

# SETTLEMENT AGREEMENT

## (Regulation 24(1) Electricity Industry (Enforcement) Regulations 2010)

### DATED:

### BETWEEN:

- (1) Contact Limited of 29 Brandon Street, Wellington (Contact); and
  - (2) Transpower New Zealand Limited as System Operator of 96 The Terrace, Wellington (System Operator); and
  - (3) Meridian Energy Limited of 33 Customhouse Quay, Wellington (Meridian); and
  - (4) Genesis Power Limited of 602 Great South Road, Greenlane, Auckland (Genesis); and
  - (5) TrustPower Limited of Truman Road, Te Maunga, Mount Maunganui, (TrustPower)
- (Collectively the **parties**).

### BACKGROUND:

- (A) On 10 November 2010, Contact reported that it had breached rule 4.11.1 of section III of part G. On 12 November 2010, the System Operator alleged that Contact had breached rule 4.11 of section III of part G in relation to the same incident. The Electricity Authority alleged Contact had breached rule 3.15 of section II of part G in relation to the incident.
- (B) On 9 February 2011, in accordance with regulation 12 of the Regulations, the Board appointed an Investigator to investigate the Alleged Breaches
- (C) The System Operator, Meridian, Genesis and TrustPower joined the investigation as affected 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;
- (b) **Alleged Breaches** means the alleged breaches 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 Authority Board has approved this Agreement under regulation 24(4) of the Regulations;
- (d) **Board** means the Board of the Electricity Authority;
- (e) **Circumstances** means the circumstances set out in clause 3;
- (f) **Regulations** means the Electricity Industry (Enforcement) Regulations 2010;
- (g) **Rules** means the Electricity Governance Rules 2003;
- (h) **Code** means the Electricity Industry Participation Code 2010;
- (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. Alleged Breaches

2.1 Rule 3.15 of section II of part G provides:

### 3.15 Circumstances when revised bids or offers will be submitted

Prior to the beginning of the **trading period** to which the **bid** or **offer** applies and notwithstanding the provisions of rules 3.16 and 3.17, a **purchaser** or a **generator** (other than an **intermittent generator** submitting an **offer** under rule 3.14) will immediately submit revised **bid** or **offer** quantities to the **system operator** whenever:

#### 3.15.3 Generator capacity expected to change by 10 MW or 10%

The ability of a **generator** to generate the total quantity offered for a **trading period** at a **grid injection point** is expected by that **generator** to change by more than 10 **MW** or 10% of the total quantity offered by that **generator** (whichever is smaller);

2.2 The Authority alleged that Contact had breached rule 3.15 of section II of part G when it failed to immediately submit a revised offer for its generation from 12:30 onwards to ensure its offer reflected the increased generation caused by the delayed shutdown.

2.3 Contact does not consider it was in breach of rule 3.15 of section II of part G. At 12:20, there was a conversation between the Otahuhu operator and Contact's trader which concluded that the offer of zero MW at the end of the next trading period was still achievable. At 12:20, and up until the start of the 12:30 trading period, Contact considered its existing offer for the next trading period was still reasonable and within the compliance limits of rule 3.15 of section II of part G. Contact was, therefore, not required to immediately submit a revised offer.

2.4 Rules 4.11 and 4.11.1 of section III of part G provide:

## 4. The dispatch process

### 4.11 Dispatch instructions will be complied with

Each **generator** or **ancillary service agent** will comply with all **dispatch instructions** properly given by the **system operator** in accordance with rule 4.6 or rule 4.7 except where:

#### **4.11.1 Instruction contravenes the law or places safety at risk**

In the reasonable opinion of that **generator** or **ancillary service agent**, personnel or plant safety is at risk or following the **dispatch instruction** will contravene any law. Where such circumstances exist, the affected **generator** or **ancillary service agent** will immediately notify the **system operator** of the circumstance; or

- 2.5 Contact self-reported that it had breached rule 4.11.1 of section III of part G when it failed to immediately notify the System Operator of the circumstances of the fault with the steam turbine controller that prevented the shutdown as planned, and prevented the station from following dispatch.
- 2.6 Contact considers that its Otahuhu operator should have noticed by 12:05 that the shutdown had not commenced and at that stage, notified the System Operator claiming a bona fide physical reason.
- 2.7 Contact does not consider it was in breach of rule 4.11 of section III of part G in trading periods commencing at 12:00 or 12:30. Contact did not breach rule 4.11 in the 12:00 trading period because the exception in rule 4.11.1 applied. The plant had commenced an automated shutdown process when a fault developed. For the trading period commencing 12:30, rule 4.11.1 also applied and there were a number of conversations between Contact and the System Operator discussing the status of the shutdown.

### **3. Circumstances of the Breaches**

- 3.1 On 8 October 2010, Contact was planning to shut down its Otahuhu power station. The shutdown was reflected in Contact's offers and was planned to commence at 12:00.
- 3.2 Prior to 12:00, Otahuhu was generating at the offered and dispatched level of 221 MW. At 11:59 Contact received and acknowledged a dispatch instruction to reduce generation from 221 MW to the offered level of 120 MW.
- 3.3 On receiving the dispatch instruction Contact commenced the fully automated shut down process. A fault then occurred with the steam turbine controller that prevented the steam turbine from shutting down. It then took 20 minutes to reset the fault. At 12:15, the System Operator phoned the power station to find out why the station was not following the dispatch instruction.
- 3.4 At 12:20, the standard shutdown procedure was again recommenced. At 12:20, there was a conversation between the Otahuhu operator and Contact's trader that concluded that the offer of zero MW for the station for the next trading period could still be achieved. At 12:30, Otahuhu was generating at 215 MW, 95 MW greater than its dispatched level of 120 MW.
- 3.5 At 12:30 a dispatch instruction for Otahuhu to reduce generation to its offered level of zero was received and acknowledged by Contact. At 12:55, while ramping down and

generating at 96 MW, the Otahuhu station tripped due to another fault. At 12:55 the Otahuhu operator called the System Operator to advise that the station was now off. At 12:57 the Contact Trader called the System Operator advising that Otahuhu had tripped.

#### **4. Impact of the Breach**

- 4.1 The parties agreed that the market impact of the breach of rule 4.11.1 of section III of part G as assessed by the Investigator should be recorded as negligible.
- 4.2 The impact of the breach of rule 4.11.1 of section III of part G was the System Operator had to manage the power system without any knowledge that Contact could not comply with the dispatch instruction. The System Operator had to phone Contact to get information on the issue so it could make an informed decision.

#### **5. Steps taken to prevent recurrence**

- 5.1 Contact's Otahuhu power station Operations Manager has discussed this incident in detail with all of the operations team at Otahuhu including expectations of what should have happened.
- 5.2 Contact has updated its procedures for Otahuhu concerning offers for planned shut downs, start ups and emergency run back scenarios and notification of bona-fide revisions.
- 5.3 Contact has also identified a number of areas for improvement. These are included in settlement actions in clause 7 of this Agreement.

#### **6. Guiding Principles**

- 6.1 The parties agree the following guiding principles in relation to this Agreement:
  - (a) Planned shutdowns of thermal plant such as Otahuhu require plant specific ramping profiles to be strictly followed to ensure a controlled shutdown to prevent damage to plant;
  - (b) Offers for planned shutdowns are based on the ramping profile for the shutdown.

## **7. Settlement**

7.1 Contact agrees to:

- (a) Improve operational instructions and procedures including document control to manage changes to Code obligations;
- (b) Improve communication and sharing of information between operators and traders and the System Operator;
- (c) Improve training including operational simulations;
- (d) Undertake formal event reviews;
- (e) Present the learning's from this event to all of Contact's generation sites;
- (f) Confirm within six month to parties to this Agreement that these settlement actions have been completed.

## **8. Confidentiality**

8.1 If the Board decides under regulation 25(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 24(4) of the Regulations, clause 8 will apply as if the Board has decided under regulation 25(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 Breaches; 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 Breaches and such other breaches together the **Settled Breaches**).

10.2 Pursuant to regulation 24, but subject to regulation 26 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 26 of the Regulations, make a further notification under regulation 7 or 8 of the Regulations in relation to a Settled Breach, and the Board may then take all or any of the steps provided for in 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 24(4)(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 Contact Energy Limited

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Name:

Position:

SIGNED:

For Transpower New Zealand Limited

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Name:

Position:

SIGNED:

For Meridian Energy Limited

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Name:

Position:

SIGNED:

For Genesis Power Limited

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Name:

Position:

SIGNED:

For TrustPower Limited

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Name:

Position: