



Undesirable Trading Situations Guidelines for Participants

Version 2.0

From 1 December 2004

Table of contents

1.	Introduction	3
2.	Analysis of the Definition – Undesirable Trading Situation	4
3.	Process for Managing Undesirable Trading Situations	5
4.	Administrative Process and Contact Details	7
Appendix A	Relevant Regulations	8
Appendix B	Checklist for Managing Undesirable Trading Situations	9
Appendix C	Flowchart Depicting the Management Process	11

1. Introduction

An Undesirable Trading Situation (“UTS”) arises when there exists a threat to orderly trading or settlement that cannot be resolved under the rules. A UTS is an extraordinary event in the market place that provides the Board with wide powers to correct any particular situation permanently, or, when appropriate, temporarily until a new rule is put in place to rectify the problem.

These situations are not necessarily high profile ‘disasters’; in fact they can appear to be quite routine problems but, if left unchecked even in the short term, could escalate to become significant issues for the market. Often a UTS will be resolved uneventfully because it can be dealt with quickly and effectively.

The powers and duties of the Board are contained in the Regulations. With respect to duties, the Board is entitled to investigate any matter that it suspects or anticipates might be a UTS. With respect to powers, the Board can do anything it considers is appropriate in the circumstances, including suspending rule requirements and imposing new requirements on any participant.

This paper is intended to notify market participants, service providers and wider stakeholders of the background against, and framework within, which the Board intends to manage UTS, and sets out the process and contact details for parties to use in order to have the Board promptly consider any claim that a UTS exists or is developing.

This paper details:

- The definition of an “undesirable trading situation”;
- The process for managing UTS; and
- The administrative process and contact details for management of UTS.

Appendices detail:

- A matrix setting out the regulations relevant to UTS;
- A checklist for managing UTS;
- A flowchart for managing UTS; and
- Contact details.

2. Definition - Undesirable Trading Situation

2.1 Section 55, Electricity Governance Regulations 2003 provides:

- 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 is 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.

2.2 The Board's view is central

Section 56, subclause (1) states that "If the Board finds that an undesirable trading situation is developing or has developed..." it may do certain things that it considers necessary to correct it. This means that if the Board does not "find", or reach the view, that the event is an undesirable trading situation, then according to the Regulations, it is not one.

In other words, it is the finding by the Board, one way or the other, that is the determinant of whether the situation is an undesirable trading situation or not.

3. Process for Managing Undesirable Trading Situations

References made in the document to the Act, Regulations, and Rules are to the Electricity Act 1992, the Electricity Governance Regulations 2003, and the Electricity Governance Rules respectively.

3.1 Initiation of UTS process

There is no limit on who may register a complaint to the Board about a UTS or potential UTS. Refer Regulation 65(1) which reflects the principle that complaints are filtered with reference to substance rather than form.

There is no requirement on the Board to pursue every complaint of a UTS or potential UTS however, as the Board is uniquely placed as the sole decision-maker whether a UTS exists or is developing, it should consider every complaint that it receives. Refer Regulation 67 which indicates a reasonable basis upon which to assess the merits of each complaint and suggests an appropriate process to manage those complaints.

A UTS exists only when the Board states that it exists. Refer Regulation 55(1)(b) which requires, before a UTS is determined to exist, a decision by the Board whether the matter could be satisfactorily resolved under the Rules other than by reference to a UTS. As no other party has the power to determine the existence of a UTS the Board has sole responsibility in that regard.

Regulation 54 provides the Board with discretion to decide whether it proceeds to investigate the existence of a UTS if it suspects or anticipates a UTS exists or is developing. Regulation 54 should be interpreted as primarily an empowering provision that allows the Board to investigate a UTS rather than as a provision that allows the Board not to investigate a UTS matter.

To summarise the above points, the Board should consider all complaints regarding the existence of a UTS and only cease investigation of those complaints when it is satisfied that, on the basis of the information available to it at that time, either a UTS exists or is developing or not as the case may be. In the latter case, where the Board is not satisfied that a UTS exists or is developing then it may consider, rather than closing the matter, to monitor the situation.

3.2 Communication of complaint to, and assembly of, the Board

Participants must be allowed access to the Board through a simple and effective mechanism. Participants should have confidence that its correspondence will get to the Board within a reasonable time, that its correspondence will not be re-interpreted or 'flavoured' by a third party for the Board, and that it will receive feedback at least on process as soon as practicable.

Please refer to section 4.2 of these guidelines for email and telephone contact details that should be used to make initial contact with the Electricity Commission for the purposes of making a UTS complaint.

3.3 Board meets to investigate whether a UTS exists or is developing

The initial meeting, whether by teleconference or otherwise, will involve Board members, Electricity Commission staff, minute-taker, and possibly a person with added knowledge of the matter (who could be on stand-by if needed). The object of the initial meeting will be to receive the background on the matter, discuss and assess the urgency of the matter, discuss any media concerns, and agree on a way forward.

Possible ways forward include:

- **no decision**
 1. further investigation required
 2. further information required
 3. consult experts and/or parties involved in the matter
 4. re-convene meeting of Board at future time

- **decision**
 1. no UTS exists or is developing then close matter or agree on monitoring
 2. UTS exists or is developing.

3.4 Board decides a UTS exists or is developing

If the Board decides that a UTS exists or is developing it must consider what actions, if any, it needs to take to correct the situation and restore normal operation.

Prior to reaching a decision on appropriate actions to take the Board may consider whether it is appropriate to consult with:

1. the system operator on the matter, including any potential actions.
2. those participants who may be directly affected by the matter or any potential actions.
 - The Board must consult with system operator if its intended actions have an impact on system security issues.
 - If practical the Board must consult with participants on its intended actions.
 - The Board must notify participants of its findings and intended actions.

3.5 Board monitors outcome

Once a course of action has been decided and implemented, the Board will ordinarily monitor the outcome to ensure the UTS has been corrected or whether any other action is required.

4. Administrative Process and Contact Details for Managing UTS

4.1 The critical element in successfully understanding and correcting a UTS is for timely and clear communication between the Board and all interested parties, affected parties, and parties that will be required to implement action to correct the situation.

The Board has agreed a process for management of potential UTS once the claim is first notified to the Electricity Commission.

4.2 Parties should

- (a) make their claim via e-mail at compliance@electricitycommission.govt.nz; **AND**
- (b) make personal contact on 04 474 2260 to ensure that the claim is received and acknowledged.

4.3 Parties should be prepared to provide preliminary details in writing stating the reasons why you consider that an undesirable trading situation arises, and also details of the person who may be contacted for any further information.

Appendix A

Relevant Regulations

	Description	Regulation and Act references
1	Definition of UTS	Reg 55
2	Board may Investigate when UTS suspected or anticipated	Reg 54
3	Board to correct every UTS and restore market to normal operation as soon as possible	Reg 60
4	Board may take corrective actions if it finds a UTS exists	Reg 56(2)
5	Board to consult with the system operator if corrective action is to be taken that may impact system security	Reg 58(1)
6	System operator to have processes to effectively respond to Board regarding Reg 58(1)	Reg 58(2)
7	Board to immediately notify all participants of its finding whether a UTS exists and if so what corrective actions the Board will take or has taken	Reg 59(a)
8	Unless impractical to do so, Board to consult with affected participants before taking any corrective action <i>(note: Board does not need to consult with participants on corrective action before it is decided upon)</i>	Reg 59(b)
9	Offence and fine up to \$20,000 for non-compliance with Board direction	Reg 57
10	Board or participant not liable for acts or omissions necessary to comply with Board direction	Reg 56(4)
11	Board member indemnity for action taken	Clause 14 of schedule 2A of the Act
12	Quorum and delegations	Clauses 26 and 30 of schedule 2A of the Act

Checklist - Process for Managing Undesirable Trading Situations

	Description	Reference
1	<p>Initiation of UTS process</p> <ul style="list-style-type: none"> a. Complaint of a UTS made to Board <ul style="list-style-type: none"> • Communication to and assembly of Board for consideration b. Board's own monitoring indicates a UTS may exist or is developing <ul style="list-style-type: none"> • Board aware of matter so investigation next step 	Reg 54
2	<p>Communication of complaint to, and assembly of, Board</p> <ul style="list-style-type: none"> a. Complaint made by email AND by phone. b. Supporting information supplied by fax or e-mail or through appropriate website c. Commission staff establish contact with complainant to ensure Board is able to discuss matter with the appropriate person at short notice d. Commission staff immediately informs Chairperson. e. Chairperson considers initiating media management process f. Commission staff contact Board members to arrange an urgent meeting 	
3	<p>Board meets to investigate whether a UTS exists or is developing</p> <ul style="list-style-type: none"> a. Board meets b. Commission staff provide background information c. Board considers whether matter is a UTS d. Board may discuss matter during the meeting with other persons as it considers appropriate e. Board decides a UTS exists or is developing f. Board decides a UTS does not exist and is not developing 	Regs 54, 55

	<ul style="list-style-type: none"> g. Board decides it has insufficient information to determine whether a UTS exists or is developing h. Board may discuss media issues i. Action items from meeting agreed 	
4	<p>Board decides a UTS exists or is developing</p> <ul style="list-style-type: none"> a. Board agrees that a UTS exists or is developing b. Board decides what actions to take to correct and restore normal operation c. Board considers whether that action will affect system security and, if so, consults with the system operator d. Board considers whether it is practical to consult with participants that may be affected by any of its intended actions e. Board notifies participants of its findings and any intended actions 	<p>Regs 55, 56, 58, 59, 60</p>
5	<p>Board monitors outcome</p> <ul style="list-style-type: none"> a. Board monitors outcome b. Board determines if further action necessary, or UTS corrected. 	

Flowchart Depicting Management Process

