

SETTLEMENT AGREEMENT

(Regulation 83(1) Electricity Governance Regulations 2003)

DATED:

BETWEEN:

- (1) **Meridian Energy Limited** (Meridian) of 15 Allen Street, Wellington; and
- (2) **Powerco Limited** (Powerco) Private Bag 2061, New Plymouth 4310.

Together "the parties"

BACKGROUND:

- (a) On 12 October 2005 Meridian notified the Electricity Commission (the **Commission**) pursuant to Regulation 62 of the Electricity Governance Regulations 2003 (the **Regulations**) of potential breaches of the Electricity Governance Rules 2003 (EGRs) by Powerco.
- (b) On 22 May 2006 the Commission appointed an investigator to investigate the potential EGR breaches under Regulation 69 of the Regulations.
- (c) The parties have agreed to settle all potential EGR breaches described in clause 3 below on the terms set out in this Agreement.

IT IS AGREED:

1. Interpretation

In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means this Settlement Agreement;
- (b) **Potential EGR Breach** means a potential breach of the EGRs described in clause 3;
- (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) **Regulations** means the Electricity Governance Regulations 2003;
- (f) All capitalised terms not defined in this Agreement have the same meaning as in the Regulations or EGRs, as the case may be; and
- (g) All references to clauses are to clauses of this Agreement.

2. Circumstances

The parties agree on the following circumstances of the potential EGR breaches:

- (a) In early 2002 a metering installation connected to a Powerco network, CST0331 POCO GN, was livened without a valid installation control point (ICP) and ensuring ICP information related to that metering installation was populated into the MARIA Registry (Registry).
- (b) During the time the metering installation was livened, the market was operating under a different regime to the Electricity Governance Rules and the development of the customer's site was a complex process that required more than two years of construction.
- (c) Due to a series of errors and assumptions by those involved in the development of the customer's site, the creation of an ICP was either inadvertently overlooked, or incorrect assumptions were made that an ICP was supplying the meter.
- (d) In September 2004 the matter was discovered during a random inspection of the site by the meter owner, Stream. Once advised, Powerco made immediate arrangements to create an ICP and populate the Registry.
- (e) In November 2004 an ICP was created and its details were populated into the Registry by Powerco. Powerco backdated the creation date to 16 July 2001, the date from which metering data was first obtained from the site.

3. Potential EGR breaches

Arising from the circumstances set out in clause 2 above, potential EGR breaches as set out below were identified and considered by the parties during settlement discussions:

- (a) Rule 2 of Part E – failure to create an ICP for a customer attached to its network;
- (b) Rule 5 of Part E – failure to provide the Registry information listed in Rule 2 of schedule E2 before the commencement of supply; and
- (c) Rule 6 of Part E – failure to provide notice to the Registry of changes to information provided under rule 5 of part E within three business days of the change occurring.

4. Liability

Powerco does not consider that it is singularly at fault, or that it is the primary cause of the initial potential breach issue. Powerco agrees that the issue has provided valuable insight, and taken a number of lessons from the matter on board.

5. Settlement

The parties agree:

- (a) Powerco will continue to take steps to ensure that it has in place appropriate processes for reviewing the accuracy of ICP information recorded by it in the Registry;
- (b) Meridian and Powerco will use best endeavours to resolve all outstanding consumption and reconciliation issues identified in the course of this settlement process;
- (c) That where a market participant reasonably believes that there is inaccurate information recorded on the Registry it is the responsibility of that market participant to provide immediate written notice to the Commission and affected market participants so that appropriate corrective action can be initiated;
- (d) That the practice of backdating any change to the Registry outside of the industry accepted practice of three business days may give rise to potential breaches of the EGRs and is an undesirable practice that should be discouraged; and
- (e) Meridian and Powerco undertake to negotiate in good faith the resolution of compensation claims by Meridian against Powerco for energy and lines charges relating to this matter and if no agreement is reached within 60 working days of the Approval Date either by agreement extend the negotiation period or either party can refer the matter to arbitration, such arbitrator to be appointed by agreement between the parties or in the absence of agreement by the President of the New Zealand Law Society.

6. Confidentiality

- 6.1 If the 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.
- 6.2 A party must not disclose confidential information under clause 6 (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 6 before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in clause 6 (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).

7. Agreement Subject to Approval

- 7.1 Subject to clause 7.2, this Agreement will come into effect on the Approval Date.
- 7.2 Clause 6 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 6 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.

8. Settled Potential EGR Breaches

- 8.1 Subject to clause 5 (e) this Agreement is in full and final settlement of all claims, actions and demands against any party under the Regulations, the EGRs or any other relevant law in relation to:
- (a) The potential EGR breaches; and
 - (b) Any other breaches or potential breaches of the Regulations or EGRs involved in or arising from the circumstances of the potential EGR breaches that the claiming party ought reasonably to have known about at the date of this Agreement,
- 8.2 Pursuant to regulation 84, but subject to regulation 87 of the Regulations, and once approved by the Board, this Agreement is also binding on the Commission and all Participants including those who are not a party to this Agreement to the effect that:
- (a) The Commission may not on its own initiative investigate a further breach investigation, or take any enforcement action in respect of, the potential EGR 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 the circumstances set out in clause 2 of this Agreement and the Commission may then take all or any of the steps provided for in Part 4 of the Regulations notwithstanding this Agreement.

9. General

- 9.1 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 Commission's approval of this Agreement under regulation 84(2)(a) of the Regulations.
- 9.2 Subject to clause 5 (e) this Agreement is the whole and only Agreement between the parties relating to the settlement of claims, actions and demands arising from the potential EGR breaches referred to in clause 3. 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.
- 9.3 This Agreement may be signed in any number of counterparts.

9.4 Contracts (Privity) Act: The parties acknowledge, for the purposes of the Contracts (Privity) Act 1982, that this Agreement confers a benefit on, and is intended to be enforceable by, the Commission.

For Meridian Energy Limited by:

Name:

Position:

For Powerco Limited by:

Name:

Position: