

14 August 2018

Matthew Lewer  
Manager, Regulation Development  
Commerce Commission  
PO Box 2351  
WELLINGTON

Sent via email: regulation.branch@comcom.govt.nz

Dear Matthew

## Cross submission to feedback on recent CPP processes

This is First Gas' cross submission on the Commerce Commission's open letter (the open letter) dated 3 July 2018 seeking feedback on recent customised price-quality path (CPP) processes.

This cross-submission focuses on two areas raised in submissions:

- The principle of proportionate scrutiny is not sufficiently defined
- Early engagement with stakeholders is useful.

### **The principle of proportionate scrutiny is not sufficiently defined**

The principle of proportionate scrutiny was introduced in the 2016 input methodologies review. The application of this principle should ensure that sufficient scrutiny is applied where it is warranted, while minimising costs to suppliers and ultimately consumers in scrutinising information unnecessarily. All submissions on this point considered that the principle is not sufficiently well defined to provide regulated suppliers and stakeholders with certainty on how it works in any particular case.

#### Further guidance is recommended

A consistent theme in the submissions is that suppliers and stakeholders would welcome further clarity of when and how the Commission will apply proportionate scrutiny.

As noted by Wellington Electricity, that Commission retains significant discretion in whether and how it applies proportionate scrutiny. To date there has not been sufficient application of proportionate scrutiny to customised price path applications to form a basis for guidance.

While there have not been sufficient examples of the application of proportionate scrutiny to form a basis of guidance, there is the potential for suppliers, stakeholders and the Commission to have a different view of what this principle means in practice.

Regulated businesses have submitted that further direction<sup>1</sup> would be helpful to ensure that the broad principle does not deter CPP applications, while customers seem to think that it should be explicitly addressed on a case by case basis.

#### Consultation could provide certainty while retaining flexibility

While we agree that the Commission should not be fettered in its discretion in assessing a CPP, we consider the suggestion from submitters<sup>2</sup> that the level of scrutiny could be determined through consultation with customers as being a pragmatic way forward.

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<sup>1</sup> Section 11 Aurora Energy submission to the *Commerce Commissions open letter requesting feedback on recent customised price-quality path processes*, Aurora Energy, 31 July 2018 and Page 2 ENA submission to the *Commerce Commissions open letter requesting feedback on recent customised price-quality path processes*, ENA, 31 July 2018

<sup>2</sup> Page 3 Fonterra Co-operative Group submission to the *Commerce Commissions open letter requesting feedback on recent customised price-quality path processes*, Fonterra Co-operative Group, 31 July 2018 and Page 3 Major Gas Users Group submission to the *Commerce Commissions open letter requesting feedback on recent customised price-quality path processes*, Major Gas Users Group, 31 July 2018.

It is likely that every CPP application will be different in its scope and scale. Customers will ultimately be expected to benefit from any expenditure approved and will ultimately pay for those benefits. It seems appropriate that customers and other stakeholders should have the opportunity to inform the Commission's views about how proportionate scrutiny should be applied, and the Commission should be guided by those views.

We support the suggestion put forward by MGUG for our White Cliffs realignment project that appropriate consultation would help to ensure an appropriate balance between providing certainty and retaining flexibility in the process of scrutiny. Early consultation on the appropriate what proportionate scrutiny means for our business would have the added advantage of making the process transparent and indicating the Commission's views of how the principle of proportionate scrutiny could be applied.

**Early engagement with stakeholders is useful**

Various submissions have commented on early consultation and engagement with stakeholders is useful. We consider this to be part of our normal operation for major projects.

We were pleased to see MGUG's view that our consumer consultation to date has been meaningful<sup>3</sup>. We see our engagement with MGUG over major projects such as White Cliffs as essential to ensuring a common understanding of what is involved, likely project timing and any potential delays.

As this project develops we will endeavour to keep our major stakeholders informed as our understanding of risk, project plans, and regulatory engagement progresses.

**Contact person**

If you have any questions regarding this submission, please contact me on 04 979 5368 or via email at [Karen.Collins@firstgas.co.nz](mailto:Karen.Collins@firstgas.co.nz).

Yours sincerely



**Karen Collins**  
Regulatory Manager

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<sup>3</sup> Page 3 of the Major Gas Users submission.