

## SETTLEMENT AGREEMENT

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

#### DATED:

#### BETWEEN:

- (1) **Mighty River Power Limited (Mighty River Power)** of Level 19, 1 Queen Street, Auckland;
- (2) **Transpower New Zealand Limited** of Level 7, 96 The Terrace, Wellington, in its capacity as System Operator (the **System Operator**);

#### BACKGROUND:

- (A) The System Operator reported Mighty River Power for certain breaches of the EGRs under regulation 62 of the Regulations. The Electricity Commission appointed an investigator to investigate the breaches under regulation 69 of the Regulations.
- (B) Meridian Energy Ltd joined the investigation as an affected party under regulation 75 of the Regulations. Later Meridian Energy Ltd advised about its decision to withdraw from the settlement process.
- (C) TrustPower Limited joined the investigation as an observer with the agreement of the other parties.
- (D) Mighty River Power denies the alleged breaches.
- (E) The parties have agreed to settle the alleged breaches on the terms of 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 EGRs described in clause 2.1;
- (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 meanings as in the Regulations or EGRs, as the case may be; and
- (g) all references to clauses are to clauses of this Agreement.

## **2. Alleged Breaches**

2.1 The System Operator reported Mighty River Power for the following alleged breaches of the EGRs occurring on 22 July 2005, 30 July 2005, and 14 October 2005:

- (a) Rule 4.11 of Section III of Part G for failing to comply with Dispatch Instructions for energy at Mokai power station on the above dates.

2.2 Mighty River Power denies the Alleged Breaches. Nothing in this Agreement is to be interpreted as acceptance of the Alleged Breaches by Mighty River Power.

## **3. Settlement**

3.1 Mighty River Power agrees to:

- (a) use the Offer revision processes set out in Rules 3.15 and 3.17 of Section II of Part G of the EGRs when Dispatch Instructions are not able to be met;
- (b) limit any sustained deviation from the dispatched quantity (of greater than + / - 1MW) to the current Trading Period by immediately submitting the revised Offer referred to in clause 3.1(a) unless there is insufficient time to submit such revised Offer;
- (c) inform the System Operator as soon as it becomes aware of conditions that are likely to affect its ability to meet Dispatch Instructions, including where such conditions are likely to result in generation that is higher than the quantity offered; and
- (d) review its current education plan for its Trading and Dispatch Operators and implement any necessary changes by 31 January 2007. For the purposes of this settlement, such review will be limited to the aspects of education that relate to offer and dispatch of generating plant.

## **4. Confidentiality**

4.1 If the Electricity 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.

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 Subject to clause 5.2, this Agreement will come into effect on the Approval Date.

5.2 Clause 4 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 4 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.

## 6. Settled Breaches

6.1 This Agreement is in full and final settlement of all claims, actions and demands against any party (under the Regulations, the EGRs or otherwise) in relation to:

- (a) the Alleged Breaches; and
- (b) any other breaches of the Regulations or EGRs involved in or arising from the circumstances of the Alleged Breaches 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**).

6.2 Pursuant to regulation 84, but subject to regulation 87 of the Regulations, this Agreement is also binding on the Electricity Commission and all Participants who are not a party to this Agreement to the effect that:

- (a) the Electricity Commission may not on its own initiative investigate 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 Electricity Commission may then take all or any of the steps provided for in Part 4 of the 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 Electricity Commission's approval of this Agreement under regulation 84(2)(a) of the Regulations.
- 7.2 This Agreement is the whole and only agreement between the parties relating to the settlement of claims, actions and demands arising from the Settled Breaches. 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.

**SIGNED:**

For **Mighty River Power Limited** by:

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

Position:

For **Transpower New Zealand Limited** in its capacity as **System Operator** by:

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

Position: