

**Reprint
as at 20 December 2010**



Electricity (Levy of Industry Participants) Regulations 2005

(SR 2005/72)

Electricity (Levy of Industry Participants) Regulations 2005: revoked, on 20 December 2010, by regulation 14 of the Electricity Industry (Levy of Industry Participants) Regulations 2010 (SR 2010/457).

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 21st day of March 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to sections 172ZC and 172ZE of the Electricity Act 1992,
Her Excellency the Governor-General, acting on the advice and with

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Ministry of Economic Development.

the consent of the Executive Council and on the recommendation of the Minister of Energy, makes the following regulations.

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Regulations

1 Title

These regulations are the Electricity (Levy of Industry Participants) Regulations 2005.

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 30 June 2005 and subsequent financial years.
- (2) The levy rate for the financial year ending 30 June 2005—
 - (a) includes the costs of performing the Commission's initial functions, duties, and powers under the Act from 1 July 2004:
 - (b) includes the Commission's costs in relation to the Whirinaki contract from the later of the commencement date of that contract and 18 October 2004 (which was the date on which the Electricity Amendment Act 2004 came into force):
 - (c) includes the costs of performing the Commission's other new functions, duties, and powers under the Act from 18 October 2004.
- (3) The levy rate for the financial year ending 30 June 2006 and subsequent financial years also includes the costs referred to in section 172ZC(1A)(b) of the Act in respect of the MACQS reform operations.

Part 1

Interpretation and general rules

4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—
Act means the Electricity Act 1992
associate has the same meaning as in the Electricity Industry Reform Act 1998

Commission means the Electricity Commission continued under subpart 1 of Part 15 of the Act

common quality operations means the activities of the Commission that relate to—

- (a) Part C, Common Quality, of the rules:
- (b) Part I, Transition, of the rules, excluding that part that relates to the transition from NZEM and MARIA

consumer connection,—

- (a) in relation to a distributor, means the total number of “ready” and “active” ICPs for that distributor; and
- (b) in relation to a retailer, means the total number of “ready” and “active” ICPs for that retailer,—

as “ready” and “active” are defined in rule 4 of Schedule E1 of Part E of the rules and “ICP” is defined in Part A of the rules

distributor means a person who supplies line function services to any other person or persons

electricity conveyed,—

- (a) in relation to the grid, means the quantity of electricity injected at grid injection points; and
- (b) in relation to a local network, means the quantity of electricity entering the network at grid exit points and at points of connection with embedded networks and at points of connection with embedded generating stations; and
- (c) in relation to an embedded network, means the quantity of electricity entering the network at points of connection with a local network and at points of connection with other embedded networks and at points of connection with embedded generating stations; but
- (d) does not include any quantity of electricity that is conveyed by a distributor for its own consumption or for the consumption of its associates

electricity efficiency operations means the activities of the Commission that relate to promoting and facilitating the efficient use and conservation of electricity

electricity generated, in relation to a generator,—

- (a) means the quantity of electricity sold by the generator to the clearing manager or to a retailer; but

- (b) does not include the quantity of electricity generated by an embedded generating station that has a rated electricity generating capacity of less than 10 MW in the station's asset capability statement

electricity purchased, in relation to a purchaser,—

- (a) means the quantity of electricity purchased from the clearing manager by the purchaser at all grid exit points; and
- (b) includes the quantity of electricity purchased from an embedded generator at a point of connection to a local network

embedded generating station has the same meaning as in the rules

embedded generator has the same meaning as in the rules

estimated Commission costs means an amount that—

- (a) estimates the costs, net of the income, of performing the Commission's functions, powers, and duties under the Act and the cost of collecting the levy for the financial year, exclusive of any goods and services tax; but
- (b) does not exceed the appropriation for the financial year in respect of the performance of the Commission's functions, powers, and duties under the Act and the cost of collecting the levy, exclusive of any goods and services tax, where "appropriation" includes the following amounts at the time of the calculation under regulation 7:
 - (i) any existing appropriation or other authority by or under an Act; and
 - (ii) any appropriation sought in an Appropriation Bill and set out in the Estimates

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 the year beginning on 1 July and ending with the following 30 June

generator means an industry participant who sells electricity to the clearing manager or to a retailer

grid has the same meaning as in the rules

industry participant has the same meaning as in section 2(1) of the Act

initial functions, powers, and duties means the functions, powers, and duties of the Commission that were provided for in the Electricity Amendment Act 2001

levy means the levy prescribed by these regulations

levy rate or **annual levy rate** means the rate calculated under regulation 7 or the rate as adjusted under regulation 10 or the rate under regulation 11, as the case may be

MACQS reform operations means the activities of Transpower in relation to the MACQS reform process (including establishment of MACQS, grid security committee costs, and related rule development)

market operations means the activities of the Commission that relate to—

- (a) Part D, Metering Arrangements, of the rules:
- (b) Part G, Trading Arrangements, of the rules:
- (c) Part H, Clearing and Settlement, of the rules:
- (d) Part I, Transition, of the rules, in so far as that Part relates to the transition from NZEM and MARIA:
- (e) Part J, Reconciliation, of the rules

Minister means the Minister of Energy

month means a calendar month

monthly instalment means the monthly instalment of the annual levy that is payable under regulation 6

new functions, powers, and duties means the new functions, powers, and duties of the Commission that were provided for in the Electricity Amendment Act 2004

other activities means the functions, powers, and duties of the Commission under the Act other than the activities of common quality operations, market operations, registry and consumer operations, supply security operations, transmission operations, and electricity efficiency operations, and includes—

- (a) monitoring and enforcement of the rules by the Commission, the Rulings Panel, and any investigator appointed under the Electricity Governance Regulations 2003:
- (b) the costs of collecting the levy:

- (c) advice provided to the Minister under section 172O of the Act

purchaser means an industry participant who purchases electricity from the clearing manager or from an embedded generator

quantity of electricity means the quantity of electricity generated, purchased, or conveyed, as the case may be, as reconciled in accordance with the rules

registry and consumer operations means the activities of the Commission that relate to—

- (a) Part E, Registry Information and Customer Switching, of the rules:

- (b) consumer protection

retailer means a purchaser who supplies electricity to a consumer or to another retailer

rules means the rules called the Electricity Governance Rules made by the Minister under section 172H of the Act

supply security operations means the activities of the Commission that relate to its reasonable endeavours to ensure security of electricity supply

transmission operations means the activities of the Commission that relate to Part F, Transport, of the rules

Whirinaki contract means the contract between the Commission and the Crown providing for the power station located at Whirinaki, and the associated assets, rights, and liabilities, to be available for the purposes of reserve energy.

- (2) Any term or expression that is defined in the Act or the rules, and used, but not defined, in these regulations, has the same meaning as in the Act or the rules.

Regulation 4(1) **consumer connection**: amended, on 1 May 2008, by regulation 4(1) of the Electricity (Levy of Industry Participants) Amendment Regulations 2008 (SR 2008/71).

Regulation 4(1) **direct consumer**: revoked, on 1 May 2008, by regulation 4(2) of the Electricity (Levy of Industry Participants) Amendment Regulations 2008 (SR 2008/71).

Regulation 4(1) **Estimates**: inserted, on 1 May 2008, by regulation 4(3) of the Electricity (Levy of Industry Participants) Amendment Regulations 2008 (SR 2008/71).

Regulation 4(1) **market operations** paragraph (e): added, on 1 May 2008, by regulation 4(4) of the Electricity (Levy of Industry Participants) Amendment Regulations 2008 (SR 2008/71).

Regulation 4(1) **retailer**: substituted, on 1 May 2008, by regulation 4(5) of the Electricity (Levy of Industry Participants) Amendment Regulations 2008 (SR 2008/71).

5 Overview of these regulations

- (1) Each generator, purchaser, and distributor is liable to pay a levy to the Commission on behalf of the Crown.
- (2) The levy—
 - (a) must be initially calculated under regulations 7 and 9 (which provide for calculation on the basis of estimated costs, except insofar as the levy relates to the MACQS reform operations); and
 - (b) may be adjusted under regulation 10 (for example, if estimated Commission costs increase or decrease or if a different quantity of electricity is generated, purchased, or conveyed than anticipated); and
 - (c) must be reconciled against the levy that would have been payable after the end of the financial year under regulation 11 or regulation 12.

6 How and when levy must be paid

- (1) The annual levy is payable to the Commission in monthly instalments in arrears.
- (2) Each person who is a generator, purchaser, or distributor at the end of a month during a financial year is liable to pay a monthly instalment of the levy for that month to the Commission.
- (3) The Commission must invoice industry participants for each monthly instalment as soon as practicable after the start of the following month.
- (4) The due date for payment of each monthly instalment is the later of—
 - (a) the tenth working day after the industry participant receives an invoice for that monthly instalment; or
 - (b) the 20th day of the month following the month to which the instalment relates.

- (5) The Commission may waive the payment of 1 or more monthly instalments if the Commission considers that the cost of invoicing the industry participant would exceed the amount to be recovered.

Part 2

Calculations, adjustments, and reconciliations

Initial calculation of annual levy rates

7 Calculation of annual levy rates

- (1) This regulation shows how the annual levy rates must be calculated by the Commission.
- (2) *Step 1* is that the **costs of each activity** must be determined. This is done by—
- (a) allocating the estimated Commission costs to the activities listed in column 1 of table 1 (including by apportioning the Commission's indirect costs to those activities); and
 - (b) taking \$2,897,216 to be the annual costs to be recovered in each of the 5 financial years beginning on 1 July 2005 and ending with 30 June 2010 in respect of the MACQS reform operations:

Table 1
Allocation of costs of each activity

Column 1—Activity	Column 2—Classes of industry participants to whom costs of activity are allocated		
	Generators	Purchasers	Distributors
Common quality operations	One-third	One-third	One-third
Market operations	One-half	One-half	
Registry and consumer operations		One-half to retailers	One-half to distributors other than Transpower
Supply security operations		All	

Column 1—Activity	Column 2—Classes of industry participants to whom costs of activity are allocated		
	Generators	Purchasers	Distributors
Transmission operations			All to Trans-power
Electricity efficiency operations		All	
Other activities	One-third	One-third	One-third
MACQS reform operations	One-third	One-third	One-third

- (3) *Step 2* is that the costs of each activity must be allocated to the classes of industry participants according to the proportions listed in column 2 of table 1 (this determines the **costs payable by each participant class per activity**).
- (4) *Step 3* is that the costs payable by each participant class per activity must be divided by the relevant number calculated in accordance with table 2 (this determines the **annual levy rate per unit of electricity generated, purchased, or conveyed or per consumer connection, as the case may be**):

Table 2

Calculation of annual levy rate per unit of electricity generated, purchased, or conveyed or per consumer connection

Activity	Generators	Purchasers	Distributors
Common quality operations	G	P	D
Market operations	G	P	
Registry and consumer operations		C	C
Supply security operations		P	
Electricity efficiency operations		P	
Other activities	G	P	D

Activity	Generators	Purchasers	Distributors
MACQS reform operations—	G	P	D

where—

- C is the estimated average total number of consumer connections during the financial year
- D is the estimated total quantity of electricity to be conveyed by distributors during the financial year
- G is the estimated total quantity of electricity to be generated by generators during the financial year
- P is the estimated total quantity of electricity to be purchased by purchasers during the financial year.

8 Notification of annual levy rates

As soon as practicable after calculating the annual levy rates under regulation 7, the Commission must notify them by—

- publishing a notice in the *Gazette* setting out the annual levy rates; and
- publishing the annual levy rates on its Internet website at all reasonable times.

Calculation of monthly instalments

9 Calculation of each participant's monthly instalment

- This regulation shows how the monthly instalment payable by a generator, purchaser, or distributor must be calculated by the Commission.
- Step 1* is that the annual levy rate per unit of electricity generated, purchased, or conveyed, or per consumer connection as the case may be, must be multiplied by the following multipliers in table 3:

Table 3

Annual levy rate multipliers—quantity of electricity generated, purchased, or conveyed or consumer connections

Activity	Generators	Purchasers	Distributors
Common quality operations	G_{im}	P_{im}	D_{im}
Market operations	G_{im}	P_{im}	
Registry and consumer operations		$C_{im}/12$	$C_{im}/12$

Activity	Generators	Purchasers	Distributors
Supply security operations		P_{im}	
Electricity efficiency operations		P_{im}	
Other activities	G_{im}	P_{im}	D_{im}
MACQS reform operations	G_{im}	P_{im}	D_{im}

where—

- $C_{im}/12$ is one-twelfth of the total number of consumer connections for which the retailer or distributor is responsible at the end of the month
- D_{im} is the total quantity of electricity conveyed by the distributor during the month
- G_{im} is the total quantity of electricity generated by the generator during the month
- P_{im} is the total quantity of electricity purchased by the purchaser during the month

- (3) *Step 2* is that the annual costs of transmission operations allocated under regulation 7(2)(a) must be included in the levy payable by Transpower, in 12 monthly instalments.
- (4) *Step 3* is that, for each industry participant, the amounts of the levy payable in respect of each activity must be added together (this determines the total amount of the **monthly instalment of the levy** payable by each individual participant under regulation 6).

Regulation 9(2) table 3 Market operations: amended, on 1 May 2008, by regulation 5 of the Electricity (Levy of Industry Participants) Amendment Regulations 2008 (SR 2008/71).

Adjustments to annual levy rates during financial year

10 Levy rates may be adjusted during financial year

- (1) An annual levy rate may, at the Commission's discretion, be adjusted if—
- the estimated Commission costs significantly change during the financial year; or
 - the costs of an activity significantly change during the financial year (for example, because the Commission acquires, or ceases to have, a particular function); or

- (c) the amount of levy money estimated under regulation 7 to be collected during the financial year is either too much or too little because the quantity of electricity generated, purchased, or conveyed is significantly different from the quantity that was estimated, or the number of consumer connections has significantly changed; or
 - (d) the Commission's costs are reallocated between activities.
- (2) An annual levy rate is adjusted by redoing the calculation in regulation 7 using the amended figures for the whole or any part of the financial year.
- (3) As soon as practicable after adjusting an annual levy rate, the Commission must—
 - (a) publish the adjusted annual levy rate in accordance with regulation 8; and
 - (b) notify relevant industry participants of the adjusted annual levy rate before invoicing the industry participant for the next monthly instalment; and
 - (c) use the adjusted levy rate for calculations of future monthly instalments.

Reconciliation of levy after end of financial year

11 Reconciliation of levy after end of financial year on basis of actual numbers

- (1) The Commission must, as soon as practicable 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 under regulation 7 (or, if it has been recalculated, the recalculation under regulation 10(2)) had used—
 - (i) the actual Commission costs for the year, rather than the estimated Commission costs; and
 - (ii) the actual quantity of electricity generated, purchased, or conveyed, and the actual number of consumer connections, rather than the estimated numbers; and

- (b) have the reconciliation calculation referred to in paragraph (a) independently audited; and
 - (c) publish the reconciled annual levy rates in accordance with regulation 8.
- (2) For the purposes of subclause (1), **actual Commission costs** for a financial year is the amount—
 - (a) identified in the Commission's audited financial statements for that year as the costs, net of the income, of performing the Commission's functions, powers, and duties under the Act and of collecting the levy; but
 - (b) that does not exceed the total amount appropriated for that year in relation to the performance of the Commission's functions, powers, and duties under the Act and to the Commission's collection of the levy; and
 - (c) that is exclusive of goods and services tax.

12 Reconciliation of levy after end of financial year on basis of reconciled figures

- (1) This regulation applies if the Commission considers that the quantities of electricity generated, purchased, or conveyed are significantly changed as a result of any reconciliation under rules 10.4 to 10.6 or rule 11 or Schedule J4 of Part J (Reconciliation) of the rules in respect of any generator, purchaser, or distributor from the numbers used in the calculations under regulation 9.
- (2) The Commission must reconcile the levy for the financial year against the levy that would have been payable if the calculation under regulation 9 had used a multiplier and an annual levy rate that were adjusted to reflect those changed numbers.

Regulation 12(1): amended, on 1 May 2008, by regulation 6 of the Electricity (Levy of Industry Participants) Amendment Regulations 2008 (SR 2008/71).

13 Refunds and further invoices

- (1) As soon as practicable after the levy is reconciled under regulation 11 or regulation 12, the Commission must,—
 - (a) if there has been an over-recovery from any industry participant, refund to that participant the amount over-recovered from it; and

- (b) if there has been a significant under-recovery in recovering from an industry participant, invoice that participant for the amount under-recovered from it, as part of the levy for the current year.
- (2) Any under-recovery that is included in the levy under this regulation may be collected by a further invoice; the due date for payment of that amount is the tenth working day after the industry participant receives that invoice.

Part 3

Transitional and miscellaneous provisions

Transitional provisions

14 Recovery of costs of additional activities

- (1) This regulation applies to the costs of any activity—
 - (a) that the Commission began to carry out before the date on which these regulations come into force, or begins to carry out after that date (whether that activity is an initial or a new function); and
 - (b) that the Commission was authorised to carry out under the Act at the time.
- (2) The Commission may decide to recover all or any of the costs of the activity by any 1 or more of the following methods:
 - (a) in any 1 or more monthly instalments of the levy, by setting a new rate for that activity or by adjusting an existing levy rate under regulation 10;
 - (b) in the end-of-year reconciliation under regulations 11 to 13.

Revocation

15 Revocation

The Electricity (Levy of Industry Participants) Regulations 2004 (SR 2004/124) are revoked.

Rebecca Kitteridge,
Acting for Clerk of the Executive Council.

**Electricity (Levy of Industry Participants)
Regulations 2005**

Reprinted as at
20 December 2010

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 24 March 2005.

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 - 2 Status of reprints
 - 3 How reprints are prepared
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 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes

1 *General*

This is a reprint of the Electricity (Levy of Industry Participants) Regulations 2005. The reprint incorporates all the amendments to the regulations as at 20 December 2010, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Electricity Industry (Levy of Industry Participants) Regulations 2010
(SR 2010/457): regulation 14

Electricity (Levy of Industry Participants) Amendment Regulations 2008
(SR 2008/71)
