

Annual Report of the
Electricity Rulings Panel
For the 12 months ending 30 June 2015

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

29 July 2017

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 2015

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Peter Dengate Thrush', is written on a light-colored rectangular background.

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 business unit leader with 40 years' experience managing power stations both in the New Zealand electricity industry and Indonesia, as General Manager Thermal and General Manager Geothermal at ECNZ and Contact Energy. He has provided consultancy services in operational strategy and organisational reform to companies in India, Australia and Singapore. 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 issued one decision in the period under review, on 7 July 2014. The decision recorded the Rulings Panel's findings on costs arising from its decision, issued in June 2014, in a dispute, brought by Meridian Energy Limited, relating to the System Operator's causer determination for an under-frequency event on 1 May, 2013. In that decision, the Rulings Panel held that the System Operator had not established that Meridian Energy Ltd was the causer (as that word is used in the Code) of that under-frequency event. In its costs decision, the Panel noted that this was the first time a dispute of this nature had come before the Rulings Panel. The Rulings Panel found that section 61 of the Electricity Industry Act 2010 conferred a broad power on the Rulings Panel to make orders as it saw fit in such disputes, in the absence of any specific provisions to a different effect. There were none, and, having determined that it *could* make such an order, the Panel then considered whether it *should*. In all the circumstances, including the fact that neither party sought costs from the other, the Rulings Panel made no order as to costs.

Summary of performance against Budget

The budgeted expenditure for the Rulings Panel for the year ending June 30 2015 was \$114,105. This was later revised downwards to a forecast expenditure of \$84,063. Actual expenditure for the year was \$70,917. The reduced expenditure reflects the fact that fewer cases were heard by the Rulings Panel in the period under review. The Rulings Panel, in conjunction with the Electricity Authority, has changed its budgeting practice somewhat for the following years. In future, precautionary provision will no longer be made for the hearings of cases, on the assumption that provision for the expenditure associated with hearing cases can be made in good time once cases are notified.

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

Summary of performance against Performance Objectives.

The 4 primary performance objectives of the Rulings Panel for 2015 remained the same as for the previous year, namely:

- (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.

In addition, the Rulings Panel began a review of its Procedures, and added a series of targets for its review, to ensure that its Procedures supported, or were not inconsistent with the primary objectives. The Performance Objectives for the year in review are 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.

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 MBIE is conducting a review of the Electricity Industry (Enforcement) Regulations 2010, and expects to contribute to that review.

In its Annual Report for the year ending 2014 the Rulings Panel had made a number of recommendations and suggestions as to possible changes to the regulations or Code, relating broadly to;

- (1) The information required to be exchanged between the System Operator and Asset owners;
- (2) Various amendments to the regulations;
- (3) Several recommendations relating to the provisions dealing with Under Frequency Events.

The Rulings Panel also made a comment on the functioning of the Rulings Panel under the constraints of section 53(1) Electricity Industry Act 2010;

The Rulings Panel notes that two of its recommendations were included in the Authority’s Code amendment register at: <http://www.ea.govt.nz/code-and-compliance/the-code/amendments/amending-the-code/>, and a third is to be added to that Register.

We understand that recommendations relating to the regulations and Act will have been considered by the Authority as part of its review of the Act and regulations under the MBIE review mentioned above.

The remaining recommendations, relating to UFE matters, have been subsumed within the Authority’s review of “Causer” provisions.

The Rulings Panel will seek to develop its processes in making recommendations on amendments to the Code and regulations in future years.

In our Annual Report for the Year ending in 2014, we suggested an amendment to the Act to permit the Rulings Panel to order costs on interlocutory hearings at the conclusion of any interlocutory

hearing. The Rulings Panel has included a clarification in its own Procedures, currently being reviewed, concerning the payment of costs after any hearing conducted according to those procedures.

Electricity Rulings Panel Annual Report

Financial Performance

Annex 1

Electricity Authority Rulings Panel Financial Report 2014/15

Description	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Full year		Full year Budget
													Actuals	Forecast	
Fees	5,784	7,903	4,932	3,912	5,499	3,992	3,510	4,935	354	10,125	9,824	8,370	69,139	81,633	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	0	0
Travel	0	0	0	0	0	0	0	338	631	0	0	0	966	804	804
Accommodation & meals	0	0	0	0	0	0	0	0	543	269	0	0	812	156	156
	5,784	7,903	4,932	3,912	5,499	3,992	3,510	5,270	1,527	10,395	9,824	8,370	70,917	84,063	114,105

Notes:

Rulings Panel fees are based on actual claims made in the month.

Electricity Rulings Panel Annual Report

Performance Objectives

Annex 2

Rulings Panel performance objectives 2014/15

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 are published. 1.1.2 Rulings Panel procedures are reviewed in 2014/15 and triennially thereafter, unless agreed otherwise by the Chairpersons. 1.1.3 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 annually 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 to be reviewed for ease of access to the Rulings Panel in 2014/15 and triennially thereafter, unless agreed otherwise by the Chairpersons.
	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 to be reviewed for innovative and flexible approaches in 2014/15 and triennially thereafter, unless agreed otherwise by the Chairpersons.
	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 to be reviewed for proportionality in 2014/15 and triennially thereafter, unless agreed otherwise by the Chairpersons.