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**SUBMISSION ON INITIAL RESET OF THE DEFAULT PRICE-QUALITY PATH FOR
ELECTRICITY DISTRIBUTION BUSINESSES – INITIAL RESET DETERMINATION
(DRAFT) CONSULTATION PAPER**

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the *Initial Reset of Default Price-Quality Path for Electricity Distribution Businesses – Initial Reset Determination (Draft)* consultation paper (the **draft determination**) released by the Commerce Commission (the **Commission**) in October 2009.
- 2 We would like to thank the Commission for the early release of this draft determination. We note that the Commission still has to consider submissions on the draft decisions paper and consequently much of the detail in this decision may change. Although the draft determination is on the whole reflective of the draft decisions paper, because it does not take into account EDBs' submissions on that paper there are many points on which further refinement is required.
- 3 As requested by the Commission, however, we have endeavoured in this submission where possible to address both the current form of the determination and suggested changes required to reflect our earlier submission.
- 4 This submission answers specific questions set out by the Commission in the draft determination.

Response to the Commission's specific questions

Q1. Are there any defined terms which you consider unclear in their description or inappropriate for the purposes of the draft determination? If so, please explain and where appropriate provide suggested wording.

- 5 We have a number of comments and suggestions regarding the defined terms, which we elaborate on below. Many of these points were also raised in our submission on the draft decisions paper and we reiterate them here. We also propose a number of new definitions.
- 6 **Allowable Notional Revenue** - is defined in terms of maximum *prices*. In our view this is inappropriate. We do not consider a definition of allowable notional revenue is required in the interpretation section at all, other than a bare reference to the formula in clause 8.3. But if the Commission considers that a definition of 'Allowable notional revenue' is necessary, we recommend modification as shown below and the inclusion of definitions for Notional Revenue and Maximum Prices. We recommend the following:

Allowable Notional revenue – means the value of R_t as set out in clauses 8.3 or 8.4

Notional Revenue – means the value of NR_t as set out in clause 8.3.

Maximum prices - means a 'set' of prices in the Notional revenue NR_t such that when applied to the 'set' of quantities $Q_{i,t-1}$ make the value of NR_t equal to the value of the Allowable Notional revenue R_t .

- 7 **'Electricity Commission Levy'** – as noted in our submission on the draft decisions paper,¹ it is probable that the Electricity Commission will be superseded by a different regulatory body during the regulatory period. We consider that the Commission should allow for the EC's successor(s) to also be provided for in this determination without requiring substantial amendment. We recommend the following definition:

Electricity Commission Levy means an industry levy paid or payable to the Electricity Commission (or its successor body) in accordance with section 172ZC of the Electricity Act 1992.

- 8 **'Forecast CPI'** – as discussed in response to question 3 below, we consider that a forecast CPI is far superior to the lagged CPI approach

¹ Orion New Zealand Ltd, *Submission on Initial Reset of DPP for EDBs* 12 October 2009.

included in the determination. We recommend that the Commission adopt the approach based on a forecast as recommended by both Orion and PwC (on behalf of 18 EDBs). An appropriate forecast is the Reserve Bank forecast, although we discuss later in this submission the precise mechanics of how the CPI should be formulated. For now we recommend the following definition:

Forecast CPI - means the forecast of the CPI based on the forecast by the [Reserve Bank] and adjusted for previous estimates based on the formula set out in clauses 8.3 and 8.4 as appropriate.

- 9 **'Pass-Through Costs'** – for the reasons set out in our response to question 2 below, we suggest the following definition²:

Pass-Through Costs means:

(a) the Transmission Charges, Rates, Electricity Commission Levies and Commerce Act Levies paid or payable by a Non-exempt EDB during an Assessment Period:

(aa) a material change in costs of providing electricity lines services as a result of an uncontrollable and unforeseen event, and where the material change has such an impact on returns that services would be jeopardised:

(ab) any charges, rates, levies or costs paid or payable by a Non-exempt EDB during an Assessment Period as required by law, including by any Act, Regulation, or other legislative instrument enacted or amended during an Assessment Period:

but does not include:

(b) any amounts described in paragraph (a) if the Non-exempt EDB demonstrates ~~beyond reasonable doubt~~ that those amounts were passed on transparently to its Consumers and/or electricity retailers

- 10 **Price** - We note further discussion is required on the scope of the DPP determination in relation to the definition of price. The Act provides the DPP must specify the maximum prices that may be charged (or revenues that may be recovered) by an EDB. Price is specified as a function of prices charged and associated quantities. There are, however, certain

² In the proposed changes deletions are shown as strikethrough and additions are underlined

EDB charges which are not a function of prices charged and associated quantities, such as capital contributions (for example, where a customer at a remote rural property requests a new connection, or connection/disconnection services). Such charges are for services closely linked to Electricity Distribution Services, but are not prices related to conveyance of electricity by line. For this reason EDB revenue from such charges is not “notional revenue” for purposes of assessing compliance with the DPP. We also note that for some of these services (such as connection/disconnection) there may be workable competition, although competitors may not be other EDBs. Orion looks forward to engaging further with the Commission on a mechanism to ensure these types of charges are appropriately assessed.

- 11 **Publicly Available** – although this is a defined term, this definition does not appear to be used in the document. We presume this is an oversight. At least the annual compliance statement would be made publicly available. However, if this definition is not required it should be deleted.
- 12 **‘Quantity’** – we believe it would be useful to include in the example of units of quantity the word “day”, to indicate that quantities to which prices apply do not have to be electrical units. We recommend the following definition:
- Quantity** – means the unit of quantity (for example, kWh, kVA, day) corresponding to a Price.
- 13 **Reliability Targets** – we consider that it would be more appropriate to use the term *reliability limits*, as these SAIDI and SAIFI levels are not targets that an EDB is trying to reach (hit) rather they are limits which, if exceeded twice in a three year period, the EDB will have breached the quality standard.
- 14 **SAIDI and SAIFI** must be defined in terms that appropriately allow for certain types of interruption (as provided for in the previous thresholds notice³) and which are comparable to the reference data derived under the previous thresholds regime.
- 15 The absence in the draft determination of definitions of “Interruption” and “Unplanned Interruption” will result in the inclusion of many events in the SAIDI and SAIFI assessed values which should not be included because they are in effect intentional interruptions or are of extremely short

³ Commerce Act (Electricity Distribution Thresholds) Notice 2004, 31 March 2004.

duration. The events listed in the definition of “Interruption” in the thresholds notice include disconnection for breach of contract, temporary interruption on the request of a customer, at the request of the customers electricity retailer, and for the purposes of isolating an unsafe installation. Plainly such events should not count towards SAIDI and SAIFI values. On the same basis, interruptions which are shorter than one minute should not be counted – the current thresholds notice excludes such short-duration interruptions from the definition of “Interruption”.

- 16 The draft determination should incorporate these concepts from the current thresholds notice definition of Interruption. There is no principled reason to radically alter in the DPP the type of interruptions which are assessed by SAIDI and SAIFI – and in fact such a change may impose significant costs on EDBs in gathering completely different interruption data and analysing how the new quality regime applies in practice. That runs counter to the low-cost rationale of the DPP regime.
- 17 Secondly, the draft determination does not distinguish between interruptions of high voltage 3.3kV and above distribution lines and lower voltage lines 230/400V. In the thresholds notice the definition of prescribed voltage electric line (those equal to or greater than 3.3kV) restricts the SAIDI and SAIFI values to interruptions on those lines. There is no reason in principle to extend SAIDI and SAIFI measures to lower voltage connections – and in practical terms that may cause significant difficulties in gathering data.
- 18 Thirdly, we note that the proposed definition will not yield comparability with the thresholds regime. Any comparison with the reference dataset (data from 1 April 2004 to 31 March 2009) will be meaningless if the interruptions described above are not excluded. Another factor is that historically EDBs are not likely to have recorded data relating to interruptions on lines which are *not* prescribed voltage lines (i.e. low voltage lines), so the reference dataset cannot be made comparable to the data gathered in the upcoming regulatory period.
- 19 We believe that the difficulties outlined above can be easily remedied by reintroducing the defined terms ‘Interruption’ and ‘Unplanned Interruption’ with similar definitions as provided for under the previous thresholds notice. That is:

Interruption – means in relation to Electricity Distribution Services at prescribed voltages the cessation of Electricity Distribution Services to a Consumer for a period of 1 minute or longer, other than by reason of disconnection of that consumer –

- (a) for breach of the contract under which electricity is conveyed; or
- (b) as a result of a request from the consumer, or
- (c) as a result of a request by the consumer's electricity retailer, or
- (d) at the direction of the system operator;⁴ or
- (e) for the purposes of isolating an unsafe installation

Unplanned Interruption – means any Interruption in respect of which less than 24 hours notice, or no notice, was given, either to the public or to all consumers affected by the interruption.

- 20 The above change also requires a definition of prescribed voltage electric line as per the previous threshold notice. We note this definition is now included (in a slightly different context) in s 54C of the Act:

Prescribed Voltage Electric Line – means an electric line that is capable of conveying electricity at a voltage equal to or greater than 3.3 kilovolts

- 21 **Transmission Charge** – we consider that for the avoidance of doubt the defined term Transmission charge should also include:

- 21.1 charges under new investment contracts, and/or agreements to improve a point of connection whether entered into before or after the introduction of the Transmission pricing methodology;
- 21.2 ancillary services charges;
- 21.3 Transpower detailed solution development charges;
- 21.4 Transpower minor works order agreements;
- 21.5 the provision of system operator services; and
- 21.6 loss and constraint rentals.

- 22 We also consider the definition of 'Transmission Charge' should encompass transmission services provided by one EDB to another EDB.

⁴ We have included this additional clause in relation to interrupting supply at the request of the system operator as we believe it is an event beyond the EDBs control.

For this reason Orion agrees with definition suggested by PwC (for ENA) in its submission.

Q2. Do you consider the definitions of Transmission Charge and Pass Through Costs to be appropriate? If not, please explain why. Are there other elements (e.g. loss and constraint rentals) which you consider should be included in the definitions? If so, please explain and provide suggested wording.

Transmission charges

- 23 Orion considers the definition of 'Avoided transmission charge' needs further consideration. In particular, it is vital that the 'Avoided transmission charge' concept should incentivise EDBs to invest in assets to provide lower overall costs to customers.
- 24 Where transfer of service from Transpower to an EDB can be made (and continued levels of service maintained) through more efficient investment by the EDB, the regime should provide an appropriate incentive for EDBs to undertake the additional investment/risk. For example, Orion is currently exploring the purchase of transmission assets from Transpower - if those assets were transferred to Orion and we undertake certain investments then overall delivery (transmission and distribution) cost to consumers would be lower than under the status quo. To facilitate this transfer and investment, transmission revenue associated with these purchased assets would need to be redefined as 'avoided transmission' rather than as transmission.
- 25 The current definition of 'Avoided Transmission charge' in the draft determination – which refers to "expense" incurred, does not provide Orion (or other EDBs) with an appropriate incentive to undertake such investment to reduce overall transmission and distribution costs. We note that clause 5.4 of the previous threshold notice provided some additional clarity in this area, but appears to have been overlooked in this draft determination.
- 26 We would appreciate clarity in the wording of the definition of 'Avoided Transmission charge' in the draft determination to specifically, support investment to lower overall costs. As noted above the wording of the current definition is very limited and does not provide clear criteria for assessing the extent to which avoided transmission costs may be recovered by an EDB.

27 We recommend the following definition:

Avoided Transmission charge means:

- (a) any expense (including the cost of capital) of a Non-exempt EDB that arises during the Assessment Period from any activity which substitutes for the use of the Transmission System; and
- (b) where Electricity Lines Services are transferred between Transpower and the Non-exempt EDB includes the value of the Transmission Charges avoided from the date of the transfer.

28 Orion considers the above definition would deliver an appropriate incentive for EDBs to invest to avoid transmission costs. We note it aligns with the draft determination's requirement that an EDB provide information in its compliance statement about whether any transfer of assets between Transpower and an EDB increased the EDB's Assessed Values (SAIDI and SAIFI): clause 11.1(b)(iv).

29 We recognise that, like efficiency carry-over mechanisms, this is a difficult issue, but we do not consider it is appropriate to wait until the input methodologies are finally determined before clearly defining pass-through costs and avoided transmission charges. We are happy to engage constructively with the Commission to devise a mechanism that achieves an appropriate balance by providing incentives to pursue network efficiencies and sharing the benefits of any gains made. This needn't be complex. It could be as simple as allowing EDBs to retain a percentage (say 90%) of any transmission charges avoided for a given period (say, 10 years)

Pass-through costs

30 While we agree with the types of charges and levies listed in limb (a) of the definition of Pass-through Costs, we have concerns about two aspects of the definition.

31 Firstly we consider the reference to the "beyond reasonable doubt" standard in limb (b) is misplaced. Beyond reasonable doubt is the criminal law standard of proof and is an extremely high test. The ordinary (civil) standard of proof is lower and is usually described as "on the balance of probabilities". Orion does not consider it appropriate to include the criminal standard in the draft determination because:

- 31.1 it may make it unduly difficult for EDBs to demonstrate a transparent pass-on to customers, in Orion's case for things such as transmission rental rebates;
- 31.2 it may require EDBs to collate significant supporting data and thus does not accord with the relatively low-cost regulation intended by the DPP regime; and
- 31.3 more generally, it is inappropriate for the Commission to import wholesale criminal law concepts into the civil law, particularly where Part 4 sets up a coherent regulatory framework – which operates largely without reference to the criminal law standards of evidence.
- 32 Secondly, in our submission on the draft decisions paper we suggested that there is a case for having a nominated pass-through event to deal with the issues of re-openers for the DPP. Based on an Australian Energy Regulator (**AER**) approach we proposed that the definition of pass-through cost being expanded to include events:
- 32.1 where a material change in costs of providing distribution services as a result of an event has such an impact on returns that services would be jeopardised and/or compliance with allowable notional revenue would be impossible; and
- 32.2 if it is an uncontrollable and unforeseeable event that falls outside of the normal operations of the business, such that prudent operational risk management could not have prevented or mitigated the effect of the event.
- 33 In light of the points above, Orion submits the definition of Pass-through Cost in the draft determination should be amended to that shown in paragraph 9 above.

Q3. Do you consider the Allowable Notional Revenue assessment formulae to reflect the Commission's draft decisions? If not, please explain and provide suggested amendments.

- 34 No, we believe that there are some problems with the allowable notional revenue formula R_t , the formulation of ΔCPI_t and the calculation of estimated quantities $Q_{i,t-1}$.
- 35 As we noted in our submission on the draft decisions paper, the allowable notional revenue formula (in the draft decisions paper and now reproduced in the draft determination) does not adequately provide a CPI-X regime.

Instead it gives a regime which *at best* yields CPI-X and, in many cases, will produce a rate of change more onerous than X.

- 36 This is because the approach of updating base quantities each year and re-establishing the allowable notional revenue would effectively eliminate any headroom from year to year, ratcheting the limit down to previous prices, plus CPI. Any allowable price increase not taken would be foregone. As Orion has previously submitted, many situations exist where we might choose not to pass on a full increase, including to avoid rate-shock and to provide an element of price stability. We also note that the suggested approach would deter us from temporarily lowering our price, as any lower level would be locked in.
- 37 As mentioned in our earlier submission⁵, this could be fixed by simply allowing any headroom to be carried forward (and adjusted by CPI - X) in the calculation of allowable notional revenue (where headroom is the difference between notional revenue and allowable notional revenue).

$$R_t = (\sum_{i,t-1} Q_{i,t-1} - K_{t-1} + R_{t-1} - NR_{t-1}) \times (1 + \Delta CPI_t)(1-X)$$

- 38 We are also concerned about the use of the terms Assessment Period and Assessment Date for the various definitions in clause 8.3 relating to the above formula. It is unclear if they correctly define the parameters, for example because Assessment Period is used in defining “t”, this means “t” would denote the 12 month period ending on the Assessment Date. We don’t think this is the intended definition of “t”.
- 39 Also, we note clause 8.3 appears to allow an EDB to set prices throughout the 12 months of the Assessment Period at any level they wish, and provided it resets its prices such that on the Assessment date its prices are at a level such that $NR_t/R_t \leq 1$ then it complies with the price path. We do not consider that this is the intent of the draft decision. It is possible that clause 8.5, which refers to an EDB restructuring its prices, is designed to capture a change in prices, however this is far from clear.

CPI lag

- 40 The draft determination uses CPI to the end of September one year for the assessment at the end of March, not the next year, but the one after – an 18-month lag. In contrast the current price path uses CPI to the end of the

⁵ Orion, Submission on initial reset of default price-quality path for EDBs – draft decisions paper, 12 October 2009.

December quarter for the assessment at the end of the following March – a three-month lag. As an example, the CPI movement in the year to September 2009 would be used to determine and assess price movements to apply through to 31 March 2011. We don't consider that this 18 month lag meets the intent of the draft decision.

- 41 We believe that a better approach, that would provide the certainty that EDBs and the Commission are trying to achieve, would be the approach recommended by Orion and other EDBs in our earlier submission to use a CPI forecast (such as the Reserve Bank's forecast).
- 42 In our proposed forecast approach we have considered the timing of price setting and availability of CPI updates, and we consider that a forecast of CPI to the mid-point of each pricing year provides the most desirable result. This approach allows any adjustment for prior under or over estimates to be applied in the following year, and allows prices to fairly reflect CPI movements for the pricing year (in theory, over collecting in the first 6 months, then under collecting in the next 6 months, or vice versa). We submit that the following approach is appropriate :

$$\Delta CPI_t = \underbrace{(1 + \Delta CPI_{f,t-1})}_{\text{Forecast change}} \times \underbrace{\frac{(1 + \Delta CPI_{a,t-2})}{(1 + \Delta CPI_{f,t-2})}}_{\text{t-2 Adjustment}} - 1$$

where: ΔCPI_t is the change in CPI used in the calculations of R_t

$\Delta CPI_{f,t-1}$ is the forecast change in CPI for the year ending September_{t-1} (from Statistics NZ, the reserve Bank or similar)

$\Delta CPI_{f,t-2}$ is the forecast change in CPI for the year ending September_{t-2}

$\Delta CPI_{a,t-1}$ is the actual change in CPI for the year ending September_{t-2} specified as:

$$\Delta CPI_{a,t-2} = \frac{CPI_{Dec,t-3} + CPI_{Mar,t-2} + CPI_{Jun,t-2} + CPI_{Sep,t-2}}{CPI_{Dec,t-4} + CPI_{Mar,t-3} + CPI_{Jun,t-3} + CPI_{Sep,t-3}}$$

- 43 With this approach the adjustment factor should not be applied in the initial assessment as there was no prior estimate for which an over or under correction is required.

Estimated quantities

- 44 We noted in our submission on the draft decisions paper some definitional problems with the specification of the price path assessment formula.
- 45 These problems are reflected in the draft determination. In particular we noted:
- 45.1 the reference to “base quantity” in the definition of $Q_{i,t-1}$ has been removed, and it is unclear what the implications of this change are;
- 45.2 the draft decision to use t-1 quantities does not make it clear whether the quantities to be used in assessment are the *actual* t-1 quantities, or the *estimated* t-1 quantities used when the prices for period t are set. We consider the Commission intends the latter;
- 45.3 the definition of $Q_{i,t-1}$ should be amended to clarify that it is a reference to estimated t-1 quantities because actual quantities for the t-1 period will not be known when prices are set for the next period; we suggest amending clause 8.3 to the following:

*“ $Q_{i,t-1}$ the base quantity for the service i in **year t-1**, which is the quantity of service i estimated to have been provided in assessment period t-1 at the time prices were set for assessment period t,”*
(emphasis added)

Q4. Do you consider the definition of Allowable Notional Revenue for the First Assessment Period to be appropriate? If not, please explain and provide suggested amendments

- 46 No, for the avoidance of doubt, $Q_{i,2010}$ should refer to the estimate of the quantities for the year to 31 March 2010 corresponding to the i^{th} starting price.
- 47 Also as discussed above we believe that ΔCPI_{2010} should be based on a forecast basis rather than the proposed lagged approach.

Q5. Do you consider the price restructuring notification requirements to be clear and workable? If not, please explain and provide suggested amendments.

- 48 No. We accept that the annual update of quantities might help facilitate tariff changes (for example, the formula would allow tracking of variations

in pricing structures where one component was increased while another was reduced).

- 49 We believe that, contrary to the view expressed by the Commission on price restructuring in its draft decisions paper,⁶ annual quantity updates will not resolve the problem of demonstrating price path compliance, at least not where entirely new quantities are devised (for example, where we move from kVA to kW, or where we move from summer assessment to winter assessment).
- 50 The problem (which also existed under the threshold regime) arises because the price for the new quantity simply did not exist in the previous period. It is not in fact possible to demonstrate compliance under both the old and new structures.

Q6. Do you consider the quality standards assessment formulae to reflect the Commission's draft decisions? If not, please explain and provide suggested amendments.

- 51 No. As noted in our response to the draft decisions paper, the proposal has the potential to ratchet down the SAIDI and SAIFI levels over time. Orion considers that this is inconsistent with the concept of “no material deterioration” in quality.
- 52 Also, the draft determination conflates compliance with SAIDI and SAIFI and requires compliance with *both* indices in any given year – in other words a breach of the SAIDI performance value in one year, if followed by a breach of the SAIFI value the next year, would be a breach of the quality standard.
- 53 As we submitted in response to the draft decisions paper, SAIDI and SAIFI are separate indices and should be treated independently.
- 54 The compliance statement in the draft determination should be amended to reflect the *separate* compliance statements (and separate two-out-of-three assessments) which are required for SAIDI and SAIFI. To impose two-out-of-three assessment which takes into account a SAIDI breach *or* a SAIFI breach is unprincipled because the two datasets are not comparable. Compliance should be independently assessed – an EDB

⁶ Commerce Commission *Initial Reset of the Default Price-Quality Path for Electricity Distribution Businesses* Draft Decisions Paper 8 September 2009.

would, of course, be obligated to meet both SAIDI and SAIFI measures, but those measures should be treated separately.

55 We suggest the following amendments to clauses 9.1 and 9.2⁷

9.1 Compliance with quality standards

A Non-exempt EDB must in respect of each Assessment Period other than the First Assessment Period, comply with either

(a) ~~the any~~ annual reliability assessments ~~for~~ specified in clause 9.2 for that Assessment Period; or

(b) have complied with ~~those~~ the relevant annual reliability assessments for the two immediately preceding extant Assessment Periods.

Clause 9.1 will apply independently to SAIDI and SAIFI values.

9.2 Annual reliability assessment

A Non-exempt EDB's Assessed values for an Assessment Period must not exceed either Reliability ~~Target~~ Limits for the Assessment period such that:

$$\frac{\text{SAIDI}_{\text{ASSESS},t}}{\text{SAIDI}_{\text{Limit}}} \leq 1;$$

$$\frac{\text{SAIFI}_{\text{ASSESS},t}}{\text{SAIFI}_{\text{Limit}}} \leq 1;$$

where:

...

56 As we indicated in our earlier submission we do not consider that it is appropriate to normalise the SAIFI dataset by replacing the daily SAIFI values with β_{SAIFI} (if the daily SAIFI value for that day exceeds β_{SAIFI}) dependent on the SAIDI value exceeding β_{SAIDI} . Consequential changes to Schedule 3 should also be made to reflect the above position.

⁷ In the proposed changes deletions are shown as strikethrough and additions are underlined

- 57 We also note the inclusion in the draft determination of the IEEE 2.5 β method to calculate boundary values for reliability DNZ datasets. ENA has previously submitted on the reasons why 2.5 β is inappropriate for New Zealand conditions: Orion supports ENA's submission.

Q7. Do you consider the explanation of the annual and multi year assessments to reflect the Commission's draft decisions? If not, please explain and provide suggested amendments.

- 58 We acknowledge that the draft determination reflects the Commission's draft decision prior to consideration of submission. We believe that the "two out of three" assessment process described in the draft decisions paper is flawed, in that if, for example, a SAIDI value that exceeds the reliability limit is followed the next year by **either** a SAIDI or a SAIFI value that exceeds the reliability limit this would result in a breach. For the reasons set out in response to question 7 above, we consider SAIDI and SAIFI values should be treated independently and the two out of three assessment would take into account SAIDI and SAIFI measure separately.

Q8. Do you consider the compliance statement requirements of Clauses 10 and 11 to be appropriate? If not, please provide details.

Mergers and acquisitions (clause 10)

- 59 We consider clause 10 is broadly acceptable but that certain amendments are desirable to ensure reporting obligations following a merger or acquisition are not unduly onerous or duplicative. Clause 10 appears sufficiently broad to encompass both mergers with other non-exempt EDBs as well as acquisitions and/or sales of assets (where customer connections and/or system length is changed by 10% or more). However if the merger or sale/purchase is between two non-exempt EDBs, then presumably clause 10 is redundant because compliance with the price path would need to be demonstrated by both EDBs in any event.
- 60 In this regard Orion supports the suggested amendments to cl 10 contained in the ENA submission which would restrict the ambit of cl 10 to non-exempt EDBs. Orion also supports the ENA's suggested amendments to assessment of quality following a merger or acquisition.

Compliance statement (clause 11)

- 61 We consider that there are a number of flaws in clause 11.

- 62 As we indicated in paragraph 11 we consider that the annual compliance statement would be made publicly available, we also consider that as with the previous thresholds the annual compliance statement should be provided to the Commission within 5 working days from when the statement was first disclosed. We therefore suggest the following amendment to clause 11:

11.1 Every Non-exempt EDB must ~~provide to the Commission~~ make Publicly Available within 50 working days of each Assessment Date an Annual Compliance Statement consisting of the following:

(a) [etc]

11.3 Every non-exempt EDB must also supply a copy of the Annual Compliance Statement published under Clause 11.1 to the Commission within 5 working days after this Annual Compliance Statement is first published.

- 63 Clause 11.1 (a) requires an EDB to include in its Annual Compliance Statement a statement as to whether the Non-exempt EDB complied or otherwise with the Default Price-quality Path. This implies the DPP is a single test. However clause 5 specifies the DPP as a two part, (a) as set out in clause 8 (Price Path) and (b) as set out in clause 9 (Quality Standards). In addition, the quality standard is made up of a two part test, (a) SAIDI and (b) SAIFI. We therefore submit that each Non-exempt EDB's assessment of compliance should set out the components of the DPP which are complied with and those which are not (similar to the current thresholds). Suggested wording is as follows:

11.1 (a) a written statement that states whether or not the Non-exempt EDB has complied with the Price Path as set out in Clause 8 of the Determination and the SAIDI Quality Standard as set out in Clause 9 of the Determination and the SAIFI Quality Standard as set out in Clause 9 of the Determination.

- 64 We believe there is a fundamental flaw in clause 11.1(b)(ii) which requires forecast and actual values for the quantities Q_i . We acknowledge that the draft decisions paper at paragraph 4.83 provided for these tests: the paper noted that continued misestimation of the t-1 base quantity by a margin of error that exceeds 5% may lead the Commission to reassess the use of the t-1 approach⁸.

⁸ At paragraph 4.84

- 65 However, we do not consider that the proposed assessment of forecast and actual amounts required by clause 11.1(b)(ii) will add any value, there are many individual quantities Q_i and these may all vary considerably from year to year (even in opposite directions). The annual amount of many of these individual quantities will be dependent on the weather, economic conditions or even dry year shortages. These reasons are likely to be the explanation of any variance between the forecast quantities and the actual quantities.
- 66 We also note, that in relation to the 5% margin of error it is unclear whether this margin applies to the individual values of each Q_i or to the total value of all Q_i .
- 67 In addition clause 11.1(b) includes a requirement that the Annual Compliance Statement must include sufficient information to enable the Commission to properly determine the accuracy of the statement. The accuracy of the statement is confirmed by the auditor, as represented in the audit opinion. Accordingly we suggest clause 11.1(b) would be improved with the following amendment:
- 11.1(b) sufficient information to enable the Commission to properly determine the accuracy of the statement assess compliance or otherwise with the Determination, including:
- (i) [etc]
- 68 We also note that while clause 11.1(b)(iv) provides that an EDB should provide information on whether or not a transfer of assets between Transpower and the Non exempt EDB has, of itself, increased the Non-exempted EDB's (SAIDI and SAFI) Assessed Values, it does not make clear the required standard of compliance
- 69 As we indicated above the potential cost impact of a transfer of assets from Transpower to an EDB (or vice-versa) needs to be incorporated into the price path (via pass through costs) and the quality standards must also be adjusted appropriately.

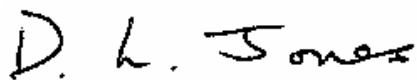
Q9. Are there additional matters which you consider should be addressed in the overall Initial Reset Determination? If so, please explain.

- 70 No.

Concluding remarks

- 71 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 that reads "D. L. Jones". The signature is written in a cursive style with a large initial "D" and "L".

Dennis Jones
Industry Developments Manager