

SETTLEMENT AGREEMENT

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

DATED:

BETWEEN:

- (1) Genesis Energy Limited of Level 6, 155 Fanshawe Street, Auckland 1010 (Genesis);
- (2) Flick Electric Limited of Level 2, 8 Kent Terrace, Mount Victoria, Wellington 6011 (Flick);
- (3) Electric Kiwi Limited of Level 4, Ferry Building, 99 Quay Street, Auckland 1010 (Electric Kiwi);
- (4) Powershop New Zealand Limited of Level 2, 55 Lady Elizabeth Lane, Wellington 6011 (Powershop);
- (5) Meridian Energy Limited of Level 2, 55 Lady Elizabeth Lane, Wellington 6011 (Meridian);
- (6) Contact Energy Limited of Level 2, Harbour City Tower, 29 Brandon Street, Wellington 6011 (Contact).

(Collectively the **parties**).

BACKGROUND:

- (A) On 31 March 2020, Genesis breached clause 11.15AA of the Code when it, as a losing retailer, made contact with customers switching to a gaining retailer in an attempt to persuade the customers to terminate the arrangement with the gaining retailer during the switch protected period.
- (B) Genesis incorrectly interpreted the effective date of the saves and winbacks Code amendment as 1 April 2020 rather than 31 March 2020. On 31 March 2020, Genesis made approximately 224 potential winback attempts and 25 successful winbacks. These totals are subject to confirmation following an internal audit process detailed at 6.3 – 6.4.
- (C) On 6 May 2020 the Electricity Authority (Authority) appointed an investigator under regulation 12 of the Regulations, to investigate the Alleged Breaches by Genesis.
- (D) Powershop, Meridian and Contact joined the investigation as affected participants in addition to Flick and Electric Kiwi which made allegations of breach.

- (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 Electricity 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

2.1 On 31 March 2020, Genesis breached clause 11.15AA when it, as a losing retailer, made contact with customers switching to a gaining retailer in an attempt to persuade the customers to terminate the arrangement with the gaining retailer during the switch protected period.

3. Circumstances of the Breaches

- 3.1 On 1 April 2020, Flick reported to the Authority that Genesis had breached clause 11.15AA of the Code.
- 3.2 Clause 11.15AA requires that a losing retailer must not contact any customer who is switching from the losing retailer to a gaining retailer for anything other than 'administrative' reasons. The clause came into effect on 31 March 2020.
- 3.3 Genesis began adapting internal systems and processes to ensure compliance with the Code amendment when it came into force, including: providing an email to all relevant staff noting the correct date effective of 31 March 2020; workshop with team leaders to discuss the new rules and compliance plan; meeting between Genesis regulatory advisor and the Authority to clarify interpretation of the new rules; suppression of information on switching customers for 180 days; preventing sales staff from intentionally approaching these customers; reprioritising staff to compliant acquisition and retention activity.
- 3.4 An internal error in interpreting the effective date of the Code amendment resulted in Genesis designing protocols to ensure compliance coming into effect on 1 April 2020, 24 hours after the Code amendment came into force.

- 3.5 On 31 March 2020, Genesis called a Flick customer who had switched from Genesis on 25 March 2020 and offered a lower price than Flick to entice the customer back to Genesis. The customer declined the offer made by Genesis and reported the attempted winback to Flick.
- 3.6 Following a fact-finding letter from the Authority advising of the breach, Genesis realised its mistake and advised that on 31 March 2020, they made 224 win-back attempts to customers from 20 different electricity retailers.
- 3.7 Genesis withdrew offers made on 31 March 2020, to customers who did not accept on the day.
- 3.8 On 24 April 2020, Electric Kiwi reported to the Authority that Genesis had breached clause 11.15AA of the Code in relation to six ICPs. Two of the ICPs overlapped with the self-reported data provided by Genesis, the other four were unique, new ICPs.
- 3.9 Following a verbal update of the additional allegations by Electric Kiwi against Genesis, the Committee appointed Maria Burns as investigator, on a temporary basis under regulation 12 of the Enforcement Regulations to investigate all alleged breaches of clause 11.15AA against Genesis.

4. Impact of the Breaches

- 4.1 The investigator considers there was no quantifiable market impact in relation to the circumstances. However, consumer protection and the promotion and benefit of competition for consumers is at the forefront of the work of the Authority. Saves and win-backs inhibit retail competition, resulting in higher prices being paid by consumers than they would in a more competitive market.
- 4.2 Genesis was successful in winning back approximately 25 customers during the save protection period from 12 different retailers.

5. Steps taken to prevent recurrence

- 5.1 Genesis had, prior to the Code change taking effect, introduced several policies and procedures to prevent breaching the regulations as set out above at 3.3.
- 5.2 In addition, and subsequent to the breach, the Genesis regulatory team have introduced a system of 'check-ins' in advance of new regulations or legislation coming into force which carry a high risk of non-compliance.

6. Settlement

The parties agree that:

- 6.1 Genesis agrees to maintain the improvements it has made to prevent recurrence as outlined in clause 3.3, 5.1 and 5.2.
- 6.2 Genesis will compensate those retailers that lost customers as a result of activity that breached the Code at a rate of \$600 per customer lost.

- 6.3 Genesis will conduct an internal audit to review its conclusion of the ICPs affected by the breaches. The audit will cover the period between 31 March 2020 and 31 May 2020.
- 6.4 This audit will include the following actions:
- (a) ICP data for contacts in breach of the regulations will be established using outbound call data matched against customer records. This has already been conducted but will be double-checked.
 - (b) These records will be further checked against notes logged against each customer as win-back activity carried out on 31 March 2020.
 - (c) ICP by ICP manual and detailed verification is being undertaken to verify:-
 - i. Any ICPs won back within the period starting 31 of March 2020 to 31 May 2021, that could be as a result of the offer/contact made by Genesis on or after 31 March 2020.
 - ii. This investigation is being carried out using registry records to verify the switching activity date and retailer affected, and checked against Genesis' CRM data and customer accounts, and any call recordings where needed.
 - (d) The records gathered through the above process will be checked against registry records of switches withdrawn to ensure accuracy
 - (e) Representative sample tests of withdrawn switches spanning April and May 2020 will be conducted to test accuracy.
- 6.5 Settlement condition 6.3 will be completed by 30 June 2021. Settlement condition 6.2 will be completed by 16 July 2021.

7. Confidentiality

- 7.1 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.
- 7.2 A party must not disclose confidential information under clause 7.1(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 7 before disclosing the confidential information. Any confidential information to be disclosed in the circumstances set out in

clause 7.1(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).

8. Agreement Subject to Approval

- 8.1 Subject to clause 8.2, this Agreement will come into effect on the Approval Date.
- 8.2 Clause 7 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 7 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.

9. Settled Breaches

- 9.1 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**).
- 9.2 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.

10. General

- 10.1 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.
- 10.2 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.

This Agreement may be signed in any number of counterparts.

SIGNED:

For Genesis Energy Limited

Name:

Position:

SIGNED:

For Flick Electric Limited

Name:

Position:

SIGNED:

For Electric Kiwi Limited

Name:

Position:

SIGNED:

For Powershop New Zealand Limited

Name:

Position:

SIGNED:

For Meridian Energy Limited

Name:

Position:

SIGNED:

For Contact Energy Limited

Name:

Position: