reduces repetition within the Determination and makes it easier to follow.

¹ We recognise that paragraph 2.25 of the draft decision paper acknowledges this issue, but it should also be written into the test.

3.1.4 Timeframes for considering modification or exemption requests

23. The draft decision paper states that the Commission will approve modification or exemption requests "as soon as reasonably practicable". We note that this means suppliers will have limited certainty about how long the Commission will take to approve modifications or exemptions. The Commerce Act sets statutory time limits for the Commission to review CPP applications to ensure decisions are made in a timely manner. The same principle could usefully be applied here.
24. It would be helpful for the IMs to specify that the Commission must make decisions on modification or exemption requests in specified timeframes, say 30 working days with an ability for the Commission to extend this by a further 20 working days where more time is needed.
25. If the Commission did not make a decision within these timeframes, we consider the request should automatically be deemed to be approved. This would give useful certainty to suppliers as they plan their CPP process, which will already be operating under compressed timeframes. In Appendix A we have marked-up suggested drafting changes to clauses 5.1.7(6)-(8) and 5.1.8(1)(a) to address these points.

3.1.5 Consultation requirements

26. The ENA agrees with the draft decision paper that in most, if not all cases, it will not be necessary for the Commission to consult with other interested persons in respect of the modification or exemption that has been requested.

3.1.6 Binding approval of modification or exemption requests

27. Once a request has been approved, it is reasonable for a regulated supplier to view that approval as binding. Our reading of the draft decision suggests that the Commission would view the approval as binding in terms of confirming the CPP application including the modification or exemption is compliant. However, paragraph 2.20.2 of the draft decision paper implies the Commission may change its mind on a modification or exemption following consultation on the full CPP proposal.
28. While this is an unlikely scenario, we do not believe it would be appropriate for the Commission to reverse a decision on a modification or exemption after it has been approved. ENBs need to have confidence an approval will be upheld through the CPP application review process. In Appendix A we have marked-up suggested drafting changes to clause 5.1.6(3) to address this point.

3.2 Alternative methodologies with equivalent effect

29. The draft decision paper proposes that:
 - a) where a CPP applicant wants to change a cost allocation, asset valuation, tax or term credit spread differential IM (but not any others) they can apply their proposed alternative methodologies in their proposal
 - b) the Commission will then assess the alternative methodologies when they assess the CPP application itself (possibly including consulting on the proposed changes).
30. The Commission will approve the alternative methodology where it "produces an equivalent effect within the relevant CPP regulatory period to that which would otherwise have applied" and will not detract from the 52A purpose.
31. As the draft decision paper notes, CPP applicants already have an ability to propose an IM amendment as part of the CPP application. The benefit of this proposal is that the CPP applicant

would not have to submit a CPP proposal both with and without the alternative methodology. It could just submit a proposal with the alternative methodology.

32. The ENA agrees this is a useful incremental improvement to the CPP IMs. However, we consider that it would be useful for the IMs to state that an alternative methodology can be applied where it produces “a materially equivalent effect”. This should help to ensure the test is practicable and minor variations in effect are not excluded. In Appendix A we have marked-up suggested drafting changes to clauses 5.3.34(4)(a) and 5.4.34(1)(d)(i) to address this point.
33. We also recommend that CPP applicants are able to request approvals of alternative methodologies with equivalent effect before they submit their CPP application. This would be helpful because, if the Commission does not approve an alternative methodology, the applicant may be required to undertake re-work after the CPP application has been submitted to adjust the application to reflect the original methodology. Given timeframes for the CPP applications, this could be challenging for all parties. In Appendix A we have marked-up suggested drafting changes to clauses 5.3.33 and 5.3.34(3) to address this point.

3.3 Assessing a CPP proposal that is complete in all material respects

34. The Commission states that it will accept CPP proposals that are "complete in all material respects" as meeting the requirements for a CPP proposal. This recognises that an application may not comply with every single requirement in the CPP IMs, but this non-compliance will not necessarily compromise the Commission's evaluation of the CPP proposal or the ability of interested persons to comment on the proposal. The Commission can still gather further information through a statutory notice.
35. The ENA supports the draft decision.

3.4 Recommendations

36. In principle the ENA supports the draft decision to enable regulated suppliers to apply for a modification to or exemption from a process or content requirement in the CPP IMs. However, consider that the following changes would improve the proposal:
 - a) the test the Commission applies when deciding whether to approve a modification or exemption should be a cost-benefit test
 - b) the IMs should specify the timeframe in which the Commission must make a decision on approving a modification or exemption request. Where a decision is not made within the timeframe (including any extension), the request should be deemed to be approved
 - c) approval of modification or exemption requests should be binding throughout the CPP review process, not just when determining if a CPP application is compliant.
37. The ENA supports the draft decision to enable regulated suppliers to apply alternative methodologies with equivalent effect for selected building block IMs. We consider that alternative methodologies should be permitted when they have a materially equivalent effect.
38. We also recommend that CPP applicants are able to request approvals of alternative methodologies with equivalent effect before they submit their CPP application.
39. The ENA supports the draft decision to accept CPP proposals that are complete in all material respects.

Appendix A: Marked-up recommendations

Modification or exemption from CPP process or content requirements

“5.1.6 Modification or exemption of CPP application requirements

- (1) The Commission may modify, or exempt a CPP applicant from, a requirement set out in—
- (a) this subpart;
 - (b) Subpart 4;
 - (c) Subpart 5; or
 - (d) schedules relating to subparts identified in paragraphs (a) to (c) above.
- (2) A modification or exemption may be made where, in the Commission’s reasonable opinion, the test in clause 5.1.7(3) has been met. modification or exemption will not detract from
- ~~(a) the Commission’s evaluation of the CPP proposal and determination of a CPP; and~~
 - ~~(b) the ability of interested persons to consider and provide their views on the CPP proposal.~~
- (3) A modification or exemption will only apply ~~for the purposes of assessing compliance of a CPP application under s 53S(1) of the Act —~~
- (a) if the Commission has previously approved a request by a CPP applicant for the modification or exemption in accordance with clause 5.1.7;
 - (b) in respect of the CPP applicant and the CPP application identified in the Commission’s approval; and
 - (c) if the CPP applicant elects to apply the modification or exemption by:
 - (i) meeting all conditions and requirements specified in the approval that relates to the modification or exemption; and
 - (ii) providing the relevant information specified in clause 5.1.8 as part of its CPP application.

5.1.7 Process for determining a modification or exemption

- (1) At any time prior to providing the Commission with a CPP application, a CPP applicant may request that the Commission approve modifications or exemptions to the requirements listed in clause 5.1.6(1) as alternatives to those requirements.
- (2) A request by a CPP applicant must—
- (a) be in writing; and
 - (b) include the following information:
 - (i) the CPP applicant’s name and contact details;
 - (ii) a brief description of the key features of its intended CPP proposal;
 - (iii) the date that the CPP applicant intends to submit the CPP application for which a modification or exemption is sought;

- (iv) a list of the specific modifications or exemptions sought;
- (v) an explanation of why the CPP applicant considers the requirement in subclause (3) is met, supported by appropriate evidence; and
- (vi) identification of any information that is commercially sensitive.

(3) The Commission may approve modifications or exemptions sought by a CPP applicant where, in the Commission's reasonable opinion, the benefits of the modifications or exemptions will exceed any costs caused by the modifications or exemptions. the CPP applicant has demonstrated that the criteria specified in clause 5.6.1(2) have been met.

(4) For the avoidance of doubt, the benefits and costs of the modifications or exemptions may include changes in —

- (a) costs incurred by the CPP applicant in preparing the CPP proposal;
- (b) costs incurred by the Commission when evaluating the CPP proposal and determining a CPP; and
- (c) costs incurred by interested persons when considering and providing their views on the CPP.

~~(4)~~(5) In considering whether to approve a request for modifications or exemptions, the Commission may seek, and have regard to—

- (a) views of interested persons within any time frames and processes set by the Commission; and
- (b) views of any person the Commission considers has expertise on a relevant matter.

~~(5)~~(6) ~~As soon as reasonably practicable~~ Within 30 working days after receipt of a request for modifications or exemptions the Commission will, by notice in writing, advise the CPP applicant as to whether:

- (a) one, some, or all of the modifications or exemptions are approved; and
- (b) the approval of any modification or exemption is subject to conditions or requirements that must be met by the CPP applicant.

(7) The Commission may elect to extend the timeframe specified in subclause (6) once by up to a further 20 working days provided it notifies the CPP applicant of the reasons for the extension.

(8) Where the Commission does not provide the notice in subclause (6) to the CPP applicant within 20 working days, or within the timeframe of any extension, the requested modifications or exemptions will be deemed to have been approved.

5.1.8 Information on modification or exemption of information requirements

(1) Where a CPP applicant elects to apply a modification or exemption approved by the Commission in accordance with clause 5.1.7, it must include as part of its CPP application—

- (a) a copy of the Commission's approval, or a statement that a notice under clause 5.1.7(6) was not provided within the timeframes specified;
- (b) a list of the approved modifications or exemptions which the CPP applicant has elected to apply in its CPP application;
- (c) evidence that any conditions or requirements of the approval have been met; and

(d) an indication, at the relevant locations within the CPP application, as to where the modifications or exemptions have been applied.”

Alternative methodologies with equivalent effect

5.3.33 Alternative methodologies with materially equivalent effect: pre-application

(1) At any time prior to providing the Commission with a CPP application, a CPP applicant may request that the Commission approve an alternative methodology to those methodologies specified in clause 5.3.34(1).

(2) A request by a CPP applicant must—

(a) be in writing; and

(b) include the following information:

(i) the CPP applicant’s name and contact details;

(ii) a brief description of the key features of its intended CPP proposal;

(iii) the date that the CPP applicant intends to submit the CPP application for which a modification or exemption is sought;

(iv) a list and description of each alternative methodology the applicant intends to apply;

(v) reasons why the applicant intends to apply each of the alternative methodologies;

(vi) an explanation of why the CPP applicant considers each of the alternative methodologies will meet the requirements of clause 5.3.34(4), supported by appropriate evidence;

(vii) identification of any information that is commercially sensitive.

(3) The Commission may approve an alternative methodology sought by a CPP applicant where, in the Commission’s reasonable opinion, the alternative methodology can be expected to meet the requirements of clause 5.3.34(4).”

5.3.34 Alternative methodologies with materially equivalent effect: applied as part of CPP application

(1) An EDB, in making a CPP application, may elect to apply an alternative methodology to that specified for—

(a) cost allocation and asset valuation in Section 2;

(b) treatment of taxation in Section 3; or

(c) the estimation of term credit spread differentials in Section 4.

(2) The Commission, in evaluating a CPP proposal and in determining a CPP for an EDB, may apply the alternative methodology elected by an EDB to that specified for—

(a) cost allocation and asset valuation in Section 2;

(b) treatment of taxation in Section 3; or

(c) the estimation of term credit spread differentials in Section 4.

~~(3)~~ However, the Commission must apply an alternative methodology elected by an EDB where it previously approved the alternative methodology under clause 5.3.33(3), unless there has been a material change in circumstances since the alternative methodology was approved.

~~(3)~~(4) An alternative methodology applied by either an EDB or the Commission in accordance with this clause must:

- (a) produce ~~an~~ a materially equivalent effect within the CPP regulatory period to the methodology that would otherwise apply; and
- (b) not detract from the promotion of the purpose of Part 4 of the Act.”

5.4.34 Demonstration that alternative methodologies have materially equivalent effect

(1) Where a CPP applicant elects to apply alternative methodologies in accordance with clause 5.3.33, it must provide:

- (a) a list and description of each alternative methodology applied;
- (b) an indication, at the relevant locations within the CPP application, as to where the alternative methodologies have been applied;
- (c) reasons why each of the alternative methodologies have been applied; and
- (d) evidence demonstrating that each alternative methodology:
 - (i) produces ~~an~~ a materially equivalent effect within the CPP regulatory period to the methodology that would otherwise apply; and
 - (ii) does not detract from the promotion of the purpose of Part 4 of the Act.”