

SETTLEMENT AGREEMENT

(Regulation 83(1) Electricity Governance Regulations 2003)

DATED: 9th November 2005

BETWEEN:

- (1) **Transpower New Zealand Limited** of Level 7, 96 The Terrace, Wellington, in its capacity as Grid Owner (the **Grid Owner**); and
- (2) **Powerco Limited** of Level 2, Council Chambers, 84 Liardet Street, New Plymouth (**Powerco**).

BACKGROUND:

- (A) The Grid Owner self-reported certain breaches of the EGRs under regulation 63 of the Regulations. The Board appointed an investigator to investigate the breaches under regulation 69 of the Regulations.
 - (B) The parties have agreed to settle the breaches on the terms of this Agreement.
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IT IS AGREED:

1. Interpretation

1.1 In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means this Settlement Agreement;
- (b) **Approval Date** means the date the Grid Owner is notified that the Board has approved this Agreement under regulation 84(2) of the Regulations;
- (c) **Breaches** means the breaches of the EGRs arising from the Circumstances and set out in clause 2.2;
- (d) **Circumstances** means the circumstances set out in clause 2.1;
- (e) **Double-Checking Procedure** means the Grid Owner's internal procedure that requires a second staff member to check any new calculation instructions for adjusted demand;
- (f) **EGRs** means the Electricity Governance Rules 2003;
- (g) **EMS** means Energy Market Services Limited, which is the Grid Owner's sub-contractor for certain of the Grid Owner's metering obligations under the EGRs;

- (h) **Regulations** means the Electricity Governance Regulations 2003;
- (i) all capitalised terms not defined in this Agreement have the same meanings as in the Regulations or EGRs, as the case may be; and
- (j) all references to clauses are to clauses of this Agreement.

2. Circumstances and Breaches

2.1 The parties agree on the following circumstances of the Breaches:

- (a) The Tararua Wind Farm (TWF) is an Embedded Generating Station.
- (b) The System Operator required the relevant Generator to make daily offers for TWF North and TWF South from 1 October 2004. The System Operator advised the Grid Owner of this.
- (c) The Grid Owner advised EMS to add the daily offers for TWF North and TWF South to unadjusted demand for the Bunnythorpe and Linton GXPs respectively.
- (d) EMS, in calculating adjusted demand for the Bunnythorpe and Linton GXPs on behalf of the Grid Owner for 1, 2 and 3 October 2004, double-counted the TWF North and TWF South daily offers. This occurred because EMS added the daily offers to unadjusted demand and then added the daily offers again to implement the calculation in rule 3.3.2.1 of Section V of Part G of the EGRs.
- (e) EMS, on behalf of the Grid Owner and being unaware of the double-counting, provided the inaccurate adjusted demand data to the Pricing Manager without notifying the inaccuracy.
- (f) The Grid Owner did not follow the Double-Checking Procedure.
- (g) The incorrect adjusted demand data for 1 October 2004 was used for Final Prices for that Trading Day, but was corrected before reconciliation. The incorrect adjusted demand data for 2 and 3 October 2004 was detected and corrected before it was used for Final Prices.
- (h) The monthly reconciliation and supply volumes incorporated the corrected demand for October 1, 2 and 3 for its calculations.

2.2 The Grid Owner admits the following breaches of the EGRs for all Trading Periods on 1, 2 and 3 October 2004:

- (a) rule 3.3.2.1 of Section V of Part G of the EGRs by giving incorrect Half-Hour Metering Information (specifically, adjusted demand data) to the Pricing Manager for the Linton and Bunnythorpe GXPs; and
- (b) rule 3.5.1.2 of Section V of Part G of the EGRs by failing to specify in the notice required under rule 3.5.1.1 of Section V of Part G of the EGRs that the Input Information referred to in clause 2.2(a) yielded a SCADA Situation.

3. Settlement

3.1 The Grid Owner agrees to take the following actions within five working days of the Approval Date to reduce the risk of recurrence of the Breaches:

- (a) inform all relevant staff (both within the Grid Owner and EMS) of the Circumstances and the Breaches and that the Grid Owner has been investigated for the Breaches; and
- (b) issue written reminders to all relevant staff (both within Transpower and EMS) of the need to follow the Double-Checking Procedure.

4. Confidentiality

4.1 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.

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 not come into effect unless and until the Board approves it under regulation 84(2) of the Regulations.

5.2 Clause 4 is binding on the parties as from the date of this Agreement. Pending the Board's approval of this Agreement under regulation 84(2) of the Regulations, clause 4 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.

6. Agreement binding on the Board and the Parties

- 6.1 This Agreement is in full and final settlement (subject to clause 7.1 below) of all claims between the parties under the Regulations and EGRs with respect to:
- (a) the Breaches; together with
 - (b) any other breaches of the Regulations and EGRs involved in or arising from the Circumstances that Powerco ought reasonably to have known about at the Approval Date.

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

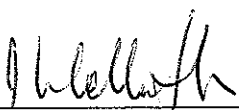
- 6.2 Pursuant to Regulation 84, but subject to Regulation 87, this settlement is also binding on the Board and all participants who are not a party to this Agreement to the effect that:
- (a) the Board may not on its own initiative instigate a further rule breach investigation, or take any enforcement action in respect of, the Settled Breaches; but that
 - (b) a participant who is not a party to this Agreement may, subject to and in accordance with Regulation 87, make a further notification under Regulation 62 or 63 in relation to a Settled Breach and the Board may then take all or any of the steps provided for by Part 4 of the Regulations notwithstanding this Settlement.

7. General

- 7.1 This Agreement is in full and final settlement of all claims, actions and demands as between Powerco and the Grid Owner, and only as between Powerco and the Grid Owner, in relation to the Circumstances and Breaches (or any of them) that Powerco ought reasonably to have known about at the Approval Date.
- 7.2 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 Board's approval of this Agreement under regulation 84(2) of the Regulations.
- 7.3 This Agreement is the whole and only agreement between the parties relating to the settlement of the 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 party that is not repeated in this Agreement.

SIGNED:

For **Transpower New Zealand Limited** in its capacity as **Grid Owner** by:


Name: J. H. Collins-Smith

Position:

For Powerco Limited by:



21/11/05

Name: Nigel Barbour

Position:

**General Manager
Commercial & Corporate**