

## **Electricity Governance Regulations 2003**

Dame Sian Elias, Administrator of the Government

### **Order in Council**

At Wellington this 15<sup>th</sup> day of December 2003

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to subpart 2 of Part 14 of the Electricity Act 1992, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Energy, makes the following regulations.

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**Regulations**

- 1 Title**  
These regulations are the Electricity Governance Regulations 2003.
- 2 Commencement**  
These regulations come into force on the 28th day after the date of their notification in the *Gazette*.
- 3 Purpose**  
(1) These regulations provide for—

- (a) the monitoring and enforcement of the rules called the *Electricity Governance Rules* made by the Minister of Energy under section 172H of the Electricity Act 1992, as may be amended from time to time; and
  - (b) other miscellaneous matters related to those rules, including liability, appeals, and exemptions; and
  - (c) the functions of the Rulings Panel, including functions in relation to regulations made under section 172D of the Act.
- (2) Those rules are made for the purposes set out in sections 172D(2)(a), (b), and (e) and 172F(2)(c), (d), and (i) to (k) of the Act.

#### 4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—
- Act** means the Electricity Act 1992
- Commission** means the Electricity Commission continued under subpart 1 of Part 15 of the Electricity Act 1992
- excluded rulebook information** means information—
- (a) that relates to bids and offers, or to any asset capability statement; or
  - (b) that is provided to the Commission, any investigator, or the Rulings Panel and that is required to be kept confidential under these regulations or the rules; or
  - (c) in relation to which the Rulings Panel has prohibited publication or communication
- exempt participant** means a participant that carries out no activities referred to in section 4 or section 5 of the Electricity Industry Reform Act 1998 other than activities listed in section 4(2) or 5(2) of that Act

**MARIA** means the metering and reconciliation arrangements created and governed by the terms and conditions of the multilateral contract known as the Metering and Reconciliation Information Agreement

**notifying participant** means a participant that notifies the Commission of an alleged breach of the rules under regulation 62 or regulation 63(2)

**NZEM** means the electricity trading arrangements created and governed by the terms and conditions of the multilateral contract known as the New Zealand Electricity Market

**participant**—

- (a) means any of the following (within the meaning of section 2(1) of the Electricity Act 1992):
  - (i) an electricity distributor:
  - (ii) an electricity generator:
  - (iii) an electricity retailer:
  - (iv) a line owner
- (b) includes a person who uses electricity that is conveyed to the person directly from the grid:
- (c) includes a person who buys electricity from the clearing manager:
- (d) includes a service provider:
- (e) includes a metering equipment owner:
- (f) includes an ancillary service agent:
- (g) *Paragraph (g) revoked by the Electricity Governance Amendment Regulations 2008*
- (h) includes an approved test house:
- (i) does not include the Commission (even to the extent that the Commission is acting as a service provider after an appointment under regulation 35):
- (j) does not include the Rulings Panel

**publicise** means to make available to the public, at no cost to the public,—

(a) on the Commission’s website at all reasonable times; and

(b) in any other manner that the Commission may decide

**register** means the register of participants kept by the Commission under regulation 9

**registered**, in relation to a participant, means that details of the participant are kept in the register

**rulebook information** means all information that is supplied by one participant to another participant, or group of participants, under the rules (other than excluded rulebook information)

**rules** means the rules called the *Electricity Governance Rules* made by the Minister of Energy under section 172H of the Electricity Act 1992 by notice published in the *Gazette*, as may be amended from time to time

**Rulings Panel** or **Panel** means the Panel established by regulation 160

**suspension order** means a suspension order made under regulation 138, and includes any suspension imposed under regulation 143(3)

**termination order** means a termination order made under regulation 138.

- (2) Any term that is defined in the rules and used, but not defined, in these regulations has the same meaning as in the rules.
- (3) Any term that is defined in the Act and used in these regulations, but not defined in these regulations or the rules, has the same meaning as in the Act.

## **5 Breaches**

- (1) In these regulations, unless the context otherwise requires, a reference to a participant that has breached a provision of the rules is a reference to a participant that—
  - (a) has contravened the provision; or
  - (b) has attempted to contravene the provision; or
  - (c) has aided, abetted, counselled, or procured any other participant to contravene the provision; or
  - (d) has induced, or attempted to induce, any other participant, whether by threats or promises or otherwise, to contravene the provision; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other participant of the provision; or
  - (f) has conspired with any other participant to contravene the provision.
- (2) In these regulations, unless the context otherwise requires, a reference to a breach (including an alleged breach) of these regulations or the rules refers only to a breach—
  - (a) that was discovered, or ought reasonably to have been discovered, within 3 years of the date of the breach; and
  - (b) that occurred within 10 years of the date of any investigation or other proceedings under these regulations.

## **6 Relationship between remedies under these regulations or rules and other remedies**

*Regulation 6 revoked by section 12(2) of the Electricity Amendment Act 2004*

**Part 1**  
**Participation in electricity industry**

Subpart 1—Register of participants

*Participants must supply registration information*

**7 Obligation to supply registration information**

- (1) All participants, other than exempt participants, must supply registration information to the Commission.
- (2) An exempt participant may supply registration information.
- (3) **Registration information** consists of—
  - (a) the name of the participant:
  - (b) the participant's telephone number, physical address, facsimile number, email address, and postal address:
  - (c) the nature of the participant's business.

**8 When registration information must be supplied**

- (1) Every person that is a participant at the commencement of these regulations (other than an exempt participant) must supply the registration information before the commencement of the rules.
- (2) Every person that intends to become a participant (other than an exempt participant) must supply the registration information before becoming a participant.

**9 Commission must keep register of participants**

- (1) The Commission must keep a register of participants that are not exempt participants.
- (2) The register must contain—
  - (a) the registration information in respect of the participant:

- (b) the date on which the participant was registered:
- (c) the date on which the person ceases to be a participant.

**10 Commission must publicise information about new participants**

The Commission must publicise the name, telephone number, physical address, facsimile number, email address, and postal address of each participant that the Commission registers, as soon as practicable after registering the participant.

**11 Changes to particulars**

- (1) Every registered participant must notify the Commission as soon as practicable—
  - (a) of any change in the participant's registration information; and
  - (b) if the person ceases to be a participant or wishes to cease to be a registered participant.
- (2) The Commission must record the change, and the date of change, in the register on receipt of the notice.
- (3) The Commission must publicise the change.

**12 Publication of register**

- (1) The Commission must maintain an up-to-date copy of the register and publicise it.
- (2) Any member of the public is entitled to a copy of the register on paying a reasonable fee to the Commission.

**13 Effect of registration**

- (1) Registration has no effect on a person's entitlement to participate in the electricity industry.

- (2) A participant is bound by these regulations and the rules regardless of whether or not the participant is registered or is an exempt participant.

**14 Effect of ceasing to be participant**

A person continues to be subject to the jurisdiction of the Rulings Panel and the Commission, after ceasing to be a participant, in relation to—

- (a) all acts and omissions under these regulations or the rules; and
- (b) any proceedings commenced under these regulations or the rules involving the participant; and
- (c) any order relating to the participant, including any directions or arrangements that may be made for the purpose of giving effect to any order made by the Rulings Panel or the Commission, under these regulations or the rules.

Subpart 2—Availability of rulebook information

*Power to request rulebook information*

**15 Requests for rulebook information**

- (1) Any participant may request the Commission to make available to the participant (the **requesting participant**) any rulebook information held by the Commission or by any other participant.
- (2) The request must specify, with as much particularity as possible, the nature of the information sought and the name of the participant who is believed to hold the information.

*Information held by Commission*

**16 Information held by Commission**

If the Commission receives a request for the supply of rulebook information that the Commission holds, the Commission must—

- (a) consider and process the request in accordance with the Official Information Act 1982; and
- (b) notify the participant with which the information originated of the request for the supply of that information, before supplying it.

*Information held by other participants*

**17 Information not held by Commission**

The rest of this subpart applies if the Commission receives a request for the supply of rulebook information that the Commission does not hold.

**18 Commission must contact participant believed to hold requested information**

The Commission must, as soon as practicable after receiving a request for the supply of rulebook information that it does not hold, send a written notice to the participant who the Commission believes holds the relevant rulebook information—

- (a) notifying the participant of the request made to the Commission, and the name and address of the requesting participant; and
- (b) requesting the participant to either—

- (i) supply the information, together with a note of the participant's charges (if any) in relation to the supply of information; or
- (ii) supply reasons for refusing to supply the information.

**19 Participant must consider request**

A participant that receives a request under regulation 18(b) must consider that request in accordance with regulations 20 to 22.

**20 Rulebook information should be made available to all participants unless good reason**

- (1) The general principle to be followed by participants in relation to rulebook information is that rulebook information should be made available to all participants unless there is good reason for refusing to supply it.
- (2) A participant has good reason for refusing to supply rulebook information if the supply of the information would be likely to—
  - (a) breach any legislative, regulatory, or other legal requirement; or
  - (b) prejudice the maintenance and supervision of the rules, including the prevention, investigation, and detection of rule breaches and the right to a fair hearing before the Rulings Panel; or
  - (c) result in any disclosing participant breaching an obligation of confidentiality; or
  - (d) interfere with the privacy of natural persons; or
  - (e) create an improper gain or improper advantage for the requesting participant or any other participant or person; or

- (f) commercially disadvantage the disclosing participant or any other participant or person, in a material manner; or
- (g) prejudice the future supply of information that is required by a service provider to perform any obligation under the rules.

**21 Other reasons**

Any participant may also refuse to supply rulebook information if—

- (a) the information requested is, or will soon be, publicly available; or
- (b) the information requested does not exist or cannot be found; or
- (c) the information requested cannot be made available without substantial collation or research and the Commission agrees that it is unreasonable to undertake the collation or research; or
- (d) the request is frivolous or vexatious or the information requested is trivial.

**22 Transfer of requests**

- (1) This regulation applies if—
  - (a) a notice is sent to a participant under regulation 18(b); and
  - (b) the information to which the request relates—
    - (i) is not held by the participant but is believed by the person dealing with the notice to be held by another participant; or
    - (ii) is believed by the person dealing with the notice to be more closely connected with the activities of another participant.

- (2) The participant to which the notice was sent must promptly, and in any case not later than 10 working days after the day on which the notice is received, transfer the notice to the other participant, and inform the Commission accordingly.

**23 Participants must not enter contracts that prejudice supply of rulebook information**

A participant must, so far as is reasonably practicable without materially affecting its business or its ability to meet its obligations under the rules, avoid entering into any obligation to any person that would have the effect of prejudicing that participant's ability to comply freely with the provisions of this subpart.

**24 Decision about supplying information**

A participant must, as soon as practicable after considering a request, inform the Commission and the requesting participant of whether it agrees or refuses to supply all or part of the rulebook information requested.

**25 Process if participant agrees to supply information**

- (1) If a participant agrees to supply all or part of the rulebook information requested, the participant must, as soon as practicable,—
  - (a) inform the Commission and the requesting participant of the information that will be supplied, and the amount of any charges to be paid for the supply of that information under regulation 26; and
  - (b) supply that information, with any deletions authorised by regulation 27, to the Commission.

- (2) The Commission must, as soon as practicable after receiving the information, and any charges required to be paid in respect of it by the requesting participant, send the information to the requesting participant.

**26 Charges payable**

- (1) The participant that supplies rulebook information may charge the requesting participant for—
  - (a) the reasonable cost of labour and materials involved in supplying the information to a requesting participant; and
  - (b) any additional costs incurred as a result of a request for urgent availability.
- (2) The participant that supplies the rulebook information, or the Commission, may require the whole or any part of the charge to be paid in advance by the requesting participant.

**27 Documents may include deletions**

If the rulebook information requested is contained in a document, and there are good reasons for refusing to supply some of the information contained in the document, the participant supplying the information may supply a copy of the document with any deletions or alterations that are necessary.

**28 Process if participant refuses to supply information**

- (1) If the participant refuses to supply all or any of the rulebook information requested, the participant must, as soon as practicable, notify the Commission and the requesting participant of both the refusal and of the reasons for the refusal.

- (2) The Commission must, as soon as practicable after receiving that notification, advise the requesting participant of its rights to appeal under regulation 29.

**29 Appeal**

A requesting participant who is notified under regulation 28 that another participant refuses to supply any rulebook information may appeal that refusal by notice of appeal to the Rulings Panel.

**Part 2**  
**Service providers**

**30 Appointment of service providers**

- (1) The Commission must appoint a person or persons to act as the following service providers:
  - (a) a system operator:
  - (b) a registry:
  - (c) a reconciliation manager:
  - (d) a pricing manager:
  - (e) a clearing manager:
  - (f) a market administrator.
- (2) The Commission must appoint Transpower as the system operator.
- (3) The Commission may also appoint a person or persons to act as any other type of service provider.

**31 Functions, rights, powers, and obligations of service providers**

A service provider has the functions, rights, powers, and obligations set out in relation to that service provider under these regulations and the rules.

**32 Term of appointment of service provider**

- (1) A service provider's term of appointment, and the date on which the term begins, is as agreed between the Commission and the service provider.
- (2) The Commission may at any time terminate, re-appoint, or change the appointment of any person as a service provider, subject to the terms of any agreement between that service provider and the Commission.
- (3) Subclause (2) does not apply to the appointment of Transpower as the system operator.

**33 Terms of service provider agreements**

- (1) The remuneration of a service provider is as agreed between the Commission and the service provider.
- (2) The Commission and the service provider may agree on any other terms and conditions, not inconsistent with the functions, rights, powers, and obligations of that service provider under these regulations and the rules.

**34 Publication of service provider agreements**

The Commission must publicise every service provider agreement.

**35 Commission may be service provider**

The Commission may appoint itself to carry out the role, or any part of the role, of any service provider.

**36 Insurance cover**

Each service provider must at all times maintain any insurance cover that is required by the Commission, on terms

and in respect of risks approved by the Commission, with an insurer approved by the Commission.

*Force majeure provisions relating to service providers*

**37 Meaning of force majeure event**

In regulations 38 to 41, **force majeure event**—

- (a) means an event or circumstance beyond the reasonable control of a service provider that results in, or causes, an inability by that service provider to perform any of its obligations under these regulations or the rules; and
- (b) includes (without limitation)—
  - (i) fire, flood, storm, earthquake, landslide, volcanic eruption, or other act of God;
  - (ii) explosion or nuclear, biological, or chemical contamination;
  - (iii) sabotage, terrorism, or act of war (whether declared or not); and
- (c) includes an act or omission by a party under an agreement with a service provider (not being the Commission) only if—
  - (i) that act or omission is a breach of an obligation under that agreement; and
  - (ii) that obligation is in all material respects the same as an obligation in the service provider's agreement with the Commission; and
  - (iii) that act or omission would have been a force majeure event if it had been done by the service provider and not by the third party; and
- (d) does not include the fact that a service provider or any other person—

- (i) is unable or unwilling to pay any amount necessary to meet the obligations under these regulations or the rules; or
  - (ii) is unable to pay its debts; or
  - (iii) calls a meeting for the purpose of Part XIV of the Companies Act 1993; or
  - (iv) has been adjudicated bankrupt; or
  - (v) in the case of a company, society, or partnership, has a receiver or statutory manager or similar person appointed in respect of it or of all or any of its assets; or
  - (vi) is put into liquidation; and
- (e) does not include any event that could have been prevented by the service provider by the exercise of a reasonable standard of care.

**38 Relief of obligation because of force majeure**

- (1) A service provider is relieved of an obligation under these regulations and the rules to the extent that, and for so long as, it is unable to perform the obligation as a result of a force majeure event.
- (2) However, subclause (1) applies only if, and for so long as, the service provider—
- (a) promptly notifies the Commission in writing of—
    - (i) the full details of the force majeure event; and
    - (ii) the obligation that cannot be performed; and
    - (iii) the likely duration of the inability to perform the obligation; and
  - (b) uses its reasonable endeavours to overcome the inability to perform the obligation and to remove or mitigate the effect of the force majeure event.

**39 Effect of relief**

If a service provider is relieved of an obligation under regulation 38,—

- (a) the service provider is not liable for breach of these regulations or the rules in respect of that obligation during the period for which the relief applies under that regulation; and
- (b) any costs arising from the relief from the obligation lie where they fall, except that the Commission and the service provider may agree to adjust the remuneration of the service provider.

**40 Commission may contract elsewhere during force majeure event**

For the duration of a force majeure event, the Commission may contract with others for the performance of any obligation that the service provider fails to perform in accordance with these regulations, the rules, or the relevant service provider agreement.

**41 Commission may terminate service provider agreements**

- (1) If the force majeure event results in a service provider being relieved of a material obligation for more than 30 continuous days, the Commission may terminate the relevant service provider agreement by written notice with immediate effect.
- (2) Subclause (1) does not apply to the appointment of Transpower as system operator.

*Disclosure to Commission*

**42 Disclosure to Commission**

Each service provider is entitled to disclose to the Commission all information received by it from any person as part of its provision of services under these regulations and the rules.

*Performance standards*

**43 Performance standards to be agreed**

The Commission and the relevant service provider (other than the system operator) must, at the beginning of each financial year, seek to agree on a set of performance standards against which the service provider's actual performance must be reported and measured at the end of the financial year.

*Accountability of service providers via self-review*

**44 Self-review must be carried out by service providers**

- (1) Each service provider must conduct, on a monthly basis, a self-review of its performance.
- (2) The review must concentrate on the service provider's compliance with—
  - (a) its obligations under these regulations and the rules; and
  - (b) the operation of these regulations and the rules; and
  - (c) any performance standards agreed between the service provider and the Commission; and
  - (d) the provisions of the service provider's agreement.

**45 Service providers must report to Commission**

- (1) Each service provider must, within 10 working days of the end of each calendar month, provide a written report to the Commission on the results of the review carried out under regulation 44.
- (2) The report must contain details of—
  - (a) any circumstances identified by the service provider where it has failed, or may have failed, to comply with its obligations under these regulations and the rules; and
  - (b) any event or series of events that, in the service provider's view, highlight any area where a change to a regulation or a rule may need to be considered; and
  - (c) any other matters that the Commission, in its reasonable discretion, considers appropriate and asks the service provider, in writing within a reasonable time before the report is provided, to report on.

*Review of service providers by Commission*

**46 Review of service providers other than system operator**

- (1) At the end of each financial year, the Commission may review the manner in which each service provider (other than the system operator) has performed its duties and obligations under these regulations and the rules.
- (2) The review must concentrate on the service provider's compliance with—
  - (a) its obligations under these regulations and the rules; and
  - (b) the operation of these regulations and the rules; and
  - (c) any performance standards agreed between the service provider and the Commission; and

- (d) the provisions of the service provider's agreement.

**47 Review of system operator**

- (1) The Commission must review the performance of the system operator at least once in each financial year.
- (2) The review must concentrate on the system operator's compliance with—
  - (a) its obligations under these regulations and the rules; and
  - (b) the operation of these regulations and the rules; and
  - (c) any performance standards agreed between the system operator and the Commission; and
  - (d) the provisions of the system operator's agreement.

**48 Additional matters to be taken into account in system operator review**

The Commission must take into account the following matters when conducting the review under regulation 47:

- (a) the terms of the system operator agreement; and
- (b) the reports from the system operator to the Commission; and
- (c) the performance of the system operator over time in relation to Part C of the rules; and
- (d) the extent to which the acts or omissions of other persons have impacted on the performance of the system operator and the nature of the task being monitored; and
- (e) reports or complaints from any person; and
- (f) the fact that the real time co-ordination of the power system involves a number of complex judgments and inter-related incidents; and

- (g) any disparity of information between the Commission and the system operator; and
- (h) any other matter the Commission considers relevant to assess the system operator's performance.

**49 Commission must publicise system operator reports**

- (1) The Commission must publicise all self-review reports that are received from the system operator and that are required to be provided by the system operator to the Commission under regulation 45 or the rules.
- (2) The Commission must publicise each report within 5 working days of receiving the report.

**50 Separation of Transpower roles**

- (1) Transpower's role as system operator under these regulations and the rules is distinct and separate from any other role or capacity that Transpower may have under these regulations and the rules, including as a grid owner or transmission provider.
- (2) For this purpose, when assessing any aspect of the performance, or non-performance, of the system operator,—
  - (a) the assessment must be made on the basis that the system operator had no other role or capacity; and
  - (b) the system operator must be treated as if it did not have any knowledge or information that may be received or held by Transpower unless Transpower receives or holds that information or knowledge in its capacity as system operator.
- (3) Subclause (2) applies, with necessary modifications, to any assessment of any aspect of the performance, or non-performance, of Transpower in any other role or capacity under these regulations or the rules.

- (4) Transpower must report, in each self-review report provided under regulation 45 or the rules, on the extent to which its role as system operator under these regulations or the rules has, despite subclauses (1) to (3), been materially affected by—
- (a) any other role or capacity that Transpower has under these regulations or the rules; or
  - (b) any agreement.

*Rules concerning service provider software*

**51 Software specifications for service providers**

(1AA) This regulation, and regulations 52 and 53, apply only to software that the service provider agreement requires the service provider to use under the agreement.

- (1) Unless otherwise agreed by the Commission in writing, the software specification for all software to be used by a service provider must be set out or described in the service provider agreement for that service provider.
- (2) Each service provider must ensure that its software performs in accordance with the relevant software specification and the rules.
- (3) **Software specification** means the user requirements and other information describing the software in respect of that service provider.

**52 Service provider must arrange audit of software**

- (1) Unless otherwise agreed by the Commission in writing, each service provider must arrange and pay for a suitably qualified independent person approved by the Commission to carry out—

- (a) before any software is first used by the service provider in connection with these regulations or the rules, an audit of all software and software specifications to be used by the service provider; and
  - (b) an annual audit of all software used by the service provider, within 1 month of each anniversary of the date of commencement of the rules; and
  - (c) an audit of any changes to the software or the software specification, before it is used by the service provider.
- (2) The auditor must report to the Commission as to—
- (a) the performance (including likely future performance) of all of the software in accordance with the relevant software specification and the rules; and
  - (b) any other matters that the Commission requires.

**53 Requirements for using software**

No service provider may use any software unless—

- (a) the service provider has provided to the Commission, in respect of that software, an auditor's report issued in accordance with regulation 52(2); or
- (b) the Commission has agreed that no audit is required under regulation 52(1).

**Part 2A**

**Force majeure provisions relating to ancillary service agents**

**53A Meaning of force majeure event in regulations 53A to 53C**

In regulations 53A to 53C, **force majeure event** —

- (a) means an event or circumstance beyond the reasonable control of an ancillary service agent that results in, or causes, an inability by that ancillary service agent to

- perform any of its obligations under these regulations or the rules; and
- (b) includes (without limitation)—
    - (i) fire, flood, storm, earthquake, landslide, volcanic eruption, or other act of God;
    - (ii) explosion or nuclear, biological, or chemical contamination;
    - (iii) sabotage, terrorism, or act of war (whether declared or not); and
  - (c) includes an act or omission by a party under an agreement with an ancillary service agent only if—
    - (i) that act or omission is a breach of an obligation under that agreement; and
    - (ii) that obligation is in all material respects the same as an obligation in the ancillary service agent's agreement with the system operator; and
    - (iii) that act or omission would have been a force majeure event if it had been done by the ancillary service agent and not by the third party; and
  - (d) does not include the fact that an ancillary service agent or any other person—
    - (i) is unable or unwilling to pay any amount necessary to meet the obligations under these regulations or the rules; or
    - (ii) is unable to pay its debts; or
    - (iii) calls a meeting for the purpose of Part 14 of the Companies Act 1993; or
    - (iv) has been adjudicated bankrupt; or
    - (v) in the case of a company, society, or partnership, has a receiver or statutory

- manager or similar person appointed in respect of it or of all or any of its assets;  
or
- (vi) is put into liquidation; and
- (e) does not include any event that could have been prevented by the ancillary service agent by the exercise of a reasonable standard of care.

**53B Relief of obligation because of force majeure**

- (1) An ancillary service agent is relieved of an obligation under these regulations and the rules to the extent that, and for so long as, it is unable to perform the obligation as a result of a force majeure event.
- (2) However, subclause (1) applies only—
  - (a) if the ancillary service agent notifies the system operator, immediately after becoming aware of the existence of the force majeure event,—
    - (i) that the obligation cannot be performed;  
and
    - (ii) of the likely duration of the inability to perform the obligation; and
  - (b) if, and for so long as, the ancillary service agent uses its reasonable endeavours to overcome the inability to perform the obligation and to remove or mitigate the effect of the force majeure event; and
  - (c) if the ancillary service agent, as soon as practicable, notifies the system operator and the Commission in writing of the full details of the force majeure event.
- (3) To avoid doubt, the relief in subclause (1) applies only if an ancillary service agent is acting in its capacity as an ancillary service agent under an ancillary service arrangement.

**53C Effect of relief**

If an ancillary service agent is relieved of an obligation under regulation 53B,—

- (a) the ancillary service agent is not liable for breach of these regulations or the rules in respect of that obligation during the period for which the relief applies under that regulation; and
- (b) any costs arising from the relief from the obligation lie where they fall, except that the system operator and the ancillary service agent may agree to adjust the remuneration of the ancillary service agent.

**Part 3**

**Regime for dealing with undesirable trading situations**

**54 Occurrence of undesirable trading situation**

If the Commission suspects or anticipates the development, or possible development, of an undesirable trading situation, the Commission may investigate the matter.

**55 Meaning of undesirable trading situation**

- (1) An **undesirable trading situation** means any contingency or event—
  - (a) that threatens, or may threaten, trading on the wholesale market for electricity and that would, or would be likely to, preclude the maintenance of orderly trading or proper settlement of trades; and
  - (b) that, in the reasonable opinion of the Commission, cannot satisfactorily be resolved by any other mechanism available under the rules.
- (2) Without limiting subclause (1), an **undesirable trading situation** includes—

- (a) manipulative or attempted manipulative trading activity:
- (b) conduct in relation to trading that is misleading or deceptive, or likely to mislead or deceive:
- (c) unwarranted speculation or an undesirable practice:
- (d) material breach of any law:
- (e) any exceptional or unforeseen circumstance that is at variance with, or that threatens or may threaten, generally accepted principles of trading or the public interest.

**56 Actions Commission may take to correct undesirable trading situation**

- (1) If the Commission finds that an undesirable trading situation is developing or has developed, it may take any of the steps listed in subclause (2) in relation to the wholesale market for electricity that the Commission considers are necessary to correct the undesirable trading situation.
- (2) The steps that the Commission may take include any 1 or more of the following:
  - (a) suspending, or limiting or curtailing, an activity on the wholesale market for electricity, either generally or for a specified period:
  - (b) deferring completion of trades for a specified period:
  - (c) directing that any trades be closed out or settled at a specified price:
  - (d) giving directions to any participant to act in a manner (not inconsistent with these regulations, the rules, or any other law) that will, in the Commission's opinion, correct or assist in overcoming the undesirable trading situation.

- (3) The participant must comply promptly with any direction given to it in writing.
- (4) Neither a participant nor the Commission is liable to any other participant in relation to the taking of any action, or any omission, that is reasonably necessary for compliance with a Commission direction under this regulation.

**57 Offence not to comply with Commission direction under regulation 56(2)**

Every participant commits an offence who fails to comply with a direction given by the Commission under regulation 56(2), and is liable on summary conviction to a fine not exceeding \$20,000.

**58 Commission must consult with system operator**

- (1) The Commission must consult with the system operator if the Commission is considering taking any action under regulation 56 to correct an undesirable trading situation and if it is possible that the action may have an effect on system security.
- (2) The system operator must maintain procedures that are necessary to enable it to respond immediately to the Commission, and provide information as soon as reasonably practicable, if the Commission consults it under this regulation.

**59 Commission must consult with participants**

If the Commission finds that an undesirable trading situation is developing or has developed, the Commission must—

- (a) immediately notify all registered participants of its findings and of any actions that the Commission

intends to take, or has taken, to correct the undesirable trading situation; and

- (b) unless the Commission considers that it is impractical to do so, consult with affected participants before taking the action.

**60 Commission must attempt to correct and restore normal operation as soon as possible**

The Commission must attempt to correct every undesirable trading situation and, consistently with section 172N of the Act, restore the normal operation of the wholesale market for electricity as soon as possible.

**Part 4**

**Complaints about, and reporting of, breaches of regulations and rules**

*Participants must investigate complaints made to them*

**61 Participants must investigate complaints made to them**

- (1) Any person may complain, in writing, to a participant about any business activity of the participant that the person believes might constitute a breach of these regulations or the rules.
- (2) The participant must ensure that the complaint is promptly, thoroughly, and fairly investigated by the participant, and that appropriate action is taken.
- (3) The participant must promptly notify the person who made the complaint in writing of the result of the investigation and the action (if any) taken by the participant.
- (4) The participant must also send a copy of the notification to the Commission.

*Mandatory reporting to Commission of breaches of regulations and rules*

**62 Participant must notify breach of regulations and rules by other participants**

- (1) If any participant believes, on reasonable grounds, that another participant has breached these regulations or the rules, that participant must notify the Commission as soon as possible.
- (2) The notice must be in writing and must specify—
  - (a) the participant that is alleged to have breached these regulations or the rules; and
  - (b) the regulation or rule allegedly breached; and
  - (c) the circumstances relating to the alleged breach; and
  - (d) the date and time on which the alleged breach occurred.
- (3) This regulation does not limit any specific obligation to report a breach that is imposed on a participant elsewhere in these regulations or the rules.

**63 Participants must report quality and security breaches**

- (1) This regulation applies if a participant believes, on reasonable grounds, that it or another participant has breached any rule relating to quality and security in Part C, F, or G of the rules.
- (2) The participant must notify the Commission as soon as practicable after the date that it became aware of the alleged breach.
- (3) The notice must be in writing and must specify—
  - (a) the participant that is alleged to have breached the rules; and

- (b) the rule allegedly breached; and
  - (c) the circumstances relating to the alleged breach; and
  - (d) the date and time on which the alleged breach occurred.
- (4) This regulation does not limit any specific obligation to report a breach that is imposed on a participant elsewhere in these regulations or the rules.

**64 Offence not to notify quality and security breach**

Every person commits an offence who fails to comply with regulation 63(2), and is liable on summary conviction to a fine not exceeding \$20,000.

*Voluntary reporting to Commission of breaches of regulations or rules*

**65 Voluntary reporting of breaches of rules or regulations**

Any person other than a participant may notify the Commission if the person believes, on reasonable grounds, that a participant has breached these regulations or the rules.

*Preliminary provisions applying when breach is reported*

**66 Commission must keep information confidential**

The Commission must keep confidential all information provided or disclosed to the Commission under this Part except to the extent that disclosure is required to enable the Commission to carry out its obligations and duties under the regulations or the rules or is otherwise compelled by law.

**67 Power to dismiss notification of alleged breach**

- (1) The Commission may decline to pursue a notification of an alleged breach—
  - (a) that relates to a matter that has been, or that the Commission considers is more properly, dealt with by any other person; or
  - (b) if the Commission considers that the notifying participant has failed to establish a prima facie case for the alleged breach; or
  - (c) that the Commission decides does not otherwise warrant any further action being taken.
- (2) The Commission must then inform the notifying participant, or the person that notified the Commission under regulation 65, as the case may be,—
  - (a) that the Commission intends to do no more in relation to the matter; and
  - (b) of the reasons for that intention.

*Interim injunctions*

**68 Interim injunctions**

- (1) The Commission may apply to the High Court for the grant of an interim injunction—
  - (a) restraining a participant from doing, or omitting to do, anything that is in breach of these regulations or the rules; or
  - (b) requiring a participant to do, or omit to do, something in accordance with these regulations or the rules.
- (2) The Court may grant the injunction if, in the opinion of the Court, it is desirable to do so.
- (3) Subclause (2) applies, in the case of an injunction under subclause (1)(a),—

- (a) whether or not the participant has done, or omitted to do, that thing; and
  - (b) whether or not there is an imminent danger of substantial damage to any person if the participant does, or omits to do, that thing.
- (4) The Court may rescind or vary the injunction on application by the Commission or any participant affected by the injunction.

*Provisions relating to appointment, etc, of investigator to investigate notification of alleged breach*

**69 Commission must appoint investigator**

- (1) If the Commission receives notice under regulation 62 or regulation 63 of any alleged breach, it must appoint a person (the **investigator**) to investigate the alleged breach.
- (2) The Commission may appoint a person (also the **investigator**) to investigate any other alleged breach of which the Commission becomes aware by any other means.
- (3) Subclause (1) is subject to regulation 67.

**70 Commission's power to appoint investigator**

- (1) The Commission may appoint any person who it thinks has the requisite skills and experience to carry out an investigation.
- (2) The appointment must be made in writing and may be on a permanent or temporary basis.

**71 Investigator may appoint other persons to give advice**

In carrying out an investigation, the investigator may appoint any external auditor, technical expert, or other persons that

the investigator thinks fit to give advice or assistance to the investigator.

**72 Commission must avoid conflicts**

In appointing an investigator or other person under regulations 69 to 71, the Commission and the investigator must take reasonable steps to ensure that the appointed person is free of conflicts of interest in carrying out the investigation.

**73 Investigator must keep information confidential**

- (1) The investigator must keep, and must ensure that every person appointed by an investigator under regulation 71 keeps, confidential all information provided or disclosed to them, except to the extent that disclosure—
  - (a) is required to enable the Commission or investigator or other person to carry out its obligations and duties under the regulations or the rules; or
  - (b) is otherwise compelled by law.
- (2) The investigator must require participants that provide or disclose information to the investigator to identify any information that the participant—
  - (a) considers to be confidential; and
  - (b) considers should not be included in the investigator's report under regulation 88.

*Notification that allegations are being investigated*

**74 Investigator must notify participant allegedly in breach**

- (1) The investigator appointed under regulation 69 must promptly notify the participant alleged to have breached these

regulations or the rules of the allegations that are being investigated.

- (2) The notice must be in writing and must specify—
  - (a) either the name of the notifying participant or, if the alleged breach is one of which the Commission became aware by any other means, that fact; and
  - (b) the regulation or rule allegedly breached; and
  - (c) the circumstances relating to the alleged breach; and
  - (d) the date and time the alleged breach occurred.
- (3) The investigator must use reasonable endeavours to give the notice within 5 working days of being appointed in relation to the breach.

**75 Investigation must be publicised and affected parties may join as parties to investigation**

- (1) At the same time as the investigator sends any notice under regulation 74, the investigator must publicise the matter under investigation, including the content of the notice given under that regulation.
- (2) Within 10 working days after the investigator publicises the matter under investigation under subclause (1), any participant may notify the investigator that it considers that it is affected by the matter being investigated and wishes to become a party to the investigation.
- (3) The participant is then joined as a party to the investigation.

**76 Participant alleged to be in breach must respond to allegations**

Within 10 working days of receiving a notice given under regulation 74 (or any longer period that the investigator may allow in writing), the recipient must respond to the allegations, in writing, to the investigator.

**77 If participant alleged to be in breach does not respond to allegations**

The investigator must, if the participant does not comply with regulation 76, proceed to—

- (a) conduct an investigation of the facts surrounding the notified alleged breach in accordance with regulation 78; and
- (b) provide to the Commission a report and recommendation sufficient to enable the Commission to decide whether a formal complaint should be laid under regulation 90.

*Investigation of alleged breaches*

**78 Investigator must investigate**

The investigator must conduct an investigation of the facts surrounding the notified alleged breach.

**79 Party must co-operate with investigations**

*Regulation 79 revoked by section 12(2) of the Electricity Amendment Act 2004*

**80 Privileges protected**

*Regulation 80 revoked by section 12(2) of the Electricity Amendment Act 2004.*

**81 Limits on investigation powers**

*Regulation 81 revoked by section 12(2) of the Electricity Amendment Act 2004.*

*Procedures if alleged breach resolved by settlement*

**82 Informal resolution process**

- (1) The investigator must endeavour to effect an informal resolution (a **settlement**) of every matter under investigation by agreement between—
  - (a) the notifying participant; and
  - (b) the Commission (if the Commission was notified of the alleged breach by a person other than a participant under regulation 65); and
  - (c) the participant allegedly in breach; and
  - (d) any other participants that have joined as parties under regulation 75.
- (2) In effecting a settlement, the investigator may use any process that the investigator thinks fit, after consultation with the persons referred to in subclause (1).

**83 Settlements must be written, etc**

- (1) Every settlement must—
  - (a) be in writing; and
  - (b) specify the details of any breach of these regulations or the rules that is admitted by a participant; and
  - (c) record the terms of the settlement.
- (2) The persons referred to in regulation 82(1) must notify their acceptance of the terms of the settlement in writing to the investigator.

**84 Commission decides whether to approve settlements**

- (1) The investigator must provide to the Commission—
  - (a) a copy of the settlement; and
  - (b) a report containing as much of the information specified in regulation 88 as the investigator

- reasonably considers relevant in the circumstances of the matter; and
- (c) a recommendation as to whether the Commission should approve the settlement.
- (2) The Commission must either—
- (a) approve the settlement, in which case, subject to regulation 87, the settlement is final and binding on all participants and the Commission; or
  - (b) reject the settlement.

**85 Settlements must be publicised**

- (1) The Commission must publicise the terms of every settlement approved under regulation 84(2)(a).
- (2) However, the Commission may decide not to publicise any part, or all, of any particular settlement if the Commission considers that there are special circumstances that justify the non-publication.

**86 Commission decides whether complaint is laid**

- (1) If the Commission rejects a settlement under regulation 84(2)(b), it must decide whether a formal complaint should be laid.
- (2) If the Commission decides that—
  - (a) no complaint should be laid, it must either direct the investigator to further endeavour to effect a settlement under regulation 82 or to abandon the investigation; or
  - (b) a complaint should be laid, it must direct the investigator to report to the Rulings Panel under regulation 93.

**87 Further complaints about same matter**

Any participant that was not a party to a settlement may make a further notification to the Commission under regulation 62 or regulation 63 in relation to the same matter only if it can demonstrate to the Commission's satisfaction—

- (a) that it was materially adversely affected by the events or consequences of the events that gave rise to the matter that was settled; and
- (b) that it could not reasonably have been expected to be aware of being affected at the time that the investigator publicised the matter under investigation under regulation 75.

*Procedures if alleged breach not resolved by settlement*

**88 Investigator's report to Commission**

- (1) The investigator must provide to the Commission a report and recommendation sufficient to enable the Commission to decide whether a formal complaint should be laid under regulation 90 if the persons referred to in regulation 82(1) do not enter into a settlement—
  - (a) within 30 working days (or any longer period that the investigator agrees in writing) of the investigator giving notice under regulation 74; or
  - (b) if relevant, within 10 working days of the investigator further endeavouring to effect a settlement under a direction given under regulation 86(2)(a).
- (2) That report must, to the extent reasonably practicable, specify or contain the following:
  - (a) the rule or regulation allegedly breached; and
  - (b) the participant against whom the formal complaint is laid; and

- (c) the estimated date and time the breach allegedly occurred; and
- (d) the relevant issues raised by the participant alleged to be in breach in response to the allegations of breach; and
- (e) the comments made to the investigator by any other person in response to the relevant issues raised by the participant alleged to be in breach; and
- (f) any additional information that the investigator considers relevant to the decision of the Rulings Panel as to how the matter may be dealt with by the Rulings Panel; and
- (g) the investigator's assessment of the impact of the conduct alleged to constitute the breach on the other participants; and
- (h) the investigator's assessment of the likelihood of the alleged breach recurring; and
- (i) details of any similar situations previously dealt with by the Commission or the Rulings Panel, including any settlement approved by the Commission under regulation 84 in response to those situations (if known by the investigator); and
- (j) a copy of all correspondence with the investigator or Commission relating to the alleged breach.

**89 Right to copy of investigation material**

The investigator must ensure that the notifying participant, the Commission, the participant allegedly in breach, and all participants that are a party to the investigation are given a copy of the investigator's report under regulation 88.

**90 Commission must decide whether formal complaint to be laid**

- (1) As soon as practicable after receiving a report under regulation 77 or regulation 88, the Commission must decide whether or not a formal complaint should be laid against the participant allegedly in breach.
- (2) If the Commission decides that no formal complaint should be laid, the Commission must inform the notifying participant, any person that notified the alleged breach under regulation 65, the participant allegedly in breach, and any other participant that has joined as a party under regulation 75—
  - (a) of the decision; and
  - (b) of the effect of regulation 92.
- (3) If the Commission decides that a formal complaint should be laid, the Commission must direct the investigator to report to the Rulings Panel under regulation 93.

**91 Commission must publicise decisions**

- (1) The 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.
- (2) However, the Commission may decide not to publicise any part, or all, of a particular decision if the Commission considers that there are special circumstances that justify the non-publication.

**92 Complainant may lay formal complaint**

- (1) A notifying participant, or any participant that has joined as a party under regulation 75, may lay a formal complaint against the participant allegedly in breach if—

- (a) the Commission informs that participant that the Commission does not intend to lay a formal complaint; and
  - (b) the participant proposing to lay the formal complaint has suffered loss as a result of the alleged breach.
- (2) Subclause (1) does not apply to a person other than a participant who notified the alleged breach under regulation 65.
- (3) The participant that proposes to lay a formal complaint under subclause (1) (now called the **complainant**) must lay the formal complaint in writing with the Rulings Panel—
  - (a) within 10 working days after receiving the notice from the Commission under regulation 90; and
  - (b) in accordance with regulation 94.

**93 Process if Commission decides that formal complaint should be laid**

- (1) This regulation applies if the Commission decides under regulation 86(2)(b) or regulation 90(3) that a formal complaint should be laid.
- (2) The investigator must formulate a formal complaint and report it to the Rulings Panel in accordance with the following process:
  - (a) the investigator must formulate a formal complaint, to which is attached the report given under regulation 88; and
  - (b) the investigator must forward a copy of the formal complaint to each of the Rulings Panel, the notifying participant, the Commission, the participant alleged to be in breach, and any other participant that has joined as a party under regulation 75.

- (3) The investigator must use reasonable endeavours to forward the report referred to in subclause (2)(b) within 5 working days of a decision that a formal complaint should be referred to the Rulings Panel.

**94 Process if complainant decides that formal complaint should be laid**

- (1) This regulation applies if the complainant under regulation 92(3) advises that it will lay a formal complaint.
- (2) The complainant must formulate a formal complaint and report it to the Rulings Panel in accordance with the process in regulation 93, as if the complainant were the investigator.
- (3) That formal complaint may contain any additional evidence or material that the complainant thinks fit.

**95 Process for Rulings Panel to deal with complaint**

- (1) On receiving a complaint under regulation 93(2) or 94(2), the Rulings Panel must—
  - (a) set a date for considering the formal complaint; and
  - (b) give to the persons referred to in subclause (2) at least 20 working days written notice of the place, date, and time at which the Rulings Panel will consider the formal complaint.
- (2) The following persons are entitled to be heard at the hearing or to provide written submissions and evidence if the matter is not set down for a hearing:
  - (a) the Commission (whether or not it has laid the complaint):
  - (b) the notifying participant and the complainant:
  - (c) the participant allegedly in breach:
  - (d) any participant that has joined as a party under regulation 75.

**Part 5**  
**Proceedings of Rulings Panel**

**96 Rulings Panel may regulate own procedures**

- (1) The Rulings Panel may regulate its own procedures, except as otherwise provided in these regulations or the rules, and subject to the requirements of natural justice.
- (2) The Rulings Panel must publicise a summary of its procedures.

**97 Rulings Panel must conduct hearings**

- (1) The Rulings Panel must set a matter that is being considered by the Rulings Panel down for a hearing—
  - (a) if the Rulings Panel considers that it is appropriate for the Commission or any participant to be given an opportunity to be heard; or
  - (b) if any participant or the Commission requests a hearing in respect of the matter.
- (2) Hearings must be in public, unless the Rulings Panel directs otherwise.
- (2A) Hearings must be held as soon as practicable.
- (3) If a matter is not set down for a hearing, the Rulings Panel must consider and decide the matter on the basis of the written submissions and evidence that it has received.

**98 Pre-hearing statements and materials**

- (1) If a matter is set down for a hearing, the Rulings Panel must ensure that the notifying participant, the complainant, the Commission, and the participant alleged to be in breach have been provided with—
  - (a) a statement of the matter under consideration; and

- (b) a copy of all relevant material collected or prepared during the course of the investigation of the matter up to the time the statement is provided.
- (2) The Rulings Panel must comply with subsection (1)—
  - (a) not less than 10 working days before the hearing; or
  - (b) if the Rulings Panel, in its discretion, decides that an urgent hearing is desirable, as soon as practicable.

**99 Private hearings may be opposed**

- (1) If the Rulings Panel considers that a hearing should be private, it must notify all registered participants and the Commission of its decision and the grounds for that decision.
- (2) If a participant or the Commission disagrees with this decision, it may make a written submission to the Rulings Panel setting out the reasons for its disagreement, within 5 working days of receiving the notification referred to in this regulation.
- (3) The Rulings Panel must consider the submission and then notify all registered participants and the Commission of its decision and the grounds for that decision.

*Miscellaneous provisions*

**100 Urgent hearings**

*Regulation 100 revoked by regulation 10 of the Electricity Governance Amendment Regulations 2008.*

**101 Evidence not otherwise admissible**

- (1) The Rulings Panel, in carrying out any hearing, may receive in evidence any statement, document, or information that would not be otherwise admissible as evidence that may in its opinion assist it to deal effectively with the matter.

- (2) This regulation is subject to section 172KC of the Act.

**102 Rights of participants who are subject of Rulings Panel hearing**

Subject to regulations 97 to 99, any person that is entitled to be heard under regulation 95(2) at any hearing of the Rulings Panel,—

- (a) is entitled to be represented:
- (b) must be given a reasonable opportunity to make written and oral representations:
- (c) is entitled to call witnesses and to cross-examine any witness called against it:
- (d) is entitled to make a plea to the Rulings Panel in mitigation of penalties:
- (e) is entitled to have any other person present to give evidence.

**103 Rulings Panel may request further information**

- (1) The Rulings Panel may request the investigator to obtain any further information that the Rulings Panel requests if the Rulings Panel considers that, in relation to any matter before it, the Rulings Panel does not have sufficient information for it to determine what action to take under section 172KE of the Act.
- (2) The Rulings Panel may make the request of its own initiative or following an application by any person referred to in regulation 95(2).
- (3) Participants must provide any information reasonably requested by the Rulings Panel or the investigator under this regulation.
- (4) Subclause (3) is subject to section 172KC of the Act.

**104 Rulings Panel may seek advice**

In carrying out its functions, the Rulings Panel may employ or otherwise seek advice or assistance from any external auditor, technical expert, or other person that the Rulings Panel sees fit.

**105 Participant may make written submissions**

- (1) Any person referred to in regulation 95(2) may make written submissions to the Rulings Panel on the subject of any penalty or order that the Rulings Panel may make in relation to that matter.
- (2) Any submission under this regulation must be made by the date set by the Rulings Panel as the closing date for submissions.

**Part 6  
Decisions of Rulings Panel**

*Application*

**106 Application of this Part**

This Part applies to any complaint or matter referred to the Rulings Panel in respect of an allegation that a participant has breached these regulations or the rules.

*Orders that Rulings Panel may make*

**107 Rulings Panel may make certain orders**

*Regulation 107 revoked by section 12(2) of the Electricity Amendment Act 2004.*

**108 Offence to breach compliance orders**

Every participant commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, who breaches an order made under section 172KE(1)(g) of the Act.

**109 Civil pecuniary penalties**

- (1) This regulation applies if the Rulings Panel is considering requiring a participant to pay a civil pecuniary penalty under section 172KE(1)(e) of the Act.
- (2) The Rulings Panel must seek to order payment of a civil pecuniary penalty that is commensurate with the seriousness of the breach.
- (3) The Rulings Panel must have regard to the following matters:
  - (a) the severity of the breach:
  - (b) the impact of the breach on other participants:
  - (c) the extent to which the breach was inadvertent, negligent, deliberate, or otherwise:
  - (d) the circumstances in which the breach occurred:
  - (e) any previous breach of these regulations or the rules by the participant:
  - (f) whether the participant disclosed the matter to the Commission:
  - (g) the length of time the breach remained unresolved:
  - (h) the participant's actions on learning of the breach:
  - (i) any benefit that the participant obtained, or expected to obtain, as a result of the breach:
  - (j) any other matters that the Rulings Panel thinks fit.

- (4) This regulation is subject to section 172KE(2) of the Act and to regulations 110 to 132 and the other provisions of this Part.

**110 Rulings Panel may not require grid owner to pay civil pecuniary penalty for metering breaches**

The Rulings Panel may not require a grid owner to pay a civil pecuniary penalty for a breach of an obligation that relates to metering standards, or to the provision of metering information.

*Liability of system operator*

**111 Liability of system operator in relation to security issues**

- (1) This regulation applies if the Rulings Panel is considering the liability of the system operator, or the imposition of any penalty or costs against the system operator, under this Part resulting from a breach of these regulations or the rules.
- (2) The Rulings Panel must take into account—
- (a) any arrangements the Commission has made with the system operator, including the policy statement and the procurement plan; and
  - (b) the extent to which the acts or omissions of other persons have impacted on the system operator's ability to comply with these regulations or the rules; and
  - (c) the fact that the real time operation of the power system may involve a number of complex judgments and inter-related incidents.

**112 Limit of liability of system operator**

The system operator is not liable under this Part for a sum in excess of—

- (a) \$200,000 in respect of any 1 event or series of closely related events arising from the same cause or circumstance; or
- (b) \$2 million in respect of all events occurring in any financial year.

*Liability in respect of metering*

**113 Limit on liability in relation to metering**

- (1) This regulation applies to any breach of a rule relating to metering standards or metering information (including failing to provide accurate information).
- (2) No participant is liable under this Part for a sum in excess of \$200,000 in respect of any 1 event or series of closely related events arising from the same cause or circumstance.

*Liability of asset owners*

**114 Liability of asset owners**

- (1) This regulation applies if the Rulings Panel is considering the liability of an asset owner, or the imposition of any penalty or costs against an asset owner, under this Part resulting from a breach of these regulations or the rules.
- (2) The Rulings Panel must take into account—
  - (a) the extent to which the acts or omissions of other persons have impacted on the asset owner's ability to comply with these regulations or the rules; and

- (b) the fact that the real time operation of the power system may involve a number of complex judgments and inter-related incidents.
- (3) In addition to the matters set out in subclause (2), if considering compensation for a breach of the outage protocol, the Rulings Panel must also take into account—
  - (a) the extent to which an order for compensation would encourage Transpower and designated transmission customers to take steps to manage efficiently the risks of outages; and
  - (b) the extent to which Transpower has operated the grid in accordance with good electricity industry practice; and
  - (c) the extent to which other participants have acted in accordance with good electricity industry practice.

**114A Limit of liability of Transpower and designated transmission customers**

Transpower or a designated transmission customer is not liable under this Part in respect of any breach of section VI or VII of Part F of the rules for a sum in excess of—

- (a) \$2 million in respect of any 1 event or series of closely related events arising from the same cause or circumstance; or
- (b) \$6 million in respect of all events occurring in any financial year.

**115 Limit of liability of asset owners**

An asset owner is not liable under this Part in respect of any breach of Part C of the rules for a sum in excess of—

- (a) \$2 million in respect of any 1 event or series of closely related events arising from the same cause or circumstance; or

- (b) \$6 million in respect of all events occurring in any financial year.

*Liability of ancillary service agents*

**115A Limit of liability of ancillary service agents**

- (1) This regulation sets a limit on the liability of an ancillary service agent in respect of each type of ancillary service (as those types are defined in the rules) provided under an ancillary service arrangement.
- (2) This regulation applies to any breach by an ancillary service agent, in its capacity as an ancillary service agent, of—
  - (a) Part G of the rules; or
  - (b) rule 8 of technical code B of Schedule C3 of Part C of the rules.
- (3) An ancillary service agent is not liable under this Part in respect of the breach for a sum in excess of,—
  - (a) in respect of any 1 event or series of closely related events arising from the same cause or circumstance, the lesser of \$100,000 or 5% of the expected annual fees for the relevant type of ancillary service; and
  - (b) in respect of all events occurring in the period of 12 months ending with the breach, the lesser of \$300,000 or 20% of the expected annual fees for the relevant type of ancillary service.
- (4) In this regulation, expected annual fees means an amount calculated by the Rulings Panel as follows:

- (a) the fees, including any constrained on amounts, paid or payable by the system operator to the ancillary service agent in respect of the relevant type of ancillary service during the 12 months before the date of the relevant breach of the rules; or
  - (b) those fees calculated on a pro-rata basis, if the ancillary service agent has provided the relevant type of ancillary service for less than 12 months; or
  - (c) if calculation under paragraph (a) or paragraph (b), in the opinion of the Rulings Panel, is impracticable (for example, because too little historical data is available) or produces an unreasonable amount, an amount that, in the opinion of the Rulings Panel, is a reasonable amount, taking into account historical data from similar ancillary service agents providing similar ancillary services.
- (5) Any amount for which an ancillary service agent is not liable under this regulation is treated as written off for the purpose of calculating the limit of liability in any period of 12 months ending with a subsequent breach of the rules.
- (6) The reference in subclause (3) to ‘liable under this Part’ includes a reference to liability imposed under section 172KE of the Act.

*Liability in respect of final prices*

**116 Limit on compensation if breach relates to final prices**

The Rulings Panel may not order compensation to be paid to any other person in respect of a breach of the rules by a participant if—

- (a) the breach is related to, or connected with, the inputs to, or the process of determining, final prices; or
- (b) the compensation sought would, but for this regulation, be determined by reference to recalculated final prices.

*Liability of reconciliation manager*

**117 Liability of reconciliation manager**

The reconciliation manager is not liable to any other party under or in relation to the rules except as expressly set out in regulations 118 to 120.

**118 Reconciliation manager is liable for financial loss**

The reconciliation manager is liable, in respect of any financial loss that occurs as a result of any failure by the reconciliation manager to comply with its obligations under the rules, only to a generator or purchaser who suffers the loss.

**119 Limit of liability of reconciliation manager**

The reconciliation manager is not liable under this Part for a sum in excess of—

- (a) \$500,000 in respect of any 1 event or series of closely related events arising from the same cause or circumstance; or
- (b) \$2 million in respect of all events occurring in any financial year.

**120 No liability in respect of reasonably assessing information**

The reconciliation manager is not liable to any participant who suffers financial loss, cost, or expenses, as a result of the

reconciliation manager reasonably assessing information as required by the rules.

*Liability of clearing manager*

**121 Liability of clearing manager**

A person's recourse against the clearing manager for settlement money owing to that person is limited to those sums that the clearing manager actually receives and, by the rules, is obliged to hold on trust for that person, and is reasonably able to make payment of, in accordance with the rules.

**122 Clearing manager is liable for financial loss**

- (1) The clearing manager is liable, in respect of any financial loss that occurs as a result of any failure by the clearing manager to comply with its obligations under the rules, only to a generator, purchaser, system operator, or ancillary service agent who suffers the loss.
- (2) The clearing manager is liable in respect of fraud or dishonesty only to the extent that is insured, and for which the clearing manager is liable, under regulation 124.

**123 Limit of liability of clearing manager**

The clearing manager is not liable under this Part, except regulation 124, for a sum in excess of—

- (a) \$5 million in respect of any 1 event or series of closely related events arising from the same cause or circumstance; or
- (b) \$10 million in respect of all events occurring in any financial year.

**124 Clearing manager must maintain fidelity insurance**

- (1) The clearing manager must, at all times, maintain any fidelity insurance cover that is required by the Commission, on terms and in respect of risks approved by the Commission, with an insurer approved by the Commission, in relation to any direct financial loss the clearing manager may sustain from any acts of fraud or dishonesty committed by it in its capacity as clearing manager or by any of its employees, contractors, or agents.
- (2) The clearing manager is liable, in respect of any financial loss that is so insured, only for the amount insured under the policy.
- (3) Despite subclause (2), if the clearing manager does not receive from the insurer the full amount insured solely as a result of the insurer's insolvency, the clearing manager's liability under this regulation is limited to the amount actually recovered from the insurer by the clearing manager.
- (4) The clearing manager must take all practicable steps to recover the full amount insured.

*Liability of registry*

**125 Limit of liability of registry**

The registry is not liable under this Part for a sum in excess of—

- (a) \$50,000 in respect of any 1 event or series of closely related events arising from the same cause or circumstance; or
- (b) \$1 million in respect of all events occurring in any financial year.

*Liability of market administrator*

**126 Limit of liability of market administrator**

The market administrator is not liable under this Part for a sum in excess of—

- (a) \$50,000 in respect of any 1 event or series of closely related events arising from the same cause or circumstance; or
- (b) \$500,000 in respect of all events occurring in any financial year.

*Liability of pricing manager*

**127 Limit of liability of pricing manager**

The pricing manager is not liable under this Part for a sum in excess of—

- (a) \$200,000 in respect of any 1 event or series of closely related events arising from the same cause or circumstance; or
- (b) \$5 million in respect of all events occurring in any financial year.

*General rules relating to liability limits and insurance*

**128 Division of limits if more than 1 participant suffers loss**

- (1) This regulation applies if—
  - (a) more than 1 participant suffers financial loss for which another participant is held to be liable by the Rulings Panel, or agreed to be liable under a settlement under these regulations, either in respect of any 1 event or series of closely related events arising from the same

- cause or circumstance, or in respect of all events occurring in any financial year; and
- (b) the total loss suffered by all participants exceeds the dollar amount to which the other participant's liability is limited by these regulations.
- (2) The dollar amount must be divided by the Rulings Panel among the participants suffering loss in the proportion that their individual loss bears to the total loss.

**129 Participants must make payments needed to settle division of liability limits**

A participant must make any payments to another participant that the Rulings Panel orders it to make, in order to provide for the division referred to in regulation 128.

**130 Loss caused by wilful breach or fraud**

- (1) The limits on liability set out in this Part do not apply if the participant wilfully breached the rules or these regulations or fraudulently caused the loss in question.
- (2) Subclause (1) does not apply to the limit on liability in regulation 124(2).

**131 Obligation to maintain professional indemnity insurance**

The reconciliation manager, the clearing manager, the registry, the market administrator, and the pricing manager must at all times maintain any professional indemnity insurance cover that is required by the Commission, on terms and in respect of risks approved by the Commission, with an insurer approved by the Commission.

**132 Civil pecuniary penalties included in liability limits**

Any civil pecuniary penalty under this Part is included in the calculation of any limits on liability set out in this Part.

*Miscellaneous provisions*

**133 Grace period**

*Regulation 133 revoked by regulation 17 of the Electricity Governance Amendment Regulations 2008.*

**134 Rulings Panel decisions**

- (1) The Rulings Panel must use reasonable endeavours to make its final decision on each matter under its consideration within 40 working days of the date that it has received all written and oral submissions on the matter.
- (2) The Rulings Panel must give the decision, in writing and together with the reasons for the decision, to the participants that were entitled to be heard under regulation 95(2).
- (3) The Rulings Panel must notify the decision to the Commission as soon as practicable after it has made a final decision.

**135 Decisions must be publicised**

- (1) The Commission must publicise the terms of every decision made by the Rulings Panel under this Part, together with the reasons for the Panel's decision, within 10 working days of receiving the decision from the Rulings Panel.
- (2) However, the Commission must not publicise any part, or all, of any particular decision if the Rulings Panel advises the Commission that there are special circumstances that justify the non-publication.

**136 Participants must comply with orders and directions**

- (1) Every participant must comply with every order relating to it, including any direction or arrangement made by the Rulings Panel for the purpose of giving effect to the order.
- (2) Every participant must perform any action, or make any payment, directed by the Rulings Panel within 10 working days of receiving notice of the direction, or any longer period that the Rulings Panel allows.

**137 Sums to be paid by party are debt due**

- (1) Any sum due to be paid by a participant under these regulations is a debt due by the participant and is recoverable as such in court.
- (2) A failure by a participant to pay a sum due to be paid under these regulations is a breach of these regulations or the rules.
- (3) A sum that is not paid when due bears interest at the prescribed rate (within the meaning of section 87 of the Judicature Act 1908).

*Termination and suspension orders under this Part*

**138 Powers of termination and suspension**

- (1) The Rulings Panel may, at any time, terminate or suspend all or any of a participant's rights under the rules by making a termination order or a suspension order in any case where, in the opinion of the Rulings Panel, that participant—
  - (a) has failed to comply with any order of the Commission or Rulings Panel; and
  - (b) the failure has seriously prejudiced the operational or financial security of the wholesale market or transmission system for electricity.
- (2) The Rulings Panel may, at any time,—

- (a) extend, suspend, or modify any conditions of any suspension order made by the Rulings Panel:
- (b) revoke any termination order or suspension order.

**139 Offence not to comply with termination order or suspension order**

Every participant commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, who breaches a termination order or a suspension order.

**140 Process requirements**

- (1) This regulation applies before the Rulings Panel—
  - (a) makes a termination order or a suspension order; or
  - (b) extends, suspends, or modifies a condition of a suspension order; or
  - (c) revokes a termination order or a suspension order.
- (2) Those things are referred to as **makes an order or a change**.
- (3) The Rulings Panel must—
  - (a) give notice to the participant to whom the order relates, or may relate, in accordance with subclause (4); and
  - (b) publicise the proposed order or change in accordance with subclause (5).
- (4) The notice given to the participant must—
  - (a) state the reasons for making the order or the change; and
  - (b) state that the order or change will be made unless, by the date specified in the notice, the participant satisfies the Rulings Panel by notice in writing that the order or change should not be made.
- (5) The notice that is publicised must specify—
  - (a) the name of the participant to whom the order relates or may relate; and

- (b) the reasons for the order or change; and
  - (c) the date by which any submission must be delivered to the Rulings Panel.
- (6) That date must be not less than 20 working days after the date of the notice.
- (7) However, that time limit does not apply if the Rulings Panel, in its discretion, decides that a suspension order may need to be made urgently.

**141 Rulings Panel to make directions or arrangements**

- (1) If the Rulings Panel makes a termination order or suspension order, it must give directions to, or make arrangements for, other participants (either generally or specifically) to give effect to its order.
- (2) Unless any directions or arrangements are made by the Rulings Panel, any participant dealing with a participant that is subject to a termination order or suspension order may treat the participant subject to the termination or suspension as if the order had not been made.
- (3) No participant is liable to any other participant in relation to the taking of any action, or any omission, that is reasonably necessary for compliance with a direction given, or arrangement made, by the Rulings Panel under this regulation.

**142 Offence not to comply with direction or arrangement**

Every participant commits an offence who fails to comply with a direction or arrangement made by the Rulings Panel under regulation 141, and is liable on summary conviction to a fine not exceeding \$20,000.

**143 Trading of electricity can be suspended if generator or purchaser becomes insolvent, etc**

- (1) This regulation applies if any generator or purchaser—
  - (a) is unable to pay its debts; or
  - (b) calls a meeting for the purpose of Part XIV of the Companies Act 1993; or
  - (c) is adjudicated bankrupt; or
  - (d) in the case of a company, society, or partnership, has a receiver or statutory manager or similar person appointed in respect of it or of all or any of its assets; or
  - (e) is put into liquidation.
- (2) A generator or purchaser is adjudicated bankrupt if,—
  - (a) in the case of a partnership, all of the partners are adjudicated bankrupt; or
  - (b) in the case of an individual, that individual is adjudicated bankrupt.
- (3) The Commission may, subject to regulation 144, suspend all rights to make bids or offers under the rules, with effect from a time to be determined by the Commission, which must be a time later than the relevant event under subclause (1).

**144 Suspension does not affect common quality obligations**

Every generator and purchaser must continue to meet its obligations under Part C of the rules, to the extent that any suspension order permits.

**145 Termination order may follow suspension**

After a suspension in respect of a generator or purchaser takes effect under regulation 138 or regulation 143, the Commission may—

- (a) order that any rights that were suspended under that regulation be reinstated in respect of the generator or purchaser; or
- (b) make a termination order.

**146 Form and effect of suspension orders and termination orders**

- (1) Every suspension order or termination order must be in writing.
- (2) No termination order affects any liability for payment of any money under the rules before the date of the relevant order.
- (3) On a termination order taking effect,—
  - (a) all the rights of the generator or purchaser under the rules immediately terminate; and
  - (b) the provisions of Part 1 apply as if the participant had ceased to be a participant.

**Part 7**

**Rulings Panel may determine reconciliation disputes and disputes on ancillary service procurement contracts**

**147 Application of Part**

This Part applies to—

- (a) a dispute in relation to reconciliation under rule 12 of Part J of the rules; and
- (b) a dispute in relation to a contract for the procurement of ancillary services.

**148 Parties may apply to Rulings Panel to resolve dispute**

- (1) The parties to a dispute may, by agreement, apply to the Rulings Panel to determine a dispute for them.

- (2) The application must be in writing, setting out the nature of the dispute, and be signed by all the parties to the dispute.
- (3) The Rulings Panel may, in its discretion, decide whether or not to undertake the determination of the dispute.
- (4) The Rulings Panel must give written notice to the parties of the decision as soon as practicable.

**149 Selection of process**

The parties to the dispute must agree to the form of dispute resolution to be utilised or, in the absence of agreement, the Rulings Panel must determine the form of dispute resolution.

**150 Rulings Panel must notify when dispute resolution will take place**

The Rulings Panel must notify the parties to the dispute of the dates, times, and places at which the dispute resolution process will take place, having regard to the urgency of the matter and the form of dispute resolution process selected under regulation 149.

**151 Rulings Panel to adopt appropriate procedure**

The Rulings Panel may regulate its own procedures in relation to the resolution of disputes, subject to the requirements of natural justice.

**152 Rulings Panel not subject to strict evidentiary requirements**

- (1) The Rulings Panel, in carrying out a resolution of a dispute, may receive in evidence any statement, document, or information that would not be otherwise admissible as evidence that may, in its opinion, assist it to deal effectively with the matter.

- (2) Subclause (1) is subject to section 172KC of the Act.
- (3) The Rulings Panel may do whatever is reasonably necessary and permitted by law to enable the fair, effective, and expeditious resolution of any matter before it.

**153 Meetings and documents**

- (1) The Rulings Panel may meet separately or jointly, or both, with the parties to any dispute.
- (2) The Rulings Panel may require parties to exchange submissions, documents, and information.

**154 Legal representation**

Any party to a dispute under this Part may be represented before the Rulings Panel by legal counsel if it wishes.

**155 Completion of process**

The Rulings Panel must complete the dispute resolution process that it selects as soon as practicable.

**156 Determinations Rulings Panel may make**

The Rulings Panel may make any determination or award in respect of a dispute that the Rulings Panel determines is just and reasonable in the circumstances, including—

- (a) a direction that 1 or more parties to the dispute take any action, including the payment of money to any other party, or refrain from taking any action that the Rulings Panel prescribes; and
- (b) assessing damages against any party and awarding compensation to be paid to any party; and
- (c) making any other determination it thinks fit.

**157 Breaches referred to Commission**

The Rulings Panel must report to the Commission if the Rulings Panel finds, during the course of any dispute resolution process, that there has been a breach of these regulations or the rules.

**158 Money payable under rules**

- (1) If the Rulings Panel finds, or the parties agree, during the course of any dispute resolution process, that money is due and payable under the rules, that finding or agreement creates an obligation to pay the amount agreed or determined.
- (2) That amount is a debt due by the participant and is recoverable as such in court.
- (3) A failure by a participant to pay the amount is a breach of these regulations or the rules.
- (4) A sum that is not paid when due bears interest at the prescribed rate (within the meaning of section 87 of the Judicature Act 1908).

**159 Costs**

- (1) Each party to a dispute is responsible for its own costs and legal expenses.
- (2) The parties must share equally all other costs and expenses associated with the dispute resolution process, including the costs of the Rulings Panel, unless an allocation is made under subclause (3).
- (3) The Rulings Panel may allocate the costs referred to in subclause (2) for payment by 1 or more parties as the Rulings Panel determines is just and reasonable.

**Part 8**  
**Rulings Panel**

*Establishment of Rulings Panel*

**160 Establishment of Rulings Panel**

- (1) A Rulings Panel is established.
- (2) The Rulings Panel is a body corporate with perpetual succession.

*Functions of Rulings Panel*

**161 Functions of Rulings Panel**

The functions of the Rulings Panel are to—

- (a) decide complaints referred to it under these regulations that a participant has committed a breach of these regulations or any other regulations made under section 172D of the Act or the rules:
- (b) propose to the Commission that it recommend to the Minister that a change should be made to any regulation or rule that the Rulings Panel considers, in the course of conducting any hearing of a matter, to be necessary or desirable:
- (c) determine disputes under Part 7:
- (d) hear any appeals under Part C of the rules:
- (e) exercise any other functions or powers conferred on the Rulings Panel by these regulations or any other regulations made under section 172D of the Act or the rules.

*Appointment of members of Rulings Panel*

**162 Membership of Rulings Panel**

The Commission must, by written notice, appoint no fewer than 5, and no more than 7, persons to be members of the Rulings Panel.

**162A How members are appointed**

- (1) The Commission may appoint a member by sending written notice to the member (with a copy to the Rulings Panel).
- (2) The notice of appointment must be given only after the person to be appointed has—
  - (a) consented in writing to being a member; and
  - (b) certified in writing that he or she is not disqualified from being a member under regulation 162C; and
  - (c) disclosed to the Commission all interests that the person would, if he or she were a member, have to disclose at that time under regulations 170 to 170B.

**162B Characteristics of Rulings Panel**

- (1) The Rulings Panel—
  - (a) must be multi-disciplinary; and
  - (b) must have the requisite knowledge, skills, and experience to carry out the functions to be performed by the Rulings Panel; and
  - (c) must act impartially in carrying out those functions.
- (2) In making appointments, the Commission may only appoint a person who, in the Commission's opinion, has appropriate skills and experience to assist the Rulings Panel to perform its functions.

**162C Restrictions on persons who may be members**

No person may be appointed as a member of the Rulings Panel if that person—

- (a) has a material financial interest in a participant; or
- (b) is a director, officer, member, employee, or trustee of a participant; or
- (c) is otherwise directly or indirectly materially interested in a participant; or
- (d) is a member of the Commission; or
- (e) is an undischarged bankrupt; or
- (f) is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993; or
- (g) is subject to a property order made under section 10, 11, 12, 30, or 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act; or
- (h) has been convicted of an offence punishable by imprisonment for a term of 2 years or more or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person; or
- (i) has failed to disclose all interests under regulation 162A(2)(c); or
- (j) is not a natural person.

**163 Term of appointment**

- (1) A member of the Rulings Panel holds office for the term specified in his or her notice of appointment, which may be up to 5 years.
- (2) A member—
  - (a) may be reappointed; and
  - (b) continues in office despite the expiry of his or her term of office until—
    - (i) the member is reappointed; or

- (ii) the member's successor is appointed; or
  - (iii) the Commission informs the member by written notice (with a copy to the Rulings Panel) that the member is not to be reappointed and no successor is to be appointed.
- (3) The appointments are effective from the latest of—
  - (a) the date specified in the notice of appointment; or
  - (b) the day that the appointee provides the Commission with written consent to the appointment and a written undertaking to be bound by these regulations and the rules.
- (4) This regulation is subject to regulation 164A.

**164 Validity of acts**

- (1) No vacancy in, or failure to appoint a member of, the Rulings Panel affects the ability of the Rulings Panel to act.
- (2) The acts of a person as a member are valid even if—
  - (a) the person's appointment was defective; or
  - (b) the person is not qualified for appointment.

*Resignation and removal of members*

**164A Members ceasing to hold office**

A member ceases to hold office if he or she—

- (a) resigns in accordance with regulation 164B; or
- (b) is removed from office in accordance with regulation 164C or any other enactment; or
- (c) becomes disqualified from being a member under regulation 162C; or
- (d) otherwise ceases to hold office in accordance with any enactment.

**164B Resignation**

- (1) A member may resign from office by written notice to the Commission (with a copy to the Rulings Panel) signed by the member.
- (2) The resignation is effective on receipt by the Commission of the notice, or at any later time specified in the notice.

**164C Removal of members**

- (1) The Commission must remove a member of the Rulings Panel in the event of that member's serious misconduct, inability to perform the functions of the office, bankruptcy, or if the member becomes a person to whom regulation 162C applies.
- (2) The Commission must state its reasons in any notice of removal.
- (3) The Commission must fill the vacancy created by a removal as soon as possible.

**164D No compensation**

A member of the Rulings Panel is not entitled to any compensation or other payment or benefit relating to his or her removal from office.

*Chairperson and Deputy Chairperson of Rulings Panel*

**165 Chairperson of Rulings Panel**

- (1) The Commission must appoint 1 member of the Rulings Panel to be the chairperson.
- (2) That member holds office as chairperson for the term appointed by the Commission, which may be up to 5 years.

**165A Appointment of deputy chairperson**

- (1) The Commission may appoint another member as deputy chairperson of the Rulings Panel by written notice to the member (with a copy to the Rulings Panel).

- (2) The notice of appointment must state the date on which the appointment takes effect.

**165B Term of appointment**

The chairperson and the deputy chairperson each holds that office from the date stated in the notice of appointment until he or she—

- (a) resigns from that office; or
- (b) is removed from it by the Commission; or
- (c) ceases to hold office as a member.

**165C Resignation**

- (1) A chairperson or deputy chairperson may, without resigning as a member, resign from that office by written notice to the Commission (with a copy to the Rulings Panel).
- (2) The notice of resignation must state the date on which the resignation takes effect.

**165D Removal**

- (1) The Commission may remove a chairperson or deputy chairperson from that office by written notice to the person (with a copy to the Rulings Panel).
- (2) The notice of removal must state the date on which the removal takes effect.

**165E Exercise of chairperson's functions, duties, and powers during vacancy**

If there is no chairperson or, for any reason, the chairperson is unable to perform his or her functions, duties, and powers as chairperson, the deputy chairperson has all the functions, duties, and powers of the chairperson.

*Remuneration and expenses of Rulings Panel members*

**168 Remuneration and expenses of Rulings Panel members**

- (1) A member of the Rulings Panel is entitled to receive, from the funds of the Rulings Panel, remuneration and other benefits for services as a member at a rate and of a kind determined by the Commission.
- (2) A member is entitled to receive, from the funds of the Rulings Panel, reasonable and actual travelling and other expenses relating to the performance of his or her duties and responsibilities as a member.

*Disclosure of interests of members in matters of Rulings Panel*

**169 Meaning of interested**

A member is interested in a transaction of, or other matter relating to, the Rulings Panel or any participant if, and only if, the member—

- (a) is a party to, or will or may derive a material financial benefit from, the transaction or matter; or
- (b) has a material financial interest in another party to the transaction or in a person to whom the matter relates; or
- (c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
- (d) is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
- (e) is otherwise directly or indirectly materially interested in the transaction or matter.

**170 Obligation to disclose interest**

A member who is interested in a transaction or proposed transaction of, or other matter relating to, the Rulings Panel or any participant must disclose the nature of the interest in accordance with regulation 170A as soon as practicable after the member becomes aware that he or she is interested.

**170A Method of disclosure of interest**

- (1) If regulation 170 applies, the member must disclose the details listed in subclause (2) in an interests register and to—
  - (a) the chairperson or, if there is no chairperson, the deputy chairperson; or
  - (b) if the member concerned is the chairperson, or the positions of the chairperson and deputy chairperson are vacant, the Commission.
- (2) The details are—
  - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
  - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

**170B Consequences of interest**

A member who is interested in a transaction or proposed transaction of, or other matter relating to, the Rulings Panel or any participant—

- (a) must not vote or take part in any deliberation or decision of the Rulings Panel or any division of the Rulings Panel relating to the matter; and
- (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the Rulings Panel or division of the Rulings Panel during which a deliberation or decision relating to the matter occurs or is made.

*Proceedings of Rulings Panel*

**171 Proceedings of Rulings Panel**

- (1) A quorum for Rulings Panel meetings is 3 members of the Rulings Panel.
- (2) No business may be transacted if a quorum is not present.
- (3) The proceedings of the Rulings Panel must be in accordance with the principles of natural justice.

**171A Procedure generally**

Except as otherwise provided in these regulations, the members may regulate their own procedure.

**171B Dates, times, and places of meetings**

- (1) The Rulings Panel must appoint the dates, times, and places of ordinary meetings of the Rulings Panel, and give notice of those meetings to each member not present when the appointment is made.
- (2) The chairperson or any 2 members may call a special meeting of the Rulings Panel by giving at least 2 days' notice of the special meeting, and of the business to be transacted at the meeting, to each member for the time being in New Zealand.
- (3) No business other than that specified in a notice of special meeting may be transacted at a special meeting.
- (4) Any irregularity regarding the notice of meeting, including the period for calling a meeting, is waived if all members attend the meeting without protest as to the irregularity or if all members agree to the waiver.

**171C Requirements as to notice of meetings**

Notice of a meeting—

- (a) must be written, and must state the date, time, and place of the meeting; and
- (b) may be given by post, delivery, or electronic transmission; and

- (c) must be sent to the member's last known address in New Zealand.

**171D Methods of holding meetings**

A meeting of the Rulings Panel may be held—

- (a) by a number of the members who constitute a quorum, being assembled together at the date, time, and place appointed for the meeting; or
- (b) by means of audio, audio and visual, or electronic communication by which all members participating and constituting a quorum can simultaneously communicate with each other throughout the meeting.

**171E Presiding at meetings**

- (1) At a meeting of the Rulings Panel, the following person presides:
  - (a) if there is a chairperson and he or she is present, the chairperson; or
  - (b) if there is no chairperson or he or she is not present, the deputy chairperson; or
  - (c) in any other case, a member chosen by the members present to be the chairperson of the meeting.
- (2) The person who presides under subclause (1) may exercise all the powers, duties, and functions of the chairperson for the purposes of the meeting.

**171F Voting at meetings**

- (1) Each member has 1 vote.
- (2) In addition to his or her general vote, the chairperson at a meeting has a casting vote.
- (3) A resolution of the Rulings Panel is passed if it is agreed to by all members present without dissent or if a majority of the votes cast on it are in favour of it.
- (4) A member present at a meeting of the Rulings Panel is presumed to have agreed to, and to have voted in favour of, a

resolution of the Rulings Panel unless he or she expressly dissents from or votes against the resolution at the meeting.

**171G Unanimous written resolutions**

- (1) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic transmission) by all members is as valid and effectual as if it had been passed at a meeting of the Rulings Panel duly called and constituted.
- (2) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members.

*Divisions of Rulings Panel*

**172 Rulings Panel may act by divisions**

- (1) The Rulings Panel or its chairperson may determine that the powers of the Rulings Panel in relation to any matter or class of matters may be exercised by separate divisions of the Rulings Panel.
- (2) The Rulings Panel or its chairperson may revoke or amend a determination made under subclause (1).
- (3) Every determination (or revocation or amendment of a determination) must be recorded in writing and signed by 3 members of the Rulings Panel or its chairperson.

**173 Membership, chairperson, meetings, and resolutions of division**

- (1) Each division consists of the members of the Rulings Panel who are assigned to it for the time being by the Rulings Panel or its chairperson.
- (2) Each division must have at least 3 members.
- (3) If the members assigned to a division do not include the chairperson of the Rulings Panel, the Rulings Panel or its chairperson must nominate 1 of those members as chairperson of the division.

- (4) Regulations 169 to 170B and 171 to 171G apply to a meeting of the division as if it were a meeting of the entire Rulings Panel, except that the quorum for division meetings is 3 members of the division.

**174 Powers of division**

- (1) For the purposes of determining any matter or class of matters specified in a determination under regulation 172,—
- (a) the Rulings Panel consists of the division of the Rulings Panel specified in the determination; and
  - (b) the powers of that division are not affected by any changes in its membership.
- (2) A division of the Rulings Panel may exercise powers of the Rulings Panel even though another division of the Rulings Panel is exercising powers of the Rulings Panel at the same time on a different matter.

*Delegation*

**175 Ability to delegate**

The Rulings Panel may delegate any of the functions and powers of the Rulings Panel (other than those related to the functions referred to in regulation 161(a) to (d)), either generally or specifically, to any of the following persons by resolution and written notice to the person or persons:

- (a) a member of the Rulings Panel or of the Commission;
- (b) an employee of the Rulings Panel or of the Commission;
- (c) any other person or persons approved by the Rulings Panel;
- (d) a subcommittee consisting of any member or members of the Rulings Panel.

**175A Effect of delegation**

- (1) If any functions or powers are delegated under regulation 175, the delegate—
  - (a) may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the Rulings Panel; and
  - (b) may delegate the function or power only if approved by the Commission.
- (2) A delegate who purports to perform a function or exercise a power under a delegation is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation.
- (3) A delegation under regulation 175—
  - (a) may be revoked at will by resolution of the Rulings Panel and written notice to the delegate; but
  - (b) does not prevent the Rulings Panel from performing the function or exercising the power.

*Method of contracting*

**175B Method of contracting**

- (1) A contract or other enforceable obligation may be entered into by the Rulings Panel as provided in subclauses (2) to (4).
- (2) An obligation that, if entered into by an individual, is required to be by deed, may be entered into on behalf of the Rulings Panel in writing, signed under the name of the Rulings Panel by—
  - (a) 2 or more of its members; or
  - (b) 1 or more attorneys appointed by the Rulings Panel in accordance with regulation 175C.
- (3) An obligation that, if entered into by an individual, is required to be in writing, may be entered into on behalf of the Rulings Panel in writing by a person acting under the Rulings Panel's express or implied authority.

- (4) An obligation that, if entered into by an individual, is not required to be in writing, may be entered into on behalf of the Rulings Panel in writing or orally by a person acting under the Rulings Panel's express or implied authority.
- (5) This regulation applies to a contract or other obligation—
  - (a) whether or not that obligation was entered into in New Zealand; and
  - (b) whether or not the law governing that obligation is the law of New Zealand.

**175C Attorneys**

- (1) The Rulings Panel may, by an instrument in writing executed in accordance with regulation 175B(2), appoint a person as its attorney either generally or in relation to a specified matter.
- (2) An act of the attorney in accordance with the instrument binds the Rulings Panel.

**175D Presumptions and saving of certain transactions**

- (1) The validity or enforceability of any deed, agreement, right, or obligation entered into, or incurred by, the Rulings Panel is not affected by a failure of the Rulings Panel to comply with any provision of these regulations.
- (2) A person purporting to execute any documentation on behalf of the Rulings Panel under any authority is, in the absence of proof to the contrary, presumed to be acting in accordance with that authority.

*Employees*

**175E Rulings Panel to be good employer**

- (1) The Rulings Panel must, if it employs employees,—
  - (a) operate a personnel policy that complies with the principle of being a good employer; and

- (b) report on its compliance with that policy (including its equal employment opportunities programme) in its annual report.
- (2) For the purposes of this regulation, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring–
- (a) good and safe working conditions; and
  - (b) an equal employment opportunities programme; and
  - (c) the impartial selection of suitably qualified persons for appointment; and
  - (d) recognition of–
    - (i) the aims and aspirations of Māori; and
    - (ii) the employment requirements of Māori; and
    - (iii) the need for involvement of Māori as employees of the Rulings Panel; and
  - (e) opportunities for the enhancement of the abilities of individual employees; and
  - (f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
  - (g) recognition of the employment requirements of women; and
  - (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this section, an **equal employment opportunities programme** means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

**175F Employment of employees**

- (1) If the Governor-General, by Order in Council, requires it, the Rulings Panel must not agree to the terms and conditions of employment, or an amendment to those terms and conditions, for an employee without—
  - (a) consulting the State Services Commissioner; and
  - (b) having regard to the recommendations that the Commissioner makes to the Rulings Panel within a reasonable time of being consulted.
- (2) The Order in Council may relate to all employees or classes of employees.
- (3) A failure to comply with this regulation does not invalidate the acts of an employee of the Rulings Panel.

**175G Application of Acts to members and employees**

No person is, by reason only of that person's appointment as a member of, or employment by, the Rulings Panel, deemed to be employed in the State services for the purposes of the State Sector Act 1988 or in the Government service for the purposes of the Government Superannuation Fund Act 1956.

*Funding*

**176 Funding of Rulings Panel**

- (1) The Commission must fund the Rulings Panel.
- (2) The Commission may recover the costs of that funding from industry participants via levy regulations made under the Act.

*Powers*

**177 Powers**

The Rulings Panel has all the powers necessary to enable it to perform its functions.

*Miscellaneous provisions*

**178 Rulings Panel to keep information confidential**

- (1) The Rulings Panel must keep confidential all information provided or disclosed to it under these regulations or the rules except to the extent that disclosure—
  - (a) is required to enable the Rulings Panel to carry out its obligations and duties under these regulations or the rules; or
  - (b) is otherwise compelled by a law other than these regulations or the rules.
- (2) A member who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of or act on that information, except—
  - (a) for the purposes of the Rulings Panel; or
  - (b) as required or permitted by law; or
  - (c) in complying with regulations 170 and 170A.

**179 Rulings Panel may prohibit publication of information**

- (1) The Rulings Panel may prohibit the publication or communication of any information or document—
  - (a) that is, or is intended to be, supplied or given or tendered to, or obtained by, the Rulings Panel under these regulations or the rules; or
  - (b) in connection with any notification, investigation, report, or procedure under Part 4 or Part 5.
- (2) The Rulings Panel may make the prohibition only after it has had regard to the following factors:
  - (a) whether the information or document is confidential, commercially sensitive, or otherwise unsuited to publication or communication; and

- (b) whether the publication or communication is required to enable the Rulings Panel to carry out its obligations under these regulations or the rules; and
  - (c) whether the publication or communication is compelled by a law other than these regulations or the rules; and
  - (d) the rules of natural justice.
- (3) The Rulings Panel may make the prohibition—
- (a) on the application of any participant or the Commission or on its own application; but
  - (b) only after notifying each participant that the Rulings Panel considers would be affected by the publication, communication, or prohibition; and
  - (c) only after having regard to any views that the participant may make known to the Rulings Panel within the time specified by the Panel.

**180 Liability of Rulings Panel members**

No member or employee of the Rulings Panel is personally liable for—

- (a) any liability of the Rulings Panel; or
- (b) any act done or omitted to be done by the Rulings Panel, any member, or any employee of the Rulings Panel, in good faith in pursuance or intended pursuance of the functions, duties, or powers of the Rulings Panel.

**180A Insurance**

The Rulings Panel may effect insurance cover for the Rulings Panel, and for a member and office holder of the Rulings Panel, in relation to the acts or omissions of the Rulings Panel, member, or office holder, except an act or omission that is—

- (a) in bad faith;
- (b) not in the performance or intended performance of the Rulings Panel's functions, duties, or powers.

Compare: 2004 No 115 s 123.

**181 Rulings Panel costs and performance objectives**

- (1) As early as practicable before the beginning of each financial year, the chairperson of the Commission and the chairperson of the Rulings Panel must agree on a budget for the expenses anticipated by the Rulings Panel, and on any performance objectives for the next 12 months.
- (2) Each month, the Rulings Panel must provide the Commission with a written report on actual costs incurred during the month compared with budgeted costs.
- (3) If the Rulings Panel anticipates incurring expenditure in excess of any budgeted amount, it must notify the Commission and apply for a variation to the agreed budget.

**182 Rulings Panel reports quarterly on other matters**

At the end of each quarter of the financial year, the Rulings Panel must provide the Commission with—

- (a) a summary of the decisions made by the Rulings Panel during that quarter, including details of all awards of costs and compensation; and
- (b) a summary of the current workload of the Rulings Panel, ability to meet performance objectives, and resources; and
- (c) information about breaches, and alleged breaches, of the rules in Part C, F, or G during that quarter that may affect common quality and grid security; and
- (d) any other matters of concern.

**183 Rulings Panel reports annually**

At the end of each financial year, the Rulings Panel must provide the Commission with an annual report—

- (a) summarising the performance of the Rulings Panel against budget for the financial year; and
- (b) summarising the decisions of the Rulings Panel during the financial year; and
- (c) summarising the performance of the Rulings Panel during the financial year against agreed performance objectives; and
- (d) commenting on any area of these regulations or the rules where the Rulings Panel considers that a change is required.

**Part 9**

**Appeals**

**184 Appeals on ground of lack of jurisdiction**

*Regulation 184 revoked by section 12(2) of the Electricity Amendment Act 2004.*

**185 Judicial review not precluded**

*Regulation 185 revoked by section 12(2) of the Electricity Amendment Act 2004.*

**186 Appeals on question of law in relation to decisions by Commission or Rulings Panel**

*Regulation 186 revoked by section 12(2) of the Electricity Amendment Act 2004.*

- 187 Right of appeal against suspension or termination orders**  
*Regulation 187 revoked by section 12(2) of the Electricity Amendment Act 2004.*
- 188 Persons entitled to appeal**  
*Regulation 188 revoked by section 12(2) of the Electricity Amendment Act 2004.*
- 189 Determination of appeals**  
*Regulation 189 revoked by section 12(2) of the Electricity Amendment Act 2004.*
- 190 High Court may refer appeals back for reconsideration**  
*Regulation 190 revoked by section 12(2) of the Electricity Amendment Act 2004.*
- 191 Provisions pending determination of appeal**  
*Regulation 191 revoked by section 12(2) of the Electricity Amendment Act 2004.*
- 192 High Court may order proceedings to be heard in private**  
*Regulation 192 revoked by section 12(2) of the Electricity Amendment Act 2004.*
- 193 Appeal to Court of Appeal in certain cases**  
*Regulation 193 revoked by section 12(2) of the Electricity Amendment Act 2004.*

**Part 10**  
**Exemptions and special provisions**  
Subpart 1—Exemptions

*General exemptions from application of rules*

**194 Commission may exempt participant from application of rules generally**

- (1) The Commission may, in its discretion and upon the terms and conditions (if any) that it thinks fit, exempt any participant, or class of participants, from compliance with all or any of the rules.
- (2) An exemption, and the Commission's reasons for granting it, must be notified in the *Gazette* as soon as practicable after being granted.
- (3) The Commission must, before granting an exemption,—
  - (a) have regard to section 172N of the Act; and
  - (b) publicise its intention to grant the exemption; and
  - (c) have regard to any views that may be made known to the Commission within the time specified by the Commission.
- (4) Subclause (3)(b) does not apply if the Commission considers that it is necessary or desirable that the proposed exemption be made urgently.
- (5) In this case,—
  - (a) the exemption must state that it is made in reliance on subclause (4); and
  - (b) the exemption must state an expiry date, which must be the earliest date that, in the opinion of the Commission, enables the Commission to have regard to the views of participants about the exemption; and

- (c) the Commission must publicise the exemption and have regard to any views that participants may make known to the Commission within the time specified by the Commission; and
- (d) after a reasonable time has expired, the Commission must publish a notice in the *Gazette* stating whether or not the Commission decides to confirm, revoke, replace, or amend the exemption and explaining the reasons for that decision, or stating where copies of that explanation may be obtained.

*Miscellaneous provisions about exemptions*

**195 Effect of exemptions**

An exemption takes effect from the date specified in the exemption (which may not be earlier than the date of the *Gazette* notice).

**196 Variation or revocation of exemptions**

- (1) An exemption may be varied or revoked, either on application by a participant or on the initiative of the Commission.
- (2) Regulation 194 applies as if the variation or revocation were the granting of an exemption and with all other necessary modifications.

**197 List of exemptions**

The Commission must keep all current exemptions made under these regulations available for public inspection free of charge—

- (a) during normal office hours at the offices of the Commission; and

- (b) on the Commission's website at all reasonable times.

Subpart 2—Special provisions relating to Comalco agreements

*Interpretation*

**198 Interpretation**

In this subpart, unless the context otherwise requires,—

**Comalco agreement**—

- (a) means an agreement described in the Schedule; and
- (b) includes any agreement that varies, or has the effect of varying, an agreement referred to in paragraph (a)

**Comalco party** means a person who is a party to a Comalco agreement

**complete**, in respect of a copy of a document, means a copy of the full document, except that the copy may omit actual prices expressed in monetary amounts, or the monetary amount component of any formulae for calculating prices (but not the other components of those formulae), that are payable for electricity or other services under the document

**disclosed**, in relation to a provision of an agreement, means supplied to the Commission under this subpart.

*Compliance with rules*

**199 Extent of Comalco parties' obligations to comply with rules**

- (1) Each Comalco party that is a participant must comply with the rules, except that Parts C, F, and G of the rules do not apply to an act or omission of a Comalco party to the extent that the act or omission is necessary to perform an obligation, or to exercise a right or power, under a disclosed provision of

- a Comalco agreement that is in force at the time of that act or omission.
- (2) However, that exception from Parts C, F, and G of the rules does not apply to an obligation, or a right or a power, that arises because of a variation of a Comalco agreement that is made after 20 May 2003 and that—
- (a) extends the term of that agreement beyond 31 December 2022; or
  - (b) provides for the performance of an obligation, or the exercise of a right or a power, that would be a breach of these regulations or the rules; or
  - (c) provides for an increase of, or the exercise of any right to increase, the total maximum quantity of electricity to which New Zealand Aluminium Smelters Limited and Comalco Power (NZ) Limited is entitled under all of the Comalco agreements to more than 610 megawatts of instantaneous and continuous supply and fluctuations above that quantity of up to 27.5 kilowatt hours in any 10 second period.
- (3) In these regulations, an act or omission is necessary to perform an obligation, or to exercise a right or power, under a disclosed provision of a Comalco agreement, if either—
- (a) the Comalco party reasonably believes, at the time of the act or omission, that the act or omission was necessary for that purpose; or
  - (b) the act or omission was, in fact, necessary for that purpose.

*Supply of Comalco agreements and publication of summaries*

**200 Parties must supply Comalco agreements to Commission**

- (1) Each Comalco party must, within 5 working days of the date on which these regulations come into force, supply to the Commission, or ensure that the Commission is supplied with, a copy of each Comalco agreement to which it is a party.
- (2) The copy that is supplied must be—
  - (a) a copy of the complete agreement; and
  - (b) certified by 1 director of the Comalco party to be, to the best of the director's knowledge and belief, after due enquiry by that director of the Commission and management of the Comalco party, a true and complete copy of the agreement.

**201 Commission must publish summary of Comalco agreements**

- (1) The Commission must publish, by 1 June 2004, a summary of the cumulative effect of the Comalco agreements that in the Commission's opinion, sufficiently describes how those agreements may affect each Comalco party's ability to comply with Part C or Part G of the rules in certain circumstances, but for this subpart.
- (1A) The Commission must publish, within 6 months after this subclause comes into force, a summary of the cumulative effect of the Comalco agreements that, in the Commission's opinion, sufficiently describes how those agreements may affect each Comalco party's ability to comply with Part F of the rules in certain circumstances, but for this subpart.
- (2) If a Comalco party supplies the Commission with a summary of the effect of those agreements that, in the opinion of the

Commission, meets that requirement, the Commission must publish that summary.

- (3) Otherwise, the Commission must publish a summary that has been prepared by the Commission after—
  - (a) the Commission has consulted, to the extent reasonably practicable, with the parties to the Comalco agreements; and
  - (b) the Commission has supplied a copy of the summary to those parties no less than 10 working days before publishing the summary.

**202 Parties must supply copy of variation of Comalco agreement to Commission**

- (1) This regulation applies if a Comalco agreement is varied after 20 May 2003.
- (2) Each party to that Comalco agreement must, no later than 5 working days after the date on which the variation is made (or 5 working days of the date on which these regulations come into force, if that is later), supply to the Commission, or ensure that the Commission is supplied with, a copy of the variation.
- (3) The copy of a variation that is supplied under subclause (2) must be—
  - (a) a copy of the complete variation; and
  - (b) certified by 1 director of the Comalco party to be, to the best of the director's knowledge and belief, after due enquiry by that director of the Commission and management of the Comalco party,—
    - (i) a true and complete copy of the variation; and
    - (ii) a variation to which regulation 199(2) either does or does not apply, as the case may be.

**203 Commission must publish summary of certain variations of Comalco agreements**

- (1) This regulation applies if the Commission is supplied with a copy of a variation under regulation 202 that the Commission considers may affect a Comalco party's ability to comply with Parts C, F, or G of the rules in certain circumstances, but for this subpart.
- (2) The Commission must publish, within 20 working days of receiving the copy, a summary of the effect of the variation that, in the Commission's opinion, sufficiently describes how the variation may affect each Comalco party's ability to comply with Parts C, F, or G of the rules in certain circumstances, but for this subpart.
- (3) The summary must be a restatement of the summary that was published under regulation 201 but updated to take account of the variation.
- (4) If a Comalco party supplies the Commission with a summary of the effect of the variation that, in the opinion of the Commission, meets those requirements, the Commission must publish that summary.
- (5) Otherwise, the Commission must publish a summary that has been prepared by the Commission after—
  - (a) the Commission has consulted, to the extent reasonably practicable, with the parties to the Comalco agreement that is varied; and
  - (b) the Commission has supplied a copy of the summary to those parties no less than 10 working days before publishing the summary.

**204 Summaries not to include certain commercially confidential matters**

The Commission must not include in a summary that it publishes under this subpart any information that, in its opinion, is commercially confidential unless, in the circumstances of the particular case, the Commission considers that the withholding of that information is outweighed by the public interest of enabling the public to understand how the Comalco agreements or variations may affect each Comalco party's ability to comply with Parts C, F, or G of the rules in certain circumstances, but for this subpart.

*Obligation to notify acts or omissions*

**205 Notifications of acts and omissions to Commission**

- (1) Each Comalco party must notify the Commission of an act or omission that may be, or have been, a breach of Parts C, F, or G of the rules, but for this subpart.
- (2) The Comalco party must give that notice either—
  - (a) as soon as practicable after the party became aware, or should reasonably have become aware, that an act or omission may be, or have been, such a breach; or
  - (b) if the Commission so consents in a situation where the breach is likely to occur frequently, in advance of the breach occurring and in accordance with the terms of that consent.
- (3) The notification must state—
  - (a) the details of the act or omission; and
  - (b) the relevant rule of Parts C, F, or G of the rules involved; and

- (c) the reasons why the Comalco party believes that regulation 199 applies or does not apply (as the case may be).
- (4) The Commission may request in writing, and the Comalco party must supply in writing, any further information about the act or omission that the Commission reasonably requests.
- (5) The Commission must publish the fact that it has received the notification, as soon as practicable after receiving it.

**206 Annual wash-up notification**

Each Comalco party must, within 90 days of the end of each financial year, notify the Commission,—

- (a) whether any acts or omissions have occurred in the financial year that may have been a breach of Parts C, F, or G of the rules but for this subpart in addition to the ones notified under regulation 205; and
- (b) whether any anticipated frequent breaches notified under regulation 205(2)(b) are still occurring.

**207 Assessment and publication of notification**

- (1) If the Commission considers that an act or omission may have been a breach of Parts C, F, or G of the rules (for example, because regulation 199 was thought to apply but does not),—
  - (a) the notification under regulation 205 must be treated as a notification under regulation 63; and
  - (b) the act or omission must be dealt with under Part 4 in the same way as an alleged breach of Parts C, F, or G of the rules, except that—
    - (i) the investigator then must consider both whether the act or omission is a breach of Parts C, F, or

- G of the rules and whether regulation 199 applies; and
- (ii) any Comalco party may notify the investigator that it considers it is affected by the matter being investigated and wishes to become a party to the investigation, in which case, it is then joined as a party to the investigation as if it were a participant.
- (2) The Commission may request in writing, and the Comalco party must supply in writing, any further information that is reasonably necessary to enable the Commission to consider the matter under subclause (1).

*Appeals in respect of Comalco agreements*

**208 Full right of appeal against Commission's or Rulings Panel's decisions**

- (1) Any Comalco party may appeal to the High Court against a decision of the Commission or the Rulings Panel in respect of regulation 199.
- (2) The appeal must be made by giving notice of appeal within 20 working days after the date of the decision appealed against or within any further time that the Court allows.
- (3) The right of appeal in this regulation does not limit the rights of appeal in sections 172KH to 172KQ of the Act.
- (4) Sections 172KM to 172KQ of the Act apply to an appeal under this regulation with necessary modifications.

*Relief from costs and charges*

**209 Relief from costs and charges**

- (1) New Zealand Aluminium Smelters Limited is not liable to the system operator under these regulations or the rules for any costs or charges which, but for this subclause, New Zealand Aluminium Smelters Limited would be liable as a participant under Part C of the rules in relation to services that Comalco Power (N.Z.) Limited pays for under the Comalco agreements to which Meridian Energy Limited and Comalco Power (N.Z.) Limited are parties for so long as it is a participant and a Comalco party.
- (2) Meridian Energy Limited is liable for the costs for which New Zealand Aluminium Smelters Limited would have been liable but for subclause (1).
- (3) In all other respects, this subpart does not affect the liability of any Comalco party that is a participant for any costs or charges under these regulations or the rules.

**Part 11**

**Transitional provisions**

**210 Disclosure of MARIA and NZEM information**

Any information collected or created, and held by service providers, officer holders, and other related parties under the MARIA and NZEM rules that is disclosed or transferred to a participant is deemed to have been validly collected and held in accordance with these regulations and the rules.

**211 Confidentiality obligations for MARIA and NZEM information**

- (1) Any restrictions on disclosure that apply to information held under the MARIA and NZEM rules and that are notified at the time of disclosure or transfer to a participant under the rules continue to apply to that information.
- (2) This regulation is subject to subpart 2 of Part 1.

**212 Registry access**

The registry must allow the MARIA and NZEM registry service provider access to its database for the purpose of completing any customer switches, and performing any other services, after the operational date in accordance with MARIA and NZEM.

**213 Registry file formats and methods of exchange**

If a file format or method of exchanging information referred to in rule 5 of Schedule E3 of Part E of the rules was in place under the equivalent MARIA rule immediately before the date of commencement of these regulations, then that file format or method of exchange (as the case may be) is deemed to be satisfactory for the purposes of the rules (subject to any subsequent amendments to, or replacement of, that file format or that method of exchange under those rules).

## Schedule

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### Comalco Agreements

#### “Power” agreements

- 1 Agreement dated 15 August 1963 between the Crown and Consolidated Zinc Proprietary Limited, as amended by agreements dated 15 November 1966 and 5 September 1969.
- 2 Agreement amending the Manapouri Power Agreement 1963 dated 9 July 1980 between the Crown and Comalco Power (N.Z.) Limited.
- 3 Agreement to supply electricity dated 30 April 1981 between the Crown and Comalco Power (N.Z.) Limited.
- 4 Deed of Review of 1963 Agreement dated 20 August 1993 between Electricity Corporation of New Zealand Limited and Comalco Power (N.Z.) Limited.
- 5 Deed of Review of 1981 Agreement dated 20 August 1993 between Electricity Corporation of New Zealand Limited and Comalco Power (N.Z.) Limited.
- 6 Electricity Supply Agreement dated 20 August 1993 between Electricity Corporation of New Zealand Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.
- 7 Comalco Deed dated 16 January 1996 between Electricity Corporation of New Zealand Limited and Contact Energy Limited.

- 8 First Supplementary Agreement dated 5 September 1996 between Electricity Corporation of New Zealand Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.
- 9 Second Supplementary Agreement dated 9 May 1997 between Electricity Corporation of New Zealand Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.
- 10 Contact Deed dated 30 October 1997 between Electricity Corporation of New Zealand Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.
- 11 Third Supplementary Agreement dated 22 December 1998 between Electricity Corporation of New Zealand Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.
- 12 Deed relating to the Power Agreements and the Connection Contract in the context of the establishment of Hydro Energy Limited dated 22 December 1998 between Electricity Corporation of New Zealand Limited, Hydro Energy Limited (now) Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.
- 13 Fourth Supplementary Agreement dated 31 August 1999 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.
- 14 Fifth Supplementary Agreement dated 31 March 2000 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

- 15 Sixth Supplementary Agreement dated 13 March 2001 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.
- 16 Seventh Supplementary Agreement dated 31 March 2003 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited, as varied by agreement dated 28 October 2003.

**“Connection” agreements**

- 17 Tiwai Point Connection Contract dated 9 November 1993 between Transpower New Zealand Limited and Electricity Corporation of New Zealand Limited.
- 18 Supplementary Contract dated 5 May 1995 between Transpower New Zealand Limited and Electricity Corporation of New Zealand Limited.
- 19 Second Supplementary Contract dated 30 August 1996 between Transpower New Zealand Limited and Electricity Corporation of New Zealand Limited.
- 20 Third Supplementary Contract dated 24 November 1998 between Transpower New Zealand Limited and Electricity Corporation of New Zealand Limited.
- 21 Deed of Novation in relation to the Tiwai Point Connection Contract dated 1 April 1999 between Electricity Corporation of New Zealand Limited, Transpower Limited, and Meridian Energy Limited.
- 22 Fourth Supplementary Contract dated 25 June 1999 between Transpower New Zealand Limited and Meridian Energy Limited.

- 23 Sixth Supplementary Contract dated 31 March 2000 between Transpower New Zealand Limited and Meridian Energy Limited (and annexing certain correspondence described as the “Fifth Supplementary Contract”).
- 24 Seventh Supplementary Contract dated 30 March 2001 between Transpower New Zealand Limited and Meridian Energy Limited.
- 25 Eighth Supplementary Contract dated 25 March 2002 between Transpower New Zealand Limited and Meridian Energy Limited, as amended by letter executed as deed dated 29 April 2002.
- 26 Ninth Supplementary Contract dated 31 March 2003 between Transpower New Zealand Limited and Meridian Energy Limited.

**“Comalco–NZAS” agreements**

- 27 Power Contract dated 12 June 1969 between Comalco Power (N.Z.) Limited and New Zealand Aluminium Smelters Limited.
- 28 Amendment to Power Contract dated 6 November 1970 between Comalco Power (N.Z.) Limited and New Zealand Aluminium Smelters Limited.
- 29 Deed of Amendment of Power Contract dated 20 June 1994 between Comalco Power (N.Z.) Limited and New Zealand Aluminium Smelters Limited.

- 30 Power Contract dated 12 June 1969, as amended and restated as of 20 June 1994 between Comalco Power (N.Z.) Limited and New Zealand Aluminium Smelters Limited.

Clerk of the Executive Council.

### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, provide for the monitoring and enforcement of the *Electricity Governance Rules* made by the Minister of Energy, and for various other matters related to those rules, such as liability, appeals, and exemptions. Those rules govern the arrangements between participants in the electricity industry.

Section 172I(4) of the Electricity Act 1992 requires the Electricity Governance Commission (also known as the Electricity Commission) to make those *Electricity Governance Rules* available to the public by making copies of them available—

- for inspection, free of charge, at the principal office of the Commission (during ordinary office hours); and
- on the Internet in an electronic form that is publicly accessible (at all reasonable times); and
- for purchase at a reasonable price.

Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 18 December 2003  
These regulations are administered in the Ministry of Economic Development.