

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE

CIV-2020-

UNDER

The Electricity Industry Act 2010 (**Act**)

IN THE MATTER

of an appeal under s 64 of the Act against a decision of the Electricity Authority to issue new guidelines for the development of a new transmission pricing methodology

BETWEEN

TRUSTPOWER LIMITED, a duly incorporated company having its registered office at 108 Durham Street, Tauranga and carrying on business as an electricity generator and retailer

Appellant

AND

The principal **electricity industry participants** directly affected by the decision identified in the Schedule to the Notice of Appeal and others who may seek to become respondents following directions to be sought from the Court

Potential Respondents

NOTICE OF APPEAL

Dated: 8 July 2020
Judicial Officer: TBA

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NOTICE OF APPEAL

The appellant in the proceeding identified above (**Trustpower**) gives notice that it is appealing to the Court against the decision, made by the Electricity Authority (the **Authority**, or **EA**) on 10 June 2020, to make and publish new guidelines and processes for the development of a new transmission pricing methodology (the **TPM Guidelines**) pursuant to clause 12.83 of the Electricity Industry Participation Code 2010 (the **Code**), on the basis of, and for the reasons provided in, its decision paper titled *Transmission pricing methodology 2020 Guidelines and process for development of a proposed TPM*, also published on 10 June 2020 (the **EA Guidelines Decision**).

1. The questions of law on appeal are, in making the TPM Guidelines and EA Guidelines Decision:
 - (a) Did the Authority misinterpret and/or misapply sections 15, 16 and 32 to 39 of the Electricity Industry Act 2010 (**Act**) and Subpart 4 of Part 12 of the Code by deciding on TPM Guidelines which improperly inflate its own role and restrict the role and scope in decision-making of Transpower New Zealand Limited (**Transpower**) under Part 12 of the Code to “develop” a new TPM?
 - (b) Did the Authority misinterpret or misapply sections 15, 16 and 32 to 39 of the Act and Subpart 4 of Part 12 of the Code by deciding that it had sufficient reliable information to conclude that the pre-existing TPM guidelines (established in 2007 – the **Pre-existing TPM Guidelines**) and the current transmission pricing methodology (**TPM**) require more than incremental amendments in order to achieve (and not undermine) the Authority’s statutory objective as stated in s 15 of the Act?
 - (c) Did the Authority err in law by basing its EA Guidelines Decision in material part on a cost-benefit analysis (**CBA**) which is methodologically unreliable and/or inconsistent with the Authority’s statutory objective under s 15 of the Act?

- (d) Did the Authority err in law by incorporating in its new TPM Guidelines key features which are likely to undermine (and not achieve) the Authority's statutory objective under s 15 of the Act?
- 2. Trustpower's specific grounds of appeal extend to a range of matters which have been addressed in its detailed submissions and in detailed submissions made by Transpower (the system operator under the Act, the owner of the national grid, and developer of any new TPM under the Code) to the Authority in 2019 and 2020, and which remain features of the EA Guidelines Decision. In essence, these matters and features reflect the Authority's misinterpretation of its role (not least by comparison to Transpower's role) in the development of a new TPM, and of its objective as stated in s 15 of the Act.
- 3. More particularly, Trustpower's grounds of appeal are that in making the TPM Guidelines and EA Guidelines Decision the Authority erred in law by:
 - (a) misunderstanding its role under sections 15, 16 and 32 to 39 of the Act and in Part 12, Subpart 4 of the Code, by deciding on highly restrictive TPM "guidelines", closing off potential options and the use of discretions, rather than orthodox guidelines outlining principles from which Transpower is then to contribute its own experience, expertise and consultations to develop a proposed TPM for Authority approval and inclusion as a Code change;
 - (b) misunderstanding the purpose of the Act, its own objective stated in s 15 and its obligation to make decisions on reliable information and analysis, in deciding that the current TPM and Pre-existing TPM Guidelines caused and contributed to major problems in the electricity industry which required more than incremental amendments to those Pre-existing TPM Guidelines and the TPM;
 - (c) basing its EA Guidelines Decision in substantial and material part on a CBA which is methodologically unsound, based on untenable assumptions and on reasoning that contradicts an established body of expert opinion (as explained in the aforementioned submissions to the Authority by Trustpower and Transpower, and their respective experts' reports) and accordingly that cannot be treated as reliable information

consistent with proper decision-making or consistent with the Authority's statutory objective in s 15 of the Act (which must underpin all of the Authority's decision making, and with which Transpower's developed TPM is required to be consistent: clause 12.89 of the Code); and

- (d) incorporating in its new TPM Guidelines key features which will not or will likely not meet the Authority's objective in s 15 of the Act, in particular:
- (i) the removal of a peak pricing signal as contained in the current regional coincident peak demand (**RCPD**) charge;
 - (ii) reliance on the concept of a benefits-based charge recovered in accordance with the positive net private benefit of each designated transmission customer (as defined in the TPM Guidelines);
 - (iii) over-reliance on nodal prices to achieve efficient outcomes; and
 - (iv) transitional provisions which would not or would not be likely to ensure a smooth change in practice to a new TPM and avoid significant price shocks.

4. Trustpower seeks a judgment from the High Court allowing the appeal and:

- (a) quashing the TPM Guidelines and EA Guidelines Decision;
- (b) making such other orders as the Court considers appropriate; and
- (c) awarding the costs of this appeal to the appellant.

DATED this 8th day of July 2020



J E Hodder QC / B A Davies
 Counsel for the appellant

This **NOTICE OF APPEAL** is filed by **BRIONY ANN DAVIES**, solicitor for the appellant, of the firm MinterEllisonRuddWatts. The address for service of the appellant is at the offices of MinterEllisonRuddWatts, Level 18, 125 The Terrace, Wellington.

Documents for service on the appellant may be left at that address for service or may be:

- (A) posted to the solicitor at PO Box 2793, Wellington; or
- (B) left for the solicitor at a document exchange for direction to DX SP20009;
and
- (C) in all cases emailed at the same time to jack.hodder@chambers.co.nz and briony.davies@minterellison.co.nz.

Schedule – list of primary electricity industry participants¹

	Entity
1.	Electricity Authority
2.	Transpower New Zealand
Generation companies that are directly connected to the grid	
3.	Contact Energy Limited
4.	Genesis Energy Limited
5.	Mercury Energy Limited
6.	Meridian Energy Limited
7.	Nga Awa Purua Joint Venture (Rotokawa Geothermal Limited and Tahumatua Limited)
8.	Ngatamariki Geothermal Limited
9.	Nova Energy Limited
10.	Rotokawa Geothermal Limited
11.	Tararua Wind Power Limited
12.	Todd Generation Taranaki Limited
13.	Todd Energy Limited and Whareroa Co-Generation Limited (as part of Fonterra Todd Cogeneration Joint Venture)
Major users that are directly connected to the grid	
14.	Beach Energy Resources NZ (Kupe) Limited
15.	Daiken Southland Limited
16.	Kiwirail Limited / Kiwirail Holdings Limited
17.	Methanex New Zealand Limited
18.	New Zealand Aluminium Smelters Limited

¹ Primarily those listed as designated transmission customers under Schedule 12.1 of the Code.

	Entity
19.	New Zealand Steel Limited
20.	Norske Skog Tasman Limited
21.	OMV NZ Production Limited
22.	Pan Pac Forest Products Limited
23.	Resolution Developments Limited
24.	Southpark Utilities Limited
25.	Winstone Pulp International Limited
Distribution companies	
26.	Alpine Energy Limited
27.	Aurora Energy Limited
28.	Buller Electricity Limited
29.	Centralines Limited
30.	Counties Power Limited
31.	EA Networks Limited
32.	Eastland Network Limited
33.	Electra Limited
34.	Horizon Energy Distribution Limited
35.	Mainpower New Zealand Limited
36.	Marlborough Lines Limited
37.	Nelson Electricity Limited
38.	Network Tasman Limited
39.	Network Waitaki Limited
40.	Northpower Limited
41.	Orion New Zealand Limited

	Entity
42.	Powerco Limited
43.	PowerNet Limited
44.	Scanpower Limited
45.	The Lines Company Limited
46.	Top Energy Limited
47.	Unison Networks Limited
48.	Vector Limited
49.	Waipa Networks Limited
50.	WEL Networks Limited
51.	Wellington Electricity Lines Limited
52.	Westpower Limited