

Exemption Application: WEL Networks and NewPower Energy Part 6A

Final decision paper

3 October 2024

1. Executive Summary

Exemption

The Electricity Authority Te Mana Hiko (Authority) has approved an exemption under section 11 of the Electricity Industry Act 2010 (Act). The exemption is from Part 6A of the Electricity Industry Participation Code 2010 (Code) which requires any person involved in a distributor and any person involved in a connected generator to comply, and ensure that their businesses comply, with corporate separation and arm's length rules, if a connected generator has a "total capacity" of more than 50MW of generation.

Applicants

WEL Networks Limited (WEL), NewPower Energy Limited (NewPower) and directors and senior management common to those participants.

Background

WEL is developing two solar farms and a network battery, which will be owned by NewPower, a wholly owned subsidiary of WEL, with a maximum capacity of 65.345MW. Together with other small scale solar, battery and diesel generation owned by WEL, the maximum capacity of the WEL and NewPower connected generation is likely to be 65.963MW.

Summary of application

WEL (the distributor) and NewPower's (a connected generator) applications are for an exemption for WEL and NewPower and dispensations for directors and senior management in common to both participants from the requirement in Part 6A of the Code to comply with arm's-length rules 3G, 3H, 3I and 3J.

WEL's application initially sought an exemption and dispensations from all the arm's length rules in Part 6A of the Code. WEL subsequently narrowed its application to an exemption and dispensations from the arm's-length rules 3G, 3H, 3I and 3J only. NewPower has since provided its own application and request for dispensation in similar terms.

The Authority published the WEL application on 18 June 2024 and invited feedback from interested parties. The Authority has received and considered two submissions on the application. The Authority has decided to proceed to the final decision without seeking further submissions on a draft decision.

Summary of final decision

The Authority's final decision is to:

- (a) grant the applications under section 11(2) of the Act for WEL and NewPower to be exempt from the requirement under clause 6A.3(2) of the Code to comply with rules 3G, 3H, 3I and 3J rules;
- (b) grant WEL and NewPower the request for dispensations under clause 6A.9(6) of the Code for the directors, the chief executive officer, chief financial officer, and chief technology officer (for WEL) and chief executive officer (for New Power) (or persons holding equivalent positions) from the requirement under clause 6A.3(2) of the Code to comply with arm's length rules 3G, 3H, 3I and 3J;

subject to the following conditions:

- (i) the exemption and dispensations apply in relation to the solar farms and network battery and various small-scale generation up to a total maximum capacity of 65.963MW as listed in Appendix C
- (ii) the exemption and dispensations from the requirement to comply with arm's-length rule 3I only applies to the appointment of management to positions of material influence¹ over WEL and NewPower
- (iii) WEL and NewPower must not engage in retailing, as that term is defined in the Act, to any customer connected to WEL's distribution network
- (iv) the exemption and dispensations apply while WEL is wholly-owned by the WEL Energy Trust
- (v) the exemption and dispensations expire on 1 October 2040 (reflecting the life of the assets) or the day that any additional generation (other than generation installed for the purpose of providing network support or solar panels installed for the sole purpose of powering substations or office buildings) owned by WEL, NewPower or any of WEL's subsidiaries is connected to WEL's network, whichever date is earlier
- (vi) WEL must comply with Part 6 and WEL and NewPower must comply with all other arm's-length rules

A copy of the draft gazette and dispensation notices are attached as Appendix B.

Date of final decision

3 October 2024

Next steps

The Authority will publish the amended exemption in the New Zealand Gazette and publish the dispensations on our website. The amended exemption and dispensations will take effect from the day after they are published.

All exemptions and dispensations, including amendments and revocations, are decided on a case-by-case basis and may only be granted where the Authority is satisfied that the statutory test in section 11 of the Act and/or clause 6A.9 of the Code has been met.

¹ Section 7, Electricity Industry Act 2010 defines the meaning of "material influence"

Contents

1. Executive Summary	2
2. Purpose	5
3. Summary	5
4. Feedback on application	6
5. Legal Framework	6
6. WEL and NewPower's application	7
7. The analysis adopted by the Authority	11
8. Summary of Authority's analysis	12
9. Assessing the impact of each market: Competition	13
10. Applying the test to the facts: Reliability	14
11. Applying the test to the facts: Efficiency	14
12. Additional matters	15
13. The exemption meets the tests in the Act and Code	16
14. Attachments	17
Appendix A WEL and NewPower's exemption application	18
Appendix B Draft gazette and dispensation notices	19
Appendix C Total generation capacity	20

2. Purpose

- 2.1. This paper sets out the Authority's final decision on applications by WEL and NewPower for an exemption under section 11(2) of the Act, and dispensations under clause 6A.9(6) of the Code, from the requirements to comply with the arm's-length rules 3G, 3H, 3I and 3J in Part 6A of the Code.

3. Summary

- 3.1. WEL is developing two solar farms and a network battery which will be owned by NewPower, a wholly owned subsidiary of WEL with a generation capacity of 65.345MW. Together with various small-scale generation owned by WEL the total generation capacity is likely to be 65.963MW (more than 50MW of generation) meaning the corporate separation and arm's length requirements in Part 6A apply.
- 3.2. The arm's-length rules require parties that are involved with each other and transact with each other to act as if they were related only by the transaction, act independently, and act in their own best interests.
- 3.3. WEL and NewPower have applied for an exemption and requested dispensations for directors and senior management in common, from the requirements to comply with the arm's-length rules 3G, 3H, 3I and 3J. The remaining arm's length rules would continue to apply in addition to the requirement in Part 6A of the Code to report on compliance with the applicable rules.
- 3.4. The Authority may grant the exemption and dispensations if satisfied the application of the arm's length rules is not necessary for the purpose of meeting the Authority's objectives or that granting the exemptions and dispensations would better achieve the Authority's objectives.
- 3.5. In assessing whether the relevant test is met, the Authority has analysed how granting the application affects competition, reliability and efficiency in the relevant markets assessed against two counterfactuals. The Authority has concluded competition, reliability and efficiency in each of the relevant markets would not be affected by granting the exemptions and dispensations. While granting the exemption may result in potential improvements to competition, and reliability and efficiency in some areas, these are likely to be modest.
- 3.6. The Authority notes that the total generation capacity exceeds the 50MW threshold by a small amount which further limits any impact on the relevant markets. Any potential risks can be addressed by the application of the remaining arm's length rules, the application of Part 6 of the Code, Commerce Commission information disclosure requirements and the proposed conditions.
- 3.7. The Authority is satisfied that the test in section 11(2) of the Act for WEL and NewPower is met, and the test in clause 6A.9(6) of the Code for directors and senior management, is met. The Authority's decision is to therefore to grant the exemption and dispensations on the conditions set out in the executive summary.

4. Feedback on application

- 4.1. The Authority published the WEL application for an exemption on 18 June 2024, indicating it was expecting a request from WEL for a dispensation for directors and senior management and an application from NewPower. The Authority sought feedback on the WEL application from any interested parties.

Feedback from Mercury and Genesis

- 4.2. The Authority received feedback on the WEL application from Mercury and Genesis Energy Limited.
- 4.3. Mercury did not oppose the application but sought reassurance that the Authority would focus on certain matters in the application and ensure safeguards were in place.
- 4.4. Genesis submitted that:
- (a) any benefits from WEL’s ownership and operation of the generation assets were not sufficient to justify an exemption
 - (b) there was a tension between Part 6A of the Code (which refers to promoting competition) and the criteria in section 11 of the Act (which allows for an exemption if it does not impact on the Authority’s ability to achieve its objectives under section 15 of the Act)
 - (c) the blanket exemption sought by WEL covering all corporate separation and arm’s length rules was too broad.

The Authority’s response

- 4.5. We note that WEL and NewPower are not required to demonstrate benefits to meet the criteria for an exemption under section 11 of the Act and clause 6.9(6). In assessing whether this test is met, the Authority has also considered the purpose of Part 6A.
- 4.6. Since the feedback was received, WEL and NewPower narrowed the scope of their exemptions and dispensations to the requirement to comply with arm’s-length rules 3G, 3H, 3I and 3J of Part 6A of the Code only. In the Authority’s view, the application of the remaining rules, and the additional conditions set out in the executive summary, address most concerns raised by Mercury and Genesis.

5. Legal Framework

Part 6A requirements under the Code

- 5.1. Clause 6A.3(2) of Part 6A of the Code requires distributors that also own generation connected to their network to comply with the arm’s-length rules set out in rules 3A to 3M of Schedule 6A.1 of the Code if that generator has a “total capacity” of more than 50MW of generation. Clause 6A.8 of the Code requires a person to report on compliance with the arm’s length rules.
- 5.2. Connected generators and any person involved in both a distributor or a connected generator, must also comply with the arms-length rules and reporting requirements.

- 5.3. The Authority may exempt a participant from compliance with the Code, including Part 6A under section 11 of the Act (section 11 test), if satisfied that:
- (a) it is not necessary, for the purpose of achieving the Authority’s objectives under section 15, for the participant to comply with the Code or the specific provisions of the Code; or
 - (b) exempting the participant from the requirement to comply with the Code or the specific provisions of the Code would better achieve the Authority objectives than requiring compliance.
- 5.4. Clause 6A.9 of the Code allows the Authority to grant dispensations for individuals from compliance with Part 6A and repeats the section 11 test.
- 5.5. The Authority’s main objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. We have assessed WEL and NewPower’s application against this objective.
- 5.6. We do not consider the additional objective in section 15(3) - to protect the interests of domestic and small business consumers in relation to the supply of electricity to those consumers - applies in this instance because the exemptions and dispensations do not involve direct dealings between WEL and NewPower and small consumers².
- 5.7. In assessing the impact of any exemption on its statutory objectives, the Authority also considers the purpose of Part 6A which is to promote competition in the electricity industry by restricting relationships between a distributor and a generator or a retailer, where those relationships may not otherwise be at arm’s length.³
- 5.8. The Authority may impose specific conditions on an exemption or dispensation to address competition concerns that are identified in the Authority’s analysis,⁴ where those conditions allow the Authority to be satisfied the statutory criteria and the purpose of Part 6A of the Code are met.

6. WEL and NewPower’s application

- 6.1. WEL is developing the following new generation assets which will be connected to its distribution network and owned by NewPower:
- (a) a recently commissioned battery energy storage system (BESS) with a total rated capacity of 32.495MW; and
 - (b) two solar farms for which WEL has obtained consent to construct:
 - (i) Taiohi in Huntly with a nameplate capacity of 22.4W (Taiohi); and
 - (i) Rangimarie in Maramarua with nameplate capacity of 10MW.

² Section 15(3), Electricity Industry Act 2010 which provides '[t]he additional objective applies only to the Authority’s activities in relation to the dealings of industry participants with domestic consumers and small business consumers.

³ Cl 6A.1, Part 6A, Electricity Industry Participation Code 2010.

⁴ Section 11(3), Electricity Industry Act 2010 which provides the Authority may grant an exemption on any terms and conditions that it reasonably considers necessary. Under cl 6A.9(5) of the Code, the Authority may also grant a dispensation on any terms and conditions that it reasonably considers are necessary.

- 6.2. WEL owns various small scale solar, BESS and diesel generation with a total nameplate capacity of 617.8kW (0.6178MW) as set out in Appendix C.
- 6.3. The total generation capacity held by NewPower and WEL is 65.963MW.
- 6.4. Because NewPower would be a connected generator under Part 6A, and because the total capacity of the generation assets will exceed 50MW, WEL and NewPower and senior persons involved in both businesses are required to comply with clauses 6A.3 and 6A.8.
- 6.5. WEL's application dated 18 May 2024 sought an exemption from clauses 6A.3 and 6.8 of Part 6 of the Code. In July 2024, WEL clarified that it was narrowing the scope of its application to an exemption from the requirement to comply with the arm's length rules 3G, 3H, 3I and 3J. NewPower made an exemption application matching the WEL application as both participants require an exemption from the arm's length rules under the Code.
- 6.6. Both WEL and NewPower have also requested dispensations from the requirement to comply with the requirements in rules 3G, 3H, 3I and 3J for senior persons involved in both businesses, namely all current and future:
 - (a) directors of WEL and New Power; and
 - (b) the chief executive, chief financial officer and chief technology officer of WEL and the chief executive of NewPower.
- 6.7. The arm's length rules that WEL and NewPower are seeking an exemption from are:
 - (a) the requirement to have two independent directors (rule 3G)
 - (b) restrictions on cross-directors having input into the day-to-day operations of each business (rule 3H)
 - (c) restrictions on managers being involved in each business (rule 3I), and
 - (d) restrictions on placing obligations on the directors/managers of the other business from time to time (rule 3J).
- 6.8. The remaining arm's length rules would continue to apply (rules 3A to 3F and 3K to 3M) which, among other things, impose requirements not to prefer interests of one business over the other or discriminate or transact on terms other than those that would be agreed by an unrelated party.⁵

WEL and NewPower submit that the test for an exemption is met

- 6.9. WEL's application states that the primary purpose of the new generation assets will be to:
 - (a) in relation to the BESS:
 - (i) provide NewPower with the ability to arbitrage by purchasing and storing electricity when demand is low and injecting this stored electricity when demand is high, and
 - (i) to provide ancillary services to third parties from time to time, and

⁵ Discussed further at paragraphs 12.2 to 12.8 below.

- (b) in relation to Taiohi and Rangimarie, to generate and inject electricity into the national wholesale market.
- 6.10. The WEL application states that, while it could use the BESS to provide network support services in theory, this would be a secondary purpose to the primary purposes noted above.
- 6.11. WEL also owns various small scale solar, BESS and diesel generation located on WEL buildings primarily for the purpose of powering its buildings. The cumulative generation capacity is 0.6178 MW and is included in the total generation capacity for the purpose of this application (see the breakdown of generation in Appendix C).
- 6.12. WEL and NewPower submit that the section 11 test is met as:
 - (a) compliance with the arm's length rules is not necessary for the purpose of achieving the Authority's objective, and
 - (b) in some cases the exemption would better achieve the Authority's objectives rather than requiring compliance.
- 6.13. WEL has provided a report from Sapere Research Group dated 23 June 2023 (Sapere report) in support of its exemption application which assesses whether granting the exemptions would promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.

Counterfactuals outlined in the WEL application

- 6.14. The Sapere report includes assessment of the competitive effects of granting WEL an exemption against three hypothetical counterfactuals being:
 - (a) WEL sells Taiohi to either an existing generator or a new entrant to the wholesale electricity market (counterfactual 1), or
 - (b) WEL sell the BESS to an existing generator (counterfactual 2), or
 - (c) WEL complies with the arm's length rules (counterfactual 3).
- 6.15. WEL submits that counterfactual 1 is the only counterfactual the Authority should assess as counterfactuals 2 and 3 are unlikely to occur. WEL nevertheless addresses each counterfactual.
- 6.16. The relevant markets referred to in the WEL application are the national wholesale market for electricity, the North Island wholesale market for ancillary services excluding voltage support and the local support services market supplying either Transpower or WEL.

Counterfactual 1

- 6.17. WEL considers the relevant market for counterfactual 1 is the national wholesale market. It submits that any difference in competition in this market between counterfactual 1 and the factual would be negligible given the small increment of generation over the 50 MW threshold (there would be no ability to influence the price paid or received in the national wholesale market).
- 6.18. However, WEL submits that some benefits would be lost to consumers under counterfactual 1. This is because, under the factual, WEL networks would be able to match solar generation from Taiohi with the BESS allowing the owner to store

electricity when demand is low and inject electricity when demand is high. The additional source of electricity supply during peak period under the factual would benefit consumers and increase the competitive rivalry of Taiohi. WEL submits the factual would promote competition compared to counterfactual 1.

- 6.19. WEL's counterfactual 1 does not consider the option of WEL entering into a Power Purchase Agreement (PPA) with the new owner of Taiohi – this possibility is included in the Authority's analysis of counterfactual 1 in section 8 below.

Counterfactual 2

- 6.20. WEL submits that the purchaser of the BESS would likely be an existing or future generator because ownership of BESS would not make economic sense without generation.
- 6.21. In relation to the ancillary services market, WEL submits that benefits it would bring under the factual as a new entrant would not be realised to the same extent if an existing generator owned the BESS (as there would be no increase in competition).
- 6.22. In relation to the national wholesale market, WEL submits it would be better able to match its solar assets with the BESS under the factual, introducing additional electricity supply during periods of peak demand and creating a small increase in competitive rivalry. WEL submits the factual would result in a modest increase in competition compared to counterfactual 2. Again, WEL does not consider the option of entering into a PPA with a new owner of the BESS in its consideration of counterfactual 2.
- 6.23. In relation to the network support services market, WEL submits the level of competition in the market would be the same under the factual and counterfactual. This is because WEL does not intend to use the BESS to provide network support services other than on rare occasions (its primary purpose is arbitrage on the national wholesale market and ancillary services to third parties).

Counterfactual 3

- 6.24. In relation to the national wholesale and ancillary service markets, WEL submits that the costs and inefficiencies of complying with the arm's length rules are likely to be material and would result in WEL being less competitive in these markets compared to the factual. WEL submits the factual would result in an increase in competition compared to counterfactual 3. It submits that the level of competition in the market for network support services would remain unchanged. WEL has advised the Authority the costs of complying with the arm's length rules compared to the factual would be approximately \$1.2 million.

Opportunities or incentives to inhibit competition or cross-subsidise

- 6.25. WEL acknowledges that, in theory, the exemption could create opportunities for it to restrict access to its networks for its competitors in the national wholesale and ancillary markets. WEL submits that in practice any additional generation on WEL's network would be too small to impact prices in those markets compared to the certainty of a connection fee and that any ability to foreclose generators on its network is restricted by the requirements in Part 6 of the Code.

- 6.26. WEL submits that there is no opportunity or incentive for WEL to leverage its distribution business to cross-subsidise the contestable activities that it will undertake as this would require it to overcharge its distribution customers contrary to WEL's purpose as a consumer-owned trust. Further, the level of any benefit WEL would receive would be insufficient to force upstream customers to exit the market.
- 6.27. More broadly, WEL notes that it would continue to own generation under all three counterfactuals, meaning that theoretical incentives or opportunity to foreclose of cross-subsidise would exist in any of the scenarios. WEL submits that the very small increment by which it would exceed the 50MW under the factual is unlikely to further increase or create these incentives.

7. The analysis adopted by the Authority

The question is: How will granting an exemption to arm's-length rules 3G, 3H, 3I and 3J affect competition reliability and efficiency in the relevant markets?

- 7.1. The Authority has assessed how granting an exemption to the arm's-length rules 3G, 3H, 3I and 3J would affect competition reliability and efficiency in the relevant markets.
- 7.2. To answer the question, we require:
- (a) a factual and a counterfactual scenario
 - (b) the relevant markets
 - (c) to make a judgement about the state of competition, reliability and efficiency under each scenario in each market.
- 7.3. For this exemption application, we have assessed the factual against the following counterfactuals outlined in the WELs application:
- (a) counterfactual 1 - ownership of BESS and Rangimarie - but we have added the possibility of a power purchase agreement (PPA) with the owners of Taiohi,
 - (b) counterfactual 3 (compliance with all the arm's length rules).
- 7.4. We consider that counterfactual 2 (WEL sells the BESS to an existing generator or new entrant) is least likely to occur and have not assessed this further for the purpose of this decision.
- 7.5. The relevant markets are:
- (a) network services market
 - (b) national wholesale market (including the spot, generation and over-the-counter (OTC) forward markets)
 - (c) ancillary services market
- 7.6. We do not consider the retail market is relevant to this application, although we do consider downstream retail market competition benefits from increased wholesale competition below.

8. Summary of Authority's analysis

	Factual WEL ownership of the BESS, Rangimarie and Taiohi	Counterfactual 1 WEL ownership of the BESS, and Rangimarie possibly with a PPA with the owners of Taiohi	Counterfactual 3 Complies with arm's length rules
	Amendment granted	Amendment not granted	Amendment not granted
Network services market	Likely none	Likely none	Likely none
Over the counter forward market	No impact	No impact	No impact
Retail market	No impact	No impact	No impact
Spot market	Flexibility to generate at peak and compete with generation as can hedge charging with generation	Similar or less than under factual with a PPA with an independent solar farm.	Same as factual
Generation market	Likely none (limited opportunities to foreclose with the remaining arm's length rules)	Likely none	Likely none
Ancillary services market	Increased competition from BESS as can hedge charging with generation	Similar or less than under factual with a PPA with an independent solar farm	Same as factual
Reliability	Better able to hedge charging of the BESS	Less than under factual, but depends on PPA arrangement	Same as factual
Efficiency	Gain from avoided compliance costs	Same outcome as factual	Impact of compliance costs - approx. \$1.2M
Cross subsidisation	Commerce Commission rules ⁶ and remaining arm's length rules make cross subsidies unlikely	Commerce Commission rules make cross subsidies unlikely	Commerce Commission rules and arm's length rules make cross subsidies unlikely

⁶ WEL is subject to information disclosure regulation under Part 4 of the Commerce Act 1986.

9. Assessing the impact of each market: Competition

How will granting an exemption to arm's-length rules 3G, 3H, 3I and 3J affect competition in the network services market?

- 9.1. The Authority considers the requested exemption will have no effect on competition in the market for network support services compared to counterfactual 1 and 3. This is due to its location on WEL's network making it impractical for the BESS/solar assets to be used in this way.

How will granting an exemption to arm's-length rules 3G, 3H, 3I and 3J affect competition in the spot market?

- 9.2. WEL's intention is to arbitrage the spot market.
- 9.3. In relation to the spot market, WEL's intention is to match or hedge the solar generation with the BESS allowing it to store electricity when the solar farm is generating and inject electricity when demand is high. This hedging means that the BESS can compete more easily in the spot market.
- 9.4. The Authority agrees with WEL that any additional source of electricity supply during peak period under the factual would benefit consumers and increase the competitive rivalry of Taiohi in the spot market. However, under the Authority's counterfactual 1, WEL could enter into a PPA with the owners of Taiohi to achieve a similar outcome.
- 9.5. Overall, the Authority considers WEL may have some greater flexibility to hedge the charging cost of the BESS with the solar generation under the factual compared to counterfactual 1 with a PPA with the owners of Taiohi. However, we consider any improved ability to hedge under the factual is likely to be less than that claimed in the WEL application, but this would depend on the specific PPA arrangement.

How will granting the exemption affect the over-the-counter forward market?

- 9.6. The Authority notes that WEL has indicated that NewPower is contemplating providing shaped hedges in the future. If this were to happen, this would contribute to competition in the OTC market. However, the commitment to compete in this market is not sufficiently firm to make a judgement for the purposes of this application.

How will granting an exemption to arm's-length rules 3G, 3H, 3I and 3J affect competition in the ancillary services market?

- 9.7. For the reasons set out above in relation to the spot market, WEL's ability to hedge the solar generation with the BESS will be able to compete more easily in the ancillary services service. Again, any greater flexibility under the factual compared to counterfactual 1 is likely to be modest given WEL's ability to enter into a PPA with the owners of Taiohi.

How will granting an exemption to arm's-length rules 3G, 3H, 3I and 3J affect access to the network of competing generation?

- 9.8. The main question is whether WEL could or would foreclose opportunities for other generators to connect to the network. While in theory this is possible, for the reasons

set out below, we consider the risk of this is very low. Any such risk would be further reduced still by the application of Part 6 of the Code and the remaining arm's length rules.⁷

- 9.9. WEL has supported solar power applications received in its area, notwithstanding its own generation development plans. A 3.3 MW solar farm has been approved and is expected to be connected in September 2024. A large approximate 25MW solar farm has received initial approval. WEL advises that it has never declined a generation connection application, noting some small generators have withdrawn applications. It is also relevant the WEL is unlikely to receive a high number of solar farm applications in its area because of high land prices in a predominantly dairy farming area reducing opportunity for foreclosure conduct.
- 9.10. The Authority also understands that WEL has no plans for material further generation development. WEL has indicated it is looking into potential non-network solutions (should they be more cost effective) in Raglan. This may include a mixture of battery and/or generation on at a modest scale (1-5MW) to ensure a more resilient electricity supply to the customers in Raglan (noting WEL would be required to apply for an amendment to any exemption granted as a result of this application).
- 9.11. WEL has advised that it has approximately 20MVA of used capacity in the area the BESS is connected to and that any new generation near the BESS may have to be disconnected if one of the dual circuits was out of service as the BESS is allocated the capacity of a single circuit (consistent with "first on last off" congestion management).⁸

10. Applying the test to the facts: Reliability

How will granting an exemption to arm's-length rules 3G, 3H, 3I and 3J affect reliability?

- 10.1. Reliability would possibly be greater under the factual compared to counterfactual 1 because of a greater flexibility to hedge battery charging and be more ready to supply reserves or energy during peak periods, depending on the PPA arrangement.
- 10.2. The BESS is not configured to run islanded so could not contribute to reliability in that context.

11. Applying the test to the facts: Efficiency

How will granting an exemption to arm's-length rules 3G, 3H, 3I and 3J affect efficiency?

- 11.1. Granting an exemption means that the costs of complying with the arms-length rules are not incurred. If compliance and these costs are unnecessary, then avoiding them is an efficiency gain. These compliance costs are therefore a benefit of the factual

⁷ See discussion at paragraphs 12.2 to 12.8 below.

⁸ WEL Network's 33 kV network supplied through Huntly 33 kV GXP has two radial parts. WEL advise that the figure of 20MVA on unused capacity is consistent with one of the Huntly circuits being out of service.

and a cost of counterfactual 2. WEL has estimated the cost of complying with arm's length rules compared to the factual as in the region of \$1.24 million, largely due to costs of duplicating directors and staff.

12. Additional matters

Cross subsidisation

- 12.1. The most harmful impact of cross subsidisation would be if WEL used network prices to subsidise generation investments. The Authority considers there is a low risk of this occurring. As WEL sets out in its application, as a consumer-owned trust, it has low incentives to cross-subsidise given this would result in higher prices for its consumers.
- 12.2. As set out below, several arm's length rules will continue to apply under the factual, including requirements not to discriminate or prefer interests of one business over the other. WEL is also subject to information disclosure regulation and the application of input methodologies under Part 4 of the Commerce Act which include some requirements around transparent and fair treatment of related and unrelated parties.

Remaining arm's-length rules and other regulatory constraints will still apply

- 12.3. The objective of Schedule 6A.1 of Part 6A of the Code is to ensure that businesses to which clause 6A.3 of the Code applies operate at arm's-length. The exemption for WEL, NewPower, and its directors and managers would only apply to arm's-length rule 3G (the requirement to have two independent directors), rule 3H (separate directors rule), rule 3I (separate management rule), and rule 3J (directors and managers must not be placed under certain obligations).
- 12.4. The remaining rules that would continue to apply to WEL and NewPower and their directors and senior managers require that the distributor and connected generator:
 - (a) take all reasonable steps to ensure the arm's-length objective is met;
 - (d) ensure transactions between the parties are entered into on terms that are consistent with each party acting independently;
 - (e) not exercise power or act in a manner they reasonably know prefers the interests of the related party;
 - (f) not favour the related party when providing services or benefits;
 - (g) ensure staff not take into consideration their dual capacity across the two businesses when making decisions on behalf of either business; and
 - (h) not disclose information to the related party that they would not reasonably have access to as a separate business.
- 12.5. If the Authority found that WEL was not abiding by the arm's-length rules, in a manner that inhibited competition, the Authority has the ability to revoke or amend the exemption under section 11(4) of the Act.
- 12.6. In addition to the arm's-length rules, WEL is still subject to the obligations in Part 6. In particular, clause 6.11 requires distributors to act at arm's length and requires a distributor to use, in respect of all distributed generators, the same reasonable efforts

in processing and considering applications for connection. This rule applies regardless of whether the distributor has an ownership interest or a beneficial interest in the distributed generator and regardless of who the distributed generator is.

- 12.7. As noted above, WEL is also subject to information disclosure regulation and input methodologies under Part 4 of the Commerce Act 1986 which include some requirements relating to treatment of related and unrelated parties.
- 12.8. The remaining arm's-length rules and Part 6 of the Code and Part 4 of the Commerce Act 1986 play a role in managing incentives and opportunities for directors and management to inhibit competition, including through WEL cross-subsidising NewPower or foreclosing on new generation connections.

WEL is owned by a Trust and WEL network consumers are beneficiaries

- 12.9. WEL is wholly owned by WEL Energy Trust. Consumers on WEL's network are the beneficiaries of this trust, weakening the incentive for WEL to shift costs from non-regulated activities such as generation onto its regulated distribution business.
- 12.10. WEL is not subject to price-quality regulation because its trustees are directly elected by consumers. It is subject to information disclosure regulation. The combination of information disclosure regulation and consumer ownership (as beneficiaries) helps relieve concerns about WEL structuring its cost allocations to benefit shareholders at the expense of consumers, as they are one and the same.
- 12.11. The Authority also notes the requirements on WEL Energy Trust to act in the interest of the ultimate owners, who are consumers supplied by WEL's distribution network.
- 12.12. Since WEL's ownership structure is a factor in our decision, the Authority proposes a condition that the exemption applies only for so long as WEL and NewPower remain wholly owned by WEL Energy Trust. If WEL and NewPower are divested, they would be required to either comply with all arm's-length rules, or obtain a new exemption assessed under the new ownership structure.

13. The exemption meets the tests in the Act and Code

- 13.1. The Authority is satisfied that the application of the arm's length rules is not necessary for the purpose of achieving the Authority's main objective, which is to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers.
- 13.2. When assessed against counterfactual 3, granting the exemption would not affect competition or reliability, and there would be efficiency gains as a result of the costs of compliance with the arm's-length rules being avoided.
- 13.3. When assessed against counterfactual 1, granting the exemption would not impact competition in the retail and OTC forward markets. Reliability could be better achieved than if the exemption was declined although this would be a modest improvement given a similar outcome could be achieved if WEL has a PPA with Taiohi. While any benefits arising from the factual are likely to be neutral or modest compared to counterfactual 1, the small increment increase in the amount of

generation reduces the likelihood of any adverse impact on competition, reliability or efficiency.

- 13.4. In addition to WEL's exemption application meeting the test in the Act and Code, there are other factors which provide checks and balances, including the proposed conditions, the application of the remaining arms-length rules, Part 6 of the Code and Part 4 of the Commerce Act, and WEL's ownership structure. All of these factors should incentivise WEL and NewPower to act in good faith and avoid anti-competitive behaviours that are not in the long-term benefit of consumers.
- 13.5. If the other arm's-length rules or Part 6 of the Code were breached, section 54 of the Act sets out the remedial actions the Rulings Panel may take and includes pecuniary penalties of up to \$2 million. In addition, the Authority has the power to revoke an exemption, if the Authority is no longer satisfied that compliance with the Code is not necessary for achieving the Authority's objectives, or that exempting the participant would better achieve the Authority's objectives than compliance. A review of any exemption could be prompted by evidence of any anti-competitive or unlawful actions by WEL or NewPower.

14. Attachments

- 14.1. The following appendices are attached to this paper:

Appendix A WEL and NewPower's exemption applications

Appendix B Draft Gazette and dispensation notices

Appendix C Total generation capacity

Appendix A WEL and NewPower's exemption application

Application for an Exemption pursuant to Section 11 Electricity Industry Act 2010

Date: 3 May 2024

Applicant: WEL Networks Limited
114 Maui Street
Te Rapa
Hamilton

Applicant's Contact: Michelle Allfrey (General Manager Commercial Engagement)
<Michelle.Allfrey@wel.co.nz>

Application: Pursuant to section 11(2) of the Electricity Industry Act 2010 (**Act**), application is hereby made to the Electricity Authority (**Authority**) for an exemption from compliance with clause 6A.3 under Part 6A of the Electricity Industry Participation Code 2010 (**Code**).

CONTENTS

1. EXECUTIVE SUMMARY	3
2. CONTEXT OF EXEMPTION APPLICATION.....	5
Changes in the electricity industry	5
3. DESCRIPTION OF WEL'S BUSINESS	6
New Generation Assets.....	7
4. APPLICATION OF ARM'S-LENGTH RULES TO WEL	9
Nature of the involvement	9
Applicability of sections of Part 6A.3 of the Code	9
5. DESCRIPTION OF EXEMPTION SOUGHT.....	10
Previous similar exemptions by the Authority	10
6. EFFECTS OF THE PROPOSED EXEMPTION ON THE AUTHORITY'S STATUTORY OBJECTIVES.....	12
(a) The exemption promotes competition in the electricity industry.....	12
(b) The exemption does not undermine the reliability of supply by the electricity industry...	18
(c) The exemption promotes the efficient operation of the electricity industry.....	18
7. CONFIDENTIALITY	18
8. DECLARATION.....	18
9. ADDITIONAL INFORMATION	19
APPENDIX 1: DECLARATION.....	21
APPENDIX 2: MAP OF NEW GENERATION ASSETS	22
APPENDIX 3: SAPERE REPORT	23

1. EXECUTIVE SUMMARY

- 1.1 WEL Networks Limited ("**WEL**") is currently in the process of developing two solar farms ("**Solar Assets**") and a network battery (the "**BESS**") (as further detailed under paragraph 3.3 below and defined together as the "**New Generation Assets**") which it plans to incorporate into its business. Once connected to WEL's network, it is understood that, from 1 June 2024, the total capacity of these New Generation Assets,¹ together with WEL's limited existing generation capacity connected to its network (as described in footnote 10 below), will exceed the 50MW threshold that triggers the corporate separation and arm's-length compliance requirements under clause 6A.3 of the Code ("**arm's-length rules**").
- 1.2 Accordingly, pursuant to section 11 of the Act, WEL is seeking an exemption from complying with clauses 6A.3 and 6A.8 of the Code.
- 1.3 The costs and inefficiencies associated with WEL complying with the arm's-length rules are expected to be material. WEL would be unlikely to continue to own and operate the New Generation Assets if the arm's-length rules were to apply. Rather than comply with the rules, if WEL does not receive an exemption, the most likely outcome is that WEL would sell one of its Solar Assets (or the permit to construct one of its Solar Assets if construction is not complete) to a third party.
- 1.4 Consistent with the findings of an economic report prepared by Sapere Research Group ("**Sapere**") on WEL's behalf (attached as **Appendix 3** to this application) ("**Sapere Report**"), WEL submits that the test under section 11 for an exemption is met, as it is not necessary for the purpose of achieving the Authority's objectives under section 15 of the Act for WEL to comply with the arm's-length rules (as per section 11(2)(a) of the Act). In some cases, and as further detailed in this application, obtaining an exemption from the obligation to comply with the arm's-length rules would actually better achieve the Authority's objectives under the Act compared to a scenario where the exemption is not granted (as per section 11(2)(b) of the Act).
- 1.5 Compared to the likely counterfactual (if WEL were not to receive an exemption), which is an existing or new entrant generator acquiring one of WEL's Solar Assets, the exemption would:
- (a) better achieve the Authority's objective of promoting competition in the electricity industry for the long-term benefit of consumers, because:
 - (i) matching WEL's Solar Assets with the BESS improves the solar generation's competitive rivalry in the wholesale electricity market; and
 - (ii) WEL's ownership and operation of the New Generation Assets would not create any incentive or opportunity for WEL to impede competition in any relevant New Zealand market, including in respect of any existing or emerging local network support services market;
 - (b) not negatively impact the Authority's objective of promoting the reliability of electricity supply, because the increase to the supply of instantaneous reserve would be the same with or without the exemption; and

¹ The Authority has recently decided to proceed with its proposal to amend Part 6A of the Code to capture non-rotating generation, including solar (PV) arrays and batteries connected to a distributor's network, as set out in its decision paper dated 2 April 2024. Therefore, from the date the amendment comes into effect on 1 June 2024, the capacity of the New Generation Assets will be captured under Part 6A and count towards the 50MW threshold.

STRICTLY CONFIDENTIAL VERSION

- (c) better promote economic efficiency by virtue of the fact that the exemption would result in an increase in competition in the wholesale electricity market as noted in (a) above (and would not result in any lessening of competition in any other market, such as local network support services).

1.6 For completeness, the Sapere Report considers two other less likely counterfactual scenarios – namely, selling the BESS or complying with the arm's-length rules. Even against these (unlikely) counterfactuals, WEL concludes that the test for an exemption is met.

2. CONTEXT OF EXEMPTION APPLICATION

Changes in the electricity industry

- 2.1 The demand for electricity in New Zealand is increasing significantly due to a range of contributing factors, including population and economic growth, and the electrification of transport and process heat as part of meeting New Zealand's target of net-zero carbon emissions by 2050.² The Ministry of Business, Innovation and Employment has stated that achieving the 2050 net-zero emissions target will require "rapid expansion and major acceleration of renewable electricity infrastructure".³
- 2.2 While the rate of investment in renewable generation is increasing, it is estimated that renewable electricity generation needs to increase by 50% to 70% by 2035, and by 170% by 2050.⁴ To put it another way, New Zealand must increase its renewable generation capacity by around 400 to 500 megawatts (MW) every year until 2050.⁵ As observed by the Authority, this growing electricity demand will increase the required sizes of distribution networks and "create new challenges for managing the congestion on those networks".⁶
- 2.3 To ensure that New Zealand can achieve this required growth, it is critical that a wider range of industry participants are encouraged and supported to invest in renewable electricity generation. The development of distributed generation assets in particular will help New Zealand to reach its 2050 net-zero emissions target while also creating greater resilience in New Zealand's distribution networks. In the case of distributors, this is especially important given the responsibility on distributors to manage the operation and maintenance of local networks.
- 2.4 While the advancement of new technologies is driving more efficient use of New Zealand's existing generation capacity (such as demand aggregation and increased network visibility), these developments are unlikely to be sufficient on their own to address the inefficiencies associated with centralised generation in New Zealand. Accordingly, industry participants, and particularly distributors, must be supported to invest in network-level generation and storage now, for the long-term benefit of New Zealand consumers.
- 2.5 This has been recognised by the Australian Energy Regulator ("**AER**") as part of its recent decision to introduce a class waiver to its 'ring-fencing guideline' (which we understand is broadly equivalent to the arm's-length rules) for battery assets funded under the Australian Government's Community Batteries for Household Solar Program.⁷ In its decision, the AER acknowledges that "strict adherence to ring-fencing obligations might, in some circumstances, result in outcomes that are not in the long-term interest of consumers", and that waivers provide "flexibility to support opportunities for genuine innovation".⁸ Ultimately the AER determined that "the benefits to consumers of requiring [distributors] to comply with each of

² The Climate Change Response Act 2002 was amended in 2019 to set three targets: net-zero carbon emissions by 2050, and biogenic methane emissions reduced below 2017 levels by 10% by 2030 and by 27-47% by 2050.

³ Ministry of Business, Innovation and Employment *Strengthening National Direction on Renewable Energy Generation and Electricity Transmission* (12 April 2023) at page 1 (<https://www.mbie.govt.nz/dmsdocument/26387-strengthening-national-direction-on-renewable-energy-generation-and-electricity-transmission-consultation-doc-pdf>).

⁴ *Ibid.*

⁵ Electricity Authority *Promoting competition in the wholesale electricity market in the transition toward 100% renewable electricity – Issues Paper* (2022) at para [4.5] (<https://www.ea.govt.nz/documents/2243/Promoting-competition-in-the-wholesale-electricity-market.pdf>).

⁶ Electricity Authority, *Energy Transition Roadmap* (December 2021) at para [3.17].

⁷ Australian Energy Regulator *Decision, Distribution ring-fencing class waiver for DNSP-led projects funded under the Australian Government's Community Batteries for Household Solar Program* (February 2023) at page 1 (<https://rb.gy/t2ps6>).

⁸ Page 3.

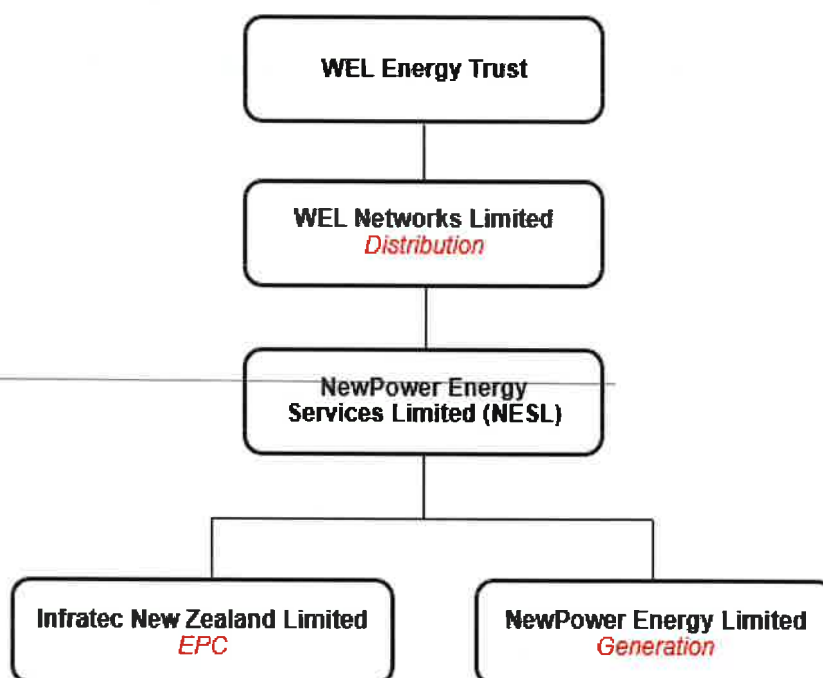
the requirements in the Guideline are outweighed by the costs of compliance with these obligations".⁹

2.6 As done by the AER in the Australian context, the Authority can similarly support distributors to contribute to the innovation of renewable energy solutions in New Zealand. WEL is committed to dealing with the challenges facing the New Zealand electricity industry alongside other industry participants, including by investing in renewable generation to meet the rapid growth in electricity demand. However, as described in the Sapere Report, the requirement on WEL to comply with the arm's-length rules would have the effect of adding avoidable inefficiencies into the electricity industry, which would be inconsistent with the Authority's objectives under the Act.

3. DESCRIPTION OF WEL'S BUSINESS

3.1 WEL and its subsidiaries (together, the "**WEL Group**") build, own and operate over \$675M worth of electricity network infrastructure. A company structure of the WEL Group is set out in the diagram in Figure 1 below.

Figure 1: WEL Group company structure



3.2 The relevant entities within the WEL group are as follows:

- (a) **WEL:** WEL, a company incorporated in New Zealand, carries on the business of a regulated electricity distributor and owns and operates a local distribution network in

⁹ Australian Energy Regulator Decision, *Distribution ring-fencing class waiver for DNSP-led projects funded under the Australian Government's Community Batteries for Household Solar Program* (February 2023) at page 14 (<https://rb.gy/t2ps6>).

the Waikato region.¹⁰ Through its nearly 7,000 kilometres of lines, WEL services more than 96,000 residential and small business connections and close to 1,000 commercial/industrial sites. Through delivering innovative and sustainable energy solutions WEL has played an essential role in the economic and social development of local communities for over 100 years.

- (b) **WEL Energy Trust ("Trust"):** WEL is wholly owned by the Trust whose beneficiaries are electricity customers connected to the WEL network. The Trust was established in 1993 and has a Trust Deed to ensure that the company now known as WEL operates as a 'successful company'. Under the Trust Deed, the definition of a 'successful company' includes not only profitability but the need to exhibit a sense of social responsibility by having regard to the interests of the community. The Trust is governed by a board of up to seven trustees, who are elected every three years.
- (c) **NewPower Energy Limited ("NewPower"):** NewPower is WEL's electricity generation business and is a wholly owned subsidiary of WEL. The current position is that WEL, through Infratec, WEL owns the 4.4MW Naumai solar farm under construction in Northland (which is not connected to WEL's distribution network) and the (consent to construct) the Solar Assets and the BESS. Once constructed, the Naumai solar farm and New Generation Assets will be transferred to NewPower. NewPower Energy Services Limited is the holding entity for NewPower.
- (d) **Infratec New Zealand Limited ("Infratec"):** Infratec conducts the engineering, procurement and construction business of the WEL Group and is a wholly owned subsidiary of NewPower Energy Services Limited.
- (e) **OurPower Limited ("OurPower"):** WEL previously operated a wholly owned retailer subsidiary, OurPower, and a small, localised retailer, Raglan Local Energy, collectively involved in the sale of approximately 20GWh of electricity per annum to 3,000 retail customers. On 1 June 2023, WEL divested all of its interests in its retail business on its network by transferring the retail customers of OurPower and Raglan Local Energy to Frank Energy Limited (a wholly owned subsidiary of Genesis Energy Limited). NewPower has assumed Ourpower's rights and obligations in the wholesale electricity market and uses Ourpower's trading code (OURP) to trade electricity.

New Generation Assets

- 3.3 WEL, using its subsidiary Infratec, is developing the following generation assets which will be connected to its distribution network:

¹⁰ For completeness, it is noted that:

- (a) WEL currently has a small amount of generation located at its office buildings in Hamilton that is predominantly used for its own self-supply. The generation capacity of these assets is limited to 271.8 kW of solar, 146 kW of battery, and 200 kW of diesel genset (all of which is currently commissioned and in use, with the exception of 110 kW of solar and 40 kW of battery which is scheduled to be installed at WEL's buildings on McKee Street in Hamilton by December 2024); and
- (b) in WEL's view, this small amount of generation capacity does not form part of WEL's exemption application (and it has not been counted for the purposes of calculating WEL's total "connected generation", as described in footnote 14 below) given it is predominantly used for WEL's own self-supply and not commercial generation activities (with only a small amount of excess supply being fed back into the network during weekends and public holidays).

STRICTLY CONFIDENTIAL VERSION

- (a) Rotohiko, a battery energy storage system or "BESS" with a total rated energy capacity at full charge of 33.2MW,¹¹ which has recently been commissioned; and
- (b) two solar farms which WEL has recently obtained consent to construct:
 - (i) Te Ohaaki in Huntly with nameplate capacity of 22.4MW ("**Te Ohaaki**"); and
 - (ii) Rangimarie in Maramarua, with nameplate capacity of 10MW ("**Rangimarie**"),

(together, the "**New Generation Assets**"). The New Generation Assets will each be connected to WEL's distribution network in the Waikato (via the Huntly GXP) and will be owned and operated by NewPower. However, the solar farms will be in a different location to the BESS, meaning they will not be directly connected to the BESS. See **Appendix 2** for a map which sets out the approximate locations of the New Generation Assets.

3.4 The primary purpose of the New Generation Assets will be to:

- (a) In relation to the **BESS**, provide NewPower with an ability to:
 - (i) arbitrage by purchasing and storing electricity on the national wholesale market when demand is low, and injecting this stored electricity back into the network when demand is high; and
 - (ii) provide ancillary services to third parties from time to time, such as instantaneous reserve;
- (b) **Te Ohaaki and Rangimarie**: generate and inject electricity into the network, for sale by NewPower into the national wholesale market.

3.5 In addition, NewPower could, in theory, provide network support services to WEL's distribution network (but not in practice, as discussed further below).¹² However, the provision of any such network support services would be secondary to the primary purpose of the BESS – namely, to provide a means for NewPower to arbitrage its sale and purchase of electricity on the national wholesale market and to provide ancillary services.

3.6 For the purpose of this application, WEL's working assumption is that the combined capacity of the New Generation Assets would take it beyond the 50MW of connected generation that triggers the arm's-length compliance requirements under clause 6A.3 of the Code.

¹¹ We note that, while the BESS has a total rated energy capacity of 33.2MW, WEL's interpretation of the Authority's recent amendments to the definition of "connected generation" in Part 6A of the Code (which come into effect on 1 June 2024) is that:

- (a) the "maximum capacity" of the BESS is required to be calculated according to the maximum amount that is: (a) offered into the wholesale market; (b) gifted into the wholesale market; (c) contracted to Transpower as an ancillary service; or (d) if not included in (a), (b), or (c), the nameplate capacity of the generating unit; and
- (b) therefore, as the BESS is captured under limb (c) above, the "maximum capacity" of the BESS for the purposes of Part 6A will be equivalent to its approved ancillary services capacity of 32.945MW (rather than its total rated energy capacity of 33.2MW).

¹² WEL's requirements for network support services in relation to the Huntly network system are expected to be small over long-term, given that the level of growth forecast for the Huntly network system is low. For example, the projected growth of capital expenditure for the Huntly network system is only \$16 million for the period of 2024-2033, compared to \$88.9 million and \$60 million for the Hamilton and Te Kowhai network systems (respectively) over the same period.

4. APPLICATION OF ARM'S-LENGTH RULES TO WEL

Nature of the involvement

4.1 Clause 6A.2 of the Code gives "involved in" the same meaning as the equivalent term under section 6A of the Act, which provides that a person is "involved" in a distributor, a generator or a retailer if the person:

- (c) has a material influence over a business that does any of those things [distribution, generation or retail].

4.2 Therefore, for the purposes of Part 6A of the Code, the following persons would be "involved in" both a distributor (WEL Networks) and a generator (NewPower):

- (a) WEL (as the parent company of the WEL Group);
- (b) all current and future:
 - (i) directors of WEL;
 - (ii) c-suite executives employed by WEL; and
 - (iii) managers employed by WEL with roles and/or responsibilities related to NewPower's generation business.

Applicability of sections of Part 6A.3 of the Code

4.3 Clause 6A.3(2) of the Code provides that:

Every person who is involved in a distributor, and every person who is involved in a connected generator or a connected retailer, must comply, and ensure that the person's businesses comply, with the arm's-length rules.

4.4 In this clause, unless the context otherwise requires:¹³

connected generator, in relation to a distributor, means a generator:

- (a) that has connected generation of more than 50 MW of generation that is connected to any of the distributor's networks; and
- (b) in respect of which the distributor, or any other person involved in the distributor, is involved.

4.5 This application assumes that NewPower will be a "connected generator" for the purposes of clause 6A.3 of the Code. This is because, once the New Generation Assets are connected to WEL's network, the total connected generation of NewPower will be more than 50MW.¹⁴

¹³ As noted in footnote 1 above, the Authority recently released its decision (dated 2 April 2024) to amend Part 6A of the Code, which will come into effect on 1 June 2024. For the purposes of this application, the applicability of Part 6A.3 is considered under the relevant provisions in the Code as amended by the Authority's recent decision.

¹⁴ The total capacity of WEL's generation assets connected to its networks would be 65.345MW based on the "maximum capacities" of the following assets: Rotohiko network connected battery in Huntly (32.945MW); Te Ohaaki solar generator in Huntly (22.4MW); and Rangimarie solar generator in Maramarua (10MW). See footnote 11 above for further details of WEL's interpretation of the Authority's recent changes to Part 6A in respect of calculating the "maximum capacity" of the BESS.

5. DESCRIPTION OF EXEMPTION SOUGHT

Why WEL is seeking an exemption from clause 6A.3 of the Code

- 5.1 Pursuant to section 11(2) of the Act, this application seeks, in respect of WEL's involvement in NewPower, an exemption from compliance with clauses 6A.3 and 6A.8 of the Code ("**Proposed Exemption**").
- 5.2 As mentioned above, and as detailed further in this application, WEL is a suitable candidate for exemption from compliance with clauses 6A.3 and 6A.8 of the Code, because it is not necessary for the purpose of achieving the Authority's objectives under section 15 of the Act for WEL to comply with the arm's-length rules, and, in some cases, the Proposed Exemption would better achieve the Authority's objectives under the Act than requiring compliance.
- 5.3 We note that the Proposed Exemption would be specific to WEL's involvement in the New Generation Assets held by NewPower. It does not extend to any other interest or future involvement of WEL in generation.

How long the exemption is required for

- 5.4 WEL is requesting the exemption from the date at which the second and final Solar Asset is connected to its distribution network and for a minimum period of twenty-five (25) years (based on the life of the assets being 25 to 30 years) for WEL to make a reasonable return on its investment.

Alternatives to an exemption that have been explored – the "counterfactual"

- 5.5 The Sapere Report describes three hypothetical "counterfactuals" which *could* occur if the Proposed Exemption is not granted:¹⁵
- (a) WEL sells Te Ohaaki to either an existing generator or a new entrant to the wholesale electricity market (**Counterfactual 1**);
 - (b) WEL sells the BESS to an existing generator (**Counterfactual 2**); or
 - (c) WEL complies with the arm's length rules (**Counterfactual 3**).
- 5.6 However, as described further below, Counterfactual 1 is the only *likely* counterfactual. For this reason, WEL submits that this is the only counterfactual against which the Authority should assess whether the section 11(2) test for an exemption is met.

Previous similar exemptions by the Authority

- 5.7 The Authority has previously considered applications for exemption from the arm's-length rules, including (for example) a recent application by Top Energy Limited ("**Top Energy**") in relation to the expansion of its geothermal generation assets at the Ngāwhā Springs Power Station.¹⁶ Top Energy's exemption application was made following the arm's-length rules

¹⁵ Sapere Report, section [4.2].

¹⁶ Electricity Authority, *Final Decision No. EA 333 in relation to Top Energy Limited* (15 December 2023).

being moved from the Act into the Code, meaning the Authority was required to consider the application for exemption from the arm's-length rules under section 11 of the Act.¹⁷

5.8 We consider that the Authority's decision to grant Top Energy's application for exemption from the arm's-length rules is relevant and provides a useful point of reference for the assessment of WEL's application. However, WEL considers there are important differences between the two applications. Namely:

- (a) While Top Energy's application concerned an expansion of its geothermal generation to a total of 117MW, which exceeds the 50MW threshold by a considerable margin, WEL is applying to have a relatively small increment of generation capacity above the 50MW threshold, with WEL's total connected generation to increase to only 65.345MW if the Proposed Exemption is granted.
- (b) The potential generation output of the Solar Assets, as calculated in GWh per annum, is much smaller than the output of a geothermal plant of the same capacity. This is because intermittent renewable generation, such as solar, is not able to run 'continuously' in the same way as a geothermal plant. As a result, WEL estimates that while 50MW of solar generation would only be capable of generating up to ~80GWh per annum, a 50MW geothermal plant would be capable of generating up to five times that amount (i.e. ~400GWh per annum).

5.9 WEL submits that these differences contribute to demonstrating that the test under section 11 for an exemption is met, given that, compared to the potential impact on competition of granting Top Energy's application for exemption from the arm's-length rules, any potential impact on competition if the Proposed Exemption is granted is likely to be much less material.

Impact on overall scheme of the Code

5.10 The purpose of Part 6A the Code is to promote competition in the electricity industry by restricting relationships between a distributor and a generator where those relationships may not otherwise be at arm's-length. We consider that the Proposed Exemption is consistent with the objectives of Part 6A of the Code, given that the arm's-length rules are not necessary to promote competition in the electricity industry in relation to WEL's involvement in NewPower, as described further below and in the findings of the Sapere Report.

No adverse effects on other participants

5.11 As described further below, the Proposed Exemption would not result in any adverse effects on other participants in the electricity industry. In particular:

- (a) The generation capacity added by WEL to the national wholesale market (being the very small increment by which WEL's generation capacity would exceed the 50MW threshold) is "tiny relative to the size of the market, making WEL a 'price taker' in the wholesale market".¹⁸ The relative significance of the incremental increase of WEL's generation capacity will be further diminished as the Government continues to fast-track new renewable generation projects to meet New Zealand's emissions reduction

¹⁷ Under sections 50 and 54 of the Electricity Industry Amendment Act 2022, which came into force on 1 September 2022, the arm's-length rules were removed from Schedule 2 of the Act and inserted into a new Schedule 6A.1 of the Code. As a result of this change, an application for an exemption to the arm's-length rules must now be made under section 11 of the Act, which deals with exemptions from the Code, whereas previously an application would have been made under section 90 of the Act, which deals with exemptions from the Act.

¹⁸ Sapere Report, section [5.5.3].

targets.¹⁹ Accordingly, WEL will have no ability to influence the price paid or received by other participants in the national wholesale market.

- (b) The Proposed Exemption does not create any risk of foreclosure in any of the relevant markets. We note that, while WEL could potentially be the purchaser and supplier in the market for local network support services on WEL's network, the fact that the New Generation Assets are connected to a high capacity 33kV line means that there is no physical constraint on an alternative provider competing with the New Generation Assets to provide local network support services to WEL.²⁰
- (c) Furthermore, there is no opportunity or incentive for WEL to leverage its monopoly distribution business to cross-subsidise the contestable activities that it will undertake with the New Generation Assets. This would effectively require WEL to undermine its business model by overcharging its distribution customers (which are also its owners under the consumer-owned trust model and which would attract increased and unwanted scrutiny from the Commerce Commission) or by operating at below-cost pricing, which WEL clearly has no incentive to do.²¹

6. EFFECTS OF THE PROPOSED EXEMPTION ON THE AUTHORITY'S STATUTORY OBJECTIVES

(a) The exemption promotes competition in the electricity industry

The relevant markets in the electricity industry

6.1 Consistent with the Sapere Report, the relevant markets for the purposes of this application are:²²

- (a) the national wholesale market for electricity;
- (b) the North Island wholesale market for ancillary services, excluding voltage support;
- (c) an upper North Island wholesale market for voltage support; and
- (d) the local network support services market, supplying either Transpower or WEL.

6.2 That being the case, those markets are adopted as the relevant markets for the purpose of this application.

Competitive analysis against the likely (and unlikely) counterfactuals

6.3 Consistent with the approach previously adopted by the Authority, the likely effect of the Proposed Exemption on competition in the relevant markets should be determined by applying a counterfactual analysis.²³ That is, the Authority should compare the likely state of competition if the Proposed Exemption is granted (the "**Factual**") with the likely state of competition if the Proposed Exemption is not granted (the "**Counterfactual**").

¹⁹ For example, since late 2021 the Government has referred five significant renewable generation projects through the COVID-19 Recovery (Fast-track Consenting) Act 2020, including two large solar farm projects in the Waikato region, which could collectively add more than 635MW to the national grid. See *Government refers solar energy projects for fast-track consenting* (14 April 2023) at <https://www.beehive.govt.nz/release/government-refers-solar-energy-projects-fast-track-consenting>.

²⁰ Sapere Report, section [5.6].

²¹ Sapere Report, section [5.5.4].

²² Sapere Report, section [3.6].

²³ Electricity Authority, *Final Decision No. EA 333 in relation to Top Energy Limited* (15 December 2023) at paras [8.1] to [8.2].

- 6.4 However, a counterfactual must be "likely", which is to say that there must be a "real and substantial risk" that it will happen.²⁴ If the Proposed Exemption is not granted, we consider that the only "likely" outcome would be Counterfactual 1. This is because, based on the strategic and commercial incentives faced by WEL in this scenario, the sale of Te Ohaaki would be the most rational decision available to WEL. WEL would continue to own and operate the BESS and the Rangimarie solar farm, and its total generation capacity (~43.2MW) would remain below the 50MW threshold that triggers the arm's-length requirements.
- 6.5 In comparison, while Counterfactual 2 and Counterfactual 3 are hypothetically possible, they are unlikely to happen given the opportunity costs and real costs that WEL would be required to incur. For example:
- (a) if WEL was to sell the BESS under Counterfactual 2, it would lose the ability to match its Solar Assets with the BESS (such that electricity could not be stored when demand is low, and injected back into the network when demand is high), which is one of the key commercial drivers behind WEL's investment in the New Generation Assets; and
 - (b) the costs and inefficiencies associated with WEL complying with the arm's-length rules under Counterfactual 3 are likely to be material (including costs of reduced synergies across WEL's business, the duplication of boards of directors, executive teams, offices and operational support for each of WEL and NewPower, together with costs related to corporate restructuring, funding, and commercial arrangements, including less favourable rates for funding and other services).
- 6.6 Accordingly, WEL submits that Counterfactual 1 is the only counterfactual against which the Authority should assess whether the section 11(2) test for an exemption is met.
- 6.7 However, for completeness, this application follows the approach of the Sapere Report by considering the likely state of competition of the Factual with all three Counterfactuals.

Counterfactual 1: WEL sells Te Ohaaki to an existing generator or a new entrant to the wholesale electricity market

- 6.8 The relevant market for Counterfactual 1 is the national wholesale market (noting that Te Ohaaki would not participate in the markets for ancillary or network services). As described in the Sapere Report, the difference in competition in the national wholesale market between Counterfactual 1 and the Factual is negligible. In either scenario, the owner of Te Ohaaki would likely be a 'price-taker' given that electricity output from solar farms is not controllable.²⁵ In addition, for the purposes of the section 11(2) test, the increment by which WEL's generation capacity would exceed the 50MW threshold in the Factual is very small, which further diminishes the significance of WEL's added generation to the national wholesale market.
- 6.9 However, an important difference is that, under the Factual, WEL would have the ability to 'match' Te Ohaaki with the BESS. The matching of solar generation with battery increases the competitive rivalry of the solar asset by enabling the owner to store electricity when demand is low (for example when the sun is shining) and inject that electricity when demand is high (for example during the evening peak). This arbitrage of WEL's activities in the wholesale electricity market will benefit consumers by introducing an additional source of electricity supply during peak periods, resulting in an increase in the competitive rivalry of Te Ohaaki.

²⁴ *Woolworths & Ors v Commerce Commission*, 8 NZLBC 102,128 (HC 2008) at para [110].

²⁵ Sapere Report, section [5.3].

6.10 It is likely that some of these benefits to consumers would be lost under Counterfactual 1, because:

- (a) WEL would be unable to arbitrage its activities in the wholesale electricity market to the same extent (given that WEL's only remaining Solar Asset under Counterfactual 1 would be Rangimarie, which has a relatively small generation capacity); and
- (b) the purchaser of Te Ohaaki is unlikely to have a network battery to match with Te Ohaaki.

6.11 Accordingly, the Factual would likely promote competition in the wholesale electricity market compared to Counterfactual 1.

Counterfactual 2: WEL sells the BESS to an existing generator

6.12 All of the markets set out under paragraph 6.1 are relevant to Counterfactual 2.

(a) Ancillary services

6.13 Under the Factual, WEL would primarily use the BESS to enter the market for the provision of ancillary services (such as instantaneous reserves and voltage support). This would result in an increase to competition compared to Counterfactual 2, given the purchaser of the BESS would likely be an existing or future generator (because ownership of the BESS would not make economic sense without accompanying generation).

6.14 As a new entrant in the market for ancillary services, and as noted in the Sapere Report, WEL would increase competition in the market for ancillary services by bringing "its own perspectives and would compete against existing entities to win and retain sales of its services".²⁶ The Authority has identified network batteries as playing an important role in increasing innovation and competition in the reserves market, with the potential to reduce transmission costs and increase grid security and reliability.²⁷ Further, the use of batteries to supply ancillary services may, in addition to increasing price competition, result in improvements in non-price factors such as increased responsiveness.²⁸

6.15 It is unlikely that these benefits would be realised to the same extent if an existing generator owned the BESS, given there would be no increase in the number of competitors in the market for ancillary services under Counterfactual 2.

6.16 Accordingly, the Factual would result in an increase in competition in the ancillary services market compared to Counterfactual 2.

(b) National wholesale market

6.17 In the national wholesale market, and as mentioned above, WEL would, in the Factual, 'match' the BESS with its Solar Assets for the purpose of storing electricity when demand is low, and selling electricity when demand is high. WEL's ability to arbitrage its generation activities in

²⁶ Sapere Report, section [5.2].

²⁷ On 3 May 2022, the Code was amended (pursuant to clause 4(1) of the Electricity Industry Participation Code Amendment (Enabling Energy Storage Systems to Offer Instantaneous Reserve) 2022) to allow battery energy storage systems (EES) to offer generation reserve. The Authority noted that the entry of EES into the reserves market is to "enable more innovation and competition in the reserves market" and "benefit consumers by helping competition amongst reserve providers in the wholesale market and help provide a reliable electricity supply" (<https://www.ea.govt.nz/projects/all/energy-storage-systems-as-instantaneous-reserve/>).

²⁸ For example, in respect of the market for voltage support, Sapere notes that "a BESS can provide reactive power over a greater operating range than a standard generating machine, and because the response is programmable and fast, then it could provide [voltage support] in excess of any Code requirements" (see Appendix B of the Sapere Report, at page 26).

this manner will introduce an additional source of electricity supply to the wholesale market during periods of peak demand, which will in turn increase the competitive rivalry of the Solar Assets. While the increase in competitive rivalry will be small (given the amount of additional generation produced by the Solar Assets is relatively small), the ultimate effect would be a marginal increase in the sources of supply of electricity during peak periods for the benefit of consumers.

- 6.18 Accordingly, the Factual would result in a modest increase in competition in national wholesale market compared to Counterfactual 2.

(c) Network support services market

- 6.19 While the BESS will be primarily used to provide ancillary services (such as instantaneous reserves) to third parties, it cannot be ruled out that, on occasion, it would be used for the purpose of self-supplying network support services to WEL's distribution network.

- 6.20 WEL is the only purchaser of network support services on its network. However, given that WEL does not intend on using the BESS for network support services under the Factual (for the reasons explained in paragraph 6.22 below), other than on rare occasions, we do not consider that the scale of network support services required by WEL from third parties would be any greater under Counterfactual 2. That is, if WEL sold the BESS to a third party, the impact of the sale on WEL's requirements for network support services would be negligible.

- 6.21 Further, because the BESS is connected to a high-capacity 33kV line and the capacity at the relevant GXP (Huntly) is not constrained, WEL would have no physical advantages compared to an alternative provider competing to provide network support services to WEL's network. In other words, the connection of the BESS to WEL's network would not introduce any capacity constraints that would prevent a third party from fulfilling WEL's full requirements for network support services in respect of its local network.

- 6.22 WEL has no incentive to fulfil its requirements for network support services from the BESS to the extent that there are lower cost alternative providers available. Instead, the commercial incentive on WEL would be to apply the capacity of the BESS towards its primary purpose of providing arbitrage on the national wholesale market and ancillary services to third parties, given that WEL would receive a higher return from the BESS in the wholesale and ancillary services markets in this situation.

- 6.23 Accordingly, the level of competition in the market for network support services would be the same under the Factual and Counterfactual 2.

Counterfactual 3: WEL complies with the arm's-length rules

- 6.24 All of the markets set out under paragraph 6.1 are relevant to Counterfactual 3.

(a) National wholesale and ancillary service markets

- 6.25 The costs and inefficiencies associated with WEL complying with the arm's-length rules are likely to be material. As described under paragraph 6.5(b) above, this includes (but is not limited to) the costs of reduced synergies across WEL's business, the duplication of boards of directors, executive teams, offices and operational support for each of WEL and NewPower, together with costs related to separating out corporate structure, funding, and commercial arrangements, including less favourable rates for funding and other services due to the weakened bargaining power of smaller scale businesses. Given that these costs would not be faced by other generators in the wholesale and ancillary services markets, WEL would be

less competitive in those markets compared to the Factual and the overall level of competitive rivalry in these markets would be reduced.

6.26 Accordingly, the Factual would result in an increase in competition in national wholesale and ancillary services markets compared to Counterfactual 3.

(b) Network support services

6.27 In terms of the market for network support services, the separation of WEL's distribution and generation businesses would have no impact on the ability for a third party to compete for those services compared to the Factual. As noted under paragraph 6.20 above, WEL does not intend on using the BESS for network support services under the Factual, other than on rare occasions, because WEL would be able to obtain a higher return from the BESS in the wholesale and ancillary services markets.

6.28 Under Counterfactual 3, this would also be the case. The commercial incentive on WEL's generation business (when operating at arm's-length from WEL's distribution business) would be to use the BESS for generation activities in the wholesale and ancillary services markets. The incentive on WEL's generation business to compete to provide network support services to WEL's distribution business would remain unchanged.

6.29 Accordingly, the level of competition in the market for network support services would be the same under the Factual and Counterfactual 3.

Would the exemption create incentives and opportunities to inhibit competition in the electricity industry?

6.30 Under the former test under section 90 of the Act, the Authority would also consider whether an exemption to the arm's-length rules would create incentives and opportunities to:

- (a) inhibit competition in the electricity industry; and/or
- (b) cross subsidise the connected generator.

6.31 For completeness, we also address these questions in the context of each of the relevant markets.

6.32 Other than in respect of the market for network support services, WEL's competitors in the relevant markets do not require an essential input from WEL in order to provide their services to those markets.²⁹ Therefore, while businesses almost always have an incentive to gain an advantage on their competitors if they can, the Proposed Exemption cannot, and does not, create any opportunities for WEL to inhibit competition in those markets.

6.33 WEL acknowledges that it is responsible for assessing applications to connect new generation to its network and that, in this context, the Proposed Exemption could (in theory) create opportunities for WEL to restrict access to its network for its competitors in the national wholesale and ancillary service markets. However, in practice, any such opportunity would:

- (a) not coincide with any incentive to restrict access given that any additional generation on WEL's network would be too small to impact the prices paid or received by WEL in those markets, as against the certainty of connection fee revenue; and

²⁹ Sapere Report, section [5.5.3].

- (b) be limited by the fact that WEL is required to adhere to Part 6 of the Code when assessing and allowing connections of distributed generation to its network. That is to say it is constrained in its ability to actually foreclose generators on its network, because it must provide access where such generators meet the criteria and conditions stipulated in the Code, including the requirement to apply pricing principles.³⁰ Any decision by WEL to refuse connection can be challenged.
- 6.34 Further, as WEL would continue to own generation on its network in the Factual and all of the Counterfactuals, these opportunities to WEL (or lack thereof) would be the same in any of these scenarios, and it is not the case that the very small increment by which WEL's generation would exceed the 50MW threshold would create or increase any theoretical incentive and opportunity to foreclose WEL's generation rivals.
- 6.35 Similarly, WEL's total generation capacity under the Factual will be too small for WEL to impact the prices paid or received by other participants national wholesale market, meaning WEL will be a 'price taker' in that market. Further, the rules which govern pricing in the national wholesale market are determined and applied independently by the Authority, which also prevents WEL from having any ability to inhibit competition in that market.³¹
- 6.36 Similarly, in the market for ancillary services (including voltage support), WEL would have no opportunity to use the BESS to influence the competitive tender process conducted by Transpower in respect of the provision of ancillary services. Under the Factual, there is no action that WEL would take that would increase the costs to its competitors in the market for ancillary services, or which would influence Transpower to choose WEL as a supplier over a more competitive alternative.³²
- 6.37 In relation to incentives or opportunities for WEL to use its monopoly distribution business to cross-subsidise its generation activities, we note that this would require WEL to:³³
- (a) charge its distribution customers (who also own WEL under the WEL Trust model) prices which exceed efficient operation costs; and
- (b) use the extra profit earned from overcharging its distribution customers to subsidise its generation activities in the wholesale and/or ancillary services markets.
- 6.38 As observed in the Sapere Report, any decision by WEL to overcharge its customers and owners would directly undermine the purpose of WEL's business, which is established under a consumer-owned trust for the benefit of its network users. Further, the fact that consumer-trust owned distributors are not currently subject to price control under Part 4 of the Commerce Act demonstrates that there is no incentive on consumer-owned distributors to over-charge their network users when price control is a possible regulatory response.
- 6.39 Moreover, any cross-subsidisation of WEL's generation business which required WEL's distribution business to forgo a normal return on its investment is not supported by any economic rationale. There would be no commercial benefit to WEL of such a strategy. In particular, the level of cross-subsidisation that WEL could possibly achieve would be

³⁰ In particular, clause 6.11 requires distributors to act at arm's length and requires a distributor to use, in respect of all distributed generators, the same reasonable efforts in processing and considering applications for connection. This rule applies regardless of whether the distributor has an ownership interest or a beneficial interest in the distributed generator and regardless of who the distributed generator is.

³¹ *Ibid.*

³² *Ibid.*

³³ Sapere Report, section [5.5.4].

insufficient to enable WEL to force its upstream competitors to exit the wholesale or ancillary services markets.

6.40 For the reasons set out under paragraphs 6.21 and 6.22 above, there is no incentive or opportunity for WEL to use its monopoly distribution business to inhibit competition or cross-subsidise the BESS in respect of the market for network support services. In particular:

(a) given the BESS is connected to a high-capacity 33kV line and the capacity at the relevant GXP (Huntly) is not constrained, WEL would have no physical advantages compared to an alternative provider competing to provide network support services to WEL's network; and

(b) if available, WEL would be incentivised to use lower cost alternative providers of network support services, and to apply the BESS towards its primary purpose of providing ancillary services (or secondly to provide arbitrage on the national wholesale market), given that WEL would receive a relatively higher return from the BESS in the those markets.

(b) The exemption does not undermine the reliability of supply by the electricity industry

6.41 The New Generation Assets would be operated and contribute to the supply of electricity under both the Factual and each of the Counterfactuals. Accordingly, there would be no difference to the reliability of supply between the different scenarios.³⁴

(c) The exemption promotes the efficient operation of the electricity industry

6.42 As discussed above, the increase in competition in the relevant markets would increase economic efficiency, given the competitive process a means through which efficient outcomes are created.³⁵

6.43 Further, each of the Counterfactuals would result in higher costs compared to the Factual. In the absence of any increase in competition in the relevant markets (which we submit would be the case in each of the Counterfactuals), the incurrence of such costs would therefore result in a relatively less efficient outcome in the absence of any gains in competition.

7. CONFIDENTIALITY

7.1 This application is being provided to the Authority on a confidential basis. WEL requests that it is notified in writing prior to the release of any of the information contained in this application, and that WEL's views on confidentiality are considered before any such disclosure takes place.

8. DECLARATION

8.1 Please see **Appendix 1** to this application for a declaration completed by WEL (in the form prescribed under the former section 90 application process).

8.2 Please let us know if you have any questions or if you require any further information.

³⁴ Sapere Report, section [6.1].

³⁵ Sapere Report, section [6.2].

9. ADDITIONAL INFORMATION

9.1 We set out **below** a summary of our views on the likely impact of the Proposed Exemption in the relevant markets in respect of the Counterfactual 1, which is the most likely outcome if the Proposed Exemption is not granted.

Table 1: Compared to Counterfactual 1, will the exemption promote competition in, reliability of supply by, and efficient operation of, the electricity industry?

	Competition	Reliability	Efficiency
Wholesale	Positive impact	No impact	Positive impact
Ancillary Services (excl voltage support)	No impact	No impact	No impact
Voltage Support	No impact	No impact	No impact
Network Support	No impact	No impact	No impact

Table 2: Will the exemption create incentives and opportunities to inhibit competition in the electricity industry?

		WEL sells Te Ohaaki (counterfactual)	Exemption granted (factual)
Wholesale	WEL	No impact	No impact
	NewPower	No impact	No impact
Ancillary Services (excl voltage support)	WEL	No impact	No impact
	NewPower	No impact	No impact
Voltage Support	WEL	No impact	No impact
	NewPower	No impact	No impact
Network Support	WEL	No impact	No impact
	NewPower	No impact	No impact

Table 3: Would the exemption create incentives or opportunities for a distributor to cross-subsidise a generator?

		WEL sells Te Ohaaki (counterfactual)	Exemption granted (factual)
Wholesale	WEL	No impact	No impact
	NewPower	No impact	No impact
Ancillary Services (excl voltage support)	WEL	No impact	No impact
	NewPower	No impact	No impact
Voltage Support	WEL	No impact	No impact

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	NewPower	No impact	No impact
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Network Support	WEL	No impact	No impact
	NewPower	No impact	No impact

APPENDIX 1: DECLARATION

THIS APPLICATION is made by:

WEL Networks Limited

WEL Networks Limited hereby confirms that:

- all the information requested by the Electricity Authority (**Authority**) is provided;
- all relevant information known to the applicant is provided; and
- all information provided is true and correct as at the date of this application.

WEL Networks Limited undertakes to advise the Authority immediately of any material change in circumstances relating to the application.

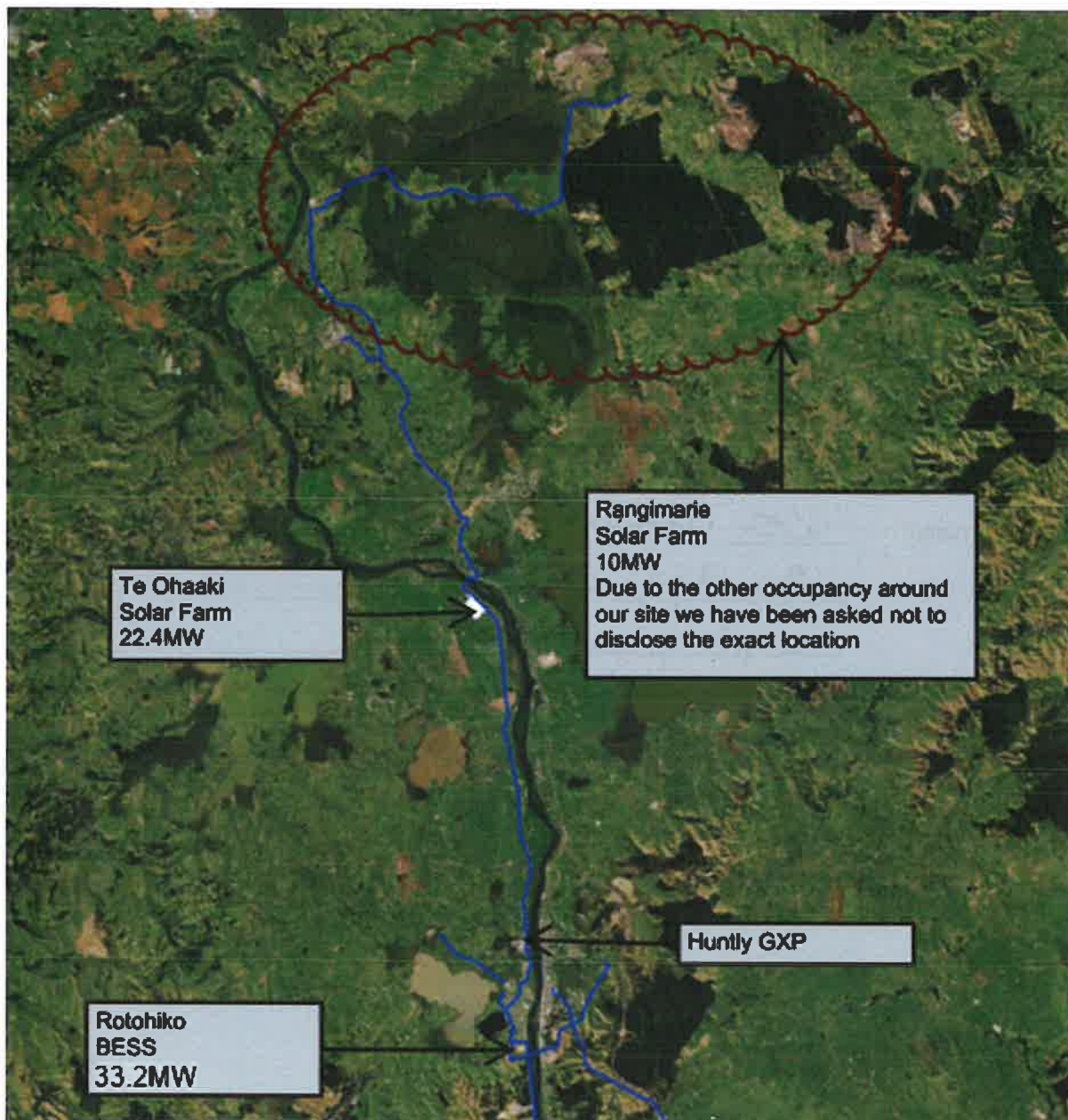
Company name: WEL Networks Limited

Date: 3. May 2024

Signed by: [Signature]

Position: GM Commercial Engagement

APPENDIX 2: MAP OF NEW GENERATION ASSETS



APPENDIX 3: SAPERE REPORT

Attached.

12 July 2024

c/- Sara Mateparae
Senior Legal Counsel
Electricity Authority
Level 7, AON Centre
1 Willis Street
WELLINGTON 6011

Dear Sara

APPLICATION FOR PART 6A EXEMPTION – NEWPOWER ENERGY SERVICES LIMITED

Application

1. Pursuant to section 11(2) of the Electricity Industry Act 2010 ("**Act**"), this application is made to the Electricity Authority ("**Authority**") for exemption from compliance with clauses 6A.3 and 6A.8 of the Electricity Industry Participation Code ("**Code**").

Details of the person filing the application

2. This application is made by NewPower Energy Services Limited ("**NewPower**") in respect of its involvement in WEL Networks Limited ("**WEL**").
3. In addition, pursuant to clause 6A.9 of the Code, NewPower makes an application on behalf of the following persons for dispensation from compliance with Part 6A of the Code in respect of their involvement in NewPower and WEL:
 - (a) the directors of NewPower; and
 - (b) the Chief Executive of NewPower.(together, the "**Dispensation Applicants**").

Background to application

4. WEL has previously submitted an application to the Authority, dated 3 May 2024, for exemption from compliance with clauses 6A.3 and 6A.8 of the Code ("**WEL Application**"). As set out in the WEL Application:
 - (a) WEL is developing, through its subsidiary, Infratec New Zealand Limited ("**Infratec**"), two solar farms and a battery energy storage system on its network (together the "**New Generation Assets**");
 - (b) it is understood that the total capacity of the New Generation Assets will exceed the 50MW threshold that triggers the corporate separation and arm's-length compliance requirements under clause 6A.3 of the Code; and
 - (c) once constructed, ownership of the New Generation Assets will be transferred from Infratec to NewPower, and, therefore, it is assumed that NewPower will be regarded as a "connected generator" under Part 6A of the Code and required to comply with the corporate separation and arm's-length rules.

5. For the reasons described in the WEL Application (including in the Sapere report dated 23 June 2023 accompanying the WEL Application), NewPower considers that:

- (a) it is a suitable candidate for exemption from compliance with clauses 6A.3 and 6A.8 of the Code; and
- (b) the Dispensation Applicants are suitable candidates for dispensation from compliance with clauses 6A.3 and 6A.8 of the Code,

in each case, because it is not necessary for the purpose of achieving the Authority's objectives under section 15 of the Act for NewPower or the Dispensation Applicants, respectively, to comply with the arm's-length rules, and, in some cases, granting the exemption and dispensations would better achieve the Authority's objectives under the Act than requiring compliance.

6. If you have any questions or if any part of this application requires explanation, please contact Michelle Allfrey, General Manager - Commercial Engagement at WEL: +64 7 850 3143; michelle.allfrey@wel.co.nz.

Yours sincerely



Grant Smith
Chief Executive
NewPower Energy Services Limited

Appendix B Draft gazette and dispensation notices

Gazette notice

Electricity Industry (Exemption No. 346 (WEL Network Limited and NewPower Energy Limited)) Exemption Notice 2024

In accordance with section 11(2) of the Electricity Industry Act 2010 (“Act”) the Electricity Authority (“Authority”) gives the following notice.

Notice

1. **Exemption**—The following persons are exempted from the requirement in clause 6A.3(2) of the Electricity Industry Participation Code 2010 (“Code”) to comply with rules 3G, 3H, 3I and 3J in Schedule 6A.1 of the Code:

- a. WEL Networks Limited (“WEL”); and
- b. NewPower Energy Limited (“NewPower”).

2. **Conditions**—This exemption is subject to the following conditions:

- a. This exemption applies to the following generation owned by NewPower:
 - i. a battery energy storage system up to maximum capacity of 32.495MW;
 - ii. Taiohi solar farm in Huntly up to a nameplate capacity of 22.4W; and
 - iii. Rangimarie solar farm in Maramarua up to a nameplate capacity of 10MW; and
 - iv. various small scale solar, battery storage with a total capacity of 0.61789 kW as follows:

Location	Type	Capacity (Kw)
Hamilton (Maui Street)	Solar	15
	Solar	60
	Solar	2
	Solar	59.8
	BESS	91
	Diesel	120
Pukete	Solar	10
Hamilton (Avalon Drive)	Solar	15
	BESS	15
	Diesel	80
Hamilton (McKee)	Solar	110
	Bess	40

- b. The exemption from the requirement to comply with rule 3I only applies to the appointment of management to positions of material influence over WEL and NewPower.
- c. WEL and NewPower must not engage in retailing, as that term is defined in the Act, to any customer connected to WEL's distribution network.
- d. This exemption applies while WEL and NewPower are wholly-owned by the WEL Energy Trust.
- e. This exemption will expire on 1 October 2040 or the day that any additional generation (other than generation installed for the purpose of providing network support or solar panels installed for the sole purpose of powering substations or office buildings) owned

by WEL, NewPower or any of WEL's subsidiaries is connected to WEL's network, whichever date is earlier.

- f. WEL must comply with Part 6 and WEL and NewPower must comply with all other arm's-length rules in Schedule 6A.1 of the Code.

5. Reasons for this exemption—The reasons for this exemption are:

- a. NewPower is wholly-owned by WEL and is a “connected generator” under Part 6A of the Code. Because its generation assets will be connected to WEL’s distribution network and exceed 50MW, WEL and NewPower are required to comply with clause 6A.3(2) of the Code.
- b. The Authority is satisfied that it is not necessary for the purpose of achieving the Authority’s objectives under section 15 of the Act for WEL and NewPower to comply with the rules 3G, 3H, 3I and 3J in Schedule 6A.1 of the Code because:
 - i. competition and reliability are expected to be either not affected or slightly improved by the granting of the amendment;
 - ii. efficiency is expected to be improved by the granting of the amendment;
 - iii. the total generation capacity exceeds the 50MW threshold by a small amount which further limits any impact on competition in the relevant markets; and
 - iv. any potential risks incentives or opportunities to inhibit competition can be addressed by the application of the remaining arm’s length rules in Schedule 6A.1 of the Code, Part 6 of the Code, information disclosure requirements under the Commerce Act 1986 and the conditions set out in paragraph 2 of this notice.

3. Commencement—This notice comes into force on the day after the date it is notified in the *New Zealand Gazette*.

Dated at Wellington this 1st day of October 2024

For and on behalf of the Electricity Authority

ANNA KOMINIK, Chair, Electricity Authority

Dispensation notice

Dispensation under clause 6A.9(6) of Part 6A of the Electricity Industry Participation Code 2010 (WEL Network Limited and NewPower Energy Limited)

In accordance with section 11(2) of the Electricity Industry Act 2010 ("Act") the Electricity Authority ("Authority") gives the following notice.

Notice

1. **Dispensation**— The following persons are granted a dispensation from the requirement in clause 6A.3(2) of the Electricity Industry Participation Code 2010 ("Code") to comply with rules 3G, 3H, 3I and 3J in Schedule 6A.1 of the Code:
 - a. the directors, from time to time, of WEL Networks Limited ("WEL");
 - b. the directors, from time to time, of NewPower Energy Limited ("NewPower");
 - c. the chief executive officer of WEL, or person holding an equivalent position;
 - d. the chief financial officer of WEL, or person holding an equivalent position;
 - e. the chief technology officer of WEL, or person holding an equivalent position; and
 - f. the chief executive officer of NewPower or person holding an equivalent position.

2. **Conditions**— This dispensation is subject to the following conditions:

- a. This dispensation applies to the following generation owned by NewPower:
 - i. a battery energy storage system up to maximum capacity of 32.495MW;
 - ii. Taiohi solar farm in Huntly up to a nameplate capacity of 22.4W;
 - iii. Rangimarie solar farm in Maramarua up to a nameplate capacity of 10MW; and
 - iv. various small scale solar, battery storage with a total capacity of 0.61789 kW as follows:

Location	Type	Capacity (Kw)
Hamilton (Maui Street)	Solar	15
	Solar	60
	Solar	2
	Solar	59.8
	BESS	91
	Diesel	120
Pukete	Solar	10
Hamilton (Avalon Drive)	Solar	15
	BESS	15
	Diesel	80
Hamilton (McKee)	Solar	110
	Bess	40

- b. The dispensation from the requirement to comply with rule 3I only applies to the appointment of persons identified in clause 2(c) to (f) to positions of material influence over NewPower.
- c. The dispensation only applies while WEL and NewPower are wholly owned by the WEL Energy Trust.

- d. This dispensation will expire on 1 October 2040 or the day that any additional generation (other than generation installed for the purpose of providing network support or solar panels installed for the sole purpose of powering substations or office buildings) owned by WEL, NewPower or any of WEL's subsidiaries is connected to WEL's network, whichever date is earlier.
- e. The persons listed in paragraph 1 must comply with all other arm's-length rules as applicable.

3. Reasons for this dispensation— The reasons for granting the dispensation are:

- a. The Authority is satisfied that it is not necessary for the purpose of achieving the Authority's objectives under section 15 of the Act for the persons referred to in paragraph 1 of this notice to comply with the rules 3G, 3H, 3I and 3J in Schedule 6A.1 of the Code because:
 - i. competition and reliability are expected to be either not affected or slightly improved by the granting of this dispensation;
 - ii. efficiency is expected to be improved by the granting of this dispensation;
 - iii. the total generation capacity exceeds the 50MW threshold by a small amount which further limits any impact on competition in the relevant markets; and
 - iv. any potential risks incentives or opportunities to inhibit competition can be addressed by the application of the remaining arm's length rules in Schedule 6A.1 of the Code, Part 6 of the Code, information disclosure requirements under the Commerce Act 1986 and the conditions set out in paragraph 2 of this notice.

Dated at Wellington this 1st day of October 2024

For and on behalf of the Electricity Authority

ANNA KOMINIK, Chair, Electricity Authority

Appendix C Total generation capacity

New generation assets (table 1)

Location	Type	Capacity MW	Comment
Glen Murray Road	Solar	24.4	Taiohi solar farm
Coalfields Road, Maramarua	Solar	10	Rangimarie solar farm
Rotowaro Road, Huntly	BESS	32.945	Rotohiko

Various existing solar, BESS and diesel (table 2)

Location	Type	Capacity (Kw)	Comment
Maui Street Hamilton	Solar	15	Located on depot buildings, bike shed and admin building
	Solar	60	
	Solar	2	
	Solar	59.8	
Maui Street Hamilton	BESS	91	Microgrid BESS
Maui Street Hamilton	Diesel	120	Diesel genset
Chanan Place, Pukete	Solar	10	Carport solar
Avalon Drive (DR site)	Solar	15	
Avalon Drive (DR site)	BESS	15	
Avalon Drive (DR site)	Diesel	80	Diesel genset
McKee	Solar	110	WEL warehouse and small office
	Bess	40	

Total

	Capacity MW
New generation assets (table 1)	62.345
Other (table 2)	00.6178
TOTAL	65.9628