

## SETTLEMENT AGREEMENT

### (Regulation 83(1) Electricity Governance Regulations 2003)

#### DATED:

#### BETWEEN:

- (1) **Electricity Ashburton Limited** (EASH), Private Bag 802, Ashburton;
- (2) **Meridian Energy Limited** (Meridian), 15 Allen Street, Wellington; and
- (3) **Orion New Zealand Limited** (Orion), PO Box 13896, Christchurch.

Together "the parties"

#### BACKGROUND:

- (a) On 26 April 2006 Meridian notified the Electricity Commission (the **Commission**) pursuant to regulation 62 of the Electricity Governance Regulations 2003 (the **Regulations**) of a potential breach of the Electricity Governance Rules 2003 (the **EGRs**) by EASH.
- (b) On 21 March 2007 the Commission appointed an investigator to investigate the potential EGR breach under regulation 69 of the Regulations.
- (c) Orion joined the investigation as an affected party under regulation 75 of the Regulations.
- (d) The parties have agreed to settle the admitted EGR breach 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 the potential breach of the EGRs described in clause 3;
- (c) **Approval Date** means the date the parties to this Agreement are notified that the Commission has approved this Agreement under regulation 84(2)(a) of the Regulations;
- (d) **EGRs** means the Electricity Governance Rules 2003;

- (e) **Regulations** mean the Electricity Governance Regulations 2003;
- (f) **Trader** means any participant that sells or purchases electricity in accordance with the EGRs and includes, generators, retailers and consumers selling directly to or purchasing directly from the Clearing Manager;
- (g) All capitalised terms not defined in this Agreement have the same meaning as in the Regulations or EGRs, as the case may be;
- (h) All references to clauses are to clauses of this Agreement;
- (i) **EASH Upper Rakaia Embedded Network** means URK0111 or the distribution assets owned by EASH supplying the Upper Rakaia beyond the Orion Switch (OAZ/2) (the embedded network); and
- (j) **Orion Upper Rakaia Embedded Network** means the distribution assets owned by Orion supplying Manuka Point beyond EASH switch (AA88 on the EASH Upper Rakaia Embedded Network (Orion embedded network)).

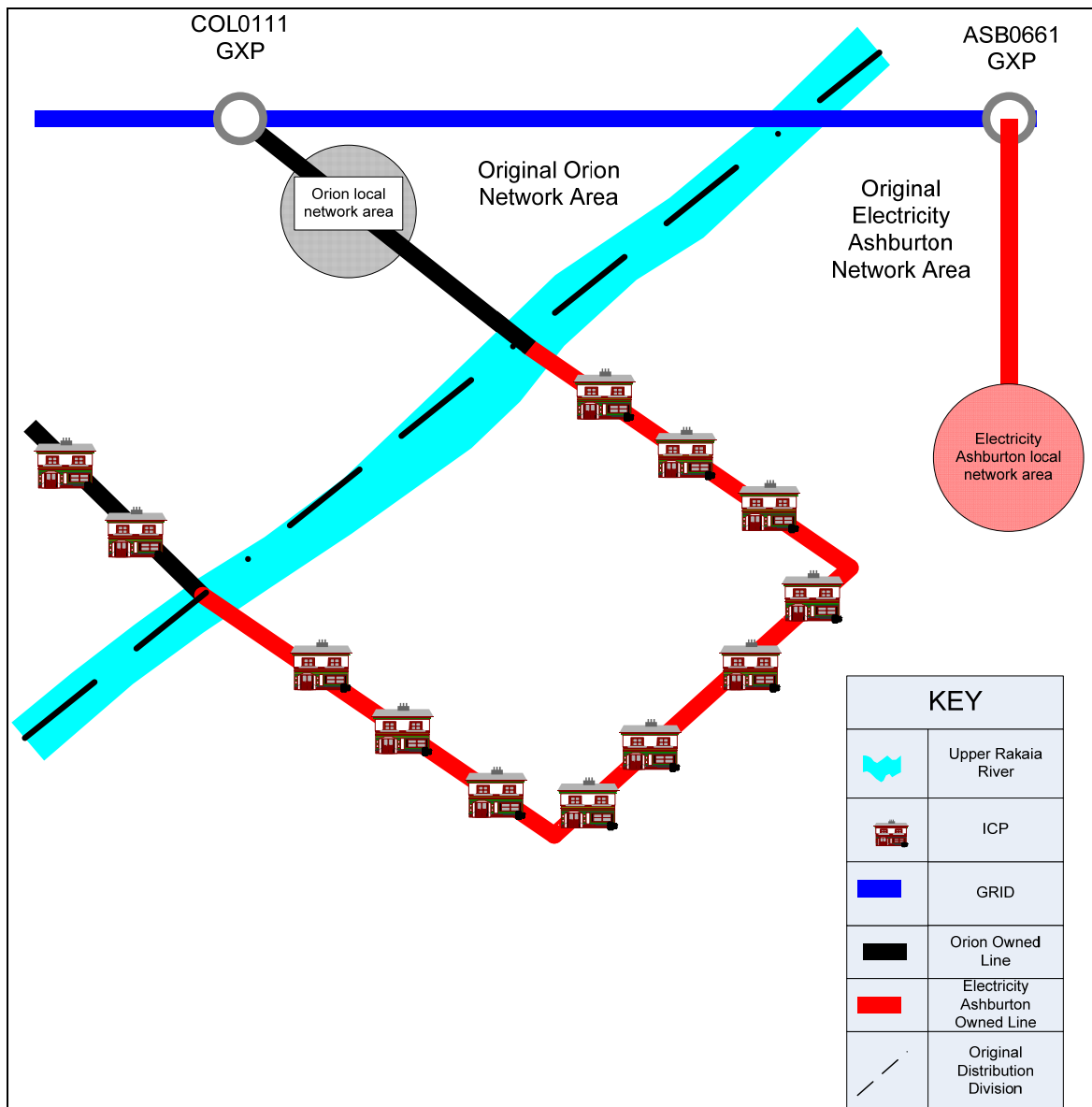
## 2. Circumstances

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

- (a) This alleged breach relates to a section of network line that forms part of the EASH owned network, while not being physically connected to or supplied from any of the Network Supply Points (NSP's) in the EASH traditional area of supply. There are ten Installation Control Points (ICP's) connected to this section of the line which are treated as EASH customers. The Registry shows the ICP's are supplied from the NSP ASB0661 but are actually supplied from the Orion NSP COL0111.
- (b) This situation has resulted in an imbalance of reconciled energy between the two networks. Moreover, line and transmission costs also have been affected. The quantum is reasonably low, approximately 215,000 kWh per annum in total.
- (c) In 1971, Central Canterbury Electric Power Board and Ashburton Electric Power and Gas Board entered into an agreement to extend a line across the Rakaia River to supply ten customers in the Ashburton area of supply then cross back over the river at Manuka Point to supply two ICP's in the Central Canterbury area of supply. This line was fully sanctioned by the New Zealand Electricity Department (NZED) under the governance structure that existed at that time. Suitable agreements were established to address the commercial issues between the two Power Boards.
- (d) Central Canterbury Electric Power Board later merged with the Christchurch Municipal Electricity Department to become Southpower Limited in 1989. Later, Orion emerged after the sale of Southpower's energy retail business (and name) to TransAlta New Zealand Limited. Around that time, the Ashburton Electric Power and Gas Board became EASH.
- (e) In 1998, the forced separation of lines and energy under the Electricity Industry Reform Act 1998 established a new regime which led to governance requirements that no longer supported the historical Upper Rakaia network settlement arrangement. By 30 June 2000, all incumbent ICP's were required to be submitted to Retailers so that the MARIA Registry could be populated. The NSP's for each Distributor were as tabled in Schedule 11 of MARIA, there was no mechanism or

recognition at that time for “embedded networks”. However, most ICP’s had been notified by April 1999.

- (f) In the bulk upload of the ICP’s for EASH, the 10 Upper Rakaia ICP’s were assigned to ASB0661. There was no ability in the Registry to assign them to any NSP not in Schedule 11 as being in the Ashburton incumbency, however, the historical issues were probably diluted with time and not recognised in the timeframe of meeting the compliance now in force. The two ICP’s at the end of the line where it re-crossed the Rakaia River have always been correctly assigned however, as they are correctly located on the Orion network and assigned the correct COL0111. Those two ICP’s are therefore not involved in this matter.
- (g) As EASH is operated as a Cooperative Company, changing the “network ownership” of the 10 ICP’s to Orion would disenfranchise these consumers of their ownership or participation in the cooperative. The line ownership issue has been studied by Orion, however due to the line condition and remoteness the liabilities of ownership are viewed as outweighing any advantages.
- (h) Below is a simplified representation illustrating the division of networks before the commencement of the Rules and how electricity is physically supplied from the Grid to the 10 ICP’s. Note that the diagram is not to scale.



### 3. Admitted EGR breach

Arising from the circumstances set out in clause 2 above a potential EGR breach was identified and considered by the parties during settlement discussions. The parties have considered the circumstances surrounding the admitted breach of rule 2.3 of schedule E2 of part E.

### 4. Liability

EASH accepts it had technically breached rule 2.3 of schedule E2 of part E.

### 5. Settlement

The parties agree to the following actions:

#### Reconciliation of Upper Rakaia

- a) A suitably qualified data collector will provide meter readings to the electricity traders (which become certified reconciliation participants post 1 May 2008) supplying electricity to the ICP's situated on the Ashburton side of the Upper Rakaia River;
- b) Traders (currently Contact Energy Limited and TrustPower Limited) will provide non half hour data from their 'n' files submissions to the Reconciliation Manager for this NSP to EASH;  
EASH, operating under a limited half hour data administrator certification<sup>1</sup>, will create notional half hour data derived for the URK0111 EASH EN gate meter by:
  - i. Obtain from the grid owner the NSP half hour file for COL0111 to be used as the COL0111 half hour profile; then
  - ii. For the initial (day 4) submission file, by using an estimate consumption for the period, apply loss factors, to scale the COL0111 half hour profile to create a EN gateway meter submission file; then
  - iii. For subsequent revisions submission files, summing 'n' file data for the embedded network then scaling by the loss factors and applying the COL0111 half hour profile; and
  - iv. then adding loss adjusted half hourly data for any half hourly metered ICP's within the URK0111 embedded network;
- c) EASH, operating under a limited half hour data administrator certification, will provide the Reconciliation Manager this notional embedded network gateway data for URK0111 as embedded network owner, in the appropriate format;
- d) Orion will accept that data supplied from EASH to the Reconciliation Manager as normal embedded network gateway metering data;
- e) Traders will provide the Reconciliation Manager with ICP data for connections on the URK0111 in the normal manner; and
- f) EASH will adopt a global reconciliation process for URK0111 post 1 May 2008;

### **Exemptions**

- a) EASH will submit an application for an exemption from the requirement to establish a metering installation (rule 3.5 of part D up to the effective date of the revised Part D and rule 3.7 of part D after this date) for a single un-metered embedded network point of connection, URK0111;
- b) EASH will submit an application for an exemption from the requirement to gain full data administration certification (rule 4 of code of practice G1 of schedule G8 of part G up to the effective date of the new Part J and rule 19 of part J after this date) to allow it to operate as a limited half hour data administrator to collate information,

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<sup>1</sup> Certification will be subject to Market Administrator approval and an equivalent certification will be applied post 1 May 2008.

scale half hour shape information and submit this information to the reconciliation manager for settlement, and only for the proposed un-metered embedded network URK0111;

- c) Orion will submit an application for an exemption to the Commission so that:
  - i) an embedded network NSP not be required between the proposed URK0111 and Manuka Point, allowing the ICP's connected to the second Orion embedded network to be treated as though they are directly connected to the Orion network; and
  - ii) there is no requirement for metering at this interconnection point;

**Other matters**

- g) EASH will submit an application to the Reconciliation Manager to create an NSP URK0111;
- h) EASH will calculate and publish loss factors for its ICPs on the embedded network based on the difference between Orion high voltage and low voltage loss factors;
- i) Subject to clause (h) and (i), EASH will update ICP data contained within the Registry in accordance with the EGRs;
- j) EASH will agree to Orion's 'Term's and Condition's of providing Delivery Services to Major Customers';
- k) Orion will charge EASH for lines services;
- l) Orion will bill EASH as a customer based on the half hour derived data for URK0111;
- m) Orion will deduct the half hour derived data for URK0111 when calculating the balance of the line charges at COL0111
- n) EASH will not charge Orion for line services regarding the two Orion ICP's situated at the end of the network line past Manuka Point;
- o) Meridian will assume the role of incumbent retailer for the proposed new embedded network URK0111 until 1 May 2008;
- p) Meridian, as incumbent retailer for URK0111 will create and supply "n" data to EASH if Meridian becomes retailer for any of the ICPs on URK0111;
- q) In respect to historical and future lines charges up to 30 November 2007, the parties will resolve this matter in a prompt and equitable manner; and
- r) Meridian will approach TrustPower Limited to engage in discussions to resolve residual reconciliation issues.

## **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 6.1 (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 6.1 before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in clause 6.1 (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).

## **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 Breach**

- 8.1 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 breach; and
  - (b) Any other breaches or potential breaches of the Regulations or EGRs involved in or arising from the circumstances of the potential EGR breach 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 breach; 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 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 breach 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 Electricity Ashburton Limited by:**

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Name:

Position:

**For Meridian Energy Limited by:**

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Name:

Position:

**For Orion New Zealand Limited by:**

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Name:

Position: