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COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

Amendment to Transpower Input Methodology Determination relating to recoverable costs

Final decision and reasons paper

23 September 2026

Associated documents

Publication date	Reference	Title
23 September 2026	[2026] NZCC 44	Transpower Input Methodologies (Non-transmission solution recoverable cost) Amendment Determination 2026

Contents

Chapter 1 Introduction

Purpose of this paper

1.1 This paper sets out our final decision to amend the recoverable cost mechanism in the Transpower Input Methodologies Determination [2012] NZCC 17 (Transpower IM). We consider the determination currently does not give effect to the original policy intent and allow reasonable cost recovery of non-transmission solution (**NTS**) costs (at the time these were defined as transmission alternatives that would incur opex).[1]

1.2 Alongside this paper, we have published a final amendment determination giving effect to our final decision (Transpower IM amendment determination).[2]

1.3 We have consulted with interested parties and considered feedback on our draft decision, before making this final decision.

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1 *Commerce Commission*, Input Methodologies (Transpower) Reasons Paper December 2010 (22 December 2010), para 7.3.22(b)(i), available here.

2 *Commerce Commission*, Transpower Input Methodology (Non-transmission solution recoverable cost) Amendment Determination 2026 [2026] NZCC 44, 23 September 2026.

Chapter 2 Our amendment to the Transpower IM

Purpose of chapter

2.1 This chapter describes our change to the Transpower IM. For the change, we explain:

2.1.1 the current requirement;

2.1.2 our proposed amendment; and

2.1.3 how the amendment is likely to promote our IM amendments framework, as set out in Chapter 3.

The current requirement

2.2 The Transpower IM sets out a range of recoverable costs that Transpower may pass through to consumers. One recoverable cost relates to operating costs associated with a major capex project (**MCP**) that we have approved under the Capex IM.[3]

2.3 In our Western Bay of Plenty (**WBOP**) final decision we decided to approve opex related to a non-transmission solution (**NTS**). NTS opex would be used by Transpower to engage third party providers to defer transmission investment where the combined NTS opex and deferred MCP capex was more economic than the non-deferred MCP capex.[4]

2.4 In its submission on our recent Transpower Capex IM amendment draft decision to give effect to the MCP incentive deadband, Transpower identified an issue with the use of the recoverable cost mechanism for NTS and a conflict with the MCP incentive framework.[5]

2.5 Transpower noted that as it stands, clause 3.1.3(1)(d) of the Transpower IM:[6]

> creates risk that Transpower may not be able to fully recover NTS expenditure even when prudent and efficient. For example, if Transpower is successful in procuring an NTS for deferral, but the capex build still needs to proceed, if the capex increases above the major capex allowance (P50) but is still below the P70, the clause implies that we would only be able to recover the capex element and would be 100% penalised for the NTS spend.

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3 Transpower Input Methodologies, Determination, consolidated as at 1 April 2025, clause 3.1.3(1)(d). available here.

4 *Commerce Commission*, Transpower's Western Bay of Plenty major capex proposal – Final decision reasons paper, 11 June 2025, available here.

5 *Transpower NZ Ltd*, "Submission on Proposed amendment to Transpower Capex IM Determination relating to major capex incentive formula, Schedule B3", 20 February 2026, available here.

6 Ibid, p.2.

2.6 We agree with Transpower that the recoverable cost mechanism for NTS opex needs to be modified in the Transpower IM for development NTS expenditure to be prudently recovered while allowing the incentive deadband to operate as designed.

2.7 The issue with the present recoverable cost IM is that under some circumstances it does not allow Transpower to reasonably recover NTS costs, even when those NTS costs are prudent and efficient costs.

The amendment we proposed in our draft decision

2.8 In our draft decision we proposed to replace clause 3.1.3(1)(d)(iii) as follows:

(iii) where the operating costs incurred do not exceed the expenditure on a **non-transmission solution** approved as part of the **major capex allowance**;

Draft decision submissions we received

2.9 We received three submissions on our draft decision - from Orion, Transpower, and the Independent Electricity Generators Association (**IEGA**).[7] All submitters supported the intent of the proposed amendment. We received no cross-submissions.

2.10 Orion stated that the proposed amendment "includes an opex provision for procuring a non-transmission solution (NTS), which may result in deferral of the project and thereby benefit consumers by delaying the transmission component increase in their electricity bills." Also will "remove a barrier to its implementation".[8]

2.11 In terms of amendment's consistency with the Part 4 purpose, Orion noted that it "serves the Part 4 purpose in section 52A of the Commerce Act 1986 (the Act) by removing a barrier to innovating (limb a); and strengthening incentives to improve and share (for a period) efficiencies (limbs b and c)", and that the proposed amendment is "consistent with the IM purpose statement in section 52R of the Act by removing uncertainty for Transpower in recovering the costs of an NTS proposed within an MCP."[9]

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7 *Orion*, Transpower IM Amendment (Recoverable Costs) draft decision submission, available here. *Transpower*, Transpower IM Amendment (Recoverable Costs) draft decision submission, available here, *IEGA*, Transpower IM Amendment (Recoverable Costs) draft decision submission, available here.

8 *Orion*, Transpower IM Amendment (Recoverable Costs) draft decision submission, p.2, available here.

9 Ibid.

2.12 The IEGA noted, with reference to the Upper South Island MCP, that it was concerned that we only approve NTS funding "one year at a time" and how we could prioritise providing "more certainty to NTS providers that deferral of a Transpower investment can be contracted and funded for more than one year under the MCP approval process."[10,11]

2.13 The IEGA raises two concerns with the NTS funding mechanism as proposed, namely:[12]

2.13.1 "the time and cost for Transpower may discourage Transpower from contracting NTS for subsequent years. This is an additional cost that Transpower does not face if it proceeds with the approved transmission infrastructure investment;" and

2.13.2 "there is no certainty for NTS providers that another year's funding will be approved by the Commission."

2.14 In recent MCP applications and pre-applications, we have seen Transpower engage meaningfully with the NTS process now that an NTS funding mechanism is available. We have seen no evidence to suggest that this will change.

2.15 Our approach of providing a pre-approved allowance for NTS as part of a MCP is a relatively new approach. Approving a NTS allowance upfront enables Transpower to continue to engage with providers where a NTS has not emerged through Transpower's development process while also providing a gauge to providers whether their solution is economically feasible.

2.16 Transpower is not limited to proposing a one-year NTS. It can propose an NTS of any duration provided it is net beneficial in terms of deferring transmission investment. In developing future MCPs, and prior to proposal submission to us, we encourage Transpower to quantify the deferral benefit of NTS beyond one-year. We encourage Transpower to publish this information during the MCP development process so that NTS providers can judge the financial viability of solutions over the longer term.

10 *Commerce Commission*, Transpower's Upper South Island (**USI**) major capex project proposal draft decision reasons paper, 18 December 2025, available here.

11 *IEGA*, Transpower IM Amendment (Recoverable Costs) draft decision submission, p.1, available here.

12 *IEGA*, Transpower IM Amendment (Recoverable Costs) draft decision submission, p.2, available here.

2.17 IEGA appears to have misunderstood our approval process for amending the NTS allowance for MCPs we have approved. We do not expect Transpower to apply for a grid output amendment on a year-to-year basis as the IEGA understands it. Rather, we see a single application as more appropriate once Transpower has identified a longer term NTS solution is both technically and economically feasible, and where the NTS provider considers it is viable. We consider that amending the approved MCP grid outputs for additional funding will be a relatively straightforward process and should not be viewed as an impediment to further NTS funding being available.

2.18 In its submission, Transpower considered that the amendment will "ensure that prudent and efficient expenditure on non-transmission solutions (**NTS**) can be recovered" and that agreed that it addresses the issue identified in its February 2026 submission.[13]

2.19 Transpower suggested we consider an IM determination drafting change to "ensure consistency between the Transpower IM and Capex IM", by using the maximum recoverable cost mechanism to set the upper bound for NTS expenditure, rather than the major capex allowance we used in the draft decision.[14]

2.20 Transpower suggested the following alternate drafting for clause 3.1.3(1)(d)(iii):

> (iii) where the operating costs incurred do not exceed the **maximum recoverable costs** on a **non-transmission solution** approved as part of the **major capex allowance**;

Our final decision on the recoverable cost amendment

2.21 We have considered Transpower's drafting suggestion.

2.22 The maximum recoverable cost mechanism was introduced in the Capex IM to allow Transpower to recover costs associated with transmission alternatives that "may involve capital expenditure or other expenditure that does not create assets".[15]

2.23 The non-asset related expenditure portion of a non-transmission solution is approved in the same way as a major capex transmission investment except that a maximum recoverable cost and a completion date assumption apply.[16]

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[13] *Transpower*, Transpower IM Amendment (Recoverable Costs) draft decision submission, p.1, available here.

[14] *Transpower*, Transpower IM Amendment (Recoverable Costs) draft decision submission, pp.1-2, available here.

[15] *Commerce Commission*, Transpower Capital Expenditure Input Methodology – Reasons Paper, 31 January 2012, p.32, para 2.8.2 - 2.8.25, available here.

[16] Maximum recoverable costs and the completion date assumption are the equivalents of the major capex allowance and commissioning date assumption that apply to major capex transmission investments and the asset-related portion of a non-transmission solution.

2.24 The original intent of the maximum recoverable cost mechanism was that it would allow cost recovery of non-transmission alternatives as stand-alone investments and not in conjunction with transmission investments under a major capex allowance. But we see no impediment to both mechanisms being utilised in an MCP approval if transmission investment deferral is economic.

2.25 We have accepted the substance of Transpower's suggested drafting change because it more clearly defines the deferral component in an MCP decision. Our amended determination drafting is as follows:

> (iii) where the operating costs incurred do not exceed the **maximum recoverable costs** for a **non-transmission solution**;

2.26 The change to clause 3.1.3(1)(d)(iii) means that when we approve an MCP application that contains traditional transmission capex investment(s) and an NTS component, that will include:

2.26.1 a major capex allowance (**MCA**) and commissioning date for the transmission investments; and

2.26.2 a maximum recoverable cost (**MRC**) and completion date for the NTS component.

2.27 Transmission capex investments and NTSs are considered major capex project outputs, for which amendments can be sought.[17] This is important as it will allow Transpower the opportunity to extend NTS funding if it can demonstrate that this meets the requirements of the Capex IM.

How the amendment is likely to promote the IM amendments framework

2.28 Our amendment will promote the s 52A(1)(b) limb of the Part 4 purpose by better incentivising Transpower to improve its efficiency. The amendment does this by enabling Transpower to recover NTS costs where it has engaged NTS providers to efficiently defer capex costs. This incentivises Transpower to improve its efficiency by removing an unintended financial barrier to Transpower choosing NTS investments that might be more efficient than capex investment alone.

2.29 We consider that correcting this error does not impact a fundamental IM and that it is appropriate to make the amendment outside the IM review cycle.[18]

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17 Transpower Capital Expenditure Input Methodology consolidated as at 1 April 2025, Schedule H, para H9(3)(d), available here.

18 Refer to para 3.21.

Chapter 3 Decision-making framework

Purpose of this chapter

3.1 This chapter describes:

3.1.1 our framework for considering the scope of IM amendments, which is relevant in considering what IMs it may be appropriate to amend outside of the statutory IM review cycle under s 52Y of the Commerce Act 1986 (the Act); and

3.1.2 the decision-making framework we have applied in the IM amendments set out in this paper.

Framework for considering the scope of potential IM amendments

3.2 Our framework considers:

3.2.1 the statutory context;

3.2.2 our specific powers to amend the IMs; and

3.2.3 what we take account of when amending IMs outside of the statutory IM review cycle under s 52Y.

Statutory context

3.3 When making amendments to IMs, we must consider the purpose of IMs and the purpose of Part 4 of the Act. This section discusses the tensions between making changes to improve the regime and the certainty intended by the IMs.

3.4 The purpose of IMs, set out in s 52R of the Act, is to promote certainty for suppliers and consumers in relation to the rules, requirements and processes applying to the regulation, or proposed regulation, of goods or services under Part 4.

3.5 To that end, s 52T(2)(a) requires all IMs, as far as is reasonably practicable, to set out relevant matters in sufficient detail so that each affected supplier is reasonably able to estimate the material effects of the methodology on the supplier. In that way, the IMs constrain our evaluative judgements in subsequent regulatory decisions and increase predictability.[19]

[19] *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, para 213, available here.

3.6 However, some uncertainty remains inevitable.[20] As the Court of Appeal observed (in relation to a judicial review against decisions made in the IMs under Part 4) "certainty is a relative rather than an absolute value",[21] and "there is a continuum between complete certainty at one end and complete flexibility at the other".[22]

3.7 The s 52R purpose is primarily promoted by having the rules, processes and requirements set upfront prior to being applied by regulated suppliers or us.

3.8 However, as recognised in ss 52X and 52Y, these rules, processes and requirements may change over time.

3.9 The power to amend an IM must be used to promote the policy and objectives of Part 4 of the Act as ascertained by reading it as a whole. It is clear that Parliament saw the promotion of certainty as being important to the achievement of the purposes of price-quality (PQ) regulation.

3.10 While this is to an extent implicitly inherent in s 52A (for example, providing suppliers with incentives to invest in accordance with s 52A(1)(a)), it is also expressed in s 52R in relation to the purpose of IMs, but also in other aspects of the regime, such as the restrictions on reopening default price paths during their regulatory periods.[23]

3.11 When making IM amendments, we must therefore be mindful that this may have a detrimental effect on:

3.11.1 the role that predictability plays in providing suppliers with incentives to invest in accordance with s 52A(1)(a); and

3.11.2 the role that the IMs play in promoting certainty for suppliers and consumers in relation to the rules, requirements, and processes in advance of being applied by us and suppliers in setting revenues for Transpower under the Individual PQ Path.

3.12 At times there will be a tension between making changes to improve the regime and better promote the s 52A purpose on the one hand, and certainty on the other.

3.13 While we must have regard to the s 52R purpose (and the other indications of the importance of promoting certainty), ultimately, we must nevertheless make decisions that we consider promote the s 52A purpose.

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20 *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, para 214, available here.

21 *Commerce Commission v Vector Ltd* [2012] NZCA 220, para 34.

22 *Commerce Commission v Vector Ltd* [2012] NZCA 220, para 60.

23 For further discussion see *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, para 213 - 221, available here.

3.14 As the High Court has observed, section 52A is paramount in all our decision-making processes under Part 4, including in setting and amending the IMs:[24]

> Both the s 52A purpose, of the long-term benefit of consumers and the s 52R purpose, of promoting certainty for suppliers and consumers, are relevant. However, we consider that in this context the s 52R purpose of certainty is conceptually subordinate to the s 52A purpose of the long-term benefit of consumers. We say that because promoting the long-term benefits of consumers in accordance with s 52A is the central purpose of Part 4 as a whole. IMs must be designed with that in mind. Subject to that, a materially more certain IM is to be preferred to a less certain IM.

3.15 More recently, the High Court noted "If a change would better give effect to the Part 4 purpose, then change is not only justified but required by the statutory framework."[25]

3.16 Therefore, it is open to us to amend an IM if the evidence shows that it would better promote the s 52A purpose of Part 4, even if it would not promote the s 52R purpose.

Amendments inside and outside the IMs statutory review cycle

3.17 This section considers the circumstances in which IMs may be amended and what must be taken into account when making amendments to IMs outside of the statutory review cycle.

3.18 All IMs must be reviewed at least once every seven years, as mandated by s 52Y. This process is key to delivering on the s 52R certainty purpose of IMs, while at the same time allowing the regime to mature and evolve in response to changing circumstances.

3.19 Given the certainty purpose of the IMs and the scheme set out in the Act to promote this purpose, we must carefully assess what amendments are appropriate to consider outside the statutory IM review cycle. Additionally, as noted previously, the predictability the IMs provide is key to promoting the s 52A purpose and, in particular, incentives to invest as required under s 52A(1)(a).

Amendments outside of the statutory IM review cycle

3.20 We generally focus on two types of amendments outside the statutory IM review cycle:

3.20.1 those that support incremental improvements to PQ paths; and

3.20.2 those that enhance certainty about – or correct technical errors in – the existing IMs.

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24 *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, at para 165, available here.

25 *First Gas Ltd v Commerce Commission* [2026] NZHC 1224, at p.69.

3.21 We do not generally consider it to be appropriate to consider 'fundamental' changes outside the statutory IM review cycle. Fundamental IMs are generally those that define the fundamental building blocks used to set PQ paths (listed in s 52T(1)(a)), and that are central to defining the balance of risk and benefits between suppliers and consumers.

3.22 However, we can and will reconsider fundamental building blocks where there is a compelling and urgent rationale for doing so.[26]

The decision-making framework we have applied

3.23 In deciding whether to make IM amendments, we have used a decision-making framework that we developed over time to support our decision-making under Part 4 of the Act.[27] This has been consulted on and used as part of prior processes and helps provide consistency and transparency in our decision-making.

3.24 Specifically, in respect of each IM amendment we consider whether they will:

3.24.1 promote the Part 4 purpose in s 52A of the Act more effectively;

3.24.2 promote the IMs purpose in s 52R of the Act more effectively; or

3.24.3 reduce compliance costs, other regulatory costs or complexity.

3.25 As part of these considerations, we also consider whether the potential IM amendment will detrimentally affect any of the matters in paragraph 3.11. As discussed in paragraphs 3.12 to 3.16 above, while the other purpose statements in Part 4 of the Act (including s 52R) are relevant matters, s 52A is paramount in our decision-making under Part 4.

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26 An example of this was the re-consideration of the Part 4 WACC percentile decision in 2014. The compelling reason for this was criticism by the High Court of this decision in the IM merits appeal process, and the urgency was due to the upcoming default price-quality path and individual price-quality resets for EDBs and Transpower New Zealand Limited.

27 See, for example, Commerce Commission “Input methodologies review decisions: Framework for the IM review” (20 December 2016), para 59 and Commerce Commission “Amendments to Electricity Distribution Services Input Methodologies Determination – Reasons paper" (26 November 2019), para 2.17 - 2.20.