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Matthew Clark  
Manager, Price-Quality Regulation  
Commerce Commission  
PO Box 2351  
Wellington

MATTER NO:1437.1  
OUR CONTACT: Stephen Franks

By email: [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)

## **DETERMINATION ON GAS IM AMENDMENTS**

1. We have instructions from members of the Major Gas Users' Group to prepare to appeal under s 52Z of the Commerce Act if the IM amendments are determined along the lines last indicated by the Commission. As you know s 52ZA(2) requires that the appeal be "conducted solely on the basis of the documentary information and views that were before the Commission when it made its determination".
2. This letter is to notify the Commission that we consider the Emissions Reduction Plan released by the Government this week to be such material. It clearly envisages natural gas remaining an important industrial fuel and feedstock beyond 2035 and out to 2050. The ERP announcement appears to render unreliable, wrong or misleading some of the Commission's assumptions and justifications for a proposed accelerated depreciation regime, and the Commission's reasoning in support of urgency for the amendments. It shows that the amendment determination would be premature, if made on your planned time-table.
3. We respectfully suggest that at the least the Commission should pause and consult further, if it does not abandon the elements of the proposed determination which rely on reasoning from premises which have become untenable. In this we endorse the recommendation of former Commissioner Patrick Duignan. We consider that the targets and plans announced in the ERP are so significant to the Commission's reasoning and the views and information before the Commission before release of the ERP, that without another round of consultation the Commission will not have satisfied the requirements of s 52V, a matter that could require testing under s 91(1B).
4. The ERP shows government recognition that phasing out fossil gas presents short-term and long-term challenges. In particular:
  - a) the 100% renewable electricity target emphasized by the Commission has been recast as 'aspirational' in the context of security, affordability and resilience of the system.
  - b) A new target for the total energy system (which includes natural gas). The target is to have 50% of total final energy consumption from renewable sources by 2035.
  - c) the development of a Gas Transition Plan (GTP), which will be a key input into the National Energy Strategy. The GTP is due by end of 2023.

- d) The GTP is also expected to establish a strategic view on the potential role for renewable gases, including potential measures for accelerating their uptake, and for carbon capture and utilisation technology.
  - e) The GTP's terms of reference include developing "high-level projections of emissions from fossil gas use out to 2035 and beyond, with a view to the longer-term trends out to 2050."
5. Notably the ERP reveals that the Government has not adopted the CCC recommendation to ban new gas connections. The expectations signalled by the ERP are materially different from those the Commission appears to have relied on to conclude that it should allow suppliers to anticipate early stranding, and urgently to start recompensing themselves.
  6. It is courteous to advise that before the release of the ERP we had formed the view that the Commission's proposed amendments would not "promote outcomes that are consistent with outcomes produced in competitive markets". In particular, assuring suppliers of FCM for stranded assets, is not such an outcome. In competitive markets stranded assets are effectively "marked to market" in real time, and the owner is likely to derive only risk related returns on the reduced value of the assets from time to time.
  7. It appears to us that the Commission has, since 2016, elevated FCM from a convenient encapsulation of a useful analytical tool into a "principle" that events have now shown to be sometimes at odds with the statutory purposes. We think that the Commission may have overlooked published warnings from its own expert, about conditions in which FCM would not be an appropriate objective.
  8. The certainty the Commission is obliged to promote under s 52R is as to "rules, requirements and processes". It seems to us that FCM has been cited to advance instead a certainty of outcome for suppliers that is not available in competitive markets, and that is not necessary or desirable in a market regulated to limit monopoly profits.
  9. In relation to s 52A(1)(d) the proposed accelerated depreciation would result in assured, not limited, excessive supplier profits, at the expense of a current generation of consumers.
  10. We would be happy to discuss with you arrangements to ensure speedy further consultation, and endorse the suggestion that it be by way of workshop.

Yours faithfully  
**FRANKS OGILVIE**



**Stephen Franks**  
Director  
[stephen.franks@franksogilvie.co.nz](mailto:stephen.franks@franksogilvie.co.nz)  
Direct Dial: +64 4 815 8033  
Mobile: + 64 27 4921983

