

In the High Court of New Zealand
Wellington Registry
CIV-2017-485-88

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 Electricity 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

**MEMORANDUM OF COUNSEL FOR THE FIRST
RESPONDENT IN RESPECT OF CASE MANAGEMENT
CONFERENCE**

13 MARCH 2017

ASSIGNED JUDICIAL OFFICER:
Clifford J

NEXT EVENT DATE:
case management conference, 14 March 2017, 09:15am

LeeSalmonLong

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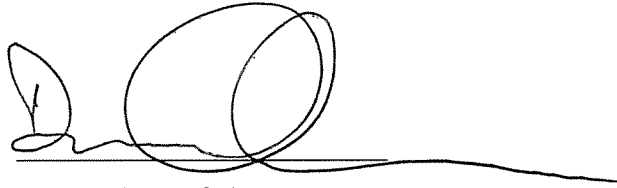
THE ELECTRICITY AUTHORITY
Second Respondent

MEMORANDUM OF COUNSEL FOR THE FIRST RESPONDENT IN RESPECT OF CASE MANAGEMENT CONFERENCE

1. This memorandum is filed in response to the joint memoranda of counsel for the appellant and the Electricity Authority (**Authority**) dated 9 March 2017 and 14 February 2017.
2. The 14 February 2017 memorandum foreshadowed that directions regarding the Authority's role in the appeal may be appropriate. It is submitted that directions are appropriate and that clarifying the Authority's participation now will assist the just and expeditious disposal of this appeal.
3. The first point is that the Authority wishes to support the appellant's arguments on appeal, in effect appearing as a second appellant. Although the Authority is an affected party in terms of r 20.6, the appeal is taken under ss 63 and 64 of the Electricity Industry Act 2010 (**Act**). Section 63 only provides a right of appeal against the Rulings Panel's decision to an "industry participant" (ie not the Authority). This suggests a legislative intention that the Authority not be involved in appeals.
4. Further, this case involves an appeal against a decision of the Rulings Panel, not the Authority.¹ The Rulings Panel has exercised important public interest responsibilities in these proceedings in investigating and giving a decision on jurisdiction in respect of the first respondent's complaint. The Rulings Panel has now given a notice of appearance.
5. The second point is that this is not a context in which the Authority (or the Rulings Panel) is the default contradictor. The appeal raises a narrow question of statutory interpretation as to the Rulings Panel's jurisdiction and responsibilities under the Act, which will be competently argued by counsel for the appellant. The Authority's experience and operational perspectives are not relevant to this interpretation question, so its inclusion in the appeal risks duplication and increased costs, without providing further assistance to the Court.
6. If the Court considers that the Authority is an appropriate party to the appeal, then counsel respectfully submit that its involvement should not result in any increased costs or costs risk to the first respondent. Allowing the Authority to participate on the condition that it not seek costs from the first respondent is consistent with the Authority's position that its involvement is mandated by wider public interest issues – the first respondent should not bear the costs of those.
7. Subject to the above, the first respondent agrees with the categorisation and the proposed timetable for the appeal set out in the appellant's and Authority's memorandum, but ask that the Registry liaise with counsel before allocating a hearing date.

¹ *Compare Re Bay of Plenty Energy Limited* HC Wellington CIV-2011-485-1372, 22 August 2011.

Dated 13 March 2017

A handwritten signature in black ink, consisting of a small loop on the left and a larger, more complex scribble on the right, all resting on a horizontal line.

Davey Salmon
Counsel for the Plaintiff

This document is filed by Davey Salmon, solicitor for the first respondent, of the firm LeeSalmonLong.

Documents for the first respondent may be served at the offices of LeeSalmonLong situated on Level 16, Vero Centre, 48 Shortland Street, Auckland, or may be posted to PO Box 2026, Shortland Street, Auckland, or emailed to Davey.Salmon@lsl.co.nz and Harriet.Bush@lsl.co.nz.