

**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 SMART POWER

Dated 8 August 2011

Contact Details

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Director
Smart Power Ltd
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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. Smart Power Ltd(**Smart Power**) understands from the Court Minute dated 25 July 2011 that any entities wishing to be 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 and resource constraints, Smart Power does not seek respondent status, nor does it intend to appear and be heard in relation to the appeals. However Smart Power wishes to record that it supports the Final Decision of the Electricity Authority.
4. By way of background, Smart Power was one of the complainants to the Authority in respect of the 26 March 2011 UTS. We work for a variety of clients who are directly affected by how the spot market for electricity operates and also many who may be in the future. We have an interest in the orderly functioning of the electricity market.
5. Smart Power believes that the situation on 26 March 2011 did constitute a UTS as found by the Authority and that the finding of a UTS restored a level of confidence in the market which had been undermined by the extreme pricing.
6. Smart Power would like the Court to note that should the UTS be overturned there will be significant financial impacts on many of our clients both those who have submitted a claim of UTS and a significant number who did not. It is important to **Smart Power** that the court implement the pricing determined by the **Authority** pending the Court's ultimate decision. The current situation of no confirmed pricing for 26th of March is unsatisfactory and affecting our clients ability to complete end of year accounts. It is also creating substantial issues around the administration of invoices with the prospect of months of rebilling being

required over thousands of sites. If the Authorities decision is overturned the subsequent extreme pricing will be a financial hardship for our clients and will create difficulties with the correction of invoicing.

At present different suppliers have handled pricing to consumers for the 26th of March in different ways so the impacts to date are quite varied depending on who a consumer's supplier is. We would like to see the EA pricing implemented by all suppliers to give a consistent approach and also so that consumers do not have to carry the costs of the extreme pricing.

7. Smart Power is happy to provide any further information to the Court on the above matters as required.

Date:

August 2011

Signature:


Anne Herrington
Director