

Further clarification for amending the TPM

Decision paper

7 June 2024

Executive summary

The Electricity Authority Te Mana Hiko (the Authority) has decided to amend the Code to clarify our ability to amend the transmission pricing methodology (TPM) in circumstances that may not comfortably fall within the pre-existing criteria for amendments (such as amendments that are technical and noncontroversial). This amendment promotes the efficient operation of the electricity industry by ensuring the TPM may clearly be amended in a timely manner when the requirements of the Act relating to Code amendments are met.

Additionally, the Authority has decided to amend the Code 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. This amendment ensures that Transpower has access to the data required to calculate transmission charges.

The Authority consulted on proposed Code amendments relating to both of these matters in February this year, and in response received one submission from Transpower, suggesting changes to the two proposals.

The Authority has decided to adopt the data-sharing amendment as consulted on and has decided to make a change to the proposed clarification on the circumstances in which a TPM amendment can be made, based on our consideration of Transpower's submission.

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1. Introduction

- 1.1. In June 2022, the Authority released its decision to include 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 (i.e., urgent amendments) of the Act.
- 1.2. 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)).
- 1.3. 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.
- 1.4. The Authority considers it likely that there will be some amendments to the TPM that may be beneficial that may not comfortably fall within the existing matters set out in section 39(3) or 40 of the Act.
- 1.5. On 27 February 2024, the Authority consulted on proposed amendments to further clarify the circumstances in which the Authority can amend the TPM.
- 1.6. Additionally, the Authority consulted on a proposed 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.

2. Amendments to the Code to enable the Authority to make further amendments to the TPM

Our decision

- 2.1. The Authority has decided to change the current drafting of clause 12.94A(2) to clarify that it is also able to amend the TPM in circumstances not currently covered by clause 12.94A. In doing so it must include an explanation of whether it considers the amendment to be consistent with the intent of the most recent TPM guidelines published under clause 12.83(b) of the Code..

What we proposed

- 2.2. The Authority proposed 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.
- 2.3. 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.
- 2.4. In addition to meeting the requirements of section 39(1) of the Act, under the proposal the Authority must 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”), 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).

Submitter views

- 2.5. We received one submission from Transpower in response to our consultation paper. Transpower expressed concern about the Authority having the power to amend the TPM where the change is consistent with section 32(1) of the Act but is inconsistent with the guidelines. Transpower stated:

In our view the proposed drafting will create uncertainty as to the scope of amendments the Authority can make to the TPM without triggering an amendment to the Guidelines. Over time cumulative policy decisions being made under consistency with section 32(1) of the Act could collectively diverge from the policy intent outlined in the Guidelines.

In turn the amendments could increase administrative risk to Transpower of needing to change our processes and systems (developed at significant cost) specifically created towards a TPM that is consistent with the Guidelines and/or their intent.

- 2.6. Additionally, Transpower has suggested a higher threshold for change to be added to the Code as stated in its submission:

We consider that the Authority should also explain how a proposed amendment that is 'consistent with 32(1) of the Act', but inconsistent with the Guidelines, better achieves section 15 of the Act compared with how the Guideline's policy intent achieves that.

Reasons for our final decision

- 2.7. We agree with Transpower that over time, cumulative decisions by the Authority could theoretically diverge from the policy intent outlined in the guidelines. However, this will only occur if and when the Authority makes amendments to the TPM that are inconsistent with the guidelines. If such amendments are made, under the proposed amendment the Authority would still need to meet the requirements of the Act to make Code amendments. This ordinarily includes an evaluation of costs and benefits, and consultation. Any costs to Transpower or others of a departure from the intent of the guidelines by the Authority would be considered as part of any amendment which did so – and the proposed amendment would only proceed if the benefits outweighed the costs. This should provide some reassurance that any proposed changes that may impose significant costs will not occur unless there is a very good reason for them.
- 2.8. We do not consider it necessary or appropriate to require the guidelines themselves to be amended before the Authority proceeds with amendments it proposes to make itself. The purpose of the guidelines is to set out the parameters for Transpower to develop a TPM (clause 12.83 of the Code).
- 2.9. The guidelines do however provide a clear insight into the Authority's policy intent at the time they were issued. That is why we included a requirement for the Authority to explain the consistency of a proposed amendment to the TPM with those guidelines.
- 2.10. We consider the requirement is appropriate and does not need to be changed to one that requires an explanation of how a proposed amendment better achieves section 15 of the Act (the Authority's statutory objectives). We note though that the requirement as proposed would not preclude such an explanation.
- 2.11. We have however made one change based on our consideration of Transpower's submission (which emphasised the policy intent outlined in the Guidelines). We have slightly modified the final form of the proposal to refer to the need for the Authority to explain consistency with the intent of the TPM guidelines rather than consistency with the guidelines themselves. We have made this change as it more clearly recognises that it is the intent of the guidelines that is important to the Authority's consideration of a potential amendment to the TPM rather than the details that were included to guide Transpower's development of the TPM.
- 2.12. 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 clearly be amended in a timely manner when the requirements of the Act relating to Code amendments are met. This clarification will ensure that policy-related amendments may occur, when necessary.

3. Amendment to the Code to enable sharing of data

Decision

- 3.1. The Authority has decided to adopt the Code amendments, as proposed in the consultation paper, to add a provision to allow the sharing of data between the Authority and Transpower to enable Transpower to calculate transmission charges. In addition, we have decided to add additional clarifications that the data sharing is subject to other applicable laws, and that the Authority may impose conditions it considers appropriate.

What we proposed

- 3.2. Transpower said that the method currently used to obtain the data needed for calculating adjustments to the benefit-based charge in certain circumstances is time-consuming.
- 3.3. The Authority holds information that could streamline Transpower's calculations.
- 3.4. We therefore proposed to amend section 12(102)(C) of the TPM to add a provision that allows the sharing of data between the Authority and Transpower (to enable Transpower to calculate transmission charges).
- 3.5. This change would enable Transpower to undertake such calculations more efficiently by providing access to relevant data that the Authority holds.

Submitter views

- 3.6. We received one submission from Transpower in response to our consultation paper. Transpower agreed with the reason for data-sharing from the Authority to Transpower and suggested additional drafting to indicate examples of the type of information the Authority could share.

Reasons for our decision

- 3.7. We consider the proposal to be appropriate and examples to be unnecessary. We have added the additional clarifications to provide greater certainty on the legal context within which the information sharing would take place, and that the shared information may be subject to conditions.

4. Attachments

- 4.1. The following appendix is attached to this paper:
 - (a) Appendix A: Submissions.

Appendix A Submissions

Submitter	Industry
Transpower	Grid owner