

THE ELECTRICITY RULINGS PANEL

IN THE MATTER OF The Electricity Act 1992 and the Electricity Governance
Regulations 2003 the Electricity Governance Rules 2003

AND

IN THE MATTER OF a referral of an invoice dispute by the Manager to the
Electricity Rulings Panel on 4 February 2009 involving invoice
43558 issued to Trust Power on 13 November 2008

Electricity Ruling Panel Members

Gael Webster - Chair
Peter Dengate Thrush – Vice Chair
John Isles
John O’Sullivan
Craig Taylor

Finding: The Electricity Rulings Panel has no power to deal with this dispute.

It takes no action in this matter.

Discussion.

The Facts

1. The Clearing Manager, by letter of 4th February 2009, reported an apparent dispute to the Electricity Rulings Panel (hereafter “the Panel”) over invoice no. 43558 issued by the Clearing Manager to TrustPower. The invoice was dated 13 November and related to the billing period of August 2007. The Clearing Manager reported then that the cause of the dispute was the supply by TrustPower to the Clearing Manager of an incorrect submission to the reconciliation process. Attempts to achieve an amicable solution had failed.
2. The Panel has not been provided with a copy of the invoice, nor any other information, despite a request by the Panel for relevant factual data.

3. The Panel understands that Bay of Plenty Energy benefited by the incorrect submission.
4. The Rulings Panel has considered these matters, and taken advice of Senior Counsel.
5. Because of a potential conflict of interest, Panel Chair Ms Gael Webster recused herself from Panel discussions and deliberations on this issue.

The Rules

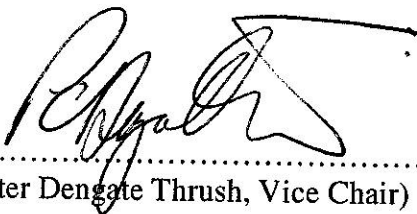
6. The referral by the Clearing Manager to the Panel was made under Rule 10.5 Part H of the Electricity Governance Rules. Part H is for the clearing and settlement of wholesale electricity volumes.
7. Rule 10 of Part H provides for disputed invoices. An outline of the content of the Rules follows.
8. Rule 10.1 provides that there is a period for resolving invoice disputes, namely the period between the receipt of an invoice and two business days prior to its payment date.
9. Rule 10.2 provides that in the first instance all disputes whatsoever between a payee/payer and the Clearing Manager will be the subject of *“amicable bona fide discussions between the persons affected with a view to resolving the dispute”*.
10. Rule 10.3 provides that where the accuracy of any invoice issued is disputed, then the payee or payer must notify the Clearing Manager in writing prior to the due date for payment. Parties are to act in good faith and take all steps necessary to resolve the dispute.
11. Rule 10.4 provides that the Clearing Manager is to notify affected participants within two business days.
12. Rule 10.5 provides that disputes referred to in 10.2 not resolved within 15 business days of the date of first notification to the Clearing Manager will be referred to the Rulings Panel by the Clearing Manager.

13. Rule 10.6 provides that if a dispute is resolved and there is a change to any consumer information, the Reconciliation Manager will carry out the process described in Rule 11 of Part J. There is no prescribed role for the Panel in relation to washups.
14. Rule 10.7 provides that all disputes between payee/payer concerning invoices must be notified in writing to the Clearing Manager within two years of the date of issue of the invoice to which the dispute relates. (In the present case the invoice was issued on November 2008, so that appears well within the two-year limit.) That concludes the Rules on disputed invoices.
15. The panel noted two difficulties with this matter:
 - 15.1 Although Rule 10.5 provides that disputes shall be referred to the Panel, there are no Rules providing how the Panel is to deal with such disputes, and no powers conferred on the Panel to resolve disputes referred to it under Rule 10.5; and
 - 15.2 There were no procedures set out for the handling of such invoice disputes.
16. In relation to the absence of procedures, this situation has been rectified by the Panel. The Panel has the power, under Regulations 96 and 171A of the Electricity Governance Regulations, of determining its own procedures. It has, since this dispute was raised, established procedures for dealing with such disputes in future.
17. However, the more substantive issue, the lack of power, cannot be remedied by the Panel.
18. The Panel only has the powers available to it under the Rules. It cannot use powers given to it for one specific function in relation to another function, unless authorized. Authorization could be express or implied. The fact that invoice disputes are referred to the Panel under Rule 10.5 might imply that the Panel had power to deal with them. The Panel, after receiving advice from Counsel has considered its express and implied powers and has concluded that it has no powers in relation to invoice disputes of this kind.

19. The Panel has no ability to compel or order any party who appears to be a beneficiary to any mistake such as has occurred in this matter to appear, make explanation, or pay any sums by way of restitution or otherwise to any other party.
20. Further, the Panel takes the view, again after receiving advice from Counsel, that there is no “dispute” properly before it. On the facts, there is no dispute about the invoice. It was properly made in terms of the information supplied. There is no dispute that the information supplied was in error, nor what that error was, nor what the correct information should have been.
21. Accordingly, the Panel, having no authority in this matter, declines to act.
22. The Panel notes that there has been, since this dispute was notified, further similar disputes. The Panel notes advice it has received to the effect that the Electricity Commission Board has advised the Reconciliation and Clearing Managers to take steps which are within their powers to resolve disputes such as the case referred to here, and further, that Rules changes are proposed which will expressly allow the Clearing Manager to resolve disputes of this nature. The Panel hopes that these measures will provide a solution to problems of this nature.

Signed,

Electricity Rulings Panel



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(Peter Dengate Thrush, Vice Chair)

2 March, 2010