

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

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 TrustPower:

- Admitted breach of rule 3.10.2 and denied breach of rule 3.15 of Section II 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 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));
- 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

In respect of these breaches the Commission decided to:

1. **Dismiss** the notified breaches under investigation against TrustPower (effected by deciding under regulation 86(2) that no formal complaint should be laid); and
2. **Instruct** the Investigator to abandon the investigation and advise TrustPower of the Commission's decision under (1).

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:

- there was no market impact as a result of the admitted breach;
- the Commission accepted TrustPower's explanation with respect to the denied breach;
- the avoidance of incurring costs involved in the laying and hearing of formal complaints in regard to minor breaches.

However, the Commission notes that it may take a different view should it determine that continued and persistent breaching of these Rules by one or more market participants is occurring.