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Commerce Commission New Zealand
Te Komihana Tehokohoko
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Tēnā Koe Ben

Proposed amendments to input methodologies for electricity distribution businesses and Transpower (reopeners and other matters) – cross submission

1. We seek to clarify issues raised in our substantive submission relating to the existing change event reopener (a responsive – ex post) reopener event under the proposed amendments.

2. In the Annex to our submission, the Big Six requested clarification of the scope and materiality threshold of the Commission's considerations under cl 4.5.5, reflecting on the past rejection of Vector's change event application relating to the Health and Safety at Work Act 2015.

3. The provisions as proposed do not promote the Part 4 purpose or certainty at a time of rapid legislative and regulatory change.[1] The Comission should clarify likely eligibility for a change event reopener within the IMs. This is best achieved through a transparent standard that will incentivise prudent and efficient responses (and commitment of expenditure) from EDBs.

4. We propose a standard based on what the EDB **reasonably** considers is efficient compliance, to:
   4.1. assist EDBs and the Commission to consistently assess cause and effect; and demonstrate or assess prudency and efficiency ('the expenditure objective'); and
   4.2. promote incentives under ss 52A and 54Q as policy aims to support the electrification of Aotearoa.

5. We recommend the Commission clarify the criteria as marked below.

[1] Pursuant to s 52R, Commerce Act 1986.

4.5.5 Change event

(1) A 'change event' occurs where there is a change of the type described in subclause (2) or (4).

(2) The first type is a change in a regulatory or legislative requirement that applies to an EDB as a result of new or amended legislation, or judicial clarification of the interpretation of legislation, compliance with which, in the EDB's reasonable opinion ~~that~~

(a) has the effect of increasing or reducing, by an amount that exceeds one of the thresholds specified in subclause (3), the costs that the EDB will incur and/or the revenue that the EDB can recover;

(b) will have a net positive or negative effect on the quality of supply by the EDB that is 5% or more of a limit set in respect of a quality standard in the DPP determination; or

(c) causes an input methodology to become incapable of being applied.

6. This reflects that the legal and compliance framework overall of each EDB influences what is 'reasonable' and ultimately, under cl 4.5.5, prudent and efficient expenditure. Emergency management provides clear examples. There may be internal and external factors driving risk tolerance. Internal factors may be insurance coverage or network configurations impacting options to restore supply. External factors may be the resilience of surrounding critical infrastructure or land. The Commission will retain discretion on what level of information it needs to determine reasonableness, and otherwise be satisfied that the expenditure objective is met.

7. We note the relevance of the public interest to how the Commission evaluates a quality breach. Similarly, new legal obligations may be influenced by broader public interest considerations that promote the long-term interests of consumers. Criteria must retain scope to respond to broad duties and obligations impacting EDBs, including being lifeline utilities under the Civil Defence Emergency Management Act 2002 or its successor. Lifeline duties, for example, require more nuanced considerations than merely 'non-compliance' given their breadth and regional influences (including, being able to operate 'to the fullest extent possible').

8. Comparisons within the industry will not always provide a fair baseline. For example, emergency plans for high flood zone areas may be expected or required to respond to land or community vulnerability (i.e. access constraints or other critical infrastructure resilience). Meeting the expenditure objective for each EDB may then substantially differ when considering regional vulnerabilities, whether land or infrastructure related.

9. The objective for clarified criteria is to clarify expectations that a change event reopener may be triggered by:
   9.1. a change in legal requirements;
   9.2. operational impacts that are consistent with the legal and compliance framework of the EDB; and
   9.3. how failing to incur the associated costs:

9.3.1. will create a risk of non compliance; or

9.3.2. undermine the cost effectiveness of risk reduction.

10. EDBs may then participate in and influence policy processes, and efficiently commit expenditure, in response to a change event consistent with an improved expectation of the Commission's view of eligibility. Given the infrastructure focus of current and expected policy processes within DPP4, clarifying these criteria will improve outcomes for consumers and EDBs over the period.

Yours sincerely

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On behalf of the Big Six