



MAJOR ELECTRICITY USERS' GROUP

3rd November 2016

Keston Ruxton
Manager, IM Review
Commerce Commission
By email to im.review@comcom.govt.nz

Dear Keston

Submission on proposed Part 4 treatment of EDB decisions on live-line work

1. This is a submission by the Major Electricity Users' Group (MEUG) on the Commerce Commission's email titled "Letter received from the Electricity Networks Association on the impact of a reduction of live line work on Non-Exempt EDBs under the Default and Customised Price Quality Path" dated 21 October 2016.¹ The letter from ENA is not dated.² The Commission published no analysis of ENA's proposals.
2. MEUG members were consulted on the overall approach in this submission. This submission is not confidential. Some members may make separate submissions.
3. Tabling of the ENA letter so late in the IM review process, a short turnaround for submissions, no cross-submission phase and no initial view from the Commission, is not in MEUG's view, a good consultation process or conducive to effective feedback from resource constrained consumers'. This is neither a trivial nor a clear cut topic as we explain in the following paragraphs. The prudent course of action for the Commission is to park the proposals for consideration until after the current IM review has concluded. Then in a separate process the Commission could consider the pros and cons of the proposed earlier amendment to IM that would affect current DPP and CPP.
4. The letter by ENA begins with a chronology of events starting with the commencement of the Health and Safety at Work Act 2015, discussions with MBIE's Worksafe and concluding with the electricity supply industry deciding to voluntarily develop a guideline for live-line work. MEUG notes the bedding in of how requirements in the Health and Safety at Work Act 2015 has and is expected to affect most businesses in New Zealand to a lesser or greater extent. EDBs are no exception.

¹ Email URL <http://www.comcom.govt.nz/dmsdocument/14872>

² URL <http://www.comcom.govt.nz/dmsdocument/14873>

5. Businesses in workably competitive markets have had to make decisions on managerial time and resourcing to meet the requirements of the Health and Safety at Work Act 2015 including assessing where after the “bedding in stage” the long-term optimum might look like. There should be no exception to EDB having to make these decisions and trade-offs as to where resources should be allocated.
6. ENA predict that the guidelines the supply industry has voluntarily decided to adopt will lead to EDB, subject to DPP or CPP, breaching their quality targets. No evidence or forecasts are tabled by ENA detailing the expected probability distribution of the increased frequency of quality breaches. Neither is any analysis provided of the constraints EDB face in re-allocating operating and maintenance budgets or introducing new maintenance or testing processes to mitigate the harm to consumers from breaching quality thresholds or reducing the risk of breaching quality standards for the balance of this regulatory control period (RCP₂₀₁₅₋₂₀) to 31 March 2020. These are the sorts of trade-offs other businesses face and we suggest EDB also need to consider if Part 4 is to mimic the pressures of workably competitive markets.
7. MEUG notes a risk that the live-line work guideline developed voluntarily by EDB may not reflect that of a line company with sufficient scale that they can implement better processes for managing live-line work and or re-allocate resources to adapt to having less live-line work. An example of the latter is the use of drones for line inspections. That technology may be beyond the capability of some EDB but not larger EDB.
8. Even if ENA were to have robust evidence that some EDB (despite taking all possible steps to avoid breaching their quality thresholds) will in all likelihood breach their quality thresholds over the next 3½ years of RCP₂₀₁₅₋₂₀, MEUG does not support amending the IM to have a quality standard re-opener to apply to current DPP and CPP. The design philosophy for DPP and CPP are ex ante “set and forget” incentive regimes with re-openers kept to a minimum by having a materiality test to avoid intra-RCP “gaming” or “cherry picking” by EDB with better information than the Commission or consumers.
9. If the Commission were to agree this one-off change to IM it would create a precedent for EDB to seek further one-off changes and reduce incentives to improve operating efficiency. In effect EDB would be incentivised to cherry pick for adverse changes in legislation knowing they can bank beneficial changes in legislation because consumers have no opportunity to seek re-openers.
10. Another reason to be wary of amending IM for re-openers outside the not less than seven year IM review cycle is to avoid diluting the incentive on EDB to provide as much relevant information as possible on expected costs including uncertainties from new legislation ahead of starting prices and price-quality paths being set for a new DPP. If EDB know the Commission is not averse to making intra-RCP changes to IM for new reasons to trigger re-openers then that becomes a backstop should EDB fail to recognise and advise the Commission of such risks. The uncertainties and risks of the Health and Safety at Work Act 2015 were well known ahead of the commencement of the current DPP.
11. ENA have proposed the 1% of allowable revenue criteria for a change event be removed. There is no evidence in the ENA letter, including for the specific topic of live-line work as noted in paragraph 6 above, supporting the proposition that removing the 1% of allowable revenue criteria would result in a materially better outcome. On the basis of lack of empirical data for the live-line work example alone MEUG does not support this proposal.

12. There is a more fundamental reason why MEUG does not support removal of the 1% of allowable revenue criteria and that is without a materiality threshold there will be an incentive on EDB to continuously propose re-openers wherever there is a detriment to their position. This will create costs to EDB in developing such proposals that consumers will pay for and additional costs to the Commission to assess proposals that also will be passed through to consumers. Until evidence is tabled demonstrating that the 1% of allowable revenue criteria is not optimal then the Commission should make no change.
13. Finally MEUG notes that changes in legislation affecting a wide range of businesses including EDB occur frequently within a RCP. It would be bizarre if each time a piece of legislation was changed that had a potential effect on EDB, even though not specifically targeted at EDB, it would trigger a re-opener. Legislation targeted at EDB should be within scope of consideration for a re-opener but not legislation affecting a wide range of sectors.
14. Arguably the ebb and flow of legislative changes with both beneficial and detrimentally effects on EDB and consumers during a RCP are systematic risks captured in the estimated forecast asset beta.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Matthes', with a long horizontal stroke extending to the right.

Ralph Matthes
Executive Director