

BEFORE The Electricity Rulings Panel
No: C-2021-001

BETWEEN The Electricity Authority
Complainant

AND Transpower New Zealand Limited
Respondent

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

IN THE MATTER OF A complaint made of a breach of Clause 13.141(2) of the Electricity Industry Participation Code 2010

Rulings Panel Decision C-2021-001

(made on the papers)

Counsel: R May and T Bain for the Electricity Authority
T Smith and S Quilliam for Transpower

Finding: Transpower breached Clause 13.141(2) of the Electricity Industry Participation Code 2010.

Orders: Transpower is publicly reprimanded for the breach. The public reprimand is at paragraph [43] of this decision.

Rulings Panel Members:

Mel Orange	Chair
Geraldine Baumann	Deputy Chair
Lee Wilson	Panel Member

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Introduction

- [1] The Rulings 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 Electricity Industry Act 2010.
- [2] The complaint before the Panel was filed by the Electricity Authority against Transpower New Zealand Limited in its capacity as an Industry Participant¹ and as Grid Owner² on 8 November 2021. A Revised Notice of Formal Complaint was filed on 27 June 2022 following the Panel issuing a Regulation 33 Notice and discussions between the Authority and Transpower.
- [3] Where a complaint is upheld, the Panel may order a range of actions, including the making of compliance orders, ordering pecuniary penalties or compensation, and issuing warnings or reprimands. A pecuniary penalty can only be ordered if one is available under the Act and is sought by the Electricity Authority.³

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

² As defined by clause 1.1 of the Code.

³ Section 56(1) of the Electricity Industry Act.

Revised Notice of Commencement

- [4] The Notice of Commencement alleged a breach of clause 13.141(2) of the Code, which provides:

Each grid owner must give the information required by subclause (1)(b) to the pricing manager by 0730 hours on a trading day for each trading period of the previous trading day. Each grid owner must provide this information in the form specified by the pricing manager.

- [5] The Authority alleged:

29. *The information required by cl 13.141(1)(b) includes correct calculations of actual demand for each grid exit point during each trading period in accordance with the equations in cl 13.141(1)(b)(i).*

30. *Transpower breached cl 13.141(2) because it did not provide the information required by cl 13.141(1)(b) to the pricing manager from 27 November 2020 to 14 December 2020 (inclusive) in circumstances where it had knowledge, as set out in paragraph 10, above, that ought have lead it to reasonably conclude that the half-hour information provided by EMS should not have been used as the OEG value.*

- [6] The Electricity Authority sought the following remedial orders:

31. *The Authority asks that the Rulings Panel determine that Transpower has breached the Code as outlined above and make the following orders:*

31.1. *An order that a public warning or reprimand be issued pursuant to s 54(1)(b) of the Act.*

31.2. *An order that Transpower pays the Authority the reasonable costs of these proceedings pursuant to s 54(1)(g) of the Act.*

31.3. *Any other order the Rulings Panel considers just.*

- [7] It should be noted that, under regulation 51 of the Enforcement Regulations, the Panel cannot make an order for a pecuniary penalty where the breach relates to the provision of metering information:

51 Rulings Panel may not require grid owner to pay civil pecuniary penalty for metering breaches

The Rulings Panel may not require a grid owner to pay a civil pecuniary penalty for a breach of an obligation that relates to metering standards, or to the provision of metering information.

- [8] The other remedial orders provisioned for in section 54 of the Act were still open to the Panel.

- [9] Prior to the Revised Notice being filed, the Authority and Transpower had sought and been granted leave for the Authority to file submissions as to the appropriate remedial orders and a statement of agreed facts together with the Revised Notice. Directions were issued for Transpower to file a response and for the Authority to file a reply. The Authority and Transpower submitted that the Panel could determine the matter on the papers.
- [10] On 12 August 2022, the Panel met and considered the matter. It decided that a hearing was not required and that it would decide the matter on the papers.

Agreed Facts

- [11] The Authority and Transpower indicated that a statement of agreed facts would be filed. The Revised Notice contained facts which were not disputed by Transpower. As such, the Panel has based its decision on those facts.
- [12] The Revised Notice set out that there had been an incorrect provision of information regarding grid exit point GLN0332 which is a grid exit point located in Glenbrook, South Auckland. Included in the assets and consumers connected around or through it were a factory owned by New Zealand Steel Ltd (NZ Steel) and Alinta ENZ Limited's (Alinta's) "Kilns" generating station (the Kilns Plant), which is a co-generation plant associated with NZ Steel's factory.
- [13] On 26 June 2020, Alinta applied to the Authority under clause 13.3 and Schedule 13.4 of the Code for the Kilns Plant to be classified as a "type B industrial co-generating station". On 27 October 2020, following consultation, the Authority publicised its decision to approve Alinta's application.
- [14] Transpower's metering team and Energy Market Services (EMS), which is staffed by Transpower's metering team, became aware of the approval on or around the date of the 27 October 2020 edition of the Authority's weekly newsletter, Market Brief.
- [15] As a result of the change, the Kilns Plant was classified as a type B industrial co-generating station effective from 3 November 2020. That change meant there were corresponding changes in Code obligations as regards half-hour metering data from the Kilns Plant. Prior to the change on 3 November 2020, under clause 13.136(1)(b) of the Code, Alinta had to provide Transpower with half-hour metering information for the Kilns Plant. The information was collected by EMS acting as an agent of Alinta and provided to Transpower. Transpower, as grid owner, was required to give the pricing manager the information for each trading period no later than 0730 hours the following trading day. Those obligations ceased on 2 November.
- [16] From 3 November 2020, Alinta was no longer required to supply half-hour metering information for the Kilns Plant to Transpower clause 13.136(1)(b) because clause 13.136(2) provides that subclause (1) does not apply to type B industrial co-generating stations. Notwithstanding, EMS, as agent for Alinta, continued to collect half-hour metering information and provide it to Transpower.

- [17] Under clause 13.141(2) of the Code, Transpower was still required to give the pricing manager the information required by clause 13.141(1)(b) for each trading period no later than 0730 hours the following trading day, and it prescribed how the half-hour metering information from GLN0332 was to be used to correctly calculate actual demand at the grid exit point over each trading period.
- [18] As a result of the half-hour metering information still being provided by EMS to Transpower and its inclusion in the demand calculations at the grid exit point, there was a miscalculation of demand from 3 November 2020 to 15 December 2020. It continued to use the equation to calculate demand provided in clause 13.141(1)(b) of the Code, which is:
- LMA = OEG + LMX – LDCLS (for a grid exit point) where:*
- LMA is the adjusted quantity of electricity measured in MWh by a metering installation at a grid exit point or grid injection point;*
- LMX is the unadjusted half-hour metering information for the quantity of electricity measured in MWh at a grid exit point;*
- LDCLS is the adjusted half-hour metering information for the quantity of electricity measured in MWh used by a dispatch-capable load station for the trading periods that the system operator listed under clause 13.138B; and*
- OEG is the adjusted half-hour metering information given to the relevant grid owner under clause 13.136.*
- [19] By including the Kilns Plant half-hourly metering information in the calculation of the OEG component, the LMA value (the adjusted quantity of electricity measured in MWh by a metering installation at a grid exit point or grid injection point) was incorrect.
- [20] The Authority alleged that Transpower knew of the change in status as a result of the Authority publishing its decision in the Market Brief and that Transpower ought to have reasonably concluded that the Kilns Plant half-hour metering information should not have been used when calculating the grid exit point demand.
- [21] The agreed facts noted that there was no practical impact from 3 November 2020 to 26 November 2020 (inclusive), as the Kilns Plant was offline but that demand at GLN0332 was over-stated in Transpower’s calculation of demand for each trading period from 27 November 2020 when the plant was online up until the error was rectified. The rectification came after the system operator raised a pricing error for 14 December 2020 on 15 December 2020, which was upheld by the Authority, resulting in final prices being corrected on 14 December 2020 only.

- [22] The Authority alleged Transpower’s error resulted in incorrect final prices for each trading period beginning 27 November 2020 to 13 December 2020 inclusive because:
- (a) the information Transpower provided to the pricing manager under clause 13.141(2) of the Code over-stated the demand at GLN0332;
 - (b) relying on those figures, the pricing manager arrived at incorrect pricing solutions for each trading period beginning 27 November 2020 up until 14 December 2020; and
 - (c) as a result, prices for each trading period beginning 27 November 2020 until 14 December 2020 were calculated at a higher level than they should have been.
- [23] The Authority calculated the market impact of Transpower’s error as:
- (a) generators were overpaid by approximately \$31.6 million; and
 - (b) consumers overpaid approximately \$32.6 million.
- [24] Whilst Transpower accepted the facts as set out above, it did note that it had not received written advice of the approval of Alinta’s application from the Authority prior to, or after, 27 October 2020 and that EMS did not receive advice of the status change from Alinta or instructions from Alinta. Transpower submitted that written notification was a requirement under clause 8(3) of Schedule 13.4 of the Code. It states:
- (3) *The Authority must, as soon as practicable after making a decision,—*
 - (a) *advise the applicant, the system operator, the grid owner, and the clearing manager in writing; and*
 - (b) *publish its decision, including—*
 - (i) *the reasons for the decision; and*
 - (ii) *in the case of an application that has been approved, any conditions that have been imposed.*
- [25] Transpower accepted, however, that it had become aware of the approval by way of the Market Brief publication, which should have led it to reasonably conclude that the metering information for the Kilns Plant that EMS continued to collect should not have been used in the calculation of demand at GLN0332 from 3 November 2020. In those circumstances, Transpower admitted a breach of cl 13.141(2).
- [26] Transpower’s submissions, in essence, noted the difference between express notice issued directly to it and general notice provided to industry participants.
- [27] Transpower also submitted that the market impact figures, whilst accurate, are not representative of the impact on the market in terms of wealth transfer between generators and retailers and consumers. Two factors were put forward in support of the submission; firstly, the actual financial gain for generators is likely to have been significantly less because generators that are also retailers were both selling and

buying electricity, and many retailers will have had hedge contracts, and, secondly, the actual impact on consumers cannot be ascertained because many consumers will be on fixed price contracts. As such, Transpower submitted that the Panel could place weight on the calculated figures as an indication of the severity of the breach but not as a reference to the actual impact.

Admitted Breach

[28] Transpower admitted a breach of clause 13.141(2) on the basis that it did not provide the information required by clause 13.141(1)(b)⁴ to the pricing manager from 27 November 2020 to 14 December 2020 (inclusive) in circumstances where it had knowledge, by way of the Market Brief publication on 27 October 2020, which ought to have led it to reasonably conclude that the half-hour information provided by EMS should not have been used as the OEG value.

Remedial Order Submissions

[29] Both parties filed submissions. It was agreed that a public reprimand was appropriate but differed as to the content of that reprimand.

[30] The Authority submitted that the error had significant consequences on other industry participants, the wholesale market, and consumers and that a public reprimand was important to achieve transparency and also to deliver a measure of accountability. It submitted, so as to bring the reprimand to industry participants' attention and to make it accessible to consumers and the general public, the appropriate course would be to:

- (a) publish the reprimand in a separate document on the Rulings Panel's website, associated with the Rulings Panel's decision; and
- (b) direct the Authority to publish a copy of the reprimand in Market Brief and/or to issue a general media release.

[31] The Authority submitted the public reprimand should, on the basis of matters that have gone before other disciplinary tribunals, contain the following:

- (a) a brief summary of the circumstances of the breach;
- (b) an outline of the impact of the breach on any other market participants;
- (c) an explanation as to why a reprimand is being issued (including why a pecuniary penalty is not being ordered); and

⁴ Under clause 13.141(1)(b) of the Code, each grid owner must give the information required by subclause (1)(b) to the pricing manager by 0730 hours on a trading day for each trading period of the previous trading day. Each grid owner must provide this information in the form specified by the pricing manager. Further, the information required by clause 13.141(1)(b) includes correct calculations of actual demand for each grid exit point during each trading period in accordance with the equations in cl 13.141(1)(b)(i).

(d) a statement of condemnation by the Rulings Panel.

[32] The Authority put forward its preferred wording. Transpower provided an amended version of the wording. The Authority version with Transpower marked-ups read:

Transpower New Zealand Limited is a grid owner regulated by the Electricity Industry Participation Code. As a grid owner, Transpower was responsible for providing ~~accurate~~ metering information to the pricing manger to allow prices to be set for each trading period.

From 3 November 2020 to 14 December 2020 (inclusive) Transpower erred in how it calculated demand for grid exit point GLN0332 in Glenbrook, South Auckland, ~~in circumstances where it has knowledge of matters that ought to reasonably lead it to conclude that the information it used was incorrect.~~ The error caused Transpower to overstate demand at GLN0332 for every trading period from 27 November 2020 to 14 December 2020. As a result, incorrect prices were set for every trading period from 27 November 2020 to 13 December 2020 (inclusive). ~~The result was that generators were overpaid by approximately \$31.6 million, and consumers overpaid by approximately \$32.6 million.~~

~~Regulation 51 of the Electricity Industry (Enforcement) Regulations 2010 prevents the Rulings Panel from imposing a pecuniary penalty on Transpower. However, [T]he Rulings Panel considers that this was a serious contravention of the Code that should result in public accountability.~~

Accordingly, the Rulings Panel orders that this public reprimand be displayed on the internet and published by the Electricity Authority, to recognise the gravity of Transpower’s error and the effect it had on the electricity industry in New Zealand.

[33] Transpower submitted the changes to paragraphs one and two of the statement were appropriate given its position that no written notice of the change of status of the Alinta Kiln was given and the uncertainty as regards actual market impact. The Authority, in its reply submissions, agreed to the proposed changes but submitted that at least the wholesale market impact should be referred to.

[34] Transpower also submitted that reference to the regulation 51 limitation on pecuniary penalty orders should not be made as it could imply that the Panel would have imposed such a penalty if it had the jurisdiction to do so. The Authority opposed the amendment on the basis that the error would have warranted a pecuniary penalty if the Panel had jurisdiction to make such an order.

[35] Finally, Transpower took issue with a reference in the suggested reprimand to “public accountability”. It submitted the reference was not necessary and that it could cause confusion and imply that the Panel considers there should be further public accountability in addition to the reprimand. The Authority did not respond to the submission.

Ruling Panel’s Remedial Order Decision

Public Reprimand

[36] The orders the Panel may make are contained in section 54 of the Act:

54 Remedial orders for breach of Code

- (1) *On determining a complaint that an industry participant has breached the Code, the Rulings Panel may decide that no action should be taken, or do any 1 or more of the following:*
 - (a) *issue a private warning or reprimand to an industry participant:*
 - (b) *make an order that a public warning or reprimand be issued to an industry participant:*
 - (c) *impose additional or more stringent record-keeping or reporting requirements under or in connection with the Code:*
 - (d) *make a pecuniary penalty order requiring an industry participant to pay a pecuniary penalty to the Crown of an amount not exceeding \$200,000 (see section 56):*
 - (e) *make a compensation order requiring an industry participant to pay a sum by way of compensation to any other person:*
 - (f) *make a compliance order requiring an industry participant that is found not to be complying with the Code to take any action that is necessary to restore it to a position of compliance (see section 57):*
 - (g) *make orders regarding the reasonable costs of any investigations or proceedings:*
 - (h) *recommend to the Authority that a change should be made to the Code or the regulations:*
 - (i) *recommend to the Minister that a change should be made to the regulations or the Act.*
- (2) *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.*

[37] The parties agreed that the Panel could not impose a pecuniary penalty order because of the provisions in regulation 51 of the Enforcement Regulations and that a public reprimand under section 54(1)(b) was appropriate.

[38] When a pecuniary penalty order is to be imposed, the Panel must consider the seriousness of the breach of the Code with reference to the factors noted in section 56(2) of the Act. There is no equivalent provision when the Panel is considering the imposition of public reprimand other than a requirement to take into account any previous decisions. The Panel has not, however, previously dealt with a public reprimand other than to provide obiter guidance for future cases in its 27 March 2020 decision.

[39] The import or impact of a public reprimand is not to be minimised. A public statement of dissatisfaction with conduct can have an impact on the subject of that statement beyond the embarrassment it may cause. It is an appropriate remedy in circumstances where the Panel is constrained in the actions that it can take. Accordingly, the Panel will issue a public reprimand in terms it thinks appropriate.⁵

Costs

[40] The Authority and Transpower agreed that it was appropriate for Transpower to pay the Authority's reasonable costs in relation to the proceedings on the District Court scale.

[41] The Authority is to file and serve, within 10 working days of this decision being issued, a memorandum as regards its costs in this matter. Transpower may file and serve a response within 7 working days of receipt of the memorandum. An order will then be made.

Panel Costs

[42] No order for the Panel's costs will be made.

Orders

[43] The Rulings Panel orders that a public reprimand in the following terms is to be published as directed in the reprimand:

Public Reprimand

Transpower, as grid owner, is reprimanded for a metering information error that resulted in demand at grid exit point GLN0332 being overstated for every trading period from 27 November 2020 to 14 December 2020. As a result of the error, incorrect prices were set for every trading period from 27 November 2020 to 13 December 2020 (inclusive). The error caused a significant market impact whereby generators were overpaid by consumers.

The Rulings Panel found that the Transpower error and the circumstances that led to it were a serious contravention of the Code. The electricity market in New Zealand relies on accurate and timely information. By failing to

⁵ The Public Reprimand wording is at paragraph [43] herein.

adhere to metering information requirements set out in the Code, Transpower has caused a serious market impact.

The Rulings Panel orders that this public reprimand be displayed on the internet and published by the Electricity Authority in its Market Brief to recognise the gravity of Transpower's error and the effect it had on the electricity industry in New Zealand.

- [44] 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

- [45] The Panel may, under section 54(1)(h) and (i) of the Act, make recommendations for change to the Code, Regulations, or the Act. In this respect, the Panel noted the provisions of regulation 51 Enforcement Regulations which restrict the imposition of a pecuniary penalty order for a breach of an obligation that relates to metering standards or to the provision of metering information, and it recommends that it be revisited with a view to potential change.
- [46] The Panel is not aware of the background to the inclusion of regulation 51 or of the reasons for the prohibition. Notwithstanding, and without making any comment as to whether a pecuniary penalty order would have been imposed in the present matter had it been available, the Panel questions whether a blanket prohibition is appropriate. In particular, the Panel envisages that there may be cases or situations where a pecuniary penalty order for a breach of an obligation that relates to metering standards or to the provision of metering information may be necessary to ensure the objectives of remedial orders can be achieved.
- [47] Firstly, the Panel notes that the remedial orders in the Act have a hierarchy in that the various orders are more and less punitive in nature. Generally, when imposing remedial orders, the Panel is looking to sanction not only current behaviour but also to deter future behaviour. Further, deterrence applies not only to the entity being sanctioned but also to other industry participants. At times, escalating remedial orders are necessary to create a deterrence. However, when the available orders are limited, as they are in relation to metering standards and the provision of metering information, deterrence through pecuniary orders might not be achieved.
- [48] Secondly, the present case has highlighted that Code breaches that relate to metering standards or to the provision of metering information may have wider industry implications. As such, whilst the restriction on pecuniary penalty orders may be appropriate in most cases, there could be cases where a pecuniary penalty order should be available because the implications of the breach go beyond metering standards or to the provision of metering information and have a wider or more serious industry impact.

Right to Appeal

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

Issued this 7th day of September 2022

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a horizontal line that extends to the right and then curves downwards.

M. J. Orange
Rulings Panel Chair