

Electricity Governance Regulations 2003

Administrator of the Government

Order in Council

At Wellington this day of 2003

Present:

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.

Contents

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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.
- (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

Board means the Electricity Governance Board established under subpart 1 of Part 15 of the Act

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 Board, 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 Board 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) includes a data administrator:
- (h) includes an approved test house:
- (i) does not include the Board (even to the extent that the Board 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 Board’s website at all reasonable times; and
- (b) in any other manner that the Board may decide

register means the register of participants kept by the Board 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

- (1) There is no remedy, other than the remedies provided in these regulations, in respect of a breach of these regulations or the rules.
- (2) In particular, no one can bring an action for breach of statutory duty that is based on a breach of these regulations or the rules by a participant or a service provider.
- (3) However, this regulation does not affect—

- (a) any right to recover a debt owing under these regulations or the rules by a participant; or
- (b) any right to bring any action for any tort other than a breach of statutory duty, for breach of contract, or for other wrong, that arises from any act or omission that also just happens to be a breach of these regulations or the rules.

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 Board.
- (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 Board must keep register of participants

- (1) The Board 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 Board must publicise information about new participants

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

11 Changes to particulars

- (1) Every registered participant must notify the Board 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 Board must record the change, and the date of change, in the register on receipt of the notice.
- (3) The Board must publicise the change.

12 Publication of register

- (1) The Board 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 Board.

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 Board, 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 Board, 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 Board to make available to the participant (the **requesting participant**) any rulebook information held by the Board 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 Board

16 Information held by Board

If the Board receives a request for the supply of rulebook information that the Board holds, the Board 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 Board

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

18 Board must contact participant believed to hold requested information

The Board 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 Board believes holds the relevant rulebook information—

- (a) notifying the participant of the request made to the Board, 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 Board 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 Board 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 Board 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 Board 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 Board.

- (2) The Board 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 Board, 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 Board and the requesting participant of both the refusal and of the reasons for the refusal.
- (2) The Board 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 Board 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 Board must appoint Transpower as the system operator.
- (3) The Board 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 Board and the service provider.
- (2) The Board 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 Board.
- (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 Board and the service provider.
- (2) The Board 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 Board must publicise every service provider agreement.

35 Board may be service provider

The Board 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 Board, on terms and in respect of risks approved by the Board, with an insurer approved by the Board.

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 Board) 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 Board; 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 Board 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 Board and the service provider may agree to adjust the remuneration of the service provider.

40 Board may contract elsewhere during force majeure event

For the duration of a force majeure event, the Board 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 Board 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 Board 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 Board

42 Disclosure to Board

Each service provider is entitled to disclose to the Board 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 Board 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 Board; and
 - (d) the provisions of the service provider's agreement.

45 Service providers must report to Board

- (1) Each service provider must, within 10 working days of the end of each calendar month, provide a written report to the Board 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 Board, 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 Board

46 Review of service providers other than system operator

- (1) At the end of each financial year, the Board 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 Board; and
 - (d) the provisions of the service provider's agreement.

47 Review of system operator

- (1) The Board 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 Board; and

- (d) the provisions of the system operator's agreement.

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

The Board 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 Board; 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 Board and the system operator; and
- (h) any other matter the Board considers relevant to assess the system operator's performance.

49 Board must publicise system operator reports

- (1) The Board 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 Board under regulation 45 or the rules.
- (2) The Board 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

- (1) Unless otherwise agreed by the Board 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 Board in writing, each service provider must arrange and pay for a suitably qualified independent person approved by the Board 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 Board as to—
 - (a) the performance (including likely future performance) of all of the software in accordance with the relevant software specification; and
 - (b) any other matters that the Board requires.

53 Requirements for using software

No service provider may use any software unless—

- (a) the service provider has provided to the Board, in respect of that software, an auditor's report issued in accordance

- with regulation 52(2); or
- (b) the Board has agreed that no audit is required under regulation 52(1).

Part 3

Regime for dealing with undesirable trading situations

54 Occurrence of undesirable trading situation

If the Board suspects or anticipates the development, or possible development, of an undesirable trading situation, the Board 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 Board, 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 Board may take to correct undesirable trading situation

- (1) If the Board 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 Board considers are necessary to correct the undesirable trading situation.
- (2) The steps that the Board 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 Board'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 Board 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 Board direction under this regulation.

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

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

58 Board must consult with system operator

- (1) The Board must consult with the system operator if the Board 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 Board, and provide information as soon as reasonably practicable, if the Board consults it under this regulation.

59 Board must consult with participants

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

- (a) immediately notify all registered participants of its findings and of any actions that the Board intends to take, or has taken, to correct the undesirable trading situation; and
- (b) must, unless the Board considers that it is impractical to do so, consult with affected participants before taking the action.

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

The Board 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 Board.

Mandatory reporting to Board 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 Board 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 or Part G of the rules.
- (2) The participant must notify the Board 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 Board of breaches of regulations or rules

65 Voluntary reporting of breaches of rules or regulations

Any person other than a participant may notify the Board 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 Board must keep information confidential

The Board must keep confidential all information provided or disclosed to the Board under this Part except to the extent that disclosure is required to enable the Board 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 Board may decline to pursue a notification of an alleged breach—
 - (a) that relates to a matter that has been, or that the Board considers is more properly, dealt with by any other person; or
 - (b) if the Board considers that the notifying participant has failed to establish a prima facie case for the alleged breach; or
 - (c) that the Board decides does not otherwise warrant any further action being taken.
- (2) The Board must then inform the notifying participant, or the person that notified the Board under regulation 65, as the case may be,—
 - (a) that the Board 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 Board 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 Board or any participant affected by the injunction.

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

69 Board must appoint investigator

- (1) If the Board 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 Board may appoint a person (also the **investigator**) to investigate any other alleged breach of which the Board becomes aware by any other means.
- (3) Subclause (1) is subject to regulation 67.

70 Board's power to appoint investigator

- (1) The Board 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 Board must avoid conflicts

In appointing an investigator or other person under regulations 69 to 71, the Board 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 Board 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 Board 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 Board a report and recommendation sufficient to enable the Board 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

Every participant must co-operate fully with any investigation carried out by the Board or an investigator—

- (a) by providing, within any reasonable time specified by the Board or the investigator, all information, papers,

recordings, and documents concerning the matter that are in the possession, or under the control, of the participant and that are requested for the purpose of the investigation; and

- (b) by permitting its officers or other employees to be interviewed (which interview may be recorded) and by ensuring as far as possible that they are made available for interview and answer truthfully and fully any questions put to them; and
- (c) by giving to the Board or any person authorised by the Board, at all reasonable times, full access to any premises (subject to complying with any safety requirements that apply to visitors to those premises) at which the participant carries on business or maintains records; and
- (d) by giving all other assistance that may be reasonable and necessary to enable the matter to be fully investigated.

80 Privileges protected

- (1) These regulations do not limit any claim for legal professional privilege.
- (2) A person is not excused from answering a question or giving any information or document under these regulations on the ground that to do so may incriminate or tend to incriminate that person.
- (3) However, a self-incriminating statement or document made or given under these regulations—
 - (a) is not admissible as evidence in criminal or civil proceedings against that person; and
 - (b) may not be used against the person in any proceedings before the Rulings Panel.

- (4) Subclause (3)(b) does not apply to a notification given under regulation 63 or regulation 205 or regulation 206.

81 Limits on investigation powers

- (1) The Board may authorise, in writing, any person or persons to exercise all or any of the powers referred to in regulation 79(b) or (c) in respect of a participant.
- (2) An authorised person must, before entering premises under regulation 79(c), give reasonable notice to the owner or occupier of the premises (at least 4 days before entry) of his or her intention to enter the premises.
- (3) An authorised person must, on first entering any premises under regulation 79(c) and, if requested, at any later time, produce to the person apparently in charge of the premises the authorisation under subclause (1).
- (4) If an authorised person enters any premises under regulation 79(c) and is unable, despite reasonable efforts, to find any person apparently in charge, the authorised person must, before leaving the premises, leave a written notice stating—
 - (a) the authorised person’s identity; and
 - (b) the address of premises where the authorised person may be contacted; and
 - (c) the date and time of entry; and
 - (d) the reasons for entering.
- (5) Regulation 79(c) does not authorise an authorised person to enter a home, except with the consent of an occupier or under the authority of a warrant.
- (6) An authorised person may apply for a warrant by written application on oath.
- (7) A District Court Judge, Justice, or Community Magistrate, or

a Court Registrar (not being a constable) who is satisfied that there are reasonable grounds to believe that it is necessary, for the purpose of ascertaining whether or not a participant has breached, or may breach, these regulations or the rules, for an authorised person to search any place may, by warrant, authorise that person to search a place specified in the warrant.

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 Board (if the Board 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 Board decides whether to approve settlements

- (1) The investigator must provide to the Board—
 - (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 Board should approve the settlement.
- (2) The Board must either—
 - (a) approve the settlement, in which case, subject to regulation 87, the settlement is final and binding on all participants and the Board; or
 - (b) reject the settlement.

85 Settlements must be publicised

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

86 Board decides whether complaint is laid

- (1) If the Board rejects a settlement under regulation 84(2)(b), it must decide whether a formal complaint should be laid.
- (2) If the Board 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 Board under regulation 62 or regulation 63 in relation to the same matter only if it can demonstrate to the Board'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 Board

- (1) The investigator must provide to the Board a report and recommendation sufficient to enable the Board 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 Board or the Rulings Panel, including any settlement approved by the Board under regulation 84 in response to those situations (if known by the investigator); and
- (j) a copy of all correspondence with the investigator or Board relating to the alleged breach.

89 Right to copy of investigation material

The investigator must ensure that the notifying participant, the Board, 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 Board must decide whether formal complaint to be laid

- (1) As soon as practicable after receiving a report under regulation 77 or regulation 88, the Board must decide whether or not a formal complaint should be laid against the participant allegedly in breach.
- (2) If the Board decides that no formal complaint should be laid, the Board 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 Board decides that a formal complaint should be laid, the Board must direct the investigator to report to the Rulings Panel under regulation 93.

91 Board must publicise decisions

- (1) The Board must publicise every decision made under regulation 86(2) or regulation 90(2) or regulation 90(3), together with the reasons for the Board's decision.
- (2) However, the Board may decide not to publicise any part, or all, of a particular decision if the Board 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 Board informs that participant that the Board 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 Board under regulation 90; and
 - (b) in accordance with regulation 94.

93 Process if Board decides that formal complaint should be laid

- (1) This regulation applies if the Board 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 Board, 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 regulation 94(2), the Rulings Panel must set a date for considering the formal complaint, and must give to the notifying participant, the complainant, the Board, and the participant allegedly in breach 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 Board (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 Board or any participant to be given an opportunity to be heard; or
 - (b) if any participant or the Board requests a hearing in respect of the matter.
- (2) Hearings must be in public, unless the Rulings Panel directs otherwise.
- (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 Board, 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 Board of its decision and the grounds for that decision.
- (2) If a participant or the Board 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 Board of its decision and the grounds for that decision.

Miscellaneous provisions

100 Urgent hearings

If the Rulings Panel considers that the subject matter of a hearing involves a significant area of dispute, or a matter of urgency, it must arrange for the hearing to take place as soon as practicable after the request for the hearing is made.

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 regulation 80.

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 regulation 107.
- (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 regulation 80.

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

- (1) The Rulings Panel may, after hearing any matter,—
 - (a) decide that no action should be taken:
 - (b) issue a private warning or reprimand:
 - (c) issue a public warning or reprimand:
 - (d) impose additional or more stringent record-keeping or reporting requirements under or in connection with any rule:
 - (e) order a civil pecuniary penalty under regulation 109:
 - (f) order any participant to pay a sum by way of compensation to any other person:

- (g) make a termination order or suspension order under regulation 138:
 - (h) order any participant that is found not to be complying with these regulations or the rules to take any action that is necessary to restore it to a position of compliance:
 - (i) make orders regarding the reasonable costs of any investigations or proceedings:
 - (j) propose to the Board that it recommend to the Minister that a change should be made to a regulation or rule.
- (2) In making any decision under this regulation, the Rulings Panel must take into account its previous decisions in respect of any similar situations previously dealt with by the Board or the Rulings Panel.

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 regulation 107(1)(h).

109 Rulings Panel may order payment of civil pecuniary penalty up to \$20,000

- (1) The Rulings Panel may require a participant to pay to the Crown a civil pecuniary penalty of an amount not exceeding \$20,000 in any case where that participant has breached any provision of these regulations or the rules.
- (2) When ordering payment of a civil pecuniary penalty, the Rulings Panel must—
 - (a) take account of the level of civil pecuniary penalties it has ordered in any similar situations; and
 - (b) seek to order payment of a civil pecuniary penalty that is commensurate with the seriousness of the case.

- (3) In making that assessment, 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 Board:
 - (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 regulations 110 to 133 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 Board 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.

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 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 Board, on terms and in

respect of risks approved by the Board, with an insurer approved by the Board, 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 Board, on terms and in respect of risks approved by the Board, with an insurer approved by the Board.

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

- (1) The Rulings Panel has, for the 3 months following the date of commencement of these regulations, a discretion, when considering what civil pecuniary penalty, if any, is to be set in relation to any breach of the rules or these regulations, to waive or lessen that penalty if—
 - (a) the rule or regulation breached differs to the MARIA or NZEM rules, or to common quality obligations or practices that operated before the date of commencement of these regulations; and
 - (b) the breach was inadvertent because of that difference.
- (2) This regulation does not limit the Rulings Panel’s discretion at other times.

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 Board as soon as practicable after it has made a final decision.

135 Decisions must be publicised

- (1) The Board 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 Board must not publicise any part, or all, of any particular decision if the Rulings Panel advises the Board 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 Board 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 Board 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 Board, 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 Board 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 13, section VI, Part G 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 regulation 80.

- (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 Board

The Rulings Panel must report to the Board 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 the rules:
- (b) propose to the Board 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 the rules.

Membership of Rulings Panel

162 Membership of Rulings Panel

- (1) The Board must, by written notice, appoint no fewer than 5, and no more than 7, persons with the characteristics described in regulations 166 and 167 to be members of the Rulings Panel.
- (2) A member of the Board may not be a member of the Rulings

Panel.

- (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 Board with written consent to the appointment and a written undertaking to be bound by these regulations and the rules.
- (4) Clauses 1(1), 1(2), 1(3)(b), and 2 of Schedule 2A of the Act apply, as if references to the Minister were references to the Board and with other necessary modifications.

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) Clause 3 of Schedule 2A of the Act applies, with necessary modifications.

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) Clause 4 of Schedule 2A of the Act applies.

165 Chairperson of Rulings Panel

- (1) The Board 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 Board, which may be up to 5 years.
- (3) Clauses 17(2) and (3) and 18 to 21 of Schedule 2A of the Act apply, as if references to the Minister were references to the Board and with other necessary modifications.

166 Characteristics of Rulings Panel

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.

167 Members of Rulings Panel must not be interested

- (1) 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.
- (2) Clauses 9 to 12 of Schedule 2A of the Act apply to members of the Rulings Panel—
 - (a) as if references to interests in a transaction of, or other matter relating to, EGB were references both—
 - (i) to interests in a matter relating to the Rulings Panel; and
 - (ii) to interests in a participant; and
 - (b) as if other references to EGB were references to the Rulings Panel; and
 - (c) as if references to the Minister were references to the chairperson of the Board; and
 - (d) with all other necessary modifications.

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 Board.

- (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.

169 Removal and resignation of members

- (1) The Board 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 any of paragraphs (a) to (c) of regulation 167(1) applies.
- (2) The Board must state its reasons in any notice of removal.
- (3) The Board must fill the vacancy created by a removal as soon as possible.
- (4) Clauses 5, 6(2), and 7 of Schedule 2A of the Act apply, as if references to the Minister were references to the Board and with other necessary modifications.
- (5) Clause 6(1) of Schedule 2A of the Act does not apply.

170 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.

Other matters relating to 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.

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) These regulations and Schedule 2A of the Act 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.
- (5) A resolution in writing signed or assented to by letter,

facsimile, electronic mail, or other similar means of communication by all members of the division is as effective as if it had been passed at a meeting of the division duly called and constituted.

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.

175 Rulings Panel may delegate to subcommittees

The Rulings Panel may delegate the exercise of any of its powers (other than those related to the functions referred to in regulation 161(a) to (d)) to a subcommittee consisting of any member or members of the Rulings Panel as the Rulings Panel thinks fit, and may revoke any delegation.

176 Funding of Rulings Panel

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

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) Clause 13(1) of Schedule 2A of the Act applies, with necessary modifications.

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 Board 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.

181 Rulings Panel costs and performance objectives

- (1) As early as practicable before the beginning of each financial year, the chairperson of the Board 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 Board 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 Board 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 Board 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 or Part 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 Board 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

Any participant affected by a decision of the Rulings Panel may appeal that decision to the High Court on the ground of lack of jurisdiction.

185 Judicial review not precluded

Nothing in these regulations limits access to the courts in an action for judicial review.

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

- (1) There is a right of appeal to the High Court by way of case stated for the opinion of the Court on a question of law only against a decision of the Board or the Rulings Panel under these regulations or the rules.
- (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.

187 Right of appeal against suspension or termination orders

- (1) A participant in respect of which a suspension order or termination order is made by the Rulings Panel or the Board may appeal to the High Court against the order.
- (2) The appeal must be made by giving notice of appeal within 20 working days after the date of the order appealed against or within any further time that the Court allows.

188 Persons entitled to appeal

The Board, and the following participants, may exercise a right of appeal under this Part:

- (a) a participant in whose favour or against whom a decision or order of the Board or the Rulings Panel is made;
- (b) a participant who was a party to a dispute that was determined by the Board or the Rulings Panel;
- (c) any participant who joined as a party, under regulation 75, to the investigation of the matter that is subject to the appeal.

189 Determination of appeals

In its determination of any appeal (other than an appeal to the High Court by way of case stated for the opinion of the Court on a question of law only), the High Court may do any 1 or more of the following things:

- (a) confirm, modify, or reverse the decision or any part of it;
- (b) exercise any of the powers that could have been exercised by the Board or the Rulings Panel in relation to the matter to which the appeal relates.

190 High Court may refer appeals back for reconsideration

- (1) The High Court may, in any case, instead of determining any appeal, direct the Board or the Rulings Panel to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.
- (2) In giving any direction under this regulation, the Court must—
 - (a) advise the Board or the Rulings Panel, as the case may be, of its reasons for doing so; and
 - (b) give to the Board or the Rulings Panel, as the case may

be, any directions that it thinks just concerning the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

- (3) In reconsidering the matter so referred back, the Board or the Rulings Panel, as the case may be, must have regard to the Court's reasons for giving the direction, and the Court's directions.

191 Provisions pending determination of appeal

If an appeal is brought under this Part against any decision of the Board or the Rulings Panel, as the case may be, the decision to which the appeal relates remains in full force pending the determination of the appeal, unless the High Court orders to the contrary.

192 High Court may order proceedings to be heard in private

- (1) The High Court may, in its discretion, order that the hearing or any part of the hearing of any proceedings under this Part must be held in private.
- (2) The High Court may make an order prohibiting the publication of any report or description of proceedings or any part of proceedings (whether heard in public or in private), but no order may prohibit the publication of any determination of the Court.

193 Appeal to Court of Appeal in certain cases

- (1) Any party to any appeal before the High Court against any decision of the Board or the Rulings Panel, as the case may be, who is dissatisfied with any decision or order of the High Court may, with the leave of the High Court or of the Court of Appeal, appeal to the Court of Appeal. Section 66 of the

Judicature Act 1908 applies to the appeal.

- (2) In determining whether to grant leave to appeal under this regulation, the court to which the application for leave is made must have regard to the following matters:
 - (a) whether any question of law or general principle is involved:
 - (b) the importance of the issues to the parties:
 - (c) the amount of money in issue:
 - (d) any other matters that in the particular circumstances the court thinks fit.
- (3) The court granting leave under this regulation may, in its discretion, impose any conditions that it thinks fit, whether as to costs or otherwise.

Part 10

Exemptions and special provisions

Subpart 1—Exemptions

General exemptions from application of rules

194 Board may exempt participant from application of rules generally

- (1) The Board 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 Board's reasons for granting it, must be notified in the *Gazette* as soon as practicable after being granted.
- (3) The Board 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 Board within the time specified by the Board.
- (4) Subclause (3)(b) does not apply if the Board 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 Board, enables the Board to have regard to the views of participants about the exemption; and
 - (c) the Board must publicise the exemption and have regard to any views that participants may make known to the Board within the time specified by the Board; and
 - (d) after a reasonable time has expired, the Board must publish a notice in the *Gazette* stating whether or not the Board decides to 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 Board.
- (2) Regulation 194 applies as if the variation or modification were the granting of an exemption and with all other necessary modifications.

197 List of exemptions

The Board 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 Board;
and
- (b) on the Board’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 Board 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 Part C and Part 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 Part C and Part 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 Board

- (1) Each Comalco party must, within 5 working days of the date on which these regulations come into force, supply to the Board, or ensure that the Board 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 board and management of the Comalco party, a true and complete copy of the agreement.

201 Board must publish summary of Comalco agreements

- (1) The Board must publish, by 1 June 2004, a summary of the cumulative effect of the Comalco agreements that in the Board'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.
- (2) If a Comalco party supplies the Board with a summary of the effect of those agreements that, in the opinion of the Board,

- meets that requirement, the Board must publish that summary.
- (3) Otherwise, the Board must publish a summary that has been prepared by the Board after—
- (a) the Board has consulted, to the extent reasonably practicable, with the parties to the Comalco agreements; and
 - (b) the Board 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 Board

- (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 Board, or ensure that the Board 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 board 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 Board must publish summary of certain variations of

Comalco agreements

- (1) This regulation applies if the Board is supplied with a copy of a variation under regulation 202 that the Board considers may affect a Comalco party's ability to comply with Part C or Part G of the rules in certain circumstances, but for this subpart.
- (2) The Board must publish, within 20 working days of receiving the copy, a summary of the effect of the variation that, in the Board's opinion, sufficiently describes how the variation 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.
- (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 Board with a summary of the effect of the variation that, in the opinion of the Board, meets those requirements, the Board must publish that summary.
- (5) Otherwise, the Board must publish a summary that has been prepared by the Board after—
 - (a) the Board has consulted, to the extent reasonably practicable, with the parties to the Comalco agreement that is varied; and
 - (b) the Board 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 Board 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 Board 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 Part C or Part G of the rules in certain circumstances, but for this subpart.

Obligation to notify acts or omissions

205 Notifications of acts and omissions to Board

- (1) Each Comalco party must notify the Board of an act or omission that may be, or have been, a breach of Part C or Part 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 Board 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 Part C or Part 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 Board may request in writing, and the Comalco party must supply in writing, any further information about the act or omission that the Board reasonably requests.
- (5) The Board 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 Board,—

- (a) whether any acts or omissions have occurred in the financial year that may have been a breach of Part C or Part 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 Board considers that an act or omission may have been a breach of Part C or Part 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 Part C or Part G of the rules, except that—
 - (i) the investigator then must consider both whether the act or omission is a breach of Part C or Part 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 Board may request in writing, and the Comalco party must supply in writing, any further information that is reasonably necessary to enable the Board to consider the matter under subclause (1).

Appeals in respect of Comalco agreements

208 Full right of appeal against Board's or Ruling Panel's decisions

- (1) Any Comalco party may appeal to the High Court against a decision of 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 Part 9.
- (4) Regulations 189 to 193 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 Board (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 Board (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*:

These regulations are administered in the Ministry of Economic Development.
