

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

CIV 2011-485-1373

UNDER the Electricity Industry Act 2010

IN THE MATTER OF an appeal under section 64 of the
Electricity Industry Act 2010 in respect of a
final decision of the Electricity Authority
that an undesirable trading situation
developed on 26 March 2011

BETWEEN GENESIS POWER LIMITED
Appellant

AND THE ELECTRICITY AUTHORITY
First Respondent

AND MERIDIAN ENERGY LIMITED
Second Respondent

AND MIGHTY RIVER POWER LIMITED
Third Respondent

AND NEW ZEALAND STEEL LIMITED
Fourth Respondent

AND NEW ZEALAND SUGAR COMPANY
LIMITED
Fifth Respondent

AND POWERSHOP NEW ZEALAND
LIMITED
Sixth Respondent

AND SWITCH UTILITIES LIMITED
Seventh Respondent

AND VODAFONE NEW ZEALAND LIMITED
Eighth Respondent

AND PULSE UTILITIES NEW ZEALAND
LIMITED
Intervenor

Hearing: On Papers

Counsel: A M Stevens and S B Kellett for Bay of Plenty Energy Limited and Todd Energy Limited
J B M Smith and D A K Blacktop for Contact Energy Limited
J A Farmer QC, M Dunning, A Simkiss and A Rawlings for Genesis Power Limited
D J Goddard QC and L A O'Gorman for Electricity Authority
J E Hodder SC and T D Smith for Meridian Energy Limited, NZ Steel Limited, NZ Sugar Company Limited, Powershop NZ Limited, Switch Utilities Limited
M R Dean QC, J A Craig and G Holm-Hansen for Mighty River Power Limited
J Scragg and O J Lund for Pulse Utilities New Zealand Limited (as intervenor)

Minute: 7 May 2012

MINUTE OF RONALD YOUNG J

[1] I refer to counsel's joint memorandum of 13 April 2012. I regret the delay in responding to that memorandum. The memorandum was not brought to my attention prior to my departure from Wellington on Wednesday, 18 April 2012.

[2] In my judgment delivered on 27 February 2012, the appellants, Genesis Power Limited, Contact Energy Limited, Bay of Plenty Energy Limited and Todd Energy Limited were unsuccessful.

[3] Genesis has now applied for leave to appeal the judgment pursuant to s 71 of the Electricity Industry Act 2010. An application and brief memorandum were filed on 26 March 2012. Neither Contact, nor Bay of Plenty Energy/Todd have sought leave to appeal.

[4] As to Genesis' application, all of the parties either consent to or do not oppose the application. Vodafone New Zealand and Pulse Utilities do not oppose the application nor does the Electricity Authority itself.

[5] Contact Energy, Bay of Plenty and Todd, given they are affected by the Genesis appeal, have been served with the leave application. They consent to leave being granted.

[6] Having considered the matter, I am also satisfied that this is an appropriate case for leave to be granted. Genesis' application for leave to appeal is therefore granted.

Interim orders

[7] On 25 July 2011 this Court made orders on Bay of Plenty and Todd's application preventing the Electricity Authority from publishing its revised interim prices for 26 March 2011 as final prices.

[8] As counsel's joint memorandum notes, prices in the wholesale electricity market are initially interim prices typically published as final prices within a few days. The Electricity Authority delayed the publication of interim prices as final prices for 26 March 2011 when it became apparent that there were complaints of a UTS.

[9] After the Electricity Authority released its decision on 4 July 2011, it reset prices for electricity for trading periods during 26 March 2011. However, as a result of Bay of Plenty and Todd's application those reset prices have not yet been published as final prices.

[10] The interim orders made by this Court on 25 July 2011, have continued until now. Thus, the trading prices for 26 March 2011 remain as interim prices until further order of this Court. All parties to the memorandum save Pulse Utilities Limited, agree that the interim orders of this Court of 25 July 2011, should lapse. Pulse takes a neutral stance.

[11] The appropriate order, therefore, is that this Court now makes a further order that the order made preventing the Electricity Authority from publishing the revised interim prices for 26 March 2011 as final prices is now lifted.

[12] I note that no issue as to costs arises with respect to either of these applications.

Ronald Young J

Solicitors:

Izard Weston, Wellington for Bay of Plenty Energy Limited and Todd Energy Limited
Bell Gully, Wellington for Contact Energy Limited
Russell McVeagh, Auckland for Genesis Power Limited
Buddle Findlay, Auckland for the Electricity Authority
Chapman Tripp, Wellington for Meridian Energy Limited, NZ Steel Limited,
NZ Sugar Company Limited, Powershop NZ Limited, Switch Utilities Limited
Simpson Grierson, Auckland for Mighty River Power Limited
Wilson Harle, Auckland for Vodafone New Zealand Limited
Duncan Cotterill, Wellington for Pulse Utilities New Zealand Limited