

**PULSE UTILITIES NEW ZEALAND LIMITED**

**AND**

**COMMERCE COMMISSION**

---

**SETTLEMENT AGREEMENT**

DATED 16 December

2011

---

*2*  
*23*

AGREEMENT DATED

day of

2011

## PARTIES

---


PULSE UTILITIES NEW ZEALAND LIMITED ('Pulse')

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

## 1. PURPOSE OF AGREEMENT

---

- 1.1 Pulse admits misleading customers who sought to terminate their supply agreement with Pulse during the period between late 2009 and 7 December 2011 ("the relevant period") by sending final invoices to customers for an amount that did not take into account a prompt payment discount for which that customer was eligible.
- 1.2 Pulse admits that in sending these final invoices it has breached the Fair Trading Act 1986 (the Act). Particularly Pulse admits that the invoices make false or misleading representations about the price of its services in contravention of s13(g) of the Act.



- 1.3 This Settlement Agreement ('Agreement') records the background to Pulse's admissions and the means by which the breaches of the Act are to be resolved.
- 1.4 By this Agreement the Commission agrees to waive its right to issue legal proceedings in respect of Pulse's conduct as set out in paragraphs 2.4 of this Agreement, on the basis that Pulse acknowledges having breached the Act and agrees to refund affected customers as detailed in Part 4 of this Agreement.
- 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 Pulse is a New Zealand registered company that is publicly listed on the NZAX Market operated by NZX Limited. Its head office is located in Hobson Street, Auckland. Pulse is an electricity retailer, trading as Just Energy and Pulse Energy, providing electricity to around 28,000 customers nationwide.
- 2.2 On 2 September 2011 the Commission received a complaint that Pulse had misled customers about the amount they were required to pay when they sought to terminate their supply agreement with Pulse by failing to carry over a prompt payment discount to the customer's final invoice.
- 2.3 The Commission commenced an investigation and on 12 September 2011 wrote to Pulse seeking an explanation for its conduct. Pulse advised the Commission that:
  - 2.3.1 Prompt payment discounts of 10% are provided to customers who pay their electricity bills by a date stipulated on the invoice as the prompt payment discount date (prompt payment discount date).



- 2.3.2 When a customer advises they wish to terminate their agreement with Pulse, Pulse generates a final invoice (final invoice) specifying the total amount owed by the customer if the customer pays by the prompt payment discount date and also specifying the total amount owed by the customer if the customer pays after the prompt payment discount date..
- 2.3.3 If the final invoice is generated prior to the expiry of the prompt payment discount date of an earlier invoice and the earlier invoice has not been paid, the final invoice does not display the prompt payment discount or the prompt payment discount date which still applies from the earlier invoice.
- 2.3.4 The automated billing software used by Pulse still calculates the prompt payment discount correctly. If a customer pays the full amount of a final invoice prior to the prompt payment discount date of an earlier invoice, the software records a credit against the customer's account.
- 2.3.5 In this situation the existence of the credit is not communicated to the customer.
- 2.4 Where final invoices were issued during the relevant period and were issued before the expiry of the prompt payment discount date of the earlier invoice Pulse misrepresented the amount payable by the customer for their electricity services.
- 2.5 Pulse advised the Commission that approximately 2582 customers received a final invoice prior to the expiry of the prompt payment discount date ("affected customers").
- 2.6 Affected customers suffered loss or damage in that they did not receive the benefit of the prompt payment discount. Either:
- 2.6.1 they paid the amount due on the final invoice prior to the prompt payment discount date of the earlier invoice and the prompt payment discount was



recorded as a credit against their closed account and they were not aware of this, or

2.6.2 they disregarded the earlier invoice and paid the amount due on the final invoice after the prompt payment discount date of the previous invoice expired and accordingly did not receive the benefit of the prompt payment discount available on the earlier invoice. .

2.7 Pulse has elected to refund affected customers who suffered the consequences set out in clause 2.6 above.

### **3 ADMISSIONS**

---

3.1 Pulse acknowledges and admits the facts referred to in clauses 2.1 to 2.7 (inclusive).

3.2 Pulse admits that by making the representation referred to in paragraph 2.4 of this Agreement, it has contravened section 13(g) of the Act.

3.3 The Commission acknowledges that Pulse has commenced making refunds to affected customers.

### **4. CONSUMER REMEDY**

---

4.1 To the extent it has not already done so Pulse undertakes to:

4.1.1 Refund affected customers in accordance with clauses 4.2 to 4.8

- 4.1.2 Report to the Commission on the settlement process as set out in clause 5 of this settlement agreement; and
  - 4.1.3 Engage an organisation to conduct an independent review of the settlement process as set out in clause 6 of this settlement agreement, if the Commission so requests.
- 4.2 Subject to clause 4.4 Pulse will refund all affected customers who have a credit on their closed Pulse account the amount of that credit.
- 4.3 Subject to clause 4.4 where an affected customer has paid the final invoice after the prompt payment discount date of the earlier invoice and has not received the benefit of the prompt payment discount that was available on that invoice and where the customer has received a prompt payment discount on at least half of the previous invoices received by that customer, Pulse will refund the customer the amount of the prompt payment discount that was lost on the earlier invoice .
- 4.4 Where an affected customer is entitled to a refund under clause 4.2 and 4.3 Pulse will write to the customer at their last known address in a form to be approved by the Commission advising the customer:
- 4.4.1 that they are entitled to a refund under this settlement
  - 4.4.2 the amount of refund
  - 4.4.3 that they can claim the refund by providing a bank account number to Pulse and Pulse will pay the refund to the customer within 7 days
  - 4.4.4 if the refund is not claimed by the customer by 1 June 2012 Pulse will treat the money as owed to that customer pursuant to section 5 of the Unclaimed Money Act 1971.



### **Report Requirement**

- 4.5 Pulse shall provide a Report to the Commission of the refund process as set out in clauses 4.2 to 4.4 of this Deed. This Report shall specify the date and the amount of the refunds made to affected customers.
- 4.6 The Report shall be provided by 12 June 2012, or when refunds have been made to all affected customers, whichever is the earlier.
- 4.7 Pulse shall, on the Commission's request, provide the Commission with:
- copies of all letters sent to affected customers;
  - any document held by Pulse relating to the compensation process set out in clauses 4.2 to 4.4 above.

### **Review Requirement**

- 4.8 If the Commission requests, Pulse shall at its own cost, engage an independent reviewer to verify the payment of refunds as set out in this agreement.
- 4.9 Any independent reviewer engaged under clause 4.8 must be approved by the Commission.
- 4.10 If an independent reviewer has not been engaged within 14 days of a request by the Commission under clause 4.8 the Commission may appoint one, at Pulse's cost, to verify the payment of refunds as set out in this agreement.
- 4.11 Any independent reviewer engaged under clause 4.8 shall verify and provide a comment on the Report to be provided by Pulse to the Commission as described at clause 4.5 above, and provide a view as to whether the process has been satisfactorily completed in accordance with the terms of this Agreement.



## 5. COMPLIANCE

---

- 5.1 Pulse will ensure that from 7 December 2011 any final invoices will offer a prompt payment discount that includes any prompt payment discount that is still available on earlier invoices
- 5.2 Pulse will prepare and implement a Fair Trading Act compliance program for its staff.

## 6. IMPLEMENTATION AND EFFECT OF THE AGREEMENT

---

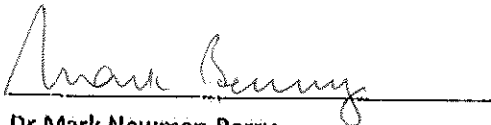
- 6.1 This Agreement does not preclude any person taking his or her own action against Pulse in relation to the conduct outlined in clause 2.4 and 2.5 of this Agreement.
- 6.2 The Commission agrees to be bound by this Agreement. The Commission will not bring any further or other action in relation to the matter referred to in clause 2.4 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 1.1.
- 6.3 The fact that this Agreement has been entered into is not confidential. The Parties have agreed that none of the contents of this Agreement are confidential and that this Agreement may be published on the Commission's website and may be released to the public.





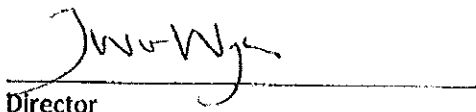
- 6.4 If there is any material breach of Pulse's obligations under this Agreement, the Commission may in its complete discretion commence an investigation and take any action it deems appropriate including commencing criminal prosecution and/or civil proceedings under the Fair Trading Act 1986.
- 6.5 If the Commission commences any Court proceedings pursuant to clause 6.4 above, Pulse 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.

EXECUTED ON BEHALF OF THE COMMERCE COMMISSION by:



Dr Mark Newman Berry  
Chair, Commerce Commission

EXECUTED ON BEHALF OF PULSE UTILITIES NEW ZEALAND LIMITED by:



Director  
Joseph van Wijk  
Chairman