

7 December 2020

Adrienne Meikle  
Chief Executive  
Commerce Commission  
44 The Terrace  
WELLINGTON

By email only: [adrienne.meikle@comcom.govt.nz](mailto:adrienne.meikle@comcom.govt.nz)  
cc: Andy Burgess, Dane Gunnell

Dear Adrienne

### **COMMERCE COMMISSION FORMAL PUBLIC CONSULTATION SESSIONS FEEDBACK**

- 1 Thank you for the opportunity to attend the Commerce Commission's (the Commission) recent public consultation and stakeholder meetings across the Otago Region. Aurora Energy staff members were present as observers and we would like to provide feedback on these sessions, particularly considering a desire signalled by the Commission for some form of joint participation in public meetings when the final CPP decision is released. Our feedback is also provided on the assumption that these sessions contribute to decision-making on the Aurora Energy CPP proposal.
- 2 Overall, we did not consider that these sessions achieved their objective of consulting on the detail of the draft decision, but rather served as a forum for further re-prosecuting of historical issues, giving public platform to known antagonists in the debate, and adding heat to a misunderstood topic for those in attendance with little or no clarification of mistruths.
- 3 There are a number of areas for improvement that we have identified and which the Commission should consider in advance of any further consultation on the final CPP decision and, potentially, future regulatory decisions.

#### **General conduct of many participants**

- 4 In the public meeting held in Alexandra on Monday 23<sup>rd</sup> November, the stakeholder session held on Tuesday 24<sup>th</sup> November, the public meeting held in Wanaka on Wednesday 25<sup>th</sup> November, and the Dunedin public session held on 1<sup>st</sup> December we observed unacceptable behaviour from participants. This included the use of foul language, insults levelled directly at individuals, personal comments regarding the effectiveness of the Commission staff and Aurora Energy staff, individuals dominating the discussion and misrepresenting the truth and inappropriate behaviour including scoffing, laughing, and interrupting the presenter and other speakers.
- 5 While we acknowledge that communities are entitled to feel angry, we do not accept that it is appropriate for this kind of unproductive conduct to go unchecked in any forum.

### **A lack of control and active chairing of the sessions**

- 6 We consider that the Commission failed to maintain control of the meetings. Due to the inappropriate behaviour of attendees at the Alexandra public meeting, the Commission was unable to complete its planned presentation and was largely unable to respond to questions. Conversation often drifted from the topic at hand and inappropriate behaviour was left largely unchecked.
- 7 It was evident that the Commission team was unprepared to mediate a meeting characterised by public rage. We consider that the Commission should have engaged an independent professional mediator/facilitator to manage the session in a way that added value and fulfilled the task at hand – consulting on the draft decision.

### **Divergence and failure to consult on the intended topic**

- 8 We observed that, during the consultation, the Commission largely failed to engage on the topic at hand. The sessions lacked structure, there appeared to be no agenda beyond the slide presentation and there were no rules of engagement outlined at any sessions.
- 9 During the Alexandra session, the Commission failed to complete its presentation and the meeting concluded with attendees taking the microphone and grandstanding about historical issues for over one hour.
- 10 We noted that the key themes from all sessions predominantly included; misappropriation of monies, a broken regulatory framework, dividend payment speculation, sale of Aurora Energy, regional pricing, the requirement for a statutory manager to enter Aurora Energy, commentary about incompetence of both parties and trust issues, DCC ownership structure and white collar fraud, related-party concerns, transparency of electricity bills and ongoing affordability concerns; all of which are well known areas of either genuine or perceived/speculative concern.

### **Failure to correct misinformation and refute ongoing allegations**

- 11 It is well established that the community (in attendance at these sessions) has low levels of trust in both Aurora Energy and its owner the DCC. In all sessions, there was continued reference to historical payment of dividends and misappropriation of monies. We believe the Commission has a lead role in dispelling these accusations as the watchdog for this sector. This did not occur; in fact, the lack of trust discussion was repeatedly played back to the attendees from the Commerce Commission staff.

### **Stakeholder meetings and selection of participants**

- 12 We wish to provide feedback on the selection mechanism and rationale for the Commission's stakeholder sessions.
- 13 Attendees at the Alexandra session included a number of unexpected attendees including; Richard Healey (former employee, does not live in the area, does not represent any group), Steve Tilleyshort (former employee, does not represent any group), Rob Douglas (former employee, does not live on the network, does not represent any group). We would like to understand the process the Commission went through to consider and select individuals to attend dedicated stakeholder sessions. We observed that representation at all stakeholder meetings seemed narrow, with the business community and young people under-represented. We understand the challenge presented in recruiting diverse representatives for a topic of this nature. This was the rationale for Aurora Energy taking a deliberative engagement approach with the formation of the Customer Advisory Panel (CAP). We consider this technique was a

success and resulted in productive and representative views from a variety of sectors and groups with a diverse spread of age within this group.

- 14 While we acknowledge that the Commerce Commission has little choice over who attends the public sessions, we note that there were a number of individuals who attended nearly all meetings and in most cases influenced and dominated the discussion into repetitive, historical and narrow focus areas unrelated to the draft decision. On many occasions conversations were steered to topics which were untrue and alarmist, therefore setting the tone for the entire session. Participants who attempted to be productive or positive were promptly shut down by these individuals. On a number of occasions, the Commerce Commission staff were either corrected or their points elaborated on by these individuals which served to further skew much of the conversation.
- 15 We acknowledge that, by the final public meeting in Dunedin, the Commission started taking active steps to maintain a focus on the issues being consulted on, and to ensure all attendees had a reasonable opportunity to express their views; however, this was too late in the process to be truly effective.
- 16 We consider that these sessions missed the opportunity to engage a broad representation of views including small business, large users, community groups, retailers, developers in the region, generators, and young people. As such, the meetings failed to elicit truly representative views.

#### **The Commission did not back its regulatory control framework adequately**

- 17 We consider that the Commission did not back its own regulatory control framework adequately, lost the opportunity to refute the allegations of incompetence levelled against it and to build trust in the price-quality and information disclosure regimes.
- 18 One representative example was the way the Commission responded to concerns about related-party relationships. This was a common concern across all Central Otago public meetings.
- 19 The Commission had the opportunity to describe the rigor with which all electricity distribution businesses are required to demonstrate that transactions with related parties are on arm's-length terms, including the need for independent audit assurance and, in some cases, independent valuation reports. Instead, the Commission confined itself to stating that it considered Aurora should move to a more contestable basis over time; a statement that did not give stakeholders much comfort that the Commission had control of the issue.

#### **The value of the public and stakeholder meetings needs to be reviewed**

- 20 We understand that the cost of the Commission's public and stakeholder meetings will ultimately be borne by consumers, through recovery of the Commission's CPP assessment fee, currently estimated to be \$1.5 million.
- 21 In light of the concerns and feedback that we have provided above, we consider that it is incumbent on the Commission to review the value it believes has been derived from the meetings. The impost on consumers is not insignificant.
- 22 To illustrate this, the Commission's assessment fee for Powerco's 2017 CPP proposal was \$1.122 million. Setting aside the much higher per ICP cost of Aurora's CPP assessment, owing to scale effects, Aurora's additional assessment cost of \$378 thousand represents approximately \$4.15 per consumer.

## Summary

- 23 We thank the Commission again for the invitation to attend the Public and Stakeholder meetings. We acknowledge that the Commission's consultation approach represents a growth and evolution of its engagement practices when compared to previous regulatory decisions.
- 24 We trust that the provision of this feedback is useful and will allow the Commission to consider adjustments to its consultation approach, to allow more productive and meaningful sessions to be hosted in the future.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sian Sutton', with a long horizontal flourish extending to the right.

**Sian Sutton**

GM Customer and Engagement Aurora Energy