



Federal Court of Australia

District Registry: Queensland

Division: General

No: QUD19/2021

STILLWATER PASTORAL COMPANY PTY LTD ACN 101 400 668

Applicant

STANWELL CORPORATION LTD ACN 078 848 674 and another named in the
schedule

Respondent

ORDER

JUDGE: JUSTICE SARAH C DERRINGTON

DATE OF ORDER: 13 July 2023

WHERE MADE: Brisbane

THE COURT ORDERS THAT:

Trial

1. Pursuant to paragraph 18 of the Orders dated 27 March 2023, the proceeding be set down for an Initial Trial commencing at 10:15 am on 3 June 2024 on an estimate of eight (8) weeks.

Mediation

2. Pursuant to rule 28.02 of the *Federal Court Rules 2011* (Cth) (Rules), the proceeding be referred to mediation to be conducted by Mr Paul Santamaria KC (the Mediator).
3. The mediation referred to in Order 2 is to commence on a date in 2024 to be agreed between the Mediator and the parties but by no later than 11 March 2024.
4. The Mediator is to meet with the parties, their representatives and funders on a without prejudice basis as soon as convenient to the Mediator, for the purposes of seeking to:
 - (a) narrow the areas of disagreement between the parties;
 - (b) facilitate the efficient presentation to the Court of the substantive issues in the proceeding; and



- (c) facilitate the final resolution of the matter as between the parties.
- 5. The parties are to bear the costs of the Mediator's fees, and venue fees, in equal proportions.
- 6. Pursuant to s 37P(2) and s 54A of the *Federal Court of Australia Act 1976* (Cth) and r 28 of the Federal Court Rules:
 - (a) the question set out in Schedule 1 to this Order (Relevant Question) be referred to a referee (Referee) for the purposes of the Referee conducting an inquiry into the Relevant Question (Reference) and providing a report in writing to the Court on the Relevant Question referred to the Referee stating, with reasons, the Referee's opinion on the Relevant Question (Report);
 - (b) the Reference will commence forthwith;
 - (c) the Referee is to consider and implement such manner of conducting the Reference as will, without undue formality or delay, enable a just, efficient, timely and cost-effective resolution of the Reference to allow completion of the Report including, if the Referee thinks fit:
 - (i) the making of enquiries electronically, by telephone or in writing;
 - (ii) direct communication without intervention of lawyers of any expert retained on behalf of a party and/or any person whom the Referee believes may have information relevant to the Reference;
 - (iii) in order to facilitate the Referee implementing the just, efficient, timely and cost-effective resolution of the Reference, the Referee is to make such directions as the Referee considers appropriate as to the conduct of the Reference;
 - (iv) without limiting (i), (ii) and (iii), to the extent the Referee considers it is necessary or appropriate for the Referee to obtain any submission from any party, the Referee may make any direction the Referee considers appropriate in relation to such submissions including that any submissions be provided wholly in writing and be limited in length and topic;
 - (v) without limiting (i), (ii) and (iii), to the extent the Referee considers it is necessary or appropriate, the attendance of any person and the production of documents be compelled by subpoena; and



- (vi) the parties to the Reference are to participate in the Reference without the involvement of legal representatives (except to the extent the Referee wishes to obtain the assistance of any lawyer) and the laws of evidence will not apply in relation to the Reference.

7. The Referee, in the Report:

- (a) will, to the extent it was necessary for the Referee to make any findings of fact in order to express his opinion on the Relevant Question, make a statement of the facts found by the Referee from which the Court may draw such inferences as it thinks fit; and/or
- (b) may submit any question arising on the Reference for the decision of the Court and provide alternative opinions on the Relevant Question which depend upon how the Court determines any question submitted to the Court.

8. Mr Neville Henderson be appointed as Referee.

9. Mr Edward Cowpe of the New South Wales Bar be appointed as counsel to assist (Counsel Assisting) the Referee with any questions the Referee has about the conduct of the Reference and the preparation of the Report and the Referee is directed to confer with Counsel Assisting as to the form of the Report.

10. Within 10 days of the date of these orders, the parties will deliver to the Referee and Counsel Assisting a copy of this order, the Orders dated 27 March 2023 and 24 May 2023, a copy of Federal Court Rule 28, a copy of the current pleadings, a copy of the draft Statement of Agreed Facts in the form agreed between the parties at that point in time, and the transcripts of the case management hearings on 27 March 2023 and 13 July 2023.

11. Within 7 days after delivery of the material pursuant to the preceding Order, Counsel Assisting is to provide to the parties and the Associates to Justice Lee and Justice Sarah C Derrington the date by which the Referee considers he could reasonably provide his report to the Court and a brief explanation of the Referee's reasons for selecting such date.

12. Any amendments to Schedule 1, whether by agreement or on a contested basis, are to be the subject of an order made by the Court.



13. The Referee and the parties have liberty to seek directions with respect to any matter arising in the Reference upon application made on 24 hours' notice or such other notice ordered by the Court.
14. Without limiting any exercise of the Court's power to award costs, the parties are, in the first instance, to be jointly and severally liable to the Referee for the fees payable to both the Referee and Counsel Assisting.

Evidence to be adduced at the Initial Trial

15. The evidence in chief to be adduced at the Initial Trial from lay witnesses is to be adduced by way of proofs of evidence, which proofs will also identify (and set out the substance of the evidence the witness is expected to give in relation to) any documents proposed to be tendered through that witness.
16. The parties, subject to any leave of the Court:
 - (a) cannot adduce evidence-in-chief which departs from evidence notified pursuant to proofs of evidence; and
 - (b) cannot cross-examine witnesses on proofs of evidence.

Applicant's evidence

17. By 4:00pm (AEST) on 10 November 2023 the applicant will file and serve:
 - (a) its list of the documents that it proposes to tender in chief at the trial; and
 - (b) its further expert evidence.
18. By 4:00pm (AEST) on 10 November 2023 the applicant will serve (but not file) any proofs of lay evidence.

Respondents' evidence

19. By 4:00pm (AEST) on 16 February 2024 the respondents will file and serve:
 - (a) their lists of the documents they intend to tender in chief; and
 - (b) their further expert evidence.
20. By 4:00pm (AEST) on 16 February 2024 the respondents will serve (but not file) any proofs of lay evidence.
21. By 4:00pm (AEST) on 4 March 2023 the applicant will file and serve a list of additional documents the applicant wishes to tender at trial.



Expert conclaves

22. By 4pm (AEST) on 30 November 2023 Counsel Assisting will confer with the parties regarding the composition and content of pre-trial conclaves of expert witnesses (Conclaves).
23. The Conclaves will be undertaken in the two weeks commencing 18 March 2024, according to such directions as Counsel Assisting may give.
24. Counsel Assisting may give such directions to the parties in respect of preparation for and the conduct of the Conclaves as he may think fit.
25. From the commencement of a Conclave, until the Conclave's report is delivered to the parties, the legal representatives of each party are to have no contact with the expert retained by that party, in relation to the matters in issue in this Proceeding.
26. Each group of experts provide a joint report within the period of time as Counsel Assisting may think fit, having regard to the provision of the joint report to the parties within a reasonable time prior to the Mediation referred to in Order 3 to enable the parties to give due consideration to that report/s.

Opt-Out

27. Pursuant to section 33J of the FCA Act, 4.00 pm (AEST) on the date which is eight weeks from the Distribution Date (as defined in paragraph 30 below) be fixed as the date and time by which a Group Member (as defined in the Second Further Amended Statement of Claim filed 5 December 2022) (2SOC) may opt out of this proceeding in accordance with these orders (Opt-Out Date).
28. Pursuant to sections 33X and 33Y of the FCA Act, the terms of the notices set out in:
 - (a) Schedule 2 to these Orders (Social Media Advertisement);
 - (b) Schedule 3 to these Orders (Opt-Out Notice); and
 - (c) Schedule 5 to these Orders (Newspaper Advertisement)are approved (together the Notices).
29. Pursuant to ss 33X and 33ZF of the FCA Act, a group member may opt out of the proceeding, pursuant to s33J(2) of the FCA Act, by notice in the form of either:
 - (a) the "Online Opt-Out Form"; or
 - (b) the "Hard Copy Opt-Out Form",in Schedule 4, in lieu of Form 21 under the Federal Court Rules.



30. Pursuant to section 33Y of the FCA Act, the Notices be given to group members according to the following procedure:

(a) by 4pm (AEST) on the date that is 35 days from the date of these orders (Distribution Date), the solicitors for the applicant will cause:

- (i) the Social Media Advertisement to be published via a '*Queensland Electricity Class Action*' Facebook and Instagram page, on the newsfeed of Facebook and Instagram account holders located in Queensland aged 18 years old or above; and
- (ii) the Newspaper Advertisement to be published in one weekday edition of each of the publications listed in Schedule 6 to these Orders.

(b) by 4pm (AEST) on the Distribution Date, the District Registrar of the Queensland Registry of the Court will cause a copy of each of:

- (i) the Opt-Out Notice;
- (ii) these Orders;
- (iii) the 2SOC;
- (iv) the respondents' Amended Defences (defences to the 2SOC); and
- (v) the applicant's Amended Replies,

to be displayed on the Federal Court website at <https://www.fedcourt.gov.au>; and available for inspection at the Queensland District Registry office in Brisbane; and thereafter continuously to remain so displayed or available until seven (7) days after the Opt-Out Date.

31. The costs of and incidental to the procedure set out in Order 30 above be borne initially by the applicant, but on the basis that those costs will subsequently be dealt with by the Court as part of the costs of the proceeding.

32. The Notices and the Opt-Out Forms may be amended by the solicitors for the applicant before being published in order to correct any non-substantive typographical error, or any postal, website or email address or telephone number.

33. If, on or before the Opt-Out Date, the solicitors for any party receive a notice purporting to be an opt out notice referable to this proceeding:

- (a) the solicitors are to file such notice in the Queensland District Registry of the Court within 14 days of receipt with a notation specifying the date it was received; and



- (b) the notice will be treated as an opt out notice received by the Court at the time when it was received by the solicitors.

- 34. The solicitors for the parties have leave to inspect the Court file and to copy any opt out notices that are filed.

Particulars

- 35. By 4pm (AEST) on 21 July 2023, the First Respondent is to provide further and better particulars of their amended defences in response to the applicant's requests dated 11 May 2023.

Interrogatories or additional discovery

- 36. By 4pm (AEST) on 4 September 2023, the applicant is to notify the respondents of its requests for specific interrogatories or limited categories of additional documents, identifying why the documents or information are relevant to the subject matter of the Initial Trial and material in nature.
- 37. On the date at Order 44 below, or on such earlier date set by the Court, the Court will determine each disputed request for discovery or interrogatories.

Mr Matters' Reports

- 38. By 4pm (AEST) on 1 September 2023, the applicant is to notify the respondents if it intends to oppose (in whole or part) the adoption of either:
 - (a) the Report of Roland Matters dated 14 March 2023;
 - (b) the Supplementary Report of Roland Matters dated 12 April 2023(together, the Matters Reports).
- 39. By 4pm (AEST) on 6 October 2023, the applicant is to file and serve any material in relation to the orders it seeks (if any) pursuant to rule 28.67 of the Federal Court Rules in respect of the Matters Reports.
- 40. By 4pm (AEST) on 10 November 2023, the respondents are to file and serve any material in response to the orders proposed by the applicant in relation to the Matters Reports.
- 41. By 4pm (AEST) on 24 November 2023, the applicant is to file and serve its submissions in relation to the orders sought regarding the Matters Reports.



42. By 4pm (AEST) on 8 December 2023, the respondents are to file and serve its submissions in response in relation to the applicants' orders sought regarding the Matters Reports.
43. The Court will determine any proposed orders in relation to the Matters Reports on 22 December 2023.

Further case management hearing

44. The matter be fixed for a case management hearing at 10:15am AEST on 22 December 2023 in Brisbane (Next CMH).
45. By 4pm (AEST) on 6 December 2023, Stillwater must deliver to the respondents its contribution to a draft joint position paper (JPP) succinctly stating Stillwater's position in respect of each issue it proposes will be addressed at the case management hearing.
46. By 4pm (AEST) on 13 December 2023, each respondent must deliver to Stillwater its contributions to the draft JPP succinctly stating its position in respect of each issue it proposes be addressed at the case management hearing.
47. By 4pm (AEST) on 15 December 2023, Stillwater must deliver the JPP to the Associates to Justice Lee and Justice Sarah C Derrington.
48. By 4pm (AEST) on 18 December 2023, the parties must provide the Associates to Justice Lee and Justice Sarah C Derrington with a joint electronic court book containing all of the materials upon which the parties intend to rely, with such court book to be prepared in accordance with Format 2 of the eBooks Practice Note (GPN-EBOOKS).

Date that entry is stamped: 21 July 2023

Sia Lagos
Registrar



Schedule

No: QUD19/2021

Federal Court of Australia
District Registry: Queensland
Division: General

Second Respondent CS ENERGY LTD ACN 078 848 745



SCHEDULE 1

Reference Question

“The Technical Referee inquire into and provide an opinion on the remaining areas of disagreement in the draft Statement of Agreed Facts relating to the technical or mechanical features of the NEM and the Queensland Region of the NEM (QRNEM).”



SCHEDULE 2

Social Media Advertisement

Did you pay for electricity in Queensland during 2015 to 2021? If you did, you will be a group member in the Queensland Electricity Class Action.

Group members in the class action should read this notice

It is argued in the class action that electricity costs you paid in Queensland from 2015 to 2021 were too large because of alleged wrongful conduct by two electricity generation companies in Queensland, Stanwell Corporation Ltd (**Stanwell**) and CS Energy Ltd (**CSE**). This is disputed but if it is right, money is sought on your behalf for amounts said to have been paid because of the alleged conduct.

Being a group member does not cost you any money, but you can get out of the class action if you want to. If you don't get out, you will be bound by the result.

If the class action is successful and money is payable by Stanwell or CSE, the solicitors running the class action (**Piper Alderman**) and the funder (**LCM**) will ask the Court to order that some of the money be used to pay the legal and funding costs, with the rest payable to the group members who it is proved paid amounts because of the alleged conduct that is, potentially you and the other group members.

You do not have to be a group member. You can opt out by clicking the following link and then clicking the option to 'opt out'. This link also gives you more information about the class action.



SCHEDULE 3

‘Simplified’ Opt-Out Notice

FEDERAL COURT OF AUSTRALIA APPROVED NOTICE ABOUT THE QUEENSLAND ELECTRICITY CLASS ACTION.

WHAT IS THE CLASS ACTION ABOUT?

1. The class action argues that electricity costs in Queensland from 2015 to 2021 were inflated because of alleged wrongful conduct by two electricity generation companies in Queensland, Stanwell Corporation Ltd (**Stanwell**) and CS Energy Ltd (**CSE**).
2. The action, which is defended by Stanwell and CSE, claims money for those who paid for electricity in Queensland between 20 January 2015 and 20 January 2021.
3. The solicitors running the case are Piper Alderman Lawyers, and a company called LCM Funding Pty Ltd (**LCM**) is currently funding the legal costs.

WHAT IT MEANS TO BE A ‘GROUP MEMBER’

4. If you paid for electricity in Queensland between 20 January 2015 and 20 January 2021, you are a ‘group member’, unless you opt out as described below.
5. Unless you opt out, the class action will finalise your legal rights in relation to the questions addressed in the class action. If it results in a settlement or judgment for compensation, you may be entitled to a share of that compensation, but if the class action is unsuccessful then you would not be able to run a similar claim yourself.
6. Group members are not responsible for any legal costs just by being group members. The costs are covered by the funder, LCM. If the class action is unsuccessful, LCM will have to pay the class’s legal costs and the defendants’ legal costs. If the class action is successful, LCM will seek a Court order that a portion of the compensation be used to repay its legal costs, and a further portion to reward it for bearing the risks of the litigation (**‘commission’**). The funding agreement provides for a commission of up to 35%, but the eventual rate will be decided by the Court. If the class action is successful, LCM will seek an order that a portion of any compensation payable to group members be used to reimburse LCM for its legal costs and to pay it a commission. That portion will be set by the Court at the level that the Court determines to be just in all the circumstances.



WHAT YOU NEED TO DO

7. If you are a group member then you have two options:

Option 1 – do nothing - Further notices will be sent to you in due course.

Option 2 – opt out and cease to be a group member - to do this, you need to complete the online form by clicking on this link, or by printing a copy of the form available on this link, and returning it to the Federal Court at the address on the form.

Opting out is a serious step, as you will no longer be covered by the class action. If you think this is something you want to do, it would be a good idea to get legal advice first. Do not ask the Court for legal advice. The Court staff are not allowed to give legal advice.

Note - if you represent more than one consumer or more than one business and you want each consumer or business that you represent to opt out, you need to provide details for each consumer or business opting out.

THIS IS NOT A SCAM - if you want further information or think you might want to opt out, or you are unsure what to do, you should get legal advice from your own solicitor or ring Piper Alderman on [].



SCHEDULE 4

‘Option 1 – ONLINE Opt-Out Form’

No. QUD19 of 2021

Federal Court of Australia
District Court Registry: Queensland
Division: General

STILLWATER PASTORAL COMPANY PTY LTD ACN 101 400 668

Applicant

STANWELL CORPORATION LTD ACN 078 848 674

First Respondent

CS ENERGY LTD ACN 078 848 745

Second Respondent

To: The Registrar
The Federal Court of Australia
Queensland District Registry
Level 6, Harry Gibbs Commonwealth Law Courts Building
119 North Quay (cnr Tank Street)
Brisbane QLD 4000

OPT OUT FORM

The Court has ordered that any person wishing to opt out of this class action must do so by [__]

The group member identified below gives notice under section 33J of the *Federal Court of Australia Act 1976 (Cth)* that they are opting out of this proceeding:

1.	First name:	
2.	Last name:	
3.	Email:	
4.	<input type="checkbox"/> I am opting out in my personal capacity only (if you tick this box you ONLY need to complete items 1 to 6)	
5.	Your signature:	
6.	<input type="checkbox"/> I authorise Piper Alderman to file this form with the Court on my behalf	

If you represent more than one consumer or more than one business and you want each consumer or business that you represent to opt out, you need to provide details for each consumer or business opting out.



7.	I am also opting out on behalf of my company, partnership or some other structure (write which):	
8.	Name of company, partnership or other:	
9.	ABN or ACN:	
10.	Your role or position in the company, partnership or other (e.g. director)	
11.	Your signature:	
12.	<input type="checkbox"/> I authorise Piper Alderman to file this form with the Court on my behalf	



‘Option 2 – HARD COPY Opt-Out Form’

No. QUD19 of 2021

Federal Court of Australia
District Court Registry: Queensland
Division: General

STILLWATER PASTORAL COMPANY PTY LTD ACN 101 400 668

Applicant

STANWELL CORPORATION LTD ACN 078 848 674

First Respondent

CS ENERGY LTD ACN 078 848 745

Second Respondent

To: The Registrar
The Federal Court of Australia
Queensland District Registry
Level 6, Harry Gibbs Commonwealth Law Courts Building
119 North Quay (cnr Tank Street)
Brisbane QLD 4000

OPT OUT FORM

The Court has ordered that any person wishing to opt out of this class action must do so by [__]

The group member identified below gives notice under section 33J of the *Federal Court of Australia Act 1976 (Cth)* that they are opting out of this proceeding:

1.	First name:	
2.	Last name:	
3.	<input type="checkbox"/> I am opting out in my personal capacity only (if you tick this box you ONLY need to complete items 1 to 4)	
4.	Your signature:	

If you represent more than one consumer or more than one business and you want each consumer or business that you represent to opt out, you need to provide details for each consumer of business opting out.

5.	I am also opting out on behalf of my company, partnership or some other structure (write which):	
6.	Name of company, partnership or other:	



7.	ABN or ACN:	
8.	Your role or position in the company, partnership or other (e.g. director)	
9.	Your signature:	



SCHEDULE 5

Newspaper Advertisement

[The newspaper advertisement replicates the Social Media Advertisement, other than amendments to the text in the final two sentences]

Did you pay for electricity in Queensland during 2015 to 2021? If you did, you will be a group member in the Queensland Electricity Class Action.
Group members in the class action should read this notice
It is argued in the class action that electricity costs you paid in Queensland from 2015 to 2021 were too large because of alleged wrongful conduct by two electricity generation companies in Queensland, Stanwell Corporation Ltd (Stanwell) and CS Energy Ltd (CSE). This is disputed but if it is right, money is sought on your behalf for amounts said to have been paid because of the alleged conduct.
Being a group member does not cost you any money, but you can get out of the class action if you want to. If you don't get out, you will be bound by the result.
If the class action is successful and money is payable by Stanwell or CSE, the solicitors running the class action (Piper Alderman) and the funder (LCM) will ask the Court to order that some of the money be used to pay the legal and funding costs, with the rest payable to the group members who it is proved paid amounts because of the alleged conduct that is, potentially you and the other group members.
You do not have to be a group member. You can opt out by visiting this website [_____] and then clicking the option to 'opt out'. This website also gives you more information about the class action.



SCHEDULE 6

Newspaper Publications

The Australian
The Australian Financial Review
The Courier-Mail
Gold Coast Bulletin
Sunshine Coast Daily
The Toowoomba Chronicle