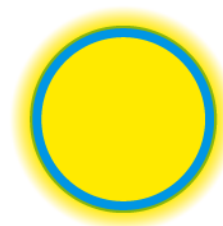


18 February 2012

John McLaren
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[Sent by email to: regulation.branch@comcom.govt.nz]

POWERCO



Dear John

Powerco submission on “How we propose to implement the Default Price-Quality Paths for Gas Pipeline Services”

Powerco welcomes the opportunity to respond to the Commerce Commission’s (Commission) consultation document, “How we propose to implement the “Default Price-Quality Paths for Gas Pipeline Services”, published on 8 February 2013.

Treatment of pass through and recoverable costs that may not yet be reflected in prices

In the Commission’s October 2012 draft decision, it proposed that all suppliers would be able to recover pass through or recoverable costs that were incurred prior to the regulatory period, to the extent that costs have not been already recovered from consumers.

The Commission is now proposing two options for the missed pass through cost recovery for suppliers whose prices were previously subject to a Gas Authorisation, such as Powerco. These options are either:

- a) a formula which approximates the value of unrecovered pass through and recoverable costs by projecting the price path under the Gas Authorisation; or
- b) an approval process where the onus is on the supplier to demonstrate any costs they wish to recover that were not previously taken into account.

Powerco prefers the accuracy of option b) to option a). It will be a simple exercise to demonstrate the costs that have not been passed through. The amounts that have been taken into account so far are documented in our Gas Authorisation Annual Compliance Statements and information we have provided to auditors.

The Commission proposes that under option b), it would approve each cost individually. It is not clear if this approval would be needed before prices are set, or as part of the subsequent Annual Compliance Statement. Powerco considers that the audit and director certification process of the Annual Compliance Statement would be adequate to provide assurance to the Commission that the amount of cost had not already been recovered. Therefore, we recommend the approval of missed pass through costs is part of the audit and certification assurance that occurs for the Compliance Statement. However, if the Commission does not agree to this, we would be able to provide information for the Commission to approve in advance of the pricing year.

Appeal costs for the year ending 30 June 2011

Based on its reading of s 52T(1)(c)(i), the Commission is proposing to exclude the legal costs of appeals against IMs from forecasted operating costs.

Powerco disagrees with the proposal as we believe it is based on an incorrect reading of s 52T(1)(c)(i). The section provides for IMs relating to regulatory processes and rules, such as:

the specification and definition of prices, including identifying any costs that can be passed through to prices (which may not include the legal costs of any appeals against input methodology determinations under this Part or of any appeals under section 91 or section 97)

The instruction “which may not include the legal costs of any appeals against input methodologies” relates to the immediately preceding phrase “including identifying any costs that can be passed through to prices”. That phrase refers to what is more commonly known as “pass-through costs”.¹ The correct position therefore is not that the legal costs of appeals cannot be included in opex (which is a building block of the revenue to be recovered), but that the legal costs of appeals cannot be included as a pass-through cost.

This view is consistent with the Commission’s earlier view, in which it stated:²

Pass-through costs are specifically identified under s 52T(1)(c)(i). Under that section, pass through costs cannot include the legal costs of any appeals against input methodology determinations under Part 4, or of any appeals under s 91 or s 97.

Powerco recommends that the legal costs of IM appeals be included in forecasted operating costs. This would be consistent with the Commission position expressed in its draft decision on the Gas IMs, in which it stated that “A DPP implicitly provides for general regulatory costs as it takes account of operating expenditure, including the historical costs of meeting regulations”.³

Powerco also notes the following typographical errors in the Draft Determination:

- Clause 8.4: Allowable notional revenue is half bolded.
- Clause 9.4.2: “Was greater than” is bolded in error.
- Schedule 4: In the first sentence, “first assessment period” should be bolded.
- Clause 8.5.1: The second sub clause should read 8.5.2.
- Clause 10.7.1: The term “regulatory investment value” is not defined.

Yours sincerely



¹ This reading of the phrase is consistent with the Commission’s view in paragraph 8.3.22 of the Gas IMs Final Decision: “The specification and definition of price IM must include the costs that can be passed through to prices. The types of costs that are typically allowed to be passed through during a regulatory period, once the actual amount is known, are those costs that are outside the control of a regulated supplier and are uncertain in terms of the amount.”

² IM Discussion Paper (June 2009), para 4.99.

³ Paragraph 8.4.11.