



Rulings Panel Annual Report

2022/2023

Annual Report - 1 July 2022 to 30 June 2023

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

Contents

Introduction	2
Members	3
Summary of decisions made	4
Summary of matters before the Rulings Panel	5
Summary of performance against budget	5
Summary of performance against performance objectives	6
Performance objectives for the 2022 to 2023 financial year	6
Comments on the Act, regulations or Code changes	6
Appendix 1 - Summary of performance against performance objectives	11
Appendix 2 - Performance objectives for 2022 to 2023 financial year	15

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.

One new complaint was filed with the Panel. Decisions were made on four complaints. No appeals have been filed or are before the Panel, and no disputes have been referred to the Panel.

The Panel made several recommendations for changes to the Electricity Industry (Enforcement) Regulations 2010 and the Code, which are summarised in this report.

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. His appointment continues pending reappointment or replacement.

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. Her appointment continues pending reappointment or replacement.

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. His appointment continues pending reappointment or replacement.

Appointments

The Ministry of Business Innovation and Employment, on behalf of the Minister for Energy, has been running an appointment process during the reporting period to appoint new members. Two new members were appointed after the reporting period had ended.

Summary of decisions made

Four decisions were made during the reporting period. The decisions have been published on the Panel's website. <https://www.electricityrulingspanel.govt.nz/decisions/>

Note that the complaints related to events that predated an increase to the maximum pecuniary penalty order that the Panel can impose. As such, they were dealt with on the basis that the maximum pecuniary penalty that could be imposed was \$200,000.

Electricity Authority v Transpower [2022] C-2021-001

Finding:	Transpower breached Clause 13.141(2) of the Electricity Industry Participation Code 2010.
Order:	Transpower was publicly reprimanded for the breach.
Costs:	Transpower is to pay the Electricity Authority the sum of \$8,117.50 in costs.

In the decision, the Panel also set out that it considered it could, if necessary, make an order that a party appearing before the Panel pay a contribution towards the Panel's costs. The reasons why and the circumstances when it might be appropriate were set out in the decision.

Electricity Authority v Transpower [2022] C-2022-001.

Finding:	Transpower breached clause 4(4)(a) of Technical Code A of schedule 8.3 of the Electricity Industry Participation Code 2010.
Pecuniary Penalty:	Transpower was ordered to pay a pecuniary penalty of \$70,000 to the Crown.
Costs:	Transpower was ordered to pay the Electricity Authority the sum of \$12,415 in costs.

Electricity Authority v Transpower [2023] Rulings Panel Decision – C-2022-002

- Findings: Transpower breached Clause 80 of the System Operator’s Policy Statement and Clause 7.1A(1) of the Code.
- Pecuniary Penalty: Transpower was ordered to pay a pecuniary penalty of \$150,000.
- Costs: Transpower was ordered to pay the Electricity Authority costs of \$6,207.50.

Electricity Authority v Ecotricity Limited Partnership [2023] Rulings Panel Decision – C-2022-003.

- Finding: Ecotricity breached clauses 11.32A, 11.32B, 11.32E, 11.32EA and 11.32EB of the Code
- Pecuniary Penalty: Ecotricity was ordered to pay a pecuniary penalty of \$57,000.
- Costs: Ecotricity was ordered to pay the Electricity Authority costs of \$3,820.

Summary of matters before the Rulings Panel

There were no matters before the Rulings Panel at the end of the reporting period.

Summary of performance against budget

The Rulings Panel and the Electricity Authority set a budget prior to the commencement of each financial year.¹ The budget is based on anticipated expenses and is reviewed on a monthly basis. For the 2022-2023 financial year, a budget of \$180,000 was agreed. A lower than anticipated volume of matters resulted in an underspend.

Actual 2021/22 \$000	Description	Actual 2022/23 \$000	Budget 2022/23 \$000
56	Rulings Panel Fees	66	180
0	Domestic Travel	2	0
3	Training	3	0
0	External Events & Publications	1	2
0	Administrative Costs	2	0
59	Total	74	182

¹ Regulaiton 113 of the Electricity Industry (Enforcement) Regulations 2010

Summary of performance against performance objectives

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

Performance objectives for the 2022 to 2023 financial year

The Ruling Panel's performance objectives are contained in Appendix 2.

Comments on the Act, regulations or Code changes

Section 54 allows the make Panel to make recommendations for changes to the Act, Regulations or the Code. In the course of the year, the Panel made recommendations in three of the matters that came before it. Those recommendations are summarised below.

Electricity Authority v Transpower [2022] C-2021-001

A recommendation was made that regulation 51 of the Electricity Industry (Enforcement) Regulations 2010 be reviewed to allow a pecuniary penalty order in relation to a breach of an obligation that relates to metering standards or to the provision of metering information.

The Panel noted that it was 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 matter had it been available, the Panel questioned whether a blanket prohibition was appropriate. In particular, the Panel envisaged 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.

The Panel noted 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.

The Panel also noted that the case 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.

Electricity Authority v Transpower [2023] Rulings Panel Decision – C-2022-002

The Panel recommended that Subpart 2 of the Electricity Industry (Enforcement) Regulations 2010, which provides for limitations of liability when the Panel makes a remedial order for a breach under section 54 of the Electricity Industry Act, be amended to reflect the increase in the maximum pecuniary penalty under section 54(1)(d) of the Electricity Industry Act from \$200,000 to \$2 million.

By way of background, in April 2018, an advisory panel was established and was tasked with considering the entire electricity supply chain, including consumer interests, prices, energy hardship, affordability, technology and the regulatory framework. Dubbed the Electricity Price Review, a Final Report was presented in May 2019. Following this, in March 2021, the Ministry of Business Innovation and Employment issued a consultation paper titled Compliance Framework: Electricity. The consultation paper recommended changes to the Electricity Industry Act to increase the maximum penalty in section 54 of the Act. The paper noted:

24. *It is important in any regulatory regime that penalties are material enough to incentivise compliance and deter non-compliance.*

The Electricity Price Review resulted in an Electricity Industry Amendment Bill being presented in Parliament in March 2022. The Bill adopted many of the recommendations made in the Final Report. During the legislative process, at the Select Committee stage, the Economic Development, Science and Innovation Committee recommended that the

Compliance Framework recommendation as regards maximum penalties be included in the Bill. It stated:

We recommend introducing several new clauses, 22A to 22C, to implement some recommendations from the recent review of the compliance framework by the Ministry of Business, Innovation and Employment. That review resulted from the 2021 Electricity Price Review, and was still under way when we invited the public to submit on the bill.

We believe these changes would improve the Act's regulatory regime.

Clause 22A would:

- increase the maximum penalty that the Rulings Panel may impose on an industry participant for breaching the Code from \$200,000 to \$2 million*
- allow the Rulings Panel to impose an additional \$10,000 penalty for every day (or part-day) that a breach continues*
- require the Rulings Panel to consider two or more Code breaches, relating to the same event or a series of closely related events arising from the same cause, as a single breach.*

We recommend this change to ensure that the possible penalty deters industry participants from breaching the Code (for example, where a breach could net them revenue far in excess of the \$200,000 penalty). It would incentivise parties to remedy breaches in a timely fashion, especially in situations where the breach is extended and uninterrupted.

We note that these are maximum penalties and we expect the Rulings Panel to exercise its judgement appropriately. However, to make this clear, clause 22B would insert a requirement into section 56(2) requiring the Rulings Panel to consider the impact of the penalty on the participant, and on the electricity industry.

The Bill was amended and passed, and the increased penalties came into effect on 1 September 2022. Provisions in Subpart 2 of the Electricity Industry (Enforcement) Regulations 2010, which refer to section 54 of the Electricity Industry Act, have not, however, been amended to reflect the change of the maximum pecuniary penalty from \$200,000 to \$2 million. For example:

50 *Limits apply to Rulings Panel orders*

The limits on liability set out in this subpart apply only to orders made by the Rulings Panel under section 54 of the Act.

53 *Limit of liability of system operator*

The system operator is not liable for a sum in excess of—

- (a) \$200,000 in respect of any one event or series of closely related events arising from the same cause or circumstance; or*
- (b) \$2 million in respect of all events occurring in any financial year.*

54 Limit on liability in relation to metering

- (1) This regulation applies to any breach of the Code relating to metering standards or metering information (including failing to provide accurate information).*
- (2) No industry participant is liable for a sum in excess of \$200,000 in respect of any one event or series of closely related events arising from the same cause or circumstance.*

The intention of the increased maximum pecuniary penalty was to incentivise compliance and deter non-compliance. The Rulings Panel considers that the incentives and deterrents that now apply to industry participants generally should also apply to the system operator and to breaches of the Code relating to metering standards and metering information and that, more generally, the liability limits in Subpart 2 should be reviewed in light of the amendment to the enabling Act. Accordingly, the Panel recommended that the Minister of Energy and Resources review and amend Subpart 2 of the Electricity Industry (Enforcement) Regulations 2010 to reflect the increased maximum pecuniary orders that the Rulings Panel can now impose.

Electricity Authority v Ecotricity Limited Partnership [2023] Rulings Panel Decision – C-2022-003.

The Panel recommended that the Electricity Authority review the definition of the term consumption data in Part 1 to aid Industry Participants with the interpretation of obligations in Part 11.

The Panel noted that the term consumption data is not defined in the interpretation provisions in Part 1 of the Code but that it is in Schedule 12A.1 Appendix C (Default agreement – Provision of consumption data).

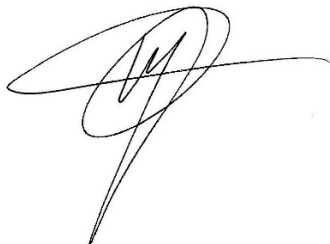
Part 1 of the Code does provide a definition of consumption information: “consumption information” means the information describing the quantity of electricity conveyed during

the period for which the information is required, which may be directly measured or calculated from information obtained from a metering installation, or calculated in accordance with this Code.

The definition of “consumption data” in Schedule 12A.1 Appendix C, is: “consumption data” means electricity consumption data collected by the Trader or the Trader’s Metering Equipment Provider for each ICP the Trader supplies, and which the Trader or the Trader’s Metering Equipment Provider holds or obtains, but does not include aggregated and anonymised information contained in documents, reports, analyses, or other materials that are prepared for a Permitted Purpose or Other Purpose.

Given the reference to consumption data in Part 11, the Panel considered that a definition of the term should be provided in Part 1 to aid Industry Participants with the interpretation of obligations in Part 11.

Dated this 5th day of October 2023



Rulings Panel Chair

Appendix 1 - Summary of performance against performance objectives

Pursuant to Regulation 113 of the Electricity Industry (Enforcement) Regulations 2010

No.	Objective	Performance Measure	Target	Progress
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. 	<ul style="list-style-type: none"> No conflicts declared Interest register up to date All matters dealt with on the papers Met
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. 	<ul style="list-style-type: none"> Met Last update January 2021. A review will be undertaken in 2023 when new members are appointed. Met
3	Accessibility	<ul style="list-style-type: none"> Information about the existence of the Rulings Panel, its jurisdiction and what is involved for 	<ul style="list-style-type: none"> Maintain an independent website. Publish procedures, decisions and related materials. 	<ul style="list-style-type: none"> Met Met

No.	Objective	Performance Measure	Target	Progress
		<p>users is readily accessible.</p> <ul style="list-style-type: none"> • 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"> • Promote an understanding of the Rulings Panel’s jurisdiction and functions. • 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. 	<ul style="list-style-type: none"> • No further action • Met • No costs ordered • Met
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. 	<ul style="list-style-type: none"> • Panel at a quorum • No experts engaged • Membership maintained • Chair attended part of Downstream

No.	Objective	Performance Measure	Target	Progress
			<ul style="list-style-type: none"> Members meet no less than three times a year to review cases, decisions and procedures. 	<ul style="list-style-type: none"> No meetings were held other than for hearings
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 within 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. Promote an understanding of the Rulings Panel's jurisdiction and functions. Rulings Panel maintains an industry profile through attendance at industry events and undertaking speaking opportunities. 	<ul style="list-style-type: none"> Met No action required Met Further work required Attended Downstream
6	Efficiency	<ul style="list-style-type: none"> Decisions are made in a timely manner. Ruling Panel costs proportionate to the matter being considered are incurred. 	<ul style="list-style-type: none"> 80% of cases are decided within 40 days of a hearing or receiving final submissions. Use of draft decisions, where appropriate. 	<ul style="list-style-type: none"> Met. No matters before the Panel requiring expert assistance

No.	Objective	Performance Measure	Target	Progress
		<ul style="list-style-type: none"> Innovative and flexible approaches are adopted. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> No requirement to date. No requirement to date.

Appendix 2 - Performance objectives for 2022 to 2023 financial year

Pursuant to Regulation 113 of the Electricity Industry (Enforcement) Regulations 2010

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 are published unless there is a 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"> • Maintain an independent website. • Publish procedures, decisions and related materials. • Promote an understanding of the Rulings Panel’s jurisdiction and functions. • No costs are imposed on filing 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 as required 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 within 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. • Promote an understanding of the Rulings Panel's jurisdiction and functions. • 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. • Use of draft decisions, where appropriate.

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"> • 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.
7	Information Disclosure	<ul style="list-style-type: none"> • Confidentiality of complaints under consideration is maintained. • Suppression orders are issued as appropriate for matters under consideration. 	<ul style="list-style-type: none"> • Requirements of regulations 116 and 117 of the Electricity Industry (Enforcement) Regulations 2010 are observed.