

Application for an amendment to the exemption from arm's-length rules: Top Energy Limited

Draft Decision Paper

12 September 2019

Draft

Executive summary

Draft Amendment to Decision No. EA003

The Electricity Authority (Authority) seeks comments from interested parties on a proposed amendment to an exemption (amendment) granted under section 90 of the Electricity Industry Act 2010 (Act), relating to the involvement of a person in a distributor and a connected generator. The Authority requests that comments are provided no later than 5 pm on 29 October.

Applicant Top Energy Limited (Top)

Background Top is an electricity distributor in the Far North. Ngawha Generation Limited (NGL) is a wholly owned subsidiary of Top. NGL owns Ngawha Power Station (Ngawha). Although Top's initial proposal was to expand Ngawha to a total capacity of 64 MW (under its current exemption of up to 65 MW) –completion of Top's exploratory drilling programme indicates Ngawha will be able to generate more than previously thought. This increase in generation requires an amendment of the exemption to permit generation up to a nameplate capacity of 75 MW. The expansion of Ngawha's capacity over 65 MW would mean that NGL would become a connected generator in relation to Top, under section 76 of Part 3 of the Act.

Summary of application: The application requests that the Authority amend the current exemption, under section 90(5) of the Act, by changing the nameplate capacity in condition 2(a) from 65 MW to 75 MW.

While considering the application from Top, the Authority has also decided to consider amending the expiry date in condition 2(e) of the current exemption, to increase the term to align with NGL's resource consent.

Summary of draft decision: The Authority proposes to grant the application for an amendment under section 90(5) of the Act to the current exemption by:

- (a) increasing the nameplate capacity in condition 2(a) from 65 MW to 75 MW
- (b) increasing the period in condition 2(e) from 10 years to 35 years.

Summary of proposed amended exemption:

If the Authority grants the request for an amendment, the amended exemption would apply to the same parties that are covered by the current exemption, ie Top, NGL, the directors of

both Top and NGL, the chief executive officer of Top or person holding an equivalent position, the chief financial officer of Top or person holding an equivalent position, and the general manager corporate services of Top or person holding an equivalent position. The proposed amendment would mean that these parties were exempt from the requirement in section 76(2) of the Act to comply with arm's-length rules 9 and 10 in Schedule 3 of the Act, subject to the following conditions:

- (a) the exemption would apply in relation to the expansion of Ngawha Springs Power Station up to a nameplate capacity of 75 MW
- (b) the exemption from the requirement to comply with rule 10 would only apply to the appointment of management to positions of material influence over NGL
- (c) Top and NGL would be prohibited from engaging in retailing, as that term is defined in the Act, to any customer connected to Top's distribution network
- (d) the exemption would apply while Top and NGL are wholly-owned by the Top Energy Consumer Trust
- (e) the exemption would apply until 31 July 2052.

Date of draft decision:

5 September 2019.

Date of amendment:

It is proposed that the amended exemption would take effect from the date notified in the New Zealand Gazette.

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1 The Application

Top and Ngawha provide electricity in the Far North

- 1.1 Top is an electricity distribution business (distributor) responsible for the supply of electricity in the Far North. It is owned by the Top Energy Consumer Trust (Trust), on behalf of approximately 31,000 consumers.¹
- 1.2 NGL is a wholly owned subsidiary of Top that owns and operates 32 MW of geothermal generation at Ngawha Power Station (Ngawha) connected to Top's distribution network.
- 1.3 In 2017 Top proposed expanding Ngawha to a total capacity of 65 MW, and applied for an exemption under section 90 of the Act to two of the arm's-length rules.

Top and NGL currently have an exemption under section 90 of the Act

- 1.4 The Authority may exempt any business or involvement (as defined by section 74 and Schedule 2 of the Act) from the application of any of the provisions of Part 3 of the Act, on any terms or conditions that it reasonably considers are necessary to give effect to the purpose of Part 3 of the Act.
- 1.5 On 7 October 2017, the Authority granted an exemption with the following conditions:
 - (a) the exemption applies in relation to the expansion of Ngawha Springs Power Station up to a nameplate capacity of 65 MW
 - (b) the exemption from the requirement to comply with rule 10 only applies to the appointment of management to positions of material influence over NGL
 - (c) Top and NGL were prohibited from engaging in retailing, as that term is defined in the Act, to any customer connected to Top's distribution network
 - (d) the exemption applies while Top and NGL are wholly-owned by the Trust
 - (e) the exemption applies for a period of 10 years from the date it was notified in the gazette notice ie until the end of 1 November 2027.
- 1.6 The exemption, granted under section 90(1)(b) of the Act, applies to Top, NGL, the directors of Top and NGL, and certain of Top's managers from the requirement in section 76 of the Act to comply with arm's-length rules 9 and 10 in Schedule 3 of the Act, in relation to their involvement in NGL (Appendix B).

This draft decision relates to the expansion of Ngawha

- 1.7 This draft decision relates to the exemption described in paragraph 1.6, regarding Top's involvement in NGL. Top's wholly owned subsidiary NGL retains resource consent for geothermal fluid extraction sufficient to increase the nameplate capacity of generation at Ngawha up to 100 MW until July 2052.
- 1.8 Top's initial proposal was to expand the nameplate generation from the existing 32 MW to 64 MW at this stage. The exemption amendment application is for the same proposed expansion but increasing the limit from the 65 MW² originally granted, up to a maximum

¹ [Top Energy Annual Report 2015/16](#)

² Although the original application from Top was for a maximum of 64 MW, the Authority granted the exemption for 65 MW in case the final nameplate was slightly more.

of 75 MW. Any further expansion would require a further exemption amendment application to the Authority.

- 1.9 As noted in the amendment application (Appendix A), Top's original exemption application was based on the enthalpy experienced with the existing production wells. Test results on the new wells indicate they will be able to generate up to 11 additional MW.
- 1.10 As Top and NGL only have an exemption up to 65 MW, Top as a distributor, and NGL as a connected generator, their respective directors, and Top's management would be required to ensure corporate separation, and to comply with the arm's-length rules in Schedule 3 of the Act in relation to the additional 10 MW.
- 1.11 However, Top has estimated the cost of separate management for NGL, as required by arm's-length rules 9 (separate management) and 10 (directors and managers must not be placed under certain obligations), to be in excess of \$1million per annum. Top has applied for the amendment because it considers separate management unnecessary to achieve the purpose of Part 3. It therefore seeks to maintain its existing management arrangements.
- 1.12 Top has applied for an amendment to the exemption in relation to NGL's generation at Ngawha, up to 75 MW.
- 1.13 Top has stated that it would be appropriate to grant an amendment to its exemption subject to the same conditions imposed on its existing exemption.

2 The purpose of Part 3 of the Act is to promote competition

- 2.1 The Authority administers Part 3 of the Act, which relates to the separation of distribution from certain generation and retailing activities, and imposes restrictions on the involvement of distributors in certain generation and retailing activities. Prior to the Act, similar provisions were contained in the Electricity Industry Reform Act and were administered by the Commerce Commission.
- 2.2 Section 72 of the Act provides that the purpose of Part 3 is to promote competition in the electricity industry:
 - (a) by prohibiting a person who is involved in a distributor from being involved in a generator where that may create incentives and opportunities to inhibit competition in the electricity industry
 - (b) by restricting relationships between a distributor and a generator or retailer, where those relationships may not otherwise be at arm's-length.
- 2.3 Implicit in the purpose outlined above is that the involvements to which Part 3 applies, and relationships between parties that are involved, may inhibit competition in the electricity industry.
- 2.4 The solution, as implemented in Part 3 of the Act is to require ownership separation, corporate separation, and the implementation of other safeguards such as arm's-length rules and other requirements relating to use-of-system agreements.
- 2.5 Relevant to the proposed expansion of Ngawha, section 76 of the Act imposes corporate separation and arm's-length rules for distributors and connected generators where the generation exceeds 50 MW.

Section 90 allows the Authority to grant exemptions

- 2.6 Section 90(1) of the Act provides that the Authority may, by notice in the Gazette, exempt:
- (a) any business or involvement from the application of Part 3; or
 - (b) any person from compliance with any provisions of Part 3.
- 2.7 Section 90(2) of the Act provides that the Authority may grant an exemption only if it is satisfied that:
- (a) the exemption will either promote, or not inhibit, competition in the electricity industry
 - (b) the exemption will not permit an involvement in a distributor and a generator or retailer that may create incentives and opportunities to inhibit competition in the electricity industry.
- 2.8 Our previous decision paper³ details statutory criteria and considerations in section 90 of the Act with regards to the original exemption.
- 2.9 Appendix D describes in more detail the relevant provisions in Part 3 of the Act.

We used the original analysis to assess the effect of the requested amendment

- 2.10 The Authority reviewed the previous analysis and set out to determine if the increase from 65 MW to 75 MW would materially affect the circumstances in which the Authority granted the current exemption.

The Authority may impose conditions

- 2.11 Section 90(4) of the Act provides that the Authority may grant an exemption on any terms and conditions that it reasonably considers are necessary to give effect to the purpose of Part 3 of the Act.
- 2.12 The Authority may impose conditions on an exemption to address specific competition concerns that are identified in the Authority's analysis, where those conditions allow the Authority to be satisfied the statutory criteria and the purpose of Part 3 are met.
- 2.13 The Authority has considered it prudent to evaluate the conditions of the original exemption when considering this amendment.

3 The Authority has issued guidance about its process

- 3.1 The Authority has issued guidelines on Part 3 of the Act (Guidelines).⁴
- 3.2 Paragraph 46 of the Guidelines describe the process the Authority will follow when it receives an application for an exemption:
- (a) register the application, including publishing the application on the Authority's website (the Authority will not publish confidential information)
 - (b) investigate the application (which may include interviewing and seeking comment from relevant parties)

³ <https://www.ea.govt.nz/dmsdocument/22670-final-decision-application-for-exemption-from-top-energy-limited-ngawha>

⁴ [Guidelines on Part 3 of the Electricity Industry Act 2010 - https://www.ea.govt.nz/dmsdocument/9541](https://www.ea.govt.nz/dmsdocument/9541)

- (c) determine to grant, or decline to grant, an exemption.
- 3.3 The Authority has stated in paragraph 48 of the guidelines that in most cases, the Authority may also publish a draft decision, including any proposed conditions, and seek comments on the draft, prior to making a final decision. This document gives effect to that part of the Guidelines.
- 3.4 Top has already made the declaration in paragraph 47 of the guidelines that the information included in the application is true and correct, and that all relevant information has been provided.

The approach for the current exemption

- 3.5 The approach used in the assessment for the current exemption was to compare the proposed exemption to a counterfactual where Top proceeded with the proposed generation expansion, but implemented separate arms-length management for NGL, the Top Energy subsidiary that manages the Ngawha plant.
- 3.6 In its application for this amendment, Top has confirmed the information they supplied in the original exemption application, and therefore the counterfactual used by the Authority, has not changed.
- 3.7 The Authority assessed the original exemption application against the criteria in the Act, including relevant matters in the Guidelines and application template:
 - (a) whether granting the exemption would either promote, or not inhibit, competition in the electricity industry
 - (b) whether granting the exemption would create incentives and opportunities to inhibit competition in the electricity industry
 - (c) whether granting the exemption would create opportunities for a distributor to cross-subsidise the connected generator
 - (d) whether the exemption, in respect of a business or involvement, would permit a relationship between a distributor and a retailer or generator that was not at arm's-length
 - (e) the temporal nature of the exemption and any incentives or opportunities it may create.
- 3.8 The markets focused on by the exemption analysis were the network services market, the national and local wholesale markets, and the local retail market.

The approach for this proposed amendment

- 3.9 Authority staff have reviewed the analysis conducted as part of the assessment of the current exemption, as outlined in the 2017 Final Decision Paper. In summary, the analysis is unaffected by the proposed increase in the size of the exemption from 65 MW to 75 MW.
- 3.10 The proposed change in generation plant capacity would impact only on the discussion around the potential effects of the exemption on the national and local wholesale markets. The original analysis of the network services and local retail markets was qualitative in nature, and the increase of the proposed generation plant capacity would not affect the reasoning behind the conclusion of those sections.

- 3.11 We consider the quantity or identity of the directors or managers involved are not relevant to the impact analysis of the proposed increase in generation plant capacity for the purposes of this amendment.

The Authority is reconsidering the exemption expiry date

- 3.12 When evaluating the amendment application against the current exemption, the Authority considered whether the current 10 year limitation was still appropriate.
- 3.13 In the 2019 TPM issues paper⁵, the Authority's preferred option for prudent discounts was to make them available for the full life of an asset. The reason for this was that "this would give a party greater certainty that a prudent discount will be available for the full life of its investment, thus reducing unnecessary uncertainty and promoting efficient investment."
- 3.14 NGL holds a resource consent for use of the geothermal resource for 35 years. This can be considered the life of the asset, because there is no certainty that a new resource consent would be granted at the expiry of the current one.
- 3.15 The Authority considers the logic from the TPM issues paper also applies in the case of this exemption. Extending the Top exemption to the life of the resource consent would provide Top and NGL with appropriate certainty, and would be consistent with the TPM preferred option. We also note that the other two exemptions the Authority has granted under section 90(1)(b) are valid for the life of the cross-directorship of the applicable parties, so that granting an extended exemption period would not be without precedent.

4 The conclusions of the original analysis remain unchanged

- 4.1 The conclusions of the original analysis based on an assumed 64 MW expansion in generation are unchanged by the proposed increase in assumed generator size to 75 MW.

The impact of the change on the national wholesale market

- 4.2 The original analysis argued that at 64 MW the proposed plant "makes the expansion at Ngawha insignificant in the context of the national market and in its ability to influence price". The proposed increase in size from 64 MW to 75 MW would not change this conclusion.

The impact of the change on the local wholesale market

- 4.3 The original analysis argued that the proposed (as it then was) exemption would not impact on the local wholesale market because of a lack of impact on local price differences associated with the plant expansion. We have not attempted to recreate the modelling work used to reach this conclusion, but are satisfied that the current market rules are sufficient to ensure that NGL would not be able to manipulate prices to the detriment of the market in the event of local grid constraints.

Without an exemption

- 4.4 The Authority considers that if the Authority were not to grant the amendment, as in the original counterfactual, the following would occur:

⁵ <https://www.ea.govt.nz/dmsdocument/25466-consultation-paper-transmission-pricing-methodology2019-issues-paper-full-document>

- (a) NGL would continue with its proposed expansion of Ngawha from 32 MW to 75 MW (proposed nameplate capacity)
- (b) NGL (and therefore Ngawha) would continue to be wholly owned by Top
- (c) Ngawha's output would mostly be hedged in the forward markets
- (d) Ngawha would remain connected to Top's distribution network
- (e) Top and NGL would continue to operate under corporate separation
- (f) Top and NGL would comply with the arm's-length rules (including rules 9 and 10) in the Act.

5 The exemption continues to meet the tests in the Act

- 5.1 The detailed statutory criteria for evaluation of an application under section 90 of the Act are contained in our previous decision paper for the current exemption. As we have only considered the change of an increase in MW and the expiry date of the original exemption, staff consider the original evaluation remains valid. A summary of the Authority's original analysis is in Appendix C.
- 5.2 If the Authority grants the requested amendment, with the conditions it proposes, it can be satisfied that:
 - (a) the amendment would not inhibit competition in the electricity industry (section 90(2)(a) of the Act)
 - (b) the amendment would not permit an involvement in a distributor and a generator that may create incentives and opportunities to inhibit competition in the electricity industry (section 90(2)(b) of the Act).
- 5.3 The Authority notes section 80 of the Act provides for significant pecuniary penalties for a breach of Part 3. In addition, under section 90(5), the Authority has the power to revoke an exemption or impose additional conditions on an exemption at any time, which could be prompted by evidence of any such behaviour.
- 5.4 The Authority plans to monitor the situation to ensure the conditions of the exemption continue to be met. Actions that would cause the Authority to re-evaluate the exemption include, but are not limited to, evidence that Top has breached any of the conditions or exhibited any behaviour that may limit competition. An example of limiting competition would be placing barriers to other distributed generators entering the market in Top's network.

6 Comments sought

- 6.1 The Authority seeks comments from interested parties on the proposed amendment. The Authority requests that comments are provided no later than 5 pm on 29 October 2019.
- 6.2 After taking any comments into account, the Authority will make its final decision on the application and, if it decides to proceed, publish an amendment notice to the current exemption in the Gazette.

7 Attachments

- 7.1 Appendix A – Application for Exemption Amendment from Top Energy Limited

- 7.2 Appendix B – Top Energy Limited existing exemption under the Electricity Industry Act 2010
- 7.3 Appendix C – Summary of the Authority's original analysis of the statutory criteria
- 7.4 Appendix D - Schedule 3 of the Electricity Industry Act 2010: Arm's-length rules
- 7.5 Appendix E - Draft Gazette notice.

Draft

Appendix A Application for Exemption Amendment from Top Energy Limited



The Chief Executive
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By Email

Dear Sir

TOP ENERGY LIMITED EXEMPTION DECISION NO. 3

I refer to the Authority's Decision No. 3 which relates to the granting of an exemption from the Arm's Length Rule relating to common management of a generation and a network business, issued on 2 October 2017, required in respect of an estimated 33MW (nameplate) [26 MW (net)] expansion to the Ngawha Springs geothermal generation facility.

The exemption was granted (on a number of conditions) in respect of generation capacity of, in total, 65 MW (nameplate).

Top Energy's original exemption application was based on an enthalpy assumption of 950kj/kg. This assumption was based upon the enthalpy experienced with the existing production wells. Since the exemption was granted, Top Energy has completed its drilling programme and has identified that the new wells have increased enthalpy sufficient to generate approximately 32 MW (net), instead of the originally calculated 26MW. The test results for the new wells are showing enthalpy of 1005kj/kg. To efficiently utilise this increased level of energy content, a minor plant capacity increase was required, with a resulting change in nameplate capacity. As a result, the limit of generation to which the exemption applies, is no longer sufficient.

For these reasons, a minor amendment is sought to the existing exemption which does not undermine the rationale on which the exemption was granted, nor, in Top Energy's view, require further consultation.

Top Energy Limited hereby applies for an amendment to the existing exemption to increase the generation capacity on which it is based from 65MW to 75MW, to reflect the greater capacity available and to ensure the Ngawha resource is used most efficiently.

No other aspects of the original application (other than for the newly appointed directors, details below) or the exemption granted are the subject of this application.

Paragraph 25 of the original application listed the details of the directors of both Top Energy and Ngawha Generation Limited. Since lodging the original application, a number of changes have occurred in relation to the structure and individuals appointed as directors to these companies.

Presently, the Directors of Top Energy are:

- Euan Richard KROGH – Chairman
- Jason John McDONALD
- David Alexander SULLIVAN
- Paul Irven WHITE
- Simon Venn YOUNG

The directors of Ngawha Generation Limited include Messrs Krogh, Sullivan and Young plus Dr Robert Duncan KIRKPATRICK and Keith Neville TEMPEST.

The three managers, Messrs Shaw, Doherty and James, details for whom were set out in Paragraph 10 (c), (d) and (e) and were included in the original exemption, remain the same.

For the purposes of this application, Top Energy confirms that the information on which the original application is based (other than in respect of the changes in directors referred to above) remains correct.

We are hopeful that the Authority is in a position to deal with this application with urgency.

This application is made by Top Energy Limited (Company).

The Company confirms that:

- All information requested by the Electricity 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.
- The Company undertakes to advise the Authority immediately of any material change in circumstances relating to the application.

Top Energy Limited

Date: 27.08.2019

Signed by



**Russell Shaw
Chief Executive**

I am the Chief Executive Officer of the Company and am authorised to make this application.

Appendix B Top Energy Limited existing exemption under the Electricity Industry Act 2010

NEW ZEALAND GAZETTE, No. 104 — 12 OCTOBER 2017

Exemption Under Section 90(1)(b) of the Electricity Industry Act 2010 in Connection With Expansion of Ngawha Springs Generation Plant

In accordance with section 90(1)(b) 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 section 76(2) of the Act to comply with rule 9 and rule 10 of Schedule 3 of the Act:

- a. Top Energy Limited (“Top Energy”);
- b. Ngawha Generation Limited (NGL);
- c. the directors, from time to time, of Top Energy;
- d. the directors, from time to time, of NGL;
- e. the chief executive officer of Top Energy, or person holding an equivalent position;
- f. the chief financial officer of Top Energy, or person holding an equivalent position; and
- g. the general manager corporate services of Top Energy, or person holding an equivalent position.

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

- a. This exemption applies in relation to the expansion of Ngawha Springs Power Station up to a nameplate capacity of 65MW.
- b. The exemption from the requirement to comply with rule 10 only applies to the appointment of the persons identified in clause 1(e) to (g) to positions of material influence over NGL.
- c. Top Energy and NGL must not engage in retailing, as that term is defined in the Act, to any customer connected to Top Energy’s distribution network.
- d. The exemption applies while Top Energy and NGL are wholly owned by the Top Energy Consumer Trust.
- e. The exemption applies until the close of 1 November 2027.

3. Commencement—This exemption comes into force on **1 November 2017**.

Dated at Wellington this 7th day of October 2017.

For and on behalf of the Electricity Authority:
DR THOMAS BRENT LAYTON, Chairperson.

2017-au5293

Appendix C Summary of the Authority's original analysis of the statutory criteria

Table 1: Will the exemption promote, or not inhibit, competition in the electricity industry?

Market		Ngawha expansion with corporate separation and full arm's-length rules (the counterfactual)	Ngawha expansion occurs anyway. Impact of allowing shared management by granting an exemption with no conditions	Same as previous column but with conditions (the factual)
Network Support	Top	No impact	No impact	No impact
	NGL	No impact	No impact	No impact
Wholesale	Top	May inhibit competition (but occurs regardless of exemption)	No impact	No impact
	NGL	May promote competition	No impact	No impact
Retail	Top	May inhibit competition (but occurs regardless of granting exemption)	No impact	No impact
	NGL	May promote competition	No impact	No impact

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

Market		Ngawha expansion with corporate separation and full arm's-length rules (the counterfactual)	Ngawha expansion occurs anyway. Allowing shared management by granting an exemption with no conditions	Same as previous column but with conditions (the factual)
Network Support	Top	No	No	N/A
	NGL	No	No	N/A
Wholesale	Top	Very modest incentives and opportunities to inhibit competition may be created	No – severe consequences for shared management if found to breach Part 6 of the Code or the arm's-length rules make incentives comparable	N/A
	NGL	No practical opportunity to inhibit competition in the local market during a grid constraint	No – incentives and opportunities are unchanged by shared management	N/A
Retail	Top	Incentives and opportunities to inhibit competition may exist, but would be reduced by separate management	Yes – additional incentives or opportunities may be created by shared management if Top or NGL retail electricity on Top's network	No – a condition removes the opportunity to inhibit competition by restricting Top and NGL from retailing to consumers on Top's network
	NGL			

	Ngawha expansion with corporate separation and full arm's-length rules (the counterfactual)	Ngawha expansion occurs anyway. Allowing shared management by granting an exemption with no conditions	Same as previous column but with conditions (the factual)
Opportunities to cross-subsidise a generator	Incentives and opportunities exist, but would be mitigated by separate management	No – severe consequences for shared management if found to breach the arm's-length rules make incentives comparable	N/A
		Yes – incentives and opportunities for shared management to cross-subsidise NGL may be increased by a new ownership model if the Trust divests ownership of Top and NGL	No – The exemption applies only if Top and NGL are owned by the Trust

Appendix D Schedule 3 of the Electricity Industry Act 2010: Arm's-length rules

Separate management rule

- 9(1) This clause applies if business A is involved in—
- (a) a generator that has a total capacity of more than 50 MW and that is connected to any of business A's networks; or
 - (b) a retailer that retails more than 75 GWh of electricity in a financial year to customers who are connected to any of business A's networks.
- (2) A manager of business A must not—
- (a) be a manager of business B; or
 - (b) be an associate of business B, other than by virtue of being a manager of business A; or
 - (c) be involved in the business of business B.

Directors and managers must not be placed under certain obligations

- 10(1) Subject to subclause (2), no person may place a director or manager of business A under an obligation, whether enforceable or not, to act in accordance with the directions, instructions, or wishes of business B, or any director or manager or associate of business B, or any parent of business B, and no director or manager may submit to any such obligation.
- (2) A common parent, or a cross-director or a cross-manager, of both business A and business B may place a director or manager under an obligation referred to in subclause (1) if doing so does not contravene another of the arm's-length rules.

DR10

Appendix E Draft Gazette notice

Amendment to exemption under section 90(1)(b) of the Electricity Industry Act 2010 in Connection with Expansion of Ngawha Springs Generation Plant

In accordance with section 90(5) of the Electricity Industry Act 2010 (“Act”), the Electricity Authority (“Authority”) gives the following notice.

Notice

1 Principal exemption and commencement

- (1) This notice amends the exemption granted by the Authority on 7 October 2017, under section 90(1)(b) of the Act, entitled ‘Exemption Under Section 90(1)(b) of the Electricity Industry Act 2010 in Connection With Expansion of Ngawha Springs Generation Plant’ (“principal exemption”).
- (2) This notice comes into force on the day after the date it is notified in the *New Zealand Gazette*.

2 Amendments to principal exemption

- (1) Replace clause 2(a) of the principal exemption with:
“a. This exemption applies in relation to the expansion of Ngawha Springs Power Station up to a nameplate capacity of 75MW.”
- (2) Replace clause 2(e) of the principal exemption with:
“e. The exemption applies until the close of **31 July 2052.**”

Dated at Wellington this ____ day of _____ 2019.

For and on behalf of the Electricity Authority:

Thomas Brent Layton, Chair.

Glossary of abbreviations and terms

Act	Electricity Industry Act 2010
Authority	Electricity Authority
Code	Electricity Industry Participation Code 2010
MW	Megawatt(s)
NGL	Ngawha Generation Limited
Top	Top Energy Limited

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