

**Reprint
as at 1 January 2014**



**Securities Act (Genesis Energy
Limited) Exemption Notice 2011**

(SR 2011/87)

Securities Act (Genesis Energy Limited) Exemption Notice 2011: expired, on 1 January 2014, by clause 3.

Notice name: amended, on 21 November 2013, by clause 4 of the State-Owned Enterprises (Genesis Energy Limited) Order 2013 (SR 2013/435).

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

Schedule 7
Provisions excluded from copies of VAS documents

Notice

1 Title

This notice is the Securities Act (Genesis Energy Limited) Exemption Notice 2011.

Clause 1: amended, on 21 November 2013, by clause 4 of the State-Owned Enterprises (Genesis Energy Limited) Order 2013 (SR 2013/435).

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 31 December 2013.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

excluded provisions means the provisions set out in the Schedule that are excluded from the copies of the VAS documents that must be delivered to the Registrar of Companies and made available for public inspection in accordance with the Act and the Regulations

GAAP means generally accepted accounting practice in New Zealand

Genesis means Genesis Energy Limited

pro-forma statement means the unaudited, simplified, pro-forma consolidated statement of financial position of the borrowing group included in the prospectus, investment statement, or any other advertisement in connection with an offer of the specified securities

Regulations means the Securities Regulations 2009

specified securities means unsecured, subordinated, redeemable, capital bonds to be issued by Genesis Energy Limited

Tekapo stations means the Tekapo A and Tekapo B power stations

VAS documents means the Virtual Asset Swap Head Agreement, ISDA Master Agreement, ISDA Schedule to the ISDA Master Agreement, Credit Support Annex, North Island Transaction Confirmation, and South Island Transaction Confirmation entered into (other than the Credit Support Annex) between Genesis Energy Limited (then known as Genesis Power Limited) and Meridian Energy Limited on 21 December 2010.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

Clause 4(1) **Genesis**: amended, on 21 November 2013, by clause 4 of the State-Owned Enterprises (Genesis Energy Limited) Order 2013 (SR 2013/435).

Clause 4(1) **specified securities**: amended, on 21 November 2013, by clause 4 of the State-Owned Enterprises (Genesis Energy Limited) Order 2013 (SR 2013/435).

Clause 4(1) **VAS documents**: amended, on 21 November 2013, by clause 4 of the State-Owned Enterprises (Genesis Energy Limited) Order 2013 (SR 2013/435).

5 Exemption from regulation 18(1)(a) of Regulations

Genesis and every person acting on its behalf are exempted from regulation 18(1)(a) of the Regulations in respect of the specified securities in so far as that regulation requires a prospectus that contains an offer of the specified securities to have attached to it or be accompanied by a copy of the VAS documents.

6 Condition of exemption in clause 5

The exemption in clause 5 is subject to the condition that the prospectus that contains the offer of the specified securities that is delivered to the Registrar of Companies must—

- (a) have attached to it or be accompanied by a copy of the VAS documents without the excluded provisions; and
- (b) state that the excluded provisions have been excluded from the copies of the VAS documents delivered to the Registrar of Companies; and

- (c) state why the excluded provisions have been excluded; and
- (d) contain a statement of the general nature of the excluded provisions; and
- (e) state—
 - (i) that copies of the VAS documents (without the excluded provisions) may be inspected during the currency of the prospectus on request and without any fee by any person; and
 - (ii) when and where in New Zealand they may be inspected; and
- (f) contain a prominent statement to the effect that the directors of Genesis warrant that the exclusion of the excluded provisions from the VAS documents does not make the prospectus misleading in any material particular by a failure to refer, or give proper emphasis, to any adverse circumstances.

7 Exemption from clause 19(c) of Schedule 2 of Regulations
Genesis and every person acting on its behalf are exempted from clause 19(c) of Schedule 2 of the Regulations in respect of the specified securities in so far as that clause applies to the VAS documents.

8 Condition of exemption in clause 7
The exemption in clause 7 is subject to the condition that the prospectus that contains the offer of the specified securities that is delivered to the Registrar of Companies must state—

- (a) that copies of the VAS documents without the excluded provisions may be inspected during the currency of the prospectus on request and without any fee by any person; and
- (b) when and where in New Zealand they may be inspected.

9 Exemptions from regulation 26(1)(a) and (c) of Regulations
Genesis and every person acting on its behalf are exempted from regulation 26(1)(a) and (c) of the Regulations in respect of the investment statement and any other advertisement for

the specified securities in so far as those provisions prohibit an advertisement from stating—

- (a) the amount of assets or net assets of any person or persons other than the total assets or net assets of the borrowing group; or
- (b) the amount of the net assets or the amounts of the total assets and total liabilities of the borrowing group except as provided in regulation 26(2).

10 Conditions of exemptions in clause 9

The exemptions in clause 9 are subject to the following conditions:

- (a) the investment statement and any other advertisement for the specified securities must comply with regulation 26 of the Regulations, other than in respect of the pro-forma statement; and
- (b) the pro-forma statement must state only the total assets, total liabilities, total borrowings included in the total liabilities, and the total equity of the borrowing group as at 31 December 2010, except as provided in paragraph (d); and
- (c) the amounts stated in the pro-forma statement must—
 - (i) be calculated on a pro-forma basis as if Genesis had completed and funded the acquisition of the Tekapo stations as at 31 December 2010; and
 - (ii) be based on the unaudited consolidated interim statement of financial position for the borrowing group as at 31 December 2010; and
- (d) the pro-forma statement must—
 - (i) include the purchase price for the acquisition of the Tekapo stations set out in the shareholding Ministers' direction under section 117(2) of the Electricity Industry Act 2010 or, if no final direction has been given at the time of publication of the investment statement or other advertisement that includes the pro-forma statement (as the case may be), the most recent draft of the shareholding Ministers' direction that has been received by Genesis at that time; and

- (ii) describe how Genesis proposes to fund the acquisition of the Tekapo stations; and
 - (iii) be referred to in the prospectus for the specified securities; and
 - (e) the investment statement and any other advertisement for the specified securities that includes the pro-forma statement must include an explanation to the effect that the pro-forma statement—
 - (i) is not a statement of the assets of the borrowing group; and
 - (ii) has not been audited; and
 - (iii) has been prepared on the assumption that the Tekapo stations were acquired as at 31 December 2010; and
 - (iv) includes values attributed to the acquisition of the Tekapo stations that the directors believe to be fair for the reasons outlined in the prospectus; and
 - (f) the investment statement and any other advertisement for the specified securities that includes the pro-forma statement must refer to this exemption notice and include a statement to the effect that more information on the exemption is set out in the prospectus for the specified securities; and
 - (g) the prospectus for the specified securities must—
 - (i) include the unaudited consolidated interim statement of financial position for the borrowing group as at 31 December 2010 as an appendix to the prospectus; and
 - (ii) contain a statement to the effect that the valuation of the Tekapo stations consists of an expression of opinion by the directors of Genesis; and
 - (iii) state whether the pro-forma statement is prepared on a basis consistent with the requirements of GAAP as it would apply to financial statements.
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Schedule
Provisions excluded from copies of VAS
documents

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1. In the definition, or provision of the definition, of each term in Part 5(4)(2) of the ISDA Schedule to the ISDA Master Agreement referred to in the first column of the following table, all of the words that appear after the word set out opposite that term in the second column of the table:

Definition of term and provision of definition	Word after which all words excluded
Averaging Period: paragraph (a)	Market Price
Averaging Period: paragraph (b)	Historic Average Spot Price
Closing Market Price	day
Daily Final Price	Trading Day
Fixed Price: paragraph (a)	South Island Transaction
Fixed Price: paragraph (b)	North Island Transaction
Historic Average Spot Price	Averaging Period
Historic Price Basis Adjustment	Transaction
North Island Market Node	below
North Island Market Price	Effective Date
North Island Settlement Node	means
Reference Instrument: paragraph (a)	North Island Market Price
Reference Instrument: paragraph (b)	South Island Market Price
South Island Market Node	below
South Island Market Price	Effective Date
South Island Settlement Node	means

2. Paragraph 6 of the North Island Transaction Confirmation.
3. Paragraph 6 of the South Island Transaction Confirmation.

Dated at Wellington this 4th day of April 2011.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

D W Mayhew,
Member.

Statement of reasons

This notice, which comes into force on the day after its notification in the *Gazette* and expires on the close of 31 December 2013, exempts Genesis Power Limited (**Genesis**) from regulations 18(1)(a) and 26(1)(a) and (c) and clause 19(c) of Schedule 2 of the Securities Regulations 2009 (the **Regulations**), subject to conditions, in respect of offers of unsecured, subordinated, redeemable, capital bonds (the **capital bonds**) to be issued by Genesis.

The effect of the exemptions from regulation 18(1)(a) and clause 19(c) of Schedule 2 of the Regulations is to allow Genesis to exclude certain commercially sensitive information from the copies of documents that constitute a material contract and are attached to the registered prospectus.

The effect of the exemptions from regulation 26(1)(a) and (c) of the Regulations is to allow Genesis to include in the investment statement and any other advertisements an unaudited, simplified, pro-forma consolidated statement of financial position (the **pro-forma statement**) for Genesis and all guaranteeing subsidiaries in relation to the capital bonds (the **Genesis Energy Group**) that sets out the financial position of the Genesis Energy Group as it appears in its interim statement of financial position dated 31 December 2010 and compares this with the financial position of the Genesis Energy Group as if Genesis's acquisition of the Tekapo A and Tekapo B power stations (the **Tekapo stations**) had been completed as at 31 December 2010.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- the exemptions from regulation 18(1)(a) and clause 19(c) of Schedule 2 of the Regulations meet the criteria stated in the Securities Commission’s Exemption Policy Note for “Applications to Exclude Commercially Sensitive Information from Material Contracts” (the Exemption Policy Note can be viewed on the Commission’s Internet site at <http://www.sec-com.govt.nz/exemptions/exemption-policy.shtml>):
- the detriment to the commercial interests of Genesis by the disclosure of the excluded provisions would outweigh any benefit to prospective investors from their disclosure:
- the directors of Genesis must warrant that the non-disclosure of the excluded provisions does not make the registered prospectus misleading in any material particular by a failure to refer, or give proper emphasis, to any adverse circumstances:
- the prospectus must state that information has been excluded from the agreements in question, the reasons why that information has been excluded, and the general nature of the information that has been excluded:
- the proceeds of the offer will be used to partially fund the purchase of the Tekapo stations, which will have a significant impact on the financial position of the Genesis Energy Group. The exemptions from regulation 26(1)(a) and (c) of the Regulations allow information about the financial impact of the acquisition of the Tekapo stations to be included in the investment statement and other advertisements in circumstances where the acquisition occurs after the date of the most recent audited statement of financial position or interim statement of financial position:
- the pro-forma statement provides prospective investors with information comparing the financial position of the Genesis Energy Group in the interim statement of financial position as at 31 December 2010 with the financial position of the Genesis Energy Group as if the acquisition of the Tekapo stations had been completed as at 31 December 2010. This will provide investors with more accurate information about the financial position of the Genesis Energy Group:

- the conditions of the exemptions from regulation 26(1)(a) and (c) require a clear explanation about the nature of the pro-forma statement, the basis on which the value of the Tekapo stations recognised in the pro forma statement was determined, and whether or not the pro-forma statement is prepared on a basis consistent with the requirements of GAAP as it would apply to financial statements.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 5 April 2011.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Genesis Energy Limited) Exemption Notice 2011 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

State-Owned Enterprises (Genesis Energy Limited) Order 2013 (SR 2013/435):
clause 4
Securities Act (Genesis Energy Limited) Exemption Notice 2011 (SR 2011/87):
clause 3
