



Electricity Authority

By email: Part3exemption2020@ea.govt.nz

3 August 2020

Top Energy application for an exemption from corporate separation and arm's-length rules

Thank you for the opportunity to comment on the Authority's draft decision granting Top Energy a conditional exemption under section 90 of the Electricity Industry Act 2010 (Act), relating to the involvement of a distributor in connected generation.

Mercury notes that Top Energy is in the process of installing 17.87MW of diesel/bio-diesel generators at Taipa, Bonnetts Road, Kaitaia Depot, Omanaia and Pukenui. The generation would be used intermittently for network support purposes or strategically when electricity prices were high to reduce costs to the network. Because of existing generation capacity owned by Top Energy at Ngawha, along with an exemption it currently holds to expand Ngawha up to 75MW, the diesel generation would cause Top Energy to further exceed the 50MW threshold on connected generation. Exceeding the threshold triggers the corporate separation and arm's-length requirements in the Act. The Authority proposes to grant the diesel generation application for one year on the basis that this will give Top Energy time to set up a registration of interest and tender process to satisfy the Authority that the distributor has run an open, transparent, technologically neutral process to consider all offers to supply network support.

Mercury supports the Authority's draft decision. We agree with the Authority that the conditions it is proposing to impose are the most pragmatic way to resolve concerns about the competition and consequent efficiency implications of the exemption application. It is only by running a competitive tender process that we can be sure there is no effect on competition in granting the exemption. We appreciate also that with the planned transmission upgrade of the Kaikohe-Kaitaia line some of the diesel generators may not be necessary in a year.

We are concerned that Top Energy has a track record of investing in generation and subsequently applying for regulatory approval as occurred with the Ngawha expansion commissioned in 2017. Applications for exemptions should in our view be made prior to investment taking place.

We also note that Top Energy could choose to divest its existing ownership of Ngawha either through establishing a new consumer trust or other options. If this avenue was taken the 50MW limit on generation would cease to be a binding constraint and ownership of the diesel/bio-diesel generation would no longer require corporate and managerial separation. Ngawha would then still be able to generate electricity and support the Northland community while Top Energy could invest in additional diesel generation up to 50MW without requiring an exemption.

If you have any questions regarding this submission please contact sharron.came@mercury.co.nz 04 460 4231.



Yours sincerely

A handwritten signature in black ink, appearing to read 'Sharron Came', with a long horizontal flourish extending to the right.

Sharron Came
Regulatory Strategist

