

**Submission to the Commerce Commission**

**on the**

**Initial Reset of the Default Price-Quality Path  
for Electricity Distribution Businesses  
Draft Determination**

**Made on Behalf of  
18 Electricity Distribution Businesses**

**3 November 2009**

## **Submission on the Initial Reset of the Default Price-Quality Path for Electricity Distribution Businesses Draft Determination**

Under the provisions of the new Part 4 of the Commerce Act 1986 (the Act), the Commerce Commission (the Commission) is required to reset Default Price-Quality Paths (DPPs) for Electricity Distribution Businesses (EDBs) to be effective from 1 April 2010.

In September the Commission released its Draft Decisions Paper: *Initial Reset of the Default Price-Quality Path for Electricity Distribution Businesses, 8 September 2009* (the Draft Decisions Paper). Our submission on the Draft Decisions Paper was submitted on 12 October 2009. In response to that, and other submissions, the Commission has now released a preliminary Draft Determination Consultation Paper: *Initial Reset of the Default Price-Quality Path for Electricity Distribution Businesses, Initial Reset Determination (DRAFT), Consultation Paper, 16 October 2009* (the Draft Determination).

This paper forms our submission on the Draft Determination which has been prepared by PricewaterhouseCoopers on behalf of the following 18 EDBs:

- Alpine Energy Limited
- Counties Power Limited
- Eastland Network Limited
- Electricity Ashburton Limited
- Electricity Invercargill Limited
- Horizon Energy Distribution Limited
- MainPower New Zealand Limited
- Marlborough Lines Limited
- Nelson Electricity Limited
- Network Tasman Limited
- Network Waitaki Limited
- Northpower Limited
- OtagoNet Joint Venture
- The Lines Company
- The Power Company Limited
- Top Energy Limited
- Waipa Networks Limited
- Westpower Limited.

This group of EDBs together comprises 456,217 connections (or 23% of the total electricity distribution sector), 60,787 system kilometres (41% of the total electricity distribution sector) and \$2.2 billion dollars of regulated network fixed assets (or 28% of the total electricity distribution sector).<sup>1</sup> The ownership structures represented include consumer and community trusts, a listed company, local body and co-operative ownership, as well as those managed by management companies. Group members include networks with predominantly urban systems, others that are sparsely populated and a number with significant urban areas combined with rural and remote rural characteristics. Some members also have obtained consumer owned exemption status from the DPP requirements, and have chosen to remain engaged in the development of the DPP for the next regulatory period.

### **Our Submission**

- 1 The Draft Determination represents the first draft of the DPP Determination, and is consistent with the Draft Decisions Paper. It does not therefore reflect the points made in submissions received on the Draft Decisions Paper. A further Draft Determination is to be issued in November, which will reflect the Commission's consideration of submissions on both the Draft Decisions Paper and the Draft Determination.
- 2 We appreciate the opportunity to comment on this early draft of the Determination. As noted in our earlier submission, there is a significant amount of detail in the Determination which needs careful review, without which there is potential for ambiguity, errors or inconsistencies to be unknowingly included in the Determination, as was the experience with the Thresholds Gazette Notice.
- 3 The Draft Determination includes many changes to terminology, definitions, formula, reporting requirements etc from the previous Thresholds Gazette Notice. Some of these are required to implement the DPP consistent with the Draft Decision. The reasons for some of the other changes which have been introduced however are not clear, as there is little supporting information included with the Draft Determination. We have responded as best we can, within the timeframe permitted, however we may have misinterpreted the intent of some of the clauses. We will also continue to review the Draft Determination over the coming weeks in preparation for the final consultation in late November.

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<sup>1</sup> Based on 2009 Information Disclosure Data

- 4 In addition, where the Draft Decision differs to the alternative approach suggested in our 12 October 2009 submission, we have indicated the appropriate changes required to the Draft Determination to implement the alternative approach. Some of this detail was included in our earlier submission, and where relevant to the Determination itself we have replicated it here. We have not, in the interests of time, repeated the arguments set out in our Draft Decisions submission for the alternative approaches.
- 5 Our submission is structured consistent with the Draft Determination as follows:
- Clauses 1, 2 and 3 – Title, Commencement Date, Application
  - Clause 4 – Interpretation
  - Clause 5 – Default Price-quality Path
  - Clause 6 – Applicable Input Methodologies
  - Clause 7 – Customised price-quality path proposal date
  - Clause [x] – Reopeners
  - Clause 8 – Price Path
  - Clause 9 (including Schedule 3) – Quality Standards
  - Clause 10 – Mergers and Acquisitions
  - Clause 11 – Annual Compliance Statement
  - Schedules 1, 2 – Starting Prices and Rate of Change
  - Schedule 4 – Auditors Report
  - Schedule 5 – Directors' Statement

We have also included in Appendix A our suggested drafting for clauses in the Draft Determination which we believe contain errors, or should be changed to reflect our submission on the Draft Decisions.

## **Clauses 1, 2 and 3 – Title, Commencement Date and Application**

- 6 We have no comment on Clauses 1 and 2.
- 7 Clause 3 includes the term ‘Electricity Distribution Services’ which excludes Transpower from the DPP. This is similar to the definitions included in section 54G of the Act. To avoid confusion the Draft Determination should refer to the Act and the definition of Electricity Distribution Service be removed, with subsequent changes to clause 3, and elsewhere throughout the Determination. Accordingly all references to Electricity Distribution Service should be amended to Electricity Lines Service.

## **Clause 4 - Interpretation**

- 8 The definition of transmission charge has changed and reflects a reduced range of services than provided for in the thresholds as it omits some of the transmission services provided by Transpower and excludes the previous provision for transmission services sold from one EDB to another.
- 9 This new definition therefore in our view is inconsistent with the Draft Decisions. To the best of our knowledge there has been no intention signalled during the consultation process that this change was planned. The existing definition from the Thresholds Notice is appropriate and should be used. An additional provision is also recommended for other services related to transmission that may emerge over the regulatory period. Our suggested amendments are included in Appendix A.
- 10 We have previously submitted on the topic of excluded services for the DPP. Currently the price path threshold provides for EDBs to exclude certain services from the price path where there is evidence to support the existence of workable or effective competition for the services. Thus electricity lines services for which there is workable competition, or which are being supplied as a result of a competitive bidding process, should be subject to the price restraints and service standards resulting from those processes, and not to the price caps and service standards set by the Commission in the DPP. The DPP should allow for prices and quality standards for electricity lines services to be set by the suppliers and purchasers of those services where there is documented evidence of such a practice being followed. An amendment to the definition of Electricity Lines Services is therefore required for the DPP.

11 We also note the definition of Pass-through costs retains the 'beyond reasonable doubt' test for pass through costs being passed on transparently to consumers and/or retailers. We do not support this definition as it is not appropriate or required for this term. It is an extremely high test which is used as a test of criminal proof, not relevant for a civil determination, and it should be removed. The remainder of the definition requires the Non-exempt EDB to demonstrate that the amounts in question were passed on. This is sufficient, and is supported by the form of auditors opinion which makes an assessment of whether compliance demonstrated in the statement is "true and fair".

12 We have also included in Appendix A new or amended definitions for the following terms which reflect the views expressed in our earlier submission, or clarifications which we believe are required:

- Allowable Notional Revenue
- Electricity Commission Levy
- Forecast CPI
- Interruption
- Pass-Through Costs
- Quantity.

## **Clause 5 - Default Price-quality Path**

13 We have no comment on Clause 5.

## **Clause 6 – Applicable input methodologies**

14 We have no comment on Clause 6.

## **Clause 7 – Customised price-quality path proposal date**

15 We have no comment on Clause 7.

## **Clause [X] - Reopeners**

- 16 We believe an additional clause incorporating provision for re-openers is required in the Determination. As previously submitted there is an equal risk that events which may require a re-opener will occur in the first year of the DPP as the second or subsequent years. It is inequitable for re-openers to be excluded from one period of the DPP and included in another. In our view, re-openers should be provided for in the interim, prior to the IM Determinations, as a precautionary measure. These should include provision for re-openers for unforeseen and uncontrollable events, exogenous to the supplier, and of a material nature. These should not be limited to events which affect the industry as a whole as suggested in the Draft Decisions Paper, as local catastrophes or events, such as a major earthquake, could be severe enough to require a re-opener for one or a few EDBs. Such events impact on cost and revenue in addition to quality and are not appropriate for a customised price-quality path (CPP), because they reflect immediate events and have immediate consequences.
- 17 Our suggested wording for re-openers for the Determination is included in Appendix A and includes suggestions for exemptions from certain aspects of the Annual Compliance Assessment requirements included in Clause 11. Our suggested definition is loosely based on the AER definition. We believe that this logically should be included between the existing clauses 7 and 8.

## **Clause 8 – Price Path**

- 18 Clauses 8.3 and 8.4 appropriately reflect the Draft Decision, subject to our comments on Clause 4 above and the first bullet point in the following paragraph.
- 19 Our submission on the Draft Decision suggested that changes should be made to address the following issues:
- The specification of the price path formula set out in Appendix B of the Draft Decision Paper has the effect of rebasing prices each year to actual prices for the purpose of establishing Allowable Notional Revenue. An allowance for revenue not recovered and an adjustment for revenue over recovered in the specification of Allowable Notional Revenue is required, to ensure that this term is defined consistent with a price path. We acknowledge that at the time prices are set for the following year, the final Notional Revenue and Allowable Notional Revenue will not be known. The uncertainty will exist in respect of pass through costs. However the majority of pass through costs will be able to be forecast for the remaining few months of the year with a reasonable degree of certainty as monthly, quarterly or annual charges will be known for EC and CC Levies and Rates. A

large proportion of Transpower's transmission charges will also be known as these are recovered on a fixed monthly basis over a pricing year. Avoided transmission charges tend to also be recovered on the same basis. We therefore do not expect this uncertainty to have a material impact on the NR/ANR adjustment to the formula we have proposed in Appendix A.

- The Notional Revenue and Allowable Notional Revenue be calculated using t-2 not t-1 quantities, due to the considerable uncertainty which exists in quantities (based on the data available from retailers) for a number of months due to estimations and wash ups, and the additional compliance and audit costs associated with reporting and auditing the variances between forecast and actual quantities. We note at the recent EC workshop on distribution pricing methodologies there was some discussion about the data available for billing and reconciliation purposes for EDBs. A retailer present at the workshop acknowledged that it typically takes about seven months following a monthly billing cycle for estimates, corrections and wash ups to work through the system. This discussion strengthened our unease about the proposals for t-1 quantities in the Draft Decisions. This unease is in relation to both compliance and audit considerations, and we strongly recommend the Commission seriously consider the t-2 option.
- The application of forecast CPI rather than lagged CPI to maintain continuity in the inflation series used in the DPP price path and the previous thresholds price path.

20 Amended price path formula and definitions consistent with our submission are included in Appendix A.

21 Clause 8.5 of the Draft Determination requires Non-exempt EDBs which restructure their prices to provide certain evidence to the Commission. Clause (a) as it is currently drafted requires the impact of the restructuring to be calculated, quantified and submitted to the Commission. This requirement is excessive, as it is not necessary to demonstrate the impact of the restructure in order to demonstrate compliance with the price path. The appropriate test for the price path, as set out in the Explanatory Note appended to the Draft Determination is that:

*“EDBs should provide evidence demonstrating that, all other things being equal, the price restructure did not create an increase in allowable notional revenue for the businesses, above that which would have applied if the restructure had not occurred.”*

22 In practice this can be demonstrated by a comparison of the notional revenue generated by previous prices times t-2 quantities, and proposed new prices times t-2 quantities (although the

units of measurement may differ, the time period to which the quantities apply will be the same). Recognition of the impact of changes in pass through costs and one year of CPI-X will also need to be made.

- 23 We also note that if a t-1 approach to quantities is adopted, the definitions need to distinguish between estimated and actual quantities/
- 24 Clause 8.5(a) as it is currently drafted refers to a restructure which occurs within an Assessment Period. In practice, restructuring usually applies from the beginning of an Assessment Period and the wording needs to be changed to reflect this. Our suggested changes to clause 8.5 are set out in Appendix A. There are related changes required to Clause 11 which sets out the information requirements for Annual Compliance Statements. These are also included in Appendix A.

## **Clause 9 (including Schedule 3) - Quality Standards**

- 25 The Quality Standards proposed do not correctly represent the Draft Decisions. The two out of three test has been specified as a combined SAIDI and SAIFI test. We are not aware of anything in the Draft Decisions which indicated that this was to be the case. We submit therefore that clause 9.1 needs to be redrafted to clarify that the 'two out of three' test should apply to SAIDI and SAIFI independently. Our suggested edits are included in Appendix A.
- 26 In addition, further guidance is required in Schedule 3 to clarify how multi-day events are to be treated when deriving the Reliability Targets and Assessed Values. These events need to be fully allocated to the first day, until supply is restored to the last affected connection. Our suggestions are set out in Appendix A.
- 27 We have also submitted that zero event days should be included in the Reference Dataset when normalising for extreme events, and the normalisation of the SAIFI datasets should occur using SAIFI MEDs not SAIDI MEDs. Our recommended amendments to Schedule 3 of the Draft Determination are included in Appendix A.
- 28 In addition our submission on the Draft Decisions did not support the proposals for separate quality standards for non-contiguous networks as this is inconsistent with the price path and is inequitable for those Non-exempt EDBs which meet the non-contiguous criteria. We note that non-contiguous networks are defined in Clause 4 using the term EDB Network. However there

is no definition of 'non contiguous'. We submit that all references to EDB Network are removed from the DPP Determination.

- 29 Finally, our submission on the Draft Decisions also recommended that an additional test be included in the Quality Standard for those Non-exempt EDBs that have recorded substantial improvements in their reliability performance over the reference period (2005-2009).
- 30 Due to the magnitude of the difference between the threshold benchmark period and the proposed reference period for the DPP for the EDBs listed above, we submitted that the DPP Reliability Target should be set to no less than 80% of the threshold benchmark (using data normalised for extreme events for both datasets) for those EDBs which have reported a 20% or more improvement in reliability between the two periods. The definition of Reliability Targets should be amended to reflect this view. We are still working on the re-specification of Schedule 3 required to implement this approach and will forward this for consideration in due course.

## **Clause 10 – Mergers and Acquisitions**

- 31 Requirements for additional reporting where a Non-exempt EDB is involved in a purchase, merger, takeover, disposal or other similar transaction are to apply to those transactions which result in a change to total number of consumers or system length of 10% or more.
- 32 Clause 10 refers to EDB Networks, or non-contiguous networks. This is incorrect, as it is the Non-exempt EDBs which must demonstrate compliance. References to EDB Networks therefore should be references to Non-exempt EDBs.
- 33 The merger and acquisition reporting proposals for the price path require EDBs to demonstrate whether price path compliance is achieved within the assessment period in which the transaction occurred. Thus where smaller transactions occur (ie: below the 10% threshold), compliance assessments for the new entity(s) is sufficient. In subsequent assessment periods no additional compliance reporting is required. Thus in the following year price path compliance will reflect the new entities' quantities, prices and pass through costs. We agree with this approach.
- 34 The price path is intended to set regulatory limits on the average prices charged by each Non-exempt EDB for distribution services. It allows transmission charges to be passed directly through to consumers. However, where an investment made by an EDB substitutes for the transmission system or a transfer of assets occurs between Transpower and an EDB the price path formula would result in a decrease in ass-through costs and an offsetting increase in net

distribution charges (or Notional Revenue), if the Non-exempt EDB made no changes to its posted prices. This could lead to a breach of the DPP.

- 35 This issue was recognised and provided for in the price path threshold. Paragraph 60 of the Commission's Final Decisions on the Price Path Reset included the following explanation and provision:

*"Because transmission and distribution services are to some extent substitutes, and the boundary between transmission and distribution services can change over time, it is possible that some movements in transmission charges will be offset by opposite movements in distribution costs. In such circumstances, a distribution business should demonstrate to the satisfaction of the Commission and the auditor that any avoided transmission charges, associated with the transfer of assets from Transpower to that distribution business, have been fully passed through to consumers."*

- 36 Accordingly, avoided transmission charges are provided for in pass through costs to avoid such outcomes. The definition of avoided transmission costs included in the Draft Determination however does not appropriately provide for these circumstances. This is because the provisions set out in Clause 5(4) of the Thresholds Notice have been removed. An amended definition for Avoided Transmission is included in Appendix A to remedy this oversight..

- 37 The proposals for the quality standard assessments however are not supported. Where a transaction exceeds the 10% threshold, it is proposed that each EDB involved is to demonstrate compliance with its previous quality standard. This is to continue for an unspecified period, until the EDB affected can demonstrate, to the satisfaction of the Commission that this can be done in respect of a single EDB. This is not logical because it is inconsistent with the price path that will apply following a transaction and it is not possible to determine (or audit) compliance 'to the satisfaction of the Commission' when Annual Compliance Statements are being prepared. It also does not adequately consider the impact of asset transfers between Non-exempt EDBs and Transpower.

- 38 Quality standards should be reassessed following a transaction, using adjusted Reference Datasets for the entities involved. Quality standards after a transaction must be consistent with the price path and the annual quality datasets for the relevant networks. The adjustment is required to transfer the historical (target) performance for the assets transferred between the acquiring entity and the entity which disposed of them.

- 39 The same adjustments should apply where assets are transferred between Transpower and a Non-exempt EDB. Outages caused by Transpower are disclosed as Class A and Class D outages. If assets are transferred to an EDB the Class A and Class D outages relating to the assets transferred should be included in the Reference and Assessment Datasets.
- 40 We recommend that in the year of the transaction, Non-exempt EDBs should demonstrate compliance with the quality standards which applied at the beginning of the assessment period (ie: before the transaction). The adjustments noted above should occur at the beginning of the following assessment period, for all transactions, including those below the 10% threshold. Our suggested amendments to the Determination are included in Appendix A.

## **Clause 11 – Annual Compliance Assessment**

- 41 Clause 11 of the Draft Determination sets out the annual compliance obligations under the Draft Determination. A number of changes are required.
- 42 Clause 11.1 requires every non-exempt EDB to ‘provide to the Commission’ a copy of the Annual Compliance Statement. The annual compliance statement should be made publicly available. The thresholds also currently provide for an additional 5 working days, from when the statement is disclosed, for a copy to be submitted to the Commission.
- 43 Clause 11.1 (a) requires the Annual Compliance Statement to include a statement as to whether the Non-exempt EDB complied or otherwise with the Default Price-quality Path. This implies the DPP is a single test. However Clause 5 specifies the DPP as a two part test as set out in Clauses 8 (Price Path) and 9 (Quality Standards). In addition, the quality standard comprises a two part test, SAIDI and SAIFI. We therefore submit that each Non-exempt EDB’s assessment of compliance should set out the components of the DPP which are complied with and those which are not (similar to the current thresholds).
- 44 Clause 11.1 (b) includes a requirement that the Annual Compliance Statement must include sufficient information to enable the Commission to properly determine the accuracy of the statement. The accuracy of the statement is however confirmed by the auditor. Accordingly Clause 11.1 (b) should be amended to focus on compliance not accuracy.
- 45 Clause 11.1 (b) (ii) sets out specific information requirements for quantities used in the price path. This is based on the assumption that t-1 quantities will be used for the price path. We do

not support this approach. A t-2 approach will greatly simplify the compliance assessment process, and Clause 11.1 (b) can be simplified.

- 46 Clause 11.1 (b) (iii) includes specific requirements for information to be provided where Non-exempt EDBs have restructured prices. Consistent with our comments included earlier, Clause 11.1 (b) (iii) should be amended.
- 47 Clause 11.1 (b) (iv) includes reference to a transfer of assets between Transpower and a Non-exempt EDB. The reference is used in the context of a potential increase to the assessed quality values. This issue is more appropriately addressed in the mergers and acquisitions section, as noted above. Clause 11.1 (b) (iv) can therefore be deleted.
- 48 Clause 11.1 (b) (v) sets out information requirements for the quality standards. It incorrectly limits the data to be provided for the First but not the Second Assessment Period.
- 49 The 2006 Threshold Notice included a provision for the Commission to exempt an EDB from any or all of the requirements of the Notice. This provision should be retained. It may be relevant from time to time for the Commission to grant such exemptions, and can be used to accommodate unforeseen and extreme events which may give rise to re-openers.
- 50 The amendments to the Determination referred to above are set out in Appendix A.

## **Schedule 4 – Form of Auditors Report**

- 51 The form of the auditors report has been altered from the previous Thresholds Gazette Notice and the edits have introduced errors into the ‘form of opinion’ section. The Basis of Opinion paragraph for SAIDI and SAIFI statistics for the Reference Period is unnecessary as audited SAIDI and SAIFI information for 2004 to 2009 is available. It therefore can be audited on the same basis as that for the Assessment Period and no distinction in the Basis of Opinion is required.
- 52 In addition we note that we would expect widespread qualifications of the ‘true and fair’ audit opinion for SAIDI and SAIFI statistics, as is our experience with audit opinions issued pursuant to the Thresholds Notice. Qualifications arise because often there is no independent evidence available to support the completeness and accuracy of recorded faults, and control over the accuracy of ICP data included in the SAIDI and SAIFI calculations tends to be limited. This is an inevitable outcome of manual recording processes, which comprise much of the data used

to record outages. This means that while it is possible to test the reliability data to confirm that it 'fairly represents' the quality performance of an EDB, it is much more difficult to achieve the higher audit standard of 'true and fair'. While EDBs continually improve their data processes the costs of fully automating data collection would be prohibitive, and not justified simply for the purpose of obtaining a 'true and fair' audit standard. For this reason we have previously submitted that 'fairly represent' is the appropriate standard for EDB reliability audit opinions. Our suggested edits to the Form of Audit Opinion are included in Appendix A.

## **Schedule 5 – Form of Directors' Certificate**

53 The proposed Directors' Certificate has also been changed from the Thresholds Notice. It is now inconsistent with the Audit Opinion. The term 'true and accurate' is confusing as this terminology is not defined nor is it commonly understood, unlike the term 'true and fair'. We submit that the Directors' Certificate should state whether the Compliance Statement complies with the requirements of the Determination and presents a true and fair view of the performance of the EDB against the price path and quality standards set out in the Determination. This is set out in Appendix A.

### **Final Comments**

We appreciate the limited time which now remains before the Final DPP Determination is gazetted. We look forward to contributing further once the Final Draft is available later in November. In the meantime please feel free to contact us to discuss any of the suggestions we have included in this submission.

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## Appendix A – Suggested Amendments to the Draft DPP Determination

### Clause 3 - Application

3.1 This determination resets the default price-quality path for Electricity ~~Lines Distribution Services~~ provided for by section 54J(2), as required by section 54K(1) of the Act.

3.2 This determination applies to every supplier of Electricity ~~Lines Distribution Services~~ (other than a supplier that is Consumer-Owned or Transpower, as exempted under section 54G) during the period 1 April 2010 to 31 March 2015.

### Clause 4 – Interpretation

**Allowable Notional Revenue** means the maximum ~~prices~~ revenue that may be charged by a Non-exempt EDB, as set out in clauses 8.3 and 8.4

**Avoided Transmission Charge** means

(a) any expense (including the cost of capital) of a Non-exempt EDB that arises during the Assessment Period from any activity which substitutes for the use of the Transmission System; and

(b) where Electricity Lines Services are transferred between Transpower and the Non-exempt EDB includes the value of the Transmission Charges avoided from the date of the transfer

**Class A** means a planned interruption by Transpower

**Class D** means an unplanned interruption originating within the works of Transpower, where those works are used for carrying out line business activities

**EDB Network** means a geographically distinct (ie: non-contiguous) electricity distribution network owned by a Non-exempt EDB

**Electricity Distribution Services** means all Electricity Lines Services, other than those supplied by Transpower

**Electricity Commission Levy** means an industry levy paid or payable by a Non-exempt EDB in accordance with section 172ZC of the Electricity Act 1992 or any such industry levy that may be imposed on a Non-Exempt EDB which supersedes section 172ZC

**Electricity Lines Service** has the meaning set out in section 54C of the Act but does not include for the purpose of this Determination any services for which there is workable competition, or which are being supplied as a result of a competitive bidding process and there is documented evidence of a competitive process being followed

**Interruption** in relation to the supply of electricity to an electricity consumer by means of electric lines, means the cessation of supply of electricity to that electricity consumer for a period of 1 minute or longer, other than by reasons of disconnection of that consumer for breach of the contract under which the electricity is supplied

**Forecast CPI** means the forecast change in the Headline CPI Inflation (annual) for the year ending September during the assessment period, as forecast by the Reserve Bank of New Zealand in its September <sub>t-1</sub> Quarterly Monetary Policy Statement.

**Pass-Through Costs** means:

(a) the Transmission Charges, Rates, Electricity Commission Levies and Commerce Act Levies, paid or payable by a Non-exempt EDB during an Assessment Period;

(b) any other levies or costs arising from legislative or regulatory changes approved by the Commission prior to the commencement of an Assessment Period;

but does not include:

~~(b)~~ any amounts described in paragraph (a) if the Non-exempt EDB demonstrates ~~beyond reasonable doubt~~ that those amounts were passed on transparently to its Consumers and/or electricity retailers.

**Quantity** means the unit of quantity (for example, kWh, kVA, day) corresponding to a price.

*[the following definition should replace the Draft Determination definition of Transmission Charge]*

**Transmission charge**, means any amount in respect of—

(a) the supply to a Non-exempt EDB of services delivered by the Transmission System, or by a substitute to the Transmission System and includes any amounts received from or payable to the suppliers of such services in relation to -

(i) connection, interconnection, and EV adjustments; and

(ii) new investment; and

(iii) the provision of system operator services; and

(iv) loss and constraint rentals; and

(v) the settlement of financial transmission rights; and

(vi) any other services that the supplier charges for and which the Non-exempt EDB recovers in its price for Electricity Lines Services.

(b) avoided transmission charges.

**Transmission Pricing Methodology** means the methodology Transpower uses to determine prices it charges for its services, as set out in Schedule F5 of section IV of Part F of the Electricity Governance Rules

## **Clause X - Reopeners**

X.1 Where a Non-exempt EDB experiences an uncontrollable and unforeseen event that:

(a) falls outside the normal operations of the Non-exempt EDB's business such that prudent operational risk management could not have prevented or mitigated the effect of the event;

or

(b) results in a material change in costs of providing Electricity Lines Services;

during an Assessment Period which prevents the Non-exempt EDB from complying with Clause 8 and/or Clause 9 of the Determination, the Non-exempt EDB should apply to the Commission for exemption for all or part of the Compliance Assessment requirements set out in Clause 11.1, as soon as practicable after the event and prior to the end of the Assessment Period, setting out the reasons for the exemption.

X.2 Following assessment of the application made under Clause X.2, the Commission may amend some or all of the requirements of Clauses 8 and/or 9 for a specified period for the Non-exempt EDB, by Notice made under the provisions of Clause 11.4.

**Clause 8 – Price Path**

The following clauses 8.3 and 8.4 should replace those included in the Draft Determination.

**8.3 Allowable Notional Revenue**

For each Assessment Period, a Non-exempt EDB's notional revenue ( $NR_t$ ) must not exceed its Allowable Notional Revenue ( $R_t$ ), such that:

$$\frac{NR_t}{R_t} \leq 1$$

where:

$NR_t$  is the notional revenue for the Assessment Period  $t$ , being equal to:

$$\sum_i P_{i,t} Q_{i,t-2} - K_t$$

$R_t$  is the allowable notional revenue for the Assessment Period  $t$ , being equal to:

**Allowable Notional Revenue in the First Assessment Period:**

$$R_{2011} = \left( \sum_i P_{i,2010} Q_{i,2009} - K_{2010} \right) \times (1 + \Delta CPI_{t,2011})(1-X)$$

**Allowable Notional Revenue in the Second and Subsequent Assessment Periods:**

$$R_t = \left( \sum_i P_{i,t-1} Q_{i,t-2} - K_{t-1} + R_{t-1} - NR_{t-1} \right) \times (1 + \Delta CPI_t)(1-X)$$

where:

$t$  denotes the Assessment Period for which compliance is being assessed;

$i$  denotes each price relating to an Electricity Distribution Service;

$P_{i,t}$  is the  $i^{th}$  Price at the Assessment Date for the Assessment Period  $t$ ;

$P_{i,t-1}$  is the  $i^{th}$  Price at the Assessment Date for the Assessment Period  $t-1$ ;

$Q_{i,t-2}$  is the quantity corresponding to the  $i^{th}$  Price during the Assessment Period  $t-2$ ;

$K_t$  is the sum of all Pass-Through Costs during the Assessment Period  $t$ ;

- $K_{t-1}$  is the sum of all Pass-Through Costs during the Assessment Period  $t-1$ ;
- $X$  is the rate of change for the Non-exempt EDB as specified in Schedule 2;
- $\Delta CPI_{f,t}$  is the change in forecast CPI for period  $t$ ; and
- $\Delta CPI_t$  is the derived change in the CPI to be applied during the Assessment Period  $t$ , being equal to:

$$\Delta CPI_t = (1 + \Delta CPI_{f,t})X \frac{(1 + \Delta CPI_{a,t-1})}{(1 + \Delta CPI_{f,t-1})} - 1$$

where:

- $\Delta CPI_{f,t}$  is the forecast change in CPI for the year ending September during the assessment period  $t$
- $\Delta CPI_{f,t-1}$  is the forecast change in CPI for the year ending September during the assessment period  $t-1$
- $\Delta CPI_{a,t-1}$  is the actual change in CPI for the year ending September during the assessment period  $t-1$

$$\text{where: } \Delta CPI_{a,t-1} = \frac{CPI_{\text{Dec},y-3} + CPI_{\text{Mar},y-2} + CPI_{\text{Jun},y-2} + CPI_{\text{Sep},y-2}}{CPI_{\text{Dec},y-4} + CPI_{\text{Mar},y-3} + CPI_{\text{Jun},y-3} + CPI_{\text{Sep},y-3}}$$

$y$  is the year of the Assessment Date in the Assessment period  $t$

$CPI_{q,y}$  is the CPI for the quarter  $q$  in the calendar year  $y$

#### 8.4 Allowable Notional Revenue in the First Assessment Period

$R_t$  for the First Assessment Period, being  $R_{2011}$ , is the Allowable Notional Revenue for that period, being equal to:

$$R_{2011} = (\sum P_{i,2010} Q_{i,2009} - K_{2010}) \times (1 + \Delta CPI_{f,2011})(1-X)$$

where:

$P_{i,2010}$  is the  $i^{th}$  starting price as specified in Schedule 1;

$Q_{i,2009}$  is the quantity corresponding to the  $i^{th}$  starting price during the period 1 April 2008 to 31 March 2009;

- $K_{2010}$  is the sum of all Pass-Through Costs allowable under this determination during the period 1 April 2009 to 31 March 2010;
- $X$  is the rate of change for the Non-exempt EDB as specified in Schedule 2; and
- $\Delta CPI_{f,2011}$  is the forecast change in the CPI for the year ending September 2010 to be applied during the First Assessment Period.

*[We also note that if a t-1 approach is adopted, the definitions of t-1 quantities must distinguish between estimated and actual quantities.]*

## 8.5 Restructuring of Prices

(a) If a Non-exempt EDB restructures its prices ~~applying during an Assessment Period~~, it must demonstrate ~~to the Commission~~ in its Annual Compliance Statement at the first Assessment Date at which the restructured prices apply, with supporting evidence, ~~the impact of the restructuring on its Allowable Notional Revenue~~ that the price restructure of itself did not create an increase in Allowable Notional Revenue, above that which would have applied if the restructure had not occurred.

(b) ~~To satisfy clause 8.3 the restructuring, of itself, should not increase the Non-exempt EDB's Allowable Notional Revenue.~~ If this is the case clause 8.3 will apply as if the new Price structure applied on and from the beginning of the Assessment Period.

## 8.6 [No edits required]

## Clause 9 – Quality Standards

### 9.1 Compliance with SAIDI quality standard

A Non-exempt EDB must, in respect of each Assessment Period other than the First Assessment Period, comply with either:

(a) the annual SAIDI reliability assessment specified in clause 9.23 for that Assessment Period;

or

(b) have complied with those annual SAIDI reliability assessments for the two immediately preceding extant Assessment Periods.

9.2 Compliance with SAIFI quality standard

A Non-exempt EDB must, in respect of each Assessment Period other than the First Assessment Period, comply with either:

(a) the annual SAIFI reliability assessment specified in clause 9.3 for that Assessment Period;

or

(b) have complied with those annual SAIFI reliability assessments for the two immediately preceding extant Assessment Periods.

9.23 Annual reliability assessment [etc]

$SAIDI_{ASSESS,t}$  is the SAIDI Assessed Value ~~for the Non-exempt EDB's EDB Network~~ for the Assessment Period t, which is calculated using the process outlined in Schedule 3;

$SAIDI_{TARGET,t}$  is the SAIDI Reliability Target ~~for the Non-exempt EDB's EDB Network~~ for the Assessment Period t, which is calculated using the process outlined in Schedule 3;

$SAIFI_{ASSESS,t}$  is the SAIFI Assessed Value ~~for the Non-exempt EDB's EDB Network~~ for the Assessment Period t, which is calculated using the process outlined in Schedule 3; and

$SAIFI_{TARGET,t}$  is the SAIFI Reliability Target ~~for the Non-exempt EDB's EDB Network~~ for the Assessment Period t, which is calculated using the process outlined in Schedule 3.

**Clause 10 – Mergers and Acquisitions**

10.1 If during the Assessment Period a Non-exempt EDB is involved in a purchase, merger, takeover, disposal, or other similar transaction, which results in a change in its total number of Consumers or System Length of 10% or more it must state as part of its Annual Compliance Statement under clause 11, to the extent practicable:

(a) whether or not ~~each of the EDB Networks~~ the Non-exempt EDB involved in the transaction complied with the Price path in clause 8.3 or 8.4 for the Assessment Period in which the transaction was completed; and

(b) whether or not ~~each of the EDB Networks~~ the Non-exempt EDB involved in the transaction complied with the Quality standards in clause 9 for the Assessment Period in which the transaction was completed ~~and for each Assessment Period thereafter until the Non-exempt EDB can demonstrate to the satisfaction of the Commission, that this can be done in respect of a single EDB Network.~~

10.2 If a Non-exempt EDB is involved in a purchase, merger, takeover, disposal or other similar transaction in the preceding Assessment Period:

(a) the Reliability Targets for the current and subsequent Assessment Periods shall be recalculated using the process outlined in Schedule 3 as if the change in consumers and system length resulting from the transaction had occurred at the beginning of the Reference Period; and

(b) the Assessed Values for the current and subsequent Assessment Periods shall be calculated using the process outlined in Schedule 3 as if the change in consumers and system length resulting from the transaction had occurred at the beginning of the Assessment Period; and

(c) the annual reliability assessments for the two immediately preceding extant Assessments Periods shall be recalculated using the process outlined in Schedule 3 as if the change in consumers and system length resulting from the transaction had occurred at the beginning of these periods.

10.3 If assets used for providing Electricity Lines Services were transferred between Transpower and the Non-exempt EDB, the calculations set out in Clause 10.2 shall include the Class A and Class D outages relevant to the assets transferred.

## **Clause 11 – Compliance Assessments**

11.1 Every Non-exempt EDB must ~~provide to the Commission~~ make Publicly Available within 50 working days of each Assessment Date an Annual Compliance Statement consisting of the following:

(a) a written statement that states whether or not the Non-exempt EDB has complied with the Price Path as set out in Clause 8 of the Determination and the SAIDI Quality Standard as set out in

Clause 9 of the Determination and the SAIFI Quality Standard as set out in Clause 9 of the Determination;

(b) sufficient information to enable the Commission to properly ~~determine the accuracy of the statement required by~~ assess compliance or otherwise with the Determination, including:

(i) the amounts of allowable notional revenue, notional revenue, Prices, Quantities, Pass-Through costs, units of measurement associated with all numeric data, and other data, information and calculations;

~~(ii) quantities (Qi) both as forecast when the Non-exempt EDB set prices for the Assessment Period and the actual amounts for that period and an explanation of any variance between the forecast and actual amounts, including units of measurement and calculations.~~

(iii) if the Non-exempt EDB restructured its Prices as set out in clause 8.5 ~~during the Assessment Period~~, information, as set out in Clause 11(b)(i) and Clause 11(b)(ii) that states demonstrates whether or not the Non-exempt EDB price restructure has of itself, increased the Non-exempt EDB's Allowable Notional Revenue has complied with the Price path in clause 8.3 using both the previous and restructured Prices and Quantities.

~~(v) if assets used for providing Electricity Lines services were transferred between Transpower and the Non-exempt EDB, information that states whether or not the transfer, of itself, increased the Non-exempt EDB's Assessed Values;~~

~~(iiiiv) in relation to the quality standards in clause 9, other than in the First Assessment Periods, the annual performance for the two previous Assessment Periods, SAIDI and SAIFI statistics and calculations (including those in Schedule 3), and other relevant data and information except for the First Assessment Period where no previous annual performance is required, and for the Second Assessment Period, where only the prior Assessment Period annual performance is required;~~

(iv) a description of policies and procedures which the Non-exempt EDB has used for recording the SAIDI and SAIFI statistics of that EDB Network for the Assessment Period;  
and

(vi) the date on which the statement was prepared.

11.2 [No edits required]

11.3 Every non-exempt EDB must also supply a copy of the Annual Compliance Statement published under Clause 11.1 to the Commission within 5 working days after this Annual Compliance Statement is first published.

11.4 The Commission may at any time, by written notice to a Non-exempt EDB

- (a) exempt from any or all of the provisions of this clause, for a period and on such terms and conditions as the Commission specifies in the notice, any Non-exempt EDB which the Commission has determined not to assess as at any Assessment Date occurring during that period; and  
(b) revoke any such exemption.

### **Schedule 3 – Reliability Targets and Assessed Values**

All references to 'non-zero' and 'exclude zero-SAIDI days' should be removed from Schedule 3.

For the avoidance of doubt, when calculating the Reliability Targets and the Assessed Values, any event which commences on one day and continues into subsequent day(s) before supply is fully restored to all affected connections is to be fully allocated to the first day.

#### **Reliability Targets**

##### *Normalise the Reference Dataset*

For any day in the Reference Dataset where the daily SAIDI Value is greater than  $B_{SAIDI}$ : (i) replace the daily SAIDI Value with  $B_{SAIDI}$  and

~~(ii) replace the daily SAIFI Value with  $B_{SAIFI}$  if the daily SAIFI value for that day exceeds  $B_{SAIFI}$~~

For any day in the Reference Dataset where the daily SAIFI Value is greater than  $B_{SAIFI}$ , replace the daily SAIFI Value with  $B_{SAIFI}$ .

#### **Assessed Values**

##### *Normalise the Assessment Dataset*

For any day in the Assessment Dataset for Assessment Period  $t$  where the daily SAIDI Value is greater than  $B_{SAIDI}$ : (i) replace the daily SAIDI Value with  $B_{SAIDI}$ .

~~(ii) replace the daily SAIFI Value with  $B_{SAIFI}$  if the daily SAIFI value for that day exceeds  $B_{SAIFI}$  and~~

For any day in the Assessment Dataset for Assessment Period  $t$  where the daily SAIFI Value is greater than  $B_{SAIFI}$ , replace the daily SAIFI Value with  $B_{SAIFI}$ .

### **Schedule 4 – Form of Auditors Reports**

Basis of Opinion – Price path, Quality standards SAIDI and SAIFI Statistics for the Years Ended 31 March 2005, 2006, 2007, 2008, 2009, and the Assessment Period ended [insert assessment date]

My/Our audit included examination, on a test basis, of evidence relevant to the amounts and disclosures contained on *[insert page references]* in the annual compliance statement which relate to:

- (a) the Price Path set out in clause 8 of the Determination
- (b) the SAIDI and SAIFI statistics for the Years Ended 31 March 2005, 2006, 2007, 2008, 2009, and the Assessment Period ended *[insert Assessment Date]* which are relevant to the quality standards set out in Clause 9 of the Determination.

It also included assessment of the significant estimates and judgements, if any, made by *[insert name of Non-exempt EDB]* in the preparation of the annual compliance statement and assessment of whether the basis of preparation has been adequately disclosed.

I/We planned and performed my/our audit of the threshold compliance statement so as to obtain all the information and explanations which I/we considered necessary, including for the purpose of obtaining sufficient evidence to give reasonable assurance that the annual compliance statement is free from material misstatements (whether caused by fraud or error).

In forming my/our opinion I/we also evaluated the overall adequacy of the presentation of information in the annual compliance statement.

~~Basis of Opinion—Quality standards: SAIDI and SAIFI Statistics for the Years Ended 31 March *[insert relevant years]*~~

~~In relation to the SAIDI and SAIFI statistics for the years ended *[insert relevant years]*, which are relevant to the quality standards set out in clause 9 of the Determination, I/we have undertaken procedures to provide reasonable assurance that:~~

- ~~(a) — the amounts and disclosures in the annual compliance statement relating to those statistics have been correctly derived and calculated based on the source data provided to me/us. I/We have not performed audit procedures on the source data.~~

*[In addition:]*

(a) the SAIDI and SAIFI statistics for the Assessment Period ended on *[insert Assessment Date]* and the Reference Period ended which are relevant to the quality standards set out in clause 9 of the Determination and related information have been calculated or prepared in accordance with the Determination and in accordance with *[insert name of Non-exempt EDB]*'s policies and procedures for recording SAIDI and SAIFI statistics as disclosed in the annual compliance statement, and fairly represent the reliability performance of *[insert name of Non-exempt EDB]* for the Assessment Period ended on *[insert Assessment Date]* and the Reference Period;

~~(b) the SAIDI and SAIFI statistics for the Assessment Period ended on *[insert Assessment Date]*, give a true and fair view of the performance of *[insert name of Non-exempt EDB]*~~

against the quality standards set out in clause 9 of the Determination for the Assessment  
Period ended on ~~[Assessment Date]~~.

**Schedule 5 – Directors Statement**

I/We *[insert full name/s]*, being director/s of *[insert name of Non-exempt EDB]* certify that, having made all reasonable enquiry, to the best of my/our knowledge and believe, the attached ~~annual~~ compliance statement of *[insert name of Non-exempt EDB]*, and related information prepared for the purpose of the Commerce Act (Electricity Distribution Default Price-Quality Path) Determination 2010 ~~are true and accurate~~ presents a true and fair view of the performance of *[insert name of Non-exempt EDB]* against the price path and quality standards and complies with that Determination [except in the following respects:]