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#### **SUBMISSION ON THE ELECTRICITY REFORM AMENDMENT BILL 2007**

- 1 Orion appreciates the opportunity to respond to the Ministry of Economic Development's (*MED*) July 2007 Electricity Industry Reform Amendment Bill (*Bill*) consultation paper.

#### **About Orion**

- 2 Orion is an electricity lines business for the purpose of the Electricity Industry Reform Act 1998. Orion owns and operates the electricity distribution network in central Canterbury between the Waimakariri and Rakaia rivers, and from the Canterbury coast to Arthur's Pass. Our network covers 8,000 square kilometres of diverse geography, including Christchurch city, Banks Peninsula.
- 3 We transport electricity from nine Transpower grid exit points to more than 184,000 homes and businesses. A reliable and safe supply of electricity is of critical importance to the community we serve. Our priority is the continued cost-effective improvement of our network performance.

#### **Draft Bill requires substantial refinement**

- 4 We note that the MED does not wish to receive comment on, or consideration of the merits or otherwise, of the policy decision to amend the EIRA. There is however one consequential issue which Orion wishes to draw to the MED's attention, as it seems inconsistent with the overall policy direction of the draft Bill.

- 5 We are particularly disappointed that the MED has not taken the opportunity to facilitate greater use of standby (diesel) generation that provides a cost effective means of deferring network investment. It remains our view that a MWh/annum limit is more appropriate threshold for compliance with the arms length rules and corporate separation than a MW limit.
- 6 As a general comment, Orion considers that the draft Bill requires substantial refinement. We outline below our concern that core concepts such as 'local network area' are unclear, and that this impacts on other parts of the draft Bill.

### **Comment on raising the threshold before compliance with the arms length rules and corporate separation is required**

- 7 The policy as articulated in the explanatory notes to the Bill, with which Orion agrees, is clearly to give lines companies more room to operate free of the arms length rules. This is achieved through "raising" the threshold before compliance with the arms length rules and corporate separation is required, thereby reducing compliance costs.
- 8 However, the draft Bill proposes to remove the current percentage threshold. This would have the practical effect of lowering the threshold for compliance with the arms length rules and corporate separation lines for companies such as Orion. Thus the Bill does not align with the objective sought or alternatively the Bill's explanatory note is misleading.
- 9 This side effect on large companies was noted in the Cabinet Paper of 27 November 2006. For Vector, PowerCo and Orion (who currently supply electricity to 60% of the ICPs in New Zealand) this proposal would be a retrograde step. The status quo is that Vector, PowerCo and Orion can generate 42MW, 14MW and 12MW respectively without needing to comply with the arms length rules.
- 10 The draft Bill proposes to remove a freedom from the lines companies, without any demonstration that it is currently causing concerns. This would have the effect of *lowering* the threshold for larger lines companies.
- 11 It remains our view that a workable solution<sup>1</sup> which would give the community access to the significant benefits of distributors' owning and

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<sup>1</sup> See our letter of 15 December 2006 to MED and our submission to the MED on the draft New Zealand energy strategy (30 March 2007)

operating non-renewable generators, while also overcoming the Government's concern that distributors should not be able to enter the retail market is:

- 11.1 that distributors should be subject to an annual MWh (energy) cap, rather than a MW (capacity) cap. This would enable distributors to embed peaking plant to run for a limited number of hours in a year when loads on the distributor's network are high. This limit would prevent distributors competing for retail customers, who naturally require 24 hour - 365 day service.
- 11.2 As an example only,  $10\text{MW} \times 24 \text{ hours} \times 365 = 87,600 \text{ MWh}$  per annum. While we do not necessarily suggest this should be the limit (as we would argue for a greater value), we do point out that a 100,000MWh annual energy volume cap is approximately equivalent to the 10MW limit proposed in the NZES
- 12 At a minimum we consider that the percentage threshold should remain to retain the status quo. That is, that it is lawful for Orion to generate up to 12 MW without the need to comply with the arms length rules. We are not aware of any problems that have arisen with this status quo in the past.
- 13 If there is no problem with the status quo, we recommend that the percentage threshold not be removed only for the sake of tidiness.
- 14 We also note that the Bill proposes to raise the threshold at which the EIRA arms length rules apply to "10 MW (up from the higher of 2 MW or 5% of maximum demand)"<sup>2</sup>. We assume the numbers are transposed in the draft Bill as currently the threshold is the higher of 5 MW or 2% of maximum demand in the last financial year of the lines company to which distributed generation is connected (see section 5(2)(e)(i) of the EIRA).

### **Comments on the drafting of the Bill**

- 15 Orion welcomes the opportunity to comment on the Bill in its draft form. The EIRA is a complex piece of legislation and the proposed amendments would introduce important changes that, except as noted in this submission, Orion supports.

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<sup>2</sup> page 1 of the draft Bill's explanatory note (second-to-last bullet point on the page)

- 16 However, Orion considers that the draft Bill needs to be revised to ensure that due attention has been given to the meaning and role of key concepts, such as “local network area”, “connected generation”, “connected customer” and “involvement”.
- 17 It seems that there is currently a lack of clarity around these concepts. This leads to redundancies such as the concept of “the line” and use of the word “involved”.
- 18 Orion suggests changes to the wording of many provisions, and comments on other specific matters of drafting, below.

### **Local network area**

- 19 *“The second main change of the reforms is to narrow the scope of the ownership separation requirements to focus on the geographic areas where there is potential for the exercise of market power and anti competitive practices, where lines and supply are co-located.”<sup>3</sup>*
- 20 Electricity lines businesses no longer have a specific geographic area, since the removal of franchise area in 1993. The draft Bill appears to be trying to use the concept of “local network” to address this issue. Orion believes that this is problematic for several reasons.
- 20.1 The definition of “local network” in the draft Bill (and the corresponding meaning of “local network area”) cross references the relevant meaning in the Electricity Governance Rules (EGRs).
- 20.2 Amendments to the EGRs can be initiated by the Electricity Commission. Any proposed change to the EGRs is assessed in the context of the function of the EGRs, and not the EIRA. Orion considers that the proposed cross reference to the EGRs could have the unintended practical effect that changes would be made in a way that failed to take due account of the implications from an EIRA perspective.
- 20.3 It is not clear, as a matter of good legislative drafting, that one of the core concepts in the draft Bill should link through to rules made under another Act. Orion appreciates that the geographic concept the MED is proposing might be difficult to define. But it sees this concept as being key to the draft Bill, and believes that it should be defined in its own right in the EIRA.

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<sup>3</sup> Para 2.2.6 Electricity Industry reform amendment Bill 2007 - Consultation on the draft Bill July 2007

**References to “the line” in proposed new section 17A**

21 Clause 8 of the draft Bill proposes a connected generation cap (new section 17A of the EIRA), which would be breached if a person’s connected generation in respect of “the line” has a total capacity that exceeds the greater of:

21.1 50 MW; or

21.2 20% of the maximum demand, in the immediately preceding financial year, on “the line”.

22 The present wording in section 46C of the EIRA refers to 20% of the maximum demand, in the immediately preceding financial year, on “the lines owned or operated by the person”.

23 Orion understands that the change reflects the draft Bill’s focus on local network areas. However, references to “the line” in proposed section 17A”, rather than a local network area (encompassing many lines), are confusing. The relevant concept is the local network area.

**Proposed new section 17C**

24 Orion has several comments in relation to the new sections 17 to 17F proposed by clause 8 of the draft Bill.

**17C(1)**

25 The words “sells or” in 17C(1) should be deleted. The new meaning of “involved” proposed under clause 7 of the draft Bill states that a person is involved in selling electricity to a customer if the person sells to the customer either on its own or another’s behalf. The concept of being “involved” in selling electricity includes the act of selling that electricity. The words “sells or” in 17C(1) are therefore unnecessary.

**17C(2)**

26 There appears to be an error in the cross reference to “section 17A (a) or (b)” in proposed new section 17C(2)c. Orion can see no such section in the draft Bill.

27 The words “first” in 17C(2)c (a), and “secondly” in 17C(2)c (b) should be deleted. They are made redundant by the fact that both “(a)” and “(b)” are required for new generation to be deemed as connected to the national grid.

**17D**

28 The words “involved in a line” in proposed section 17D(1)(a) are redundant, as “connected generation” is defined as including involvement

in a line. Orion submits that the beginning of 17D(1)(a) should instead read “a person is involved in any connected generation”.

- 29 Proposed sections 17D(2) and (3) refer to “connected electricity businesses”. Orion notes that this term is not defined in either the draft Bill, or the EIRA. It submits that a definition be inserted into the draft Bill. “Connected electricity businesses” could be defined as meaning those businesses to whom section 17D(1) applies.

**Clause 10 – proposed amendments to section 19**

- 30 Clause 10(2) of the draft Bill proposes the insertion of sub-paragraphs to section 19(1) of the EIRA. That section reads “...no account is to be taken of a person’s business, or involvement or interest in a business if-”. The proposed sub-paragraphs do not make sense when following on from that wording.
- 31 Proposed section 19(1A)(d) should include “or for the consumption of its associates”, as this wording is currently included in section 4(2)(b) of the EIRA, which refers to the same exclusion.

**Clause 17 – proposed section 70A and 70B**

- 32 The words “within a local network” in proposed section 70A are redundant. Under the draft Bill, “connected customers” will be within a company’s local network.
- 33 Proposed section 70B(1) should read “rules”, rather than “rule”.

**Arms length rules**

- 34 Orion believes that the proposed new arms length rules need to be clarified.
- 35 In proposed new rule 8, the words “and may direct or supervise the management of the whole, or a substantial part of the business and affairs of business B” make that rule unduly complex. Orion suggests that those words, and the word “otherwise”, are deleted. That would leave the main provision (that a director of business A may be a director of business B), followed by a list of the conduct which the director must not carry on.
- 36 The reference to “other than a director” in proposed new rule 9 makes that rule read as though directors may have the listed involvements. However, directors are dealt with under new rule 8; rule 9 relates to managers and should not mention directors.
- 37 Further, the EIRA definition of “manager” should be amended, and a separate definition of “director” inserted, to remedy potential confusion

resulting from permitting cross directorships but excluding common management (over the 30 MW threshold).

**Consequential amendments**

- 38 Orion considers that the draft Bill needs to make several consequential amendments.
- 39 The draft Bill proposes to amend the Commerce Act so that “electricity business”, “electricity lines business” and “involved” have the meanings as they did in the EIRA prior to the enactment of the Electricity (Miscellaneous Matters) Amendment Act 2007. The Commerce Act should not cross-refer to legislation that is no longer in force. Instead, the relevant definitions should be set out in full.
- 40 Note that the reference to the Electricity Industry Reform Act “1988” should read “1998”.
- 41 Section 4A of the Electricity Act provides that the Minister of Energy may declare an electricity supply business to be an “electricity operator” if the Minister is satisfied that a declaration is necessary to enable the person to carry on all or any of the activities referred to in section 4(2) of the EIRA. Section 4 of the EIRA would be repealed by clause 6 of the draft Bill.
- 42 Section 4A of the Electricity Act also defines “electricity supply business” by cross reference to section 5 of the EIRA, which would be repealed under clause 6 of the draft Bill.
- 43 Confidentiality is not claimed for any of the content of our submission.
- 44 Thank you for the opportunity to make this submission. If you have any questions relating to the submission, 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



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