

CONTACT ENERGY LIMITED

AND

COMMERCE COMMISSION

SETTLEMENT AGREEMENT

DATED

16 June

2011

AGREEMENT DATED
2011

16th

day of

June

PARTIES

CONTACT ENERGY LIMITED (*Contact Energy*)

COMMERCE COMMISSION (*the Commission*) a statutory body established under section 8 of the Commerce Act 1986

1. PURPOSE OF AGREEMENT

- 1.1 The Commission has received complaints alleging contraventions of the Fair Trading Act 1986 (*the Act*) by Contact Energy in relation to misleading customers as to the amount payable on final invoices.
- 1.2 Contact Energy has co-operated with the Commission in relation to the Commission's investigation (*the investigation*).
- 1.3 This Settlement Agreement (*the Agreement*) records the background to the investigation, the conclusions reached by the Commission and the means by which the investigation is to be resolved.
- 1.4 By this Agreement the Commission agrees to waive its right to issue legal proceedings in respect of Contact Energy's conduct as set out in paragraphs 2.2 to 2.3 of this Agreement, on the basis that Contact Energy acknowledges having breached the Act and agrees to refund affected customers as detailed in Part 4 of this Agreement and implement a compliance programme as detailed in Part 5.
- 1.5 The parties agree to take such steps as are necessary or desirable to give full effect to the terms of this Agreement.



2. BACKGROUND

- 2.1 Contact Energy is a New Zealand registered company that is publicly listed on the New Zealand Stock Exchange. Its head office is located on 29 Brandon Street, Wellington. Contact Energy is an energy generator and retailer, providing electricity, natural gas and LPG to around 600,000 customers nationwide.
- 2.2 It is alleged that, between 2003 and 15 April 2011, Contact Energy made misleading representations as to the amount payable on the final invoices of those customers who were terminating their supply agreement with Contact Energy. This occurred as a result of Contact Energy failing to carry over a customer's prompt payment discount from the customer's previous monthly invoice to the final invoice when the previous monthly invoice was unpaid and not yet due.
- 2.3 Contact Energy advised the Commission that while investigating the above matter it found it had breached the Act between 2001 and 15 April 2011 by making misleading representations as to the amount payable on the final invoices of those customers who were terminating their Dual Energy supply agreement with Contact Energy. This occurred as a result of Contact Energy failing to correctly apply the Dual Energy discount to customer's final invoices. This affected those customers who ceased being supplied with one or both of the fuels that entitled them to the Dual Energy discount.

3. ADMISSIONS

- 3.1 The Commission wrote to Contact Energy on 31 March 2011 requesting further information on the allegation outlined in 2.2. On 19 April 2011 Contact Energy informed the Commission that they considered they had breached the Act in

relation to 2.2 and voluntarily identified and admitted to a further breach of the Act as outlined in 2.3.

3.2 Contact Energy admits and agrees that, by the conduct outlined in 2.2 and 2.3 of this Agreement, it has contravened section 13(g) of the Act (*the admissions*).

3.3 In explanation, Contact Energy advised the Commission that:

3.3.1 In relation to 2.2 Contact Energy explained that when it is made aware by a customer that the customer is switching away from Contact Energy it has in place a manual intervention process. The manual intervention process produces a replacement invoice that covers the previous invoice and the final invoice. The prompt payment discount is then applied to all amounts owing for the extended period so that the customer receives more time to pay without losing the prompt payment discount. Contact Energy has admitted that in some cases the manual intervention process does not occur due to staff members not identifying the issue of prompt payment discount.

3.3.2 In relation to 2.2 where Contact Energy is informed by a competitor or via the industry 'switch/move' process that a customer is switching away to another supplier, a final invoice is automatically generated. If the customer relies on the final invoice payment due date they may end up paying too late to take advantage of the prompt payment discount for the previous invoice.

3.3.3 Contact Energy admits that when a final invoice is generated for those customers paying by direct debit the scheduled payment for the previous monthly invoice is cancelled and a new payment is scheduled for the final invoice amount. The customer paying by this method is likely to lose the previous months prompt payment discount.

3.3.4 In relation to 2.3 Contact Energy admits that a number of customers who ceased being supplied with one or both of the fuels that entitled them to

the dual energy discount did not receive the discount for the part month in which they stopped receiving that supply. The discount is calculated at a daily rate but applied monthly to each invoice that relates to both gas and electricity.

4. CONSUMER REMEDY

Prompt payment discount

- 4.1 Contact Energy has undertaken analysis and identified 5,681 customers who have been affected (that is, who did not get the prompt payment discount for the previous monthly invoice) between 1 April 2008 and 15 April 2011. The total financial impact on all affected customers was \$134,024.83.
- 4.2 Contact Energy has taken the following steps:
- Contact Energy has compiled a list including name, ICP number, and last known address for each of the 5681 affected customers;
 - Contact Energy is grouping affected customers into categories that reflect the particular circumstances (for example, some affected customers still owe money to Contact, some may have switched back to Contact Energy);
 - When the customers have been grouped in appropriate categories, Contact Energy will prepare letters tailored to each relevant category. Contact Energy anticipates that the process that is now underway will result in affected customers being contacted in late June 2011;
 - Contact Energy is working through defining a process to offer customers a choice as to how the refund is paid (for example, by direct credit, cheque).
- 4.3 Contact Energy proposes to contact affected customers over a 6 month period. If a customer is unable to be found after 6 months, Contact Energy will donate the residual funds to the Government's Christchurch Earthquake Appeal.

- 4.4 Contact Energy has already implemented new operating procedures for staff responsible for billing and switching customers, and has undertaken knowledge refreshment with call centre staff. This means that Contact Energy can manually intervene when it is necessary to issue a final invoice for a customer who is switching or moving at a time when the previous monthly invoice has not yet been paid, to ensure that the prompt payment discount for the previous monthly invoice is clearly identified as being available to the customer.

Dual Energy

New customers

- 4.5 Contact Energy has already changed its terms and conditions for new Dual Energy customers so it is clear that the Dual Energy discount applies only for a full billing period, and will not apply if the customer switches away part way through a billing period.

Existing Dual Energy customers

- 4.6 Contact Energy has sent letters to all existing Dual Energy customers to notify an amendment to the Dual Energy terms and conditions as of 1 June 2011. At the same time, Contact Energy advised customers that if they were dual energy customers as of 1 June 2011 they would receive a \$12 credit to their account. Those credits have now been applied. The credit is equivalent to the discount that would apply for the final month of being Dual Energy customers at the maximum that could be payable. This means that, in the event that a customer switches one or both fuels away from Contact Energy, the customer will not be disadvantaged.

Previous customers

- 4.7 18,673 affected customers switched away in the period 1 April 2008 to 15 April 2011 and did not have the Dual Energy discount applied to their bills. The total financial impact on all affected customers was \$146,748.20. Contact Energy is undertaking the following steps to identify and find those customers:



- Contact Energy has compiled a list including name, ICP number, and last known address for each of the 18,673 affected customers;
- Contact Energy is grouping affected customers into categories that reflect the particular circumstances (for example, some affected customers still owe money to Contact Energy, some may have switched back to Contact Energy);
- When the customers have been grouped in appropriate categories, Contact Energy will prepare letters tailored to each relevant category. Contact Energy anticipates that the process that is now underway will result in affected customers being contacted in mid June;
- Contact Energy is working through defining a process to offer customers a choice as to how the refund is paid (for example, by direct credit, cheque).

4.8 Contact Energy proposes to contact affected customers over a 6 month period. If a customer is unable to be found after 6 months, Contact Energy will donate the residual funds to the Government's Christchurch Earthquake Appeal.

5. COMPLIANCE REVIEW REQUIREMENT

- 5.1. In further consideration for the Commission agreeing to waive its right to issue legal proceedings in respect of Contact Energy's conduct, Contact Energy will institute a Compliance Programme to ensure future compliance with the Act.
- 5.2 Contact Energy will provide a report to the Commission on that Compliance Programme within three months of the date of signing of this Agreement of Settlement.



6. IMPLEMENTATION AND EFFECT OF THE AGREEMENT

- 6.1 This Agreement does not preclude any person taking his or her own action against Contact Energy in relation to the conduct outlined in 2.2 and 2.3 of this Agreement.
- 6.2 The Commission agrees to be bound by this Agreement. The Commission will discontinue the Investigation and not bring any further or other action in relation to the matters referred to in 2.2 and 2.3 of this Agreement, subject to clause 6.4 below. Nothing in this Agreement shall prevent the Commission from commencing an investigation or bringing Court proceedings in relation to any conduct that occurred outside of the relevant periods described in clauses 2.2 and 2.3 above.
- 6.3 Either party may publish the facts of this investigation and settlement and may subsequently refer to them. This may include publicity by press statements, articles, publications or speeches prepared or given by Commission members or staff.
- 6.4 If there is any material breach of Contact Energy's obligations under this Agreement, the Commission may in its complete discretion recommence the Investigation and take any action it deems appropriate including commencing criminal prosecution and/or civil proceedings under the Fair Trading Act 1986.
- 6.5 If the Commission commences any Court proceedings pursuant to clause 6.4 above, Contact Energy hereby waives any limitation defence that may be available to it in respect of those proceedings to the extent that limitation arose solely as a result of the settlement recorded in this Agreement.
- 6.6 This Agreement may be executed in any number of counterparts each of which is deemed an original, but all of which together are to constitute an instrument. It is acknowledged that this Agreement may be executed by an exchange of facsimile



