23 January 2025

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

Firstlight Network (FNL, we) appreciate the opportunity to submit on the Commerce Commission's (the Commission's) Draft Decision and Reasons Paper: Proposed Amendments to Input Methodologies for Electricity Distribution Businesses (EDBs) and Transpower – Reopeners and Other Matters.

We understand that the Commission seeks views on proposed amendments to improve the clarity, workability, and alignment of input methodologies with their intended policy outcomes, particularly in relation to reopener mechanisms.

While we commend the Commission's intent to enhance the certainty and efficiency of the regulatory framework, we seek clarity on some aspects of the proposed amendments and make some suggestions.

Firstlight is a member of Electricity Networks Aotearoa (ENA). Firstlight supports the ENA's submission. We have highlighted issues where we seek further clarity.

Reprioritisation, efficiency gains and reopeners

Requiring EDBs to use efficiency savings to fund projects tied to price path reopeners, in the name of demonstrating reprioritisation, could very well discourage the pursuit of further efficiency gains (contrary to the statutory objective in section 52A of the Commerce Act). While the intention may be to ensure that EDBs meet regulatory needs, the unintended outcome could be a disincentive to pursue ongoing efficiency improvements.

We seek clarity from the Commission if the requirement in the IMs to demonstrate that 'planned Capex and Opex have been appropriately reviewed and reprioritised' implies that EDBs are expected to use any potential or expected efficiency savings for the remainder of the regulatory period to fund the costs associated with a reopener event. If so, could the Commission clarify how this aligns with the intent of the Act to incentivise EDBs to make Capex/Opex savings?

We understand discouraging cost savings is not likely to be an intended outcome. In that case, could the Commission explicitly clarify in the IMs how efficiency savings achieved by an EDB should be treated differently to other reprioritisation opportunities in a reopener event?

This would help to ensure that EDBs retain strong incentives to pursue efficiency gains without the concern that these savings might later need to be reprioritised to address unforeseen events. This approach would align with the broader regulatory objective of encouraging long-term efficiency improvements for the benefit of consumers.

Evidence demonstrating reprioritisation

We are concerned that demonstrating reprioritisation will involve considerable administrative effort and have unintended costs and challenges.

Managers and decision-makers will divert time and resources to focusing on justifying their decisions, rather than pursuing operational efficiencies or focusing on long-term strategic goals. This diversion of resources could result in opportunity costs, as the leadership team spends valuable time navigating regulatory requirements instead of working on initiatives that drive actual business performance improvements or cost savings.

The process of demonstrating reprioritisation can create delays in implementing critical projects or decisions, particularly if the approval or review process involves back-and-forth communication with the Commission. This uncertainty can cause project delays or disrupt financial planning, which could also lead to higher costs or missed opportunities.

EDBs would have to justify every allocation and reallocation of resources, the complexity of their financial and operational decision-making processes could increase.

We acknowledge that the intention behind requiring EDBs to demonstrate reprioritisation is likely aimed at promoting responsible financial management and ensuring regulatory compliance. However, this objective can only be effectively achieved if the criteria is applied with sufficient flexibility, taking into account the materiality of the reopener application value and ensuring that the scrutiny and reprioritisation efforts are proportionate to the value of the reopener. Without such proportionality, there is a risk of introducing significant regulatory burdens and additional costs, which may outweigh the benefits of the requirement.

Moreover, we also seek clear guidance on the criteria the Commission will use to assess the reprioritisation efforts of EDBs. EDBs may have prioritisation frameworks that differ from those of the Commission, reflecting their detailed understanding of their network needs and operational priorities. In such cases, it is important that the Commission recognises and respects the expertise of EDBs in determining the most effective and efficient allocation of resources. Providing clarity on the assessment criteria would ensure consistency and fairness in evaluations while acknowledging the unique knowledge EDBs bring to managing their networks.

Reopening the previous regulatory period

Firstlight Network was hit by Cyclone Gabrielle in February 2022. In August 2024, we applied to reopen Default Price-Quality Path Determination (DPP) 3 for FNL due to the impact of Cyclone Gabrielle as our network required remediation actions. The current draft decision suggests that we could have applied to reopen DPP3 in the DPP4 period.

Per clause 3.10 of the draft decision, ".... 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. "

Under this clause, it appears that DPP3 can be reopened in DPP4. However, the revenue recovery will only be available for Regulatory Year (RY)25 (01 April 2024 to 31 March 2025) “12 months prior to the beginning of the regulatory period” because the clause limits the recovery to 12 months.

The clause also allows the recovery to the end of the regulatory period. Does it mean a reopener application submitted in RY26 would have allowed reopening last year of DPP3 and also the recovery of Cyclone Gabrielle response spend until the end of DPP4?

We ask the Commission to provide further clarity on clause 3.10 of the draft decision and confirm if the intent is to allow reopening previous regulatory periods.

Flexibility in Input Methodologies (IMs) interpretation and the need for ex-post revenue recovery approval for prospective reopeners

The draft decision in Clause 3.15.1.1 to limit eligibility for prospective reopener events to ex-ante approval—allowing cost recovery only for operating expenditure (Opex) incurred or assets commissioned after an application is made—raises important concerns. While this approach aims to ensure regulatory consistency, it risks creating unintended barriers to timely and efficient investments.

Clause 3.12 of the draft decision suggests that the Commission considers the Revenue Effect Adjustment (REA) inappropriate for prospective reopener events. The rationale appears to be that such events (e.g., a new customer inquiry or demand triggers for capacity investment) provide advance notice, which allows Electricity Distribution Businesses (EDBs) to plan investments without requiring retrospective adjustments.

We appreciate the intent but unfortunately, this overlooks some practical challenges:

Some capacity upgrades require significant lead time for procurement (specially from international suppliers) approvals, and construction. If EDBs must wait to commission an asset or incur any Opex spend until a price-path reopener application is made, this could delay their ability to complete critical work efficiently and in a timely way. The result could be delayed upgrades, strained network capacity, inefficiency and potential dissatisfaction from customers or stakeholders.

Moreover, the restriction on recovering costs for assets commissioned before an application may deter EDBs from taking proactive measures and lead to a "wait-and-see" approach, reducing responsiveness in addressing network and customer needs. Conversely, EDBs may choose to apply for a reopener as soon as possible to ensure that future expenditure is covered.

The smaller EDBs might also face operational challenges in delivering large capacity upgrades within tight timeframes if they cannot start work early as it may require incurring Opex and commissioning some assets in the early stages. Additionally, the financial strain of funding projects upfront without guaranteed recovery could discourage investments in network expansion or improvement.

Furthermore, clause 3.1.3 highlights two key issues associated with cost recovery for prospective reopener events.

- Negative impact on efficiency incentives and cost-risk allocation
- Ambiguity in defining the "event date"

This assumption does not fully consider the natural incentive for EDBs to maintain competitive and efficient operations and avoid the likely inefficiencies created by delays in cost recovery if investments are postponed until the application is made.

There could be situations where EDBs must act proactively and initiate the projects for efficient and timely delivery even before the application to reopen the price-path is made. The proposed strict interpretations of IMs place a disproportionate risk on EDBs, requiring them to fund prospective projects upfront without a guarantee of timely cost recovery. A balanced approach would involve sharing this risk between EDBs and the customers and will allow conditional or partial cost recovery for pre-application efficient and prudent Opex incurred and assets commissioned subject to the Commission’s approval.

Moreover, the absence of a "definable event date" does not mean cost recovery should be dismissed altogether. A regulatory framework that accounts for prospective scenarios, even without rigid date definitions, would reduce ambiguity and better reflect real-world network operations. The Commission could define specific milestones as "event dates," such as when demand thresholds are exceeded, or a formal customer connection request is made. Alternatively, a flexible framework could allow EDBs to propose an event date, subject to regulatory review, based on network data and project planning evidence.

We propose that the IMs interpretation should remain flexible and that ex-post revenue recovery approvals (REAs) for prospective reopeners should remain at the Commission’s discretion.

Distinguishing price-quality path reopener criteria from reopener assessment factors

We agree that EDBs would not have any information if a project has/has not been provided for in a DPP. Hence, we propose introducing a formal preliminary review process, allowing EDBs to seek clarification on whether specific expenditures might be considered "not provided for" in a Default Price-Quality Path (DPP) before committing to a full application. This would help avoid unnecessary regulatory burden and improve efficiency for both applicants and the Commission.

Contact details

We would welcome the opportunity to meet with the Commission to discuss any points we have raised in our submission. To arrange this meeting or if you have any questions, please contact me via email at [redacted].

Yours sincerely

[redacted]

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