

BEFORE **The Rulings Panel**
No: C-2025-003

BETWEEN **The Electricity Authority**
Complainant

AND **South Pacific Energy Limited**
Respondent

UNDER The Electricity Industry Act 2010 (the Act), The Electricity Industry (Enforcement) Regulations 2010 (the Regulations), The Rulings Panel Procedures 2017 and The Electricity Industry Participation Code 2010.

IN THE MATTER OF A complaint made of breaches of clause 14.32(1), clause 14.31(1)(a), and clause 14A.6(2) of The Electricity Industry Participation Code 2010.

Rulings Panel Decision C-2025-003
Recalled and Reissued to Correct a Date

Decision Date: 16 February 2026

Counsel: R S May and S B McCusker, Luke Cunningham Clere, for the Authority

J Zhan, Zhan Lawyers, for the South Pacific
Lion Yang, Counsel for South Pacific

Finding: South Pacific Energy Limited breached its payment obligations under clauses 14.31(1)(a), 14.32(1) and 14A.6(2) of the Code.

Orders: South Pacific Energy is ordered to pay a pecuniary penalty of \$88,000 and costs of \$4,775

Rulings Panel Members:

Mel Orange	Chair
Matthew Dunning KC	Deputy Chair
Steven Jay	Member

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Introduction

- [1] The Rulings Panel (the Panel) is an independent body that assists in enforcing the Electricity Industry Participation Code by dealing with complaints about breaches of the Code. It is established under the Electricity Industry Act 2010.
- [2] The complaint was filed by the Electricity Authority against South Pacific Energy Limited (South Pacific), an industry participant¹ who is both a retailer and an electricity buyer who buys electricity from the Clearing Manager.
- [3] Where a complaint is upheld, the Panel may order a range of actions, including the making of compliance orders, the imposition of pecuniary penalties or compensation, and the issuance of warnings or reprimands. A pecuniary penalty can only be ordered if one is sought by the Electricity Authority (the Authority).²

Procedure

- [4] South Pacific did not, initially, respond to the Complaint. The Panel gave notice that it would proceed by way of formal proof and deal with the complaint on the papers. A Minute was issued directing further service on South Pacific prior to the Panel determining the matter. As a result of the further service, South Pacific engaged, and counsel filed a Memorandum together with a supporting affidavit from a director of South Pacific.

¹ Pursuant to section 7(1)(a) of the Electricity Industry Act.

² Section 56(1) of the Electricity Industry Act.

- [5] South Pacific apologised for its failure to engage, accepted liability for the alleged breaches, accepted the penalty and costs orders proposed by the Authority and submitted that the matter could be determined on the papers.
- [6] The Panel proceeded to decide the matter on the papers.

Notice of Formal Complaint

- [7] The Notice of Formal Complaint alleged a finding that South Pacific breached its payment obligations under clauses 14.31(1)(a), 14.32(1) and 14A.6(2) of the Code.
- [8] The allegations related to repeated failures by South Pacific, as an industry participant, to pay the Clearing Manager on a monthly basis for electricity purchased and provide the Clearing Manager with prudential security at the minimum required level.

Clearing Manager's Role

- [9] The Clearing Manager³ ensures industry participants can pay their invoices for the electricity they have consumed and the financial transmission rights they have purchased by continuously calculating and collecting prudential security requirements. Its role is important because electricity is consumed before it is invoiced, and cannot be reposessed.
- [10] All industry participants must provide sufficient prudential security to the Clearing Manager to ensure they can meet their financial obligations under the Code if they default on their payments.
- [11] Under the Code, electricity purchasers must make monthly payments to the Clearing Manager for electricity purchased (settlement payments). Clause 14.31(1)(a) requires that settlement payments be paid by 1 pm on the 20th day of the month following the billing period for that payment. Clause 14.32(1) requires that settlement payments be made in cleared funds to the operating account.
- [12] In accordance with cl 14A.6(2), by 4 pm each business day, participants must ensure they have provided sufficient security to cover the lowest amount set by the Clearing Manager for that business day. One acceptable form of prudential security is a cash deposit into the Clearing Manager's cash deposit account.

Factual Background

- [13] Counsel for the Authority, in its submissions on liability and penalty, set out a summary of the facts the Authority relied on. They were supported by previously

³ The clearing manager role is provided for in the Act and by the Code. The Clearing Manager invoices industry participants by combining reconciled quantity information (provided by the reconciliation manager) with half-hourly pricing information (from the Clearing Manager) to determine the amounts owed to and by each industry participant.

filed investigation reports and appendices. Counsel for South Pacific did not dispute the factual allegations. The summary set out the following (footnotes removed):

- 15.1 South Pacific, as an industry participant (both a retailer and a purchaser of electricity), is required to make settlement payments and provide prudential security to the Clearing Manager (as set out in paragraphs [9] to [12] herein).
- 15.2 Prior to the breaches alleged in the Notice, South Pacific had breached its payment obligations to the Clearing Manager on six occasions since January 2020, resulting in one settlement agreement, one warning letter covering four breaches, and one strong warning letter. A term of the settlement agreed on 15 November 2023 was that South Pacific would resolve a banking delay issue contributing to the breaches, and would consistently meet all future repayment deadlines.
- 15.3 South Pacific breached cl 14.32(1) of the Code on 22 July 2024 because payment of the outstanding settlement amount was incorrectly made into the Clearing Manager's prudential security account and therefore was received into the operating account after the deadline (at 1:39pm). South Pacific admitted this breach on 4 August 2024 and on 13 February 2025.
- 15.4 South Pacific breached cl 14.31(1)(a) of the Code on three occasions because it did not meet the deadline for settlement payments (1pm):
 - (a) On 22 July 2024 payment was received at 1:39pm (see paragraph 15.3 above). On 4 August 2024 and 13 February 2025, South Pacific admitted this breach.
 - (b) On 20 September 2024 the outstanding settlement amount was transferred by the Clearing Manager from South Pacific's prudential security and was received in the operating account at 1:08pm. Later that afternoon, funds transferred by South Pacific at 12:51pm that day arrived into the operating account and were remitted back as prudential security. South Pacific admitted this breach on 7 October 2024 and on 13 February 2025.
 - (c) On 20 December 2024 the outstanding settlement amount was transferred by the Clearing Manager from South Pacific's prudential security and was received in the operating account at 1:05pm. South Pacific admitted this breach on 20 May 2025.
- 15.5 South Pacific breached cl 14A.6(2) of the Code on eight occasions because it did not meet the deadline for payment of prudential security (4pm). On 18 July 2024 payment was received at 5:27pm; on 13 August 2024 (the day after the deadline) at 8:08am; on 14 August 2024 at 4:21pm; on the morning of 28 February 2025 (the day after the deadline); on the morning of 4 March 2025 (the day after the deadline); on 26 March 2025 at 4:14pm; on 27 March 2025 at 4:12pm; on the morning of 5 April 2025 (the day after the deadline). South Pacific has admitted seven out of eight of these breaches (one was not formally responded to). The August 2025 Investigation Report states:

Three of the breaches can be attributable to South Pacific Energy not beginning the payment process early enough to ensure the payments would be received into the Clearing Manager's prudential account by the 4.00pm deadline. On one occasion a

clerical error by South Pacific Energy resulted in an underpayment of \$3.00 which was resolved at the beginning of the next business day.

[14] Counsel for the Authority submitted:

16. South Pacific's breaches impacted the Clearing Manager by putting it at risk of failing to comply with its own obligations under the Code, and Consumers were not directly impacted by the alleged breaches. However, there are system costs (including Authority staff time for any alleged Code breaches) in dealing with late payments and defaults, which ultimately may be passed onto consumers. In addition, repeated or widespread non-compliance of this type will clearly impact the Clearing Manager's operations, resulting in inefficiencies that again may increase costs to consumers through increases to funding required by the Clearing Manager to carry out its role.
17. The impact on the Clearing Manager was such that it was not prepared to enter into a further settlement in relation to the alleged breaches in the Notice because of the ongoing high number of breaches and the failure of South Pacific to adhere to an earlier settlement agreement.
18. Since January 2020, 25% (16 out of 63) of all late payment alleged breaches reported by the Clearing Manager relate to South Pacific. The remaining 75% are split across 28 other industry participants.
19. The Authority respectfully seeks a finding that South Pacific breached cls 14.31(1)(a), 14.32(1) and 14A.6(2) of the Code for the reasons above.

[15] Counsel for South Pacific noted that South Pacific did not contest the complaint. The Panel proceeded to consider and decide the matter on that basis.

Breaches

[16] The Panel finds that South Pacific breached its payment obligations under clauses 14.31(1)(a), 14.32(1) and 14A.6(2) of the Code as set out in paragraph [13] herein.

Remedial Orders – Pecuniary Penalty

17. Where a complaint is upheld, the Rulings Panel may, under section 54 of the Electricity Industry Act, order a range of actions, including ordering a pecuniary penalty. A pecuniary penalty under section 54(d) can only be ordered if one is sought by the Authority.⁴ A pecuniary penalty was sought.
18. Section 54(d) was amended on 1 September 2022. The amendment increased the maximum penalty from \$200,000 to one not exceeding \$2 million and a further amount not exceeding \$10,000 for every day or part of a day during which a breach continues. The breaches occurred after the maximum penalty was increased, and the higher amount applies.

⁴ Section 56(1) of the Electricity Industry Act.

- [19] The Act prescribes various factors that the Panel must consider when making a pecuniary penalty order.⁵ The list includes aggravating and mitigating factors that the Panel should consider. Overall, however, the Panel must consider the seriousness of the breach.
- [20] The Panel must also adhere to the principle set out by the High Court that it is in the interests of the parties and the community to allow negotiated settlements. Various High Court authorities have noted that when seeking approval for a negotiated penalty, it is appropriate for the parties to advise the process which they have followed in reaching the recommendation, and when presented with an agreed recommended penalty, the Panel's role is not to embark on its own inquiry of what would be appropriate but to consider whether the proposed penalty is within the proper range.⁶
- [21] In the current matter, whilst the parties did not negotiate a penalty, Counsel for South Pacific stated that it accepted the pecuniary penalty imposed by the Authority and did not seek any reduction. Given the acceptance, the Panel has decided the matter on the basis of a negotiated settlement.
- [22] It is also to be noted that, in a decision of 27 March 2020, the Panel set out a framework for arriving at the appropriate pecuniary penalty based on the seriousness of the breach and by reference to four bands (low, medium, high and very high) prior to it considering any mitigating and aggravating factors and stepping back and making an overall assessment. That framework, in the context of higher pecuniary penalties and Code breaches that can vary in their seriousness, may no longer be applicable to all matters before the Panel, and in this matter, the Panel was of the view that the starting points set out above were misaligned to the seriousness of the conduct and that a change in approach was warranted. In this respect, it is noted that the Authority's submissions recognised this:
 - 28. The Authority seeks to follow this approach by applying an increase to the starting point that is proportionate to the increase in the penalty. However, the Authority acknowledges that the Rulings Panel may be reluctant to issue a guideline decision setting penalty bands across the range in this unusual case, which concerns multiple lower-level breaches, no direct impact on the market ...
 - 29. Nevertheless, the new maximum is plainly relevant, and it is clear that penalties must increase in line with the legislative instruction. The starting point analysis

⁵ Section 56(2) of the Electricity Industry Act.

⁶ *Commerce Commission v New Zealand Milk Corporation* [1994] 2 NZLR 730 (HC) at p 553.

Commerce Commission v Koppers Arch Wood Protection (NZ) Limited & Ors HC Auckland, CIV 2005-404-2080, 6 April 2006 at [37].

Commerce Commission v Alstom Holdings SA [2009] NZCCLR 22 (HC) at [18] (Commerce Act 1986); *Chief Executive of Land Information New Zealand v Clevedon-Kawakawa Road Ltd* [2021] NZHC 1831 at (28) (Overseas Investment Act 2005); *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399 at [32] (Financial Markets Conduct Act 2013); *Takeovers Panel v New Image Group Ltd* (2022) NZHC 1504 at [44] (Takeovers Act 1993); *Reserve Bank of New Zealand v TSB Bank Ltd* [2021] NZHC 2241, [2021] NZCCLR 27 at [2] (Anti-Money Laundering and Countering Financing of Terrorism Act 2009).

below treats this case as essentially one arising on its own facts, given the absence of a prior comparable case.

- [23] Given the above, the Panel has, in paragraph [37], recommended a legislative change to the pecuniary penalty regime.

Remedial Order Submissions

- [24] The Authority submitted that the starting point should be set with the multiple breaches in mind (six previous breaches and 10 breaches associated with the complaint), as well as the fact that a previous settlement agreement had not prevented further contraventions. At the same time, it was acknowledged that the breaches were resolved promptly. The Authority further submitted that there was a demonstrated pattern of repeated contraventions, and that it could be inferred that conduct, if not deliberate conduct, was at least negligent. The increased burden on the Clearing Manager was noted.
- [25] The Authority recommended a starting point of \$80,000 and submitted that such a penalty should have a deterrent effect on the South Pacific and the wider industry. An uplift of \$8,000 was submitted as appropriate, given the previous breaches and the failure to adhere to the undertakings made and a previous settlement agreement.
- [26] No other orders were sought by the Authority.
- [27] As previously noted, South Pacific accepted the authority's submissions on penalty. It also stated that it understood the seriousness of its obligations under the Code and that it was taking genuine steps to ensure future compliance. The submissions outlined the remedial steps and management changes implemented in response to the complaint. The South Pacific did not submit that those factors should be considered as mitigation.

Ruling Panel's Remedial Order Decision

Pecuniary Penalty Order

- [28] The Rulings Panel notes the limits on its considerations as outlined in paragraph [20] above to the consideration of whether the proposed penalty is within the proper range. The Panel, having reviewed the facts and noting that South Pacific accepted the Authority's proposed penalty as appropriate, has decided that the starting point of \$80,000 is within the proper range for the found breaches, and it accepts that an uplift of \$8,000 is appropriate and that the overall pecuniary penalty is consistent with previous Panel decisions.⁷ Accordingly, pursuant to section 154(1)(d) of the Act, the Panel will order that South Pacific pay a pecuniary penalty of \$88,000.

⁷ Section 54(2) of the Electricity Industry Act states that the Rulings Panel must take into account its own previous decisions in respect of any similar situations previously dealt with by the Authority or any predecessor of the Authority.

[29] As no other remedial orders were sought, none will be issued.

Costs

[30] The Authority sought costs of \$4,775, calculated on the District Court 2B scale. South Pacific accepted that the Authority's submission on costs was appropriate. That being the case, pursuant to section 54(1)(g) of the Electricity Industry Act, South Pacific will be ordered to pay the Authority the sum of \$4,775 for its reasonable costs associated with the complaint.

[31] The Authority noted that the Panel's previous comments that there may be cases where an order for contribution towards the Panel's costs is appropriate, and submitted that this may be a case where such costs should be considered. The Panel formed the view that an order for its costs would have been appropriate if the matter had been determined by way of formal proof. However, as South Pacific did, albeit at a late stage, engage and because it took a responsible and pragmatic approach to the complaint and its resolution, it decided that no Panel costs would be ordered.

Orders

[32] The Rulings Panel finds that South Pacific Energy Limited breached clauses 14.31(1)(a), 14.32(1) and 14A.6(2) of the Code

[33] The Rulings Panel orders that South Pacific Energy Limited is to:

- (a) pay the Crown a pecuniary penalty of \$88,000; and
- (b) is to pay the Authority the sum of \$4,775 in costs.

[34] This decision is, in accordance with regulation 44 of the Electricity (Industry) Regulations, to be published by the Electricity Authority within ten (10) working days of receipt.

Recommendations for change

[35] Section 54(1)(i) of the Electricity Industry Act states that, on determining a complaint, the Panel may recommend to the Minister that a change should be made to the regulations or the Act.

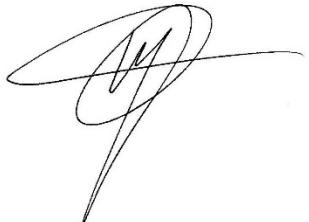
[36] This is the first matter before the Panel where the respondent failed to engage after the complaint was filed. The Panel noted that the legislative provisions do not set out how notices are to be served under the Act or the Regulations. As a result, when considering whether the matter should proceed by way of a formal proof, it was not clear whether adequate notice of the complaint had been given. Given those circumstances, the Panel recommends that the Act and/or Regulations be amended to include provisions setting out how notices are to be served on industry participants.

[37] The Panel also considers that, with the increase in the maximum amount of pecuniary penalty orders to \$2,000,000, and the increased range of matters that can come before the Panel, such as breaches of the Consumer Care Obligations, consideration should be given to separating breaches into bands that reflect their seriousness and providing for lower levels of pecuniary penalties for less serious matters.

Right to Appeal

[38] The right to appeal Panel decisions is set out in sections 64 and 65 of the Act.

Issued this 16th day of February 2026

A handwritten signature in black ink, appearing to read "M.J. Orange".

M.J. Orange
Rulings Panel Chair