Orion yourNETwork

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Submissions
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SUBMISSION ON 2012/13 APPROPRIATIONS

1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the "2012/13 Appropriations, Authority Path to CRE, and EECA work programme" consultation paper (the **paper**) released by the Electricity Authority (the **Authority**) in November 2011.

2 Our comments are in three areas:

- The "Path to CRE"
- The way the Authority determines whether items should be included in the work programme.
- The interaction between the Authority's work programme and that of other regulatory agencies – in particularly the Commerce Commission.
- The possible undesirable implications of the suggested (in a separate document) approach to extending a possible transmission pricing economic framework to distribution pricing.

The Path to CRE

3 The document states the "CRE aspirations", and notes the Authority's focus on "perceived performance". While perception is important, we are not sure it should be the focus. We are unsure what the Authority is going to do when objective analysis confirms that something is OK, but it is nevertheless perceived not to be. The Authority seems to be moving away from a rational workable competition benchmark that would only require the industry to be as good as comparable industries, and towards a more nirvana conception. We are concerned at this perceived change in

focus by the Authority, however if perception is to be the focus, then the Authority must develop some useful benchmarks based on other unregulated industries so that reasonable targets for what “widespread…confidence…acceptance…[and] recognition” mean can be developed. The Authority must also indicate how this perceived new focus aligns and complements the Commerce Commission’s stated workable competition focus.

Determining the work programme

4 In describing the Authority’s proposed work programme, the Paper, at Appendix D.35 and D.36, identifies two attributes – project size and net public benefit – that in our view merit more detailed discussion, particularly with regard to how they interact and influence the programme. Examples of the type of discussion we think should be included are:

- In terms of size, the inclusion of the likely cost imposed by the projects on other industry participants, not just the Authority.
- How the size/benefit relate to the proposed rankings of “Key” projects and “Second priority” projects – we note for example that there is at least one “Second priority” project (gate closure) which has a high public benefit and is a small project. We would see this as unambiguously higher priority than, for example, the medium size / medium benefit “Retailer default provisions”. (But note that we do not agree that this is in fact a less important project than gate closure. We are just trying to ensure that the Authority’s ranking process is consistent.)
- The development of some tests that projects must pass in order to be added to (or remain on) the work programme. We would suggest the following:
  - Nothing that has a low public benefit, and irrespective of the project size, should be added to the work programme at all. Or at least not until all more beneficial projects have been completed.
  - Medium benefit projects should only be added if they are small or medium sized.
  - Restricting the number of projects on the work programme. For example, a requirement that only ‘n’ projects can be on the go at any point in time, and only ‘m’ large projects, ‘l’ medium projects and ‘k’ small projects.

5 Appendix D, at D.47 identifies a set of “research” projects that are not listed earlier as “Key” or “Second priority” projects. Since each of these presumably requires Authority resource, and probably involves industry interaction and consultation as well, we cannot see why they have been separated out. These projects themselves need an initial assessment of size and potential public benefit before any work occurs on them. We are obviously particularly concerned about a project to “Review efficiency of distribution network company arrangements.” This looks potentially very open-ended.

We must see much more detailed specifications of what is proposed before this and other projects in this group are accepted into the work programme.

6 Appendix D, at D.48 raises similar issues with the list of “Future projects”. The projects here are described as “having merit”, but nearly all have low public benefit. We see no merit in proceeding with such projects.

Interaction with other agencies

7 The activities of other regulatory agencies impact on industry participants. From our perspective the Commerce Commission is the most important, but the MED and the MCA can both also have an impact. The work programme needs to acknowledge this by:

- Ensuring there is no duplication of work – for example the Commerce Act requires the Commerce Commission to ensure efficiency by distributors. Other agencies need to be careful that they do not try to do the same thing.

- Acknowledging and leveraging obvious overlaps – for example the use of the Information Disclosure information gathered by the various agencies, and ensuring as much as possible that the same information is provided only once.

- Developing clear demarcations and “no-go” areas.

- Considering the other agencies’ consultation timetables.

Transmission pricing economic framework

8 While it is not mentioned in the paper, the Authority, at the 21 December 2011 Regulatory managers meeting, tabled a presentation that noted (slides 9 and 10) that the now very well-worn transmission pricing workstream (and presumably this is the first “Other key project” listed in Appendix D of the paper?) would include a consultation on a Transmission Pricing Economic Framework Paper in late January 2012, and further that the Authority would then “ensure alignment” of the approach to distribution pricing principles with the Framework Paper in March 2012. We have several observations on this:

- It is rather late in the transmission pricing workstream to be developing the economic framework for it.

- We are extremely concerned that there is an implication that any elements of the transmission pricing economic framework will automatically feed through to distribution pricing principles. We see no reason why they should, and none has been provided. Any change to the distribution pricing principles must itself be subject to consultation.

- There is a suggestion that, to the extent that the Framework Paper *does* influence the distribution pricing principles, this will be reflected in the

Authority's review of distributor alignment with the principles in June 2012. This will of course not be possible, as distributor pricing can only reasonably be assessed with respect to principles that were in place at the time the pricing was developed. We further note in this regard that the Authority does not seem to have responded to the submissions on the proposed criteria for assessment made by participants in October 2011.

Concluding remarks

9 At Appendix D.2, the paper notes the Authority's vision "to be recognised as a world class electricity regulator." Overall we consider that the Authority will fail to achieve its vision and will not be so recognised if it continues to try and do too much, and does not rule out early on proposed interventions that can, at best, deliver only marginal benefits. Regulation itself is not costless, and contains risks of both failure and unintended consequences - so there must always be a very compelling reason to intervene.

10 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 Bruce Rogers, DDI 03 363 9870, email bruce.rogers@oriongroup.co.nz.

Yours sincerely

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