

12 December 2008

Electricity Commission  
Level 7, ASB Bank Tower  
2 Hunter Street  
Wellington

*by email: [submissions@electricitycommission.govt.nz](mailto:submissions@electricitycommission.govt.nz)*

## **SUBMISSION ON ARRANGEMENTS FOR ROLLING OUTAGES CONSULTATION PAPER**

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to submit on the papers released by the Electricity Commission (the **Commission**) in November 2008 on:
  - 1.1 *arrangements for rolling outages consultation paper (the paper);*
  - 1.2 the proposed amendments to the automatic under frequency load shedding (AUFLS) rule
  - 1.3 the proposed amendments to the *Electricity Governance (Security of Supply) Regulations (the amended regulations);* and
  - 1.4 the Commission's draft *security of supply outage plan (the SOSOP).*
- 2 Our submission is in two parts:
  - 2.1 general comments, including comments about liabilities, AUFLS and supply shortage declarations; and
  - 2.2 our response to the specific questions raised in the paper, which we set out in the schedule to this letter.

## **General comments**

- 3 Orion considers that security of supply is of utmost importance to both customers and the industry and we support the need for a planned approach to the co-ordination of industry response to those low probability high impact situations that may lead to the need for rolling outages.
- 4 In our submission to the Commission's previous consultation on this issue<sup>1</sup>, we indicated our broad agreement with the proposed regulations and the SOSOP. At that time we believed some areas needed further consideration and improvement. In particular the areas relating to:
- 4.1 Liabilities
  - 4.2 grid emergencies and AUFLS; and
  - 4.3 making a supply shortage declaration
- 5 We consider that the Commission's current proposals provide some improvements in relation to our earlier concerns. However, we consider that these same areas of concern still require further consideration and improvement. We expand on these concerns below.

## **Liabilities**

- 6 While it is pleasing to see that the Commission recognises that the implementation of rolling outages may present some legal risks for distributors, the issue of liability was an issue of some concern to Orion and others during the 2006 consultation.<sup>2</sup>
- 7 We remain concerned that the Commission has yet to appropriately address the issue of liabilities faced by distributors in complying with the proposed regulations.
- 8 The paper indicates that the Commission has raised this issue of liabilities with the Ministry of Economic Development as a matter to be considered in any future review of the Electricity Act. However, there is no indication that the Commission will pursue this issue further.

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<sup>1</sup> Submission on rolling outages consultation 27 October 2006

<sup>2</sup> We note that our legal advice at the time contradicted the Commission's advice in relation to the limitations of liability under the Electricity Act.

- 9 The Commission acknowledges that the draft regulation presents some legal risks for distributors. In our opinion the draft regulation implies that distributors should be acting in a socially optimal way and not out of a concern to limit potential liability to them.
- 10 In order to illicit this socially optimal response we recommend that the Commission should be proactively seeking an urgent amendment to the Electricity Act as part of this current process to ensure that the objectives of the rolling outage regime are not defeated by participants concern to mitigate potential claims against them.

## **AUFLS**

- 11 We are please to see that the Commission has addressed, to some extent, the issues we raised in our 2006 submission relating to AUFLS. However, we remain concerned about the practicalities of implementation.
- 12 We agree with the proposal that the AUFLS requirements should be relaxed under rule 6.5A of the Rules if a direction under regulation 10 of the Electricity Governance (Security of Supply) Regulations 2008 is in force.
- 13 However, the proposal still lacks certainty for distributors in that the System Operator (SO) may amend or revoke any notice given under 6.5A.5 that modifies the requirements of rule 6.1 and 6.3. The effect of this ability of the SO to amend or revoke any relaxation of Rules 6.1 and 6.3 is that distributors would still have to plan based on a worse case scenario that feeders with AUFLS relays would not be available to participate in a rolling outage plan.
- 14 That any participant outage plan (POP) must cater for the inclusion of AUFLS is made clear in clause A4 of the "guidelines for distributors' participant outage plans"<sup>3</sup> which requires that the distributors plan should set out "*How any automatic under frequency load shedding (AUFLS) requirements will continue to be met when rolling outages are being implemented*".
- 15 We recommend that the Commission further consider this issue with the SO to provide some level of additional certainty for distributors planning.

## **Making a supply shortage declaration**

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<sup>3</sup> Appendix A of the Commissions draft security of supply outage plan

- 16 We are pleased to see a number of improvements in the communications and notice provisions of section 8 “Making a supply shortage declaration and issuing directions” of the SOSOP rather than including these issues in the Emergency Response Plan as set out in the previous draft SOSOP<sup>4</sup>.
- 17 However, while the current proposal is an improvement it still lacks the required level of specificity to give distributors confidence that they will be able to respond. The notice must provide sufficient notice to distributors (and hence then consumers) of any rolling outages.
- 18 The notice provisions in the draft SOSOP only require “endeavours” by the Project Manager to provide **up to** 14 days notice of a supply shortage declaration and **up to** 7 days advanced notice of a savings target for a category A type event.
- 19 We consider that the Commission should be for more definite in respect of the notice period for a category A type event, which by definition is an event which evolves over time. Additionally the Commission is envisaging a staged approach with a Security Alert Phase preceding the declaration of an emergency situation, which should provide ample opportunity to provide notice.
- 20 Orion recommends that the notice period for a Category A type event should be **at least** 14 days for both the supply shortage declaration and the advanced notice of a savings target. The delay in advice of the savings target is unacceptable as the amount of savings required will be a critical factor in implementing any communications plan.

### **Reasonable targets and compliance**

- 21 We consider that settings of targets will be an imprecise exercise and as such the Commission must apply a degree of reasonableness in considering compliance. For example if we submit a plan that would cut feeders equating to 10% of load we would not expect to be penalised for only getting 9% savings that week.
- 22 We consider that monitoring of compliance should more appropriately be a consideration of a specified participant’s adherence to the approved plan and any amendments agreed during the time of the event.

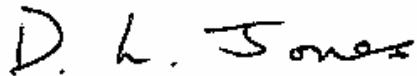
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<sup>4</sup> <http://www.electricitycommission.govt.nz/pdfs/opdev/secsupply/pdfsconsultation/SOS-Outage-Plan-Sep06.pdf>

### **Concluding remarks**

- 23 Thank you for the opportunity to make this submission. Orion does not consider that any part of this submission is confidential. If you have any questions please contact Dennis Jones (Industry Developments Manager), DDI 03 363 9526, email [dennis.jones@oriongroup.co.nz](mailto:dennis.jones@oriongroup.co.nz).

Yours sincerely

A handwritten signature in black ink that reads "D. L. Jones". The letters are cursive and slightly slanted to the right.

Dennis Jones  
**Industry Developments Manager**

## SCHEDULE

### Responses to the Commission's questions

No.	Question	Comments
1	Do you agree with the set of reasonably practicable options that the Commission has identified for the Security Regulations? If not, what other option(s) would you propose and why?	Yes
2	Do you agree with the set of reasonably practicable options that the Commission has identified for the AUFLS Rule? If not, what other option(s) would you propose and why?	Yes. We consider that the Commission needs to do more work with the SO to provide a greater degree of certainty over whether AUFLS will be required, otherwise distributors will have to plan based on an assumption that they will be required,
3	Do you agree with the content requirements for the SOSOP? If not, what changes would you propose and why?	We agree with the content requirements of the SOSOP, however we consider that the relationship between the SOSOP and the ERP remains unclear.
4	Do you agree with the proposed contents requirements for Participant Outage Plans? If not, what changes would you propose and why?	Yes
5	Do you have any comments on the other requirements for POPs set out in the Amended Security Regulations?	<p>Yes, we consider that that the requirement of regulation 8G to make the POP available to the public on an internet site is inappropriate. We expect that in most cases the POP will be at a high level, with actual operational details being worked out closer to the event when target levels are known. We consider that the plan would provide little specific value to the public while it may give rise to unnecessary concern. We consider that the requirement under regulation 8F for the plan to be approved by the Commission should be sufficient.</p> <p>We are also concerned that the regulations do not provide a time frame for participants to produce a plan, rather it is left to the Commission to specify a date for submission under regulation</p>

		8A(2)(b). We consider that the regulations should provide a specific time frame of at least three months for specified participants to submit a POP following the gazetting of the SOSOP or amendments to the SOSP.
6	Do you agree that the Amended Security Regulations should give the Commission flexibility to be able to require any "specified participant" (within the meaning outlined at paragraph 8.2.6) to prepare a security of supply outage plan?	<p>Yes. We note that the Commission currently proposes to require only distributors and direct-connect customers over 80GWh to prepare plans. However, we agree that the Commission should reserve its right to require any "specified participant" to prepare a security of supply outage plan.</p> <p>Once the Commission has received and evaluated plans from distributors and direct connect customers over 80 GWh it can then decide whether it needs other participants to prepare plans as a means to address any shortfalls. We also consider the Commission should reserve the right to require a plan from Transpower. This may be needed, for example, if load reductions greater than 25% are required and it is more appropriate for Transpower to roll outages by grid exit points or regions.</p>
7	Do the regulations contain appropriate restrictions on the circumstances in which the Commission can make a supply shortage declaration? If not, what amendments would you propose, and why?	<p>Yes. Separate from the regulations the Commission needs to ensure that the SOSOP/ERP describes the spectrum of likely events that will lead to a declaration, the thresholds the Commission will apply in making the decision to declare rolling outages are required and how the Commission intends to determine the direction it will give.</p>
8	Is it appropriate for the Commission to have the power to direct any specified participant to implement outages to achieve specified energy savings targets	<p>Yes, it is appropriate for the Commission to have the power to direct any specified participant to implement outages to achieve specified energy savings targets.</p> <p>However, the Commission must ensure that any such participant that it directs to implement outages is indemnified from any liabilities that may arise from the participant responding to this direction.</p> <p>We would expect that the day to day operational issues related to the specified participant acting in accordance with its approved plan would be dealt with by the system operator.</p>
9	Is the Commission right to defer consideration of an administrative pricing regime, pending completion of the Market Design Review?	<p>No, by definition the market has failed at the point where rolling outages have been directed, therefore only an administrative price can apply. A price set at the value of lost load (VOLL) determined by the Commission could be appropriate.</p> <p>Also, Orion does not consider that the Commission's suggestion that distributors could give purchasers enough information to supply reasonably accurate bids is practical. It is questionable whether purchasers supply reasonably accurate bids during normal circumstances.</p>

		We therefore consider it impractical to suggest that distributors should give purchasers information when the market mechanism has failed and centralised intervention is occurring.
10	Do you agree with the Commission's proposal that enforcement of the Amended Security Regulations (except for information provision) should be through the compliance regime of the EGRs? If not what alternative do you propose and why	Orion supports the intent of the proposal to provide for enforcement under the EGR's. However, we are concerned that this may give rise to unlimited liability in the form of possible compensation provisions that are available under the compliance regime of the EGRs. This issue needs to be addressed by the Commission and appropriate limits to any liability under these provisions implemented.
11	What is the nature and extent of the legal risks that distributors face in implementing outages? Are these legal risks likely to prevent distributors from planning for and implementing rolling outages in a socially optimal way?	<p>If the proposed regulations provided that the Commission could direct the specified participant to implement outages, based on a plan that had been developed by the Commission, we understand that the specified participant could not be liable in tort for negligence, as the participant would be complying with the law.</p> <p>However, the proposed regulations do not operate in this manner. Instead, the Commission requires a specified participant to develop that participant's outage plan. In developing that outage plan, it is reasonable to assume that there is sufficient "proximity" to consumers and that a duty of care in the tort of negligence will arise. Therefore, a specified participant could potentially be liable in tort for preparing and implementing a participant outage plan.</p> <p>In addition, we understand that by necessity a participant's outage plan will have a degree of generality. Therefore, the participant will need to exercise judgement to implement the plan. This again could result in a participant being liable in tort for negligence.</p> <p>We are concerned that the answer to the second part of the question is clearly yes.</p>
12	Are the information gathering provisions in the regulations appropriate?	Yes
13	Do you agree with the Commission's proposed approach to addressing overlaps between the proposed rolling outage arrangements and AUFLS requirements? If not, what alternative approach would you propose, and why?	<p>No. We are please to see that the Commission has addressed to some extent the issues we raised in our 2006 submission relating to AUFLS. However we remain concerned about the practicalities of implementation.</p> <p>We agree with the proposal that the AUFLS requirements should be relaxed under rule 6.5A of the Rules if a direction under regulation 10 of the Electricity Governance (Security of Supply) Regulations 2008 is in force.</p> <p>However, the proposal still lacks certainty for distributors in that the System Operator (SO) may amend or revoke any notice given</p>

		<p>under 6.5A.5 that modifies the requirements of rule 6.1 and 6.3. The effect of this ability of the SO to amend or revoke any relaxation of Rules 6.1 and 6.3 is that distributors would still have to plan based on a worse case scenario that feeders with AUFLS relays would not be available to participate in a rolling outage plan.</p> <p>That any participant outage plan must cater for the inclusion of AUFLS is made clear in clause A4 of the “guidelines for distributors’ participant outage plans”<sup>5</sup> which requires that the distributors plan should set out “How any automatic under frequency load shedding (AUFLS) requirements will continue to be met when rolling outages are being implemented”.</p> <p>We recommend that the Commission further consider this issue with the SO to provide some level of additional certainty for distributors planning.</p>
14	<p>Do you agree with the Commission’s specification of those parties that should be required to develop participant outage plans? If not, what alternative specification would you propose, and why?</p>	<p>Yes, subject to our comments in response to question 6 above.</p>
15	<p>Do you agree with the proposed system operator role? If not, what changes would you propose, and why?</p>	<p>Yes</p>
16	<p>Do you agree that the Commission should include the priority order set out in the table, pending its review of the relative cost of outages to residential and non-residential consumers?</p>	<p>Yes, as this provides a useful guideline to the development of the POP.</p>
17	<p>Are the proposed requirements and guidelines for distributors for preparing their participant outage plans appropriate? If not, how</p>	<p>Yes</p>

<sup>5</sup> Appendix A of the Commissions draft security of supply outage plan

	should they be changed?	
18	Are the proposed requirements for direct-connect consumers for preparing their participant outage plans appropriate? If not, how should they be changed?	No Comment
19	Is the “high probability” test for making a declaration appropriate? If not, is there a better test that the Commission should apply?	<p>We agree that for category A emergencies a simple approach is required, whereby the Commission assesses whether there is “high probability” that, in the absence of managed energy saving rolling outages, a sustained period of forced load reductions under grid emergency provisions would be required.</p> <p>It is not so apparent that this test would apply in a category B emergency, where the situation is more likely to be a capacity constraint rather than an energy constraint. In the category B case it is more likely that the ‘time to repair’ will be the predominant test.</p>
20	Are the Commission’s intentions for advance notice of a declaration and of savings targets reasonable?	<p>No, while the current proposal is an improvement it still lacks the required level of specificity to give distributors confidence that they will be able to respond. The notice must provide sufficient notice to distributors (and hence then consumers) of any rolling outages.</p> <p>The notice provisions in the draft SOSOP only require endeavours by the Project Manager to provide up to 14 days notice of a supply shortage declaration and up to 7 days advanced notice of a savings target for a category A type event.</p> <p>We consider that the Commission should be for more definite in respect of the notice period for a category A type event, which by definition is an event which evolves over time. Additionally the Commission is envisaging a staged approach with a Security Alert Phase preceding the declaration of an emergency situation, which should provide ample opportunity to provide notice.</p> <p>Orion recommends that the notice period for a Category A type event should be <b>at least</b> 14 days for both the supply shortage declaration and the advanced notice of a savings target. The delay in advice of the savings target is unacceptable as the amount of savings required will be a critical factor in implementing any communications plan.</p>
21	Does the draft SOSOP contain appropriate guidelines for determining individual savings targets for distributors and direct-connect electricity users?	No. While we have previously submitted that in regard to “category A” type emergencies, that we agreed with the simple approach of calculating a percentage level of savings and calculating a target for each participant, referencing the required savings to the electricity used in the same period of the previous year.

	<p>If not, how should the Commission determine what directions to give to participants?</p>	<p>We now consider that while the above approach has merit in its simplicity we consider that targets will need to be set on the SO forecasts of demand patterns and take into account the generation and grid constraints related to the particular event.</p> <p>We also consider that we will be complying with the approved plan, and while reasonable endeavours will be used to comply with the plan and achieve the savings required, we cannot be responsible for achieving a particular MWh target.</p> <p>In regard to category B emergencies, we consider that the Commission should consider using a demand target in MW for transmission issues as this is more likely to be of relevance than an energy measure.</p>
22	<p>Do you agree with specifying savings targets as an amount of energy in MWh that can be used over the specified network over a specified time? If not, how should the savings targets be specified?</p>	<p>See our response to question 21</p>
23	<p>Is it appropriate for savings targets to be determined by reference to (and measured against) electricity use in the same period of the previous year? If not, how should the savings targets be set?</p>	<p>See our response to question 21</p>
24	<p>Should the Commission take additional factors such as composition of load and prevailing climate into account when setting individual savings targets (given the increasing complexity this could create)? If so, how could this be achieved?</p>	<p>We consider that it would be possible to broadly consider geographic location and climatic conditions. However, we recommend that this be a simple process. For example, New Zealand could be split into three or four regions based on average temperature with a simple scaling factor to reduce the amount of load required to be shed in the colder regions</p>
25	<p>Do you consider the proposed monitoring requirements are</p>	<p>We have reservations about the proposed monitoring of savings; clearly any target value will be an estimate and extremely susceptible to climatic conditions and customers response.</p>

	<p>appropriate? If not, what alternative arrangements would you propose and why?</p>	<p>Estimation of savings is of necessity an arbitrary consideration of a number of estimates, and any monitoring must be accompanied by a reasonableness around target setting and compliance (e.g. if we submit a plan that would cut feeders equating to 10% of load we would not anticipate being penalised for only getting 9% savings that week).</p> <p>We consider that monitoring of compliance should more appropriately be a consideration of a specified participant's adherence to the approved plan and any amendments agreed during the time of the event.</p>
26	<p>Do you consider the proposed communications requirements are appropriate? If not, what alternative arrangements would you propose and why?</p>	<p>Yes.</p>
27	<p>What comments do you have on the Commission's assessment of the costs and benefits of the proposed Amended Security Regulations, and of the reasonably practicable options, and of the extent to which each meets the objectives?</p>	<p>We have noted our concern above in relation to liabilities and the issues around AUFLS we consider that these concerns must be addressed for a proposal to meet the objectives.</p>
28	<p>What comments do you have on the Commission's assessment of the costs and benefits of the proposed Amended AUFLS Rule, and of the reasonably practicable options, and of the extent to which each meets the objectives?</p>	<p>We have noted our concern above in relation to the issues around AUFLS we consider that these concerns must be addressed for a proposal to meet the objectives</p>