

WWF

LAWYERS FOR CLIMATE ACTION

Feedback on proposed reliability obligation to manage dry year risk

21 July 2026

Date: 21 Jul 2026

To: Ministry for Business, Innovation and Employment

Feedback on proposed reliability obligation to manage dry year risk

---

About Lawyers for Climate Action NZ Inc

1 Lawyers for Climate Action NZ Incorporated (**Lawyers for Climate Action**) uses the law to drive meaningful action on climate change. We are an incorporated society and registered charity with around 400 members across Aotearoa New Zealand. Our members include Kings' counsel, barristers, solicitors, and legal academics. We have no vested interest other than seeing Aotearoa New Zealand contribute to the goals of the Paris Agreement in light of the science of climate change, as expressed by the IPCC. You can find out more about Lawyers for Climate Action NZ here.

About WWF-New Zealand

2 As one of the leading environmental Non-Governmental Organisations in New Zealand, World Wide Fund for Nature New Zealand (**WWF**) supports science-based, pragmatic solutions that can deliver a future where humanity lives in harmony with nature.

Introduction

3 MBIE is seeking feedback on whether a proposed liability obligation would provide the right incentives for the market to better manage dry year risk in New Zealand's electricity market.

4 Lawyers for Climate Action & WWF have limited this feedback to that related to the implications of the proposed reliability obligation for climate change and New Zealand's legal obligations. In general, we support the submissions of Rewiring Aotearoa and the New Zealand Climate Foundation.

The consultation paper is biased towards the use of thermal fuel for firming and particularly LNG

5 The key concern for Lawyers for Climate Action & WWF is that the consultation paper appears to be biased towards the use of thermal fuels to fulfill the reliability obligation, especially the short-term reliability obligation. In particular, it appears likely that it will strongly incentivise the use of LNG as a firming fuel. This is despite the fact that - as noted in the submission of Rewiring Aotearoa - the least cost dry year solution could include renewable generation and contracted demand response.

6 For example:

(a) Thermal options are framed as the obvious example of fulfillment of the reliability obligations, while renewable options are caveated, and appear likely to be subject to confirmation from the Electricity Authority. For example, the consultation papers state (in response to whether a generator can point to enough genuinely firm and deliverable cover to support its obligations):[1]

> Thermal generation would be the clearest example. But simply having the thermal plant would not by itself, be enough. The generator would need to show that it has sufficient fuel available for that plant to run when needed. That may require, for example, ordering sufficient coal or LNG far enough in advance for it to be available in time to alleviate any looming shortages.

This is in comparison to the caveated and impliedly more challenging option of renewable firming:[2]

> A generator that relies on a geographically diverse portfolio of wind generation may, in some circumstances, be able to point to that as qualifying cover. But that would require judgement about what can reasonably be counted on…the Electricity Authority would need to determine what level of contribution can properly be treated as sufficiently firm in the relevant circumstances.

(b) While the reliability obligations would not explicitly require generators to use LNG or any other particular fuel, LNG is implicitly incentivised because of the likely cost recovery model for the LNG import facility itself. While the cost recovery model has not yet been publicly announced, it appears likely that it will involve some type of participation from the gentailers, and will spread the cost of the facility over a wider group than simply gas users.[3] There are two key implications of this on the reliability obligation:

(i) Should gentailers be required to contribute to the cost recovery of the LNG import facility, there is little incentive for them to invest in other forms of infrastructure which could support firming. This then strongly incentivises the purchase of LNG to fulfil their reliability obligation.

(ii) Any cost recovery which spreads the cost of the facility across a wider group than only gas users will incentivise the use of LNG as a firming fuel. This is because it subsidises the delivered cost of LNG

---

1 Consultation Papers at [145]

2 Consultation Papers [146]

3 Minister Brown has directed MBIE and NIFFCO to work through the detail of how the facility will be paid for, "including engaging with the gentailers on a fair funding model." See Beehive press release "Securing affordable energy: LNG to keep lights on and protect jobs" (9 June 2026)

by lowering the cost of the cost recovery of the impact facility for gas users, therefore incentivising the use of LNG as compared to other, non-subsidised alternatives.

This bias risks undermining New Zealand's domestic and international legal obligations

7 A bias towards new thermal generation risks breaching New Zealand's domestic and international legal obligations.

(a) Internationally, the 2025 International Court of Justice Advisory Opinion on states' obligations on climate change (**Advisory Opinion**) clarified that states have an obligation of stringent due diligence when pursuing domestic mitigation measures under Article 4(2) of the Paris Agreement.[4] Encouraging additional thermal generation - particularly when there are renewable alternatives - has the potential to undermine this obligation of strict due diligence. In addition, it is unlikely to meet the requirement that New Zealand uses "all available means at its disposal to achieve its Nationally Determined Contributions."[5] New Zealand is currently facing a shortfall of 89.2 Mt CO2-e to meet its NDC1.[6] Encouraging renewable firming options instead of thermal ones would be one step in addressing this gap.

(b) Under the Climate Change Response Act 2002 the Minister for Climate Change has a legal obligation to ensure that the net accounting emissions do not exceed the emissions budget for the relevant emissions budget period.[7] Currently, the chances of New Zealand meeting its second emissions budget are little better than a coin toss;[8] and New Zealand is projected to fall short of achieving its third emissions budget by 8.7 Mt CO2-e.[9] Legal and policy changes which would encourage thermal firming when there are lower emissions options put New Zealand's ability to meet its emissions budgets even further at risk.

---

4 Obligations of States in respect of Climate Change (Request for Advisory Opinion) (Advisory Opinion) (23 July 2025) General List No 187, International Court of Justice [**Advisory Opinion**] at [250]-[254]; [136]-[137].

5 Advisory Opinion at [208].

6 New Zealand's First Biennial Transparency Report, Third working group session of the Facilitative, Multilateral Consideration of Progress, June 2026. The report notes that the abatement gap does not include the impact of more recent policies such as those outlined in ERP2 (which are estimated to be approximately 3.2 Mt CO2-e).

7 Climate Change Response Act 2002, s 5X(4)

8 The Government's own analysis of ERP2 shows a 1.9 Mt CO2-e margin for meeting EB2 against a ±17 Mt uncertainty range, indicating a substantial risk of failure (See Ministry for the Environment "Our journey towards net zero: New Zealand's second emissions reduction plan" (amended January 2026) at pages 17-18))

9 Ministry for the Environment "Our journey towards net zero: New Zealand's second emissions reduction plan 2026-30 (January 2026 amendment addendum)" (January 2026) at p 10

8 Additionally, the consultation paper notes the risk to New Zealand's international reputation through maintaining the status quo.[10] It is important to note that there is also a credible threat to New Zealand's reputation through obligations which incentivise the build out of unnecessary additional thermal generation.

Recommendations

9 Given firming with renewable generation is technically feasible, and potentially lower cost long-term, it is our view that the reliability obligation should be designed to incentivise renewable firming options over thermal firming, rewarding wholesalers and generators who prioritise renewable and low emissions options.

10 Lawyers for Climate Action & WWF do not support the development of the LNG import facility. There are likely lower-cost options to address the dry year problem with a lower emissions impact that have not been adequately considered. However, if the LNG import facility proceeds then it should be funded by gas users, not the gentailers more generally. This would allow them genuine flexibility to determine firming options to fulfil their reliability obligation.

Response to specific questions

11 **Q2: What do you consider to be the principal remaining barriers to investment in additional dry year firming following the recent reforms to improve fuel adequacy (Government procurement of an LNG importation facility)?** As noted above, Lawyers for Climate Action & WWF do not support the Government procurement of an LNG importation facility, given the likely lower cost, and lower emissions alternatives that have not been adequately considered. As noted by the Infrastructure Commission, the LNG import facility could *reduce* incentives to invest in renewable energy,[11] which would have a negative impact on dry year firming investment. As renewable energy could play a key role in dry year firming, removing investment and revenue certainty barriers for renewable energy projects should be prioritised.

12 **Q10: what forms of cover should be eligible to meet the long-term obligation?** As set out above, our view is that the reliability obligation should act to incentivise low emissions and renewable types of cover.

13 **Q20: what forms of firm energy fuel cover should qualify under the short-term obligation? In particular, how should hydro be treated, including whether and in what circumstances, existing stored water should be capable of counting towards compliance?** As above with our response to Q10, forms of low emissions and renewable energy fuel cover should be incentivised under the short-term reliability obligation. This can include stored water from hydro. As also noted by the

---

10 Consultation Paper at [13].

11 New Zealand Infrastructure Commission "MBIE LNG Proposals" (8 December 2025)(released to Lawyers for Climate Action under the Official Information Act

Infrastructure Commission in its feedback to MBIE, as the system evolves, hydro can shift from a predominantly baseload role, to providing renewable firming, replacing the function traditionally performed by thermal fuels.[12]

Ngā mihi,

Privacy of natural persons

Laura MacKay
Acting Executive Director, signed on behalf of Lawyers for Climate Action NZ Inc

Privacy of natural persons

Abbie Reynolds
Interim Chief Executive, signed on behalf of WWF-New Zealand

[12] New Zealand Infrastructure Commission "MBIE LNG Proposals" (8 December 2025)(released to Lawyers for Climate Action under the Official Information Act