

25 September 2015

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SUBMISSION ON FIRST LIMB OF CPP IM

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to provide a submission in response to the Commerce Commission's (the **Commission**) draft decision for Limb 1 of the CPP fast track consultation paper "Proposed amendments to Input Methodologies for customised price paths" (the **paper**).
- 2 Orion has reviewed and supports the submission by the Electricity Networks Association (the **ENA**).

General comments

- 3 The Commission is proposing to leave existing methodologies in place and introduce additional IMs that:
 - 3.1 allow modifications or exemptions to the process for preparing, and content of, CPP proposals to introduce more flexibility for suppliers;
 - 3.2 Provide for alternative methodologies with equivalent effect for the proposal and determination of a CPP to introduce more flexibility for suppliers;
 - 3.3 Allow for the acceptance of CPP applications for consideration if they comply with the process and content IMs "in all material respects".

- 4 We support changes that look to remove complexity and cost from the CPP application and proposal process as part of this “fast track” review within the broader IM review.
- 5 Of course, amending certain IMs outside the broader IM review process does carry some risk of “delinking” the revised IMs from other IMs that are considered later. For example, as the Commission notes in the paper, amendments may be needed to fast track amendments when the Commission considers how they fit with any changes proposed in the overall IM review. We agree that this is appropriate and suggest the Commission confirms, in the final Limb 1 decision, that it does intend to consider any changes made under the fast track process with other IMs as part of the broader review.
- 6 We have provided some drafting suggestions to the Commission’s Attachment A - Proposed amendment for modification or exemption from the CPP process or content requirements in Appendix A. We note the ENA has proposed a similar amendment to our own.
- 7 We endorse the ENA’s suggested amendments to the Commission’s Attachment B – Proposed amendments for alternative methodologies with equivalent effect.

Modification or exemption from the CPP process or content requirements.

- 8 We agree that exemptions and modifications should be available to all IMs relating to the process and content of a CPP. However, approving a change to the IMs as part of the fast track process should not remove the need for the Commission to undertake a thorough review of the CPP IMs in the fuller review process.
- 9 We agree:
 - 9.1 with the Commission’s proposal that for EDB’s only subparts 1, 4 and 5 of Part 5, and related schedules should be subject to modification or exemption; and
 - 9.2 that the Commission should approve modifications or exemptions on a case by case basis in response to a request made by a supplier. The Commission considers that this will provide flexibility while allowing the Commission to retain oversight of the appropriateness of the modifications and exemptions.
- 10 We are however mindful that one of the issues we raised when the Commission reviewed our CPP process was the Commission’s

interpretation of IM requirements, in particular the IM requiring EDB's to consult with customers.

- 11 To provide more clarity to the intending applicant regarding the extent of the underlying requirements of the IMs we submit that the Commission should, where it approves a modification or exemption, clearly articulate how it will interpret those changes to IMs.

Criteria for approving and information to be provided by a supplier

- 12 We agree that the Commission should provide guidelines on the criteria it would use to evaluate applications and the information the applicant should provide to justify its application.
- 13 We are concerned over the appropriateness of the proposed guidelines that require suppliers requesting modifications or exemptions to demonstrate that their proposal will not detract from:
 - (a) The Commission's evaluation of the CPP proposal and determination of a CPP; and
 - (b) The ability of interested persons to consider and provide views on the CPP proposal
- 14 When applying the tests in practice it is suggested that the Commission would take into account the likely impact on (a) the time; (b) the costs; and (c) the quality of the Commission's evaluation of the CPP proposal and consultation with interested parties.
- 15 Our concern is that there are aspects of these tests and the possible range of information that would make it very difficult for the supplier to be able to comply. For example the supplier may be able to demonstrate how a proposal would reduce its own costs but is unlikely to be able to calculate the Commission's costs (or changes to them) or be in a position to understand how it impacts on the Commission's ability to evaluate the proposal.
- 16 Regardless, of whether the supplier's costs decrease and the Commission's costs increase, we submit, if the overall impact of the proposed modifications or exemptions is in the best long term interests of the consumer then the Commission should approve the application.
- 17 We propose that the test the Commission applies when deciding whether to approve a modification or exemption should be a cost-benefit analysis.

Certainty of applicable CPP requirements

- 18 Consideration of modifications or exemptions at a pre-application stage will increase certainty for an applicant in one regard. That is, if the Commission **rejects** an application then the supplier has the opportunity to decide whether to proceed with its application.
- 19 However, the **approval** of an application for a modification or exemption does not provide the same certainty as a rejection. That is because, if the exemption is approved, the paper provides, at para 2.17 that:
- the approval would be binding on the Commission in the sense that a CPP application for which an applicant has elected to apply approved modifications or exemptions would be accepted as being compliant in that respect under s 53S(1).*
- 20 However paragraph 2.20 indicates that there are a number of opportunities for interested parties to give their views on the proposal for any modifications or exemptions before and after the Commission determines whether to approve the modifications or exemptions. This includes an opportunity after the application, prepared on the basis of approved changes, has been provided to the Commission.
- 21 The paper does not explain how the Commission would deal with the situation where interested parties objected to a modification or an exemption to an IM that had already been approved and a CPP application and proposal had been submitted based on this approval.
- 22 Further uncertainty is added where the Commission proposes to use its information gathering powers as part of the assessment of the CPP proposal and gives the example of where the Commission considers that the modification or exemption of any information requirements (that it has already approved) poses an impediment to the evaluation of the CPP proposal.¹
- 23 We consider that a materially better IM would be that the consideration and acceptance of a modification of an IM or an exemption of an IM would occur prior to the CPP application being submitted.
- 24 Once approval is provided it should be binding and the modifications or exemptions to IMs should be treated as being the effective IMs applying to

¹ Paragraph 2.22 and footnote 12 Input methodologies review process paper – Update on CPP fast track amendments 7 August 2015

the CPP application and proposal. If consultation is required than it would need to be accommodated prior to approval.

Alternative methodologies with equivalent effect

- 25 The intent of the proposal to allow certain methodologies with equivalent effect is a good step.
- 26 We suggest that refinements to the Commission's proposal that will further enhance the goal of reducing complexity and cost and enhancing certainty need to be made.
- 27 We note that the paper contemplates that the decision on whether to accept the proposal is made after the CPP application is submitted and the Commission has determined that the CPP proposal complies with the requirements for the process of, and content of, an application².
- 28 The paper does not set out the procedure should the Commission, at that stage, decide not to allow the alternative methodology. We submit that this is too late as the EDB's proposal cannot be withdrawn.
- 29 We consider that a materially better IM would be that consideration and acceptance of the alternative methodology would occur prior to the application being submitted.
- 30 Once approval is provided it should be binding and the alternative methodologies to IMs should be treated as being the effective IMs applying to the CPP application and proposal. If consultation is required than it would need to be accommodated prior to approval.

Assessing a CPP proposal that is complete in all material respects

- 31 We consider that the intent of the proposal to introduce a level of materiality into the CPP IMs that allow a CPP application/proposal to be considered as compliant with the IMs relating to the process of preparing and content of CPP proposals is a good step.
- 32 We note that the paper appears to use the words "application" and "proposal" interchangeably. For example at paragraph 4.3, the paper states "*section 53S(1) of the Act provides that within 40 working days after receiving a CPP application, the Commission must determine whether the application complies with the requirements set out...*" whereas section 53S(1) of the Act actually

² Paragraph 3.12 "*We will consider applying these alternative methodologies as part of the evaluation of the CPP proposal after the Commission has determined that the CPP proposal complies with the requirements for the process of, and content of, an application.*" Input methodologies review process paper – Update on CPP fast track amendments 7 August 2015

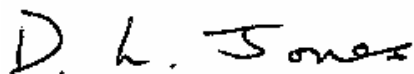
refers only to the proposal. We recommend that for clarity the Commission corrects this in its final decision.

- 33 We submit that further clarification of the term “in all materially respects” would be helpful. Some guidance is given in paragraph 4.7, which indicates that a proposal may be complete in all material respects even where the CPP applicant has not complied with every IM requirement in preparing and submitting a proposal provided this does not compromise:
- (a) the Commission’s evaluation of the CPP proposal and determination of a CPP; or
 - (b) the ability of interested persons to consider and provide views on the CPP proposal
- 34 This is very broad criteria. Further guidance on this would be useful, otherwise we would envisage that an EDB would seek an IM exemption to give it more certainty.

Concluding remarks

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

Yours sincerely



Dennis Jones
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Appendix A

Comments on Attachment A – proposed amendments for modification or exemption from CPP process or content requirements

We have provided a number of drafting suggestions in relation to Attachment A which we consider will more accurately meet the Commission's intention. As part of these amendments we consider that it would also be useful to amend the definition of CPP applicant.

1.1.4 Application

CPP applicant means an EDB who-

- (a) Is preparing a **CPP application**; or
- (b) Is preparing a **CPP proposal**; or
- (c) has made a **CPP proposal** that has not been determined

We note Clause 5.1.7 (3) appears to have an incorrect reference. We assume that the reference should be to clause 5.1.6 (2).

"5.1.6 Modification or exemption of CPP application **and proposal** requirements

(1) The **Commission** may modify, or exempt a **CPP applicant** from, a requirement set out in—

- (a) this subpart;
- (b) Subpart 4;
- (c) Subpart 5; or
- (d) schedules relating to subparts identified in paragraphs (a) to (c) above.

~~(2) A modification or exemption may be made where, in the **Commission's** opinion, the modification or exemption will not detract from—~~

- ~~(a) the **Commission's** evaluation of the **CPP proposal** and determination of a **CPP**; and~~
- ~~(b) the ability of interested persons to consider and provide their views on the **CPP proposal**.~~

~~(3) A modification or exemption will only apply for the purposes of assessing compliance of a **CPP application** under s 53S(1) of the **Act**—~~

- (a) if the **Commission** has previously approved a request by a **CPP applicant** for the modification or exemption in accordance with clause 5.1.7;
- (b) in respect of the **CPP applicant** and the **CPP application** identified in the **Commission's** approval; and
- (c) if the **CPP applicant** elects to apply the modification or exemption by:
 - (i) meeting all conditions and requirements specified in the approval that relates to the modification or exemption; and

(ii) providing the relevant information specified in clause 5.1.8 as part of its **CPP application**.

5.1.7 Process for determining a modification or exemption

(1) At any time prior to providing the **Commission** with a **CPP application**, a **CPP applicant** may request that the **Commission** approve modifications or exemptions to the requirements listed in clause 5.1.6(1) as alternatives to those requirements.

(2) A request by a **CPP applicant** must—

(a) be in writing; and

(b) include the following information:

- (i) the **CPP applicant's** name and contact details;
- (ii) a brief description of the key features of its intended **CPP proposal**;
- (iii) the date that the **CPP applicant** intends to submit the **CPP application** for which a modification or exemption is sought;
- (iv) a list of the specific modifications or exemptions sought;
- (v) an explanation of why the **CPP applicant** considers the requirement in subclause (3) is met, supported by appropriate evidence; and
- (vi) identification of any information that is commercially sensitive.

(3) The **Commission** may approve modifications or exemptions sought by a **CPP applicant** where, in the **Commission's** reasonable opinion, ~~the benefits of the modification or exemption will exceed any costs caused by the modification or exemption the **CPP applicant** has demonstrated that the criteria specified in clause 5.6.1(2) 5.1.6(2) have been met.~~

(4) For the avoidance of doubt, the benefits and costs of the modification or exemption may include changes in —

(a) costs incurred by the CPP applicant in preparing the CPP proposal;

(b) costs incurred by the Commission when evaluating the CPP proposal and determining a CPP; and

(c) costs incurred by interested persons when considering and providing their views on the CPP.

(45) In considering whether to approve a request for modification or exemptions, the **Commission** may seek, and have regard to—

(a) views of interested persons within any time frames and processes set by the **Commission**; and

(b) views of any person the **Commission** considers has expertise on a relevant matter.

(56) ~~As soon as reasonably practicable~~ Within 30 working days after receipt of a request for modifications or exemptions the **Commission** will, by notice in writing, advise the **CPP applicant** as to whether:

(a) one, some, or all of the modifications or exemptions are approved; and

(b) the approval of any modification or exemption is subject to conditions or requirements that must be met by the **CPP applicant**.”

(7) The Commission may elect to extend the timeframe specified in subclause (6) once by up to a further 20 working days provided it notifies the CPP applicant of the reasons for the extension.

(8) Where the Commission does not provide the notice in subclause (6) to the CPP applicant within 30 working days, or within the timeframe of any agreed extension, the requested modifications or exemptions will be deemed to have been approved.