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

Reasons paper

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Associated documents

Publication date	Reference	Title
12 December 2024	978-1-99-133209-7	[Draft] Electricity Distribution Services Input Methodologies (Reopeners and Other Matters) Amendment Determination 2025
12 December 2024	978-1-99-133210-3	[Draft] Transpower Input Methodologies (Reopeners and Other Matters) Amendment Determination 2025
12 December 2024	978-1-99-133211-0	[Draft] Transpower Individual Price-Quality Path Amendment Determination 2025 (No. 2)
11 December 2024	ISSN: 1178-2560	Amendments to input methodologies for electricity distribution businesses, gas pipeline businesses and Transpower relating to insurance entitlements, other compensatory entitlements, and other regulated income – final decision and reasons paper
11 December 2024	[2024] NZCC 36 ISSN: 1178-2560	Electricity Distribution Services Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024
11 December 2024	[2024] NZCC 39 ISSN: 1178-2560	Transpower Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024
20 November 2024	[2024] NZCC 26 ISSN 1178-2560	Transpower Individual Price-Quality Path Determination 2025
20 November 2024	ISSN: 1178-2560	Proposed amendments to input methodologies for electricity distribution businesses – wash-up amounts – Final decision reasons paper
20 November 2024	[2024] NZCC 27 ISSN: 1178-2560	Electricity Distribution Services Input Methodologies (Wash-up Amounts) Amendment Determination 2024
11 September 2024		Notice of Intention, amended and reissued 11 September 2024 - Potential amendments to Input Methodologies for Electricity Distribution and Transmission Services
28 September 2012	[2012] NZCC 26 ISBN: 978-1-869452-16-2	Electricity Distribution Services Input Methodologies Determination 2012
2 July 2024		Notice of Intention – Potential amendments to Input Methodologies for Electricity Distribution Services
29 June 2012	[2012] NZCC 17 ISBN: 978-1-869452-08-7	Transpower Input Methodologies Determination

Commerce Commission
Wellington, New Zealand

Contents

Executive summary

X1 This paper sets out proposed amendments to the current input methodologies (IMs) for Electricity Distribution Businesses (EDBs) and Transpower, and the Transpower Individual Price-quality Path (IPP) determination, in relation to:[1]

X1.1 discrete issues with particular IM provisions concerning reopeners and the reopener event allowance (REA); and

X1.2 further changes that are needed to give effect to our policy decisions in the IM Review in 2023 (IM Review 2023).

X2 We seek the views of interested parties on the proposed amendments by Thursday 23 January 2025 (submissions) and Wednesday 12 February 2025 (cross-submissions).

Context for proposed amendments

X3 We have identified some discrete amendments that we consider will improve the clarity and workability of the IMs. These amendments relate to the default price-quality path (DPP) that will apply for the regulatory period beginning on 1 April 2025 for EDBs (DPP4). We identified the need for them as part of:

X3.1 resetting the default price-quality path for DPP4;

X3.2 assessing several applications for EDB price-quality path reopeners this year; and

X3.3 consulting on our draft IM amendments (insurance entitlements).

X4 The draft decisions outlined in this paper also include (where relevant) EDB customised price-quality path (CPP) IM changes, Transpower IM changes, and a discrete change to the Transpower IPP determination. They do not include any changes to the gas distribution or gas transmission IMs. We may make changes to these IMs, in conjunction with the price-quality path reset for the gas sector in 2026, if these meet our decision-making framework.

X5 The IM changes we are proposing would apply from the beginning of DPP4 and Transpower's fourth regulatory period (RCP4). We will finalise these proposed IM amendments (following this consultation with stakeholders) before DPP4 and RCP4 begin on 1 April 2025.

[1] As part of the IM amendments package that we notified on 11 September 2024, we separately published on 20 November 2024 a final decision on proposed amendments to the EDB IMs that relates to correcting errors in the EDB revenue wash-up and reducing the volatility of the revenue path.

X6 As discussed in Chapter 2 (Decision-making framework), the Commission carefully assesses what amendments are appropriate to consider outside the statutory IM review cycle. This is to preserve certainty for suppliers and consumers in accordance with s 52R of the Commerce Act 1986 (the Act).

X7 As such, we have not considered substantive policy changes that would be more appropriately dealt with under a statutory IM review.[2]

Draft input methodologies amendments

X8 During the IM Review 2023, we made amendments to align and improve price-quality path reopener processes. This included updating the structure of the reopener IMs into three sections to clearly reflect the reopener process:[3]

X8.1 Section 1: when the Commission can reconsider the price-quality path;

X8.2 Section 2: reopener event definitions ("events that may be reopener events"); and

X8.3 Section 3: Commission consideration of whether and how to amend the price-quality path ("assessment factors").

X9 The technical amendments we are proposing in this paper affect all three sections, but are weighted towards Section 3 – relating to how we amend the price-quality path following a reopener event.

X10 The technical drafting changes we propose are intended to:

X10.1 ensure the IMs correctly give effect to our policy decisions;

X10.2 improve the workability of the IMs relating to reopeners; and

X10.3 improve the clarity and certainty of the rules and processes for reopeners, to reduce compliance and regulatory costs for regulated suppliers, other stakeholders, and the Commission.

X11 Tables in Attachment A provide an overview of how the changes we propose will achieve these objectives for EDBs (with respect to the DPP and CPPs) and for Transpower.

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2 The last statutory review of the IMs under Part 4 of the Act was completed in 2023. Commerce Commission "Report on the IM Review 2023: Part 4 Input Methodologies Review 2023 – Final decision" (13 December 2023).

3 Commerce Commission "CPP and in-period adjustment mechanisms topic paper: Part 4 Input Methodologies Review 2023 – Final decision" (13 December 2023), p 65.

X12 Table X1 summarises the issues discussed in this paper and the associated draft decision numbers. It also provides information on relevant EDB and Transpower IMs, and Transpower IPP determination that would be amended to give effect to each draft policy decision.

Table X1: Summary of issues addressed with draft decision numbers

Driver for proposed IM change:[4]	Improve rules and processes	Correct errors	No change

Draft decision number[5]	Issues addressed	Relevant IMs
	Chapter 3 - Proposed EDB and Transpower reopener-related IM amendments	
1.1 **1.2**	Time limits and expenditure eligibility for the 'reopener event allowance' (REA)	EDB: DPP, CPP Transpower
2.1 **2.2**	Scope of the REA	EDB: DPP, CPP Transpower
3.1 **3.2**	Classification of price-quality path reopener events as different categories of 'reopener events'	EDB: DPP, CPP Transpower
4.1	Processes for reopening the revenue allowance	EDB: DPP, CPP
5.1 **5.2**	Double recovery of capital costs already included in an REA	EDB: DPP, CPP Transpower (IPP determination)
6.1 **7.1** **8.1**	Incremental rolling incentive scheme: calculation of incentive adjustments where a price-quality path is amended following a reopener event	EDB: DPP, CPP
9.1 **9.2**	Application of the 'change event' price-quality path reopener	EDB: DPP, CPP Transpower
10.1	Distinguishing price-path reopener event criteria from reopener assessment factors	EDB: DPP
11.1	Catastrophic event reopener application criteria - treatment of quality requirements	EDB: DPP, CPP
12.1 **12.2**	Catastrophic event reopener application criteria - treatment of insurance	EDB: DPP, CPP Transpower
13.1 **13.2**	Changes to mandatory considerations in price-quality path amendment assessment factors	EDB: DPP, CPP Transpower
	Chapter 4 - Proposed other IM amendments	
14.1	CPP treatment of catastrophic events	EDB: CPP
15.1	Inadvertent removal of the foregone revenue cap	N/A

4 The summary tables in Attachment A provide more detail on the purpose of each proposed change.

5 The draft decision number X.1 denotes the proposed amendment to the EDB IMs and draft decision number X.2 denotes the proposed amendment to the Transpower IMs or Transpower IPP determination.

Chapter 1 Introduction

Purpose of this paper

1.1 This paper describes our draft decisions with supporting reasons and invites submissions on how we propose to amend:

1.1.1 the Electricity Distribution Services Input Methodologies Determination 2012 [2012] NZCC 26, as amended (EDB IMs);[6]

1.1.2 the Transpower Input Methodologies Determination [2012] NZCC 17, as amended (Transpower IMs);[7] and

1.1.3 the Transpower Individual Price-Quality Path Determination 2025 [2024] NZCC 26 (Transpower IPP determination).[8]

Structure of this paper

1.2 Chapter 2 of this paper outlines our framework for considering the scope of potential IM amendments and the decision-making framework we have applied in proposing the IM amendments.

1.3 Chapter 3 of this paper describes our proposed changes to the EDB IMs and Transpower IMs relating to discrete issues with particular IM provisions relating to reopeners, the reopener event allowance (REA) and further changes that are needed to give effect to our policy decisions in the IM Review in 2023 (IM Review 2023).

1.4 Chapter 4 of this paper describes our proposed other changes to the EDB IMs and Transpower IMs relating to the customised price-quality path (CPP) treatment of catastrophic events, and foregone revenue provisions.

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6 The EDB principal determination was amended on 13 December 2023: Commerce Commission "Input methodologies review 2023 – [Final] Electricity Distribution Services Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC 35" (13 December 2023), on 20 November 2024: Commerce Commission "Electricity Distribution Services Input Methodologies (Wash-up Amounts) Amendment Determination 2024 [2024] NZCC 27", and December 2024: Commerce Commission "Electricity Distribution Services Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024 [2024] NZCC 36".

7 The Transpower principal determination was amended on 20 December 2023: Commerce Commission "Input methodologies review 2023 – [Final] Transpower Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC 38" (13 December 2023), and on 29 August 2024: Commerce Commission "Transpower Input Methodologies Amendment Determination 2024 [2024] NZCC 19" (29 August 2024), and December 2024: Commerce Commission "Transpower Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024 [2024] NZCC 39".

8 Commerce Commission *Transpower Individual Price-Quality Path Determination 2025* [2024] NZCC 26 (20 November 2024.

General context for the IM and Transpower IPP amendments

1.5 During the IM Review 2023, we made amendments to align and improve price-quality path reopener processes. This included updating the structure of the reopener IMs into three sections to clearly reflect the reopener process:

1.5.1 Section 1: when the Commission can reconsider the price-quality path;

1.5.2 Section 2: reopener event definitions ("events that may be reopener events"); and

1.5.3 Section 3: Commission consideration of whether and how to amend the price-quality path ("assessment factors").

1.6 Since the IMs were reviewed in 2023, we have processed several reopeners for the EDB DPP that applies from 1 April 2020 to 31 March 2025 (DPP3) and undertaken the process to determine the EDB DPP that will apply from 1 April 2025 to 31 March 2030 (DPP4) and Transpower's RCP4 IPP. In addition, we have consulted on our draft IM amendments relating to insurance entitlements.

1.7 From this work (including through submissions received from stakeholders) we have identified ways in which the reopener IMs could be amended to:

1.7.1 better achieve their policy intent in s 52A(1) or s 52R of the Commerce Act 1986 (the Act) terms;[9] or

1.7.2 mitigate implementation issues that increase compliance cost and complexity.

1.8 The technical amendments we are proposing in this paper affect all three sections outlined in paragraph 1.5 above. In particular, we have identified improvements to the way we classify reopener events, to the criteria for defining some reopener events (catastrophic events and change events), and to the rules and processes for amending the price path and for determining an REA (where applicable).

1.9 The technical drafting changes we propose in this paper are intended to:

1.9.1 ensure the IMs correctly give effect to our policy decisions;

1.9.2 improve the workability of the IMs relating to reopeners; and

1.9.3 improve the clarity and certainty of the rules and processes for reopeners, to reduce compliance and regulatory costs for regulated suppliers, other stakeholders and the Commission.

[9] All statutory references in this document refer to the Commerce Act 1986 unless stated otherwise.

1.10 We consider these changes are required to be made in advance of the forthcoming EDB DPP4 regulatory period and Transpower's RCP4 regulatory period to preserve certainty for suppliers and consumers, consistent with the framework for out of cycle amendments set out in Chapter 2. The next statutory review of the IMs under s 52Y is expected to be completed by 2030.

Sectors affected

1.11 These changes would apply to:

1.11.1 price-quality regulated EDBs on the DPP and any future CPPs; and

1.11.2 where relevant, to Transpower (including via proposed changes to the IPP determination).

1.12 The draft decisions in this paper do not include any proposed changes to the gas distribution or gas transmission IMs, as the price-quality reset for the gas sector is not due until 2026. We may make changes to the gas IMs, in conjunction with the price-quality path reset for the gas sector in 2026, if these meet our decision-making framework.

Proposed entry into effect

1.13 The proposed amendments discussed in this paper would take effect on the day following publication in the Gazette in accordance with s 52W of the Act. They would apply as follows:

1.13.1 for amendments relating to the EDB DPP, from the commencement of DPP4 on 1 April 2025;

1.13.2 for amendments relating to an EDB CPP, from the date of a CPP application made on or after the date the amendments have effect (as noted above); and

1.13.3 for amendments relating to the Transpower IPP, from the commencement of RCP4 on 1 April 2025.

The process we have followed

1.14 The proposed amendments to the EDB IMs and the Transpower IMs described in this paper are made in accordance with s 52X of the Act.

1.15 In accordance with s 52V of the Act, we published on 2 July 2024 a Notice of Intention relating to potential IM amendments set out in this paper, which we amended and reissued on 11 September 2024 to include further possible amendments.

1.16 On 21 October 2024, following a fast-track process, we published a draft decision on proposed amendments to the EDB IMs that relates to correcting errors in the EDB revenue wash-up and reducing the volatility of the revenue path. Our final decision on these amendments was published on 20 November 2024.[10] The amended IMs needed to be in place in time for EDBs to confirm pricing decisions prior to the DPP4 regulatory period.

1.17 The proposed amendments to the Transpower IPP described in this paper are made in accordance with s 52Q of the Act.

1.18 The proposed amendments have been assessed in accordance with the decision-making framework outlined in Chapter 2.

Materials published alongside this paper

1.19 Alongside this paper we have published:

1.19.1 the [Draft] Electricity Distribution Services Input Methodologies (Reopeners and Other Matters) Amendment Determination 2025 (draft EDB IM amendment determination);

1.19.2 the [Draft] Transpower Input Methodologies (Reopeners and Other Matters) Amendment Determination 2025 (draft Transpower IM amendment determination); and

1.19.3 the [Draft] Transpower Individual Price-Quality Path Amendment Determination 2025 (No. 2) (draft Transpower IPP amendment determination).

How you can provide your views

Submissions on this paper

1.20 We seek your views on the matters raised in this paper and our draft amendments that give effect to our draft decisions. We have allowed six weeks, taking account of the impact of the Christmas and New Year period, for submissions and two weeks for cross-submissions as follows:

1.20.1 submissions are due by 5pm on **Thursday 23 January 2025**; and

1.20.2 cross-submissions are due by 5pm on **Wednesday 12 February 2025**.

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10 Commerce Commission *Electricity Distribution Services Input Methodologies (Washup Amounts) Amendment Determination 2024* [2024] NZCC 27 (20 November 2024).

Address for submissions

1.21 Please email submissions and cross-submissions to infrastructure.regulation@comcom.govt.nz , with "EDB and Transpower IM amendments (reopeners and other matters)" in the subject line of your email.

1.22 We prefer submissions in both a format suitable for word processing (such as a Microsoft Word document), as well as a 'locked' format (such as a PDF) for publication on our website.

Confidential submissions

1.23 While we encourage public submissions so that all information can be tested in an open and transparent manner, we recognise that there may be cases where parties that make submissions wish to provide information in confidence. We offer the following guidance:

1.23.1 If it is necessary to include confidential material in a submission, the information should be clearly marked, with reasons why that information is considered to be confidential.

1.23.2 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.

1.23.3 Both confidential and public versions of the submission should be provided.

1.23.4 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.

1.24 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 a 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 response to any request for information under the Official Information Act 1982.

1.25 Please note that all submissions and cross-submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we do not publish unless good reasons existed under the Official Information Act 1982 to withhold it. We would normally consult with the party that has provided the information before any disclosure is made.

1.26 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.

Chapter 2 Decision-making framework

Purpose and structure of this chapter

2.1 This chapter sets out the framework we have applied in reaching our draft decisions. In doing so, it explains:

2.1.1 our framework for considering potential IM amendments, which is relevant in considering what IMs may be appropriate to amend outside of the statutory IM review cycle under s 52Y of the Act;

2.1.2 the decision-making framework we have applied in proposing IM amendments to the EDB and Transpower IMs; and

2.1.3 the decision-making framework we have applied in proposing amendments to the Transpower IPP for RCP4.

Framework for considering the scope of potential IM amendments

2.2 Our framework considers:

2.2.1 the statutory context and our specific powers to amend IMs; and

2.2.2 what we must take account of when amending IMs outside of the statutory IM review cycle under s 52Y of the Act.

Statutory context and our powers to amend IMs

2.3 When considering amendments to IMs, we must consider the purpose of IMs and the purpose of Part 4 of the Act. This section discusses the tensions between making changes to improve the regime and the certainty intended by the IMs.

2.4 The purpose of IMs, set out in s 52R of the Act, is to promote certainty for suppliers and consumers in relation to the rules, requirements and processes applying to the regulation, or proposed regulation, of goods or services under Part 4. To that end, s 52T(2)(a) requires all IMs, as far as is reasonably practicable, to set out relevant matters in sufficient detail so that each affected supplier is reasonably able to estimate the material effects of the methodology on the supplier. In that way, the IMs constrain our evaluative judgements in subsequent regulatory decisions and increase predictability.[11]

[11] *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, para [213].

2.5 However, some uncertainty remains inevitable.[12] As the Court of Appeal observed (in relation to a judicial review against decisions made in the IMs under Part 4) "certainty is a relative rather than an absolute value",[13] and "there is a continuum between complete certainty at one end and complete flexibility at the other".[14]

2.6 The s 52R purpose is primarily promoted by having the rules, processes and requirements set upfront prior to being applied by regulated suppliers or the Commission.

2.7 However, as recognised in s 52X and s 52Y, these rules, processes and requirements may change over time.

2.8 The power to amend an IM must be used to promote the policy and objectives of Part 4 of the Act as ascertained by reading it as a whole. It is clear that Parliament saw the promotion of certainty as being important to the achievement of the purposes of price-quality regulation. While this is to an extent implicit in s 52A (for example, providing suppliers with incentives to invest in accordance with s 52A(1)(a)), it is also expressed in s 52R in relation to the purpose of IMs, but also in other aspects of the regime, such as the restrictions on reopening DPPs during their regulatory periods.[15]

2.9 When considering IM amendments, we must therefore be mindful that this may have a detrimental effect on:

2.9.1 the role that predictability plays in providing suppliers with incentives to invest in accordance with s 52A(1)(a); and

2.9.2 the role that the IMs play in promoting certainty for suppliers and consumers in relation to the rules, requirements, and processes in advance of being applied by us and suppliers in setting the DPP, CPP or IPP, as applicable.

2.10 At times there will be a tension between making changes to improve the regime and better promote the s 52A purpose on the one hand, and certainty on the other.

2.11 While we will have regard to the s 52R purpose (and the other indications of the importance of promoting certainty), ultimately, we must nevertheless make decisions that we consider promote the s 52A purpose.

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12 *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, para [214].

13 *Commerce Commission v Vector Ltd* [2012] NZCA 220, [2012] 2 NZLR 525, para [34].

14 *Commerce Commission v Vector Ltd* [2012] NZCA 220, [2012] 2 NZLR 525, para [60].

15 For further discussion see *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, para [213]-[221].

2.12 Section 52A governs all of our decision-making processes under Part 4, including our IM decisions. The other purpose statements within Part 4 are relevant matters, but they should be applied consistently with s 52A.[16]

2.13 When making our decisions we must only give effect to these other purposes to the extent that doing so does not detract from our overriding obligation to promote the Part 4 purpose in s 52A.

2.14 Therefore, where the promotion of s 52A requires amendment to an IM, s 52R does not prevent us from making a change that is consistent with s 52A.

Amendments inside and outside the IM statutory review cycle

2.15 This section considers the circumstances in which IMs may be amended and what must be taken into account when making amendments to IMs outside the statutory review cycle.

2.16 All IMs must be reviewed at least once every seven years, as mandated by s 52Y.[17] This process is key to delivering on the s 52R certainty purpose of IMs, while at the same time allowing the regime to mature and evolve in response to changing circumstances.

2.17 Given the certainty purpose of the IMs and the scheme set out in the Act to promote this purpose, we must carefully assess what amendments are appropriate to consider outside the statutory IM review cycle. As noted previously, the predictability the IMs provide is key to promoting the s 52A purpose and, in particular, incentives to invest as required under s 52A(1)(a).

2.18 On the other hand, it is important that the IMs are fit-for-purpose going into a price-quality path reset, particularly as under s 53ZB(1) IM amendments made after a price-quality path is determined (other than in limited circumstances) will not affect the price-quality path until the next reset.[18]

2.19 Leading up to a price-quality path reset, we may therefore need to consider which topics are appropriate to consult on as potential s 52X amendments in order to identify changes to the IMs that are necessary to ensure that the price-quality paths are workable and effective in promoting the outcomes in s 52A.

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16 We note that the High Court, in *Wellington International Airport Ltd & Ors v Commerce Commission* considered that the purpose of IMs, set out in s 52R, is "conceptually subordinate" to the purpose of Part 4 as set out in s 52A when applying the "materially better" test. See *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, para [165].

17 The next statutory Part 4 IM review is due to be completed by 2030.

18 Under s 53ZB(2) a price-quality path must be reset by us with a new price-quality path made by amending the price-quality path determination if: an IM changes as a result of an appeal under s 52Z; and that changed IM would have resulted in a materially different price-quality path being set had the changed IM applied at the time the price-quality path was set.

Amendments outside the statutory IM review cycle

2.20 We generally focus on two types of amendments outside the statutory IM review cycle:

2.20.1 those that support incremental improvements to price-quality paths; and

2.20.2 those that enhance certainty about – or correct technical errors in – the existing IMs.

2.21 We do not generally consider it appropriate to consider "fundamental" changes outside of the statutory IM review cycle. Fundamental IMs are generally those that define the fundamental building blocks used to set price-quality paths (listed in s 52T(1)(a)), and that are central to defining the balance of risk and benefits between suppliers and consumers.

2.22 However, we can and will reconsider fundamental building blocks where there is a compelling and urgent rationale for doing so.[19]

The decision-making framework we have applied

IM amendments

2.23 In deciding whether to propose the IM amendments in this paper, we are using a decision-making framework that we have developed over time to support our decision making under Part 4 of the Act.[20] This has been consulted on and used as part of prior processes, and it helps provide consistency and transparency in our decision making.

2.24 Specifically, in respect of each potential amendment we have considered whether it would:

2.24.1 promote the Part 4 purpose in s 52A of the Act more effectively;

2.24.2 promote the IMs purpose in s 52R of the Act more effectively (without detrimentally affecting the promotion of the s 52A purpose); and

2.24.3 significantly reduce compliance costs, other regulatory costs, or complexity (without detrimentally affecting the promotion of the s 52A purpose).

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19 An example of this was the re-consideration of the Part 4 WACC percentile decision in 2014. The compelling reason was criticism by the High Court of this decision in the IM merits appeal process, and the urgency was due to the upcoming default price-quality path and individual price-quality resets for EDBs and Transpower New Zealand Limited.

20 Commerce Commission "Part 4 Input Methodologies Review 2023 - Framework paper" (13 October 2022), paras X20-X21.

2.25 We may also take into account the following where they are relevant and where taking them into account does not compromise our promotion of the s 52A purpose of Part 4:

2.25.1 whether there are alternative ways to address the identified issues with the relevant IM without changing the IMs;

2.25.2 the permissive considerations under s 5ZN of the Climate Change Response Act 2002;[21] and

2.25.3 other Part 4 provisions, namely:

2.25.3.1 the purpose of ID (s 53A);

2.25.3.2 the purpose of default/customised price-quality regulation (s 53K);

2.25.3.3 requirements relating to energy efficiency (s 54Q); and

2.25.3.4 decisions made under the Electricity Industry Act 2010 (s 54V).

2.26 We refer to the outcomes specified in paragraphs 2.24-2.25 as the 'IM amendments framework outcomes' in this paper.

Transpower IPP amendments

2.27 Our discretion as to whether we amend the Transpower IPP for RCP4 is driven by whether such an amendment would promote the s 52A purpose of Part 4.

2.28 We may also take into account the matters listed at paragraphs 2.24-2.25 where they are relevant and where taking them into account does not compromise our achievement of the s 52A purpose of Part 4.

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21 Commerce Commission "Default price-quality paths for gas pipeline businesses from 1 October 2022 – Final reasons paper" (31 May 2022) (Gas DPP3 final decision), paras 2.24-2.25; Commerce Commission "Note of clarification – our Part 4 Input Methodologies Review 2023 Framework paper" (21 December 2022).

Chapter 3 Proposed EDB and Transpower reopener-related IM amendments

Purpose and structure of this chapter

3.1 This chapter describes our proposed reopener-related changes to the EDB IMs and Transpower IMs. For each of these proposed changes, we describe:

3.1.1 the current IM requirements;

3.1.2 our proposed IM amendments; and

3.1.3 how the proposed amendment is likely to promote an IM amendments framework outcome, as defined in Chapter 2.

3.2 This chapter also describes a proposed consequential change to the Transpower IPP determination.

IM amendments discussed in this chapter

3.3 In this chapter we discuss proposed amendments to the EDB IM determination and, where appropriate, the Transpower IM determination and Transpower IPP determination, for the following matters:

3.3.1 **Draft decision 1** - time limits and expenditure eligibility for the REA;

3.3.2 **Draft decision 2** - scope of the REA;

3.3.3 **Draft decision 3** - classification of price-quality path reopener events as different categories of 'reopener events' (to support implementation of the above draft decisions);

3.3.4 **Draft decision** 4 - processes for reopening the EDB revenue allowance;

3.3.5 **Draft decision 5** - double recovery of capital costs already included in an REA;

3.3.6 **Draft decisions 6, 7, and 8** - incremental rolling incentive scheme: calculation of incentive adjustments where a price-quality path is amended following a reopener event;

3.3.7 **Draft decision 9** - application of the 'change event' price-quality path reopener;

3.3.8 **Draft decision 10** - distinguishing price-quality path reopener event criteria from reopener assessment factors;

3.3.9 **Draft decisions 11 and 12** - catastrophic event reopener application criteria:

3.3.9.1 treatment of quality requirements in the catastrophic event reopener application criteria; and

3.3.9.2 treatment of insurance in the catastrophic event reopener application criteria; and

3.3.10 **Draft decision 13** - changes to mandatory considerations in price-quality path amendment assessment factors.

Structure of this chapter

3.4 We present our reasons for the above draft decisions in four sections:

3.4.1 Revenue recovery: Clarification of time limits and eligibility, and mechanism, for revenue recovery following a reopener event, which discusses the matters in paragraphs 3.3.1-3.3.3 above;

3.4.2 Revenue recovery: Processes for reopening the revenue allowance for EDBs (paragraph 3.3.4 above);

3.4.3 Revenue recovery: Correction of technical implementation problems, which addresses the matters in paragraphs 3.3.5-3.3.6 above; and

3.4.4 Reopener criteria and assessment criteria: Technical amendments to improve certainty and workability, in which we discuss the matters in paragraphs 3.3.7-3.3.10 above.

Revenue recovery: Clarification of time limits and eligibility, and mechanism, for revenue recovery following a reopener event

3.5 This section sets out our reasons for three inter-related draft decisions to clarify the availability of and mechanism for revenue recovery following a reopener event.[22] These three draft decisions relate to:

3.5.1 time limits and expenditure eligibility for the REA;

3.5.2 amendment to the scope of the REA, which supports implementation of our draft decision on time limits and eligibility for revenue recovery; and

[22] For simplicity, we use the terms “revenue recovery” and “cost recovery” to refer to adjustments to the total revenue a supplier may recover within the regulatory period. In some cases this could include reductions (negative revenues or costs) as well as increases.

3.5.3 classification of price-quality path reopeners into two different categories to support implementation of the above draft decisions, as well as other improvements to the workability of the IMs for reopeners. These categories are:[23]

3.5.3.1 'reopener event (responsive)', relating to an event that has already occurred (we also refer to these are "responsive reopener events");[24] or

3.5.3.2 'reopener event (prospective)', relating to an anticipated or forecast event (we also refer to these are "prospective reopener events").[25]

3.6 These changes are interlinked and have a common overall problem definition. Because of this, we first explain the overall problem definition, and our reasons for proposing these changes as a whole. We then set out how our draft decisions implement our proposed changes.

Problem definition and current IMs

Time limits and eligibility for revenue recovery

3.7 Prior to amendments made as part of the 2023 IM review, recovery of already incurred costs (also referred to as *ex post* recovery) was limited to:

3.7.1 catastrophic events; and

3.7.2 for EDBs only, change events, error events, and the discovery of false or misleading information.

3.8 The IM Review 2023 introduced a new recoverable cost termed the 'reopener event allowance' (REA).[26]

3.9 As currently drafted, the definition of REA enables regulated suppliers to recover costs incurred as a result of any reopener event, permitting cost recovery from the time of the reopener event to the effective date of an amendment to the price-quality determination to implement a reopener decision.

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23 Some reopener types that are special cases would remain separate from these two new categories, as they have their own distinct processes (see Table 3.1 on page 29).

24 These 'responsive' reopener events are: catastrophic events, change events, error events, provision of false or misleading information, major transaction events and (for DPPs only) risk events.

25 These 'prospective' reopener events are, for DPPs: unforeseeable/foreseeable large project reopeners; for CPPs: contingent projects and unforeseen projects; for Transpower: E&D projects, anticipatory capacity projects.

26 Commerce Commission "Input methodologies review 2023 - Final decision - Cost of capital topic paper" (13 December 2023), paragraphs 5.10 and 5.120-5.129.

3.10 This means that revenue recovery is potentially available for all reopeners from the date of the event (up to 12 months prior to the beginning of the regulatory period) to the end of the regulatory period.

3.11 This is appropriate for responsive reopener events, where a supplier or the Commission may need to respond at short notice to the unforeseen emergence of a reopener driver (such as a catastrophic event). This is the type of specific scenario we envisaged the REA should apply to when we introduced the REA in the IM Review 2023.

3.12 However, we consider this is not appropriate for prospective reopener events, where a supplier will have some degree of advanced notice of the need to invest (such as where an EDB receives an enquiry from a prospective connecting party or where demand triggers for a capacity investment are met). This is not the type of scenario that we consider the REA should apply to, or that we would expect to allow an REA for in practice.

3.13 Cost recovery from the time of the event for prospective reopener events:

3.13.1 would negatively impact efficiency incentives and cost-risk allocation; and

3.13.2 may be unworkable, as prospective reopener events lack a definable "event date", ie, it is ambiguous from what date cost recovery would be calculated.

Mechanism through which revenue recovery is implemented

3.14 As currently drafted, the IMs create ambiguity as to which mechanism applies for recovery of costs incurred between the date on which we receive a reopener application ('application date'), and the date from which an amendment to the price path takes effect ('effective date'). This ambiguity:

3.14.1 reduces certainty regarding the rules and process that apply to implementation of amendments to the price path; and

3.14.2 could lead to reliance on the REA where the option of amending the revenue allowance is available. Because the REA is a recoverable cost, it creates additional complexity for IRIS calculations, the operation of the wash-up, and information disclosure.

Overview of proposed IM amendments

3.15 Our draft decision is to clarify in the IMs that:

3.15.1 in terms of eligibility:

3.15.1.1 for prospective reopener events, approval for additional expenditure is only available on an *ex ante* basis – that is only for opex incurred or assets commissioned after an application is made;

3.15.1.2 for responsive reopener events, allowance is made for *ex post* approval of expenditure or correction of the revenue path;

3.15.2 in terms of mechanism:

3.15.2.1 for all categories of reopener, where possible, changes to the revenue path resulting from a reopener will be given effect via simplified adjustments (see paragraphs 3.68-3.70) to the 'net' revenue path – ie, forecast net allowable revenue and actual net allowable revenue;

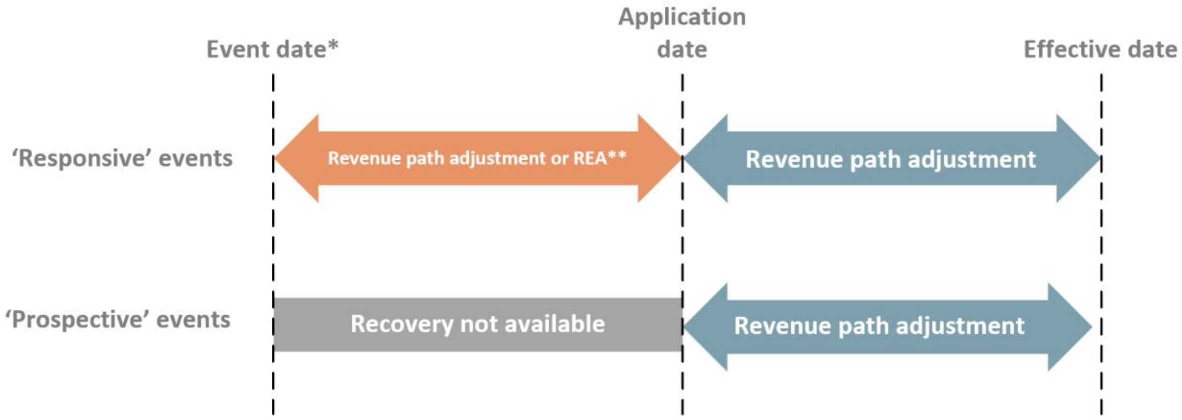
3.15.2.2 for responsive reopener events – where an adjustment to forecast or net allowable revenue is no longer straight-forward (because the relevant compliance disclosures have been completed) – the Commission may determine a 'reopener event allowance';

3.15.2.3 the REA does not apply to prospective reopener events, because these applications are made *ex ante* revenue path adjustments are possible for these.

3.16 To avoid any ambiguity about the prospect of double recovery of revenue between the two mechanisms, we propose clarifying that any amendment to the net revenue path (ie, FNAR and/or ANAR) must exclude revenue already provided for via an REA.

3.17 Figure 3.1 below illustrates how our draft decision would apply in practice.

Figure 3.1 Draft decisions to clarify availability and mechanism for revenue recovery



* For prospective reopeners, the relevant 'event' will be in the future – after the application date.
** Where timing of application and approval allows, we will make amendments via a revenue path adjustment and use an REA where it does not.

Our reasons

Time limits and eligibility for revenue recovery

3.18 In general, the purpose of Part 4 of the Act (the long-term benefit of consumers) is best promoted where amendments to the price path are limited to *ex ante* costs, as:[27]

3.18.1 suppliers have the opportunity to earn a normal return on efficient investments, consistent with s 52A(1)(a) and (d);

3.18.2 suppliers are rewarded for superior performance, consistent with s 52A(1)(b); and

3.18.3 efficiency gains are shared with consumers when the price path is reset (or via the IRIS mechanism), consistent with s 52A(1)(c).

3.19 This approach is consistent with our risk allocation principle: it allocates cost risks to suppliers who are best placed to control them, helping deliver the efficiency incentives outlines in paragraph 3.18.

3.20 This is the approach we apply when determining price paths at the start of a regulatory period, and in general is the one that applies when reopening the price path.

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27 Commerce Commission "Part 4 Input Methodologies Review 2023: Framework paper" (13 October 2022), para 4.10.

3.21 However, there are some situations where this approach does not promote the long-term benefit of consumers. Examples include catastrophic events, changes in regulations affecting the regulated service, or situations where it becomes apparent that information used to set the price path was incorrect or applied in error at the time the path was set (ie, error events or false and misleading information).

3.22 For these limited exceptions (responsive reopener events), we consider allowing for *ex post* recovery of costs, from the event date, best promotes the Part 4 purpose, as:

3.22.1 in emergent situations, such as catastrophic events, this strengthens the distributors' existing incentives to restore supply on its network;[28]

3.22.2 suppliers have limited ability to influence the impact on their costs of legislative or regulatory changes; we consider they should be compensated for the net financial impact prudently incurred as a result of such changes;[29]

3.22.3 where the price path is based on information that is subsequently revealed to have been incorrect at the time or otherwise based on an error, mitigating the effect on the price path is consistent with s 52A(1)(a) and (d) of the Act.

3.23 Similar to any revenue adjustment resulting from a reopener event, even where pre-application expenditure may be approved for inclusion in the revenue path, the Commission is still required to apply the relevant considerations set out in the IMs for amending the price-quality path and retains a discretion about the level of any adjustment.[30] This includes taking into account the expenditure objective.[31]

3.24 In some cases, this may mean that we will not approve the entire amount incurred and applied for, on the basis that it either:[32]

3.24.1 does not reflect the efficient costs that a prudent supplier would have incurred; or

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28 Commerce Commission "Input methodology amendments for electricity distribution services - Default price-quality paths" (27 November 2014), para 11.6.

29 Commerce Commission "Input methodology amendments for electricity distribution services - Default price-quality paths" (27 November 2014), paras 12.10-12.13. This is consistent with our risk allocation principle (Commerce Commission "Part 4 Input Methodologies Review 2023: Framework paper" (13 October 2022), para 4.12).

30 EDB IMs, clauses 4.5.15 and 5.6.13; Transpower IMs clause 3.7.11.

31 As defined in the EDB IMs (clause 1.1.4(2)): that capex and opex reflect the efficient costs that a prudent non-exempt EDB would require to: meet or manage the expected demand for electricity distribution services, at appropriate service standards, during the DPP regulatory period or CPP regulatory period and over the longer term; and comply with applicable regulatory obligations associated with those electricity distribution services.

32 EDB IMs, clauses 4.5.15 and 5.6.13; Transpower IMs, clause 3.7.11(2).

3.24.2 was not reasonably necessary to respond to the reopener event (for example, included elements that did not meet the definition of the reopener).

3.25 For those situations where we consider recovery of only *ex ante* costs is appropriate,[33] we are clarifying that the revenue path may be adjusted for opex incurred and assets commissioned after the application date.

3.26 This change reinstates a explicit limit on ex post recovery to relevant reopeners from prior to the 2023 introduction of the REA recoverable cost. We consider it would better promote certainty to make this change.

Mechanism through which revenue recovery is implemented

3.27 The IMs provide two mechanisms we can use to allow recovery of costs related to a reopener event:

3.27.1 the REA recoverable cost; and

3.27.2 amendment of the net revenue path, ie, FNAR or ANAR.

3.28 Because the REA is a recoverable cost, it creates additional complexity for IRIS, the operation of the wash-up, and information disclosures. Whenever we determine an REA, to preserve the integrity of the price path and of the information disclosure regime, we may need to calculate adjustments to:

3.28.1 IRIS amounts, to avoid under or over recovery;

3.28.2 the wash-up mechanism (as we may need to adjust the opening balance of the wash-up account to provide for any REA that has been retrospectively approved as a recoverable cost); and

3.28.3 information disclosures, to ensure opex and capex amounts are correctly reflected in the EDB's disclosures.

3.29 Given this complexity, we consider the REA should only be used where the option of amending the price path is not feasible, that is for reopeners determined after a regulatory year is "closed" (ie, where the wash-up compliance disclosures have been finalised).

3.30 Thus, we consider that the REA only needs to be available for responsive reopener events (because recovery of costs incurred prior to the application date is only available for responsive reopener events).[34]

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33 ie, prospective reopener events and other forward looking reopener events outside these categories (see Table 3.1 on page 29 for details).

34 This is consistent with the approach prior to the IM Review 2023.

Classification of price-quality path 'reopener events'

3.31 To support implementation of our draft decisions clarifying the availability and mechanism for revenue recovery (discussed above), and other technical amendments, we propose amending the definition of 'reopener event' in the EDB IMs and Transpower IMs. The amendment would create categories of 'reopener event (responsive)' and 'reopener event (prospective)' as defined terms.[35]

How our draft decisions implement proposed changes to time limits and mechanism for revenue recovery

3.32 Our proposed approach to the time limits and mechanism for revenue recovery would be implemented through draft decisions to amend:

3.32.1 the time limits and expenditure eligibility for the REA; and

3.32.2 the scope of the REA.

3.33 As noted above, these amendments would be supported by proposed changes to the classification of reopener events.

3.34 We describe these three draft decisions in more detail below.

Time limits and expenditure eligibility for the reopener event allowance

<u>EDB IMs and Transpower IMs (Draft decisions 1.1 and 1.2)</u>

3.35 Our draft decisions are, for the EDB IMs and Transpower IMs, to:

3.35.1 amend the IMs to clarify that:

3.35.1.1 when amending the price-quality path following a **prospective** reopener event, the Commission may amend the price path to account for opex incurred or assets commissioned only in respect of opex incurred or assets commissioned after the **application** date;

3.35.1.2 when amending the price-quality path following a **responsive** reopener event, the Commission may amend the price path to account for opex incurred or assets commissioned in respect of opex incurred or assets commissioned after the **event** date;

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[35] Some special case reopener events would remain outside these two categories (see Table 3.1 on page 29 for details).

3.35.1.3 for capex as part of both prospective and reactive reopeners, recovery of costs via an amendment to the price-quality path including FNAR, ANAR, REA, and IRIS allowances is available for *assets commissioned* after the relevant date (even where expenditure on those assets has been incurred prior to relevant date); and

3.35.2 amend the REA so that it is available for the recovery of costs from the event date to the application date (rather than to the effective date as is currently the case).

3.36 We propose making the same amendments as above to the relevant Transpower IMs to specify that, for prospective and other reopener events, recovery is only available for opex incurred or assets commissioned after the application date. For responsive reopener events recovery of pre-application costs would also be available via the REA.

3.37 As well as better promoting the Part 4 purpose (as discussed above), establishing a clear boundary for the scope of the REA would promote the s 52R purpose by creating more certainty in the regime, would reduce the cost and complexity of administering the reopeners regime, and better achieves the original policy intent.

3.38 In making these changes, we have also corrected an inconsistency between the EDB DPP IMs and the EDB CPP IMs that define what amendments the Commission may make after reconsidering the price-quality path. Clause 4.4.15(5)(b) refers to any "change" resulting from a reopener event, while clause 5.6.13(2)(b) refers to any "change in costs". The specific inclusion of "costs" in the CPP provision is unduly restrictive (as not all relevant changes will affect cost, for example a legislative redefinition of revenue may require an amendment without impacting costs).[36] As such, we have proposed amending the CPP provisions to mirror the DPP ones.

Scope of the REA

EDB IMs (Draft decision 2.1)

3.39 Our draft decision is to use the categorisation for reopener events, explained above, and amend the EDB IMs to exclude prospective reopener events, WACC change event reopeners, and quality standard variation proposals from the scope of the REA.[37]

3.40 The effect of this draft decision is to clarify, in the definition of the REA, that the REA is only available for responsive reopener events. This supports implementation of our draft decision that recovery of pre-application costs via the REA should only be available for responsive reopener events.

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36 This issue is discussed in greater detail below with respect to the definition of a change event.

37 This implements our view, set out in para 3.30, that the REA should only be available for responsive reopener events (in relation to recovery of costs incurred prior to the application date).

Transpower IMs (Draft decision 2.2)

3.41 Similarly, we propose amending the Transpower IMs to exclude prospective reopener events from the scope of the REA.

3.42 We propose to do this by amending the definition of the REA to only apply to responsive reopener events and explicitly exclude the following reopeners:

3.42.1 the 'E&D project reopener', as it is related to demand and the REA should not be available for prospective reopener events;

3.42.2 the anticipatory capacity project reopener, which is based on approved capital expenditure, subject to *ex ante* incentives and as such should only be eligible for expenditure from the application date;

3.42.3 the large build up in EV account balance reopener, which only spreads out EV account balance — there are no *ex post* costs associated with it and it is not a cost-based reopener event; and

3.42.4 the delivery risk adjustment reopener, which allows Transpower to have additional *ex ante* expenditure — the REA would enable double compensation.

3.43 The large build-up of EV account and delivery risk adjustment reopeners are specific cases which are not eligible for the REA as they do not require additional expenditure in responding to the reopener event.

Classification of price-quality path 'reopener events'

EDB IMs and Transpower IMs (Draft decisions 3.1 and 3.2)

3.44 Our draft decision is to create categories under the 'reopener event' definition to clarify in the IMs which reopener provisions apply to which reopener events and to support implementation of the above draft decisions.

3.45 In the EDB IMs and Transpower IMs, we propose creating two defined categories under the definition of 'reopener event': 'reopener event (responsive)' and 'reopener event (prospective)'.

3.46 Table 3.1 shows how reopener events would be grouped into these categories. The basis for this grouping is:

3.46.1 'reopener event (responsive)' reopeners would be those that respond to an identifiable event that has already occurred (see paragraphs 3.22-3.23); and

3.46.2 'reopener event (prospective)' reopeners would relate to anticipated or forecast events, where a supplier will have some notice or foresight for a need to invest – such as via enquiries from connecting parties or via demand triggers being met – and the exceptions to *ex ante* regulation described above for responsive events do not apply.

3.47 Some reopener types that are special cases would remain separate from these two new categories, as they have their own distinct processes.

3.48 Table 3.1 shows, for EDBs and Transpower, which types of reopener event would fall within each category, and which will remain undefined under any category.

Table 3.1: Proposed classification of 'reopener events'

Sector	Responsive reopener events	Prospective reopener events	Reopener events outside these categories
EDBs	• Catastrophic event • Change event • Error event • False or misleading information • Major transaction event • Risk event (DPP only)	• Unforeseeable large project (DPP only) • Foreseeable large project (DPP only) • Contingent project (CPP only) • Unforeseen project (CPP only)	• Quality standard variation proposal (DPP only) • WACC change event (CPP only**)**
Transpower	• Catastrophic event • Change event • Error event • False or misleading information	• E&D project • Anticipatory capacity project	• Large buildup in EV account balance • Delivery risk adjustment

3.49 We are also proposing to make consequential amendments to address instances where the defined term 'reopener event' is used, but where that term was intended to have limited application (either to a specific reopener or one of the new categories set out above).

3.50 In addition, we are propose making consequential changes in the EDB IMs where the term 'catastrophic event' was unintentionally changed to 'reopener event' in instances where the term was not intended to refer to reopeners (refer draft decision 14.1 in Chapter 4).

3.51 Our proposed amendments to the definition of 'reopener event' in the EDB IMs and Transpower IMs, would support implementation of our draft decisions clarifying the availability and mechanism for revenue recovery (discussed above), and other technical amendments.

3.52 We have grouped certain types of reopeners together into these categories according to whether the reopener:

3.52.1 is applied for by a supplier (or initiated by the Commission) in response to an event (such as those events outside the control of the regulated entity); or

3.52.2 is applied for by a supplier for additional expenditure to invest in projects related to increased demand or greater certainty as to the scope or the cost of a project.

3.53 We have also taken into account whether the reopener can be nominated by us or whether it can only be applied for by the regulated entity.

3.54 For those reopener events that are related to circumstances largely outside the control of a regulated supplier (the likes of catastrophic events or legislative changes), we have categorised them as 'reopener event (responsive)'. These are also events that can be nominated by either a regulated entity or by us.

3.55 We have considered those events which are primarily related to additional expenditure related to increased forecast expenditure driven by factors such as increased demand should be in their own category and treated differently. We have labelled these as 'reopener event (prospective)' as these are often in response to a future need for assets/capacity. These are projects that can only be applied for by a regulated entity as they are in the best position to manage and forecast demand or expenditure.

3.56 In the proposed amendments, there are four reopeners in the EDB IMs and Transpower IMs that we have not defined under any category as we consider these warrant their own treatment. The intent is for these to be assessed according to their own factors.

3.57 We consider this approach categorises reopeners with similar characteristics together and provides the basis for other amendments to address the interrelated issues discussed above.

3.58 As well as supporting our draft decisions on time limits and eligibility for the REA, and scope of the REA, we consider this amendment would better promote the s 52R purpose of the IMs by providing greater certainty. We consider categorising reopeners will allow the policy intent for different types of reopeners to be better reflected, and compliance costs and complexity to be reduced.

Revenue recovery: Processes for reopening the revenue allowance for EDBs

3.59 This section discusses our proposed amendment to processes for reopening the revenue allowance, to reduce the complexity of the process for reopening the price path for EDBs.

3.60 As well as reducing regulatory and compliance costs, this amendment would support our proposed changes to the availability and mechanism for revenue recovery following a reopener event, discussed in the previous section.

Problem definition

3.61 The current process for amending an EDB price path is technically workable but complicated. As currently drafted, the 'specification of price' provisions mean the process for amending the revenue due to a price-quality path reopener after the first disclosure year of the regulatory period ('Y1') requires an adjustment to be made to the Y1 revenue which is then projected forward to the relevant year.

3.62 This makes the EDB DPP determination complex and creates compliance difficulties for EDBs and their auditors.

Current IM requirements

Forecast Net Allowable Revenue (FNAR)

3.63 Clause 3.1.1(5) of the EDB IMs currently governs how FNAR for each year following Y1 is calculated. The clause reads as follows:

> For each disclosure year of the DPP or CPP regulatory period after the first disclosure year, 'forecast net allowable revenue' is calculated based on
>
> (a) the forecast net allowable revenue for the first disclosure year of the regulatory period;
>
> (b) the forecast CPI, as specified in subclause (6); and
>
> (c) any X factor applicable to the EDB.

3.64 Because the EDB IMs require FNAR in subsequent years of a regulatory period to be defined in terms of revenue in Y1, CPI, and the X-factor. For example, a reopener after Y1 of a regulatory period (eg, in Y4) requires an adjustment to be made to FNAR for Y1 (also referred to as 'starting prices') that we then 'project' forward to Y4 FNAR.

3.65 While this process does technically work, it requires adding multiple additional clauses to the DPP determination each time the path is reopened.

Actual Net Allowable Revenue (ANAR)

3.66 For instances where we may be unable to adjust FNAR for the reopener year, a similar problem arises in the calculation of ANAR.

3.67 Currently, clause 3.1.4 governs how ANAR for each year is calculated. The relevant clause is clause 3.1.4(4)(a)-(c) which reads as follows:

> For the purposes of subclause (3), and subject to subclause (10), 'actual allowable revenue' for a disclosure year means an amount calculated on the same basis as the forecast allowable revenue for the disclosure year, adjusted (as specified by the Commission in a DPP determination or CPP determination) by substituting: [list of matters to be updated when calculating the wash-up]

Proposed IM amendments

Amendment process - EDB IMs (Draft decision 4.1)

3.68 Our preferred solution is to create a 'carve-out' to clause 3.1.1(5) that enables a simplified calculation to apply for a reopener past Y1 of the current DPP. This would act as an increase (or decrease) to the EDB's revenue, which would be added on top of (or deducted from) the FNAR for the relevant years, without having to relate it to Y1. The adjusted FNAR could then be projected forward for the remainder of the regulatory period with CPI and the X factor.

3.69 For example, where a reopener results in an increase in an EDB's capex allowance, we could 'rerun' the BBAR revenue model incorporating the increase in commissioned assets, then determine an incremental amount of revenue equal to the return on and of capital that we would then add to the FNAR allowance in the relevant years.[38]

3.70 When reopener adjustments cannot be reflected in the FNAR (such as where the application or approval of the reopeners occurs after an EDB has already set prices for the relevant year), an adjustment will need to be made to ANAR alone. However, as ANAR is defined in relation to FNAR in the current IMs, we have proposed introducing a similar 'carve-out' for clause 3.1.4(4) that defines ANAR.

Our reasons

Amendment process - EDB IMs

3.71 A carve-out is our preferred option as we consider it is simpler than the status quo or the alternative option of using the REA recoverable cost (as we discussed above at paragraphs 3.27-3.30).

3.72 This would be easier to understand from a compliance perspective for EDBs and their auditors, as it would not require retrospective adjustment to FNAR for the years prior to the reopener. We understand that under the current provisions, EDBs' auditors have found it time consuming and difficult to understand the adjustments made to earlier years, prior to the reopener.

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[38] At the same time, we would also increase the EDB's forecast aggregate value of commissioned assets for IRIS purposes.

3.73 This option would also simplify how the Commission models the adjusted FNAR (and possibly ANAR) following a reopener, as the model would only have to add to FNAR for the reopener year and then project that forward. This would reduce the complexity and time required by the Commission to implement a successful reopener application.

3.74 With this option there is a possible compliance retrospectivity risk. To mitigate this risk, we propose adding a new provision in the DPP4 s 53N compliance requirements that make clear that if FNAR or ANAR change due to a reopener, that EDBs do not have to redemonstrate compliance with amended amounts for which they have already provided an annual price-setting compliance statement.

Revenue recovery: Correction of technical implementation problems

3.75 This section relates to our draft decisions to address technical implementation problems relating to:

3.75.1 potential double recovery, through the capex wash-up, of capital costs recovered through the REA; and

3.75.2 the process in the EDB IMs for adjusting IRIS amounts when a price path is amended following a reopener event.[39]

Double recovery of capital costs already included in an REA

Problem definition

3.76 An REA for capital costs up to the application date approved by the Commission could lead to double recovery of those costs for that period. This is because the EDB would recover those costs (including IRIS penalties on additional capex) through the REA, and in the next regulatory period would recover the capital costs through the calculation of the capex wash-up. This is inconsistent with the Purpose of Part 4, which includes (among other things) that regulated suppliers should be limited in their ability to extract excessive profits (s 52A(1)(d) of the Act).

Current IM requirements

3.77 The existing definition of the REA includes an amount, determined by the Commission, that reflects “any additional net costs (over and above those provided for in a DPP determination or CPP determination) prudently incurred by the EDB as a result of a reopener event (other than costs that are foregone revenue)”. It also provides for any gains resulting from a reopener event to be taken into account.

3.78 Consistent with costs that can be recovered under a price path adjustment, we consider that “costs” in the definition of REA includes capital costs (either or both the return on or return of regulated service asset values).

[39] EDB IMs, clauses 3.3.13 and 3.3.14.

Proposed IM amendments

EDB IMs and Transpower IPP determination (Draft decisions 5.1 and 5.2)

3.79 To avoid double recovery of the return on and of capital, our draft decision is to amend the capex wash-up provisions in the EDB IMs and the Transpower IPP determination to require the deduction of any capital costs already included in an REA.

Our reasons

EDB IMs

3.80 Normally, an EDB would recover the additional capital costs, the return on and of capital, less the applicable capex IRIS retention adjustment, through the capex wash-up calculated in the next regulatory period.

3.81 However, if the additional capital expenditure was a consequence of an event requiring urgent remedial expenditure, such as a catastrophic event, we consider it would better promote the Part 4 purpose to include the recovery of capital costs in the REA to allow for the earlier recovery of capital costs to assist with that expenditure.

3.82 Where we approve an REA for the capital costs up to the application date, a corresponding adjustment must be made to the capex wash-up provisions to avoid the double recovery of capital costs for that period. We propose to implement this by inserting wording in the capex wash-up provisions to require the deduction from any capex wash-up amount of capital costs provided for in an REA.

Transpower IPP determination

3.83 To implement a similar approach for Transpower, we consider it is necessary to make an amendment to Transpower's IPP determination.

3.84 Transpower's equivalent capex wash-up mechanism is contained in the IPP determination through Transpower's EV account mechanism as the Transpower IM does not specify any wash-up component.

3.85 We are proposing to make an amendment to the definition of 'EV account entry' in the Transpower IPP so that any capex wash-up amount for capital costs (being the return on and of capital in the EV account), is offset by any amount included in an REA.

3.86 The proposed amendment to the IPP for RCP4 would give effect to the same policy change for Transpower as outlined above for the IM amendments proposed for EDBs.

3.87 We therefore consider the proposed amendment to the IPP for RCP4 would have the same effect, promoting s 52A(1)(d) of the Part 4 purpose more effectively by limiting Transpower's ability to extract excessive profits.

Incremental rolling incentive scheme: Calculation of incentive adjustments following a reopener event (EDB IMs)

3.88 The IMs include an Incremental Rolling Incentive Scheme ('IRIS').[40] The IRIS provides a mechanism by which suppliers can retain the benefits of efficiency gains beyond the end of a regulatory period. This helps address an issue that occurs when price-quality paths are reset at periodic intervals, whereby incentives on suppliers to achieve efficiency gains tend to decline as the regulatory period progresses.

3.89 Where an EDB's operational and/or capital cost allowances change as a result of a reopener event, it is necessary to adjust IRIS calculations to ensure that the affected EDB is not penalised or, alternatively, does not earn excessive profits as a result (contrary to s 52A(1)(d) of the Act). Clauses 3.3.13 and 3.3.14 of the EDB IMs provide for adjustments to the amounts used for IRIS calculations, following price-quality path transitions and other events.

3.90 We have identified several implementation problems with these clauses and related provisions:

3.90.1 scope of clause 3.3.13 (calculating alternative incentive adjustments following price-quality path transitions);

3.90.2 overlapping treatment of major transaction events; and

3.90.3 workability of the calculation of incentive adjustment amounts under clauses 3.3.13 and 3.3.14.

3.91 These matters do not apply to the equivalent clauses in the Transpower IMs due to differences in the implementation of IRIS provisions for Transpower.

Scope of clause 3.3.13 (calculating alternative incentive adjustments following price-quality path transitions)

Problem definition

3.92 Clause 3.3.13(1) of the EDB IMs provides for the calculation of alternative incentive adjustment amounts when a price quality path is amended following a reopener, for the purpose of the IRIS.

3.93 As part of the IM Review 2023 we simplified the drafting of this clause, replacing the previous specific list of reopener types to which the clause applies with reference to the defined term 'reopener event'.

3.94 As a consequence, the clause now applies to all types of reopener event, which is potentially confusing, as some types of reopeners do not affect incentive amounts.

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40 The IRIS provisions for EDBs are set out in Part 3, Subpart 3 of the EDB IMs.

Current IM requirements

3.95 Clause 3.3.13(1) currently requires the Commission to specify adjusted incentive amounts "[w]here a price-quality path is amended following a reopener event".

Proposed IM amendments (EDB IMs: Draft decision 6.1)

3.96 Our draft decision is to amend clause 3.3.13(1) to clarify that this clause does not apply to WACC change events and quality standard variations.

Our reasons

3.97 WACC change events and quality standard variations are separate events that have no impact on incentive amounts under the IRIS provisions. The requirement for us to specify amounts for IRIS calculations for these reopener types creates the potential for confusion. Removing these from the scope of clause 3.3.13(1) improves the clarity of the IMs and avoids the potential for unnecessary regulatory costs.

Overlapping treatment of 'major transaction events'

Problem definition

3.98 Since the IM Review 2023, clauses 3.3.13(1) and 3.3.14 both specify processes for adjusting incentive amounts in response to a major transaction event.

3.99 It is not clear which of these processes applies following a major transaction event.

Current IM requirements

3.100 Clause 3.3.13(1) sets out the process for adjusting incentive amounts "[w]here a price-quality path is amended following a reopener event". The definition of reopener event includes major transaction events. Clause 3.3.14 sets out the process for "other events":

> 3.3.14 Calculating incentive adjustments for other events
>
> Where an event that is–
>
> (a) an amalgamation;
>
> (b) a merger (as defined in a DPP determination);
>
> (c) a major transaction event; or
>
> (d) an alteration to Part 2 or ID determination requirements affecting the quantification of operating costs allocated to electricity distribution services or a value of commissioned asset, …

3.101 Thus, the process for calculating incentive adjustments for major transaction events is set out in two different clauses, which is potentially confusing and may reduce certainty for suppliers (inconsistent with the s 52R purpose for the IMs).

Proposed IM amendments (EDB IMs: Draft decision 7.1)

3.102 To improve clarity, and for consistency with the broader treatment of reopener events, we propose removing major transaction events from clause 3.3.14.

3.103 The Commission will retain, under clause 3.3.13(1), the ability to specify adjusted amounts to be used in calculating the 'amount carried forward' and 'capex incentive amounts', where the price-quality path is amended following a major transaction event.

Our reasons

3.104 Removing the current overlapping treatment for major transaction events improves clarity and certainty, consistent with s 52R of the Act.

Workability of the calculation of incentive adjustment amounts under clause 3.3.13 and 3.3.14

Problem definition

3.105 We have identified three technical problems with the drafting of clause 3.3.13 – and the associated definition of 'forecast aggregate value of commissioned asset' in clause 4.2.5 – which compromise our ability to adjust incentive amounts as intended.

3.106 First, the current drafting does not explicitly provide the Commission the ability to adjust capex incentive amounts following a reopener. For any reopener involving changes to capex allowances EDBs may be penalised or, alternatively, earn excessive profits as a result (contrary to s 52A(1)(a) and (d) of the Act). This omission is also reflected in clauses 3.3.13(2), 3.3.13(3), and 3.3.14(h).

3.107 Second, to be workable for both DPP and CPP reopeners, clause 3.3.13 should provide for the Commission to specify both:

3.107.1 the 'forecast aggregate value of commissioned assets', used to calculate capex incentive amounts in the context of a DPP; and

3.107.2 the sum of the 'forecast value of commissioned assets', used for a CPP.

3.108 This would be consistent with the (correct) distinction in clause 3.3.14.

3.109 This change is necessary because the provisions governing the calculation of the capex wash-up – clause 3.3.11(1)(b) and (c) – distinguish between these two distinct defined terms. This also underpins the calculation of the capex incentive amount (specified in clause 3.3.10).

3.110 In summary, as currently drafted, clause 3.3.13 does not explicitly enable us to adjust the relevant amounts for the correct calculation of the capex wash-up following a DPP or CPP reopener.

3.111 Third, the current definition of the term ‘forecast aggregate value of commissioned assets’ (in clause 4.2.5 of the EDB IMs) is not workable in the context of an amendment to an individual EDB’s price-quality path, during a regulatory period.

Current IM requirements

3.112 Where a price-quality path is amended following a reopener event:

3.112.1 the wording of clauses 3.3.13 and 3.3.14 of the EDB IMs only provides for adjustments to the ‘amount carried forward’ (which relates to the ‘opex incentive amount’) and does not provide for adjustment of the capex incentive amounts; and

3.112.2 clause 3.3.13 allows the Commission to determine adjustments to the ‘forecast aggregate value of commissioned assets’ (used in the context of a DPP) but does not provide for adjustments to the sum of ‘forecast value of commissioned assets’, which applies in the context of a CPP.

3.113 The definition of ‘forecast aggregate value of commissioned assets’ in clause 4.2.5 requires that ‘forecast aggregate value of commissioned assets’ “is equal to forecast capital expenditure for the relevant disclosure year as determined by the Commission”.

3.114 This equivalence is appropriate for setting a DPP before the start of the regulatory period, when the timing of asset commissioning cannot be forecast with any reasonable precision.

3.115 However, it is not appropriate when adjusting amounts for an individual EDB, during a regulatory period, when the forecast commissioning dates can be forecast with reasonable certainty and our price path adjustments, including IRIS capex adjustments are calculated with respect to the value of commissioned assets.

Proposed IM amendments (EDB IMs: Draft decision 8.1)

3.116 Our draft decision is to:

3.116.1 amend clause 3.3.13(1) to:

3.116.1.1 include provision for calculation of adjusted capex incentive amounts; and

3.116.1.2 provide for ‘forecast aggregate value of commissioned assets’ or the sum of the ‘forecast value of commissioned assets’, to provide for amendments to DPPs or CPPs respectively (this will bring the drafting of clause 3.3.13(1) into alignment with clause 3.3.14).

3.116.2 make consequential amendments to clauses 3.3.13(2), 3.3.13(3), and 3.3.14(h) for consistency with the changes above; and

3.116.3 amend clause 4.2.5 to make it clear that the requirement that 'forecast aggregate value of commissioned assets' is equal to forecast capital expenditure for the relevant disclosure year, as determined by the Commission, only applies for the purpose of setting forecast allowable revenues for the next regulatory period.

Our reasons

3.117 We propose these changes to enhance certainty and correct technical errors in the existing IMs. This will ensure that the IMs are fit-for-purpose going into the DPP4 regulatory period, and in particular that:

3.117.1 we avoid the potential for unnecessary regulatory costs (for example from the unnecessary application of IRIS adjustment requirements to WACC change events and quality standard variations);

3.117.2 EDBs have certainty as to which process applies for adjustments to IRIS calculations, following a major transaction event (consistent with the s 52R purpose of the IMs);

3.117.3 the IMs enable us to make necessary adjustments to capex incentive amounts, as well as to the opex 'amount carried forward', when the price-quality path is amended following a reopener. This will enable us to preserve incentives on EDBs for efficiency gains, and remove the potential for excessive profits (consistent with s 52A(1)(a) and (d) of the Act); and

3.117.4 the rules for adjusting incentive amounts - following amendments to the price-quality path (clause 3.3.13) or other events (clause 3.3.14) - enable us to adjust the appropriate terms, so that adjustments can be implemented effectively in the context of both a DPP and a CPP.

Reopener criteria and assessment criteria: Technical amendments to improve certainty and workability

Application of the 'change event' price-quality path reopener

Problem definition

3.118 As currently drafted, a change event reopener for a legislative or regulatory change:

3.118.1 is limited to those changes that result in cost increases relating to capex, opex or both;

3.118.2 does not include changes that result in a reduction in costs relating to capex, opex or both; and

3.118.3 does not include changes that do not impact capex, opex or both, but does impact on revenue.

Current IM requirements

3.119 The change event reopener provides a mechanism for price-quality path amendments to reflect changes to legislative or regulatory requirements applying to EDBs and to Transpower. There are two limbs to the change event reopener:

3.119.1 a limb for changes to legislative or regulatory requirements that impact EDBs' or Transpower's costs ('change event reopener for a legislative or regulatory change');[41] and

3.119.2 a limb which is for changes to Generally Accepted Accounting Practice (GAAP) which result in a change in the recognition or measurement of costs, assets, liabilities, revenue and tax which could impact the revenue path ('GAAP change limb').[42]

3.120 The amendment discussed in this section relates to the first limb, ie, the change event reopener for a legislative or regulatory change.

Proposed IM amendments

EDB IMs and Transpower IMs (Draft decisions 9.1 and 9.2)

3.121 Our draft decision is to amend the EDB IMs and the Transpower IMs to ensure that the change event reopener for a legislative or regulatory change:

3.121.1 is defined symmetrically to include both positive and negative financial impacts on EDBs and Transpower;

3.121.2 includes revenue impacts on EDBs and Transpower in addition to cost impacts;

3.121.3 removes the current specificity on the types of costs (currently limited to capex, opex, or both);

3.121.4 applies an "impact on revenue" test as a basis for establishing the threshold with the proposed inclusion of revenue impacts; and

3.121.5 allows for the quality standards or quality incentive measures to be amended if the legislative or regulatory change has an effect on an EDB's or Transpower's ability to meet its quality standards.

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41 EDB IMs, clauses 4.5.5 (2) and 5.6.5(2); Transpower IMs, clause 3.7.5(2).

42 EDB IMs, clauses 4.5.5 (4) and 5.6.5(4); Transpower IMs, clause 3.7.5(3).

Our reasons

3.122 We consider that the proposed IM amendments will more effectively achieve the IM amendments framework outcomes as set out above.

Symmetrical application of change event reopener

3.123 The original change event reopener provisions in the 2010 IMs were neutral in wording, indicating the original intent of this reopener to apply symmetrically, ie, capturing either an increase or a reduction in costs.[43]

3.124 The current wording means any future changes in legislative or regulatory requirements that reduce costs for EDBs and Transpower will result in windfall gains, contrary to s 52A(1)(d) which seeks to limit regulated suppliers from being able to extract excessive profits. This change was inadvertent.

3.125 The symmetrical application of the change event reopener would allow any legislative or regulatory changes that result in cost or revenue upsides for EDBs to be taken into account in the price-quality path, reflecting the original policy intent. This will prevent EDBs and Transpower from making windfall gains and in doing so, limit their ability to extract excessive profits consistent with s 52A(1)(d) of the Act.

3.126 We consider the proposed amendment needs to be in place before the start of the upcoming regulatory periods for EDBs and Transpower, so that any cost or revenue reductions arising during those periods can be appropriately reflected in changes to EDBs' and Transpower's price-quality paths to avoid consumers paying higher prices than they otherwise would.

Revenue impacts due to change event and definition of "costs"

3.127 The IM Review 2023 included more specificity of the term "costs" in the change event reopener by qualifying that "costs" applies to "capex, opex or both". Past EDB IMs only referred to "costs" without further qualification or specificity. We consider that including more specificity of the term "costs" is unnecessarily restrictive and would not capture any impacts on costs that are not capex or opex, for example, tax.

3.128 Although the majority of legislative and regulatory changes are likely to result in cost impacts, there may be scenarios that impact on revenue and not cost. Hypothetical examples include changes to the Income Tax Act 2007 or changes to the Electricity Authority (EA)'s connection charge framework. It is important to note that these examples are not an exhaustive list, and the proposed change is intended to account for other unforeseeable legislative or regulatory changes which may result in a revenue impact only.

[43] Commerce Commission "Commerce Act (Electricity Distribution Services Input Methodologies Determination 2010 – Decision No.710" (22 December 2010), clause 5.6.2.

3.129 Under the current EDB IMs and Transpower IMs, an EDB's or Transpower's price-quality paths would not be able to be reconsidered and amended if there are solely revenue impacts (but not cost impacts) from any future legislative or regulatory changes.

3.130 If we maintain the status quo instead of implementing the change now, a potential consequence could be reduced incentives for the EDB or Transpower to innovate and invest and provide services at a quality that reflects consumer demands (s 52A(1)(a) and (b)). Both the cost specificity and the inability to account for revenue impacts under the current EDB IMs may create financial pressures that disincentivise EDBs and Transpower from appropriately investing in their networks which may affect their ability to provide services at a quality that reflects consumer demands.

3.131 The 2023 Amendments did not reflect a policy change and we consider that the proposed amendments to include revenue impacts on EDBs and Transpower in addition to costs, and removing the current specificity on the types of costs, would better reflect the original policy intent.

Quality standard reopener for change event - EDBs

3.132 Under the current reopener event definition, legislative or regulatory change that affects an EDB's ability to meet the quality standards set out in a price-quality path would not meet the definition of a change event eligible for a reopener.

3.133 In the IM Review 2023, we made amendments to the IMs to restructure and clarify the process for DPP, CPP and IPP price-quality path reopeners to align the process with the Fibre IMs.[44]

3.134 The Fibre IMs allow for a change in a regulatory requirement resulting in a regulated provider failing to meet its quality standards in a price-quality path determination to be defined as a 'change event'.[45]

3.135 The lack of this definition in the EDB IMs creates a key inconsistency between the EDB IMs and the Fibre IMs, which was not originally envisaged in the IM Review 2023.

[44] Commerce Commission "CPP and in-period adjustment mechanisms topic paper – Part 4 Input Methodologies Review 2023 – Final decision" (13 December 2023), para X4.

[45] Commerce Commission, "Fibre Input Methodologies Determination 2020" [2020] NZCC 21, clause 3.9.4(1)(b).

3.136 We consider it is appropriate to align the EDB IMs to include the impact on quality standards in the 'change event' definition. There may be instances where legislative or regulatory change affects an EDB's ability to meet the prescribed quality standards in its DPP or CPP. We propose incorporating a threshold for the impact on quality standards resulting from a legislative or regulatory change to reflect that there must be more than a minor impact on quality standards (being 5% or more of a limit set for a quality standard).

3.137 We consider defining a 'change event' to include an event impacting EDBs' ability to meet quality standards after a change in legislation or regulatory rules would better promote s 52A(1)(b) by providing appropriate incentives to provide services at a quality reflecting consumer demands.

Quality standard reopener for change event - Transpower

3.138 As part of the price-quality path reset process for Transpower's RCP4, we amended the Transpower IMs to allow us to amend the quality standards applying to Transpower after reconsidering Transpower's IPP.[46]

3.139 Under the Transpower IMs, the Commission is able to amend the quality standards contained in Transpower's IPP if we decide the IPP should be amended following a change event. The definition of 'change event' under the Transpower IMs (like the EDB IMs) does not include a legislative or regulatory change impacting Transpower's ability to meet prescribed quality standards. Therefore, a quality standard amendment may only be made following Transpower's application to amend the price-quality path where the trigger is a revenue or cost impact.

3.140 We consider amending the Transpower IMs to allow Transpower to qualify for an eligible reopener event under the definition of 'change event' would better promote s 52A(1)(b) by providing appropriate incentives to provide services at a quality reflecting consumer demands.

Distinguishing price-quality path reopener criteria from reopener assessment factors

Problem definition

3.141 The definitions in the EDB IMs for catastrophic event reopeners and change event reopeners include criteria that are repeated in the assessment factors for our consideration of whether to amend the price-quality path. These assessment factors are used in our consideration of whether, and if so, to what extent we should amend the price-quality path.

[46] Commerce Commission "Transpower Input Methodologies Amendment Determination 2024 [2024] NZCC 19" (29 August 2024), Attachment C clause 3.7.11.

3.142 Under the pre-2023 IM Review reopener provisions, the reopener event definitions incorporated the relevant assessment factors into the reopener criteria (ie, the definition of the reopener event). In the IM Review 2023, we made a structural change to the reopener provisions in which we specified a list of assessment factors. This resulted in repetition in the reopener criteria and the assessment factors.

3.143 Consequently, some of the current IM reopener event criteria incorporate criteria that are difficult for an applicant to assess, as they refer to assessment factors we would consider. This may make it difficult for a regulated supplier to determine whether an event or project meets the definition of an event that qualifies for a reopener.

Current IM requirements

3.144 The EDB IMs contain drafting within the 'reopener event' criteria for catastrophic events and change events which are better suited to the reopener assessment factors.

3.145 The current catastrophic event and change event reopener criteria include a criterion defining the event to mean an event in relation to which expenditure, or the effect of the event, was "not explicitly or implicitly provided for" in a price-quality path. This is difficult for an applicant to assess, as the way in which we set DPPs, as an envelope of allowable revenue, does not allow for an applicant to easily assess whether specific items of expenditure have already been provided for in a DPP.

Proposed IM amendments

EDB IMs (Draft decision 10.1)

3.146 With respect to the criteria in the definitions for catastrophic event and change event, we propose removing an element of the reopener criteria that is not easily assessed by an applicant because it requires our judgement. The criterion we have identified is the "not explicitly or implicitly provided for in the DPP" criterion. The criterion would still exist in the assessment factors.

Our reasons

3.147 As part of the IM Review 2023, we decided to explicitly set out the assessment factors in the IMs.[47] We considered this would promote certainty for suppliers in how we assess reopener applications and whether, and if so how, to amend the price path.[48]

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47 Commerce Commission "Input methodologies review 2023 – Final decisions - CPP and in-period adjustment mechanisms topic paper" (13 December 2023), para 5.22.4.

48 Commerce Commission "Input methodologies review 2023 – Final decisions - CPP and in-period adjustment mechanisms topic paper" (13 December 2023), para 5.20.

3.148 The inclusion of the criterion "not explicitly or implicitly provided for in the DPP" in the IMs may create undue regulatory burden. In considering whether an application meets the definition of the reopener event, an EDB may not be able to easily assess whether the expenditure has been explicitly or implicitly provided for under a DPP. This is because when we determine a DPP, we determine a package of expenditure in which individual projects are not identified and there are not necessarily any individual items of expenditure that inform our expenditure decisions.

3.149 We have limited the changes to the catastrophic event and change event criteria applicable to DPPs only. We consider that the way in which CPPs and the IPP for Transpower are set mean that a regulated supplier is more readily able to assess whether the expenditure has been explicitly or implicitly provided for in a CPP or IPP. This serves as a useful criterion to limit reopener applications.

3.150 We consider a change to the EDB IMs to remove some of the criteria that are not easily applicable would reduce regulatory burden without undermining the Part 4 purpose. The changes we are proposing would still allow us to consider whether the expenditure, or effect of the event, has been implicitly or explicitly provided for in the DPP in our assessment of whether and how to amend the price-quality path.

3.151 We consider this change would better promote certainty by allowing a regulated entity to more easily determine whether an event would be applicable for a reopener, consistent with the s 52R purpose.

3.152 We consider these proposed amendments would be particularly useful in the next DPP period as it would likely reduce costs of applying for and processing reopener applications.

Catastrophic event reopener application criteria - treatment of quality requirements

Problem definition

3.153 The catastrophic event reopener provides a mechanism for allowing a price-quality path to be reopened following an event that is beyond the reasonable control of the EDB. It includes both expenditure and quality impact requirements.

3.154 The current definition of 'catastrophic event' includes a criterion relating to quality, which an EDB must meet for an event to be assessed as a 'catastrophic event'. This criterion is "action required to rectify [the event's] adverse consequences cannot be delayed until a future regulatory period without quality standards under the [DPP or CPP] being breached". This identifies significant events, but its practical application does not necessarily line up well with the design of the quality standards within the existing EDB price-paths, which have both a planned and unplanned standard, and a process for normalisation of major events.

3.155 This means that events which should reasonably be identified as a catastrophic event may not qualify. This occurs as the System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) values related to an event are accrued to the time period in which the interruption began, with normalisation applying to reduce the SAIDI and SAIFI assessed values for time periods which qualify as having exceeded a proportion of the boundary value. This means despite interruptions related to catastrophic events potentially having significant SAIDI and/or SAIFI raw values, they do not necessarily result in high SAIDI or SAIFI values for compliance purposes.

Current IM requirements

3.156 Under the current EDB IMs the definition of 'catastrophic event' in the reopener provisions specifies that the catastrophic event reopener is available where actions required to rectify the adverse consequences from the event cannot be delayed without the quality standards being breached.

Proposed IM amendments

<u>EDB IMs (Draft decision 11.1)</u>

3.157 For the EDB IMs we propose an amendment to the criteria for a 'catastrophic event' so that whether events of a significant scale meet the definition is not impacted by the way quality standards are assessed under a DPP or CPP (eg, normalisation or the timeframes for quality standards under the price-quality path).

3.158 Specifically, we propose changing the threshold for the 'impact on quality standards' to incorporate a quantifiable measure that can be assessed independently by EDBs, and does not take into account any effects of the quality standard assessment under a DPP or CPP.

Our reasons

3.159 In assessing compliance with the unplanned interruptions quality standard under DPP4, SAIDI and SAIFI values may be normalised down to a boundary value where they are affected by a major event. This normalisation approach means an interruption directly caused by a catastrophic event may not necessarily result in an EDB breaching its quality standards, despite it having a significant impact on an EDB's network and consumers. However, the threshold criteria within the IMs currently requires a direct link between the catastrophic event and quality standards being breached:[49]

> action required to rectify its adverse consequences cannot be delayed until a future regulatory period without quality standards under the DPP being breached.

[49] EDB IMs, clause 4.5.4(1)(d)(i) and 5.6.12(1)(c)(i).

3.160 We consider that to better reflect the operation of the quality standards, the wording should be amended so that an event that causes a significant impact on an EDB's network and consumers (before the operation of SAIDI and SAIFI normalisation) would meet the threshold for a catastrophic event reopener.

3.161 Our proposed approach is to specify that the impact on quality standards must exceed either 120 SAIDI minutes or six million customer interruption minutes. We consider we need to specify two thresholds to account for the fact that some EDBs have a greater number of customers, meaning that the SAIDI impact is diluted for EDBs with a large number of installation control points (ICPs) on their networks.

3.162 We proposed to amend the threshold to be consistent with the extreme event standard limits under the EDB DPP determination.[50] Consistent with the rationale under the EDB DPP extreme event standard limits, this would allow us to focus on the events that have the largest impact on customers and represent extreme one-off events.[51]

3.163 We consider the proposed threshold represents an objective measure that provides EDBs with greater certainty as to the catastrophic event criteria, in accordance with s 52R of the Act.

3.164 We also consider these changes would better promote the Part 4 purpose by setting appropriate incentives to improve efficiency and provide services at a quality reflecting consumer demand, as well as providing incentives to invest in replacement assets to remediate damage caused by a catastrophic event.[52]

3.165 By specifying an objective quality threshold that is not affected by the normalisation function, this better promotes certainty under s 52R of the Act as to whether the reopener is available to an EDB. We also consider this proposed amendment would not detrimentally affect the s 52A purpose of the Act.

50 Commerce Commission "Electricity Distribution Services Default Price-Quality Path Determination 2025 [2024] NZCC 28" (20 November 2024), Schedule 3.3.

51 Commerce Commission "EDB DPP4 Final decision reasons paper – Attachment E: Setting quality standards and incentives" (20 November 2024), para E132.

52 We note that the quality standard variation reopener in the EDB IMs is available and may be more appropriate where impacts of a significant event affect an EDB's ability to meet quality standards in a DPP on an on-going basis.

Catastrophic event reopener application criteria - treatment of insurance

Problem definition and current requirements

3.166 To meet the threshold for a 'catastrophic event' reopener, the costs of remediation for an event, net of any insurance or compensatory entitlements, must have an impact on the price path of at least 1% of forecast net allowable revenue.[53]

3.167 Ascertaining whether this threshold is met may be difficult for suppliers. There is often a delay between the timing of estimating additional remediation costs pursuant to an event, and the settlement of corresponding entitlements with an insurer, at which point the value of those entitlements can be determined with certainty. This means that stating the threshold net of insurance or compensatory entitlements may impose an unnecessary delay for reopener applications.

Proposed amendments

EDB IMs and Transpower IMs (Draft decisions 12.1 and 12.2)

3.168 For both EDBs and Transpower our draft decision is to amend the threshold to express it as a gross value, ie, before the recognition of any insurance entitlements, third-party liability entitlements, and compensatory entitlements. We consider this will allow applications to be progressed in a timelier manner.

Our reasons

3.169 In our consultation on the draft IM amendments relating to insurance entitlements, other compensatory entitlements and other regulated income, we received submissions from the Electricity Networks Aotearoa (ENA) and Unison on the impact of the catastrophic event threshold being specified net of insurance entitlements and compensatory entitlements.[54, 55, 56]

3.170 The ENA argued that meeting the threshold for a catastrophic event reopener is "extremely difficult" for these reasons:[57]

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53 From 1 April 2025 this is specified as:
(a) 1% of the EDB's forecast net allowable revenue for the DPP regulatory period; and
(b) $5 million for Vector Limited or Powerco Limited, or $2.5 million for any other EDB.

54 Our final decision is available on our website, Commerce Commission "Amendments to input methodologies for electricity distribution businesses, gas pipeline businesses and Transpower relating to insurance entitlements, other compensatory entitlements, and other regulated income – final decision and reasons paper" (11 December 2024).

55 ENA "Submission to the Commerce Commission on the proposed amendments to input methodologies for electricity distribution business, gas pipeline businesses and Transpower relating to insurance entitlements, other compensatory entitlements, and other regulated income" (3 October 2024).

56 Unison "Proposed amendments to the input methodologies – insurance entitlements" (4 October 2024).

57 ENA "Submission to the Commerce Commission on the proposed amendments to input methodologies for electricity distribution business, gas pipeline businesses and Transpower relating to insurance entitlements, other compensatory entitlements, and other regulated income" (3 October 2024), section 1.6.

3.170.1 insurance coverage may be unknown when expenses occur and may remain unclear within the regulatory period;

3.170.2 since the revenue threshold is based on forecast net allowable revenue, it might overlook how other regulated income could affect wash-up and IRIS penalties in the next regulatory period; and

3.170.3 additionally, even if an event causes major capital expenses and large IRIS penalties, the threshold may still not be met because capital expenses do not strongly impact net allowable revenue during the regulatory period.

3.171 Our proposed amendment directly addresses the first of the ENA's concerns.

3.172 The remaining points above (paragraphs 3.170.2 and 3.170.3) have been addressed by the implementation, in our IM Review 2023, of an additional cost-based threshold for DPP4 and beyond. That cost-based threshold is also stated net of insurance and compensatory entitlements. Our proposed changes to express the overarching catastrophic event reopener threshold as a gross value will also apply to this measure.

3.173 The unworkability of the existing catastrophic event reopener threshold with regards to netting off insurance and compensatory entitlements was further emphasised by Unison. Unison provided the example of its own situation, where it has been unable to determine the price path impact resulting from Cyclone Gabrielle in 2023 because its first insurance claim is not yet settled.[58]

3.174 Our proposed amendment will promote certainty for suppliers and consumers in line with s 52R in enabling them to determine at the time of an event whether they are eligible for a reopener. At the same time this does not undermine the s 52A purpose as, in adjusting the price-path or approving an REA, we will continue to take into account the extent of insurance and other compensation receivable by a regulated supplier.

Changes to mandatory considerations in price-quality path amendment assessment factors

Problem definition

3.175 In the IM Review 2023, we prescribed a list of factors the Commission must have regard to when deciding whether to amend a price-quality path.[59]

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58 Unison "Proposed amendments to the input methodologies – insurance entitlements" (4 October 2024), para 11.

59 Commerce Commission "CPP and in-period adjustment mechanisms topic paper: Part 4 Input Methodologies Review 2023 – Final decision" (13 December 2023), para 5.5.1.4.

3.176 The introduction of these mandatory considerations has given rise to an issue where we must now consider and justify each of the factors specified in each reopener assessment, even where it may not be relevant to the application or may be impractical to consider.

3.177 Additionally, the IMs impose an obligation on a supplier that nominates a reopener to demonstrate (among other things) that these criteria have been met and, in practice, more information can be provided later if we requested. However, the timing of this obligation in the IMs is not clear, which creates unnecessary uncertainty for applicants.

Current IM requirements

3.178 The current EDB IMs and Transpower IMs specify a list of factors that we must have regard to when deciding whether to amend the price-quality path, if we are satisfied that a reopener event has occurred.[60]

Proposed IM amendments

<u>EDB IMs and Transpower IMs (Draft decisions 13.1 and 13.2)</u>

3.179 Our draft decision is to change the current reopener assessment factors to clarify that the Commission is not required to consider each and every listed assessment factor – only those that it considers relevant. We propose amending the wording of the requirements in clauses 4.5.13 and 5.6.12 of the EDB IMs and clause 3.7.10 of the Transpower IMs to so that the Commission must have regard to at least each of the listed matters “to the extent that the Commission considers the matter is relevant”.

3.180 With respect to the ambiguity about the timing for suppliers demonstrating the criteria have been met, we propose clarifying that this is at the time the reopener event is nominated.[61] We note that this change would not prevent the Commission from seeking (for example via our s 53ZD information gathering powers) and the supplier from providing additional information in response to such a request during the reconsideration process.

Our reasons

3.181 In the course of applying the reopener provisions, we have found that the mandatory consideration provision may give rise to unnecessary regulatory burden and uncertainty.

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[60] EDB IMs, clauses 4.5.13 and 5.6.12; Transpower IMs, clause 3.7.10.

[61] Commerce Commission “[Draft] Electricity Distribution Services Input Methodologies (Reopeners and Other Matters) Amendment Determination 2025” (12 December 2024), clauses 4.5.2(3) and 5.6.2(3); Commerce Commission “[Draft] Transpower Input Methodologies (Reopeners and Other Matters) Amendment Determination 2025” (12 December 2024), clause 3.7.2(3).

3.182 This is because the current IMs may be construed as requiring us to apply each of the factors listed in the assessment factors to each of the reopener classes, and for the applicant to include information relating to each factor in its reopener application. Some may not be applicable or appropriate to be applied to each type of reopener event, as the following examples demonstrate (though the issue is not limited to these examples):

3.182.1 in the event of an error event or a false or misleading information reopener, we would be required to consider (and a regulated entity would be required to provide evidence on) the extent to which it has reprioritised capex and opex in response to the event under clause 4.5.13(1)(c)(iii);

3.182.2 the extent to which the EDB DPP provides explicitly or implicitly for the reopener event under clause 4.5.13(1)(b) is not relevant for the purposes of the error event; and

3.182.3 quality standard variation applications are currently subject to all the consideration factors, despite having their own assessment criteria inherent in the definition in clause 4.5.12.

3.183 We consider making explicit that not all the factors will be relevant for all reopener applications would:

3.183.1 allow us to correctly apply the relevant and appropriate factors in assessing whether and how to amend the price-quality path; and

3.183.2 provide greater clarity and reduce the regulatory burden on a regulated supplier in providing supporting information for the purposes of our assessment.

3.184 We consider that by improving clarity the proposed amendment will reduce the compliance and regulatory costs of reopeners and facilitate more timely considerations of reopener applications. This would better promote the Part 4 purpose in promoting incentives to provide services at a quality reflecting consumer demand by facilitating investment without requiring unnecessary regulatory burden.

3.185 We consider the proposed amendment still provides certainty under the s 52R purpose by listing the factors we must have regard to where relevant in our assessment, allowing a regulated entity to appropriately prepare its application.

Chapter 4 Proposed other IM amendments

Purpose and structure of this chapter

4.1 The draft decisions discussed in Chapter 3 relate to the rules and processes for reopeners. We have identified two additional matters, outside the rules and processes for reopeners, that affect the allocation of risk of catastrophic events. These are:

4.1.1 the CPP treatment of catastrophic events, and the availability of claw-back; and

4.1.2 the inadvertent removal of the foregone revenue cap.

CPP treatment of catastrophic events

Problem definition

4.2 Subpart 3 of Part 5 of the EDB IMs allows the Commission, in determining the price path for a CPP, to provide for claw-back in specified circumstances.[62] Prior to the IM Review 2023, this included the recovery of costs of catastrophic events that occurred before the CPP.

4.3 In the IM Review 2023 we introduced changes to the CPP reopener provisions that unintentionally limited the availability of claw-back relating to catastrophic events to costs not provided for in the CPP.

4.4 As a result, EDBs are currently unable to recover the cost(s) of responding to a catastrophic event where the event occurs while that EDB is subject to a DPP, and leads to a CPP rather than a DPP reopener. This impacts costs from the date of the catastrophic event up to the date on which the CPP comes into effect.

Current IM requirements

4.5 Clause 5.3.4(2) of the IMs sets out the circumstances in which the Commission may determine a claw-back amount. Clause 5.3.4(2)(a)(ii) allows the Commission to determine a clawback amount in response to CPP proposals made in response to a 'reopener event', which includes 'catastrophic events'. The relevant definition of 'catastrophic event' relates only to expenditure that is "not explicitly or implicitly provided for in the CPP".[63]

4.6 This is a change from the pre-2023 IMs, which allowed the Commission to determine claw-back for costs related to catastrophic events that were incurred before a CPP was initiated.

[62] EDB IMs, clauses 5.3.4(1) and (2).
[63] EDB IMs, clause 5.6.4(1)(b)(ii).

Proposed IM amendments

EDB IMs (Draft decision 14.1)

4.7 Our draft decision is to clarify that the Commission may determine a claw-back amount for costs incurred in responding to a catastrophic event, by:

4.7.1 amending clause 5.3.4(2)(a)(ii) to specifically apply to CPPs, where the CPP proposal is in response to a 'catastrophic event' (with a consequential drafting change to clause 5.3.4(4)(b)) for consistency); and

4.7.2 amending the definition of 'catastrophic event' in the CPP IMs to reinstate our previous approach, which allowed for claw-back of expenditure related to a catastrophic event, where the EDB was subject to a DPP at the time of the event, and the expenditure was not provided for in the DPP.[64]

Our reasons

4.8 Our proposed amendments reinstate our original policy intent regarding the treatment of catastrophic events and their associated claw-back provisions under a CPP.

4.9 We remain of the view that *ex post* compensation should be available to EDBs for additional net operational and capital expenditure incurred in response to catastrophic events that occur during the DPP.

4.10 Allowing *ex post* compensation for additional net costs related to a catastrophic event helps strengthen incentives for the distributor to focus on restoring its network in the aftermath of the event.[65]

4.11 This is the case whether compensation is provided by amending the DPP through a DPP catastrophic event reopener, or through providing for claw-back of those costs in a CPP determination in response to the catastrophic event, where a CPP is more appropriate.

4.12 Explicitly allowing claw-back in response to a catastrophic event, for prudent additional costs incurred in responding to the event before the CPP takes effect, also provides certainty should suppliers need to obtain financing immediately after the event.[66]

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64 EDB IMs, clause 5.6.4(1).

65 Commerce Commission, "Input methodology amendments for electricity distribution services: Default price-quality paths" (27 November 2014), para 11.12.

66 Commerce Commission, "Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons paper" (December 2010), para 8.4.27.

Inadvertent removal of the foregone revenue cap

Problem definition

4.13 In 2016 the Commission introduced a cap on the amount of revenue that may be recovered through the wash-up mechanism ('the revenue foregone provisions').

4.14 This was introduced as part of the package of changes replacing the former weighted average price cap for EDBs with a revenue cap plus wash-up. The purpose of the revenue foregone provisions was to ensure that suppliers bear some of the risk if an unforeseen major demand event occurs (eg, a catastrophic event).[67]

4.15 The revenue foregone provisions were inadvertently removed in the IM Review 2023, when simplifying the overall wash-up mechanism for EDBs.

Current IM requirements

4.16 The current EDB IMs no longer provide for a cap on the amount that can be accrued to the wash-up each year.[68]

Proposed approach

Draft decision 15.1

4.17 As part of our current amendment process, we considered reinstating these provisions. We have decided not to do so at this time.

Our reasons

4.18 Any major unforeseen demand event, of a magnitude that would have triggered the revenue foregone provisions, is likely to result in an application for a reopener or a CPP. We consider the IMs allow us to consider appropriate allocation of foregone revenue between suppliers and consumers when assessing reopener applications following a catastrophic event.[69]

4.19 Thus, we can achieve a similar policy outcome during the DPP4 regulatory period through the existing reopener provisions, without amending the IMs.[70]

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67 Commerce Commission "Input methodologies review decisions - Topic paper 1: Form of control and RAB indexation for EDBs, GPBs and Transpower" (20 December 2016), paras 150-159.

68 EDB IMs, clause 3.1.4.

69 Clauses 4.5.13 and 5.6.12 of the EDB IMs set out (for DPPs and CPPs respectively) matters the Commission must have regard to in considering whether to amend a price path. These clauses currently provide that "[i]f the Commission is satisfied that a reopener event has occurred, then the Commission must have regard to ***at least*** the following matters …" (emphasis added). The use of the words "at least" allow us to take account of additional considerations where appropriate, such as sharing of foregone revenue between suppliers and consumers following a catastrophic event.

70 Chapter 2 of this paper (Decision-making framework), para 2.25.1.

4.20 Any future review of the specification of price IMs (either prior to DPP5 or as part of the next IM review) may reconsider how the sharing of the costs of unexpected declines in demand is achieved.

Attachment A Overview of how proposed amendments affect the reopener process for EDB DPP, CPP and Transpower

Table A1: EDBs - Overview of how proposed amendments affect the reopener process for the DPP

Note: Draft decision numbers for each proposed amendment are referenced in **bold** for ease of reference, for example **[1.1]**.[71]

Clause references refer to the [Draft] Electricity Distribution Services Input Methodologies (Reopeners and Other Matters) Amendment Determination 2025.

Amendments proposed	Purpose of proposed change	Clause references
Section 1 When the Commission can reconsider the DPP		
[3.1] Amend classification of price-quality path reopeners as different categories of 'reopener events', to reflect differences in policy treatment, by creating two defined categories: 'Reopener event (responsive)': • catastrophic event • change event • error event • false or misleading information • major transaction event • risk event 'Reopener event (prospective)': • unforeseeable large project • foreseeable large project Quality standard variation proposals separately defined.	Ensure the IMs correctly give effect to our policy decisions. Support implementation of draft decisions relating to reopeners.	1.1.4(2) 4.5.1(3) 4.5.2(1) 4.5.2(4) 4.5.9(1)-(2) 4.5.10(1)-(2) 4.5.14(2)
Process for reconsideration of the DPP (included in Section 1)		
Drafting changes to clause 4.5.2 that are consequential to draft decisions 3.1 and 13.1 (as noted elsewhere in this table).		
Section 2 Reopener event definitions ("Events that may be reopener events")		
[9.1] Amend the application of the 'change event' price-quality path reopener.	Better promote the Part 4 Purpose (s 52A(1)(a) and (b) of the Act).	4.5.5(2)

[71] Where a decision applies to both the EDBs and Transpower, the draft decision number X.1 denotes the proposed amendment to the EDB IMs and draft decision number X.2 denotes the proposed amendment to the Transpower IMs or Transpower IPP determination.

Amendments proposed	Purpose of proposed change	Clause references
[10.1] Distinguish price-path reopener event criteria from reopener assessment factors for 'catastrophic event' and 'change event'.	Improve the clarity and certainty of the rules and processes for reopeners.	4.5.4(1) 4.5.5(1)
[11.1] Catastrophic event reopener application criteria – treatment of quality requirements: Amend catastrophic event reopener application criteria to better reflect how quality standards are set.	Ensure the IMs correctly give effect to our policy decisions; improve the clarity and certainty of the rules and processes for reopeners.	4.5.4(1) 4.5.4(1A)
[12.1] Catastrophic event reopener application criteria - treatment of insurance.	Improve the clarity and certainty of the rules and processes for reopeners.	4.5.4(1)
Section 3 Commission consideration of whether to amend the DPP ("assessment factors")		
[13.1] Amend the mandatory considerations in price-quality path amendment assessment factors so the Commission must assess those to the extent they are relevant to better cater for different types of reopeners.	Reduce compliance and regulatory costs.	4.5.1(1) 4.5.2(3)-(4) 4.5.13(1)
Amending the DPP after reconsideration (included in Section 3)		
[1.1] The time limits and expenditure eligibility for the REA - clarify application of the REA *vs* amendment to the price path to implement a reopener decision.	Improve certainty regarding the rules and processes that apply.	1.1.4(2) 4.5.15(3)-(4) 4.5.15(5)(b)
[2.1] Amend the scope of the 'reopener event allowance' (REA) such that it is only available for 'reopener event (responsive)', by excluding prospective reopener events and separately defined reopener events under any category from the scope.	Ensure the IMs correctly give effect to our policy decisions.	1.1.4(2)
[4.1] Amend the processes for reopening the revenue allowance: Simplify the amendment process by creating a 'carve out' under the specification of price IM which would enable the Commission to make an adjustment to FNAR or ANAR for the relevant year of the reopener, without having to relate it to Year 1.	Reduce complexity, and reduce regulatory and compliance costs. Improve the workability of the IMs relating to reopeners, such that they are fit-for-purpose for the DPP4 regulatory period.	3.1.1(5A) 3.1.4(4) 3.1.4(11A)

Amendments proposed	Purpose of proposed change	Clause references
[5.1] Double recovery of capital costs already included in an REA: Amend the capex wash-up provisions to require the deduction from any capex wash-up amount of capital costs already provided for in an REA, to avoid double recovery of return on and of capital.	Improve certainty regarding the rules and processes that apply. Better promote the Part 4 Purpose (s 52A(1)(a) and (d) of the Act).	1.1.4(2) 3.1.3(1) 3.3.11(2)
[6.1, 7.1, 8.1] Technical amendments to the provisions in the EDB IMs for adjustments to IRIS amounts following a reopener, to: • correct the scope of the provisions; and • correct technical drafting errors that prevent the Commission from determining adjustments to IRIS capex incentive amounts, following a reopener, and make implementation of the provisions unworkable.	Ensure the IMs correctly give effect to our policy decisions.	3.3.13 3.3.14 4.2.5(1)

Table A2: EDBs - Overview of how proposed amendments affect the reopener process for CPPs

Note: Draft decision numbers for each proposed amendment are referenced in **bold** for ease of reference, for example **[1.1]**.
Clause references refer to the [Draft] Electricity Distribution Services Input Methodologies (Reopeners and Other Matters) Amendment Determination 2025

Amendments proposed	Purpose of proposed change	Clause references
Section 1 When the Commission can reconsider the CPP		
[3.1] Amend classification of price-quality path reopeners as different categories of 'reopener events', to reflect differences in policy treatment, by creating two defined categories: 'Reopener event (responsive)': • catastrophic event • change event • error event • false or misleading information • major transaction event 'Reopener event (prospective)': • contingent project • unforeseen project WACC change event separately defined.	Ensure the IMs correctly give effect to our policy decisions. Support implementation of draft decisions relating to reopeners.	1.1.4(2) 5.6.1(3) 5.6.2(1)
Process for reconsideration of the CPP (included in Section 1)		
Drafting changes to clause 5.6.2 that are consequential to draft decisions 3.1 and 13.1 (as noted elsewhere in this table).		
Section 2 Reopener event definitions ("Events that may be reopener events")		
[9.1] Amend the application of the 'change event' price-quality path reopener.	Better promote the Part 4 Purpose (s 52A(1)(a) and (b) of the Act).	5.6.5(2)
[11.1] Catastrophic event reopener application criteria – treatment of quality requirements: Amend catastrophic event reopener application criteria to better reflect how quality standards are set.	Ensure the IMs correctly give effect to our policy decisions. Improve the clarity and certainty of the rules and processes for reopeners.	5.6.4(1) 5.6.4(1A)
[12.1] Catastrophic event reopener application criteria - treatment of insurance.	Improve the clarity and certainty of the rules and processes for reopeners.	5.6.4(1)

Amendments proposed	Purpose of proposed change	Clause references
Section 3 Commission consideration of whether to amend the CPP ("assessment factors")		
[13.1] Amend the mandatory considerations in price-quality path amendment assessment factors so the Commission must assess those to the extent they are relevant to better cater for different types of reopeners.	Reduce compliance and regulatory costs.	5.6.1(1) 5.6.2(3) 5.6.12(1)
Amending the CPP after reconsideration (included in Section 3)		
[1.1] Time limits and expenditure eligibility for the REA - clarify application of the REA *vs* amendment to the price path to implement a reopener decision.	Improve certainty regarding the rules and processes that apply.	1.1.4(2) 5.6.13 (2)(b) 5.6.13(3)-(4)
[2.1] Amend the scope of the 'reopener event allowance' (REA) such that it is only available for 'reopener event (responsive)', by excluding prospective reopener events and separately defined reopener events from the scope.	Ensure the IMs correctly give effect to our policy decisions.	1.1.4(2)
[4.1] Amendment to processes for reopening the revenue allowance: Simplify the amendment process by creating a 'carve out' under the specification of price IM which would enable the Commission to make an adjustment to FNAR or ANAR for the relevant year of the reopener, without having to relate it to Year 1.	Reduce complexity and reduce regulatory and compliance costs. Improve the workability of the IMs relating to reopeners, such that they are fit-for-purpose for the DPP4 regulatory period.	3.1.1(5A) 3.1.4(4) 3.1.4(12)
[5.1] Double recovery of capital costs already included in an REA: Amend the capex wash-up provisions to require the deduction from any capex wash-up amount of capital costs already provided for in an REA, to avoid double recovery of return on and of capital.	Improve certainty regarding the rules and processes that apply. Better promote the Part 4 Purpose (s 52A(1)(a) and (d) of the Act).	3.3.11(2)
[6.1, 7.1, 8.1] Technical amendments to the provisions in the EDB IMs for adjustments to IRIS amounts following a reopener, to:	Ensure the IMs correctly give effect to our policy decisions.	3.3.13 3.3.14

Amendments proposed	Purpose of proposed change	Clause references
• correct the scope of the provisions; and • correct technical drafting errors that prevent the Commission from determining adjustments to IRIS capex incentive amounts, following a reopener, and make implementation of the provisions unworkable.	Improve the workability of the IMs relating to reopeners, such that they are fit-for-purpose for the DPP4 regulatory period.	
Technical change to correct drafting error: Catastrophic events in advance of a CPP application		
[14.1] CPP treatment of catastrophic events: Correct a drafting error in the treatment of CPP-related catastrophic events and associated claw-back provisions to provide for catastrophic events occurring during the DPP period in advance of a CPP application.	Ensure the IMs correctly give effect to our policy decisions.	5.3.4(2) 5.3.4(4) 5.6.4(1)

Table A3: Transpower - Overview of how proposed amendments affect the reopener process

Note: Draft decision numbers for each proposed amendment are referenced in **bold** for ease of reference, for example **[1.2]**.
Clause references refer to the [Draft] Transpower Input Methodologies (Reopeners and Other Matters) Amendment Determination 2025 and, for draft decision 5.2, to the [Draft] Transpower Individual Price-Quality Path Amendment Determination 2025 (No. 2).

Amendments proposed	Purpose of proposed change	Clause references
Section 1 When the Commission can reconsider the IPP		
[3.2] classification of price-quality path reopeners as different categories of 'reopener events', to reflect differences in policy treatment, by creating two defined categories: 'Reopener event (responsive)': • catastrophic event • change event • error event • false or misleading information 'Reopener event (prospective)': • E&D reopener • anticipatory project reopener Large EV account build-up reopener and delivery risk adjustment reopener separately defined.	Ensure the IMs correctly give effect to our policy decisions.	1.1.4(2) 3.6.5(1) 3.7.1(2) 3.7.2(1) 3.7.11(5)-(6)
Process for reconsideration of the IPP (included in Section 1)		
Drafting changes to clause 3.7.2 that are consequential to draft decisions 3.2 and 13.2 (as noted elsewhere in this table).		
Section 2 Reopener event definitions ("Events that may be reopener events")		
[9.2] Amend the application of the 'change event' price-quality path reopener.	Better promote the Part 4 Purpose (s 52A(1)(a) and (b) of the Act).	3.7.5(2)-(2A)
[12.2] Catastrophic event reopener application criteria - treatment of insurance.	Improve the clarity and certainty of the rules and processes for reopeners.	3.7.4(1)

Amendments proposed	Purpose of proposed change	Clause references
Section 3 Commission consideration of whether to amend the IPP ("assessment factors")		
[13.2] Amend the mandatory considerations in price-quality path amendment assessment factors so the Commission must assess those to the extent they are relevant to better cater for different types of reopeners.	Reduce compliance and regulatory costs.	3.7.1(1) 3.7.2(3) 3.7.10(1)
Amending the IPP after reconsideration (included in Section 3)		
[1.2] Time limits and expenditure eligibility for the REA - clarify application of the REA *vs* amendment to the price path to implement a reopener decision.	Improve certainty regarding the rules and processes that apply.	1.1.4(2) 3.7.11(2)-(4)
[2.2] Amend the scope of the 'reopener event allowance' (REA) such that it is only available for 'reopener event (responsive)', by excluding prospective reopener events and separately defined reopener events from the scope.	Ensure the IMs correctly give effect to our policy decisions.	1.1.4(2)
[5.2] Double recovery of capital costs already included in an REA - proposed amendments to the IPP Determination (affects 'reopener event (responsive)' only): Amend the definition of 'EV account entry' in the Transpower IPP so that any capex wash-up amount for capital costs (being the return on and of capital in the EV account), is offset by any amount already included in an REA. (This is equivalent to the changes to the capex wash-up in the EDB IMs.)	Better promote the Part 4 Purpose (s 52A(1)(a) and (d) of the Act).	Transpower IPP 2025 clause 7.1 and 34.1.3[72]

72 [Draft] Transpower Individual Price-Quality Path Amendment Determination 2025 (No. 2).

Attachment B Glossary

Abbreviation	Definition
the Act	Commerce Act 1986
ANAR	Actual Net Allowable Revenue
AMP	Asset Management Plan
BBAR	Building Blocks Allowable Revenue
Capex	Capital Expenditure
CPP	Customised Price-quality Path
DPP	Default Price-quality Path
DPP3	DPP that applies from 1 April 2020 to 31 March 2025
DPP4	DPP that will apply from 1 April 2025 to 31 March 2030
EA	Electricity Authority
EDB	Electricity Distribution Business
EDB IMs	Input methodologies for electricity distribution businesses
ENA	Electricity Networks Aotearoa
EV account	Economic Value account
FCM	Financial capital maintenance
Fibre IMs	Fibre IMs set under Part 6 of the Telecommunications Act 2001
FMCP	Foreseeable major capex project
FNAR	Forecast Net Allowable Revenue
GAAP	Generally Accepted Accounting Practice
Gas IMs	Input Methodologies for gas pipeline businesses
ICP	Installation Control Points
ID	Information Disclosure
IMs	Input Methodologies (refers to Part 4 IMs which are the subject of the IM Review, unless identified otherwise)
IM Review 2023	Input Methodologies Review 2023
IPP	Individual Price-quality Path
IPP determination	Transpower Individual Price-Quality Path Determination 2025
IRIS	Incremental Rolling Incentive Scheme
MAR	Maximum Allowable Revenue
Opex	Operating expenditure
Part 4	Part 4 of the Commerce Act 1986
PQ	Price-quality
Price-quality path	Refers to the maximum revenues (or weighted average prices) regulated suppliers can recover from their consumers and the minimum quality standards they must meet when delivering electricity and/or gas transmission and distribution services.
PV	Present Value
RAB	Regulated Asset Base
RCP4	IPP that will apply from 1 April 2025 to 31 March 2030
REA	Reopener Event Allowance
SAIDI	System Average Interruption Duration Index
SAIFI	System Average Interruption Frequency Index
Transpower IMs	Input methodologies for Transpower
Transpower IPP	Transpower Individual Price-Quality Path
WACC	Weighted Average Cost of Capital