

# SETTLEMENT AGREEMENT

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

### DATED:

### BETWEEN:

- (1) ESD Power Ltd of level 12, 50 Manners Street, Wellington (ESD Power);
- (2) Simply Energy Ltd of level 4, James Cook Arcade, 294-296 Lambton Quay, Wellington (Simply Energy);
- (3) Mighty River Power Ltd of 602 Great South Road, Greenlane, Auckland (Mighty River Power);
- (4) Genesis Power Ltd of 602 Great South Road, Greenlane, Auckland (Genesis Energy).

(Collectively the **parties**).

### BACKGROUND:

- (A) On 26 March 2008, Simply Energy alleged that Mighty River Power had breached rule 5.3 of section VI of part G (now included in rule 4.2.2 of part J) of the Rules for failing to provide Consumption Information to the Reconciliation Manager for the Embedded Network Supply Point EMB0011 ESDP EN.
- (B) On 16 July 2008, Mighty River Power alleged that Simply Energy acting as an agent for ESD Power breached rule 4 of part E and rules 1 and 2 of schedule E2 of part E for setting up new Installation Control Points (ICPs) for Network Supply Point EMB0011 ESDP EN while valid ICPs already existed. Mighty River Power alleged that Simply Energy while acting as agent for ESD Power breached rule 4.5 of schedule E2 of part E by decommissioning ICPs that did not meet the criteria for decommissioning. Simply Energy was acting as an agent for ESD Power and thus the obligation with these rules was on ESD Power alone.
- (C) On 25 September 2008, Simply Energy alleged that it considered that Mighty River Power to be in breach of rule 4.4 of schedule E2 of part E, [effective prior to 1 May 2008] and rule 4.7 of schedule E1 of part E [effective from 1 May 2008], which replaced rule 4.4, by failing to set the status of existing ICPs to 'inactive'.
- (D) In accordance with regulation 69 of the Regulations, on 19 November 2008, the Board appointed an Investigator to investigate the Alleged Breaches.
- (E) Genesis Energy joined the investigation as an interested Participant.

- (F) 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 Electricity Commission Board has approved this Agreement under regulation 84(2)(a) of the Regulations;
- (d) **Board** means the Board of the Electricity Commission;
- (e) **Circumstances** means the circumstances set out in clause 3;
- (f) **Regulations** means the Electricity Governance Regulations 2003;
- (g) **Rules** means the Electricity Governance Rules 2003;
- (h) all capitalised terms not defined in this Agreement have the same meanings as in the Regulations or Rules, as the case may be; and
- (i) all references to clauses are to clauses of this Agreement.

### **2. Alleged Breaches**

- 2.1 It was alleged that Mighty River breached rule 4.4 of schedule E2 of part E and rule 4.7 of schedule E1 of part E of the Rules by failing to change the status of the ICPs at the Point Of Supply to 'inactive'.
- 2.2 It was alleged that Mighty River breached rule 5.3 of section VI of part G of the Rules (now included within rule 4.2.2 of part J) by failing to submit data to the Reconciliation Manager for Consumption Information at the new Embedded Network.
- 2.3 It was alleged that ESD Power Ltd (through its agent, Simply Energy) breached rule 4 of part E of the Rules by changing the ICP identifier for an electrical load.
- 2.4 It was alleged that ESD Power Ltd (through its agent, Simply Energy) breached rules 1 and 2 of schedule E2 of part E of the Rules by creating new ICPs while valid ICPs already existed and thereby duplicating valid ICPs.

- 2.5 It was alleged that ESD Power Ltd (through its agent, Simply Energy) breached rule 4.5 of schedule E2 of part E of the Rules by decommissioning ICPs that did not meet the criteria for decommissioning.

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

- 3.1 On 27 November 2007 Simply Energy, as an agent for ESD Power, advised Mighty River Power, that it would be converting a building from a Network extension CPK0111 UNET GN (parent Network) to the Embedded Network EMB011 ESDP EN on 1 December 2007.
- 3.2 Simply Energy provided a mapping of existing ICPs to new ICPs and requested that Mighty River Power change the status of the existing ICPs on the parent Network to 'inactive' as of 1 December 2007.
- 3.3 Other Retailers trading on different ICPs in the same building were similarly provided with the mapping of existing ICPs to new ICPs and were requested to set the status of the ICPs they were trading on to 'inactive'. These Retailers did so.
- 3.4 Mighty River Power was the only Retailer which did not change the status of the existing ICPs to 'inactive', and for data submission to the Reconciliation Manager on 8 January, 7 February and 6 March 2008, submitted the volumes for these ICPs against the parent Network. Mighty River Power is currently still using these ICPs.
- 3.5 Simply Energy, acting as an agent for ESD Power, set up new ICPs for each Point Of Connection on the Embedded Network EMB0011 ESDP EN. The ICPs on the parent Network, the status of which the other Retailers set to 'inactive', have been decommissioned.

### **4. Impact of the Breaches**

- 4.1 The parties agreed that the market impact should be recorded as minimal. It only resulted in additional operational input by Mighty River Power and Simply Energy. All reconciliation submission volumes previously made on the parent network for the ICPs have now been submitted by Mighty River Power via revision submissions to the new embedded network and have been washed up.
- 4.2 The process of decommissioning the existing ICP causes loss of history in the retailer's records for that point of connection. This adds costs to retailers by way of resource time and software to maintain historical records and link billing and metering detail.

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

- 5.1 The parties agree in this Agreement to use the process, subsequently developed by the Commission, to transfer ICPs between Networks. This will avoid any issues caused by the method of decommissioning existing ICPs and creating new ICPs on new Networks.

## **6. Guiding Principles**

- 6.1 The parties agree the following guiding principles in relation to this Agreement:
- (a) A similar issue to the alleged breaches also exists for one ICP on Embedded Network EVA0011 ESDP EN. The resolution of this issue will be included within this agreement.
  - (b) Where ICPs have been decommissioned on the parent Network and replaced by new ICPs created on either the Embedded Networks EMB0011 ESDP EN or EVA0011 ESDP EN, there will be no benefit in reversing the process.
  - (c) The process to transfer existing ICPs between Networks, developed subsequently to the Embedded Networks EMB0011 ESDP EN and EVA0011 ESDP EN being set up, is the method to be used for the ICPs retailed by Mighty River Power which need to be transferred to either of the Embedded Networks EMB0011 ESDP EN or EVA 0011 ESDP EN and for all future ICPs where ownership of a network changes or where Embedded Networks are created where ICPs already exist. .
  - (d) The transfer of an ICP from one Network to another does not require existing ICPs to be decommissioned and then new ICPs to be created in their place.
  - (e) The two letter character used in the ICP denoting the issuing distributor is only to ensure uniqueness and does not denote ownership of the ICP.
  - (f) Mighty River Power highlighted that this settlement sets the precedence for future transfers of ICPs between networks where no physical electrical supply has altered.

## **7. Settlement**

### **7.1 Simply Energy agrees to:**

- (a) By 3 April 2009, submit to the Commission a transfer file for the ICPs retailed by Mighty River Power which need to be transferred to either of the Embedded Networks EMB001 ESDP EN or EVA0011 ESDP EN. The file would transfer the ICPs from the parent Network to either of the Embedded Networks EMB0011 ESDP EN or EVA0011 ESDP EN and backdate the transfer to the commencement of the respective Embedded Network.
- (b) By 30 April 2009, decommission the new ICPs set up by Simply Energy which were intended to be used for the Points of Connection retailed by Mighty River Power on either of the Embedded Networks EMB0011 ESDP EN or EVA0011 ESDP EN.
- (c) From now on, use the transfer process developed by the Commission to transfer existing ICPs to Embedded Networks.

## **8. Confidentiality**

### **8.1 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.

### **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 84(2)(a) of the Regulations, clause 8 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.

## **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 84, but subject to regulation 87 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 87 of the Regulations, make a further notification under regulation 62 or 63 of the Regulations in relation to a Settled Breach, and the Board may then take all or any of the steps provided for in Part 4 of 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 84(2)(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 ESD Power Ltd

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Name:

Position:

SIGNED:

For Simply Energy Ltd

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Name:

Position:

SIGNED:

For Mighty River Power Ltd

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Name:

Position:

SIGNED:

For Genesis Power Ltd

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Name:

Position: