IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2024-485-64
[2026] NZHC 2462

UNDER	Part 4 of the Commerce Act 1986
IN THE MATTER	of an appeal against an Input Methodologies Determination of the Commerce Commission
BETWEEN	FIRST GAS LIMITED Appellant
AND	COMMERCE COMMISSION Respondent

Hearing:	On the papers
Counsel:	T D Smith and S D J Peart for appellant J D Every-Palmer KC, R S May and J W Harrell for respondent
Judgment:	20 August 2026

JUDGMENT OF RADICH J
AND LAY MEMBERS DR J WALKER AND PROFESSOR S KING
(Formal orders)

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[1] In [235] of the substantive judgment, we said that the precise form of the orders that will follow the successful appeal is to be the subject of further input from the parties.[1]

[2] In accordance with the Court's directions which followed, the parties filed a joint memorandum, with proposed orders, on 5 June 2026.

[1] *First Gas Limited v Commerce Commission* [2026] NZHC 1224.

[3] We are satisfied with the terms of the orders proposed. Accordingly, we make the orders set out in schedule 1.

[4] Schedule 2 is a redlined version of the Gas Transmission Services Input Methodologies Amendment Determination 2023 which shows the effect of the orders.

[5] Schedule 3 is a redlined version of the Gas Distribution Services Input Methodologies Amendment Determination 2023 which shows the effect of the orders.

Radich J for the Court

Solicitors:
Chapman Tripp for Appellant
Luke Cunningham Clere for Respondent

SCHEDULE 1: ORDERS

1 The following provisions of the Gas Transmission Services Input Methodologies Amendment Determination 2023 are amended as follows:

1.1 clause 1.1.4(2), definition of "65th percentile estimate of WACC" inserted as:

65th percentile estimate of WACC means, for the purpose of-

(a) Part 2, the 65th percentile estimate of post-tax WACC, determined in accordance with clause 2.4.5(4);

(b) Part 3, the 65th percentile estimate of post-tax WACC, determined in accordance with clause 4.4.5(2); and

(c) Part 4 and Part 5, the 65th percentile estimate of vanilla WACC, determined in accordance with clause 4.4.5(1);

1.2 clause 2.4.5, heading substituted as "Methodology for estimating the WACC range and the 65th percentile of WACC";

1.3 clause 2.4.5, new subclauses (4) and (5) inserted as follows:

(4) The **Commission** will, commencing with **disclosure year** 2026, determine a 65th percentile estimate of vanilla **WACC** and a 65th percentile estimate of post-tax **WACC** –

(a) for each **disclosure year**; and

(b) within 1 month of the start of the **disclosure year** in question.

(5) For the purpose of subclause (4)-

(a) the **mid-point estimate of WACC** must be treated as the 50th percentile; and

(b) the 65th percentile must be determined in accordance with the formula- **mid-point estimate of WACC** + 0.385 x standard error,

where the **standard error** of the relevant **mid-point estimate of WACC** is 0.0112.

1.5 new clause 4.4.5 inserted, with consequential numbering changes made to existing subclause 4.4.5 onwards and as needed throughout the Determination;

4.4.5 <u>Methodology for estimating the 65th percentile estimate of WACC</u>

(1) The **Commission** will determine a 65th percentile **estimate of** vanilla **WACC**-

(a) for each **DPP regulatory period**; and

(b) no later than 6 months prior to the start of each **DPP regulatory period.**

(2) The **Commission** will determine a 65th percentile estimate of post-tax **WACC**-

(a) for each **DPP regulatory period**; and

(b) no later than 6 months prior to the start of each **DPP regulatory period.**

(3) For the purposes of subclause (1) or (2)-

(a) the 65th percentile must be determined in accordance with the formula-

mid-point estimate of WACC + *0.385 x standard error*,

where the **standard error** of the **mid-point estimate of WACC** is 0.0112; and

(b) the relevant **mid-point estimate of WACC** in accordance with clause 4.4.1(1) and (2) must be treated as the 50th percentile.

1.6 clause 4.4.6 (current numbering), to be renumbered clause 4.4.7, amended to substitute for the words "most recently published mid-point" the words "65th percentile" and to insert, at the end of the clause "and most recently published in accordance with clause 4.4.6", and consequential numbering amendments;

1.7 clause 5.3.18 amended to substitute for the words "estimate of **WACC**" the words "**65th percentile estimate of WACC**" and insert at the end of the clause "in accordance with clause 4.4.7(1)";

1.8 clause 5.5.22(1) amended to substitute for the words "estimate of **WACC**" the words "**65th percentile estimate of WACC**"; and

1.9 clause 5.5.22(2) amended to substitute for the words "estimate of **WACC**" the words "**65th percentile estimate of WACC**" and to substitute for the words "**WACC** used for the **DPP** applying at the proposed start of the **CPP regulatory period**" the words "applicable cost of capital specified in clause 5.3.18".

2 The following provisions of the Gas Distribution Services Input Methodologies Amendment Determination 2023 are amended as follows:

2.1 clause 1.1.4(2), definition of "65th percentile estimate of WACC" inserted as:

65th percentile estimate of WACC	means, for the purpose of- (d) Part 2, the 65th percentile estimate of post-tax WACC, determined in accordance with clause 2.4.5(4); (e) Part 3, the 65th percentile estimate of post-tax WACC, determined in accordance with clause 4.4.5(2); and (f) Part 4 and Part 5, the 65th percentile estimate of vanilla WACC, determined in accordance with clause 4.4.5(1);

2.2 clause 2.4.5, heading substituted as "Methodology for estimating the WACC range and the 65th percentile of WACC";

2.3 clause 2.4.5, new subclauses (4) and (5) inserted as follows:

(4) The **Commission** will, commencing with **disclosure year** 2026, determine a 65th percentile estimate of vanilla **WACC** and a 65th percentile estimate of post-tax **WACC** –

(a) for each **disclosure year**; and

(b) within 1 month of the start of the **disclosure year** in question.

(5) For the purpose of subclause (4)-

(a) the **mid-point estimate of WACC** must be treated as the 50th percentile; and

(b) the 65th percentile must be determined in accordance with the formula- **mid-point estimate of WACC** + 0.385 x standard error,

where the **standard error** of the relevant **mid-point estimate of WACC** is 0.0112.

2.5 new clause 4.4.5 inserted, with consequential numbering changes made to existing subclause 4.4.5 onwards and as needed throughout the Determination;

<u>4.4.5 Methodology for estimating the 65th percentile estimate of WACC</u>

(1) The **Commission** will determine a 65th percentile **estimate of** vanilla **WACC**-

(a) for each **DPP regulatory period**; and

(b) no later than 6 months prior to the start of each **DPP regulatory period.**

(2) The **Commission** will determine a 65th percentile estimate of post-tax **WACC**-

(a) for each **DPP regulatory period**; and

(b) no later than 6 months prior to the start of each **DPP regulatory period.**

(3) For the purposes of subclause (1) or (2)-

(a) the 65th percentile must be determined in accordance with the formula-

mid-point estimate of WACC + *0.385 x standard error*,

where the **standard error** of the **mid-point estimate of WACC** is 0.0112; and

(b) the relevant **mid-point estimate of WACC** in accordance with clause 4.4.1(1) and (2) must be treated as the 50th percentile.

2.6 clause 4.4.6 (current numbering), to be renumbered to clause 4.4.7, amended to substitute for the words "most recently published mid-point" the words "65th percentile" and to insert, at the end of the clause "and most recently published in accordance with clause 4.4.6", and consequential numbering amendments;

2.7 clause 5.3.22 amended to substitute for the words "estimate of **WACC**" the words "**65th percentile estimate of WACC**" and insert at the end of the clause "in accordance with clause 4.4.7(1)";

2.8 clause 5.5.25(1) amended to substitute for the words "estimate of **WACC**" the words "**65th percentile estimate of WACC**"; and

2.9 clause 5.5.25(2) amended to substitute for the words "estimate of **WACC**" the words "**65th percentile estimate of WACC**" and to substitute for the words "**WACC** used for the **DPP** applying at the proposed start of the **CPP regulatory period**" the words "applicable cost of capital specified in clause 5.3.22".

SCHEDULE 2 — Amendments to Gas Transmission Services Input Methodologies Amendment Determination 2023

1.1.1 Title

This determination is the Gas Transmission Services Input Methodologies Determination 2012.

1.1.2 Application

(1) The **input methodologies** in this determination apply to **gas transmission services.**

(2) The **input methodologies** relating to cost allocation in Part 2 Subpart 1, Part 5 Subpart 3 Section 2 and Part 5 Subpart 5 Section 3 also apply to any **other regulated service supplied** by a **GTB**, as provided by the provision in question.

(3) The **input methodologies** in-

(a) Part 2 of this determination apply in relation to information disclosure regulation under Part 4 Subpart 4 of the **Act**;

(b) Part 3 of this determination apply to default/customised price-quality regulation under Part 4 Subpart 6 of the **Act**;

(c) Part 4 of this determination apply in relation to default price-quality paths under sections 53O and 53P of Part 4 Subpart 6 of the **Act**; and

(d) Part 5 of this determination apply in relation to customised price-quality paths under sections 53Q to 53ZA of Part 4 Subpart 6 of the **Act.**

1.1.3 Commencement

This determination comes into force on the day after the date on which notice of it is given in the New Zealand Gazette under s 52W of the **Act.**

1.1.4 Interpretation

(1) In this determination-

(a) unless otherwise stated, references to-

(i) 'Sections' are to sections within the same subpart; and

(ii) 'Subparts' are to subparts within the same part,

in which the reference is made;

(b) unless stated otherwise, references to Parts, Subparts and Sections are to named and numbered parts, subparts and sections of the determination;

(c) unless the context otherwise requires, a word which denotes the singular also denotes the plural and vice versa;

(d) unless stated otherwise, any reference to an allowance, amount, cost, sum or value is a reference to an allowance, amount, cost, sum or value calculated in relation to a **GTB** in respect of a **disclosure year**;

(e) unless stated otherwise, any references to "includes" means "includes, but is not limited to";

(f) examples in this determination are for guidance purposes only and do not form part of this determination; and

(g) materials incorporated by reference into this determination, including standards promulgated by other bodies, are incorporated under the terms of Schedule 5 of the **Act**.

(2) In this determination, including in the schedules, the words or phrases in bold type bear the following meanings:

65th percentile estimate of WACC means, for the purpose of-

(a) Part 2, the 65th percentile estimate of post-tax **WACC**, determined in accordance with clause 2.4.5(4);

(b) Part 3, the 65th percentile estimate of post-tax **WACC**, determined in accordance with clause 4.4.5(2); and

(c) Part 4 and Part 5, the 65th percentile estimate of vanilla **WACC**, determined in accordance with clause 4.4.5(1);

2.4.5 Methodology for estimating the WACC range and the 65th percentile of WACC

(1) The **Commission** will determine a WACC range for each **mid-point estimate of WACC**-

(a) for each **disclosure year**; and

(b) within 1 month of the start of the **disclosure year** in question.

(2) For the purpose of subclause (1), 'WACC range' means the values falling between the 25th percentile and 75th percentile, inclusive, of the **mid-point estimate of WACC.**

(3) For the purpose of subclause (2)-

(a) the **mid-point estimate of WACC** must be treated as the 50th percentile; and

(b) the-

(i) 75th percentile must be determined in accordance with the formula-

mid-point estimate of WACC + *0.674 x standard error*; and

(ii) 25th percentile must be determined in accordance with the formula-

mid-point estimate of WACC - *0.674 x standard error*,

where the **standard error** of the relevant **mid-point estimate of WACC** is 0.0112.

(4) The **Commission** will, commencing with **disclosure year** 2026, determine a 65th percentile estimate of vanilla **WACC** and a 65th percentile estimate of post-tax **WACC** –

(a) for each **disclosure year**; and

(b) within 1 month of the start of the disclosure year in question.

(5) For the purpose of subclause (4)-

(a) the **mid-point estimate of WACC** must be treated as the 50th percentile; and

(b) the 65th percentile must be determined in accordance with the formula-

mid-point estimate of WACC + 0.385 x standard error,

where the **standard error** of the **mid-point estimate of WACC** is 0.0112.

...

4.4.5 Methodology for estimating the 65th percentile estimate of WACC

(1) The **Commission** will determine a 65th percentile **estimate of** vanilla **WACC**-

(a) for each **DPP regulatory period**; and

(b) no later than 6 months prior to the start of each **DPP regulatory period**.

(2) The **Commission** will determine a 65th percentile estimate of post-tax **WACC**-

(a) for each **DPP regulatory period**; and

(b) no later than 6 months prior to the start of each **DPP regulatory period**.

(3) For the purposes of subclause (1) or (2)-

(a) the 65th percentile must be determined in accordance with the formula-

mid-point estimate of WACC + *0.385 x standard error*,

where the **standard error** of the **mid-point estimate of WACC** is 0.0112; and

(b) the relevant **mid-point estimate of WACC** in accordance with clause 4.4.1(1) and (2) must be treated as the 50th percentile.

...

4.4.7 Application of cost of capital methodology

(1) Where the **Commission** takes into account the cost of capital in making a **DPP determination**, the **Commission** will use the ~~most recently published~~ **65th percentile** ~~**mid-point**~~ **estimate of WACC** determined in accordance with clause 4.4.5~~1~~(1) and most recently published in accordance with clause 4.4.6.

(2) **Term credit spread differential allowance** for a **disclosure year** and a **GTB** is the maximum of nil and the amount determined in accordance with the formula-

$a \times b \div c$,

where-

a means the 'term credit spread differential allowance' calculated in accordance with clauses 4.4.8~~7~~-4.4.10~~9~~ for the **base year**;

b means the **total opening RAB value** for the **disclosure year** in question; and

c means the **aggregate opening RAB value for existing assets** for the **base year**

(3) Where a **qualifying supplier** discloses a **term credit spread differential allowance** pursuant to an **ID determination**, the **Commission**, for the purpose of assessing the **qualifying supplier's** profitability pursuant to its powers relating to default price-quality regulation in s 53P of the **Act**, will treat such an allowance as an expense in the **disclosure year** in respect of which that allowance was disclosed.

5.3.18 Methodology for estimating the weighted average cost of capital

(1) Where the Commission takes into account the cost of capital in making a **CPP determination**, the **Commission** will use the **65th percentile estimate of WACC** ~~**estimate of WACC**~~ that was used for the **DPP** applying at the start of the **CPP regulatory period** in accordance with clause 4.4.7(1).

(2) Where there has been a **WACC change event**, the cost of capital for the **CPP** is the **DPP WACC** referenced in clause 5.7.6(1)(a), which has effect in the remaining years of the **CPP regulatory period.**

5.5.22 Information regarding WACC and TCSD allowance

(1) A **CPP proposal** must, subject to subclause (2) identify the **65th percentile estimate of WACC** ~~**estimate of WACC**~~ used for the purpose of clause 5.5.5(1).

(2) For the purpose of subclause (1), the identified **65th percentile estimate of WACC** ~~**estimate of WACC**~~ is the ~~**WACC** used for the **DPP** applying at the proposed start of the **CPP regulatory period**~~ applicable cost of capital specified in clause 5.3.18.

(3) Where a **term credit spread differential allowance** is proposed, a **CPP proposal** must contain all data, information, calculations, and assumptions used to determine any proposed **term credit spread differential.**

SCHEDULE 3 — Amendments to Gas Distribution Services Input Methodologies Amendment Determination 2023

PART 1 GENERAL PROVISIONS

1.1.1 Title

This determination is the Gas Distribution Services Input Methodologies Determination 2012.

1.1.2 Application

(1) The **input methodologies** in this determination apply to **gas distribution services.**

(2) The **input methodologies** relating to cost allocation in Part 2 Subpart 1, Part 5 Subpart 3 Section 2 and Part 5 Subpart 5 Section 3 also apply to any **other regulated service supplied** by a **GDB**, as provided by the provision in question.

(3) The **input methodologies** in this determination in-

(a) Part 2 of this determination apply in relation to information disclosure regulation under Part 4 Subpart 4 of the **Act**;

(b) Part 3 of this determination apply to default/customised price-quality regulation under Part 4 Subpart 6 of the **Act**;

(c) Part 4 of this determination apply in relation to default price-quality paths under sections 53O and 53P of Part 4 Subpart 6 of the **Act**; and

(d) Part 5 of this determination apply in relation to customised price-quality paths under sections 53Q to 53ZA of Part 4 Subpart 4 of the **Act**.

1.1.3 Commencement

This determination comes into force on the day after the date on which notice of it is given in the New Zealand Gazette under s 52W of the **Act**.

1.1.4 Interpretation

(1) In this determination-

(a) unless otherwise stated, references to-

(i) 'Sections' are to sections within the same subpart; and

(ii) 'Subparts' are to subparts within the same part,

in which the reference is made;

(b) unless stated otherwise, references to Parts, Subparts and Sections are to named and numbered parts, subparts and sections of the determination;

(c) unless the context otherwise requires, a word which denotes the singular also denotes the plural and vice versa;

(d) unless stated otherwise, any reference to an allowance, amount, cost, sum or value is a reference to an allowance, amount, cost, sum or value calculated in relation to a **GDB** in respect of a **disclosure year**;

(e) unless stated otherwise, any reference to "includes" means "includes, but is not limited to";

(f) examples in this determination are for guidance purposes only and do not form part of this determination; and

(g) materials incorporated by reference into this determination, including standards promulgated by other bodies, are incorporated under the terms of Schedule 5 of the **Act**.

(2) In this determination, including in the schedules, the words or phrases in bold type bear the following meanings:

65th percentile estimate of WACC	means, for the purpose of-
	(a) Part 2, the 65th percentile estimate of post-tax WACC, determined in accordance with clause 2.4.5(4);
	(b) Part 3, the 65th percentile estimate of post-tax WACC, determined in accordance with clause 4.4.5(2); and
	~~(a)~~(c) Part 4 and Part 5, the 65th percentile estimate of vanilla WACC, determined in accordance with clause 4.4.5(1);

2.4.5 Methodology for estimating the WACC range and the 65th percentile of WACC

(1) The **Commission** will determine a WACC range for each **mid-point estimate of WACC**-

(a) for each **disclosure year**; and

(b) within 1 month of the start of the **disclosure year** in question.

(2) For the purpose of subclause (1), 'WACC range' means the values falling between the 25th percentile and 75th percentile, inclusive, of the **mid-point estimate of WACC.**

(3) For the purpose of subclause (2)-

(a) the **mid-point estimate of WACC** must be treated as the 50th percentile; and

(b) the-

(i) 75th percentile must be determined in accordance with the formula-

mid-point estimate of WACC + *0.674 x standard error*; and

(ii) 25th percentile must be determined in accordance with the formula-

mid-point estimate of WACC - *0.674 x standard error*,

where the standard error of the relevant mid-point estimate of WACC is 0.0112.

(4) The **Commission** will, commencing with **disclosure year** 2026, determine a 65th percentile estimate of vanilla **WACC** and a 65th percentile estimate of post-tax **WACC** –

(a) for each **disclosure year**; and

(b) within 1 month of the start of the **disclosure year** in question.

(5) For the purpose of subclause (4)-

(a) the **mid-point estimate of WACC** must be treated as the 50th percentile; and

(b) the 65th percentile must be determined in accordance with the formula- **mid-point estimate of WACC** + 0.385 x standard error,

where the **standard error** of the relevant **mid-point estimate of WACC** is 0.0112.

4.4.5 Methodology for estimating the 65th percentile of the WACC

(1) The **Commission** will determine a 65th percentile estimate of vanilla **WACC**-

(a) for each **DPP regulatory period**; and

(b) no later than 6 months prior to the start of each **DPP regulatory period.**

(2) The **Commission** will determine a 65th percentile estimate of post-tax **WACC**-

(a) for each **DPP regulatory period**; and

(b) no later than 6 months prior to the start of each **DPP regulatory period.**

(3) For the purposes of subclause (1) or (2)-

(a) the 65th percentile must be determined in accordance with the formula-

mid-point estimate of WACC + *0.385x standard error*.

where the **standard error** of the **mid-point estimate of WACC** is 0.0112; and

(b) the relevant **mid-point estimate of WACC** in accordance with clause 4.4.1(1) and (2) must be treated as the 50th percentile.

...

~~4.4.6~~4.4.7 Application of cost of capital methodology

(1) Where the **Commission** takes into account the cost of capital in making a **DPP determination**, the **Commission** will use the ~~most recently published~~ ~~**mid-point**~~**65th percentile** **estimate of WACC** determined in accordance with clause 4.4.~~1~~5(1) and most recently published in accordance with clause 4.4.6.

(2) **Term credit spread differential allowance** for a **disclosure year** and a **GDB** is the maximum of nil and the amount determined in accordance with the formula –

$a \times b \div c$,

where-

a means the 'term credit spread differential allowance' calculated in accordance with clauses 4.4.8~~7~~-4.4.10~~9~~ for the **base year;**

b means the **total opening RAB value** for the **disclosure year** in question; and

c means the **aggregate opening RAB value for existing assets** for the **base year.**

(3) Where a **qualifying supplier** discloses a **term credit spread differential allowance** pursuant to an **ID determination**, the **Commission**, for the purpose of assessing the **qualifying supplier's** profitability pursuant to its powers relating to default price – quality regulation in s 53P of the **Act**, will treat such an allowance as an expense in the **disclosure year** in respect of which that allowance was disclosed.

SECTION 4 Cost of capital

5.3.22 Methodology for estimating the weighted average cost of capital

(1) Where the **Commission** takes into account the cost of capital in making a **CPP determination**, the **Commission** will use the 65th percentile estimate of **WACC** ~~**estimate** of **WACC**~~ that was used for the **DPP** applying at the start of the **CPP regulatory period** in accordance with clause 4.4.7(1).

(2) Where there has been a **WACC change event**, the cost of capital for the **CPP** is the **DPP WACC** referenced in clause 5.7.6(1)(a), which has effect in the remaining years of the **CPP regulatory period.**

SECTION 6 Cost of capital information

5.5.25 Information regarding WACC and TCSD allowance

(1) A **CPP proposal** must identify the **65th percentile estimate of WACC** ~~estimate of **WACC**~~ used for the purpose of clause 5.5.5(1).

(2) For the purpose of subclause (1), the identified **65th percentile estimate of WACC** ~~estimate of **WACC**~~ is the ~~**WACC** used for the **DPP** applying at the proposed start of the **CPP regulatory period**~~ applicable cost of capital specified in clause 5.3.22.

(3) Where a **term credit spread differential allowance** is proposed, a **CPP proposal** must contain all data, information, calculations, and assumptions used to determine any proposed **term credit spread differential**.