

Regulatory Impact Statement

AMENDMENTS TO THE COMMERCE (LEVY ON SUPPLIERS OF REGULATED SERVICES) REGULATIONS 2009

AGENCY DISCLOSURE STATEMENT

This Regulatory Impact Statement has been prepared by the Ministry of Economic Development.

It provides an analysis of options to recover the Commerce Commission's increased costs in regulating Transpower under Part 4 of the Commerce Act 1986. The option of government/tax payer funding is not considered further as the legislation provides that the costs are to be met by a levy on regulated parties.

In 2009, Cabinet decided to transfer a function of the Electricity Commission to the Commerce Commission. The costs of this function are currently paid for by Transpower through levy regulations that recover the Electricity Commission's costs. Cabinet decided that the costs of this function should continue to be met by a levy. The analysis therefore focuses on how the costs should be levied under the levy regulations that recover some of the Commerce Commission's costs. Because these regulations levy Transpower and electricity distribution businesses for other related costs, the analysis was extended to consider options for recovery of those costs as well.

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STATUS QUO AND PROBLEM DEFINITION

The Commerce (Levy on Suppliers of Regulated Services) Regulations 2009 need to be amended following a decision by Cabinet to transfer one of the Electricity Commission's (EC) functions to the Commerce Commission (CC).

The function is the approval of Transpower's grid upgrade plan proposals. The costs of performing this function are currently recovered from Transpower through the Electricity (Levy on Industry Participants) Regulations 2005.

The CC will now incur costs in approving Transpower's grid upgrade plans and in determining, by 1 October 2011¹, a related input methodology² for Transpower's capital expenditure proposals.

Cabinet has decided that the function should continue to be levy funded following the transfer, so the relevant levy regulations need to be amended.

It was considered appropriate to review the method of allocating other CC costs relating to the regulation of Transpower under the same levy regulations at the same time. These Transpower-related costs are grouped with the costs of other regulated suppliers and allocated as follows:

- Input Methodologies – split based on asset valuation between Electricity Distribution Businesses (EDB's) (55%), Transpower (17%), specified airports (16%) and gas pipeline businesses (12%)
- Price-Quality Regulation of Electricity Lines Businesses – split based on asset valuation between EDBs that are not consumer-owned³ (72%) and Transpower (28%)
- Other Electricity Lines Business Regulation (e.g. information disclosure) – split based on asset valuation between all EDBs (82%) and Transpower (18%).

OBJECTIVES

The objective is to recover the CC's costs in regulating Transpower by way of levy regulations using a consistent and fair methodology that is straightforward to administer. Any changes should accord with the Treasury's Guidelines for Setting Charges in the Public Sector (2002).

¹ The Minister may, on written request of the CC, extend the deadline by three months.

² Input methodologies outline the rules, process and requirements relating to regulation and are designed to provide greater certainty, transparency and predictability to regulated businesses.

³ As defined in section 54D of the Commerce Act 1986

REGULATORY IMPACT ANALYSIS

New Transpower costs

The new Transpower costs could be recovered from:

- A levy on regulated suppliers – electricity distribution businesses (EDBs), gas pipeline businesses and specified major airports
- A levy on Transpower

The option of levying regulated suppliers is not considered appropriate because the new costs specifically relate to the regulation of Transpower. Under the existing arrangements, Transpower is levied for the EC's costs of approving grid upgrade plans. A levy on Transpower is therefore considered the most appropriate option. Submitters agreed with this option.

Other (existing) Transpower-related costs

The appropriateness of the current method of recovering of the CC's other costs in regulating Transpower was also reviewed.

Two options were considered for the continued levying of these costs:

- Option 1: Status quo (as described in the "Status quo and Problem Definition" section)
- Option 2: Allocating some (or all) of the other Transpower-related costs solely to Transpower.

Option 1 is based on the premise that the CC's work related to the regulation of Transpower leverages off its work in relation to the other businesses regulated under Part 4, and that the costs would be difficult to separate. It also maintains administrative simplicity.

Option 2 provides greater transparency to levy payers. However, it comes at the expense of administrative simplicity and increased administration costs as the CC would have to spend time allocating costs that are difficult to separate. It could also result in greater variability in the amount levied to regulated parties from year to year; for example, if a substantial amount of the CC's resource (funding) is committed to working on Transpower-related work in one particular year, then a lesser amount will be allocated to other activities, and therefore other regulated parties (and vice versa).

Option 1 is the preferred option because the Transpower-related work is closely related to the regulation of the EDBs, and it avoids creating unpredictability in levy costs for regulated parties and increased transaction costs.

All five submitters that commented on the options agree that Option 1 is the best option.

CONSULTATION

Consultation on the decision to transfer the grid upgrade plan approval function to the CC was undertaken through consultation on the preliminary report⁴ to the Ministerial Review of Electricity Market Performance. Further consultation on implementation of the decision was undertaken through consultation on the Electricity Industry Bill 2010, which amends the Commerce Act to provide for the new function.

In accordance with 53ZE (4) of the Commerce Act 1986, regulated parties were consulted with on the proposed amendments to the levy regulations. A discussion paper was posted on the Ministry of Economic Development's website for public consultation and directly sent to electricity lines businesses (including Transpower) for comment.

The views of submitters have been taken into account in the recommended amendments. The discussion paper included proposals for recovering the CC's new costs, and options for recovering its other Transpower-related costs.

In developing the proposed design, the Ministry of Economic Development consulted with the following government departments: the Commerce Commission, Electricity Commission, Energy Efficiency and Conservation Authority, and the Treasury. The Department of Prime Minister and Cabinet was informed.

CONCLUSIONS AND RECOMMENDATIONS

The CC's new costs in approving Transpower's grid upgrade plans and in determining a related input methodology⁵ for Transpower's capital expenditure proposals should be met by a levy on Transpower.

The CC's other costs relating to the regulation of Transpower should continue to be levied as per the current regulations.

IMPLEMENTATION

Once decisions are made, amendment regulations will be drafted and recommended to Cabinet. The decisions will be communicated to relevant levy payers (Transpower in particular) as the amendments will take effect later than 1 October 2010 (when the Act takes effect).

The Ministry of Economic Development will continue to administer the Commerce (Levy on Suppliers of Regulated Services) Regulations 2009, collecting the levy on behalf of the Minister of Commerce.

MONITORING, EVALUATION AND REVIEW

The Ministry of Economic Development will continue to monitor the appropriateness of the allocation methodology under the levy regulations, taking into account any issues raised by levy payers regarding the regulations.

⁴ Prepared by the Electricity Technical Advisory Group and the Ministry of Economic Development

⁵ Input methodologies involve setting upfront regulatory methodologies, rules, processes, requirements and evaluation criteria that are directly (or indirectly) relevant for applying the regulatory instruments for undertaking Part 4 inquiries. Once input methodologies are determined, they will apply to both regulated parties and the CC