

31 October 2014

Regulation Branch
Commerce Commission
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SUBMISSION ON THE REVISED DRAFT DPP DETERMINATION AND RELATED DOCUMENTS

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to provide a submission on the Commerce Commission's (**Commission**) revised "Electricity Distribution Services Default Price-Quality Path Draft Determination 2015" (the DPP 2015 determination) issued by the Commission in October 2014.
- 2 In the interests of efficiency, this submission also comments on related documents, for example the changes set out in the "Draft Electricity Distribution Input Methodology Amendments Determination 2014" (the 2014 IM determination).
- 3 In general we are pleased that the Commission has made a number of changes to the previous determination in response to submissions. In particular we note:
 - 3.1 both SAIDI and SAIFI are capped on major event days (previously, SAIDI was only capped if SAIFI was over cap),
 - 3.2 the quality limit for compliance is now set to the incentive cap (so the penalty applies in a range below a breach result). Consequently a breach now only occurs where the result is one standard deviation above the average,
 - 3.3 the "2 out of 3" quality compliance approach has been reinstated, and
 - 3.4 there is now no fifth year requirement for the pass-through balance to be nil, and any balance carries forward to subsequent regulatory periods.
- 4 However, we are concerned that a number of issues we raised have not been addressed, with no explanation given as to why not. Our submission focusses on these.

General comments

- 5 With respect to the DPP 2015 determination we find the suggestion that the “rules” set out in the determination apply to both default and customised price paths is confusing and unhelpful. We note the explanation in Table 3.1 of the companion paper¹ to “allow potential future [CPP] determinations to be included ...with minor adjustments” but we are still not sure that this is in fact possible, or why this approach has been taken as opposed to, say, doing any necessary variations in a CPP determination. In more detail:
- 5.1 Clause 1, the short title, states this is the Electricity Distribution Services Default Price-Quality Path determination 2015 yet should a EDB apply for a CPP, the suggestion is that the CPP will be dealt with by varying the schedules. Presumably then this short title should be the Electricity Distribution services Default/Customised price-quality Path determination 2015.
- 5.2 New clause 3.2 clarifies that the determination does not apply to Orion until the expiration of our CPP. We agree with the inclusion of this new clause as it provides clarity that Orion is not included initially. However it remains unclear how a number of key aspects of the determination, as written, can be seen to apply to Orion *after* the expiration of our CPP.
- 5.3 We consider that clause 3.2 should be extended by adding the words “*Only some aspects of this determination may apply to Orion should it return to this determination on the expiration of its CPP. These aspects will be determined in consultation with Orion prior to [date]*”.
- 5.4 Clause 5.1 links CPP Regulatory Period compliance to clauses 8 and 9. Clause 8.1 specifies that the starting distribution prices that apply to a non-exempt EDB, specified as maximum allowable revenue, and the Regulatory Period or CPP Regulatory Period to which they apply, are set out in Schedule 1. Similarly clause 8.2 indicates that the rates of change in distribution prices relative to a CPI allowed by a non-exempt EDB during a Regulatory Period or CPP Regulatory Period, are set out in Schedule 2. As a CPP Regulatory Period may and probably will cross multiple DPP regulatory periods, presumably Schedule 1 and Schedule 2 will have to be amended each time an EDB has either moved from a DPP to a CPP or returned from a CPP to a DPP or applied for a further CPP.
- 5.5 Regarding schedule 4A, which is referenced in clause 9, we are not now sure if Orion will be included in that schedule, as the entries are blank, but, if it is, our previously stated concerns stand: we acknowledge the signal as to how the Commission may establish SAIDI and SAIFI targets for Orion for the 2019/2020 year, but we do not think it is necessary to do so at this stage, and nor is it

¹ “How we propose to implement default price-quality paths for electricity distributors from 1 April 2015”.

appropriate to set these targets in the absence of the method by which prices will be set for that year.

- 5.6 The draft determination sets out specific boundary values for Orion (paragraph 3 & 5 of schedule 4A) which might imply that Orion will not be included in table 4A.1. However, in the absence of an entry in table 4A.1, no reliability limit is set for Orion.
- 5.7 Clause 6 sets out applicable input methodologies however, if this determination is to also apply to CPPs, then clause 6 should include the Input methodologies for customised price paths set out in Part 5.
- 5.8 We continue to take the view that a preferable method here is to acknowledge that a CPP may vary a number of terms that apply under a DPP, but these variations will be carried out under a separate s52P determination that is imposed by amendment to the default/customised price-quality regulation applying to the supplier and otherwise make no reference to the CPP within the DPP determination other than the dates for proposing a CPP. At the very least the Commission should explain further the benefits of this combined DPP/ CPP approach in the determination and how this will work when we have multiple EDB's on multiple different CPP's across a variety of time periods.
- 5.9 With respect to the 2014 IM determination we consider that this amendment would not apply to Orion until after the end of the CPP regulatory period. We therefore suggest a new clause 3:

3 Application

3.1 This determination does not apply to Orion until the expiration of the Orion New Zealand Limited customised price-quality path determination 2013 [2013] NZCC 21

Renumber other clauses in the determination as required.

Additional matters for Consultation

- 6 Section 4 of the Commission's paper "How we propose to implement default price-quality paths for electricity distributors from 1 April 2015" raises a number of additional matters for consultation. We address these below.

New treatment of pass through and recoverable costs

- 7 We note the shift to assess all pass through costs under the separate assessment (with unders and overs carried forward). We currently publish and apply two separate sets of prices: distribution prices and transmission prices (to comply with ID

2.4.18(1)(d)). The new IM amendments appear to require a different split, with prices for pass through and recoverable costs, and separate prices for everything else. It is not clear to us (reading paragraphs 4.16 to 4.18 of the reasons paper, and the existing definition of price in the IMs) if the Commission is expecting us to comply with both requirements by publishing and applying three sets of prices (which would require costly system changes and added complexity) or if we can simply identify the part of our current distribution price that relates to non-transmission pass through costs.

Advance notification of price restructuring

- 8 In paras 4.36 to 4.38 of the companion paper², the Commission states that the proposed advance notice of price restructuring (now in clause 8.11 of the determination) gives the Commission the opportunity to raise concerns, and that it helps distributors ensure price path compliance.
- 9 We do not understand how advance notification will help with either of these, unless it is combined with actual pre-approval, which does not seem to be proposed (and which would require much earlier notification to be useful). In any case, 30 days' notice (which is then the maximum amount of time in advance that the Commission could raise concerns, but we presume it could take much longer for the Commission to do an assessment) would mean the distributor would have already notified the price changes to retailers, who in many cases will in turn have notified their customers. Unless the offending prices are actually withdrawn, non-compliance will result, but if they are withdrawn it is highly likely that retailers will face unnecessary costs, and consumers will face unnecessary confusion.
- 10 The proposal looks very odd in the context of a regime where all other compliance elements are left as the responsibility and risk of distributors.
- 11 Clause 8.11 should be removed if its value cannot be better explained, and the issue addressed.

Distributed generation payments

- 12 The proposed IM amendment still refers to payments made in accordance with Schedule 6.4 of part 6 of the Electricity Industry Participation Code or the Electricity Industry Act 2010. Our payments are made on an alternative basis and it appears we will no longer be able to claim them. As a result we may have to cease making these payments as we currently do and instead move to an assessment more closely reflecting the Code, which will create significant uncertainty for the generating customers, and risk cutting across long-standing commercial arrangements. We again submit that we should simply be able to claim amounts paid where those amounts are

² Ibid.

identified as avoided transmission payments. Please refer to paragraph 32 of our previous submission.³

Major transactions

- 13 Major transaction – Schedule 3C paragraph 2(b) requires the adjustment of pass through and recoverable costs attributable to the ICPs transferred. We can't see why this is appropriate because EDBs are allowed to recover actual costs incurred, and the vast majority of that would normally be recovered in the year that the cost is incurred (with only minor variances being carried forward). The appropriate extent of this adjustment should be to transfer an appropriate share of any pass-through balance (if any adjustment is made at all). We suggest the Commission consider deleting 2(b), 3(b) and 4(b), and definitely delete 6(b) and 7(b) as Exempt EDBs do not maintain a pass-through balance and therefore no amounts should be transferred.
- 14 Schedule 3C provides for an alternative compliance approach to be taken where a transaction occurs with an exempt EDB. To cater for situations that do not conform to the standard, or situations where the Commission publishes a determination with an error in it, we submit that the alternative compliance approach should also be an option where a transaction occurs with a non-Exempt EDB.

Definition of interruption

- 15 For interruptions, we asked for the exclusion of AUFLS, AUVLS, rolling outage or on instruction from an appropriately authorised regulator. Instead, the draft provides exclusion of outages that occur “in accordance with any extended reserves regulations made under the Electricity Industries Act 2010” The extended reserves regulations made under the Electricity Industries Act 2010 will, in time, consist of AUFLS and other resources. However, AUFLS is currently the only type of extended reserve⁴. We do not consider that this addresses the concerns we have raised.

Detailed drafting

- 16 We have the following comments on the detailed drafting of the determination:
- 16.1 The defined term Price is used to denote all prices (including pass-through prices in respect of transmission costs) and the definition is linked to IM clause 3.1.1(4), which in turn links it to the supply of an “electricity distribution service”, which is defined to exclude electricity lines services supplied by Transpower. This appears to be a conflict.
- 16.2 There are four “t-1” typos on pages 27 and 28 of schedule 3C.

³ Paragraph 32 Orion submission on the draft DPP determination and related documents 29 August 2014

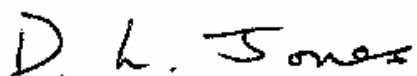
⁴ Paragraph A.4(C) Draft Role description of the ERM <https://www.ea.govt.nz/development/work-programme/wholesale/efficient-procurement-extended-reserves/implementation/extended-reserve-manager-role/>

16.3 Schedule 3C paragraph 1(a) should refer to "paragraphs 2 to 4".

Concluding remarks

- 17 Thank you for the opportunity to make this submission. Orion does not consider that any part of this cross submission is confidential. If you have any questions please contact Dennis Jones (Industry Developments Manager), DDI 03 363 9526, email dennis.jones@oriongroup.co.nz.

Yours sincerely

A handwritten signature in black ink that reads "D. L. Jones". The letters are cursive and slightly slanted to the right.

Dennis Jones
Industry Developments Manager