

BEFORE	The Electricity Rulings Panel
BETWEEN	City Financial Investment Company (New Zealand) Limited, and Transpower New Zealand Limited, and The Electricity Authority
UNDER	The Electricity Industry Participation Code 2010, and The Electricity Industry Act 2010, and The Electricity Industry (Enforcement)Regulations 2010
IN THE MATTER OF	A complaint made by City Financial Investment (New Zealand) Limited of Code breaches by Transpower New Zealand Limited.

Further Procedural Directions

Dated : 9 June 2017

Rulings Panel Members

Peter Dengate Thrush	- Chairperson
Geraldine Baumann	- Deputy Chairperson
John O’Sullivan	- Panel member

Background

1. On 15 March 2017 City Financial Investment Company (New Zealand) Limited “City Financial” or the “complainant” filed a complaint, or what purported to be a complaint, with the Rulings Panel, under Regulation 31 of the Electricity Industry (Enforcement) Regulations 2010 (“the Regulations”). We say “purported” as the validity of that complaint has been put in issue. For convenience, we shall continue to describe it as the “complaint”, without ruling at this point on that issue. The complaint alleged various breaches of the New Zealand Electricity Industry Participation Code (“Code”) by Transpower New Zealand Limited (“Transpower”).
2. Pursuant to its obligations on receiving a complaint under Regulation 33, on 12 May 2017 the Rulings Panel issued notice to the parties consistent with the requirements of Regulation 33. The Rulings Panel also gave procedural directions for the convening of a telephone conference on 26 May 2017.

Submissions

3. On 17 May 2017 Transpower filed and served submissions by way of a Memorandum, in which (to paraphrase them) the validity of the complaint was challenged. The validity of the Rulings Panel’s Regulation 33 notice was disputed. Transpower’s submission was to the effect that because the Electricity Authority had decided under Regulation 11 not to proceed with a complaint made by City Financial, the Rulings Panel had no jurisdiction to hear the complaint.
4. The Rulings Panel gave other parties time to respond to this jurisdictional challenge to the proceedings, and adjourned the telephone conference sine die. On 23 May 2017 the Electricity Authority filed and served submissions by way of a Memorandum, in which it (again paraphrasing) agreed with the Transpower submissions as to jurisdiction, and called on the Rulings Panel to decline to hear the matter. It went on to submit that, if the Rulings Panel “...is not minded to discontinue its consideration of the complaint at this stage, it should suspend its consideration of the complaint until the High Court decision on the appeal relating to Solar City New Zealand’s case is available.

Response

5. On 25 May 2017 submissions were filed by City Financial to the effect (again paraphrasing) that the Rulings Panel did have jurisdiction, and that the Solar City decision was distinguishable, and that delay until the appeal decision in that case was available would prejudice the complainant. Time was then provided to the other parties to reply.

Reply

6. On 29 May Transpower filed further submissions in rebuttal of the City Finance submissions. On the question of whether the Rulings Panel should wait for the decision in the Solar City appeal, Transpower submitted that the cases had the common feature that the complainants had been rejected by the Authority

under regulation 11, and both had subsequent attempts to bring the complaint before the Rulings Panel.

7. On 1 June 2017 the Authority filed a submission in reply, in which it challenged some of the factual assertions made by the complainant, and rebutted its arguments on jurisdiction and breach of natural justice. It also submitted that the possibility that the Solar City appeal decision would be relevant was more than a mere possibility, and it would make sense to wait for that decision.

Decision

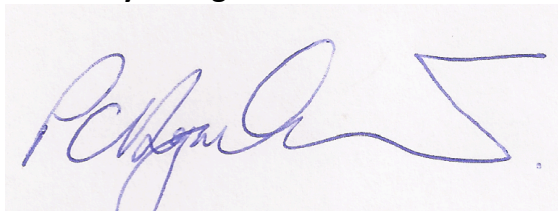
8. We think the prudent course is to await the decision in the Solar City Appeal. That case involved a complainant whose complaint had been rejected by the Authority under Regulation 11. The decision of the Rulings Panel was that there were other avenues available under the Electricity Industry Act 2010 and Regulations by which that complainant could bring the complaint before the Rulings Panel. The matter is novel, and the Rulings Panel believes that the analysis of the same provisions of the Act and Regulations that the appeal decision likely requires will be relevant and helpful to the Rulings Panel in considering this matter.
9. In reaching that decision, we have been conscious of the complainant's submission that delay is prejudicial. We have balanced that concern with the costs and other prejudice which might be suffered by all parties were the Rulings Panel to proceed without the decision in the Solar City appeal. However, we do not intend that this complainant should sit suspended in limbo indefinitely. Leave is reserved to the complainant to bring this matter back before the Rulings Panel for further review if the decision on the appeal is not available by Friday, 4 August 2011.

Costs reserved

10. The parties made no submission on costs, and we do not think this is an appropriate moment to address costs.

Issued 9 June 2017

Electricity Rulings Panel



P.C. Dengate Thrush
Chairperson, Electricity Rulings Panel

