

SETTLEMENT AGREEMENT

Agreement dated 21 November 2017

PARTIES

Commerce Commission, a Crown Entity established under section 8 of the Commerce Act 1986 (**Commission**)

Nelson Electricity Limited, a company incorporated under the Companies Act 1993 and having its registered office at 1-3 Alfred Street, Blenheim, New Zealand (**Nelson**)

BACKGROUND

- A. Part 4 of the Commerce Act 1986 (**Act**) provides that all suppliers of electricity distribution services are subject to default/customised price-quality regulation, unless they are exempt.
- B. Nelson is not exempt from price-quality regulation and is currently subject to a default price-quality path determination that limits the amount of notional revenue that it can earn in each annual assessment period (**Price Path**).
- C. Nelson's Price Path was set by the *Electricity Distribution Services Default Price-Quality Path Determination 2015 (DPP Determination 2015)* and applies to the regulatory period from 1 April 2015 to 31 March 2020.
- D. Nelson is required to provide the Commission with an annual self-assessment against its Price Path after each annual assessment period (**Annual Compliance Statement**).

The Breach

- E. Nelson submitted its Annual Compliance Statement dated 16 June 2017 stating that it did not comply with its Price Path for the 12 month period ending on 31 March 2017 (**2017 Assessment Period**) as it had exceeded the Price Path by \$91,793.
- F. The Commission considers, and Nelson hereby acknowledges, that Nelson did not comply with its Price Path for the 2017 Assessment Period, and that such instance of non-compliance amounted to a contravention of a price-quality requirement applying to regulated goods or services as described in section 87(1)(a) of the Act (**Breach**).
- G. Nelson asserts, and the Commission accepts for purposes of this agreement, that the cause of the Breach was due to an inadvertent error by Nelson.

Settlement

- H. The purpose of this agreement is to resolve the Breach without litigation. In consideration of the Commission agreeing not to bring proceedings in relation to the Breach, Nelson has agreed to reduce its "**Notional Revenue**" below its "**Allowable**

Notional Revenue” in its Price Path for the assessment period ending 31 March 2019 (**2019 Assessment Period**) by at least \$105,075 (being the over-recovered amount adjusted for the time value of money).

AGREEMENT

Interpretation

1. The terms “**Allowable Notional Revenue**”, “**Annual Compliance Statement**”, “**Notional Revenue**”, and “**Prices**” have the same meanings as in the DPP Determination 2015, and the term “**working day**” has the meaning given in section 29 of the *Interpretation Act 1999*.
2. Unless otherwise indicated, any reference to “**clause**” is to a clause of this agreement.

Acknowledgement of Breach

3. Nelson acknowledges that it did not comply with its Price Path for the 2017 Assessment Period, and that such instance of non-compliance amounted to a contravention of a price-quality requirement applying to regulated goods or services as described in section 87(1)(a) of the Act.
4. Nelson acknowledges that the Commission may refer to this agreement and the Breach in any enforcement action (including any court proceedings) brought by the Commission against Nelson for the Breach, or in relation to any other contravention or alleged contraventions of the Act.

Disposition of the Breach

5. Upon execution of this agreement, save as is provided for in this agreement, the Commission will not take any further enforcement action (through court proceedings or otherwise) against Nelson in relation to the Breach. This agreement is sufficient to resolve the Breach.

Remediation by Nelson

Obligation to remediate by reducing Prices in the 2019 Assessment Period

6. Nelson will set its Prices for the 2019 Assessment Period so that its Notional Revenue for the 2019 Assessment Period is less than its Allowable Notional Revenue for the 2019 Assessment Period by at least \$105,075.
7. By 5p.m. on 31 January 2018, Nelson will provide a written submission to the Commission showing whether it has complied with clause 6.
8. The written submission referred to in clause 7 will include any information reasonably necessary to enable the Commission to assess that Nelson has complied with its obligations under this agreement with regards to the setting of Prices for the 2019 Assessment Period.
9. In its Annual Compliance Statement for the 2019 Assessment Period, Nelson will:

- 9.1 state whether it complied with clause 6; and
 - 9.2 provide any information reasonably necessary to assess whether Nelson has complied with clause 6.
10. For the avoidance of doubt, the director's certification and assurance report referred to in clause 11 of the DPP Determination 2015 will also cover the material included in the Annual Compliance Statement by virtue of clause 9 of this agreement.
 11. Nelson will be deemed to have met the obligation set out in clause 7 when the Commission confirms this in writing to Nelson.
 12. For the avoidance of doubt, the obligation in clause 6 is separate from the obligation in clause 7 and the performance of one shall not affect the obligation to perform the other.

Termination of the agreement

13. If Nelson fails to comply with clause 6, then subject to clause 14, the Commission may elect to give Nelson written notice that this agreement is terminated with immediate effect.
14. Before giving notice of termination to Nelson under clause 13, the Commission will:
 - 14.1 notify Nelson in writing that it considers that clause 13 applies and that it is contemplating terminating this agreement; and
 - 14.2 allow Nelson 10 working days to respond to its view that clause 13 applies, and
 - 14.3 have regard to any written response that it receives from Nelson prior to the deadline specified in clause 14.2.
15. If this agreement is terminated by the Commission under clause 13, then the Commission may thereafter initiate court proceedings against Nelson in relation to the Breach, and clause 5 of this Agreement ceases to apply from the date of the notice of termination.
16. Clauses 3, 4, 15, 16, 17, 18 and 19 will survive termination of this agreement.
17. For the avoidance of doubt, termination of this agreement does not discharge Nelson from obligations already accrued under this agreement.

Waiver of limitation

18. If the Commission commences proceedings in relation to the Breach within three months of notice of termination of this agreement, Nelson agrees that it will not raise by way of defence to those or any related proceedings any issue arising from any applicable limitation period.

Publicity

19. The Commission may publicise or make media comment in relation to this agreement, the Breach and the acknowledged contraventions under section 87(1)(a) of the Act, and may subsequently refer to them publicly whenever it considers this appropriate. This may include, without limitation, publication by media statements, articles, or speeches prepared or given by Commission members or staff.
20. Where the Commission decides to issue a press release regarding this agreement (including the fact of the Breach), the Commission will provide Nelson with an indication of the key elements of that press release at least 24 hours before it is issued.
21. Nelson will not take any action, including by making any public statement, to dispute or deny the Breach or the remediation set out in clause 6.

Miscellaneous

22. For the avoidance of doubt, all obligations of Nelson under this agreement are in addition to any obligations of Nelson under any enactment, regulation, determination or similar.
23. This agreement will be governed by, and construed in accordance with, the laws of New Zealand.
24. This agreement constitutes the entire agreement between the Commission and Nelson in relation to the Breach. It supersedes all prior communications, understandings or representations whether oral or written between the Commission and Nelson.
25. No amendment to this agreement will be effective unless it is in writing and signed by both of the parties.
26. The failure of a party to enforce any provision of this agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.
27. The parties may enter into this agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single document. A party may execute this agreement by one signatory executing one counterpart and another signatory executing a different counterpart. A party's delivery of a signed pdf counterpart of this agreement will have the same legal effect as that party's delivery of a signed original counterpart.

Notices / Communications

28. Any notice or communication pursuant to this agreement will be delivered to the physical or electronic mail address listed below:

For the Commission:

Commerce Commission
Level 9, 44-52 The Terrace
Wellington 6011
New Zealand

For: Andrew Riseley, General Counsel, Regulation Branch
E-mail: andrew.riseley@comcom.govt.nz

For Nelson:

Nelson Electricity Limited
63 Haven Road
Nelson 7042
New Zealand

For: Phil Goodall, General Manager
E-mail: phil@nel.co.nz

29. Either party may designate a different recipient and/or address for notices and communications delivered in accordance with clause 28.

EXECUTION

**Signed by and on behalf
of Commerce
Commission**

SJBegg
Authorised signatory

Susan Janice Begg

Name

21 November 2017
Date

**Signed by and on behalf
of Nelson Electricity
Limited**

Phil Goodall
Director/authorised signatory

Phil Goodall
Name

15th day of November 2017
Date

Director/authorised signatory

Name

Date