

SETTLEMENT AGREEMENT

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

DATED: 9 February 2012

BETWEEN:

- (1) Pulse Utilities New Zealand Limited, of 201 Hobson St, Auckland (Pulse);
 - (2) NZX Limited of NZX Centre, of 11 Cable Street, Wellington in its capacity as the Reconciliation Manager;
 - (3) Simply Energy Limited of 4 James Cook Arcade, 294-296 Lambton Quay, Wellington (Simply Energy);
 - (4) TrustPower Limited of Truman Lane, Rd 5, Tauranga (TrustPower);
- (Collectively the **parties**).

BACKGROUND:

- (A) On 28 July 2011, the Authority's Compliance Committee considered two reports on Alleged Breaches by Pulse that had been alleged by the Reconciliation Manager.
- (B) In accordance with regulation 12 of the Regulations, the Authority appointed an Investigator to investigate the Alleged Breaches.
- (C) Simply Energy and TrustPower 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;
- (b) **Alleged Breaches** means the alleged breaches of the Code arising from the Circumstances, and which are described in clause 2;
- (c) **Approval Date** means the date the parties to this Agreement are notified that the Authority has approved this Agreement under regulation 24(4) of the Regulations;
- (d) **Authority** means the Electricity Authority;
- (e) **Circumstances** means the circumstances set out in clause 3;

- (f) **Regulations** means the Electricity Industry (Enforcement) Regulations 2010;
- (g) **Code** means the Electricity Industry Participation Code 2010;

2. Alleged Breaches

- 2.1 On 5 May 2011, Pulse reported to the Authority that an error had occurred in the wash-up file it had submitted to the Reconciliation Manager on 17 March 2011.
- 2.2 On 24 May 2011, in relation to that error, the Reconciliation Manager reported to the Authority that it believed on reasonable grounds that Pulse had breached clause 15.2(1) of the Code.
- 2.3 On 9 June 2011, the Reconciliation Manager reported to the Authority that it believed on reasonable grounds that Pulse had breached clause 15.2(1) of the Code again. This second alleged breach of clause 15.2(1) related to revised submission information provided by Pulse to the Reconciliation Manager on 18 May 2011.

3. Circumstances of the Breaches

Breach on 17 March 2011

- 3.1 On 17 March 2011, being the 13th business day of the month deadline for the Reconciliation Manager to receive wash-up submission information for the March 2011 reconciliation period, Pulse submitted wash-up information for consumption periods February 2011, December 2010, August 2010, and January 2010.
- 3.2 The Reconciliation Manager then undertook its reconciliation processes using this wash-up information. On 31 March 2011, the Reconciliation Manager supplied reconciliation reports to purchasers and generators, to enable those participants to verify their reconciliation information. Reconciliation reports including the wash-up information submitted by Pulse, were also sent to the Clearing Manager to enable the calculation of the amounts payable.
- 3.3 On 6 April 2011, which was the deadline for the Reconciliation Manager to receive submission information for the April 2011 reconciliation period, Pulse submitted submission information for March 2011. The Reconciliation Manager's system picked up a 55% increase in Pulse's consumption volumes between February 2011 and March 2011 volumes. The Reconciliation Manager queried this increase in consumption with Pulse. Pulse investigated this increase and identified that the wash-up consumption information it had submitted on 17 March 2011 had significantly understated consumption in the wash-up files for February 2011, December 2010, August 2010 and January 2010.
- 3.4 Pulse attempted to correct the information immediately but was advised by the Reconciliation Manager that corrections could only be made in the next wash-up submissions relevant to those months.
- 3.5 Pulse has determined that the breach was the result of both human error and their lack of a checking process. The under-submission occurred because system maintenance was being carried out at the same time the batch was run to extract the

file for the Reconciliation Manager. The system maintenance locked a number of records, and therefore those records were not available for the extracted file to be sent to the Reconciliation Manager. Pulse identified this issue at the end of the day along with the need to re-run the extract process the next day. However, Pulse forgot to re-run the extract. The lack of a checking process resulted in the under-submission not being identified at the time.

Breach on 18 May 2011

- 3.6 On 9 December 2010, the distributor for the Aurora network, Aurora Energy Limited (Aurora) changed the loss code CE33 in the Registry to have an end date of 31 March 2011. At the same time, Aurora set up a new loss code CC33 to apply from 1 April 2011.
- 3.7 In March 2011, Pulse correctly submitted half-hour (HHR) volumes for embedded generation at the grid exit point CYD0331 under the CE33 loss code for both the initial submission and the 1 month revision of February 2011.
- 3.8 In May 2011, when Pulse prepared the 3 month revision for February 2011, its HHR reconciliation system only contained the current effective loss code CC33 as its system did not maintain multiple loss codes for an ICP. This required the wash-up file to be manually adjusted to ensure the correct historic loss code of CE33 that was effective in February 2011 was used. In this instance, the wrong historic loss code (CELV, another loss code that was effective in February 2011) was manually selected, and therefore used for the generation submission information.
- 3.9 On 18 May 2011, for the 3 month revision for February 2011, Pulse supplied to the Reconciliation Manager this HHR embedded generation revision information under the incorrect loss code of CELV. This caused the Reconciliation Manager's system to hold duplicated generation volumes at CYD0331 for February 2011, under loss code CE33 and under loss code CELV.
- 3.10 The Reconciliation Manager then undertook its reconciliation processes for the wash-ups. On 31 May 2011, the Reconciliation Manager supplied reconciliation reports to purchasers and generators, to enable those participants to verify their reconciliation information. Reconciliation reports, including this wash-up information, were also sent to the Clearing Manager to enable the calculation of the amounts payable.
- 3.11 The Reconciliation Manager, when undertaking post-reconciliation checks, noted an increase in unaccounted for energy at CYD0331 and found that Pulse had submitted the same generation volume under the two different loss codes. The Reconciliation Manager then queried with Pulse this apparent duplication of generation volume.
- 3.12 On 3 June 2011, Pulse supplied to the Reconciliation Manager a further revision submission file for February 2011. That file set the data against CYD0331, loss code CELV to zero to remove the duplication.
- 3.13 Pulse determined that this breach was caused by human error when manually intervening in the automated process. Pulse also admits that subsequent processes to detect the error were inadequate.

4. Impact of the Breaches

- 4.1 The parties agreed with the Investigator that the market impact was negligible.
- 4.2 For the 17 March 2011 breach, all other months were able to be corrected via the wash-up process except for the 14 month revision of January 2010 where the market impact is estimated to be less than \$500.
- 4.3 For the 18 May 2011 breach, the market impact was fully resolved by the wash-up process.

5. Steps taken to prevent recurrence

- 5.1 Pulse has identified it had an inadequate process to compare prior submissions arising from non half-hour wash-up files with the current submission. Pulse has developed an additional variance report for checking wash-up data which includes an independent check before sending revision submission information to the Reconciliation Manager.
- 5.2 Pulse has identified that the breach resulting in the duplication of data under two loss codes was caused by human error when manually intervening in an automated process. Pulse has since automated its system and this has removed the requirement for this manual intervention.
- 5.3 Pulse has made organisational changes including moving responsibility for reconciliation under the Chief Financial Officer.
- 5.4 Pulse's non half-hour process is now being run by a dedicated Financial & Reconciliation Analyst. Pulse's Financial & Reconciliation Analyst comes from an IT background. Pulse considers this will significantly strengthen its ability to ensure compliance.
- 5.5 Pulse has provided further training for its Financial & Reconciliation Analyst with Pulse's external IT support.
- 5.6 Pulse has fully documented process maps and related procedures for all reconciliation processes and these have all been audited internally.

6. Settlement

6.1 Pulse agrees to:

- (a) ensure its reconciliation systems meet the expected industry standard by resolving all non-compliant functions identified in its 2011 Reconciliation Participant Audit Report as soon as practicable; and
- (b) confirm to parties to the investigation and the Authority, when Pulse considers it has completed clause 6.1(a); and
- (c) advise parties to the investigation when the Authority renews Pulse's reconciliation participant certification that confirms that Pulse has met the requirements of schedule 15.1 of the Code.

7. Confidentiality

7.1 If the Authority 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.

7.2 A party must not disclose confidential information under clause 7.1(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 7 before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in clause 7.1(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).

8. Agreement Subject to Approval

8.1 Subject to clause 8.2, this Agreement will come into effect on the Approval Date.

8.2 Clause 7 is binding on the parties as from the date of this Agreement. Pending the Authority's approval of this Agreement under regulation 24(4) of the Regulations, clause 7 will apply as if the Authority has decided under regulation 25(2) of the Regulations not to publicise any part of this Agreement or the existence of this Agreement.

9. Settled Breaches

- 9.1 This Agreement is in full and final settlement of all claims, actions and demands against any party (under the Regulations, the Code or otherwise) in relation to:
- (a) the Alleged Breaches; and
 - (b) any other breaches of the Regulations or Code 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**).

- 9.2 Pursuant to regulation 24, but subject to regulation 26 of the Regulations, this Agreement is also binding on the Authority and all Participants who are not a party to this Agreement to the effect that:
- (a) the Authority 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 Authority may then take all or any of the steps provided for in the Regulations despite this Agreement.

10. General

- 10.1 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 Authority's approval of this Agreement under regulation 24(4)(a) of the Regulations.
- 10.2 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.
- 10.3 This Agreement may be signed in any number of counterparts.

SIGNED:

For Pulse Utilities New Zealand Limited

Name:

Position:

SIGNED:

For NZX Limited

Name:

Position:

SIGNED:

For Simply Energy Limited

Name:

Position:

SIGNED:

For TrustPower Limited

Name:

Position: