

SETTLEMENT AGREEMENT

(Regulation 83(1) Electricity Governance Regulations 2003)

DATED:

BETWEEN:

Transpower New Zealand Limited, of Level 7, 96 The Terrace, Wellington, in its capacity as System Operator (the **System Operator**);

Transpower New Zealand Limited, of Level 7, 96 The Terrace, Wellington, in its capacity as Grid Owner (the **Grid Owner**);

Vector Limited, of level 4, 101 Carlton Gore Road, New Market, Auckland (**Vector**);

Meridian Energy Limited, of 33 Customhouse Quay, Wellington (**Meridian**);

Norske Skog Tasman Limited, of Fletcher Avenue, Kawerau (**Norske Skog**),

(collectively the **parties**).

BACKGROUND:

- (A) On 2 November 2006 the Commission alleged that the System Operator had breached rule 45 of schedule C4 (Policy Statement effective from 25 August 2005 to 30 August 2006) of part C of the Rules. This breach concerned the System Operator's failure to issue the Grid Emergency Notice as soon as practicable after declaring the nationwide grid emergency at 17:34 on 19 June 2006.
- (B) In accordance with regulation 69 of the Regulations, the Board appointed an investigator to investigate the Alleged Breach.
- (C) The Grid Owner, Meridian, Vector and Norske Skog joined the investigation as interested participants.
- (D) The parties have agreed to settle the Alleged Breach on the terms contained in this Agreement.

IT IS AGREED:

1. Interpretation

In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means this Settlement Agreement;
- (b) **Alleged Breach** means the breach of the Rules arising from the Circumstances and set out in clause 2.2;
- (c) **Approval Date** means the date the Board approves this Agreement under regulation 84(2) of the Regulations;

- (d) **Board** means the board of the Electricity Commission;
- (e) **Circumstances** means the circumstances set out in clause 2.1;
- (f) **Commission** means the Electricity Commission;
- (g) **Regulations** means the Electricity Governance Regulations 2003;
- (h) **Rules** means the Electricity Governance Rules 2003;
- (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. **Circumstances and Alleged Breach**

2.1 The parties agree on the following circumstances of the Alleged Breach:

- i. At 17:34 on 19 June 2006 the System Operator declared a nationwide grid emergency from 17:34 to 20:00.
- ii. At approximately 17:35 the System Operator informed the Regional Operating Centres (ROCs) that it was intending to declare a nationwide grid emergency due to there being insufficient reserves offered for a contingent event. The ROCs subsequently telephoned the distributors within their zones to advise them that the System Operator intended to declare a grid emergency. This phone call was for information only and was not the oral notification of the nationwide grid emergency.
- iii. To notify participants of the grid emergency the System Operator prepared a written formal notice dated "19 Jun 2006, 17:44" and used faxination to issue the grid emergency notification (GEN).
- iv. At 18:15 on 19 June 2006 the Southern ROC called the System Operator and advised that it had not received a grid emergency fax and therefore didn't know if all the other participants had received one or not. The System Operator advised the GEN should have gone as "...its told me its gone from here". The System Operator advised that it would print out a copy for the Southern ROC to fax around. The Southern ROC received the copy that was sent by normal fax on at 18:16 on 19 June 2006 and then faxed that copy out to South Island distributors.
- v. The Commission in July/August 2006 reviewed distributor responses to reduce demand as requested of them by the Nationwide GEN on 19 June 2006. During that review it became apparent that the GEN sent via faxination had not been sent until approximately 02:00 the next day, resulting in a number of distributors not being made aware of the grid emergency until it was over.
- vi. Several weeks later the System Operator became aware of a delivery problem with GEN faxes on 19 June 2006. The System Operator commenced an investigation, which revealed that there had been a problem with faxination on 19-20 June 2006. Following further investigation by the System Operator in December 2006 it was revealed that no faxes had actually been transmitted via faxination between midday on 19 June 2006 and 01:58 on 20 June 2006.

- vii. Automatic end to end testing of the faxination system did not report a failed test until approximately 01:05 on 20 June 2006 at which time Transpower on call support staff were notified. The support staff found that the server was not responding and at 01:58 on 20 June 2006 the server was restarted. On restarting the server all faxes since midday on 19 June 2006 including the nationwide GEN were then sent. It appears that the nationwide GEN was sent by faxination between 01:59 and 02:08 on 20 June 2006. The GEN was sent to participants on the System Operator's GEN NZ Participants distribution list comprising 48 fax numbers as well as a number of email addresses.
- 2.2 The breach was alleged by the Commission and admitted by the System Operator. It concerned rule 45 of schedule C4, (Policy Statement effective from 25 August 2005 to 30 August 2006) of part C of the Rules. The breach was alleged against the System Operator for failing to issue a GEN as soon as practicable after declaring the nationwide grid emergency at 17:34 on 19 June 2006.

3. Settlement

3.1 The System Operator:

- (a) has advised that it has in place end-to-end testing to detect faults in faxination delivery;
- (b) has advised that it has put in place a process that will alert its service desk if no fax acknowledgement is received within 20 minutes of the fax being sent;
- (c) will, in addition to fax, send the written Formal Notice by email to relevant participants. This will require those participants to provide email addresses to the System Operator;
- (d) will offer to provide to relevant participants SMS alerts that a written Formal Notice has been issued. This will require those participants to provide cellular phone details to the System Operator;
- (e) has agreed to review the content of GEN notices with any changes implemented from 1 September 2009 as part of the Policy Statement.

4. Confidentiality

- 4.1 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.

- 4.2 A party must not disclose confidential information under clause 4.1(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 4 before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in clause 4.1(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).

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 in clause 2.2 ;
 - (ii) any other breaches of the Regulations and Rules, involved in or arising from the Circumstances;
- (together the “the Settled Breaches”)
- (b) In accordance with regulation 84, but subject to regulation 87, this Agreement is also binding on the Commission and all other Participants to the effect that:
- (i) the Commission may not on its own initiative instigate a further rule breach investigation, or take any enforcement action, in respect of the Settled Breaches; 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 Commission may then take all or any of the steps provided for by Part 4 of the Regulations despite this Agreement.

7. General

- 7.1 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) of the Regulations.
- 7.2 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.
- 7.3 This Agreement may be signed in any number of counterparts.

EXECUTED AS AN AGREEMENT:

For **Transpower New Zealand Limited** as System Operator by:

Name:

Position:

For **Transpower New Zealand Limited** as Grid Owner by:

Name:

Position:

For **Meridian Energy Limited** by:

Name:

Position:

For **Norske Skog Tasman Limited** by:

Name:

Position:

For **Vector Limited** by:

Name:

Position: