



# Rulings Panel Annual Report

2020/2021

# Annual Report - 1 July 2020 to 30 June 2021.

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.

In the past year, the Panel has disposed of historical matters but has not received any new complaints, appeals or disputes. There are no active matters before the Panel.

Highlights for the 2020-2021 year have been:

- The creation of a Rulings Panel website separate from the Electricity Authority; and
- A review of the Rulings Panel's Procedures.

## Members

### **Mel Orange** (Chair)

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 of 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 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.

## Summary of decisions made

**City Financial Investment Company (New Zealand) Limited – Decision issued 2 July 2020**

Decision to close a complaint filed by City Financial Investment Company (New Zealand) Limited on 15 March 2017 under Regulation 31 of the Electricity Industry (Enforcement) Regulations 2010 on the basis that the matter had been determined by the High Court.

**Solar City New Zealand Limited – Decision issued 2 July 2020**

Decision to close a complaint filed by Solar City New Zealand Limited alleging that a tariff adopted by Unison breached clauses 2 and 2(a) of Schedule 6.4 of the Electricity Industry

Participation Code 2010 on the basis of a High Court ruling that the Panel did not have jurisdiction to consider the matter.

**14 December 2018 Under Frequency Event, Transpower and the Electricity Authority**

Draft Decision issued 13 July 2020

Draft decision issued with regard to a disputed determination as to the causer of an Under Frequency Event (UFE) on 14 December 2018, referred to the Electricity Rulings Panel under Clause 8.62 of the Electricity Industry Participation Code by Transpower New Zealand Limited.

Final Decision issued 28 September 2020

The Electricity Authority’s determination was confirmed. Transpower as Grid Owner was found to have been the causer of the 14 December 2018 Under Frequency Event.

**Haast Energy Trading Limited v Genesis Energy Limited – Decision issued 28 January 2021**

Decision that:

- (a) Pohukura Forecasts were not “disclosure information” under clause 13.2A(1) of the Code, and Genesis was not obliged to them under clause 13.2A(1) of the Code; and
- (b) even if the Pohukura Forecasts were “disclosure information” clause 13.2A(2)(c) of the Code applied, and Genesis was not obliged to disclose under clause 13.2A(1) of the Code.

Summary of matters before the Rulings Panel

There are no matters before the Rulings Panel.

Summary of performance against budget

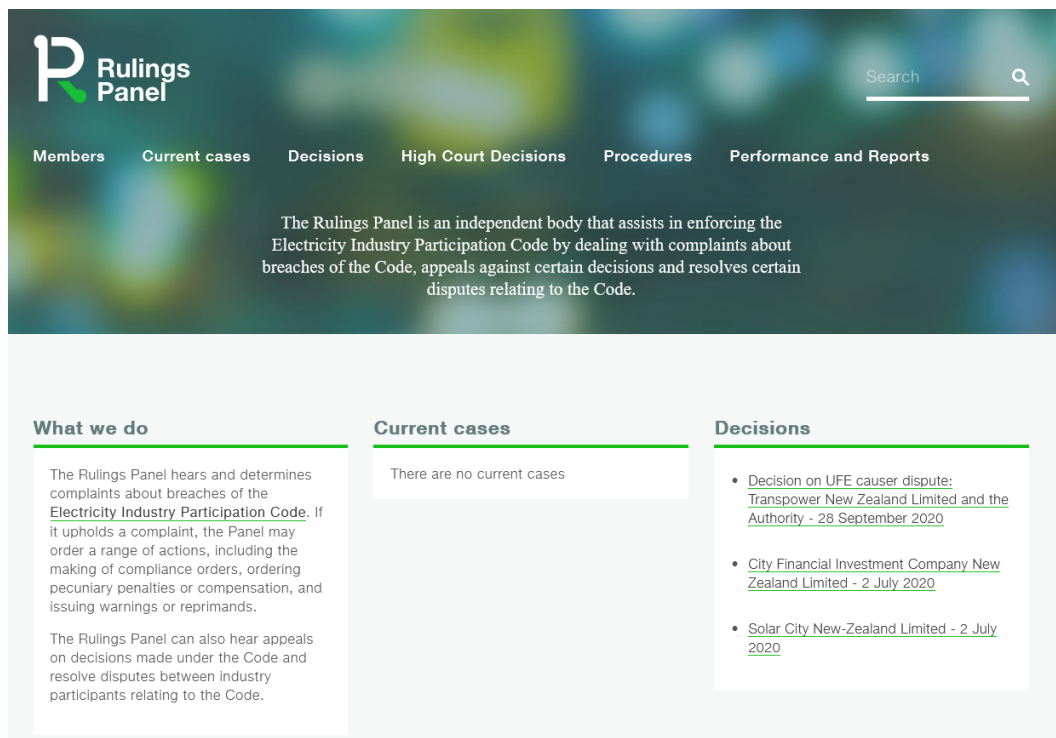
Actual 2019/20 \$000	Description	Actual 2020/21 \$000	Budget 2020/22 \$000
88	Rulings Panel Fees	81	100
0	Domestic Travel	2	1
0	Training	10	0
0	External Events & Publications	2	0
0	Administrative Costs	0	2
<b>88</b>	<b>Total</b>	<b>95</b>	<b>103</b>

## Summary of performance against performance objectives

A summary of the Panel’s performance against stated objectives is contained in Appendix 1.

The following are the highlights in the 2020/2021 reporting year:

- All historical cases and matters have been determined or disposed of;
- The Rulings Panel reviewed its Procedures during the financial year and has published updated Procedures (<https://www.electricityrulingspanel.govt.nz/rulings-panel-procedures-and-objectives/>); and
- An independent website was developed and published. The Panel considers it important that it maintain its identity as an independent decision-making body (<https://www.electricityrulingspanel.govt.nz/>)



## Performance objectives for 2020 / 2021 financial year

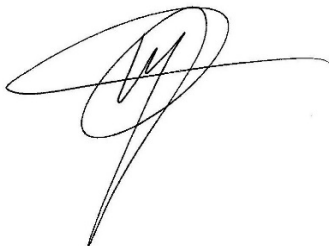
The Ruling Panel’s performance objectives for the financial year from 1 July 2020 to 30 June 2020 is contained in Appendix 2.

## Comments on regulations or Code changes

In the *Haast Energy Trading Limited v Genesis Energy Limited* matter, the Panel made four recommendations:

1. Clarification on the threshold for “disclosure information”. The Panel expressed an opinion that the threshold for information to be “disclosure information” in the clause 1.1 definition in the Code may have been too high given the requirement that information “will have a material impact on prices in the wholesale market”. The Panel recommended that consideration be given to introducing a lower threshold to bring more information within the definition of “disclosure information”;
2. Inclusion of the provisions in clause 13.2A(2)(ba) of the Code into the clause 1.1 definition of “disclosure information”;
3. Continued consideration as to whether specific provisions for fuel disclosure should be incorporated into the Code; and
4. An amendment to section 54 of the Act to allow the Panel a greater discretion to award costs.

Dated this 15<sup>th</sup> day of July 2021



Rulings Panel Chair

## Appendix 1 - Summary of performance against performance objectives

No.	Objective	Performance Measure	Target	Performance
1	Independence and Impartiality	<ul style="list-style-type: none"> <li>The Rulings Panel is independent and without the potential for bias, perceived or actual.</li> <li>Hearings are conducted in public and decisions published, unless there is good reason not to.</li> </ul>	<ul style="list-style-type: none"> <li>All conflicts of interest are disclosed.</li> <li>Interests register is maintained by Rulings Panel members.</li> <li>Open access to hearings is provided.</li> <li>Decisions are published in a timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>Case by case – one disclosure re Haast and Genesis – parties did not require a recusal</li> <li>Interests registered developed and maintained</li> <li>Hearings on the papers to date</li> <li>EA to publish</li> </ul>
2	Fair treatment	<ul style="list-style-type: none"> <li>Each party is given the opportunity to put their case and be heard.</li> <li>Matters are determined impartially and according to the law.</li> <li>Rules of evidence are observed as modified by regulation 39.</li> </ul>	<ul style="list-style-type: none"> <li>Requirements of the Electricity Act 2010 and the Electricity Industry (Enforcement) Regulations 2010 are observed.</li> <li>Rulings Panel Procedures are published, observed and regularly reviewed.</li> <li>Rules of natural justice observed.</li> </ul>	<ul style="list-style-type: none"> <li>No known issues</li> <li>Procedures were reviewed. Review accommodated Part 12A of the Code and hearings by video link.</li> <li>No known issues</li> </ul>
3	Accessibility	<ul style="list-style-type: none"> <li>Information about the existence of the Rulings Panel, its jurisdiction and what is involved for</li> </ul>	<ul style="list-style-type: none"> <li>Establish and maintain an independent website.</li> <li>Publish procedures, decisions and related materials.</li> </ul>	<ul style="list-style-type: none"> <li>Established and soon to go live.</li> <li>Published on both the EA and the Panel's sites.</li> </ul>



No.	Objective	Performance Measure	Target	Performance
		<p>users is readily accessible.</p> <ul style="list-style-type: none"> <li>• Access to the Rulings Panel is available without undue administrative burden.</li> <li>• Costs to the user do not impose an undue barrier to access.</li> </ul>	<ul style="list-style-type: none"> <li>• No costs imposed to file matters with the Rulings Panel.</li> <li>• Rulings Panel costs are imposed on an equitable basis and in accordance with regulation 90.</li> <li>• Innovative and cost-effective means to hear matters are developed and implemented.</li> </ul>	<ul style="list-style-type: none"> <li>• Achieved</li> <li>• No cases in which costs could be imposed.</li> <li>• Review of the Panel’s procedures has allowed for appearances by video link.</li> </ul>
4	Professionalism and Integrity	<ul style="list-style-type: none"> <li>• Respect for the law.</li> <li>• Rulings Panel Members are competent in the performance of their functions.</li> <li>• Decide cases fairly and free from influence.</li> </ul>	<ul style="list-style-type: none"> <li>• Rulings Panel Members have the knowledge and technical skills together with the communication and decision-making skills to make robust decisions.</li> <li>• Rulings Panel engages experts as and when required to assist the Panel in its deliberations and maintains a register of appropriate persons.</li> <li>• Rulings Panel membership of the Coalition of Australasian Tribunals (COAT).</li> <li>• Members undertake training and maintain awareness of industry matters.</li> </ul>	<ul style="list-style-type: none"> <li>• Engaged with MBIE to recruit one new member.</li> <li>• None engaged to date, work has commenced on identifying a list of potential experts.</li> <li>• Joined COAT – September 2020.</li> <li>• Two members attended Downstream.</li> </ul>

No.	Objective	Performance Measure	Target	Performance
			<ul style="list-style-type: none"> <li>Members meet no less than three times a year to review cases, decisions and procedures.</li> </ul>	<ul style="list-style-type: none"> <li>Meeting held in December. As there are no current cases next meeting will be as the need arises.</li> </ul>
5	Accountability	<ul style="list-style-type: none"> <li>Rulings Panel meets its statutory objectives:               <ul style="list-style-type: none"> <li>reasonable endeavours are used to decide matters within 40 days of a hearing or receiving final submissions;</li> <li>decisions published with 10 working days; and</li> <li>reporting completed in accordance with regulations 113 to 114.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Performance results are regularly published.</li> <li>Improvement action is taken when objectives are not met.</li> <li>Quarterly and annual reporting completed in a timely manner.</li> <li>Rulings Panel maintains an industry profile through attendance at industry events and undertaking speaking opportunities.</li> </ul>	<ul style="list-style-type: none"> <li>Met</li> <li>No known issues</li> <li>Met</li> <li>Attendance at Downstream.</li> </ul>
6	Efficiency	<ul style="list-style-type: none"> <li>Decisions are made in a timely manner.</li> <li>Ruling Panel costs proportionate to the matter being considered are incurred.</li> <li>Innovative and flexible approaches are adopted.</li> </ul>	<ul style="list-style-type: none"> <li>80% of cases are decided within 40 days of a hearing or receiving final submissions.</li> <li>Use of draft decisions, where appropriate.</li> <li>Develop procedures that allow parties to appear using audio-visual facilities.</li> </ul>	<ul style="list-style-type: none"> <li>Met on a percentage basis</li> <li>Draft decision process used in UFE case</li> <li>Met</li> </ul>

No.	Objective	Performance Measure	Target	Performance
			<ul style="list-style-type: none"> <li>Rulings Panel engages experts as and when required to assist the Panel in its deliberations and maintains a register of appropriate persons.</li> <li>Use of external administrative bureau services if required.</li> </ul>	<ul style="list-style-type: none"> <li>No current requirement for experts.</li> <li>No current requirement.</li> </ul>

### Appendix 2 - Performance objectives for 2021/2022 financial year

No.	Objective	Performance Measure	Target
1	Independence and Impartiality	<ul style="list-style-type: none"> <li>The Rulings Panel is independent and without the potential for bias, perceived or actual.</li> <li>Hearings are conducted in public and decisions published, unless there is good reason not to.</li> </ul>	<ul style="list-style-type: none"> <li>All conflicts of interest are disclosed.</li> <li>Interests register is maintained by Rulings Panel members.</li> <li>Open access to hearings is provided.</li> <li>Decisions are published in a timely manner.</li> </ul>
2	Fair treatment	<ul style="list-style-type: none"> <li>Each party is given the opportunity to put their case and be heard.</li> <li>Matters are determined impartially and according to the law.</li> <li>Rules of evidence are observed as modified by regulation 39.</li> </ul>	<ul style="list-style-type: none"> <li>Requirements of the Electricity Act 2010 and the Electricity Industry (Enforcement) Regulations 2010 are observed.</li> <li>Rulings Panel Procedures are published, observed and regularly reviewed.</li> <li>Rules of natural justice observed.</li> </ul>
3	Accessibility	<ul style="list-style-type: none"> <li>Information about the existence of the Rulings Panel, its jurisdiction and</li> </ul>	<ul style="list-style-type: none"> <li>Maintain an independent website.</li> <li>Publish procedures, decisions and related materials.</li> </ul>

No.	Objective	Performance Measure	Target
		<p>what is involved for users is readily accessible.</p> <ul style="list-style-type: none"> <li>• Access to the Rulings Panel is available without undue administrative burden.</li> <li>• Costs to the user do not impose an undue barrier to access.</li> </ul>	<ul style="list-style-type: none"> <li>• Promote an understanding of the Rulings Panel’s jurisdiction and functions.</li> <li>• No costs imposed to file matters with the Rulings Panel.</li> <li>• Rulings Panel costs are imposed on an equitable basis and in accordance with regulation 90.</li> <li>• Innovative and cost-effective means to hear matters are developed and implemented.</li> </ul>
4	Professionalism and Integrity	<ul style="list-style-type: none"> <li>• Respect for the law.</li> <li>• Rulings Panel Members are competent in the performance of their functions.</li> <li>• Decide cases fairly and free from influence.</li> </ul>	<ul style="list-style-type: none"> <li>• Rulings Panel Members have the knowledge and technical skills together with the communication and decision-making skills to make robust decisions.</li> <li>• Rulings Panel engages experts as and when required to assist the Panel in its deliberations and maintains a register of appropriate persons.</li> <li>• Rulings Panel membership of the Coalition of Australasian Tribunals (COAT).</li> <li>• Members undertake training and maintain awareness of industry matters.</li> <li>• Members meet no less than three times a year to review cases, decisions and procedures.</li> </ul>
5	Accountability	<ul style="list-style-type: none"> <li>• Rulings Panel meets its statutory objectives:               <ul style="list-style-type: none"> <li>○ reasonable endeavours are used to decide matters within 40 days of a</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Performance results are regularly published.</li> <li>• Improvement action is taken when objectives are not met.</li> <li>• Quarterly and annual reporting completed in a timely manner.</li> </ul>

No.	Objective	Performance Measure	Target
		<p>hearing or receiving final submissions;</p> <ul style="list-style-type: none"> <li>○ decisions published with 10 working days; and</li> <li>○ reporting completed in accordance with regulations 113 to 114.</li> </ul>	<ul style="list-style-type: none"> <li>● Promote an understanding of the Rulings Panel’s jurisdiction and functions.</li> <li>● Rulings Panel maintains an industry profile through attendance at industry events and undertaking speaking opportunities.</li> </ul>
6	Efficiency	<ul style="list-style-type: none"> <li>● Decisions are made in a timely manner.</li> <li>● Ruling Panel costs proportionate to the matter being considered are incurred.</li> <li>● Innovative and flexible approaches are adopted.</li> </ul>	<ul style="list-style-type: none"> <li>● 80% of cases are decided within 40 days of a hearing or receiving final submissions.</li> <li>● Use of draft decisions, where appropriate.</li> <li>● Rulings Panel engages experts as and when required to assist the Panel in its deliberations and maintains a register of appropriate persons.</li> <li>● Use of external administrative bureau services if required.</li> </ul>