

# SETTLEMENT AGREEMENT

(Regulation 83(1) Electricity Governance Regulations 2003)

**DATED:**

**BETWEEN:**

- (1) **Genesis Power Limited**, of 602 Great South Road, Greenlane, Auckland (**Genesis**)
- (2) **Transpower New Zealand Limited**, of Level 7, 96 The Terrace, Wellington, in its capacity as System Operator (the **System Operator**);
- (3) **Norske Skog Tasman Limited**, of Fletcher Ave, Kawerau, (**Norske Skog**); and
- (4) **Meridian Energy Limited**, of 33 Customhouse Quay, Wellington, (**Meridian**)

collectively the **parties**.

**BACKGROUND:**

- (A) On 28 February 2007 the System Operator alleged that Genesis had breached rule 4.11 of section III of part G and rule 6.3.3 of section II of part G of the Electricity Governance Rules 2003 (Rules) by failing to comply with dispatch instructions for fast instantaneous reserve (FIR) issued for Huntly power station (HLY) and failed to reasonably estimate FIR available on seven occasions between 16 January 2005 and 10 October 2006 (the Alleged Breaches).
- (B) In accordance with regulation 69 of the Regulations, the Board of the Electricity Commission (**Board**) appointed an investigator to investigate the Alleged Breaches.
- (C) The System Operator, Norske Skog and Meridian 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) **Approval Date** means the date the Board approves this Agreement under regulation 84(2) of the Regulations;
- (c) **Alleged Breaches** means the alleged breaches of the Rules arising from the Circumstances and set out in clause 2.2;
- (d) **Circumstances** means the circumstances set out in clause 2.1;
- (e) **Regulations** means the Electricity Governance Regulations 2003;
- (f) **Rules** means the Electricity Governance Rules 2003;
- (g) all capitalised terms not defined in this Agreement have the same meanings as in the Regulations or Rules, as the case may be; and
- (h) 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) Genesis is a provider of FIR as Partly Loaded Spinning Reserve (PLSR) from the thermal units at HLY. The units are offered and dispatched for FIR on a regular basis. On seven occasions between 16 January 2005 and 10 October 2006 the HLY units were dispatched and FIR was called in during under-frequency events. The System Operator believes that on these occasions Genesis provided FIRs that were below dispatched quantities. The dates, times, actual dispatch, and compliance with dispatch instructions are provided in Appendix 1.
- (b) Genesis denied all alleged breaches. Genesis considered the event of 1 July 2005 as a bona fide event where problems with the coal mill shortly before the UFE prevented it from delivering the dispatched FIR or claiming bona fide reduction of reserves on time.
- (c) Genesis believes that the System Operator's methods of measuring compliance with dispatch instructions for FIR from PLSR, which form the basis of the allegations of breaching rule 4.11, are unreliable, and accordingly, cannot be taken as evidence of non-compliance.

2.2 On 28 February 2007 the System Operator alleged that Genesis had breached rule 4.11 of section III of part G and rule 6.3.3 of section II of part G of the Rules by failing to comply with dispatch instructions FIR issued for HLY and failed to reasonably estimate FIR available on seven occasions between 16 January 2005 and 10 October 2006.

## 3. Guiding Principle

The parties agree the following guiding principle in relation to this Agreement: that any actions the parties may be required to undertake in order to achieve a settlement should

not require the parties to invest in significant additional resources to comply with the Agreement.

#### **4. Settlement**

The parties agree to the following settlement terms:

##### **4.1 Genesis agrees to work with the System Operator to:**

- a) Undertake quality assurance checks of the data contained within RMT Study pertaining to the Huntly Units 1, 2, 3 and 4 against the asset capability data currently held by Genesis in relation to Huntly Units 1, 2, 3 and 4. These checks are to be completed by 31 July 2008.
- b) Review and refine the RMT Study model for Huntly. The parties intend that the scope for this review should be completed by 31 July 2008 and that the parties will use best endeavours to complete the review (and make any revisions identified by the review) by 30 November 2008. The review will include Genesis undertaking a full validation review of asset capability statement information for Huntly Units 1, 3 and 4. It is understood that Huntly Unit 2 is undergoing its control and instrumentation upgrade in December 2008 and therefore the validation review for this unit will be undertaken within three months of the completion of the control and instrumentation upgrade. It is intended that an outcome of the review and refinement of the RMT Study model for Huntly is to have RMT Study modelled performance results reflect actual asset capability. Part of meeting this outcome will include providing Genesis with the revised RMT models. Note: Assumptions used in developing the models are included as part of the models documentation.

4.2 Genesis agrees to ensure that it has in place appropriate internal operational processes to enable it to adjust its reserve offers to reflect its actual reserve asset capability. These processes should clearly demonstrate that Genesis consistently produces results that meet the Rules' and contractual requirements for offer accuracy and compliance with dispatch. Genesis will provide a summary of these internal operational processes to the System Operator by 31 July 2008. It is acknowledged by the System Operator that Genesis has already taken positive steps to address the issues described in this clause.

4.3 Genesis acknowledges the System Operator uses RMT Study as an initial indicator of post event instantaneous reserve performance.

4.4 Genesis and the System Operator agree that any performance and compliance issues indicated by the RMT Study assessment are to be followed up by the System Operator through discussions with the asset owner.

## **5. Agreement Subject to Approval**

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

## **6. Settled Breaches**

- 6.1 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 Breach; and
- (ii) any other breaches of the Regulations and Rules, involved in or arising from the Circumstances

(together the “Settled Breach”)

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

- (i) the Electricity Commission may not on its own initiative instigate a further rule breach investigation, or take any enforcement action, in respect of the Settled Breach; 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 Electricity Commission may then take all or any of the steps provided for by Part 4 of the Electricity Governance Regulations notwithstanding this Agreement.

## **7. General**

- 7.1 Each party will execute all documents and do, or refrain from doing, all other 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) of the Regulations.

## **EXECUTED AS AN AGREEMENT:**

For **Genesis Power Limited** by:

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Name:

Position:

For **Transpower New Zealand Limited** by:

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Name:  
Position:

For **Norske Skog Tasman Limited** by:

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Name:  
Position:

For **Meridian Energy Limited** by:

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Name:  
Position:

Appendix 1

<b>Date</b>	<b>Time</b>	<b>Min Hz</b>	<b>FIR dispatched, MW</b>	<b>Pm as modelled by RMT, MW</b>	<b>Pm delivered as calculated by SO, MW</b>	<b>Pm delivered as calculated by Genesis, MW</b>
16/01/05	15:51:40	49.16	30	28.84	10	11.7
26/03/05	08:42:40	49.21	34	31.86	16	14.1
01/07/05	03:25:50	48.99	115	110.67	32	56.8
16/10/05	21:55:06	49.15	80	73	57	62.6
28/12/05	17:01:58	49.05	89	76	13	35
06/09/06	14:25	49.24	45	43.7	32.7	18.4
10/10/06	08:23	49.23	37.8	37	22	13.9

**Pm** is mechanical power response output of thermal units measured in MW at the sixth second of UFE.