

Gas Transmission Services Default Price-Quality Path Determination 2022

[2022] NZCC 20

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Date of determination: 31 May 2022



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COMMERCE COMMISSION

Wellington, New Zealand

Gas Transmission Services Default Price-Quality Path Determination 2022

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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 Transmission 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 GTBs in respect of the supply of Gas Transmission 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 relevant written statement required to be made by a GTB under clause 12;

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

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;

Critical Contingency means a critical contingency as determined by the critical contingency operator in accordance with regulation 48 of the Gas Governance (Critical Contingency Management) Regulations 2008, as incorporated by reference into this determination;

Curtailment Band has the same meaning as in Schedule 3 of the Gas Governance (Critical Contingency Management) Regulations 2008, as incorporated by reference into this determination;

Emergency means an incident:

- (a) that has occurred on or in the near vicinity of a GTB's assets on the transmission network, including leaks, unplanned disruptions of supply, third party damage, near-miss incidents, equipment failure, overpressure, or ignitions; and
- (b) that should be responded to immediately by the GTB based on GIP;

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

Forecast Revenue from Prices means the amount calculated for each Assessment Period as specified in Schedule 3;

Forecast Allowable Revenue means the amount calculated for each Assessment Period as specified in Schedule 5;

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

- (a) \$219.85m for First Gas Limited (in respect of Gas Transmission Services);

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

GIP means 'Good Industry Practice', where the GTB concerned exercises the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

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

IM Determination means the Gas Transmission 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 Interruption means any declaration of a Critical Contingency caused or contributed to by an incident on the transmission assets owned or controlled by the GTB, which results in curtailment directions being issued in respect of Curtailment Band 2 and above;

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 GTB directly or indirectly:

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

Pass-through Cost has the same meaning as in clause 1.1.4 of the IM Determination;

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

Price 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;

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

RTE means 'response time to emergencies', being the time between when an Emergency is reported to a GTB representative and when the GTB'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 the GTB under section 53N of the Act;

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

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

- (a) 16.62 years for First Gas Limited (in respect of Gas Transmission Services);

Wash-up Amount means the amount calculated for each Assessment Period as specified in Schedule 6 for the first Assessment Period and Schedule 7 for each of the second to fourth Assessment Periods; 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 GTB must comply with the default price-quality path, which consists of:

- (a) the price path specified in clause 8;
- (b) the quality standards specified in clause 9; and
- (c) the quality incentive reporting requirements in clause 10.

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

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

8. Price path

Starting prices

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

Rate of change

- 8.2 The annual rate of change in revenue for each GTB, 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 Forecast Revenue from Prices of each GTB for each Assessment Period must not exceed the Forecast Allowable Revenue for the Assessment Period.

Wash-up Amount calculation

- 8.4 The GTB must calculate the Wash-up Amount for each Assessment Period using the methodology specified in Schedule 6 for the first Assessment Period, and the methodology specified in Schedule 7 for the second to fourth Assessment Periods.

9. Quality standards

Compliance with quality standards

- 9.1 The quality standards for each Assessment Period are that:

- (a) a GTB's RTE for any Emergency must not exceed 180 minutes; and
- (b) there must be no Major Interruption.

Exclusion of certain Emergencies

- 9.2 If a GTB has a reasonable excuse for not meeting the quality standard in clause 9.1(a) in respect of the RTE for a particular Emergency, the GTB may apply to the Commission under clause 9.3 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 GTB's RTE was greater than 180 minutes.

- 9.4 A GTB may only treat a RTE greater than 180 minutes as having complied with that quality standard if the Commission determines in writing that the GTB may do so.

10. Incentives to maintain quality of supply - Reporting in the case of a failure to meet the Major Interruption quality standard

Reporting and public disclosure of a Major Interruption

- 10.1 A GTB must notify the Commission in writing within 5 Working Days of any Major Interruption, and provide the Commission with the following information within 60 Working Days of the termination of the Critical Contingency leading to the Major Interruption:
- (a) a description of the interruption (including the cause(s), location, assets involved);
 - (b) whether the risk of the interruption was identified in advance, and any steps the GTB took to reduce or mitigate that risk;
 - (c) the duration of the interruption;
 - (d) the GTB's best estimate of the quantities of services not delivered as a result of the interruption, and the revenues that would have been earned for any undelivered services, to the extent that it is possible to determine them;
 - (e) the direct cost of the interruption (including repair costs) to the GTB; and
 - (f) what actions (if any) the GTB intends to take to avoid similar interruptions in future.
- 10.2 The GTB must make the information required in clause 10.1(a) to (f) publicly available on its website within 5 Working Days after providing it to the Commission.
- 10.3 Where a GTB is not reasonably able to provide the Commission with some or all of the information required in clause 10.1(a) to (f) within the prescribed 60-Working Day period in clause 10.1, the GTB may apply in writing to the Commission for an extension of time to provide the information.
- 10.4 An extension request made under clause 10.3 must set out why the information is unavailable and the proposed timeframe for supplying the information to the Commission.

11. Transactions

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

- 11.1 A GTB must notify the Commission in writing within 30 Working Days of any Amalgamation, Merger, Transfer or Major Transaction.

12. Due dates of Compliance Statements

Compliance Statement in respect of Price setting

- 12.1 First Gas Limited, in respect of Gas Transmission Services, must provide to the Commission a written 'annual price-setting compliance statement' in respect of Price setting for each Assessment Period, as specified in a Section 53N notice, before the start of the Assessment Period.

Compliance Statement in respect of the Wash-up Amount calculation and quality standards

- 12.2 First Gas Limited, in respect of Gas Transmission Services, must provide to the Commission a written 'annual compliance statement' in respect of the Wash-up Amount calculation in clause 8.4, the quality standards in clause 9, and the quality incentive reporting requirements in clause 10, as specified in a Section 53N notice, by 31 March following the end of each Assessment Period.

Schedule 1: Starting prices

The starting price for the Regulatory Period for First Gas Limited, in respect of Gas Transmission Services, specified as actual net allowable revenue, is \$147.227m.

Schedule 2: Rate of change

The annual rate of change is -8.50%.

Schedule 3: Calculation of Forecast Revenue from Prices

1. When setting Prices for an Assessment Period, each GTB must calculate the Forecast Revenue from Prices for the Assessment Period.
2. When calculating the Forecast Revenue from Prices, the GTB must prepare a forecast of Quantities for the Assessment Period to which the Prices for the Assessment Period will apply.
3. The Forecast Revenue from Prices must be calculated as the sum of each Price multiplied by each corresponding forecast Quantity.
4. All forecast Quantities used to calculate the Forecast Revenue from Prices must be demonstrably reasonable.

Schedule 4: Forecast Net Allowable Revenue

Assessment Period ending	Forecast net allowable revenue (\$000)
30 September 2023	147,227
30 September 2024	163,455
30 September 2025	180,939
30 September 2026	200,246

Schedule 5: Calculation of Forecast Allowable Revenue

1. When setting Prices for an Assessment Period, the GTB must calculate the Forecast Allowable Revenue.
2. When calculating the Forecast Allowable Revenue, the GTB must prepare a forecast of Pass-through Costs and a forecast of Recoverable Costs.
3. All forecasts of Pass-through Costs and Recoverable Costs used to calculate the Forecast Allowable Revenue must be demonstrably reasonable.
4. The Forecast Allowable Revenue must be determined in accordance with the following formula:

forecast net allowable revenue + forecast pass-through and recoverable costs + opening balance of the wash-up account

where—

forecast net allowable revenue is the amount as specified in Schedule 4;

forecast pass-through and recoverable costs is the sum of all the forecast Pass-through Costs and forecast Recoverable Costs, excluding any Recoverable Cost that is a *revenue wash-up draw down amount* calculated as specified in paragraph 5 of Schedule 7; and

opening wash-up account balance is the amount calculated as specified in paragraph 3 of Schedule 8.

5. Unless expressly stated otherwise, all amounts referred to in this schedule are for the Assessment Period for which the relevant calculations are being performed.

Schedule 6: Calculation of Wash-up Amount for the first Assessment Period

Definitions

1. For the purpose of this schedule, the following terms have the following meanings:
 - 1.1 *Actual net allowable revenue* is the amount specified in Schedule 4 as the *forecast net allowable revenue* for the first Assessment Period;
 - 1.2 *Actual revenue from prices* must be calculated as the sum of each Price multiplied by each corresponding actual Quantity; and
2. Unless expressly stated otherwise, all amounts referred to in this schedule are for the first Assessment Period.

Formula for Wash-up Amount

3. The Wash-up Amount must be calculated in accordance with the following formula:

$$\text{actual allowable revenue} - \text{actual revenue} - \text{revenue foregone}$$
4. The components of the formula to calculate the Wash-up Amount must be calculated as set out below in paragraphs 5 to 8.

Actual allowable revenue

5. *Actual allowable revenue* must be calculated in accordance with the formula –

$$\text{actual net allowable revenue} + \text{actual pass-through costs and recoverable costs} + \text{revenue wash-up draw down amount}$$

where –

<i>actual net allowable revenue</i>	is the amount as specified in paragraph 1.1 above;
<i>actual pass-through costs and recoverable costs</i>	is the sum of all Pass-through Costs and Recoverable Costs incurred in the Assessment Period, excluding any Recoverable Cost that is a <i>revenue wash-up draw down amount</i> ; and
<i>revenue wash-up draw down amount</i>	is the <i>opening wash-up account balance</i> calculated in accordance with Schedule 8.

Actual revenue

6. *Actual revenue* must be calculated in accordance with the formula –

$$\text{actual revenue from prices} + \text{other regulated Income}$$

where –

actual revenue from prices is the amount calculated as specified in paragraph 1.2 above

other regulated income has the same meaning as in clause 1.1.4 of the IM Determination.

Revenue foregone

7. If the *revenue reduction percentage* is greater than 20%, the *revenue foregone* must be calculated in accordance with the following formula:

$$\text{actual net allowable revenue} \times (\text{revenue reduction percentage} - 20\%)$$

where–

actual net allowable revenue is the amount as specified in paragraph 1.1 above; and

revenue reduction percentage is $1 - (\text{actual revenue from prices} \div \text{Forecast Revenue from Prices})$;

and where–

actual revenue from prices is the amount as specified in paragraph 1.2 above; and

Forecast Revenue from Prices is the amount calculated under Schedule 3.

8. If the *revenue reduction percentage* as calculated in paragraph 7 is not greater than 20%, the *revenue foregone* is nil.

Schedule 7: Calculation of Wash-up Amount for the second to fourth Assessment Periods

Definitions

1. For purposes of this schedule *Actual revenue from prices* must be calculated as the sum of each Price multiplied by each corresponding actual Quantity.
2. Unless expressly stated otherwise, all amounts referred to in this schedule are for the Assessment Period for which the relevant calculations are being performed.

Formula for Wash-up Amount calculation

3. The Wash-up Amount must be calculated in accordance with the following formula:

$$\text{actual allowable revenue} - \text{actual revenue} - \text{revenue foregone}$$

4. The components of the Wash-up Amount calculation formula must be calculated as set out below in paragraphs 5 to 8.

Actual allowable revenue

5. *Actual allowable revenue* must be calculated in accordance with the following formula:

$$\text{actual net allowable revenue} + \text{actual pass-through costs and recoverable costs} + \text{revenue wash-up draw down amount}$$

where—

actual net allowable revenue is the amount calculated using the following formula:

$$\text{actual net allowable revenue of the previous Assessment Period} \times (1 + \Delta CPI_t) \times (1 - X)$$

and where—

ΔCPI is the derived change in the CPI to be applied for the Assessment Period, calculated in accordance with the following formula:

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

and 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;
- t is the year in which the Assessment Period ends; and
- X is the annual rate of change, as specified in Schedule 2

actual-pass through costs and recoverable costs is the sum of all Pass-through Costs and Recoverable Costs that were incurred in the Assessment Period, excluding any Recoverable Cost that is a *revenue wash-up draw down amount*;

revenue wash-up draw down amount for each of the second to fourth Assessment Periods is the *opening wash-up account balance* calculated in accordance with Schedule 8.

Actual revenue

6. *Actual revenue* must be calculated in accordance with the following formula:

$$\text{actual revenue from prices} + \text{other regulated Income}$$

where–

actual revenue from prices is the amount calculated as specified in paragraph 1 above; and

other regulated income has the same meaning as in clause 1.1.4 of the IM Determination.

Revenue foregone

7. If the *revenue reduction percentage* is greater than 20%, the *revenue foregone* must be calculated in accordance with the following formula:

$$\text{actual net allowable revenue} \times (\text{revenue reduction percentage} - 20\%);$$

where–

actual net allowable revenue is the amount calculated using the formula *actual net allowable revenue* of the previous Assessment Period $\times (1 + \Delta\text{CPI}_t) \times (1 - X)$, as set out in paragraph 5 above; and

revenue reduction percentage is $1 - (\text{actual revenue from prices} \div \text{Forecast Revenue from Prices})$

and where–

actual revenue from prices is the amount as specified in paragraph 1 above; and

Forecast Revenue from Prices is the amount calculated as specified in Schedule 3.

8. If the *revenue reduction percentage* as calculated in paragraph 7 is not greater than 20%, the *revenue foregone* is nil.

Schedule 8: Calculation of Opening Wash-up Account Balance

1. For purposes of this schedule, the *67th percentile estimate of post-tax WACC* is 5.67%.
2. The *closing wash-up account balance* for the first Assessment Period must be calculated in accordance with the following formula:

$$\text{wash-up amount for the previous assessment period} \times (1 + 67^{\text{th}} \text{ percentile estimate of post-tax WACC})^2$$

where *wash-up amount for the previous assessment period* means the *wash-up amount* of the last Assessment Period of the previous regulatory period, calculated in accordance with the Gas Transmission Services Default Price-Quality Path Determination 2017.

3. The *closing wash-up account balance* for the second and subsequent Assessment Periods must be calculated in accordance with the following formula:

$$\text{wash-up Amount for the previous Assessment Period} \times (1 + 67^{\text{th}} \text{ percentile estimate of post-tax WACC})^2$$

4. The *opening wash-up account balance* for the first Assessment Period is the *closing wash-up account balance* of the last Assessment Period of the previous regulatory period, calculated in accordance with the Gas Transmission Services Default Price-Quality Path Determination 2017.
5. The *opening wash-up account balance* for the second and subsequent Assessment Periods is the *closing wash-up account balance* of the previous Assessment Period.

Explanatory note

1. The purpose of the *Gas Transmission Services Default Price-Quality Path Determination 2022* (“the Determination”) is to set a default price-quality paths for the gas transmission business (“GTB”) for the four years beginning 1 October 2022 and ending 30 September 2026, pursuant to Part 4 of the Commerce Act 1986 (“the Act”).
2. Under s 53N the GTB is required to provide to the Commerce Commission (“the Commission”), Compliance Statements relating to Price setting, and the GTB’s Wash-up Amount calculation, quality standards and quality incentive reporting. The Compliance Statements must be accompanied by a directors’ certificate. The Compliance Statement for the Wash-up Amount calculation, quality standards and quality incentive reporting must also be accompanied by an auditor’s report. The current requirements relating to the Compliance Statements are set out in section 53N notices that have been issued to the GTB.
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.