

# SETTLEMENT AGREEMENT

## Regulation 24(1) Electricity Industry (Enforcement) Regulations 2010

### DATED:

### BETWEEN:

- (1) Alpine Energy Limited of 31 Meadows Road, Timaru (Alpine);
- (2) Meridian Energy Limited of 33 Customhouse Quay, Wellington (Meridian); and
- (3) Electricity Authority in its role as the market administrator under the Electricity Industry Act 2010, of 2 Hunter Street, Wellington (market administrator);

(Collectively the **parties**).

### BACKGROUND:

- (A) On 20 May 2015, the market administrator reported to the Electricity Authority (Authority) that Alpine had breached clause 18 of Schedule 10.7 of the Code.
- (B) Clause 18 of Schedule 10.7 required each MEP to certify each interim certified metering installation it is responsible for, by 1 April 2015.
- (C) On 26 June 2015 the Authority appointed an investigator under regulation 12 of the Electricity Industry (Enforcement) Regulations 2010 (Regulations), to investigate the Alleged Breaches by Alpine.
- (D) Meridian joined the investigation as an interested party.
- (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 Code arising from the Circumstances and described in clause 2;
- (c) **Approval Date** means the date the parties to this Agreement are notified that the Authority has approved this Agreement under regulation 24(4) of the Regulations;

- (d) **Circumstances** means the circumstances set out in clause 3;
- (e) **Code** means the Electricity Industry Participation Code 2010; and
- (f) **Regulations** means the Electricity Industry (Enforcement) Regulations 2010.

## **2. Alleged Breaches**

- 2.1 Alpine failed to ensure that it certified each interim certified metering installation it is responsible for, by 1 April 2015.

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

- 3.1 Alpine is 100% owned by the South Canterbury community and is part of the SmartCo Limited (SmartCo) project, the metering equipment provider (MEP) project for managing the deployment of smart meters. In 2010, Alpine began replacing its interim certified category 1 metering installations to achieve compliance by 1 April 2015.
- 3.2 In early 2014 Alpine decided to join the SmartCo project and to roll out smart meters. As a result, Alpine stopped its own replacement programme, with 12,616 metering installations remaining uncertified as at 21 May 2015. The uncertified meters comprise 55.5% of Alpine's category 1 metering installations.
- 3.3 SmartCo started the smart meter roll out on Alpine's network in November 2014 and originally intended to replace all of its category 1 meters by 31 August 2016. Following discussions with Alpine's compliance manager, it now seems unlikely that Alpine will meet this deadline because of a lack of qualified installers and other resources.
- 3.4 In May 2015, Alpine submitted a compliance plan to the Authority, showing that it intended to recertify its non-compliant meters by statistical sampling to achieve compliance earlier than August 2016. However, recent sampling revealed that there is a high level of inaccuracy amongst very old metering installations, which means that Alpine will face difficulties achieving compliance in the near future.

## **4. Impact of the Breaches**

- 4.1 Alpine has discovered inaccuracies of metering installations during statistical sampling. However, the parties consider the impact is minor.
- 4.2 There is also an impact on consumers who pay a monthly lease fee for uncertified metering installations. However, there is an off-set of these lease fees for such consumers because of Alpine's ownership structure. Alpine passes benefits, such as annual discounts, on to consumers on its network.

## **5. Steps taken to prevent recurrence**

- 5.1 These breaches will not recur because the obligation was specific to the date 1 April 2015.

## **6. Guiding Principles**

- 6.1 The parties agree the following guiding principles in relation to this Agreement:
- (a) Alpine will take all practicable steps to ensure that it will recertify the metering installations as soon as possible;
  - (b) Alpine will pay all reasonable costs incurred as a result of an uncertified metering installation; and
  - (c) Alpine will provide an updated roll-out plan and recertification plan and report on progress every three months to the Authority.

## **7. Settlement**

- 7.1 Alpine agrees to:

- (a) take all practicable steps to achieve compliance as fast as possible, preferably by 24 December 2016. To achieve this outcome, Alpine commits to taking the following actions:
  - (i) certifying all non-compliant metering installations regardless of suitability for an AMI meter, by using any compliant meters or moving the metering point where customers are refusing permission to install electronic/AMI meters;
  - (ii) prioritising the replacement of uncertified metering installations in areas where there is a high concentration of uncertified metering installations;
  - (iii) conducting statistical sampling where practicable.
- (b) provide a detailed rollout plan to the Authority by 30 November 2015, clearly stating the number of metering installations it will certify in each three-month period;
- (c) provide to the Authority the results of its current statistical sampling programme by 29 February 2016;
- (d) pay reasonable costs required to upgrade meter boards to ensure metering installations can be certified;
- (e) donate the charged lease fee for each uncertified metering installation after 1 September 2016 on a monthly basis to a charity agreed with the Authority, preferably a charity assisting vulnerable customers or budget advisory services. If the trader at the metering installation does not arrange reasonable access, and Alpine has made all reasonable efforts to meet the trader's access requirement, then that metering installation is removed from the counts if Alpine alleges a breach against the trader. This is so Alpine is

not penalised for the trader's failure to arrange access, if the customer refuses access, or for safety issues for which the customer is responsible;

- (f) reimburse any genuine (direct) losses incurred by customers as a result of an uncertified metering installation where there is no metering agreement in place or in accordance with Alpine's metering agreement or use of system agreement where the metering services are provided under those agreements;
- (g) pay all compensation and costs associated with a customer complaint (except the trader's administrative costs with dealing with the complaint) as a result of one of Alpine's uncertified metering installations where there is no metering agreement in place or in accordance with Alpine's metering agreement or use of system agreement where the metering services are provided under those agreements;
- (h) provide information on the accuracy of non-compliant meters to the settlement parties. This will require testing a statistically significant sample of meters; and
- (i) be independently audited alongside the regular MEP audit for its compliance with this Agreement.

## **8. Confidentiality**

8.1 If the Authority decides under regulation 25(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.

8.2 A party must not disclose confidential information under clause 8.1(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 (a) before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in clause 8.1(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).

## **9. Agreement Subject to Approval**

- 9.1 Subject to clause 9.2, this Agreement will come into effect on the Approval Date.
- 9.2 Clause 8 is binding on the parties as from the date of this Agreement. Pending the Authority's approval of this Agreement under regulation 24(4) of the Regulations, clause 8 will apply as if the Authority has decided under regulation 25(2) of the Regulations not to publicise any part of this Agreement or the existence of this Agreement.

## **10. Settled Breaches**

- 10.1 This Agreement is in full and final settlement of all claims, actions and demands against any party (under the Regulations, the Code or otherwise) in relation to:
- (a) the Alleged Breaches; and
  - (b) any other breaches of the Regulations or Code 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**).
- 10.2 However, the Authority may, on its own initiative, instigate a further breach investigation, or take any enforcement action in respect of, the Settled Breaches.
- 10.3 Subject to regulation 26 of the Regulations, this Agreement is also binding on all participants who are not a party to this Agreement. A participant who is not a party to this Agreement may, in accordance with regulation 26 of the Regulations, make a further notification under regulation 7 or 8 of the Regulations in relation to a Settled Breach, and the Authority may then take all or any of the steps provided for in the Regulations despite this Agreement.

## **11. General**

- 11.1 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 Authority's approval of this Agreement under regulation 24(4)(a) of the Regulations.
- 11.2 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.
- 11.3 This Agreement may be signed in any number of counterparts.

SIGNED:

For Alpine Energy Limited

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Name:

Position:

SIGNED:

For Meridian Energy Limited

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Name:

Position:

SIGNED:

For Electricity Authority in its role as the market  
administrator under the Electricity Industry Act 2010

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Name:

Position: