

Annual Report of the

Electricity Rulings Panel

For the 12 months ending 30 June 2016

Presented to the Electricity Authority

Pursuant to Regulation 115

The Electricity Industry (Enforcement) Regulations 2010

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.

Powers of the Rulings Panel

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 in 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 made in the past 12 months

The Rulings Panel issued no decisions in the period under review.

Summary of performance against Budget

The budgeted expenditure for the Rulings Panel for the year ending June 30 2016 was \$102,430. Actual expenditure for the year was \$94,537.

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 2014/5 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 continued with 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 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.

ANNEX 1

Electricity Authority Rulings Panel Monthly Financial Report 2015/16

Description	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Year to date		
													Actuals	Budget	Variance
Fees	5,241	5,380	5,796	6,737	5,570	9,606	4,834	8,411	15,743	6,058	5,208	5,513	84,098	100,000	15,902
Hearing costs													0	1,470	1,470
Expert and Legal Advice													0	0	0
Travel						959	81	593	827	1,596			4,056	804	(3,252)
Accommodation & meals													0	156	156
Other							6,150	233					6,383	0	(6,383)
TOTAL	5,241	5,380	5,796	6,737	5,570	10,565	11,065	9,237	16,570	7,654	5,208	5,513	94,537	102,430	7,893

Annex 2

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Performance Objectives

Rulings Panel performance objectives 2016

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 triennially, 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 reviewed triennially for ease of access to the Rulings Panel, 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	3.1 Innovative and flexible	3.1.1 Rulings Panel procedures are to be reviewed triennially for innovative and flexible approaches, unless agreed otherwise by the Chairpersons.

efficiently	approaches to issues are adopted that may not be available to more formal Courts.	
	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 triennially for proportionality, unless agreed otherwise by the Chairpersons.

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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. Costs on Interlocutory Matters

The Panel had suggested in its 2013/4 Annual Report that the Electricity Industry (Enforcement) Regulations 2010 (the Regulations) be amended to permit the Rulings Panel to order costs on interlocutory hearings at the conclusion of any interlocutory hearing. During the course of its review of its Procedures, the Rulings Panel included a clarification concerning the payment of costs after any hearing conducted according to those Procedures.

2. Recommendations on Regulatory changes

In its 2013/14 Annual Report the Rulings Panel made a number of recommendations concerning possible changes to the Act or Regulations. We were grateful to be advised that the Electricity Authority had passed on those recommendations to MBIE. We look forward to contributing to any MBIE review of the Act or the Regulations.

3. Recommendations on Code changes

In the 2013/14 Annual Report, there were 5 recommendations from the Rulings Panel on possible amendments to the Code that the Rulings Panel wishes to make further comment on.

3.1 Information Exchange. The Rulings Panel observed that 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 then-current Code) called 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 Rulings Panel considered that 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. The Rulings Panel recommended that some thought given to quantifying the extent of such information, and more use made of this requirement in considering liability.

The Rulings Panel received advice from the Electricity Authority that this matter had been considered, and discussed with the System Operator, and a consultant practicing in the relevant area. As a result, the Authority decided not to recommend a Code change, on the basis (in summary) that the current arrangement was flexible enough to allow a case-by-case analysis, and that quantification may limit that flexibility.

3.2 System Study. As a result of its 6 June 2014 Decision into the UFE at Lake Manapouri, the Rulings Panel recommended that the Code require the System Operator to conduct a robust system study before approving a testing program such as was proposed by Meridian at Manapouri resulting in the UFE. The Rulings Panel has been informed by the Electricity Authority that this recommendation was not included in the Code Amendment Register (see <http://www.ea.govt.nz/code-and-compliance/the-code/amendments/amending-the-code/>) and that this was an oversight. The Rulings Panel understands this recommendation will be included in further consideration of Code amendments.

3.3 Reasonable Expectation of meeting PPOs. Arising out of the same June 2014 decision, the Rulings Panel recommended that consideration be given to increasing the accountability of the System Operator where the System Operator has received and approved a request for an equivalence arrangement or a dispensation under Schedule 8.1. This was on the basis that the System Operator has accepted the accountability for system operation under the amended conditions. This would therefore offer protection to a generator once dispensation has been granted. However, in granting the dispensation, Clause 8.31 only requires the System Operator to have “a reasonable expectation” that it can continue to operate the existing system and meet

its PPO's, despite the fact that accountability for operation of the system under any amended configuration clearly then would rest with the System Operator. In assessing any application for dispensation the System Operator should be required to take all necessary steps to ensure that it could accept the accountability and continue to operate the existing system and meet its PPO's. In a letter to the Rulings Panel Chairman dated 21 April 2016 the Electricity Authority had informed the Rulings Panel that it considers the investigation of a Code amendment in this matter as appropriate, and we understood that this was proceeding. However CAR 121, relating to the Rulings Panel request to increase the requirement on the system operator when granting dispensations under Clause 8.31, has been listed as having been declined. The Rulings Panel is interested in learning the basis for this, and will take the matter up with the Authority.

3.4 Definition of UFE Causer. Also arising from that UFE decision was a recommendation by the Rulings Panel concerning the definition of "causer". We noted: *"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."*

The Rulings Panel received advice from the Authority that this recommendation was to be included in ongoing Code review work then underway, and would be included in the Instantaneous Reserve and Event Charge Cost Allocation (IRECCA) review. That review does not appear to have resulted in any reconsideration of the definition of "causer" in relation to UFE. Amendments to the Code were gazetted in April 2016, including changes to Code clauses 8.60, 8.61 and 8.62. Although there are proposed amendments to Clause 8.61 (see below) there appears to have been no changes yet to the definition of "causer" as that term is used in UFE incidents, with the continued implication that the only options for causer in relation to a UFE are a generator or grid owner, ignoring the possible impact of dynamic system conditions.

3.5 System Operator as UFE Investigator. The Rulings Panel also recommended changes into the way each UFE was to be investigated, noting that the current obligation to determine the causer fell on the System Operator, that the System Operator had obligations under its Primary Performance Obligations for the system operating environment, suggesting that the System

Operator should appoint an independent investigator, and also that the Authority might treat a UFE as a possible breach of the Code and appoint an Investigator, as with other possible Code breaches.

The Panel received advice from the Electricity Authority that the 1 May 2013 UFE at Manapouri was subject to a compliance investigation that was considered by the Compliance Committee at its 21 August 2014 meeting. The Rulings Panel is not clear what the outcome of that process was, nor how it fits with the Clause 8.60 et al process.

As the result of a Consultation paper titled *Proposed Code Amendments Relating to the System Operator and Alignment with the Statutory Objective* with submissions closing on 10 February 2016 the Code was amended with the reallocation of responsibilities and functions relating to the process for determining the causer of under-frequency events. Essentially clause 8.60 now requires the System Operator to *investigate* the causer and clause 8.61 requires the Electricity Authority to *determine* the causer.

'The Authority proposes the following amendments to clauses 8.60 to 8.63 in relation to determining the causer of an under-frequency event:

(a) add new clause 8.60(5) to create an investigative role for the system operator to support the Authority to determine the causer of an under-frequency event. This new clause 8.60(5) would require the system operator to provide within 40 business days of receiving the information sought from participants under clause 8.60(2), a report to the Authority that includes:

(i) whether, in the system operator's view, the under-frequency event was caused by a generator or grid owner, and if so, the identity of the causer

(ii) the reasons for the system operator's view

(iii) all of the information the system operator considered in reaching its view

(b) amend clauses 8.61 to 8.63 to replace all references in these clauses to "system operator" with references to "Authority". This would make the Authority (as opposed to the system operator) responsible for determining the causer of an under-frequency event and the other associated obligations under these clauses.'

The Rulings Panel has concerns that the clear wording of clause 8.60 of the Code, once notification of a UFE has taken place, still allocates the role for the System Operator as the first line investigator. 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. Once a UFE has been notified as a potential breach then 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. Therefore, contrary to the amended clause 8.60, the System Operator would not be the primary investigative resource. 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. 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. 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.

