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10 March 2015

Ms Natalie James  
Fair Work Ombudsman  
GPO Box 9887  
MELBOURNE VIC 3001

Dear Ms James

I am writing to you in my capacity as Chief Executive of Ausgrid, Endeavour Energy and Essential Energy.

Ausgrid and Endeavour Energy are currently subject to protected industrial action. Ausgrid has seven unions who are parties to their enterprise agreement and Endeavour Energy has three.

One of the Endeavour Energy unions (CEPU) and four of the Ausgrid unions have successfully concluded a protected action ballot utilising the Australian Electoral Commission (AEC) and four unions have provided their first protected action notices to undertake specific industrial action. The Fair Work Commission (FWC) has recently suspended this action until 5.00pm Wednesday 4 March 2015 following application by the NSW Minister for Industrial Relations and Ausgrid and Endeavour Energy under section 424 of the *Fair Work Act (FWA)*.

An officer of your organisation, Mr Nathan Forwood has kept in touch with us over the past weeks to monitor the progress of our industrial issues. We are grateful for that interest.

During our communications with Mr Forwood he has reminded us that section 470 of the *FWA* prevents employers paying employees undertaking protected action and that we could face penalties as the employer if we did pay those employees.

I want to draw our attention to a very practical difficulty we have in our current circumstances.

The ballot order issued on 12 January 2015 by the FWC for the CEPU ballot at Endeavour Energy (copy attached) specified that the employees to be balloted must be members of the CEPU. In conducting the ballot the AEC established a roll of voters from a list of employees provided by Endeavour Energy and a list of CEPU members at Endeavour Energy provided by the CEPU. At no stage of this process was Endeavour Energy management aware of the names of CEPU members at Endeavour Energy. We do know from aggregate AEC ballot data that approximately 54% of award employees are members of the ETU. We don't however know the names of union members. We therefore have no way of knowing who are legally able to take protected action. Further we cannot seek to acquire membership information from either the union or individuals due to the freedom of association provisions under the *FWA*.

The situation at Ausgrid is more complex with four of six unions conducting successful and simultaneous AEC ballots. Three of those unions subsequently and simultaneously issued protected action notices. Without the names of each roll of voters, management has no visibility on individuals who are entitled to take protected action and are therefore subject to section 470 FWA.

During a stoppage or strike management do generally know who is and who is not at work. Those legally entitled to protected industrial action are subject to section 470. Those who took industrial action and were not legally entitled to do so (non-unionist or other union) would be covered by a section 418 application. Clearly the problem is we don't know which employees are subject to the different sections of the *Act*.

I raise this issue with you because it would present us with a difficulty should protected industrial action occur and as the Fair Work Ombudsman you sought an assurance from us that we have robustly implemented section 470 of the *FWA*.

I would be grateful for your thoughts on this issue and would appreciate discussing it with you.

Kind regards

Vince Graham  
**Chief Executive Officer**

Attachment/s:

1. Ballot Order dated 12 January 2015 issued by the FWC for the CEPU ballot at Endeavour Energy



# ORDER

*Fair Work Act 2009*

s.437 - Application for a protected action ballot order

**Communications, Electrical, Electronic, Energy, Information, Postal,  
Plumbing and Allied Services Union of Australia**

**v**

**Endeavour Energy**

(B2015/152)

SENIOR DEPUTY PRESIDENT HARRISON

SYDNEY, 12 JANUARY 2015

*Proposed protected action ballot by employees of Endeavour Energy.*

Further to the Decision in this matter issued on 12 January 2015 ([2015] FWC 244), and pursuant to s.443 of the *Fair Work Act 2009* (the Act) the Fair Work Commission orders:

## **1. PROTECTED ACTION BALLOT TO BE HELD**

The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Unions (CEPU) is to hold a protected action ballot of employees of Endeavour Energy described in clause 3 of this order.

## **2. NAME OF PERSON AUTHORISED TO CONDUCT THE BALLOT AND S.446 ORDER**

The ballot is to be conducted by the Australian Electoral Commission. Pursuant to s.446 of the Act, the ballot is to be conducted at the same time as other ballots which have been ordered in respect to applications by the Australian Municipal, Administrative, Clerical and Services Union known as the Australian Services Union (B2015/7) and The Association of Professional Engineers, Scientists and Managers, Australia (B2015/9).

### **3. TYPE OF EMPLOYEES TO BE BALLOTTED**

The employees to be balloted are those employees of Endeavour Energy who are members of and are entitled to be industrially represented by the CEPU and who will be covered by the proposed enterprise agreement.

### **4. DATE BY WHICH BALLOT CLOSES**

To enable the ballot to be conducted as expeditiously as practicable, the date by which voting in the protected action ballot is to close is 20 working days from the day of this order.

### **5. QUESTIONS**

The questions to be put to the employees in the ballot:

In support of reaching an enterprise agreement with your employer, do you endorse the taking of protected industrial action by CEPU members against your employer, which may involve taking separately, concurrently and/or consecutively any or all of the actions set out below:

#### **1. Stoppages of work**

- a. Stoppages of work for a 1 hour period
- b. Stoppages of work for 2 hour periods
- c. Stoppages of work for 4 hour periods
- d. Stoppages of work for 8 hour periods
- e. Stoppages of work for 12 hour periods
- f. Stoppages of work for 24 hour periods
- g. Stoppages of work for 48 hour periods
- h. Stoppages of work for 72 hour periods

Yes ☐

No ☐

#### **2. Strikes**

- a. Strikes for a period of one week
- b. Indefinite strikes?

Yes ☐

No ☐

### **3. Bans**

Indefinite or periodic bans on one or more of the following:

- a. On-Call
- b. Responding to Callouts except in an emergency
- c. Afternoon shifts
- d. Project Works
- e. Issuing work permits including Access Permits
- f. Testing provided this does not affect public health & safety
- g. The training of agency staff
- h. The performing of work outside of the usual work area or location
- i. All on the job training
- j. Participation in Competency Programs
- k. Completing specific processes, paperwork, approvals or reports
- l. Using or taking home Endeavour Energy keys & swipe cards
- m. The use of technology such as mobile phones, computers and tablets afterhours
- n. The use of private devices such as mobile phones, computers and tablets during work hours for Endeavour Energy purposes
- o. The use of Endeavour Energy purchasing cards
- p. Assisting or communication with contractors
- q. Network switching for contractors
- r. The use of computers & tablets
- s. Starting and finishing on job sites
- t. Undertaking stand-by
- u. Overtime generally
- v. Working non-rostered overtime
- w. Working overtime in geographical areas not covered by the current agreement
- x. Performing work outside the Endeavour Energy franchise area
- y. Performing Live High or Low Voltage works
- z. Working secondments

- aa. Conducting planned or unplanned periodic maintenance
- bb. Any activity relating to the disconnection of customer electricity supply, other than for safety reasons
- cc. Acting up in higher positions
- dd. Performing work beyond recognised competencies
- ee. Reconnecting services if not licenced
- ff. Providing assistance to district operators
- gg. Performing work afterhours beyond making safe
- hh. Working alone

Yes ☐

No ☐

#### **4. Changes to the Performance of Work**

- a. Commencement and ceasing of work from the depot
- b. Return to the depot for lunch
- c. Return to the depot for toilet requirements
- d. No heavy vehicle to be driven from depot until the weight of the vehicle is recorded on a daily basis
- e. Vehicle checks to be performed by a qualified mechanic
- f. No use of tools/equipment without evidence of completion of duty of care training
- g. Speaking to members of the public during work related telephone calls about the industrial action

Yes ☐

No ☐

#### **5. Distribute Union & Industrial Campaign Related Material**

- a. Attach union and industrial campaign-related material to outgoing mail or email, and add it to Endeavour Energy materials and displays;
- b. Wear and distribute Union & industrial campaign-related material such as t-shirts, badges, written communications and stickers

- c. Attach union and industrial campaign-related material to Endeavour Energy company vehicles and assets
- d. The provision of any information, in any form, concerning the views of employees about any aspect of the campaign to any members of the community including the media

Yes ☐ No ☐

## 6. POSTING OF THE ORDER

Endeavour Energy shall cause a copy of this order to be posted at prominent locations in, or about, its worksites.

## 7. MANDATORY NOTICE PERIOD FOR PROPOSED INDUSTRIAL ACTION

Pursuant to s.443(5) of the Act, the period of written notice for proposed industrial action contained in s. 414(2)(a) of the Act is extended to **7 working days**.

## 8. DATE OF EFFECT

This order shall come into effect from 12 January 2015.



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