19 July 2023

Vhari McWha

Commerce Commission

Wellington

By email: im.review@comcom.govt.nz

Dear Vhari

Feedback on the draft decision of the Input Methodology Review.

Introduction

1. Orion appreciates the opportunity to provide feedback on the Commission's Draft Decision on the Input Methodology (IM) Review published on 14 June 2023.
2. The Commission has indicated that the amendments better support innovation, decarbonisation and flexibility going forward. We note that changes made to the input methodologies were last made in 2016 and need to be reviewed every 7 years at least.
3. We have reviewed the papers which were published on 14 June 2023 and included:
   - Draft Decision and Context Paper[1]
   - Report on the Input methodologies review 2023 paper[2]
   - Draft Electricity Distribution Services Input Methodologies IM Review 2023 Amendment Determination 2023 (with tracked changes)[3]

[1] https://comcom.govt.nz/__data/assets/pdf_file/0030/318666/Part-4-IM-Review-2023-Draft-decision-Summary-and-context-paper-14-June-2023.pdf

[2] https://comcom.govt.nz/__data/assets/pdf_file/0027/318627/Part-4-IM-Review-2023-Draft-decision-Report-on-the-Input-methodologies-review-2023-paper-14-June-2023.pdf

[3] https://comcom.govt.nz/__data/assets/pdf_file/0027/318663/Draft-Electricity-Distribution-Services-Input-Methodologies-IM-Review-2023-Amendment-Determination-2023.pdf

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- Cost of Capital Topic Paper[4]
- CPPs and In-Period adjustment topic paper[5]
- Financing and incentivising efficient expenditure during the energy transition topic paper[6]
- We have not reviewed the Excel models due to insufficient time provided by the submission period to consider the extent and impacts of these models thoroughly[7].

Summary

4. This submission includes:
   - Discussion on specific areas in the IM's which have been identified as requiring further explanation.
   - A table of the Commission's draft decision which we either, support or do not support is included as an Appendix A (attached)
5. We support many of the changes which the Commission has made in the draft IM Review, specifically in broadening definitions to accommodate innovation and decarbonisation, and the inclusion of large customer contracts. However, we believe there are still areas for improvement including in providing EDBs certainty of re-openers, their timing, and the discretionary aspect of many re-openers which could result in the Commission deciding that based on a specific reopener that circumstances therefore more broadly are better served under a CPP.

Support for other feedback

6. We support the submission from the ENA.

[4] https://comcom.govt.nz/__data/assets/pdf_file/0024/318624/Part-4-IM-Review-2023-Draft-decision-Cost-of-capital-topic-paper-14-June-2023.pdf

[5] https://comcom.govt.nz/__data/assets/pdf_file/0025/318625/Part-4-IM-Review-2023-Draft-decision-CPPs-and-In-period-adjustments-topic-paper-14-June-2023.pdf

[6] https://comcom.govt.nz/__data/assets/pdf_file/0026/318626/Part-4-IM-Review-2023-Draft-decision-Financing-and-incentivising-efficient-expenditure-during-the-energy-transition-topic-paper-14-June-2023.pdf

[7] https://comcom.govt.nz/__data/assets/excel_doc/0028/318466/Part-4-IM-Review-2023-Risks-and-incentives-topic-paper_-Demonstration-model_-Financial-impacts-of-indexation-of-Transpowers-RAB-June-2023.xlsm; https://comcom.govt.nz/__data/assets/excel_doc/0029/318467/Part-4-IM-Review-2023-Risks-and-incentives-topic-paper_-Demonstration-model_-stylised-impact-of-different-RAB-indexation-approaches-June-2023.xlsm; https://comcom.govt.nz/__data/assets/excel_doc/0027/318465/Part-4-IM-Review-2023-Cost-of-capital-topic-paper-calculations-spreadsheet_-NSS-spreadsheet-model-and-WACC-percentile-spreadsheet-model-June-2023.xlsm; https://comcom.govt.nz/__data/assets/excel_doc/0030/318468/Part-4-IM-Review-2023-Transpower-investment-topic-paper-model-ACA-model-Accounting-guidance-for-Transpower27s-Anticipatory-Connection-Asset-ACA-capacity-June-2023.xlsx

7. We also support the submission and supporting expert reports (Frontier and Oxera) made by the 'Big 6' EDBs, which face similar challenges around significant customer preferences going forward and growth, in particular Vector, Unison, Powerco, Aurora and Wellington Electricity.

8. In addition, we support Frontier's expert report point 24 which recommends removing the price limit altogether or alternatively consider the further recommendations made under point 26.

9. We appreciate that the Commission gave industry stakeholders advance warning of the release of the draft decision. However, the volume of literature provided on 14 June 2023 was significant to work through in order to give due consideration to all aspects of the draft decision. We were therefore somewhat disappointed that the Commission declined an extension for submissions. This may result in additional items being raised in the cross-submissions.

Orion Context

10. The Orion Group is focused on ensuring we are ready to enable our community to transition to a low carbon economy. Our Purpose – powering a cleaner and brighter future with our community talks to the impacts we want to make on regional prosperity through energy equity, energy security and sustainability.

11. Our priority for the next five years is to get 'match fit'. This means our network will be ready for the increased demand as electricity plays a crucial role in decarbonising Aotearoa New Zealand.

12. Our five-year Focus Areas are:

- Facilitating decarbonisation and hosting capacity at the lowest cost while giving our customers choice on how they access our network
- Investing to maintain a safe, reliable, resilient network at lowest total lifecycle cost
- Being a force for good in the community, enabling the net zero transition
- Creating the preferred workplace — our people are at the heart of what we do
- Fit for purpose capital structure — funding our future .

Our strategy is outlined in our Statement of Intent[8]

13. Orion's Chair, in our Annual Report 2023[9], reinforces the changes and challenges which we are seeing in the electricity sector:

"There is a growing consensus on the importance of the electricity sector for Aotearoa New Zealand's future and this has heightened the Orion Group's focus on where we need to be to meet our community's needs in a fast-evolving landscape.

The increased urgency to decarbonise our economy, climate change precipitating severe weather events across the motu and sustained customer growth in our region have prompted us to refresh our strategy and make a step-change in our network investment plans. Globally many countries face significantly larger challenges than we face in Aotearoa New Zealand however we can't let this relative advantage create complacency – we need to act now to ensure that we can deliver a sustainable future.

[8] https://www.oriongroup.co.nz/assets/Company/Corporate-publications/Orion_Statement-of-Intent_2024-26.pdf

[9] https://www.oriongroup.co.nz/assets/Company/Corporate-publications/Orion_Annual-Report-2023_FINAL.pdf

The future is electric.

At the Orion Group, we are taking a proactive, positive approach to the need for urgency and the increasing pace of change as our sector evolves. We are not alone in recognising our traditional, incremental, business-as usual approach will no longer cut it - it is acknowledged sector-wide. Sector-wide alignment around what is required has been a positive catalyst for increased collaboration across not just our distribution sector, but the wider electricity industry in Aotearoa New Zealand. Continuing to unlock these collaboration opportunities will be critical to support the delivery of an electric energy future."

14. Orion's CEO also emphasised Orion's role in the industry, stating that:

"Decarbonisation is one of the biggest mega trends of our lifetime. As steward of the electricity distribution network serving Aotearoa's second largest city and fastest growing district, Orion has a critical role to play in delivering New Zealand's decarbonisation objectives, and with technology and trends in our sector evolving and changing rapidly, our Integrated Leadership Team interrogated the underlying assumptions and direction of the strategy we set for Orion Group two years ago. We asked ourselves if the Group remained focussed on what was most important to serving our community in a rapidly changing energy environment".

Draft Decision and Context Paper[10]

WACC

15. We refer to the following point in the paper on WACC:

"*4.12 Based on the analysis discussed in the Cost of Capital topic paper, we are proposing the following WACC percentiles:*

4.12.1 <u>the 65th percentile for EDBs</u> and Transpower, which compares to the 67th percentile in the current IMs; and

4.12.2 the 50th percentile for GPBs, which compares to the 67th percentile in the current IMs.

[10] https://comcom.govt.nz/__data/assets/pdf_file/0030/318666/Part-4-IM-Review-2023-Draft-decision-Summary-and-context-paper-14-June-2023.pdf

4.13 Our draft decision to use the 65th percentile for EDBs and Transpower reflects an updated assessment of the evidence, including consideration of regulatory changes that have reduced the risks of underinvestment."

16. Orion submits that the reduction in the WACC is concerning given the volatility of expenditure (Traffic Management compliance, supply chain issues, sourcing equipment, etc) during DPP3 (2020-2025) and high inflation. While we appreciate the Commission's reasoning for calculating the WACC at the 65th percentile, reducing the WACC from 67th percentile to 65th percentile leaves EDBs undercompensated for the challenges of increased expenditure incurred during DPP3 going forward. Over DPP resets we have seen a downward trend from 75th, to 67th and now the proposed 65th percentile in a period where we expect even higher uncertainty than before. In Orion's case, we expect the reduction to equate to about $25m in lost revenue during DPP4, all other things being equal. We appreciate that the Commission has indicated that there is a reduced risk of underinvestment. However,

- The environment during DPP3 due to Covid impacts has meant increased costs to do the same work
- Reprioritisation and potential deferral may have occurred
- This means that EDBs will be looking to play "catch-up" for works which may have moved into DPP4 to mitigate the potential for underinvestment if not addressed.

17. Orion strongly supports the work of Oxera, submitted by the 'Big 6' EDBs, on WACC.

Report on the Input methodologies review 2023 paper[11]

18. Appeals

We refer to the following point in the paper on Appeals:

"Costs of appeals against determinations

3.31 Currently, regulated suppliers in all sectors can pass on the cost of any appeals against the IMs or other determinations to their consumers via the regulatory Opex.

[11] https://comcom.govt.nz/__data/assets/pdf_file/0027/318627/Part-4-IM-Review-2023-Draft-decision-Report-on-the-Input-methodologies-review-2023-paper-14-June-2023.pdf

3.32 Our draft decision to exclude the cost of appeals under sections 52Z, 91 and 97 of the Commerce Act:

3.32.1 better promotes the Part 4 purpose – specifically s 52A(1)(d) – by ensuring profits do not reflect double recovery of cost associated with appeals;

3.32.2 ensures consistency with our risk allocation principle;

3.32.3 better promotes the IM purpose in s 52R, by removing ambiguity about the treatment of these costs; and

3.32.4 complies with the intent of s 52T(1)(c)(i) of the Act."

19. We submit that where appeals could be in the best interest of consumers the Commission's position discourages regulated businesses from making appeals. Regulated business should be allowed to claim the cost associated with an appeal, and pass this on to consumers, if it is awarded in their favour through an independent judgement .

20. Length of regulatory period

We refer to the regulatory term for WACC under the following point:

"6.4 We are proposing to change IM decision CC03 to allow for the determination and publishing of a vanilla and post-tax WACC at the 65th percentile with parameters matched to the regulatory period term. The change will allow us to determine a WACC based on both a five-year and a <u>four-year regulatory period</u>. The change relating to the regulatory period term aligns with our current approach to GDBs and GTBs."

21. We agree that this change will provide the Commission with flexibility to determine a 4-year period as well as a 5-year period. Orion submits a preference to keep the regulatory period at 5 years as it provides for:

- Better planning and mirrors the current DPP period providing for more certainty and alignment
- A 4-year period could also limit the windows and timeframes for CPP applications.

22. Error Events

"8.35 Our draft decision is to change the threshold to be $100,000 for errors related to the price path for all entities."

We further note that in the Amendment Determination point 4.5.6, that:

"(2) For the purposes of subclause (1),-

(a) an error relating to the DPP does not constitute an error event unless the error has an impact on the aggregate amount of the forecast net allowable revenue for all disclosure years of the regulatory period that exceeds $100,000;"

We agree that errors should not generally occur in the schedules which are used for setting revenues, however in practice this may happen. Due to the variability of revenues across the 29 EDBs, we would recommend that a materiality limit is set at an appropriate level (%) of a fixed dollar value given the variances between EDBs. We would also be interested in how the Commission intends to remedy such circumstances by way of a fine or merely requiring restatement of an EDBs DPP allowances.

23. Timeframes for Reopener Evaluation

The table in point 18.2, states "*The current IMs do not prescribe a timeframe for the Commission to evaluate reopener applications"*. 18.3 goes on to say, *"Our draft decision in respect of IM decisions RP01.12, RP02.12 and RP05.12 is to make no change to include timeframes for the Commission to evaluate reopener applications".*

We submit that if the Commission does not intend to put timeframes on reopeners that these could take longer than expected which would not support regulated businesses in the uncertain environment we face and to respond to customer needs in a timely manner.

24. Absence of Reopeners for Other Matters

The table under point 18.26 states that:

The current IMs do not include a reopener for the following specific categories of cost:

- digitalisation and data;
- monitoring of Low Voltage networks;
- changes to a system operator's approach to security;
- software as a service;
- avoided cost of distribution payments;

- increased insurance premiums; and
- Distributed System Operator type services.

While we acknowledge that operational expenditure can be budgeted for, we submitted previously[12] supporting this type of expenditure for reopeners as we see some of these items as potential areas for major increases in the next DPP reset. We submit that the Commission should reconsider including these as re-openers.

Cost of Capital Topic Paper[13]

25. We refer to point 6.1 which states: "*6.1 Our draft decision is to use the 65th percentile for the purposes of PQ regulation for EDBs and Transpower. In reaching this draft decision we have considered:…… 6.1.4 We introduced a quality incentive scheme for EDBs in 2014. The scheme rewards EDBs for exceeding quality standards and rewards them for exceeding them*". We do not believe that the Quality Incentive Scheme should be considered as a reason for reducing the WACC to 65th percentile as it is an upside incentive to improve performance. If the criteria are not met then the incentive reward cannot be claimed. i.e. it is unrelated to WACC. In addition, the materiality between the incentive and the change in WACC is not comparable from a dollar value perspective.

CPPs and In-Period adjustment topic paper[14]

26. We commend the Commission on point X29, in proposing a new in-period adjustment mechanism in the IM review for large connection contracts (LCCs) and a connection volume wash-up mechanism for EDB's on a CPP. While we see that there could be administrative challenges in isolating expenditure out between LCCs and the regulated asset base, this should provide benefit in responding to customers in a timelier manner.

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[12] https://www.oriongroup.co.nz/assets/Company/Commerce-Commision-submissions-archive/Orion-submission-on-IM-review-draft-framework-and-process-and-issues-paper-11-July-2022.pdf , Point 31

[13] https://comcom.govt.nz/__data/assets/pdf_file/0024/318624/Part-4-IM-Review-2023-Draft-decision-Cost-of-capital-topic-paper-14-June-2023.pdf

[14] https://comcom.govt.nz/__data/assets/pdf_file/0025/318625/Part-4-IM-Review-2023-Draft-decision-CPPs-and-In-period-adjustments-topic-paper-14-June-2023.pdf

Financing and incentivising efficient expenditure during the energy transition topic paper[15]

27. Point 6.6 provides ways in which the regime and the Commission promotes innovation in the following ways:
    - *i.* *"We require information disclosure of EDBs asset management plans which includes reporting requirements on each EDBs innovation practices;*
    - *ii.* *our summary and analysis of disclosed information related to innovation highlights developments in innovation and good practice by regulated suppliers;*
    - *iii.* *we set default price-path revenue allowances that can be spent in the manner a supplier sees fit. This approach provides significant flexibility to suppliers to choose the work they undertake (including in respect of innovation). If that approach does not suit the particular circumstances of a supplier, it can apply for a customised price-path;"*

28. We are disappointed that the Commission has not included Research and Development in this space. While we acknowledge that Regulatory Sandboxes may be better supported by the Electricity Authority, regulated businesses still need some flexibility within their allowances to undertake this work and potentially implement actions from those outcome

29. We also believe that there is certainty in government policy changes, such as traffic management which the Commission has not taken into account and, which in some cases has contributed significantly to increased costs on projects to comply. We accept that there are reopeners but these are not flexible or conducive to this type of day-to-day activity, unless the reopeners and allowances are clearly defined and easily accessible to regulated suppliers.

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[15] https://comcom.govt.nz/__data/assets/pdf_file/0026/318626/Part-4-IM-Review-2023-Draft-decision-Financing-and-incentivising-efficient-expenditure-during-the-energy-transition-topic-paper-14-June-2023.pdf

30. Financeability

    Chapter 3 details how the current regime deals with financeability issues which we raised during the initial round of submissions before the draft decision was issued. Orion also submitted our expected debt covenants for DPP4 which was a significant uplift to be able to fund the expenditure needed to support decarbonisation. We appreciate that there are mechanisms such as RAB indexation which to some extent deals with the uplift in revenue. However, our predictive models indicate that our forecast expenditure versus the current mechanisms will be heavily restrictive on our DPP4 allowances. We are therefore concerned that for EDBs who face significant expenditure there will be no choice but to consider applying for CPP's. We are also cognisant that CPPs take time to prepare, cost a significant amount of money and resources before being considered and a couple of years before it can be implemented. The Commission indicated that the current settings address financeability concerns adequately, we urge the Commission to build this into their modelling when setting the next DPP period to ensure that EDBs are adequately compensated to ensure that financeability issues do not arise, specifically for EDBs who will be required to raise additional debt to fund operations.

31. While the revenue cap is limited to 10% per annum when setting the DPP revenue allowances year on year, we consider this a further limitation on regulated businesses to recover adequate income to fund expenditure. We support Frontier's recommendation in their report to increase this limit when the Commission considers the step changes so that EDBs are able to recover all their costs within the 5-year regulatory period.

32. Furthermore, we refer to Frontier's discussion about Part 4 of the Act which is to promote the long-term benefits of consumers by promoting outcomes which are consistent with outcomes produced in competitive markets.

33. Section 52A of the Act does not suggest that consumers should be shielded from price volatility and rather that EDBs should:

    - Have incentives to innovate and invest, including in replacement, upgraded and new assets
    - Have incentives to improve efficiency and provide services at a quality that reflects demands
    - That the benefit to consumers would be promoted through efficiency gains in the supply of a regulated good or service

- Have a limited ability to extract excess profits.

34. IRIS and Totex
    - The Commission gave a detailed explanation on the Capex and Opex and how the compensation of the immediate expenditure (Opex) differs from the phased recovery (Capex) is accounted for through the retention factor so that there isn't a significant benefit in substituting one for the other.
    - We note that the Commission mentioned that the models are too complex to de-weight the Capex and Opex to accommodate a Totex approach.
    - We still believe that there is value in exploring a Totex approach and provide more simplicity in the IRIS mechanism between Capex and Opex substitution.

35. We would also like to draw the Commission's attention to Clause 53P, "Resetting starting prices, rates of change, and quality standards" (8) of the Commerce Act[16] which states:

    The Commission may set alternative rates of change for a particular supplier—

    (a) as an alternative, in whole or in part, to the starting prices set under subsection (3)(b) if, in the Commission's opinion, this is necessary or desirable to minimise any undue financial hardship to the supplier or to minimise price shock to consumers; or

    (b) as an incentive (under section 53M(2)) for the supplier to improve its quality of supply.

    We urge the Commission to consider the consequences of not making adequate provision in the Input Methodologies to minimise the impact of financial constraints on regulated businesses when setting the rules and reset for the next regulatory period (DPP4 2025-2030).

Conclusion

Thank you for the opportunity to provide this feedback and information. We do not consider that any part of this feedback is confidential. If you have any questions please contact Rob Tweedie on 03 363 9898.

Yours sincerely

Rob Tweedie

Regulatory Manager

[16] https://www.legislation.govt.nz/act/public/1986/0005/latest/DLM1685621.html

Appendix A- Table of IMs decisions that the Commission is proposing to change in the Draft Decision Report[17].

Draft decision reference		Proposed change	Orion's view	Additional comments
CA02	Allocating not directly attributable cost	Clarify that asset and cost allocators are used to 'proportionally' allocate values.	Support	Refinement
CA04	ABBA causal relationship approach to proxy allocators	Make an implementation change to IM decision CA04 to require that any proxy allocator must be: (a) consistent with similar measures (both within a disclosure year and from year to year); and (b) reasonable.	Support	Refinement
CA05	Definition of causal relationships	Make editorial refinements for IM decision CA05 as follows: i) replace 'proportion of a quantifiable measure' with 'ratio' in the ii) definitions of 'asset allocator', 'cost allocator', 'proxy asset allocator', and 'proxy cost allocator' in the EDB, GDB, GTB and Airports IMs; and iii) remove the reference to 'quantifiable measure' from the requirements of how	Support	Refinement

[17] Part-4-IM-Review-2023-Draft-decision-Report-on-the-Input-methodologies-review-2023-paper-14-June-2023.pdf (comcom.govt.nz)

Draft decision reference		Proposed change	Orion's view	Additional comments
		proxy cost and asset allocators are used in the EDB, GDB, GTB and Airports IMs.		
CA13	Costs associated with large connection contracts	Introduce a 'large connection contract' (LCC) mechanism in the EDB IM that allows connection assets created under LCCs to be nil-valued and excluded from the RAB, where certain conditions around workable competition and connection size are met. The connection assets being excluded from the RAB, EDBs are to exclude any: i) forecast capex for the connection assets funded under an LCC from any capex forecasts used to determine the EDB's Default Price-Quality Path (DPP); ii) costs associated with the connection assets, which are funded under the LCC from the EDB's total operating costs; iii) income associated with the connection assets, which are funded under the LCC from the EDB's other regulated income; and iv) all revenue received from LCCs from the EDB's actual revenue.	Support	We would like to see a 5MW capacity be adopted. 10MW for LCC's may be too restrictive and is highly unlikely be used i.e. in very exceptional circumstances or remove the cap and leave it to the customer e.g. supermarket who is willing to enter into an agreement with the EDB on agreed terms. There may also be a mix of RAB and LCC assets which could become blurred in expenditure associated with non-regulated expenditure.

Draft decision reference		Proposed change	Orion’s view	Additional comments
CA14	Exclusions from operating costs	Amend the definition of operating costs: i) for GDBs, GTBs and Airports, to exclude pecuniary penalties; ii) for all sectors, to exclude the costs of appeals under sections 52Z, 91 and of the Commerce Act; and iii) for airports, to remove the erroneous reference to pass-through costs and recoverable costs in the list of exclusions.	Do not support	The cost of an appeal should be shared with consumers who could ultimately benefit from the EDB having appealed. We would like to see it being if an independent judgement is passed in favour of the EDB or regulated business.
AV05	Finance leases and intangible assets	Make a minor editorial refinement to amend the definition of “identifiable non-monetary asset” in the EDB IMs.	Support	Refinement
AV12	Assets purchased from regulated supplier	Make changes to IM decision AV12 to: i) ensure it is clear that GAAP applies on an arm’s-length basis to the valuation of assets acquired, or forecast to be acquired, in related party transactions; ii) require that the value of a commissioned asset that, before its commissioning date, was acquired from another regulated supplier as works under construction, is limited to the sum of:	Support	Provides better independent valuation of an asset from a regulated supplier and additional costs.

Draft decision reference		Proposed change	Orion's view	Additional comments
		(a) the costs of the other regulated supplier in constructing those works; and (b) any additional costs of the regulated supplier in constructing the asset (excluding any amount paid to the other regulated supplier); and iii) remove the reference to "limited to" in cl 2.2.11(1)(e) of the EDB and Gas Pipeline Business (GPB) IMs, such that assets acquired from another regulated supplier and used by the regulated supplier in the supply of regulated goods and services must always be valued at the unallocated closing RAB value of the asset.		
AV17	Standard asset lives apply – with listed exceptions	Add an additional line item for 'instrumentation and remote terminal unit (RTU) assets' to Schedule A of the GTB and GDB IMs, with a standard asset life of 15 years.	Support	We do not see RTU's as being a unit which fails easily. https://en.wikipedia.org/wiki/Remote_terminal_unit

Draft decision reference		Proposed change	Orion’s view	Additional comments
AV56	Large connection contract (EDBs)	Introduces an LCC mechanism in the EDB IM that allows connection assets created under LCCs to be nil-valued, and therefore excluded from the RAB, where certain conditions around workable competition and the size of the connection are met	Support	See CA13 with the exception that the 10MW threshold should be 5MW.
TX02	Tax legislation and cost allocation to be applied	Make minor implementation changes to: i) amend the definition of ‘tax depreciation rules as it relates to information disclosure (ID) to apply to all existing assets; and ii) amend the definition of ‘adjusted tax value’ to refer to the ‘tax rules’ rather than the ‘tax depreciation rules.	Support	Currently only applies to EDBs on a CPPs Assets.
CC02	WACC Percentile	The 65th percentile of the WACC will apply for price-quality path regulation for EDBs.	Do not support	This has a significant reduction implication on revenues when costs and the level of activity are going up.

Draft decision reference		Proposed change	Orion’s view	Additional comments
CC03	The Commission to publish annual WACC estimates	Allow for the determination and publishing of a vanilla and post-tax WACC at the 65th percentile with parameters matched to the regulatory period term. The change will allow us to determine a WACC based on both a five-year and a four-year regulatory period. The change relating to the regulatory period term aligns with our current approach to GDBs and GTBs.	Support	Annual WACC estimates are currently published, we are in favour it remains on the 5-year regulatory period.
CC05	Cost of Debt in WACC estimates	Allow for the appropriate calculation of the Cost of Debt for a four-year regulatory period, if required. The decision allows debt issuance costs at 25 basis points (0.25%) per annum for a four-year regulatory period. All other elements continue to apply for EDBs, GDBs and GTBs.	Support	
CC07	Cost of equity in WACC estimates	Change the equity betas for EDBs to be 0.59, and for GDBs and GTBs to be 0.68; derived from: i) An asset beta for EDBs of 0.35, and for GDBs and GTBs of 0.40; and ii) Leverage of 41% for EDBs and GDBs, and GTBs.	Support (in principle)	These indicators do not have a significant impact on EDBs allowances, support in principle

Draft decision reference		Proposed change	Orion's view	Additional comments
		Change the TAMRP estimate for GDBs and GTBs to 7.0%		
SP01	Revenue wash-ups	change the IMs to: i) include additional EDB wash-up: (a) provide a revenue wash-up for inflation for the first year of a regulatory period for EDBs and GTBs; (b) wash-up for EDBs, an amount that is the difference between: • the return on debt for the year based on the cost of debt assumed at the relevant price-quality determination; and • the return on debt referred to in paragraph 7.3.2.1 where the cost of debt is adjusted for actual CPI inflation; (c) allow for a demand volume wash-up mechanism for an EDB CPP, but not a DPP.	Support	These wash-ups could result in price volatility if not tested thoroughly – so we support in principle on the condition that the Commission tests for price volatility unless the Commission is expecting EDBs to manage revenue smoothing. We support the ENA's submission regarding point 5, the Revenue cap 5.1 Proposed changes, 5.2 Inflation debt wash-up and 5.3 Nominal debt wash-up in respect of cashflow and non-cashflow items.

Draft decision reference		Proposed change	Orion's view	Additional comments
		ii) revenue path and wash-up workability, the Commission's draft decision is to: (a) amend the 'secondary' revenue control to give greater flexibility in how it is expressed, and to apply it only to net revenue and recoverable costs; (b) change the status of transmission-related recoverable costs to passthrough costs; (c) make a package of changes to move the wash-up mechanism from a rolling basis to an account basis; and (d) change the timing of the CPI wash-up from a two-year lag to a one-year ahead forecast which involves: • first, an annual update to forecast allowable revenue at the start of each regulatory year using the most up to date RBNZ forecasts of inflation; and • second, a residual wash-up for differences between these updated forecasts and actual inflation.	Support	Agree with status change of transmission-related recoverable costs to passthrough costs and changing the timing of the CPI wash-up from a two-year lag to a one-year ahead forecast

Draft decision reference		Proposed change	Orion's view	Additional comments
		iii) Change the definition of 'other regulated income' by excluding awards of costs following an appeal under sections 52Z, 91, or 97 of the Commerce Act from 'other regulated income' in the EDB, GDB and GTB IMs.	Do not support	We would like to see appeal costs being allowed to be claimed as the outcome may be in the best interest of consumers.
SP03	Pass-through costs	Proposing to reclassify recoverable costs related to transmission services as pass-through costs	Support	D10 mentions a revenue smoothing limit and we agree that this secondary revenue control will as long as "above the line" revenue does not result in EDBs not being able to recover all their allowable revenue during the 5-year period.
SP05	Recoverable costs	Change the IMs to: i) introduce a 'reopener event allowance' recoverable cost which covers all reopener events;	Support	
		ii) remove the distributed generation allowance (DGA) recoverable cost while retaining the 'spur asset' recoverable cost;	Support	
		iii) require EDBs to adjust recoverable costs to take account of costs that are common to regulated and unregulated services;	Support	

Draft decision reference		Proposed change	Orion's view	Additional comments
		iv) change the reference in clause 3.1.3 of the EDB IM from 'new investment contracts' to 'investment agreement';	Support	
		v) prevent EDBs from double recovering costs for 'investment agreements' (paid to Transpower) and finance-related payments for such payments (paid to a third party);	Support	Point 7.18.5 makes sense that EDBs cannot double recover costs for investment agreements
		vi) make changes to the innovation project allowance (IPA) mechanism to: (a) rename and broaden the scope of the 'IPA' definition to 'innovation and non-traditional solutions allowance'; and (b) remove the 'innovation project' definition from the IMs;	Support	We welcome the broadening of the scope and definitions
		vii) reclassify transmission-related recoverable costs as pass-through costs; and	Support	
		viii) remove the recoverable costs associated with the 'capex wash-up adjustment' and 'transmission asset wash-up adjustment'	Support	

Draft decision reference		Proposed change	Orion's view	Additional comments
SP11	Recoverable cost for additional revenue – Alpine/Top Energy/Centralines	Remove the '2013-15 NPV washup allowance' recoverable cost from the EDB IM.	Support	Agree that the wash-up allowance is no longer relevant.
RP01.1	Reconsideration of DPP—System growth capex	Amend the EDB IMs by: i) amending the triggers for system growth expenditure within the Foreseeable major capex project reopener to provide for reopeners for general growth only where the relevant project or programme was identified within an Asset Management Plan used in setting the DPP; ii) amending the IM triggers for system growth expenditure within the Unforeseeable major capex project reopener to not allow for applications driven by general growth; and iii) refining the definitions of 'system growth capex' and 'connection capex'.	Do Not Support	We note that the Commission has said that there are reopeners and CPPs if necessary. CPPs will be more cumbersome and we are concerned that timelines for reopeners are not clearly defined leaving EDBs uncertain of how long it may take to process such applications.
RP01.2	Reconsideration of DPP—Resilience capex	Amend the EDB IM by: i) extending the drivers in the EDB Foreseeable and Unforeseeable major	Support	

Draft decision reference		Proposed change	Orion's view	Additional comments
		capex project reopeners to include targeted resilience-related capex; and ii) including a new (separate) reopener for capex relating to targeted resilience and asset relocation, and include within the expenditure for targeted resilience and asset relocation, Opex that is directly associated with the implementation of a capex solution provided it would not have been incurred but for that particular project or programme preceding it		
RP01.3	Reconsideration of DPP—Risk events-deterioration of one or more of the EDB's network assets or their immediate surrounds	Include a Risk event reopener, with a lower reopener threshold of 1% of the EDB's forecast net allowable revenue (FNAR) or $2.5 million (whichever is lower).	Qualified support	To cover the deterioration of one or more assets which could have a material adverse effect on an EDBs ability to meet its quality standards. This generally would be a CPP and does lowering this give the EDB an ability not to have to apply for a CPP or does this event reopener relate to slips as was the case with Cyclone Gabriel where an EDB can reopen because a slip or landslide poses a risk.

Draft decision reference		Proposed change	Orion’s view	Additional comments
RP01.4	Reconsideration of DPP—Consideration of whether an application is better suited to a CPP	Amend the IMs to include a new clause to allow the Commission to identify reopeners better suited to CPPs. This new provision excludes error events, major transactions, and false or misleading information reopener events.	Do Not Support	This may result in the Commission declining reopeners to directing them to CPPs resulting in substantial volumes of work and delaying the recovery of costs. i.e. could be an uneconomical alternative.
RP01.5 RP02.5	Reconsideration of DPP—Threshold to trigger a major transaction reopener	Clarify that the 10% threshold to trigger the major transaction reopener applies to the regulated supplier’s ‘total opening RAB value’ for its assets in the year of the transaction.	Qualified support	8.13 states that below 10% threshold is an unrealistically low hurdle. This has not been tested and it may depend on the RAB value. Support removal of “individual asset”
RP01.6 RP02.2 RP05.1	Reconsideration of DPP—Definition of a ‘reopener event’	Define a ‘reopener event’ as an event or a series of related events occurring within the twelve months before or during the regulatory period of the price-quality path determination.	Support	
RP01.7 RP02.7 RP05.7	Reconsideration of DPP—Requirement to provide sufficient information	Require a supplier which nominates a reopener event to provide sufficient information to enable the Commission to assess whether a reopener event has occurred and whether a price-quality path should be amended.	Qualified support	It would be better to provide clear guidance on what “sufficient information” would constitute.

Draft decision reference		Proposed change	Orion’s view	Additional comments
RP01.8 RP02.8 RP05.8	Reconsideration of DPP—Requirement to publish notice for reopener event applications	Require the Commission to publish a notice on its website after: i) a reopener event has been nominated by a supplier; and ii) the Commission decides whether: (a) it is satisfied a reopener event has occurred; (b) to reconsider the price-quality path; and (c) to amend a price-quality path	Support	Agree that this would provide transparency.
RP01.9 RP02.9 RP05.9	Reconsideration of DPP—Consideration the Commission must have regard to	Prescribing a list of factors the Commission must have regard to when deciding whether to amend the DPP, CPP or IPP, if we are satisfied that a reopener event has occurred.	Support	Provides better guidance
PR01.10 PR02.10 PR05.10	Reconsideration of DPP—Confidentiality clause for reopener applications	Include a new provision on confidential information in the reopener process IMs. The drafting has been repurposed from the Fibre Capex IM	Support	Aligns with other regulated businesses.

Draft decision reference		Proposed change	Orion's view	Additional comments
RP01.11 RP02.11 RP05.11	Reconsideration of DPP—GAAP changes	Amend the IMs to change how the impacts of GAAP changes are assessed in the change event reopener to remove the potential for windfall gains and losses.	Support	
RP01.25 RP02.26	Reconsideration of DPP—Requirement to take into account the expenditure objective when determining the extent of any amendment to the price path.	Amend the IMs to require the Commission to take into account the expenditure objective when determining the extent of any amendment to the price path.	Support	
RP02.1	Reconsideration of DPP—Inclusion of Opex	Amend: i) the EDB Unforeseeable major capex project and the Foreseeable major capex project reopeners in the EDB IMs; and ii) the Capacity event reopeners in the GDB and GTB IMs,	Support	Interchangeability of expenditure

Draft decision reference		Proposed change	Orion's view	Additional comments
		by providing for entirely Opex solutions in relation to system growth, and by including Opex consequential to the implementation of capex-based solutions, and capex consequential to the implementation of Opex-based solutions.		
RP03.1	Reconsideration of DPP—Change the basis for establishing the threshold for Catastrophic events	Change the basis for establishing the threshold for the Catastrophic Event reopener from an 'impact on revenue' test to an 'incurred cost' test: i) for EDBs, this will be that the total cost incurred in responding to the reopener event exceeds the lower of 1% of FNAR for the regulatory period, or $5 million for Vector Limited and Powerco Limited, or $2.5 million for all other EDBs;	Do not support	We agree that incurred cost should be considered but the impact on revenue for Orion FNAR – only approx. $1.6M
RP03.2	Reconsideration of DPP—Change the basis for establishing the threshold for Change events (not relating to GAAP)	Change the basis for establishing the threshold for the Change Event reopener (not relating to GAAP) from an 'impact on revenue' test to an 'incurred cost' test: i) for EDBs, this be that the total cost incurred in responding to the event exceeds the lower of 1% of FNAR for the regulatory period, or $5 million for Vector	Do Not Support	We have previously submitted that the limit was too high at $2M, which is evident from not being able to be accessed by EDBs, $1,5M would better meet the intent of the reopener.

Draft decision reference		Proposed change	Orion's view	Additional comments
		Limited and Powerco Limited, or $2.5 million for all other EDBs;		
RP03.3	Reconsideration of DPP—Change the threshold for Error events	Change the threshold to $100,000 for errors related to the price path for all entities.	Qualified support	Should be on the basis of materiality as discussed in our explanations
RP03.4	Reconsideration of DPP—Raise the thresholds for Foreseeable and Unforeseeable large project reopeners	Raise the existing dollar thresholds that could apply to $5 million for Vector Limited and Powerco Limited or $2.5 million for all other EDBs.	Do not support	See above RP03.2
RP03.5	Reconsideration of DPP—Remove the upper threshold for Foreseeable and Unforeseeable large project reopeners	Remove the $30 million upper threshold.	Support	Makes sense as could be too low for some investment work.
RP03.6	Reconsideration of DPP—Revise the impact on revenue test for Change events reopeners relating to GAAP	Revise the impact on revenue test for Change event reopeners relating to GAAP changes to be based on whether changes had been in place at the time of the price path reset, there have been a different price path, rather than a cost incurred test, with the thresholds being:	Do not support	See above RP03.1 and RP03.2

Draft decision reference		Proposed change	Orion’s view	Additional comments
		i) for EDBs, the lower of 1% of FNAR for the regulatory period, or $5 million for Vector Limited and Powerco Limited, or $2.5 million for all other EDBs;		
RP03.7	Reconsideration of DPP—Include consequential Opex into materiality thresholds for Capacity events and Risk events for GPBs	Extend the materiality threshold for a Capacity event and Risk event reopener to include consequential Opex and incurred capex.	Support	
AM01	No price reset following amalgamation	Make an editorial refinement to the IMs by changing the reference to “following an amalgamation” to “in response to an amalgamation” in clause 3.2.1(7) of the EDB, GDB and GTB IMs.	Support	Status quo remains for the revenues until the next reset period
IR11 IR12	IRIS to apply	Amend the IMS by:: i) changing our approach to using the mid-point vanilla WACC as the discount rate for calculating the Opex incentive rate; ii) calculating the IRIS incentive amounts based on CPI-adjusted allowances for Opex	Support	

Draft decision reference		Proposed change	Orion's view	Additional comments
		and capex (for EDBs) to remove the impact of economy-wide inflation; and iii) removing clauses 3.3.15 to 3.3.17 of the EDB IM and the associated definitions.		