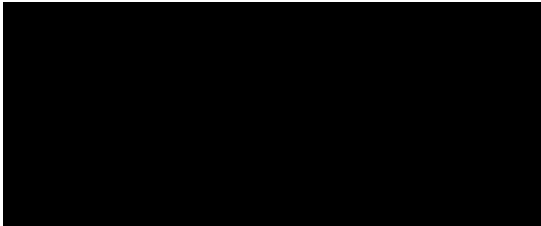


19 December 2023



### **Official Information Act #23.120 – Response**

1. We refer to your request received on 22 November 2023 for information about Mercury Energy Limited (Mercury). You would like to know if the Commerce Commission (the Commission) has received any complaints about Mercury overcharging customers.
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).

### **Our response**

3. The Commission received 47 complaints about Mercury in the period 22 November 2022 to 22 November 2023. Ten of these complaints relate to customers' being overcharged.<sup>1</sup>
4. We have provided a summary of the ten complaints and the outcomes in **Appendix A** below.
5. All complaints or enquiries received by the Commission are entered into our database by reference to the name of the relevant trader. We have identified that complaints received about Mercury are entered against the trader's name "Mercury", "Mercury Energy" and "Mercury Energy Limited".
6. The Commission has decided to take no further action in relation to the ten complaints referenced above, at this time. There are a number of reasons why the Commission may decide not to take any further action in relation to a complaint.

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<sup>1</sup> Complainants alleged they are being overcharged due to Mercury not reading meters and estimating their usage instead.

7. To provide context to how the complaints were assessed, we have outlined the Commission's screening process below.

*Commerce Commission's complaint process*

8. All complaints received by the Commission are logged in our database and assessed by our Screening and Analysis Team on the basis of the information available at the time. When conducting this initial assessment, the Screening and Enquiries Team considers:
  - 8.1 the likelihood of a breach of the relevant legislation (the Fair Trading Act 1986, Credit Contracts and Consumer Finance 2003, and the Commerce Act 1986);
  - 8.2 the Commission's Enforcement Response Guidelines;<sup>2</sup> and
  - 8.3 the Commission's strategic priorities and resourcing constraints.
9. The Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
10. If a complaint is appropriate for further consideration, it is reviewed by a panel of managers and subject matter experts from within the Competition, Fair Trading and Credit Branches. The panel decides which complaints are to be prioritised for further assessment by the Branch with reference to our Enforcement Response Model.<sup>3</sup>
11. This process enables us to identify complaints that best reflect our current enforcement priorities.<sup>4</sup> The outcomes of the process are not final and we may revisit any complaint at a later stage, should we wish to reconsider the issues it presents.
12. It is important to consider complaint numbers in the following context:
  - 12.1 Complaints data on its own cannot paint a complete picture of compliance with the law. The fact that a complaint has been received does not necessarily mean that a trader has done anything wrong, or any harm has been caused to any consumer or competitor. Some complaints will not be investigated by the Commission because they are unfounded or outside our jurisdiction, and some complaints that are investigated will not proceed to further action.

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<sup>2</sup> Available at: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

<sup>3</sup> Our Enforcement Response Model is discussed in more detail from page 3 of the Commission's Enforcement Response Guidelines, available here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf).

<sup>4</sup> For further information, see: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-criteria/>

- 12.2 The complaints data only reflects what consumers have chosen to report to the Commission or to other organisations that have, in turn, provided information to the Commission. Some complaints on the same matter are likely to have reached other complaint bodies instead of the Commission.
- 12.3 Larger traders are likely to generate more complaints as a function of their scale; we have not adjusted for this.
- 12.4 Complaint volumes for a trader can be about a single matter or multiple matters. Some matters that attract a high level of publicity can generate a large volume of complaints.

**Further information**

- 13. Please note the Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
- 14. Please do not hesitate to contact us at [oja@comcom.govt.nz](mailto:oja@comcom.govt.nz) if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator

| Appendix A     |               |  |                                      |
|----------------|---------------|--|--------------------------------------|
| Enquiry number | Date received | Complaint  | Outcome                              |
| ENQ0573553     | 31/12/2022    | Complainant alleges trader is misleading customers about their policies as stated on the website. Complainant claims that they are unable to enter their own meter reading as advertised on the website, and that is misleading. Complainant concerned that they have been overcharged and noticed some accounting errors on their account.                    | No Further Action (NFA) <sup>5</sup> |
| ENQ0577522     | 02/04/2023    | Complainant alleges information on trader's website is misleading and there have been significant increases in price. Complainant is unable to enter own meter reading although trader claims it is possible. Trader is not responding to complaints made by complainant.  | NFA                                  |
| ENQ0577988     | 13/04/2023    | Complainant alleges trader overcharged following Cyclone Gabrielle. Complainant is concerned trader charged for power when they had no power, and the estimates were based on the higher daily usage. Complainant contacted trader about this but has had no response.   | NFA                                  |
| ENQ0581117     | 27/06/2023    | Complainant concerned about paying for a series of incorrectly issued power bills from trader. Complainant alleges trader installed the meter reading at an incorrect address and power supply has been cut off without any notice. Complainant contacted trader about this issue and trader advised it will look into this matter but no response since then. | NFA                                  |
| ENQ0581276     | 01/07/2023    | Complainant alleges trader has charged higher prices since it took over Trustpower's retail business. Complainant claims the trader's calculation of power use is questionable.  | NFA                                  |
| ENQ0581603     | 10/07/2023    | Complainant alleges trader is not reading the meter.   | NFA                                  |

<sup>5</sup> The Commission may decide not to take further action in relation to a complaint for a number of reasons. These reasons include, but are not limited to, circumstances where we consider the complaint is better suited to private action by the complainant, the complaint is subject to the jurisdiction of another agency, or where there is no clear breach of the law. However, each complaint and enquiry provides information that is valuable to the Commission. This contributes to future priorities, potential issues for us to watch closely or emerging issues to refer to our policy agency, MBIE. In this regard, we will monitor complaints information we receive as we look to future prioritisation.

| <b>Appendix A</b>     |                      |  |                |
|-----------------------|----------------------|--|----------------|
| <b>Enquiry number</b> | <b>Date received</b> | <b>Complaint</b>   | <b>Outcome</b> |
| ENQ0582383            | 27/07/2023           | Complainant concerned about the gas bills generated by trader. Complainant alleges that trader has never read the gas meter and complainant claims that trader has overcharged for gas. Complainant has contacted trader but is still receiving the incorrect bill. Complainant believes that there is inconsistent gas billing from trader. | NFA            |
| ENQ0585880            | 10/10/2023           | Complainant alleges trader overcharged on gas bill. Complainant claims that the gas valve was turned off when they were out of the country, and they should not be charged for that billing period, only the daily fixed charge for gas and electricity.   | NFA            |
| ENQ0586737            | 31/10/2023           | Complainant alleges trader is being misleading when it comes to meter readings. Complainant claims that they are unable to enter their own meter reading as promised by trader when signing up to trader's service.  | NFA            |
| ENQ0587792            | 22/11/2023           | Complainant alleges trader did not read the meter properly. As a result, they have been overcharged \$800 by trader. Complainant contacted trader about this issue but has not received a response.  | NFA            |