

29 May 2020

PO Box 1017
Wellington 6140
New Zealand

Fibre regulation
Commerce Commission,
PO Box 2351,
Wellington 6140.

Upload via website

Re: Fibre regulatory processes and rules IM

Dear Commission

This letter contains the ENA submission on the Commission paper “Fibre input methodologies: Draft decision – reasons paper (regulatory processes and rules)” and the accompanying draft determination that were published on 2 April 2020. Thank you for the opportunity to provide feedback.

[Overall comments](#)

We note the general similarity between the processes and rules in this draft fibre IM and the processes and rules that are employed in the IMs developed under Part 4, both at a principle level and across much of the detail. We are very supportive of the Commission maintaining a consistent approach to economic regulation across different industries and only varying regulatory conditions where specific industry circumstances warrant it. A high level of regulatory certainty is important to the provision of regulated services to consumers at the right price and quality levels.

[Some specific issues](#)

We have a few matters that we feel should be commented on but would caution against interpreting our ‘silence’ on more substantive fibre IM matters as tacit support for them.

We observe the Commission’s revised views on pass-through costs in this draft decision compared to the 2019 RPR topic paper. At a principle level this concerns us because it reveals an inconsistency between this draft IM and the pass-through provisions in the Part 4 IMs. In para 54 the Commission sets out its criteria for assessing pass-through costs and the subsequent paras describe the application of the criteria to telecommunications levies (which

are included as pass-through), costs of disputes schemes and local body rates (which are both excluded on the basis that these costs can be managed by the regulated fibre entity).

While we note that the exclusion of these latter costs is inconsistent with Part 4, where they are pass-through, we struggle to understand how disputes costs and local body rates can be influenced in a practical sense. Local body rates are often pass-through items in commercial leases and as such are excluded from rental negotiations simply because Councils have the statutory right to increase rates. No matter what a regulated entity does these entities cannot impact this right so this type of cost is inherently better kept as a pass-through for fibre IMs.

In particular we note that Councils have the right to change rating methodologies, which can result in substantial, unpredictable changes (almost always increases) in rates, which cannot be readily addressed in forecasting revenue requirements. It would be a particularly onerous administrative effort for regulated businesses to obtain information from local authorities across the country on projected rates increases over five-year regulatory periods to ensure reasonable allowances are made in reset decisions.

ENA member participation in the Utilities Disputes scheme is not voluntary and we cannot influence how much exposure we have to the scheme. The right to appeal to UDL is broad so members must deal with claims irrespective of whether the claimant has a legitimate grievance or not.

We consider that these two cost categories should be included as pass-through costs for Chorus.

Kind regards

A handwritten signature in black ink, appearing to be 'David de Boer', written in a cursive style.

David de Boer
Principal Advisor
Electricity Network Association