

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

Date: 15 April 2025

Applicant: WEL Networks Limited
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Application: Pursuant to section 11(2) of the Electricity Industry Act 2010 (**Act**), application is hereby made to the Electricity Authority (**Authority**) for an amended exemption from compliance with Schedule 6A.3(2) Clauses 3G, 3H, 3I and 3J under Part 6A of the Electricity Industry Participation Code 2010 (**Code**).

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1. EXECUTIVE SUMMARY

- 1.1 In October 2024 WEL Networks Limited ("**WEL**") was granted an exemption by the Authority to Schedule 6A.1 Clauses 3G, 3H, 3I and 3J under Part 6A of the Code for its generation assets to a maximum capacity of 65.963MW which included our network battery ("**BESS**") Rotohiko, our two large solar farms Taiohi and Rangimarie and some incidental generation assets on our own buildings. During WEL's original exemption application we did make note to the Authority that we were exploring more options for generation but did not have any specific information we could provide at the time.
- 1.2 WEL is now able to provide those details and is seeking an amendment to our existing exemption condition (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)* to include these generation assets as further detailed under paragraph 4.4 and defined together as the "**New Generation Assets**". WEL is seeking our total maximum capacity to increase to 93.013MW.
- 1.3 WEL is also seeking to add another named person, currently David Barnett (WEL CFO) is Acting CEO of NewPower Group and we would request Emma Elliott (WEL Financial Reporting Manager) is added as she is currently Acting WEL CFO. WEL is not seeking an amendment to any other conditions.
- 1.4 On 8 April 2025 Ministry of Business Innovation & Employment ("**MBIE**") released the Cabinet Paper which states that under the upcoming Energy and Electricity Security Bill they are seeking to remove the current generation threshold of 50MW threshold in Part 6A of the Code. However, until the Bill passes and is enacted WEL and the Authority must abide by the existing requirements under the Code.
- 1.5 WEL continues to deem the costs and inefficiencies associated with WEL complying with the full arm's-length rules are material and WEL's exemption does not inhibit competition in the electricity market. The findings of MBIE in their Cabinet paper back this position and through safeguards in other regulatory requirements, such as the Code and the Commerce Act, the intent of Arm's length can be met.

2. CONTEXT OF EXEMPTION AMENDMENT 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 2050.¹ 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".²
- 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

¹ 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.

² 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>).

2050.³ To put it another way, New Zealand must increase its renewable generation capacity by around 400 to 500 megawatts (MW) every year until 2050.⁴ 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".⁵

- 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 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.⁶ 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".⁷ Ultimately the AER determined that "the benefits to consumers of requiring [distributors] to comply with each of the requirements in the Guideline are outweighed by the costs of compliance with these obligations".⁸
- 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. ENERGY AND ELECTRICITY SECURITY BILL

- 3.1 Recently MBIE, in consultation with the Authority the Commerce Commission and many others was asked to investigate options for inclusion in the Energy and Electricity Security Bill with respect to the amount of generation an electricity distribution business ("**EDB**") may own.

³ *Ibid.*

⁴ 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>).

⁵ Electricity Authority, *Energy Transition Roadmap* (December 2021) at para [3.17].

⁶ 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>).

⁷ *Ibid* Page 3.

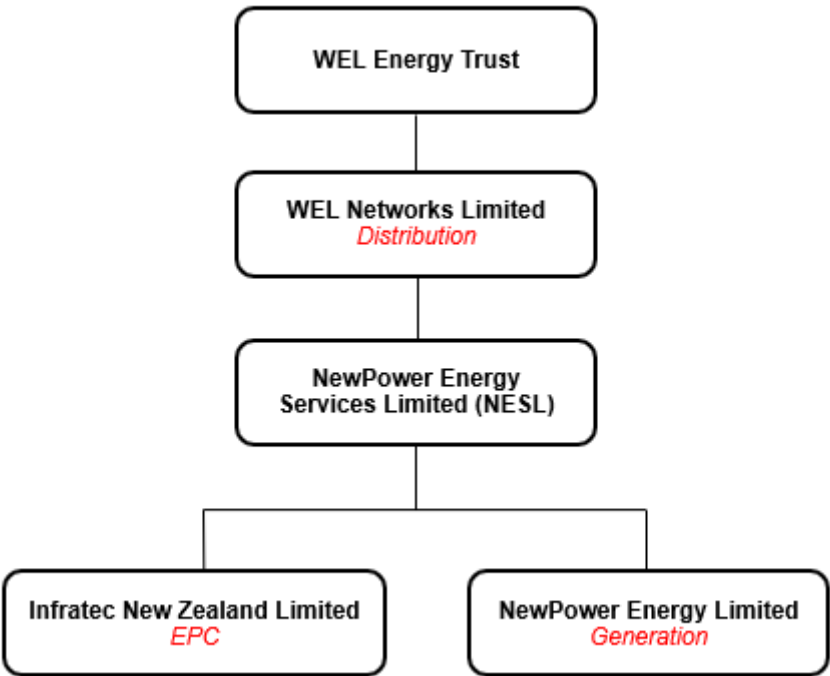
⁸ Australian Energy Regulator *Decision, Distribution ring-fencing class waiver for DNSP-led projects funded under the Australian Government's Community Batteries for Household Solar Program* (February 2023) at page 14 (<https://rb.gy/t2ps6>).

- 3.2 In the Cabinet paper⁹ released 8 April the recommended options were the removal of the current regulatory caps of 50MW and 250MW from being connected to an EDB's own network or Transpower's grid respectively.
- 3.3 The Cabinet paper noted that the current rules were deterring investment in generation at a time when distributed generation should be encouraged to promote regional resilience of the electricity sector. It noted that removing the rules would reduce the administrative burden on EDB's, increasing opportunities for new generation and assist in developing resilience at a local level.
- 3.4 The justification for the removal was, whilst there was concern on the impact of competition, other safeguards exist in the Code through Part 6 and the Commerce Act which imposes cost allocation, related party and information disclosure requirements.
- 3.5 Whilst the Energy and Electricity Security Bill is looking to be put forward in the first half of 2025, it is currently unknown as to what amendments may be made and when it may come into force. As such both the Authority and WEL must abide by the existing requirements under the Code which currently enforce Arm's Length for over 50MW.

4. DESCRIPTION OF WEL'S BUSINESS

- 4.1 WEL and its subsidiaries (together, the "**WEL Group**") build, own and operate over \$750M 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



- 4.2 The relevant entities within the WEL group are as follows:

⁹ Cabinet Paper – Investigating Options to Amend or Remove the Amount of Generation that Electricity Distribution Businesses May Own 8 April 2025

- (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 the Waikato region. 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. NewPower owns, operates and maintains WEL's large generation assets. 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.
- 4.3 The WEL Group have had a couple of staff changes recently and David Barnett (WEL CFO) has been appointed Acting CEO of the NewPower Group and Emma Elliott (WEL Financial Reporting Manager) is currently Acting WEL CEO. We request that Emma Elliott be added as a named person in her current capacity as Acting WEL CFO.

New Generation Assets

- 4.4 The WEL Group, in part using its subsidiary Infratec, is developing the following generation assets which will be connected to its distribution network:
- (a) Two battery sites:
 - (i) WEL is seeking to install a small BESS with a capacity of 50kW and be capable of discharging 100kWh in the Raglan community.
 - (ii) WEL is seeking to install a 2MW BESS in the Raglan community.
 - (b) Two solar sites:
 - (i) NewPower is seeking to purchase a consented solar farm site near [REDACTED] connecting into WEL's network with a connected capacity of 24MW.
 - (ii) WEL is seeking to invest in a 1MW rooftop solar opportunity.

(together, the "**New Generation Assets**").

See **Appendix 2** for a map which sets out the approximate locations of the New Generation Assets.

4.5 The primary purposes of the New Generation Assets are as follows:

- (a) In relation to the small **BESS** (50kW), to provide WEL with an ability to run a trial to understand what systems, communication protocols and capabilities WEL need to invest in to be able to use aggregated small-scale batteries where a non-network solution is more beneficial.
- (b) In relation to the larger **BESS** (2MW), this is for the primary purpose of Raglan area network resilience. In recent years the Raglan community have been severely impacted by storm events and WEL's ability to supply them with a reliable electricity supply during these types of events.
- (c) [REDACTED] generate and inject electricity into the network, for sale by NewPower into the national wholesale market.
- (d) **Rooftop**: generate and sell the generation directly to the tenant through a Power Purchase Agreement with WEL.

4.6 For this application, WEL's working assumption is that the combined capacity of the New Generation Assets would take it beyond the 65.963MW of connected generation under our current exemption to a total of 93.013MW.

5. DESCRIPTION OF EXEMPTION AMENDMENT 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, WEL is seeking an exemption amendment to our existing exemption from compliance with Schedule 6A.3(2) Clauses 3G, 3H, 3I and 3J under Part 6A of the Electricity Industry Participation Code 2010 (**Code**). ("**Proposed Exemption Amendment**").

5.2 As mentioned above, and as detailed in our original exemption application, WEL is a suitable candidate for exemption from compliance with Schedule 6A.3(2) Clauses 3G, 3H, 3I and 3J 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.

When is WEL seeking the amended exemption

5.3 WEL is seeking a decision to our exemption application to be made by 30 June, this will enable us to progress with our plans for our New Generation Assets as soon as possible.

How long the exemption is required for

5.4 WEL is requesting the exemption from the date at which the final New Generation 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. Or, until this exemption is no longer required through legislative change.

Previous similar exemptions by the Authority

5.5 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 Station¹⁰ for generation up to 117MW.

What alternatives did WEL seek

- 5.6 An alternative to this exemption would be to move to have complete separation of Governance and Management. The estimated cost of this alternative was substantial compared the purported benefits of Arm's Length. Sapare's report, which was part of WEL's initial exemption application, showed no negative impact on competition from WEL's exemption request to Arm's Length.

Impact on overall scheme of the Code

- 5.7 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 Amended 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 in WEL's original exemption application.

No adverse effects on other participants

- 5.8 As described further below, the Proposed Amended 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 increment by which WEL's generation capacity would exceed the 50MW threshold) is small relative to the total generation in the market. 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 targets.¹¹
 - (b) The Proposed Amendment Exemption does not create any risk of foreclosure in any of the relevant markets.
 - (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.

¹⁰ Electricity Authority, *Final Decision No. EA 333 in relation to Top Energy Limited* (15 December 2023).

¹¹ 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>.

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

(a) The exemption does not undermine competition in the electricity industry

- 6.1 In WEL's first exemption application a competition impact assessment was sought from Sapare which showed that the exemption would have no negative impact on competition.

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

- 6.2 The New Generation Assets would be operated and contribute to the supply of electricity under WEL's network connection standards and would not reduce the reliability of supply. The larger BESS is designed to improve the reliability of supply for the Raglan area.

(c) The exemption seeks to promote the efficient operation of the electricity industry

- 6.3 The small BESS trial is designed to improve WEL's understanding of non-network solutions enabling WEL to go out to market for these potential solutions in the future, therefore seeking more efficient use of investments made by WEL and third parties and the operation of the network

(d) The exemption seeks to promote the interests of domestic consumers and small business consumers.

- 6.4 The small BESS trial is designed to improve WEL's understanding of non-network solutions enabling WEL to go out to market for these potential solutions in the future. Therefore, seeking more efficient use of investments made by domestic and small business consumers in distributed energy resources.

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.

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 Network Limited
Date:	15 April 2025
Signed by:	
Position:	GM Commercial Engagement

