

Notification of the Commission's Decision Pursuant to Regulation 91(1)

Under regulation 91(1) of the Electricity Governance Regulations 2003 ("Regulations") the Electricity Commission ("Commission") must publicise every decision made under regulation 86(2) or regulation 90(2) or regulation 90(3), together with the reasons for the Commission's decision.

Investigation

On 12 September 2005 the Commission appointed an investigator under regulation 69 of the Regulations to investigate the following alleged breach of the Electricity Governance Rules 2003 ("Rules") by Transpower Limited in its role as system operator (the System Operator)

- Admitted breach of rule 1.3.4.7 of schedule G6 of part G of the Rules.

Matters Considered by the Commission

The Commission received and considered a report and recommendation from the investigator. The Commission also made its decision taking into account its relevant functions and objectives. The Commission considered:

- its functions (section 172O of the Electricity Act ("Act")) and in particular, the function in section 172O(1)(b) which requires the Commission to administer, monitor compliance with, investigate, enforce, and apply penalties or other remedies for contraventions of the Regulations and Rules; and
- its principal objectives, which are to ensure electricity is produced and delivered to all classes of consumers in an efficient, fair, reliable, and environmentally sustainable manner and to promote and facilitate the efficient use of electricity (section 172N(1) of the Act); and
- its specific outcomes (section 172N(2) of the Act). Of relevance are the Commission's outcomes which require:
 - (i) that energy and other resources are used efficiently (section 172N(2)(a)),
 - (ii) risks (including price risks) relating to security of supply are properly and efficiently managed (section 172N(2)(b));
- the Government Policy Statement on Electricity Governance ("GPS"). This provides that the Government expects the Commission to take responsibility for monitoring compliance, investigating alleged breaches and if necessary taking enforcement action in relation to regulations and rules (clause 11).

The Commission's Decision

In respect of this admitted breach the Commission decided to:

1. **Dismiss** the notified breach under investigation against the System Operator (effected by deciding under regulation 90(2) that no formal complaint should be laid; and
2. **Send a letter** to the System Operator to advise it of the Commission's decision under paragraph 1 above.

Reasons for the Commission's Decision

The Commission considered, and agreed with, the reasons set out in the investigator's report why the breaches were unsuitable for using the informal settlement process. The report noted that the way the Regulations regarding informal settlements are drafted (regulation 82) seems to exclude the ability for the investigator to try to effect an informal settlement when no other party joins (or as in some cases a party joins under regulation 75 but then withdraws) the investigation.

The Commission considered that not laying a formal complaint met the fairness and efficiency objectives given:

- the breach was the result of a human error and had minimal market and operational impact; and
- the System Operator has since taken steps to prevent recurrence of the breach; and
- the costs that would be incurred in laying and hearing a formal complaint in regard to such a minor breach.

However, the Commission notes that it may take a different view should it determine that continued and persistent breaching of this Rule by the System Operator is occurring.