

BEFORE The Electricity Rulings Panel
No: D-2026-001

BETWEEN Haast Energy Trading Limited (Haast)
Disputant

AND Energy Clearing House Limited, a subsidiary of NZX
Limited, as the Clearing Manager (the Clearing
Manager)
First Respondent

AND The Electricity Authority (the Authority)
Interested Party

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

IN THE MATTER OF A dispute under clause 14A.23(1) of the Code

RULINGS PANEL DECISION ON AN INTERIM RELIEF APPLICATION

Hearing Date: 12 March 2026

Decision Date: 16 March 2026

Decision: **The Rulings Panel has jurisdiction to grant interim relief, but will not grant the relief sought.**

Counsel: R Butler, Barrister, for Haast
S Jeffs, Barrister, for Haast
T Refoy Butler, Holland Becket, Instructing Solicitor

K M Massey, Barrister and Solicitor, for the Clearing Manager
M S Bowie, Barrister and Solicitor, for the Clearing Manager

C Marks, Barrister and Solicitor, for the Electricity Authority
J Day, Barrister and Solicitor, for the Electricity Authority

Rulings Panel Members:

M Orange Chair
L Wilson Member
P Webber Member

The Dispute

- [1] On 25 February 2026, Haast filed a Notice of Dispute with the Clearing Manager under clause 14A.23(1) of the Code. Haast disputed the Clearing Manager's prudential requirement decisions of 26 January 2026 and 24 February 2026.
- [2] The dispute related to the Clearing Manager's application of the 11 February 2025 version of its Prudential Security Assessment Methodology for Financial Transmission Rights (Assessment Methodology) and, in particular, the application of Price Predictive Model (PPM) updates to Daily Settlement Prices (DSPs) in the Assessment Methodology. Haast alleges the updates resulted in increased prudential security requirements that were inconsistent with the underlying principles of the Assessment Methodology, which must respond dynamically to changing market inputs, and avoid introducing 'methodology-driven' volatility into the assessment process.
- [3] The crux of Haast's argument is that the Clearing Manager applied the periodic PPM updates to incorporate stale information in the model estimates of the DSPs and, in doing so, introduced artificial volatility into DSPs and imposed excessive prudential security requirements on Haast. Haast says the prudential amounts set on 26 January 2026 and 24 February 2026 were not genuine estimates of Haast's financial transmission rights (FTR) hedge values.

Interim Relief Sought

- [4] On 4 March 2026, Haast filed an application for interim relief, which was opposed by the Clearing Manager. The relief sought was a direction, on an interim basis, that prudential security requirements for all FTR participants be calculated as if the 26 January 2026 and 24 February 2026 PPM step changes had not been applied, pending the Ruling Panel's (the Panel's) final determination of the dispute. Haast filed evidence that estimated the alleged PPM errors may have overstated the market-wide prudential obligations by more than \$10 million and, for Haast, by approximately \$5.3 million in respect of the 26 January 2026 PPM update and \$1.3 million for the 24 February 2026 update.

Prudential Requirements

- [5] The Clearing Manager¹ ensures industry participants can pay their invoices for the electricity they have consumed and the FTRs they have purchased by continuously calculating and collecting prudential security requirements. Its role is necessary because electricity is consumed before it is invoiced, and cannot be repossessed.

¹ 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.

- [6] All FTR 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.
- [7] Prudential requirements are set out in Part 14A of the Code, which provides that a FTR participant must provide acceptable security by maintaining an acceptable credit rating (as defined) or by way of acceptable security. Acceptable security can be provided in various forms, including a cash deposit. The amount of security required is determined by the Clearing Manager applying the Assessment Methodology. The form of acceptable security Haast provided was a cash deposit.

Jurisdiction

- [8] The Panel is an independent body whose functions include considering and resolving certain disputes between industry participants relating to the Code.² Its Members include persons who have the appropriate knowledge, skills, and experience to assist the Panel in performing its functions.³
- [9] The types of disputes that can be resolved by the Panel are those that are provided for in the Enforcement Regulations or the Code.⁴ This dispute is covered by clause 14A.23(1) of the Code. It provides:

14A.23 Disputes regarding prudential requirements

- (1) A **participant** that disputes a decision of the **clearing manager** under this Part may refer the dispute to the **Rulings Panel**.
 - (2) Until such time as the **Rulings Panel** makes a decision on the dispute, all **participants** must comply with the relevant decision of the **clearing manager**.
 - (3) If a dispute is referred to it under subclause (1), the **Rulings Panel** must, after hearing from the **participant** that disputed the **clearing manager's** decision and from the **clearing manager**, make a decision in accordance with this Part.
 - (4) If the **Rulings Panel** overturns or varies a decision by the **clearing manager**, the **clearing manager's** original decision, and the process that led to that decision, is not a breach of this Code by the **clearing manager**, unless the **Rulings Panel** determines that the **clearing manager's** decision was made negligently or in bad faith.
- [10] Haast submits that the Panel has an inherent jurisdiction to grant interim relief by making an interim decision, and that is not constrained by clause 14A.23 of the Code. The Clearing Manager submits that the Panel does not, in this instance, have the jurisdiction to make anything other than a final or substantive decision on the dispute. The parties' respective positions revolved around the interpretation of

² Section 25 of the Electricity Industry Act 2010.

³ Regulation 91 of the Electricity Industry (Enforcement) Regulations 2010.

⁴ Section 50(4) of the Electricity Industry Act 2010 and regulation 76 of the Electricity Industry (Enforcement) Regulations 2010.

sections 25, 53 and 61 of the Electricity Industry Act, the Panels' published Procedures, and the phrase "makes a decision" in clause 14A.23(2) of the Code.

- [11] The Panel is of the view that it does have an inherent jurisdiction to grant interim relief, subject to the requirements for such relief to be granted, more of which will be said in due course. That view is consistent with the Supreme Court decision in *Zaoui v AG*⁵, where the court stated:

Courts which do not possess an inherent substantive jurisdiction (as is the case where their substantive powers are entirely statutory) nevertheless have inherent or implied procedural powers necessary to enable them to give effect to their statutory substantive jurisdiction."

- [12] There are, however, limitations. In *Orlov v National Standards Committee 1*⁶, the High Court noted:

Parliament has provided that the Tribunal is free to set its own procedure. Obviously it must do so in a way that is consistent with the discharge of its statutory functions and does not cut across any express statutory or regulatory provisions. Subject to those constraints, the Tribunal has been given a high degree of procedural flexibility in the exercise of its important statutory functions.

- [13] The High Court made the same observations in *Unison v Solar City*⁷, an appeal from a decision of the Panel in relation to a dispute in which the High Court found that the Panel did not have jurisdiction, as the dispute ruled on was not of a type covered by the Code. Justice Thomas noted:

All the language of the Act makes it clear that the Panel's jurisdiction was from the outset specifically limited by Parliament. The Act did not confer a general jurisdiction on the Panel. It conferred a jurisdiction specifically limited to the areas to be specified in the Regulations and Code.⁸

- [14] The Panel, therefore, needs to be mindful of the limitations of its jurisdiction. Within that context, whilst the dispute before the Panel clearly falls within its jurisdiction, the issue is whether, because its jurisdiction is limited by the Code, the Panel is constrained from making an interim decision by the wording "makes a decision" in clause 14A.23(2) of the Code.

Consideration

- [15] The question came down to the interpretation of the phrase "makes a decision". The respective arguments can be summarised as whether the clause should be interpreted to mean any decision in relation to the dispute or only the substantive decision. Both parties pointed to potential consequences for them and other industry participants if either interpretation were adopted. Both positions have merit.

⁵ [2004] NZSC 31 at [35].

⁶ [2013] NZHC 1955 at [29].

⁷ [2017] NZHC 1343

⁸ *Ibid* at [56]

- [16] Interim relief is generally granted to preserve the status quo pending a decision, although in the present matter, what is sought is positive or mandatory relief from the status quo by way of resetting two PPM updates. A mandatory order usually requires a very strong case and may raise questions of pre-emption of the consideration and determination of the substantive dispute.
- [17] Granting interim relief is discretionary and temporary. In this instance, it would be until the substantive dispute is determined, which is scheduled for consideration from 10 April 2026.
- [18] The Panel considers, having taken a purposive approach⁹ to the interpretation of clause 14A.23, that its general jurisdiction to grant interim relief is not completely negated by the intent of that clause. There could be circumstances in which it will be appropriate for interim relief, and the Panel's view is that the wording "makes a decision" is not limited to the final substantive decision. Rather, the combined wording of clauses 14A.23(2) and (3) allows the Panel to make more than one decision, provided it hears from both parties before doing so. The Panel's view is that this is consistent with the intent or purpose of clause 14A.23(2) of the Code, which is to protect the parties' positions, including their interim positions, pending a final decision. In this respect, it is important to recognise that whilst the Panel's Procedures recognise the need for urgency in dealing with disputes, real harm or injustice may occur to a party pending the resolution of the dispute and that the Code must, using the purposive approach, be interpreted in such a way as to negate such a circumstance occurring.

Should Interim Relief be Granted

- [19] Having determined that the Panel's jurisdiction to grant relief is not negated by clause 14A.23, the question becomes whether it should do so.

Interim relief legal principles

- [20] There are three stages to the consideration of an application:¹⁰
- (1) the applicant must establish that there is a serious question to be tried or, put another way, that the claim is not frivolous or vexatious;
 - (2) the balance of convenience must be considered, which requires consideration of the impact on the parties of the granting of, and the refusal to grant, an order; and
 - (3) an assessment of the overall justice of the position is required as a check.
- [21] In the present matter, when considering the balance of convenience, the potential consequences to third parties are also relevant as the relief sought is for all FTR participants that provide prudential security, and there is, as has been submitted by

⁹ Section 10 of the Legislation Act 2019 and *Commerce Commission v Fonterra Co-Operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767

¹⁰ *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90, (2013) 13 TCLR 531 at [12] and affirmed in *Intellihub v Genesis Energy Ltd* [2020] NZCA 344 at [23].

the Clearing Manager, a potential impact on other industry participants in the event of a FTR participant default where there is inadequate security.

Serious question

[22] The Panel formed the view that Haast's allegation that the Clearing Manager is misapplying the Assessment Methodology, causing harm through higher prudential payments, is a serious question. Haast provided evidence that the Clearing Manager acknowledged that the current approach to PPM updates may have introduced volatility and that the issue should be included in a Clearing Manager review of the Assessment Methodology. It is a question that needs to be determined.

Balance of Convenience

[23] Haast set out various reasons why the balance favoured relief. They included that the Clearing Manager would not be financially exposed, other industry participants would not be affected, and that security would continue to be paid by Haast and held by the Clearing Manager, albeit at a lower amount.

[24] As noted, when weighing the balance of convenience, the Panel should take into account the potential impact on other industry participants, and the fact that they might be detrimentally affected by the granting of the interim relief sought is a factor that the Panel considers should be given considerable weight. The courts have, in various interim injunction cases, stated that this may be appropriate.¹¹

[25] The relief sought by Haast involved resetting the PPM to reflect inputs prior to 26 January 2026 and recalculating the prudential requirements for FTR participants across all contracts affected by the two PPM updates. The Panel understands could have a positive or negative impact on other parties. As such, other industry participants who are unaware of the dispute and have no say in it could be affected (positively or negatively), including the industry participants for whom the prudential security is held. That raises the risk of making a decision at an interim stage that has consequences for others and does not preserve or protect their position. In short, whilst attempting to protect Haast's position, others could be detrimentally impacted. For that reason, the Panel does not consider that the balance of convenience favours Haast. The second stage has not been satisfied.

Overall Justice

[26] The third stage is a check on the position reached following analysis of the issues, the serious question to be tried, and the balance of convenience.

[27] The Panel has issued consent directions, and it will be in a position to make a decision on the substantive issues on or after 10 April 2026. By then, it will have the benefit of evidence from the Clearing Manager, which it does not currently have, and submissions from the parties and possibly the Electricity Authority to clarify the

¹¹ *Dunedin Taxis 1965 Ltd v Dunedin Airport Ltd* (1990) 3 PRNZ 391; *CBA Finance Holdings Ltd v Hawkins* (1984) 1 BCR 609; *NZ Forest Products Ltd v NZ Stock Exchange* (1984) 2 NZCLC 99,051; *Finnigan v NZ Rugby Football Union Inc (No 2)* [1985] 2 NZLR 181; and *Chatham Islands Fisherman's Co-op Co Ltd v Chatham Islands Packing Co Ltd* (1988) 2 TCLR 605

impact of resetting the PPM calculations should it transpire that the Clearing Manager has incorrectly applied the Assessment Methodology. In those circumstances, and noting the risk posed to other industry participants of an interim order being granted, the Panel has decided that overall, justice will not be served by granting interim relief.

Decision

[28] The interim relief sought is not granted.

Costs

[29] The Clearing Manager sought costs. Its and the Panel's costs are reserved.

Publication

[30] Regulation 44 of the Enforcement Regulations requires that Panel decisions be published. The parties are invited to make submissions on whether the regulation covers this decision.

Issued this 16th day of March 2026

A handwritten signature in black ink, appearing to be 'M.J. Orange', written in a cursive style.

M.J. Orange
Rulings Panel Chair