

## SETTLEMENT AGREEMENT

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

#### DATED:

#### BETWEEN:

- (1) **Transpower New Zealand Limited**, of Level 7, 96 The Terrace, Wellington, in its capacity as System Operator (the **System Operator**);
- (2) **Meridian Energy Limited**, of 15 Allan St, Wellington (**Meridian**);
- (3) **Norske Skog Tasman Limited**, of Fletcher Avenue, Kawerau (**Norske Skog**),
- (4) **Contact Energy Limited**, of Level 1, Harbour City Tower, 29 Bandon Street, Wellington (**Contact**);
- (5) **Genesis Power Limited**, of 602 Great South Road, Greenlane, Auckland (**Genesis**);

(collectively the **parties**).

#### BACKGROUND:

- (A) On 10 March 2006 the System Operator self reported that it had breached rule 20.5 of schedule C4 (Policy Statement effective 25 August 2005) of part C of the Rules. On 22 May 2006 the Commission alleged that rule 22 of schedule C4 (Policy Statement effective prior to 25 August 2005) of part C of the Rules had also been breached.
- (B) In accordance with regulation 69 of the Regulations, the Board appointed an investigator to investigate the Alleged Breaches.
- (C) Meridian, Norske Skog, Contact and Genesis joined the investigation as interested participants.
- (D) The parties have agreed to settle the Alleged Breaches 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;
- (c) **Alleged Breaches** means the breaches of the Rules arising from the Circumstances and set out in clause 2.2;

- (b) **Approval Date** means the date the Board approves this Agreement under regulation 84(2) of the Regulations;
- (d) **Board** means the board of the Electricity Commission;
- (e) **Circumstances** means the circumstances set out in clause 2.1;
- (f) **Commission** means the Electricity Commission;
- (g) **Regulations** means the Electricity Governance Regulations 2003;
- (h) **Rules** means the Electricity Governance Rules 2003;
- (i) all capitalised terms not defined in this Agreement have the same meanings as in the Regulations or Rules, as the case may be; and
- (j) all references to clauses are to clauses of this Agreement.

## 2. Circumstances and Alleged Breaches

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

- (a) On 9 February 2005 the Grid Owner advised the System Operator that the upgrade of the Wairakei-Whakamaru circuit had been completed earlier than planned and that the circuit was to be re-rated effective 9 March 2005.
- (b) On 10 February 2005, in response to recent shortfalls of generation offers in the North Island, the Grid Owner and the System Operator determined it was appropriate to implement the change earlier and with urgency rather than wait until 9 March 2005. The System Operator initiated the “emergency re-rating change process” to implement the change.
- (c) On 11 February 2005 the System Operator deactivated the existing constraints in SPD.
- (d) On 9 March 2005 the System Operator applied new constraints in SPD to supersede the constraints deactivated on 11 February 2005.
- (e) On 16 December 2005 Contact Energy queried the System Operator about the accuracy of the constraints.
- (f) The System Operator reviewed the constraints and discovered the equations were incorrect. The System Operator has advised that the wrong methodology was used when a thermal constraint was developed and applied where a static component should have been used.
- (g) On 22 December 2005 the System Operator applied revised constraints to take into account a component limit that set the post contingency limit for the circuit.

2.2 The alleged breaches are;

- 2.2.1 Self-reported and admitted by the System Operator concerning rule 20.5 of schedule C4 (Policy Statement effective 25 August 2005) of part C of the Rules, for the period 25 August 2005 to 21:00, 22 December 2005.
- 2.2.2 Alleged by the Commission concerning rule 22 of schedule C4, (Policy Statement effective prior to 25 August 2005) of part C of the Rules, for the periods;
- (a) 11 February 2005 to 9 March 2005, when no constraint was applied. Denied by the System Operator; and
  - (b) 9 March 2005 to 24 August 2005, when the constraint applied was incorrectly designed. Admitted by the System Operator.

### **3. Guiding Principles**

- 3.1 The parties agree the following guiding principles in relation to this Agreement:
- (a) The System Operator admits the alleged breaches in clauses 2.2.1<sup>1</sup> and 2.2.2(b) and will only settle on these admitted breaches.
  - (b) The parties agree with the System Operator that this Agreement is only to settle the admitted breaches.

### **4. Settlement**

- 4.1 The System Operator acknowledges and understands the interest of the parties, and other participants, in the manner by which power system constraints are developed in the System Operator's planning process. In recognition of that interest it has:
- (a) undertaken an external audit of its constraints development process (the Elliston audit);
  - (b) published the Elliston audit report (available on the System Operator's website);
  - (c) published information about the actions it has taken (and continues to take) in respect of the Elliston audit;
  - (d) published extracts from its internal procedure documents relating to development of constraints (in planning time);
  - (e) presented at its April 2007 industry workshops on the topic 'constraints development process'. This presentation is available on the System Operator's website;
  - (f) presented at its April 2007 industry workshops on the topic: 'new market systems update, including an explanation of modelling the system in SPD and Simultaneous Feasibility Test (SFT) plus the new

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<sup>1</sup> By agreement of the parties this reference has been corrected. Previously typed incorrectly as clause 2.2.2.

Weekly Dispatch Schedule'. This provided information about the current System Operator proposal to automate the development of many constraints used to manage the power system. This presentation is available on the System Operator's website.

## **5. Confidentiality**

- 5.1 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.
- 5.2 A party must not disclose confidential information under clause 5.1(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 5 before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in clause 5.1(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).

## **6 Agreement Subject to Approval**

- 6.1 This Agreement takes effect on the date it is approved by the Board under regulation 84(2) of the Regulations.

## **7. Settled Breaches**

- 7.1 Subject to the approval of the Commission under regulation 84(2)(a):
- (a) The terms of this Agreement are a full and final settlement between the parties to this Agreement of all claims and liabilities under the Regulations and Rules of:
    - (i) the Alleged Breaches in clauses 2.2.1 and 2.2.2 (b); and
    - (ii) any other breaches of the Regulations and Rules, involved in or arising from the Circumstances (but, to avoid doubt, excluding the alleged breach described in clause 2.2.2(a));

(together the "the Settled Breaches")
  - (b) In accordance with regulation 84, but subject to regulation 87, this Agreement is also binding on the Commission and all other Participants to the effect that:

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

**8. General**

- 8.1 Each party will execute all documents and do, or refrain from doing, such 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.
- 8.2 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.
- 8.3 This Agreement may be signed in any number of counterparts.

**EXECUTED AS AN AGREEMENT:**

For **Transpower New Zealand Limited** by:

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Name:  
Position:

For **Meridian Energy Limited** by:

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Name:  
Position:

For **Norske Skog Tasman Limited** by:

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Name:  
Position:

For **Contact Energy Limited** by:

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Name:

Position:

For **Genesis Energy Limited** by:

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Name:

Position: