

Electricity Authority
By Email : compliance@ea.govt.nz



MainPower New Zealand Limited
172 Fernside Road, RD 1 Kaiapoi 7691
PO Box 346, Rangiora 7440
T. 0800 30 90 80

Dated 01 December 2023

Dear Sirs

RE: Submission re: Decision to grant Part 6A dispensations

- 1 This is MainPower New Zealand Limited's (**MainPower**) submission on the Electricity Authority's draft decision to amend existing exemption EA 003 to exempt members of senior management common to both Top Energy Limited and Ngāwhā Generation Limited from the requirement to comply with arm's-length rules 9 and 10 in Part 6A of the Code.¹
- 2 MainPower holds resource consent for a wind farm site located on the Mount Cass ridge near Waipara in North Canterbury. We plan to use 22 wind turbines, which will be capable of producing 93 MW of energy, enough to power 40,000 homes. When completed, the wind farm will be the largest wind farm in the South Island, providing greater resilience to North Canterbury's electricity supply. It will have the capacity to offset 100,000 tonnes of greenhouse gas emissions and will be the largest wind farm in the country that is owned by a participant that is not a generator-retailer.
- 3 The Mount Cass wind farm is still many months away from being connected to the MainPower network and there is no requirement for MainPower to comply with Part 6A of the Code at this time. However, Part 6A of the Code has given rise to many uncertainties and MainPower supports the steps the Electricity Authority (the **Authority**) is taking to clarify when and how Part 6A applies to specified persons, industry participants and connected generators.
- 4 We welcome a decision from the Authority but we are unsure whether the Authority's draft decision to amend exemption EA 003 fully addresses those underlying uncertainties in respect of specified persons.

Whether specified persons are required to comply with the Code

- 5 From MainPower's perspective, the key area of uncertainty is whether specified persons are required to comply with the Code. The Authority's draft decision appears to assume that specified persons are required to comply with the Code but we submit that this needs to be clarified in the legislation.

¹ MainPower does not seek to make any submissions in relation to the Authority's draft decision on the request for an exemption from complying with the arm's-length rules in respect of the solar generation.

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- 6 Section 9 of the Act clearly states that every industry participant must register as an industry participant and comply with the Code. However, the Act does not contain a comparable provision relating to specified persons. Section 32(3) of the Act states that the “Code may impose obligations on a specified person for the purpose of restricting relationships between two classes of industry participants, where those relationships may not otherwise be at arm’s length.” However, the Act does not say that specified persons must comply with the Code. This means there is uncertainty as to whether a specified person will ever need a dispensation if they are not required to comply with the Code.
- 7 It is also unclear whether exemption EA 003 continues to have effect in respect of the members of senior management common to both Top Energy and Ngāwhā Generation (specified persons) because arguably they are not required to comply with the Code.
- 8 This uncertainty is unhelpful for participants that are progressing distributed generation projects, including renewable generation projects, as it creates uncertainty over the regulatory rules that apply. If we are correct in identifying this uncertainty, we submit that it would be best for this underlying issue to be clarified as soon as possible so as not to increase costs of prospective investors and deter investment, especially in renewables.
- 9 We submit that the approach that would provide the greatest certainty would be for the Authority to clarify that specified persons are not subject to Part 6A of the Code at this time and approach MBIE urgently to discuss whether new regulations should be made under section 109(1)(ab) of the Act stating that specified persons are a class of industry participant that is required to comply with the Code but not required to register under section 9 of the Act. If such regulations are made, it will then be clear that specified persons are required to comply with Part 6A from the time the regulations take effect.
- 10 Alternatively, MBIE could consider the less expedient (but even more certain) option of seeking an amendment to sections 7, 9 and/or 32 of the Act to make it clear that Part 6A was intended to apply to specified persons (if that is the policy intent) and, in the meantime, the Authority could issue clear guidance to the industry on how to navigate the uncertainties surrounding Part 6A until such time as the Act is amended.
- 11 If the government’s decision is to not make these regulations, we submit that the Authority should then propose and consult on an amendment to remove reference to specified persons from clause 6A.9 of the Code for the time being.
- 12 Either way the position will be clear.
- 13 If, however, we are wrong in our view and specified persons are required to comply to Part 6A then MainPower supports the Authority’s draft decision for the reasons it has given.
- 14 Please do not hesitate to contact us if you have any queries about our submission.

Yours Sincerely



SARAH BARNES

Acting GM Commercial

MainPower New Zealand Limited