

27 January 2012

Regulation Branch
Commerce Commission
Wellington

by email: regulation.branch@comcom.govt.nz

SUBMISSION ON CUSTOMISED PRICE-QUALITY PATH APPLICATION WINDOW AND STANDARD APPLICATION FEE DRAFT DECISIONS PAPER

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the “customised price-quality path application window and standard application fee” draft decisions paper (the **paper**) released by the Commerce Commission (the **Commission**) in December 2011.

Application Window

- 2 At paragraph 8 of the paper the Commission advises the proposed application windows for a CPP. The final bullet point in this paragraph states:

“In circumstances relating to a catastrophic event, a CPP proposal may be submitted to us at any time, except within the 12 months of a DPP reset.”

We recommend that the Commission confirm that, consistent with the Commission’s earlier view,¹ the restriction on applying for a CPP as a result of a catastrophic event in the 12 months prior to a price reset (s 53Q(3)) does not apply in the case of a starting price adjustments for a DPP under s54K.

¹ Footnote 1385 “For the avoidance of doubt, the Commission considers that this 12 month exclusion period does not apply in the case of starting price adjustments under the DPP, as that adjustment will not occur at a time that the DPP is ‘due to be reset’. The Commission considers that the DPP is due to be reset at the end of the DPP regulatory period. In other words, suppliers will not be precluded from making a CPP application in the 12 months prior to the date on which starting price adjustments are made.” Commerce Commission Input Methodologies (EDBs & GPBs) reasons paper 22 December 2010



- 3 We agree with the Commission's proposal that in circumstances relating to a catastrophic event a CPP may be submitted at any time on or before 31 December of each year, and that this is an appropriate date in terms of the requirement of s 53O(e). However, we believe the Commission needs to also clarify what if any time limits apply between the occurrence of a catastrophic event and the time by which an EDB may apply for a CPP (note this time period (if any) should run from the time at which an application for a CPP *could be* applied for).
- 4 The first window proposed by the Commission for applying for a CPP is for the week beginning Monday 2 July 2012. This implies that an EDB would need to have finished the required customer consultation by the 4th May 2012². We note that the Commission has indicated that the July window should give EDB's sufficient time to submit a CPP proposal, we disagree.
- 5 Assuming that the Commission is able to Gazette this amendment in early February 2012 this leaves EDB's wishing to apply in that first window only three months to prepare the necessary information and consult with customers. We doubt that this is possible.
- 6 We note the Commission's concern that even the January or March windows may not provide sufficient time for the Commission to consider the application prior to December, which makes the use of the July window even more unlikely, particularly in light of the proposed 1 April 2013 price reset.
- 7 Having said that there may be EDBs that have already consulted with customers or may be in a position to do so at short notice and the Commission may be able to deal with these in a timely manner. Also there may be EDB's that only wish to apply for a CPP in relation to quality which may simplify the application.
- 8 We therefore recommend that the Commission continue with its current proposal and retain the July 2012 application window.
- 9 The Commission has requested information on implementation issues that may arise if a CPP is determined after 1 December in any one year.
- 10 The 1 December date is a useful cut-off date that is required by EDB's to allow them to calculate any new prices that may apply as a result of the CPP, and carry out any contractual requirements they may have in relation to consultation and notice periods to customers, retailers etc of changes in price.
- 11 We consider that there may be individual EDB's able to deal with a later date than 1 December and consider that the Commission should be flexible enough to

² Commerce Act (Electricity Distribution services Input methodologies) Determination 2010 Subpart 5 s5.5.1(1) requires the CPP applicant to have adequately notified customers by no later than 40 working days prior to the submission of the application.

accommodate this. These issues could be agreed between the Commission and the CPP applicant as part of their individual application. Should the delay beyond 1 December result in delay to any price changes we believe that the Commission should consider addressing this by the application of claw-back.

- 12 The Commission should also be mindful that if the CPP path starts from a date different from a “disclosure year” this may impact on other areas of the Part 4 regulation.

Application Fee

- 13 The Commission has indicated that the proposed standard application fee will be set at \$20,000 excluding GST. We accept the Commission’s view that the level of this fee will not impose a significant upfront burden on applicants.

- 14 The Commission has previously indicated that there are three categories of costs associated with making a CPP proposal³:

14.1 the CPP application fee (payable by the applicant under s 53Q(2)(c));

14.2 the Commission’s assessment costs (recoverable from the applicant under s 53Y)

14.3 the suppliers own costs of making a CPP proposal

- 15 This paper indicates that the standard application fee is intended to be a part payment of the total assessment costs that the Commission will incur for assessing the proposal and setting of a CPP. Orion agrees with this interpretation.

- 16 The paper also indicates that in the event that a CPP proposal is discontinued under s 53S(2) or (3) the Commission will either refund any amount by which the standard application fee exceeds the actual costs; or invoice for the difference in the event that the Commission’s costs exceed the standard application fee. Orion agrees with this approach.

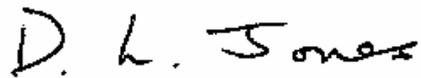
- 17 However, a supplier who makes a CPP application cannot withdraw the proposal (s 53R). Discontinuation of the CPP application can only occur at an early stage of the Commission’s assessment process under s 53S(2) or (3), we would therefore expect that the Commission should ensure that the proposed standard application fee is a good approximation of the Commission’s expected costs up to the point where discontinuation can apply. That is the cost of the Commission assessing whether the proposal complies with the input methodologies referred to in s 52T(1)(d). .

³ Commerce Act (Electricity Distribution Services Input methodologies) Determination 2010 K1.26 page 630

Concluding remarks

- 18 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 letters are cursive and slightly slanted to the right.

Dennis Jones
Industry Developments Manager