

Default/Customised Price-Quality Regulation

**Setting of the Default Price-Quality Path
for Suppliers of Gas Pipeline Services**

Updated Process Paper

9 October 2009



COMMERCE COMMISSION

Network Performance Branch

Commerce Commission

Wellington

NEW ZEALAND

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Introduction

- 1 On 24 July 2009, the Commerce Commission (“Commission”) issued a paper (“Process Paper”) outlining the process it proposed to follow in setting the initial default price-quality path (“DPP”) for suppliers of gas pipeline services (“GPBs”).
- 2 The Commission invited submissions on the proposed process and, after consideration of these submissions it has revised its process.

Background

- 3 From 1 July 2010, suppliers of gas pipeline services are subject to default/customised price-quality regulation under subpart 10 of Part 4 of the *Commerce Act 1986* (“the Act”), as amended by the *Commerce Amendment Act 2008*.
- 4 The DPP must include starting prices, the rates of change in prices during the first regulatory period, the quality standards that apply during the first regulatory period, the date at which the DPP takes effect and the annual date by which any proposal for a customised price-quality path must be received¹. The Commission may also, by written notice issued under section 53N of the Act, require information demonstrating compliance with the DPP, including written confirmation of compliance and the truth and accuracy of that information.
- 5 It was noted in the Process Paper that there is ambiguity in the Act as to the date by which the Commission is required to set the initial default price-quality path for suppliers of gas pipeline services (“gas DPP”). Section 55E(2) contemplates that the DPP may come into effect after 1 July 2010, whereas section 55D on one interpretation suggests that this should be set by 1 July 2010. The Commission’s view remains that there is an inconsistency in the relevant legislative provisions. Against this background, an assessment was made as to which of the express provisions was to be preferred. The Commission decided that it would be guided by section 55E(2) and, therefore, proposed that the initial gas DPP come into effect on 1 July 2011. It was argued that this time line would enable the Commission to fully consider the application of relevant input methodologies; to obtain a more comprehensive data set from regulated suppliers; to undertake better analysis of that data; to give due consideration to sector-specific issues; and to allow time for consultation with interested parties.

Submissions from Interested Parties

- 6 Submissions to the Process Paper were received from GasNet Limited (“GasNet”), Powerco Limited (“Powerco”), Vector Limited (“Vector”) and Maui Development Limited (“MDL”) and were posted on the Commission’s website. While all four submissions were supportive of the DPP taking effect after 1 July 2010, issues were raised regarding the proposed date of 1 July 2011.

¹ Section 53O.

- 7 First, it was argued that if the DPP took effect on 1 July 2011 this would imply a short time frame between the input methodologies being made available and the date for the Draft Decisions Paper on the Gas DPP².
- 8 Second, there was concern over the proposed consultation timeframes for the Gas DPP and that a longer period may be necessary than for the electricity distribution businesses' ("EDBs") DPP especially given the quality and coverage of the data compared with what is available for the EDBs³. For instance, the range of indicators covered by existing data may not be comparable with electricity and not universal across all of the suppliers of gas pipeline services.
- 9 Third, it was noted that a deferral of the gas DPP to 1 July 2012 would coincide with the date at which the Commerce (Control of Natural Services) Order 2005 is due to expire. Powerco and Vector (Auckland) are subject to this Order and would be subject to the DPP thereafter. In addition, section 55F(2) of the Act provides an opportunity to apply claw-back at the time the initial DPP is set if the supplier has increased its weighted average prices by more than the movement in the CPI between the period beginning 1 January 2008 and ending with the date of the initial DPP determination. As such, if the DPP were to take effect from 1 July 2012, there would still be implicit constraints in place until that date for each of the regulated suppliers of gas pipeline services⁴.
- 10 In light of the submissions, the Commission has decided that the gas DPP should come into effect on 1 July 2012. This allows for an increased time frame for interested parties to consider and respond to the DPP outputs (i.e. the Initial Consultation Paper, Draft Decisions Paper, and Draft Determinations Paper), and a longer time frame to collect and analyse data. As noted above, there are current regulatory provisions to offer implicit constraints on regulated suppliers of gas pipeline services until that date.

Outline of Updated DPP Process

- 11 This section describes the proposed project stages. Each project stage will contain progressively more detail on the proposed DPP and seek to address and draw conclusions on particular issues as the project proceeds. The Commission envisages that the process to set the DPP will consist of three stages, each with a significant consultative element. These stages are as follows:
 - i. discussion stage;
 - ii. decision stage; and
 - iii. determination stage.
- 12 The three key outputs of the process to set the DPP are:
 - a Determination, setting out how the DPP applies to GPBs;
 - a Decisions Paper that outlines how decisions relating to the Determination were made; and

² Submission from GasNet, paragraph 9.

³ Submission from Vector, paragraph 3.

⁴ Submission from GasNet, paragraph 12.

Process Paper

- a summary of the Determination, published in the Gazette in December 2011.

Discussion Stage

- 13 Following this updated Process Paper will be an “Initial Consultation Paper”, setting out the Commission’s preliminary views on the DPP and how it should be determined. The Initial Consultation Paper will cover issues such as:
- *Overall Form and Scope of the DPP*: a proposal on the likely form of the DPP;
 - *Information Requirements*: discussion of the required information needed for setting starting prices, rates of change and possible quality standards;
 - *Preliminary views*: on the following:
 - i. appropriate starting prices including potential use of claw-back to 1 January 2008;
 - ii. rates of change analysis; and
 - iii. appropriate quality standards.
- 14 Consultation with interested parties will follow the release of the Initial Consultation Paper, inviting written submissions and cross-submissions from interested parties. To foster an informed and transparent process, the Commission intends to publish all submissions on its website.

Decision Stage

- 15 In the decision stage, the Commission will consider submissions and cross-submissions on the Initial Consultation Paper and prepare and consult on a “Draft Decisions Paper” accompanied by a “Draft Determination”. The Draft Decisions Paper will include initial decisions such as:
- *Overall Form*: the proposed overall form of the DPP given the preliminary work done and submissions received;
 - *Starting Prices*: whether there is a need for initial price adjustments and for which suppliers. This will include an indication of how these should be calculated and towards what level returns should be targeted;
 - *Rates of Change*: a preliminary view on the methodology for calculating the rate of change and whether alternative rates are necessary; and
 - *Quality Standards*: preliminary views on the methodology for determining appropriate standards.
- 16 Consultation with interested parties will be undertaken through the release of the Draft Decisions Paper and Draft Determination, inviting written submissions followed by cross-submissions from interested parties. As with the discussion stage, the Commission intends to publish all submissions on its website.

Determination Stage

- 17 The Commission will prepare an Updated Draft Determination and consult on its form and content. At the same time, it will also produce an Updated Decisions Paper. Following consideration of submissions, the Commission will publish the Final

Determination, the Final Decisions Paper and a summary of the Determination in the *New Zealand Gazette*, in early December 2011.

Indicative Timetable

Table 1 summarises the main consultative steps the Commission intends to follow when setting the DPP. Milestone dates are indicative and may vary. In addition it is anticipated that the Commission will make use of workshops and/or conference to aid the DPP process. The timing of this will be considered within the Initial Consultation Paper.

Table 1: Indicative Timetable

Phase	Key Step	Indicative Date
Discussion	Publish Initial Consultation Paper	Mid March 2010
	- Submissions due on Initial Consultation Paper	Early May 2010
	- Cross-submissions due on Initial Consultation Paper	Early June 2010
Decision	Publish Draft Decisions Paper and Draft Determination	Early February 2011
	- Submissions due on Draft Decisions Paper and Draft Determination	Early April 2011
	- Cross-submissions due on Draft Decisions Paper and Draft Determination	Early June 2011
	Publish Updated Decisions Paper	Mid September 2011
Determination	Publish Updated Draft Determination	Mid September 2011
	- Submissions due on the technical drafting of the Draft Determination	Early November 2011
	Publish Final Determination and Summary of Final Determination in <i>Gazette</i> ; Publish Final Decisions Paper	December 2011*
	The DPP takes effect	1 July 2012

* In order for the DPP to take effect on 1 July 2012, the Final Determination must be made no later than 1 March 2012. The date shown here allows for further consultation with industry if necessary.