

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

CIV-2016-485-580

UNDER The Judicature Amendment Act 1972 and/or Part 30 of the
High Court Rules

IN THE MATTER of the Electricity Industry Act 2010

BETWEEN **TRUSTPOWER LIMITED**

Applicant

AND **ELECTRICITY AUTHORITY**

First Respondent

AND **MERIDIAN ENERGY**

Second Respondent

AFFIDAVIT OF GRANT EDWARD SMITH IN REPLY

SWORN: 29 AUGUST 2016

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I, **Grant Edward Smith**, Manager, swear:

Introduction

1. My name is Grant Edward Smith. I am General Manager, Strategy and Business Development at Pioneer Energy (**Pioneer**). I am responsible for response to government and the Electricity Authority (**Authority**) on policy and regulatory matters as they pertain to company assets and investment.
2. Pioneer is an active investment partner in local and renewable energy generation, in customer on-site heat and power facilities and in retail energy services businesses. Pioneer's current assets and most new investments are predominantly Distributed Generation (or **DG**), so will be materially impacted by the Authority's proposal to remove the current Distributed Generation Pricing Principles (**DGPP**) and the proposed application of Network Common Costs to Distributed Generators.
3. Pioneer is an active member of the Independent Electricity Generators Association (**IEGA**). Pioneer has been a member of the IEGA since it was established in October 2006 and I currently hold a role as spoke-person on these regulatory matters. I attach the IEGA submission to the Authority on its DGPP Proposals, marked "**GES-1**".
4. IEGA comprises approximately 40 members who are either directly or indirectly associated with predominately small scale power schemes throughout New Zealand for the purpose of commercial electricity generation. Combined, the IEGA is the sixth largest electricity generator in New Zealand.
5. Pioneer provides regulatory and administrative support to the IEGA as one of its few members that has scale to contract this resource on a part-time basis. The overwhelming majority of IEGA members do not participate in the wholesale electricity market, are not connected to the transmission grid, and the size of their generation plant is below the NZEM 10MW de-minimus set for generators required to undertake 24/7 market dispatch. As such these smaller generators (there are nearly 90 separate power stations located across New Zealand) are price takers in that they receive the prevailing half hourly market spot prices without any specific influence

on those prices. Members are small, entrepreneurial businesses – essentially the SME's of the electricity generation sector that apply their limited financial and human resources to successfully operating and maintaining their business.

6. I have read Jason Woolley's affidavit (sworn 23 August 2016) filed for Meridian in this proceeding. I have been asked to (and wish to) reply to the sections headed "Delay will prejudice some participants and will benefit Trustpower", to the overall contentions that the DGPP process has been underway since 2009, that the May 2016 proposals were an expected development, and that Trustpower's judicial review of the Authority's latest consultation process decisions is just about delay for financial gain (by Trustpower). I wish to reply to indicate the errors in Mr Woolley's assertions.
7. At the outset I would like to record that Trustpower's concerns with the process are echoed by Pioneer and the IEGA membership. I would also like to clarify that, prior to the Electricity Industry Act 2010, the DGPPs were the Electricity (Connection of Distributed Generation) Regulations 2007 promulgated by the Government. These regulations were developed from a series of consultation papers over a period of four years and recognised the difficulty distributed generation owners were having in negotiating connection agreements and payments with monopoly network owners.
8. Mr Woolley's affidavit fails to acknowledge that the DGPP regulations and Part 6.4 of the Code were explicitly established to protect the market and commercial interests of smaller distributed generation owners. The proposal to remove the DGPP rules from the Code, and apply Network Common Costs, will destroy considerable DG wealth and will likely render many existing DG plant financially obsolete, the exact opposite outcome to that as was intended by government in 2007.

The DGPP Proposals were new and unexpected

9. The Authority's proposal to remove the DGPP's from the Code was not anticipated by IEGA members. As a result of removing the DGPPs from

the Code, network companies can, and are encouraged by the Authority, to allocate Network Common Costs to DG facilities.

10. The financial consequences of Network Common Cost allocations are significantly higher than the financial consequence of any changes to the level of ACOT payments.
11. The proposals in the DGPP Paper released by the Authority in May 2016 are very different from, and could not have been anticipated from, previous papers published by the Authority. The Authority's 2013 ACOT Working Paper only focussed on the level of payment of ACOT to DG. This paper states (at paragraphs 1.5 and 1.22 of the Executive Summary):

"The purpose of this working paper, therefore, is to assist the Authority to understand the efficiency implications of any changes to the TPM in relation to ACOT payments."

And;

"Depending on the potential impact of any changes to the Code that results from a review of the part 6 pricing principles, it may be desirable to include transitional arrangements."

12. There was no indication that the Authority was going to solve the issue about the level of payment to DG by removing the relevant parts of the Code – by allocating Network Common Costs to DG. Pioneer and IEGA made comprehensive submissions to the Authority on its 2013 ACOT Working Paper. While the Authority published a summary of these submissions it provided no further information following this consultation about what could be expected from its next consultation.
13. When the DGPP proposal was released, the IEGA scheduled a meeting for 26 May 2016, which I attended. Members had been expecting some kind of change to the level of the ACOT payments, but had very limited understanding that the Authority was proposing that network companies could allocate some of their common costs to DG. There was a very strong representation of members at this meeting (26 attendees) with members coming from across New Zealand.

14. The Authority attended this IEGA meeting and presented on the DGPP and TPM proposals, with about a third of the presentation covering the DGPP proposals. The decision relating to Network Common Costs made just one line on that presentation. The Authority was not able to provide any indication of what Network Common Costs might be. When I questioned them further on inconsistencies between DG having to pay network Common Costs but Grid Connected Generation not having to pay Common Costs for use of these same networks, they indicated this had not been considered.
15. The IEGA felt the DGPP proposal was new and was poorly resolved. It sent a letter to the Authority dated 2 June 2016 requesting an extension to the consultation period. The letter (attached to the IEGA submission to the Authority as Appendix 3) outlines the IEGA's surprise and concerns with the sudden removal of Part 6.4 and the introduction of Common Costs and noted;

“The IEGA is looking to be constructive in its submissions – providing practical implications and empirical analysis as well as suggested solutions. The IEGA needs to understand the practicalities of how these proposals might be implemented and the additional costs that our members could face before being able to prepare a quality submission. Neither of these changes were discussed in the ACOT Working Paper of November 2013. Both proposals have a very material impact on the financial viability of our members. The current consultation period does not allow sufficient time for us to understand the financial and operational consequences.

In our view there would be material prejudice if an extension is not granted.”

16. The Authority replied 3 weeks later to this extension request, on 23rd June 2016 (attached to the IEGA submission to the Authority at Appendix 3). Their response advised the level of detail and information IEGA members would require from network companies, to assess impacts of the DGPP proposal, “...*would not be available for years*”. It was then very clear to

members that the Authority did not fully understand the level of costs and the market impact of its DGPP proposal.

17. IEGA then commissioned PricewaterhouseCoopers (**PWC**) to review the financial statements of its members and to assess the potential market value impacts. Initially PWC focussed on the impacts of removing the current ACOT payments, as the initial network company responses were consistent with the Authority's letter response. It therefore took some time for IEGA members to fully understand the implications of the proposals.
18. Pioneer and IEGA members attended the Authority's four regional TPM workshops held during June 2016. However, despite the inter-relationship between these two proposals, the Authority specifically made it known at each workshop that they were only to discuss the TPM and would not discuss the DGPP proposals. There were no workshops on the DGPP proposals that I am aware of.
19. At the end of June 2016, as a result of our investigations and industry discussions to date, Pioneer sought and received agreement from the IEGA membership to extend the scope of work being undertaken by PWC to review the impact of an allocation of Network Common Costs on member's businesses. On 30 June 2016 IEGA members were provided with a template letter to either send to, or alternatively form the basis of discussion with, their local network company about what the allocation of Network Common Costs might look like. There was limited feedback from network companies. For example: *"...only preliminary discussions around the proposed changes to Part 6 of the Code, the final position will only be made by the Board following the date of the actual change"*.
20. In my experience, it is critical to take the time to collect quality data and quantitative evidence to support a decision to unwind rules that were originally put in place by the Government and will create significant wealth transfers. I understand that the Authority sought and received detailed information from Network companies on ACOT payments in the months prior to releasing its proposal, but has elected not to include a summary or the quantitative results from its Networks survey.

21. Network companies have well established process to review prices once a year and publish these early each calendar year to apply from 1 April. The proposals in the DGPP paper provide no guidance or rules relating to how network companies should allocate common costs to DG. This makes it very difficult for network companies to quickly reassess their cost structures and inform DG on their network what the charges might be from 1 April 2017. The Authority's proposals place an unexpected requirement on Networks to consider reallocating common costs outside business-as-usual.
22. It therefore took significant time for IEGA members to receive feedback, from discussions with various network companies and with Transpower, to assess potential Network Common Costs that could be used by PWC in its analysis. Consequently, there was insufficient time to provide quality information in submissions to the Authority. For example: we could only provide a wide range of options for possible increases in connection costs for the PWC analysis on the basis of the limited information available.
23. PWC's report for IEGA (attached to the IEGA submission to the Authority at Appendix 4) concluded that removal of ACOT and the allocation of this range of Network Common Costs results in wealth destruction across the DG sector of \$0.5 to \$1.5 billion. This is a significant wealth transfer and compares with the Authority's estimate of the net benefits of making the change of a maximum \$21.7 million.

Rushing the consultation process will prejudice many participants and will benefit Meridian

24. If the current proposals are rushed through at this point, Pioneer has estimated it could ultimately lose up to \$9m (or up to 50%) of its annual cash earnings. This earning loss and the investment uncertainty created will severely undermine business and shareholder confidence.
25. Pioneer's Board has had to approve further work on understanding the physical generation asset consequences of these proposals. For example, Pioneer may be forced by Network Common Costs to relocate its current Network connections and run new connections many km's to connect

directly to the transmission system, or otherwise face plant closures. Many of these network connected hydro plant preceded the building of the transmission grid itself.

26. Pioneer has worked with a number of Network businesses and independent advisors to understand the local and national market impacts of removing its and other distributed generation from local networks. The consequences are material but not adequately considered, nor discussed in either TPM or DGPP proposals. This work is complex, requiring ongoing discussions between us, the Networks and Transpower to ensure negotiations in the absence of DGPP rules are fair and reasonable.
27. Pioneer's TPM and DGPP submissions cover these and many other issues relating to fair and equitable competition, locational market benefits and the various inconsistencies and anomalies between the Authority's TPM and DGPP cost-benefit analysis.
28. I am concerned that the current process is rushing the Authority's proposed DGPP reforms through without proper time for anyone to consider and engage properly with the Authority on these issues.

Sworn at Alexandra)
 this 29th day of August 2016)
 before me:)

_____)
 Grant Edward Smith

_____)
A Solicitor of the High Court of New Zealand