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Gas Distribution Services Default Price-Quality Path Determination 2022

[2022] NZCC 19

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Deputy Chairperson

Dated at Wellington this 31st day of May 2022

COMMERCE COMMISSION

Wellington, New Zealand

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

1. Title

1.1 This determination is the Gas Distribution Services Default Price-Quality Path Determination 2022.

2. Commencement

2.1 This determination takes effect on 1 October 2022.

3. Application

3.1 This determination applies to GDBs in respect of the supply of Gas Distribution Services during the Regulatory Period.

4. Interpretation

- 4.1 Unless the context otherwise requires—
 - (a) words appearing in this determination with capitalised initial letters are defined terms and bear the meaning given to them in clause 4.2;
 - (b) terms used in this determination that are defined in the IM Determination, but not in clause 4.2 of this determination, have the same meanings as in the IM Determination; and
 - (c) terms used in this determination that are defined in the Act, but not in clause 4.2 of this determination or the IM Determination, have the same meaning as in the Act;
- 4.2 In this determination, unless the context otherwise requires—

Act means the Commerce Act 1986;

Amalgamate has the same meaning as in clause 1.1.4 of the IM Determination;

Assessment Period means a 12-month period commencing 1 October and ending on 30 September of the following year;

Commission means the Commerce Commission as defined in section 2 of the Act:

Compliance Statement means the written statement required to be made by a GDB under clause 11;

Consumer has the same meaning as in clause 1.1.4 of the IM Determination;

Consumer Group means the category of consumer used by a GDB to set a Price;

Control means the acquisition of rights similar to ownership, such as a long-term lease;

CPI has the same meaning as in clause 1.1.4 of the IM Determination;

CPP Proposal has the same meaning as in clause 1.1.4 of the IM Determination;

Emergency means:

- (a) an unplanned escape or ignition of gas that requires the active involvement of any emergency service (eg, fire service, ambulance);
- (b) an unplanned disruption in the supply of gas that affects more than five installation control points; or
- (c) an evacuation of a premises as the result of escape or ignition of gas;

First Assessment Period means the Assessment Period for the 12-month period 1 October 2022 to 30 September 2023;

forecast depreciation for existing assets means, for a **GDB**, the value expressed in New Zealand dollars in millions:

- (a) \$5.30m for GasNet Limited;
- (b) \$95.26m for Powerco Limited;
- (c) \$94.02m for Vector Limited and
- (d) \$44.22m for First Gas Limited (in respect of Gas Distribution Services);

Gas Distribution Services has the same meaning as in clause 1.1.4 of the IM Determination;

GDB has the same meaning as in clause 1.1.4 of the IM Determination;

IM Determination means the Gas Distribution Services Input Methodologies Determination 2012 as at the date of this determination;

Input Methodology has the same meaning as in section 52C of the Act;

Interconnected Body Corporate means any two or more bodies corporate where one of them is a body corporate of which the other is a subsidiary (within the meaning of section 5 of the Companies Act 1993), or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate;

Major Transaction has the same meaning as in clause 1.1.4 of the IM Determination;

Merger means a transaction, other than an Amalgamation, whereby a GDB directly or indirectly:

- (a) acquires ownership or Control of all or substantially all of the assets of another GDB; or
- (b) acquires ownership or Control of another GDB by acquiring all of its share capital;

Pass-through Cost has the same meaning as in clause 1.1.4 of the IM Determination, and is determined in accordance with Schedule 5;

Person has the same meaning as in clause 1.1.4 of the IM Determination;

Prices has the same meaning as in clause 1.1.4 of the IM Determination;

Quantity has the same meaning as in clause 1.1.4 of the IM Determination;

Recoverable Cost has the same meaning as in clause 1.1.4 of the IM Determination, and is determined in accordance with Schedule 5;

Regulatory Period means the period 1 October 2022 to 30 September 2026;

Restructure of Prices includes any change in the allocation of connections to Consumer Groups by a GDB, the introduction of a new Consumer Group, or any change in Prices, but excludes:

- (a) a change to the value of a Price applicable to an existing Consumer Group; or
- (b) the movement of connections between existing Consumer Groups at the request of the Consumer or retailer;

RTE means 'response time to emergencies', being the time between when an Emergency is reported to a GDB representative and when the GDB's personnel arrives at the location of the Emergency;

Section 53N notice means a notice to supply information in respect of an Assessment Period that was issued by the Commission to a GDB under section 53N of the Act;

Transfer means a transaction, other than an Amalgamation or Merger, whereby a GDB directly or indirectly transfers assets to another Person and Consumers are acquired by or no longer supplied by a GDB as a result of the asset transfer;

transitional adjusted asset life for existing assets means, for a **GDB**, the value expressed in years:

- (a) 20.03 years for GasNet Limited;
- (b) 17.75 years for Powerco Limited;
- (c) 20.57 years for Vector Limited and
- (d) 17.28 years for First Gas Limited (in respect of Gas Distribution Services); and

Working Day has the same meaning as in clause 1.1.4 of the IM Determination.

5. Default price-quality path

- 5.1 Every GDB must comply with the default price-quality path, which consists of:
 - (a) the price path specified in clause 8; and
 - (b) the quality standards specified in clause 9.

6. Applicable Input Methodologies

- 6.1 The Input Methodologies that are applied through this determination are the following parts of the IM Determination:
 - (a) Subpart 1 of Part 3 specification of price;
 - (b) Subpart 2 of Part 3 amalgamations;
 - (c) Subpart 1 of Part 4 cost allocation;
 - (d) Subpart 2 of Part 4 asset valuation;
 - (e) Subpart 3 of Part 4 treatment of taxation;
 - (f) Subpart 4 of Part 4 cost of capital;
 - (g) Subpart 5 of Part 4 reconsideration of the default price-quality path;
 - (h) Subpart 6 of Part 4 treatment of periods that are not 12-month periods; and
 - (i) Subpart 7 of Part 4 availability of information.

7. CPP Proposals

7.1 A GDB may submit a CPP Proposal to the Commission at any time before 23 October 2024.

7.2 A GDB may not submit a CPP Proposal to the Commission within the period 24 October 2024 to 30 September 2026.

8. Price path

Starting prices

8.1 The starting prices that apply for each GDB in the Regulatory Period are set out in Schedule 1.

Rate of change

8.2 The annual rate of change in prices for each GDB, relative to the CPI, that is allowed during the Regulatory Period is set out in Schedule 2.

Compliance with the Price Path

8.3 The notional revenue of each GDB in an Assessment Period must not exceed the allowable notional revenue for the Assessment Period, such that:

 $NR \leq ANR$

where-

- NR is the notional revenue for the Assessment Period, calculated in accordance with clause 8.4(a); and
- ANR is the allowable notional revenue for the Assessment Period, calculated in accordance with clause 8.4(b).

How to calculate notional revenue and allowable notional revenue

- 8.4 For the purpose of calculating notional revenue and allowable notional revenue in clause 8.3:
 - (a) notional revenue for an Assessment Period is NR_t, where:

$$NR_{t} = \sum_{i} P_{i,t} Q_{i,t-2} - (K_{t} + V_{t})$$

where:

- t is the year in which the Assessment Period ends;
- i is each Price relating to a Gas Distribution Service;
- $P_{i,t}$ is the ith Price for any part of the Assessment Period ending in year t;

- $Q_{i,t-2}$ is the Quantity corresponding to the ith Price during the Assessment Period ending two years prior to year t;
- K_t is the sum of all Pass-through Costs for the Assessment Period ending in year t, determined in accordance with Schedule 5;
- V_t is the sum of all Recoverable Costs for the Assessment Period ending in year t, determined in accordance with Schedule 5; and
- (b) allowable notional revenue for the Assessment Period ending in year t is ANR_t, as specified in:
 - (i) Schedule 3 for the First Assessment Period; and
 - (ii) Schedule 4 for all other Assessment Periods.

Restructure of Prices

- 8.5 For the avoidance of doubt, a Restructure of Prices during an Assessment Period does not change the allowable notional revenue for that Assessment Period.
- 8.6 For purposes of calculating notional revenue and allowable notional revenue in clause 8.3, where a GDB undertakes a Restructure of Prices, the GDB must:
 - (a) for the Assessment Period to which a Restructure of Prices first applies, calculate notional revenue for that Assessment Period using the Quantities determined in accordance with clause 8.7 or clause 8.8, as applicable; and
 - (b) for the Assessment Period immediately following the Assessment Period to which a Restructure of Prices first applies, calculate notional revenue and allowable notional revenue using the Quantities determined in accordance with clause 8.7 or clause 8.8, as applicable.
- 8.7 Where a Restructure of Prices—
 - (a) combines two or more Consumer Groups into one Consumer Group, the Quantities corresponding to the Prices in the combined Consumer Group must be the sum of the Quantities corresponding to each of the Prices that applied to the previous Consumer Groups; and
 - (b) separates a Consumer Group into two or more new Consumer Groups, the Quantities corresponding to the Prices in each new Consumer Group must be based on the Quantities corresponding to the Prices that applied to the original Consumer Group, and the sum of the Quantities corresponding to each new Consumer Group must equal the Quantities corresponding to the original Consumer Group.

- 8.8 Where, as a result of a Restructure of Prices, there are no Quantities for the Assessment Period two years prior that reasonably practicably correspond to the restructured Prices, the GDB must derive demonstrably reasonable Quantities in place of actual Quantities. In deriving the demonstrably reasonable Quantities the GDB:
 - (a) may not use forecast Quantities;
 - (b) must use relevant Quantity information from the Assessment Period two years prior;
 - (c) must consider any other relevant information that is reasonably available;and
 - (d) must use a substantially similar methodology for determining the Quantities in each Assessment Period for which Quantities are determined under this clause.

9. Quality standards

Compliance with quality standards

- 9.1 The quality standards for each Assessment Period are that a GDB's RTE values must be such that:
 - (a) of the total of all RTEs, the percentage greater than 60 minutes does not exceed 20%; and
 - (b) the RTE to any Emergency does not exceed 180 minutes.

Exclusion of certain Emergencies

- 9.2 If a GDB has a reasonable excuse for not meeting the quality standard in clause 9.1(b) in respect of the RTE for a particular Emergency, the GDB may apply under clause 9.3 to the Commission to treat the RTE as having complied with that quality standard.
- 9.3 A request under clause 9.2 must-
 - (a) be submitted to the Commission in writing within 45 Working Days of the Emergency; and
 - (b) include sufficient evidence demonstrating why it was reasonable that the GDB's RTE was greater than 180 minutes.
- 9.4 A GDB may only treat a RTE greater than 180 minutes as having complied with that quality standard if the Commission determines in writing that the GDB can do so.

10. Transactions

Transactions resulting in an Amalgamation or Merger

- 10.1 If a GDB completes an Amalgamation or a Merger during an Assessment Period with another GDB subject to a default price-quality path, then:
 - (a) for the purpose of calculating notional revenue and allowable notional revenue in clause 8.3, the notional revenue and allowable notional revenue of the GDB resulting from the Amalgamation or Merger for the Assessment Period equals the sum of notional revenues and the sum of allowable notional revenues, respectively, of the GDBs that are the subject of the Amalgamation or Merger; and
 - (b) for the purpose of clause 9, the total number of Emergencies used to calculate the RTE values of the GDB resulting from the Amalgamation or Merger equals the sum of the total number of Emergencies of each of the GDBs that are the subject of the Amalgamation or Merger.

Transactions resulting in a Transfer

10.2 For the purpose of calculating allowable notional revenue in clause 8.3, if a GDB completes a Transfer during an Assessment Period, the GDB must increase or decrease the allowable notional revenue for that Assessment Period as specified in Schedule 6.

Requirement to notify the Commission of Amalgamations, Mergers, Transfers and Major Transactions

- 10.3 A GDB must notify the Commission in writing within 30 Working Days of any Amalgamation, Merger, Transfer, or Major Transaction.
- 10.4 Any notice of a Transfer under clause 10.3 must include, to the extent practically available at the time of the notice:
 - (a) the GDB's allowable notional revenue for the Assessment Period in which the Transfer occurs, as adjusted in accordance with Schedule 6;
 - (b) the amount of allowable notional revenue attributable to the Transfer; and
 - (c) the basis on which allowable notional revenue was allocated between the parties in accordance with Schedule 6.
- 10.5 Any information not practically available under clause 10.4 at the time of the notice must be provided to the Commission in writing as soon as practicable after it becomes available.

11. Due date for Compliance Statements

- 11.1 Vector Limited and GasNet Limited must each provide to the Commission a written 'annual compliance statement', as specified in a Section 53N notice, by 31 December following the end of each Assessment Period.
- 11.2 Powerco Limited, and First Gas Limited in respect of Gas Distribution Services, must each provide to the Commission a written 'annual compliance statement', as specified in a Section 53N notice, by 31 March following the end of each Assessment Period.

Schedule 1: Starting prices

The starting prices for each GDB for the Regulatory Period, specified as maximum allowable revenue, are set out in Table 1.

Table 1: Starting prices for each GDB

GDB	MAR (\$m)
GasNet Limited	4.852
Powerco Limited	57.633
Vector Limited	58.317
First Gas Limited (in respect of Gas Distribution Services)	28.566

Schedule 2: Rate of change

The annual rates of change are set out in Table 2.

Table 2: Annual rate of change for each GDB

GDB	Rate of change
GasNet Limited	-5.50%
Powerco Limited	-5.00%
Vector Limited	0%
First Gas Limited (in respect of Gas Distribution Services)	-10.00%

Schedule 3: Allowable notional revenue for the First Assessment Period

Allowable notional revenue for the First Assessment Period must be calculated in accordance with Equation 1.

Equation 1

$$ANR_{2023} = \frac{MAR}{\Delta D}$$

where:

MAR is the starting price specified in Schedule 1; and

 ΔD is the value specified in Table 3 for each GDB.

Table 3: ΔD for the First Assessment Period

GDB	ΔD
GasNet Limited	0.9961
Powerco Limited	1.0281
Vector Limited	1.0297
First Gas Limited (in respect of Gas Distribution Services)	1.0274

Schedule 4: Allowable notional revenue for each Assessment Period other than the First Assessment Period

Allowable notional revenue for each Assessment Period other than the First Assessment Period must be calculated in accordance with Equation 2.

Equation 2

$$ANR_{t} = (\sum_{i} P_{i,t-1} Q_{i,t-2} - (K_{t-1} + V_{t-1}) + (ANR_{t-1} - NR_{t-1}))(1 + \Delta CPI_{t})(1 - X)$$

where:

t is the year in which the Assessment Period ends;

is each Price relating to a Gas Distribution Service;

 $P_{i,t-1}$ is the ith Price for any part of the Assessment Period ending the

year prior to year t;

 $Q_{i,t-2}$ is the Quantity corresponding to the ith Price for the Assessment

Period ending two years prior to year t;

 $K_{+} + V_{+}$ is the sum of all Pass-through Costs and Recoverable Costs for

the Assessment Period ending the year prior to year t, calculated

in accordance with Schedule 5;

 $ANR_{t-1} - NR_{t-1}$ is the difference between allowable notional revenue and

notional revenue for the Assessment Period ending the year

prior to year t;

is the rate of change, as specified in Schedule 2.

 ΔCPI_t is the derived change in the CPI to be applied for the Assessment

Period ending in year t, being equal to:

$$\Delta CPI_{t} = \frac{CPI_{Jun,t-2} + CPI_{Sep,t-2} + CPI_{Dec,t-2} + CPI_{Mar,t-1}}{CPI_{Jun,t-3} + CPI_{Sep,t-3} + CPI_{Dec,t-3} + CPI_{Mar,t-2}} - 1$$

where:

 $CPI_{q,t-n}$ is the CPI for the quarter year ending q in the 12-month period n years prior to year t.

Schedule 5: Process for determining the amount of Pass-through Costs and Recoverable Costs for an Assessment Period

- 1. The amount of each Pass-through Cost or Recoverable Cost that is used to calculate allowable notional revenue or notional revenue for an Assessment Period must:
 - 1.1 be ascertainable at the time the GDB sets its Prices for that Assessment Period;
 - 1.2 not have already been passed through to, or recovered from, Consumers or other parties by the GDB in a previous Assessment Period; and
 - 1.3 not be able to be otherwise recovered from Consumers or other parties, other than through Prices.
- 2. A GDB may adjust the amount of any Pass-through Cost or Recoverable Cost for the time value of money in accordance with paragraph 4.
- 3. If a GDB adjusts the amount of any Pass-through Cost or Recoverable Cost for the time value of money, the GDB must use the same approach for calculating all Pass-through Costs or Recoverable Costs for each Assessment Period.
- 4. For the purposes of calculating time value of adjustments under paragraph 2, the GDB must either:
 - 4.1 calculate the amounts in accordance with Equation 3:

Equation 3

$$K_t + V_t = \sum_n (K_n + V_n)(1+r)^{t-n}$$

where:

- t is the year in which the Assessment Period ends;
- K_t is the sum of all Pass-through Costs claimed during the Assessment Period ending in year t;
- V_t is the sum of all Recoverable Costs claimed during the Assessment Period ending in year t;
- n is the year the Assessment Period ends in which actual Passthrough Costs and Recoverable Costs were paid or will be paid;
- K_n is the sum of all Pass-through Costs that have been paid or will be paid in year n;

- V_n is the sum of all Recoverable Costs that have been paid or will be paid in year n; and
- r is the discount rate of 4.04%; or
- 4.2 calculate the amounts in accordance with Equation 3, except where the term 't-n' is the difference expressed in years between:
 - the date that each Pass-through Cost or Recoverable Cost amount was paid or will be paid; and
 - (b) the date 148 days prior to the end of Assessment Period ending in year t.

Schedule 6: Recalculation of the price path following a Transfer

Where a GDB is party to a Transfer it must adjust its allowable notional revenue as set out below:

By agreement on an allocation with another GDB

- 1. Where a GDB is party to a Transfer with another GDB they must attempt to agree on a demonstrably reasonable allocation of the allowable notional revenue attributable to the Consumers transferred as a result of the transaction.
- 2. A GDB transferring Consumers must reduce its allowable notional revenue by the amount determined in accordance with paragraph 1.
- 3. A GDB receiving a transfer of Consumers must increase its allowable notional revenue by the amount determined in accordance with paragraph 1.

Applying a formula to determine an allocation

4. Where a GDB acquiring Consumers is unable to agree on a demonstrably reasonable allocation of the allowable notional revenue with the other GDB party to the Transfer, as set out in paragraphs 1 to 3 above, the GDB must recalculate its allowable notional revenue in accordance with the following formula:

$$\left(\sum_{i} P_{i,t-1}Q_{i,t-2} - K_{proportion,t-1} - V_{proportion,t-1}\right) (1 + \Delta CPI_t) \times \text{Part-year Factor}$$

where-

t is the year in which the Assessment Period ends;

i denotes each Price;

P_{i,t-1} is the ith Price of the other GDB during any part of the Assessment Period

prior to year t;

 $Q_{i,t-2}$ is the Quantity attributable to the Consumers transferred by the other GDB

for the Assessment Period ending 2 years prior to year t corresponding to

the ith Price;

K_{proportion,t-1} is the proportion of all Pass-through Costs of the other GDB recognised in

the Assessment Period prior to year t, being equal to:

Transaction Factor $\times K_{t-1}$

Where -

 K_{t-1}

is the sum of all Pass-through Costs of the other GDB recognised in the Assessment Period prior to year t

 $V_{proportion,t-1}$

is the proportion of all Recoverable Costs of the other GDB recognised in the Assessment Period prior to year t, being equal to:

Transaction Factor
$$\times V_{t-1}$$

where-

 V_{t-1} is the sum of all Recoverable Costs of the other GDB recognised in the Assessment Period prior to year t; and is the derived change in the CPI to be applied for the Assessment Period

 ΔCPI_t

ending in year t, being equal to:

$$\frac{CPI_{Jun,t-2} + CPI_{Sep-t-2} + CPI_{Dec,t-2} + CPI_{Mar,t-1}}{CPI_{Jun,t-3} + CPI_{Sep,t-3} + CPI_{Dec,t-3} + CPI_{Mar,t-2}} - 1$$

where-

 $CPI_{q,t-n}$

is the CPI for the quarter year ending q in the 12-month period n years prior to year t.

5. Where a GDB transferring Consumers is unable to agree on a demonstrably reasonable allocation of the allowable notional revenue with the other GDB party to the Transfer as set out in paragraphs 1 to 3 above, or the other party to the Transfer is not a GDB, the GDB must recalculate its allowable notional revenue in accordance with the following formula:

$$ANR = ANR_p - (ANR_p \times Transaction Factor \times Part-year Factor)$$

where-

 ANR_p

is the allowable notional revenue, calculated in accordance with Schedule 3 or 4, that would have applied for the Assessment Period absent the transaction.

- 6. For the purposes of paragraphs 4 and 5,—
 - 6.1 the 'Transaction Factor' is calculated in accordance with the following formula:

$$\frac{\sum P_{i,t-1}Q_{lost,i,t-2}}{\sum P_{i,t-1}Q_{i,t-2}}$$

where-

t is the year in which the Assessment Period ends;

i denotes each Price of the Person transferring Consumers;

 $P_{i,t-1}$ is the ith Price of the GDB transferring Consumers during any part of the Assessment Period prior to year t;

- $Q_{i,t-2}$ is the Quantity for the Assessment Period ending 2 years prior to year t of the GDB transferring Consumers corresponding to the ith Price; and
- Q_{lost,t,t-2} is the Quantity for the Assessment Period ending 2 years prior to year t of the GDB transferring Consumers attributable to the Consumers transferred and corresponding to the ith Price; and
- 6.2 the 'Part-year Factor' is calculated in accordance with the formula-

 $\frac{n}{d}$

where-

- is the number of days between the date on which Consumers are
 first transferred and the last day of the Assessment Period in
 which the Consumers are transferred; and
- d is the number of days in the Assessment Period in question.

Alternative methodology approved by the Commission

7. Where a GDB:

- 7.1 is unable to agree on a demonstrably reasonable allocation of the allowable notional revenue with the other GDB party to the Transfer, as set out in paragraphs 1 to 3 above; or
- 7.2 is unable to reasonably apply the relevant formula set out in paragraphs 4 to 6 above, or
- 7.3 considers that the application of the formula set out in paragraphs 4 to 6 above would not be consistent with the purpose of Schedule 6;

the GDB may apply an alternative methodology approved in advance by the Commission to determine the allowable notional revenue attributable to a transfer of Consumers as a result of a Transfer.

Explanatory note

- 1. The purpose of the *Gas Distribution Services Default Price-Quality Path Determination* 2022 ("the Determination") is to set a default price-quality path for gas distribution businesses ("GDBs") for the four years beginning 1 October 2022 and ending 30 September 26, under Part 4 of the Commerce Act 1986 ("the Act").
- 2. Under s 53N each GDB is required to provide to the Commerce Commission ("the Commission") a Compliance Statement stating whether or not the GDB has complied with the default price-quality path set out in the Determination together with supporting evidence. The Compliance Statement is to be accompanied by both a director's certificate and an auditor's report. The requirements relating to the Compliance Statement are set out in s 53N notices that have been issued to each GDB.
- 3. We have specified under s 53O(e) that any application for a customised price-quality path must be received before 23 October 2024. In setting this date, we have taken into account our timeframes for processing and deciding on such an application and for resetting a default price-quality path. A date of 23 October 2024 will allow us to finalise our decisions on any applications for a customised price-quality path before we start the process of resetting the default price-quality path for the next regulatory period.
- 4. A reasons paper providing detailed background to, and analysis of, the Determination can be found at:
 - https://comcom.govt.nz/regulated-industries/gas-pipelines/gas-pipelines-price-quality-paths/gas-pipelines-default-price-quality-path/2022-2027-gas-default-price-quality-path
- 5. Copies of this Determination are available for inspection free of charge at the Commission (during ordinary office hours), on the Commission's website at the above link, or for purchase at a reasonable price at the Commission.