

From: Sam Fleming
To: Doug Watt
Cc: Jason Woolley
Subject: Response to s46 request
Date: Wednesday, 7 July 2021 4:05:22 pm
Attachments: image001.png
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S9(2)(b) and S9(2)(ba)(i)

Hi Doug

See attached our response to the Authority's information request of 25 June 2021.

Happy to discuss or put you in touch with our finance team if anything is unclear.

Kind regards

Sam Fleming (he/him) – Manager Regulatory and Government Relations

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M. S9(2)(a)



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7 July 2021

Doug Watt
Manager Market Monitoring
Electricity Authority – Te Mana Hiko

By email: S9(2)(a)

Dear Doug

Request for financial information under section 46(2)(a) of the Electricity Industry Act

In response to the information request from James Stevenson-Wallace dated 25 June 2021, please see attached to this letter a spreadsheet containing the requested financial information.

In preparing this response we have made some assumptions about which we would like to be transparent. We would also like to point out some specific features of our response:

- We assume that the Authority's request is in respect of all our operations in New Zealand under both the Meridian and Powershop brands.
- We do not use ANZSIC codes to differentiate residential and small and medium enterprise customers from commercial and industrial customers in our accounts. We instead use our own marketing segments and therefore the information we are reporting may be slightly different to data provided by other participants to the extent that they base their segments on ANZSIC codes.
- The contract for difference between Meridian and New Zealand's Aluminium Smelter is separated from other derivative contracts in our management accounting. It has therefore been included in "Sale of other electricity products to electricity market" at row 37 of the spreadsheet.
- Minor differences between EBITDAF in our audited financial reporting and the spreadsheet's calculations are attributable to the set up of the spreadsheet, differences in the mapping of data, and in the treatment of spot sales.

Please note that the information in the spreadsheet represents internal management reporting assumptions and is not part of our audited financial statements. The information is therefore commercially sensitive and its disclosure to any third party has the potential to cause commercial prejudice to Meridian. We ask that the Authority keeps the information confidential, uses it only in accordance with the lawful purposes for which the Authority has requested the information and does not disclose the information to third parties. If the Authority receives an Official Information Request in respect of the information, we ask that the Authority alerts us immediately and that we have the opportunity to provide our views before the Authority decides whether to disclose or withhold the information. We anticipate that the Authority's response to any such request would appropriately withhold this information.

We note with concern the suggestion that the Authority may decide "to share some or all the information Meridian provides" pursuant to this section 46 request with an extensive list of government entities. The Authority exists and operates separately from government; it is an independent Crown entity. We have taken legal advice on the point and are confident the Authority does not have the power to share such information. The Electricity Industry Act 2010 does not expressly or impliedly authorise the Authority to share information it gathers pursuant to section 46. Neither the Authority's section 16(1)(g) function nor the Ministerial request power in section 18 assist the Authority; both are carefully circumscribed and require the Authority to exercise its expert judgement in the preparation of public reports (or studies etc) on certain matters. Neither provides a power for the Authority to act as a conduit to collect data or documents for government entities. Nor can such an information-sharing power be inferred or considered incidental to the Authority's functions or powers, given the statutory limitations on them.

The position of the Authority in this regard can be contrasted with other regulators that are empowered to share information gathered pursuant to their respective information gathering powers (for example WorkSafe and the Financial Markets Authority). Parliament chose not to give the Authority an equivalent power. Other regulators without such powers have taken a limited view of their powers to share information they gather in their investigations. For example, see the Commerce Commission's Competition and Consumer Investigation Guidelines, July 2018, at [254] – [267].

We trust that the Authority will not share the information provided, as that would be in excess of its powers. That said, we note your commitment to notify us in the event you decide otherwise. We request that any such notification be given at least two weeks before the proposed sharing of the information is to take place. That period will allow Meridian to consider the steps necessary to protect its position, including seeking urgent relief from the Courts. For the avoidance of doubt, Meridian reserves all its rights.

Please let me know if you would like to discuss.

Yours sincerely



Sam Fleming
Manager Regulatory and Government Relations