

IN THE WESTERN AUSTRALIAN ELECTRICITY REVIEW BOARD

No 7 of 2017

Re: Stephen Davidson's Applications for Review No. 1, 2, 3, 4, 5 and 6 of 2017 to the Western Australian Electricity Review Board for review of various decisions by the Economic Regulation Authority.

Application by:

STEPHEN DAVIDSON

Applicant

APPLICATION FOR REVIEW

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Date of document: 05 September 2017

Filed on behalf of The Applicant

Prepared by:

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Pursuant to Section 130(4) of the *Electricity Industry Act 2004* and Regulation 6 of the *Electricity Industry (Arbitrator and Board Funding) Regulations 2009* the Applicant applies for no adverse cost order early in the review of the Applicant's Applications for Review No. 1, 2, 3, 4, 5 and 6 of 2017 to the Western Australian Electricity Review Board for review of various decisions by the Economic Regulation Authority **(Applications No. 1 - 6 of 2017 Davidson & ERA)**.

The application seeks the following final orders: -

1. The Electricity Review Board to order a no adverse cost order be granted to the Applicant to give effect to the matters asserted in the grounds for this application.
2. The Electricity Review Board to order a temporary stay of consideration of the Applications No.1 - 6 of 2017 Davidson & ERA until after the Board rules on the Applicant's request made under Order 1 here.
3. Such further or other orders as may be appropriate.

The grounds for this application are annexed.

Applicant



## GROUNDS

1. On 12 July 2017, the Applicant received by email the attached letter from the State Solicitor's Office, dated the same day.
2. The Applicant was advised that the State Solicitor's Office represents the Economic Regulation Authority, who is the Respondent, in relation of each of the Applications No. 1 - 6 of 2017 Davidson & ERA.
3. The Applicant was also advised that the Board has discretion to make orders as to costs (both own costs and the costs of the parties) and determine which of the parties is liable for those costs in respect of a proceeding.
4. The Applicant understood the advice by the State Solicitor's Office of Item 3 here as a warning against financial ruin should the Applicant proceed with his Applications No. 1 - 6 of 2017 Davidson & ERA.
5. The Applicant also advises that his earlier efforts to resolve the issues directly with the Economic Regulation Authority failed. For example, over six months without substantial progress for the issues raised in Application No. 2.
6. It appears to the Applicant that the Economic Regulation Authority had no genuine intention to discuss technical matters on their merits, for the reasons explained in Item 5 here.
7. The view of Item 6 here is further reinforced by the content of the letter from the State Solicitor's Office, see Items 2 to 4 here.
8. The Applicant advises that he has no financial means to fight costly legal battles: has no financial backers and is disinclined to run the risk of being bankrupted by the, potentially protracted, legal battles - one for each Application.
9. The Applicant is an individual, ordinary working Australian and an altruist who made considerable personal sacrifice to prepare the Applications No. 1 - 6 of 2017 for the benefit of the wider WA community.
10. The Applicant submits he will not gain financially from success of any of his six Applications, other than reduced electricity prices to his home, as would all users of the Western Power network. However, the aggregate societal benefit to all Western Australians, residential and business customers, would be enormous. Hence, the Applicant trusts that a fair hearing (without fear or favour) of the six Applications would be in the public interest and natural justice.

11. In addition, the Applicant submits this Application for a no adverse cost order is in the spirit of the recently proposed Competition and Consumer Legislation Amendment (Small Business Access to Justice) Bill 2017.
12. On 10 August 2017, the Bill has progressed to the third reading in the Senate.<sup>1</sup>
13. The Bill of Item 11 here is intended to:<sup>2</sup>

*“Empower small business private litigants to bring litigation under part IV of the Competition and Consumer Act, but without the burden of prohibitive legal fees. It would bring greater balance in respect of our competition laws by allowing a smaller business to request a no adverse costs order early in the court case. This will help to level the playing field and encourage small business to take on anticompetitive behaviour, to the benefit of the consumers and business alike.”*
14. The following is justification for the Bill of Item 11 here:

*“Large businesses have deeper pockets and access to considerable legal firepower. Small businesses that take on larger firms risk being out-resourced and face the possibility of having to pay the big business's legal fees if they are unsuccessful. Currently, that imbalance is too great. On the one side is the big end of town, well resourced with all of the legal muscle you can imagine, perfectly positioned to defend themselves in court. On the other side is a small- or medium-sized business just wanting a fair go, wanting to ensure our competition laws are enforced but currently having to risk prohibited costs and drawn-out legal proceedings to do so. This is a huge obstacle, and one that hampers competition.”*
15. The financial imbalance described in Item 14 here is even greater in the Applicant's situation: an individual challenging the Electricity Network Corporation and/or the Economic Regulation Authority.
16. The Applicant respectfully requests a no adverse cost order early in the review of his Applications No. 1 - 6 of 2017 Davidson & ERA, for the benefit of consumers and business in WA - respectively for their living standards and for competitiveness.

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<sup>1</sup> Senate Hansard - Competition and Consumer Legislation Amendment (Small Business Access to Justice) Bill 2017; Second Reading - 10 Aug 2017.

<sup>2</sup>[http://www.aph.gov.au/Parliamentary\\_Business/Hansard/Search?page=2&q=&ps=10&drt=0&drv=0&drvH=0&pnu=0&pnuH=0&pi=0&chi=0&coi=0&speakerID=ING&st=1](http://www.aph.gov.au/Parliamentary_Business/Hansard/Search?page=2&q=&ps=10&drt=0&drv=0&drvH=0&pnu=0&pnuH=0&pi=0&chi=0&coi=0&speakerID=ING&st=1)



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## STATE SOLICITOR'S OFFICE

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**By email:** [stephendavidson144@gmail.com](mailto:stephendavidson144@gmail.com)

Date: 12 July 2017

Dear Mr Davidson

### **ELECTRICITY REVIEW BOARD APPLICATIONS FOR REVIEW NO 1, 2, 3, 4, 5 AND 6 OF 2017**

I refer to your Applications for Review Nos. 1, 2, 3, 4, 5 and 6 of 2017 ("the Applications") to the Western Australian Electricity Review Board ("the Board") for review of various decisions by the Economic Regulation Authority.

First, I write to advise you that the State Solicitor's Office is acting for the Economic Regulation Authority, who will be the Respondent, in relation to each of these Applications.

Secondly, I write as a matter of courtesy to inform you that, on our understanding of the applicable legislation:

- (a) Section 130 of the *Electricity Industry Act 2004* provides in relation to review by the Board and subsection (2) sets out the decisions to which the section applies. This does not appear to include all decisions made by the Authority under the *Electricity Networks Access Code 2004*, for example, to approve amendments to Technical Rules or to approve exemptions from the Technical Rules.
- (b) Section 130(4) applies some of the "gas pipelines access provisions" (as defined in section 130(1)), including section 38(2), to applications for review by the Board. Section 38(2) provides that the time for making an application for review of a decision expires 14 days after the decision is placed on the public register, and there does not appear to be provision for the Board to extend this time. It appears that each of the Applications has been made outside of this time.
- (c) Section 38(10) of the "gas pipelines access provisions" also applies under section 130(4) of the *Electricity Industry Act 2004* (and regulation 6 of the *Electricity Industry (Arbitrator and Board Funding) Regulations 2009* may be relevant) so that the Board has the discretion to make orders as to costs (both its own costs and the costs of the parties) and determine which of the parties is liable for those costs in respect of a proceeding.

Should the Applications proceed, this Office may draw the attention of the Board to these matters for determination.

Yours faithfully

A handwritten signature in cursive script that reads "Jenny Grove". The signature is written in black ink and is positioned above the typed name.

**JENNY GROVE**  
**SENIOR ASSISTANT STATE SOLICITOR**