

## **Notice of the Authority's decision under regulation 29 of the Electricity Industry (Enforcement) Regulations 2010**

Under regulation 29(1) of the Electricity Industry (Enforcement) Regulations 2010 (Regulations) the Electricity Authority (Authority) must publicise every decision made under regulation 23(3) of the Regulations, together with the reasons for the Authority's decision.

### **Investigation**

On 12 August 2020, the Authority appointed an investigator under regulation 12 of the Regulations to investigate the alleged breaches of clause 13.5A of the Electricity Industry Participation Code 2010 by Contact Energy Limited (Contact).

The breaches were alleged by Haast Energy Trading Limited, Ecotricity Limited Partnership, Switch Utilities Limited (Vocus), Electric Kiwi Limited, Flick Energy Limited, Oji Fibre Solutions (NZ) Limited, and Pulse Energy Alliance LP.

The circumstances of the alleged breaches concerned Contact's offers when it was spilling water during flood conditions in the Clutha catchment area between 11 November 2019 and 28 December 2019.

Genesis Energy Limited, Mercury NZ Limited, Nova Energy Limited and Todd Generation Taranaki Limited joined the investigation as affected parties. The notifying participants were also parties to the investigation.

The investigator was not able to achieve a settlement agreement because Contact denied the alleged breaches.

The investigator considered that Contact did not breach clause 13.5A(1) because the safe harbour provisions in clause 13.5B applied. Where a generator complies with the safe harbour provisions the generator is considered to comply with the high standard of trading conduct (HSOTC) requirement in clause 13.5A(1).

The investigator considers the safe harbour provisions create a situation where "static" offer behaviour is deemed to meet a HSOTC. The "static" offer behaviour is what the investigator considers to be the underlying issue behind the alleged breaches where Contact maintained its offers despite the value of water having zero value when spilling water under flood conditions.

On 1 April 2021, the Authority received and considered a report and a recommendation from the investigator to discontinue the investigation.

### **The Authority's decision**

On 1 April 2021, the Authority decided under regulation 23(3)(a) of the Regulations to discontinue the investigation.

## **Reason for the Authority's decision**

The reason for the Authority's decision to discontinue the investigation was that:

- The investigation found that Contact did not breach clause 13.5A(1) because the safe harbour provisions in clause 13.5B applied.

In making its decision the Authority noted:

- Offers would normally be expected to result in lower prices in times of excess water. However, the investigation had highlighted that the safe harbour provisions had created a situation where maintaining offers at similar levels is not a breach of the trading conduct rules.