

Notification Pursuant to Regulation 91(1)

During 2004 the Board appointed investigators under regulation 69 to investigate the following three alleged breaches of the Electricity Governance Rules 2003 ("Rules") as follows:

- Admitted Breaches of Rule 3.6 and 3.17, Section II Part G by Todd Energy on 6th March and 15th April 2004
- Admitted Breach of Rule 3.16, Section II, Part G by TrustPower on 18th May 2004
- Admitted Breach of Rule 1.3.4.5, Schedule G6, Part G by the System Operator on 1 April 2004

The Board has received reports and recommendations from the investigators and has considered its decision against the Commission's relevant functions and objectives. The Board considered its decision;

- In regard to its functions (section 172O of the Electricity Act ("Act")) and in particular, the function in section 172O (b) which requires the Commission to administer, monitor compliance with, investigate, enforce and apply penalties, or other remedies for contraventions of the EGRs, and
- In regard to the principal objective which is to ensure electricity is produced and delivered to all classes of consumer in an efficient, fair, reliable and environmentally sustainable manner and promoting and facilitating the efficient use of electricity (new section 172N), and
- Against specific Commission outcomes (new section 172N(2)). Of relevance are Commission outcomes which require;
 - (i) That energy and other resources are used efficiently (172N(2)(a)),
 - (ii) Risks (including price risks) relating to security of supply are properly and efficiently managed (172N(2)(b)),
- Against the requirements on the Board in the Government Policy Statement on Electricity Governance (GPS). This includes, the requirement on the Board to take responsibility for monitoring compliance, investigating alleged breaches and if necessary taking enforcement action (clause 11 October 2004 GPS) in respect of the EGRs.

The investigators considered for the reasons set out in the reports that the breaches were unsuitable for using the informal settlement process. The reports 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 but then withdraws) the investigation (under regulation 75).

The Board considered that not laying a formal complaint in each of the three cases met the fairness and efficiency objectives given:

- the minimal market impact of each admitted breach; and
- the avoidance of incurring costs involved in the laying and hearing of formal complaints in regard to minor breaches.

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

In respect of each of the three admitted breaches the Board decided to:

1. **Dismiss** the notified breaches under investigation (effected by declining to lay a formal complaint) against the breaching parties; and
2. **Instruct** the Investigators to send letters to the breaching parties advising them of the Commissions decision under (1) above and to publicise this decision