



# Electricity (Levy of Industry Participants) Regulations 2004

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 17th day of May 2004

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

### Contents

1	Title	
2	Commencement	
3	Application	
	<b>Part 1</b>	
	<b>Interpretation and general rules</b>	
4	Interpretation	
5	Overview of these regulations	
6	How and when levy must be paid	
	<b>Part 2</b>	
	<b>Calculations, adjustments, and reconciliations</b>	
	<i>Calculation of annual levy rates on basis of estimated costs</i>	
7	Calculation of annual levy rates on basis of estimated costs	9
8	Notification of annual levy rates	10
		<i>Calculation of monthly instalments</i>
		<i>Adjustments to annual levy rates during financial year</i>
		<i>Reconciliation of levy after end of financial year</i>
		11
		12
		13

<b>Part 3</b>			<i>Miscellaneous provision</i>
<b>Transitional and miscellaneous provisions</b>		15	Levy money to be paid into Crown Bank Account
	<i>Transitional provisions</i>		
14	Levy for financial year ending 30 June 2004		

## Regulations

### 1 Title

These regulations are the Electricity (Levy of Industry Participants) Regulations 2004.

### 2 Commencement

These regulations come into force on 17 June 2004.

### 3 Application

- (1) These regulations apply to the financial year ending with 30 June 2004 and subsequent financial years.
- (2) These regulations include in the levy rate for the financial year ending 30 June 2004 the costs of performing EGB's functions, duties, and powers under the Act from 15 September 2003 (which was the date on which subpart 1 of Part 15 of the Act came into force).

## Part 1

### Interpretation and general rules

#### 4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

**Act** means the Electricity Act 1992

**consumer connection**,—

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

as those terms are defined in rules 4.2 and 4.3 of Schedule E2 of Part E of the rules

**direct consumer** means a person who uses electricity that is conveyed to the person directly by the grid

**EGB** means the Electricity Governance Board established under subpart 1 of Part 15 of the Act

**embedded generating plant** means a generating station, or generating unit, with a point of connection to a local network in respect of which the generator is required, under rule 5.4.2 of Section VI of Part G of the rules, to deliver information to the reconciliation manager

**embedded generator** means a person who owns an embedded generating plant

**estimated EGB costs** means the appropriation, or proposed appropriation, in the Estimates, at the time of the calculation under regulation 7, for the financial year within Vote Energy for the non-departmental output class that relates to the performance of EGB's functions, powers, and duties under the Act and the cost of collecting the levy

**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) in the case of the first financial year, the period beginning on 15 September 2003 and ending with 30 June 2004; and
- (b) in the case of each successive financial year, the year beginning on 1 July and ending with the following 30 June

**generator** means an industry participant who owns—

- (a) a generating plant that is connected to the grid; or
- (b) a generating unit that is connected to the grid; or
- (c) an embedded generating plant

**grid** means the system of transmission lines, substations, and other works, including the HVDC link, used to connect grid injection points and grid exit points to convey electricity through the North Island and South Island of New Zealand

**grid owner** means an industry participant who owns any part of the grid

**industry participant** has the same meaning as in section 2(1) of the Act, but does not include a person who is an industry participant only by reason of being involved in the governance or administration of the electricity industry

**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

**line owner** includes the grid owner and the owner of a local network

**market operations** means the activities of EGB 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

**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

**MWh conveyed,—**

- (a) in relation to the grid owner, means the number of MWh injected at grid injection points; and
- (b) in relation to a line owner other than the grid owner, means the sum of—
  - (i) the number of MWh taken off at grid exit points that enter the line owner's local network; and
  - (ii) the number of MWh injected at a point of connection with a local network by an embedded generating plant

**MWh generated**, in relation to a generator,—

- (a) means the number of MWh sold by the generator to the clearing manager or to a retailer; but
- (b) does not include the number of MWh generated by an embedded generating plant which has a rated electricity generating capacity of less than 10 MW in the plant's asset capability statement

**MWh purchased**, in relation to a purchaser,—

- (a) means the recorded number of MWh purchased from the clearing manager by the purchaser at all grid exit points; and

- (b) includes the recorded number of MWh purchased from an embedded generator at a point of connection to a local network

**other activities** means the functions, powers, and duties of EGB under the Act other than the activities of market operations, registry and switching, and system operations, and includes—

- (a) monitoring and enforcement of the rules by EGB, 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

**previous year** means the 12 months ending on 31 March before the start of the financial year for which a levy is payable

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

**registry and switching** means the activities of EGB that relate to Part E, Registry Information and Customer Switching, of the rules

**retailer** means a purchaser who supplies electricity to a consumer and includes an independent retailer and an incumbent retailer

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

**system operations** means the activities of EGB 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.
- (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.

## 5 Overview of these regulations

- (1) Each generator, purchaser, and line owner is liable to pay a levy to the Minister.

- (2) The levy—
- (a) must be initially calculated under regulations 7 and 9 on the basis of estimated costs; and
  - (b) may be adjusted under regulation 10 (for example, if estimated EGB costs increase or decrease or if a different number of MWh are 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 Minister in monthly instalments in arrears.
- (2) Each person who is a generator, purchaser, or line owner 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 Minister.
- (3) EGB 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.

## **Part 2**

### **Calculations, adjustments, and reconciliations**

#### *Calculation of annual levy rates on basis of estimated costs*

#### **7 Calculation of annual levy rates on basis of estimated costs**

- (1) This regulation shows how the annual levy rates must be calculated by EGB.
- (2) *Step 1* is that the estimated EGB costs must be allocated to the activities listed in column 1 of table 1 (this determines the **costs of each activity**):

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	Line owners
System operations	one-third	one-third	one-third
Market operations	one-half	one-half	n/a
Registry and switching	n/a	one-half allocated to retailers	one-half allocated to line owners other than Transpower
Other activities	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**):

Table 2  
Calculation of annual levy rate

Activity	Generators	Purchasers	Line owners
System operations	Total number of MWh that are estimated by EGB to be generated by all generators during the current financial year	Total number of MWh that are estimated by EGB to be purchased by all purchasers during the current financial year	Total number of MWh that are estimated by EGB to be conveyed by all line owners during the current financial year
Market operations	Total number of MWh that are estimated by EGB to be generated by all generators during the current financial year	Total number of MWh that are estimated by EGB to be purchased by all purchasers during the current financial year	n/a
Registry and switching	n/a	Number of consumer connections as at the end of the previous year	Number of consumer connections as at the end of the previous year

Activity	Generators	Purchasers	Line owners
Other activities	Total number of MWh that are estimated by EGB to be generated by all generators during the current financial year	Total number of MWh that are estimated by EGB to be purchased by all purchasers during the current financial year	Total number of MWh that are estimated by EGB to be conveyed by all line owners during the current financial year

## 8 Notification of annual levy rates

EGB must notify the annual levy rates calculated under regulation 7 by—

- (a) publishing a notice in the *Gazette* setting out the annual levy rates; and
- (b) 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

- (1) This regulation shows how the monthly instalment payable by a generator, purchaser, or line owner must be calculated by EGB.
- (2) *Step 1* is that the annual levy rate per MWh must be multiplied by the following multipliers in table 3:

Table 3

Annual levy rate multipliers—number of MWh generated, purchased, or conveyed

Activity	Generators	Purchasers	Lines owners
System operations	Total number of MWh generated by the generator during the month for which the levy is payable	Total number of MWh purchased by the purchaser during the month for which the levy is payable	Total number of MWh conveyed during the month for which the levy is payable along lines that the line owner owns at the end of that month
Market operations	Total number of MWh generated by the generator during the month for which the levy is payable	Total number of MWh purchased by the purchaser during the month for which the levy is payable	n/a



Activity	Generators	Purchasers	Lines owners
Other activities	Total number of MWh generated by the generator during the month for which the levy is payable	Total number of MWh purchased by the purchaser during the month for which the levy is payable	Total number of MWh conveyed during the month for which the levy is payable along lines that the line owner owns at the end of that month

- (3) *Step 2* is that one-twelfth of the annual levy rate in respect of registry and switching must be multiplied by the number of consumer connections for which the retailer or line owner is responsible at the end of that month.
- (4) *Step 3* is that the amounts of the levy payable by each industry participant 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).

#### *Adjustments to annual levy rates during financial year*

### **10 Levy rates may be adjusted during financial year**

- (1) An annual levy rate may, at EGB's discretion, be adjusted if—
- the estimated EGB costs significantly change during the financial year; or
  - the costs of an activity significantly change during the financial year (for example, because EGB acquires, or ceases to have, a particular function); or
  - 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 number of MWh generated, purchased, or conveyed is significantly different from the number that was estimated or the number of consumer connections has significantly changed.
- (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) If an annual levy rate is adjusted, EGB must—
- publish the adjusted annual levy rate in accordance with regulation 8; and
  - notify relevant industry participants of the adjusted annual levy rate at the time of, or 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 EGB costs**

- (1) EGB must, no later than 1 month after EGB'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 EGB costs for the year, rather than the estimated EGB costs; and
    - (ii) the actual number of MWh generated, purchased, or conveyed, and the actual number of consumer connections for the year, rather than the estimated numbers; and
  - (b) publish the reconciled annual levy rates in accordance with regulation 8.
- (2) For the purposes of subclause (1), **actual EGB costs** for a financial year is the amount—
  - (a) identified in EGB's audited financial statements for that year as the costs of performing EGB'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 within Vote Energy for the non-departmental output class that relates to the performance of EGB's functions, powers, and duties under the Act and to EGB's collection of the levy.

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

- (1) This regulation applies if EGB considers that the numbers of MWh generated, purchased, or conveyed are significantly changed as a result of any reconciliation under rule 11.4 to 11.7 or rule 12.2 or rule 12.3 of Section VI of Part G of the

rules in respect of any generator, purchaser, or line owner from the numbers used in the calculations under regulation 9.

- (2) EGB 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.

### **13 Refunds and further invoices**

- (1) EGB must, if the levy is reconciled under regulation 11 or regulation 12,—
  - (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 Levy for financial year ending 30 June 2004**

- (1) Each person who is a generator, purchaser, or line owner as at 30 June 2004 is liable to pay a levy for the year ending with that date to the Minister.
- (2) The annual levy for that year is payable to the Minister in 1 instalment in arrears.
- (3) EGB must invoice industry participants for that levy as soon as practicable after the start of July 2004.
- (4) The due date for payment of the levy is the later of—
  - (a) the tenth working day after the industry participant receives an invoice for that levy; or
  - (b) 20 July 2004.
- (5) Part 2 applies to the calculation and reconciliation of the levy, and the notification of the annual levy rates,—

- (a) except that references to months must be read as references to the period beginning on 15 September 2003 and ending with 30 June 2004; and
- (b) except that the annual levy in respect of registry and switching must be determined according to the number of consumer connections as at 30 June 2004; and
- (c) with all other necessary modifications.

*Miscellaneous provision*

**15 Levy money to be paid into Crown Bank Account**

All levy money that is received under these regulations must be paid into the Crown Bank Account.

Diane Morcom,  
Clerk of the Executive Council.

---

**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 17 June 2004, impose levies on generators, purchasers, and line owners for the costs of performing the Electricity Governance Board's functions, powers, and duties under the Electricity Act 1992 and of collecting the levy money. The Electricity Governance Board (**EGB**) is also known as the Electricity Commission.

The levy in respect of financial years beginning on or after 1 July 2004 is payable in arrears in monthly instalments.

The levy in respect of the financial year ending 30 June 2004 is payable in one lump sum, to be invoiced at the beginning of July 2004. That levy covers the costs of performing EGB's functions, powers, and duties for the period from 15 September 2003 to 30 June 2004. EGB was established on 15 September 2003.

The due date for each levy payment is 10 working days after receipt of the invoice (but not before the 20th day of the month following the month to which the invoice relates).

The levy rate must be calculated on the basis of the estimated EGB costs for the financial year. The **estimated EGB costs** is the appropriation, or proposed appropriation, within the relevant Vote. Those costs are levied among generators, purchasers, and line owners according to the method of allocation set out in the regulations.

The annual levy rates may be adjusted during the financial year under *regulation 10*. If the levy rates are adjusted, EGB must notify the relevant industry participants of the recalculated levy rates and adjust the next monthly instalment.

EGB must reconcile the levy under *regulation 11* after the end of the financial year against the levy that would have been payable on the basis of the actual EGB costs, rather than the estimated EGB costs. The **actual EGB costs** are those identified in EGB's audited financial statements that are presented to the House of Representatives. However, they are capped at the total relevant appropriations for the year.

There is also provision, under *regulation 12*, for the reconciliation of the levy after the end of the financial year on the basis of actual amounts of electricity generated, purchased, and conveyed, as those numbers are reconciled under the *Electricity Governance Rules*.

If there has been an over-recovery from any participant, EGB must refund to that industry participant the amount over-recovered from it. If there has been an under-recovery from any participant, EGB must include in that industry participant's levy the amount under-recovered from it.

---

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 20 May 2004.

These regulations are administered in the Ministry of Economic Development.

---