

**IN THE MATTER of the  
Electricity Act 1992**

**AND**

**IN THE MATTER of the  
Electricity Governance  
Regulations 2003**

**DECISION OF THE ELECTRICITY COMMISSION PURSUANT TO PART 3 OF THE  
ELECTRICITY GOVERNANCE REGULATIONS 2003 REGARDING AN ALLEGED  
UNDESIRABLE TRADING SITUATION ON 14 AUGUST 2008**

Decision dated 22 August 2008

## **Decision of the Electricity Commission pursuant to Part 3 of the Electricity Governance Regulations 2003 regarding an alleged undesirable trading situation on 14 August 2008**

### **Introduction**

1. Under Part 3 of the Electricity Governance Regulations 2003 (“the regulations”), the Electricity Commission (“Commission”) is responsible for investigating undesirable trading situations (UTS) and, if the Commission finds that an UTS is developing or has developed, it may take steps in relation to that undesirable trading situation.
2. This document sets out the reasons for a decision by the Commission that the circumstances existing in respect of the claim made by TrustPower Limited (TrustPower) on 14 August 2008 do not constitute a UTS.
3. The decision was made by the Undesirable Trading Situation Committee (“the Committee”), being the committee of the Electricity Commission to which decision-making under Part 3 of the regulations has been delegated. The membership of that Committee comprises all members of the Board of the Commission.

### **Background – Claim of Undesirable Trading Situation by TrustPower**

4. On Thursday 14 August 2008, TrustPower claimed the existence of a UTS in respect of settlement of non half hour purchase volumes for the months of February 2008 to July 2008, which it believes will be incorrect until the solution it proposes is implemented.
5. The issue arises as a consequence of the transition from reconciliation by differencing by network supply point (NSP) to reconciliation by balancing area (global reconciliation). This transition took place on 1 May 2008, when part J of the Electricity Governance Rules 2003 (Rules) came into effect.
6. TrustPower claimed that if the process set out in part J (Reconciliation) of the Rules were allowed to operate, participants that were incumbent retailers prior to 1 May 2008 would be financially disadvantaged compared with participants that were independent retailers. That effect would be exacerbated with the high spot prices in May 2008, and the corresponding flow-on effects into prudential securities.
7. It was noted that this issue was recognised by the EGR Committee, which granted Exemption 90<sup>1</sup> at its June 2008 meeting to hold the position until a solution was

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<sup>1</sup> Electricity Governance Regulations (Exemption No. 90 (Reconciliation Participants)) Exemption Notice 2008, *New Zealand Gazette*, 19/6/2008, No. 100, p.2709.

put in place. A further exemption (Exemption No. 93<sup>2</sup>) was granted by the EGR Committee on 15 August 2008 to continue to hold the position. Exemption No. 90 has also been revoked as it is no longer required.

### **Commission investigation**

8. Upon receipt of the UTS claim, the Commission began preliminary investigations into the circumstances, including discussions with TrustPower.
9. The Commission notified market participants on 15 August 2008 that the UTS claim had been received.
10. Because the claim did not relate to final prices it was not necessary for the Commission to exercise its power under rule 3.28 of section V of part G of the Rules to delay publication of final prices pending consideration of the UTS claim.

### **TrustPower's Claim for a UTS**

11. TrustPower's UTS claim raises serious issues that are certainly worthy of careful consideration by the Commission.
12. TrustPower's concerns as set out in its UTS claim are that:
  - (a) while seasonal adjustment shapes are not available, and revision settlements are not processed, participants have no certainty on their purchases or financial settlements. TrustPower is particularly concerned that it cannot determine the accuracy of settlements for the April and May 2008 period until seven months after that period (this being the next revision period) while Exemption No. 93 is in force; and
  - (b) large swings in unaccounted for electricity (UFE) have been noted and Trustpower is receiving what it considers is more than an equitable share of UFE. TrustPower has estimated that the impact it faces is in excess of \$5 million.
13. Trustpower proposes a solution that it considers could be quickly put in place to:
  - (a) prevent delay in revision settlement of non half hour purchase volumes for the months of February 2008 to July 2008;
  - (b) make available to participants corrected seasonal adjustment shapes; and
  - (c) require participants to present revised submission information for the period to the reconciliation manager.

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<sup>2</sup> Electricity Governance Regulations (Exemption No. 93 (Reconciliation Participants and Reconciliation Manager) and Revocation of Exemption No. 90) Notice 2008, *New Zealand Gazette*, 18/8/2008, No. 129, p.3375

14. Seasonal adjustment shapes are profiles used by participants purchasing electricity from the clearing manager, from non half hour meters, to allocate non half hour metered volumes into months.
15. The delays in revision settlement are due to settlements for the period remaining based on initial estimates until a rule change is enacted and initial estimates not being based on meter reads. There will be inaccuracies in these settlements until non half hour revisions are run.

**Is there an undesirable trading situation?**

16. The definition of undesirable trading situation is set out in regulation 55(1) of the regulations which states:

*“(1) An undesirable trading situation means any contingency or event—*

- (a) that threatens, or may threaten, trading on the wholesale market for electricity and that would, or would be likely to, preclude the maintenance of orderly trading or proper settlement of the trade; and*
- (b) that, in the reasonable opinion of the Board, cannot satisfactorily be resolved by any other mechanism available under the rules.”*

17. Regulation 55(2) provides examples (without limitation) of the types of circumstances that may constitute an undesirable trading situation. It is not necessary that the contingency or event falls into one of the categories listed in regulation 55(2). Regulation 55(2) merely suggests the types of situations in which an undesirable trading situation may be considered to have occurred.

18. Regulation 55(2) states:

*“(2) Without limiting subclause (1), an “undesirable trading situation” includes—*

- (a) manipulative or attempted manipulative trading activity;*
- (b) conduct in relation to trading that is misleading or deceptive, or likely to mislead or deceive;*
- (c) unwarranted speculation or an undesirable practice;*
- (d) material breach of any law;*
- (e) any exceptional or unforeseen circumstance that is at variance with, or that threatens or may threaten, generally accepted principles of trading or the public interest.”*

19. The Commission does not consider that the circumstances giving rise to the UTS claim by TrustPower fall within any of the specific situations described in paragraphs (a) to (e) of regulation 55(2). With reference to paragraph (e), whilst the claim may relate to exceptional or unforeseen events, it is the Commission's view that it does not otherwise satisfy the requirements of paragraph (e).
20. Accordingly, the Commission turns to consider whether the test in regulation 55(1)(a) has been satisfied. Here the Commission is required to first consider whether the circumstances giving rise to the UTS claim threaten, or may threaten, trading on the wholesale market for electricity and that would or would be likely to preclude the orderly trading or proper settlement of trades.
21. The regulations do not set out what is meant by "threatening" trading on the wholesale market. The Commission considers that, for an event to be considered as threatening (or possibly threatening) trading on the wholesale market, the event must be such that participants' confidence in the market is significantly affected, that daily trading is affected by withdrawal (or likely withdrawal) of participants, or similar such circumstances.
22. Trading in the relevant trading periods was completed and trading was not actually threatened by the events that took place. Similarly, orderly trading was not precluded.
23. The Commission notes that, unlike all preceding UTS claims, this claim does not relate to prices or trading as such but relates to settlement issues. The Commission's view is that although TrustPower may not be satisfied with certain results that arise from settlement, settlement is taking place in an orderly manner in compliance with the Rules.
24. The Commission considers that the criteria set out in regulation 55(1)(a) have not been met in relation to the UTS claim.
25. Accordingly, because the first limb of regulation 55(1) has not been met and in order for an UTS to exist both limbs must be met, the Commission does not need to consider whether the second limb of regulation 55(1) (that the case cannot be satisfactorily resolved by any other mechanism under the rules) has been met.

## **Remedies**

26. As the Commission's finding is that a UTS does not exist, it has not examined possible remedies under regulation 56 in detail. However, it did review TrustPower's proposed solution in the context of the UTS regime.
27. The Commission's view is that it is not convinced that it has the powers to implement the solution proposed by TrustPower because the solution may amount

to directions to participants that are inconsistent with the Rules and therefore prohibited by Regulation 56 (2)(b).

28. However, the Commission notes that Exemption no. 93 has been put in place to attempt to address the issue and that Commission staff are investigating the implementation of an urgent Rule change proposal to further alleviate concerns that have been raised.

### **Conclusion**

29. The decision of the Commission is that, whilst the issue raised by TrustPower is a serious one, the circumstances giving rise to the UTS claim by TrustPower do not meet the regulatory requirements for an undesirable trading situation.

**Electricity Commission  
Wellington  
22 August 2008  
UTS Decision 7, 2008**