



23 November 2021

Andy Burgess
Head of Energy, Airports and Dairy Regulation
Commerce Commission
PO Box 2351
Wellington 6140

Dear Andy

Decision on Orion Innovation Allowance Application June 2021

Orion New Zealand made an innovation allowance application under DPP3 in June 2021. The Commission provided their written decision on 15 November 2021. We thank the Commission for their consideration of our application and their acknowledgement of our efforts ‘to play a role in decarbonisation’.

The Commission has indicated that it will “try to continue to provide indicative views when requested prior to formal applications being made.” We think this is important because a significant amount of expenditure, time and effort can go into making an application.

Orion is now responding to the Commission’s decision. Our application was an application for funding related to the planting of native forestry to offset the carbon emissions from our existing and evolving business which includes electricity distribution assets worth circa \$1b.

Expenditure must occur before application

We agree that Orion has not yet invested the majority of the expenditure required to execute this multi-year project. A criterion of the innovation allowance rules is that “approval of costs as recoverable under the innovation project allowance [can only occur] after an EDB has incurred them, not before”. We appreciate then, that on that basis alone the Commission “cannot approve a drawdown amount”.

Design and operation of the innovation project allowance mechanism

We thank the Commission for considering our points on the design and operation of the innovation project allowance mechanism and will take on board your suggestion to “make these points in submission on the upcoming IM review and the next DPP reset”.

Response to non-binding view

We disagree with the Commission’s non-binding view as expressed in its response to our Innovation Allowance application that voluntary carbon offsetting falls outside the regulated electricity lines service (ELS)

The Climate Change Response Act and the declaration of a 'Climate Emergency' signals a clear intent by government that climate matters need to be addressed and an expectation that this applies to all businesses whether in a competitive market or regulated. It seems incongruent to us that the Commission considers activity by an EDB to mitigate climate emissions pursuant to its line function service assets as falling outside the supply of the electricity lines service (ELS). While the Commission states that "DPP3 regulates a non-exempt EDB's expenditure on assets used, or costs incurred, in whole or in part of supplying the regulated service - ELS", we consider the Commission is taking a narrow view given the types of expenditure already approved under a DPP.

For instance, the Commission approves expenditure for vegetation management, traffic management, sponsorship and USPP arrangements for expenditure funding. These expenditures address issues of:

- environmental and climate impacts on assets used,
- costs incurred on mandated and non-mandated health and safety requirements to facilitate delivery of maintenance or enhancements to assets,
- costs incurred to address equity in our community related to our delivery service but not directly related to assets used – for instance funding of insulation in low income households,
- arrangements and costs incurred to reduce financing costs

Is the Commission suggesting that non-mandated health and safety and equity matters are incumbent upon EDBs to consider, address and take action on as part of the ELS but that investment related to climate change mitigation directly addressing climate emissions of ELS assets is not?

The list provided above combines aspects of voluntary and mandatory approaches. The Commission appears to have left the door open for carbon offsetting to fall within the ELS only if it is mandatory. It is well accepted that regulation is slow to follow what is happening in real time within a market. We contend that the time to act on a government declared emergency is after such declaration is made, and not to wait until the government has time to rewrite Acts and pass Bills to match their call for action. Early action is both an environmentally and fiscally responsible step to take.

It is our position that carbon production and consumption associated with the assets we operate, maintain, build and retire cannot (and should not) be unravelled from the climate emergency and are not independent of ELS. We would not consider ourselves to be a responsible operator if we did not address our carbon emissions. Further, our customers have indicated their support for this as detailed in our Innovation Allowance application.

In its summary of the responses to its open letter in May, the Commission indicated that, in accordance with S5ZN of the Climate Change Response Act 2002, it may "in exercising or performing a public function, power or duty conferred on [us]" "take into account- the 2050 target; or an emissions budget; or an emissions reduction plan." We therefore believe the Commission has erred in its assessment that our pursuit of carbon neutrality falls outside of ELS activities and ask the Commission to re-assess its position. We believe activities that seek to prudently and reasonably reduce and offset carbon emissions from ELS activities should be allowed to be included on an EDBs RAB.

Given our differing views, we invite the Commission to discuss this further with us to determine what would expand the Commission's view and what settings might need to change to support climate related expenditure on 'assets' entering the RAB. Subsequently a joint discussion with policy makers could follow.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'DP', followed by a long horizontal flourish.

Dayle Parris
Head of Regulatory and Commercial