

27 July 2020

Electricity Authority  
PO Box 10041  
**WELLINGTON**

Attention: Part 3 Notices  
marketoperations@ea.govt.nz

**APPLICATION FOR EXEMPTION – SECTION 90 OF THE ELECTRICITY INDUSTRY  
ACT 2010 – JULIA HOARE**

**Application**

1. Under section 90(1)(b) of the Electricity Industry Act 2010 ("**Act**"), an application is hereby made to the Electricity Authority ("**Authority**") for an exemption from compliance with sections 75, 77, 78, 79 and 88 under Part 3 of the Act.

**Details of the Person Filing the Application**

2. This joint-application is made by Meridian Energy Limited ("**Meridian**") and Auckland International Airport Limited ("**AIAL**") on behalf of Julia Hoare ("**Ms Hoare**"). It is not intended that this proposed exemption would extend to the Meridian Board or AIAL Board more widely than Ms Hoare.
3. Please direct any correspondence relating to this application to Cath Shirley-Brown (Partner) and Lucy Clifford (Solicitor) at Russell McVeagh in the first instance. Contact details are:

**Partners**

Frederick Ward  
Brendan Brown  
Malcolm Crotty  
Joe Windmeyer  
Guy Lethbridge  
John Powell  
Ed Crook  
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David Hoare  
Matthew Kersey  
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**Confidentiality**

4. The fact and content of this application are not confidential.

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### Background to application

5. Ms Hoare is currently, and will continue to be, an independent director of AIAL.
6. In September 2019, Meridian appointed Ms Hoare to its Board of Directors as an independent non-executive director. Given she is currently (and will remain) a director of AIAL, as outlined in further detail below, an exemption from certain provisions of Part 3 of the Act is required.
7. We note and rely on the Authority's Decision No. 1 ("**Decision No. 1**") dated 30 April 2012, where a director of AIAL, James Miller ("**Mr Miller**"), was exempted from provisions in Part 3 of the Act for his proposed appointment to the Mighty River Power Limited ("**MRPL**") Board. As with the present case, that exemption resulted in AIAL and MRPL having two common (exempted) directors.<sup>1</sup> Given the similarities between the two applications, the reasoning of the Authority in Decision No. 1 is, in our view, applicable here.
8. We further note by notice in the New Zealand Gazette, number 115 dated 22 October 2015, the Authority granted an exemption to allow a director of AIAL, Dr Patrick Strange ("**Dr Strange**") to serve on both AIAL and MRPL's Boards ("**Dr Strange Decision**"). That exemption also resulted in AIAL and MRPL having two common (exempted) directors.<sup>2</sup> This final decision of the Authority was not published so we do not refer to it in detail in this application.
9. We also note that the Commerce Commission has previously granted exemptions to allow Stephen Reindler (via Decision 649 dated August 2008) and Joan Withers (via Decision 384 dated March 2000) to sit on the Boards of both Meridian and AIAL. We understand these decisions of the Commerce Commission informed the Authority's decision regarding Mr Miller, so again, we do not refer to them in detail in this application.
10. Each decision referred to above was granted with the certain conditions attached. As discussed more fully at paragraph 35, we propose that the same conditions as were applied to Mr Miller in Decision No. 1 and to Dr Strange in the Dr Strange Decision apply to Ms Hoare in the present application.

### Timetable

11. Given that Ms Hoare is concurrently serving as a member of both AIAL and Meridian's Boards, we would be grateful if the Authority could provide its decision on this application as soon as possible.

### Parties

#### *AIAL*

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<sup>1</sup> Ms Joan Withers was already a director of both AIAL and MRPL (and subject to exemptions granted by the Commerce Commission in Decision No. 676) when the Authority granted exemption to Mr Miller in Decision No. 1.

<sup>2</sup> Mr James Miller was already a director of both AIAL and MRPL (and subject to exemptions granted by the Authority in Decision No. 1) when the Authority granted exemption to Dr Patrick Strange in the Dr Strange Decision.

12. AIAL owns and operates Auckland Airport. AIAL provides the infrastructure to support and facilitate a range of aeronautical services including leisure and business aircraft travel and freight movement. In addition to its aeronautical activities, it provides a wide variety of retail, commercial and customer services.
13. AIAL is listed on both the NZX and ASX exchanges. Its largest shareholder is Auckland Council Investments Limited (through its wholly-owned subsidiaries, Airport Shares (Auckland) Limited and Airport Shares (Manukau) Limited).
14. AIAL owns the distribution network across the airport precinct. The network operates at 11,000V, 3,300V, 400V and 230 volts (V) and comprises of transformers, switchgear and underground cables (and associated protection and control equipment). The network is a secondary, or embedded network (type; customer network) and connects to Vector's distribution network.
15. Accordingly, AIAL is registered with the Authority as a line owner, distributor and reconciliation participant. It distributes electricity to consumers at the airport on lines (not being lines that are part of the national grid). Because AIAL distributes over the 5GWh threshold for a 'distributor' under clause 2(c) of Schedule 2 of the Act, it is deemed to be a distributor.

#### *Meridian*

16. As the Authority is aware, Meridian is an electricity generator and retailer.
17. In terms of its generation activities, Meridian owns five windfarms, six hydro-electric power stations, and employs solar installations across New Zealand. In Australia, Meridian owns three hydro-electric power stations and two wind farms.
18. In New Zealand, Meridian's retailing of electricity and complementary products takes place through two brands, Meridian and Powershop ("**Retail Brands**"). Meridian purchases electricity from the wholesale electricity market and sells it to the New Zealand retail segment and to large industrial customers.
19. Meridian supplies electricity to various consumers on the AIAL distribution network through its Retail Brands. Meridian also supplies electricity to AIAL itself.

#### **The nature of the involvement**

20. Section 74 of the Act provides that a person is "involved" in a distributor, a generator or a retailer if the person:  
  
(c) has material influence over a business that does any of those things [distribution, generation or retail].
21. Clause 7 of Schedule 2 of the Act defines "material influence" as being:  
  
(1) Without limiting the ordinary meaning of the expression material influence, the following people are deemed to have material influence over a business:

(a) a director or manager of a person that carries on the business:

22. Therefore, on the basis of the Authority's view in Decision No. 1, upon her appointment to the Board of Meridian, for the purposes of the Act, Ms Hoare was involved in both a distributor (AIAL) and a generator (Meridian).
23. However, as explained below, to the extent that Ms Hoare is involved in both companies, that involvement will not inhibit competition in the electricity industry.

**Particular sections of Part 3 in respect of which an exemption is sought**

24. Part 3 of the Act applies to Ms Hoare as follows:

*Section 75*

25. Section 75 prohibits a person who is involved in a distributor from being involved in a generator. A person who is involved in distribution must not be involved in a generator that has a total capacity of more than 250MW, which is generated by one or more generating plants that are directly connected to the national grid.
26. Meridian's electricity generation capacity, predominately comprising hydro and wind, is 2,713MW. This generation is directly connected to the national grid. Consequently, section 75 is applicable.

*Section 76*

27. Section 76 does not apply because:
  - (a) Meridian does not have 50MW of generation that is connected to AIAL's network, meaning it is not a "connected generator"; and
  - (b) Meridian does not retail more than 75GWh of electricity in a financial year to customers who are connected to AIAL's network, meaning it is not a "connected retailer" for the purposes of this section.

*Sections 77 to 79 and 88*

28. Sections 77 to 79 and section 88 of the Act apply to each director of a distributor in respect of which there is either a "connected retailer" or a "connected generator" (as defined in section 77).
29. Meridian is not a connected generator because it does not have any generation connected to AIAL's distribution network.
30. Meridian is, however, a connected retailer for the purposes of sections 77 to 79 and 88 of the Act. This is because, through its Retail Brands, Meridian retails more than 5GWh of electricity to customers connected to AIAL's network. As such, sections 77 to 79 and 88 of the Act would apply to Ms Hoare as a member of both the Meridian Board and AIAL Board.

31. As relevant, those sections provide:
  - (a) *section 77*: every director of a distributor, where there is a connected retailer, must ensure that the distribution business has a comprehensive, written use-of-systems agreement, and that the terms of that agreement satisfy certain requirements;
  - (b) *section 78*: a distributor and a connected retailer must not pay, or offer to pay, any consideration to a retailer in respect of the transfer to a connected retailer of any retail customers who are connected to the distributor's networks;
  - (c) *section 79*: a director of a distributor must ensure that any rebates or dividends do not discriminate between customers of a connected retailer and customers of other retailers where those customers are connected to the distributor's networks; and
  - (d) *section 88*: each director of a distributor referred to in section 77(1) to ensure that the distributor discloses the quantity of electricity sold each financial year by connected retailers to customers who are connected to its local network.
32. Therefore, pursuant to section 90(1)(b), this application seeks, on behalf Ms Hoare, exemption from compliance with the following provisions of the Act:
  - (a) section 75;
  - (b) section 77;
  - (c) section 78;
  - (d) section 79; and
  - (e) section 88
33. Ms Hoare is a suitable candidate for exemption from compliance with the above provisions of Part 3. Exemption from compliance with the aforementioned sections of the Act will not inhibit competition in the electricity industry and nor would it be contrary to the purpose of Part 3 of the Act or the Authority's objective set out in section 15 of the Act.
34. Finally, we note that in Decision No.1, the Authority granted exemption from compliance with the same provisions for Mr Miller (the director involved in both AIAL and MRPL), but that this exemption did not apply to the remaining directors of AIAL and MRPL. For the avoidance of doubt, in light of the position reached by the Authority in that case, exemption is not sought for the remaining directors of AIAL (other than Dr Patrick Strange who is exempt pursuant to the Dr Strange Decision) or Meridian. Those other directors will continue to comply with sections 77 to 79 and 88 of the Act.

### Conditions

35. The exemptions granted in both Decision No. 1 and the Dr Strange Decision were granted with the Conditions. While we do not consider that any competition issues have or will arise from Ms Hoare's position as a member of both the AIAL and Meridian Boards, consistent with the approach adopted by the Authority in both Decision No. 1 and the Dr Strange Decision, we propose that the same Conditions be applied to Ms Hoare in this application.
36. Accordingly, while a director of both AIAL and Meridian:
- (a) Ms Hoare will not participate in any discussions or decision-making by Meridian and/or AIAL regarding matters that relate to or could affect or favour the supply of electricity by Meridian (or disadvantage any other business selling electricity on AIAL's network other than Meridian) on AIAL's electricity distribution network or the provision of electricity lines services by AIAL to Meridian, including the:
    - (i) selection of, and any negotiation with, any electricity retailer for the supply, or intended supply, of electricity to AIAL; and
    - (ii) supply, or intended supply, of electricity by Meridian to any new or existing consumer on AIAL's electricity distribution network; and
  - (b) Ms Hoare will not disclose the outcome of any discussions or decision-making by AIAL to Meridian (and vice versa) on the matters referred to in paragraph 36(a),
- (together, the "**Conditions**").
37. We note that the proposed exemption will be specific to the cross-involvements created through Ms Hoare's involvement in AIAL and Meridian. It does not extend to any other interest or future cross-involvement of Ms Hoare.

### The relevant markets in the electricity industry

38. In Decision No. 1 the Authority was of the view that the markets relevant to that application (which in all material respects is the same as that now being made) were:
- (a) the national electricity wholesale market;
  - (b) the electricity retail market corresponding with AIAL's network; and
  - (c) the electricity distribution market corresponding with AIAL's network.
39. That being the case, those markets are adopted as the relevant markets for the purpose of this Application.

## **The nature of any incentives or opportunities created**

### *Electricity Retail Market*

40. Consistent with the approach adopted by the Authority in Decision No. 1 (which was consistent with prior Commission decisions), the focus of the Authority's enquiry in relation to electricity retail should be on AIAL's distribution network - ie Meridian airport customers connected to AIAL's network.
41. As the Authority concluded in Decision No. 1, any opportunity for competition to be affected arising out of Ms Hoare's appointment to the Meridian Board will be effectively addressed by the limitations imposed on her participation in matters that relate directly to electricity supply or lines services between Meridian and AIAL. Such limitations include:
  - (a) the Conditions proposed at paragraph 36 above mean that Ms Hoare will not have any involvement in any discussions about the terms and conditions of the use-of-systems agreement between AIAL and Meridian's Retail Brands and/or the supply of electricity to AIAL by Meridian's Retail Brands. As such, there will be no opportunity for Ms Hoare to favour Meridian relative to other retailers;
  - (b) clause 2.11 of the AIAL Board Charter provides that a Director who finds themselves in a conflict between their appointment to the board of AIAL and an involvement in another organisation will "put in place appropriate processes, including excluding themselves from discussions in respect of such businesses, to ensure that the effect of such conflict of interest is minimised"; and
  - (c) similarly, clause 13 of the Meridian Board Charter provides that a Director is "required to take all reasonable steps to avoid actual, potential or perceived conflicts of interests" and "in certain circumstances to abstain from participating in any discussion or voting on matters in which they have a material personal interest".
42. Therefore, exempting Ms Hoare from compliance with the relevant provisions of the Act will not inhibit competition in the electricity industry.

### *National Electricity Wholesale Market*

43. Meridian's generation assets are not directly connected to AIAL's distribution network, and there are no plans to have them connected in the future. As such, granting the exemption sought will not create incentives or opportunities to inhibit competition in the national electricity wholesale market.

### *Electricity distribution market corresponding to AIAL's network*

44. As the Authority noted in Decision No. 1, because AIAL's network is a local natural monopoly, granting of the exemption cannot affect the level of existing competition or the scope for potential competition within this market. As a result,

the granting of this exemption will not create incentives or opportunities to inhibit competition in this market.

**Would the exemption permit any involvement in a distributor and a generator or a retailer that may create incentives or opportunities to inhibit competition in the electricity industry?**

45. For the reasons set out above, the proposed exemption, together with the conditions proposed by the applicant, will not create any incentives or opportunities to inhibit competition in the electricity industry.

**Would the exemption, in respect of an involvement, create incentives or opportunities for a distributor to cross-subsidise the connected generator or a directly connected generator of over 250MW?**

46. The Authority noted in Decision No. 1 that MRPL has no generation directly connected to AIAL's network, meaning that it is not a connected generator. There is no proposal for Meridian to connect any generation assets to AIAL's network. Therefore, granting Ms Hoare an exemption from compliance with sections 75, 77 to 79 and 88 of the Act, subject to the proposed conditions, would not give rise to incentives or opportunities for a distributor to cross-subsidise a connected generator.
47. Further, the proposed conditions to the exemption prevent Ms Hoare from participating in any future discussions or decision-making that relates to, or has the potential to affect or favour, the retail of electricity by Meridian on AIAL's network or the provision of electricity lines services to Meridian.

**Would the exemption, in respect of an involvement, permit a relationship between a distributor and a retailer or generator which is not at arm's-length?**

48. The provisions on arm's length rules in section 76 and Schedule 3 of the Act do not apply:
- (a) Meridian is not a "connected generator" as its generation is not connected to AIAL's distribution network; and
  - (b) Meridian is not a "connected retailer" as it does not retail more than 75GWh of electricity to customers connected to AIAL's distribution network.
49. In any event, the Conditions proposed at paragraph 36 above mean that any relationship would remain at arm's length.

**Declaration**

50. Please find **attached** to this application a Declaration completed by both AIAL and Meridian on behalf of Ms Hoare in the prescribed form.



51. Please do not hesitate to contact us if you have any questions or if any part of this application requires explanation.

### Declaration


THIS APPLICATION is made by:

**Auckland International Airport** and **Meridian Energy Limited**


We hereby confirm that:

- all the information requested by the Electricity Authority is provided;
- all relevant information known to the applicants is provided; and
- all information provided is true and correct as at the date of this application.

We undertake to advise the Authority immediately of any material change in circumstances relating to the application.

Company name:	Meridian Energy Limited
Date:	27 July 2020
Signed by:	
	Jason Woolley
Position:	General Counsel and Company Secretary
Company name:	Auckland International Airport Limited
Date:	
Signed by:	
	Mary-Liz Tuck
Position:	General Manager, Corporate Services

I am an Officer of Meridian Energy Limited and am duly authorised to make this application.

Date:	27 July 2020
Signed by:	
	Jason Woolley
Position:	General Counsel and Company Secretary

I am an Officer of Auckland International Airport Limited and am duly authorised to make this application.

Date: \_\_\_\_\_

Signed by: \_\_\_\_\_

Mary-Liz Tuck

Position: General Manager, Corporate Services

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Company name: Meridian Energy Limited  
Date: \_\_\_\_\_  
Signed by: \_\_\_\_\_  
Position: \_\_\_\_\_

Company name: Auckland International Airport Limited  
Date: 27 July 2020  
Signed by:   
Mary-Liz Tuck  
Position: General Manager, Corporate Services

I am a **[Director/Officer]** of Meridian Energy Limited and am duly authorised to make this application.


Date: \_\_\_\_\_  
Signed by: \_\_\_\_\_  
Position: \_\_\_\_\_

I am an Officer of Auckland International Airport Limited and am duly authorised to make this application.

Date:

27 July 2020

Signed by:



Mary-Liz Tuck

Position:

General Manager, Corporate Services