

Further clarification on amending the TPM

Consultation paper

27 February 2024

Executive summary

In April 2022 the Electricity Authority Te Mana Hiko decided to incorporate a new transmission pricing methodology (TPM) into the Electricity Industry Participation Code 2010 (the Code). To provide greater clarity around its ability to amend the new TPM, in [June 2022 the Authority amended Part 12 of the Code to clarify that it can amend the TPM in situations where an amendment fits under section 39(3) of the Act or in circumstances that justify urgent amendment of the Code using section 40 (clause 12.94A).¹

The Authority now considers that a further amendment is necessary to clarify that it is also able to amend the TPM in circumstances not covered by clause 12.94A. This is because the Authority considers it likely that there will be some amendments to the TPM that may be beneficial to achieving the TPM's policy intent that may not comfortably fall within the existing criteria.

To provide transparency as to the extent any amendments are consistent with the most recently published TPM guidelines, the Authority would be required, when consulting on a potential amendment, to explain the extent to which it considers an amendment is consistent with these guidelines, and if it is not, then why it should nevertheless be made.

Additionally, the Authority proposes an amendment to add a provision that allows the sharing of data between the Authority and Transpower (as the grid owner) to enable Transpower to make TPM-related calculations.

The proposed Code amendments further the Authority's statutory objective by promoting the efficient operation of the electricity industry. This is achieved by clearly providing for the TPM to be amended when appropriate, and in a timely manner and improving the accuracy of information used in calculating transmission charges.

This consultation is proceeding with a four-week period for submissions. We welcome feedback from interested parties on the enclosed proposed Code amendments.

¹ Refer to: <https://www.ea.govt.nz/documents/1790/Decision-paper-Code-amendments-to-support-TPM-implementation.pdf>

Contents

Consultation paper	1
Executive summary	3
Contents	4
1. What you need to know to make a submission	5
What this consultation is about	5
How to make a submission	5
When to make a submission	5
2. Background: Requirements for amending the TPM	6
3. Problem definition	7
Amendments to the TPM	7
Data availability	7
4. Proposed amendments	8
Clarifying how the TPM can be amended	8
Providing for the Authority to share certain data with Transpower	8
5. Regulatory Statement	9
Proposed amendments to clarify how the TPM can be amended	9
Objectives of the proposed amendment	9
The proposed amendment	9
The proposed amendment's benefits are expected to outweigh the costs	9
The Authority has identified other means for addressing the objectives	9
The proposed amendment complies with section 32(1) of the Act	10
The Authority has given regard to the Code amendment principles	10
Providing data sharing between the Authority and Transpower	12
Objectives of the proposed amendment	12
The proposed amendment	12
The proposed amendment's benefits are expected to outweigh the costs	12
The Authority has identified other means for addressing the objectives	12
The proposed amendment complies with section 32(1) of the Act	13
The Authority has given regard to the Code amendment principles	13
Appendix A Proposed amendment	15
Appendix B Format for submissions	16

1. What you need to know to make a submission

What this consultation is about

- 1.1. The purpose of this paper is to consult with interested parties on the Authority's proposal to amend the Code to:
 - (a) clarify the Authority's ability to amend the TPM
 - (b) add a provision that allows the sharing of data between the Authority and Transpower (as the grid owner) to enable Transpower to make TPM-related calculations.

How to make a submission

- 1.2. The Authority's preference is to receive submissions in electronic format (Microsoft Word) in the format shown in Appendix B. Submissions in electronic form should be emailed to network.pricing@ea.govt.nz with "Consultation Paper—" in the subject line.
- 1.3. If you cannot send your submission electronically, please contact the Authority (network.pricing@ea.govt.nz or 04 460 8860) to discuss alternative arrangements.
- 1.4. Please note the Authority intends to publish all submissions it receives. If you consider that the Authority should not publish any part of your submission, please:
 - (a) indicate which part should not be published,
 - (b) explain why you consider we should not publish that part, and
 - (c) provide a version of your submission that the Authority can publish (if we agree not to publish your full submission).
- 1.5. If you indicate part of your submission should not be published, the Authority will discuss this with you before deciding whether to not publish that part of your submission.
- 1.6. However, please note that all submissions received by the Authority, including any parts that the Authority does not publish, can be requested under the Official Information Act 1982. This means the Authority would be required to release material not published unless good reason existed under the Official Information Act to withhold it. The Authority would normally consult with you before releasing any material that you said should not be published.

When to make a submission

- 1.7. Please deliver your submission by 5pm on **26 March 2024**.
- 1.8. Authority staff will acknowledge receipt of all submissions electronically. Please contact the Authority network.pricing@ea.govt.nz or 04 460 8860 if you do not receive electronic acknowledgement of your submission within two business days.

2. Background: Requirements for amending the TPM

- 2.1. In 2020, the Authority issued new TPM guidelines for development of a proposed new TPM following completion of a review and consultation process. Transpower subsequently developed a proposed TPM consistent with the TPM guidelines. In 2021 the Authority consulted on a proposed TPM and in April 2022 it amended the Code to incorporate a new TPM into the Code. The new TPM came into force on 1 April 2023.
- 2.2. The TPM is a long and technically complex part of the Code. The Authority recognised that minor issues may be identified during the TPM's implementation, requiring correcting amendments.
- 2.3. In June 2022, the Authority released the decision to include the provision 12.94A of the Code to clarify that the Authority may amend the TPM where it is satisfied on reasonable grounds regarding any of the matters in section 39(3) (e.g. technical and non-controversial amendments) or 40 (ie, urgent amendments) of the Act.
- 2.4. The matters in section 39(3) are:
 - (a) the nature of the amendment is technical and non-controversial (section 39(3)(a)); or
 - (b) there is widespread support for the amendment among the people likely to be affected by it (section 39(3)(b)); or
 - (c) there has been adequate prior consultation so that all relevant views have been considered (section 39(3)(c)).
- 2.5. Section 40 provides that the Authority may amend the Code without complying with section 39(1) if the Authority considers it is necessary or desirable in the public interest that the proposed amendment be made urgently.
- 2.6. These provisions have been used to make a number of technical amendments to the TPM (such as making corrections to the reduction event adjustment factor formula for the residual charge and resolving a workability problem with the cap recovery charge calculation).
- 2.7. For further information on other TPM correction amendments please refer to our website.²

² <https://www.ea.govt.nz/projects/all/tpm/>

3. Problem definition

Amendments to the TPM

- 3.1. The Authority considers it likely that there will be some amendments to the TPM that may be beneficial to achieving the TPM's policy intent that may not comfortably fall within the existing matters set out in section 39(3) or 40 of the Act.
- 3.2. In our consultation paper: *Code amendments supporting the new transmission pricing methodology* published in April 2022, we expressed our intention to later assess the appropriateness of Subpart 4 of Part 12 of the Code and determine whether it remains effective or if there should be flexibility to re-open the TPM under other circumstances.³
- 3.3. During the TPM's implementation, we noted that the existing requirements could be perceived as constraining the Authority's ability to propose and make amendments to the TPM where they do not clearly fit within the criteria of clause 12.94A.
- 3.4. This could be, for example, because a proposed amendment includes policy that has not previously been consulted on as part of the TPM development, and/or arguably may not be considered "technical and non-controversial" but is nevertheless in furtherance of the Authority's main statutory objective.
- 3.5. An example we are currently aware of is the potential issue we identified in November 2023 with the weighted average cost of capital (WACC) that will be used to calculate benefit-based charges from 1 April 2025.⁴ This is not an issue that was previously considered when we developed and consulted on the TPM, meaning the policy solution may not comfortably fit within the criteria in clause 12.94A. It is possible however that addressing this issue will further the Authority's main statutory objective by ensuring that the operation of the TPM is efficient and promotes the long-term benefit of consumers.
- 3.6. Any impediment to the Authority's ability to make this amendment, or other beneficial amendments to the TPM, will likely detract from the Authority's main statutory objective.

Data availability

- 3.7. Transpower has raised an issue with the Authority that the method currently used to obtain the data needed for calculating adjustments to the benefit-based charge adjustments in certainty circumstances is time-consuming.
- 3.8. The Authority has the information that can streamline Transpower's calculations.

³ Refer to: <https://www.ea.govt.nz/documents/1801/Code-amendments-to-support-the-implementation-of-the-new-TPM.pdf>

⁴ [Authority identifies issue with WACC that could affect 2025 transmission prices | Electricity Authority \(ea.govt.nz\)](#)

4. Proposed amendments

Clarifying how the TPM can be amended

- 4.1. The Authority is proposing an amendment to the Code that adds a provision to clause 12.94A of the Code that makes it clear that the Authority can amend the TPM under section 38 of the Act if it complies with section 39(1) of the Act.⁵
- 4.2. This amendment addresses the problem of there being ambiguity about when the Authority may amend the TPM by providing clearly that the Authority may amend the TPM where it meets the Code-making requirements in the Act. It will clearly support the Authority amending the TPM when there is a justification for doing so as contemplated by the Act, including the Authority's main statutory objective.
- 4.3. In addition to meeting the requirements of section 39(1) of the Act, the Authority will be explicitly required to provide, when consultation is required on a proposed amendment to the TPM,:
 - (a) an explanation of whether the proposed amendment is in its view consistent with the most recently published TPM guidelines (published under clause 12.83(b) of the Code – with the current guidelines being the “2020 guidelines”)⁶ – and
 - (b) where it is not consistent with the guidelines, the reasons why the Authority considers the amendment to nevertheless be consistent with section 32(1) of the Act (which sets the requirements for what the Code may contain).⁷
- 4.4. This information will allow people to easily view proposed amendments in the context of the Authority's previous major policy decisions on the content of the TPM (as reflected in the TPM guidelines) and assist them to prepare submissions in a cost-effective way.
- 4.5. The draft amendment to the Code is attached alongside this consultation paper.

Providing for the Authority to share certain data with Transpower

- 4.6. We propose to amend the TPM to add a provision that allows the sharing of data between the Authority and Transpower (as the grid owner) to enable Transpower to make TPM-related calculations.
- 4.7. This will enable Transpower to undertake TPM-related calculations more efficiently by providing access to relevant data that the Authority holds.

Q1. Do you agree with the above amendments to the Code? If not, why not?

⁵ Refer to: [Electricity Industry Act 2010 No 116 \(as at 24 August 2023\), Public Act 39 Consultation on proposed amendments – New Zealand Legislation](#)

⁶ Refer to: [26850TPM-2020-guidelines-10-June-2020.pdf \(ea.govt.nz\)](#)

⁷ Refer to: [Electricity Industry Act 2010 No 116 \(as at 24 August 2023\), Public Act 32 Content of Code – New Zealand Legislation](#)

5. Regulatory Statement

Proposed amendments to clarify how the TPM can be amended

Objectives of the proposed amendment

- 5.1. The objectives of the proposed Code amendments are described in the preceding chapters of this paper.

Q2. Do you agree with the objectives of the proposed amendment? If not, why not?

The proposed amendment

- 5.2. The Authority proposes to amend Part 12 of the Code as described in the preceding chapters of this paper.
- 5.3. The drafting of the proposed amendment is in Appendix A.

The proposed amendment's benefits are expected to outweigh the costs

- 5.4. The Authority has assessed the benefits and costs of the proposed Code amendments and expects them to deliver a net benefit.
- 5.5. Relative to the status quo arrangements:
- (a) the expected incremental benefits of the proposed amendments are as follows:
 - i. Improved confidence for stakeholders that when the TPM is not achieving the policy intent or when there are workability issues, any such issues will be resolved when necessary.
 - ii. Improved operational efficiency: Issues can be addressed in a timely manner as the Authority may be able to act more proactively when it spots an issue and thereby promote the long-term benefit of consumers
 - (b) the expected incremental costs of the proposed amendments are as follows:
 - i. perceptions of reduced certainty, as the resolution of identified problems with the TPM not achieving the policy intent or workability issues means the TPM will not necessarily remain in its current state.
- 5.6. The Authority considers that the expected incremental benefits outweigh the expected incremental cost. We are of the view that regulatory certainty is best served by the Authority consistently and predictably pursuing policies that promote its statutory objective.

Q3. Do you agree the benefits of the proposed amendments outweigh the costs?

The Authority has identified other means for addressing the objectives

- 5.7. The Authority considered removing all requirements related to amending the TPM (revoking clauses 12.79 to 12.94A of the Code). This alternative would align TPM amendments with the general amendment process used for the Code.

- 5.8. However we consider that the proposed amendment better promotes the Authority's main statutory objective, compared to the alternative approach, as:
- (a) this alternative approach may reduce the level of certainty stakeholders have about:
 - i. the enduring nature of the TPM: the removal of all current process steps in the Code may create the perception that the TPM may regularly undergo extensive changes.
 - ii. these perceptions would be counter to the intent that the TPM remains a high priority for the Authority.
 - (b) there may be continued value in preserving the current provisions as they set out a clearly understood process for Transpower to propose variations to the TPM.

Q4. Do you agree the proposed amendment is preferable to the alternative option? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.

The proposed amendment complies with section 32(1) of the Act

- 5.9. The Authority's work on transmission pricing is guided by its main objective under section 15(1) of the Act, which is to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers.⁸
- 5.10. Section 32(1) of the Act provides that the Code may contain any provisions that are consistent with the Authority's objectives and are necessary or desirable to promote any or all of the matters listed in section 32(1).
- 5.11. The Authority considers that the proposed amendment is necessary or desirable to promote the efficient operation of the electricity industry by ensuring the TPM may be clearly amended in a timely manner when the requirements of the Act relating to Code amendments are met.

Q5. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?

The Authority has given regard to the Code amendment principles

- 5.12. When considering amendments to the Code, the Authority is required by its Consultation Charter to have regard to the following Code amendment principles, to the extent that the Authority considers that they are applicable. Table 1 (below) describes the Authority's regard for the Code amendment principles in the preparation of the proposal.

⁸ The Authority's additional objective under section 15(2) of the Act is to protect the interests of domestic and small business consumers in relation to their supply of electricity. The additional objective only applies to the Authority's activities in relation to the direct dealings between participants and these consumers.

Table 1: Regard for Code amendment principles

Principle	
1. Lawful	The proposal is lawful, and is consistent with the Authority's statutory objectives and with the requirements set out in section 32(1) of the Act.
2. Provides clearly identified efficiency gains or addresses market or regulatory failure	The efficiency gains are set out in the evaluation of the costs and benefits (para 5.4 – 5.6 above).
3. Net benefits are quantified	The extent to which the Authority has been able to estimate the efficiency gains is set out in the evaluation of the costs and benefits (para 5.4 – 5.6 above).
4. Preference for small-scale 'trial and error' options	N/a
5. Preference for greater competition	N/a
6. Preference for market solutions	N/a
7. Preference for flexibility to allow innovation	N/a
8. Preference for non-prescriptive options	N/a
9. Risk reporting	N/a

Providing data sharing between the Authority and Transpower

Objectives of the proposed amendment

- 5.13. The objectives of the proposed Code amendments are described in the preceding chapters of this paper.

Q6. Do you agree with the objectives of the proposed amendment? If not, why not?

The proposed amendment

- 5.14. The Authority proposes to amend the TPM to add a provision that allows the sharing of data between the Authority and Transpower (as the grid owner) to enable Transpower to make TPM related calculations.
- 5.15. The drafting of the proposed amendment in Appendix A.,

The proposed amendment's benefits are expected to outweigh the costs

- 5.16. The Authority has assessed the benefits and costs of the proposed Code amendments and expects them to deliver a net benefit.
- 5.17. Relative to the status quo arrangements:
- (a) the expected incremental benefits of the proposed amendments are as follows:
 - i. Improve accuracy of TPM-related calculations due to more data available to Transpower
 - ii. Improved operational efficiency: Transpower will not be dependent on contacting customers to request data as they will have access to this data now
 - (b) the expected incremental costs of the proposed amendments are as follows:
 - i. the cost to the Authority preparing reports and running data necessary for Transpower to undertake the TPM calculations.

Q7. Do you agree the benefits of the proposed amendment outweigh its costs?

The Authority has identified other means for addressing the objectives

- 5.18. The Authority has considered whether there are readily available alternatives to the TPM amendments it has proposed. There is the option of keeping the status quo where Transpower has access to limited data. However, to ensure that Transpower has the necessary data to make TPM calculations and to uphold the policy intent of the TPM it requires access to information held by the Authority.

Q8. Do you agree the proposed amendment is preferable to the alternative option? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.

The proposed amendment complies with section 32(1) of the Act

- 5.19. The Authority's work on transmission pricing is guided by its main objective under section 15(1) of the Act, which is to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers.⁹
- 5.20. Section 32(1) of the Act provides that the Code may contain any provisions that are consistent with the Authority's objectives and are necessary or desirable to promote any or all of the matters listed in section 32(1).
- 5.21. The Authority considers that the proposed amendment is necessary or desirable to promote the efficient operation of the electricity industry by ensuring that Transpower has access to the necessary data needed to make TPM calculations.

Q9. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?

The Authority has given regard to the Code amendment principles

- 5.22. When considering amendments to the Code, the Authority is required by its Consultation Charter to have regard to the following Code amendment principles, to the extent that the Authority considers that they are applicable. Table 1 (below) describes the Authority's regard for the Code amendment principles in the preparation of the proposal.

Table 2: Regard for Code amendment principles

Principle	
1. Lawful	The proposal is lawful and is consistent with the Authority's statutory objectives and with the requirements set out in section 32(1) of the Act.
2. Provides clearly identified efficiency gains or addresses market or regulatory failure	The efficiency gains are set out in the evaluation of the costs and benefits (para 5.16 – 5.17 above).
3. Net benefits are quantified	The extent to which the Authority has been able to estimate the efficiency gains is set out in the evaluation of the costs and benefits (para 5.16 – 5.17 above).
4. Preference for small-scale 'trial and error' options	N/a

⁹ The Authority's additional objective under section 15(2) of the Act is to protect the interests of domestic and small business consumers in relation to their supply of electricity. The additional objective only applies to the Authority's activities in relation to the direct dealings between participants and these consumers.

5. Preference for greater competition	N/a
6. Preference for market solutions	N/a
7. Preference for flexibility to allow innovation	N/a
8. Preference for non-prescriptive options	N/a
9. Risk reporting	N/a

Appendix A Proposed amendment

12.94A Amending the transmission pricing methodology

(1) Despite anything else in this Code, the **Authority** may amend the **transmission pricing methodology** under section 38 of the **Act** if–

(aa) the **Authority** complies with section 39(1) of the **Act**; or

(a) the **Authority** is satisfied on reasonable grounds regarding any of the matters in section 39(3)(a), (b) or (c) of the **Act** (in which case sections 39(1)(b) and (c) of the **Act** will not apply to the amendment); or

(b) section 40 of the **Act** applies (in which case section 39(1) of the **Act** will not apply to the amendment).

(2) When consultation is required on an amendment to the **transmission pricing methodology** under subsection (1), the **Authority** must include an explanation of whether it considers the amendment to be consistent with the most recent guidelines **published** under clause 12.83(b), and if it does not consider the amendment to be consistent, the reasons why the **Authority** considers the amendment to nevertheless be consistent with section 32(1) of the **Act**.

12.102C Authority may provide information

The **Authority** may provide to **Transpower** any information it holds for the purpose of enabling **Transpower** to calculate transmission charges.

Q10. Do you have any comments on the drafting of the proposed amendment?

Appendix B Format for submissions

Submitter	
Questions	Comments
Q1. Do you agree with the above amendments to the Code? If not, why not?	
Q.2 Do you agree with the objectives of the proposed amendment? If not, why not?	
Q3. Do you agree the benefits of the proposed amendment outweigh its costs?	
Q4. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	
Q5. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	
Q6. Do you agree with the objectives of the proposed amendment? If not, why not?	
Q7. Do you agree the benefits of the proposed amendment outweigh its costs?	
Q.8 Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in	

section 15 of the Electricity Industry Act 2010.	
Q.9 Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	
Q10. Do you have any comments on the drafting of the proposed amendment?	