

 **FletcherBuilding Facsimile**

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To: Laura O'Gorman
Fax No: 09 358 2055
Company: Buddle Findlay
On Behalf Of: Electricity Authority

From: Sara Double
Fax No:
Date: 5th August 2011

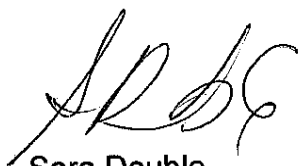
Total Pages: 4 (including this page)

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Good afternoon,

Following fax on behalf of Fletcher Building Limited (including on behalf of Golden Bay Cement) in respect of the 26 March 200 UTS.

Kind regards



Sara Double
Treasurer

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**NO. CIV-2011-485-1371
NO. CIV-2011-485-1372
NO. CIV-2011-485-1373**

UNDER THE Electricity Industry Act 2010

IN THE MATTER of an appeal under section 64 of the Electricity Industry Act 2010 in respect of a Final Decision of the Electricity Authority that an Undesirable Trading Situation developed on 26 March 2011

NO. CIV-2011-485-1371

IN RE **BAY OF PLENTY ENERGY LIMITED**

First Appellant

TODD ENERGY LIMITED

Second Appellant

NO. CIV-2011-485-1372

IN RE **CONTACT ENERGY LIMITED**

Appellant

NO. CIV-2011-485-1373

IN RE **GENESIS POWER LIMITED**

Appellant

**MEMORANDUM ON BEHALF OF FLETCHER BUILDING LIMITED (including
on behalf of Golden Bay Cement)**

Dated 8 August 2011

Fletcher Building Limited
Fletcher House
810 Great South Road, Penrose
Private bag 92114
Auckland
Attention: Mark Binns

MAY IT PLEASE THE COURT:

1. This memorandum is filed in respect of each of the appeals brought under s64 of the Electricity Industry Act 2010 against the Final Decision of the Electricity Authority (**Authority**) regarding the Undesirable Trading Situation (**UTS**) of 26 March 2011 (the **Decision**), by Genesis Power Limited (CIV-2011-485-1373), Contact Energy Limited (CIV-2011-485-1372) and Bay of Plenty Energy Limited and Todd Energy Limited (CIV-2011-485-1371) (together, the **appeals**).
2. Fletcher Building Limited (including on behalf of Golden Bay Cement) (**Fletcher Building**) understands from the Court Minute dated 25 July 2011 that any entities wishing to appear and be heard, or seeking respondent status, in the appeals must file notices by 5pm on Monday 8 August 2011.
3. Due to cost constraints, Fletcher Building does not seek respondent status, nor does it intend to appear and be heard in relation to the appeals. However Fletcher Building wishes to record that it supports the Final Decision of the Electricity Authority.
4. By way of background, Fletcher Building was one of the complainants to the Authority in respect of the 26 March 2011 UTS, and is directly affected by the Decision of the Authority and, as a consequence, the appeals. In particular, Fletcher Building is:
 - 4.1 a party that made a claim to the Authority that a UTS under the Code existed on 26 March 2011 as a result of the offer behaviour of Genesis on that date;
 - 4.2 a party that was issued with statutory information requests by the Authority requiring it to provide information to the Authority for the purposes of the Authority's investigation of the UTS on 26 March 2011;
 - 4.3 a party that was invited to, and that did, make written submissions and cross submissions to the Authority in relation

to the Authority's investigation of the UTS on 26 March 2011 ;
and

- 4.4** a party affected by the Decision of the Authority released on 15 June 2011 in which the Authority found that a UTS developed on 26 March 2011 .
- 5.** Fletcher Building believes that the conduct of Genesis on 26 March 2011 did threaten trading on the wholesale market for electricity as found by the Authority. In particular: we consider the conduct to be an abuse of market power; we were not notified prior to 26 March of potential price spikes by our electricity supplier, nor were we offered any additional hedge product. The cost to Golden Bay Cement of \$900,000 could have been totally eliminated by shutting non-core plant had the business been made aware of the situation.
- 6.** Fletcher Building is happy to provide any further information to the Court on the above matters as required.

Date:

5th August 2011

Signature:


Mark Binns
Authorised Signatory
Fletcher Building Limited