

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**

Appellant

And **SOLARCITY NEW ZEALAND LIMITED**

First Respondent

And **THE ELECTRICITY AUTHORITY**

Second respondent

**JOINT MEMORANDUM OF COUNSEL FOR THE APPELLANT AND THE
ELECTRICITY AUTHORITY IN RESPECT OF CASE MANAGEMENT
CONFERENCE**

Next Event Date: 14 March 2017 at 9:15am
Judicial Officer: Justice Clifford

Dated 9 March 2017

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**JOINT MEMORANDUM OF COUNSEL FOR THE APPELLANT AND THE
ELECTRICITY AUTHORITY IN RESPECT OF CASE MANAGEMENT
CONFERENCE**

1. This proceeding is an appeal under Part 20 of the High Court Rules against a decision of the Rulings Panel about whether or not it has jurisdiction to hear a complaint made by the first respondent (**Solar**) against the appellant (**Unison**).
 - (a) The underlying substantive complaint relates to new pricing introduced by Unison for network customers with distributed generation.
 - (b) The jurisdiction issues that are the subject of this appeal concern whether or not the Rulings Panel has a broad discretion to hear the complaint under s 50(4) and s 50(5) of the Electricity Industry Act 2010.
2. This memorandum filed jointly on behalf of the appellant and the Electricity Authority proposes appropriate directions for this appeal, with regard to the matters set out in Schedule 6.
3. As a preliminary matter, counsel for the appellant and the Authority seek confirmation about the Authority's ability to be heard in this appeal. The position was explained in the joint memorandum of counsel dated 14 February 2017. In summary:
 - (a) **Authority a full "party" with existing right to be heard:** This is not a situation where any leave is required for the Authority to be added as an "intervener" or joined as a full "party". The Authority has correctly been joined as a full party in accordance with the High Court Rules.
 - (i) Regulation 32(c) of the Electricity Industry (Enforcement) Regulations 2010 expressly provides that the Authority is a "party" to a complaint referred to the Rulings Panel under r 31. As such, the Authority participated as a "party" in the procedure leading to the Decision which has been appealed.
 - (ii) The Authority is correspondingly a "party directly affected by the appeal" in terms of HCR 20.6(1)(c) and therefore it must be joined and it has an existing right to be heard in terms of Part 20 of the High Court Rules.
 - (iii) It was not the decision-maker, so HCR 20.9(2) is inapplicable.

- (b) **Appropriate for the Authority to be heard in any event:** Even if principles about the conventional restraints on a decision-maker were applicable, this is clearly a case where it is appropriate for the Authority to be heard as a full "party":
- (i) This is the first time it has ever been suggested that the Rulings Panel has a residual jurisdiction under s 50(4) and (5) of the Act. The Authority wishes to address these issues of jurisdiction, and related considerations of public interest and the effective administration of an Act,¹ in which it has a particular interest as regulator. A residual jurisdiction of this nature has major implications for the respective statutory roles of the Authority and the Rulings Panel for any disputes "of a kind that are identified in the regulations or the Code". These implications transcend the private interests of SolarCity and Unison in respect of the present complaint.² As the body charged with protecting these public interests and administering the Electricity Industry Act, the Authority is properly interested in the Court's decision on such jurisdiction issues and accordingly should have full party status.
- (ii) As referred to in *McGechan on Procedure* (online looseleaf ed, Thomson Reuters) at [JR9.02], it is unobjectionable for a decision-maker to put forward arguments relevant to jurisdiction. This appeal is solely about such jurisdictional issues, so no concern arises with "entering the fray" on the underlying substantive complaint.
4. Counsel for the appellant and the Authority propose that this appeal is classified as a category 2 proceeding for the purposes of Rule 14.3.
5. A draft common bundle has already been prepared and circulated. It will be filed and served as soon as practicable after the first respondent provides its comments.
6. Counsel for the appellant and the Authority confirm that standard directions are appropriate, and respectfully propose the following timetable:

¹ *Goodman Fielder v Commerce Commission* [1987] 2 NZLR 10 at p 20 cited in *Fonterra Co-operative Group Ltd v Grate Kiwi Cheese Company Ltd* (2009) 19 PRNZ 824 at [23].

² *Re Bay of Plenty Energy Limited* HC Wellington CIV-2011-485-1372, 22 August 2011 at [26] and [28].

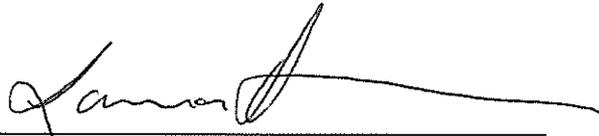
- (a) The appellant and the Authority must each file and serve their submissions by 28 March 2017;
- (b) The first respondent must file and serve its submissions by 11 April 2017;
- (c) The appellant will prepare the common bundle of authorities and file and serve that bundle by 20 April 2017 (by 11 April 2017 each party will provide the appellant's lawyers with electronic copies of any authorities they request to be included);
- (d) Counsel request that the appeal is allocated a half day hearing before a single Judge, for the first available date after 27 April 2017.

Dated 9 March 2017



A S Butler / C M Marks

Counsel for the appellant



L A O'Gorman

Counsel for the Electricity Authority

Attachments:

- Page 1: Electricity Industry Act 2010, s 50
- Page 3: Electricity Industry (Enforcement) Regulations 2010, r 32
- Page 5: *Fonterra Co-operative Group Ltd v Grate Kiwi Cheese Company Ltd & Anor* (2009) 19 PRNZ 824 (HC)
- Page 17: *Re Bay of Plenty Energy Limited* HC Wellington CIV-2011-485-1372, 22 August 2011
- Page 32: *McGechan on Procedure* (online looseleaf ed, Thomson Reuters) at [JR9.02]