23 January 2025

Ben Woodham
Electricity Distribution Manager
Commerce Commission
Wellington 6140
By email: infrastructure.regulation@comcom.govt.nz

Dear Ben

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

Who we are

We are a group of the six largest price-quality regulated electricity distribution businesses (EDBs) in New Zealand (the Group) - Aurora, Orion, PowerCo, Unison, Vector and Wellington Electricity. We formed in 2021 around a shared objective of delivering future-ready electricity services to communities and helping shape regulation that supports that objective.

Big Six submission

The below submission is on behalf of the Group in relation to the Commerce Commission's (Commission) draft decision on proposed amendments to input methodologies (IMs) on reopeners and other matters.

Yours sincerely

Richard Sharp
On behalf of the Big Six

Executive summary

1 We understand and generally agree with the Commission's proposed amendments to the IMs to better give effect to the intended policy for reopener events. We welcome the opportunity to submit on the Commission's proposals. Reopeners will be an important tool for EDBs in DPP4, and it is important that the reopener mechanisms:

1.1 allow for an appropriate degree of flexibility, within the constraints of the low-cost DPP mechanism and incentives-based regulation;

1.2 are sufficiently clear that EDBs can plan around the availability of reopeners (including considering whether or not to seek a CPP); and

1.3 are proportionate and timely.

2 In this submission, we set out some practical considerations and drafting improvements that would offer EDBs improved certainty, which would better enable EDBs to self-evaluate the eligibility of reopener applications. This would, in turn, save the Commission time and resourcing and reduce regulatory delays that could impact the pace of customer or critical projects in DPP4. Ultimately, any administrative improvements that produce efficient outcomes for EDBs and the Commission will reduce costs to consumers and better promote the Part 4 purpose.

3 We have also set out some further proposals that are within the overall scope of the reopeners topic, albeit not the subject of the Commission's current consultation, which we hope the Commission will either address in this consultation or put on the agenda for future consideration.

(A) Revenue recovery: clarification of time limits and eligibility

4 As we understand it, the Commission proposes to:

4.1 distinguish between "responsive" reopener events, for which a backward-looking reopener event allowance (REA) will be available in addition to a forward-looking adjustment to the price-path, and "prospective" reopener events, for which only a forward-looking adjustment to the price-path will be available;

4.2 clarify that the reopener application date, rather than the date on which the amended DPP enters into force, determines which costs are eligible for inclusion in an adjusted price-path or REA, as applicable; and

4.3 prefer, where possible, to give effect to a reopener by means of an adjustment to the price-path rather than an REA.

Removal of reopener event allowances for prospective reopener events

5 We agree in principle with the Commission's concern to preserve the intended incentives that arise from setting expenditure allowances on an *ex ante* rather than *ex post* basis. Conversely, we also agree that it is appropriate in certain circumstances to allow for *ex post* recovery where an EDB is responding to an unanticipated cost driver.

6 However, the Commission's categorisation of foreseeable/unforeseeable large projects as prospective, and therefore ineligible for an REA, assumes that EDBs have the ability to respond to control or influence the timing or amount of those costs. Specifically, that:

6.1 EDBs have sufficient advance notice of large projects/programmes that they can complete the application process before incurring material costs; or

6.2 EDBs can defer or influence the timing of costs associated with large projects/programmes (without compromising consumer needs); or

6.3 EDBs can influence or control the amount of expenditure associated with large projects/programmes.

7 In practice many large project/programme reopeners will be customer-driven, or responsive to unanticipated circumstances or cost drivers, or cost drivers the timing of which was uncertain at the outset of the regulatory period.

8 In those circumstances, incentives are less relevant because EDBs have a limited ability to respond to those incentives. Particularly for customer-driven work, the timing of costs is largely outside of EDBs' control. Conversely, the inability to recover prudent and efficient costs already incurred in response to a reopener event has the potential to:

8.1 undermine financial capital maintenance and therefore incentives to invest; or

8.2 incentivise EDBs to defer large projects/programmes contrary to consumer demand. For example, EDBs may face a choice between progressing work on a customer-driven project in circumstances where costs associated with the early stages of that work will not be recoverable, or defer commencement of a project to allow for preparation of a reopener application.

9 In addition, even in the case of *ex post* recovery there is still a strong incentive to operate prudently and efficiently because the IMs provide that the Commission will only approve expenditure that meets the expenditure objective. EDBs therefore remain on-risk between the application date and the date of the Commission's decision that the Commission will not approve in full expenditure already incurred.

10 Making the application date the point of eligibility for cost recovery, rather than the effective date of the DPP amendment, is a partial solution to these challenges because it gives EDBs a greater degree of control over the point of eligibility. However, the application requirements for a foreseeable/unforeseeable large project reopener are detailed and involve a significant amount of analysis and preparation. In practice, in order to demonstrate that the project meets the criteria in clauses 4.5.9 and 4.5.10, the project will have to be reasonably progressed through the planning and development phases, and so EDBs will have incurred potentially significant costs in relation to a project before they are in a position to file an application that meets the criteria.

11 This is particularly the case given customers need certainty regarding the availability and timing of connections and capacity, and demand speed that does not parallel regulatory processes and timeframes. Often, an EDB needs to confirm customer work and finalise commercial contracts prior to, or in parallel with, preparing a reopener application. The consequences are that: (i) any costs incurred prior to the application date are unrecoverable, and (ii) EDBs are on-risk as regards costs incurred between the application date and the Commission's decision date.

12 This problem will be exacerbated by the Electricity Authority's regulatory proposals for network connections, which will mandate timeframes for delivering new connections. That will further limit EDBs' control over when and how costs are incurred.

13 The earlier EDBs can put down a marker after identifying the relevant cost driver, the better. To address this problem, we therefore propose that clause 4.5.2 is amended to provide that EDBs can nominate a prospective reopener event at the point that the applicable cost driver is identified, in a streamlined form, without providing all the information required by clauses 4.5.9 and 4.5.10. We would appreciate the opportunity to speak further with the Commission about what this may look like, especially to talk through the implications for projects which have a long lead-in time in which material costs are incurred before it is yet clear when we will be able to make a reopener application.

14 As well as allowing EDBs to recover costs incurred from the point an applicable cost driver is identified, we consider the above suggestion may assist the Commission's resourcing if it can anticipate a reopener application with some level of advance notice.

15 A further implication of the removal of REAs for prospective reopener events is that the Commission must decide a reopener application filed in respect of a disclosure year before the annual compliance statements for that year are finalised.

Certainty regarding point of eligibility

16 Whether on the Commission's current proposal, or our suggested approach above, certainty regarding the point of eligibility for cost recovery will be important for EDBs.

17 On the current drafting, it is unclear whether the point of eligibility is defined solely with reference to the date of application or the point at which the Commission accepts the application is complete. It is also unclear whether the Commission can reject an application for incompleteness and whether this would have the effect of moving the point of eligibility for cost recovery.

18 The Commission will want to ensure that EDBs don't secure eligibility by filing 'place-holder' applications that do not adequately describe the project or programme. On the approach we have proposed above, this would be less of a risk as a short-form nomination would be quicker and easier to verify as complete. But on either approach, we suggest the IMs include a step for the Commission to confirm the nomination or application as complete within, for example, four weeks so that both EDBs and the Commission have certainty regarding the point after which costs are eligible to be included in the reopener.

19 We also suggest the Commission clarify in the IMs the last point at which an EDB can apply for a reopener in respect of a regulatory period. Currently, clause 4.5.1(2) provides that a reopener event is an event that occurs in the regulatory period or in the 12 months before the start of the regulatory period. We infer that:

19.1 as regards a reopener event that occurs in the final year of a regulatory period, an EDB can apply for a reopener in that final year or in the course of the next regulatory period; but that

19.2 as regards a reopener event that occurs in years 1 to 4 of a regulatory period, an EDB cannot apply for a reopener once that regulatory period is concluded.

20 We do not think this reflects the complexities and challenges of a catastrophic event, ill-timed regulatory period and obtaining sufficient network, financial and regulatory information to apply to the Commission for relief. Vector, Firstlight and Unison have experienced that challenge in DPP3. Cyclone Gabrielle was in year 3 of the DPP but Vector and Firstlight's applications were received in year 5.

21 The Commission can better protect its discretion to promote Part 4 in rare but foreseeable circumstances, such as catastrophic events. We recommend that the clause is amended to add discretion to the Commission to approve a reopener event that occurs before year 5 on EDB request (much like the existing discretion the Commission has to reject a reopener application because it considers a CPP is more appropriate).

Preference for giving effect to a reopener by adjusting the price-path rather than an REA

22 The Commission has explained that it prefers that costs associated with a reopener are recovered via an adjustment to FNAR/ANAR rather than via an REA. As we read it, the Commission's position appears to be that it can adjust FNAR/ANAR for a disclosure year at any point up to the deadline for disclosure of annual compliance statements.[1] In other words, it is open to the Commission to amend allowable revenue for a disclosure year after the end of that disclosure year but before the compliance statement is submitted. Furthermore, the implication appears to be that the Commission cannot amend FNAR/ANAR in respect of a disclosure year once the annual compliance statement is submitted. This is on the basis, as the Commission says[2], that the regulatory year is "closed" when wash-up compliance disclosures are finalised.

23 We agree that flexibility is appropriate, but the IMs do not expressly provide that a reopener can adjust the price path in respect of a completed disclosure year. The concept of the disclosure year being "closed" when annual compliance statements are submitted, rather than on 31 March, does not appear expressly in the IMs. Absent that express provision, there is some ambiguity about the point at which it is no longer open to the Commission to make amendments in respect of a disclosure year. It would be at least reasonably arguable that the ability to reopen allowable revenue for a disclosure year expires at the conclusion of that disclosure year (i.e. on 31 March). We recommend the Commission clarify expressly in the IMs that the Commission can adjust FNAR/ANAR in respect of a completed disclosure year up to the deadline for submission of annual compliance statements[3].

24 The Commission should also clarify that it can similarly adjust FNAR/ANAR in respect of the final disclosure year in a regulatory period after the regulatory period is concluded, but before compliance statements are submitted. This will provide certainty that retroactive amendments to a price-quality path are available, once the regulatory period is concluded, a point particularly relevant for risk and catastrophic events.

25 If the Commission adjusts FNAR/ANAR after the end of a disclosure year, presumably the result is a wash-up calculation that includes an amount equal to the difference between the

---

1 See paragraph 3.15.2.2.

2 See para 3.29.

3 However, noting that any adjustment must leave sufficient time for audit/certification: see paragraph 25.2 below.

amended and unamended FNAR/ANAR, which this wash-up amount is then recoverable through prices in the n+2 regulatory year. It would be helpful if the Commission could confirm this understanding in its final decision reasons paper. This has two practical implications:

25.1 Because the default distributor agreement prevents EDBs from re-pricing within the year, any adjustment to FNAR/ANAR cannot be included in current year prices and would only be recoverable via the wash-up account. If the amendment is made early in the regulatory year, this means EDBs may have to wait close to three years before recovering costs. It would be helpful if the Commission could consider options to bring forward cost recovery; and

25.2 any amendment to FNAR/ANAR would have to be made with sufficient time to allow EDBs to work through audit and certification (i.e. not in the final weeks immediately prior to deadlines for annual price-setting compliance statements or annual compliance statements).

26 Finally, while we agree that it is preferable to give effect to the reopener via an adjustment to FNAR/ANAR rather than through an REA, where possible, the proposed IMs do not appear to make this explicit. New clause 3.1.1(5A) refers to amending the FNAR "for the disclosure year *in which the price path is amended*" (emphasis added), but:

26.1 on the Commission's proposed approach, the price path may be amended *after* the disclosure year is complete but before annual compliance statements are finalised. It would be more accurate to say in clause 3.1.1(5A) that FNAR is amended "for the disclosure year *in relation to which the price path is amended*" and, as described above, separately make clear that FNAR can be amended any time up to a certain point before the finalising of annual compliance statements. We note that any such amendment should allow some time for internal processes and certification of both compliance statements and annual price-setting; and

26.2 while the proposed new clause 3.1.1(5A) explicitly empowers the Commission to make a simplified calculation to amend the FNAR in respect of the relevant disclosure year (rather than amending the year 1 FNAR and projecting forward), the amendment does not explicitly provide that the Commission will adjust the FNAR, rather than determine an REA, where the reopener is decided before annual compliance statements are finalised. On its face, therefore, the IMs would still allow the Commission to either determine an REA or adjust FNAR in relation to expenditure incurred in relation to responsive reopener event prior to the application date.

(B) Revenue recovery: processes for reopening the revenue allowance

27 We agree with the Commission's proposal to allow for a simplified amendment to the FNAR in the relevant disclosure year, rather than the current approach of amending the year 1 FNAR and then projecting forward the sequence of FNAR and ANAR to the relevant disclosure year.

28 We have suggested above some minor clarifications to clause 3.1.1 to make this clearer.

(C) Revenue recovery: correction of technical implementation problems

29 We agree that the IMs should prevent double-recovery of the same costs through both an REA and an adjustment to the price-path. However, the potential for that double-recovery

depends on the Commission's interpretation of "additional net costs" in the definition of REA. The interpretation of that term was the subject of discussion in relation to catastrophic event reopeners in 2024.

30 In its email to EDBs of 11 April 2024, the Commission explained that "additional net costs" are limited to costs that are not recovered through the opex IRIS and capex wash-up adjustment. We understood that to mean that the only costs eligible for inclusion in an REA is the incentive rate on additional opex and capex that is not recovered in future prices as a result of IRIS penalties.

31 At paragraph 3.78 of the consultation paper, the Commission says that "costs" in the definition of REA includes capital costs, including return of and on regulated service asset values. We agree that is a better interpretation because it allows for recovery through the REA of expenditure on the same basis (i.e. depreciation and WACC) that the EDB would have been permitted to recover had the reopener entered into effect at the point the reopener event occurred. The Commission has indicated it intends to provide more detail in its guidance, but in our view this point is sufficiently material to the certainty the IMs are intended to provide that the definition should be clarified in the IMs themselves. In our view, "additional net costs" for purposes on REA should include:

31.1 return of and on capital for additional assets commissioned between the reopener event and the date of application as a result of the reopener event; and

31.2 opex incurred between the reopener event and the date of application as a result of the reopener event.

(D) Reopener criteria and assessment criteria: technical amendments to improve certainty and workability

32 The consultation paper includes a number of technical amendments to improve certainty and workability. We generally agree with those amendments, with some comments and suggestions.

33 We have also identified a number of other aspects in which the reopener provisions are either unclear or workability could be improved, set out in the table in the Annex to this submission.

(E) Additional issues

34 There are two matters within scope of the current consultation but on which the Commission is not currently consulting, which we would like to put on the Commission's agenda for further consideration.

35 First, while the uncertainty mechanisms in this DPP are a significant step forward, we continue to believe that additional uncertainty mechanisms would make for more efficient regulation. We appreciate the Commission has considered these in recent consultations on the IMs but would like to continue this conversation in light of the Electricity Authority's increased focus on new connections and growth. Additional uncertainty mechanisms will be important to ensure the DPP provides suitable flexibility to support the energy transition, particularly given the uncertainty this will create in terms of DER adoption and high volume/low-cost projects that may not meet the threshold for other reopeners. Without an appropriate level of in-period flexibility, EDBs are disincentivised from, or penalised for, responding to rapid changes in technology, consumer behaviour and demand for electrification.

36 Second, the major transaction and transfer provisions in the IMs and the DPP determination should be reviewed. Those provisions have a number of practical implementation problems that unnecessarily complicate transactions between EDBs, or by investors in EDBs. To take two examples:

36.1 the DPP determination defines as a "merger" any acquisition which gives one EDB a "substantial degree of influence" over another EDB, which could include the acquisition of a minority interest, including by a holding company. In that situation, the DPP determination requires adjustments to the price paths, even if the EDBs remain operationally separate and with largely separate ownership; and

36.2 the general rule where two EDBs merge is that the price paths are amalgamated. But given that most transactions will be effected by means of a share sale rather than asset sale, both regulated entities will continue to exist post-merger and could, in principle, continue to operate under separate price-quality paths. That may be an appropriate outcome where, for example, a financial investor owns multiple EDBs that are operationally separate. More flexibility should be available to EDBs to adjust or amalgamate price paths as is most appropriate in the circumstances.

Annex - Technical amendments proposed to the reopener and assessment criteria

Summary of proposed amendment	Comments
Changes proposed by the Commission	
Application of the 'change event' price-quality path reopener (draft decision 9.1) See clause 4.5.5 The draft decision is to amend the EDB IMs to ensure that the change event reopener for a legislative or regulatory change: • is defined symmetrically to include both positive and negative financial impacts on EDBs and Transpower; • includes revenue impacts on EDBs and Transpower in addition to cost impacts; • removes the current specificity on the types of costs (currently limited to capex, opex, or both); • applies an "impact on revenue" test as a basis for establishing the threshold with the proposed inclusion of revenue impacts; and • 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.	We agree with the proposed amendments, subject to the following comments. The Commission should clarify its approach under the low cost DPP to determining the scope and materiality of relevant changes. **Scope** The purpose of a change event is to fairly compensate EBDs for legislative or regulatory changes outside of their control. Defining the scope of relevant changes will reduce the Commission's evaluation of applications and improve EDB certainty informing policy processes requiring robust cost benefit analyses. A purposive and clear definition is *"a change to legislation or delegated legislation, or judicial clarification thereof, that has a material impact on forecast expenditure over a price path".* **Materiality** For example, whether the evaluation includes considering only legislative or regulatory changes that individually have a material impact on the price path (i.e. the EDB benefited from one change that reduced its investment need over the DPP by a material amount rather than several changes that collectively are estimated to become material). Forecasting the positive or negative financial impacts of multiple smaller (immaterial) changes would come with a disproportionate administrative burden for both parties.
Distinguishing price-quality path reopener criteria from reopener assessment factors (draft decision 10.1) See clauses 4.5.4(1) and 4.5.5(1) The draft decision is to remove the "not explicitly or implicitly provided for in the DPP" criterion from the reopener criteria for catastrophic events and change events. This is because it is not easily assessed by an applicant, requiring the Commission's	We agree with this proposed amendment.

Summary of proposed amendment	Comments
judgement. The criterion would still exist in the assessment factors.	
Catastrophic event reopener application criteria - treatment of quality requirements (draft decision 11.1) See subclauses 4.5.4(1)(i) and (1A) The draft decision is to amend 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). Instead, the threshold for the 'impact on quality standards' would 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.	We broadly agree with the policy intent of adopting a quantifiable measure, subject to the following comments: • the terms "SAIDI minutes" and "customer interruption minutes" are not defined anywhere in the IMs, which potentially introduces ambiguity. The terms "customer interruption minutes" and "SAIDI value" are the terms used in the DPP determination to describe 'raw' SAIDI, which we understand is what the Commission is intending to refer to here; • the meaning of the phrase "resulting from all unplanned interruptions that start within a 24-hour period" is unclear and could be clarified. •
Catastrophic event reopener application criteria - treatment of insurance (draft decision 12.1) See subclauses 4.5.4(1) and (2) The draft decision is to amend the threshold for catastrophic event reopeners to express it as a gross value (i.e. before the recognition of any insurance entitlements, third-party liability entitlements, and compensatory entitlements).	We agree with this proposed amendment.
Changes to mandatory considerations in price-quality path amendment assessment factors (draft decision 13.1) See clauses 4.5.13 and 5.6.12 The 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. The wording of the requirements in clauses 4.5.13 and 5.6.12 are intended to indicate 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". See clauses 4.5.2(3) and 5.6.2(3) 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. The	We agree with this proposed amendment subject to the clarification on the ambiguity about the timing for suppliers demonstrating the criteria have been met under clauses 4.5.2(3) and 5.6.2(3).

Summary of proposed amendment	Comments
Commission's intention is that the change would not prevent it from seeking (for example via the s 53ZD information gathering powers) and the EDB from providing additional information in response to such a request during the reconsideration process.	
CPP treatment of catastrophic events (Draft decision 14.1) Clauses 5.3.4 and 5.6.4 The draft decision is to clarify that the Commission may determine a claw-back amount for costs incurred in responding to a catastrophic event. In the IM Review 2023 the Commission 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. The clarifications are as follows: • 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 • amending the definition of 'catastrophic event' in the CPP IMs to reinstate the pre-2023 IMs 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.	We agree with this proposed amendment.
Inadvertent removal of the foregone revenue cap (draft decision 15.1) 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'). The purpose of the revenue foregone provisions was to ensure that suppliers bear some of the risk if an unforeseen major demand event occurs (e.g. a catastrophic event). These were inadvertently removed in the 2023 IM review. The Commission does not propose to reinstate these provisions at this time.	We agree with this proposed amendment.

Summary of proposed amendment	Comments
Further technical amendments we recommend	
Clause 4.5.2(4)(b) – process for the reconsideration of the DPP	Clarify that an application will not be rejected/considered incomplete solely because the Commission has requested information to assess whether a CPP application is more appropriate.
Clause 4.5.5 – Change event	Clause 4.5.5(2) provides that a change event is a regulatory or legislative requirement that applies as a result of new or amended legislation, or judicial clarification of legislation. It is not clear what the Commission considers is a "regulatory" requirement, as distinct from a "legislative" requirement, that applies as a result of legislation. Past decisions of the Commission have suggested the Commission construes the change event reopener very narrowly; for example the Commission decision to decline Vector's application for a reopener based on the passage of the Health and Safety at Work Act 2015. It would be helpful to have more clarity on the scope of the change event reopener for example, an IM definition as proposed above, and some idea of the kinds of regulatory or legislative requirement that the Commission is contemplating. For example, would the Commission consider it to be a change event if a local or regional council enacts a managed retreat adaptation plan that results in an EDB having to remove asset at cost and/or build new asset to accommodate the relocation?
Clause 4.5.7 – false or misleading information	The provision of false and misleading information constitutes a reopener event, but in contrast to other clauses that define reopener events, the meaning of this clause is unclear. It might more clearly read: *The discovery of false or misleading information will constitute a reopener event if the false or misleading information—* (a) *related to the making or amending of a DPP determination and was—* (i) *provided by an EDB [et seq]*
Clause 4.5.9/10 – unforeseeable/foreseeable large projects	The definition of unforeseeable/foreseeable large projects allows for recovery of resilience capex but not opex solutions. This means that, as between a capex solution and a more

Summary of proposed amendment	Comments
	efficient opex solution, the IMs as currently drafted encourage an EDB to prefer the capex solution. It is not clear why the IMs do not allow for recovery of opex solutions for resilience through a reopener. The Commission should consider the outcome that an EDB applies for a capex solution for resilience, is successful, and following certainty of the capex funding tenders an equivalent opex solution to ensure efficiency for its consumers. If the opex solution is more cost efficient for its consumers over the long-term, the EDB may better deliver a least cost life cycle basis solution by implementing the opex solution and relying on IRIS to equalise the capex underspend and opex overspend. Is that acceptable to the Commission?
Clause 4.5.10(1)(i)(iii) – foreseeable large projects	A requirement for a foreseeable large project reopener is that: (i) the project was included in the EDB's forecast used to determine the EBD, but (ii) excluded by the Commission from the expenditure allowance. Given expenditure allowances are fully substitutable, it is not clear what information/evidence EDBs should provide to demonstrate that a project is not included in the expenditure allowance. Having certainty on this issue is important as a number of EDBs whose AMPs were moderated in the DPP determination will be relying on an expectation that the foreseeable large project reopener is available to recover some of that forecast expenditure (without the need to apply for a CPP). We would appreciate more clarity in the IMs, or guidance from the Commission, on this issue.
Clause 4.5.13 and 4.5.15	Clauses 4.5.13 and 4.5.15 appear to set up a two-stage assessment process where the Commission: • first assesses under clause 4.5.13 "whether" to amend the DPP; and then • if the Commission has decided to amend the DPP, separately and subsequently decides under clause 4.5.15 how (i.e. to what extent) to amend the DPP. That two-stage approach, on a plain reading, suggests that the matters set out in clause 4.5.13 are relevant only to the binary decision whether or not to reopen and conversely are not

Summary of proposed amendment	Comments
	relevant to the question of how to amend the DPP. Is that what the Commission intends? Further comments on clause 4.5.13: • clause 4.5.13(1)(a) appears to duplicate the criteria that apply when determining whether or not a reopener event has occurred (e.g. FNAR thresholds); • under clause 4.5.13(1)(c)(ii)(B) it's not clear what the "adverse consequences" of a foreseeable/unforeseeable large project reopener event are. The language of "adverse consequences" is apt for a catastrophic event, but potentially not for other reopeners.
Clause 4.5.14 – Commission may determine CPP proposal more appropriate	There are a number of terms in this clause that are not clearly explained and could usefully be clarified; for example: • "a wide range of costs specific to the EDB that were used explicitly or implicitly to set the DPP" • "the materiality of the likely…quality of service effects on consumers of the amendment to the price path to mitigate the effect of the reopener event on the DPP" • "whether the amendment…is likely to have any upstream or downstream effects on the network" (for example, "*…downstream effects of material expenditure of quality impacts on the network*")
Clause 4.5.15 – Amending DPP after reconsideration	It is not clear what the relationship is between clauses 4.5.15(5)(a) and (b). (a) refers to "mitigating the effect" of the reopener event while (b) refers to "taking account of the change resulting from the reopener event". These provisions appear to significantly overlap, or alternatively the distinct meaning of these provisions is unclear. Clause 4.5.15(8) appears to duplicate (6).
Clause 5.6.1 – when a CPP may be amended	The DPP reopeners include "risk events", but this is a not a category of reopener under the CPP. In our view, the rationale that supports inclusion of the risk event reopener in the DPP applies equally in the context of a CPP, and should be considered for inclusion in the CPP IMs.
Clause 5.6.11 – unforeseen project	The criteria for unforeseen projects under the CPP IMs are much simpler than the equivalent reopener in the DPP IMs. The Commission may

Summary of proposed amendment	Comments
	want to consider whether the criteria in the IMs sufficiently capture the matters that the Commission would intend to consider in practice. If not, then the IMs should be amended so that EDBs have more clarity on how this reopener will function. We would also appreciate the Commission's confirmation that, unlike the unforeseeable large project reopener in the DPP, the unforeseen project reopener in the CPP can apply to any category of expenditure, including asset renewals, and is not limited to those categories of expenditure that are recoverable under the equivalent DPP reopener.