

## SETTLEMENT AGREEMENT

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

#### DATED:

#### BETWEEN:

- (1) **Meridian Energy Limited** (Meridian) of 15 Allen Street, Wellington;
- (2) **TrustPower Limited** (TrustPower) TrustPower Building, Truman Road, Te Maunga, Mount Maunganui; and
- (3) **Buller Electricity Limited** (Buller Electricity), Robertson Street, Westport

Together "the parties"

#### BACKGROUND:

- (A) On 26 January 2006 Meridian notified the Electricity Commission (the **Commission**) pursuant to Regulation 62 of the Electricity Governance Regulations 2003 (the **Regulations**) of potential breaches of the EGRs by Buller Electricity.
- (B) The Commission appointed an investigator to investigate the potential EGR breaches under Regulation 69 of the Regulations.
- (C) TrustPower joined the investigation as an affected party under Regulation 75 of the Regulations.
- (D) The parties have agreed to settle all the potential EGR breaches described in clause 3 below on the terms set out in this Agreement.

#### IT IS AGREED:

##### 1. Interpretation

In this Agreement, unless the context requires otherwise:

- (a) Agreement means this Settlement Agreement;
- (b) Potential EGR Breach means a potential breach of the EGRs described in clause 3;
- (c) Approval Date means the date the parties to this Agreement are notified that the Electricity Commission has approved this Agreement under regulation 84(2)(a) of the Regulations;
- (d) EGRs means the Electricity Governance Rules 2003;

- (e) Regulations means the Electricity Governance Regulations 2003;
- (f) All capitalised terms not defined in this Agreement have the same meaning as in the Regulations or EGRs, as the case may be; and
- (g) All references to clauses are to clauses of this Agreement.

## **2. Circumstances**

The parties agree on the following circumstances of the potential EGR breaches:

- (a) In or about April 1999 Meridian entered into a supply arrangement with a major electricity user on the West Coast of the South Island (**Meridian's customer**). No Loss Factors were applied.
- (b) In or about October 2002 Buller Electricity populated the Registry by way of a global transfer of its database. In this process, Buller Electricity inadvertently allocated a Loss Factor of 1.0876 with respect to the GXP Meridian's customer was being supplied from. The correct Loss Factor for this GXP was 1.00.
- (c) Between 1 April 2004 and 25 May 2005 Meridian billed its customer applying a Loss Factor of 1.0876. Inadvertently Meridian applied no Loss Factor in the market reconciliation process.
- (d) Using the published loss factor in the reconciliation process would have created a significant market impact. However because Meridian did not apply the published loss factor during the reconciliation process, no market impact occurred. Buller was aware at all times the correct loss factor was applied in the reconciliation process as it monitored the market information on a monthly basis.
- (e) In May 2005 Meridian reviewed the allocation of Loss Factors for a number of ICPs with Buller Electricity. It was agreed by Meridian and Buller Electricity at that time that the correct Loss Factor for Meridian's customer should be 1.00.

## **3. Potential EGR breaches**

Arising from the circumstances set out in clause 2 above potential EGR breaches were identified and considered by the parties during settlement discussions:

- (a) The following potential breaches by Buller Electricity were considered:
  - Rule 6 of Part E – failing to make changes to the Registry within three business days of a change occurring
  - Rule 2 of Part E - creating an ICP for a customer not on a Distributor's network
  - Rule 5 of Part E - having created an ICP not on a Distributor's network providing information to the Registry listed in Rule 2 of Schedule E2, namely a Loss Factor

- Rule 6 of Part E - having incorrectly provided information under Rule 5 of Part E and having incorrectly creating an ICP under Rule 2 of Part E, failing to correct that information within three business days of the commencement of the Electricity Governance Regulations and Rules 2003
- (b) The following potential breaches by Meridian were considered:
- Rules 5.1.1 and 5.2, Section VI of Part G - failing to make an adjustment for losses to the half-hour consumption information delivered to the reconciliation manager for a particular ICP between April 2004 and May 2005
  - Rule 5.2 of Section VI of Part G - failing to provide the reconciliation manager with certain consumption information
  - Rule 5.6.1 of Section VI of Part G - failing to use reasonable endeavours to provide complete and accurate consumption information
- (c) Other issues considered:
- The obligations of market participants, Distributors and Retailers, when acting for or contracting with actual or potential Direct Consumer customers
  - Appropriate processes for advising the electricity market and the Commission of actual or potential inaccurate Loss Factors recorded on the Registry

#### **4. Liability**

- (a) Buller Electricity denies liability for any of the potential EGR breaches as outlined in clause 3 above.
- (b) Meridian denies liability for any of the potential EGR breaches as outlined in clause 3 above.
- (c) Nothing in this Agreement is to be interpreted as acceptance, by Buller Electricity or Meridian, of any potential EGR breaches referred to in this Agreement.

#### **5. Settlement**

The parties agree:

- (a) That the practice of backdating any change to the Registry outside of the industry accepted practice of three business days may give rise to potential breaches of the EGRs and, in any event, is an undesirable practice that should be discouraged;
- (b) That where a market participant reasonably believes that there is inaccurate information recorded on the Registry, including but not limited to inaccurate Loss Factors, it is the responsibility of that market participant to provide

immediate written notice to the Commission and affected market participants so that appropriate corrective action can be initiated;

- (c) That this Agreement is taken as a recommendation to the Commission by the parties that it should, draft and distribute to all market participants a set of guidelines concerning the market participant obligations when inaccurate loss factors have been identified on the Registry and clarification on what the EGRs mandate with respect to backdating changes on the Registry;
- (d) TrustPower is to provide a written waiver to Meridian acknowledging it has no legal claim on money paid by Meridian's customer in respect of Loss Factor charges applied between 1 April 2004 and 25 May 2005;
- (e) Subject to (d), Meridian will facilitate a fair and equitable resolution with its customer concerning those Loss Factor charges;
- (f) Meridian and Buller Electricity will use best endeavours to resolve outstanding consumption and reconciliation issues identified in the course of this settlement process;
- (g) Meridian is to continue to take steps to ensure that it has effective communication with its data administrator including as to any discrepancy reporting in its system;
- (h) Buller Electricity is to continue to take steps to ensure that it has in place appropriate processes for reviewing the accuracy of Loss Factors recorded by it on the Registry;
- (i) Buller Electricity, with the assistance (where practicable) from the Commission, will continue to take steps to encourage Meridian's customer to enter into an appropriate connection contract with either it or Transpower.

## **6. Confidentiality**

6.1 If the Commission 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.

6.2 A party must not disclose confidential information under clause 6 (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 6 before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in clause 6 (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).

## **7. Agreement Subject to Approval**

7.1 Subject to clause 7.2, this Agreement will come into effect on the Approval Date.

7.2 Clause 6 is binding on the parties as from the date of this Agreement. Pending the Electricity Commission's approval of this Agreement under regulation 84(2) (a) of the Regulations, clause 6 will apply as if the Electricity Commission has decided under regulation 85(2) of the Regulations not to publicise any part of this Agreement or the existence of this Agreement.

## **8. Settled Potential EGR Breaches**

8.1 This Agreement is in full and final settlement of all claims, actions and demands against any party under the Regulations the EGRs or any other relevant law in relation to:

- (a) The potential EGR breaches; and
- (b) Any other breaches or potential breaches of the Regulations or EGRs involved in or arising from the circumstances of the potential EGR breaches that the claiming party ought reasonably to have known about at the date of this Agreement,

8.2 Pursuant to regulation 84, but subject to regulation 87 of the Regulations, and once approved by the Board, this Agreement is also binding on the Commission and all Participants including those who are not a party to this Agreement to the effect that:

- (a) The Commission may not on its own initiative investigate a further breach investigation, or take any enforcement action in respect of, the potential EGR 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 the circumstances set out in clause 2 this Agreement and the Commission may then take all or any of the steps provided for in Part 4 of the Regulations notwithstanding this Agreement.

## **9. General**

9.1 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 Commission's approval of this Agreement under regulation 84(2)(a) of the Regulations.

- 9.2 This Agreement is the whole and only Agreement between the parties relating to the settlement of claims, actions and demands arising from the potential EGR breaches referred to in clause 3. 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.
- 9.3 This Agreement may be signed in any number of counterparts.
- 9.4 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.

**For Meridian Energy Limited by:**

\_\_\_\_\_  
Name:

Position:

**For TrustPower Limited by:**

\_\_\_\_\_  
Name:

Position:

**For Buller Electricity Limited by:**

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Name:

Position: