

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

McMURDO J

No 7793 of 2008

AGL ENERGY LIMITED

Applicant

and

QUEENSLAND COMPETITION AUTHORITY

Respondent

and

MINISTER FOR MINES AND ENERGY

Respondent

No 8576 of 2008

ORIGIN ENERGY RETAIL LIMITED

Applicant

and

QUEENSLAND COMPETITION AUTHORITY

Respondent

and

MINISTER FOR MINES AND ENERGY

Respondent

BRISBANE

..DATE 29/05/2009

ORDER

HIS HONOUR: The two proceedings have returned to Court today on the application of the Queensland Competition Authority to vary paragraph 3 of the orders I made on 14 May last to substitute the date 5 June for the date 29 May.

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I accept from the evidence led by the Authority that in practical terms it will be impossible for the Authority to comply with paragraph 3 in its present terms.

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The applicants in the proceedings were critical of the Authority, saying that its present predicament is of its own making because it has chosen to adopt quite a different methodology, it is suggested, from the one which it could have followed. It is unnecessary to decide whether that is the case. As I have said, the predicament exists and it is appropriate that the Authority have the benefit of a variation of the order for otherwise it would be contempt.

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The evidence for the Authority indicates that it expects to receive the necessary and remaining material from its consultants by 3 June. The order, however, will be not contingent upon the provision of that material and it must be understood that an order in these terms with the varied date is one which requires the Authority to perform the recalculation and make the decision referred to in paragraph 3 on or before that date which will now be 5 June.

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In other words, it is not an order of which is in terms that the Authority will use its best endeavours to achieve that goal.

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The debate today has also extended to whether there should be, by an order, a time limit on the Authority in notifying the prices for the year 2009-2010.

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At present there is no such limit because at the time that the orders of 14 May were made, according to those orders, it was open to the authority to publish those prices within the time required by section 96 of the Act.

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There is apparent force in the argument for the applicants that in the present circumstances there ought to be some limit of time on the Authority's calculation and notification of those prices. The parties are agreed, however, that that matter could be debated, if it has to be, late next week, when the Authority will be in a better position, it says, to say by when it can calculate and notify those prices.

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The order today then will be that paragraph 3 of the order of 14 May 2009 be varied by substituting "5 June" for "29 May 2009". The proceedings will be adjourned until 9.30 on 4 June 2009.

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The applicants seek their costs of today. The Authority, against whom those costs are sought, resists that, saying that it is not its fault that it is in the present predicament. As

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I see it, these costs which have resulted from the invalidity of the decision, which I reviewed in the principal judgment, and they are not costs which ought to be the subject of apportionment, as I made in my orders of 14 May.

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Accordingly, it will be ordered that the Authority pay to the applicants their costs of today's hearing, to be assessed on the standard basis.

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