

7 May 2014

File No: P13

Regulatory Institutions and Practices Inquiry
New Zealand Productivity Commission
PO Box 8036
The Terrace
WELLINGTON 6143

Via email: info@productivity.govt.nz

Dear Sir or Madam

Regulatory Institutions and Practices Draft Report March 2014

Thank you for providing Mighty River Power Limited ('Mighty River Power' or 'the Company') with the opportunity to submit on the above regulatory institutions and practices draft report ('the draft report').

Mighty River Power is a publicly listed company on the New Zealand Stock Exchange and is in the business of generating and retailing electricity. As a result, Mighty River Power is involved with a number of different regulatory authorities ranging from territorial authorities to Crown entities such as the Electricity Authority.

We commend the Productivity Commission for producing a comprehensive and clear report. The recommendations contained in the report are sound. In particular we support increased participation and oversight of regulatory process and decision making from appropriate central government departments such as the State Services Commission and the Treasury.

In addition, the draft report picks up on a number of points that Mighty River Power raised in its initial submission to the inquiry into regulatory institutions and practices. We support the recommendations made by the Productivity Commission in response to these submission points.

Mighty River Power does wish to provide comment on the following issues dealt with in the draft report.

Role clarity

It is important that organisations subject to regulation know exactly what they can and cannot be regulated for and why this regulation is occurring. In addition, having transparency in the regulation process over the information required and the processes to be adhered will aid in ensuring accurate and timely information is collected.

Clarity in the roles of regulators will help consistency to be achieved across the different regulatory regimes in use. In addition, Mighty River Power supports the

statement made in the draft report¹ that a clear mandate can help promote accountability, compliance, focus, legitimacy and predictability in regulatory regimes. In turn, the presence of these elements will enable the organisations being regulated and the general public to understand what is being done and why.

Transparency plays an important part in defining the role clarity of a regulator. Regulators need to operate in an open manner so that the rationale for action is apparent.

At present, the electricity sector is regulated by a number of government entities with the potential to impose costs – directly or indirectly – on the organisations being regulated. Ensuring that the various regulatory regimes being applied in New Zealand are open and transparent will help reduce any duplication and inconsistencies from occurring.

Clear communication regarding role clarity will assist in defining where responsibility for tasks sits. Role clarity will further occur through regulators being required to comply with the following:

- **Reporting** – if a regulator is required to report their activities and outcomes, then it is easier for the public to evaluate the regulators performance and achievement. .
- **Monitoring** – if a regulator is monitored regularly by an independent third party then it will be become apparent if appropriate process is being observed or the regulator is achieving the desired outcomes.

Decision review

It is important to ensure that the ability to review decisions made by regulators is in place and is clear and easy to access and follow. At present the following appeal processes are available:

- Courts – judicial review and appeal of decision.
- Tribunals – appeal of decision.
- Regulations Review Committee.
- Legislation Advisory Committee.
- Ombudsmen.

These decision review processes have created legitimate expectations amongst the organisations being regulated that any regulation applied will be transparent and applied in a fair manner. In addition, these existing review processes have created expectations of regulator process and outcomes. These expectations need to be clearly managed so that a regulator is not allocated unrealistic or irrelevant functions that are outside of their mandate.

The role that the Courts and Tribunals play in overseeing decisions and decision-making processes should not be underestimated. The involvement of the Courts and Tribunals as reviewers of decisions and the processes followed help to ensure that

the principles of natural justice are adhered to. That is, that the decisions being made are reasonable, have an element of fairness to them and do not impinge on the rights of other parties and/or organisations.

In addition, the decision review processes provide outside parties with the means of testing the 'reasonableness' of a regulator and/or decision-maker. This is important to maintain and to ensure that the processes are available across a number of regimes and applied in a consistent manner.

The existing review processes have been created within defined legal regimes and have been shown over time to be legally sound. This helps regulators to ensure that they act within the legal constraints defined by the regime and regulations.

Any amendments to the existing decision review process, particularly around the appeals and judicial review processes, need to be consistent with any upcoming Resource Management Act 1991 ('RMA') reforms which have been mooted by Parliament as being on the cards. Mighty River Power would be concerned if the outcome of this report and the forthcoming RMA reforms resulted in two different decision review processes being in force. This would create additional costs in both resources and finances for the Company in adhering to both its regulatory and resource management obligations.

Please contact me directly on (07) 857 0150 or via email on jo-anne.cook-munro@mightyriver.co.nz if you have any questions on the comments made above.

Yours faithfully

A handwritten signature in black ink that reads "Jo-Anne Cook-Munro". The signature is written in a cursive, flowing style.

Jo-Anne Cook-Munro
Environmental Legal Advisor