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Electricity Lines Company discounts

Submission to Inland Revenue

From the Electricity Networks Association

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Contents

1. Introduction 4

2. Executive Summary 4

3. Focus of our submission 5

4. The facts 6

4.1. A discount rather than a rebate 6

4.2. The facts are crucial 6

4.3. Form over substance 7

The legal form 8

The substance of the arrangements 8

5. Discounts are not profit distributions 8

5.1. Non-discretionary 9

5.2. Discounts are based on the amount of electricity used 9

5.3. Correlation to lines revenue and not profits 11

6. Factual matters of relevance - questions 11

6.1. Q1. Are all consumers eligible for a discount? 12

6.2. Q2. Are discounts payable only when the lines company makes a profit or a sufficient profits? 13

6.3. Q3. What is the company's history of making distributions? 13

6.4. Q4-6. What do the standard form documents sent to consumers, reports prepared by the owners and annual reports and other statutory disclosure documents provide for? 14

7. Benefits of discounts 15

8. Irrelevance of cited case law 17

Relevance? 19

9. GST 26

10. Policy and Strategy business unit input 26

11. Timing of application 27

12. Publication of the final issues paper 28

13. Conclusion 28

14. Appendix One 29

15. Summarised regulatory background 31

The Commerce Act 31

Pricing disclosure 31
The definition of discretionary discount 31

1. Introduction

1. We have been provided with a copy of the Commissioner's draft issues paper: "*Income tax treatment of electricity lines companies paying rebates/discounts to electricity consumers*" (the Issues Paper). The Electricity Networks Association (**ENA**) appreciates the opportunity to make a submission to Inland Revenue on the issues paper and welcomed your agreement that the submission deadline should be extended from 8 December 2016 to 28 February 2017.

2. The ENA represents New Zealand's electricity distribution businesses (EDBs) or lines companies. They provide critical infrastructure to NZ residential and business customers. Apart from a small number of major industrial users connected directly to the national grid and embedded networks (which are themselves connected to an EDB network), electricity consumers are connected to a distribution network operated by an ENA member, distributing power to consumers through regional networks of overhead wires and underground cables. Together, EDB networks total 150,000 km of lines. Some of the largest distribution network companies are at least partially publicly listed or privately owned, or owned by local government, but most are owned by consumer or community trusts.

3. References in this submission to "a lines company" are to one of the trust-owned, and discount-paying, EDBs. These are Centralines, Counties Power, Electra, Marlborough Lines, Network Tasman, Network Waitaki, Northpower, Scanpower, The Power Company, Top Energy, Waipa Networks, WEL Networks and Westpower.

4. This submission does not consider the arrangements of EA Networks or MainPower as they both materially differ from the discount arrangements of the lines companies in paragraph 3[1].

5. We understand that lines companies might also make individual submissions.

2. Executive Summary

6. The key elements of our submission are as follows:

- The outline of the facts in the Issues Paper is too simplistic and needs more detailed analysis. There are critical factual features of the arrangements which the Commissioner appears has not given adequate consideration.
- The Commissioner's analysis of the arrangements should follow legal form. She should not selectively use both form and substance to try and support her conclusions.
- The Commissioner has incorrectly concluded that discounts are a distribution of profits by failing to recognise the significance of three key factual features:
    - Some discounts are non-discretionary.

[1] EA Networks is a Cooperative Company which issue shares to consumers. MainPower issues redeemable preferences shares to consumers.

  - The correlation between discounts and electricity usage.
  - Evidence that discounts are tied to revenue from lines charges and are not affected by operating profits.
- The Commissioner has made material misstatements which need to be corrected, and some of the factors she has taken into account are not relevant to the analysis of the discount arrangements.
- The Commissioner has incorrectly dismissed the reasons lines companies view discounts as an important operating expense.
- The case law cited in the Issues Paper is not applicable to the factual arrangements and therefore does not support the Commissioner's position.
- The Issues Paper should include an analysis of the GST treatment of discounts, and this should be referred for consultation before the paper is finalised.
- Prior to finalising the Issues Paper, the Commissioner should ensure that the proposed outcomes have been agreed with Inland Revenue's policy and strategy business unit as being the correct policy outcome.
- If the finalised Issues Paper results in the Commissioner applying an amended tax treatment to discounts, the application of that treatment should commence at least 12 months after finalisation of the paper.
- Any finalised paper should be published, and most appropriately be in the form of an interpretation statement.

3. Focus of our submission

7. Our position is that discounts paid by lines companies are a tax deductible expense. The correct technical analysis of the factual arrangements results in this conclusion. Our submission therefore focuses on tax deductibility.

8. We have reviewed the sections in the Issues Paper on derivation and mutuality. While there are aspects of the Commissioner's analysis that we take issue with, we will not be making submissions at this time. This is because discounts in our view are deductible, and submitting on derivation and mutuality would unnecessarily complicate and lengthen this submission.

9. We do however note that subpart HE 1 of the Income Tax Act 2007, which deals with mutuality, defines an "association rebate" as being a payment to a member that is a distribution of profits. The distribution may be made up to six months after year-end. As explained below in paragraph 11 such distributions are quite different to the discounts paid by the lines companies.

4. The facts

4.1. A discount rather than a rebate

10. *Our submission: That the term rebate in the Issues Paper is removed and references should consistently be to discounts.*

11. The Issues Paper frequently refers to "discounts/rebates", and occasionally separately to "discounts" or "rebates". For example, in the summary section, the Issues Paper variously says:

> *"The Commissioner has been reconsidering the tax issues arising from the relatively widespread practice of electricity lines companies providing discounts/rebates to electricity consumers."* [Paragraph 1]
>
> *"The Commissioner's revised view is that the amounts of these rebates are* *not* *deductible expenditure"* [Paragraph 3]
>
> *"Lines companies' payments of discounts to electricity consumers are* *not* *deductible expenses"* [Paragraph 5]
>
> *"The Commissioner's revised view is that the discount or rebate amounts paid to consumers …"* [Paragraph 6]

12. The various references suggest that the Commissioner may think the terms "discount" and "rebate" are synonymous and interchangeable. However, the references to a rebate in the Income Tax Act are to an "association rebate" which is a payment to a member that is a distribution of profits. The distribution can be made up to six months after year-end. An association rebate is a distribution of profit, but with a particular tax treatment prescribed by statute.

13. The public comments of the lines companies overwhelmingly refer to discounts. The income statements in their financial reports show discounts, either as reducing revenue or as an expense. In all cases the discount is shown as an item calculated before the profit figure.

14. We submit that use of the term rebate in the issues paper is unnecessary and potentially confusing and that references should consistently be to discounts. In this submission we will refer consistently to discounts.

4.2. The facts are crucial

15. *Our submission: The outline of the facts in the Issues Paper is too simplistic and needs more detailed analysis. There are critical factual features of the arrangements which the Commissioner appears not to have given adequate consideration to.*

16. A detailed understanding of the facts is crucial when considering a tax issue, and particularly a capital/revenue question. The Issues Paper acknowledges the importance of the factual circumstances of individual companies:

> *"each lines company's factual circumstances will need to be carefully considered when assessing whether its payment of a discount or rebate will be a non-deductible distribution of profits or a deductible cost of earning those profits" [Paragraph 45].*

17. However, the Issues Paper does not then analyse particular factual features of the companies' arrangements, instead describing what it labels a "typical arrangement". This typical arrangement is too simplistic and of limited relevance to the lines companies. It is therefore premature for the Commissioner to suggest in the Issues Paper that she has reached a widely applicable "revised view" on the tax treatment of the discounts.

18. We also note that binding rulings issued over a number of years to individual lines companies were each issued only after appropriately detailed consideration by the Commissioner of the factual circumstances for that company. The Issues Paper should include an explanation of how and why the Commissioner's revised view is (so) different to that reached in the various binding rulings.

19. In the next section of our submission "Discounts are not profit distributions" we reference particular factual features of the discount arrangements which we submit need to be taken into account in the Commissioner's analysis in the Issues Paper.

4.3. Form over substance

20. *Our submission: The Commissioner's analysis of the arrangements should follow legal form. She should not selectively use both form and substance to try and support her conclusions.*

21. The analysis in the Issues Paper selectively uses both the form and the substance of the arrangements to support the Commissioner's conclusions. The Issues Paper treats discounts as being paid to consumers (ignoring the legal form payment to the retailer, but following the substance) but treats the provision of lines services as being provided to the retailer (following the legal form, but ignoring the substance). For example, in the Summary section:

> *"The persons who contributed to the fund are electricity retailers and the persons who are entitled to receive the discounts are electricity consumers." [Paragraph 7]*

22. In New Zealand, except where the statutory provisions require otherwise, tax arrangements are considered based on their legal form. The legal form rule was established by the House of Lords in *IR Commrs v Duke of Westminster*[2]. It has been applied in New Zealand e.g. *C of IR v Europa Oil (NZ) Ltd*[3] and *Buckley & Young Ltd v C of IR*[4] and *Mills v Dowdall*[5].

[2] *IR Commrs v Duke of Westminster* [1936] AC 1.

[3] *C of IR v Europa Oil (NZ) Ltd* 70 ATC 6012 [1971] NZLR 641.

[4] *Buckley & Young Ltd v C of IR (1978)* 3 NZTC 61,271; [1978] 2 NZLR 485 (CA).

[5] *Mills v Dowdall* [1983] NZLR 154.

23. We submit that the analysis of the arrangements should follow their legal form and that it is inappropriate to mix both form and substance.

The legal form

24. Each lines company provides lines services to retailers[6]. The lines company issues invoices (GST tax invoices) to the retailer for the services and a detailed breakdown of the line charges. Invoices are prepared based on information that the retailer supplies to the lines company showing the electricity supplied to (and therefore the lines changes applicable to) each installation connection point (ICP).

25. In turn retailers supply electricity to consumers and invoices consumers for this. Typically the retailer's invoice shows a bundled charge and does not separately show the lines charges (although there are some exceptions to this).

26. From time to time, a lines company provides a discount on its line charges to the retailer. Most lines companies issue a GST credit note to the retailer for the discount, reflecting the reduction in the line charges.

27. Contractual arrangements between the lines companies and the retailers result in the retailers giving consumers a credit (which sums to the discount received from the lines companies) against the retailers' electricity supply charges.

The substance of the arrangements

28. The substance of the discount arrangements is that lines companies are giving discounts to consumers for the lines services they are receiving, the costs of which are ultimately being paid by consumers.

29. Notwithstanding our position that legal form should apply, in our view discounts are still tax deductible when analysed based on their substance, particular when it is noted that the involvement of the retailer is the result of regulatory intervention.

30. Up until 1999 the EDBs provided their services directly to the consumers in their region. The Electricity Industry Reform Act 1998 forced the separation of generation, transmission and retailing. It banned EDBs from also owning an electricity retailing operation. The EDBs were required to divest their retailing operations. It is reasonable to assume that, but for the effect of the Electricity Industry Reform Act 1998, the lines companies would be paying the discounts directly to the consumers so the form and substance of the arrangements would be the same.

5. Discounts are not profit distributions

31. *Our submission: The Commissioner has incorrectly concluded that discounts are a distribution of profits by failing to recognise the significance of three key factual features:*

[6] In some limited cases a lines company will have a direct relationship with the consumer. This is usually restricted to a small number of larger industrial or commercial consumers.

- *Some discounts are non-discretionary*
- *The correlation between discounts and electricity usage*
- *Evidence that discounts are tied to revenue from lines charges and are not affected by operating profits.*

32. There are three key factual features of the discount arrangements which the Commissioner has not factored into her description of a "typical arrangement". These features need to be included in the Commissioner's analysis because by doing so the conclusion that discounts are profit distributions would not be supported.

5.1. Non-discretionary

33. A number of the discounts are non-discretionary[7]. This means that the companies paying these discounts have committed to paying discounts to retailers in advance of deriving the related lines charges revenue. The reason the discounts are being paid is due to the receipt of the lines charges. The discounts are not contingent on a particular level of operating profit nor are they determined after that year's operating profit is calculated.

34. For regulatory reporting purposes, non-discretionary discounts are not included as income. This supports our view that these discounts clearly should not be classified as profit distributions for tax purposes. Lines companies exclude the non-discretionary discount from the "discretionary discount and rebates" figure disclosed in schedule 5a of their annual Electricity Information Disclosure to the Commerce Commission. An explanation of the relevant regulatory requirements and definitions is included in Appendix Two.

5.2. Discounts are based on the amount of electricity used

35. Lines companies derive revenue from retailers based on electricity used by consumers. The amount of electricity used by consumers is then used to determine the amount of discount the line companies give to retailers, and then ultimately the amount of credit the consumers receive.

36. The correlation between discounts and electricity usage supports the revenue expenditure nature of the discounts provided by the lines companies. A distribution of profits to consumers would see consumers receiving amounts reflecting their ownership capacity (i.e. equal distributions) rather than amounts influenced by their electricity usage.

37. For all lines companies, their discounts are based (to some extent[8]) on the amount of electricity used by the consumer. There are however a number of different methods of calculation. In summary the discount arrangements (as described in documentation provided by the lines companies to the Commissioner and publicly available) are as follows:

[7] Non-discretionary discounts are paid by Marlborough Lines, WEL Networks, Counties Power, Network Waitaki and Waipa Networks.

[8] Ranging from discounts that are a set amount for different categories of consumer to discounts that are directly linked to usage.

- Centralines – paid in December and based on a consumer's past 12 month line charges. Average residential discount $125. Highest discount $5,500.
- Counties Power – paid in December and based on consumer usage within set bands. Has both a non-discretionary and a discretionary component.
- Electra – paid in January and calculated as $30 plus 13% of a consumer's total fixed and variable line and transmission prices for the previous 12 months.
- Marlborough Lines – paid in March, and varies based on both usage and lines charges, with no cap. However consumers in remote areas are not eligible for a discount, whereas a distribution of profits by way of dividend to the shareholding trust does result in these consumers receiving a distribution.
- Network Tasman – paid twice during the year (July and November). Calculated based on usage for domestic and most business consumers, and calculated based on total distribution charges for large industrial consumers.
- Network Waitaki – paid in March and has both a non-discretionary and a discretionary component. The discount is a proportion of the fixed distribution charge (which varies between consumer classes).
- Northpower – paid in February and the amount (referred to as a lines holiday) varies according to billed annual consumption.
- Scanpower – paid in September and is a fixed amount for a domestic consumer of $250, and up to $650 for large commercial consumers.
- The Power Company – paid in February and for domestic consumers is based on energy consumption, and for commercial consumers the discount is 14.5% of their fixed line charge plus energy consumption.
- Top Energy – paid in November and is a minimum of $57, increasing with usage to a maximum of $4,000.
- Waipa Networks – paid in September and March, varies based on usage. Consumers on non-standard contracts or unmetered supply are not eligible for a discount, whereas a distribution of profits by way of dividend to the shareholding trust would result in these consumers receiving a distribution.
- WEL Networks – paid in April and varies based on usage. Capped at a maximum of $1,650.
- Westpower – paid in December. Consumers receive $15 plus an amount per kWh (with the amount varying between domestic and large businesses).

38. The above illustrates that discounts paid by a lines company do vary across consumers, usually according to the type of consumer and the amount of electricity used, which supports the revenue expenditure nature of the discounts. If discounts were a distribution of profits, consumers would be receiving equal distributions. For example, recent dividends by lines companies to their shareholding trust have resulted in a uniform amount being distributed to beneficiaries: Marlborough Lines $150, Network Tasman $80, Northpower $80.

5.3. Correlation to lines revenue and not profits

39. For discounts to be a distribution of profits as the Commissioner asserts, there needs to be a correlation between the discounts and operating profits. There is no such correlation. Evidence shows that discounts paid by lines companies are not affected by their operating profits. There is however a strong correlation between the amount of discounts and revenue from lines charges.

40. Refer Appendix One for our analysis. The information we have used has been obtained from annual reports available on the websites of each company[9].

41. We have compared the discounts paid by each of the lines companies to their revenue from lines charges over the last five years. The information shows that the correlation between the amount of discount and the lines charges of each company is very high, which is to be expected when the discount is a discount on lines charges:

- The average ratio of discounts paid over lines charges (across all companies and years) is 15%. However the range of the ratio (averaged over all of the companies) is just 5%. This small range is because discounts are linked to revenue from lines charges.

42. We have also compared the discounts paid by each of the lines companies to net profit over the last five years. In doing this we have conservatively used profit before discount and before tax as the Commissioner's assertion is that the discount is a distribution of profits.

43. The information shows that the correlation between the amount of discounts and net profit is very low, which is to be expected when the discounts are not a profit distribution:

- Appendix One shows that the amount of the discount paid by all lines company is consistent from year to year (but generally increasing as revenue from lines charges increases), despite varying net profit.
- Significantly, lines companies still paid a discount even when a net loss was recorded for the year.
- The range (averaged over all companies) of the ratio of discounts paid over net profit before discount showed a variation of 47%, nine times higher than the ratio of discount to lines charges. We have conservatively excluded from this calculation the years in which the lines company had a net loss before discount.

6. Factual matters of relevance - questions

44. Under the heading "factual matters of relevance", the Issues Paper (at paragraph 44) lists six factors (or questions).

[9] For Waipa Networks the information is taken from the financial statements of the Waipa Networks Trust.

45. *Our submission: The Commissioner has made material misstatements which need to be corrected, and some of the factual matters are not relevant to the analysis of the discount arrangements.*

6.1. Q1. Are all consumers eligible for a discount?

46. The Issues Paper says:

> *"If not all consumers are eligible for a discount/rebate, and the ineligibility is due to the customer's connection being an unprofitable customer connection (which may be on the basis of remoteness, for example) then this supports the view that the discount/rebate reflects a share of profits rather than a cost of earning profits. If a customer's connection profitability is a basis for receiving the discount/rebate then it suggests the discount/rebate represents a distribution of the share of that profit from the connection rather than a payment for a service to or to reflect a benefit to the company."*

47. Firstly, this should not be a factual matter of relevance when considering a "typical arrangement". Only one or two of the lines companies excludes unprofitable consumer connections (being remote consumers or very low tariff consumers) from eligibility for the discount.

48. Secondly, the exclusion of remote consumers does not support the view that discounts reflect a share of profits. Remote consumers are supplied at considerable cost to a lines company. Such consumers are usually low numbers of small consumers supplied by long transmission lines through difficult terrain that involves significant maintenance costs. These supply arrangements reflect a legal requirement (section 105 of the Electricity Industry Act 2010, maintaining a requirement previously in section 62 of the Electricity Act 1992) for EDBs to continue supplying electricity to consumers that were connected as at 1 April 1993. The lines company is not able to charge differential (pre-discount) lines charges to the remote consumers[10], so excluding the remote consumers from the discount is the only avenue open to the lines company to maximise its income.

49. We therefore do not accept the proposition in the Issues Paper that the exclusion of remote consumers from the discount in any way suggests that the discount is a distribution of profits.

[10] Government policy (previously expressed in a Government Policy Statement) is that there should be equal rates of line charge increases for urban and rural consumers. To support this, section 113 of the Electricity Industry Act 2010 provides for regulation to be introduced to limit prices increasing at a greater rate for rural consumers than for those in urban areas. At this time no such regulation has been put in place, presumably because the EDBs have complied with the policy.

6.2. Q2. Are discounts payable only when the lines company makes a profit or a sufficient profits?

50. The Issues Paper says that if that is the case, this supports the view that a discount is a distribution of profits.

51. At paragraph 6 the Issues Paper says:

> *"The evidence indicates the discounts / rebates are only paid out of profits."*

52. That is incorrect. The evidence does not indicate the discounts are only paid out of profits. The information we have collated from annual reports for the past five years explicitly shows that discounts continued to be paid when there were low or no profits. See Appendix One.

53. The Issues Paper says that a factor to consider is:

> *"Are discounts/rebates consistently a fixed or close to fixed percentage of pre-tax profit? If so, this supports the view that the discounts are a fixed profit share rather than an ordinary business expense." [Paragraph 44 (2)]*

54. The information for the past five years shows that discount levels are much more consistent than profit levels. There is however a close relationship between discount levels and revenue from lines charges. See Appendix One.

6.3. Q3. What is the company's history of making distributions?

55. The Issues Paper comments that substitution from paying non-deductible dividends to discounts would suggest the discounts fulfil the same role as the dividend.

56. In paragraph 6 (the list of bullet points described as the main reasons for the Commissioner's conclusion) the Issues Paper says:

> *"There is also some evidence of substitution from the payment of dividends to the payment of discounts/ rebates."*

57. We do not believe this statement can be substantiated, because:

- Most of the lines companies have been paying discounts for 20 years or longer.
- The information for the past five years does not indicate any substitution of dividends with discounts. On average the discount as a percentage of revenue from lines charges has actually decreased over that period, from 17% in 2012 to 14% in 2016. See Appendix One.

58. In any event, this should not be a factual matter of relevance when considering a "typical arrangement".

6.4. Q4-6. What do the standard form documents sent to consumers, reports prepared by the owners and annual reports and other statutory disclosure documents provide for?

59. The Issues Paper comments that "*some of the letters*" refer to distribution of a surplus. However the Issues Paper also notes (correctly in our view) that the significance of labels should not be overestimated.

60. A label used to describe something does not determine its character[11]. As Lord Templeman put it in *Street v Mountford*[12]:

> *... the consequences in law of the agreement, once concluded, can only be determined by consideration of the effect of the agreement. If the agreement satisfied all the requirements of a tenancy, then the agreement produced a tenancy and the parties cannot alter the effect of the agreement by insisting that they only created a licence. The manufacture of a five pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade."*

61. The Issues Paper also says that it has seen some annual reports which:

> *"Treat discounts/rebates in a separate manner to the companies [sic] operating expenses, this indicates that the company sees the discount/rebate as a distribution of the company's profit post the income earning process, rather than a cost in the course of that income earning."*

62. In fact, in all cases discounts are included in the income statement of the lines companies. Seven of the lines companies show discounts as a reduction in revenue and five as an expense before arriving at net profit. One company, The Power Company Limited, does show the operating surplus both before and after the discount.

63. We do not believe that the labels used by some lines companies in some communications (including in some cases in the non-audited narrative section of their annual report) provide any material support for the treatment suggested by the Commissioner. The same can be said for comments made by some trustees.

64. The most relevant documentation is the treatment in the audited financial statements of each lines company. The financial statements are required to be prepared in accordance with generally accepted accounting practice in New Zealand (NZ GAAP) and comply with the New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS), and with the Companies Act 1993 and the Energy Companies Act 1992.

[11] *See Radaich v Smith (1959) 101 CLR 209, Facchini v Bryson (1952) 1 TLR 1386, Nixon v Doney (1960) NSWR 2, Fatac Limited (in liquidation) v Commissioner of Inland Revenue (2002) 20 NZTC 17,902.*

[12] *Street v Mountford* [1985] AC 809 (HL).

65. In every case the discount is included in the income statement of the lines company, shown as either being a reduction in revenue or as an expense deducted in arriving at net profit.

7. Benefits of discounts

66. *Our submission: The Commissioner has incorrectly dismissed the reasons lines companies view discounts as an important operating expense.*

67. In response to the Commissioner's October 2015 information request "*What are the benefits to your EDB from providing rebates/discounts to consumers?*" each of the lines companies stated a number of the benefits they expect to obtain by paying discounts. The Issues Paper says that the Commissioner considers the reasons provided by the lines companies "*are not persuasive*".

68. In explaining this the Issues Paper says at paragraph 48 that there is only a "*very indirect link*" to the business of the lines companies because that business is "*transporting electricity for electricity retailers*". That statement is wrong as it ignores that the electricity is ultimately transported for consumers, that the lines companies have a monopoly in their region, that the consumers are well aware of who their lines company is, and that there is significant interaction between the lines company and the consumers. This is amply demonstrated through such things as:

- The lines company web sites, which typically provide:
  - Information telling consumers what they need to do to become connected.
  - Pricing details.
  - 24 hour 0800 faultline numbers.
  - Live outage details.
  - Details of complaint processes.
- The regular consultation that the lines companies undertake with consumers about supply standards and asset management plans.
- The various contracting services provided by the lines companies such as line construction, arborist services, design, lighting, and cabling.
- Regional services now being provided by some of the lines companies in relation to a fibre network.
- The extensive local sponsorship arrangements.

69. The interposition of the retailers is a result of the regulatory background under which the lines company operates. The lines companies are very much regional companies providing transmission and other related services to the consumers in their region.

70. The Issues Paper goes on to say at paragraph 50:

> *"to date the Commissioner has not been provided with any evidence to support the link between the payments and the purported benefits".*

71. However the Commissioner's October 2015 request for information from the lines companies did not ask for evidence to be provided. In relation to this we also note:

> *"It is not for the Court or the Commissioner to say how much a taxpayer ought to spend in obtaining his income;"*[13]

> *"Where the need for the expenditure can be regarded as a normal incident of the business or undertaking forming the source of the taxpayer's income, then he may select his own means of incurring it, and may spend what he thinks fit."*[14]

8. Irrelevance of cited case law

72. *Our submission: The case law cited in the Issues Paper is not applicable to the factual arrangements and therefore does not support the Commissioner's position.*

73. The Issues Paper cites and relies on a relatively small number of cases, many of which might perhaps generously be described as antiquated. It is telling that it is difficult to find modern instances of the cases being cited.

74. Most critically, in citing the cases the Issues Paper attempts to bolt together a number of quite separate principles to support an overall proposition that the discounts should be non-deductible.

75. We note that the language used in the Issues Paper indicates that the Commissioner is far from convinced by her own arguments. For example:

- Paragraph 2 suggests that the issue is:

  > *"finely balanced"*

- Paragraph 6, which lists the main reasons for the Commissioner's conclusion that the discounts are non-deductible, says:

  > *"There is case law that <u>supports a view</u> that this type of arrangement <u>can be</u> a non-deductible distribution of profits. [emphasis added].*

- Paragraph 6 goes on to say:

  > *"That case law <u>arguably indicates</u> …" [emphasis added].*

- Paragraph 6 also says:

  > *"The case law also <u>indicates</u> that allowing a person to share in a company's profits as part of a business arrangement <u>can still be</u> non-deductible distribution" [emphasis added]*

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[13] *Cecil Bros. Pty Ltd v FCT* (1964) 111 CLR.

[14] *Halliwell v CIR* (1977) 3 NZTC 61,208.

76. The outcome proposed in the Issues Paper (of the discounts not being deductible) requires each strand of cited case law to apply precisely in the manner suggested by the Commissioner. The failure of any one of the strands will negate the conclusion reached by the Commissioner.

Relevance?

77. In a number of instances the case law cited is not relevant because the Commissioner has incorrectly understood the lines company arrangements, or is not relevant because its facts are fundamentally materially different to the lines company facts. We explain this in the following paragraphs by commenting on the Commissioner's propositions listed in paragraph 31 of the Issues Paper:

Proposition:	*"There is a distinction between the expenses in earning profits which are deductible as compared to the post-earning distribution of profits which is not deductible"* Case cited *Mersey Docks*

78. We agree with this proposition. However, it should be understood that *Mersey Docks*[15] was concerned with the profit of the company for the year expressed as: "the sum which remains after all those expenses have been deducted" by Lord Blackburn.

79. Lord Fitzgerald spoke of: "'profit' in the sense of income acquired from the estate, of whatever character it may be, over and above the costs and expenses or receipt and collection".

80. The court found that the profit for the year was taxable, notwithstanding that there were statutory restrictions on how some of the profit could be applied.

81. The key here is that the case dealt with a situation where it was quite clear that the income for the year had been earned and the expenses for the year incurred, enabling the profit for the year to be calculated. The focus in the case was on the profit for the year, and whether restrictions on how it could be applied was capable of altering and reducing the amount of that profit.

82. This is fundamentally different to the situation of the lines companies where the discount is an expense of the business, even in a number of instances one committed to before the year commences. The discount is not an amount paid out from the profit for the year. This is demonstrated by numerous factors, including the accounting treatment, the close correlation between the amount of lines charges income and the amount of discount, and the lack of correlation between the amount of profit and the amount of discount (see Appendix One).

[15] *Mersey Docks and Harbour Board v Lucas* (1883) 8 AC 891; (1883) 2 TC 25 (HL).

83. We submit that the Commissioner's arguments fall at the first hurdle because *Mersey Docks* simply has no application to the discounts.

Proposition:	*A share in profits can be given by a company to a person* <u>*who is not a shareholder*</u> *in circumstances where the profit share is not deductible"* Cases cited *Last, Wright Stephenson, Boulder Perseverance, Hutchinson*

84. These cases are only relevant if the discount is a payment made from profits. The cases are simply not relevant to the situation of the lines companies.

85. *Last*[16] can be distinguished. The issue in *Last* was whether an insurance company could treat as a deductible expense an estimate of an amount payable to participating policy holders <u>out of profits</u> (and only when there was a profit).

86. Lord Blackburn was clear that the payment was out of profits, and said:

> *"And I think we must take it as agreed by both parties, that the bargain (so made as to be binding on the Corporation, and enforceable against them by those who took participating policies) was that the holders of such participating policies as were in force at the quinquennial period should have paid to them two-thirds of the profits made during those five years on this class of participating policies."*
>
> *"They [the company] cannot be called upon to make any payment to the policy-holders unless there is a profit"*
>
> *"…by the terms of the contract with the assured, the surplus which remains after payment of policies is dealt with as follows: - Two-thirds of the surplus are returned to the assured"*

87. The surplus or profit was:

- Determined quinquennially [at the end of five years] by ascertaining actual results and calculating contingencies.
- Payable only if the policy holder was still alive and still a policy holder.
- Not payable if there was no profit.

88. Lord Blackburn said that the customer had effectively purchased a share in the profits.

89. The facts in *Last* are vastly different from those for the lines companies, where:

- The lines company pays a discount to consumers out of the lines charges that they pay.
- Information for the last five years shows that the discount is paid regardless of whether the lines company makes a profit.
- In a number of instances the discount is committed to even before the year commences.

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[16] *Last v London Assurance Corporation* (1885) 2 TC 100 (HL).

90. *Wright Stephenson*[17] can also be distinguished on its facts. In this case, regulations formulated by the company explicitly stated:

> *"Surplus earnings of the company" means the earnings from time to time of the company after deducting working and other expenses, depreciation, taxation, and all other expenses in the company's annual balance sheet, and also after deducting a sum equal to 5½ per cent, or such other rate per cent as may from time to time be fixed by the board [i.e. the board of directors], on its paid-up capital and undivided profits, including in undivided profits such reserves and internal reserves of the company as the auditors of the company consider undivided profits."*

91. This was very clearly a share in the after-tax profits for the year, and then only to the extent that the profits exceeded 5.5%. The amount could not be known until the profit had been calculated, and if there was no profit, or a profit of less than 5.5% there would be no contribution.

92. This is very clearly distinguishable from the discounts paid by the lines companies.

93. *Boulder Perseverance*[18] can also be distinguished on its facts. The company issued profit-sharing notes which provided for the payment of interest, and a premium, and for the company to pay 50% of its <u>profits</u> in each year. The notes stated:

> *"the company covenants to divide amongst and pay to the registered holders of such notes pro rata in proportion to the amount of the notes held by them respectively within three calendar months after the date of the certificate hereinafter mentioned 50 per cent of the profits of the company in each year … The said profits shall be the profits as ascertained and certified in writing by the auditors of the company … after making provision for depreciation and reserves and interest on the notes and any premium paid in respect of notes … and for annual and other payments necessary in respect of any loans made or guaranteed by or assistance given by any Government to the company and for taxation."*

94. This is clearly expressed to be a payment of after-tax profits. This is clearly distinguishable from the discounts paid by the lines companies.

95. The Issues Paper refers to Parsons[19]. We note that Parsons is critical of the decision in *Boulder Perseverance*:

> *"the verbal distinction drawn in Boulder Perseverance … should be seen as an aberration, reflecting a disposition to treat debenture holders as shareholders*

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[17] *Wright Stephenson & Co Limited v COT* [1921] NZLR 633.

[18] *Boulder Perseverance Limited v COT (WA)* (1936-37) 4 ATD 389 (HCA).

[19] R.W Parsons "Income Taxation in Australia" (1985, Law Book Company, Sydney).

when the development of the law in this area should move towards treating shareholders as debenture holders."

96. The facts in *Hutchinson*[20] are vastly different to those for the lines companies.

97. In *Hutchinson* the company derived profit from selling certain publications to consumers and then gave all of those profits to a charity. That is an entirely different situation from the lines companies where they are paying a discount to reduce the cost of services provided by them.

98. In his decision Vaisey J considered whether the company might have been acting as an agent for the charity, but concluded that he was "*wholly unable to find any agreement here, whether of agency or otherwise*". He concluded that the payment out of profits was not a necessary outgoing of the business, and said there was a close analogy to a situation where a successful tradesmen made an annual payment to support a relative living in poverty. On that basis it is not surprising that Vaisey J concluded that the payment of the profit was not an allowable deduction.

99. In summary *Last, Wright Stephenson* and *Boulder Perseverance* involved situations where there were explicit contractual agreements that payments were to be made out of profits. These situations are far removed from the payment of discounts by the lines companies.

100. In *Hutchinson* there was a payment, also made from profits, to an unrelated charity.

101. The cases indicate that in particular situations it is possible for profits to be given to a person that is not a shareholder, but they also indicate that those situations will be few and far between, and only where there is definitely a payment out of profits. That is clearly not the situation for the lines companies.

Proposition:	*"An agreement to share profits from an undertaking is not deductible, even where it could have been (but was not) organised in the form of a rent (Pondicherry, Indian Radio, salary (Wright Stephenson) or interest (Boulder Perseverance).*

102. This proposition is stated to rely on *Wright Stephenson* and *Boulder Perseverance*, which have been discussed above, and on *Pondicherry* and *Indian Radio*.

103. *Pondicherry*[21] is no more relevant than *Boulder* and *Wright Stephenson*. The company's agreement with the French Government, which determined the outcome, was as follows:

- The French Government paid a subsidy and provided land free of charge to enable construction and operation of a railway for a 99 year term.
- The Company undertook in return that during the duration of the concession it would pay:

  "one half of the net profits which shall be arrived at by deducting from the gross receipts the rates and taxes of every kind chargeable to the Company

[20] *Hutchinson and Co (Publishers) Ltd v Turner* [1950] 2 All ER 633.

[21] *Pondicherry Railway Co Limited v CIT (Madras)* (1931) LR 58 IA 239 (PC).

as well as the amount expended in the purchase or hire of rolling stock, the expenditure relating to the maintenance and repair of the lines, of fixed plant and rolling stock; expenses of working and administration; as well as such sums, if any, as with the consent of the Colonial Government may be placed to reserve to cover the costs of heavy repairs of the works of the railway and for the renewal of the 'material'. But this division shall not commence until after deduction by the Company of a sum of one hundred and fifty-seven thousand five hundred francs (157,500 francs) from the aggregate amount of the net profits during the first years of the line'" [emphasis added]

104. The decision of the court, delivered by Lord MacMillan was that:

> *"A payment out of profits and conditional on profits being earned cannot accurately be described as a payment to earn profits."*
>
> *"…the form in which the parties have contracted that the French Government shall participate in the success of the undertaking precludes the deduction claimed".*

105. The court also referred to the principle laid down by Lord Chancellor Halsbury in *Gresham Life Assurance Society v Styles* [1892] AC 309:

> *"The thing to be taxed" said his Lordship, "is the amount of profits or gains. The word 'profits' I think is to be understood in its natural and proper sense – in a sense which no commercial man would misunderstand. But when once an individual or a company has in that proper sense ascertained what are the profits of his business or his trade, the destination of those profits or the charge which has been made on those profits by previous agreement or otherwise is perfectly immaterial. The tax is payable upon the profits realized and the meaning to my mind is rendered plain by the words 'payable out of profits'."*

106. That agreement in *Pondicherry* related to a payment explicitly paid from after-tax profit. It is in no way similar to the discount arrangements of the lines companies.

107. *Indian Radio*[22] is yet another case in which there was a payment explicitly made out of profits, and only made if there were profits. The company was given the use of plant. In return it paid a fixed sum each year of "pounds ninety thousand sterling" (agreed to be deductible) plus: "*one-half of the net profits of the Radio Company for each of its financial years*". Up to eighty per cent of the payment of net profits could be made from time to time, but with the proviso that if payments exceeded the actual amount of the half share of profits the excess must be refunded.

108. That agreement is in no way similar to the discount arrangements of the lines companies.

[22] *Indian Radio and Cable Communications Company Limited v Income Tax Commissioners (Bombay Residency and Aden)* [1937] 3 All ER 709 (PC).

109. In summary, there is nothing wrong with the proposition, but it simply has no application to the lines company discounts.

Proposition:	*"Payments of profits made to members of a company on the basis of trade with the company, but which bear no relation at all to the profit or loss on the goods sold, are not covered by the mutuality principle (Chittleborough) and are not deductible because they are a distribution of earned profits."* Case cited: *Chittleborough*

110. Again, *Chittleborough* was a case dealing with what was explicitly (under the company's articles of association) the application of profits and so of no relevance to the lines company discounts. Bundey J commented:

> *"it is a condition precedent that the "net profits" on the year's transactions of the Company have to be ascertained before any of the shareholders have a right to participate in their division"*

111. The reason that the mutuality principle was not applied was that the company was distributing 50% of its profits from all trading to only those members with which it had traded (i.e. it was distributing profits from non-member trading to members).

112. In finding that the company could not obtain a tax deduction for the distribution of profits, the court in *Chittleborough*[23] was simply applying *Mersey Docks,* as it was required to.

113. Bundey J also took the time to warn against trying to draw analogies between quite different fact situations:

> *"No case at all analogous to the one now before us, so far as trading companies are concerned, was cited at the bar, and I much doubt if any can be found. Of the four principle cases to which our attention was called, three were relative to insurance companies and one related to a dock company carrying out its duties under a special Act of Parliament, in which company there were no shareholders, and the profits of which were by its Act ordered to be applied in the reduction of liabilities in carrying out a gigantic undertaking."*

114. Although past cases can be useful in assisting with the resolution of a new case, there are dangers involved in this approach. For example, Viscount Radcliffe in *Commissioner of Taxes v Nchanga Consolidated Copper Mines Ltd*[24] said that it was almost unavoidable to argue from analogy when considering allocations of expenditure between capital and income accounts:

> *"Nevertheless, it has to be remembered that all these phrases, as, for instance, "enduring benefit" or "capital structure" are essentially descriptive rather than*

[23] *Chittleborough v COT (SA)* [1901-03] SALR 24 (SASC).

[24] *Commissioner of Taxes v Nchanga Consolidated Copper Mines Ltd* [1964] 1 All ER 208, 212 (PC).

> *definitive, and, as each new case arises for adjudication and it is sought to reason by analogy from its facts to those of one previously decided, a court's primary duty is to inquire how far a description that was both relevant and significant in one set of circumstances is either significant or relevant in those which are presently before it."*

115. And Lord Pearce would later say in in *BP Australia Ltd v Commissioner of Taxation of the Commonwealth of Australia*[25] at pp 264–265:

> *"As each new case comes to be argued felicitous phrases from earlier judgments are used in argument by one side and the other; but those phrases are not the deciding factor, nor are they of unlimited application. They merely crystallise particular factors, which may incline the scale in the particular case after a balance of all the considerations has been taken."*

9. GST

116. *Our submission: The Issues Paper should include an analysis of the GST treatment of discounts, and that this is put out for consultation before the paper is finalised.*

117. When the lines companies were asked in October 2015 to provide information to the Commissioner, the letter from the Acting Investigations and Advice Manager said that Inland Revenue was considering the GST treatment of discounts. Lines companies were asked how the discounts were being treated for GST purposes.

118. The Issues Paper is silent as to the GST treatment of the discounts. However the Commissioner's income tax position on discounts in the Issues Paper raises questions on how discounts should be treated for GST purposes.

10. Policy and Strategy business unit input

119. *Our submission: Prior to finalising the Issues Paper, the Commissioner should ensure that the proposed outcomes have been agreed with Inland Revenue's policy and strategy business unit as being the correct policy outcome.*

120. The Issues Paper proposes a significant change in tax treatment of discounts to that which has been accepted for over 20 years (and which has been supported by a number of binding rulings) without any apparent change in Government policy.

121. The proposed change will result in the Commissioner treating discounts as a non-deductible distribution of profits – like the treatment of a dividend. However treating discounts like a

[25] [1966] AC 244.

dividend will be at odds with the 2009 policy decision and law change that the discounts should not be dividends in the hands of the beneficiaries.

122. Discounts are not dividends as a direct result of an exclusion from the associated persons rules provided in section YB 16 of the Income Tax Act 2007. The discounts are not dividends because in 2009 the Government, advised by officials, took decisive action to ensure that the discounts would not be dividends. This was a fully informed decision. As noted in the Issues Paper, officials said:

> *"We agree that discounts to consumers from electricity lines companies should not be treated as dividends."*

123. The Issues Paper also says that:

> *"The question of the tax treatment of the payer of the discount is a completely separate issue."*

124. We take issue with this statement. The tax treatment of the payer is not a separate issue. Our members engaged with officials in 2009. Our recollection is that officials were focused on ensuring the discounts did not become dividends to the consumers because they were accepted as being a return of lines charges and not a distribution of profits. It is implicit that officials expected lines companies to claim a tax deduction for discounts.

125. If the Commissioner wants to treat discounts as non-deductible profit distributions, then that should be approved by the policy and strategy business unit as being the policy outcome the government desires. Finalising the Issues Paper without the approval of the policy and strategy business unit will create substantial work and uncertainty while the lines companies work through the implications of the Issues Paper with government and policy officials.

11. Timing of application

126. *Our submission: If the finalised Issues Paper results in the Commissioner applying an amended tax treatment to discounts, the application of that treatment should commence at least 12 months after finalisation of the paper.*

127. If the Commissioner amends the tax treatment to discounts, lines companies will require at least 12 months' notice. The increased tax costs of discounts being treated as non-deductible will be unacceptable to lines companies, and they will need time to move to alternative arrangements (moving to net pricing – rather than the current gross pricing less a discount – being just one potential option).

128. Also, lines companies set pricing (and in some cases the level of discount) prior to the start of the year and certainty is needed around the tax treatment for that next year.

12. Publication of the final issues paper

129. *Our submission: Any finalised paper should be published, and most appropriately be in the form of an Interpretation Statement.*

130. The Investigations and Advice Manager, in his letters to individual lines companies which accompanied the Issues Paper, said:

> *"Any final view will not be published but will be adopted as the CIR's position in any dealings with the affected EDBs."*

131. The tax treatment of the discounts is an issue that affects a number of lines companies and approximately 420,000 electricity consumers. There is significant public interest in relation to this matter (and there has already been some publicity).

132. We therefore submit that any finalised paper should be published, and most appropriately be in the form of an Interpretation Statement. We note that an Interpretation Statement would normally be issued for public consultation.

13. Conclusion

133. If you require any clarification of our comments in this submission, please contact us. We also request the opportunity to meet with you to discuss our submission and its impact on the Commissioner's position prior to the Issues Paper being finalised.

134. The ENA's contact person for this submission is Graeme Peters (gpeters@electricity.org.nz or 04 471 1335).

14. Appendix One

Information from financial statements

						Average discount / network revenue	Range of discount / network revenue	Average discount / Net profit before discount and tax	Range of discount / Net profit before discount and tax
Centralines	**2012**	**2013**	**2014**	**2015**	**2016**				
Lines charges revenue	9,912	10,855	11,229	12,260	13,018				
Discount	801	652	999	1,092	1,206				
Net profit before discount and tax	3,449	3,012	2,909	4,487	5,347				
Discount/Net profit before discount and tax	23%	22%	34%	24%	23%			25%	13%
Discount/Lines charges revenue	8%	6%	9%	9%	9%	8%	3%		
Counties Power	**2012**	**2013**	**2014**	**2015**	**2016**				
Lines charges revenue	42,403	44,611	48,372	52,428	63,181				
Discount	9,393	9,377	9,513	9,538	9,605				
Net profit before discount and tax	19,532	20,850	21,234	23,063	26,878				
Discount/Net profit before discount and tax	48%	45%	45%	41%	36%			43%	12%
Discount/Lines charges revenue	22%	21%	20%	18%	15%	19%	7%		
Electra	**2012**	**2013**	**2014**	**2015**	**2016**				
Lines charges revenue	32,325	35,099	36,165	38,554	40,489				
Discount	6,112	6,947	7,628	7,021	7,711				
Net profit before discount and tax	7,260	9,744	7,559	10,429	7,970				
Discount/Net profit before discount and tax	84%	71%	101%	67%	97%			84%	34%
Discount/Lines charges revenue	19%	20%	21%	18%	19%	19%	3%		
Marlborough Lines	**2012**	**2013**	**2014**	**2015**	**2016**				
Lines charges revenue	34,773	37,332	40,400	42,636	53,864				
Discount	8,311	7,135	7,976	8,078	11,545				
Net profit before discount and tax	14,891	19,369	19,049	20,385	24,508				
Discount/Net profit before discount and tax	56%	37%	42%	40%	47%			44%	19%
Discount/Lines charges revenue	24%	19%	20%	19%	21%	21%	5%		
Network Tasman	**2012**	**2013**	**2014**	**2015**	**2016**				
Lines charges revenue	37,812	40,092	42,851	45,712	44,986				
Discount	9,400	9,800	9,900	10,100	10,200				
Net profit before discount and tax	17,236	18,444	19,925	19,722	20,336				
Discount/Net profit before discount and tax	55%	53%	50%	51%	50%			52%	5%
Discount/Lines charges revenue	25%	24%	23%	22%	23%	23%	3%		
Network Waitaki	**2012**	**2013**	**2014**	**2015**	**2016**				
Lines charges revenue	12,487	14,450	14,910	17,957	18,814				
Discount	1,873	2,023	1,676	1,729	1,768				
Net profit before discount and tax	3,406	4,543	5,535	9,616	9,028				
Discount/Net profit before discount and tax	55%	45%	30%	18%	20%			33%	37%
Discount/Lines charges revenue	15%	14%	11%	10%	9%	12%	6%		
Northpower	**2012**	**2013**	**2014**	**2015**	**2016**				
Lines charges revenue	53,206	63,241	64,910	67,535	68,859				
Discount	4,800	4,694	4,676	4,194	4,204				
Net profit before discount and tax	19,774	19,750	26,299	-3,693	17,180				
Discount/Net profit before discount and tax	24%	24%	18%	-114%	24%			23%	6%
Discount/Lines charges revenue	9%	7%	7%	6%	6%	7%	3%		

ScanPower	2012	2013	2014	2015	2016				
Lines charges revenue	6,737	7,521	7,905	8,404	9,119				
Discount	1,336	1,513	1,343	1,075	1,565				
Net profit before discount and tax	3,634	1,713	1,946	2,273	3,773				
Discount/Net profit before discount and tax	37%	88%	69%	47%	41%			57%	52%
Discount/Lines charges revenue	20%	20%	17%	13%	17%	17%	7%		

The Power Company	2012	2013	2014	2015	2016				
Lines charges revenue	28,908	30,110	58,214	60,974	64,117				
Discount	5,850	6,952	6,950	6,900	6,944				
Net profit before discount and tax	16,402	12,186	10,937	-23,083	16,436				
Discount/Net profit before discount and tax	36%	57%	64%	-30%	42%			50%	28%
Discount/Lines charges revenue	20%	23%	12%	11%	11%	15%	12%		

Top Energy	2012	2013	2014	2015	2016				
Lines charges revenue	34,336	41,034	41,622	43,714	46,887				
Discount	5,109	5,073	5,018	5,104	5,122				
Net profit before discount and tax	4,272	13,183	15,246	1,292	6,688				
Discount/Net profit before discount and tax	120%	38%	33%	395%	77%			133%	362%
Discount/Lines charges revenue	15%	12%	12%	12%	11%	12%	4%		

Waipa Networks	2012	2013	2014	2015	2016				
Lines charges revenue	24,310	26,447	27,407	29,465	29,965				
Discount	4,438	4,706	4,319	3,831	4,009				
Net profit before discount and tax	9,164	10,200	10,441	10,690	10,840				
Discount/Net profit before discount and tax	48%	46%	41%	36%	37%			42%	13%
Discount/Lines charges revenue	18%	18%	16%	13%	13%	16%	5%		

WEL Networks	2012	2013	2014	2015	2016				
Lines charges revenue	92,930	101,952	109,115	114,525	117,677				
Discount	18,525	18,943	19,317	18,945	18,590				
Net profit before discount and tax	44,415	45,522	46,599	46,197	48,536				
Discount/Net profit before discount and tax	42%	42%	41%	41%	38%			41%	3%
Discount/Lines charges revenue	20%	19%	18%	17%	16%	18%	4%		

WestPower	2012	2013	2014	2015	2016				
Lines charges revenue	19,465	19,554	19,718	20,489	21,065				
Discount	2,062	997	1,991	1,979	2,961				
Net profit before discount and tax	4,200	6,286	7,350	9,049	8,902				
Discount/Net profit before discount and tax	49%	16%	27%	22%	33%			29%	33%
Discount/Lines charges revenue	11%	5%	10%	10%	14%	10%	9%		

Averages									
Discount/Lines charges revenue	17%	16%	15%	14%	14%	15%	**5%**	50%	47%

15. Appendix Two

Summarised regulatory background

The Commerce Act

135. EDBs are subject to information disclosure and default price-quality path regulatory provisions under the Commerce Act 1986 (the Commerce Act).

136. Default/customised price-quality regulation is a type of regulation under Part 4 of the Commerce Act that applies to 17 EDBs[26]. The remaining 12 EDBs[27] are exempt from default/customised price-quality regulation as they meet the 'consumer-owned' exemption criteria under the Act.

137. Information disclosure is required by all EDBs under subpart 9 of Part 4 of the Commerce Act. One aspect of this is pricing disclosure.

Pricing disclosure

138. Each EDB must publicly disclose, before the start of each disclosure year (the 12 months ending 31 March), a pricing methodology. Some of the lines companies explicitly show the discount they will pay in their pricing disclosure – Counties Power, Marlborough Lines, Network Waitaki, Waipa Networks and WEL Networks Limited.

139. When paying a discretionary discount, the Electricity Distribution Information Disclosure Determination 2012, provides that the EDB must provide sufficient detail that consumers can accurately determine their entitlement.

The definition of discretionary discount

140. The definition of discretionary discount refers to:

> *"expenditure or loss allowed as a deduction under the tax rules in respect of the-*
>
> *(a) sum of all payments made; and*
>
> *(b) value of all credit amounts given,*
>
> *to persons by an EDB in respect of the supply of electricity distribution services owing to those persons' direct or indirect ownership interest in the EDB."*

[26] These companies are: Alpine Energy, Aurora Energy, Centralines, Eastland Network, Electricity Ashburton, Electricity Invercargill, Horizon Energy Distribution, Nelson Electricity, Network Tasman, Orion New Zealand, OtagoNet, Powerco, The Lines Company, Top Energy, Unison Networks, Vector, Wellington Electricity Lines.

[27] These companies are: Buller Electricity, Northpower, Counties Power, Scanpower, Electra, The Power Company, Mainpower New Zealand, Waipa Networks, Marlborough Lines, WEL Networks, Network Waitaki, and Westpower.