

From: Sam Fleming
To: Doug Watt
Cc: Jason Woolley; S9(2)(a)
Subject: RE: [EXTERNAL] Letter from CE to Meridian Energy Ltd | Section 46(2)(a) | 2021 08 05 CONFIDENTIAL AND COMMERCIAL SENSITIVE
Date: Tuesday, 10 August 2021 2:10:58 pm
Attachments: [image001.jpg](#)
[image002.png](#)
S9(2)(b) and S9(2)(ba)(i)

Hi Doug

Please see attached a letter in response to the s46 information request from James Stevenson-Wallace dated 5 August 2021.

Documents referred to in the letter are also attached to this email.

Ngā mihi

Sam Fleming (he/him) – Manager Regulatory and Government Relations
Meridian Energy Limited
Level 2, 55 Lady Elizabeth Lane
PO Box 10840, Wellington 6143, New Zealand
M. S9(2)(a)



From: Jason Woolley S9(2)(a)
Sent: Thursday, 5 August 2021 4:24 pm
To: S9(2)(a)
Cc: Doug Watt S9(2)(a); Sam Fleming S9(2)(a)
Subject: RE: [EXTERNAL] Letter from CE to Meridian Energy Ltd | Section 46(2)(a) | 2021 08 05

Hi S9(2)(a)
Thanks. I have forwarded your email to Sam Fleming who will respond.
Regards
Jason

From: S9(2)(a)
Sent: Thursday, 5 August 2021 4:20 pm
To: Jason Woolley S9(2)(a)
Cc: Doug Watt S9(2)(a)
Subject: [EXTERNAL] Letter from CE to Meridian Energy Ltd | Section 46(2)(a) | 2021 08 05

Hi Jason,

Please find letter attached from James Stevenson-Wallace, re: Requirement to provide information under section 46(2)(a) of the Electricity Industry Act 2010.

Kind regards

S9(2)(a)



S9(2)(a)

Executive Assistant to the Chief Executive

Mobile: +S9(2)(a)

Electricity Authority - Te Mana Hiko

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Meridian Energy Limited
P O Box 10840 Wellington
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0800 496 496
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10 August 2021

Doug Watt
Manager Market Monitoring
Electricity Authority – Te Mana Hiko

By email **S9(2)(a)**

Dear Doug

Request for swaption information under section 46(2)(a) of the Electricity Industry Act

In response to the information request from James Stevenson-Wallace dated 5 August 2021, please see attached to this letter:

- the ISDA Master Agreement between Meridian and Genesis dated 19 November 1999;
- the Confirmation dated 8 July 2014;
- the Confirmation dated 27 April 2016; and
- a spreadsheet containing the requested receipts and payments under the swaption from 1 July 2015 to 30 June 2021.

We note that settlement with Genesis under the swaption is on a net basis and monthly rather than quarterly per your request.

We also note that the request is for "receipts and payments under *the* swaption from 1 July 2015 to 30 June 2021" (our emphasis). However, there were two different swaption agreements in effect during that period:

- the ISDA Master Agreement and Confirmation dated 8 July 2014, having a term of 1 January 2015 to 31 December 2018; and
- the ISDA Master Agreement and Confirmation dated 27 April 2016, having a term of 1 January 2019 to 31 December 2022.

Please note that the information provided is commercially sensitive and subject to confidentiality provisions in the agreements. Disclosure of this information to any third party has the potential to cause commercial prejudice to Meridian. We ask that the Authority keeps the information confidential, uses it only in accordance with the lawful purposes for which the Authority has requested the information and does not disclose the information to third parties. If the Authority receives an Official Information Request in respect of the information, we ask that the Authority alerts us immediately and that we have the opportunity to provide our views before the Authority decides whether to disclose or withhold the information. We anticipate that the Authority's response to any such request would appropriately withhold this information.

We again note with concern the suggestion that the Authority may decide "to share some or all the information Meridian provides" pursuant to this section 46 request with the Minister and an extensive list of government agencies. The Authority exists and operates separately from government; it is an independent Crown entity. We have taken legal advice and are confident the Authority does not have the power to share such information. The Electricity Industry Act 2010 does not expressly or impliedly authorise


the Authority to share information it gathers pursuant to section 46. Neither the Authority's section 16(1)(g) function nor the Ministerial request power in section 18 assist the Authority; both are carefully circumscribed and require the Authority to exercise its expert judgement in the preparation of public reports (or studies etc) on certain matters. Neither provides a power for the Authority to act as a conduit to collect data or documents for government Ministers or agencies. Nor can such an information-sharing power be inferred or considered incidental to the Authority's functions or powers, given the statutory limitations on them.

The position of the Authority in this regard can be contrasted with other regulators that are empowered to share information gathered pursuant to their respective information gathering powers (for example WorkSafe and the Financial Markets Authority). Parliament chose not to give the Authority an equivalent power. Other regulators without such powers have taken a limited view of their powers to share information they gather in their investigations. For example, see the Commerce Commission's Competition and Consumer Investigation Guidelines, July 2018, at [254] – [267].

We trust that the Authority will not share the information provided, as that would be in excess of its powers. That said, we note your commitment to notify us in the event you decide otherwise. We request that any such notification be given at least two weeks before the proposed sharing of the information is to take place. That period will allow Meridian to consider the steps necessary to protect its position, including seeking urgent relief from the Courts. For the avoidance of doubt, Meridian reserves all its rights.

Please let me know if you would like to discuss.

Yours sincerely

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

Sam Fleming
Manager Regulatory and Government Relations