

Electricity and Gas Input Methodology Determination Amendments (No. 1) 2012

Decision No. [2012] NZCC 18

Amendments to Decisions 710, 711, and 712 made under s52X of the Commerce Act 1986 to the treatment of asset valuations in related party transactions in the information disclosure and customised price-quality path proposals input methodologies applicable to electricity and gas distribution businesses and gas transmission businesses.

The Commission:

S Begg

P Duignan

Dr S Gale

Date of Decision: 29 June 2012

Electricity and Gas Input Methodology Determination Amendments (No. 1) 2012

Pursuant to Part 4 of the Commerce Act 1986 (the Act) the Commerce Commission makes the following determination:

1. DETERMINATION AMENDED

This determination amends the following determinations:

- 1.1 *Commerce Act (Electricity Distribution Services Input Methodologies) Determination 2010* (Commerce Commission Decision No. 710, 22 December 2010) (the **EDB Determination**);
- 1.2 *Commerce Act (Gas Distribution Services Input Methodologies) Determination 2010* (Commerce Commission Decision No. 711, 22 December 2010) (the **GDB Determination**); and
- 1.3 *Commerce Act (Gas Transmission Services Input Methodologies) Determination 2010* (Commerce Commission Decision No. 712, 22 December 2010) (the **GTB Determination**).

2. COMMENCEMENT

This determination comes into force on the day following notice of the determination is given in the New Zealand Gazette under section 52X of the Commerce Act 1986.

3. INTERPRETATION

- 3.1 Terms in bold type term have the meaning given to those terms in the Determination. Terms used in this determination that are defined in the Act but not this determination, have the same meaning as in the Act.
- 3.2 Nothing in this determination limits the **Commission's** authority to amend the Determination in accordance with the Act.

4. EDB IM AMENDMENTS

- 4.1 In section 1.1.1 of the EDB Determination, replace "Commerce Act (Electricity Distribution Services Input Methodologies) Determination 2010" with "Electricity Distribution Services Input Methodologies Determination 2010", and references to the EDB Determination in the GDB Determination and GTB Determination are updated accordingly.
- 4.2 In the title of section 2.2.11 and 5.311, and in clauses 2.2.11(1) and 5.3.11(1), replace "**Commissioned**" with "**commissioned**".
- 4.3 In section 2.2.11 of the EDB Determination, replace paragraph 2.2.11(1)(g) with:

“(g) an asset acquired from a **related party**, other than an asset to which paragraphs (e) or (f) apply, determined in accordance with subclause (5);”

4.4 In section 2.2.11 of the EDB Determination, insert new subclause (5):

“(5) For the purpose of paragraph 2.2.11(1)(g), the cost of a **commissioned** asset, or component of a **commissioned** asset, acquired from a **related party** must be one of the following –

“(a) the price paid by the **EDB** for the asset, where the cost of all assets acquired from the **related party** first **commissioned** in that **disclosure year** is less than–

“(i) one percent of the sum of **opening RAB values** for the **EDB** for that **disclosure year**, or

“(ii) 20% of the cost of all assets first **commissioned** by the **EDB** in that **disclosure year**;

“(b) the price paid by the **EDB** for the asset, where–

“(i) at least 50% of the **related party**’s sales of assets are to third parties, and third parties may purchase the same or substantially similar assets from the **related party** on substantially the same terms and conditions, including price; or

“(ii) that price is substantially the same as the price paid for substantially similar assets (including any adjustments for inflation using CPI or an appropriate input price index) in the preceding 3 **disclosure years** from a party other than a **related party**;

“(c) the price paid by the **EDB** to the **related party** following a competitive tender process, provided that–

“(i) the price is no more than 5% higher than the price of the lowest conforming tender received;

“(ii) all relevant information material to consideration of a proposal was provided to third parties, or made available upon request;

“(iii) at least one other qualifying proposal was received; and

“(iv) the **EDB** retains for a period of 7 years following the closing date of tender proposals a record of the tender and tender process, including request for information and/or proposal, the criteria used for the assessment of proposals, reasons for acceptance or rejection of proposals, and all proposals and requests for information on the tender for the purposes of making proposals;

- “(d) its depreciated historic cost on the day before the acquisition by the **EDB** determined in accordance with **GAAP**;
- “(e) its inventory value on the day before the acquisition by the **EDB** determined in accordance with **GAAP**;
- “(f) its market value as at its **commissioning date** as determined by a **valuer**;
- “(g) its directly attributable cost as would be incurred by the group to which the **EDB** and **related party** are a part, determined in accordance with **GAAP**, as if the consolidated group was the **EDB**;
- “(h) the price paid by the **EDB** for the asset, provided–
 - “(i) the price cannot otherwise be determined under paragraphs (a) – (g), and
 - “(ii) no fewer than 2 **directors** of the **EDB** provide a written certification that they are satisfied that the price of any assets determined in accordance with this paragraph reflect the price or prices for those assets that would be received in an arm’s-length transaction; or
- “(i) nil.”

4.5 In section 5.3.11 of the EDB Determination, replace paragraph 5.3.11(1)(g) with:

- “(g) an asset or assets, or components of assets, forecast to be acquired from a **related party**, and forecast to be **commissioned** during any **disclosure year** of the **CPP regulatory period** other than assets to which paragraphs (e) or (f) apply, are the forecast values as determined by the **EDB**, supported by a written certification by no fewer than 2 **directors** of the **EDB** that they are reasonably satisfied that the asset values are consistent with values determined in accordance with subclause (6).”

4.6 In section 5.3.11 of the EDB Determination, insert new subclause (6):

- “(6) For the purpose of paragraph 5.3.11(1)(g), the forecast value of any assets, or components of assets, must be consistent with values determined in accordance with one of the following –
 - “(a) the forecast price to be paid by the **EDB** for the asset, where the forecast cost of all assets to be acquired from the **related party** and first **commissioned** in any **disclosure year** of the **CPP regulatory period** will be less than–
 - “(i) one percent of the sum of **opening RAB values** for the **EDB** for that **disclosure year**, or
 - “(ii) 20% of the cost of all assets to be first **commissioned** by the **EDB** in that **disclosure year**;

- “(b) the forecast price to be paid by the **EDB** for the asset, where–
- “(i) it is reasonably expected that at least 50% of the **related party’s** sales of assets will be to third parties in the **disclosure year** in which the asset is first **commissioned**, and third parties may purchase the same or substantially similar assets from the **related party** on substantially the same terms and conditions, including price; or
 - “(ii) that forecast price is substantially the same as the price paid for substantially similar assets (including any adjustments for inflation using CPI or an appropriate input price index) in the preceding 3 **disclosure years** from a party other than a **related party**;
- “(c) the price to be paid by the **EDB** to the **related party** for an asset to be **commissioned** in a **disclosure year** in the **CPP regulatory period** has been determined following a completed competitive tender process, provided that–
- “(i) the price is no more than 5% higher than the price of the lowest conforming tender received;
 - “(ii) all relevant information material to consideration of the proposal was provided to third parties, or made available upon request;
 - “(iii) at least one other qualifying proposal was received; and
 - “(iv) the **EDB** retains for a period of 7 years following the closing date of tender proposals a record of the tender and tender process, including request for information and/or proposal, the criteria used for the assessment of proposals, reasons for acceptance or rejection of proposals, and all proposals and requests for information on the tender for the purposes of making proposals;
- “(d) its forecast depreciated historic cost on the day before the forecast acquisition by the **EDB** determined in accordance with **GAAP**;
- “(e) its forecast inventory value on the day before the forecast acquisition by the **EDB** determined in accordance with **GAAP**;
- “(f) its forecast market value as at its **commissioning date** as determined by a **valuer**;
- “(g) its forecast directly attributable cost as would be incurred by the group to which the **EDB** and **related party** are a part, determined in accordance with **GAAP**, as if the consolidated group was the **EDB**; or

“(h) the forecast price to be paid by the **EDB** for the asset reflects the price or prices that would be paid in an arm’s-length transaction, provided the price cannot otherwise be determined under paragraphs (a) – (g).”

5. GDB IM AMENDMENTS

5.1 In section 1.1.1 of the GDB Determination, replace “Commerce Act (Gas Distribution Services Input Methodologies) Determination 2010” with “Gas Distribution Services Input Methodologies Determination 2010”, and references to the GDB Determination in the EDB Determination and GTB Determination are updated accordingly.

5.2 In section 2.2.11 of the GDB Determination, replace paragraph 2.2.11(1)(g) with:

“(g) an asset acquired from a **related party**, other than an asset to which paragraphs (e) or (f) apply, determined in accordance with subclause (5);”

5.3 In section 2.2.11 of the GDB Determination, insert new subclause (5):

“(5) For the purpose of paragraph 2.2.11(1)(g), the cost of a **commissioned** asset, or component of a **commissioned** asset, acquired from a **related party** must be one of the following –

“(a) the price paid by the **GDB** for the asset, where the cost of all assets acquired from the **related party** first **commissioned** in that **disclosure year** is less than–

“(i) one percent of the sum of **opening RAB values** for the **GDB** for that **disclosure year**, or

“(ii) 20% of the cost of all assets first **commissioned** by the **GDB** in that **disclosure year**;

“(b) the price paid by the **GDB** for the asset, where–

“(i) at least 50% of the **related party**’s sales of assets are to third parties, and third parties may purchase the same or substantially similar assets from the **related party** on substantially the same terms and conditions, including price; or

“(ii) that price is substantially the same as the price paid for substantially similar assets (including any adjustments for inflation using CPI or an appropriate input price index) in the preceding 3 **disclosure years** from a party other than a **related party**;

“(c) the price paid by the **GDB** to the **related party** following a competitive tender process, provided that–

- “(i) the price is no more than 5% higher than the price of the lowest conforming tender received;
 - “(ii) all relevant information material to consideration of a proposal was provided to third parties, or made available upon request;
 - “(iii) at least one other qualifying proposal was received; and
 - “(iv) the **GDB** retains for a period of 7 years following the closing date of tender proposals a record of the tender and tender process, including request for information and/or proposal, the criteria used for the assessment of proposals, reasons for acceptance or rejection of proposals, and all proposals and requests for information on the tender for the purposes of making proposals;
- “(d) its depreciated historic cost on the day before the acquisition by the **GDB** determined in accordance with **GAAP**;
 - “(e) its inventory value on the day before the acquisition by the **GDB** determined in accordance with **GAAP**;
 - “(f) its market value as at its **commissioning date** as determined by a **valuer**;
 - “(g) its directly attributable cost as would be incurred by the group to which the **GDB** and **related party** are a part, determined in accordance with **GAAP**, as if the consolidated group was the **GDB**;
 - “(h) the price paid by the **GDB** for the asset, provided–
 - “(i) the price cannot otherwise be determined under paragraphs (a) – (g), and
 - “(ii) no fewer than 2 **directors** of the **GDB** provide a written certification that they are satisfied that the price of any assets determined in accordance with this paragraph reflect the price or prices for those assets that would be received in an arm’s-length transaction; or
 - “(i) nil.”

5.4 In section 5.3.11 of the GDB Determination, replace paragraph 5.3.11(1)(g) with:

- “(g) an asset or assets, or components of assets, forecast to be acquired from a **related party**, and forecast to be **commissioned** during any **disclosure year** of the **CPP regulatory period** other than assets to which paragraphs (e) or (f) apply, are the forecast values as determined by the **GDB**, supported by a written certification by no fewer than 2 **directors** of the **GDB** that they are reasonably satisfied

that the asset values are consistent with values determined in accordance with subclause (6).”

5.5 In section 5.3.11 of the GDB Determination, insert new subclause (6):

- “(6) For the purpose of paragraph 5.3.11(1)(g), the forecast value of any assets, or components of assets, must be consistent with values determined in accordance with one of the following –
- “(a) the forecast price to be paid by the **GDB** for the asset, where the forecast cost of all assets to be acquired from the **related party** and first **commissioned** in any **disclosure year** of the **CPP regulatory period** will be less than–
- “(i) one percent of the sum of **opening RAB values** for the **GDB** for that **disclosure year**, or
- “(ii) 20% of the cost of all assets to be first **commissioned** by the **GDB** in that **disclosure year**;
- “(b) the forecast price to be paid by the **GDB** for the asset, where–
- “(i) it is reasonably expected that at least 50% of the **related party’s** sales of assets will be to third parties in the **disclosure year** in which the asset is first **commissioned**, and third parties may purchase the same or substantially similar assets from the **related party** on substantially the same terms and conditions, including price; or
- “(ii) that forecast price is substantially the same as the price paid for substantially similar assets (including any adjustments for inflation using CPI or an appropriate input price index) in the preceding 3 **disclosure years** from a party other than a **related party**;
- “(c) the price to be paid by the **GDB** to the **related party** for an asset to be **commissioned** in a **disclosure year** in the **CPP regulatory period** has been determined following a completed competitive tender process, provided that–
- “(i) the price is no more than 5% higher than the price of the lowest conforming tender received;
- “(ii) all relevant information material to consideration of the proposal was provided to third parties, or made available upon request;
- “(iii) at least one other qualifying proposal was received; and

- “(iv) the **GDB** retains for a period of 7 years following the closing date of tender proposals a record of the tender and tender process, including request for information and/or proposal, the criteria used for the assessment of proposals, reasons for acceptance or rejection of proposals, and all proposals and requests for information on the tender for the purposes of making proposals;
- “(d) its forecast depreciated historic cost on the day before the forecast acquisition by the **GDB** determined in accordance with **GAAP**;
- “(e) its forecast inventory value on the day before the forecast acquisition by the **GDB** determined in accordance with **GAAP**;
- “(f) its forecast market value as at its **commissioning date** as determined by a **valuer**;
- “(g) its forecast directly attributable cost as would be incurred by the group to which the **GDB** and **related party** are a part, determined in accordance with **GAAP**, as if the consolidated group was the **GDB**; or
 - “(h) the forecast price to be paid by the **GDB** for the asset reflects the price or prices that would be paid in an arm’s-length transaction, provided the price cannot otherwise be determined under paragraphs (a) – (g).”

6. GTB IM AMENDMENTS

- 6.1 In section 1.1.1 of the GTB Determination, replace “Commerce Act (Gas Distribution Services Input Methodologies) Determination 2010” with “Gas Distribution Services Input Methodologies Determination 2010”, and references to the GTB Determination in the EDB Determination and GDB Determination are updated accordingly.
- 6.2 In section 2.2.11 of the GTB Determination, replace paragraph 2.2.11(1)(g) with:
 - “(g) an asset acquired from a **related party**, other than an asset to which paragraphs (e) or (f) apply, determined in accordance with subclause (5);”
- 6.3 In section 2.2.11 of the GTB Determination, insert new subclause (5):
 - “(5) For the purpose of paragraph 2.2.11(1)(g), the cost of a **commissioned** asset, or component of a **commissioned** asset, acquired from a **related party** must be one of the following –

- “(a) the price paid by the **GTB** for the asset, where the cost of all assets acquired from the **related party** first **commissioned** in that **disclosure year** is less than–
 - “(i) one percent of the sum of **opening RAB values** for the **GTB** for that **disclosure year**, or
 - “(ii) 20% of the cost of all assets first **commissioned** by the **GTB** in that **disclosure year**;
- “(b) the price paid by the **GTB** for the asset, where–
 - “(i) at least 50% of the **related party**’s sales of assets are to third parties, and third parties may purchase the same or substantially similar assets from the **related party** on substantially the same terms and conditions, including price; or
 - “(ii) that price is substantially the same as the price paid for substantially similar assets (including any adjustments for inflation using CPI or an appropriate input price index) in the preceding 3 **disclosure years** from a party other than a **related party**;
- “(c) the price paid by the **GTB** to the **related party** following a competitive tender process, provided that–
 - “(i) the price is no more than 5% higher than the price of the lowest conforming tender received;
 - “(ii) all relevant information material to consideration of a proposal was provided to third parties, or made available upon request;
 - “(iii) at least one other qualifying proposal was received; and
 - “(iv) the **GTB** retains for a period of 7 years following the closing date of tender proposals a record of the tender and tender process, including request for information and/or proposal, the criteria used for the assessment of proposals, reasons for acceptance or rejection of proposals, and all proposals and requests for information on the tender for the purposes of making proposals;
- “(d) its depreciated historic cost on the day before the acquisition by the **GTB** determined in accordance with **GAAP**;
- “(e) its inventory value on the day before the acquisition by the **GTB** determined in accordance with **GAAP**;
- “(f) its market value as at its **commissioning date** as determined by a **valuer**;
- “(g) its directly attributable cost as would be incurred by the group to which the **GTB** and **related party** are a part,

determined in accordance with **GAAP**, as if the consolidated group was the **GTB**;

- “(h) the price paid by the **GTB** for the asset, provided—
 - “(i) the price cannot otherwise be determined under paragraphs (a) – (g), and
 - “(ii) no fewer than 2 **directors** of the **GTB** provide a written certification that they are satisfied that the price of any assets determined in accordance with this paragraph reflect the price or prices for those assets that would be received in an arm’s-length transaction; or
- “(i) nil.”

6.4 In section 5.3.11 of the GTB Determination, replace paragraph 5.3.11(1)(g) with:

- “(g) an asset or assets, or components of assets, forecast to be acquired from a **related party**, and forecast to be **commissioned** during any **disclosure year** of the **CPP regulatory period** other than assets to which paragraphs (e) or (f) apply, are the forecast values as determined by the **GTB**, supported by a written certification by no fewer than 2 **directors** of the **GTB** that they are reasonably satisfied that the asset values are consistent with values determined in accordance with subclause (6).”

6.5 In section 5.3.11 of the GTB Determination, insert new subclause (6):

- “(6) For the purpose of paragraph 5.3.11(1)(g), the forecast value of any assets, or components of assets, must be consistent with values determined in accordance with one of the following –
 - “(a) the forecast price to be paid by the **GTB** for the asset, where the forecast cost of all assets to be acquired from the **related party** and first **commissioned** in any **disclosure year** of the **CPP regulatory period** will be less than –
 - “(i) one percent of the sum of **opening RAB values** for the **GTB** for that **disclosure year**, or
 - “(ii) 20% of the cost of all assets to be first **commissioned** by the **GTB** in that **disclosure year**;
 - “(b) the forecast price to be paid by the **GTB** for the asset, where—
 - “(i) it is reasonably expected that at least 50% of the **related party’s** sales of assets will be to third parties in the **disclosure year** in which the asset is first **commissioned**, and third parties may purchase the

same or substantially similar assets from the **related party** on substantially the same terms and conditions, including price; or

- “(ii) that forecast price is substantially the same as the price paid for substantially similar assets (including any adjustments for inflation using CPI or an appropriate input price index) in the preceding 3 **disclosure years** from a party other than a **related party**;
- “(c) the price to be paid by the **GTB** to the **related party** for an asset to be **commissioned** in a **disclosure year** in the **CPP regulatory period** has been determined following a completed competitive tender process, provided that–
 - “(i) the price is no more than 5% higher than the price of the lowest conforming tender received;
 - “(ii) all relevant information material to consideration of the proposal was provided to third parties, or made available upon request;
 - “(iii) at least one other qualifying proposal was received; and
 - “(iv) the **GTB** retains for a period of 7 years following the closing date of tender proposals a record of the tender and tender process, including request for information and/or proposal, the criteria used for the assessment of proposals, reasons for acceptance or rejection of proposals, and all proposals and requests for information on the tender for the purposes of making proposals;
- “(d) its forecast depreciated historic cost on the day before the forecast acquisition by the **GTB** determined in accordance with **GAAP**;
- “(e) its forecast inventory value on the day before the forecast acquisition by the **GTB** determined in accordance with **GAAP**;
- “(f) its forecast market value as at its **commissioning date** as determined by a **valuer**;
- “(g) its forecast directly attributable cost as would be incurred by the group to which the **GTB** and **related party** are a part, determined in accordance with **GAAP**, as if the consolidated group was the **GTB**; or

- “(h) the forecast price to be paid by the **GTB** for the asset reflects the price or prices that would be paid in an arm’s-length transaction, provided the price cannot otherwise be determined under paragraphs (a) – (g).”



Sue Begg, *Deputy Chair*

Dated at Wellington this 29th day of June 2012.

COMMERCE COMMISSION

Explanatory Note

This amendment provides regulated suppliers of gas distribution, gas transmission, and electricity distribution services with additional means for valuing assets of the regulated supplier obtained from a related party for the purposes of information disclosure and customised price-quality path proposals.

