Annual Report of the

Electricity Rulings Panel

For the 12 months ending 30 June 2014

Presented to the Electricity Authority
Pursuant to Regulation 115
The Electricity Industry (Enforcement) Regulations 2010

15 September 2014

Dr. Brent Layton
Chair
Electricity Authority

Dear Sir,

I have the honour to present the report of the Electricity Rulings Panel for the year ending 30 June 2014.

Yours faithfully

Peter Dengate Thrush,
Chair
Electricity Rulings Panel

The Electricity Rulings Panel

Introduction

The Rulings Panel was established by regulation 160 of the Electricity Governance Regulations 2003, and maintained by the Electricity Industry Act 2010.

Functions of the Rulings Panel

(1) To assist in the enforcement of the Code by:

a) hearing and determining complaints about breaches or possible breaches of the Code;
b) hearing and determining appeals from certain decisions made under the Code
c) considering and resolving certain disputes between participants relating to the Code;
d) making appropriate remedial and other orders.

(2) To review any suspension of trading by the Authority under section 49.

(3) To exercise any other functions conferred on it under the Act or the regulations.

Hearings by the Rulings Panel must be in public, unless otherwise ordered by the Rulings Panel. The Rulings Panel has the power to penalise the System Operator up to $200,000 in respect of any one event or series of closely related events arising from the same cause or circumstance, or up to $2 million in respect of all events occurring in any financial year. The liability of other industry participants is limited to $200,000 in respect of any one event or series of closely related events arising from the same cause or circumstance. The liability of Transpower (as a grid owner) and other asset owners is limited to $2 million in respect of any one event or series of closely related events arising from the same cause or circumstance or $6 million in respect of all events occurring in any financial year. Decisions are published on the Electricity Authority website. Breach of an order of the Rulings Panel is an offence, with a fine payable on summary conviction of $20,000. Appeals from the Rulings Panel are to the High Court.

Membership of the Rulings Panel

Members are appointed by the Governor-General in accordance with a recommendation from the Minister of Energy and Resources after consultation with the Minister of Justice and the Electricity Authority. The chair must be a barrister or solicitor of the High Court of more than 7 years standing. There can be up to 5 members.

Current Membership

The current members of the Rulings Panel are:

- Peter Dengate Thrush (Chair)
- Geraldine Baumann (Deputy Chair)
- Nicola Wills
- Susan Roberts
- John O'Sullivan

Background to Current Members

Peter Dengate Thrush

Peter Dengate Thrush is a barrister sole, specialising in intellectual and industrial property, information technology, the Internet and competition issues. He is Deputy Chairman of the Copyright Tribunal. He has been a member of the Rulings Panel since March 2008 and was its Deputy Chair between July 2008 and August 2011.

Geraldine Baumann

Geraldine Baumann has 30 years experience in the electricity sector. She was General Counsel at the Electricity Corporation of NZ from 1987 to 1999 and then CEO of ECNZ - Residual for a year. Since that time she has been on the Board of EECA (from 2001 to 2007, including a period as Deputy Chair), the Board of Genesis Energy (2002 to 2008), and a member of the Board of Inquiry to consider the National Policy Statement for Renewable Energy (2008-2009).

Nicola Wills

Nicola Wills has practised as a barrister since 2000. She has extensive experience in commercial dispute resolution, and has been an Adjudicator of the Motor Vehicle Disputes Tribunal since 2006. Her experience in the electricity sector includes a period as In-house Counsel at Transpower from 1998 to 1999.

Susan Roberts

Susan Roberts has over 30 years commercial experience, including 16 years in the energy sector carrying out senior level management and consultancy roles with Contact Energy, NGC, Genesis Energy and ECNZ.

John O'Sullivan

John O'Sullivan has been a member of the Rulings Panel since it was established in 2004. He is a power system engineer with 40 years' experience in the New Zealand electricity industry and overseas, including managing power stations and as General Manager Thermal and General Manager Geothermal at Contact Energy. He served as a board member of Transpower from 1991 to 1994, and the New Zealand Geothermal Association from 2002 to 2005.

Summary of decisions of the past 12 months

The Rulings Panel has issued two decisions in the reporting period.

The first related to an unplanned electricity outage that occurred on 27 October 2010, under which power was cut to New Zealand's largest pulp and paper mill – the Carter Holt Harvey Pulp & Paper Ltd pulp and paper mill at Kinleith. Power was restored some 30 minutes later, but Carter Holt Harvey claimed that the mill lost a day's production as a result of the outage. It initially claimed there were Code breaches by both the System Operator and the Grid Owner. The case was the subject of the Rulings Panel's first ever consideration of a preliminary question of law as an interlocutory matter. The issue was the applicability of rule 5 of section VI of part F of the code, and was the subject of an interlocutory decision by the Rulings Panel delivered on 28 February 2013. The Rulings Panel found that the System Operator was covered by the relevant rule. The substantive matter came back before the Rulings Panel, which issued its decision on 27 September 2013. The maximum applicable penalty, because of the timing of the event, was $20,000. To quote from the Decision:

The Rulings Panel set the penalty at $16,000, reduced by $1000 to $15,000 to reflect mitigating conduct since the breach, and went on to award a confidential sum in compensation to Carter Holt Harvey Ltd., the largest compensation order made to date by the Rulings Panel.

The second case involved an Under-Frequency Event ("UFE"), which occurred on 1 May 2013. Meridian Energy, which operates a major electricity generating station at the Manapouri dam, submitted a Plan to the System Operator, proposing 14 drop load tests, of which two were to be drops of 130MW, and two at 135MW. Meridian was required under the Plan to compensate for the dropped load using other Manapouri generation. The Plan was reviewed by the System Operator's investigation engineers, who approved it, saying "proceed with caution". Meridian and the System Operator communicated throughout the day, as drop testing proceeded, until, when the 135MW test was performed, there was a drop in the South Island grid frequency to 49.19Hz, below the system limit of 49.2Mz. Electricity to the aluminum smelter at Tiwai Point was cut off for approximately 12 minutes.

After conducting an open enquiry as it was obliged to do under the Act, the System Operator found that Meridian Energy was the "causer" (a defined term) of the UFE. That had financial consequences for Meridian; it disputed the finding by the System Operator, and brought the dispute before the Rulings Panel. This was the first time a dispute of this nature had come before the Rulings Panel.

The Rulings Panel received written submissions and affidavit evidence from both Meridian and the System Operator. By consent, no hearing was required, and the Rulings Panel considered the matter on the papers. The Rulings Panel found that while Meridian's testing program had provided the occasion for the UFE, the System Operator had not met the burden of establishing that Meridian was the causer.

Summary of performance against Budget

The budgeted expenditure for the Rulings Panel for the year ending June 30 2014 was $116,095.00. Shortly into the financial year, this was revised downwards to a forecast expenditure of $101,280. Actual expenditure for the year was $90,964.

A table showing the financial performance against budget is attached as Annex 1.

Summary of performance against Performance Objectives.

The Rulings Panel agreed on 4 principal performance objectives:
(1) That its processes, procedures and results would be ***fair and credible***;
(2) That the Rulings Panel, and its processes and procedures would be ***accessible***
(3) That the Rulings Panel, and its processes and procedures would be ***administered efficiently***; and
(4) That the processes adopted would be ***proportionate*** to the issue.

The Performance Objectives are broken down into "measures" and "targets": a copy of the applicable performance objectives for the year in review is attached as Annex 2.

The Rulings Panel has met or complied with each of the measures and targets, to the extent they were applicable in the year, save for the matter discussed below.

The Performance Objective provision that addresses timely decision-making requires: *"…65% of decisions to be issued by the Rulings Panel within 40 working days of receiving final submissions; 95% to be issued within 60 working days."*

In the Transpower decision mentioned above, there was a period of 69 days between the receipt of final submissions (24 June 2013) and the issuance of the decision (27 September 2013). The Rulings Panel is satisfied that the matter fell into the 5% of cases that justify extended time; the complaint recommended by the Investigator differed from that made by the affected party (Carter Holt Harvey), and the complaint brought to the

Rulings Panel by the Compliance Committee amended that which was recommended. The impact of the outage was substantial, reflected in a large compensation order. It was also the first occasion that the Rulings Panel ordered costs against the Electricity Authority.

In the Meridian UFE decision, the period between final submissions and delivery of the decision was 46 days. While this is within the 60-day period, the Rulings Panel has put in place an improved diary process for better complying with this Objective.

Commenting on areas of the Code or Regulations where change is required

The Rulings Panel is required under regulation 115 (d) to comment *"on any area of these regulations or the Code where the Rulings Panel considers that a change is required."* The Rulings Panel is aware that the Authority is conducting a review of the Electricity Industry Enforcement Regulations 2010, and expects to contribute to that review

The Rulings Panel has prepared a schedule of topics where it considers a change could be considered, and made comment on those topics. That schedule is attached as Annex 3.

Electricity Rulings Panel
Annual Report
Annex 1

Description	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Full year Actuals	Full year Forecast	Full year Budget
Fees	5,659	5,935	9,452	4,783	4,730	13,561	3,580	5,941	6,639	11,222	7,363	11,051	**89,916**	**96,860**	**111,675**
Hearing costs	0	0	0	0	0	0	0	0	0	0	0	0	**0**	**1,470**	**1,470**
Expert and Legal Advice	0	0	0	0	0	0	0	0	0	0	0	0	**0**	**2,000**	**2,000**
Travel	0	0	0	0	363	0	518	0	0	0	0	0	**881**	**350**	**350**
Accommodation & meals	0	0	0	0	0	0	167	0	0	0	0	0	**167**	**600**	**600**
	5,659	**5,935**	**9,452**	**4,783**	**5,093**	**13,561**	**4,264**	**5,941**	**6,639**	**11,222**	**7,363**	**11,051**	**90,964**	**101,280**	**116,095**

Electricity Rulings Panel Annual Report
Performance Objectives
Annex 2

Objective	**Performance measure**	**Target**
1. Fair and credible	1.1 The Rulings Panel has procedures to support high quality decision-making.	1.1.1 Rulings Panel procedures published and reviewed regularly. 1.1.2 Users are consulted on any proposed amendments to the Rulings Panel procedures.
	1.2 Hearings are conducted openly and decisions published, unless there is good reason not to.	1.2.1 All hearings conducted in public and decisions published, or reasons not to notified and published.
	1.3 The Rulings Panel is perceived to be independent and without the potential for bias.	1.3.1 No issues of lack of independence.
	1.4 The number of successful appeals against any decision or order of the Rulings Panel.	1.4.1 No successful appeals.
2. Accessible	2.1 Information about the existence of the Rulings Panel, its jurisdiction and what is involved for users is readily accessible.	2.1.1 Information about the Rulings Panel is reviewed regularly with the Authority's Communications team.
	2.2 Access to the Rulings Panel is as easy as possible, without undue administrative burden on the user.	2.2.1 Rulings Panel procedures are reviewed regularly for ease of access to the Rulings Panel.
	2.3 Costs to the user do not impose any undue barrier to access to the Rulings Panel.	2.3.1 No filing costs.
3. Administered efficiently	3.1 Innovative and flexible approaches to issues are adopted that may not be available to more formal Courts.	3.1.1 Rulings Panel procedures are reviewed regularly for innovative and flexible approaches.
	3.2 The percentage of decisions and orders made by the Rulings Panel within the time periods set out in the Electricity Industry (Enforcement) Regulations 2010.	3.2.1 65% of decisions to be issued by the Rulings Panel within 40 working days of receiving final submissions; 95% to be issued within 60 working days.
	3.3 Rules are improved, based on experience.	3.3.1 Rulings Panel to regularly review the outcome of all decisions, orders and directions.
4. Proportionate	4.1 Processes are proportional to the complexity and seriousness of the issue.	4.1.1 Rulings Panel procedures are reviewed regularly for proportionality.

Electricity Rulings Panel Annual Report
Annex 3

In this Annex, the Rulings Panel provides comment on areas of the Regulations or the Code where the Rulings Panel considers that a change is required.

1. General

1.1 We suggest an amendment to the Act to permit the Rulings Panel to order costs on interlocutory hearings at the conclusion of any interlocutory hearing This issue arose in the interlocutory decision in the Transpower case, which issued on 23 February 2013, concerning the applicability of Rule 5. As we noted in that decision, s 54 of the Act, which confers a power to order costs, may be subject to the making of a final order as to breach. The Rulings Panel considers that the ability to order costs after interlocutory matters are heard would be more convenient for the parties, and would more closely accord with court practice in this area.

1.2 Rule 3.1 of technical code A of schedule C3 of part C of the Electricity Governance Rules (equivalent to Rule 3(1)(a) of Technical Code A, Schedule 8.3 of the current Code) calls for 'sufficient information to be exchanged between the System Operator and Asset Owners,' where changes are made. In the substantive decision in the Transpower case that issued on 27 September 2013, the two-way reporting requirements (Grid Owner:System Operator) were insufficient to require reporting on the increase in the number of times the SPS was being activated (originally an emergency measure but which apparently became routine). There should perhaps be some thought given to quantifying the extent of such information, and more use made of this requirement in considering liability.

1.3 The Panel finds the limitation found in section 53(1) that "every complaint, appeal, or dispute before the Rulings Panel must be dealt with by a panel of 3 members, one of whom must be the chairperson…" to be onerous, and, if its intention was to save costs, probably ineffective in meeting that goal. The Rulings Panel considers:

(a) Decisions are those of the Rulings Panel as a collective body.
(b) There is a need to ensure the maximum benefit is extracted from the collective experience of Panel members during the hearing of any matter, including by way of questions to be asked and other matters to be raised.

(c) That there should be a balanced development of experience within Panel members despite the small number of cases referred to the Panel.

The Rulings Panel is developing an internal process by which details of matters being heard are referred to non-sitting Panel members, including an opportunity for review of draft decisions.

1.4 The Ruling Panel found it surprising that the clauses used by Electricity Authority in laying the complaint in the substantive Transpower case referred to above relate to processes which deliver the dispatch schedules which facilitate trading on and from the operational data. It was not clear why the Authority had not considered rule 4.1 of section III of Part C which states that "each grid owner will ensure *that the design and configuration of its assets (including its connections to other persons)* and associated protection arrangements are consistent with the technical codes *and, in the reasonable opinion of the system operator, with maintaining the system operator's ability to comply with the principal performance obligations."* It was clear from the Investigator's Report that the Compliance Committee declined to pursue this route. In addition the Authority declined to pursue the breach under rule 3.1 of technical code A of schedule C3 of Part C which outlines the requirements for asset information as well as the exchange of that information. The reasons for the Compliance Committee's decision were therefore unclear. It would be very useful for the Rulings Panel to more comprehensively understand the Compliance Committee's position when seen against claims made in the Authority's submission. Matters relating to the compliance with technical codes are extremely relevant. The Rulings Panel suggests that the regulations be amended to require a more detailed description of these matters be included in the papers for those cases that are referred to the Rulings Panel.

1.5 In the substantive Transpower case mentioned above the System Operator drew attention to the fact that the liability limit in regulation 53(a) is per event and not per breach. The System Operator submitted that any event should not attract greater liability or criticism merely because it is linked to multiple individual rule breaches. We think that is generally appropriate, however, in this case there was a continued failure on the part of the System Operator between 2005-2010 to identify the error despite frequent enabling of the SPS and specific enquiries from participants prior to the incident. During that extensive period there was also an expectation that there was a quality assurance program which would have been carried out. Consideration could be given to allowing individual rule breaches to attract liability as an incentive to participants to carry out regular reviews and audits of their processes and practices. Alternatively, consideration could be given to amending the definition of "event" and/or "closely related events arising from the same cause or circumstances" in regulation 53(a).

1.6 The Rulings Panel recommends that the obligation contained in r 113 (2) to report monthly on financial matters be amended to require quarterly reporting. This would accord with current practice, in which monthly reports are collated, and reviewed on a quarterly basis.

2. Under Frequency Event: Rulings Panel Decision dated 06 June 2014

2.1 Given the perceived level of risk associated with the testing schedule proposed by Meridian there is an expectation that a robust system study would have been carried out prior to the testing program, and as part of the approval process. This was not a requirement placed on the System Operator by the Code when approving the test plan. Amendment of the Code may be required.

2.2 Part 8.29 of the Code clearly outlines the process whereby asset owners may apply to the System Operator for an equivalence arrangement or dispensation to be granted in accordance with Schedule 8.1. Once this process is completed one would therefore expect that the System Operator has accepted the accountability for system operation under these amended conditions. This would therefore offer protection to a generator once an application has been adopted.

2.3 Previously the Commission/Authority had reviewed existing event causer provisions in under frequency cases and their application over a period of time and considered that the outcome of some disputes was not always consistent with the design intent of the event-charging regime, and that, therefore, there was a risk that the regime did not always operate in a manner that gave effect to its purpose; and that the regime was proving to be increasingly complex and costly for those parties affected by it. The Commission/Authority also noted that, while the causer of an event was able to be identified easily in many situations, the prevalence of lengthy disputes appeared to be increasing. In relation to more difficult cases it was argued that greater clarity should be provided in the event of secondary trippings or when unfavourable system conditions are occurring and an unrelated subsequent event causes an under-frequency event.*(Genesis submission, 23 May 2010)* The Commission/Authority was also mindful that the System Operator had formally advised of significant difficulties in applying the existing rules. A rule amendment proposal to address the key issues was therefore identified.

Submissions on those changes included concern that the Authority's definition of "causer" was loosely defined. It was submitted that the Authority should re-think this definition in order to allow for situations where the causer of an event was not clear. Meridian's submission stated that as a general rule, it was felt that parties should only be able to avoid event charges when it is clear that the event really was outside of the party's control. There was concern that the Authority's definition had the potential to create a new set of legal disputes that may not have been envisaged by the original proposal. One suggestion was to add a requirement

to show beyond reasonable doubt that the asset owner was the causer. It was felt that this would ensure that the System Operator carried out due process before determining the causer. *(Meridian 21 May 2010).*
A further submission from Transpower *(24 May 2010)* also suggested that the proposed changes would also not result in any greater clarity as to who the "causer" of an event was, especially when an event actually comprises several contingent events. The absolute/strict liability nature of the proposed new rules, it was suggested, may also actually reduce the incentive for asset owners to take reliability and risk into account when designing, maintaining and operating their assets. This was partly because the proposed changes may unfairly penalise an asset owner whose assets are rule compliant, while not imposing charges on an owner whose assets are non-compliant and the "true causer" of an event, and also because the proposed changes penalise asset owners for events that are completely outside their control. They considered that the "first causer" proposal was likely to result in real injustices.
The definition of 'causer' in the interpretation section of the Code only contemplates a 'causer' being a generator or grid owner when their assets cause the UFE. "Causer" can only be an interruption or reduction in a single grid owner or generator's assets (not joint assets, the System Operator nor any other body or thing i.e. system conditions). The view of some participants, and shared by the Rulings Panel, is that 8.61 needs addressing in that 8.61(1) leaves no flexibility in complex cases.

2.4 The aim of the under-frequency event charge is to encourage asset owners to take reliability issues into account when designing, maintaining and operating their plant. It acts as a redistribution of availability charges in a manner that rewards owners of more reliable assets. There does not appear to be any focus on system operation which has a major impact on system frequency. The System Operator is required by its Principal Performance Obligations to act as a reasonable and prudent system operator and therefore any event investigation must surely include a review of the System Operator's compliance with its PPO's.

2.5 In the recent Under Frequency case the System Operator commissioned an independent review of its draft decision. The reviewer stated that "*I'm not comfortable with the conclusion that a generator attempting in good faith to implement a test plan approved by the System Operator falls foul of the event charge regime because of the strict interpretation of the definition of 'causer', because this outcome does not fit within the policy of the event charge regime as expressed in the consultation paper. Yet in my view it is the consequence of the application of the Code. I consider that the decision that Meridian is the 'causer' is the decision that is open to the System Operator to reach on the wording of the Code and in light of the facts, subject to the System Operator determining that Meridian does not fall within the exception c) i.e. following a test plan is complying with the Code. My own view is that test plans were intended to be within the exception, but it is not explicit from the wording of c) and the industry*

doesn't appear to consider if falls within this exception." Reference was made to the fact that possible unfair outcomes of this regime were raised in the Authority's consultation paper "Under frequency event charge causer determination" (April 2010). The System Operator's draft determination statement that "system conditions are inherently dynamic and cannot be relied upon to maintain frequency stability for participant testing" supports the case for a Code change. The process of finding a single causer is somewhat difficult where there are complex interconnected contributing causal events. The wording in clause 8.61(2) suggests the System Operator may find there to be no causer. The definition of causer makes it clear that there can only be one causer identified. Submissions made in 2010 when the current rules were introduced argued that this was problematic. It is our view that 8.61 needs addressing in that 8.61(1) leaves no flexibility in more complex cases such as the recent case. The possible unfair outcomes of this regime were raised in the consultation paper.

2.6 The process whereby the System Operator investigates all UFE's requires re-consideration given the System Operator's role in relation to overall system conditions. As stated above the System Operator acknowledged in the recent UFE case that system conditions were a potential influence on power system characteristics. The claim by the System Operator in that case that the HVDC had no part to play in system dynamics at the time of the tests was in contradiction to other statements which implied that the System Operator acknowledged that HVDC transfer had a material impact on system conditions. The range of PPO's for the System Operator detailed in section 7.2 of the Code clearly places the responsibility for the system operating environment with the System Operator. Transpower, as Grid Owner, is one of the two alternatives the Code offers the System Operator in determining a causer. The System Operator is a Division of Transpower. There is no reference in Part 7.2 of the Code, which outlines the principal performance obligations of the System Operator, to any requirement for the System Operator to perform the role of a 'power system policeman'. In at least one previous UFE case where the Grid Owner was involved the System Operator had introduced the services of an independent reviewer. Given that system operating conditions prevailing at the time of any UFE are potentially extremely material to any investigation, and there appears to be universal acknowledgement of the dynamic nature of these conditions, it may be inappropriate that there appears no clear requirement for the System Operator, as the regulated investigator, to seek an independent view on the identification of a 'causer'.

2.7 We consider that the Authority should consider the use of its powers under the Electricity governance regulations to investigate under frequency events as rule breaches, on the basis that an under-frequency event is potentially caused by a participant breaching a rule. Contact believed that the Rules associated with the

Part C Common Quality requirements are sufficient to motivate any party to reduce the amount of unintended UFE's on the grid (within their control). (Submission on the Electricity Commission's Consultation Paper on Under-Frequency Event Charge Causer Determination, 21 May 2010) The regulations provide for the Investigator to appoint other persons to provide advice and this could be the System Operator if specialist technical advice is required. The role of the System Operator, as a key participant in system operation would clearly be taken into account on a case by case basis. As in any rule breach situation any participant affected by a decision of the Authority may dispute the determination by referring the matter to the Rulings Panel.