



**THE ENERGY COMPANIES (WAITOMO ENERGY SERVICES LIMITED) VESTING ORDER 1993**

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CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 3rd day of May 1993

Present:

THE RIGHT HON. D. C. MCKINNON PRESIDING IN COUNCIL

PURSUANT to section 47 (1) of the Energy Companies Act 1992, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and on the recommendation of the Minister of Energy, hereby makes the following order.

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ORDER

**1. Title**—This order may be cited as the Energy Companies (Waitomo Energy Services Limited) Vesting Order 1993.

**2. Interpretation**—(1) In this order, unless the context otherwise requires,—

“The Act” means the Energy Companies Act 1992:

“The Board” means the Waitomo Electric Power Board:

“The company” means Waitomo Energy Services Limited:

“The Waitomo Energy Services Customer Trust” means the trust referred to by that name in the establishment plan approved by the Minister in respect of the Board on the 17th day of March 1993:

“North King Country Development Trust” means the trust referred to by that name in the establishment plan approved by the Minister in respect of the Board on the 17th day of March 1993:

“The senior debt” means the company’s liabilities, including loans and financial accommodations (contingent or otherwise), and interest on loans and financial accommodations, but not including—

(a) The company’s liabilities to its shareholders under the articles of association of the company and the terms of shares in the company; or

(b) The company’s liabilities under the debt securities referred to in clause 5 (1) of this order.

(2) Expressions not defined in this order but defined in the Act have, in this order, the meanings so defined.

**3. Appointment of date for vesting of undertaking of Board in successor company**—The 7th day of May 1993 is hereby appointed as the date on which the undertaking of the Board shall, by virtue of section 47 (1) (a) of the Act, vest in the company.

**4. Shares held by Board in company**—On the 7th day of May 1993, the shares held by the Board in the company at the close of the 6th day of May 1993 shall, by virtue of section 47 (1) (b) of the Act, vest as follows:

(a) In the following persons in their capacity as trustees of the Waitomo Energy Services Customer Trust:

(i) 2,666,666 to Russell Alfred Aldridge:

(ii) 2,666,666 to Raymond James Bone:

(iii) 2,666,666 to Ivan Claude Haines:

(iv) 2,666,666 to John McKenzie Miller:

(v) 2,666,666 to Robyn Andra Neeley:

(vi) 2,666,666 to Carleon James Vellenoweth:

(b) 4 to Robert Alexander Kidd in his capacity as nominee on behalf of the Waitomo Energy Services Customer Trust.

**5. Debt securities to be issued by company**—(1) The debt securities that shall be issued by the company consequent upon the vesting in it of the undertaking of the Board shall be—

(a) A debt security by way of subordinated debt of \$1,000,000; and

(b) A debt security by way of subordinated debt of \$2,000,000.

(2) The debt security referred to in subclause (1) (a) of this clause shall be issued on the following terms:

(a) The interest rate shall be the New Zealand one year retail deposit rate as published by the National Business Review as at the 7th day of May 1993:

(b) The interest rate referred to in paragraph (a) of this subclause shall, beginning on the 7th day of May 1994, be adjusted on the 7th day of May each year to be the New Zealand one year retail deposit rate as published by the National Business Review as at that date:

(c) Interest shall be payable monthly in arrears:

(d) The company shall not redeem the debt security in whole or in part unless the senior debt for the time being has been repaid in full and the company is satisfied that there are no outstanding

liabilities contingent or otherwise that comprise or could become part of the senior debt:

- (e) The company may at any time, and without notice to the holder of the debt security, borrow or obtain financial accommodation for the company:
  - (f) The company may at any time—
    - (i) Enter into agreements extending the time for payment of or renewing or otherwise altering the terms or security of all or any of the senior debt; or
    - (ii) Enter into new liabilities comprising senior debt,—without notice to the holder of the debt security and without impairing or affecting the debt security:
  - (g) If there is a distribution, division or application, partial or complete, voluntary or involuntary, of all or any of the assets of the company to creditors of the company by reason of—
    - (i) The company going into liquidation; or
    - (ii) The company being dissolved; or
    - (iii) The company being wound up; or
    - (iv) The company being placed into receivership; or
    - (v) The company becoming insolvent; or
    - (vi) An assignment for the benefit of creditors; or
    - (vii) Proceedings being commenced by or against the company for any relief under any bankruptcy or insolvency law or under any law relating to the relief of debtors, readjustment of indebtedness, reorganisations, compositions, or extensions,—the holder of the debt security shall receive any payment due to it under the debt security only after such payment has first been applied to the repayment of the senior debt:
  - (h) If the holder of the debt security—
    - (i) Resolves to wind up; or
    - (ii) Distributes all of its assets,—

the holder of the debt security may, by giving the company 3 months' notice in writing, require the company, immediately prior to the date of such winding up or distribution, to convert the debt security to ordinary shares in the capital of the company on the basis that the number of shares to be issued will be equal in value to the principal of the debt security:
  - (i) The value of the shares to be issued on conversion will be their asset backing in the last balance sheet of the company that has been approved by the directors of the company:
  - (j) The directors of the company may have the assets of the company revalued for the purpose of preparing the balance sheet referred to in paragraph (i) of this subclause:
  - (k) The debt security may be converted to shares at any time by agreement between the holder of the debt security and the company at the conversion rate referred to paragraph (h) of this subclause.
- (3) The debt security referred to in subclause (1) (b) of this clause shall be issued on the following terms:
- (a) The interest rate shall be 5 percent per annum:
  - (b) Interest shall be payable monthly in arrears:

- (c) The requirement that the company pay interest may be suspended by the company at any time if the company believes that the holder of the debt security is applying all or any part of the interest paid by the company on the debt security to or for activities that are not in the interests of the company:
- (d) The company shall not redeem the debt security in whole or in part unless the senior debt for the time being has been repaid in full and the company is satisfied that there are no outstanding liabilities contingent or otherwise that comprise or could become part of the senior debt:
- (e) The company may at any time, and without notice to the holder of the debt security, borrow or obtain financial accommodation for the company:
- (f) The company may at any time—
  - (i) Enter into agreements extending the time for payment of or renewing or otherwise altering the terms or security of all or any of the senior debt; or
  - (ii) Enter into new liabilities comprising senior debt,—without notice to the holder of the debt security and without impairing or affecting the debt security:
- (g) If there is a distribution, division or application, partial or complete, voluntary or involuntary, of all or any of the assets of the company to creditors of the company by reason of—
  - (i) The company going into liquidation; or
  - (ii) The company being dissolved; or
  - (iii) The company being wound up; or
  - (iv) The company being placed into receivership; or
  - (v) The company becoming insolvent; or
  - (vi) An assignment for the benefit of creditors; or
  - (vii) Proceedings being commenced by or against the company for any relief under any bankruptcy or insolvency law or under any law relating to the relief of debtors, readjustment of indebtedness, reorganisations, compositions, or extensions,—the holder of the debt security shall receive any payment due to it under the debt security only after such payment has first been applied to the repayment of the senior debt.
- (4) The debt security referred to in subclause (1) (a) of this clause shall be issued to the following persons jointly in their capacity as trustees of the the Waitomo Energy Services Customer Trust:
  - (a) Russell Alfred Aldridge:
  - (b) Raymond James Bone:
  - (c) Ivan Claude Haines:
  - (d) John McKenzie Miller:
  - (e) Robyn Andra Neeley:
  - (f) Carleon James Vellenoweth.
- (5) The debt security referred to in subclause (1) (b) of this clause shall be issued to the following persons jointly in their capacity as trustees of the North King Country Development Trust:
  - (a) David Gordon Muir:
  - (b) Daniel Takutaimoana Te Kanawa:
  - (c) Denis Laurie Bevan:
  - (d) Charles Murray Loewenthal:

- (e) Russell Laird Thomson;
- (f) John Burns Anderson.
- (6) The debt securities referred to in subclause (1) of this clause shall be issued on the 7th day of May 1993.

MARIE SHROFF,  
Clerk of the Executive Council.

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EXPLANATORY NOTE

*This note is not part of the order, but is intended to indicate its general effect.*

This order is made pursuant to section 47 (1) of the Energy Companies Act 1992. The order appoints 7 May 1993 as the date on which the energy undertaking of the Waitomo Electric Power Board shall vest in its successor company, Waitomo Energy Services Limited. The order—

- (a) Provides for the vesting of the shares held by the Board in the company by virtue of section 47 (1) (b) of the Act; and
- (b) Specifies the debt securities that shall be issued by the company consequent upon the vesting in it of the undertaking of the Board; and
- (c) Specifies the persons to whom those debt securities shall be issued.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 6 May 1993.  
This order is administered in the Ministry of Commerce.