

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.

Decision not to lay formal complaint to the Rulings Panel

During 2004 the Commission appointed an investigator under regulation 69 of the Regulations to investigate the following alleged breaches of the Electricity Governance Rules 2003 ("Rules") by the Clearing Manager:

- Admitted breach of rules 4.3 and 5.3 of Section V of Part G of the Rules in that the Clearing Manager did not correctly calculate the constrained on and constrained off payments for the March 2004 billing period as carried out in April 2004.

In respect of the alleged breaches the Commission received and considered a report by the investigator under regulation 88 and has decided:

Not to lay a formal complaint against the Clearing Manager under regulation 90 (2)

Matters Considered by the Commission

The Commission received and considered a report and recommendation from the investigator under regulation 88. The Commission considered its decision against 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)); and

- 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).

Reasons for the Commission’s Decision

The Commission considered, and accepted the recommendations set out in the investigator’s report. The Committee did not have a formal written settlement between the parties to consider and did not consider that such an agreement was required as it was noted that the substantive actions of the “recommended settlement” had already been completed.

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

- there was no market impact as a result of the admitted breach;
- the error occurred due to an error in the software at the outset of the commencement of the Rules. Software was now subject to regular auditing and reporting to the Commission. The latest audit report of the software and specifications used by the Clearing Manager had been received by the Commission and would be published;
- The audit requirement and steps taken by the Clearing Manager subsequent to these admitted breaches will significantly reduce the likelihood of a similar recurrence.