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By upload to this link

Review of the Commerce Commission's funding for the regulation of electricity and gas networks under Part 4 of the Commerce Act 1986

Dear Commerce Commission

Thank you for the opportunity to provide feedback on your funding of the regulation of electricity and gas networks.

ENA's interest is solely in the electricity-related aspects of the discussion paper.

The Electricity Networks Association (ENA) is the industry membership body that represents the 29 local electricity distribution businesses (lines companies) that take power from the national grid and deliver it to homes and businesses.

The ENA harnesses the collective expertise of members to promote safe, reliable and affordable power for our members' customers.

ENA's primary role is to guide the development of policy for the electricity distribution sector, to engage with government agencies on the sector's behalf and to co-ordinate communications and other activities for the benefit of members and their local communities.

Question 1: Do you have feedback on the purpose and objective of this paper?

ENA notes the Commission's statement that its appropriations were reviewed last in 2013. According to official data, general prices have risen 11 percent since the first quarter of 2013, and wage inflation by 24 percent. Given that the Commission is responsible for enforcing the Fair Trading and Commerce Acts, ENA accepts the certainty that the Commission is facing cost pressures and does require more funding from July 2021.

However, the Commission is asking for substantially more than a 11-24 percent increase. For electricity, it is seeking $9 million a year, compared to $5.6 million in the current appropriation. This is a 60 percent increase.

The Commission notes its operating costs have risen and so it needs substantially more resourcing due to "increased workload and expectations for our role…". It later offers a helpful and partially illuminating summary of its increased workload and expectations.

While ENA accepts that the Commission might have an increased workload, it has no visibility of the cost of resourcing this workload. As with all the commission's external stakeholders, ENA is in the dark about the regulator's capability requirements, its staff management practices and remuneration, efficiency, and allocation of and monitoring of its resources. Bluntly, we have no idea if 41 FTEs are required for resourcing Part 4, plus a further 13.5 FTEs for the two-year review of input methodologies. Over a five-year regulatory cycle this equates to 232 person-years to deliver its functions, which seems like a very substantial resource commitment, especially when considering there is an existing platform of DPP resets, input methodologies and disclosure requirements. A detailed understanding of the Commission's internal operations might show such a commitment is appropriate.

Absent this understanding, ENA cannot comment on whether the commission has an increased workload or expectation which requires more funds, or a workload that can instead be managed by improved prioritisation of existing resources and greater efficiencies through productivity gains and technology adoption.

Only the Ministry of Business, Innovation and Employment, as the adviser to the Minister of Commerce and Consumer Affairs, has the power to thoroughly examine the Commission's resource requirements and efficiency in the context of assessing whether the Commission requires more money from consumers. Given the extent of the budget increase request, we think that MBIE should be requesting details of how new roles and work plans enable an appropriately-sized capability to discharge the Commission's statutory role. These should be subject to a 'Senior Management' or 'Board' challenge-type process to ensure value for money for consumers, who will ultimately pay the bill.

To bolster confidence, the Commission illuminates the fine details of electricity distribution businesses through information disclosure, auditing, director assurances, and external reviews. In future, the same light should be shone on the Commission – an external review of its capability-needs assessment, resourcing requirements, prioritisation, and staff time-management practices. The independent review would be carried out by an external party and published with the discussion document. This would give stakeholders more confidence as to the reasonableness of the Commission's request.

In summary, ENA accepts that operating costs have risen since 2013, and notes the Commission's comment about increased workload, but ENA has no visibility on the resourcing required to carry out this workload and the subsequent funding requirement. As the minister's adviser, MBIE should have the most influence on funds allocated to the Commission, and whether its priorities are consistent with its statutory mandate and oversight of the sector. To give greater confidence to external stakeholders, an external independent review should in future accompany the Commission's needs discussion document.

Question 2: Please provide feedback whether you agree with how we have characterised the operating context of our work – in terms of a regulatory regime with increased expectations – in relation to our regulation of electricity and gas networks.

We agree that the energy sector must recognise that energy trilemma issues such as climate change are at the forefront of economic challenges at this time (excluding the pandemic), and the Commission's role must adapt to the range of consumer, environmental, and technology issues.

As mentioned above, ENA accepts that the commission's funding has not been reviewed for a significant time, and that energy matters require more immediate attention than several years ago.

That said, most divisions of larger organisations would say they are busy and resource constrained. All organisations operate with finite resources and therefore must prioritise their work programmes. If an entity wants to do more with existing resources, it must simultaneously make difficult decisions to do less. Government departments and regulators also make these decisions. Adding work should be accompanied by reducing work in other areas. This is not stated anywhere in the discussion paper.

As such, the discussion paper gives the impression that the Commission wants to do more (data gathering, summary and analysis, and compliance activity) and start new work (consumer engagement, efficiency benchmarking). This accretive approach is not realistic for any entity, including regulators.

While ENA supports the Commission's request for more funding, it would have preferred the discussion paper to include a balanced view on work and expectations, and a work programme consistent with the narrative on sector transformation.

Finally, we would like to highlight the bullet 32.2 about "engaging effectively with all regulated businesses and wider stakeholders so that we, and they, can plan".

ENA has noticed a reduction in the Commission's outreach engagement in recent times. Given that the Commission is currently spending $7.7 million a year on electricity-related work, ENA does not consider the Commission's other priorities such as the fiber IMs and the Aurora CPP warrant a reduction in regular contact with Commissioners and senior leadership. This is particularly important as the ENA ramps up its preparation for a review of information disclosure, and proactively looks forward to early engagement on quality-of-service.

Question 3: Please provide feedback on whether you agree with how we have characterised the changing energy landscape in relation to electricity and gas networks. Are there other sector factors that you think are important?

We agree that the energy landscape is becoming more dynamic and the Commission will need to ensure that it has the capability of developing regulatory arrangements that support EDBs to respond effectively to change. Of particular importance is the Commission's ability to access expertise from within the sector and have the capability of engaging effectively with the supply chain, other regulators and policymakers.

We would emphasise that EDBs face the same increasing expectations that the Commission has outlined, including managing the transition to the new energy future, and dealing with associated changes in regulation.

Question 4: Please provide feedback on how we have characterised our approach to delivering consumer outcomes in electricity and gas networks and our focus on 'bridging the gap'. Are there

other outcomes you would expect to see with the additional funding we are seeking in the consultation document?

ENA strongly supports your clause 62, which says that the Minister of Commerce and Consumer Affairs expects that the Commission “maintain strong and trusted relationships with the diverse range of stakeholders with interests in the sectors regulated under Part 4…” . We agree there needs to be a strong focus on stakeholders – with organisations such as ENA providing a time-efficient way to gather feedback to the commission on its various proposals.

We would emphasis that ENA puts considerable effort into preparing submissions for the Commission, including the 2019 work on the DPP reset.

Given their large amount of collective effort, members were mostly disappointed with the Commission’s mostly status quo approach to significant matters raised during the DPP reset. The lack of progress and modernisation of the third regulatory period puts limits on the extent to which EDBs can fully embrace the remainder of the DPP period and meet the dynamic challenges needed for the sector to deliver on the energy trilemma. We believe the absence of any meaningful reform has put pressure on the relationship with the Commission. ENA is keen to rebuild the closer level of engagement it has had in the past.

Question 5: Please provide feedback on the workplan for ‘bridging the gap’ outlined above in relation to electricity and gas networks. Are there other elements of the workplan that should be included?

ENA mostly agrees with your assessment. However, it challenges the Commission to back its statement that it is not confident the majority of electricity distributors “have a sound understanding of the condition and criticality of their assets”.

The Commission’s recent report on lines company trends was couched differently. It said that annual lines charges have increased, and the key driver was local lines companies “investing in their networks to support growth and replace ageing assets”. One of the headlines in the report says: “Local lines companies have been investing to ensure healthy assets”. The report also mentions little change in reliability.

Getting the facts correct in all public material, as no doubt is the purpose of the summary and analysis, is important so as not to create uncertainty or undermine positive asset management that is happening in practice.

Question 6: Please provide feedback on the workplan for ‘bridging the gap’ outlined above in relation to the IM review. Are there other elements of the workplan that should be included? Do you agree that the ‘bridging the gap’ scenario for the IM review is more appropriate than ‘bridging the gap+’?

No comment

Question 7: Please provide feedback on whether you think the additional funding we are seeking for our work in relation to electricity and gas networks is appropriate. If you think a different level of funding is warranted, please explain why.

ENA supports greater funding for the Commission's regulatory activities. While we are acknowledge that operating costs have risen since 2013, we are unclear on how much extra money the Commission requires to deliver its statutory functions under Part 4. More importantly, the discussion paper contains little insight into how much of the funding proposal will be used to develop modern regulation for a dynamic sector.

Anecdotally, we note our day-to-day engagement with the Commission has been less than ideal. Our experience of the Commission over the past few years includes:

1. persistent delays in the publication of an enforcement guideline (especially in relation to non-price enforcement), which the Commission agrees is important and necessary, and has a strong connection to insights into asset condition and criticality;

2. lack of timely responses to interpretation queries (some taking more than three months); and

3. lengthy delays in commencement and completion of breach investigations.

This suggests the Commission's resources are stretched in terms of current capacity or capability, but we reiterate our view that only MBIE is appropriately placed to assess the Commission's existing capability and that required to meet its future workload and expectations.

ENA and possibly other external stakeholders would support an external, review of the Commission's capability and capacity to carry out its work programme, and the costs of doing so.

High-quality regulation and regulatory decisions are important not just to our member's businesses, but to the quality of the sector overall. Accordingly, we are appreciative that the Commission is focused on ensuring that it has sufficient resources to address the Part 4 requirements, particularly, as the energy landscape is changing at pace.

Graeme Peters
Chief Executive

Electricity Networks Association