

## SETTLEMENT AGREEMENT

Agreement dated 3<sup>rd</sup> September 2014

### PARTIES

**Commerce Commission**, a body corporate established under section 8 of the Commerce Act 1986 (**Commission**)

**Horizon Energy Distribution Limited**, a company incorporated under the Companies Act 1993 and having its registered office at 52 Commerce Street, Whakatane, New Zealand (**Horizon**)

### 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. Horizon 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 is allowed to earn in each annual assessment period (**Price Path**).
- C. The default price-quality path that Horizon breached was set by the Electricity Distribution Services Default Price-Quality Path Determination 2010 (**DPP Determination 2010**) and applied to the regulatory period from 01 April 2010 to 31 March 2015. That price-quality path was subsequently reset in 2012 by the Electricity Distribution Services Default Price-Quality Path Determination 2012 (**DPP Determination 2012**) which amended Horizon's Price Path for the annual assessment periods ending 31 March 2014 and 31 March 2015.
- D. The price-quality path set by the DPP Determination 2012 will be reset in 2014 by the Electricity Distribution Services Default Price-Quality Path Determination 2015 (**DPP Determination 2015**). The DPP Determination 2015 will set Horizon's Price Path for the annual assessment periods between 1 April 2015 and 31 March 2020.
- E. Horizon is required to provide the Commission with an annual self-assessment against the Price Path (**compliance statement**) after each annual assessment period.
- F. On 13 June 2012, Horizon submitted its compliance statement for the period of 12 months ending on 31 March 2012 (**2012 assessment period**), stating that it had breached its Price Path by \$645,686.

- G. The Commission considers, and Horizon has acknowledged, that the breach of its Price Path in the 2012 assessment period amounts 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**).
- H. Horizon asserts, and the Commission accepts for purposes of this agreement, that the causes of the Breach included factors associated with the timing and forecasting of avoided transmission costs due to changes outside of Horizon's control as a result of embedded generators operating on Horizon's network; forecasting of local authority rates and regulatory levies; forecasting of movements in lagged quantities following a pricing restructure; setting standard prices prior to finalising pricing for non-standard customers; and forecasting 2012 allowable notional revenue.
- I. Horizon further asserts that it subsequently reduced its revenue targets when setting its prices for the assessment periods ending 31 March 2014 (**2014 assessment period**) and 31 March 2015 (**2015 assessment period**), in part to remediate the Breach. The Commission accepts this assertion for purposes of this agreement, which, in calculating the settlement figure, recognises one third (\$11,575) of Horizon's under recovery of \$34,724 for the 2014 assessment period, and one third of Horizon's under recovery for the 2015 assessment period up to a maximum of \$66,667, as remediation.
- J. The purpose of this agreement is to resolve the Breach without litigation, by Horizon reducing its future prices by the amount it gained from the Breach (less the amounts already remediated as described in paragraph I).

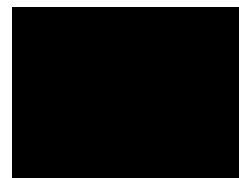
## **AGREEMENT**

### **Acknowledgement of Breach**

1. Horizon acknowledges that in relation to the Breach it has contravened a price-quality requirement applying to regulated goods or services as described in section 87(1)(a) of the Act.
2. Horizon acknowledges that the Commission may refer to this agreement and the Breach in any subsequent enforcement action brought against it by the Commission for alleged contraventions of the Act, including in any Court proceedings.

### **Disposition of the Breach**

3. Upon execution of this agreement, save as is provided for in this agreement, the Commission will not take any further steps (through litigation or otherwise) against Horizon in relation to the Breach.





**Horizon's obligations – how it will remediate the amount it gained as a result of the Breach**

*Obligation to remediate by reducing prices in the 2016 assessment period*

4. For the period of 12 months ending on 31 March 2016 (**2016 assessment period**), Horizon will ensure that its notional revenue is less than its allowable notional revenue under the DPP Determination 2015 ('notional revenue' and 'allowable notional revenue' having the same meaning as in the DPP Determination 2015) by at least the amount of \$727,934.
5. Horizon will, by 12 December 2014, demonstrate to the Commission that it has factored the amount specified at clause 4 into its pricing for the 2016 assessment period.
6. Horizon will be deemed to have met the obligation set out in clause 5 when the Commission confirms this in writing to Horizon no later than 9 January 2015.
7. For the avoidance of doubt, the obligation in clause 4 is separate from the obligation in clause 5 and the performance of one shall not affect the obligation to perform the other.

*Horizon's obligations if its under recovery against the Price Path for the 2015 assessment period is less than \$200,000*

8. If Horizon's notional revenue is not at least \$200,000 less than its allowable notional revenue for the 2015 assessment period, the obligation set out at clause 9 will apply.
9. Subject to clause 8, for the period of 12 months ending on 31 March 2017 (the **2017 assessment period**), Horizon will ensure that its notional revenue is less than its allowable notional revenue under the DPP Determination 2015 ('notional revenue' and 'allowable notional revenue' having the same meaning as in the DPP Determination 2015) by at least the amount of X, where X is calculated as follows:

$$X = (200,000 - (ANR_{2015} - NR_{2015})) \times 0.33 \times 1.0458^2$$

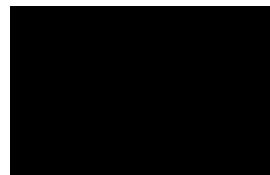
where:

ANR<sub>2015</sub> = Horizon's allowable notional revenue for the 2015 assessment period ('allowable notional revenue' having the same meaning as in the DPP Determination 2012);

NR<sub>2015</sub> = Horizon's notional revenue for the 2015 assessment period ('notional revenue' having the same meaning as in the DPP Determination 2012); and

X cannot exceed \$72,182.

10. If the obligation in clause 9 applies, Horizon will, by 11 December 2015, demonstrate to the Commission that it has factored the amount of X calculated under clause 9 into its pricing for the 2017 assessment period.



11. Horizon will be deemed to have met the obligation set out in clause 10 when the Commission confirms this in writing to Horizon no later than 8 January 2016.
12. For the avoidance of doubt, the obligation in clause 9 is separate from the obligation in clause 10 and the performance of one shall not affect the obligation to perform the other.

#### **Termination of the agreement**

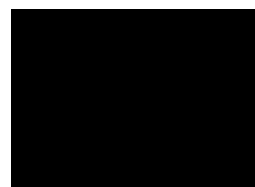
13. Subject to clause 14, the Commission may give Horizon written notice that this agreement is terminated if Horizon fails to comply with any of its obligations in clauses 4 , 5, 9 and 10.
14. Before giving notice under clause 13, the Commission:
  - 14.1 must notify Horizon in writing that it considers that clause 13 applies and that it is contemplating terminating the agreement; and
  - 14.2 will give Horizon 10 working days to respond to its view that clause 13 applies, and will have regard to that response before making a decision to give notice under clause 13.
15. If, having had regard to any response made by Horizon under clause 14.2, the Commission decides to give notice under clause 13, the Commission will notify Horizon of that decision in writing.
16. If this agreement is terminated, the Commission may thereafter initiate Court proceedings against Horizon in relation to the Breach, and clause 3 of this Agreement ceases to apply from the date of the notice of termination.

#### **Waiver of limitation**

17. If the Commission commences proceedings in accordance with clause 16 within three months of notice of termination of this agreement, Horizon agrees that it will not raise by way of defence to those proceedings the expiry of any applicable limitation period under the Act.

#### **Publicity**

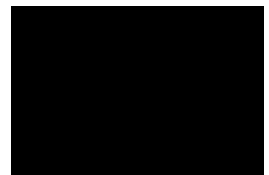
18. The Commission may publicise or make media comment in relation to this settlement, the conduct and the acknowledged breach of section 87(1)(a) of the Act, and may subsequently refer to them publicly whenever it considers this appropriate. This may include, without limitation, publication by media statements, articles, or speeches prepared or given by Commission members or staff.
19. In the case of any press release immediately following the execution of this agreement, the Commission will provide Horizon with an indication of the key elements of any proposed press release at least 24 hours before release.





**Miscellaneous**

20. For the avoidance of doubt, all obligations of Horizon under this agreement are in addition to any obligations of Horizon under any enactment, regulation, determination or similar.
21. This agreement will be governed by, and construed in accordance with, the laws of New Zealand.
22. This agreement constitutes the entire agreement between the Commission and Horizon in relation to the Breach. It supersedes all prior communications, understandings or representations whether oral or written between the Commission and Horizon.
23. No amendment to this agreement will be effective unless it is in writing and signed by both of the parties.
24. 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.
25. 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 facsimile or pdf counterpart of this agreement will have the same legal effect as that party's delivery of a signed original counterpart.



**Notices / Communications**

26. Any notice or communication pursuant to this agreement will be delivered as follows:

For the Commission:

Commerce Commission  
Level 6, 44-52 The Terrace  
Wellington  
New Zealand

For: Robert Bernau, General Counsel, Regulation Branch

E-mail: [REDACTED]

Fax: [REDACTED]

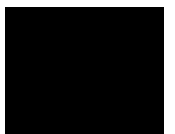
For Horizon:

Horizon Energy Distribution Limited:  
52 Commerce Street  
Whakatane  
New Zealand

For: Ajay Anand, Chief Executive

E-mail: [REDACTED]

Fax: [REDACTED]





**EXECUTION**

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

  
\_\_\_\_\_  
Authorised signatory

Susan Janice Beggs  
Name  
1<sup>st</sup> Sept 2014

**Signed by and on behalf of Horizon Energy  
Distribution Limited**

  
\_\_\_\_\_  
Director/authorised signatory

Ajay Arund  
Name

