

24 March 2025

Orion New Zealand Limited
565 Wairakei Road
Christchurch 8053
New Zealand

By e-mail only: [REDACTED]

Tēnā koe [REDACTED],

Request for exemption from disclosure of non-network solutions under the Electricity Distribution Information Disclosure Determination 2012

1. In response to Orion New Zealand Limited's (**Orion**) letter dated 4 February 2025, the Commerce Commission (the **Commission**) is granting Orion a conditional exemption from publicly disclosing its 'non-network solutions provided by a related party or third party' (**non-network solutions**) and 'system operations and network support' information as required under the Electricity Distribution Information Disclosure Determination 2012, as amended, (the **ID Determination**).¹ This exemption relates to specified disclosures for 2025, 2026 and 2027.

Exemption request

2. On 4 February 2025, Orion requested an exemption from disclosing information related to 'non-network solutions' for the next two years.^{2,3,4}
3. The disclosures covered by the next two years are:
 - 3.1 Actuals for disclosure year (**DY**) 25 – Schedule 6b and 7 - (due 31 August 2025);

¹ Commerce Commission, Electricity Distribution Information Disclosure Determination 2012 NZCC 22. The latest amendment determination can be found [here](#) on our website.

² Orion New Zealand Limited, *Request for Exemption from disclosing non-network solutions provided by a related party or third party*, dated 4 February 2025.

³ Orion provided information to clarify and support its request on 14 February 2025.

⁴ Disclosure of operating expenditure related to "non-network solutions provided by a related party or third party" is required clauses 2.3.1(12), 2.3.1(13) and 2.6.6(1)(b) of the ID Determination.

- 3.2 Forecast for DY26 – Schedule 11b - (due 31 March 2025);
 - 3.3 Actuals for DY26 – Schedule 6b and 7 - (due 31 August 2026); and
 - 3.4 Forecast for DY27 – Schedule 11b - (due 31 March 2026).
4. 'Non-network solutions' is present in:
- 4.1 Schedule 6b – specifically rows 13 and 34 which impacts the subtotals in rows 16 and 37, and the totals in rows 18 and 39;
 - 4.2 Schedule 7 – specifically row 28 which impacts the subtotal in row 31 and the total in row 32; and
 - 4.3 Schedule 11b – specifically, rows 17, 30, and 51 which impacts the subtotals in rows 18, 31, and 52, and the totals in rows 19, 32, and 53.
5. Orion requested an exemption from disclosing this information because it has tendered a provider that will allow it to add flexibility to its network, which will allow Orion to defer investment in traditional network assets. Orion expect this to proceed over the next couple of years, forecasting expenditure in FY26.⁵ Orion considers this forecast to be commercially sensitive, as it is a payment to one provider for one site. Orion is particularly concerned that if the non-network solutions amount is disclosed, it will reveal commercially sensitive information, breach confidentiality with its provider and inappropriately signal price to the market.
6. Orion has offered to provide this disclosure as a Commission-only disclosure. In our correspondence with Orion, it also indicated it would be willing to publicly disclose information about the reasons for the exemption. In their correspondence with the Commission, Orion also indicated that it would want to avoid the ability to back-engineer the 'non-network solutions figure', but that it was open to possible approaches on how this was done.

Legal framework

- 7. Under Part 4 of the Commerce Act 1986 (the **Act**), EDBs are subject to information disclosure (**ID**) regulation.⁶ Clause 2.6.6 of the ID Determination requires EDBs to disclose certain financial information before the start of each disclosure year. Clause 2.3.1 of the ID Determination requires EDBs to disclose certain financial information five months after the end of each disclosure year.
- 8. EDBs must publicly disclose Schedules 6b and 7 under section 2.3.1(12) and 2.3.1(13), and Schedule 11b under clause 2.6.6(1)(b) of the ID Determination.

⁵ Orion Group, [Energy Flexibility](#), 19 October 2023.

⁶ Commerce Act 1986, Section 54F.

9. Clause 2.11.1(1) of the ID Determination allows the Commission to, by written notice to an EDB, grant an exemption from any requirement of the ID Determination, for a period and on such terms and conditions as the Commission specifies in that notice. Furthermore, clause 2.11.1(2) gives the Commission the power to amend or revoke any such exemption.

Conditional exemption granted

10. Using the exemption powers under clause 2.11.1(1) of the ID Determination, the Commission grants Orion a conditional exemption from having to publicly disclose its 'non-network solutions provided by a related party or third party' and related information within specified line items for disclosures related to DY25, DY26, and DY27, subject to the conditions outlined at paragraph 12.
11. Specifically, Orion is exempted from publicly disclosing the opex subcategories of 'system operations and network support' and 'non-network solutions provided by a related party or third party' with respect to the following disclosure deadlines and specific Schedule references:
 - 11.1 for the disclosures due five months after the end of DY25 (31 August 2025) and DY26 (31 August 2026):
 - 11.1.1 cells R13, R14, R34, R35 of Schedule 6b as required by clause 2.3.1(12) of the ID Determination;
 - 11.1.2 cells H28 to J28, H29 to J29 of Schedule 7, as required by clause 2.3.1(13) of the ID Determination; and
 - 11.2 for the disclosures due before the start of DY26 (31 March 2025) and DY27 (31 March 2026), cells I15 to K15, I17 to K17, I28 to K28, I30 to K30, I49 to K49, I51 to K51 of Schedule 11b, as required by clause 2.6.6(1)(b) of the ID Determination.
12. This exemption is granted on the following conditions:
 - 12.1 Orion provides the Commission with a non-redacted copy of Schedules 6b, 7, and 11b at the same time as the information that applies to this exemption is publicly disclosed.
 - 12.2 Within the form set out in Schedule 15 in the ID Determination, Orion provides the reasons for not disclosing the information as detailed in paragraph 11 above (which should include relevant details about this exemption) to support the disclosures that rely on this exemption.
 - 12.3 By 31 January 2026, Orion must provide written confirmation to the Commission that its circumstances in relation to its contractual arrangements for non-network solutions remains materially unchanged. If the Commission does not receive this written confirmation, this exemption will not apply to:

12.3.1 Schedules 6b and 7 for the disclosures due by 31 August 2026; and

12.3.2 Schedule 11b for the disclosures due by 31 March 2026.

13. We consider it is reasonable to grant this exemption because:
 - 13.1 the use of non-network solutions is an emerging area, and we are conscious of the potential for new competition appearing. We consider that promoting the exploration and use of these services by EDBs is in the best interests of consumers;⁷
 - 13.2 requiring the disclosure of this information in this case could discourage market development by signalling the price paid to a single provider, which may impact competition and commercial negotiations; and
 - 13.3 we do not expect this to be a typical situation for an EDB to be in, having one provider within this category. We consider that a change to disclosure requirements in the future will not be necessary.
14. We have granted an exemption to Orion from disclosing 'system operations and network support' in addition to 'non-network solutions'. This ensures that Orion can still disclose the 'non-network opex subtotal' and 'operational expenditure total' amounts without revealing commercially sensitive figures. Without an exemption for an additional category of non-network opex, parties would be able to calculate the 'non-network solutions' figure from these totals. We consider an exemption for an additional category preferable to the alternative of granting an exemption for the subtotal and total figures.
15. We have considered the impact of the exemption on the purpose of information disclosure under section 53A of the Act and have concluded that the purpose will still be met if this exemption is granted. Orion will continue to disclose the 'non-network opex subtotal' and 'operational expenditure total' amounts, which provides an effective point of comparison between EDBs expenditure, and results in less missing information overall. We consider that this approach ensures that important expenditure totals remain publicly available and within our performance accessibility tools (that we understand stakeholders are more likely to use), while not revealing commercially sensitive information.

⁷ In our final decision for TIDR 2024, we said that the purpose of this requirement is to allow interested persons to assess what investments are being made by electricity distribution businesses (EDBs) in relation to assets or services that are innovative in nature. Having this information disclosed may also lead to opportunities for market participants to offer non-network solutions to EDBs which will increase the supply of electricity and ultimately lower prices for consumers.

Further information

16. This exemption may be revoked or amended by the Commission at any time in accordance with clause 2.11.1(2) of the ID Determination.
17. A copy of this exemption response letter will be published on the Commission's website.
18. If you have any questions regarding this matter, please contact Sam Chevin at infrastructure.regulation@comcom.govt.nz.

Nāku iti noa, nā



Vhari McWha
Commissioner