

**Reprint
as at 1 July 2014**



**Commerce (Levy on Suppliers of
Regulated Goods and Services)
Regulations 2009**
(SR 2009/141)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 18th day of May 2009

Present:
His Excellency the Governor-General in Council

Pursuant to section 53ZE of the Commerce Act 1986, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce made after consultation in accordance with section 53ZE(4) of that Act, makes the following regulations.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

Contents

	Page
1 Title	3
2 Commencement	3
3 Application	3
4 Interpretation	3
<i>Transitional, savings, and related provisions from 30 June 2014</i>	
4A Transitional, savings, and related provisions	6
5 Additional provisions on regulatory asset base value	6
<i>General levy provisions (second and subsequent financial years)</i>	
6 Levy on suppliers of regulated goods or services	7
7 Calculation of levy	8
8 How and when levy must be paid	9
9 Minister must notify levy amount and other key amounts each quarter	10
10 Levy or sub-levy may be recalculated following more recent regulatory asset base value	10
11 Sub-levy for price-quality regulation must be recalculated if change in suppliers liable to pay	10
12 Provisions applying to recalculation of sub-levy for price-quality regulation	11
13 Levy must be reconciled after end of financial year	12
<i>Transitional provisions for first financial year [Revoked]</i>	
14 Levy on suppliers of gas pipeline services (other than Powerco Limited and Vector Limited) for first financial year [Revoked]	13
15 Levy on suppliers of specified airport services for first financial year [Revoked]	13
16 How and when levy must be paid and key amounts notified for first financial year [Revoked]	14
17 Reconciliation of levies payable for first financial year [Revoked]	14
18 Notification, collection, and refund of final reconciled amounts [Revoked]	14
Schedule	14
Transitional, savings, and related provisions	

Regulations

1 Title

These regulations are the Commerce (Levy on Suppliers of Regulated Goods and Services) Regulations 2009.

2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

3 Application

- (1) These regulations apply to the financial year ending with 30 June 2009 and subsequent financial years.

- (2) *[Revoked]*

Regulation 3(2): revoked, on 13 January 2011, by regulation 4 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

4 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Commerce Act 1986

actual Commission costs, for a financial year, means the amount—

- (a) identified in the Commission's audited financial statements for that year as the costs to the Commission of the Part 4 functions; but
- (b) that does not exceed,—
 - (i) in the case of an annual appropriation within Vote Commerce for a non-departmental output expense that relates to the Part 4 functions for the financial year, the total amount appropriated for that year (or the sum of those amounts, if there is more than 1 annual appropriation); or
 - (ii) in the case of a multi-year appropriation within Vote Commerce for a non-departmental output expense that relates to the Part 4 functions applying to that year, the total amount appropriated for the period to which the multi-year appropriation relates that, at the start of the financial year, remains authorised to be incurred (or the sum of

those amounts, if there is more than 1 multi-year appropriation); or

- (iii) in the case of both annual and multi-year appropriations, the sum of the amounts referred to in subparagraphs (i) and (ii)

costs of regulation, for a sub-levy for an activity, means the amount of the estimated Commission costs allocated to that activity in the calculation (or recalculation) of that sub-levy under regulation 7(1)(a)

estimated annual amount means, in relation to a financial year, the total amount included or proposed to be included in the Estimates relating to a multi-year appropriation as estimated to be incurred for the financial year

estimated Commission costs, for a financial year, means,—

- (a) in the case of an annual appropriation, the total amount appropriated, or proposed to be appropriated in the Estimates, at the time of the calculation (or recalculation) under regulation 7, for the financial year within Vote Commerce for a non-departmental output expense that relates to the Part 4 functions (or the sum of those amounts, if there is more than 1 annual appropriation); or
- (b) in the case of a multi-year appropriation, the estimated annual amount, at the time of the calculation (or recalculation) under regulation 7, for the financial year within Vote Commerce for a non-departmental output expense that relates to the Part 4 functions (or the sum of those amounts, if there is more than 1 multi-year appropriation); or
- (c) in the case of both annual and multi-year appropriations, the sum of the amounts referred to in paragraphs (a) and (b)

Estimates has the meaning set out in section 2(1) of the Public Finance Act 1989; and includes the Supplementary Estimates (within the meaning of that section)

financial year means a year ending with 30 June

first financial year means the year ending with 30 June 2009

multi-year appropriation means an appropriation authorised to apply for more than 1 financial year (*see* section 10 of the Public Finance Act 1989)

Part 4 functions means the performance of the Commission's functions and duties, and exercise of the Commission's powers, under Part 4 of the Act

quarter means a period of 3 consecutive months that ends with the last day of September, December, March, or June

regulatory asset base value means, for a supplier of regulated goods or services,—

- (a) the value disclosed, in connection with those goods or services, as the total value of its regulated fixed assets under the information disclosure requirements; or
- (b) until there is a section 52P determination that sets out information disclosure requirements for the supplier,—
 - (i) (for electricity lines services) the value disclosed, in connection with those services, as its total regulatory value of the system fixed assets under the information disclosure requirements published by the Commission under subpart 3 of Part 4A of the Act before 1 April 2009;
 - (ii) (for gas pipeline services or specified airport services) the value disclosed, in connection with those services, as the total value of its fixed assets or its non-current assets “property, plant, and equipment” in the balance sheet of the financial statements disclosed under the Gas (Information Disclosure) Regulations 1997 or Airport Authorities (Airport Companies Information Disclosure) Regulations 1999;
 - (iii) if no value of fixed assets must be disclosed under any of the requirements referred to in subparagraphs (i) and (ii), the value of its fixed assets used to calculate the financial performance measures that have been disclosed, in connection with those goods or services, under any of those requirements

remaining quarters has the meaning set out in regulation 11(1).

Regulation 4 **actual Commission costs**: replaced, on 1 July 2014, by regulation 4(1) of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2014 (LI 2014/172).

Regulation 4 **estimated annual amount**: inserted, on 1 July 2014, by regulation 4(3) of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2014 (LI 2014/172).

Regulation 4 **estimated Commission costs**: replaced, on 1 July 2014, by regulation 4(2) of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2014 (LI 2014/172).

Regulation 4 **multi-year appropriation**: inserted, on 1 July 2014, by regulation 4(3) of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2014 (LI 2014/172).

*Transitional, savings, and related provisions
from 30 June 2014*

Heading: inserted, on 1 July 2014, by regulation 5 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2014 (LI 2014/172).

4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in the Schedule have effect according to their terms.

Regulation 4A: inserted, on 1 July 2014, by regulation 5 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2014 (LI 2014/172).

5 Additional provisions on regulatory asset base value

- (1) The Minister may, if he or she thinks fit, include in the regulatory asset base value of a supplier, the regulatory asset base value of a subsidiary of the supplier if those assets are used to supply the regulated goods or services and the subsidiary is not liable to pay a levy in respect of those assets under these regulations.
- (2) In a calculation, recalculation, or reconciliation of a levy, the Minister must use the regulatory asset base value of the supplier that has been most recently disclosed or made available to the Minister.
- (3) However, if a supplier (**supplier A**) has disposed of assets to another person (**person B**) during a financial year and supplier A's regulatory asset base value has consequently changed, but person B is not liable to pay a levy for that financial year, the

Minister may use the regulatory asset base value of supplier A before the disposal (rather than the most recent regulatory asset base value) in a recalculation or reconciliation of the levy for supplier A for that financial year.

General levy provisions (second and subsequent financial years)

6 Levy on suppliers of regulated goods or services

- (1) Every person that is a supplier of regulated goods or services on the first day of a financial year must pay a levy (made up of the sub-levies determined by subclause (2)) for the financial year to the Minister.
- (2) The sub-levies for the activities set out in the first column of the following table must be paid by the persons who, on the first day of a financial year, are suppliers of the goods or services set out opposite in the second column:

Activities for which sub-levy paid	Suppliers who must pay sub-levy
Price-quality regulation of electricity lines services	Suppliers of electricity lines services (other than those that are consumer-owned)
Other regulation of electricity lines services	Suppliers of electricity lines services
Regulation of gas pipeline services	Suppliers of gas pipeline services
Regulation of specified airport services	Suppliers of specified airport services
Functions relating to approval of Transpower's grid upgrade plans under section 54R of the Act	All to Transpower

Activities for which sub-levy paid	Suppliers who must pay sub-levy
Functions relating to preparation of input methodology for Transpower's capital expenditure proposals under section 54S of the Act	All to Transpower
Other functions relating to input methodologies	All suppliers of regulated goods or services
(3) However, in respect of the sub-levy for price-quality regulation of electricity lines services,—	
(a) a supplier must pay that sub-levy, despite being consumer-owned, if there is an Order in Council in force under section 54H of the Act in respect of the supplier:	
(b) a supplier may become liable to pay, or exempt from paying, that sub-levy part-way through a financial year under regulation 11.	

Regulation 6(2) table: amended, on 13 January 2011, by regulation 5 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

7 Calculation of levy

- (1) The Minister must calculate the sub-levies and levies payable for a financial year as follows:
- (a) *step 1*: determine the costs of regulation for each sub-levy by allocating the estimated Commission costs for that financial year (including indirect costs) between some or all of the activities listed in regulation 6(2) (*see* subclauses (2) and (3)):
 - (b) *step 2*: determine the total of the regulatory asset base values for each sub-levy by adding up the regulatory asset base values of the suppliers who must pay that sub-levy for that financial year under regulation 6:
 - (c) *step 3*: calculate each sub-levy for each supplier by using the following formula:

$$\begin{array}{ccccc} \text{costs of} & & \text{supplier's regulatory} & & \\ \text{regulation for} & \times & \text{asset base value} & = & \text{sub-levy for the} \\ \text{sub-levy} & & \text{total of regulatory} & & \text{activity} \\ & & \text{asset base values} & & \\ & & \text{for sub-levy} & & \end{array}$$

- (d) *step 4*: obtain the total levy amount for each supplier by adding together the sub-levies that the supplier must pay under regulation 6.
- (2) If a separate appropriation is made or proposed in the Estimates for an activity, the costs of regulation for that activity's sub-levy must not exceed the separate appropriation or proposed appropriation for that activity (or the sum of them if there is more than 1).
- (3) If a separate appropriation is made or proposed in the Estimates for 2 or more activities, the sum of the costs of regulation for those activities' sub-levies must not exceed the separate appropriation or proposed appropriation (or the sum of them if there is more than 1).

8 How and when levy must be paid

- (1) Each supplier of regulated goods or services is liable, as at the commencement of the financial year, to pay in advance the full annual amount of its levy for that year.
- (2) However, the Minister must collect the levy in quarterly instalments.
- (3) The due date for payment of each instalment is—
- the 15th day after the supplier receives an invoice for that quarterly instalment; or
 - if the supplier receives that invoice more than 15 days before the commencement of a quarter, the first day of the quarter.
- (4) In addition, any shortfall included in the levy under regulation 13 may be collected by a further invoice; the due date for payment of that amount is the 15th day after the supplier receives that invoice.

9 Minister must notify levy amount and other key amounts each quarter

The Minister must notify each supplier of regulated goods or services, on or before invoicing that supplier for each quarterly instalment, of the amounts of—

- (a) the supplier's sub-levies and levy for that financial year; and
- (b) the costs of regulation used in the calculation of each of those sub-levies; and
- (c) the regulatory asset base values used in the calculation of each of those sub-levies.

10 Levy or sub-levy may be recalculated following more recent regulatory asset base value

- (1) The purpose of this provision is to enable the recalculation of the levy for a whole financial year (taking the place of the initial calculation under regulation 7) if there are any more recent regulatory asset base values disclosed.
- (2) The levy or 1 or more sub-levies for a financial year may, at the Minister's discretion, be recalculated under regulation 7 if a more recent regulatory asset base value is disclosed, or made available to the Minister, for 1 or more suppliers.
- (3) The Minister must adjust the next quarterly instalment, and the notifications under regulation 9, to provide for the recalculated amount, and for any over-recovery or shortfall in previous quarterly instalments.

11 Sub-levy for price-quality regulation must be recalculated if change in suppliers liable to pay

- (1) The purpose of this provision is to enable, if there is a change during a financial year in the suppliers who are liable to pay the sub-levy for price-quality regulation, the recalculation of that sub-levy for the next quarter or quarters of the financial year (the **remaining quarters**).
- (2) If a supplier of electricity lines services ceases to be exempt for the purpose of section 54G of the Act,—
 - (a) on the commencement of the next quarter of the financial year, that supplier becomes liable to pay a sub-levy for price-quality regulation of electricity lines services

- for that quarter and any other remaining quarters of the financial year; and
 - (b) the Minister must recalculate that sub-levy in respect of those quarters (and regulation 12 applies).
- (3) If the Minister considers that a supplier of electricity lines services has become consumer-owned,—
- (a) on the commencement of the next quarter of the financial year, that supplier becomes exempt from paying the sub-levy for price-quality regulation of electricity lines services for that quarter and any other remaining quarters of the financial year; and
 - (b) the Minister must recalculate that sub-levy in respect of those quarters (and regulation 12 applies).

Regulation 11(2): amended, on 13 January 2011, by regulation 6 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

12 Provisions applying to recalculation of sub-levy for price-quality regulation

- (1) A recalculation of the sub-levy for price-quality regulation part-way through a financial year must be done so that suppliers are levied for only those quarters of the year for which they are liable to pay the sub-levy under regulation 6 as affected by regulation 11, and accordingly—
- (a) the costs of regulation for the sub-levy must be allocated equally between the quarters and the recalculation for the remaining quarters then done under regulation 7 using the proportion of the costs of regulation allocated to those quarters; and
 - (b) the relevant supplier's regulatory asset base value must be included or excluded (as appropriate under regulation 11) from the total of regulatory asset base values for the sub-levy in that recalculation.
- (2) A recalculation of the sub-levy for the remaining quarters does not affect suppliers' liability for the sub-levy for previous quarters of that year.
- (3) The Minister must adjust the quarterly instalments for the remaining quarters, and the notifications under regulation 9, to provide for the recalculated amount.

- (4) If a supplier becomes liable part-way through a year to pay a sub-levy under regulation 11(2)(a) for the remaining quarters, the Minister must collect that levy in the same number of instalments as the remaining quarters of that year (and regulation 8(3) and (4) apply accordingly).

13 Levy must be reconciled after end of financial year

- (1) The Minister must, within 1 month after the Commission's audited financial statements for a financial year are presented to the House of Representatives,—
 - (a) reconcile the levy for the financial year against the levy that would have been payable if the calculation (or recalculation) had used—
 - (i) the actual Commission costs rather than the estimated Commission costs; and
 - (ii) the allocations of those costs to the activities for the sub-levies as set out in the Commission's audited financial statements for the year as the costs of regulation for each sub-levy; and
 - (b) notify each supplier of regulated goods or services of the final amounts of—
 - (i) the supplier's sub-levies and total levy on that basis; and
 - (ii) the costs of regulation for the sub-levy used in the reconciliation for each of those sub-levies; and
 - (iii) the regulatory asset base values used in the reconciliation; and
 - (c) if there has been an over-recovery of those actual Commission costs from the supplier, refund to the supplier the amount over-recovered from it; and
 - (d) if there has been a shortfall in recovering those actual Commission costs from the supplier, invoice the supplier for the amount under-recovered from it, as part of the levy for that year.
- (2) If there has been a recalculation of a sub-levy for part of a financial year under regulation 11, the reconciliation of the sub-levy must be done for each part of the year for which different suppliers were liable for the sub-levy (applying the

principles set out in regulation 12(1) to each part with any necessary modifications).

- (3) If, at the time of the reconciliation under this regulation, there has been a change after the end of the financial year in the suppliers who were liable to pay the sub-levy for price-quality regulation during the financial year, the Minister must, as part of that reconciliation,—
- (a) reconcile the levy for the financial year against the levy that would have been payable if the calculation (or recalculation) had used the actual suppliers who were liable to pay the sub-levy; and
 - (b) notify each supplier of regulated goods or services of the amount by which the reconciliation has been affected by this subclause.

Regulation 13 heading: amended, on 13 January 2011, by regulation 7(1) of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

Regulation 13(3): added, on 13 January 2011, by regulation 7(2) of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

Transitional provisions for first financial year
[Revoked]

Heading: revoked, on 13 January 2011, pursuant to regulation 8 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

14 Levy on suppliers of gas pipeline services (other than Powerco Limited and Vector Limited) for first financial year
[Revoked]

Regulation 14: revoked, on 13 January 2011, by regulation 8 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

15 Levy on suppliers of specified airport services for first financial year
[Revoked]

Regulation 15: revoked, on 13 January 2011, by regulation 8 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

**16 How and when levy must be paid and key amounts
notified for first financial year***[Revoked]*

Regulation 16: revoked, on 13 January 2011, by regulation 8 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

17 Reconciliation of levies payable for first financial year*[Revoked]*

Regulation 17: revoked, on 13 January 2011, by regulation 8 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

**18 Notification, collection, and refund of final reconciled
amounts***[Revoked]*

Regulation 18: revoked, on 13 January 2011, by regulation 8 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458).

**Schedule
Transitional, savings, and related
provisions**

r 4A

Schedule: inserted, on 1 July 2014, by regulation 6 of the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2014 (LI 2014/172).

**Provisions relating to Commerce (Levy on
Suppliers of Regulated Goods and Services)
Amendment Regulations 2014****1 Interpretation**

In clause 2, **amendment regulations** means the Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2014.

2 Transitional provisions

- (1) These regulations, as amended by regulation 4 of the amendment regulations, apply to the financial year beginning on 1 July 2014 and to subsequent financial years.
- (2) These regulations, as in force immediately before 1 July 2014, continue to apply in respect of the financial years ending on or before 30 June 2014 as if the amendment regulations had not been made.

Michael Webster,
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 21 May 2009.

Reprints notes

1 *General*

This is a reprint of the Commerce (Levy on Suppliers of Regulated Goods and Services) Regulations 2009 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2014 (LI 2014/172)

Commerce (Levy on Suppliers of Regulated Goods and Services) Amendment Regulations 2010 (SR 2010/458)
