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Contact Energy requests delay to publication of final prices for 26 March 2011

Contact Energy has this afternoon made an urgent request to the Electricity Authority that the publication of final prices for 26 March 2011 be delayed further, for a period of one week.

The Authority notes there is a case management conference scheduled for Monday 25 July 2011 in the High Court at Wellington at 10am. This will provide an opportunity for interested parties to discuss the merits of delaying further the publication of final prices.

The Authority has considered Contact Energy's request and has decided to defer a decision on when final prices for 26 March 2011 are to be published until it receives any directions from the Court arising from the case management conference.

The letter from Contact Energy containing this request is below. Contact Energy has agreed that the content of the letter does not need to be kept confidential.

Subscription

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info@ea.govt.nz



By email

Laura O'Gorman

Buddle Findlay
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FROM **Jenny Stevens**
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MATTER NO. 01-352-2784
DATE 21 July 2011

In Re Contact Energy - CIV 2011-485-1372: URGENT

We write on behalf of our client Contact Energy Limited in relation to the above appeal.

We refer to your client's Market Brief dated 19 July 2011 in which the Authority states:

"... The decision, nevertheless, remains in effect pending the outcome of the appeals and the Pricing Manager and Clearing Manager are continuing to take steps to implement it.

The Authority expects the Pricing Manager will be in a position to publish revised interim prices for 26 March 2011 by Friday 22 July."

Contact seeks an urgent order from the Authority that the publication of the revised interim prices be delayed or, if such prices have already been published, that the publication of the final prices in respect of those revised interim prices be delayed.

Contact seeks this order under clause 13.184 of the Code.

The reasons for this request include:

- Contact has appealed the Authority's UTS Decision (as that is defined in Contact's notice of appeal). If Contact is successful in that appeal, it seeks an order the UTS Decision be declared null and void. If this occurs, then all subsequent actions and decisions of the Authority in relation to that UTS Decision, including as to the action to be taken in relation to that UTS Decision and the market price the Authority has determined should apply, would have been made contrary to law.
- There is a real prospect that, should there be a publication of revised interim prices or final prices at this point in circumstances where Contact believes that price could later be found to have been erroneously determined, Contact would be substantially and adversely financially affected in relation to third party arrangements. Contact wishes to consider whether such arrangements may be able to be later revisited should the UTS Decision be declared null and void.

In the first instance, Contact seeks that the delay to publication be for a period of one week i.e. until Friday, 29 July 2011, to enable Contact time to further consider its position and, if necessary, to seek a further order from the Authority that the publication be delayed until the conclusion of Contact's appeal and/or to seek further orders from the Court.

Contact also notes the power conferred on the decision maker (the Authority) and the Court under High Court Rule 20.10 to order a stay of enforcement of any judgment or order appealed against and to grant any interim relief.

If the Authority does not grant the urgent order sought in this letter under either clause 13.184 of the Code or High Court Rule 20.10, Contact will need to consider making an urgent application to the Court for such relief.

Please confirm by 5pm today whether the Authority will take this step.

We note that we have copied this letter to other appellants of the UTS Decision, namely counsel for Genesis and for BOPE/Todd. We have also provided a copy of this letter directly to the Pricing Manager and Clearing Manager (NZX) so that they are apprised of this request having been made.

Finally, the content of this letter should be kept confidential as it contains Contact confidential information. If the Authority wishes to publicise its contents, please advise us and we can address with you the preparation of a non-confidential version.

Yours faithfully

Bell Gully



Jenny Stevens / David Blacktop

Partner / Senior Associate

Copy to: Jim Farmer QC / Russell McVeagh (Sarah Armstrong) for Genesis
Izard Weston (Tony Stevens) for BOPE / Todd
NZX/Energy Clearing House (Robyn Dey / Erich Livengood)