

Gas Distribution Services Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024

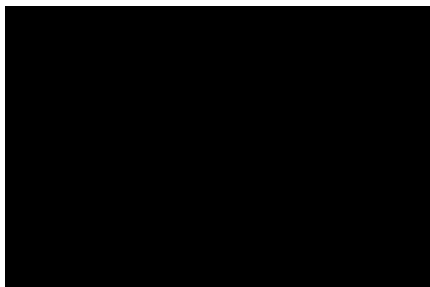
[2024] NZCC 37

The Commission:

Vhari McWha
Dr Derek Johnston
Bryan Chapple
Nathan Strong

Date of decision:

11 December 2024



Dr Derek Johnston, Commissioner
Dated at Wellington this 11th of December 2024
COMMERCE COMMISSION
Wellington, New Zealand

Determination history		
Determination date	Decision number	Determination name
28 September 2012	[2012] NZCC 27	Gas Distribution Services Input Methodologies Determination 2012 ('principal determination')*
15 November 2012	[2012] NZCC 34	Electricity and Gas Input Methodologies Determination Amendments (No. 2) 2012
25 February 2013	[2013] NZCC 3	Gas Pipeline Services Input Methodologies Determination Amendment (No. 1) 2013
3 December 2013	[2013] NZCC 23	Gas Distribution Services Input Methodologies Determination Amendment 2013
16 December 2013	n/a	Updated consolidated determination for typographical errors in transcribing the amendments made by amendment [2013] NZCC 23
29 October 2014	[2014] NZCC 27	Electricity Lines Services and Gas Pipeline Services Input Methodologies Determination Amendment (WACC percentile for price-quality regulation) 2014
14 November 2014	n/a	Determination of Input Methodologies by the High Court in <i>Wellington International Airports Ltd and others v Commerce Commission</i> [2013] NZHC 3289 (11 December 2013)
11 December 2014	[2014] NZCC 38	Electricity Lines Services and Gas Pipeline Services Input Methodologies Determination Amendment (WACC percentile for information disclosure regulation) 2014
12 November 2015	[2015] NZCC 28	Electricity and Gas (Customised Paths) Input Methodology Amendments Determination 2015
20 December 2016	[2016] NZCC 25	Gas Distribution Services Input Methodologies Amendments Determination 2016
21 December 2017	[2017] NZCC 31	Gas Distribution Services Input Methodologies Amendments Determination 2017
25 March 2022	[2022] NZCC 5	Gas Distribution Services Input Methodologies Amendment Determination (No.1) 2022
30 May 2022	[2022] NZCC 15	Gas Distribution Services Input Methodologies Amendment Determination (No.2) 2022
13 December 2023	[2023] NZCC 37	Gas Distribution Services Input Methodologies (IM Review 2023) Amendment Determination 2023
11 December 2024	[2024] NZCC 37	Gas Distribution Services Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024

* The principal determination re-determined the input methodologies contained in *Commerce Act (Gas Distribution Services Input Methodologies) Determination 2010* (Commerce Commission Decision No. 711, 22 December 2010), as amended by the *Electricity and Gas Input Methodologies Determination Amendments (No. 1) 2012* [2012] NZCC 18 (29 June 2012). A complete history of determinations relevant to the input methodologies applicable to gas distribution services is available on the Commission's website.

[Drafting notes:

- This determination amends the Gas Distribution Services Input Methodologies Determination 2012, as previously amended, ('principal determination').
- The included amendments which are secondary legislation are made under the Legislation Act 2019 and Part 4 of the Commerce Act 1986.]

Under Part 4 of the Commerce Act 1986, the Commerce Commission makes the following determination:

1. TITLE

- 1.1 This determination is the Gas Distribution Services Input Methodologies (treatment of insurance entitlements) Amendment Determination 2024.

2. DETERMINATION AMENDED

- 2.1 This determination amends the **principal determination**.

3. INTERPRETATION

- 3.1 In this determination, the words or phrases in bold type bear the following meanings:

3.1.1 **Act** means the Commerce Act 1986;

3.1.2 **Commission** has the same meaning as defined in s 2 of the **Act**;

3.1.3 **CPP** means customised price-quality path;

3.1.4 **CPP application** has the same meaning as in the **principal determination**;

3.1.5 **disclosure year** has the same meaning as in the **principal determination**;

3.1.6 **DPP** means default price-quality path;

3.1.7 **DPP3 determination** means the Gas Distribution Services Default Price-Quality Path Determination 2022 [2022] NZCC 19;

3.1.8 **IM Review amendment determination** means the Gas Distribution Services Input Methodologies (IM Review 2023) Amendment Determination 2023 [2023] NZCC 37; and

3.1.9 **principal determination** means the Gas Distribution Services Input Methodologies Determination 2012 [2012] NZCC 27.

4. COMMENCEMENT AND APPLICATION

- 4.1 This determination comes into force on 12 December 2024, being the day after the day on which notice of the determination is given in the New Zealand Gazette under the Legislation Act 2019 in accordance with s 52W of the **Act**.

- 4.2 However:

4.2.1 the amendments to the **principal determination** in Attachment B apply for **disclosure year 2025** and subsequent **disclosure years**;

- 4.2.2 the amendments to the **principal determination** in Attachment C, together with any amendments to the **principal determination** set out in Attachment A relevant to Parts 3 and 4 of the **principal determination**, apply for a **DPP** which commences on or after 1 October 2026;
- 4.2.3 the amendments to the principal determination in Attachment CA, together with any amendments to the **principal determination** set out in Attachment A relevant to Parts 3 and 4 of the **principal determination**:
 - (a) apply for the **DPP3 determination**; and
 - (b) do not apply for a **DPP** which commences on or after 1 October 2026;
- 4.2.4 the amendments to the **principal determination** in Attachment D together with any amendments to the **principal determination** set out in Attachment A relevant to Parts 3 and 4 of the **principal determination**, apply for:
 - (a) the **DPP3 determination**; and
 - (b) a **DPP** which commences on or after 1 October 2026; and
- 4.2.5 the amendments to the **principal determination** in Attachment E, together with any amendments to the **principal determination** set out in Attachment A relevant to Parts 3 and 5 of the **principal determination**, apply for a **CPP application** made on or after the date described in clause 4.1, and any **CPP** resulting from that application.
- 4.3 Clause 4.4 applies to a provision of the **principal determination** that is amended by the **IM Review amendment determination** and by this determination.
- 4.4 If the amendments to the provision are expressed, in the **IM review amendment determination** and in this determination, to apply from the same date, the amendments set out in this determination apply immediately after the amendments set out in the **IM review amendment determination** apply.
- 4.5 For the avoidance of doubt, if the **Commission** determines that any forecast values are required to be calculated consistent with Attachment C for the determination of a **DPP** that will be in force from 1 October 2026, the provisions in Attachment C, and any applicable amendments to the **principal determination** set out in clauses 5.1 to 5.2 and Attachment A relevant to Parts 3 and 4 of the **principal determination**, will apply as amended by this determination to the setting of those forecast values.

5. PRINCIPAL DETERMINATION AMENDMENTS

- 5.1 In clause 1.1.4(2) of the **principal determination**, insert in their appropriate alphabetical order:

“**compensatory entitlement** means, for the purposes of–

- (a) Part 2, money or the monetary value of other consideration relating to an event, other than an **insurance entitlement or capital contribution**, that is received or receivable from **consumers** or other parties, for any of the following purposes:
 - (i) restoring damaged assets to the same operating condition and location as prior to the event;
 - (ii) relocating assets if required; and
 - (iii) compensating for damaged or destroyed assets;
- (b) Parts 4 and 5, money or the monetary value of other consideration relating to an event, other than an **insurance entitlement or capital contribution**, that is received or receivable from, or forecast to be received or receivable from, **consumers** or other parties, for any of the following purposes:
 - (i) restoring damaged assets to the same operating condition and location as prior to the event;
 - (ii) relocating assets if required; and
 - (iii) compensating for damaged or destroyed assets;”

“insurance entitlement

means, for the purposes of–

- (a) Part 2, money or the monetary value of other consideration relating to an event, that is received or receivable from a ‘licensed insurer’ as that term is defined in the Insurance (Prudential Supervision) Act 2010, in respect of a contract of insurance that insures against damaged or destroyed assets

or **operating costs** arising from damaged or destroyed assets, excluding business interruption insurance or **third-party liability entitlements**; and

- (b) Parts 4 and 5, money or the monetary value of other consideration relating to an event that is received or receivable from, or forecast to be received or receivable from, a 'licensed insurer' as that term is defined in the Insurance (Prudential Supervision) Act 2010, in respect of a contract of insurance that insures against damaged or destroyed assets or **operating costs** arising from damaged or destroyed assets, excluding business interruption insurance or **third-party liability entitlements**;"

"third-party liability entitlement means, for the purposes of-

- (a) Part 2, money or the monetary value of other consideration relating to an event, that is received or receivable from a 'licensed insurer' as that term is defined in the Insurance (Prudential Supervision) Act 2010, in respect of a contract of insurance that insures against third-party liability; and
- (b) Parts 4 and 5, money or the monetary value of other consideration relating to an event, that is received or receivable from, or forecast to be received or receivable from, a 'licensed insurer' as that term is defined in the Insurance (Prudential Supervision) Act 2010, in respect of a contract of insurance that insures against third-party liability;"

- 5.2 Amend the definition of "operating cost" in clause 1.1.4(2) of the **principal determination** so that the text up to paragraph (c) of that definition reads as follows, with the text from paragraph (c) onwards remaining unchanged:

“operating cost

means a cost incurred by the **GDB** in question relating to the **supply** of-

- (a) **regulated services** alone; or
- (b) **regulated services** and one or more **unregulated service**,

net of any **insurance entitlement**, **compensatory entitlement**, or **third-party liability entitlement** for the same cost, up to the amount of that cost, which the **GDB** chooses to net off in calculating that cost, and excludes-

- (c) ...;”

- 5.3 The **principal determination** is amended in accordance with the deletions, replacements, and insertions that are tracked as changes in the excerpts of the **principal determination** that are set out in Attachments A, B, C, and D.

ATTACHMENT A – PART 1 OF THE PRINCIPAL DETERMINATION

1.1.4 Interpretation

[...]

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

other regulated income

for the purpose of–

- (a) Part 4, means forecast income associated with the supply of **gas distribution services** other than–
- (i) through **prices**;
 - (ii) investment-related income;
 - (iii) **capital contributions**;
 - (iv) **vested assets**;
 - (v) any **insurance entitlement** that has been applied to reduce the value of a **commissioned asset** under clause 2.2.11(1)(j);
 - (vi) any **compensatory entitlement** that has been applied to reduce the value of a **commissioned asset** under clause 2.2.11(1)(j);
 - (vii) any **insurance entitlement** that has been netted off in calculating an **operating cost**; and
 - (viii) any **third-party liability entitlement** that has been netted off in calculating an **operating cost**,
- as determined by the **Commission**;
- and
- (b) Part 5, has the meaning specified in clause 5.3.2(7);

ATTACHMENT B – PART 2 OF THE PRINCIPAL DETERMINATION

2.2.11 Value of commissioned assets

- (1) Value of **commissioned** asset, in relation to an asset (including an asset in respect of which **capital contributions** were received or a **vested asset**), means the cost of the asset to a **GDB** determined by applying **GAAP** to the asset as on its **commissioning date**, except that, subject to subclause (2), the cost of-

[...]

- (h) an asset in respect of which **capital contributions** were received where such contributions do not reduce the cost of the asset when applying **GAAP**, is the cost of the asset by applying **GAAP** reduced by the amount of the **capital contributions**; ~~and~~
- (i) a **vested asset** in respect of which its fair value is treated as its cost under **GAAP**; and must exclude any amount of the fair value of the asset determined under **GAAP** that exceeds the amount of consideration provided by the **GDB**; ~~and~~
- (j) an asset in respect of which-
 - (i) an insurance entitlement or compensatory entitlement was received or is receivable; and
 - (ii) such an insurance entitlement or compensatory entitlement does not reduce the cost of the asset when applying GAAP,
is the cost of the asset by applying GAAP reduced (at the GDB's choice) by the amount of the insurance entitlement or compensatory entitlement that was received or is receivable.

[...]

- (4) For the avoidance of doubt-

- (a) revenue derived in relation to **works under construction** that is not included in regulatory income under an **ID determination** or preceding regulatory information disclosure requirements reduces the cost of an asset by the amount of the revenue where such reduction is not otherwise made under **GAAP**; ~~and~~
- (b) where expenditure on an asset which forms part of the cost of that asset under **GAAP** is incurred by an **GDB** after that asset was **commissioned**, such expenditure is treated as relating to a separate asset; ~~and~~
- (c) where an insurance entitlement is applied to reduce the cost of an asset under subclause (1)(j), any subsequent adjustment to the amount of that insurance entitlement, to reflect the full and final settlement of the associated insurance contract, is treated as expenditure or negative expenditure relating to a separate asset or negative asset, adjusted by the amount of $b - a$, where-
 - a is the nominal amount of the expenditure or negative expenditure referred to in this paragraph expressed at the

date the **insurance entitlement** was first applied to reduce the cost of the asset under subclause (1)(i); and
b is the present value of *a* at the date the separate asset or negative asset referred to in this paragraph is recognised, calculated using the **WACC** for each **disclosure year** applied by the **Commission** in setting prices for the relevant **DPP** or **CPP**.

[...]

2.3.9 Regulatory tax asset value

[...]

(3) 'Notional tax asset value' means, for the purpose of-

(a) [...]

(b) [...]

(c) subclause (2)(a)(iii), value in respect of the **disclosure year** in which the asset was acquired or transferred that is-

(i) consistent with the **tax rules**; and

(ii) limited to its **value of commissioned asset** plus the sum of any **insurance entitlements** and **compensatory entitlements** applied to reduce the value of a **commissioned** asset under clause 2.2.11(1)(i), or, if relevant **capital contributions** are treated for tax purposes in accordance with section CG 8 of the Income Tax Act 2007 (or subsequent equivalent provisions), limited to the **value of commissioned asset** plus any taxed **capital contributions** applicable to the asset plus the sum of any **insurance entitlements** and **compensatory entitlements** applied to reduce the value of a **commissioned** asset under clause 2.2.11(1)(i).

[...]

ATTACHMENT C – PART 4 OF THE PRINCIPAL DETERMINATION

4.5.4 Catastrophic event

- (1) A 'catastrophic event' is an event-
- (a) [...]
 - (b) [...]
 - (c) [...]
 - (d) for which-
 - (i) action required to rectify its adverse consequences cannot be delayed until a future **regulatory period** without quality standards under the **DPP** being breached;
 - (ii) remediation requires **capex, opex**, or both;
 - (iii) the full remediation costs are not provided for in the **DPP**; and
 - (iv) the cost of remediation net of any **insurance entitlements, third-party liability entitlements, and compensatory entitlements** ~~insurance or compensatory entitlements~~ exceeds the relevant threshold specified in subclause (2).

[...]

4.5.14 Amending DPP after reconsideration

[...]

- (2) The **Commission** will not amend-
- (a) [...]
 - (b) the price path more than is reasonably necessary to take account of the change resulting from the **reopener event** ~~net of any insurance or compensatory entitlements~~.

[...]

ATTACHMENT CA – PART 4 OF THE PRINCIPAL DETERMINATION

4.5.1 Catastrophic Event

Catastrophic event means an event-

- (a) [...]
- (b) [...]
- (c) [...]
- (d) in respect of which-
 - (i) action required to rectify its adverse consequences cannot be delayed until a future **regulatory period** without quality standards being breached;
 - (ii) remediation requires either or both of **capital expenditure** or **operating expenditure** during the **regulatory period**;
 - (iii) the full remediation costs are not provided for in the **DPP**; and
 - (iv) in respect of a **GDB** subject to a **DPP**, the cost of remediation (net of any **insurance entitlements, third-party liability entitlements, and compensatory entitlements**) ~~insurance or compensatory entitlements~~ has had or will have an impact on the price path over the **disclosure years** of the **DPP** remaining on and after the first date at which a remediation cost is proposed to be or has been incurred, by an amount equivalent to at least 1% of the aggregated **allowable notional revenue** for the **disclosure years** of the **DPP** in which the cost was or will be incurred.

ATTACHMENT D – PART 4 OF THE PRINCIPAL DETERMINATION

4.2.5 Forecast aggregate value of commissioned assets

Forecast aggregate value of commissioned assets means the forecast cost of **additional assets** if **GAAP** were to be applied to determine the cost of the assets to the **GDB** in the **disclosure year** in question, less any insurance entitlements and compensatory entitlements forecast to be received or receivable in respect of those assets and forecast to be applied to reduce the value of those assets, and is equal to forecast **capital expenditure** for the relevant **disclosure year** as determined by the **Commission**.

ATTACHMENT E – PART 5 OF THE PRINCIPAL DETERMINATION

5.3.2 Building blocks allowable revenue before tax

[...]

- (7) 'Other regulated income' means income associated with the **supply of gas distribution services** other than-

- (a) through **prices**;
- (b) investment-related income;
- (c) **capital contributions**; ~~or~~
- (d) **vested assets**;
- (e) any **insurance entitlement** that has been applied to reduce the forecast value of a **commissioned** asset under clause 5.3.11(1)(j);
- (f) any **compensatory entitlement** that has been applied to reduce the forecast value of a **commissioned** asset under clause 5.3.11(1)(j);
- (g) any **insurance entitlement** that has been netted off in calculating an **operating cost**; and
- ~~(d)~~(h) any **third-party liability entitlement** that has been netted off in calculating an **operating cost**.

[...]

5.3.11 Forecast value of commissioned assets

- (1) 'Forecast value of commissioned asset', in relation to an asset for which **capital expenditure** is included in forecast capital expenditure (including an asset in respect of which **capital contributions** are or are forecast to be received, or a **vested asset**), means the forecast cost of the asset to a **GDB** determined by applying **GAAP** to the asset as on its forecast **commissioning date**, except that, subject to subclauses (2) and (3), the cost of-
- [...]
- (h) an asset in respect of which **capital contributions** are or are forecast to be received where such contributions are not taken into account when applying **GAAP**, is the cost of the asset by applying **GAAP** reduced by the amount of the **capital contributions**; ~~and~~
- (i) a **vested asset** in respect of which its fair value is or would be treated as its cost under **GAAP**, must exclude any amount of the fair value of the asset determined under **GAAP** that exceeds the amount of consideration provided or forecast to be provided by the **GDB**; ~~and~~
- (j) an asset in respect of which-
- (i) an **insurance entitlement** or **compensatory entitlement** is forecast to be received or receivable; and
- (ii) such an **insurance entitlement** or **compensatory entitlement** does not reduce the cost of the asset when applying **GAAP**,
- is the cost of the asset by applying **GAAP** reduced (at the **GDB's** choice) by the amount of the **insurance entitlement** or **compensatory entitlement** that is forecast to be received or receivable.

[...]

5.3.21 Regulatory tax asset value

- (1) 'Regulatory tax asset value', in relation to an asset, means the value determined in accordance with the formula-
- $$\text{tax asset value} \times \text{result of asset allocation ratio}.$$
- (2) Tax asset value means, in respect of-
- (a) an asset-
 - (i) in the **initial RAB** where, in the **disclosure year 2010**, the sum of **unallocated initial RAB values** is less than the sum of the **adjusted tax values** of all assets in the **initial RAB**;
 - (ii) acquired from a **regulated supplier** who used it to **supply regulated goods or services**; or
 - (iii) acquired or transferred from a **related party**,
the value of the asset determined by applying the **tax depreciation rules** to its notional tax asset value; and
 - (b) any other asset, its forecast **adjusted tax value**.
- (3) 'Notional tax asset value' means, for the purpose of-
- (a) subclause (2)(a)(i), **adjusted tax value** of the asset in the **disclosure year 2010** adjusted to account proportionately for the difference between the-
 - (i) sum of the **unallocated initial RAB values**; and
 - (ii) sum of the **adjusted tax values**,
of all assets in the **initial RAB**;
 - (b) subclause (2)(a)(ii), value after applying the **tax depreciation rules** to the tax asset value (as 'tax asset value' is defined in the **input methodologies** applying to the **regulated goods or services** in question) in respect of the **disclosure year** in which the asset was acquired; and
 - (c) subclause (2)(a)(iii), value in respect of the **disclosure year** in which the asset was acquired or transferred that is-
 - (i) consistent with the **tax rules**; and
 - (ii) limited to its **value of commissioned asset** plus the sum of any insurance entitlements and compensatory entitlements applied to reduce the value of a commissioned asset under clause 5.3.11(1)(j), or, if relevant **capital contributions** are treated for tax purposes in accordance with section CG 8 of the Income Tax Act 2007 (or subsequent equivalent provisions), limited to the **value of commissioned asset** plus any taxed **capital contributions** applicable to the asset plus the sum of any insurance entitlements and compensatory entitlements applied to reduce the value of a commissioned asset under clause 5.3.11(1)(j).

[...]

5.5.12 Commissioned assets information

- (1) For each **disclosure year**, after the last disclosure made under an **ID determination**, until the last **disclosure year** of the **next period**, provide the-
- (a) sum of **value of commissioned assets**; and
 - (b) sum of **forecast value of commissioned assets**,
- in respect of each of the following groups of assets:
- (c) assets-
 - (i) acquired or intended to be acquired from a **related party**; or
 - (ii) transferred from a part of the **GDB** that supplies **unregulated services**;
 - (d) assets-
 - (i) acquired or intended to be acquired from another **regulated supplier** and used by that **regulated supplier** in the **supply of regulated services**; or
 - (ii) transferred or intended to be transferred from a part of the **GDB** that supplies **other regulated services**;
 - (e) **network spares**; and
 - (f) all other assets having a **commissioning date** or forecast to have a **commissioning date** in that period.
- (2) In respect of each value provided in accordance with subclause (1), provide-
- (a) all data, information, calculations and assumptions used to derive it from relevant data provided in the **capex forecast**; ~~and~~
 - (b) where **capital contributions** are taken into account in any value disclosed pursuant to subclause (1)-
 - (i) the amount of such **capital contributions**, with respect to asset types and quantities; and
 - (ii) policies relevant to such **capital contributions**; ~~and~~
 - (c) where **insurance entitlements** or **compensatory entitlements** are taken into account in any value disclosed pursuant to subclause (1)-
 - (i) the amount of such **insurance entitlements**, with respect to asset types and quantities;
 - (ii) a description of the insurance contracts relevant to such **insurance entitlements**; and
 - (iii) a description of the nature and amounts, with respect to asset types and quantities, of **compensatory entitlements**.

[...]

5.7.4 Catastrophic event

(1) A 'catastrophic event' is an event-

- (a) [...]
- (b) [...]
- (c) [...]
- (d) for which-
 - (i) action required to rectify its adverse consequences cannot be delayed until a future **regulatory period** without quality standards under the **CPP** being breached;
 - (ii) remediation requires **capex, opex**, or both;
 - (iii) the full remediation costs are not provided for in the **CPP**; and
 - (iv) the cost of remediation net of any **insurance entitlements, third-party liability entitlements, and compensatory entitlements** ~~insurance or compensatory entitlements~~ exceeds the relevant threshold specified in subclause (2).

[...]

5.7.13 Amending CPP after reconsideration

[...]

(2) The **Commission** will not amend-

- (a) [...]
- (b) the price path more than is reasonably necessary to take account of the change in costs ~~net of any insurance or compensatory entitlements~~; and

[...]

[...]