

# Application for an exemption from the Electricity Industry Participation Code 2010

Please complete and return to [compliance@ea.govt.nz](mailto:compliance@ea.govt.nz)

Date: 26 April 2024

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## 1. Who is the exemption for?

*Give the full legal company (or otherwise) name and address of the participant seeking the exemption and the relevant details of the contact person for the exemption. The application must be made by the participant that the exemption will apply to, though other parties (participants or otherwise) may be involved in the process.*

Manawa Energy (Manawa) is the participant seeking an exemption from compliance with arm's length rules, as set out at Part 6A of the Electricity Industry Participation Code.

Manawa Energy Limited  
93 Cameron Road  
Tauranga  
3110

Contact: [REDACTED]

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## 2. When is the exemption required?

*Specify the date when a decision is needed and when any exemption granted would need to be gazetted (active). For all non-urgent applications, please [refer to the Authority's instructions](#). If the application is urgent, please include the reasons for seeking urgent consideration.*

An exemption is required at the soonest possible date.

The application of Part 6A to Manawa had been unclear for a significant period while the dispensation process for Anne Urlwin was worked through (discussed below). The Authority has now determined that Ms Anne Urlwin is involved in Manawa (and as such Manawa is a connected retailer under Part 6A). Manawa wishes to have its exemption considered as soon as possible, so that it has clarity over its compliance obligations moving forward.

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## 3. What do you want an exemption from?

*Give the provisions of the Code from which the exemption is sought.*

6A.3(2), 6A.5(1), 6A.8 and Schedule 6A.1. These clauses relate to ensuring commercial arm's length rules.

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## 4. Why are you seeking this exemption?

*Please specify the problem that the exemption would resolve, reasons for the problem arising, and how the exemption would address this problem.*

*Background to the exemption*

Manawa has recently had confirmed that it is a "connected retailer" for the purposes of Part 6A of the Code. A connected retailer is a retailer in respect of which a distributor, or any person involved in the distributor, is involved, which retails over a specified amount of electricity to customers connected to the distributor's network. This status is the result of the following:

- Ms Anne Urlwin was appointed to the board of Infratil on 1 January 2023. Infratil is an NZX-listed infrastructure investment company and has an ~51.1% share in NZX-listed Manawa Energy Limited, through its subsidiaries Renew Nominees Limited, Infratil Energy New Zealand Limited, and Infratil Investments Limited.
- Manawa is a generator, and also retails electricity to Commercial and Industrial customers.
- Ms Urlwin is also a director of NZX-listed Vector Limited, a distributor.
- Manawa currently retails electricity in volumes over the relevant thresholds in Part 6A to customers (specifically Commercial and Industrial customers) connected to Vector's network.

*Problem Manawa is seeking to resolve and how exemption would assist*

Ms Urlwin has no involvement in the operational details of Manawa's business, such as Manawa's distribution agreement with Vector. There is therefore no relationship that isn't already at arm's length i.e. there are no situations in place that the purpose of Part 6A sets out to restrict. Vector and Manawa operate at arm's length as separate independent companies and Ms Urlwin is not directly involved in Manawa (but rather is a director of the parent company Infratil). The primary role of the Infratil Board is to approve proposed investments, and Morrison & Co (who Ms Urlwin is not directly involved with) has been delegated to perform the day-to-day responsibilities of Infratil.

An exemption to Part 6A would assist in alleviating the regulatory burden on Manawa Energy, and the costs of the Authority monitoring compliance, for a circumstance in which requiring compliance is not necessary because of the lack of Ms Urlwin's involvement with Manawa.

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## **5 What alternatives to the exemption have been explored?**

*Please list the alternative solutions that have been explored and give details of why they are not suitable to address the problem.*

An alternative would be for the directors of Manawa to annually report compliance with the arm's-length rules under clause 6A.8. Whilst this would achieve the requirements under the Code, granting an exemption would alleviate the regulatory burden on Manawa Energy, and the costs of the Authority monitoring compliance, for a circumstance in which there is no benefit in requiring compliance because of the lack of Ms Urlwin's involvement with Manawa (as discussed in section 4 above).

## **6. What effects will granting the exemption have on achieving the Authority's statutory objectives?**

*The Electricity Industry Act 2010 (Act) only permits the Authority to grant an exemption if it is 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's objectives than requiring compliance.*

*To enable the Authority to be satisfied that compliance with the Code is not necessary to achieve the Authority's objectives under section 15, or that an exemption would better achieve the Authority's objectives than requiring compliance, please address the following questions:*

- Please explain, with reasons, what impact (positive or negative) granting the exemption would have on the Authority's ability to promote competition in the electricity industry for the long-term benefit of consumers?*

Consistent with Authority decisions under the previous section 90 exemption regime, the potentially relevant markets for the purposes of this application are the national electricity generation and wholesaling market and the electricity retailing markets. In respect of those markets:

- a) Manawa's generation is not connected to Vector's distribution network. Competition in the national generation and wholesaling market will therefore not be impacted by Ms Urlwin's directorships, and the dispensation would not create incentives or opportunities to inhibit competition in the market.
- b) In respect of electricity retailing markets, the conditions noted below, which would prevent Ms Urlwin being involved in any discussions or decision-making relating to electricity supply by Manawa on Vector's network or provision of electricity lines services by Vector to Manawa, would ensure that she would not have any ability to impact competition in the retail market. They would also mean that any relationship between Vector and Manawa would remain at arm's length. Further, even without the conditions, Ms Urlwin's directorships would not provide the ability to impact competition in the retail markets given:
  - a. Vector and Manawa operate at arm's length as separate independent companies.
  - b. Ms Urlwin is not directly involved in an electricity retailer (but rather is a director of a parent company of an electricity retailer). She does not have any involvement in the operational details of Manawa's business, such as Manawa's distribution agreement with Vector. As outlined above, the primary role of the Infratil Board is to approve proposed investments, and Morrison & Co (who Ms Urlwin is not directly involved with) has been delegated to perform the day-to-day responsibilities of Infratil.
  - c. When exercising powers or performing duties in respect of Vector, Ms Urlwin has an obligation under the Companies Act 1993 to make decisions in the best interests of Vector. Vector's Code of Conduct & Ethics and Board Charter also require directors to avoid or manage conflicts of interest. Likewise, when exercising powers or performing duties in respect of Infratil, Ms Urlwin has an obligation to make decisions in the best interests of Infratil. As a single director of Vector, she does not have the ability to influence Board decisions in favour of Manawa or against competitors of Manawa. For example, Ms Urlwin would not have any ability to require Vector to discriminate in favour of Manawa or customers of Manawa, or require Vector to pay for the transfer of customers to Manawa.
  - d. Distributor agreements entered into by Vector (and variations to the agreements) are governed by Part 12A of the Code and provided to the Authority under Part 12A of the Code. Vector therefore trades on the same default distributor agreement for all retailers, unless an alternative agreement is entered into (in which case the Authority will be notified).
  - e. Vector also has disclosure obligations under the Commerce Commission's Electricity Distribution Information Disclosure Determination 2012, and publishes information at Prescribed terms and conditions of contracts | Vector Limited. Further, Vector's pricing methodology (published annually under the Electricity Distribution Information Disclosure Determination 2012) is agnostic as to the identity of the retailer (ie, does not provide for Vector to discriminate in Manawa's favour, or against Manawa's competitors), and requires Vector to make disclosures in respect of non-standard contracts. There is therefore no benefit in imposing additional requirements and disclosure obligations in respect of the distributor agreement under clause 6A.4 in these circumstances.

Given this, there will be no impact to the Authority's ability to promote competition in the electricity market for the long-term benefit of consumers. Granting this exemption will not make any changes except to reduce compliance for both Manawa and the Authority.

- b) *Please explain, with reasons, what impact (positive or negative) granting the exemption would have on the Authority's ability to promote reliability of supply for the long-term benefit of consumers?*

There will be no impact to the Authority's ability to promote reliability of supply for the long-term benefit of consumers. Granting this exemption will not make any changes except to reduce compliance for both Manawa and the Authority.

- c) *Please explain, with reasons, what impact (positive or negative) granting the exemption would have on the Authority's ability to promote efficiency for the long-term benefit of consumers?*

There will be no impact to the Authority's ability to promote efficiency for the long-term benefit of consumers. Granting this exemption will not make any changes except to reduce compliance for both Manawa and the Authority.

- d) *If applicable to your application, please explain, with reasons, what impact (positive or negative) granting the exemption would have on the Authority's ability to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers?*

There will be no impact to the Authority's ability to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers. Granting this exemption will not make any changes except to reduce compliance for both Manawa and the Authority.

## **7. In your opinion, should the exemption be granted with terms or conditions? In your opinion, what terms or conditions would reasonably be considered necessary?**

Manawa proposes the following condition to give the Authority comfort that the Authority can continue to monitor the Manawa exemption (if granted) and Ms Urlwin dispensation in a cohesive way, having regard to the inherent linkages between the two and the Authority's statutory objectives.

*"Manawa agrees that the Authority may review this exemption at any time if Dispensation 002 (Ms Urlwin) is terminated for any reason".*

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## **8. Are there any previous similar exemptions?**

*Identify any previous exemptions you have been granted, or that you are aware have been granted to other participants, that are similar to the exemption you seek, and which may provide a guide to how your application could be considered. State how the other exemptions are similar to, and different from, the exemption you are seeking.*

Dispensation 002: Ms Urlwin was granted a dispensation from the requirement to comply with clauses 6A.3(20), 6A.4(1), 6A.5(1), 6A.6(20), 6A.7, 6A.8 and Schedule 6A.1, in relation to her appointment as a director of Vector Limited (Vector) while she is also a director of Infracore Limited.

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## **9. What impact will granting the exemption have on the overall scheme of the Code?**

*Explain what impact, in your opinion, the granting of the exemption will have on your, and other participants', ability to comply with other provisions of the Code.*

The granting of the amendment to the existing exemption will have no impact on the overall scheme of the Code.

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## **10. What effects will there be on other participants?**

*Describe who may be affected by the granting of the exemption and how they might be affected, including market operation service providers, and any costs and benefits to them (for example, whether there will be any financial or commercial effect on other participants or, if this exemption was granted to another participant, the effect it would have on you).*

Granting of the exemption will have no effects on other participants.

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## **11. How long do you need the exemption for?**

*Bearing in mind that an exemption is intended to be an interim measure until a permanent solution is implemented, specify how long you are seeking the exemption for. Additionally, please include details if there is a specific event*

*(such as a substation upgrade, or the customer switches to another trader etc) that may mean that the exemption could end sooner. Give reasons for the period that you specify.*

The exemption is required for the length of time that Ms Urlwin holds a director position at both Infratil and Vector.