

# Appendix A Settlement agreement

2305SPEL1

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

**Dated: 14 December 2023**

**Between:**

1. South Pacific Energy Limited of Level 8, 87 Albert Street, Auckland 1010; (SPEL)
  2. Energy Clearing House Limited of Level 1, 11 Cable Street, Wellington 6011; (the clearing manager)
  3. Haast Energy Trading Limited of Level 4, The Ferry Building, 99 Quay Street, Auckland 1010 (Haast)
- (Collectively, the **parties**).

## Background

- (a) On 11 May 2023 the clearing manager alleged to the Electricity Authority (Authority) that SPEL had breached clause 14.31(1)(a) of the Electricity Industry Participation Code 2010 (Code) on 20 April 2023 when a payment arrived after the 1.00 pm deadline.
- (b) SPEL had failed to respond to the clearing manager's attempts to contact it and subsequently failed to respond to the Authority's fact finding letter.
- (c) On 15 September 2023, the Authority appointed an investigator under regulation 12 of the Electricity Industry (Enforcement) Regulations 2010 (Regulations), to investigate the alleged breach by SPEL.
- (d) Haast Energy Trading Limited (Haast) joined the investigation as an affected participant.
- (e) SPEL provided evidence that it had made payment at 11.30 am on 20 April 2023, but the funds were not received in the clearing manager's account until 1.36 pm.
- (f) The parties have agreed to settle the alleged breach on the terms contained in this settlement agreement.

**It is agreed:**

## 1 Interpretation

1.1 In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means this settlement agreement;
- (b) **Alleged breach** means the alleged breach 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) **Regulations** means the Electricity Industry (Enforcement) Regulations 2010;
- (f) **Code** means the Electricity Industry Participation Code 2010.

## 2 Alleged breach

- 2.1 On 11 May 2023 Energy Clearing House Limited (the clearing manager) alleged that South Pacific Energy Limited (SPEL) had breached clause 14.31(1)(a) of the Electricity Industry Participation Code 2010 (Code) on 20 April 2023 when a payment was received after the 1.00 pm deadline.

## 3 Circumstances of the breach

- 3.1 On 20 April 2023 between 1.00 pm and 1.36 pm, SPEL breached clause 14.31(1)(a) of the Code when its payment to the clearing manager was late.
- 3.2 Clause 14.31(1)(a) requires each participant to pay the amount advised as payable to the clearing manager by 1.00 pm on the 20<sup>th</sup> day of the month following the relevant billing period.
- 3.3 On 11 May 2023 the clearing manager alleged to the Authority that SPEL had breached clause 14.31(1)(a) of the Code.
- 3.4 On 16 May 2023, a fact finding letter was sent to SPEL but no response was received.
- 3.5 On 9 June 2023, a follow up email was sent to the four contact email addresses listed for SPEL on the Participant Register and another email address from its website. By 27 June 2023, SPEL was still not responding to either the Authority or the clearing manager, who continued to attempt contact.
- 3.6 On 15 September 2023, the Authority appointed an investigator under regulation 12 of the Regulations, to investigate the alleged breach by SPEL. A regulation 16 notice of investigation was sent to SPEL.
- 3.7 On 3 October 2023, Haast joined the investigation as an affected participant.
- 3.8 On 25 October 2023, SPEL responded to the Authority, accepting the breach and providing confirmation from its bank ASB that the transfer had been made at 11.30 am on 20 April 2023.
- 3.9 The clearing manager has accounts at both ASB and ANZ banks, with the receiving account being with ANZ. It stated that it frequently transferred funds between banks as 'same day cleared payments' which were completed within minutes.
- 3.10 No specific reason for the delay in receipt of the transfer was identified. However, this is a repeated issue for SPEL's transfers and each time, it places additional responsibility on the clearing manager to manage a potential breach.
- 3.11 The parties have agreed to settle the alleged breach on the terms contained in this settlement agreement.

## 4 Impact of the breach

- 4.1 There is an operational impact on the clearing manager in the form of additional administrative burden for management of a potential settlement default.
- 4.2 The potential default by SPEL also results in the clearing manager being at risk of breaching its own Code requirements for settlement.
- 4.3 Delays in the settlement process may impact other participants.
- 4.4 When this happens regularly, the inconvenience becomes an unnecessary burden on the clearing manager, requiring follow up action to try and resolve the situation and prevent recurrence.
- 4.5 When the participant fails to respond to attempts to contact it by the clearing manager and also to the Authority investigating the alleged breach, this compounds the impact.

## 5 Steps taken to prevent recurrence

- 5.1 SPEL states that it has taken steps to rectify the situation but did not specify what those steps were. It noted that it had subsequently made payments without further breaches.

## 6 Settlement

- 6.1 The parties agree that:
  - (a) SPEL will resolve the banking delay issue and consistently meet all future payment deadlines;
  - (b) Until such time as a) is proven to be effective, the clearing manager will use prudential funds for settlement in accordance with clause 14A.13(c) of the Code;
  - (c) To facilitate condition b), the settlement balance will be transferred from SPEL's prudential account the day before settlement;
  - (d) The clearing manager will advise SPEL when it is satisfied that conditions in a) have been met and conditions b) and c) no longer apply;
  - (e) Prudential obligations will continue to be reported to SPEL three days in advance, providing sufficient time to arrange payment.

## 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 clause 7 before disclosing the confidential information.
- 7.3 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 breach

- 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 breach; and
  - (b) any other breach 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 breach and such other breaches together with the **Settled breach**).
- 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 breach; 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.
- 10.3 This Agreement may be signed in any number of counterparts.

**Signed:**

For South Pacific Energy Limited

*[accepted in email 15/11/23]*

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Name: Hongbing (Peter) Wu

Position: Director

**Signed:**

For the Energy Clearing House Limited, as the Clearing Manager



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Name: Shane Dinnan

Position: Head of Energy Markets

Date: 14/12/23

**Signed:**

For Haast Energy Trading Limited



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Name: Phillip Anderson

Position: Managing Director

Date: 14/12/23