13/03/2014

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By email: regulation.branch@comcom.govt.nz

Dear Brett,

Consultation on whether the Commission should review the cost of capital input methodologies

Thank you for the opportunity to comment on the paper *"invitation to have your say on whether the Commerce Commission should review or amend the cost of capital input methodologies"*, published 20 February 2014.

Unison has contributed to the development of the Electricity Networks Association's submission and endorses the points made. In particular, Unison emphasizes that:

1. It would undermine confidence in the Part 4 regime if the Commission were to undertake a narrow review of the choice of WACC percentile absent a broader consideration of other issues the High Court identified and the inter-dependencies of the choice of WACC percentile and other key input methodologies. As the ENA submission states, risk and return are inextricably linked and it would be of significant concern to investors for the Commission to examine only a narrow aspect impacting on EDB's long-term financial performance and risk positions;

2. In making its comments, the High Court did not take into account that setting a WACC at the higher end of calculated ranges is a typical regulatory practice, so it is unlikely that a review would find that the Commission should depart from use of the 75th percentile or would not lead to the Commission adopting an alternative methodology that leads to substantively the same outcome; and

3. The Commission should therefore undertake the WACC IM review at the seven year review point as set out in the Part 4 legislation, thereby allowing for a comprehensive consideration of evidence in a robust process. Given the requirement for the Commission to undertake the DPP reset and Transpower IPP resets over the course of 2014, attempting to undertake a parallel WACC IM review would be highly likely to severely compromise both those reset processes and the quality and robustness of a WACC IM review.

One point not addressed in ENA's submission is possible consideration of MEUG's suggested split-WACC proposal, where different WACCs could apply to investments made at different points in time, with a higher rate applying to new investments in order to incentivise investment. Unison submits that such a proposal should be strongly rejected by the Commission on the basis that it would signal to investors a strong potential for regulatory opportunism, in that once an investment has become sunk, there is a risk (or even certainty depending on how the approach is implemented) that a lower return will apply. Over the last decade, the Commission has consistently adopted the 75th percentile in its regulatory decision-making, so to move to lower the WACC on past investments at what would be ultimately an arbitrary date would be highly damaging to investor perceptions.

In closing, Unison submits that the long-term interests of consumers are best served where there is investor certainty and confidence in the development of the Part 4 regime. We submit such confidence would be enhanced by the Commission determining that the WACC IM should be reviewed in a comprehensive, robust and considered process at the scheduled seven year timeframe set out in the legislation. Consumers' long-term interests are unlikely to be promoted by a rushed or narrow IM review.

Yours sincerely

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