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Submissions
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SUBMISSION ON MORE STANDARDISATION OF USE-OF-SYSTEM AGREEMENTS

1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the "More standardisation of use-of-system agreements" consultation paper (the **paper**) released by the Electricity Authority (Authority) in April 2014.

2 In summary:

- We believe that the paper reaches conclusions about activity regarding the MUoSA that are inconsistent with both the timing and approach expectations set by the Authority when it finalised the MUoSA in September 2012. Moreover the Authority's unexpectedly rapid response has actually set back the process by introducing considerable uncertainty as to what is and is not acceptable. The Authority needs to address this uncertainty.

- We consider there is no real difference between a default and a mandated approach, as a default approach will drive distributors to use the MUoSA because material divergence from it will not be possible in the face of the option for any retailer to use the MUoSA as a default. (Not that we think that either is a proportionate response to the problem.)

3 The Electricity Network Association (ENA) has also submitted on the paper, and Orion supports the ENA submission.[1]

[1] We take a slightly different view around the default versus mandate question as explained above.

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4 The remainder of our submission is in two parts:

- Comments on key aspects of the paper, and
- Responses to the paper's specific questions as an appendix.

Time to reflect?

5 Orion, like many other participants, has been involved in the process of MUoSA development for many years. We do not revisit much of that history here, but we think the most important point to note is that, with the passage of so much time, it is sensible to reflect on whether other changes in the industry and its regulation are relevant to consideration of changes to the Authority's approach to the MUoSA.

The Authority's monitoring process

6 We have been very surprised by both the speed with which the Authority has concluded that the MUoSA is not working as it expected, and the basis of its conclusion.

7 Regarding speed, we note that the Authority, when it finalised the MUoSA in September 2012, described a monitoring programme that involved annual reporting by Authority staff to the board, with the first report in May 2013. In its 11 September 2012 information paper (page 30), the Authority reiterated the view that "it intends to provide participants with a reasonable opportunity to give full effect to the core components of the regime" and indicated a time-frame for achieving this of "**over the next five years**" (emphasis added). In its more detailed outline of the monitoring programme (page 31 of the September 2012 paper) the Authority indicated a shorter, timeframe for MUoSA based agreements being entered into of "within two years", but maintained a "four to five year" timeframe for participants demonstrating that all agreements are model-based.

8 While it was not clear at the time exactly how alignment would be monitored, we presumed this would be based on our own disclosures (both our disclosed standard agreement (what we offer to new retailers and all existing retailers every time it is executed) and the contract disclosures required under the Commerce Commission's information disclosure regime), and on our responses to specific information requested by the Authority.

9 With that in mind, we had embarked in early 2013 on a review of the alignment of our latest delivery services agreement with the finalised MUoSA. We have shared some of this information with the Authority and with some retailers. We also had discussions with one major retailer and, in March 2013, sought its views and shared our views on the MUoSA, and we have also sought some retailer's views on the Vector agreement, which we knew was under discussion. Our plan was to then take to the Orion board recommendations on a way forward by the end of 2013, including identifying key issues with moving to a MUoSA based agreement so that the board

could make informed commercial decisions. We believe this is an inevitable first step that all distributors must go through.

10 Before that process was complete, and in fact not long after it had started, we became aware that the Authority was already potentially concerned about developments with respect to Vector's approach to using the MUoSA in developing a new agreement. While this concern was consistent with the "feedback channel" aspect of the Authority's monitoring approach, there was an implication that this might lead to changes to the Authority's thinking on the MUoSA, despite it being, at the time, only about six months since the MUoSA was finalised. This uncertainty was confirmed by the Authority's May 2013 letter, which amongst other things indicated a revisiting of the cost benefit analysis around making the MUoSA a default agreement. Not long after that we met with the Authority to discuss the MUoSA and our approach to it. A little later in the year the Authority signalled that it would be issuing a new paper on its approach in early 2014. Faced with this uncertainty, we moved to a more "wait and see" approach, as clearly there was a material risk of Orion, and retailers, investing time and effort on something that turned out to be poorly aligned with the Authority's shift in approach.

11 Regarding the basis of the conclusion, we note that the Authority indicated in its September 2012 paper (page 30) that the MUoSA could be used in one of two ways:

- as a "template that could be used by a distributor and a retailer without undue effort or unmanageable risk on either party's part", or

- as "a template that two parties, negotiating in good faith, will be able to use as a basis for negotiations, but improve on to reflect innovative new approaches to the provision of distribution services. If the parties mutually consent to an alternative provision or drafting detail, and inappropriate negotiating power has not been a factor in its development, the Authority would be unconcerned".

These two approaches were repeated in the Authority's letter to Orion of 25 July 2013.

12 For the avoidance of doubt, Orion has been pursuing the second approach, and it appears this was also Vector's approach. We are not sure if this approach still has any standing as the paper indicates a change of view by the Authority.

13 As we noted above, for us the first year was to involve mainly preparatory activity, and this may explain the fact that not much appears to be going on in most cases, which is the third of the paper's "issues" (3.2.3(c), pages 8 and 9). However the paper is using only two specific examples - Vector and Network Tasman respectively - for the other two issues. We consider that the paper is unduly harsh on Vector, and we think Tasman's experience is entirely understandable in the light of the inherent incentives. These are now discussed in turn.

The paper's analysis of the Vector agreement

14 The paper is very critical of the approach Vector has taken to negotiating a new agreement with a number of retailers. We do not pretend to understand all that has been going on with Vector and its new agreements with a number of retailers, but from our limited perspective it does not seem to be at odds with the second approach described above:

- The negotiation seems to have been in good faith, and, this being a Code requirement, we would have expected to see breach allegations if it has not been,
- The main parties involved would not seem to have uneven bargaining power, and
- The parties appear to have mutually consented.

15 We appreciate that a major retailer expressed early concern to the Authority about Vector's approach, but we understand that retailer has now signed up.

16 Moreover, Vector has gone to the trouble of commissioning independent analysis of its new agreement and the economic efficiency impact vis-à-vis the MUoSA, analysis which concluded that the agreement was no worse than the MUoSA in all respects and in some respects superior.

17 Based on the comments in the paper the Authority disagrees with Vector and the consultants, but that disagreement is after the fact, and in our view has shifted the ground. The paper does not indicate that Vector's *approach* was at odds with the second approach, but only that the *result* is now deemed unsatisfactory. The result of a meaningful negotiation cannot be known in advance, it can only be found out through the process. It turns out that the Authority is very concerned about the outcome of the process despite designing that process. It appears that the rules have changed but the players have not been told.

18 From our perspective it appears to be the case that we cannot expect to be able to negotiate delivery service agreements with retailers in any meaningful sense. We understand that both Vector and the counterparties invested considerable time and effort in the negotiation process, investment that could now be wasted.

What would a rational retailer do?

19 While we have observed very little interest by retailers in the MUoSA, this does not surprise us at all. A retailer that already has an agreement with a distributor will, by definition, be able to accommodate its terms. The benefits of investing time in negotiating a MUoSA-based agreement, or any new agreement, need to outweigh the costs for it to be commercially sensible, and in most cases we doubt that they are. We believe this is strong empirical evidence that, in reality, the benefits of a

MUoSA are actually very low. Some retailers in discussion with the Authority might express a different view, but this is an area where perhaps actions speak louder than words.

20 We believe this inertia also explains the very limited level of interest evident when we offer new agreements to existing retailers each time we contract with a new retailer: the incremental benefit is seen as only minor compared to the cost.

21 For an entrant or smaller retailer we believe it will always be most sensible to see what larger players do first, and then get the benefit of their negotiation power and greater resources. This would in most cases include accepting existing agreements on offer on the basis that they are the result of robust negotiation between parties with equal bargaining power.

22 A further aspect that may reinforce retailer's apparent approaches is that the most likely outcome of inaction by them is that the Authority will take further and stronger regulatory action which effectively achieves the same outcome but at lower cost to them – exactly what we are now observing.

In the meantime…

23 While the Authority's work on the MUoSA has been progressing, and while there has been little interest from those retailers that already have agreements with us, we have nevertheless been contracting with new retailers. Since the MUoSA was finalised we have contracted with Nova, Norske Skog, Opunake Hydro, and we are about to contract for the first time with a consumer that is also a market participant. We have also accommodated Bosco Connect under an extension to its parent Mighty River Power's agreement. Overall this means that Orion has contracts with 10 of the 14 counterparties mentioned in the paper, covering 17 of the 22 trading names. The four potential counterparties that we do not have contracts with would appear to have a narrow regional focus, at least for the moment.

24 All of these agreements have been entered into quickly and with little cost incurred. No new retailer has sought an agreement based on the MUoSA. No new retailer has stated (to us) that our agreement is an impediment or barrier to new retailers.

25 We remain very sceptical that there is any material variation in the terms of distributor agreements as regards their effect. Moreover, we doubt that any retailer would get into significant trouble by operating *as if* the terms were reasonably standard, which we would judge is what most retailers do[2]. We note that we are not aware of any situations where retailers and distributors have ended up with either party taking court action against the other, which we would have thought would be common were diverse terms a material issue. In fact we do not recall any public airing of such

[2] We note for example that retailers tend to have very generic rather than network specific terms and conditions with their customers.

problems. On the other hand, it *is* common to hear parties - distributors and retailers - talk of "putting the contract in the drawer" once signed. This is not to suggest that the contract is unimportant (it is common for many contracts in many markets to not be referred to much once signed) but it does suggest that the day to day implications of whatever variation exists is minimal.

26 As we have said, we do not detect much retailer concern about agreements, but it might be there is concern about engagement, in that perhaps some retailers find it difficult to even have a discussion with some distributors. We are not aware of any such concerns, and any disaffected retailer has recourse to the Code requirements around good faith, but if engagement is a problem in some cases it would appear to be a very different problem.

What is the problem?

27 To return somewhat to first principles, the idea of a MUoSA is aimed at three concerns.

- Existing (or at least legacy) agreements inappropriately favour distributors, reflecting uneven bargaining power,
- Existing agreements may not provide equal access on equal terms (particularly for smaller new entrant retailers), and
- The variety of agreements may increase transaction costs.

These are discussed in turn.

- ***Uneven bargaining power***

28 Attempting to address perceived uneven bargaining power via the MUoSA introduces the inevitable consequence that distributors adopting it would be worse off. This in turn presents an inevitable governance hurdle for the MUoSA within distributor's businesses.

29 An example is the MUoSA's removal of "good industry practice" as a standard for the delivery service. Whatever the rights or wrongs of this, the MUoSA wording clearly **increases** the standard of service that distributors must provide (the good industry practice standard is, we suspect, the actual standard that applies in most and possibly all pre-MUoSA agreements). There is no regulatory compensation for this increase – it is a form of "regulatory taking". It is all very well to state that a "good industry practice" standard reflects uneven bargaining power back in the day, but it is nevertheless the status quo. A board can reasonably ask why it would voluntarily give this up. If the response is that, if it doesn't do so voluntarily it will be forced to by regulation, then the board can reasonably say the decision, which has the same outcome, was taken out of its hands. This reasoning applies to all of the MUoSA terms that, intentionally or otherwise, weaken a distributor's position.

30 The bargaining power argument also ignores the fact that distributors, like all businesses, are subject to general regulation, and have as well, for many years, been subject to various forms of sector specific price and quality regulation. More recently distributors have been required to indemnify retailers against claims under the Consumer Guarantees Act. Thus the context for the existing agreements is not one where distributors have behaved like classical monopolists, producing poor quality at high prices, take it or leave it, and with price discrimination thrown in for good measure. Rather, the context is that price and quality are regulated[3] and a large amount of information is disclosed to support regulator and stakeholder monitoring. It is therefore an error in logic to conclude that the existing agreements reflect uneven bargaining power.

- ***Equal access***

31 We are not sure if there is any empirical or even conceptual basis for this concern, but we can say that Orion offers all retailers who approach us (at any point in time) the same agreement, and all existing retailers are offered any new agreement we enter into with new retailers. Because retailers *choose* whether or not to take up subsequently offered agreements, we cannot make all retailers be on the same agreement, but we do not believe any of our legacy agreements make the retailers in question materially better off with respect to new entrants. We don't believe they are materially worse off either, but if they are they have chosen that position by not taking up subsequent agreements.

32 We wonder whether this particular concern reflects some legacy agreements that may favour what was the incumbent retailer over all other retailers, including new entrants. We do not know the detail of any such agreements, or whether the issues, if any, are material, particularly with the passage of time changing so much else in the industry. The disclosure element of the Authority's monitoring seemed to be trying to get at these aspects, but we suspect that any such terms are confidential, and as such are likely to be redacted as the Authority allowed for in its suggested template. Even if such terms were disclosed, it is not clear how the MUoSA (defaulted or mandated) would address them. Either the distributor will be forced onto the MUoSA by a disadvantaged retailer, thus potentially placing it in breach of its obligations to the advantaged retailer, or the distributor will enter into a MUoSA with a new retailer because it simply does not address the advantage. Neither outcome strikes us as satisfactory or in the long term interest of consumers.

33 It might be that this concern is better addressed by a three stage process, something like the following. The Authority:

- invites participants to provide *in confidence* examples of perceived unequal terms.

[3] Directly for so-called "non-exempt" distributors, and indirectly via consumer ownership for the others.

- investigates these claims *in confidence*, using if necessary its statutory powers to acquire information.

- considers its options in light of its investigation.

- ***Transaction costs***

34 It is not within a distributor's power to completely standardise its agreements with even its own retailer counterparties. What distributors can do is have an agreement readily available that will be offered to all others if a new counterparty agrees to it. (We can presume the distributor will have been careful not to change the agreement over time so much that it has created a situation where it operationally compromises itself by agreeing to conflicting obligations.)

35 So long as a distributor takes this approach, its and retailer's transaction costs are minimised within each network area. However it is correct that a retailer *might* incur costs due to the diversity of agreements *across* distributors. But the extent of these cost differences is an empirical question and one that we do not believe has been answered. Even in answering it, care would need to be taken to separate the costs associated with different contractual terms and those associated with different operational approaches.

36 However, so long as it is unclear what, if any, scope the parties have to negotiate based on the MUoSA, it is unlikely it will address transaction cost concerns in any case. For example a default MUoSA would apply where the parties are unable to agree. The disagreement could occur very quickly, or it could be at the end of a long period where the parties have tried to persuade each other. If the latter occurs, then the transaction costs could still be considerable.

37 If on the other hand any costs relate primarily to operational differences, then the MUoSA always anticipated customisation to accommodate this, probably reflecting the fact that agreeing to something you cannot currently do is likely to involve significant transaction costs!

38 On this topic, a useful question to ask retailers who have signed up to model based arrangements (and there are apparently some) is: "How much have your transaction costs reduced with respect to your trading in the area?"

The options

39 We agree that the status quo, option 0, is not a viable option because it is very unclear what the status quo is.

40 Our preference is for option 1, as we consider that there is currently no clarity around the Authority's objectives and expectations, especially as to timing and the extent to which negotiation and variation from the model is actually permissible. We believe that in providing this clarity the other available options may become easier to choose from, particularly the choice between default and mandated arrangements.

41 We believe option 2 is actually a limited version of options 5 and 6, since codifying is effectively mandating, but just a subset of terms. See our comments on those options. If there are only a few particular clauses where non-standardisation creates issues for retailers these would be the obvious candidates. None are mentioned in the paper, perhaps reflecting the fact that an analysis of how diverse existing terms are, and the consequences of that, is lacking.

42 Option 3 in our view is a 'Clayton's' option because, as we have argued, negotiation in the normal sense sems to be unacceptable. Even if a distributor "negotiated" a variation to the MUoSA with one retailer, negotiation with the next could fail to achieve agreement, with imposition of the default, which would not be the same as the previous agreement. To maintain consistency, the distributor would then have to impose the default on the first retailer. (Although it is unclear whether this would breach the good faith Code requirement.) As noted in para 5.3.26, negotiation also runs the risk that the mutually agreed variation turns out to be unacceptable to the Authority, which is where Vector seems to have ended up.

43 Regarding the transmission benchmark agreement being presented as an example of a default agreement that supports subsequent negotiation, our experience is that it is in fact not possible to do this. It is also important to note that the benchmark agreement is a 1-to-many agreement, whereas distributor agreements are many-to-many.

44 Option 4 has the same issues as option 3, but it also runs the serious risk of driving very significant cost into the industry as participants seek to align processes and standards. We do not believe it was ever conceived that the operational aspects of MUoSA would be the same across all distributors, which is why a number of variants are allowed for, and a number of schedules are blank.

45 Moreover, it is the distributor that should be choosing the variant in most if not all cases. If this is to change it requires significant further consultation. We note in this regard the repeated use (in Table 3 of the paper) of the term "Significant transaction costs would likely be created if a mandatory change from network specific status quo arrangements was enforced." This does not mean that further standardisation in these areas is impossible or undesirable, only that it needs to progress separately from the defaulting or mandating of core terms.[4] We do not understand the logic by which the paper argues for including operational terms within the default / mandate boundary while at the same time identifying the likely significant cost impacts of doing so. The MUoSA process is not the appropriate vehicle by which to establish more standardised operating practises.

46 Option 5 is, we think, the second best option **where the choice is between defaulting and mandating.** In saying this we do not resile from our preference for

[4] We would specifically urge the Authority to complete the consultation on loss factors that it commenced in early 2013.

Option 1, and our view that a move to much heavier-handed regulation is simply not warranted. In any case, we remain unconvinced that variations in contractual terms are in fact a material barrier to entry or a source of material cost for new or existing retailers. Despite years of work by two regulators we believe this has yet to be established. It is also contradicted by our experience with new retailers. We would be particularly interested in the source of the potential cost *savings* of a MUoSA presented in the paper.

47 Option 6 would cause similar problems to option 4 by extending standardisation to operational matters.

48 With either option 3 or option 5 a significant amount of work will be required to establish just what the core is, how it is actually expressed, and whether, even within the core, variation is permissible. With any of options 3, 4, 5 or 6 there needs to be revisiting of the relevant terms to ensure they are fit for a new purpose. We agree with the Authority that implementation of any of these options requires very careful consideration.

49 Our response to question 17 in the appendix provides more detailed comments on the discussion of "core" elements.

Analysis of benefits and costs

50 We are very sceptical about the information and discussion in section 7 of the paper.

- We believe transactions costs associated with existing agreements are very low for both parties, and we see no reason why a default MUoSA would materially reduce costs even once it is in place. Factoring in what could be significant transition costs - Vector and its counterparties would be in a position to confirm these - makes it highly unlikely there is a net benefit available.

- It is unclear how a default MUoSA makes innovation lower cost (as stated in para 7.3.3). We suspect innovation would, under options 3 to 6, involve the Authority making changes to the MUoSA. Whatever this process is we suspect it must be consultative and inclusive, making it higher cost and more time consuming for the innovating party. Inevitably we will see less innovation.

- We do not believe it costs anything like $30,000 to $60,000 *in total* to negotiate a use of system agreement based on an existing standard, so the cost cannot be *reduced* by these amounts.

- Para 7.3.8 draws a long bow with respect to the "further gains" possible. Neither of the areas mentioned seem plausibly material. On the other hand, it is plausible that the costs associated with trying to standardise these aspects would in fact be material. We note the alleged net benefits are not quantified - we think zero is a good upper estimate.

- We suspect the cost to "update policies and procedures" in 7.3.13 might cover the cost of updating documents but, depending on the level of change required to the actual policies and procedures, the costs could be many times greater.

- To the extent that there is any "innovation" inherent in existing agreements, this will be lost by standardisation, with inherent loss of dynamic efficiency. An example is Orion's "evergreen" approach to the agreement. These costs need to be factored into the analysis. As noted above, we very much doubt that innovation can be achieved in a regulated context. The barriers to change will be too great for anyone to even try.

A way forward

51 We believe the appropriate regulatory response is for the Authority to clearly set out its expectations of participants regarding the MUoSA with respect to both timing and approach. This is most consistent with the Authority's option 1.

52 In particular, the Authority needs to be clear what, if any, scope for negotiation parties have. It would seem that Vector in particular seems to have been pursuing a negotiating approach which turns out to be unacceptable to the Authority. Parties can now only wait to see what approach the Authority adopts, but if negotiation of any terms at variance to the MUoSA is likely to lead to disapproval by the Authority, it would seem that mandating is preferable to a default approach. (But, we hasten to repeat, any of options 3 to 6 are poor ones.)

53 We do not support standardisation of operational aspects of the agreement under the guise of a default or mandated approach. Separately the Authority should review whether there are in fact any outstanding operational matters that might merit a standardisation discussion. Connection agreements are mentioned in the paper, and this might be one candidate?

Concluding remarks

54 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 Bruce Rogers (Pricing Manager), DDI 03 363 9870, email bruce.rogers@oriongroup.co.nz.

Yours sincerely

Bruce Rogers
Pricing Manager

Appendix: response to specific questions

Question	Response
Q1: Do you have feedback that would update the issues outlined in this section?	Yes, we had commenced analysis and were proceeding with a negotiated approach. The Authority's initial reaction to Vector's approach made us pause - the right decision in the light of the comments in the paper. We cannot proceed without much greater clarity from the Authority. As set out in the body of our submission we observe limited activity in this space. What we have observed, and in particular Vector's approach, seems well aligned with the expectations that the Authority set back in September 2012. We are surprised that the Authority has reacted so adversely to Vector's approach, and we believe it makes it much less likely that engagement will occur. Regarding contract disclosure, we remain uncomfortable with openly providing information on and copies of our various agreements with retailers where the information is in excess of the Commerce Commission's information disclosure requirements. In the body of our submission we propose an approach by which this information could be made available to the Authority confidentially where any affected party alleges that some existing agreements provide materially superior terms. We believe the relevant cases are quite limited, implying a focussed approach is more appropriate.
Q2: If you are a distributor, are you actively developing and negotiating UoSAs with retailers? If you are a retailer, are you actively engaged with any distributors in relation to UoSAs? Please provide information relating to your approach, experiences, successes and concerns.	The process we have been through is described in the body of our submission. In short we have, or had been taking an approach of describing to our board the impact on Orion's business of moving to the MUoSA with a view to them making informed decisions about Orion's attitude to it. At the same time we have been sharing our process and thoughts with some retailers, and seeking their views in return. Orion's approach has been based on the understanding that what we have termed the "second approach" to the MUoSA is acceptable. We are not sure now that it is. Our work is therefore on hold pending the outcome of this latest consultation. There is clearly no point seeking to progress this work when the regulatory context - which is determined by the Authority - is so uncertain. In the meantime we seem to be able to accommodate new retailers on our existing agreement with little fuss or cost to either party.
Q3: Are you aware of any new issues that have arisen since the Authority undertook monitoring and communication with participants relating to UoSAs in early 2013?	We are not aware of any new issues. The pending changes to the CGA may be relevant to some of the MUoSA clauses.
Q4: Are you aware of any new developments that would provide additional information or update the	The Vector agreement strikes us as the most significant new development. We are surprised at how unfavourably it has been received by the Authority, since it represents a timely and commercially

situation presented in section 4? If so, please provide relevant details.	grounded case study in taking the MUoSA forward. The Authority's response is very discouraging for any other party, such as Orion, that was taking the "second approach" to the MUoSA. As one example of what the Vector agreement has clarified, the liability capping clause in the MUoSA does not work, and is unfair (probably unintentionally) to distributors even if fixed. Vector's new agreement, and indeed Orion's current agreement provide examples of how this can be made to work properly. More generally, even if Vector's approach has been at odds with the Authority's expectations, it does not mean that all of the changes made are inferior to the MUoSA. Elsewhere the developing Part 4 regime for non-exempt distributors has some useful concepts that might assist the Authority where aspects of the MUoSA redefine the allocation of risk and cost inherent in the agreement. Specifically we do not think that it is principled to allocate more risk without compensation. The paper contains no indication that the Authority has consulted with the Commerce Commission.
Q5: Do you agree that the Authority is unlikely to achieve its objectives for UoSAs within a reasonable timeframe by persevering with largely voluntary measures? Please state the reasons for your view.	No. The timeframe set out in the Authority's September 2012 paper was considerably longer (between two and five years) than the timeframe now being applied. However, any move to non-voluntary measures runs significant risk of unintended consequences, particularly around the operating costs of distributors being forced to align on a single process, or even worse, maintain two sets of processes that align with both the MUoSA and past practice. We urge the Authority to consider whether its objectives for the MUoSA, if delivered in a non-voluntary framework, are in the long term interest of consumers.
Q6: What other options can you suggest that would be worth considering alongside the options identified in section 5.2 and explained in more detail in section 5.3? Please explain the key advantages of your suggested option(s).	See also our response to Q9. We disagree with any options that mandate or make default the MUoSA or parts of it. However, options that treat core terms separately run less risk of driving significant costs into the industry. Notwithstanding our disagreement with the options 3 to 6, and for the avoidance of doubt we do not support any of these options, we consider that option 5, mandating certain core terms, is the best option. This is because a default implies that negotiation is acceptable to the Authority, when Vector's experience demonstrates that it is not. Mandating core terms also has the effect of reducing transaction costs, and rapidly cutting across legacy issues. We agree with the Authority that any moves to mandate or default MUoSA terms need to be very carefully considered and comprehensively consulted on.
Q7: What feedback do you have on the design detail discussed in this section? What options amongst the design detail do you think would best	We believe that the September 2012 MUoSA is improvable. We believe the Authority must consult on the core terms before mandating them or making them a default.

meet the Authority's objective	
Q8: Are you aware of any issues relating to the variation of network connection standards between distributors that the Authority should consider? Are there opportunities to provide greater standardisation of network connection standards? Why would network connection standards not be suitable for greater standardisation across distribution network areas?	There may be such opportunities, but we believe this is appropriately a separate project. How diverse are the current approaches, and are there legitimate reasons for any diversity?
Q9: Do you agree that the extended options described in section 6.4 reasonably represent the range of options available to the Authority in seeking to meet its objectives for more standardised, efficient and pro-competitive UoSAs? If you disagree, please describe what other options should be considered and what advantages these options would provide?	One alternative approach, to which we haven't given any detailed thought, is that the Code obligation for a retailer to have an agreement could be removed in favour of a "posted terms" approach. A posted terms approach would simply involve the distributor maintaining posted terms (its current agreement) and the Code would oblige the retailer to comply.
Q10: Do you agree with the Authority's initial assessment that option 4 (require reset of all existing interposed agreements and introduce a default agreement for distribution service into the Code) is the best approach to meet its objectives?	No we do not consider that a default approach is superior to a mandatory approach, (and it is hard to see a "reset" as anything other than a mandating in any case). This is because we do not believe that negotiation of an agreement that materially differs from the MUoSA will survive long in the face of Authority disapproval or subsequent use of the default by another retailer. Furthermore, if there are any legacy agreements that favour some retailers over others it is hard to see how a default approach will deal to these, at least without putting the distributor in a very difficult position, perhaps involving court action. Since option 4 implies standardisation of operational processes, the cost implications will be significant.
Q11: What other Code design details should be considered if option 4 were subsequently adopted for development?	It will be important to consider how the default is codified, and then how it adapts over time. To the extent that operational standardisation is included, the timeframe for implementation will need to be considerably longer.
Q12: What information do you have that a problem exists in the way that distributors that adopt the conveyance approach establish contracts with retailers and consumers? Should standardisation of conveyance UoSAs be pursued as well?	We have no problem with the way that the MUoSA deals with conveyance from a retailer perspective – it basically requires retailers to provide relevant information to the distributor. This is effectively the same way as our delivery services agreement deals with it, that is, there is no separate conveyance agreement between the retailer and the distributor. Orion contracts with, and directly bills, a relatively small number of large customers.

Q13: What information do you have that a problem exists in the way that embedded network owners establish contracts with retailers? Should standardisation of embedded network UoSAs be treated the same as local networks?	We are not aware of any problems. We would argue that any regulation needs to be reasonably consistent to avoid perverse incentives to create embedded networks. On our own network we prefer to directly contract with embedded network owners.
Q14: Based on your experience negotiating UoSAs, what is the average time and cost for a retailer and a distributor to negotiate and thereafter administer a UoSA on a local distribution network that the retailer is entering for the first time?	We can only estimate our own costs with reliability. Where a retailer pretty much accepts our standard agreement, and this is our experience, our costs would be less than $1,000. It does not appear from our recent interactions with various counterparties that they are incurring material costs either. Our standard agreement is available on our website so could be executed by a counterparty in a matter of days. We note that, was our agreement based on the MUoSA, with all the transitional costs incurred, it would still cost us around the same amount to execute an agreement, since this is mostly unavoidable administration. On-going administration costs are (normally) minor. It would only be in event of a material breach (say a default) or some other dispute that administration costs could become significant. We do not normally refer to the agreement in our day to day interactions with retailers. Again, these costs would be incurred under any "negotiated" agreement.
Q15: Based on your experience adopting the UoSA clauses contained in Part 12A of the Code, what do you estimate the cost to be of adopting the default terms approach?	The Part 12A changes are, as we understand them, mandatory, not an example of default terms. The Part 12A changes were very specifically aimed at areas where distributors were perceived to have used their dominant position to impose terms. We disagree with that assessment, but the changes had little impact other than on the allocation of risk. As such the cost is not a useful benchmark for wider changes. By contrast, some core aspects of the MUoSA could impose significant costs on us, while including operational aspects would impose even greater costs.
Q16: Based on your experience with electricity retail competition, and with reference to Figure 2, over the next two to five years on average what number of retailers (being retailers likely to enter into UoSAs) would you expect to see entering regions with less than 10 retail brands, under the following two scenarios: a) without a default terms arrangement in place, and b) with a default terms arrangement in place?	We are very puzzled by Figure 2. We are not sure why a date of December 2012 is relevant, or why retail brands is a useful measure within the context of use of system agreements, since retailers can, and do, have multiple brands trading under the one agreement. We are also not sure what "Retail brands serving all ICPs in regions…" means, given that we do not believe all the brands shown have business models based on supplying "all ICPs". What we can say is that, as of today, there are 11 parties with whom we have delivery services agreements, one of which is not associated with a current "brand" in Figure 2. We anticipate signing up a further counterparty (also not associated with a current "brand") shortly. The 11 counterparties cover 17 of the 21 brands in Figure 2. However, to answer the question, we do not believe that the form of the agreement will make any material difference to the number of retailers with whom we have agreements, as our experience

	with retailers regarding concluding contracts has been that it is generally seen as a formality. We note this is the second time the Authority has presented information on competitive activity in a way that is somewhat misleading. In its letter to Orion of 17 May 2013, the Authority asked us to explain why there were "only a few" retailers operating on the Orion network. "Only a few" was at that time reported as 9. As we pointed out at the time, this was incorrect in a number of respects: • In the context of a discussion of agreements, it is odd to use retail brands as a measure. For example our agreement with Pulse Energy (previously Pulse Utilities) encompasses the Just Energy, Pulse Energy and (we suspect) Pulse Community brands, but how retailers structure and position brands is their business, and not usually or necessarily related to the contract. • When the total population is 14, 9 seems like more than "a few". • One retailer that had customers on the Orion network was left off the list. This called into question the quality of the supporting analysis.
Q17: The column headed "Suitable for inclusion in core terms?" in Appendix B provides the Authority's initial view of the parts of the interposed MUoSA that would be suitable for direct transfer into a default or mandatory agreement, if such an approach were adopted. Do you agree with the assessments provided here for each clause and schedule? Please reference your responses to specific clauses and schedules and provide reasons if you disagree.	Should the Authority proceed with a default or mandated approach, it will in our view have to conduct a separate consultation not only on the core terms, but on the wording of the MUoSA itself. In the meantime we provide the following comments on the paper's Appendix B. We do not repeat here all of the concerns expressed about the MUoSA terms in our previous submissions. We still have most of those concerns.

1: Term	We note that with a default or mandated agreement it becomes unclear what the term is. This, perhaps unintentionally, aligns well with Orion's evergreen approach.
2: Services	Given that it is admitted that retailers do not provide services that need to be covered by default or mandated terms, main and subheadings could usefully be amended.
4: Equal access and even-handed treatment.	We understand why the Authority believes this should be carried directly into the Code. We note however that this might immediately place distributors in breach if they are parties to legacy agreements that favour some retailers. At the very least the time to comply needs to be carefully considered.
5: Service interruptions	Regarding where costs fall, the presumption should be that they fall where they lie. If retailers (or distributors) currently provide

	services without specific payment from the other party, they should continue to do so.
7: Losses and loss factors	We believe loss factor obligations should be and are in the Code, and do not need to be in the agreement. They are not in our current agreement and no issues have arisen. Distributor obligations around investigating losses should not be core, or in the Code, as Orion at least is unable to provide this service. The Authority should complete the loss factors consultation it commenced in early 2013.
8: Service reporting	So long as the operational detail and content of the reporting is not core.
17: Consumer service lines.	Orion treats these differently. The MUoSA would make our consumers worse off. The ENA is currently considering recommendations to extend distributor responsibility to include customer service lines. This should be taken into account.
18: Trees	If there are regulations why have this in an agreement between distributors and retailers?
26: Liability	The clause does not work with respect to the cap, and if it did work it would mean the distributor's liability for the same event increases with the number of retailers. This makes no sense.
29: EIEPs	Should this just be a Code requirement?
Schedules	While option 4 (or option 6) anticipates that operational matters would also be covered by the default (or mandated) MUoSA, we note there are more "Noes" than "Yeses" against the various schedules discussed in Appendix B of the paper. We believe that the paper thereby persuasively makes the case for operational matters **not** being included in the default terms. This is further reinforced by Table 3. In other words the paper actually supports option 3 over option 4 (and by extension option 5 over option 6).