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Transpower Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024

[2024] NZCC 39

The Commission: Vhari McWha
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Date of decision: 11 December 2024

[redacted]

Dr Derek Johnston, Commissioner
Dated at Wellington this 11th of December 2024
COMMERCE COMMISSION
Wellington, New Zealand

Determination history		
Determination date	**Decision number**	**Determination name**
29 June 2012	[2012] NZCC 17	Transpower Input Methodologies Determination ('principal determination')*
28 August 2014	[2014] NZCC 22	Transpower Input Methodologies Amendments Determination 2014
26 September 2014	[2014] NZCC 24	Electricity Lines Services Input Methodologies Determination Amendment 2014
29 October 2014	[2014] NZCC 27	Electricity Lines Services and Gas Pipeline Services Input Methodologies Determination Amendment (WACC percentile for price-quality regulation) 2014
27 November 2014	[2014] NZCC 32	Incremental Rolling Incentive Scheme Input Methodology Amendments Determination 2014
27 November 2014	[2014] NZCC 34	Transpower Input Methodologies Amendments Determination 2014 (No. 2)
11 December 2014	[2014] NZCC 38	Electricity Lines Services and Gas Pipeline Services Input Methodologies Determination Amendment (WACC percentile for information disclosure regulation) 2014
5 February 2015	[2015] NZCC 3	Transpower Input Methodologies Amendment Determination 2015
21 October 2015	[2015] NZCC 27	Transpower Input Methodologies Amendment Determination 2015 (No. 2)
20 December 2016	[2016] NZCC 27	Transpower Input Methodologies Amendments Determination 2016
29 June 2017	[2017] NZCC 17	Transpower Input Methodologies Amendment Determination 2017
28 August 2019	[2019] NZCC 10	Transpower Input Methodologies Amendments Determination 2019
13 November 2019	[2019] NZCC 16	Transpower Input Methodologies Amendments Determination (No. 2) 2019

13 December 2023	[2023] NZCC 38	Transpower Input Methodologies (IM Review 2023) Amendment Determination 2023
29 August 2024	2024] NZCC 19	Transpower Input Methodologies Amendment Determination 2024
11 December 2024	[2024] NZCC 39	Transpower Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024

* The principal determination re-determined the input methodologies contained in the *Commerce Act (Transpower Methodologies) Determination 2010* (Commerce Commission Decision No.713, 22 December 2010), as amended by the *Commerce Act (Transpower Input Methodologies) Amendment Determination (No. 1) 2011* (Commerce Commission Decision 736, 1 November 2011). A complete history of determinations relevant to the input methodologies applicable to Transpower is available on the Commission's website.

[Drafting notes:

- This determination amends the Transpower Input Methodologies Determination, as previously amended, ('principal determination').

- The included amendments which are secondary legislation are made under the Legislation Act 2019 and Part 4 of the Commerce Act 1986.]

Under Part 4 of the Commerce Act 1986, the Commerce Commission makes the following determination:

1. TITLE

1.1 This determination is the Transpower Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024.

2. DETERMINATION AMENDED

2.1 This determination amends the **principal determination**.

3. INTERPRETATION

3.1 In this determination, the words or phrases in bold type bear the following meanings:

3.1.1 **Act** means the Commerce Act 1986;

3.1.2 **Commission** has the same meaning as in s 2 of the **Act**;

3.1.3 **disclosure year** has the same meaning as in the **principal determination**;

3.1.4 **IM Review amendment determination** means the Transpower Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC 38;

3.1.5 **principal determination** means the Transpower Input Methodologies Determination [2012] NZCC 17;

3.1.6 **RCP3 IPP determination** means the Transpower Individual Price-Quality Path Determination 2020 [2019] NZCC 19; and

3.1.7 **RCP4 IPP determination** means the Transpower Individual Price-Quality Path Determination 2025 [2024] NZCC 26.

4. COMMENCEMENT AND APPLICATION

4.1 This determination comes into force on 12 December 2024, being the day after the day on which notice of the determination is given in the New Zealand Gazette under the Legislation Act 2019 in accordance with s 52W of the **Act**.

4.2 However:

4.2.1 the amendments to the **principal determination** in Attachment A:

(a) apply, for the purposes of information disclosure regulation, from the commencement of **disclosure year** 2026;

(b) do not apply, for the purposes of information disclosure regulation, for **disclosure year** 2025; and

(c) apply for the **RCP4 IPP determination**; and

4.2.2 the amendments to the **principal determination** in Attachment B:

(a) apply, for the purposes of information disclosure regulation, for **disclosure year** 2025, including any disclosures related to that year;

(b) do not apply, for the purposes of information disclosure regulation, for **disclosure year** 2026 and subsequent **disclosure years**;

(c) apply for the **RCP3 IPP determination**; and

(d) do not apply for the **RCP4 IPP determination**.

4.3 Clause 4.4 applies to a provision of the **principal determination** that is amended by the **IM Review amendment determination** and by this determination.

4.4 If the amendments to the provision are expressed, in the **IM review amendment determination** and in this determination, to apply from the same date, the amendments set out in this determination apply immediately after the amendments set out in the **IM review amendment determination** apply.

5. PRINCIPAL DETERMINATION AMENDMENTS

5.1 In clause 1.1.4(2) of the **principal determination**, insert in their appropriate alphabetical order:

"**compensatory entitlement** means, for the purposes of Part 3, money or the monetary value of other consideration relating to an event, other than an **insurance entitlement** or **capital contribution**, that is received or receivable from **consumers** or other parties, for any of the following purposes:

(a) restoring damaged assets to the same operating condition and location as prior to the event;
(b) relocating assets if required; and
(c) compensating for damaged or destroyed assets;"

"**insurance entitlement** means, for the purposes of-

(a) Part 2, money or the monetary value of other consideration relating to an event, that is received or receivable from a ‘licensed insurer’ as that term is defined in the Insurance (Prudential Supervision) Act 2010, in respect of a contract of insurance that insures against damaged or destroyed assets or **operating costs** arising from damaged or destroyed assets, excluding business interruption insurance or **third-party liability entitlements**; and

(b) Part 3, money or the monetary value of other consideration relating to an event that is received or receivable from, or forecast to be received or receivable from, a ‘licensed insurer’ as that term is defined in the Insurance (Prudential Supervision) Act 2010, in respect of a contract of insurance that insures against damaged or destroyed assets or **operating costs** arising from damaged or destroyed assets, excluding business interruption insurance or **third-party liability entitlements**;”

“**third-party liability entitlement** means, for the purposes of-

(a) Part 2, money or the monetary value of other consideration relating to an event, that is received or receivable from a ‘licensed insurer’ as that term is defined in the Insurance (Prudential Supervision) Act 2010, in respect of a contract of insurance that insures against third-party liability; and

(b) Part 3, money or the monetary value of other consideration relating to an event, that is received or receivable from, or forecast to be received or receivable from, a ‘licensed insurer’ as that term is defined in the Insurance (Prudential Supervision) Act 2010, in respect of a contract of insurance that insures against third-party liability;”

5.2 Amend the definition of “operating cost” in clause 1.1.4(2) of the **principal determination** so that the text up to paragraph (a) of that definition reads as follows, with the text from paragraph (a) onwards remaining unchanged:

“**operating cost**	means a cost incurred by **Transpower** relating to the **supply** of **electricity transmission services**, net of any **insurance entitlement**, **compensatory entitlement**, or **third-party liability entitlement** for the same cost, up to the amount of that cost, which **Transpower** chooses to net off in calculating that cost, and excludes- (a) …;”

5.3 The **principal determination** is amended in accordance with the deletions, replacements, and insertions that are tracked as changes in the excerpts of the **principal determination** that are set out in Attachments A and B.

ATTACHMENT A – PARTS 1-3 OF THE PRINCIPAL DETERMINATION

1.1.4 Interpretation

[…]

(2) In this determination, including in the schedules, the words or phrases in bold type bear the following meanings:

retained entitlement	means, for the purpose of Part 3, the **base capex standard incentive rate** multiplied by (the sum of any **insurance entitlements**, **compensatory entitlements**, and **third-party liability entitlements**, excluding the sum of any of those entitlements netted off, or forecast to be netted off, in calculating an **operating cost** or applied to reduce the value of a **commissioned** asset under clause 2.2.10(1)(j));

[…]

2.2.10 Value of commissioned assets

(1) Value of commissioned asset, in relation to an asset, is the cost of the asset to **Transpower** determined by applying **GAAP** to the asset as on its **commissioning date**, except that the cost of-

[…]

(i) an **anticipatory connection asset** is its value as determined under any other relevant provision of this clause, multiplied by the **anticipatory capacity** of the asset on its **commissioning date**, divided by the asset's total capacity~~.~~; and

(j) an asset in respect of which-

(i) an **insurance entitlement** was received or is receivable; and

(ii) such an **insurance entitlement** does not reduce the cost of the asset when applying **GAAP**,

is the cost of the asset by applying **GAAP**, reduced (at **Transpower's** choice) by the amount of the **insurance entitlement**.

[…]

(4) For the avoidance of doubt-

(a) revenue derived in relation to **works under construction** that is not included in regulatory income under an **ID determination** or preceding regulatory information disclosure requirements reduces the cost of an asset by the amount of the revenue where such reduction is not otherwise made under **GAAP**;

(b) where expenditure on an asset which forms part of the cost of that asset under **GAAP** is incurred by **Transpower** after the asset was first **commissioned**, such expenditure may be treated, at **Transpower's** election, as relating to-

(i) that asset; or

(ii) a separate asset~~.~~; and

(c) where an **insurance entitlement** is applied to reduce the cost of an asset under subclause (1)(j), any subsequent adjustment to the amount of that **insurance entitlement**, to reflect the full and final settlement of the associated insurance contract, must be treated as expenditure or negative expenditure relating to a separate asset or negative asset, adjusted by the amount of *b* - *a*, where-

a is the nominal amount of the expenditure or negative expenditure referred to in this paragraph expressed at the date the **insurance entitlement** was first applied to reduce the cost of the asset under subclause (1)(j); and

b is the present value of *a* at the date the separate asset or negative asset referred to in this paragraph is recognised, calculated using the **WACC** for each **disclosure year** applied by the **Commission** in setting prices for the relevant **IPP**.

[…]

2.3.2 Regulatory tax asset value

[…]

(4) 'Notional tax asset value' means, for the purpose of-

(a) subclause (2)(a)(i), the value after applying the tax depreciation rules to the tax asset value (as 'tax asset value' is defined in the **input methodologies** applying to the **regulated goods or services** in question) in respect of the **disclosure year** in which the asset was acquired; and

(b) subclause (2)(a)(ii), the value in respect of the **disclosure year** in which the asset was acquired or transferred that is-

(i) consistent with the **tax rules**; and

(ii) limited to its **value of commissioned asset** plus the sum of any **insurance entitlements** applied to reduce the value of a **commissioned** asset under clause 2.2.10(1)(j).

[…]

3.7.4 Catastrophic event

(1) A 'catastrophic event' is an event-

(a) […]

(b) […]

(c) for which-

(i) action required to rectify its adverse consequences cannot be delayed until a future **regulatory period** without *the* **grid outputs** associated with the **revenue-linked grid output measures** being outside the range specified by the relevant **cap** and **collar** in the remaining **disclosure years** of the **regulatory period**;

(ii) remediation requires **capex**, **opex**, or both;

(iii) the full remediation costs are not provided for in the **IPP**; and

(iv) the cost of remediation net of any **insurance entitlements**, **third-party liability entitlements**, and **compensatory entitlements** ~~insurance or compensatory entitlements~~ exceeds $5 million.

[...]

3.7.11 Amending IPP after reconsideration

[...]

(2) The **Commission** will not amend the **IPP**-

(a) [...]

(b) in any other case,-

(i) more than is reasonably necessary to mitigate the effect of the **reopener event** on the **IPP**;

(ii) more than is reasonably necessary to take account of the change resulting from the **reopener event** ~~net of any insurance or compensatory entitlements~~; and

(iii) by more than the prudent net additional expenditure incurred in responding to the **reopener event**.

ATTACHMENT B – PARTS 1-3 OF THE PRINCIPAL DETERMINATION

1.1.4 Interpretation

[…]

(2) In this determination, including in the schedules, the words or phrases in bold type bear the following meanings:

retained entitlement	means, for the purpose of Part 3, the **base capex standard incentive rate** multiplied by (the sum of any **insurance entitlements, compensatory entitlements**, and **third-party liability entitlements,** excluding the sum of any of those entitlements netted off, or forecast to be netted off, in calculating an **operating cost** or applied to reduce the value of a **commissioned** asset under clause 2.2.7(1)(i));

[…]

2.2.7 Value of commissioned assets

(1) Value of commissioned asset, in relation to an asset, is the cost of the asset to **Transpower** determined by applying **GAAP** to the asset as on its **commissioning date**, except that the cost of-

[…]

(h) an asset acquired from a **related party** other than an asset to which paragraphs (f) or (g) apply is-

(i) its depreciated historic cost in respect of the **related party** determined by applying **GAAP** as on the day before the acquisition by ~~the~~ **Transpower**; or

(ii) where sufficient records do not exist to establish this cost, its market value as at its **commissioning date** as determined by a **valuer**~~.~~; and

(i) an asset in respect of which-

(i) an **insurance entitlement** was received or is receivable; and

(ii) such an **insurance entitlement** does not reduce the cost of the asset when applying **GAAP**,

is the cost of the asset by applying **GAAP**, reduced (at **Transpower's** choice) by the amount of the **insurance entitlement**.

[…]

(4) For the avoidance of doubt-

(a) revenue derived in relation to **works under construction** that is not included in regulatory income under an **ID determination** or preceding regulatory information disclosure requirements reduces the cost of an asset by the amount of the revenue where such reduction is not otherwise made under **GAAP**;

(b) where expenditure on an asset which forms part of the cost of that asset under **GAAP** is incurred by **Transpower** after the asset was first **commissioned**, such expenditure may be treated, at **Transpower's** election, as relating to-

(i) that asset; or

(ii) a separate asset~~.~~; and

(c) where an **insurance entitlement** is applied to reduce the cost of an asset under subclause (1)(i), any subsequent adjustment to the amount of that **insurance entitlement**, to reflect the full and final settlement of the associated insurance contract, must be treated as expenditure or negative expenditure relating to a separate asset or negative asset, adjusted by the amount of $b - a$, where-

a is the nominal amount of the expenditure or negative expenditure referred to in this paragraph expressed at the date the **insurance entitlement** was first applied to reduce the cost of the asset under subclause (1)(i); and

b is the present value of a at the date the separate asset or negative asset referred to in this paragraph is recognised, calculated using the **WACC** for each **disclosure year** applied by the **Commission** in setting prices for the relevant **IPP**

.

[…]

2.3.2 Regulatory tax asset value

[…]

(4) 'Notional tax asset value' means, for the purpose of-

(a) subclause (2)(a)(i), the value after applying the tax depreciation rules to the tax asset value (as 'tax asset value' is defined in the **input methodologies** applying to the **regulated goods or services** in question) in respect of the **disclosure year** in which the asset was acquired; and

(b) subclause (2)(a)(ii), the value in respect of the **disclosure year** in which the asset was acquired or transferred that is-

(i) consistent with the **tax rules**; and

(ii) limited to its **value of commissioned asset** plus the sum of any **insurance entitlements** applied to reduce the value of a **commissioned** asset under clause 2.2.7(1)(i).

[…]

3.7.1 Catastrophic event

Catastrophic event means an event-

(a) […]

(b) […]

(c) in respect of which-

(i) action required to rectify its adverse consequences cannot be delayed until a future **regulatory period** without *the* **grid outputs** associated with the **revenue-linked grid output measures** being outside the range specified by the relevant **cap** and **collar** in the remaining **disclosure years** of the **regulatory period**;

(ii) remediation requires either or both of **capital expenditure** or **operating expenditure** during the **regulatory period**;

(iii) the full costs of remediation are not provided for in that **IPP determination**; and

(iv) the cost of remediation (net of any **insurance entitlements**, **third-party liability entitlements**, and **compensatory entitlements**) ~~insurance or compensatory entitlements~~ has had or will have an impact on the price path over the **disclosure years** of the **IPP** remaining on and after the first date at which a remediation cost is proposed to be or has been incurred, by an amount at least equivalent to 1% of the aggregated **forecast MARs** for the **disclosure years** of the **IPP** in which the cost was or will be incurred.

[…]

3.7.5 Amending price-quality path after reconsideration

[…]

(2) Where, after reconsidering an **IPP**, the **Commission** determines that the **IPP determination** should be amended on the basis of any of clause 3.7.4(1)(a)(i)-(iv), (vi) or clause 3.7.4(4), the **Commission** must not amend the-

(a) price path; or

(b) **grid output targets**, **caps**, **collars** and **grid output incentive rates** associated with **revenue-linked grid output measures**,

more than is reasonably necessary to take account of the change in costs ~~net of any insurance or compensatory entitlements~~, arising from:

(c) the **catastrophic event**;

[…]

[…]