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Facsimile**To:** Electricity Authority**From:** Karen Price

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Pages: 5**Fax:** 09 358 2055**Date:** 8 August 2011**Subject:** THE NEW ZEALAND REFINING COMPANY LIMITED

(COURT FILE REFERENCE: CIV-2011-485-1371, CIV-2011-485-1372, CIV-2011-485-1373)

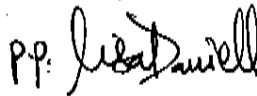
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We act for The New Zealand Refining Company Limited in respect of the above proceedings.

Please see the **attached** documentation filed in the High Court today.

Yours faithfully
ChanceryGreen



Karen Price
Partner

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

**CIV-2011-485-1371
CIV-2011-485-1372
CIV-2011-485-1373**

UNDER THE Electricity Industry Act 2010

IN THE MATTER of appeals 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

IN RE **BAY OF PLENTY ENERGY LIMITED**

Appellant

TODD ENERGY LIMITED

Appellant

IN RE **CONTACT ENERGY LIMITED**

Appellant

IN RE **GENESIS POWER LIMITED**

Appellant

**MEMORANDUM ON BEHALF OF
THE NEW ZEALAND REFINING COMPANY LIMITED**

8 August 2011

Counsel for The New Zealand Refining Company Limited:
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MAY IT PLEASE THE COURT:**Background**

1. This memorandum is filed in respect of appeals lodged pursuant to s64 of the Electricity Industry Act 2010 against the Final Decision of the Electricity Authority (**Authority**) released on 15 June 2011 and/or those parts of a further decision of the Authority released on 4 July 2011, regarding an Undesirable Trading Situation (**UTS**) on 26 March 2011 (**the Decision**).
2. Appeals against the Decision have been filed by Bay of Plenty Energy Limited and Todd Energy Limited, Contact Energy Limited, and Genesis Power Limited (Court file reference numbers: CIV-2011-485-1371; CIV-2011-485-1372; and CIV-2011-485-1373), (together, **the appeals**).
3. The New Zealand Refining Company Limited (**NZRC**) understands from the Court Minute dated 25 July 2011 that any entities who wish to appear and be heard, or seek respondent status in the proceedings, must file notices by 5pm on Monday 8 August 2011.
4. NZRC was one of the complainants to the Authority in respect of the UTS on 26 March 2011. It was subsequently issued with statutory information requests by the Authority requiring it to provide information for the purposes of investigating the UTS of 26 March 2011. NZRC did so and provided written submissions to the Authority. NZRC is directly affected by the Decision of the Authority and the outcome of these appeals.
5. NZRC considers that the conduct of Genesis on 26 March 2011 threatened trading on the wholesale market for electricity, as found by the Authority. In particular, NZRC considers that the market events of 26 March 2011 led to unreasonable spot electricity pricing during this period that was unprecedented and unreasonable.
6. The pricing on 26 March 2011 was well beyond what NZRC would reasonably expect to pay within a competitive electricity market and it considers such behaviour undermines faith in the electricity market. The UTS will potentially result in a significant financial penalty for NZRC. Further detail on the effect of this pricing is addressed at paragraph 12 below.

NZRC'S Marsden Point Refinery Operations - Electricity Supply

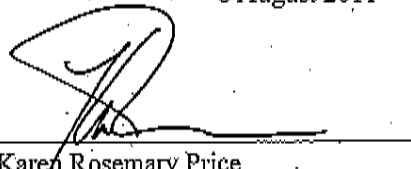
7. NZRC's Marsden Point Refinery produces petrol, diesel and jet fuel for consumption throughout the country. NZRC produces 100% of the Northland region's road transport and aviation fuel requirements, approximately 92% of the Auckland region's needs, and approximately 70% of the country's fuel requirements.
8. The Northland region and the national economy are heavily dependent on the continuous operation of the refinery and the Refinery to Auckland Pipeline. NZRC is also deemed a 'lifeline utility' pursuant to the Civil Defence Emergency Management Act 2002.
9. NZRC's continuous operations are critical to keeping New Zealand supplied with quality transport fuel. The NZRC refinery must run continuously in order to meet consumer demand and accordingly, NZRC has very limited flexibility in its operations to reduce electrical load during normal operations. Reducing electrical load would ultimately require NZRC to shut down its refinery over a number of days and could incur significant cost and risk to New Zealand's domestic fuel supply.
10. A long term disruption in electricity supply (longer than 10 minutes) is considered severe and would result in all equipment other than steam boilers and steam turbine driven equipment shutting down. Sequential start-up of all equipment would then be required, which would need to progress over several days. Lost production from NZRC's refinery could be replaced by imported product. However, the lead time for delivery at short notice is approximately four to six weeks and some shortfall would therefore be unavoidable. There is also the potential under these circumstances for refinery customer operations and revenues (the major oil companies) to be impacted by lost production.
11. NZRC was first notified by its spot supplier of the UTS and its impact on prices on 28 March 2011. Accordingly, NZRC was unable to take action on 26 March 2011 to mitigate its exposure to the resulting electricity pricing as it did not have knowledge of the applicable pricing on the electricity market prior to the UTS.

Financial Impact to NZRC of Market Events of 26 March 2011

12. The full extent of the financial impact to NZRC's business due to the UTS is estimated to be in the order of \$3.2 million dollars, based on preliminary market pricing. This equates to approximately 10% of NZRC's total expected annual electricity cost.
13. As a consequence of cost constraints, NZRC does not seek respondent status in the proceedings, nor does it intend to appear and be heard in relation to the appeals or the application for a stay of the Decision. However, NZRC wishes to record that it supports the Decision of the Authority.
14. NZRC is willing to provide any further information to the Court on the above matters as required.

Date:

8 August 2011

Signature:

Karen Rosemary Price
Counsel for The New Zealand Refining
Company Limited

This document is filed by Karen Price, of ChanceryGreen, counsel for The New Zealand Refining Company Limited. The address for service of The New Zealand Refining Company is, Level 1, 11 Bacons Lane, Chancery Square, Auckland.

Documents for service may be left at that address or may be:

- a. Posted to counsel at PO Box 106 202, Auckland, 1143;
- b. Transmitted to counsel by facsimile at 09 357 0340;
- c. Emailed to counsel at karen.price@chancerygreen.com