

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 to lay formal complaint to the Rulings Panel

On 3 February 2005 the Commission appointed an investigator under regulation 69 of the Regulations to investigate the following notified breach of the Electricity Governance Rules 2003 ("Rules") by Transpower New Zealand Ltd (the system operator):

- admitted breach of rule 1.3.4.5 of schedule G6 of part G of the Rules in that the system operator failed to use revised availability information from the grid owner and incorrectly modelled the Otahuhu Bus Tie (OTA_TIE.2_3) between 1 March 2004 and 18 May 2004 (note that a subsequent rule change has now resulted in this rule number changing to 1.3.4.7 in the current rules).

In respect of this alleged breach, the Commission received and considered a report by the investigator prepared under regulation 84 ("report") and a copy of the proposed settlement of the matter (between the system operator and Contact Energy Limited who had joined the investigation) under regulation 84. In this instance the Commission has decided to:

1. **reject** the settlement under regulation 84(2)(b);
2. **lay a formal complaint** with the Rulings Panel under regulation 86(2)(b); and
3. **direct** the investigator to report to the Rulings Panel under regulation 93.

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)); 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

In reaching its decision, the Commission considered the report's recommendations and the proposed terms of the settlement against its relevant functions and objectives as listed above. The Commission considers that laying a formal complaint meets those functions and objectives given that:

- the modelling error was substantial and had remained undetected for some time;
- the error had caused increased costs to participants; and
- the Commission is concerned that the proposed settlement falls short of providing a meaningful remedy for the parties to the settlement and does not appear to contain appropriate performance incentives on the system operator to comply with the Rules in the future.