

## Summary of Submissions: Funding the Regulation of Electricity, Gas and Airports under the revised Commerce Act 1986

---

The Ministry received 13 submissions on the above discussion paper.

Number	Submitter (abbreviation used in summary table)	Role
1	Christchurch International Airport (CIA)	Airport Company
2	Maui Development Limited (MDL)	Gas Pipeline Business (GPB) – Transmission
3	Eastland Networks (Eastland)	Electricity Lines Business (ELB)
4	Powerco	ELB and GPB – Distribution
5	Vector	ELB and GPB – Distribution and Transmission
6	PriceWaterhouseCoopers (PWC)	On behalf of 22 ELB's
7	GasNet	GPB – Distribution (owned by Wanganui Gas)
8	Auckland International Airport (AIA)	Airport Company
9	Wellington International Airport (WIA)	Airport Company
10	Unison Networks (Unison)	ELB
11	Electricity Networks Association (ENA)	Industry group (representing ELB's)
12	Air New Zealand (Air NZ)	Airline
13	Transpower	Electricity Transmission Business

## Electricity

Comment	Submitter	Ministry Comment
<b>Is the proposed allocation of costs between activities appropriate?</b>		
Yes. Agree that the proposed methodology is the most appropriate as it follows a 'user pays' philosophy. Agree that it is unjustified to require consumer-owned lines businesses to contribute to the cost of default/customised price-quality path as this regulation does not apply to them.	Eastland	Noted.
Yes. Agree that this split is appropriate.	ENA	Noted.
Yes. Agree in general with this approach.	Powerco	Noted.
Impossible to form a view as not enough information provided on specific activities.	Vector	Noted.
Yes. Attempts at further separation and more detailed allocation of the activities are likely to be complex and potentially arbitrary. At a minimum CC needs to allocate the activities between sectors and, for electricity, between default/customised regulation and other activities – this is sufficient and quite possibly challenging enough.	PWC	Noted.
Yes. Allocating costs on the basis of time spent on the regulation of each business is unworkable and likely to be arbitrary.	PWC	Noted.
No. The different activities are not clearly divisible as proposed.	Unison	Disagree. CC has agreed that the division is possible.
<b>If not, what could be used, and why?</b>		
The cost of investigations into consumer-owned trusts (e.g. if a petition under section 54H (3) of the Act) should be funded by the company being investigated.	Powerco	The costs must be recovered by levy so this proposal would prove administratively complex.

Not appropriate for non-exempt companies to pay for the costs of assessments of petitions relating to exempt companies. These costs should be borne by the customer making the proposal.	Vector	Refer above.
The costs should be allocated once input methodologies are decided upon (to take into account the relevance of the control regime work to the information disclosure regime).	Unison	This would result in businesses receiving a substantial invoice in 2010/11.
<b>Is share of valuation appropriate to recover costs, within activities?</b>		
Yes. Method provides consistency as all lines businesses use the same established methodology for asset valuation. Since the methodology is already in place the administration of levies should be straightforward.	Eastland	Noted.
Yes. Agree that the levy should be apportioned on the basis of asset valuation.	ENA	Noted.
Yes. It is more logical to allocate based on customer numbers, but appreciate that geography and population density lead to significant variation in the proportion of customers to system length and assets.	Powerco	Noted.
No. Too much weight has been placed on equity considerations and not enough on cost reflective pricing.	Vector	A balance must be found between cost reflective pricing and administrative simplicity. A complicated levy design will add compliance costs.
Yes. Do not support the use of any other allocators presented – they are inappropriate as relativities between companies are distorted by network characteristics. Strongly oppose a flat rate levy because consumers of small companies would contribute more than consumers of large companies (which is inequitable).	PWC	Noted.
Yes. However, effective implementation relies on CC mandating a valuation methodology common to all regulated ELB's which is made available on an annual basis in a timely manner.	PWC	A CC decision on a common asset valuation methodology will be made by 30 June 2010

		as it is one of the required input methodologies. A common methodology exists in the meantime (ODV) (see note below re Transpower and DHC)
Yes. Agree with the use of asset valuation to allocate costs, but potential changes to the derivation of the regulatory asset base may make this approach difficult to apply in future.	Horizon	Noted. There should always be a consistent asset valuation methodology for electricity lines businesses. The valuation of Transpower is large enough that minor variations (due to the application of a different valuation methodology) become insignificant relative to other businesses.
Yes. Allocating the costs based on each business's share of the total asset valuation is satisfactory in principle.	Transpower	Noted.
<b>If not, what could be used and why?</b>		
As well as using share of valuation, there should be a minimum levy for each company to cover basic administration costs and a maximum levy based on a percentage of revenue.	Powerco	Adds administrative complexity (and costs).
A combination of a flat fee (which is more cost reflective) and variable fee (based on an allocator such as asset value) should be used.	Vector	Adds administrative complexity (and costs).
If there remains a difference between Transpower's valuation methodology and that of ELB's, CC should separately identify the costs of each activity (which Transpower can be levied for) and the remainder can be apportioned to ELB's based on asset value. If the use of asset values become impractical, would support the use of total electricity supplied as a basis for apportioning the levy but only if Transpower's costs are allocated directly to	PWC (note Horizon's comment below)	Agree that could be some variance in asset valuation due to Transpower now using DHC. However, the valuation of Transpower is large enough

them. In the absence of consistent asset valuations, total electricity supplied on the network is the most relevant indicator of the relative size of ELB's.		that minor variations (due to the application of a different valuation methodology) become insignificant relative to other businesses.
Should electricity supplied be used as a basis for allocating the levy will result in some companies being allocated a disproportionate share of the cost. In the case of Horizon, five major industrial consumers use of 50% of electricity supplied. Adjustments in the allocation approach would be required.	Horizon	Agree, MED is proposing asset valuation for electricity lines businesses.
<b>Any other comments?</b>		
Regulatory cost should be kept to a minimum for businesses. For smaller businesses especially, these costs can otherwise be a substantial burden. The levy process should be fair and transparent for all stakeholders so as to not create uncertainty.	Eastland	Noted.
Costs should ultimately be met by the beneficiaries of the regime (i.e. consumers). The mechanism for ensuring CC recognises the levy as a pass-through cost is unclear. This could be achieved through a clause in regulations or through a section 26 statement.	ENA	Out of scope. CC decision.
Companies facing control and/or meeting the information disclosure requirements are also incurring significant additional compliance costs, in addition to the levy. We recommend that it become a policy objective that the full compliance costs of a regulatory regime are identified and met by the ultimate beneficiaries. This would place a reasonable check on the tendency for regulatory creep to occur because incremental costs in relation to benefits would be clearly recognised.	ENA	Noted.
Concerned at the level of funding. CC should lower its own costs to minimise the cost of regulation on energy consumers.	Powerco	Out of scope.
Levies under section 53ZE of the Act should be pass through costs under 52T(c) of the Act for electricity lines regulation.	Powerco	Out of scope. CC decision.

<p>Do not consider it appropriate for CC expenditure to be recovered through levies until such time as ELB's are able to recover those costs in prices. CC must determine (by 2010) what costs will be treated as pass through costs under section 52T of the Act. Levies for the preceding years (plus the time value of money) could be recouped from consumers by distribution businesses once a decision is made. (Under the recent Gas Final Authorisation notice, gas levies are treated as a pass through cost).</p>	<p>Vector</p>	<p>Disagree. This would result in businesses receiving a substantial invoice in 2010/11.</p>
<p>In the interests of certainty, levies should not change throughout the year.</p> <p>If asset valuation is used, levies should not be changed within a year if the valuation changes (as is currently the case). For example, 2008/09 levies should be based on the 2007 valuation, as opposed to the 2008 valuation.</p>	<p>Vector</p>	<p>There must be some flexibility in case of under expenditure (or recovery of funds appropriated during the year).</p> <p>The final levy paid in a year should be based on the most recent valuation available to reflect asset changes. For example, if it is not adjusted, the levy paid for the year ended 30 June 2009 would be based on valuations as at 31 March 2007 (over two years earlier).</p>
<p>Impossible to gauge whether the money will be well spent from the information provided in the discussion paper. Would like to see a more detailed plan setting out how funds would be spent (particular activities of CC, cost of various inputs such as staff, consultants, research) and assurance that there will not be undue duplication in the process of developing these regulatory processes.</p>	<p>Vector</p>	<p>Noted. The level of funding of specific CC activities is determined as part of the annual Budget process.</p>
<p>Budget overruns should not be recovered from businesses at the end of the year. This provides no incentives for CC to act efficiently and manage within budget or re-prioritise expenditure.</p>	<p>Vector</p>	<p>There must be some flexibility in CC's funding to reflect changing circumstances and priorities. CC must go through the normal government</p>

		budget bid process to receive extra funding.
Would like clarification as to the treatment of levies for 2008/09 – how will the difference in liabilities between the existing and proposed regulations be dealt with? Will companies be given a credit for levies already paid under the existing regulations?	Vector	It is proposed that the existing levy regulations remain in place until 30 June 2009. The usual “wash up” based on actual expenditure for 2008/09 will occur later in 2009.
Concerned that here has been no explicit cost-benefit analysis. Would encourage CC and MED to ensure that the direct costs of regulation are minimised and that any potential synergies between the sectors are fully exploited.	PWC	Noted.
Support a consistent approach across all three sectors.	PWC	Agree.
Assurance needs to be given that levy costs will be allowed as pass through costs, otherwise cost-benefit allocation will be distorted.	Unison	Out of scope. CC decision.
Regulation is becoming an increasingly costly burden. Amendments to the regulations should take into account the increasing cost burden of regulation in the industry.	Unison	Noted.
There should be provision in the levy regulations for businesses whose exempt status changes during a regulatory period.	PWC	Agree.
Raised issues around timing of financial year and disclosure of asset valuations (which vary between sectors).	PWC	The regulations will be based on the principle that the most recent valuations available should be used.
Expenditure on the levy forms part of Transpower’s total operating expenditure which is constrained by the terms of the Commerce Act (Transpower Thresholds) Notice 2008. If, as a consequence of the need for increased expenditure in order to satisfy the requirements of the amended Act, the quantum of the levy increases at a rate substantially higher than the rate of increase in the consumers’ price index, it would be	Transpower	Out of scope. CC decision.

<p>appropriate for CC to consider the case for reclassifying expenditure by Transpower on the levy as a “pass through” cost. Such a classification would make the treatment of the CC levy equivalent to that of the EC levy.</p>		
<p>Transpower no longer uses optimised deprival value (ODV) as the basis for valuing its fixed assets. Transpower is now using depreciated historical cost for this purpose, as permitted by CC (and outlined in the Commerce Act (Transpower Thresholds) Notice 2008).</p>	<p>Transpower</p>	<p>Noted. Transpower’s most recent valuation used for levy collection is based on ODV (as at 30 June 2007 – gazetted 20 Nov 2007). Levy collection to date has been based on ODV, subsequent years will be based on DHC.</p>

## Gas

Comment	Submitter	Ministry Comment
<b>Is the proposed allocation of costs between activities appropriate?</b>		
No. Opposed to funding work that is not relevant to the Maui pipeline (i.e. for Part 5 price control over Powerco and Vector's Auckland networks).	MDL	If accepted, Powerco and Vector could argue that they should not pay for the costs of price-quality regulation until they are subject to that regime. In the interests of administrative simplicity it is argued that all gas pipeline businesses should be charged for all activities from 2009/10.
Yes. Agree with the proposed allocation.	GasNet	Noted.
No. Against funding the development of input methodologies and a default/customised price-quality path until it becomes subject to the new regime in 2012.	Powerco	Same argument as above. If accepted, MDL could argue that it should not pay for Part 5 price control over Powerco and Vector's Auckland network. In the interests of administrative simplicity it is argued that all gas pipeline businesses should be charged for all activities from 2009/10.
Yes. Agree that all gas pipeline businesses should be charged for all activities.	Vector	Noted.
<b>If not, what could be used, and why?</b>		

Parties not impacted by a given activity should not be charged for that activity.	MDL	See above.
It is unreasonable to expect customers to bear the costs of developing a scheme that they will not benefit from for nearly four years. Recommends that businesses under Part 5 continue to pay their own costs, and do not contribute to the costs of developing the default/customised price-quality path. The division of funds has been occurring administratively since 2005 and it should not be significantly administratively complex to continue an already operational process.	Powerco	See above.
<b>Is share of valuation appropriate to recover costs, within activities?</b>		
Yes.	MDL	Noted.
<p>Yes, but note that in practice there are a number of issues that require further consideration. Specifically, there is no single prescribed standard for the valuation of fixed assets. (Vector uses the lesser of depreciated replacement cost and discounted cash flow; Powerco – cost or fair value; GasNet – depreciated replacement cost, revalued every three years).</p> <p>Should a common asset valuation approach be implemented, there is likely to be some divergence between current asset valuation methodologies (and the relative share of the total for each company) versus the new standard. MED should investigate this issue further to examine the extent of potential divergence.</p> <p>There will also be a need for the regulations to specify which assets are included in the regulated asset value. System fixed assets plus non system fixed assets of the gas pipeline business be used.</p>	GasNet	These issues will be fully resolved once CC has developed the input methodologies for asset valuation. In the interim, the best publicly available information on fixed asset values remains those reported in the financial statements required under the Gas (Information Disclosure) Regulations 1997. It is proposed to use these valuations (notwithstanding the slightly different methodologies used) as the basis for recovering costs.
Yes.	Powerco	Noted.
No.	Vector	See below.

<b>If not, what could be used and why?</b>		
While agreeing with the proposal, suggest that there should be a minimum levy to cover basic administration costs and a maximum levy based on the percentage of revenue.	Powerco	A balance must be found between cost reflective pricing and administrative simplicity. A complicated levy design will add compliance costs.
Too much weight has been given to equity considerations and too little weight to cost reflective pricing. Propose a combination of a flat fee (which is cost reflective) and a variable fee based on asset value which would provide greater balance.	Vector	A balance must be found between cost reflective pricing and administrative simplicity. A complicated levy design will add compliance costs.
<b>Any other comments?</b>		
The levy will impose a significant additional financial burden. Request that a levy collection arrangement that is cost-effective for the pipeline owner be selected (not specified) and that adequate advance notice of the amount of the levy, and any subsequent adjustments, be provided.	MDL	Noted.
Extremely concerned about the magnitude of the estimated regulatory costs. Considers that there must be some overlap in CC's work between the electricity and gas sectors and that this should result in a lower levy. The regulatory costs far outweigh any potential benefits. Information disclosure is currently not gazetted until five months after financial year end (November). As such, information from two years previous may need to be used, with adjustments included in the year end reconciliation once more information is available.	GasNet	Noted.
Have significant concerns over the magnitude of the indicative financial estimates. The costs of gas regulation have spiralled in recent years and they appear significantly higher than the equivalent costs of regulation in Europe, particularly if population levels are taken into account. Agree with the proposed quarterly levy collection arrangements.	Powerco	Noted.

<p>Supports quarterly collection of levies, however, opposed to changing levies during the course of the year as more up to date asset valuations become available. Would prefer that the asset valuation used for 2008/09 would be the 2007 valuation, as opposed to the 2008 valuation.</p>	<p>Vector</p>	<p>The final levy paid in a year should be based on the most recent valuation available to reflect asset changes. For example, if it is not adjusted, the levy paid for the year ended 30 June 2009 would be based on valuations as at 31 March 2007 (over two years earlier).</p>
<p>Would like clarification as to the treatment of levies for the 2008/09 year (i.e. between the existing levies and the proposed levies). Will companies be given a credit for levies already paid under existing regulations?</p>	<p>Vector</p>	<p>It is proposed that the existing levy regulations remain in place until 30 June 2009. The usual “wash up” based on actual expenditure for 2008/09 will occur later in 2009.</p>
<p>Against CC being able to recoup budget overruns from regulated companies – believe that there should be substantially more information as to how the levy would be spent.</p>	<p>Vector</p>	<p>There must be some flexibility in CC’s funding to reflect changing circumstances and priorities. CC must go through the normal government budget bid process to receive extra funding.</p>
<p>Want clarification on whether it will be able pass through the levy to consumers.</p>	<p>Vector</p>	<p>Out of scope. CC decision.</p>
<p>Considers that the payment of these levies should be held over until such time as there is clarity as to how businesses can treat the levies for pricing purposes. The amount of levy over preceding years, plus the time value of money, could be re-cooped from consumers through a pass-through levy paid by distribution companies at this time.</p>	<p>Vector</p>	<p>Disagree. This would result in businesses receiving a substantial invoice in 2010/11.</p>

## Airports

Comment	Submitter	Ministry Comment
<b>Is the proposed allocation of costs between activities appropriate?</b>		
No.	AIA	Noted.
No.	CIA	Noted.
Yes. This is dependant on no one party causing a significant increase in the total cost of the regime.	WIA	Each party should already have incentives to comply with the regulation, as there are penalties for non-compliance.
There should be transparency regarding the basis on which common costs, such as the development of input methodologies, are shared between sectors. Cross-subsidisation should not occur.	AIA, WIA, CIA, Air NZ	The costs of IM development will be allocated to each sector based on its proportion of the total asset valuation of all three sectors.
The cost allocated to airports is unfairly high when no problems were identified in this sector.	WIA	The level of complaints in relation to major airports is not a relevant consideration in the allocation of the levy.
<b>If not, what could be used, and why?</b>		
It would be more appropriate to split the costs of developing shared input methodologies equally among all participants, instead of on a sector by sector basis.	AIA	Disagree. This basis of allocating costs would not take into account the size and value of different businesses and their ability to pay.

CC should absorb the establishment costs.	CIA	Disagree. It is appropriate to directly link the costs of the regime to the justification for regulation (major airports' market power) and the consumers of the regulated services who are the direct beneficiaries of the regulatory regime.
<b>Is share of valuation appropriate to recover costs, within activities?</b>		
No. The use of valuation of fixed assets would create inequities in regards to historic practices.	CIA	It is proposed that fixed asset valuations under the Airport Authorities (Airport Companies Information Disclosure) Regulations 1999 be temporarily used until a common methodology is determined by CC. Note that the industry and other stakeholders will have input into CC's determination on an appropriate asset valuation methodology.
No. There is no regulated methodology for determining the aeronautical asset base, and it is a contentious issue.	AIA	See comment above.
Yes. However, CC must use the generally accepted accounting principles applied in the normal accounts of the three major airports.	WIA	Noted.
Yes.	Air NZ	Noted.

<p>No. Should not have to pay for regulation, as there have not been any Commerce Act complaints, nor have airports been criticised in any CC inquiry.</p>	<p>CIA</p>	<p>Whether or not there have been Commerce Act complaints is not a relevant consideration in the allocation of the levy.</p>
<p><b>If not, what could be used and why?</b></p>		
<p>Levies based on the aeronautical revenues earned by the airports, because it takes into account the differing pricing regimes on introduction.</p>	<p>CIA</p>	<p>Disagree. Compared to relative value of fixed assets, share of aeronautical revenues is likely to fluctuate more.</p>
<p>Share of total passengers is preferable, as it is non-contentious, is information that is readily available, and would result in equitable allocation to the consumers who will benefit from the regulation.</p>	<p>AIA</p>	<p>Disagree. The share of total passengers would not be reflective of the cost of different types of passengers. In addition, the level and types of passengers would be demand driven and outside of the control of airports.</p>
<p><b>Any other comments?</b></p>		
<p>The pricing regime of airport services limits the ability to pass on costs to the end users who will benefit from the regulation, because their prices are set periodically.</p>	<p>CIA, AIA, WIA</p>	<p>Costs will be able to be passed through to consumers as long as all parties (such as airlines) are aware of the situation. CC will reach a determination on how the costs can be passed on in their development of IM's.</p>

Levy payments for airports should be deferred until the next pricing round when costs can be passed on.	AIA	Disagree. Note that the CC will make a determination as to how the costs of the levy can be passed on to consumers.
The ongoing regulatory cost should be met by the airlines so that costs can be more easily passed on to those who benefit.	CIA	Disagree. The justification for the regulation is based on the scope for the exercise of major airports' market power, not the airlines.
The price reduction from increased competition will be offset by a rise in prices due to the cost of the levy, so benefits to consumers will not eventuate.	CIA	A review of the information disclosure regime will be undertaken following the price-reset around or after 2012, and will consider how effective the regime has been in achieving the regulatory outcomes for the long term benefit of consumers.
There should be greater detail as to what activities are being funded by the levy ("Information Disclosure" and "Input Methodologies" should be more accurately defined), and there should be transparency as to how levy costs relate to CC activities.	CIA, AIA, WIA, Air NZ	Noted. There are existing mechanisms in place to promote accountability and transparency. This includes budget processes, performance measures, and monitoring processes.
Costs should be fair and reasonable, not disproportionate to the cost of internal resourcing.	AIA, WIA, CIA, Air NZ	Noted.
There should be transparency as to the methodology for allocating costs between	AIA, Air NZ	Noted.

sectors.		
Indicative amounts appear to be disproportionately high, given the intended regime for airports.	AIA, WIA	Out of scope.
Cost recovery should only relate to functions under Part 4 of the Commerce Act.	WIA	Noted.
CC should bear the risk of cost overruns if it is inefficient in its processes or does not meet its own timetable.	WIA, CIA	Noted. There are existing mechanisms in place to promote accountability and transparency. This includes budget processes, performance measures, and monitoring processes.
It would be reasonable to provide quarterly invoicing of the charges.	WIA	Noted.
Smoothing of costs over time would be desirable.	AIA	Noted.
There are fewer businesses under airport regulation than the other sectors, so the airports will have to pay a disproportionate share.	AIA	Noted. The cost will be allocated on the basis of fixed asset valuation. While large businesses across all sectors will be required to pay a larger share (for example in relation to input methodology costs) this will be reflective of ability to pay.
Regulation should be funded by government, as the benefits accrue to the general public.	WIA, CIA	Disagree. A levy on industry will better ensure that costs are more accurately passed on to those who benefit - the consumers of the service.

## Glossary

Abbreviation	
CC	Commerce Commission
EC	Electricity Commission
MDL	Maui Development Limited
MED	Ministry of Economic Development