

**BEFORE**

**THE ELECTRICITY RULINGS PANEL**

**UNDER**

The Electricity Industry Participation Code 2010

**IN THE MATTER OF**

A dispute under clause 8.62(1) of the Electricity Industry Participation Code 2010 by Meridian Energy Limited relating to the System Operator's causer determination for an under-frequency event on 1 May 2013.

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**DECISION OF THE ELECTRICITY RULINGS PANEL  
ON COSTS**

**DATED 07 July 2014**

**ON THE PAPERS**

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**Rulings Panel Members**

Peter Dengate Thrush - Chair  
John O'Sullivan - Panel member  
Sue Roberts - Panel member

## *Introduction*

1. On 6 June 2014 the Rulings Panel issued a substantive decision in this matter, and invited the parties to make submissions on costs<sup>1</sup>. In summary, the Rulings Panel ruled in its decision that the System Operator had not established that Meridian Energy Ltd was the causer (as that word is used in the Code) of the Under Frequency Event of 1 May 2013.
2. On 17 June 2014 Meridian filed its submissions on the costs matter, saying that Meridian did not seek costs in relation to its own participation in the Dispute. It submitted that if the Rulings Panel was minded to order costs in relation to the Rulings Panel's costs, those should be against the System Operator, on the grounds that Meridian had succeeded in the Dispute, and costs should normally follow the event.
3. On 19 June 2014 the System Operator filed its submissions on costs, in which it said (properly, we think) that it did not seek costs against Meridian, and addressed the issue of the Rulings Panel's power to award costs to Meridian and in relation to the Rulings Panel's own costs. In summary, it said that the Rulings Panel had no power to order costs in a dispute of this kind, but, in the alternative, no costs should be ordered in this case if the power existed.

## *Party Costs*

4. Because this is the first case that has come before the Rulings Panel involving a Dispute of this kind, we think it might be helpful to industry participants if we address the issue of the power of the Rulings Panel to order party costs in such cases. The System Operator pointed out that there is no provision in Clause 8.62 of the Code that authorizes the Rulings Panel to order costs, nor in Clause 8.63 that sets out the specific powers that the Rulings Panel has in hearing such a dispute. Clause 8.62 is the Code provision that established that the Rulings Panel is to hear such disputes.
5. The System Operator says that the Rulings Panel would need to show that the power to order costs came from other general empowering provisions in the Electricity Industry Act 2010 Act. It mentioned sections 25 (a)(iv), 53(3) and 61.
6. However, before analyzing those provisions, the System Operator argued that the "Scheme" of the Act, Code and Regulations was opposed to a general empowering approach. It noted several examples where the power to award costs was specifically addressed in various places, including s 54(g), s 90(3), clause 5 of Schedule 6.3 of Part 6 of the Code, and clause 12A.3(7) of the Code. The System

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<sup>1</sup> A copy of the decision is available at <https://www.ea.govt.nz/code-and-compliance/rulings-panel/decisions/>

<sup>2</sup> The Rulings Panel Procedures can be seen at <https://www.ea.govt.nz/code-and-compliance/rulings-panel/rulings->

Operator also noted that the Rulings Panel Procedures do not provide for costs orders in UFE disputes<sup>2</sup>.

### *Analysis*

7. We think the proper starting point is the power conferred on the Rulings Panel in s 61, which reads:

**“61 Powers in relation to appeals and disputes**

In determining an appeal, or resolving a dispute, of a kind identified in the regulations or the Code, the Rulings Panel may make any determination, order, or direction that it thinks fit, subject to—

(a) any general provisions of the regulations relating to appeals and disputes; or

(b) if there are specific provisions in the regulations or the Code relating to that kind of appeal or dispute, those provisions.”

8. This is a broad empowering provision, allowing the Rulings Panel to make “any order or direction” (such as a costs order) subject to some specified constraints. The proper approach to delineating the Rulings Panel’s powers is therefor to examine for the existence of those constraints. That approach is in contrast to the System Operator’s argument that the existence of some specific provisions on unrelated matters creates a ‘scheme’ requiring specific references. We disagree. The fact that there are specific provisions in some places does not diminish the broad power in s 61 to make costs order. The System Operator has not pointed to any “*general provisions of the regulations*”, nor to any “*specific provisions in the regulations or Code*” that limit the ability of the Rulings Panel to order costs.
9. The reference to the Rulings Panel Procedures does not support the System Operator; those are self-evidently about procedures, and do not have any bearing on the general power conferred by the Act.
10. Accordingly, we find that the Rulings Panel does have the power to make party costs orders in disputes referred to it under Code clause 8.62.

### *Rulings Panel costs*

11. The System Operator also made submissions in relation to the Rulings Panel costs, noting the provisions of s 128 (3)(e) of the Act, and the Electricity Industry (Levy of Industry Participants) Regulations 2010). It is neither necessary nor appropriate in this case to address the issues of the Rulings Panel costs.

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<sup>2</sup> The Rulings Panel Procedures can be seen at <https://www.ea.govt.nz/code-and-compliance/rulings-panel/rulings-panel-procedures-and-objectives/>

*Decision*

12. In its alternative argument, the System Operator submitted that should the power to order costs exist, it should not be exercised against the System Operator in this case. The System Operator pointed to a number of factors, including that this was the first case brought under these provisions before the Rulings Panel, that there was nothing inappropriate in the way the System Operator had conducted the formation of its draft and final determinations, that it derived no benefit from its determination. It pointed also to its timely and helpful conduct in the case before the Rulings Panel.

13. We agree. There is no order as to costs.

**Issued 7 July 2014**

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**P.C. Dengate Thrush**  
**Chair, Electricity Rulings Panel**