

2 October 2018

Sue Begg
Deputy Chair
Commerce Commission
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Dear Sue

Commission's response to Vector's request to re-open the DPP

Thank you for the opportunity to comment on your letter of 5 September 2018, setting out the Commission's initial view on Vector's request to re-open the default price-quality path ("DPP"). As you know, the re-opener request was triggered by Vector's introduction of new policies and practices related to live lines and downed lines ("live line policies"). These policies were designed to protect our workers and the public from harm and meet our obligations under health and safety law.

We are encouraged by the Commission's statement that "it is unlikely that enforcement action would be warranted" where a quality standards breach by Vector or another EDB was "solely because it had legitimately and efficiently de-energised lines for safety reasons". This is an important step forward in the Commission's position and provides a degree of reassurance to Vector and other EDBs. However, we are concerned that the statement does not provide full certainty regarding the Commission's approach to enforcement action. It is also unclear how the Commission would determine that a breach was caused "solely and legitimately" by live line policies. We would welcome further guidance from the Commission on this issue.

We also fundamentally disagree with the Commission's view that the reforms to health and safety legislation introduced under the Health and Safety at Work Act 2015 (HSWA) do not constitute a "new or changed regulatory requirement", and therefore do not meet the criteria for a "change event" under the DPP re-opener provisions. While the language of the HSWA may be superficially similar to the previous Health and Safety in Employment Act 1992 (HSE), it is clear from the legislative background and the purpose statement that the introduction of the HSWA was a major reform designed to bring about a 'step change' in New Zealand's health and safety culture.

We have attached a second legal opinion from R B Stewart QC, setting out his view on the Commission's position and on the legal advice provided to the Commission by Paul Wicks QC. Mr Stewart's advice is that Vector's decision to cease most live line work was an entirely appropriate response to the new legislation. He considers that if this matter is tested, a Court will have little difficulty in concluding that the HSW Act is a "changed or new legislative requirement".

In addition to the legal opinion, we have sought advice from international health and safety experts regarding the introduction of Vector's live line policies. Once it has been finalised, this advice will be shared with the Commission as additional evidence in support of our submission.

In conclusion, while we welcome the shift in the Commission's position on enforcement action, we continue to believe that adjusting the relevant quality standards via a DPP re-opener is the correct course of action from both a legal and ethical perspective. Vector has done the right thing by prioritising the safety of our people and the public above all other considerations, and should not face financial losses or risk of enforcement action as a result.

In the meantime, we will continue to work hard to mitigate the impact that our live line policies have had on some customers in terms of longer outages. We will also work constructively with the

Commission to ensure regulatory settings for 2020 onwards appropriately reflect the significant changes to the operating and legislative environment, recognise the need to prioritise safety above all, and do not discourage others in the industry from adopting similar safety policies.

Yours sincerely,



Richard Sharp
Head of Regulatory and Pricing
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