

2019/2020

Rulings Panel Annual Report

For the period 1 July 2019 to 30 June 2020.

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

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Introduction

The Rulings Panel is established under the Electricity Industry Act 2010. It has a role in the enforcement of the Electricity Industry Participation Code 2010 (the Code) by dealing with complaints about breaches of the Code, appeals against certain decisions made under the Code and resolving certain disputes relating to the Code.

Members

Peter Dengate Thrush (Chair to 2 March 2020)

Peter Dengate Thrush is a barrister sole, specialising in intellectual and industrial property, information technology, the Internet and competition issues. He was a member of the Rulings Panel from March 2008, was Deputy Chair between July 2008 and August 2011 and the Chair from August 2011 to March 2020.

The Rulings Panel thanks Peter for his long and dedicated service to the Panel.

Mel Orange (Chair from 2 March 2020)

Mel Orange is a barrister and business consultant from Christchurch. He has worked in the energy and construction industries for 25 years, including being a past Board Member of MARIA. Mel is the Presiding Member (Chair) of the Electrical Workers Registration Board and the Deputy Chair of the Building Practitioners Board.

Mel is appointed through to 1 March 2022.

Geraldine Baumann (Deputy Chair)

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).

Geraldine is appointed through to 28 August 2021.

Lee Wilson

Lee Wilson is an electricity market specialist with over 35 years of experience with electricity companies and providing consulting services to the energy sector. He was a founding director of Concept Consulting Group and during his 18 years consulting, led a wide range of assignments for government agencies and energy companies, with a focus on energy policy and market design. His senior executive roles included Establishment CEO for Genesis Energy, CEO for the Electricity Reform Transition Unit, Market Development Director at Contact Energy, and Corporate Development Manager at the Electricity Corporation of New Zealand. He was a member of the Electricity Price Review, which provided its recommendations to the Minister in May 2019.

Lee is appointed through to 1 March 2022.

Denis O'Rourke

Denis O'Rourke practised in Christchurch and in Invercargill as a barrister and solicitor for over 30 years and has served as a Disputes Tribunal Referee and as a member of the Legal Aid Review Panel. He was a Christchurch City Councillor for 15 years and a member of parliament for six years. He has served on the boards of many companies and authorities and is currently Chairman of Central Plains Water Trust and a member of the board of Maritime New Zealand.

Denis is appointed through to 1 March 2022.

Nicola Wills

Nicola Wills is a Wellington lawyer with extensive experience in commercial dispute resolution, as a Tribunal adjudicator and in the electricity sector (including an in-house role for Transpower, and advising the Market Surveillance Committee (a predecessor to the Rulings Panel). She has practised at the bar, in private firms and as a lawyer in the public service.

Nicola is appointed through to 28 August 2021.

John O'Sullivan

Members of the Rulings Panel note the passing of their longest-standing member, John O'Sullivan. John was a member of the Panel when he passed and was actively involved in matters before the Panel. John contributed enormously to the work of the Rulings Panel. The Rulings Panel took great confidence and comfort in his wealth of industry experience, and we will miss his contribution to the work of the Rulings Panel. He was dedicated, diligent and effective, and in many ways the institutional memory of the Rulings Panel, because of his long service.

Summary of decisions made

Decision of 27 March 2020

The Electricity Authority and Transpower New Zealand Limited (as Grid Owner) – a decision on a complaint made by the Electricity Authority of breaches of the Code by Transpower New Zealand in its capacity as Grid Owner in relation to an event on 25 January 2018.

Findings made:

- 1) Transpower breached clause 4 (4)(a)(ii) of technical code A of schedule 8.3 of the Code by its conduct leading up to the outage on 25 January 2018; and
- 2) Transpower shall pay to the Crown sum of \$75,000 by way pecuniary penalty.

Members: Peter Dengate Thrush as Chair to 2 March 2020; Geraldine Baumann, Deputy Chair; Nicola Wills, Panel Member; Denis O'Rourke, Panel Member.

Decision of 11 May 2020:

Haast Energy Trading Limited and Genesis Energy Limited – Interlocutory Decision ordering disclosure of information to the Rulings Panel.

Members: Mel Orange, Chair; Geraldine Baumann, Deputy Chair; Denis O'Rourke, Panel Member.

Decision of 3 June 2020:

The Electricity Authority and Transpower New Zealand Limited - A complaint made by the Electricity Authority of breaches of the Code by Transpower New Zealand Limited in its capacity as Systems Operator in relation to events of 2 March 2017. Findings made:

1. The System Operator breached:
 - Clause 7.1A of the Code;
 - Clause 7.2A(2) of the Code;
 - Clause 7.2B of the Code;
 - Clause 8.5(1) of the Code;
 - Clause 8.5(2)(b) of the Code;
 - Clause 8.5(2)(d) of the Code;
 - Clause 3 of Technical Code B of Schedule 8.3;
 - Clause 4 of Technical Code B of Schedule 8.3 of the Code;
 - Clause 3 of Technical Code C of Schedule 8.3 of the Code; and
 - Clause 84.2 of the System Operator Policy Statement.
2. The Grid Owner breached clause 12.113 of the Code.
3. The System Operator is to pay the Crown the sum of \$150,000 as a pecuniary penalty for the admitted breaches.
4. The Grid Owner is to pay the Crown the sum of \$150,000 as a pecuniary penalty for the admitted breaches.

Members: Mel Orange, Chair; Geraldine Baumann, Deputy Chair; Lee Wilson, Panel Member.

Decision of 29 June 2020

Haast Energy Trading Limited and Genesis Energy Limited – Decision refusing an application for an order that Genesis disclose information.

Members: Mel Orange, Chair; Geraldine Baumann, Deputy Chair; Denis O'Rourke, Panel Member.

Summary of matters before the Rulings Panel

1. Transpower New Zealand Limited and The Electricity Authority – a disputed determination as to the cause of an Under Frequency Event on 14 December 2018, referred to the Rulings Panel under Clause 8.62 of the Code by Transpower New Zealand Limited.

Members: Mel Orange, Chair; Geraldine Baumann, Deputy Chair; Lee Wilson, Panel Member.

2. Haast Energy Trading Limited and Genesis Energy Limited – a complaint made about breaches of Clause 13.2A of the Code.

Members: Mel Orange, Chair; Geraldine Baumann, Deputy Chair; Denis O'Rourke, Panel Member.

3. Palamountain and Meridian Energy Limited and The Electricity Authority – an allegation of breaches of Part 10 of the Code.

Members: Peter Dengate Thrush, Chair, Sue Roberts, Panel Member, Nicola Wills, Panel Member.¹

Summary of performance against budget

For the period 1 July 2019 to 30 June 2020²:

Actual 2018/19 \$000	Description	Actual 2019/20 \$000	Budget 2019/20 \$000
105	Rulings Panel Fees	88	100
3	Domestic Travel	0	1
5	Training	0	1
113	Total	88	102

Summary of performance against performance objectives

A summary is contained at Appendix 1

Performance objectives for 2020 / 2021 financial year

The Ruling Panel's performance objectives for the financial year from 1 July 2020 to 30 June 2020 is contained in Appendix 2.

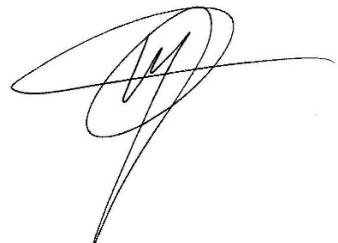
¹ As at 30 June 2020 a new Panel had not been established to deal with this matter.

² Note that further financial reporting is provided in the Electricity Authority's Annual Report.

Comments on regulations or Code changes

No recommendations for changes to the Electricity Industry (Enforcement) Regulations 2010 or the Code have been made.

Dated this 10th day of August 2020

A handwritten signature in black ink, appearing to read 'P J'.

Rulings Panel Chair

Appendix 1 - Summary of performance against performance objectives

Objective	Performance Measure	Target	Performance
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.	Met
		1.1.2 Rulings Panel procedures are reviewed triennially, unless agreed otherwise by the Chairpersons.	Review deferred by agreement. Review will be carried out in the 2020/2021 financial year.
		1.1.3 Users are consulted on any proposed amendments to the Rulings Panel procedures.	Review deferred by agreement. Review will be carried out in the 2020/2021 financial year.
	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.	Met
	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.	Met
	1.4 The number of successful appeals against any decision or order of the Rulings Panel.	1.4.1 No successful appeals.	Met. Decisions issued at the end of the financial year are still within the appeal period.

Objective	Performance Measure	Target	Performance
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.	Met
	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.	Review deferred by agreement. Review will be carried out in the 2020/2021 financial year.
	2.3 Costs to the user do not impose any undue barrier to access to the Rulings Panel.	2.3.1 No filing costs.	Met
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 triennially for innovative and flexible approaches, unless agreed otherwise by the Chairpersons.	Review deferred by agreement. Review will be carried out in the 2020/2021 financial year.
	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.	Not met – the Palamountain matter, filed in May 2019, was not dealt with as per the performance objectives. The other matters were dealt with in accordance with the performance objectives.

Objective	Performance Measure	Target	Performance
	3.3 Rules are improved, based on experience.	3.3.1 Rulings Panel to regularly review the outcome of all decisions, orders and directions.	No Rule changes were proposed
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.	Review deferred by agreement. Review will be carried out in the 2020/2021 financial year.
5. Accountable	5.1 Rulings Panel meets all its regulatory obligations under the Electricity Industry (Enforcement) Regulations 2010.	5.1.1 All regulatory obligations met.	Quarterly reporting for 1 st and 2 nd quarters not filed. Meeting with Electricity Authority Chair under regulation 113 deferred due to Covid 19. All other obligations met.

Appendix 2 - Performance objectives for 2020/2021 financial year

No	Objective	Performance Measure	Target
1	Independence and Impartiality	<ul style="list-style-type: none"> The Rulings Panel is independent and without the potential for bias, perceived or actual. Hearings are conducted in public and decisions published, unless there is good reason not to. 	<ul style="list-style-type: none"> All conflicts of interest are disclosed. Interests register is maintained by Rulings Panel members. Open access to hearings is provided. Decisions are published in a timely manner.
2	Fair treatment	<ul style="list-style-type: none"> Each party is given the opportunity to put their case and be heard. Matters are determined impartially and according to the law. Rules of evidence are observed as modified by regulation 39. 	<ul style="list-style-type: none"> Requirements of the Electricity Act 2010 and the Electricity Industry (Enforcement) Regulations 2010 are observed. Rulings Panel Procedures are published, observed and regularly reviewed. Rules of natural justice observed.
3	Accessibility	<ul style="list-style-type: none"> Information about the existence of the Rulings Panel, its jurisdiction and what is involved for users is readily accessible. Access to the Rulings Panel is available without undue administrative burden. Costs to the user do not impose an undue barrier to access. 	<ul style="list-style-type: none"> Establish and maintain an independent website. Publish procedures, decisions and related materials. No costs imposed to file matters with the Rulings Panel. Rulings Panel costs are imposed on an equitable basis and in accordance with regulation 90. Innovative and cost-effective means to hear matters are developed and implemented.

No	Objective	Performance Measure	Target
4	Professionalism and Integrity	<ul style="list-style-type: none"> • Respect for the law. • Rulings Panel Members are competent in the performance of their functions. • Decide cases fairly and free from influence. 	<ul style="list-style-type: none"> • Rulings Panel Members have the knowledge and technical skills together with the communication and decision-making skills to make robust decisions. • Rulings Panel engages experts as and when required to assist the Panel in its deliberations and maintains a register of appropriate persons. • Rulings Panel membership of the Coalition of Australasian Tribunals (COAT). • Members undertake training and maintain awareness of industry matters. • Members meet no less than three times a year to review cases, decisions and procedures.
5	Accountability	<ul style="list-style-type: none"> • Rulings Panel meets its statutory objectives: <ul style="list-style-type: none"> • reasonable endeavours are used to decide matters within 40 days of a hearing or receiving final submissions; • decisions published with 10 working days; and • reporting completed in accordance with regulations 113 to 114. 	<ul style="list-style-type: none"> • Performance results are regularly published. • Improvement action is taken when objectives are not met. • Quarterly and annual reporting completed in a timely manner. • Rulings Panel maintains an industry profile through attendance at industry events and undertaking speaking opportunities.
6	Efficiency	<ul style="list-style-type: none"> • Decisions are made in a timely manner. 	<ul style="list-style-type: none"> • 80% of cases are decided within 40 days of a hearing or receiving final submissions.

No	Objective	Performance Measure	Target
		<ul style="list-style-type: none"> • Ruling Panel costs proportionate to the matter being considered are incurred. • Innovative and flexible approaches are adopted. 	<ul style="list-style-type: none"> • Use of draft decisions, where appropriate. • Develop procedures that allow parties to appear using audio visual facilities. • Rulings Panel engages experts as and when required to assist the Panel in its deliberations and maintains a register of appropriate persons. • Use of external administrative bureau services if required.