



MAJOR ELECTRICITY USERS' GROUP

1 September 2006

Hon Lianne Dalziel
Minister of Commerce
Parliament
WELLINGTON

Hon David Parker
Minister of Energy
Parliament
WELLINGTON

Dear Ministers

Concern regarding s.26 statement on Infrastructure Investment

The Executive Committee of the Major Electricity Users' Group (MEUG) has serious concerns with the issuance of the Section 26 statement by Government to the Commerce Commission pursuant to the Commerce Act (the "s.26 statement") titled "Incentives of regulated businesses to invest in infrastructure." The Committee requested that I write to Government expressing concern at the rationale for the s.26 statement; the robustness of the analysis and advice (from stakeholders and officials) on which Cabinet considered that a statement was necessary and the timing and purpose of the statement.

The Cabinet paper proposing the s.26 statement notes (paragraph 7), "As a separate but related issue, concerns have been expressed by Transpower and line companies that the current "thresholds" regime under Part 4A of the Commerce Act does not provide sufficient incentives to invest in new lines and other infrastructure. While the case is not proven, the Minister of Commerce and I consider that it would be worthwhile issuing a s.26 statement of government policy to the CC emphasising the importance of maintaining incentives to invest in infrastructure."

Later at paragraph 59 the paper states, "Officials have advised me that they are not aware of specific instances where lines companies have decided not to make needed investments (and outage rates on lines appear to be improving, not worsening)."

Despite the Cabinet paper recognising the case for a specific s.26 directive to the Commerce Commission lacked substance, Cabinet decided to proceed anyway. The fact, as stated in the paper, that an important driver for the issue becoming a Cabinet agenda item was concern expressed by Transpower and electricity line monopolies, also worried MEUG members. As far as we are aware no attempt was made to obtain the countervailing view of consumers that have long suffered the cost of excess profiteering and poor customer service from these monopolies.

The subsequent threat by Vector not to invest in response to the Commerce Commission issuing a consultation paper on an Intention to Control their electricity line business reinforced our view that some electricity monopolies still view "playing the person" or "changing the rules in their favour" rather than "playing by the rules" as the way to do business. That government so easily accepted the lobbying of these monopolies has created uncertainty within the business community as to what other policies government might change on the basis of special interest lobbying.

MEUG members and other large industrial and commercial enterprises make large investment decisions every day that in aggregate would have a value of several multiples that of electricity monopoly infrastructure investment. We face a very uncertain business environment compared to that which electricity monopolies face. We don't want to also have regulatory uncertainty. Paragraph 7 a. of the s.26 statement mentions regulatory transparency as an important factor for infrastructure businesses making long-term investments. We also want regulatory transparency such as when Cabinet is considering a s.26 statement that could be perceived to tilt the playing field in favour of monopolies.

Most of the substance of the s.26 statement aligns with the requirements of the Commission with respect to Part 4A of the Commerce Act already. MEUG has no view on the impact of the s.26 statement on other infrastructure industries.

The specific economic policy objectives in paragraphs 7 and 8 of the statement, in the view of MEUG, reinforce existing objectives of Part 4A of the Commerce Act. Some of the drafting of the introduction and background paragraphs are unclear. First, the reference to "affordable energy services" (paragraph 2) is a new term not previously seen in either Part 4A or the Government Policy Statement to the Electricity Commission. This isn't helpful but fortunately it's only in the introductory and background paragraphs.

Second, the overarching objective for infrastructure (paragraph 2) refers to, "reducing the incidence and severity of service failures." MEUG note that in some cases consumers may choose to have less service quality over time as a trade-off for lower prices than might otherwise be the case. The latter point is picked up in paragraph 8 c. of the statement, "regulated businesses provide infrastructure at the quality required by consumers at an efficient price." The overarching objective might need to be changed to cover this possibility.

Consistent with the MEUG general approach of no surprises to other members of the industry, copies of this letter have been forwarded to the Commerce Commission, Electricity Commission, Transpower, Electricity Networks Association and generators for their information.

Yours sincerely



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Executive Director

Copy: Ms Paula Rebstock, Chair Commerce Commission
Mr Roy Hemmingway, Chair Electricity Commission
Dr Ralph Craven, Transpower
Mr Alan Jenkins, ENA
Generator CEO Forum members and Todd Energy