

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 90(2) together with the reasons for the Commission's decision.

Investigation

On 20 August 2008, the Commission appointed an investigator under regulation 69 of the Regulations to investigate the alleged breaches of rules 3.2.1 and 5.2 of section II and rule 8.2 of section III of part F of the Electricity Governance Rules 2003 (Rules) by Transpower New Zealand Limited as a Grid Owner (Grid Owner) and by Mighty River Power Limited (MRPL). The Grid Owner and MRPL denied the breach allegations.

The breaches were alleged by Bay of Plenty Energy Limited (BOPE) and by the Electricity Commission. It was alleged that by connecting the MRPL's Kawerau Geothermal Plant to the 110 kV side of the Kawerau substation instead to 220 kV the Grid Owner and MRPL may have breached the requirements for the Connection Contract to be consistent with the Connection Code and the Benchmark Agreement.

This investigation was joined by BOPE as the breach alleging party, by the Grid Owner and MRPL as the alleged breaching parties; and by TrustPower Limited (TrustPower), Genesis Power Limited (Genesis), Meridian Power Limited (Meridian), Contact Energy Limited (Contact) and Norske Skog Tasman Limited (Norske Skog) as potentially affected parties.

On 30 August 2010, the Commission received and considered a report and a recommendation from the Investigator not to lay a formal complaint.

The Commission's Decision

On 30 August 2010, in respect of these alleged breaches the Commission decided under regulation 90 not to lay a formal complaint.

Reasons for the Commission's Decision

The reasons for the Commission's decision were that:

- there was no breach of rule 3.2.1 of section II of part F as alleged by the Commission. The Connection Contract was signed on 29 January 2008. This was after the benchmark agreement and the Connection Code were added to the Rules, but before they came into force. Therefore, rule 3.2.1

of section II of part F applies. Under this Rule the Connection Contract should be consistent in all material respects with the benchmark agreement and the Connection Code except as permitted under rules 5.1 to 5.3 of section II of part F. BOPE alleged a breach of rule 5.2 of section II of part F.

- there was no breach of rule 5.2 of section II of part F as alleged by BOPE. While the connection of KAG to the 110kV bus at KAW is in line with the principle of unrestricted access to the grid for all participants, the arrangement potentially may restrict generators' ability to inject generated energy into the grid or to provide ancillary services. However, this arrangement does not decrease the services below those described in the benchmark agreement. Nor does this arrangement affect the grid reliability standards, as connecting KAG to the 110 kV bus does not reduce grid reliability related to servicing the load. It should be noted, that restricting ability of the generators to inject generated energy into the grid or to provide ancillary services may affect the overall ability of the power system to service the load in times of power shortages. For these reasons, it was not necessary to obtain the Board approval in this case.
- A connection process is one that evolves from a draft into a final document over a period of time going through various phases of concept, feasibility study, design, project planning and building to testing and commissioning before an asset is finally physically connected to the grid. For avoidance of doubt, even if a view is taken that the Connection Contract was entered into on a date which was before the benchmark agreement and the Connection Code were added to the Rules, the Committee is of a view that there are still no breaches to these Rules.
- there seems to be no breach of rule 8.2 of section III of part F. This is because application of rule 8.2 depends on whether the Grid Owner and MRPL entered into an investment contract. Committee's understanding of the terms of the Grid Owner's standard connection contracts is that it would not come within this definition.
- In regard to the Connection Code breaches BOPE has alleged, the Committee has considered those to be contractual matters between the Grid Owner and MRPL, and therefore to be outside of the Investigator's jurisdiction to investigate. The Investigator was not appointed to investigate these allegations.
- It should be noted that while the Committee is of the view that there were no breaches of the Rules as alleged, the Committee considers that in

principal considering alternative options is a logical step to take in the process dealing with connecting new assets to the grid. The problems in the Bay of Plenty were a result of the decision of the Grid Owner to connect KAG to the 110kV bus at Kawerau, without properly investigating and comparing any other existing options.