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Building Resources and Markets
Ministry of Business Innovation and Employment
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SUBMISSION – EDB EFFICIENCY CONSULTATION

1. INTRODUCTION

1. Orion welcomes this opportunity to provide feedback on the Ministry of Business Innovation and Employment's (MBIE) consultation, *'Discussion document for the electricity distribution businesses'* (the 'discussion paper').
2. No part of this submission is confidential.
3. Orion owns and operates the electricity distribution infrastructure in Central Canterbury, including Ōtautahi Christchurch city and Selwyn district. Our network is both rural and urban and extends over 8,000 square kilometres from the Waimakariri River in the north, to the Rakaia River in the south; from the Canterbury coast to Arthur's Pass. We deliver electricity to more than 230,000 homes and businesses and are New Zealand's third largest Electricity Distribution Business (EDB).
4. Orion participates in an informal group of the six largest price-quality regulated EDBs (Big 6), which was formed in 2021 around a shared interest in delivering future-ready electricity services to communities and a common belief that decarbonisation needs to be integral to the regulatory framework.
5. Orion supports the submission made by the Big 6, and our own submission provides supplementary views. Specifically, Orion supports, or conditionally supports:
 - 5.1. removing the partial prohibition on comparative benchmarking (option 1A);
 - 5.2. increasing the Commerce Commission's (Commission) regulatory toolset (option 2A);
 - 5.3. changing the regulation of consumer-owned EDBs (option 2B);
 - 5.4. introducing individual price-quality-path (IPP) regulation for larger EDBs (option 2C);
 - 5.5. more focussed objectives for consumer-owned EDBs (option 3A);
 - 5.6. monitoring of ancillary investments (option 3B); and
 - 5.7. enhancing capability and governance (option 3C).
6. We have addressed MBIE's proposed 'technical' amendments in section 5 (2 of the 3 proposed amendment are supported by Orion).

2. PART 1: COLLABORATION AND STANDARDISATION

7. Part 1 of the discussion paper focusses on the potential benefits of collaboration between EDBs and standardisation of processes across the sector. Collaboration and standardisation are presented as alternatives to the forced amalgamation of EDBs recommended by Frontier Economics,¹ and subsequently rejected by the Government.²
8. The benefits of collaboration and standardisation are well-recognised by EDBs. ENA, representing all 27 EDBs, is leading a significant work programme to promote collaboration and to respond to the additional, EDB-focussed recommendations of the Asset Dynamics³ report.
9. ENA recently wrote to the Minister for Energy, providing the first quarterly update on its commitments to the (then) Minister for Energy in January 2026, and providing similar updates on the five supplementary recommendations made by Asset Dynamics.

3. PART 2: TAILORING ECONOMIC REGULATION

10. The discussion document considers whether the information produced through the current Part 4 monitoring framework is sufficient to support stakeholder assessment of EDB performance, including efficiency. Two enhancement options are proposed.

3.1. Option 1A - Remove the prohibition on comparative benchmarking and require the Commission to periodically publish accessible conclusions on EDB performance

11. Orion supports option 1A.
12. As noted in the discussion document, section 53P(10) of the Commerce Act 1986 (the Act) prohibits the Commission, in the context of default price-quality regulation, from using comparative benchmarking on efficiency to set starting prices, rates of change, quality standards, or incentives to improve quality of supply.
13. While Orion supports the removal of the prohibition on using comparative benchmarking on efficiency to set default price-quality paths (DPPs), we consider that benchmarking should primarily be used as an informative tool that guides examination and judgement. Benchmarking should under no circumstances be applied mechanically.
14. Methodology selection, data quality, and accounting for heterogeneity of geography and operating environment all impact the validity and credibility of benchmarking outputs. It appears that Commission shares our cautionary views. In its 2018 submission to the Electricity Price Review's first report, the Commission stated:

*"We also agree that allowing benchmarking to be part of setting default price quality paths could be useful, but we would expect to use it cautiously, as one input into price setting."*⁴

15. In the context of the tools currently available to the Commission, Orion's understanding is that the Act does not constrain the Commission from using comparative benchmarking on efficiency in other ways. The Commission has noted that productivity and efficiency of EDBs is relevant to the Part 4 purpose (s52A of the Act) and that it may assess the relative performance of EDBs, including productivity and efficiency as part of its summary and analysis obligations under s53B(2)(b) of the Act.⁵ Effectively, existing regulation permits the Commission to assess productivity and efficiency, and create 'league tables' that would theoretically provide a reputational incentive to

¹ Frontier Economics. (2025). [Review of Electricity Market Performance](#). 23 May 2025, section 8.5.1, p133.

² Ministry of Business Innovation and Employment. (2025). [Key Frontier recommendations and the Government's response](#).

³ Asset Dynamics Limited. (2026). [Electricity Distribution Business Efficiency – Recommendations for Standardisation and Collaboration](#). 9 April 2026. Sections 5 & 6, pp 12-41.

⁴ Commerce Commission. (2018). [Commerce Commission submission on the Electricity Price Review's first report](#). 23 October 2018. Paragraph 21.5, p9.

⁵ Commerce Commission. (2026). [Productivity and efficiency of electricity distributors](#).

improve.

16. However, a recent expert report obtained by the Commission on methodologies for assessing and comparing the productivity and efficiency of EDBs noted that:

“Using comparative benchmarking to construct a league table which is not backed up with regulatory financial incentives is not normal practice for regulators. This is because it would be costly to undertake and it would be unclear what additional incentive properties this would create – since incentive regulation emphasises the importance of actual financial incentives.”⁶

17. This, in Orion’s view, reinforces the need for consistent application of price-quality (incentive) regulation in order to maximise the likelihood of efficiency gains across the sector, and supports our recommendation in section 3.3, below, that all EDBs be subject to price-quality regulation.

3.2. Option 2A: Provide the Commission with a greater range of tools to apply to all EDBs

18. Orion **supports** option 2A, with a few caveats, as noted below.

19. The proposed additional tools range from mechanisms to directly influence productivity and efficiency (such as comparative benchmarking) to more intrusive interventions designed to curb, or otherwise modify, behaviour or practices of concern to the Commission (for example, financial ring-fencing rules). Having regard for the compliance burden associated with imposing additional regulatory controls, and to ensure that intervention is proportionate, we consider that use of the proposed additional tools should be subject to safeguards. Safeguards should include requiring the Commission to:

- 19.1. develop a clear, evidenced problem statement;
- 19.2. identify options for a proportionate response;
- 19.3. demonstrate that using its existing performance monitoring tools would be insufficient; and
- 19.4. consult with affected stakeholders.

20. Acknowledging that the Commission would (or should) have flexibility to adopt any of the proposed additional tools, we have concerns with the proposed quality-only regulation. MBIE has stated that *“quality-only regulation would introduce an intermediary tool between information disclosure and price-quality regulation to help target improvements in EDB efficiency.”⁷* Orion disagrees. Currently, price-quality regulation applying to EDBs relies on a tension between prudent and efficient expenditure, and ‘no material deterioration’ of quality-of-service. Applying quality-only regulation, without the balancing tension of price control, may drive inefficiencies, because it is likely to incentivise investment beyond efficient levels, to ensure that quality standards are not contravened (‘gold-plating’).

21. Reflecting on Part 4 more broadly, Orion considers that MBIE might be missing an opportunity to standardise the regulatory tools available to the Commission across all regulated infrastructure (electricity lines services, gas pipeline services, airport services and water services). While electricity affordability and EDB efficiency are the issues of the day, and EDB regulatory reform is being contemplated in light of the more contemporary regulatory settings for water services, the same tools may be useful for gas pipelines and airports in the future. Including them now ensures that Part 4 remains fit-for-purpose and enduring, and provides the Commission with the ability to promptly respond to changing economic or sectoral circumstances.

⁶ Pollitt, M. (2025). [Benchmarking and Optimal Scale for Electricity Distribution Boards in New Zealand: A study for the Commerce Commission](#). 23 July 2026, p3.

⁷ Ministry of Business Innovation and Employment. (2026). [Discussion document for the electricity distribution businesses](#). p23.

3.3. Option 2B: Changing how further regulation is applied to consumer-owned EDBs

22. Orion **supports** option 2B and **recommends** that DPP regulation is applied to all EDBs, with the option to seek a customised price-quality (CPP) path retained.
23. New Zealand’s current, two-tiered approach to regulating EDBs is an anomaly among the nations that we most often compare ourselves to (the United Kingdom and Australia). The rationale for currently exempting certain EDBs from price-quality regulation is ostensibly linked to consumer-ownership, on the basis that those relevant consumers “are best placed to ensure the business acts in their interests.”⁸
24. Frontier Economics, in its 2025 electricity market performance review, noted that the decision to “deny the consumers served by those EDBs the long-term benefits offered by effective regulation — was a pragmatic compromise reflecting the regulatory burden that would be imposed on EDBs...” and that “it is inappropriate to simply assume away the harm (e.g., arising from very weak incentives for efficiency and innovation) that may potentially be imposed on some consumers, simply because those consumers happen to be served by small EDBs.”⁹
25. As we noted at paragraphs 16-17, above, implementing comparative benchmarking is likely to be effective only if all EDBs are subject to price-quality regulation. The risks to consumers of inconsistent regulation were identified by Powerco in its 2025 response to the Commission’s open letter ‘ensuring our approach to price paths is delivering for consumers’:¹⁰
- “Tighter regulation is a useful mechanism to lift performance, however, to benefit all consumers, all distributors need to be consistently regulated. If the regulatory settings do not support investment in capability adequately and consistently, it creates a real risk of postcode differences in electricity services, quality and affordability.”¹¹*
26. If consolidation of some (currently) exempt businesses occurs through management or shared services agreements it may, in Orion’s view, create a further justification for price-quality regulation to be imposed, as consumers will be distanced further from the operation of their parent EDB, and already weak consumer influence will be further weakened.
27. There is evidence to suggest that stronger regulatory controls may provide incentives for greater voluntary collaboration and consolidation. Michael Pollitt, in his expert report to the Commission on benchmarking and the optimal scale of EDBs, noted that there wasn’t a uniform answer to optimal scale, owing to scale being a poorly defined economic concept, but that didn’t mean that smaller EDBs shouldn’t be encouraged to consolidate or share services. He went on to say:
- “It is worth saying that tighter regulation forces smaller companies to seek out rationalisation benefits. The mergers of GB firms were definitely encouraged by the pressure to cut costs and find efficiency savings, under incentive-based price control regulation. This has been a major driver across Northern Europe in reducing the number of firms over time.”¹²*
28. This is a compelling argument for why all EDBs should face price-quality (incentive) regulation. If an EDB is too small to cope with price-quality regulation, it is likely that it is too small in absolute terms. EDBs in such circumstances would face real incentives to merge or seek shared services arrangements that would establish the requisite scale.

⁸ Commerce Amendment Bill 201-2. [Commentary – Reported from the Commerce Committee](#). 24 July 2008. p11.

⁹ [Ibid.](#) p120.

¹⁰ Commerce Commission. (2025). [Open Letter: Ensuring our approach to price paths is delivering for Consumers](#). 25 August 2025.

¹¹ Powerco. (2025). [DPP5: setting a renewed approach to regulate & incentivise future electricity distribution](#). p1.

¹² [Ibid.](#), p25.

3.4. Option 2C: Introduce individualised price-quality paths for EDBs

29. Orion **supports** option 2C and **recommends** that the four largest EDBs are subject to individual price-quality IPP regulation.
30. IPP regulation of the four largest EDBs (Vector, Powerco, Orion and Wellington Electricity) would result in 61 percent of electricity consumers reaping the benefits of detailed scrutiny of the prudence and efficiency of region-specific investment plans by the Commission and an independent verifier, ultimately leading to efficient levels of consumer prices. Further, the process of developing IPP proposals provides an impetus for:
- 30.1. advancing maturity in asset management practices, risk and resilience management, and innovation;
 - 30.2. deeper and more meaningful consumer engagement; and
 - 30.3. greater readiness for, and adoption of, non-network solutions and flexibility, leading to more efficient network utilisation.
31. While the costs of preparing, verifying and auditing IPP proposals are significant, those costs would occur only five-yearly and should be considered against the potential benefits brought by deeper scrutiny of a significant proportion of sector expenditure.

4. PART 3: STRENGTHENED GOVERNANCE REQUIREMENTS

32. Part 3 of the discussion document focusses on potential improvements to governance arrangements pertaining to consumer-owned EDBs. Our responses to individual options are set out below, noting that Orion considers that most of the proposed options have the potential for broader application than to just consumer-owned EDBs.

4.1. Option 3A: More focused objectives for consumer-owned EDBs

33. Orion **supports** option 3A.
34. MBIE has suggested that the current requirement to operate as a 'successful business' in section 36 the Energy Companies Act 1992 (ECA) could be broadened to place greater emphasis on efficient investment, network reliability, resilience, and supporting electrification.
35. Orion agrees that this would provide more focussed direction to consumer-owned EDBs, but notes that broadened requirements should not be applied to consumer-owned EDBs only. We consider that the proposed broadened requirements are universal. We therefore **recommend** that the proposed broadened requirements be incorporated into the Electricity Industry Act 2010.
36. We have not considered further aspects of the ECA, including whether it should be further rationalised or repealed.

4.2. Option 3B: Greater monitoring and regulation of ancillary investments

37. Orion provides **qualified support** for Option 3B.
38. While the discussion paper focusses on ancillary investments in the context of consumer-owned EDBs, the potentially deleterious effects of ancillary investments are not confined only to those businesses. This is a potentially universal issue.
39. We consider that giving the Commission greater power to monitor ancillary investments is reasonable, but regulation should not be available without strong, post-investigation evidence of consumer harm. We also note that regulation of ancillary investments moves Part 4, somewhat uncomfortably, from regulating monopoly infrastructure investments to regulating competitive investments.

40. We note that not all ancillary investments are equal. We consider that there is a distinction between industry-related investments or investment in other regulated network infrastructure, and investments that are completely unrelated to electricity distribution.¹³
41. Orion considers that related investments or investments in other regulated network infrastructure frequently create synergies that can increase the efficiency of the organisation by sharing common costs, thereby benefitting electricity consumers. The Commission's current cost allocation input methodologies effectively ensure that consumers of electricity lines services do not bear the costs of ancillary investments (whether related or unrelated).
42. Unrelated investments can be more problematic. While Orion considers that an EDB's ultimate parent owner should be free to decide what it invests in, we question whether unrelated investments should be permitted to be undertaken directly by its EDB, or whether a structurally separate corporate entity should be created as the investment vehicle. Using the EDB as the investment vehicle has the potential to split management focus and dilute EDB-specific capability and experience within the EDB's management team and board.

4.3. Option 3C: Measures to enhance capability and governance

43. Orion supports option 3C.
44. Initiatives that strengthen governance capability and decision-making should, in Orion's view, be uncontroversial; however, we consider that such initiatives should not be confined to consumer-owned EDBs only. Like options 3A and 3B, this option has broader application. While private EDB owners may arguably have a natural incentive to ensure that governance capability is strong, there is no reason why some of the proposed initiatives shouldn't have universal application.
45. The proposal to create legislative requirements for governance capability and experience, similar to section 48(b) of the Local Government (Water Services) Act 2025, seems reasonable. Orion considers that the Electricity Industry Act 2010 would be the appropriate instrument in which to specify such requirements.
46. The discussion document suggests that "*non- statutory support and guidance from government to assist with training for directors*"¹⁴ may be appropriate. Orion considers that government support should not be necessary, since this form of support is available from the Institute of Directors (IoD). IoD membership would also satisfy the "*optional board of directors accreditation*"¹⁵ complementary approach to statutory requirements.
47. The industry has also developed initiatives to help enhance governance capability. ENA recently held its inaugural EDB governance induction,¹⁶ designed to complement the induction directors receive from their own EDB with a broader view of the environment they're governing in.

5. PART 4: TECHNICAL MATTERS

48. Part 4 of the discussion paper sets out three proposed 'technical' changes to Part 4 of the Act, intended to "*clarify existing rules, address gaps and keep the system up to date*".

5.1. Quality Incentives

49. The discussion document proposes that s87(2)¹⁷ be amended to incorporate quality incentives made under s53M(2) of the Act and has justified the proposal by stating that "[q]uality incentive schemes are unlikely to provide any incentives for regulated suppliers if there are no consequences for a contravention eg if the Commission cannot

¹³ Marlborough Lines' investment in Yealands Wine Group, cited in the discussion document, is an example of an un-related investment.

¹⁴ [Ibid.](#) p31.

¹⁵ [Ibid.](#) p32.

¹⁶ Electricity Networks Aotearoa. (2026). [EDB Governance Induction](#).

¹⁷ Contravention of a price-quality, quality, or performance requirement.

enforce a requirement for a supplier to pay compensation to consumers or to report.”¹⁸

50. Orion **does not** support the proposal. We note, however, that there is limited detail provided for the proposal, and would be prepared to review our position should the underlying rationale be made clearer.
51. The proposal, as described, reflects an incomplete understanding of the relationship between the existing quality incentive scheme and quality standards contained in the default price-quality determination.¹⁹ Quality incentives are designed to act before a contravention of a quality standards occurs, although an EDB that ultimately contravenes the quality standard, and thereby becomes subject to enforcement action by the Commission, is not shielded from the negative effects of the incentive.
52. In setting quality standards for each EDB, taking the unplanned quality standard and associated incentive as an example:
- 52.1. The Commission determines the EDB’s historical average performance over a 10-year reference period. This average value represents the incentive neutral point, where an EDB is neither rewarded nor penalised for its quality performance.
- 52.2. The Commission then sets the quality limit at two standard deviations above the historical average, to protect against random volatility. The quality limit acts as the incentive cap.
- 52.3. A price-quality regulated EDB that records a quality result between zero and the incentive neutral point receives an incentive reward (an increase in revenue in a future regulatory year).
- 52.4. A price-quality regulated EDB that records a quality result between the incentive neutral point and the incentive cap receives an incentive penalty (a reduction in revenue in a future regulatory year).²⁰
53. In short, a price-quality regulated EDB receives a reward or a penalty under the Commission’s current quality incentive scheme, but there is no clear basis on which a contravention would be registered.
54. The matter of consumer compensation is also raised in this proposal. We note that the Commission has consumer compensation tools at its disposal:
- 54.1. In its 2019 decision on DPP3, the Commission noted that it was empowered to implement a consumer compensation scheme (guaranteed service levels) under s53M of the Act but decided, for a variety of reasons, that it would not do so and would reconsider the matter for DPP4.²¹ At the DPP4 reset, the Commission again elected not to implement a consumer compensation scheme due to complexity that it believed was inconsistent with the relatively low-cost nature of default price-quality regulation.²²
- 54.2. Section 87A of the Act provides that the Commission may make an application for a compensation order in circumstances where a price-quality regulated EDB has contravened a quality standard and has had a pecuniary penalty imposed for its conduct.

5.2. Consecutive CPPs

55. The discussion document proposes that the prohibition on an EDB making a CPP proposal within 12 months of a DPP reset be removed from s5Q(3) of the Act, on the basis that “[r]equiring suppliers that want consecutive customised price-quality paths to first revert to a default price-quality path for one or more years weakens the positive incentives that price-quality paths provide.”
56. Orion **supports** this proposal. We do not think that it is in the best interests of an EDB, or its consumers, to be

¹⁸ *Ibid.* p34.

¹⁹ Commerce Commission. (2026). *Electricity Distribution Services Default Price-Quality Path Determination 2025*. Consolidated 26 August 2026.

²⁰ The revenue at risk (gains/losses) from the quality incentive scheme is currently capped at 2% of actual net allowable revenue.

²¹ Commerce Commission. (2019). *Default price-quality paths for electricity distribution businesses from 1 April 2020 – Final decision: Reasons paper*. Paragraphs J32 to J36, pp354-355.

²² Commerce Commission. (2024). *Default price-quality paths for electricity distribution businesses from 1 April 2025 – Final decision: Reasons paper - Attachment E Setting quality standards and incentives*. Paragraphs E194 to E203, pp 49-50

constrained from submitting a CPP proposal when its particular circumstances necessitate it. However, we consider that the effect of the current prohibition is mis-stated.

57. Assuming that the CPP proposal is not determined for a period shorter than 5 years (as permitted under s53W(2) of the Act), then:

57.1. With the prohibition in force, an EDB would only be prevented from proposing a CPP if it needed to do so in the final year of a DPP period.

57.2. Under those circumstances, the earliest that a CPP would normally come into effect (assuming the CPP proposal seeks alignment with the disclosure year) would be at the start of the second year of the new DPP regulatory period.

57.3. There would be no impediment to seeking a second, consecutive CPP since the EDB can submit its proposal early in the final year of its CPP, which aligns to the first year of the DPP regulatory period. This is shown in Figure 3 below. CPP proposals made in years 2 to 4 of the DPP period are similarly unaffected and EDBs do not have to revert to the DPP before making a second CPP proposal.

Figure 1: Timing of CPP proposals and regulatory periods

	DPP Yr5	DPP Yr1	DPP Yr2	DPP Yr3	DPP Yr4	DPP Yr5	DPP Yr1	DPP Yr2	DPP Yr3	DPP Yr4	DPP Yr5	DPP Yr1
Preferred CPP proposal submission	X											
Actual CPP proposal submission		✓										
CPP period 1												
Second CPP Proposal submission							✓					
CPP period 2												

5.3. Transpower IPP

58. The discussion document proposes that Part 4 of the Act be amended to specify that Transpower is subject to IPP regulation, rather than under an Order-in-Council that expires in 2030.

59. Orion supports this proposal, considering it to be appropriate and administrative in nature.

6. CLOSING

60. Thank you for the opportunity to provide our views on the options for increasing EDB efficiency. Please contact the undersigned if you require further information.

Yours sincerely



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