

SETTLEMENT AGREEMENT

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

DATED:

BETWEEN:

- (1) ALPINE ENERGY LIMITED of 31 Meadows Road, Washdyke, Timaru, PO Box 530, Timaru 7940 (Alpine)
- (2) ELECTRICITY AUTHORITY of Level 7, ASB Bank Tower, 2 Hunter Street, PO Box 10041, Wellington 6143 (Authority)

(Collectively the **parties**).

BACKGROUND:

- (A) On 15 August 2014 a party that was not a participant (non-participant) reported to the Authority that Alpine had breached the following clauses of Part 6 of the Electricity Industry Participation Code 2010 (Code):
 - a) clause 6.3
 - b) clause 6.4
 - c) clause 2(5) of Schedule 6.1
 - d) clause 3(3) of Schedule 6.1
 - e) clause 9 of Schedule 6.1
 - f) clause 2 of Schedule 6.2
 - g) clause 3 of Schedule 6.2.
- (B) On 26 February 2015, the Authority appointed an investigator under regulation 12 of the Electricity Industry (Enforcement) Regulations 2010 (Regulations), to investigate the Alleged Breaches by Alpine.
- (C) The non-participant that alleged the breaches was not a party to the investigation and is not a party to the settlement agreement. This is because the non-participant does not come within one of the categories of participants set out in section 7 of the Electricity Industry Act 2010. Regulations 18(b)(ii) and 22(1) of the Regulations prevent a non-participant that alleges a Code breach from being a party to an investigation and any settlement arising from it.

Regulation 18(b)(ii) instead requires the Authority to stand in for the non-participant as a party to the investigation and any settlement agreement that arises from it.

- (D) 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
- (f) **Regulations** means the Electricity Industry (Enforcement) Regulations 2010.

2. Alleged Breaches

The non-participant alleged that Alpine breached the following provisions of the Code:

- (a) clause 6.3 by failing to make certain information publicly available to enable connection of distributed generation in accordance with its connection and operation standards
- (b) clause 6.4(2) by failing to grant approval to connect distributed generation that complied with Alpine's connection and operation standards
- (c) clause 2(5) of Schedule 6.1 by failing to notify the non-participant whether its application was complete, within the required 5 business days timeframe
- (d) clause 3(3) of Schedule 6.1 when it declined six of the non-participant's applications to connect distributed generation, but failed to provide the required information with the notification
- (e) clause 9 of Schedule 6.1 when, under the circumstances outlined in that clause, it failed to connect the distributed generation as soon as practicable under regulated terms

- (f) clause 2 of Schedule 6.2 by failing to interpret the regulated terms for connection of distributed generation in a way that gave business efficacy to the relationship between Alpine and the non-participant
- (g) clause 3 of Schedule 6.2, because Alpine's assessment of what was "reasonable and prudent operating practice" would force the adoption of unsafe installation practices.

3. Circumstances of the Alleged Breaches

- 3.1 Between 12 November 2012 and 28 November 2012, the non-participant made six applications to Alpine to connect distributed generation for six distributed generators the non-participant represented.
- 3.2 On 29 November 2012, Alpine published on its website the requirement for applications to be compliant with *AS/NZS 5033:2012 Installation and Safety Requirements for Photovoltaic (PV) Arrays* (AS/NZS 5033:2012).
- 3.3 On 19 December 2012, Alpine declined the six applications, citing a failure to comply with AS/NZS 5033:2012 in each instance.
- 3.4 On 20 December 2012, the non-participant complained to the Authority and alleged a number of breaches of Part 6. In January 2013, Alpine and the non-participant reached a confidential settlement (private settlement) that included compensating the non-participant, agreement to comply with AS/NZS 5033:2012, approval of the six applications, and the withdrawing of the complaint made to the Authority.
- 3.5 Between 13 February and 28 May 2013, the non-participant submitted a further four applications to connect distributed generation. These applications were approved by Alpine within the applicable deadlines under Part 6.
- 3.6 After receiving approval from Alpine, the distributed generators (and the non-participant acting on their behalf), to connect did not notify their intention to proceed within 10 business days of receiving the approval as required by the Code at the time. Failure to notify the intention to proceed meant that Alpine's duties under Part 6 no longer applied.

4. Impact of the Breaches

- 4.1 The parties agreed that the market impact as assessed by the Investigator should be recorded as minor and addressed by the private settlement between Alpine and the non-participant.

5. Steps taken to prevent recurrence

- 5.1 Alpine has updated and refined its process to ensure that distributed generators with compliant applications can connect to Alpine's network easily and without unnecessary delay.

6. Guiding Principles

The parties agreed as a guiding principle in relation to this Agreement that the Code does not and cannot mandate matters of safety that are already covered in the Electricity (Safety) Regulations 2010.

7. Settlement

- 7.1 Alpine made changes to its website in 2015, and by 24 December 2016, will have completed making further improvements following a gap analysis against the information provided on peer websites and the compliance requirements of the Code.
- 7.2 Alpine agrees to keep its website up to date in the future according to the requirements of the Code.
- 7.3 Alpine accepts some limited specific breaches of clause 6.3 and clause 2(5) of Schedule 6.1 of the Code, but does not admit any other breach of the Code.
- 7.4 Alpine agrees not to adopt or enforce standards in its connection and operation standards that are inconsistent with standards incorporated in New Zealand law.
- 7.5 Alpine has carefully considered the learning from this experience and considers clear lines of communications with its customers is paramount to effective operations as a market participant.

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 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 Subject to regulation 26 of the Regulations, this Agreement is also binding on the Authority and all participants who are not a party to this Agreement to the effect that:
- (a) the Authority may not on its own initiative instigate 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, 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

Name:

Position:

SIGNED:

For the Electricity Authority

Name:

Position: