

Reprint
as at 7 August 2020



Electricity Industry (Enforcement) Regulations 2010 (SR 2010/362)

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 11th day of October 2010

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 112 of the Electricity Industry Act 2010, 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 and Resources, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

1 Title

These regulations are the Electricity Industry (Enforcement) Regulations 2010.

2 Commencement

These regulations come into force on 1 November 2010.

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Electricity Industry Act 2010

Authority means the Electricity Authority established under the Act

Code means the Electricity Industry Participation Code made under the Act

extended reserve manager means the person appointed by the Authority under the Code to perform the role of extended reserve manager under the extended reserve arrangements created by the Authority under the Code

industry participant means a person identified in section 7 of the Act as an industry participant

financial transmission right means a right created and allocated by the FTR manager under Part 13 of the Code

FTR manager means a person appointed by the Authority under the Code to perform the role of FTR manager, which is a role, defined in the Code, that relates to financial transmission rights

investigator means a person appointed under regulation 13 to investigate, on behalf of the Authority, allegations of breaches of the Code

publicise, in relation to a document or information, means making the document or information available, free of charge,—

- (a) on the Authority’s Internet site; and
- (b) in any other way that the person who is required or allowed to publicise the document or information may decide

Rulings Panel or **Panel** means the Rulings Panel continued by section 23 of the Act

suspension order means a suspension order made under section 58 of the Act

termination order means a termination order made under section 58 of the Act.

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

Regulation 3(1) **extended reserve manager**: inserted, on 1 August 2015, by regulation 4 of the Electricity Industry (Enforcement) Amendment Regulations 2015 (LI 2015/158).

Regulation 3(1) **financial transmission right**: inserted, on 1 June 2012, by regulation 4 of the Electricity Industry (Enforcement) Amendment Regulations 2012 (SR 2012/73).

Regulation 3(1) **FTR manager**: inserted, on 1 June 2012, by regulation 4 of the Electricity Industry (Enforcement) Amendment Regulations 2012 (SR 2012/73).

Part 1

Complaints about breaches of Code

Overview of process under this Part

4 Overview

- (1) Reports of a breach of the Code may be received by the Authority as a result of mandatory reporting by an industry participant or as a result of voluntary reporting by any person.
- (2) If the Authority decides that a reported breach should be investigated, it appoints an investigator.
- (3) The investigator—
 - (a) notifies the relevant parties and publicises the matter; and
 - (b) attempts to reach a settlement.

- (4) If a settlement is reached, it is submitted to the Authority, which must either accept or reject it.
- (5) If a settlement is not reached, or if the Authority rejects a settlement, the Authority may lay a formal complaint with the Rulings Panel, in which case the investigator formulates the complaint and submits it to the Rulings Panel on the Authority's behalf.
- (6) If the Authority decides not to lay a formal complaint, an industry participant that was a party to the investigation and that has suffered loss as a result of it may independently lay a formal complaint with the Rulings Panel.
- (7) This regulation is by way of explanation only. If any other provision of the Act or these regulations conflicts with it, the other provision prevails.

Complaints to industry participants

5 Complaints to industry participants

Any person may complain, in writing, to an industry participant about any business activity of the industry participant that the person believes might constitute a breach of the Code.

Compare: SR 2003/374 r 61

6 Industry participants to investigate complaints made to them

- (1) An industry participant to which a complaint is made under regulation 5 must ensure that the complaint is promptly, thoroughly, and fairly investigated by the industry participant, and that appropriate action is taken.
- (2) The industry participant must promptly give written notice of the result of the investigation and the action (if any) taken by the industry participant to both—
 - (a) the person who made the complaint; and
 - (b) the Authority.

Compare: SR 2003/374 r 61

Mandatory reporting by industry participants

7 Mandatory reporting of common quality or security breaches

- (1) If an industry participant believes on reasonable grounds that it or another industry participant has breached a provision of Part 7, 8, 9, or 13 of the Code that is about common quality or security, or any related provision in Part 17 of the Code, the industry participant must report the alleged breach to the Authority as soon as practicable after it becomes aware of the alleged breach.
- (2) The report must be in writing and must specify—
 - (a) the industry participant that is alleged to have breached the Code; and
 - (b) the provision of the Code allegedly breached; and
 - (c) the circumstances relating to the alleged breach; and

- (d) the date and time the alleged breach occurred.
- (3) This regulation does not limit any specific obligation to report a breach that is imposed on an industry participant elsewhere in these regulations or the Code.
- (4) An industry participant that fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000.

Compare: SR 2003/374 rr 63, 64

Regulation 7(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

8 Mandatory reporting of other breaches

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

Compare: SR 2003/374 r 62

Voluntary reporting of breaches

9 Voluntary reporting of breaches

Any person other than an industry participant who believes on reasonable grounds that an industry participant has breached the Code may report the alleged breach to the Authority.

Compare: SR 2003/374 r 65

Authority response to reported breaches

10 Authority must keep information confidential

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

Compare: SR 2003/374 r 66

11 Authority may decline to act on reported breach

- (1) The Authority may decline to take action on any report of an alleged breach if—

- (a) the report relates to a matter that has been, or that the Authority considers should more properly be, dealt with by any other person; or
 - (b) the Authority considers that the report fails to establish a prima facie case for the alleged breach; or
 - (c) the Authority decides that the alleged breach does not otherwise warrant further action being taken.
- (2) If the Authority decides not to take further action, it must inform the industry participant or other person that reported the breach—
- (a) that the Authority intends to do no more in relation to the matter; and
 - (b) of the reasons for that intention.

Compare: SR 2003/374 r 67

Appointment of investigator

12 When Authority to appoint investigator

Unless the Authority decides, under regulation 11, to take no further action in relation to a reported breach, the Authority—

- (a) must appoint an investigator to investigate any alleged breach that is reported under regulation 7 or 8; and
- (b) may appoint an investigator to investigate any other alleged breach of which it becomes aware.

Compare: SR 2003/374 r 69

13 Appointment and powers of investigator

- (1) The Authority may appoint as investigator any person who it thinks has the requisite skills and experience to carry out the investigation.
- (2) The appointment must be made in writing and may be on a permanent or a temporary basis.
- (3) An investigator has and may exercise—
 - (a) the powers of the Authority under section 46 of the Act, in which case section 48 of the Act applies to a requirement under that section as if the investigator were the Authority; and
 - (b) the powers of an authorised person under section 47 of the Act.
- (4) In appointing an investigator, the Authority must take reasonable steps to ensure that the appointed person is free of conflicts of interest in carrying out the investigation.

Compare: SR 2003/374 rr 70, 72

14 Investigator may appoint other persons to assist

- (1) For the purpose of carrying out an investigation, the investigator may appoint any external auditor, technical expert, or other person whom the investigator thinks fit to give advice or assistance to the investigator.
- (2) In appointing a person under this regulation, the investigator must take reasonable steps to ensure that the appointed person is free of conflicts of interest in carrying out the investigation.

Compare: SR 2003/374 rr 71, 72

15 Investigators to keep information confidential

- (1) Investigators must keep, and must ensure that all persons appointed under regulation 14 keep, confidential all information provided or disclosed to them, except to the extent that disclosure—
 - (a) is required to enable the Authority or an investigator or other person to carry out their obligations and duties under the Code or these regulations; or
 - (b) is otherwise compelled by law.
- (2) An investigator who requires an industry participant to disclose information must also require the participant to identify which of that information the participant—
 - (a) considers to be confidential; and
 - (b) considers should not be included in the investigator's report under regulation 19.

Compare: SR 2003/374 r 73

Before investigation starts

16 Notification to industry participant allegedly in breach

- (1) Before commencing an investigation, an investigator must promptly notify the industry participant alleged to have breached the Code of the allegations that are being investigated.
- (2) The notice must be in writing and must specify—
 - (a) either the name of the industry participant that reported the breach or, if the alleged breach is one of which the Authority became aware by any other means, that fact; and
 - (b) the provision of the Code 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 after being appointed in relation to the breach.

- (4) Within 10 working days after receiving the notice (or any longer period that the investigator allows in writing), the recipient must respond to the allegations, in writing, to the investigator.

Compare: SR 2003/374 rr 74, 76

17 Investigation to be publicised, and affected parties may join as parties

- (1) At the same time as the investigator sends a notice under regulation 16, the investigator must publicise the information about 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 industry participant may notify the investigator that it considers that it was or is affected by the matter being investigated and wishes to become a party to the investigation.
- (3) On giving notice, the industry participant is joined as a party to the investigation.

Compare: SR 2003/374 r 75

Parties to investigations

18 Parties to investigation

The parties to an investigation are as follows:

- (a) the industry participant that is alleged to have breached the Code;
- (b) the following:
- (i) if the alleged breach was reported by another industry participant, that industry participant; or
 - (ii) if the alleged breach was reported by someone other than an industry participant, the Authority;
- (c) any industry participant joined as a party under regulation 17(3).

Reports by investigators to Authority

19 Content of reports by investigators to Authority

- (1) This regulation applies to a report provided by an investigator to the Authority under any of the following regulations:
- (a) regulation 21 (where an industry participant that has been notified under regulation 16 that it is alleged to have breached the Code has failed to respond to the notification as required by that regulation);
 - (b) regulation 23 (where no settlement has been reached);
 - (c) regulation 24(3) (where a settlement is submitted to the Authority for approval).

- (2) A report to which this regulation applies must set out sufficient detail to enable the Authority to decide whether a formal complaint on the matter should be made to the Rulings Panel.
- (3) To the extent that is reasonably practicable and appropriate to the circumstances applying to the report, the report must set out or specify the following:
 - (a) the provision of the Code allegedly breached; and
 - (b) the industry participant alleged to have breached the Code; and
 - (c) the estimated date and time the breach allegedly occurred; and
 - (d) any relevant issues raised by the industry participant alleged to be in breach in response to the allegations of breach; and
 - (e) any comments made to the investigator by any other person in response to relevant issues raised by the industry 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 industry 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 Authority (or its predecessor) or the Rulings Panel, including any settlement approved by the Authority under regulation 24(4) (or by its predecessor under any equivalent regulation) in response to those situations (if known by the investigator); and
 - (j) a copy of all correspondence with the investigator or Authority relating to the alleged breach.

Compare: SR 2003/374 r 88

Investigation, settlement, etc

20 Investigation of facts

An investigator appointed to investigate an alleged breach must conduct an investigation of the facts surrounding the alleged breach.

Compare: SR 2003/374 r 78

21 What happens if industry participant allegedly in breach fails to respond

- (1) If an industry participant that has received notification under regulation 16(1) does not respond within the time allowed under regulation 16(4), the investigator must proceed to investigate the facts surrounding the alleged breach (as required by regulation 20) and then give the Authority a report that—

- (a) complies with regulation 19; and
 - (b) includes a recommendation on whether a formal complaint should be laid with the Rulings Panel.
- (2) As soon as practicable after receiving the report and recommendation, the Authority must decide whether to—
- (a) discontinue the investigation, in which case regulation 28 applies; or
 - (b) lay a formal complaint with the Rulings Panel against the industry participant allegedly in breach, in which case regulation 30 applies.

Compare: SR 2003/374 rr 77, 90

22 Investigator to effect settlements

- (1) An investigator must endeavour to effect an informal resolution (a **settlement**) of every matter under investigation, by agreement between the parties to the investigation.
- (2) The investigator must endeavour to effect the settlement within 30 working days after the notification referred to in regulation 16, or any longer period agreed to in writing between the investigator and any party.
- (3) The investigator may, after consultation with the parties to the investigation, use any process that the investigator thinks fit for the purpose of effecting a settlement between the parties.

Compare: SR 2003/374 r 82

23 What happens if settlement not reached

- (1) If the parties to an investigation do not enter into a settlement within 30 working days after the notification referred to in regulation 16, or within any longer period agreed by the investigator in writing, the investigator must prepare a report that—
- (a) complies with regulation 19; and
 - (b) includes a recommendation on whether the Authority should discontinue the investigation or make a formal complaint to the Rulings Panel.
- (2) If, within 10 working days after the notification referred to in regulation 16, the only party to the investigation is an industry participant that self-reported under regulation 7, the investigator must prepare a report that complies with sub-clause (1) as soon as practicable.
- (3) As soon as practicable after receiving the report, the Authority must decide whether to—
- (a) discontinue the investigation, in which case regulation 28 applies; or
 - (b) lay a formal complaint with the Rulings Panel against the industry participant allegedly in breach, in which case regulation 30 applies.

Compare: SR 2003/374 rr 88(1)(a), 89, 90

24 What happens if settlement reached

- (1) Every settlement must—
 - (a) be in writing; and
 - (b) specify the details of any breach of the Code that is admitted by the industry participant; and
 - (c) record the terms of the settlement.
- (2) The parties to the investigation must notify their acceptance of the terms of the settlement in writing to the investigator.
- (3) The investigator must provide to the Authority—
 - (a) a copy of the settlement; and
 - (b) a report under regulation 19; and
 - (c) a recommendation on whether the Authority should approve the settlement.
- (4) On receiving a settlement, the Authority must either—
 - (a) approve the settlement, in which case, subject to regulation 26, the settlement is final and binding on all parties; or
 - (b) reject the settlement, in which case regulation 27 applies.

Compare: SR 2003/374 rr 83, 84

25 Approved settlements to be publicised

- (1) The Authority must publicise the terms of every settlement approved under regulation 24(4)(a).
- (2) However, the Authority may decide not to publicise any part, or all, of a particular settlement if the Authority considers that there are special circumstances that justify the non-publication.

Compare: SR 2003/374 r 85

26 Restriction on further complaints about matters settled

An industry participant that was not a party to a settlement may make a further report to the Authority under regulation 7 or 8 in relation to a matter dealt with in the settlement only if it can demonstrate to the Authority's satisfaction that—

- (a) it was materially adversely affected by the events or consequences of the events that gave rise to the matter that was settled; and
- (b) 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 17.

Compare: SR 2003/374 r 87

27 What happens if Authority does not approve settlement

- (1) If the Authority rejects a settlement under regulation 24(4)(b), it must decide whether a formal complaint should be laid.
- (2) If the Authority decides that a formal complaint should be laid, regulation 30 applies.
- (3) If the Authority decides that no complaint should be laid, it must—
 - (a) direct that the investigation be discontinued, in which case regulation 28 applies; or
 - (b) direct the investigator to further endeavour to effect a settlement.
- (4) If the investigator endeavours to effect a settlement under a direction under this regulation, regulations 22 to 26 apply again, except that the time referred to in regulation 22 must be taken to be 15 working days from the date of the direction, and the investigator may not allow further time.

Compare: SR 2003/374 rr 86, 88(1)(b)

28 What happens if Authority decides to discontinue investigation

If the Authority decides, under regulation 21, 23, or 27, to discontinue an investigation, it must—

- (a) notify the parties to the investigation of that decision and of the effect of regulation 31; and
- (b) provide all parties with a copy of the investigator's report.

Compare: SR 2003/374 r 90(2)

29 Publication of decisions

- (1) The Authority must publicise every decision made under regulation 21(2), 23(3), or 27(1), together with the reasons for the Authority's decision.
- (2) However, the Authority may decide not to publicise any part, or all, of a particular decision if the Authority considers that there are special circumstances that justify the non-publication.

Compare: SR 2003/374 r 91

*Laying formal complaints with Rulings Panel***30 Authority laying formal complaint**

- (1) If the Authority decides to lay a formal complaint with the Rulings Panel, the investigator must—
 - (a) formulate the complaint; and
 - (b) submit the complaint, along with a copy of the report under regulation 19 that was provided to the Authority, to the Rulings Panel.

- (2) The investigator must use reasonable endeavours to provide the complaint and report to the Rulings Panel within 5 working days after the Authority's decision to lay a formal complaint.
- (3) A copy of the complaint and report must also be sent to each party to the investigation.

Compare: SR 2003/374 r 93

31 Industry participant independently laying formal complaint

- (1) An industry participant may lay a formal complaint with the Rulings Panel against another industry participant allegedly in breach if—
 - (a) the industry participant either notified the Authority of the alleged breach under regulation 7 or 8, or has been joined as a party under regulation 17; and
 - (b) the industry participant has suffered loss as a result of the alleged breach; and
 - (c) the Authority has informed the industry participant that it does not propose to lay a formal complaint.
- (2) The industry participant must lay the complaint in writing with the Rulings Panel—
 - (a) within 10 working days after receiving the notice from the Authority under regulation 28; and
 - (b) in accordance with regulation 30, as if the industry participant were the investigator.
- (3) The complaint may contain any additional evidence or material that the industry participant laying the complaint thinks fit.

Compare: SR 2003/374 rr 92, 94

Part 2

Rulings Panel consideration of complaints

Subpart 1—Rulings Panel procedures, orders, etc

32 Parties to complaints

The parties to a complaint referred to the Rulings Panel under regulation 30 or 31 are—

- (a) the industry participant allegedly in breach; and
- (b) the complainant, being the industry participant that originally reported the breach; and
- (c) the Authority; and

- (d) any other industry participant that was a party to the investigation (as determined by regulation 18).

33 Rulings Panel to notify parties of complaint

- (1) On receiving a formal complaint, the Rulings Panel must give written notice of it to every party to the complaint.
- (2) The notice must include—
 - (a) the text of the complaint; and
 - (b) a statement that any party may make written submissions to the Rulings Panel before the deadline for submissions, which must be at least 20 working days after the date of the notice; and
 - (c) a statement that any party may request a hearing to consider the complaint, by notice in writing to the Rulings Panel received before the deadline for submissions; and
 - (d) a statement that, if a hearing is not held, the complaint will be considered on the papers as soon as practicable after the deadline for submissions; and
 - (e) a statement that if the Rulings Panel extends the deadline for submissions, it will notify all parties of the new deadline.

Compare: SR 2003/374 r 95

34 When hearing must be held

- (1) The Rulings Panel must hold a hearing into a complaint if, by the deadline for submissions,—
 - (a) any party requests, in writing, a hearing into the complaint; or
 - (b) the Rulings Panel considers that a hearing should be held in order to give the Authority or any industry participant the opportunity to be heard.
- (2) If a hearing is to be held, the Rulings Panel must set a date and time for the hearing that is as soon as practicable, and determine where the hearing will be held.

Compare: SR 2003/374 r 97

35 Notice of hearing and provision of materials

- (1) If a complaint is set down for a hearing, the Rulings Panel must give or send all parties to the complaint—
 - (a) a notice of the date and time when, and the place where, the hearing will be held; and
 - (b) a copy of all relevant material collected or prepared during the course of the investigation.
- (2) The Rulings Panel must comply with subclause (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.

Compare: SR 2003/374 r 98

36 Hearings public unless Rulings Panel directs otherwise

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

Compare: SR 2003/374 rr 97(2), 99

37 Rights of parties at hearings

At a hearing into a formal complaint, every party to the complaint—

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

Compare: SR 2003/374 rr 95, 102

38 Consideration of complaint when no hearing held

- (1) If a complaint 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 by the deadline for submissions.
- (2) All parties to the complaint are entitled to provide written submissions and evidence on the complaint.

Compare: SR 2003/374 rr 95, 97(3)

Provisions applying to every consideration

39 Evidence admissible

- (1) When considering a complaint, whether at a hearing or otherwise, the Rulings Panel 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 complaint.
- (2) This regulation is subject to section 48 of the Act.

Compare: SR 2003/374 r 101

40 Rulings Panel may request further information

- (1) The Rulings Panel may request an investigator to obtain any further information that the Rulings Panel requests if the Panel considers that, in relation to any matter before it, it does not have sufficient information to determine what remedial order to make under section 54 of the Act.
- (2) The Rulings Panel may make the request of its own initiative or following an application by any party to the complaint.
- (3) Industry participants must provide any information reasonably requested by the Rulings Panel or the investigator under this regulation.
- (4) Section 48 of the Act applies to any request by the Rulings Panel or the investigator under subclause (3).

Compare: SR 2003/374 r 103

41 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.

Compare: SR 2003/374 r 104

42 Submissions on orders

- (1) Any party to a complaint may make written submissions to the Rulings Panel on the subject of any order that the Panel may make in relation to the matter.
- (2) Submissions under this regulation must be made before any deadline for those submissions that is set by the Rulings Panel.

Compare: SR 2003/374 r 105

Decisions, orders, and directions

43 Rulings Panel decisions

- (1) The Rulings Panel must use reasonable endeavours to make its decision on each complaint under its consideration within 40 working days after the date on which it receives 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 parties to the complaint.

Compare: SR 2003/374 r 134

44 Decisions to be publicised

- (1) The Authority 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 after receiving the decision from the Rulings Panel.
- (2) However, the Authority must not publicise any part, or all, of any particular decision if the Rulings Panel advises the Authority that there are special circumstances that justify the non-publication.

Compare: SR 2003/374 r 135

45 Industry participants to comply with orders and directions

- (1) Every industry 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 industry participant must perform any action, or make any payment, directed by the Rulings Panel within 10 working days after receiving notice of the direction, or any longer period that the Rulings Panel allows.

Compare: SR 2003/374 r 136

46 Sums to be paid by party are debt due

- (1) Any sum due to be paid by an industry participant under these regulations is a debt due by the industry participant and is recoverable as such in court.
- (2) A failure by an industry participant to pay a sum due to be paid under these regulations is a breach of the Code.
- (3) A sum that is not paid when due bears interest, which must be calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

Compare: SR 2003/374 r 137

Regulation 46(3): amended, on 1 January 2018, by section 29 of the Interest on Money Claims Act 2016 (2016 No 51).

Termination and suspension orders

47 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 **making an order or change**.
- (3) The Rulings Panel must—

- (a) give notice to the industry participant to which 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 industry participant must—
- (a) state the reasons for making the order or change; and
 - (b) state that the order or change will be made unless, by the date specified in the notice, the industry 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 industry participant to which 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.

Compare: SR 2003/374 r 140

48 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 industry participants (either generally or specifically) to give effect to its order.
- (2) Unless any directions or arrangements are made by the Rulings Panel, any industry participant dealing with an industry participant that is subject to a termination order or suspension order may treat the industry participant subject to the termination order or suspension order as if the order had not been made.
- (3) No industry participant is liable to any other industry 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.

Compare: SR 2003/374 r 141

49 Offence not to comply with direction or arrangement

Every industry participant that fails to comply with a direction or arrangement made by the Rulings Panel under regulation 48 commits an offence and is liable on conviction to a fine not exceeding \$20,000.

Compare: SR 2003/374 r 142

Regulation 49: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Subpart 2—Limits on liability

Application

50 Limits apply to Rulings Panel orders

The limits on liability set out in this subpart apply only to orders made by the Rulings Panel under section 54 of the Act.

Compare: SR 2003/374 r 106

Grid owner liability

51 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.

Compare: SR 2003/374 r 110

Liability of system operator

52 Liability of system operator

- (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, resulting from a breach of the Code.
- (2) The Rulings Panel must take into account—
 - (a) any arrangements the Authority 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 affected the system operator's ability to comply with the Code; and
 - (c) the fact that the real-time operation of the power system may involve a number of complex judgements and interrelated incidents.

Compare: SR 2003/374 r 111

53 Limit of liability of system operator

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

- (a) \$200,000 in respect of any one 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.

Compare: SR 2003/374 r 112

*Liability in respect of metering***54 Limit on liability in relation to metering**

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

Compare: SR 2003/374 r 113

*Liability of asset owners***55 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, resulting from a breach of the Code.
- (2) The Rulings Panel must take into account—
 - (a) the extent to which the acts or omissions of other persons have affected the asset owner's ability to comply with the Code; and
 - (b) the fact that the real-time operation of the power system may involve a number of complex judgements and interrelated incidents.
- (3) In addition to the matters set out in subclause (2), if considering compensation for a breach of the outage protocol, the Rulings Panel must also take into account—
 - (a) the extent to which an order for compensation would encourage Transpower and designated transmission customers to take steps to manage efficiently the risks of outages; and
 - (b) the extent to which Transpower has operated the grid in accordance with good electricity industry practice; and
 - (c) the extent to which other industry participants have acted in accordance with good electricity industry practice.

Compare: SR 2003/374 r 114

56 Limit of liability of Transpower and designated transmission customers

Transpower or a designated transmission customer is not liable in respect of a breach of any provision of subpart 6 or 7 of Part 12 of the Code (which are about interconnection asset services and outage protocols), or any related provision of Part 17 of the Code, for a sum in excess of—

- (a) \$2 million in respect of any one 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.

Compare: SR 2003/374 r 114A

57 Limit of liability of asset owners

An asset owner is not liable in respect of any breach of any provision of Part 8 of the Code (which relates to common quality), or any related provision of Part 17 of the Code, for a sum in excess of—

- (a) \$2 million in respect of any one 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.

Compare: SR 2003/374 r 115

Liability of ancillary service agents

58 Limit of liability of ancillary service agents

- (1) This regulation sets a limit on the liability of an ancillary service agent in respect of each type of ancillary service (as those types are defined in the Code) provided under an ancillary service arrangement.
- (2) This regulation applies to any breach by an ancillary service agent, in its capacity as an ancillary service agent, of—
- (a) any provision of Part 13 of the Code (which is about trading arrangements); or
(b) any provision of Part 8 of the Code that is about an obligation to take independent action in a grid emergency.
- (3) An ancillary service agent is not liable for a sum in excess of,—
- (a) in respect of any one event or series of closely related events arising from the same cause or circumstance, the lesser of \$100,000 or 5% of the expected annual fees for the relevant type of ancillary service; and
(b) in respect of all events occurring in the period of 12 months ending with the breach, the lesser of \$300,000 or 20% of the expected annual fees for the relevant type of ancillary service.
- (4) In this regulation, **expected annual fees** means an amount calculated by the Rulings Panel as follows:
- (a) the fees, including any constrained on amounts, paid or payable by the system operator to the ancillary service agent in respect of the relevant type of ancillary service during the 12 months before the date of the relevant breach of the Code; or
(b) those fees calculated on a pro rata basis, if the ancillary service agent has provided the relevant type of ancillary service for less than 12 months; or

- (c) if calculation under paragraph (a) or (b), in the opinion of the Rulings Panel, is impracticable (for example, because too little historical data is available) or produces an unreasonable amount, an amount that, in the opinion of the Rulings Panel, is a reasonable amount, taking into account historical data from similar ancillary service agents providing similar ancillary services.
- (5) Any amount for which an ancillary service agent is not liable under this regulation is treated as written off for the purpose of calculating the limit of liability in any period of 12 months ending with a subsequent breach of the Code.
- Compare: SR 2003/374 r 115A

Liability in respect of final prices

59 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 Code by an industry 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.

Compare: SR 2003/374 r 116

Liability of reconciliation manager

60 Liability of reconciliation manager

The reconciliation manager is not liable to any other party under or in relation to the Code except as expressly set out in regulations 61 to 63.

Compare: SR 2003/374 r 117

61 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 Code, only to a generator or purchaser that suffers the loss.

Compare: SR 2003/374 r 118

62 Limit of liability of reconciliation manager

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

- (a) \$500,000 in respect of any one 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.

Compare: SR 2003/374 r 119

63 No liability in respect of reasonably assessing information

The reconciliation manager is not liable to any industry participant who suffers financial loss, cost, or expenses, as a result of the reconciliation manager reasonably assessing information as required by the Code.

Compare: SR 2003/374 r 120

Liability of clearing manager

64 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 Code, is obliged to hold on trust for that person, and is reasonably able to make payment of, in accordance with the Code.

Compare: SR 2003/374 r 121

65 Clearing manager 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 Code, only to a generator, purchaser, system operator, or ancillary service agent who suffers the loss, or to the holder of a financial transmission right who suffers the loss.
- (2) The clearing manager is liable in respect of fraud or dishonesty only to the extent that the clearing manager is insured, and to which the clearing manager is liable, under regulation 67.

Compare: SR 2003/374 r 122

Regulation 65(1): amended, on 1 June 2012, by regulation 5 of the Electricity Industry (Enforcement) Amendment Regulations 2012 (SR 2012/73).

66 Limit of liability of clearing manager

- (1) The clearing manager is not liable for a sum in excess of—
 - (a) \$5 million in respect of any one 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.
- (2) The limit provided in subclause (1) does not apply to regulation 67.

Compare: SR 2003/374 r 123

67 Clearing manager must maintain fidelity insurance

- (1) The clearing manager must, at all times, maintain any fidelity insurance cover that is required by the Authority, on terms and in respect of risks approved by the Authority, with an insurer approved by the Authority, 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.

Compare: SR 2003/374 r 124

Liability of registry manager

68 Limit of liability of registry manager

The registry manager is not liable for a sum in excess of—

- (a) \$50,000 in respect of any one 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.

Compare: SR 2003/374 r 125

Liability of market administrator

69 Limit of liability of market administrator

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

- (a) \$50,000 in respect of any one 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.

Compare: SR 2003/374 r 126

Liability of pricing manager

70 Limit of liability of pricing manager

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

- (a) \$200,000 in respect of any one 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.

Compare: SR 2003/374 r 127

Liability of FTR manager

Heading: inserted, on 1 June 2012, by regulation 6 of the Electricity Industry (Enforcement) Amendment Regulations 2012 (SR 2012/73).

70A Limit of liability of FTR manager

The FTR manager is not liable for a sum in excess of—

- (a) \$500,000 in respect of any one 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.

Regulation 70A: inserted, on 1 June 2012, by regulation 6 of the Electricity Industry (Enforcement) Amendment Regulations 2012 (SR 2012/73).

Liability of extended reserve manager

Heading: inserted, on 1 August 2015, by regulation 5 of the Electricity Industry (Enforcement) Amendment Regulations 2015 (LI 2015/158).

70B Limit of liability of extended reserve manager

The extended reserve manager is not liable for a sum in excess of—

- (a) \$550,000 in respect of any 1 event or series of closely related events arising from the same cause or circumstance; or
- (b) \$550,000 in respect of all events occurring in any financial year.

Regulation 70B: inserted, on 1 August 2015, by regulation 5 of the Electricity Industry (Enforcement) Amendment Regulations 2015 (LI 2015/158).

General rules relating to liability limits and insurance

71 Division of limits if more than 1 industry participant suffers loss

- (1) This regulation applies if—
 - (a) more than 1 industry participant suffers financial loss for which another industry 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 one 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 industry participants exceeds the dollar amount to which the other industry participant's liability is limited by these regulations.
- (2) The dollar amount must be divided by the Rulings Panel among the industry participants suffering loss in the proportion that their individual loss bears to the total loss.

Compare: SR 2003/374 r 128

72 Industry participants must make payments needed to settle division of liability limits

An industry participant must make any payments to another industry participant that the Rulings Panel orders it to make, in order to provide for the division referred to in regulation 71.

Compare: SR 2003/374 r 129

73 Loss caused by wilful breach or fraud

- (1) The limits on liability set out in this Part do not apply if the industry participant wilfully breached the Code or fraudulently caused the loss in question.
- (2) Subclause (1) does not apply to the limit on liability in regulation 67(2).

Compare: SR 2003/374 r 130

74 Obligation to maintain professional indemnity insurance

[Revoked]

Regulation 74: revoked, on 1 June 2012, by regulation 7 of the Electricity Industry (Enforcement) Amendment Regulations 2012 (SR 2012/73).

75 Civil pecuniary penalties included in liability limits

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

Compare: SR 2003/374 r 132

Part 3

Dealing with disputes and appeals

Subpart 1—General

76 Overview of Part

- (1) Under the Act, the Rulings Panel may resolve disputes, and determine appeals, of a kind identified in regulations made under the Act or in the Code.
- (2) Practices and procedures relating to any kind of identified dispute or appeal may be set out in the regulations or the Code.
- (3) These regulations identify 2 kinds of dispute that the Rulings Panel may resolve, and sets out the practices and procedures associated with them.

77 Interface with Code

- (1) This Part does not limit the kinds of disputes and appeals that the Code may identify as disputes and appeals that the Rulings Panel may resolve or determine.
- (2) However, if these regulations set out practices and procedures relating to particular kinds of disputes and appeals, the regulations prevail over any inconsistent provisions in the Code.

Subpart 2—Specific kinds of disputes

78 Disputes that Rulings Panel may resolve

The Rulings Panel may resolve—

- (a) a dispute in relation to the submission of information provided for the purposes of reconciliation under Part 15 of the Code; and
- (b) a dispute that relates to a contract for the procurement of ancillary services.

Compare: SR 2003/374 r 147

79 Regulations 80 to 90 apply to disputes identified in regulation 78

Regulations 80 to 90 apply to the disputes identified in regulation 78.

80 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.

Compare: SR 2003/374 r 148

81 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.

Compare: SR 2003/374 r 149

82 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 81.

Compare: SR 2003/374 r 150

83 Rulings Panel not subject to strict evidentiary requirements

- (1) The Rulings Panel, in carrying out a resolution of a dispute, may receive in evidence any statement, document, or information that would not be otherwise admissible as evidence that may, in its opinion, assist it to deal effectively with the matter.
- (2) Subclause (1) is subject to section 48 of the Act.

- (3) The Rulings Panel may do whatever is reasonably necessary and permitted by law to enable the fair, effective, and expeditious resolution of any matter before it.

Compare: SR 2003/374 r 152

84 Meetings and documents

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

Compare: SR 2003/374 r 153

85 Legal representation

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

Compare: SR 2003/374 r 154

86 Completion of process

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

Compare: SR 2003/374 r 155

87 Orders and appeals

- (1) The Rulings Panel may make any order in respect of a dispute that it considers is just and reasonable in the circumstances, including—
- (a) an order 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 order it thinks fit.
- (2) An order made under this regulation may be appealed to the High Court under section 67 of the Act.

Compare: SR 2003/374 r 156

88 Breaches referred to Authority

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

Compare: SR 2003/374 r 157

89 Money payable under Code

- (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 Code, that finding or agreement creates an obligation to pay the amount agreed or determined.
- (2) That amount is a debt due by the industry participant and is recoverable as such in court.
- (3) A failure by an industry participant to pay the amount is a breach of the Code.
- (4) A sum that is not paid when due bears interest, which must be calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

Compare: SR 2003/374 r 158

Regulation 89(4): amended, on 1 January 2018, by section 29 of the Interest on Money Claims Act 2016 (2016 No 51).

90 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.

Compare: SR 2003/374 r 159

Part 4 Membership and operation of Rulings Panel

Appointment

91 Who may be appointed

- (1) The Minister may recommend a person to be appointed as a member of the Rulings Panel only if the person has, in the Minister's opinion, the appropriate knowledge, skills, and experience to assist the Rulings Panel to perform its functions.
- (2) A person may be appointed as a member of the Rulings Panel only if he or she has—
 - (a) consented in writing to being a member; and
 - (b) certified in writing that he or she is not disqualified from being a member under subclause (3); and
 - (c) disclosed to the Minister all interests that the person would, if he or she were a member, have to disclose under regulations 102 to 104.

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

Compare: SR 2003/374 r 162C

92 Term of appointment

- (1) A member of the Rulings Panel holds office for the term specified in his or her notice of appointment, which may be up to 5 years.
- (2) A member—
- (a) may be reappointed; and
 - (b) continues in office despite the expiry of his or her term of office until—
 - (i) the member is reappointed; or
 - (ii) the member's successor is appointed; or
 - (iii) the Governor-General, on the recommendation of the Minister given after consultation with the Minister of Justice and the Authority, informs the member by written notice (with a copy to the Rulings Panel) that the member is not to be reappointed and no successor is to be appointed at that time.
- (3) This regulation is subject to regulation 94.

Compare: SR 2003/374 r 163

93 Validity of acts

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

Compare: SR 2003/374 r 164

Resignation and removal of members

94 Members ceasing to hold office

A member ceases to hold office if he or she—

- (a) resigns in accordance with regulation 95; or
- (b) is removed from office in accordance with regulation 96 or any other enactment; or
- (c) becomes disqualified from being a member under regulation 91; or
- (d) otherwise ceases to hold office in accordance with any enactment.

Compare: SR 2003/374 r 164A

95 Resigning as member

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

Compare: SR 2003/374 r 164B

96 Removal of member

- (1) The Governor-General may at any time, for just cause, on the advice of the Minister given after consultation with the Attorney-General, remove a member from office.
- (2) The removal must be made by written notice to the member (with a copy to the Rulings Panel) that states—
 - (a) the date on which the removal takes effect (which must not be earlier than the date on which the notice is received); and
 - (b) the reasons for the removal.
- (3) The Minister must give public notice of the removal, by notice in the *Gazette*, as soon as practicable after the notice referred to in subclause (2) is given.
- (4) In this regulation, **just cause** includes misconduct, inability to perform the functions of the office, and neglect of duty.

Compare: 2004 No 115 ss 39, 40

97 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.

Compare: SR 2003/374 r 164D

*Chairperson and deputy chairperson***98 Term of appointment**

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

- (a) resigns from that office; or
- (b) is removed under regulation 96; or
- (c) ceases to hold office as a member.

Compare: SR 2003/374 r 165B

99 Resigning from office

- (1) A chairperson or deputy chairperson may, without resigning as a member, resign from that office by written notice to the Minister (with a copy to the Rulings Panel).
- (2) The resignation is effective on receipt by the Minister of the notice, or at any later time specified in the notice.

Compare: SR 2003/374 r 165C

100 Exercise of chairperson's functions, duties, and powers during vacancy

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

Compare: SR 2003/374 r 165E

*Disclosure of interests***101 Meaning of interested**

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

- (a) is a party to, or will or may derive a material financial benefit from, the transaction or matter; or
- (b) has a material financial interest in another party to the transaction or in a person to whom the matter relates; or
- (c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or

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

Compare: SR 2003/374 r 169

102 Obligation to disclose interest

A member who is interested in a transaction or proposed transaction of, or in another matter relating to, the Rulings Panel or any industry participant must disclose the nature of the interest in accordance with regulation 103 as soon as practicable after the member becomes aware that he or she is interested.

Compare: SR 2003/374 r 170

103 Method of disclosure of interest

- (1) If regulation 102 applies, the member must disclose the details listed in sub-clause (2) in an interests register and to—
 - (a) the chairperson or, if there is no chairperson, the deputy chairperson; or
 - (b) if the member concerned is the chairperson, or the positions of the chairperson and deputy chairperson are vacant, the Minister.
- (2) The details are—
 - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

Compare: SR 2003/374 r 170A

104 Consequences of interest

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

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

Compare: SR 2003/374 r 170B

Method of contracting

105 Method of contracting

- (1) A contract or other enforceable obligation may be entered into by the Rulings Panel as provided in subclauses (2) to (4).

- (2) An obligation that, if entered into by an individual, is required to be by deed, may be entered into on behalf of the Rulings Panel in writing, signed under the name of the Rulings Panel by—
 - (a) 2 or more of its members; or
 - (b) 1 or more attorneys appointed by the Rulings Panel in accordance with regulation 106.
- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of the Rulings Panel in writing by a person acting under the Rulings Panel's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of the Rulings Panel in writing or orally by a person acting under the Rulings Panel's express or implied authority.
- (5) This regulation applies to a contract or other obligation—
 - (a) whether or not that obligation was entered into in New Zealand; and
 - (b) whether or not the law governing that obligation is the law of New Zealand.

Compare: SR 2003/374 r 175B

106 Attorneys

- (1) The Rulings Panel may, by an instrument in writing executed in accordance with regulation 105(2), appoint a person as its attorney either generally or in relation to a specified matter.
- (2) An act of the attorney in accordance with the instrument binds the Rulings Panel.

Compare: SR 2003/374 r 175C

107 Presumptions and saving of certain transactions

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

Compare: SR 2003/374 r 175D

Employees

108 Rulings Panel to be good employer

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

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

Compare: SR 2003/374 r 175E

109 Employment of employees

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

Compare: SR 2003/374 r 175F

Regulation 109(1)(a): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

110 Application of Acts to members and employees

No person is, by reason only of that person's appointment as a member of, or employment by, the Rulings Panel, deemed to be employed in the State services for the purposes of the Public Service Act 2020 or in the Government service for the purposes of the Government Superannuation Fund Act 1956.

Compare: SR 2003/374 r 175G

Regulation 110: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

*Liability and insurance***111 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.

Compare: SR 2003/374 r 180

112 Insurance

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

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

Compare: 2004 No 115 s 123; SR 2003/374 r 180A

*Accountability***113 Rulings Panel costs and performance objectives**

- (1) As early as practicable before the beginning of each financial year, the chairperson of the Authority 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 Authority 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 Authority and apply for a variation to the agreed budget.

Compare: SR 2003/374 r 181

114 Rulings Panel to report quarterly on other matters

At the end of each quarter of the financial year, the Rulings Panel must provide the Authority 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 Code during that quarter that may affect common quality and grid security; and
- (d) any other matters of concern.

Compare: SR 2003/374 r 182

115 Rulings Panel to report annually

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

- (a) summarising the performance of the Rulings Panel against the 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 Code where the Rulings Panel considers that a change is required.

Compare: SR 2003/374 r 183

Information disclosure

116 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 Code 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 Code; or
 - (b) is otherwise compelled by a law other than these regulations or the Code.
- (2) A member who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of or act on that information, except—
 - (a) for the purposes of the Rulings Panel; or
 - (b) as required or permitted by law; or

(c) in complying with regulations 101 and 102.

Compare: SR 2003/374 r 178

117 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 Code; or
 - (b) in connection with any notification, investigation, report, or procedure under Part 2 or 3.
- (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 Code; and
 - (c) whether the publication or communication is compelled by a law other than these regulations or the Code; and
 - (d) the rules of natural justice.
- (3) The Rulings Panel may make the prohibition—
 - (a) on the application of any industry participant or the Authority or on its own application; but
 - (b) only after notifying each industry 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 industry participant may make known to the Rulings Panel within the time specified by the Panel.

Compare: SR 2003/374 r 179

Publication of procedures

118 Rulings Panel to publicise procedures

The Rulings Panel must publicise its procedures for dealing with matters before it, including summaries of procedures prescribed by these regulations and the Code and any other procedures determined by the Rulings Panel itself.

Compare: SR 2003/374 r 96(2)

Rebecca Kitteridge,
Clerk of the Executive Council.

Reprinted as at
7 August 2020

Electricity Industry (Enforcement) Regulations 2010

Part 4 r 118

Issued under the authority of the Legislation Act 2012.
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Reprints notes

1 *General*

This is a reprint of the Electricity Industry (Enforcement) Regulations 2010 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Public Service Act 2020 (2020 No 40): section 135

Interest on Money Claims Act 2016 (2016 No 51): section 29

Electricity Industry (Enforcement) Amendment Regulations 2015 (LI 2015/158)

Electricity Industry (Enforcement) Amendment Regulations 2012 (SR 2012/73)

Criminal Procedure Act 2011 (2011 No 81): section 413