

**Submission on the
Initial Reset of the DPP for Electricity Distribution
Businesses
Draft Determination**

From the Electricity Networks Association

Final 2 November 2009

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1. Introduction

1. This submission, from the Electricity Networks Association (ENA), is in response to the Commerce Commission's (the Commission) draft determination on the Initial Reset of the DPP for Electricity Distribution Business (Draft Determination).
2. The Draft Determination has been issued following consultation of the Draft Decisions Paper which set out the Commission's initial decisions in respect of the Reset DPP to apply from 1 April 2010. The Draft Determination reflects the Draft Decisions.
3. The ENA acknowledges the early publication of the Draft Determination, and appreciates the additional time the Commission has made available to interested parties to submit on this important drafting stage of the DPP reset. We note the Draft Determination does not yet include potential changes to the Draft Decisions which may arise from submissions made in recent weeks. In responding to the Draft Determination we have included comments on the structure and content of the Determination, and in addition, comments as to where the Draft Determination requires amendment in order to incorporate our suggested changes to the Draft Decisions as submitted in our 12 October submission.¹
4. In addition, we note that there will be a further opportunity to comment on the next draft of the DPP Determination, and that this is expected to occur in the latter part of November.
5. We have addressed each of the clauses in the Draft Determination in turn throughout the remainder of this submission.
6. The ENA's contact person for this submission is:

Rob Jamieson
Chair of the ENA Regulatory Working Group
C/- Orion New Zealand Ltd
P O Box 13 896
Christchurch 8141

Tel: 03 363 9793
Email: rob.jamieson@oriongroup.co.nz

¹ *Submission on the Reset of the Default Price-Quality Path for Electricity Distribution Businesses, Draft Decisions Paper*, 12 October 2009, Electricity Networks Association

2. Application and Interpretation

7. Our comments on the definitions set out in Clause 3 and 4 of the Draft Determination comprise suggested changes to definitions included in the Draft Determination as well as additional terms which we believe should be included to implement the DPP.

Application

8. The Draft Determination introduces the definition “Electricity distribution service”, it appears, in order to exclude (appropriately) the electricity lines services supplied by Transpower from the scope of the DPP. This same distinction is set out in section 54G of the Commerce Act (the Act). We recommend for the sake of clarity the Draft Determination reference the legislative distinction, and the definition of “Electricity distribution service” be removed. This change would also necessitate the following change to paragraphs 3.1 and 3.3 in the “Application” section:

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.

9. If the above change is accepted, the term “Electricity Distribution Service” would need to be amended to “Electricity Lines Service” throughout the Draft Determination.

Definition of transmission charge

10. The definition in the Draft Determination of “transmission charge” is in turn referred to in the definition of “pass-through costs”, as was the case in the Thresholds Gazette Notice.² However the Draft Determination definition of

² *Commerce Act (Electricity Distribution Thresholds) Notice 2004*, issued pursuant to Part 4A of the Commerce Act

“transmission charge” is narrower than that in the Thresholds Gazette Notice in two ways:

It appears to omit some Transpower charges faced by EDBs related to the transmission service and which are covered in the Thresholds Gazette Notice.

It relates to charges from Transpower only, whereas the Thresholds Gazette Notice definition allows for transmission and related services that are sold by one EDB to another. At least one EDB currently provides another with transmission services and this type of supply arrangement would likely increase if Transpower were to divest itself of spur lines.

11. There is no indication in the Decisions Paper that the Commission intends to narrow the scope of transmission charges in this way. The ENA recommends the definition from the Thresholds Gazette Notice be used, with appropriate modification to suit the context of the Draft Determination. In addition, we recommend an additional subclause (vi) to cover other services related to transmission that may emerge over the regulatory period and which appropriately should be included as a pass-through cost. This clause would read as follows:

transmission charge, ~~in the case of a distribution business~~, 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, use by a lines business (not being the distribution business) of that lines business’ transmission system for the purpose of providing specified services to the distribution business,~~ and includes any amounts received from or payable to the suppliers of such services ~~lines business~~ in relation to—

- (i) connection, interconnection, and EV adjustments; and
- (ii) new investment ~~(whether or not excluded from the definition of specified services by paragraph (k) or (l) of the definition of that term);~~ 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.**

Pass-through Costs

12. The ENA's submission on the Draft Decision promoted a widening of the pass-through costs definition to include other levies or costs imposed on EDBs from industry legislation or regulation. In addition the criminal test of 'beyond reasonable doubt' is inappropriate for this definition, and is not required given the Compliance Statement must be audited and the auditor must provide a "true and fair" opinion. Accordingly, the definition of pass-through costs should be amended as follows:

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:

~~(bc)~~ 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.

Excluded services

13. The Decisions Paper and the Draft Determination make no mention of the provision for excluded services in the DPP. The ENA has previously submitted at length on this issue³ and has not repeated the full discussion in this submission.
14. The Commission has the discretion to treat some services that are potentially subject to the DPP differently to others (see section 52P of the Act). It is this discretion that could and in our view should be used to ensure that those electricity lines services for which there is workable competition, or which are being supplied as a result of a competitive bidding process, are 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 use of the Commission's discretion in these circumstances would be consistent with the purpose statement, as in these circumstances the terms of supply agreed by the parties are "outcomes produced in competitive markets". These are the

³ *Submission on the Reset of the DPP for Electricity Distribution Business*, Electricity Networks Association, 17 July 2009, pages 8-11

services that were excluded under subclauses (d) and (j) in the definition of “specified services” in the Thresholds Notice.

15. The definition of electricity lines services in section 54C addresses this issue in part by excluding in that definition:

(e) conveying electricity only by a line or lines that are mostly in competition with a line or lines operated by another supplier of electricity lines services that is not an associate of the person, provided that the competition is actual competition and not potential competition:

16. However, this exclusion does not capture the situation where, for example, a large consumer conducts a competitive bid process for the provision of electricity lines services resulting in a long term contract for the supply of these services, and the building of only one set of electricity lines.
17. To provide for this type of situation, which was reflected in (j) of the “specified services” definition under the Thresholds Gazette Notice, we recommend the DPP allow for prices and quality standards for electricity lines services to be set by the suppliers and purchasers of those services where there is a documentary evidence that a distributor has competed to supply the customer (ie: tender documentation).
18. Note we do not consider it necessary to complicate this arrangement with a test of workable and effective competition (as was the case in (j) above), as the purchasers of the service are best placed to determine whether or not they wish these services to be carved out in this manner. Accordingly, for the purpose of the DPP, the definition of Electricity Lines Services requires amendment as follows:

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

3. Reopeners

19. We note the draft decision to defer any decision on the inclusion of re-openers until after Input Methodology determinations have been made. In addition the Decisions Paper indicates that the Commission considers that re-openers should be limited to events which affect the industry as a whole and which cause significant cost increases across all EDBs.

20. As previously submitted the ENA considers re-openers are necessary for the DPP, as EDBs need the flexibility to respond to extreme events that affect the industry as a whole, or an individual EDB (e.g. a major earthquake). Such events may not necessarily affect all EDBs, and may not also only affect costs, as there is likely to be quality and revenue impacts from some of the events which would trigger the need for a re-opener. In addition, the impact of such events will be immediate and it is not appropriate to rely on CPP processes therefore which are more suited to future needs.

4. Price Path

21. The formula included in the Draft Determination correctly applies the Draft Decisions in respect of the price path, however it incorrectly specifies the Allowable Notional Revenue in each year based on previous year's actual prices. This has the effect of locking in the under or over recovery of Allowable Notional Revenue into the price path which is not consistent with the CPI-X price path per se.
22. Our submission on the Draft Decisions set out the corrected formula as follows which incorporates allowances for recovery in future years of headroom established in previous years (and prevents future allowances based on previous period over recovery). This has been effectively incorporated into the price path threshold to date. The amendment would apply from the second year of the price path as follows:

$$R_t = (\sum P_{i,t-1} Q_{i,t-1} - K_{t-1} + R_{t-1} - NR_{t-1}) \times (1 + \Delta \text{CPI})(1-X)$$

23. In addition, our earlier submission on the Draft Decision, did not support the proposed approach to the price path in the following ways:
- The ENA submitted that t-2 quantities should be used instead of t-1. t-2 quantities will be known with certainty when prices are set, thus removing a significant potential source of uncertainty from the price path. Although two thirds of the t-1 year has passed when prices are set, the quantity information available at that time contains estimates and there are significant movements and wash ups which occur throughout the year, and in particular at year end. EDBs have little influence on this process as the data is managed by retailers and is subject to the market reconciliation processes. It is therefore highly likely that there will be considerable variances between actual and estimated quantities under the t-1 approach to the DPP.
 - In order to maintain continuity in the CPI series used to set Allowable Notional Revenue for the price path and to reduce the uncertainty which currently exists in the thresholds, the ENA also submitted that forecast CPI, rather than lagged CPI should be used for the purpose of the DPP price path.

24. The amended Clauses 8.3 and 8.4 consistent with these alternative approaches are set out in Appendix A to this submission.
25. Clause 8.5 of the Draft Determination requires Non-exempt EDBs which restructure their prices to provide certain evidence to the Commission. Clause (a) is very broad, and we submit too broad, as it is not necessary to demonstrate the impact of the restructure in order to demonstrate compliance with the price path. We suggest it can be improved. The test should be that all other things being equal, the price restructure did not create an increase in allowable notional revenue, above that which would have applied if the restructure had not occurred.
26. In practice this can be demonstrated by a comparison of the notional revenue generated by previous prices using t-2 quantities, and new prices using 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 change in pass through costs and the impact of CPI-X on the new prices will also need to be made.
27. In addition, Clause 8.5(a) refers to a restructure which occurs within an Assessment Period. In practice, restructuring often applies from the beginning of an Assessment Period. Accordingly, the ENA submits that Clause 8.5 should be amended as follows:
- (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.

Pass Through Costs

28. The price path focuses on the average prices charged by each Non-exempt EDB for distribution services, and allows transmission charges to be passed directly through to consumers, without being subject to the CPI-X price path. This is reasonably straight forward for those EDBs which are not contemplating a transfer of assets with Transpower.
29. Where an investment made by a distributor is to substitute for or transfer transmission system assets to itself, all other things being equal, the simple

application of the price path formula would result in a decrease in the cost pass-through (transmission charges) and an offsetting increase in net distribution charges, if the Non-exempt EDB made no changes to its posted prices. This could lead to a breach of the DPP.

30. The Commission recognised this anomaly and allowed for it in the price path threshold. Paragraph 60 of the Commission’s Final Decisions on the Price Path Reset,⁴ stated:

“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.”

31. 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 needs to be amended as it does not adequately capture the provisions required in the situation where assets are transferred from Transpower to a Non-exempt EDB. This is because the provisions in Clause 5(4) from the Thresholds Notice have been removed. The following amendment is required:

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 a Non-exempt EDB includes the value of the Transmission Charges avoided from the date of the transfer

32. The provisions relating to the quality standards, where assets are transferred from Transpower to a Non-exempt EDB however require amendment. We address this further below.

⁴ Regulation of Electricity Lines Businesses, Target Control Regime, Threshold Decisions, 23 December 2003, Commerce Commission

5. Quality standards

Normalising for normal variation

33. The Draft Decisions included a “two out of three” test in the quality standards to assist with normalising for normal variation. The Draft Determination however applies this to the combined SAIDI and SAIFI quality standard, rather than independently. We suggest this is inconsistent with the Draft Decisions and we do not support this specification. The SAIDI and SAIFI quality standards should be assessed independently and Clause 9 should be amended as follows:

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.

Normalising for extreme variation

34. The Draft Determination includes normalisation for extreme variation which includes a step which eliminates from the reference and assessment datasets all zero event days. The ENA commissioned SRA to assess the statistical robustness of this assumption, and they advised that zero event days should be included in the datasets when accounting for extreme variation. Accordingly all

references to ‘non-zero’ and ‘exclude zero SAIDI days’ in Schedule 3 should be removed.

35. In addition, we note there is no guidance provided in Clause 9 or Schedule 3 in respect of multi-day events. We submit the following explanation should be included in 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.

36. We note that SRA made a number of additional recommendations for improvements to the specification of the quality standards for the DPP to improve the statistical robustness of the measures. In particular we submit that the analysis put forward by SRA regarding the Commission’s proposed strategy of departing from the IEEE criteria for classifying extreme events by replacing each MED with the boundary value needs to be further considered. As SRA submitted in their 12 October paper on the Draft Decisions:

It would seem that the strategy of replacing MEDs by the threshold T_{MED} is unsafe since it may lead to violations of its Transparency and Consistency Principles, including the IEEE Fairness Principle. From a statistical viewpoint, the IEEE approach and the separate assessment of MEDs and normal variation provides a more secure strategy.

37. The IEEE’s Fairness Principle (as replicated on page 9 of SRA’s submission) sets out the approach that should be adopted for the identification of T_{MED} , based on an *agreed common percentile* of each network’s daily SAIDI distribution.
38. We have not been able to include suggested amendments to Clause 9 and Schedule 3 to reflect these refinements within the time available for this submission. We plan to submit further on this topic in due course.

Normalising SAIFI

39. In the ENA submission on the Draft Decisions it was submitted that the Commission’s proposal for defining SAIFI MED days with reference to the SAIDI dataset was incorrect. The SAIFI component of the quality path is an independent dimension of the DPP to the SAIDI component. A failure to meet the SAIDI or the SAIFI standard will result in a failure to comply with the DPP. For this reason, MEDs should be defined using the characteristics of the dataset to which they are applied, for the purpose of normalising for extreme variation.
40. Accordingly the process for normalising the target and assessed values for SAIFI as set out in Schedule 3 must be altered to ensure that the MEDs for SAIFI are

identified using the SAIFI boundary value. We note the following suggested redrafting does not include the changes required to implement our submission that the MED should not be replaced with the boundary value, as noted above.

The edits required are as follows:

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} .

~~(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}~~

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} .

Non contiguous network quality standards

41. The Draft Decision indicated that EDBs with non-contiguous networks are to derive separate SAIDI and SAIFI datasets for each non-contiguous network. Non-contiguous networks are referred to as EDB Networks. (We note the term non-contiguous network is not defined in the Draft Determination). This implies that those networks meeting the non-contiguous network definition will be required to meet an increased number of tests in order to fulfil the requirements of the DPP. As previously submitted the ENA does not support this draft decision because:

- The separation of the quality path into sub network reliability standards increases the number of tests that must be met by affected EDBs. This is inequitable, as it increases the probability of a failure to comply, as not all normal variability can be accounted for in the design of the quality component of the DPP;
- Separating the quality path into non-contiguous networks is inconsistent with the price path component of the DPP. The DPP reflects an inherent relationship between price and quality, which is inconsistent with this proposal; and
- The information disclosure requirements include separate disclosure of reliability performance for non-contiguous networks. This is appropriate and provides sufficient information for performance monitoring purposes.

Accordingly the ENA recommends removal of all references to “EDB Network” in the Draft Determination.

6. Mergers and Acquisitions

42. Clause 10 includes provisions for additional reporting where a Non-exempt EDB is involved in a purchase, merger, takeover, disposal or other similar transaction. The provisions are only to apply to those transactions which result in a change to total number of consumers or system length of 10% or more. The drafting however refers to EDB Networks which has the effect of applying the clause to non-contiguous networks. This is not necessary, as it is the Non-exempt EDB in each instance which must demonstrate compliance. References to EDB Networks therefore should be references to Non-exempt EDBs.
43. The proposal in respect of the price path, is for the EDBs affected to demonstrate that price path compliance is achieved/not achieved within the assessment period in which the transaction occurred. The inference is that where smaller transactions occur (ie: below the 10% threshold), compliance assessments for the new entity(s) is sufficient. In addition, in the periods following the transaction, no additional compliance reporting is required, that is effectively the price path assessment in the following year will reflect the new entities’ quantities, prices and pass through costs. This is reasonable.
44. The justifications for the proposals for the quality standard assessment however are less clear. 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 to the Commission that this can be done in respect of a single EDB. The ENA members do not support this proposal because:

- It is inconsistent with the price path to apply following a transaction
 - It is not possible to determine what compliance ‘to the satisfaction of the Commission’ is during the preparation of the Annual Compliance Statement
 - Auditors will be unable to form a view of compliance, given the requirement to demonstrate ‘to the satisfaction of the Commission’
 - Where transactions occur which do not meet the 10% threshold, an EDB will be penalised/rewarded depending on whether their network increases or reduces in size
 - It does not adequately consider the impact of asset transfers between Non-exempt EDBs and Transpower.
45. Accordingly the ENA submits that the quality standards should be reassessed following a transaction, using adjusted Reference Datasets for the entities involved. This will ensure that the reliability standards for the non-exempt EDBs post the transaction are consistent with the price path and the Assessment Datasets for the relevant networks. The adjustment should effectively transfer the historical (target) performance for the assets transferred to the acquiring entity and remove them from the entity which disposed of them.
46. In the year of the transaction, we suggest that the Non-exempt EDBs involved be required to demonstrate compliance with the quality standards which applied at the beginning of the assessment period as if the transaction had not occurred. The reassessment should occur at the beginning of the following assessment period. This requirement should also apply to transactions which do not meet the 10% threshold.
47. The adjustments should also apply where assets are transferred between Transpower and a Non-exempt EDB. Outages caused by Transpower are reported as Class A and Class D outages, which are disclosed as part of the information disclosure requirements, but are excluded from the quality standards. If assets are transferred to an EDB the Class A and Class D outages relating to the assets transferred should however be included, in both the Reference Dataset and the Assessment Datasets.
48. Accordingly we submit clause 10 is modified as follows:
- 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 has 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 has 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.

49. Accordingly definitions for Class A and Class D should be included in the Interpretation Section, as follows:

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.

7. Compliance Assessments

50. Clause 11 of the Draft Determination sets out the annual compliance obligations under the Draft Determination.
51. 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 also however be made publicly available. In addition, the thresholds previously provided for an additional 5 working days from when the statement was first disclosed, for a copy to be submitted to the Commission. We therefore submit that the following amendment to Clause 11 is required:

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) [etc]

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.

52. 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, (a) as set out in Clause 8 (Price Path) and (b) as set out in Clause 9 (Quality Standards). In addition, the quality standard is made up of a two part test, (a) SAIDI and (b) 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). Suggested wording is as follows:

11.1 (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.

53. In addition 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 confirmed by the auditor, as represented in the audit opinion. Accordingly we suggest Clause 11.1 (b) would be improved with the following amendment:

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

(i) [etc]

54. Clause 11.1 (b) 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. For the reasons set out earlier, the ENA does not support t-1 quantities and instead supports a t-2 approach. This approach will greatly simplify the compliance assessment process, and the following edits to Clause 11.1 (b) can be made:

11.1 (b) sufficient information to enable the Commission to properly 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) [etc]

55. Clause 11.1 (b) (iii) includes specific requirements for information to be provided where Non-exempt EDBs have restructured prices. Our comments on the price-path provisions where prices have been restructured are set out above. Accordingly, and consistent with our recommendations, Clause 11.1 (b) (iii) should be amended as follows:

(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.

56. In addition, 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. It is the first time in the Draft Determination that the potential impact of a transfer of assets from Transpower to an EDB (or vice-versa) is acknowledged. This issue needs to be incorporated into the price path (via pass through costs) and the quality standards as noted

above in the context of Clause 10. Accordingly there is no requirement for clause 11.1 (b) (iv) which should be deleted.

57. 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. The following amendment is required:

(v) 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;

58. The 2006 amendments to the threshold gazette notice included an amendment to clause 9 which provided for the Commission to exempt an EDB from any or all of the requirements of the Notice. We submit that this provision should be retained. It may be relevant from time to time for the Commission to grant such exemptions, for example following a transaction, major event causing a re-opener or a change in exempt status. The appropriate clause should be:

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.

8. Auditors Report and Directors Statement

59. We note that the form of the auditors report has changed from the previous Thresholds Gazette Notice. The ‘form of opinion’ section is incorrect as it includes limitations which previously applied to the quality reference period (1999 – 2003) which are no longer required. In particular 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 and can be audited on the same basis as that for the assessment period. The limited form of opinion which previously applied to the Reference Period reflected the fact that the thresholds were introduced subsequent to the compilation of the SAIDI and SAIFI data for that period, which accordingly had

not been audited to the same standard as that which applied once the thresholds were put in place.

60. Accordingly, the form of auditors report set out in Schedule 4, should be amended as follows:

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:

- the Price Path set out in clause 8 of the Determination
- 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.~~

61. There are also drafting errors in clause (a) of the Quality standard section of the Opinion, which need to be corrected as follows:
- (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;
62. In addition the terminology in the proposed Directors Certificate set out in Schedule 5 has been changed. It is now inconsistent with the auditors' 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 instead 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. Accordingly the Directors' Statement should be changed as follows:

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:]

9. Next Steps

Final decision and technical drafting

63. The Decisions Paper indicates that a final draft decision will be made available in mid November, along with a draft determination. The draft determination will be subject to a one week technical drafting consultation period. Due to the limited time available in November, we encourage the Commission to seek clarification or further comment on the issues raised in this submission prior to the publication of the final draft of the DPP determination.

Appendix A – Price Path

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:

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

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 forecast change in CPI for period t ; and

ΔCPI_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 $t-1$

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

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