

# SETTLEMENT AGREEMENT

(Regulation 83(1) Electricity Governance Regulations 2003)

**DATED: 21 October 2008**

## **BETWEEN:**

- (1) **STREAM INFORMATION LIMITED** of 101 Carlton Gore Road, Newmarket, Auckland (Stream);
- (2) **THE RECONCILIATION MANAGER** of 10 Brandon Street, Wellington (The Reconciliation Manager);
- (3) **CONTACT ENERGY LIMITED** of 29 Brandon Street, Wellington (Contact);
- (4) **ENERGY MARKET SERVICES** of 96 The Terrace Wellington (EMS);
- (5) **GENESIS POWER LIMITED** of 602 Great South Road, Greenlane, Auckland (Genesis);
- (6) **MERIDIAN ENERGY LIMITED** of 12 Queens Wharf, Wellington (Meridian);
- (7) **MIGHTY RIVER POWER LIMITED** of 602 Great South Road, Greenlane, Auckland (Mighty River);
- (8) **TRUSTPOWER LIMITED** of Truman Road, Te Maunga, Mount Maunganui; (TrustPower); and
- (9) **VIRCOM-EMS** of PO Box 34, Rangiora (VEMS).

(Collectively the **parties**)

## **BACKGROUND:**

- (A) On 23 April 2007 Contact notified the Electricity Commission (the **Commission**) pursuant to regulation 62 of the Electricity Governance Regulations 2003 (the **Regulations**) of potential breaches of the Electricity Governance Rules 2003 (the **Rules**) by Stream.
- (B) The Commission also received breach notifications from Meridian on 3 May 2007, Genesis on 15 May 2007 and Mighty River on 22 May 2007.
- (C) In accordance with regulation 69 of the Regulations, the Board appointed an Investigator to investigate the Alleged Breaches.
- (D) The Reconciliation Manager, EMS, AMS, TrustPower and VEMS joined the investigation as interested participants.

- (E) 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**

It was alleged that Stream, as a metering equipment owner, had breached the following rules:

- (a) rule 7.1 of code of practice D3 of schedule D1 of part D by failing to appoint a suitably qualified person to carry out non-invasive inspections of categories 4, 5 and 6 metering installations on an annual basis;
- (b) rule 7.2 of code of practice D3 of schedule D1 of part D by failing to take steps to recertify components of the metering installations in accordance with rule 5.4.2 of code of practice D3 of schedule D1 of part D;
- (c) rule 8.1 of code of practice D3 of schedule D1 of part D by failing to ensure that appropriate records are kept in relation to each metering installation;
- (d) Rule 1 of code of practice D3 of schedule D1 of part D by failing to ensure that individual responsibilities under code of practice D3 are defined in relevant agreements for sites where multiple ownership of equipment exist; and

- (e) Rule 4.7 of code of practice D3 of schedule D1 of part D by adjusting or replacing components of a metering installation without the agreement of all affected participants.

Note the rules in clauses 2 (a), (b) and (c) were formally notified for investigation. During the course of the settlement process for this investigation the rules in clauses 2 (d) and (e) were alleged by Mighty River as having been breached.

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

- 3.1 Stream is a metering equipment owner that provides half hourly metering services to customers in the New Zealand electricity market. It owns approximately 5,000 half hour meters and a smaller number of metering current transformers (CT's) and voltage transformers (VT's).
- 3.2 Stream's meters and transformers are leased either to electricity retailers (Retailers) or directly to end use customers (Consumers) who have arranged with Stream to have independent metering installed.
- 3.3 From 2004 until the date upon which breaches by Stream were alleged, Retailers requested copies of certification and inspection records. Stream originally held certification and compliance details of metering installations in an Excel spreadsheet. When a database was developed not all information contained in the spreadsheet was successfully migrated to the database. Consequently, Stream did not meet requests to provide relevant metering installation information to Retailers.
- 3.4 When Retailers were finally supplied with this information they identified that several metering installations, which they were trading on, were non-compliant. Once Retailers had become aware they were consequently in breach of the Rules, they self-reported the breaches to the Commission.
- 3.5 On 23 April 2007 Contact self reported to the Commission that it may have breached rule 4.1 of code of practice D3 of schedule D1 of part D for trading on non-compliant metering installations. Contact also notified the Commission that it reasonably believed Stream had breached the Rules by failing to ensure that appropriate records are kept and failing to take steps to re-certify metering installations before their certifications expired. Similar notifications were subsequently received from Genesis, Meridian, and Mighty River alleging Stream had breached the Rules.
- 3.6 An investigation into the matter revealed that 257 metering installations that Stream was responsible for, were non-compliant. The non-compliant metering installations were categories 3, 4, 5 and 6 metering installations.

3.7 Of the 257 metering installations:

- (a) 93 contained Stream's meters with expired certifications.
- (b) 149 contained CT's or VT's that were not owned by Stream and their certifications had expired; and
- (c) 13 contained a combination of Stream's meters and CT's or VT's not owned by Stream with certifications that had expired.
- (d) 2 metering installations at the Northshore hospital were awaiting load checks to complete certification.

3.8 From May 2007 until the date of this Agreement, approximately 150 of Stream's metering installations have become non-compliant.

3.9 It was alleged that if annual inspections had been carried out in accordance with rule 7.1, then the non-compliant category 4, 5 and 6 installations should have been identified much earlier and addressed.

3.10 From June 2004, John Moore & Associates had been contracted by Stream to carry out inspections of categories 4, 5 and 6 metering installations. Inspections were carried out in accordance with rule 7.1 and reports were provided by John Moore to Stream. The reports highlighted a number of metering installations that were non-compliant.

3.11 Stream did not take any action to re-certify the metering installations identified by John Moore and did not notify the affected parties.

3.12 After the Commission notified Stream of the alleged breaches, Stream endeavoured to re-certify the non-compliant metering installations. Stream experienced difficulty where the installation was subject to shared ownership. Specifically, Stream was unable to identify the metering equipment owner of CT's or VT's that had expired certifications.

3.13 From the time leading up to the breaches until the date of this Agreement, Stream has not carried out compliance of the Rules efficiently and effectively, in all instances where it was required to do so, which has in some instances had a detrimental impact on the other parties. The impact of the breaches is contained in Appendix A to this Agreement.

#### **4. Settlement**

The parties agree to the following:

- 4.1 Stream will provide the parties with monthly updates, by the Wednesday following day 13 of each month, on the progress of re-certifying non-compliant metering installations until all metering installations are fully re-certified.
- 4.2 Stream will ensure that all metering installations, for which it is identified as the *Meter Contact* as displayed in the Registry, are fully re-certified or where re-certification is not possible will be in the process of receiving code of practice D5 dispensation under the Rules within one month after the effective date of this Agreement.
- 4.3 Stream will establish a new role within the organisation to oversee and manage compliance issues.
- 4.4 Stream will enter into written agreements with other metering equipment owners where there is shared ownership of equipment at metering installations. Stream will use reasonable endeavours to enter into these written agreements within two months of the effective date of this Agreement. The written agreements will set out each metering equipment owners' individual responsibilities in accordance with rule 1 of code of practice D3 of schedule D1 of part D.
- 4.5 Where Stream is unable to identify the metering equipment owner responsible for a non-compliant CT or VT, it will approach the Retailer to determine whether the Retailer can identify who owns the metering equipment. Where the metering equipment owner cannot be determined, the Retailer will instruct a metering equipment owner to replace, or certify in situ thereby claiming ownership of the non-compliant equipment. Stream will not install metering equipment until the compliance status has been rectified.
- 4.6 Stream will undergo an audit of its metering equipment activities and processes and its compliance database in accordance with the following:
  - (a) The audit will be performed by a Market Administrator approved auditor (the Auditor);
  - (b) The scope of the audit will be developed by the Commission and the Auditor;
  - (c) Stream will ensure that the audit is completed within 60 calendar days of the effective date of this Agreement;
  - (d) Within 60 calendar days following completion of the audit, Stream must complete the recommendations issued by the Auditor and must take the following actions regarding any non-compliance identified by the audit:

- i. remedy non-compliance where possible; or
- ii. where it is not possible to remedy non-compliance, apply for a valid code of practice D5 dispensation; and

once clauses 4.6 (d)(i) and (ii) have been complied with, obtain a sign-off from the Auditor.

- (e) Within 60 calendar days following the completion of the requirements set out in clause 4.6(d), Stream will:
  - i. undergo another full audit (re-audit); and
  - ii. notify the Commission of any non-compliance identified by the re-audit; and
  - iii. undergo a further clearance audit should any non-compliance be identified by the re-audit.
- (f) Once the re-audit is completed, the Auditor will notify any non-compliance identified by the re-audit to:
  - i. any party affected by that non-compliance; and
  - ii. the Commission.
- (g) Where the re-audit identifies Stream's direct actions or omissions to have caused non-compliance of any metering installation, Stream must pay, to the Commission, a penalty, in accordance with the process set out in clause 4.6(h), of \$5,000 for each non-compliant metering installation, but not exceeding a total of \$50,000.
- (h) The Commission and Stream must comply with the following process when processing a payment of a penalty, referred to in clause 4.6(g):
  - i. Once the Commission has received a notice from the Auditor, pursuant to clause 4.6(f), the Commission will invoice Stream for the amount of a penalty calculated in accordance with clause 4.6(g);
  - ii. Stream will pay, to the Commission's account, the full penalty amount by the 20<sup>th</sup> day of the month following receipt of the invoice by Stream; and
  - iii. Once payment has been received by the Commission, the Commission will transfer the full penalty amount from the Commission's account to the Crown account.

4.7 Stream will develop and implement a compliance programme to monitor certifications that will expire within six months, on a rolling basis. The programme will carry out the following:

- (a) interrogate Stream's database system on a rolling monthly basis to identify all metering equipment requiring re-certification within six months;
  - (b) instruct Stream's metering service provider to re-certify the metering installations before their current certifications expire;
  - (c) maintain an appropriate work order management system and will update Stream's database whenever a job request is initiated;
  - (d) monitor Stream's metering service provider's performance and ensure that no meters become non-compliant; and
  - (e) once a metering installation has been fully re-certified, arrange for copies of 'certificates of compliance' to be provided to the relevant Retailer within 10 working days of the site's recertification being completed.
- 4.8 The parties will recommend to the Commission that urgency be applied to the *Metering Equipment Owner Model Contract*.
- 4.9 The parties will recommend to the Commission that urgency be given to clarifying all metering equipment owners' obligations within the Rules.
- 4.10 Stream and the Retailers will enter into without prejudice discussions to seek to resolve any claims for compensation for direct losses incurred by the Retailers as a result of the alleged breaches (whether such losses would be recoverable by those Retailers under the Regulations, Rules or otherwise) ("Retailers' claims"). Retailers who do not wish to make any claim for compensation from Stream will not take part in this process.

## **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 Subject to clause 6.2, this Agreement will come into effect on the Approval Date.
- 6.2 Clause 5 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 5 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.

## **7. Settled Breaches**

- 7.1 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 the following breaches up until the date of this Agreement:
- (a) the Alleged Breaches; being for the metering installations listed in appendix B, and
  - (b) any other breaches of the Regulations or Rules, or issues 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**).
- 7.2 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:
- (f) 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
  - (g) 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.



## **8. General**

- 8.1 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.
- 8.2 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.
- 8.3 Contracts (Privity) Act: The parties acknowledge, for the purposes of the Contracts (Privity) Act 1982, that this Agreement confers a benefit on, and is intended to be enforceable by, the Commission.
- 8.4 This Agreement may be signed in any number of counterparts.

SIGNED:

For Stream Information Limited

Name:

Position:

SIGNED:

For The Marketplace Company (as The  
Reconciliation Manager)

Name:

Position:

SIGNED:

For Contact Energy Limited

Name:

Position:

SIGNED:

For Energy Market Services

Name:

Position:

SIGNED:

For Genesis Power Limited

Name:

Position:

SIGNED:

For Meridian Energy Limited

Name:

Position:

SIGNED:

For Mighty River Power Limited

Name:

Position:

SIGNED:

For TrustPower Limited

Name:

Position:

SIGNED:

For VirCom-EMS

Name:

Position:

## Appendix A: Impact of the Breaches

Areas which the parties have been affected:

- (a) **Market impact** – Retailers trading on the non-compliant metering installations consequently breached the Rules. Metering information retrieved from the non-compliant metering installations could not be confirmed as being accurate and therefore, were submitted as estimated consumption information. Potentially, Retailers may have over or under-charged Consumers substantial amounts over a long period of time as the metering installations are categories 3, 4, 5 and 6, some of which have been non-compliant for several years.
- (b) **Additional working hours** (not including performance meetings) –. This includes investigations, liaising with various parties (not including Consumers), following up with service providers, requesting information, and following up with Stream on the provision of metering installation information.
- (c) **Performance meetings** – Additional resourcing required for parties to attend meetings in order to resolve Stream's breaches.
- (d) **Meter replacement** – Organising and managing meter replacements to ensure installation compliancy for Consumers. This includes several Consumers that have a direct metering contract with Stream.
- (e) **Legal** – Legal services were necessary to advise Consumers of the situation, offer solutions for re-certification of their metering installations, and allow Retailers to meet their obligations to the Consumers. This includes several Consumers with direct metering contracts with Stream.
- (f) **Consumer support** – Calls and visits to Consumers were necessary by relationship managers in order to explain the situation, potential impacts, and options available on how to resolve the situation.
- (g) **Deadlines** – Retailers set deadlines for information to be supplied and compliance to be obtained but were consistently not followed by Stream. This caused more administrative work for Retailers and other affected parties. Retailers were forced to engage other metering equipment owners to replace non-compliant meter equipment.
- (h) **Supply of data** – The uncertainty surrounding the accuracy of consumption information obtained from the non-compliant

metering installations caused additional checking and work. Approximately eight hours of work per month was required. This time includes work carried out by data administrators who are now required to process large volumes of interim data and wash ups.

- (i) **Financial implications** - Overall it is estimated that each non-compliant installation has cost the retailer a substantial amount of money in time and resources, as outlined in clauses (a) to (h) of Appendix A, in order to resolve the compliance issues and entering this Agreement.

## **Appendix B: Schedule of Metering Installations**