

SETTLEMENT AGREEMENT

(Regulation 83(1) Electricity Governance Regulations 2003)

DATED:

BETWEEN:

- (1) **Vector Limited** of Level 4, 101 Carlton Gore Road, Newmarket, Auckland (**Vector**);
- (2) **Transpower New Zealand Limited** of Level 7, 96 The Terrace, Wellington, in its capacity as System Operator (the **System Operator**);
- (3) **Meridian Energy Limited** of 15 Allen Street, Wellington;
- (4) **Norske Skog Tasman Limited** of Fletcher Avenue, Kawerau;
- (5) **Genesis Power Limited** of 602 Great South Road, Greenlane, Auckland;
- (6) **Rio Tinto Aluminium New Zealand Limited** of 16th Floor, ASB Bank Tower, 2 Hunter Street, Wellington;
- (7) **Mighty River Power Limited** of Level 19, 1 Queen Street, Auckland; and
- (8) **TrustPower Limited** of TrustPower Building, Truman Road, Te Maunga, Mount Maunganui.

BACKGROUND:

- (A) The System Operator reported Vector for certain breaches of the EGRs under regulation 62 of the Regulations. The Electricity Commission appointed an investigator to investigate the breaches under regulation 69 of the Regulations.
- (B) The other parties joined the investigation as affected parties under regulation 75 of the Regulations.
- (C) Vector denies the alleged breaches.
- (D) The parties have agreed to settle the alleged breaches on the terms of this Agreement.

IT IS AGREED:

1. Interpretation

1.1 In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means this Settlement Agreement;

- (b) **Alleged Breaches** means the alleged breaches of the EGRs described in clause 2.1;
- (c) **Approval Date** means the date the parties to this Agreement are notified that the Electricity Commission has approved this Agreement under regulation 84(2)(a) of the Regulations;
- (d) **EGRs** means the Electricity Governance Rules 2003;
- (e) **IL Methodology** means the methodology applied by the System Operator to calculate the amount of Interruptible Load provided by an Ancillary Service Agent;
- (f) **Regulations** means the Electricity Governance Regulations 2003;
- (g) all capitalised terms not defined in this Agreement have the same meanings as in the Regulations or EGRs, as the case may be; and
- (h) all references to clauses are to clauses of this Agreement.

2. Alleged Breaches

2.1 The System Operator reported Vector for the following alleged breaches of the EGRs occurring on 1 July 2005 :

- (a) Rule 6.3.3 of Section II of Part G for failing to provide reasonable estimates to the System Operator for the Interruptible Load Vector was able to provide on the above date; and
- (b) Rule 4.11 of Section III of Part G for failing to comply with Dispatch Instructions for Interruptible Load on the above date.

2.2 Vector denies the Alleged Breaches. Nothing in this Agreement is to be interpreted as acceptance of the Alleged Breaches by Vector.

2.3 Nothing in this agreement is to be interpreted as acceptance of Vector's denial of the Alleged Breaches by any of the other parties.

3. Settlement

3.1 The System Operator will review the current Procurement Plan and determine whether it believes a Rule change is necessary for it to implement an alternative IL Methodology. The System operator will notify the Electricity Commission and Vector of its view within two weeks of the Approval Date.

3.2 Vector will request the Electricity Commission to approach the appropriate Electricity Commission advisory groups to consider the following issues:

- (a) What are the criteria for determining whether a Reserve Offer for Interruptible Load is a reasonable estimate of the Interruptible Load available in terms of Rule 6.3.3 of Section II of Part G of the EGRs? Are Interruptible Load, Tail Water Depressed Reserve, and Partly Loaded Spinning Reserve subject to the same criteria?

- (b) What are the criteria for determining whether an Ancillary Service Agent has complied with a Dispatch Instruction to provide Interruptible Load in terms of Rule 4.11 of Section III of Part G of the EGRs? Are over delivery and under delivery of Interruptible Load to be treated the same way under rule 4 of section III of part G of the EGRs?
 - (c) What should the accuracy standard be for monitoring and recording equipment for Interruptible Load?
- 3.3 Vector will facilitate informal consultation with Participants interested in the provision of Interruptible Load on alternatives to the current IL Methodology, with a view to achieving industry consensus on one or more alternatives. On the basis of such consultation, Vector will propose to the System Operator in a written report one or more alternatives to the current IL Methodology.
- 3.4 The System Operator is not obliged to change the current IL Methodology in response to the consultation referred to in clause 3.3 or otherwise. The System Operator will continue to use the current IL Methodology, and Vector will continue to be assessed against the current IL Methodology, unless the System Operator decides to change it or is compelled to change it by the Electricity Commission or a change to the EGRs. Nothing in this Agreement is to be interpreted as acceptance by Transpower that the current IL Methodology requires change.
- 4. Confidentiality**
- 4.1 If the Electricity Commission decides under regulation 85(2) of the Regulations not to publicise any part of this Agreement, each party will treat that part of the Agreement as confidential information and will not disclose it other than:
 - (a) to the party's employees or contractors who need to know the confidential information to implement or monitor the implementation of this Agreement;
 - (b) to the party's professional advisers, auditors and bankers;
 - (c) as required by law or for the purposes of judicial proceedings;
 - (d) as required by any securities exchange or regulatory or governmental body to which the party is subject or submits; or
 - (e) as authorised in writing by the other parties.
- 4.2 A party must not disclose confidential information under clause 4.1(a) or (b) unless the party obtains a confidentiality undertaking from the person to whom the confidential information is to be disclosed on terms no less onerous than those set out in this clause 4 before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in clause 4.1(c) or (d) may only be disclosed after written notice to the other parties (unless the disclosing party is prevented from notifying the other parties by law).

5. Agreement Subject to Approval

5.1 Subject to clause 5.2, this Agreement will come into effect on the Approval Date.

5.2 Clause 4 is binding on the parties as from the date of this Agreement. Pending the Electricity Commission's approval of this Agreement under regulation 84(2)(a) of the Regulations, clause 4 will apply as if the Electricity Commission has decided under regulation 85(2) of the Regulations not to publicise any part of this Agreement or the existence of this Agreement.

6. Settled Breaches

6.1 This Agreement is in full and final settlement of all claims, actions and demands against any party (under the Regulations, the EGRs or otherwise) in relation to:

- (a) the Alleged Breaches; and
- (b) any other breaches of the Regulations or EGRs involved in or arising from the circumstances of the Alleged Breaches that the claiming party ought reasonably to have known about at the date of this Agreement,

(the Alleged Breaches and such other breaches together the **Settled Breaches**).

6.2 Pursuant to regulation 84, but subject to regulation 87 of the Regulations, this Agreement is also binding on the Electricity Commission and all Participants who are not a party to this Agreement to the effect that:

- (a) the Electricity Commission may not on its own initiative instigate a further breach investigation, or take any enforcement action in respect of, the Settled Breaches; and
- (b) a Participant who is not a party to this Agreement may, subject to and in accordance with regulation 87 of the Regulations, make a further notification under regulation 62 or 63 of the Regulations in relation to a Settled Breach, and the Electricity Commission may then take all or any of the steps provided for in Part 4 of the Regulations notwithstanding this Agreement.

7. General

7.1 Each party will execute all documents and do, or refrain from doing, all other things necessary or desirable to give full effect to the provisions of this Agreement, including to secure the Electricity Commission's approval of this Agreement under regulation 84(2)(a) of the Regulations.

7.2 This Agreement is the whole and only agreement between the parties relating to the settlement of claims, actions and demands arising from the Settled Breaches. Each party acknowledges that it has not been induced to enter into this Agreement by any representation made by or on behalf of the other parties that is not repeated in this Agreement.

7.3 This Agreement may be signed in any number of counterparts.

SIGNED:

For **Vector Limited** by:

Name:

Position:

For **Transpower New Zealand Limited** in its capacity as **System Operator** by:

Name:

Position:

For **Meridian Energy Limited** by:

Name:

Position:

For **Norske Skog Tasman Limited** by:

Name:

Position:

For **Genesis Power Limited** by:

Name:

Position:

For **Rio Tinto Aluminium New Zealand Limited** by:

Name:

Position:

For **Mighty River Power Limited** by:

Name:

Position:

For **TrustPower Limited** by:

Name:

Position: