

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-

IN THE MATTER

of the Electricity Industry Act 2010; Electricity Participation Code 2010; and Electricity Industry (Enforcement) Regulations 2010

AND

IN THE MATTER OF

an appeal by **Unison Networks Limited** of a decision by the Rulings Panel pursuant to sections 63 and 64 of the Electricity Industry Act 2010

BETWEEN

UNISON NETWORKS LIMITED of 1101 Omaha Road, Hastings, Hawke's Bay 4175

Appellant

AND

SOLAR CITY NEW ZEALAND LIMITED of Level 1, 190 Trafalgar Street, Nelson 7010

First Respondent

AND

ELECTRICITY AUTHORITY Level 7, ASB Bank Tower, 2 Hunter Street, Wellington 6143

Second Respondent

**NOTICE OF APPEAL BY UNISON NETWORKS LIMITED
13 FEBRUARY 2017**

TO: The Registrar of the High Court at Wellington

AND TO: The Respondents

1. Unison Networks Limited ("**Appellant**") appeals to the High Court against the decision of the Rulings Panel delivered and notified on 16 January 2017 ("**Decision**") on the Rulings Panel's jurisdiction to hear a dispute between Solar City New Zealand Limited ("**First Respondent**") and the appellant under the Electricity Industry Act 2010 ("**Act**"), Electricity participation Code 2010 ("**Code**"), and Electricity Industry (Enforcement) Regulations 2010 ("**Regulations**") ("**Dispute**").
2. The Appellant has the right to appeal the Decision under section 63 of the Act and section 64 of the Act.

Grounds

3. The Rulings Panel wrongly interpreted subsections 50(4) and 50(5) of the Act as providing it with jurisdiction to hear disputes between industry participants of a kind identified in the Code without following the procedures and processes prescribed in the Code and Regulations for such an identified kind of dispute.
4. Subsections 50(4) and 50(5) of the Act provide as follows:
 - (4) The Rulings Panel may determine appeals against decisions made under the Code, and resolve disputes between industry participants that relate to the Code, that are of a kind that are identified in the regulations or the Code.
 - (5) If the regulations or the Code prescribe practices and procedures in relation to any kind of such appeal or dispute, the Rulings Panel must apply those practices and procedures when dealing with the appeal or dispute.
5. The Rulings Panel in its Decision rightly concluded that:
 - (a) the Dispute is of a kind identified in the Code and, accordingly, section 50(4) and section 50(5) of the Act applied;¹
 - (b) the Dispute is of a kind identified under Part 6 of the Code, and the procedure in Schedule 6.3 of the Code applied;² and
 - (c) applying the practices and procedures set out in Schedule 6.3 of the Code (which in turn apply the Regulations) to the Dispute, the Rulings Panel has no jurisdiction to hear the dispute.³
6. However, the Rulings Panel wrongly concluded in the Decision that:
 - (a) it had a broad jurisdiction to hear the Dispute under subsection 50(4) of the Act, notwithstanding the processes and procedures prescribed in the Code and Regulations for this kind of dispute; that no procedures are set out for the Dispute; and that the Rulings Panel can determine its own procedure;⁴ and / or

¹ Decision at [28].

² Decision at [28].

³ Decision at [26], [34] and [35].

⁴ Decision at [36].

- (b) in relation to a dispute under Schedule 6 of the Code, there is no requirement under section 50(4) to first make a complaint to the Electricity Authority, suggesting that the processes and procedures prescribed for a Schedule 6 dispute therefore do not apply; and
 - (c) the Code, specifically Part 6 and Schedule 6.3 of the Code, cannot be interpreted to limit the Rulings Panel's jurisdiction to resolve the Dispute⁵ (despite the requirement in subsection 50(5) of the Act that the Rulings Panel must apply processes and procedures in the Code for an identified kind of dispute).
7. The part of the Decision referred to in paragraph 6 above is directly contrary to the plain wording in subsections 50(4) and 50(5) which require that the Rulings Panel **must** apply the processes and procedures prescribed for a kind of dispute identified in the Code or the Regulations; in this case the Dispute being of a kind identified under Schedule 6 of the Code. As accepted by the Rulings Panel, under the processes and procedures prescribed for a dispute of a kind identified in Schedule 6 of the Code, the Rulings Panel has no jurisdiction to hear the First Respondent's dispute. There is no separate jurisdiction under the Act, the Code, or the Regulations, that empowers the Rulings Panel to hear the Dispute.

Relief sought

8. The Appellant seeks:
- (a) that this appeal be allowed;
 - (b) orders that:
 - (i) the Decision of the Rulings Panel be overturned;
 - (ii) the Rulings Panel had no jurisdiction to entertain this Dispute; and
 - (c) costs.

DATED 13 February 2017

A S Butler / C M Marks
Solicitors for the Appellant

This document is filed by **Andrew Stephen Butler**, solicitor for the Appellant, of Russell McVeagh. The address for service of the Appellant is Level 24, 157 Lambton Quay, Wellington.

Documents for service may be left at that address or may be:

- (a) posted to the solicitor at PO Box 10-214, Wellington; or
- (b) left for the solicitor at a document exchange for direction to DX SX 11189.

⁵ Decision at [32].