

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 **SOLAR CITY NEW ZEALAND LIMITED**
First Respondent

AND **ELECTRICITY AUTHORITY**
Second Respondent

JOINT MEMORANDUM OF COUNSEL IN RESPECT OF JOINDER ISSUES

Dated 14 February 2017

Judicial officer: None yet assigned

Next event date: First case management conference (no date yet assigned)

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JOINT MEMORANDUM OF COUNSEL IN RESPECT OF JOINDER ISSUES

1. This memorandum is filed jointly on behalf of the appellant and the Electricity Authority for the purposes of:
 - (a) explaining the reasons for the Electricity Authority (the "Authority") being named as a second respondent in this appeal and the role that it intends to take in these proceedings; and
 - (b) advising that, in the event of any disagreement about the position set out in this memorandum, then the Authority and the appellant seek directions about these matters.

2. The Authority disagrees with the appealed findings of the Rulings Panel, and therefore intends to make submissions in support of the appeal. The Authority and the appellant submit that joinder as a respondent is appropriate in the circumstances, for the following reasons:
 - (a) The Authority participated as a party in the process leading to the Ruling Panel decision that is the subject of this appeal (consistent with regulation 32) and the Authority correspondingly wishes to appear and be heard as a party to this appeal.
 - (b) Unison Networks Limited is a relevant "industry participant" entitled to file the notice of appeal under s 63, but arguably the Authority does not properly fall within this description and for that reason it has been named as a respondent rather than an "appellant".
 - (c) However, as recognised in *Re Bay of Plenty Energy Limited* HC Wellington CIV-2011-485-1372, 22 August 2011 at [28] and [29], the Authority has a unique position and public interest responsibilities arising from its role as industry regulator. It is a "party directly affected by the appeal" required to be served under HCR 20.6(1)(c) because of the significance of the Rulings Panel decision in determining the respective statutory roles of the Authority and the Rulings Panel for disputes "of a kind that are identified in the regulations of the Code".¹
 - (d) HCR 20.9(2) states that the notice of appeal must not name the decision-maker as a respondent, but this applies to the Rulings Panel rather than the Authority in this case. In any event, the subject matter

¹ See *Re Bay of Plenty Energy Limited* HC Wellington CIV-2011-485-1372, 22 August 2011 at [43] for a discussion about the meaning and effect of that phrase in HCR 20.6(1)(c),

of this appeal also falls within the exception of "arguments relevant to its jurisdiction" referred to in *McGechan on Procedure* (looseleaf ed, Brookers) Vol 2 at [JA9.04(3)].

3. In the event of any dispute or uncertainty about these issues, it would be appropriate for the Court to give directions: see *Re Bay of Plenty Energy Limited* HC Wellington CIV-2011-485-1372, 22 August 2011 at [43]. Accordingly, counsel propose that these issues are addressed by the parties at the first call in this proceeding.

Dated 14 February 2017



L A O'Gorman

Counsel for the Electricity Authority



A S BUTLER / C M Marks

Counsel for the appellant