

ANNEXURE 2

Top Energy Limited

Board Charter

1. ROLE OF THE BOARD

The Board is responsible for setting the strategic direction of the Company, overseeing the management of the Company, and ensuring effective execution of strategy by management, with the ultimate aim of increasing shareholder value. The Board is accountable to the shareholder for the performance of the Company.

1.1. Company's Purpose and Objectives

The purpose of the Company and members of its group is to operate as a successful business by carrying on business as an electricity distributor in the Far North District, and through its subsidiary, Ngawha Generation Limited, carrying on the business of generating electricity through geothermal generation plants situated at Ngawha Springs geothermal resource and through such other legal entities as it may establish, carrying on other businesses as the directors, after consultation with the shareholder, may determine.

The objective of the Company is to achieve the objectives set out in the Company's Statement of Corporate Intent, a document negotiated and agreed with the shareholder each year.

1.2. Main Functions of the Board

In carrying out its role, the main functions of the Board are to:

- (a) review and approve the strategic, business, and financial plans prepared and recommended by management and to develop a depth of knowledge of the Company's business so as to understand and question the assumptions upon which such plans are based and to reach an independent judgement on the probability that such plans can be achieved;
- (b) monitor the Company's performance against its approved strategic, business, and financial plans and oversee the Company's operating results on a regular basis so as to evaluate whether the business is being properly managed;
- (c) review, amend (where necessary) and measure (by way of setting KPIs) the effectiveness of the Company's health, safety, and environment (**HSE**) policies, ensuring that they clearly set out the commitment of the Company to effectively manage these issues by:

- (i) ensuring that all directors are provided with such information and reports as may be necessary to enable each director to comply with their duty under section 44 of the Health and Safety at Work Act to exercise due diligence;
 - (ii) affording sufficient opportunity to all directors to ask such questions in relation to health and safety risks, the management of those risks and the policies and systems used to manage such risks as well as the opportunity for all directors to discuss and debate the appropriateness of those policies and HSE risk management systems;
 - (iii) reviewing the Company's HSE management systems and ensuring they are fit for purpose;
 - (iv) ensuring sufficient funds are available to deliver the outcomes expected;
 - (v) ensuring employees participate in decision making and implementation of health and safety programmes;
 - (vi) monitoring performance of the effectiveness of the HSE systems that are in place;
 - (vii) reviewing the effectiveness of the Board's management of HSE issues at least once every year.
- (d) select and (if necessary) replace the CEO;
 - (e) ensure that the Company has adequate management to achieve its objectives and to support the CEO;
 - (f) delegate certain authorities to the CEO to allow him or her to manage the day-to-day operation of the Company;
 - (g) review and approve individual investment and divestment decisions which the Board has determined should be referred to it before implementation;
 - (h) review, and if believed to be appropriate, approve material transactions not in the ordinary course of the Company's business;
 - (i) after consultation with the shareholder, approve the appointments by the Company (including its affiliates) to the boards of directors of subsidiary and associate companies;
 - (j) ensure compliance with the Company's Constitution, the relevant laws and regulations and the relevant auditing and accounting principles; and
 - (k) assess from time to time its own effectiveness in carrying out these functions and the other responsibilities of the Board.

1.3. Boards Relationship with the shareholder

The Board will use all reasonable endeavours to familiarise itself with the issues of concern to the Company's shareholder. The Board will regularly evaluate economic, political, social, and legal issues and other relevant external matters that may influence

or affect the development of the Company's business or the interests of its shareholder and, if thought appropriate, take outside advice on these matters.

1.4. Boards relationship with its other stakeholders

The Board will use all reasonable endeavours to familiarise itself with the issues of concern relevant to the Company's stakeholders recognising that the Company's long-term prosperity is closely intertwined with the needs and concern of its consumers, employees, and customers.

1.5. Board Relationship with Management

The Board, through formal delegated authorities as set out in the "Delegated Matrix," delegates management of the day-to-day activities and management responsibilities of the Company to the CEO (who is accountable for the strategic direction and achievement of goals determined by the Board) and management to whom authority is delegated with the approval of the Board. The delegations of authorities shall be consistent with the Policies approved by the Board (including, without limitation, the Treasury, Energy Trading and Carbon Policies).

Between meetings of the Board, the Chair maintains an informal link between the Board and the CEO and expects to be kept informed by the CEO on all important matters. Only decisions or instructions of the Board acting as a whole are binding on the CEO. Decisions of individual directors or committees are not binding on the CEO except where specific prior authorisation is given by the Board.

The Board's role is to monitor the performance of the CEO against the Board's requirements and expectations and to take timely action if the objective of the Company is not being achieved or a correction to management is required.

1.6 Boards Relationship with subsidiaries

The Board will appoint to each subsidiary company, directors with the qualifications and experience required to maximise the value of the investment involved, the ability to address the complexity involved and to ensure compliance with all obligations of the subsidiary and to comply with any applicable regulatory requirements.

2. COMPOSITION OF THE BOARD

2.1. Shareholder's Director Nominations Committee

Directors are appointed by the shareholder. The Chair of the Board is a member of the shareholder's director nominations committee (a sub-committee of the Top Energy Consumer Trust Board of Trustees). The Chair will ensure that Committee is informed as to the skills, diversity, experience, and attributes that the Board believe are required so as to ensure that the Board can meet the demands facing the Company and can work co-operatively and effectively.

2.2. Appointments to the Board

Written appointment letters establishing the terms of their appointment will be provided to all directors for their signature.

Directors must fully commit to giving the time needed to be effective as a director of the Company and are expected to observe the highest standards of ethical behaviour to comply with the Governance Code and this Charter. Each director acknowledges that their appointment is made within the terms of the Company's Constitution and their re-appointment (should the director make themselves available for re-appointment) will be made by the shareholder(s), generally at the annual meeting.

2.3. Board Membership

The Board has adopted the following principles:

- (a) a Board member should not have any significant conflict of interest that is potentially detrimental to the Company, including:
 - (i) affiliations with competitors of the Company; and
 - (ii) affiliations with parties that are likely to be a counter-party to a transaction with the Company where that affiliated party might receive commercial benefit to the potential detriment of the Company. In practice, however, such conflicts may arise in the course of a director's tenure and procedures for dealing with these situations are contained in 3.2;

3. INDEPENDENCE, INTERESTS, AND CONFLICT MANAGEMENT

3.1. Independence Definition

A director is regarded as having a relationship that may compromise his or her ability to act independently when that director:

- (a) is, directly or indirectly, an advisor or consultant to the Company;
- (b) has a personal service contract with the Company;
- (c) is a director of or employed by, or is a member of, an organisation that has an interest in an existing business relationship with the Company, or which has an interest in establishing a business relationship with the Company or any subsidiary or associate of the Company;
- (d) is a member of the immediate family of any person described above;
- (e) has had any of the relationships described above with any affiliate of the Company.

For the avoidance of doubt, the fact that a director is a power consumer connected to the Company's power network, either directly or via an organisation of which he or she

is involved, does not, of itself, indicate a conflict of interest or raise issues of independence.

3.2. Procedures in respect of independence or conflict-of-interest

A director must declare to the Board any relationship that might compromise his or her ability to act independently from management (see 3.1) or any conflicts of interest that are potentially detrimental to the Company (see 3.4). This information will be recorded as part of the Board's records and will be available to all directors at the commencement of each Board meeting. Every meeting of the Board will, at the commencement of the meeting, consider the issue of possible conflicts of interest and the accuracy of the record of declarations made by each director.

Each independent director of the Board will, at least annually, review and certify to the rest of the Board, that they are in agreement with the basis and value of related party transactions disclosed in the statutory financial statements, for the preceding year.

It is the responsibility of every director to identify a possible conflict of interest as soon as it becomes apparent to that director that the consideration of any specific matter may raise issues of possible conflict or independence. Once raised, it will become the responsibility of the other Board members to consider whether the director should withdraw from any further consideration of the matter and/or exercise a vote on the matter, should one be required.

3.3. Confidentiality of Company Information

A director who has confidential information in his or her capacity as a director must not disclose that information to any person, make use of or act on that information, except:

- (a) for the purposes of the Company;
- (b) as required or permitted by law; and
- (c) in complying with the director's obligation to disclose his or her interest in a transaction with the Company.

3.4. General Conflicts

Directors are required to take all reasonable steps to avoid actual, potential, or perceived conflict-of-interest.

Examples of a conflict-of-interest include, but are not limited to:

- (a) material affiliations with competitors of the Company; and
- (b) material affiliations with parties that are likely to be a material, or regular counterparty to a transaction with the Company.

When an actual or perceived conflict of interest is identified the director concerned shall not attend any part of meeting of the Board (or Committee) at which the matter

is to be discussed or deliberated on, nor may that director cast a vote in respect of such matter, unless the Chair shall have determined otherwise.

3.5. Corporate Opportunities

Directors will not take any opportunity discovered through the use of the Company's property, information, or position for themselves or for persons with whom they have a relationship.

3.6. Business Relationships to be Disclosed

Before accepting appointment to the Board, and thereafter as they occur, a director is required to disclose to the Board his or her business relationships that may have a bearing on his or her role as a director of the Company or which are relevant to the matters referred to in 2.3, 3.1, or 3.4.

3.7. Disclosure of directors' information

The Company's annual report will include information about each director including their qualifications, experience, length of service and remuneration.

4. DIRECTOR INDUCTION

4.1 All new directors appointed to the Board will undertake an induction programme coordinated by the CEO, in consultation with the Chair, which will provide such information as will enable new directors to understand the nature and scope of the businesses of the Company and any subsidiary of the Company so as to assist them in fulfilling their duties and responsibilities.

4.2 Directors are expected to keep themselves abreast of changes and trends in the environment and markets in which the Company operates as well as trends in the economic, political, social, and legal climate generally.

4.3 The Board will annually determine any training requirements that are appropriate for all members to participate in to lift the capability of the Board.

4.4 Directors will commit to the appropriate level of ongoing training and continuing skills development to ensure that they continue to contribute to the strategic direction of the Company and their roles in accordance with best practice.

5.1. Principal Duties

The Directors will:

- (a) when exercising powers or performing duties, act in good faith and in what the director believes to be the best interests of the Company. To avoid doubt, in considering the best interest of the Company, a director may consider matters other than the maximisation of profit (for example environmental, social and governance matters);

- (b) exercise their powers for a proper purpose;
- (c) not act, or agree to the Company acting, in a manner that contravenes the law or the Constitution;
- (d) not:
 - (i) agree to the business of the Company being carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors; or
 - (ii) cause or allow the business of the Company to be carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors;
- (e) not agree to the Company incurring an obligation unless the director believes at that time, on reasonable grounds, that the company will be able to perform the obligation when it is required to do so; and
- (f) when exercising powers or performing duties as a director, must exercise care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation:
 - (i) the nature of the Company;
 - (ii) the nature of the decision; and
 - (iii) the position of the director and the nature of the responsibilities undertaken by him or her;
- (g) adhere to the truth, and not mislead, directly or indirectly, nor make false statements or mislead by omission; and
- (h) advance the legitimate interests of the Company.

5.2. Reliance on Information

A director may rely on information, financial data and professional or expert advice given by any of the following:

- (i) an employee of the Company who the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (j) a professional advisor or expert in relation to matters which the director believes on reasonable grounds to be within the person's competence; or
- (k) any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's delegated authority.

A director may only rely on information from other persons not referred to above, if the director:

- (i) acts in good faith;

- (ii) makes proper enquiry where the need to enquire is indicated by the circumstances; and
- (iii) has no knowledge that such reliance is unwarranted.

5.3. Indemnities and Insurance

The Company will indemnify a director upon joining the Board to the extent provided in section 162 of the Companies Act 1993 (*the Act*) and it will also indemnify persons who undertake directorships of other companies at the request of the Company. In addition, the Company will put in place director and officers' liability insurance cover for the benefit of the directors and management.

5.4. Independent Advice

A director may obtain independent advice at the expense of the Company on issues related to the fulfilment of his or her duties as a director, subject to obtaining the approval of the Chair prior to the incurrence of any advisory fees being incurred.

5.5. Resigning Director

A director who resigns before the expiry of his or her term will identify to the Board his or her reasons for such resignation.

6. ROLE OF THE CHAIR

6.1. Chair's Responsibilities

The Chair is appointed by the shareholder in accordance with the Company's Constitution.

The Chair is responsible to ensure that Board meetings are sufficiently well planned and conducted in a manner that ensures the most effective and efficient use of Board time and energy, for leading the Board and setting the tone for the conduct of its meetings and the way in which issues are debated and in particular has the following specific responsibilities:

- (a) conduct meetings of the Board and if required of the shareholder and ensure that adequate minutes of the proceedings of meetings are taken;
- (b) schedule Board meetings in a manner that enables the Board and its committees to perform their duties responsibly while not interfering with the flow of the Company's business;
- (c) prepare, in consultation with the CEO, other directors and committee Chairs, the agendas for the Board and committee meetings;
- (d) define the quality, quantity, and timeliness of the flow of information between management and the Board;

- (e) ensure that issues raised, or information requested, by any director are responded to promptly and as fully as possible;
- (f) approve, in consultation with the Board, the retention of consultants who report directly to the Board;
- (g) foster a constructive governance culture and assist the Board and management in assuring compliance with and implementation of this Charter and to be principally responsible for recommending revisions thereto;
- (h) promote and maintain the independence of the Board from management;
- (i) lead the directors evaluation of the CEO's performance and to meet with the CEO to discuss the Board's requirements and expectations and the evaluation of the CEO's performance by the Board; and
- (j) in consultation with the shareholder, to ensure rigorous, formal processes for evaluating the performance of the Board, Board committees and individual directors are in place and to lead these processes.

6.2. Chair's relationship with CEO

The Chair is responsible for establishing a close working relationship with the CEO and acting as his or her mentor.

7. BOARD PROCEDURES

7.1. Conduct

The conduct of the Board will be consistent with their duties and responsibilities to the Company. The Board will be disciplined in carrying out its role, with emphasis on strategic issues and policy.

The Board has in place procedures to ensure that the Board meets regularly, conducts its meetings in an efficient and effective manner and that each director is fully empowered to perform his or her duties as a director of the Company and to fully participate in meetings of the Board.

7.2. Meetings without CEO and/or management

The Board will meet without the CEO and other management in relation to each meeting and at least once a year specifically to address the performance and remuneration of the CEO and management.

7.3. Attendance at Meetings

Directors are expected, and will use all reasonable endeavours, to attend all Board meetings. If it is not possible for a director to attend in person, that director will give his or her, apologies in writing to the Chair at the earliest date possible.

7.4. Convening of Meetings

Board meetings are normally convened by the Chair. Any director may request the Chair to convene a meeting. Notice of a meeting must be given to all directors.

7.5. Agenda for Meetings

The agenda for normal Board meetings is determined by the Chair. Where a director has requested a meeting, the agenda will be as specified by that director. In addition, each Board meeting has a general business item under which directors may raise issues.

7.6. Information to Directors

The Board recognises that appropriate information, provided on a timely basis, is essential to the effective discharge of its duties. The Chair and the CEO are responsible for ensuring appropriate Board papers (including any financial reports), that identify and fairly address the key issues concerning the Company, are prepared and distributed to Board members in a format and at a time that allows directors to be fully informed on the affairs of the Company and to properly prepare for discussion at Board meetings.

7.7. Availability of Management

The Chair, in consultation with the CEO, is responsible to ensure the availability of the CEO and management when required by the Board but except to this extent, and except to the extent permitted with the prior approval of the Chair or in the Audit and Risk Committee Charter, directors have no authority to deal directly with, or to instruct, management.

7.8. Passing of Resolutions

A resolution of the Board is passed at a Board meeting by the agreement of a majority of the votes cast on it. In the case of an equality of votes the Chair has a casting vote.

7.9. Director Performance Evaluation

The Board will undertake an annual performance evaluation of itself. Under the direction of the shareholder, the performance of individual directors will be evaluated at not more than 2 yearly intervals. The performance of the CEO and executives will also be evaluated on an annual basis. The scope and process for such evaluations will be as set out in the Performance Evaluation Policy set out in Annexure 5.

8. COMMITTEES OF THE BOARD

8.1. Establishment of Committees

The Board may from time to time establish committees to assist it in carrying out its responsibilities. For each committee, the Board must adopt a formal charter that sets out the delegated functions and responsibilities for, and the composition of and any administrative matters relating to, that committee.

8.2. Standard form Committee Charter

A standard form committee charter to apply with appropriate modifications on the establishment of a committee has been adopted by the Board and is set out in Annexure 3 to the Corporate Governance Code.

8.3. Oversight of Committees

The Board is responsible for oversight of the committees. This oversight will include, in relation to each committee, determining and reviewing its structure and composition and regularly reviewing its performance against its charter.

8.4. Audit and Risk Committee for both Top Energy and Ngawha Generation

Recognising the significance of the assets held by the Company and the subsidiary Ngawha Generation Limited (**NGL**), the Board has determined that NGL must establish an audit and risk committee with a charter the same as or substantially similar effect of the charter applicable to the Audit and Risk committee of Top Energy.

8.5. Publication of Committee Members

The Board will identify the members of each committee and their charter in the Company's annual report.

9. FINANCIAL ACCOUNTING AND REPORTING AND AUDIT

9.1. Overall Responsibility

The Board, as a whole, monitors the processes which are undertaken by management executives (for internal audit purposes) and external auditors to ensure that the Board meets all financial corporate governance requirements. The Board has appointed the Audit and Risk committee to assist it in fulfilling its oversight responsibilities. The objectives, authority and functions of the Audit and Risk committee are set out in its Charter in Annexure 4.

9.2. Appointment of Auditor

As required by the Energy Companies Act, the auditor of the Company is the Controller and Auditor-General. In practice, the Controller and Auditor-General appoints a private audit practitioner (external auditor) to undertake the audit.

9.3. Full and Frank Dialogue

The Board recognises the importance of and shall facilitate full and frank dialogue among the Audit and Risk committee, the auditor and management. The Audit & Risk committee Charter will include a requirement for that committee to meet with the auditors without management present.

9.4. Report on Audit Fees and non-audit work

The Board shall include in the Company's annual report, fees paid to the auditor for both audit and non-audit work and shall separately identify fees paid for each category of non-audit work and why non-audit work undertaken by the external auditor did not compromise the independence of the external auditor.

10. REMUNERATION POLICY

10.1. Alignment of Interests with Shareholder

The Board promotes the alignment of the interests of the directors, the CEO and management with the long-term interests of the shareholder.

10.2. Review Process

The Board shall annually review the remuneration of the directors, the CEO and executives and the remuneration structure and policy within the Company in accordance with the Remuneration Policy set out in Annexure 8.

11. THE CHIEF EXECUTIVE OFFICER

11.1. Responsibilities of the CEO

The CEO is the senior executive of the Company and is responsible for:

- (a) recommending the strategic direction, vision, and policies of the Company, for approval by the Board;
- (b) providing management of the day-to-day operations of the Company for approval; and
- (c) acting as the spokesperson of the Company in accordance with the Company's Media Protocol.

11.2. No Appointment as Chair

The CEO is not eligible to be appointed as a director. A Chair may, however, assume the post of CEO concurrently on a temporary basis when the post of CEO is vacant, for a period not longer than six months. After the initial period of six months, if a CEO has not been appointed, the Board may extend the Chair's CEO post for another maximum period of six months.

11.3. Independence of the Board

The CEO must respect the independence of directors so as to permit the Board to challenge management decisions objectively and evaluate corporate performance.

11.4. Other Boards

The CEO will not accept appointment to the board of other companies except for family companies and directorships undertaken at the request of the Company where the Company has a significant interest, except with the consent of the Board.

12. REPORTING AND DISCLOSURE

12.1. Annual Report

In addition to all information required by law, the Board acknowledges that the Company's annual report should include sufficient meaningful information to enable the shareholder and stakeholders to be well informed on the affairs of the Company, as detailed in Annexure 6, Corporate Governance Stakeholder Engagement Policy.

12.2. Financial Reports

The Chair and chair of the Audit and Risk committee of the Company shall certify in the published financial reports of the Company that the reports comply with generally accepted accounting standards and present a true and fair view of the financial affairs of the Company.

12.3. Code of Ethics

The Board will monitor performance of the Top Energy Governance Code and the charters and policies which form part of it.

The Board's Code of Ethics will be published on the Company's website and available to all directors, Top Energy people and the shareholder.