

SETTLEMENT AGREEMENT

(Regulation 83(1) Electricity Governance Regulations 2003)

DATED: 30 June 2009

BETWEEN:

- (1) Transpower New Zealand Ltd, of level 7, 96 The Terrace, Wellington in its capacity as the System Operator (the **System Operator**);
 - (2) Genesis Power Ltd, of 602 Great South Road, Greenlane, Auckland, (**Genesis**);
and
 - (3) Meridian Energy Ltd, of 33 Customhouse Quay, Wellington, (**Meridian**);
- (Collectively the **parties**).

BACKGROUND:

- (A) On 30 August 2007, the System Operator self-reported that it had breached rule 2.2.5 of section II of part C of the Electricity Governance Rules 2003 (Rules) by failing to act as a Reasonable and Prudent System Operator with the objective of ensuring Frequency Time Error is not greater than five seconds of New Zealand Standard Time.
- (B) In accordance with regulation 69 of the Regulations, the Board appointed an Investigator to investigate the Alleged Breach
- (C) Genesis and Meridian joined the investigation as interested participants.
- (D) The parties have agreed to settle the Alleged Breach on the terms contained in 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 Breach** means the alleged breach of the Rules arising from the Circumstances and described in clause 2;

- (c) **Approval Date** means the date the parties to this Agreement are notified that the Electricity Commission Board has approved this Agreement under regulation 84(2)(a) of the Regulations;
- (d) **Board** means the Board of the Electricity Commission;
- (e) **Circumstances** means the circumstances set out in clause 3;
- (f) **Regulations** means the Electricity Governance Regulations 2003;
- (g) **Rules** means the Electricity Governance Rules 2003;
- (h) all capitalised terms not defined in this Agreement have the same meanings as in the Regulations or Rules, as the case may be; and
- (i) all references to clauses are to clauses of this Agreement.

2. Alleged Breach

- 2.1 The System Operator itself, alleged that it breached 2.2.5 of section II of part C of the Rules by failing to act as a Reasonable and Prudent System Operator with the objective of ensuring Frequency Time Error is not greater than five seconds of New Zealand Standard Time.

3. Circumstances of the Breach

- 3.1 At 06:03 on 8 August 2007, the North Island system frequency fell below 49.8Hz. The frequency keeper responded to the falling frequency and went to the top of its band by 06:10. At 06:16 the frequency keeper called the System Operator expressing concern that it had been at the top of its band for some time and that the time error was increasing and beyond its control. The System Operator advised the frequency keeper that it was aware of the situation and that it had just dispatched additional generation into the North Island to try and alleviate the situation. The system frequency remained around 49.8Hz from 06:03 to 06:17 and at 06:26 recovered to 50Hz. The Frequency Time Error exceeded –5 seconds from 06:18 to 06:33 with a maximum error of -5.96 seconds at 06:26.
- 3.2 On review of this incident, it appears the System Operator did not make sufficiently large increases in the amount of generation dispatched between 06:00 and 06:30 to account for the rapidly increasing loads.

4. Impact of the Breach

- 4.1 The parties agreed that the impact as assessed by the Investigator should be recorded as having minimal market impact and no security impact.

5. Steps taken to prevent recurrence

5.1 The System Operator has:

- (a) conducted an investigation to determine the root cause of this incident. The System Operator believes the root cause was a combination of process implementation and the need for staff to recognise, consistently, when more active management with respect to Frequency Time Error is needed;
- (b) spoken to the personnel involved in this incident to ensure they understand the need to manage Frequency Time Error more proactively;
- (c) reviewed the process for monitoring Frequency Keeping band and the Frequency Time Error, and the thresholds at which proactive action is required. The review concluded these thresholds are appropriate;
- (d) updated its operational process documentation with minor clarity changes, in accordance with the review findings;
- (e) conducted training for all of its co-ordinators to:
 - i. reinforce Dispatch management processes, particularly regarding frequency Normal Band and Frequency Time Error monitoring; and
 - ii. strengthen the interpersonal openness and urgency in dealing with operational incidents.

6. Guiding Principles

6.1 The parties agree the following guiding principles in relation to this Agreement:

- (a) The System Operator, subsequent to reporting this breach reported a further breach of the same rule. This further breach occurred two days prior to the breach which is the subject of this Investigation and involved the same System Operator personnel. Parties to this Investigation were provided with details of this prior breach for information purposes and were thus able to consider this during this settlement process.

7. Settlement

- (a) The System Operator acknowledges that the successful management of the Frequency Time Error (and by default, the frequency Normal Band) requires appropriate action by both the frequency keeper and the System Operator.
- (b) The parties to the Investigation agree that they do not require any further action to be taken by the System Operator other than the steps it has already undertaken to prevent a recurrence of the breach, as set out in clause 5.1 of this Agreement.

8. Confidentiality

8.1 If the Board 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.

8.2 A party must not disclose confidential information under clause 8.1(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 8 before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in clause 8.1(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).

9. Agreement Subject to Approval

9.1 Subject to clause 9.2, this Agreement will come into effect on the Approval Date.

9.2 Clause 8 is binding on the parties as from the date of this Agreement. Pending the Board's approval of this Agreement under regulation 84(2)(a) of the Regulations, clause 8 will apply as if the Board has decided under regulation

85(2) of the Regulations not to publicise any part of this Agreement or the existence of this Agreement.

10. Settled Breaches

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

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

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

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

- (a) the Board 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 Board may then take all or any of the steps provided for in Part 4 of the Regulations despite this Agreement.

11. General

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

11.2 This Agreement is the whole and only agreement between the parties relating to the settlement of claims, actions and demands arising from the Circumstances. 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 party that is not repeated in this Agreement.

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

SIGNED:

For Transpower New Zealand Ltd

Name:

Position:

SIGNED:

For Genesis Power Ltd

Name:

Position:

SIGNED:

For Meridian Energy Ltd

Name:

Position: