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SUBMISSION ON INFORMATION DISCLOSURE DISCUSSION PAPER

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the Information Disclosure discussion paper (the **paper**) released by the Commerce Commission (the **Commission**) in July 2009.
- 2 Our submission is in three parts:
 - 2.1 our summary of the key issues;
 - 2.2 our comments on specific chapters; and
 - 2.3 our response to selected questions.
- 3 We have also been associated with the ENA submission on this issue and we endorse their recommendations.

1. Summary of the key issues

Do not pre-empt input methodologies

- 4 To fulfil the overall purpose of the regulatory regime the Commission should seek to reward parties who are genuinely more innovative, and more customer focussed with higher returns thus replicating what happens in competitive markets. We think this is an admissible objective however we are concerned that in trying to develop the proposed performance measures relating to whether one company is more customer focussed or innovative than another, the Commission may actually have the opposite effect.

- 5 This is an important area and we would be happy to engage further with the Commission on a less formal basis as we try and work through these issues.
- 6 We believe that the Commission should take the maximum advantage of the time available and should not determine new information disclosure requirements until **after** the applicable input methodologies have been finalised and draft determinations issued. This would be in line with the Commission's previously stated position and would provide the opportunity to workshop these issues through with various EDBs.

Limit information disclosure to no more than necessary

- 7 Orion believes that the requirement for non-exempt EDBs to comply with the default price path is a higher standard and more onerous than "standard" information disclosure. Regulation of non-exempt EDBs will thus focus more on DPP compliance than on the information disclosure regime. Requiring repeated disclosure of the same information but in subtly different formats plainly does not accord with the purpose of Part 4 and the Commission should guard against it.
- 8 We believe that the Commission should limit the information disclosure requirements to no more than that necessary to meet the purpose of the control regime (s 53A). In doing this the Commission should take into account the other disclosed information such as that the compliance and monitoring statements required under s 53N.
- 9 This information together with an asset management plan (AMP) should form the bulk of any information disclosure regime for non exempt EDBs.

Future workshops

- 10 We consider that developing relevant and useful performance indicators and information disclosure requirements in general is a complex exercise and would welcome the opportunity to work with the Commission on these issues in a workshop type environment.

2. Comments on specific issues

STATUTORY FRAMEWORK AND REGULATORY FRAMEWORK PRINCIPLES

Input methodologies need to be determined before new information disclosure regime is finalised

- 11 We believe that the Commission should not determine new information disclosure requirements until **after** the applicable input methodologies have been finalised. Until it is clear how the input methodologies will apply to EDBs (and, by extension, what is required for compliance) we contend the Commission should not try and define what information is required for non exempt EDBs. This would be in line with the Commission's previously stated position.
- 12 Information disclosure regulation applies to all EDBs irrespective of their ownership structure. A number of EDBs are also subject to the additional rigours of the DPP regulation.
- 13 The Commission has previously indicated that it does not intend to determine new information disclosure requirements until applicable input methodologies have been developed:

*"The Commission does not intend to determine new information disclosure requirements until applicable input methodologies have been developed"*¹

- 14 The paper appears to reaffirm this approach in the paper²

As noted above, given that s 53C(1)(g) requires such determinations to "specify the input methodologies that apply", the Commission intends to set new information disclosure requirements after the applicable input methodologies have been determined.

and

"Any information disclosure requirements that are determined by the Commission under Part 4A of the Act (prior to its repeal on 1 April 2009) continue to apply until such time as the Commission makes new requirements under the new legislative provisions. Section 54W provides that:

¹ Paragraph 468 *Regulatory provisions of the Commerce Act 1986 discussion paper 19 December 2008*

² Paragraphs B22 and B28 *Information disclosure discussion paper 29 July 2009*

Any information disclosure requirements published by the Commission under subpart 3 of Part 4A before 1 April 2009 continue to apply to each supplier of electricity lines services in respect of every financial year that precedes the first financial year to which a determination made by the Commission under section 54I(1) applies to that supplier.”

- 15 We agree with the paper, in relation to EDBs at least, that new information disclosure requirements should be set only **after** the applicable input methodologies have been determined.
- 16 For the avoidance of doubt the Commission should confirm that it intends to continue with the current information disclosure regime and that the s 52P determination that is required in December 2009 will not include new information disclosure requirements.
- 17 We would also recommend that the Commission extend the process timetable for the development of new information disclosure requirements for EDBs to make use of the additional time provided by this approach.

Avoid duplication of information

- 18 For those EDBs that are also subject to DPP regulation s 53N expressly provides for monitoring compliance with price quality standards:

“For the purpose of monitoring compliance with a price-quality path (whether a default price-quality path or a customised price-quality path under this subpart, or an individual price-quality path under subpart 7), the Commission may, in addition to exercising its powers under section 98, issue a written notice to a regulated supplier requiring it to provide any or all of the following:

“(a) a written statement that states whether or not the supplier has complied with the price-quality path applying to that supplier:

“(b) a report on the written statement referred to in paragraph (a) that is signed by an auditor in accordance with any form specified by the Commission:

“(c) sufficient information to enable the Commission to properly determine whether all applicable price-quality paths have been complied with:

“(d) a certificate, in the form specified by the Commission and signed by at least one director of the supplier, confirming the truth and accuracy of any information provided under this section.”

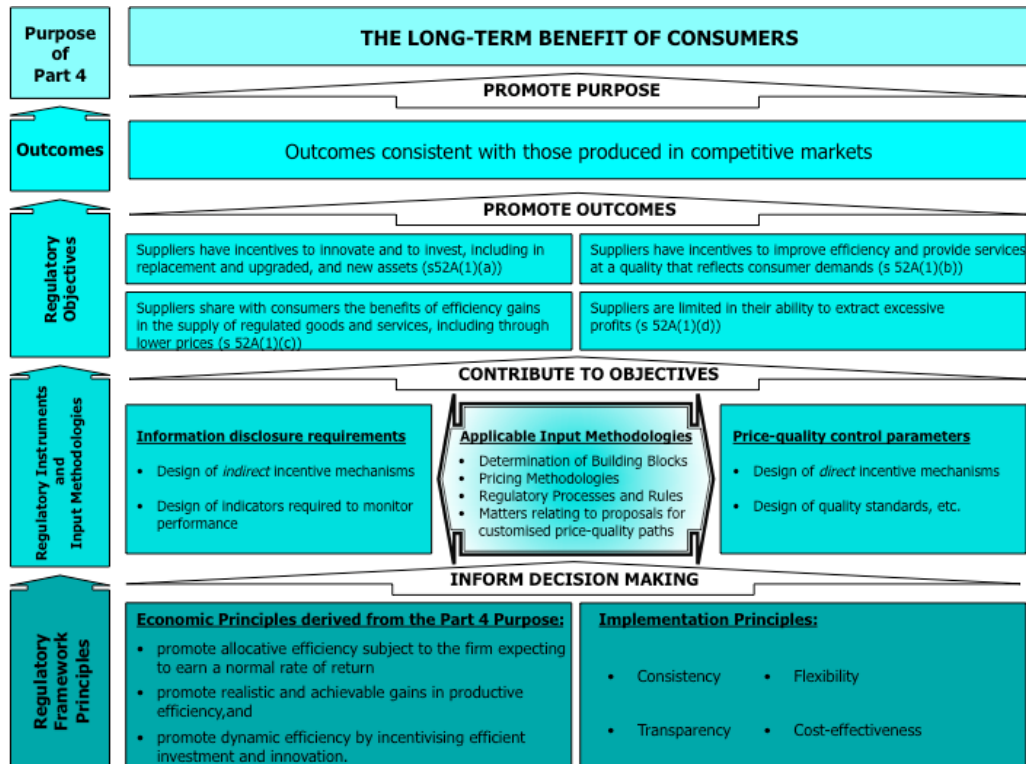
- 19 A statement by an EDB under s 53N will necessarily include sufficient information for the Commission to assess DPP compliance (and thus whether an EDB is complying with Part 4). The default price path is a higher standard and more onerous than “standard” information disclosure

- regulation of non-exempt EDBs (unlike, for example, airports) will thus focus more on DPP compliance than on the information disclosure regime.
- 20 Orion is keen to avoid the current inefficient duplication of information provision that existed under the previous threshold regime where EDBs supplied a threshold compliance statements followed by an information disclosure statement containing much of the same information.
- 21 The paper indicates that the default customised price-quality regulation has two purposes³:
- 21.1 the overarching purpose of Part 4 as set out in s 52A; and
- 21.2 the particular purpose set out in s 53K.
- 22 We consider that the monitoring compliance requirements set out in s 53N particularly s 53N(c) should provide the Commission and other interested parties with sufficient information to assess whether the purpose in s 52A is being met.
- 23 However, we acknowledge that the Act also requires (s 54) that non – exempt EDBs should also be subject to information disclosure requirements as well as the compliance information required by s 53N. We consider that to the extent that the information provided to the Commission is the same then only one disclosure should be required.
- 24 The Commission must keep front-of-mind the explicit recognition in s 53K that the DPP regime is intended to provide a relatively low-cost way of regulating suppliers. Requiring repeated disclosure of the same information but in subtly different formats plainly does not accord with s 53K or with the purpose of Part 4 generally.

³ Paragraph 401 *Regulatory provisions of the Commerce Act 1986 discussion paper 19 December 2008*

Purpose of Part 4

THE COMMISSION'S OVERVIEW OF PART 4 REGULATORY FRAMEWORK⁴



- 25 The paper indicates that the purpose of Part 4 is promoted by producing outcomes that are consistent with a “workably competitive” market. These outcomes are promoted by the regulatory objectives set out in s 52A(1)(a)-(d) which are to be achieved by the application of the input methodologies to the regulatory instruments. For EDBs this means the application of price – quality control parameters and/or information disclosure requirements.
- 26 The new Part 4 regulatory regime is in our opinion a quantum shift in the level of regulation, particularly for non exempt EDBs, compared to the old Part 4A regime. EDBs are under control and the consequences of failure to comply with a DPP (or CPP) may be very high. Given this quantum shift in the regulatory regime we are therefore concerned that the Commission appears to be trying to shoe-horn the existing information disclosure requirements into the new regime without first taking a fresh look at what is required.

⁴ Figure 1 Reset of default price-quality path for electricity Distribution businesses discussion paper June 2009

- 27 Orion considers that for non-exempt EDBs, the most significant element of control under Part 4 is the DPP together with the associated monitoring and compliance requirements of s 53N. Any further regulatory requirements such as information disclosure should be very limited indeed (production of an appropriate AMP would be an obvious example of such additional information disclosure).
- 28 The promotion of the s 52A objectives is a high threshold. The provision of additional material on top of that disclosed under the DPP regime would at best provide a marginal additional insight into the commercial activities of EDBs. In other words, we fail to see how the provision of still further information will enhance the objectives of s 52A. More likely, it will add a material compliance cost burden, with little or no countervailing regulatory utility.
- 29 We are conscious that the Commission has to balance the additional regulatory scrutiny of an actual control regime with the requirement that the information disclosure and the DPP are intended to be low-cost forms of regulation.
- 30 We are concerned, therefore with the contradictory ideas in the paper in relation to the cost of compliance. On the one hand while the paper repeated states it is mindful of the need to implement a low cost regime:

The Commission is aware that all regulatory instruments, including information disclosure, impose compliance costs upon regulated suppliers. The Commission is therefore mindful of the need to implement a least-cost regime that sufficiently informs interested persons whether the purpose of Part 4 is being met. It is noted, however, that the purpose of information disclosure regulation, requires that some information must be disclosed which unavoidably entails costs.

- 31 While on the other hand the paper suggests that because EDBs have previously been subject to information disclosure regimes then significant compliance cost should not be involved.

The fact that EDBs have established systems and processes to comply with information disclosure regulation means that to the extent which the current disclosure requirements are consistent with the relevant provisions of Part 4, significant compliance costs should not be involved.

- 32 We consider that, rather than assuming existing disclosure processes are appropriate, the Commission should instead consider how it can reduce existing compliance costs by eliminating duplication of information disclosure and requiring only the minimum additional information for non exempt EDBs to that required above and beyond the monitoring and

compliance requirements of s 54N. Such a reduction in compliance cost is precisely the statutory purpose of the DPP regime as set out in s 53K. That purpose should not be diminished by an onerous (and redundant) information disclosure regime.

33 More fundamentally, Orion is concerned that a key objective of the current information disclosure is aimed at comparing EDBs. We believe that the Commission should ensure that any prospective information disclosure requirement (to the extent that it is used to compare EDBs) should enable meaningful comparison across EDBs.

34 While we would not argue the s 53P prohibition on the use of comparative benchmarking for efficiency extends with the same force to other aspects of Part 4, s 53P(10) is a strong legislative caution that any direct comparison between EDBs can be potentially misleading. Variances in the EDB operating environments must always be kept in mind when the Commission invites comparison of EDB performance by interested persons. Simply requiring disclosure of certain performance benchmarks does not enable meaningful comparison if the *context* of the data is not clear.

Key performance areas and performance indicators

35 The Commission's preliminary view is that prescribed performance indicators set out below would be useful to indicate whether the objectives of Part 4 as outlined in s 52A(1)(a)-(d) are being met.⁵

Part of purpose	Key performance area	Performance indicator
S 52A(1)(a) suppliers have incentives to innovate and invest, including in replacement, upgraded and new assets (emphasis added)	Innovation and investment	AMP review rating- innovation and investment
		Capital expenditure rating
		Renewal ratio
		Capital expenditure growth ration
S 52A(1) (b) suppliers have incentives to	Efficiency	Operational expenditure ration

⁵ Commerce Commission, *Information disclosure discussion paper, 29 July 2009*, table 16

improve efficiency and provide services at a quality that reflect consumer demands (emphasis added)		Overhead operational ratio
		Maintenance expenditure ratio
		Capacity
		Relative Unit price index
	Quality	SAIDI and SAIFI
		AMP review rating - quality
Customer perception		
S 52(1)(c) suppliers share with customers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices S 52(1)(d) suppliers are limited in their ability to extract excessive profits	Prices and profits	ROI
S 54Q The Commission must provide incentives, and must avoid disincentives , for suppliers of electricity lines services to invest in energy efficiency and demand side management, and to reduce energy losses (emphasis added)	Energy efficiency, demand side management and loss reductions	AMP review rating - Energy efficiency, demand side management and loss reductions

36 While we agree there may be a limited role for some pre-defined performance indicators we do not agree that the papers proposals for performance indicators for EDBs (as set out in the table above) are appropriate. We consider that developing relevant and useful performance

indicators is a complex exercise and would welcome the opportunity to work with the Commission on these issues in a workshop type environment.

- 37 The paper identifies a number of key performance areas and associated performance indicators. We discuss these below

Innovation and investment

AMP review rating – innovation and investment

- 38 The paper does not provide any detail on how this indicator would be constructed. We do not consider that it will provide any meaningful indications to an interested party on whether the objective of s 52A(1)(a) is being met. Indeed nowhere does the paper explain what criteria might be relevant on such a “review”, nor does it set out how the results of a review might assist in *assessing suppliers’ performance* –the statutory foundation for any analysis by the Commission. We consider however that the application of PAS-55 standard would provide interested parties with the assurance that an AMP was of a satisfactory standard. We do not believe that further reviews or comparisons by the Commission would add any value.

Capital expenditure ratio, renewal ratio and capital expenditure growth ratio

- 39 These ratios provide meaningful data only if they are derived using an up-to-date ODV and are based on an up-to-date depreciation expense. Beyond the difficulties posed by ratios not based on current data, the paper’s suggested approach reflects an unsophisticated view of the complex planning world that EDBs face. Capital expenditure may be “lumpy” and reflect differing assessments by an EDB of the timing of required investments. As the paper recognises, unless these factors are taken into account then renewal ratios may be of little use and (at worst) give a potentially misleading impression.

Efficiency

- 40 Some networks are simply higher cost than others due to a variety of factors such as the challenging geographic conditions that occur in New Zealand and customer density. Simple measures such as the ones proposed by the paper cannot be reliably used for comparison. Nor do they in isolation provide a measure of efficiency. As the Commission has long acknowledged there is a price quality trade-off and it is not appropriate to apply the same quality standards to all suppliers. But in inviting disclosure of performance indicators for the purposes of direct comparison by interested parties, the paper is ignoring the reality that all

EDBs operate under different conditions, which materially impact on their performance when measured on certain objective criteria in isolation from relevant commercial context.

- 41 Many of the efficiency indices outlined in the paper can be significantly affected by the ownership boundary on our network. This applies at both the subtransmission level where assets could be owned by either Transpower or the distribution network owner and also at the 11kV level where customers may or may not own distribution network connection assets.
- 42 For example, Orion has a number of major customers who have historically chosen to take supply at 11kV and have ownership of the 11kV switchgear and transformers on their site. Many of these customers now face the need to replace aging or technically redundant assets and are realising that Orion can achieve this more efficiently (lower capex funding cost and economies of scale). However, if Orion took ownership of these assets, we would effectively increase our installed distribution transformer capacity and increase our asset value without an increase in demand this would impact negatively on many of the proposed efficiency indicators in the paper. The efficiency indicators would be a disincentive for Orion to take ownership at an appropriate price and customers would lose the opportunity to achieve the right economic and service quality outcome.
- 43 This example, coupled with the recognition of the different demographics (customer size, density and location) between networks reiterates the many anomalies and differences that can occur between networks and the inherent difficulty trying to benchmark efficiency ratios and indices. It is difficult to imagine how these efficiency indicators could be used effectively to regulate distributors.

Operational expenditure ratio, overhead operational expenditure ratio and maintenance expenditure ratio

- 44 These ratios are extremely difficult to measure in a meaningful way. Our challenge is to achieve the lowest LRMC of supply over time. This is necessarily forward looking and the effects of expenditure decisions based on our assessment of LRMC will only play out over the long term. Ratios do not easily reflect this. For example higher maintenance costs in the short term may be appropriate if they offset large 'step' capex proposals

Capacity

- 45 There are a number of problems with any simplistic measure of ‘capacity’ such as maximum demand/transformer capacity. The ‘capacity’ of a network can be affected by the configuration of a network in relation to the number of transmission supply points. In some networks sub transmission transformer capacity is supplied by Transpower (as opposed to the EDB) and in these cases measurements such as maximum demand/transformer capacity are meaningless in any comparative sense.
- 46 A further difficulty with this measure is that the maximum demand of the network (taken as the single highest half hourly demand) is of limited relevance to overall network design. It is not a parameter we try to directly control. Different parts of our network and of the transmission network have maximum demands occurring at different times. An obvious example is in rural areas where some parts of our network will reach their maximum design levels in summer (when large irrigation loads are operating), while in urban areas winter heating loads drive our maximum demands.
- 47 We like many other EDBs currently manage load to control a variety of network and transmission constraints and in doing so our primary goal is to manage load while at the same time meeting our customer service level targets (in relation to the time load control may be operating) and a variety of different demand levels across both our network and the upper South Island.
- 48 The difficulties with expenditure ratios and capacity as proxies for efficiency is that both those measures are highly contextual and difficult to measure. To require disclosure the paper is in effect assuming direct comparisons between EDBs are possible when they are often not. As the Commission recognises, comparability is only possible if suppliers in similar circumstances are treated the same way. And achieving consistency in a cost-effective manner may be difficult. Requiring disclosure of “bare” figures such as expenditure ratios and capacity does not in our view assist in making consistent comparisons.
- 49 A final concern is that the “capacity” measure could provide a perverse incentive to reduce load management and increase maximum demands.

Relative unit price index

- 50 There are constraints to efficient pricing (ie clause 99 of the GPS). Note that efficient pricing should reflect the reality of the cost drivers for that network. Examples include capacity and peak demand.

- 51 We do not agree with the Commission's preliminary view that the relative price index measurement used to assess the price variability between consumer groups in the Part 4A EDB information disclosures regime (MP3) is an effective means of assessing price differentials.
- 52 We have previously held discussions with the Commission and its advisors on this issue and submitted on the inappropriateness of this particular measure in relation to Orion's and a number of other EDBs pricing methodologies. For Orion and a number of other EDBs this is an impractical measure that we do not have data to support and have had to apply (under the Part 4A regime) for (and been granted) exceptions from this requirement.
- 53 The Commission has indicated that for the DPP⁶ pricing *principles* are more appropriate than highly specific pricing methodologies. We agree with the Commission's preliminary view that suppliers subject to the DPP may not be required to apply the input methodology for pricing methodologies, but instead be subject to broad pricing principles.
- 54 We consider that any input methodologies that the Commission develops in relation to pricing should be at a principles level only. We consider that the Electricity Commission should also restrict its work in this area to a principles only approach.
- 55 In our earlier submissions' to the Electricity Commission⁷ and to the Commerce Commission⁸ we highlighted our concerns in relation to the Electricity Commission developing a model distribution pricing methodology.
- 56 Orion accepts the need for non-exempt EDBs to disclose pricing methodologies, but we do not accept the Commission's preliminary view that the Electricity Commissions model distribution pricing methodology should be used as a basis from which EDBs are required to disclose where pricing methodologies are not aligned.

⁶ Chapter 9 Commerce Commission Input methodologies paper June 2009

⁷ Orion's submission to the Electricity Commission on Proposed model approaches to distribution pricing methodology paper 10 July 2009

⁸ Orion's submission to the Commerce Commission on input methodologies 14 August 2009

Quality

SAIDI and SAIFI

- 57 We agree with the use of SAIDI and SAIFI, to measure reliability of supply. These measure are widely accepted and understood. We would however expect these to be disclosed as part of the s 53N monitoring and compliance information. We have commented previously on the flaws with the Commission's proposed IEEE 2.5β methodology in relation adjustment for extreme events.⁹ We refer the Commission to the work commissioned by ENA on this issue.

AMP review rating - quality

- 58 The paper does not provide any detail on how the AMP review rating – quality indicator would be constructed. We do not consider that such a measure will provide any meaningful indications to an interested party on whether the objective of s 52A(1)(b) is being met. We consider that the application of PAS-55 standard would provide interested parties with the assurance that an AMP was to a satisfactory standard. We do not believe that further review or comparison by the Commission would add any value.

Customer perception

- 59 Determining customer perception of an EDB's performance is a difficult matter, as recognised in the paper, often consumers are not aware of the role of the network (consumers in the majority see the electricity industry as a whole rather than segmented, with one segment being the EDB). They may have views on a networks pricing based more on final retail price, and may have vastly different expectations of service depending on the type/category of customer they are.
- 60 Consequently any measure of customer perception cannot we believe be accurately delivered via one formula or one method. A variety of methods are required. Some of these methods are qualitative, such as SAIDI, SAIFI, voltage measures etc, and some are only obtained through direct customer interface. Given this we believe the Commissions historical approach to require EDB's to consult with customers and report on this consultation, and also disclose certain qualitative statistics, is the best method to judge overall customer perception.
- 61 Rather than introduce another method of determining customer perception, the Commission should continue to encourage and ensure EDB's discuss their performance and their security of supply standards with customers.

⁹ Orion's submission on the Commission's default price- quality path for EDBs 17 July 2009

Prices and profit

ROI

- 62 We consider that in any measure of ROI regulatory tax expense should be based on tax expense method and not tax payable. As outlined in our submission on the input methodologies, a tax expense approach ensures that:
- 62.1 all EDBs are treated the same - no matter when or how much they paid for their assets or their tax loss position, etc;
 - 62.2 any calculations are simple and transparent.
- 63 Those same rationales apply equally when tax expense is used as part of the denominator in the ROI calculation. Adopting a tax payable approach is needlessly complex and will likely have the unintended consequence of distorting the ROI for EDBs with newer assets.
- 64 Further, profit should not include an interest tax shield (because profit is EBIT based), currently that shield is backed out of the ROI calculation in any case.

Energy efficiency, demand side management and loss reductions (s 54Q)

- 65 While the energy efficiency incentives in s 54Q are not specifically contained as objectives in s 52A we are pleased to see that the paper has included energy efficiency in the proposed disclosure regime. We would consider that s 54Q is a subset of s 52(1) in so far as s 52(1) contains a generalised obligation on the Commission to provide “**incentives to innovate and invest, including in replacement, upgraded and new assets**” (emphasis added). Section 54Q relates specifically to *promoting incentives and avoiding imposing disincentives* for EDBs to invest in energy efficiency, demand side management and to reduce energy losses.
- 66 That said, energy efficiency as contained in s 54Q is a requirement that applies to the Commission and not to EDBs. While the Commission is not subject to information disclosure it is difficult to see what measure could be applied to an EDB to disclose. Unless the Commission requests that as part of the information disclosure the EDB is required to comment on whether they consider the regime is: providing incentives, and avoiding disincentives, for suppliers of electricity lines services to invest in energy efficiency and demand side management, and to reduce energy losses.

- 67 Whether the s 54Q requirements are being met by the Part 4 regime is an assessment the Commission must make for itself. The obligation is on the Commission to ensure it imposes the correct incentives, not on an EDB to “disclose” the incentives as it perceives them to be.

AMP review rating – energy efficiency, demand side management and loss reductions

- 68 For the reasons set out above we do not consider that a review rating of AMPs would provide any meaningful information about whether the Commission is providing appropriate incentives and avoiding disincentives. We note that EDBs continued to invest in energy efficiency, demand side management and loss reductions, despite the disincentives for such investments that existed under the threshold regime.
- 69 Due to this approach from EDBs in trying to do the right thing by their customers in regard to investment in energy efficiency, demand side management, and reducing energy losses, despite regulation that did not encourage or reward such investment. If the Commission looks only at whether EDBs are continuing to invest in this area, they will not be able to ascertain whether it is because EDBs are receiving the right incentives as required under s 54Q or just investing despite a possible failure of the regime

ASSET MANAGEMENT PLANS

- 70 Orion believes that adoption of PAS – 55 would give EDBs the option to obtain external certification of compliance with the AMP requirements. In our opinion such external certification is becoming recognised by asset owners and regulators internationally as a tool to demonstrate good governance, due diligence in the management of asset related risk and optimised asset management decision making. Orion considers that for information disclosure requirements an AMP certified to PAS-55 is appropriate. We also note that certification of AMPs in this manner could provide the certainty of detail and quality of information that the Commission notes is variable across the industry at present.¹⁰

AMP reconciliation

- 71 We disagree with the Commission’s hypothesis that where capital expenditure falls over the regulatory period below the amount forecast, that

¹⁰ Para 408 Reset of Default Price price – quality path for electricity distribution businesses
Discussion paper June 2009

such differences are inevitably due to efficiency gains. There may be many causes such as changes in demand relative to the AMP forecast.

- 72 The Commission implicitly acknowledges this at paragraph - 468 where it notes that disclosure imposes a forecasting discipline on regulated suppliers to disclose forecasts that are rigorous and realistic. While this disclosure applies a discipline it does not eliminate all sources of forecast error and it is therefore inappropriate to conclude that the differences between forecast and outturn may *only* be due to efficiency gains

Timing of AMP reconciliation

- 73 Actual expenditure reconciliations are not available until a few months after the end of the financial year. The AMP however has to be produced in advance of the financial year. Therefore any variances should be disclosed in the annual disclosures by 31 August each year.

PUBLICATION, RETENTION, CERTIFICATION, STATUTORY DECLARATION

Publication, retention, certification etc

- 74 Orion does not consider that public disclosure should require a notice in the Gazette of that disclosure. This is an extremely inefficient and costly mechanism that can be avoided. We recommend that the Commission Gazette one annual notice which lists all the relevant EDBs' websites and notes that certain disclosures will be found on those website by certain dates.
- 75 We are also concerned about the potential inefficient duplication of information. Currently we supply a large amount of information in our compliance statements which is independently audited and is certified by directors. A good deal of this information is then duplicated some months later as a requirement of the information disclosure regime, for example the SAIDI and SAIFI results. The Commission should consider the consolidation of information into a single document that indicates compliance with the DPP. Clearly if the DPP is complied with this indicates that the purpose statement in Part 4 is also being complied with.
- 76 The focus for non-exempt EDBs is properly on compliance with the DPP – requiring duplication of all the information disclosure stage is not necessary.

- 77 We consider that that the Commission should rationalise the requirements around director certification. At present some of these have to be sworn and we consider that this is an unnecessary requirement.

Audit report

- 78 The Commission's preliminary view is that the auditing requirements for prospective financial and non-financial information should be similar to the standard of assurance required by the Securities Regulations 1983 in respect of prospectus information for equity securities (and we note that new regulations have been promulgated which will result in the Securities Act standard aligning with the Financial Reporting Act).
- 79 We disagree with any suggestion by the Commission that securities law standard of assurance (a stringent standard designed to protect investors) is appropriate for prospective financial and non-financial information under the information disclosure regime. Securities law does not ordinarily apply to Orion because it is not an issuer and its requirements should not be brought in by a side-wind. The consumer protection rationale of securities law is not relevant here.
- 80 As the Commission itself notes at paragraph - 468, reviewing AMP variances from forecasts "...imposes a forecasting discipline on regulated suppliers to disclose forecasts that are rigorous and realistic." We agree with this statement.
- 81 We also note that many issuers make offers to the public infrequently - and this can weaken incentives to impose good forecasting disciplines. However EDB AMPs and the subsequent variances to forecasts will be published annually and this serves to further strengthen those incentives that the Commission has identified.
- 82 The Commission also has the opportunity to highlight those EDB AMPs that have large forecasting variances in its annual summary publication. This will also further reinforce the incentives for forecasting disciplines - effectively by way of peer pressure.
- 83 The proposed information disclosure regime under Part 4 has a quite different purpose to disclosure in the securities environment. The standard of assurance required under Part 4 is less – because there are a myriad of other controls and disclosure requirements on EDBs, and because the Commission or any other interested party is plainly not analogous to an investor relying on this information in making an investment decision. Any audit requirement to the stringent security law standard would impose an unnecessary cost and burden in circumstances where EDBs are required

anyway to report their subsequent actual financial and non-financial information relating to that prospective information to a high standard of assurance. This is particularly true for prospective non-financial information which is not easily amenable to audit requirements - as the Commission recognises, auditors will be heavily reliant on technical experts.

Concluding remarks

- 84 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.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roger Sutton', with a stylized flourish at the end.

Roger Sutton
Chief Executive Officer

- **SCHEDULE – RESONSE TO SEPCIFIC QUESTIONS**

CHAPTER 2 – statutory framework and regulatory framework principles

• Q.1) In your view, should the Commission's next steps in making information disclosure determinations for the regulated services be as outlined above? Please provide the reasons for your views. 6

• No. For EDBs at least, new information disclosure requirements should be set after the applicable input methodologies have been determined. For the avoidance of doubt the Commission should confirm that it intends to continue with the current information disclosure as provided by s 54W and that the s 52P determination that is required in December 2009 for DPP applying from 1 April 2010 will not include new information disclosure requirements. We recommend that the Commission extend the process timetable for the development of new information disclosure requirements for EDBs to take advantage of any additional time to develop new information disclosure requirements given that they should take into account relevant input methodologies.

• Q.2) Do you agree that the term 'interested persons' is broad in its application and includes all persons that are interested in the activities of a regulated supplier? If not, please provide the reasons for your view, an alternative interpretation and why you consider this to be more appropriate. 11

• Orion agrees with the broad definition of the term 'interested parties' given at paragraph 53 however we also note that in relation to non exempt EDBs that are subject to a price quality path regulation the compliance and monitoring requirements of s 53N provide sufficient information to enable the Commission to determine whether the applicable price-quality paths have been complied with and hence that the compliance with the s 52A purpose has been demonstrated.

• Q.3) Do you agree that pre-prescribed performance indicators will assist interested persons in the assessment as to whether the purpose of Part 4 is being met? If not, please provide the reasons for your view, an alternative approach and why you consider this to be more appropriate. 14

• We consider that for non exempt EDBs monitoring of our compliance (s 53N) with the price-quality path is the fundamental performance indicator that provides interested persons that we and the Commission are meeting the Part 4 purpose. However, we acknowledge that the Act also requires (s 54) that non – exempt EDBs should also be subject to information disclosure requirements as well as the compliance information required by s 53N. We consider that to the extent that the information provided to the Commission is the same then only one disclosure should be required.

- We agree that there may be a limited role for pre-prescribed performance indicators may assist interested persons in the assessment as to whether the purpose of part 4 is being met. We do not agree that the pre-performance indicators suggested by the Commission are appropriate. However we would be happy to engage further with the Commission on a less formal basis as we try and work through these issues.

- Q.4) Do you agree that these principles are consistent with the purpose of information disclosure which is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 is being met? If not, please provide the reasons for your view, alternative principles and why you consider these are better aligned to the purpose of information disclosure. 18

No Comment

CHAPTER 3 – monitoring performance

- Q.5) What other areas of performance, if any, do you think the Commission should consider when assessing whether the purpose of Part 4 is being met? Please provide the reasons for your view. 23

No Comment

- Q.6) Do you agree that an indicator relating to investment is required? If not, please provide the reasons for your view. 24

- No. the AMP is the key document that justifies planned levels of investment. Variance analysis should subsequently explain the reasons for any differences.

- Q.7) Do you believe that a capital expenditure ratio is an appropriate indicator? If not, please provide the reasons for your view, an alternative and explain why you consider this to be preferable. 24

- Until input methodologies have been determined we are unable to respond on this issue.

- Q.8) Do you have any views on the Commission's proposed treatment of capital expenditure ratios under information disclosure? If so, please provide the reasons for your views. 25

- Until input methodologies have been determined we are unable to respond on this issue.

- Q.9) Do you agree that the disclosure of an AMP is an appropriate means of demonstrating innovation and investment? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable.26

- We agree that the AMP is a valuable part of the information disclosure regime, and while it may be useful in demonstrating that an EDB is implementing innovative plans and carrying out a level of investment, it may not be useful in demonstrating that EDBs are actually being incentivised by the regime to innovate and invest. We do not agree with the suggested AMP review performance indicator will be useful to provide interested parties with information on EDBs meeting the purpose statement.

• Q.10) Do you have any views on appropriate indicators for measuring innovation? If so, please provide the reasons for your views. 27

- No. We consider that this is a difficult area that it would be useful to develop further dialog with the Commission in a less formal setting.

• Q.11) Do you have any views on appropriate indicators for measuring quality? If so, please provide the reasons for your views. 28

- We agree with the use of SAIDI and SAIFI, however we would expect this to be disclosed as part of the s 53N monitoring and compliance information. We have also commented previously on the flaws with the Commission's proposed IEEE 2.5 Beta methodology in relation to also considering the adjustment for extreme events.¹¹ We refer the Commission to the work being developed on behalf of the ENA in relation to this issue.

• Q.12) Do you have any views on appropriate indicators for measuring profits? If so, please provide the reasons for your views. 29

- This is an issue that will need to be developed after input methodologies have been established. Any measure will have to align with the IM measures of profits/ROI etc.

• Q.13) Do you have any views on appropriate indicators for measuring pricing efficiency? If so, please provide the reasons for your views. 30

- We do not agree with the Commission's preliminary view that the relative price index measurement used to assess the price variability between consumer groups in the Part 4A EDB information disclosures regime (MP3) is an effective means of assessing price differentials.
- We have previously held discussions with the Commission and its advisors on this issue and submitted on the inappropriateness of this particular measure in relation to Orion's and a number of other EDBs pricing methodologies. For Orion and a number of other

¹¹ Orion's submission on the Commission's default price- quality path for EDBs 17 July 2009

EDBs this is an impractical measure that we do not have data to support and have under the Part 4 A regime had to apply for and been granted exceptions from this requirement. We do not consider that this measure should be retained.

- Q.14) Do you have any views on the appropriate cost based indicators to assess whether regulated suppliers have taken action to minimise costs? If so, please provide the reasons for your views. 30

- No Comment

- Q.15) Do you have any views on the Commission's proposed treatment of operational expenditure ratios under information disclosure? If so, please provide the reasons for your views. 32

- Our initial impression is that this ratio looks ok, however it will depend on further definition from the Commission. We will comment further when the additional definitions are available

- Q.16) Do you have any views on the Commission's proposed treatment of capacity utilisation ratios under information disclosure? If so, please provide the reasons for your views. 33

- There are a number of problems with any simplistic measure of 'capacity' such as maximum demand/transformer capacity. The 'capacity' of a network can be affected by the configuration of a network in relation to the number of transmission supply points. In some networks sub transmission transformer capacity is supplied by Transpower (as opposed to the EDB) and in these cases measurements such as maximum demand/transformer capacity are meaningless in any comparative sense.
- A further difficulty with this measure is that the maximum demand of the network (taken as the single highest half hourly demand) is of limited relevance to overall network design. It is not a parameter we try to directly control. Different parts of our network and of the transmission network have maximum demands occurring at different times. An obvious example is in rural areas where some parts of our network will reach their maximum design levels in summer (when large irrigation loads are operating), while in urban areas winter heating loads drive our maximum demands.
- We like many other EDBs currently manage load to control a variety of network and transmission constraints and in doing so our primary goal is to manage load while at the same time meeting our customer service level targets (in relation to the time load control may be operating) and a variety of different demand levels across both our network and the upper South Island.

CHAPTER 4 – return on investment

- Q.17) Do you agree that profitability should be measured using an ROI measure? If not, please detail the measure that is appropriate and explain how that measure would better meet the purpose of information disclosure? 36

- We agree in principle, however a precise definition will depend on the input methodologies. We consider that any interest tax shield should be taken out of regulatory profit so that it does not have to be subsequently adjusted for in the ROI calculation.

- Q.18) Do you agree that revaluations and depreciation in the Regulatory Profit should be the same value as that which is used in rolling forward the RAB value? If not, please detail how depreciation and revaluations should be treated and how this treatment is consistent with the FCM concept. 38

- We agree in principle, should the input methodology relating to RAB require roll forward revaluations.

- Q.19) Do you agree that the value of capital contributions and vested assets (net of any consideration) should be recognised as income in the ROI? If not, please explain how the value of the returns earned from vested assets and capital contributions should be treated and why you consider this to be preferable. 39

- We agree in principle.

- Q.20) Do you agree that lost and found assets should not be treated as income and expense? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 39

- Yes

- Q.21) Do you agree that a ROI comparable to a vanilla WACC and a post-tax WACC should be disclosed? If not, please provide the reasons for your view. 40

- No. We do not consider that it is necessary to disclose ROI based on both approaches. Again this is a question that cannot be answered specifically until the input methodologies have been developed. But in principle we consider that an approach to ROI that involves the regulatory post tax profit measure that does not include the interest tax shield is preferable.

- Q.22) Do you agree that half the value of the net new capital investment should be reflected in the RIV value? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 42

- We agree in principle, however a simpler approach may be to include 100% of the previous years closing RIV and 100% of the current years closing RIV and then take the average of these two values.

• Q.23) Do you agree that assets acquired from or sold to another regulated supplier or business unit should be included in the RIV to the extent that the profit relating to those assets is recognised in the regulated supplier's regulatory profit? If not, please detail how asset acquired from or sold to another regulated supplier or business unit should be treated and why you consider this to be preferable. 42

- We agree in principle, but this would require that the starting RIV is based on an up-to date 2010 ODV and not a rolled forward 2004 ODV. If the starting RIV is set below the up-to-date 2010 ODV then profits will be artificially increased when sold due to the low starting RIV.

• Q.24) Do you agree that it is appropriate to treat assets acquired from or sold to another regulated supplier that doesn't relate to merger or acquisition activity as above? If not, please explain how these should be treated and why you consider this to be preferable. 42

- See our response to Q 23

• Q.25) Do you agree that an adjustment to RIV for working capital is not necessary given its likely materiality? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 42

- No comment

• Q.26) In your view, how should the capital costs associated with the use of regulated assets to provide regulated and unregulated services be attributed? Please provide the reasons for your view. 43

- See our submission on Input methodologies, we consider that ACAM is appropriate..

CHAPTER 5 – financial information

• Q.27) Do you agree that the Commission should consider GAAP as the starting point, but modify the disclosures where required to meet the purposes of information disclosure under the regulatory regime? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 50

- We agree as a basic principle that GAAP forms a good starting point, as indicated above. We consider that information disclosure should be minimised and to the extent that any modification to the requirements of GAAP to meet specific regulatory disclosures are

required these information disclosure requirements should be clearly shown to be necessary to fulfil the purpose of Part 4.

- Q.28) Do you agree that where the sale of the asset is made to an unregulated entity or business unit, then the regulatory profit should be adjusted for gains or losses on sale? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 51

- See our response to Q23 this question again depends on an appropriate opening RAV set at 2010 to provide a meaningful base.

- Q.29) Do you agree that pass-through revenue and the associated distribution should be transparently disclosed in the regulatory profit statement? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 52

- Yes

- Q.30) Do you agree that pass-through costs should be separately disclosed? If not please provide a detailed explanation as to why it shouldn't be separately disclosed. 52

- Yes

- Q.31) Do you agree that insurance expenses should be included in the calculation of Regulatory Profit only where these are paid to an insurance entity? If not please, provide a detailed explanation as to why insurance should or shouldn't be disclosed, including a reference to the materiality of the insurance costs. 53

- Yes

- Q.32) Do you agree that merger and acquisition expenses should be included in Regulatory Profit? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 53

- Yes

- Q.33) Do you agree that financing information should not be required due to the difficulty in meaningfully allocating the portion that relates to the regulated business? If not, please provide details on how information on financing can be meaningfully allocated to regulated business units. 54

- Yes

• Q.34) Are there any additional means for which an assessment of financial viability could be made? If so, in light of the regulatory provisions, please provide details of how the assessment can be made. 54

• No. We consider that this is outside the scope of Part 4

• Q.35) Do you agree that regulated suppliers should use the leverage assumption and cost of financing assumptions outlined in the cost of capital input methodology in preparing the deductible interest and interest tax shield calculation? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 54

• No. Interest costs and associated tax shield should be taken right out of regulatory profit. Then no adjustment is required to the ROI calculation and everything is a lot easier and transparent.

• Q.36) Do you agree that disclosure of related party transactions should at least be consistent with GAAP and also include transactions between business units? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 56

• No comment

• Q.37) Do you agree that transactions with related parties, including transfer pricing information, should be disclosed? If so, please provide details of how this information should be disclosed. If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 56

• No comment

• Q.38) Do you agree that reconciliation between consolidated statutory reporting and regulatory reporting should be required for the purpose of monitoring compliance? If not, please provide that reasons for your view, an alternative to monitoring compliance and why you consider this to be preferable. 57

• No That's the auditors job and publication does not meet the cost/benefit test.

• Q.39) In your view, what form should the consolidation and reconciliation disclosures take? Please provide the reasons for your view. 57

• Not applicable, we do not agree that there should be any consolidation and reconciliation disclosures

- Q.40) Do you agree that financial information should be disclosed by way of a Regulatory Profit Statement, Regulatory Asset Statement, Regulatory Tax Calculation, Forecast Statement and Consolidation Statement? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 60

We do not agree with the need for a consolidation statement because the other statements are audited which of itself provides interest parties with the confidence that they have been correctly created.

CHAPTER 6 – the regulatory asset base

- Q.41) Do you agree that if the initial RAB value is established by updating a base valuation, then supporting disclosure of the methodology and assumptions will be required for transparency? If not, please provide the reasons for your view. 64

- No Comment

- Q.42) Do you agree that disclosures relating to the roll forward of the RAB should be sufficiently transparent so as to show the roll-forward calculation? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 65

- No Comment

- Q.43) Do you agree that the distinction between system fixed assets and nonsystem fixed assets under an indexed or un-indexed historic cost rollforward approach is not required for the on-going purpose of information disclosure? If not, please provide the reasons for your view. 66

- No Comment

- Q.44) Do you agree that if shared asset costs were to be excluded from the RAB this should be done by way of an adjustment to the final RAB value, depreciation and revaluations? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 66

- No Comment

- Q.45) Do you agree that the treatment of leases consistent with GAAP is the appropriate approach under information disclosure? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 67

- No Comment

- Q.46) Do you agree that the level of prescription of information disclosed for assets acquired from or sold to another regulated supplier or business unit should be consistent with the information disclosed in the initial RAB and be sufficiently detailed to provide transparency? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 67

- No Comment

- Q.47) What do you consider to be the implications of the two approaches for recognising the cost of finance during construction, being either application of an FDC allowance, or application of GAAP? Which approach do you prefer, and why? 69

- No Comment

- Q.48) Do you agree that RAB information should be disclosed by way of a Regulatory Valuation Roll-Forward Report, Annual Valuation Roll- Forward by Asset Class Report, Asset Transactions with Other Regulated Suppliers Report and Initial RAB Report? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 72

- No Comment

CHAPTER 7 – quality disclosure and statistics

- Q.49) Do you agree that the requisite quality, quality targets and actual quality are appropriate measurements of quality for the purposes of information disclosure? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 77

- We consider that the information required under s 53N compliance and monitoring should be sufficient.

- Q.50) Do you agree that requisite quality should be disclosed by suppliers of regulated services through the AMP so that they can choose the best way to establish and disclose the requisite level of quality? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 78

- As a working document the AMP should contain the level of quality that the EDB is trying to meet. This information may be in a different form to that required to demonstrate compliance with a price quality path.

- Q.51) Do you agree that the Commission should assess the process by which suppliers engage with their consumers to assess requisite quality, how target quality has been determined based on requisite quality information and how the supplier has performed

against target quality? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 79

- We consider that the Commission should continue to assess the process by which suppliers engage with customers. However we do not believe that the Commission should mandate how this engagement is to occur. Depending upon the area and the type of customers that a network serves, different methods of engagement are needed and it is the local EDB, not the Commission, who is best placed to determine local requirements. Consequently we believe the historical customer engagement requirements of the Commission to be adequate and not in need of amendment. If anything, given that network performance does not rapidly change and that customer requirements also change slowly over time, we believe that if the Commission is to make any change it should consider lengthening out the requirement to report on customer engagement to greater than the current two yearly requirement. This would reduce costs for the network and the customer.

• Q.52) Do you agree that suppliers of regulated services should be required to engage with their consumers and disclose how they engage or plan to engage with consumers, what service offers or commitments they make to consumers, how they make decisions about requisite quality standards, what types of contractual or other arrangements, if any, they enter into in relation to quality and how they plan to deliver requisite quality in terms of medium term service delivery? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 79

- We agree with the Commission on this question and believe the historical consumer engagement and reporting requirements of the Commission to be very well considered. See Q 51

• Q.53) Do you agree that quality information should be audited? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 80

- No Comment

• Q.54) Do you agree that the aspects of quality most relevant to suppliers of regulated services should include reliability, supply quality-other and customer service? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 84

- Yes

• Q.55) Do you agree that statistics information should include asset information, demand and capacity information? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 86

- See comments in the body of our submission

CHAPTER 8 – asset management plans

• Q.56) Do you agree that suppliers of regulated services should apply a recognised AMP standard? If so, what is the appropriate standard that should be applied? Please provide the reasons why you consider it to be preferable? 91

- In principle we agree that suppliers of regulated services should apply a recognised AMP standard. We consider that PAS-55 may be appropriate

• Q.57) Do you agree that AMPs should cover at least a ten-year forecast period? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 92

- Yes

• Q.58) Do you agree that the AMPs should be certified by Directors that they are compliant with the requirements and that the AMP describes actual process and practices implemented by the business? If not, please provide a reason for your view, an alternative and why you consider this to be preferable.92

- Yes

• Q.59) Do you agree that the Commission should review investment and innovation, quality and energy efficiency, demand side management and loss reductions as part of the AMP review process for Electricity Distribution Lines Businesses? If not, please provide a reason for your view, an alternative and why you consider this to be preferable. 94

- As indicated in the body of our submission we do not consider that an AMP review rating is required or will provide a useful measure to assist the Commission or interested parties in deciding whether the purpose of s 52A is being met. We do not have any issues with the Commission reviewing the investment and innovation, quality and energy efficiency, demand side management and loss reductions sections of our AMP.

- The AMP is however a working document and a forecast. Conditions will change and AMPs will have to be modified to take into account these changes. Forecasting over the next few decades is likely to be extremely challenging with the uncertain future of technological and political change to respond to economic and climate initiatives.

• Q.60) Do you agree that an AMP should include details of the background and overall approach to, and objectives of, a regulated supplier's asset management and planning processes? If not, please provide reasons for your view. 96

- Yes

• Q.61) Do you agree that an AMP should include details of the assets covered by the plan? If not, please provide reasons for your view. 96

- Yes

• Q.62) Do you agree that an AMP should include details of the regulated suppliers' plans for asset growth and their methods for reaching asset - related growth decisions? If not, please provide reasons for your view. 98

- Yes

• Q.63) Do you agree that an AMP should include details of the regulated suppliers plans for maintenance and renewal of assets over the planning period? If not, please provide reasons for your view. 99

- Yes

• Q.64) Do you agree that an AMP should include details of risk policies, assessment, analysis and mitigation methods, and details of emergency response and contingency plans? If not, please provide the reasons for your view. 99

- Yes

• Q.65) Do you agree that an AMP should include a regulated supplier's assessment of its performance against its own financial and service level targets as they relate to asset management planning? If not, please provide the reasons for your view. 101

Yes. In annual disclosure

CHAPTER 9 – pricing and other disclosure provisions

• Q.66) Do you agree that all regulated suppliers should disclose and publish their pricing methodologies? Please provide the reasons for your view. 107

- Yes, these methodologies should be developed by the EDBs based on a set of pricing principles set by the Commission (possibly in conjunction with the Electricity Commission) we do not consider that either the Commission or the Electricity Commission has any role in attempting to define pricing methodologies, rational for customer groupings etc.

• Q.67) Do you agree that regulated suppliers should disclose prices? If not, please provide the reasons for your view. 107

- We conditionally agree. While it is appropriate to disclose current prices and prices immediately preceding current prices we do not consider that this should be at a level at which individual customers can identify the prices applying to them. We principally operate at a wholesale level and our prices are structured on this basis to apply to consolidated quantities available at the reconciliation level by retailer. As such our prices are not intended to be and are not immediately applicable to say the measured quantities at the customers premise. We would note that the MED published an analysis of EDBs prices which is more appropriate for an individual person.

• Q.68) Do you agree that regulated suppliers should be required to disclose the terms and conditions of supply and that the scope of disclosures should be limited to terms and conditions for the supply of regulated services? If not, please provide the reasons for your view. 108

- Yes, however this may not be in a single document. Also an EDB is regulated under a number of different statues and regulations. [It is unclear if the Commission is referring to just Part 4 regulations.

• Q.69) Do you agree that that disclosure of policies will assist in achieving the stated purposes? If not, why not, and what information do you suggest would provide meaningful information? 109

- No. We do not agree that publishing credit policy; delegated authority policy; profit distribution policy; sponsorship policy and insurance policy will provide any useful information to assisting interested parties in assessing our compliance with the purpose statement.

CHAPTER 10 – Publication, retention, certification, statutory declaration

• Q.70) Do you agree that publicly disclosure should require a notice in the Gazette of that disclosure? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 114

- No. We consider that it would be more efficient for the Commission to Gazette one annual list of EDB websites and the information that parties should be able to find disclosed there.

• Q.71) Do you agree that the Annual, AMP and pricing methodology disclosures should be publicly disclosed? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 114

- Yes

- Q.72) Do you agree that prices disclosures should also be notified to each consumer by whom the charge is payable? If not, please provide the reasons for your view. 114

- No. Our pricing is to the retailer, by whom the charges are payable, not the consumer. This papers proposal basically assumes one model of pricing and limits innovative pricing solutions. Retailers are the appropriate party to provide customers with the retail price for electricity. We operate at a wholesale level and our prices are directed at retailers and relate only to the services we provide not the total cost of delivered electricity.

- Q.73) Do you agree that templates should be used where appropriate and that disclosures should be made available to the Commission in Excel format with relevant formulae in place? If not, please provide the reasons for your view. 114

- We agree that a template and excel spreadsheet could be useful additions. We consider that the compliance and monitoring statements required under s 53N and the AMP should form the bulk of any information disclosure regime. Given the requirements in s 53N for:

“(a) a written statement that states whether or not the supplier has complied with the price-quality path applying to that supplier:
“

(b) a report on the written statement referred to in paragraph (a) that is signed by an auditor in accordance with any form specified by the Commission:

“(c) sufficient information to enable the Commission to properly determine whether all applicable price-quality paths have been complied with:

“(d) a certificate, in the form specified by the Commission and signed by at least one director of the supplier, confirming the truth and accuracy of any information provided

- It is not entirely clear whether a template format would be appropriate except for section s 53N(c).
- We do not consider that the Commission should just adopt the existing templates from the existing threshold spreadsheets as we believe these need significant improvement.

- Q.74) Do you agree with the proposed timing for disclosures? If not, please provide the reasons for your view. 115

- We agree that annual disclosures (including compliance and monitoring information required under s 53N) should be made within 5 months after the end of the regulatory year (31 March for EDBs). We agree that the pricing methodologies should be in place and disclosed at the beginning of the regulatory year and within one month of a change or the adoption of a different pricing methodology. We agree that disclosures of required contracts should occur no later than one month after entering into the contract. We agree that pricing disclosures should be made at least 20 working days before introducing the new charge and AMPs at the beginning of the regulatory year.

• Q.75) Do you agree with the proposed regulatory year end dates? If not, please provide the reasons for your view. 115

- Yes in relation to EDBs

• Q.76) Do you agree that regulated suppliers should continue to disclose information and retain disclosed information and information supporting the disclosed information for a period of at least seven years? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 116

- Yes

• Q.77) Do you agree that Director certification should be required for the Annual, AMP and pricing methodology disclosures to certify that the information being disclosed complies with the relevant requirements? If not, please provide the reasons for your view. 117

- Yes, but they could be streamlined and should not require a statutory declaration.

• Q.78) Do you agree that audit reports should be required for Annual Disclosures? If not, please provide the reasons for your view, an alternative to obtaining independent assurance and why you consider this to be preferable. 119

- In some cases we agree, however where forecasts are involved an audit of the forecasts in AMP's is not appropriate.

• Q.79) Do you agree that audit reports should not be required for AMP, pricing methodology, prices or contract disclosures? If not, please provide the reasons for your view. 119

- Yes. We agree that audit reports should **not** be required for AMP, pricing methodology, prices or contract disclosures. A lot of the information is subjective and cannot be validated by an audit process. In the case of the AMP a number of sections are dependent on forecast where audits would add no value. See also paragraphs 78 – 83 of our main submission.

• Q.80) Do you agree that the form of audit reports should be flexible enough to allow for any changes in the New Zealand Auditing Standards without requiring an amendment to the requirements? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 119

- Yes

- Q.81) Do you agree that audit reports should include a statement as to whether the disclosures comply with the requirements and include explanations of any material non-compliance? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 119

- Yes

- Q.82) Do you consider it appropriate for there to be different assurance requirements for different types of information and what do you think they should be? Please provide the reasons for your view. 120

- The Commission's preliminary view is that the auditing requirements for prospective financial and non-financial information should be similar to the standard of assurance required by the Securities Regulations 1983 in respect of prospectus information for equity securities (and we note that new regulations have been promulgated which will result in the Securities Act standard aligning with the Financial Reporting Act).
- We disagree with any suggestion by the Commission that securities law standard of assurance (a stringent standard designed to protect investors) is appropriate for prospective financial and non-financial information under the information disclosure regime. Securities law does not ordinarily apply to Orion because it is not an issuer and its requirements should not be brought in by a side-wind. The consumer protection rationale of securities law is not relevant here.
- As the Commission itself notes at paragraph 468, reviewing AMP variances from forecasts "...imposes a forecasting discipline on regulated suppliers to disclose forecasts that are rigorous and realistic." We agree with the Commission's view on this.
- We also note that many issuers make offers to the public infrequently - and this can weaken incentives to impose good forecasting disciplines. However EDB AMPs and the subsequent variances to forecasts will be published annually and this serves to further strengthen those incentives that the Commission has identified.
- The Commission also has the opportunity to highlight those EDB AMPs that have large forecasting variances in its annual summary publication. This will also further reinforce the incentives for forecasting disciplines - effectively by way of peer pressure.
- The proposed information disclosure regime under Part 4 has a quite different purpose to disclosure in the securities environment. The standard of assurance required under Part 4 is less – because there are a myriad of other controls and disclosure requirements on EDBs, and because the Commission or any other interested party is plainly not analogous to an investor relying on this information in making an investment decision. Any audit requirement to the stringent security law standard would impose an unnecessary cost and burden in circumstances where EDBs are required anyway to

report their subsequent actual financial and non-financial information relating to that prospective information to a high standard of assurance. This is particularly true for prospective non-financial information which is not easily amenable to audit requirements - as the Commission recognises, auditors will be heavily reliant on technical experts.

- Q.83) Do you agree that audit reports should be addressed to interested persons and contain a statement that acknowledges the auditor's duty of care to the Commission? If not, please provide the reasons for your view, an alternative and why you consider this to be preferable. 120

- No. The Commission has indicated the definition of interested persons is likely to be broad, this would make an audit aimed at such a broad audience difficult. We consider that this is a question that the auditor may have a view on.

- Q.84) What do you consider to be an appropriate level of independence for auditors? Please provide the reasons for your view. 120

- No Comment

- Q.85) Do you agree a statutory declaration should be attached to all information made available to the Commission under any disclosure requirement? If not, please provide the reasons for your view. 120

No. We consider that a statutory declaration is unnecessary. We recommend either an authorised signatory or a simple declaration.