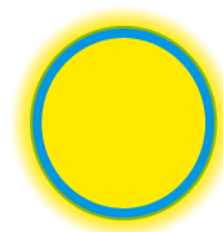


25 September 2015

Dane Gunnell  
Project Manager  
CPP Fast Track  
Regulation Branch  
Commerce Commission  
PO Box 2351  
WELLINGTON 6140



Dear Dane

**Re: Proposed amendments to input methodologies for CPP – Draft decision for Limb 1 of the CPP fast track**

1. Powerco Limited (**Powerco**) appreciates the opportunity to contribute to the Commerce Commission's (**Commission's**) consultation paper *Proposed amendments to input methodologies for customised price-quality paths – Draft decision for Limb 1 of the CPP fast track (the draft decision)* published on 7 September 2015.
2. In addition to this submission, we also support the submission and proposed drafting amendments made by the Electricity Networks Association.

***Powerco supports the Commission's work to reduce the cost and complexity of the requirements for preparing, assessing and determining CPPs***

3. Powerco supports the following proposed amendments, discussed in the draft decision, but with the qualifications described in the body of this submission:
  - 1.9.1 Allowing modifications or exemptions to the process for preparing, and content of, CPP proposals to introduce more flexibility for suppliers (Chapter 2).
  - 1.9.2 Providing for alternative methodologies with equivalent effect for the proposal and determination of a CPP to introduce more flexibility for suppliers (Chapter 3).
  - 1.9.3 Accepting CPP applications for consideration if they comply with the process and content IMs "in all material respects" (Chapter 4).<sup>1</sup>
4. We consider that the proposed amendments are consistent with the stated objectives of the IM Review, which we support. However, we recommend that the drafting be further refined to ensure the achievement of the intended outcomes. The rest of this submission discusses areas requiring further consideration.

<sup>1</sup> Commerce Commission. *Proposed amendments to input methodologies for customised price-quality paths – Draft decision for Limb 1 of the CPP fast track*, 7 September 2015, p.3.

### ***Requirement for full review of CPP IMs remains***

5. As noted in the Commission's consultation paper *Input methodologies review – Invitation to contribute to problem definition*, there are multiple opportunities to improve the processes and rules in the CPP IMs. The key areas for improvement have been clearly identified through the Commission's consultation on the Orion CPP process and the recent IM review submissions.
6. The proposed amendments detailed in limb one of the IM fast track process address a number of immediate concerns, but are only an initial step towards mitigating the complexity and costs associated with the CPP application process as a whole. If the remaining problems that have previously been identified with the current drafting of the CPP IMs are not adequately dealt with, EDBs applying for a CPP will inevitably need to seek exemptions, modifications and/or the acceptance of alternative methodologies. While we agree that such remedies should be available to EDBs, and used when necessary, the first choice and most efficient solution would usually be to amend the IMs to remove the root cause of the problem.
7. To achieve the Commission's stated IM review objective to make changes that would "significantly reduce compliance costs, other regulatory costs or complexity, without detrimentally affecting the promotion of the s.52A purpose", we recommend that the proposed amendments in the draft Limb 1 decision, once finalised, be retained in the Input Methodologies post the 2016 full IM review. We also consider that a line by line review of the CPP process and information IMs would be appropriate and cost effective as part of the full IM review. Retaining the Limb 1 fast track amendments, and also addressing the other previously identified CPP IM problems, could potentially deliver significant long term benefits by substantially reducing unnecessary complexity and compliance costs.

### ***Modification or exemption from CPP process or content requirements***

8. We support the principle of enabling EDBs to apply for pre-approval to make modifications to or seek exemptions from the CPP application process. The proposed modification or exemption amendment has the potential, if drafted clearly, to improve certainty, reduce transaction costs and provide EDBs with the required flexibility.
9. As an example of its practical use, the proposed modification or exemption clauses would address a number of data challenges that we have identified when considering the information-related requirements of a CPP application. These include:
  - Clause 5.4.26 – Regulatory tax asset value information;
  - The Capex, Opex, Service and Asset categories required by Schedule E;
  - Clause 5.4.24 – Analysis of deferred tax opening balances;
  - Clause 5.4.14 – Vendor details for commissioned assets; and
  - Clause 5.4.15 – Details of purchasers of disposed assets.
10. The proposed IM changes require an EDB to support its modification or exemption application with "a brief description of the key features of its intended CPP proposal" (proposed section 5.1.7(2)(b)(ii)). We assume the Commission has included this provision in order to help it gain a better understanding of the context of the proposed modification or exemption. While we support the principle, we consider the clause needs amending to reflect the fact that information provided at this stage of the CPP decision making process may not be fully developed and, as such,

should be treated as confidential to the Commission and the party submitting the pre-approval request.

11. We note the Commission's view (para. 2.20) that in most cases it will not be necessary for the Commission to seek the views of interested persons when considering a request for modifications or exemptions. However, should the Commission choose to seek the views of interested persons, the draft wording of clause 5.1.7(4) permits the Commission to have regard to the views of interested persons within any time frames and processes set by the Commission. In our view, this draft provision is too permissive. We recommend that a reasonable time frame be specified, such as within 50 working days.
12. We accept that a CPP application must meet the Commission's needs when evaluating the application and that the Commission should therefore be the sole decision maker when deciding if any pre approval proposal from an EDB will meet its needs. However, we recommend that, in order to assist the process and treat EDB applicants in an even-handed manner, the proposed amendment should state explicitly that the approval of any pre approval modification or exemption by the Commission will be binding. Failure to provide this assurance could potentially create unnecessary uncertainty and impede the CPP application process.
13. Proposed Section 5.1 7(2)(b)(v) requires EDBs to provide "appropriate evidence" that the criteria in 5.6.1(2) [sic] have been met. (Note – this provision should refer to clause 5.1.6(2)). The proposed drafting, which permits a modification or exemption to be made where, in the Commission's opinion, the modification will not detract from the Commission's evaluation of the CPP proposal and determination of a CPP and the ability of interested persons to consider and provide their views on the CPP proposal, is too open-ended and imprecise. We recommend that the provision be expanded to specify how a modification or exemption might potentially detract from the Commission's evaluation and determination of a proposal or the ability of interested persons to consider and provide their views.
14. The tight nature of the CPP application windows and the current cost of debt observation periods make it is essential that the modification and pre- approval process time frames be certain. Consequently, we recommend that the Commission provide specific time frames for considering pre approval modifications or exemptions rather than the proposed "as soon as practicable" approach used in the current drafting of clause 5.1.7(5). The times permitted should be consistent with other time limits related to CPP applications (e.g. 40 working days).

#### ***Alternative methodologies with equivalent effect***

15. Powerco recognises and supports the intent of the proposed amendment to allow alternative methodologies with equivalent effect. We consider improvements to the current arrangements could materially reduce the cost and complexity of a CPP application process by augmenting the flexibility and certainty of the process. We note that the Commission appears to be attempting to eliminate the potential need to submit a proposal with and without the alternative methodology and we support this objective.
16. The current wording of the draft decision states that, where a CPP applicant elects to apply alternative methodologies, it must provide "evidence demonstrating that each alternative methodology produces an equivalent effect within the CPP regulatory period to the methodology that would otherwise apply" (draft clause 5.4.34(1)(d)) . On the face of it, this appears to require the applicant to apply both the alternative methodology and the original methodology, which would be contrary to the objective noted in paragraph 15 above. We suggest that this problem might be avoided if slightly more permissive wording such as "materially equivalent effect"

were used instead. Alternatively, “equivalence of input”, which is used in telecommunications regulation, could be applied instead.

17. Further, an EDB has no certainty that an alternative methodology will be accepted by the Commission prior to submitting a CPP application, and will not know this until after the 40 day completeness assessment has been undertaken. This creates a high level of uncertainty which could potentially disincentivise a CPP application, as, once a CPP application is submitted, it becomes irrevocable and cannot be withdrawn by a supplier (Commerce Act 1986, s.53R(a) refers). This introduction of additional regulatory uncertainty is contrary to the Commission’s stated intention to reduce the costs and complexity associated with regulatory processes. Non-acceptance of a proposed alternative methodology submitted at the time of the application could also have a materially negative effect on an application by requiring significant rework which would add to compliance costs and the time required to complete the application.
18. We contend that an application for an alternative methodology should be able to be submitted in advance of a CPP application and the Commission should be required to give a clear indication of the alternative methodology’s suitability prior to the submission of the application. This is the only approach would provide an EDB with the certainty it needs to safely proceed with a CPP application that includes an alternative methodology.

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

19. Powerco supports the principle that the Commission should accept CPP proposals that are “complete in all material respects”. However, we submit that the Commission could help reduce compliance costs by including some specific examples of how a CPP proposal could demonstrate that it was complete in all material respects

***Clarifying which input methodologies apply and when***

20. We welcome the Commission’s clarification of its view that the IMs in force at the time a CPP application is submitted are the ones that apply to the submission, with the opportunity for both the applicant and Commission to agree to any variation.
21. We appreciate that the Commission does not consider that any more certainty would be created by recording this position in an IM, but we disagree. We submit that, because an IM has the force of law, including this clarification in an IM would necessarily provide greater certainty for all participants.
22. If you wish to discuss this submission or any part it, please contact Oliver Vincent, [oliver.vincent@powerco.co.nz](mailto:oliver.vincent@powerco.co.nz), tel. (06) 757-3397, in the first instance.

Yours sincerely



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