

SETTLEMENT AGREEMENT

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

DATED:

BETWEEN:

- (1) Contact Energy Limited of 29 Brandon Street, Wellington (Contact);
 - (2) Meridian Energy Limited of 33 Customhouse Quay, Wellington (Meridian); and
 - (3) Powershop New Zealand Limited of 43 Hanson Street, Wellington (Powershop).
- (Collectively the **parties**).

BACKGROUND:

- (A) On 13 April 2015, Contact reported to the Electricity Authority (Authority) that Contact had breached clause 18 of Schedule 10.7 of the Code.
- (B) Clause 18 of Schedule 10.7 requires metering equipment providers (MEPs) to ensure that they certify each interim certified metering installation they were responsible for, by 1 April 2015.
- (C) On 26 June 2015 the Authority appointed an investigator under regulation 12 of the Regulations, to investigate the Alleged Breaches by Contact
- (D) Meridian and Powershop joined the investigation as interested parties.
- (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)(a) 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 Contact 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 As of 21 May 2015, 62,768 of Contact's category 1 interim certified metering installations had expired certification. This represented approximately 41% of Contact's total category 1 metering installations.
- 3.2 In 2011, Contact started deploying AMI meters to displace the existing standard metering. In 2014, despite contracting arrangements being in place, Contact realised it would not achieve compliance by 1 April 2015.
- 3.3 Consequently, Contact initiated a statistical sampling programme. Contact completed this first programme on 27 March 2015, which resulted in the re-certification of approximately 67,000 meters.

4. Impact of the Breaches

- 4.1 There could be a minor market impact. The results of the statistical sampling showed the vast majority of these meters are within the prescribed variance. However, the results also showed a bias towards running slowly during times of low load, with only a few meters marginally outside the level of tolerance for meters running fast. When tested at high load the sample results appeared more accurate.
- 4.2 There is also an impact on each consumer who pays monthly lease fees for an uncertified metering installation.

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) Contact will take all practicable steps to ensure that it will recertify the metering installations as fast as possible;
 - (b) Contact will pay all reasonable costs incurred as a result of an uncertified metering installation;

- (c) Contact will provide a roll-out plan and recertification plan and report on progress every three months to the Authority.

7. Settlement

7.1 Contact agrees to:

- (a) take all practicable steps to achieve compliance as fast as possible, preferably by 1 September 2016. To achieve this outcome, Contact commits to taking the following actions:
 - (i) certifying all non-compliant ICPs regardless of suitability for an AMI meter, including sourcing small form factor meters and relays for use where an AMI meter will not physically fit or using “analogue” meters or moving the metering point where customers are refusing permission to install electronic/AMI meters;
 - (ii) prioritising uncertified metering installations over certified metering installations in current smart meter deployment programmes, in areas where there is a high concentration of uncertified metering installations;
 - (iii) working with its deployment partners Advanced Metering Services Limited and SmartCo Limited to investigate setting financial incentives to attract more installers to AMI deployment programmes;
 - (iv) allocating more than \$0.5 million additional budget to fast-tracking resolution of difficult technical “Unable to Install” issues that have held up some smart meter deployments to date;
 - (v) identifying any assistance Contact can provide to facilitate Advanced Metering Services Limited and SmartCo Limited deploying smart meters to the third-party traders who currently use Contact’s meters. To date, most of these traders have actively organised their own smart meter deployment, which provides greater benefits to their customers than would a mass rollout by Contact of like for like ‘standard’ meters;
 - (vi) exploring potential transfer of ownership to third parties of metering installations at ICPs retailed by other traders, where such third parties may be better placed than Contact to accelerate compliance; and
 - (vii) completing its extended statistical sampling programme by December 2015;
- (b) provide its detailed rollout plan to the Authority by 1 November 2015, clearly stating the number of metering installations certified in each three-month period and provide the results of its current statistical sampling programme by 31 January 2016;

- (c) pay reasonable costs required to upgrade meter boards to ensure the metering installation can be certified if the customer does not or cannot pay;
- (d) 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 Contact has made all reasonable efforts to meet the trader's access requirement, then that metering installation is removed from the counts if Contact alleges a breach against the trader. This is so Contact 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;
- (e) reimburse any genuine losses incurred by customers as a result of an uncertified metering installation;
- (f) pay all costs resulting from additional market settlement wash-ups required as a result of Contact's uncertified metering installations;
- (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 Contact's uncertified metering installations;
- (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 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 8.1(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, breaches of this settlement.
- 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 Contact Energy Limited

Name:

Position:

SIGNED:

For Meridian Energy Limited

Name:

Position:

SIGNED:

For Powershop New Zealand Limited

Name:

Position: