

## SETTLEMENT AGREEMENT

Agreement dated 4 <sup>December</sup> ~~November~~ 2013

### Parties

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

**Wellington Electricity Lines Limited**, a company incorporated under the Companies Act 1993 and having its registered office at C/- Bell Gully, Level 21, 171 Featherston Street, Wellington, 6011, New Zealand (**WELL**)

### Introduction

- A. Part 4 of the Commerce Act 1986 (the **Act**) provides that all suppliers of electricity distribution services are subject to default/customised price-quality regulation unless they are exempt.
- B. WELL 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 WELL is allowed to earn in each annual assessment period (**Price Path**).
- C. The default price-quality path for WELL 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, amongst other things, amended WELL's Price Path for the annual assessment periods ending 31 March 2014 and 31 March 2015.
- D. WELL is required to provide the Commission with an annual self-assessment against the Price Path following each annual assessment period (**Compliance Statement**).
- E. On 5 June 2012, WELL submitted its Compliance Statement for the assessment period beginning on 1 April 2011 and ending on 31 March 2012, stating that it breached its Price Path by \$116,757.
- F. WELL asserts and the Commission accepts that the breach of the Price Path was due to inaccurate forecasting of pass-through costs.
- G. The Commission considers, and WELL has acknowledged, that the breach of the Price Path amounts to a contravention of section 87(1)(a) of the Act in that it is a contravention of a price-quality path requirement applying to regulated goods or services (the **Breach**).

- H. The purpose of this agreement is to resolve the Breach without litigation, by WELL paying back to consumers the amount gained by WELL as a result of the Breach.

**Acknowledgement of Breach**

1. WELL acknowledges that it has breached section 87(1)(a) of the Act.
2. WELL acknowledges that the Commission may refer to this agreement and the Breach in any subsequent enforcement action against WELL by the Commission in relation to alleged breaches 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 against WELL in relation to the Breach.

**WELL's obligations – how it will pay back to consumers the amount it gained as a result of the Breach**

4. For the period of 12 months ending on 31 March 2015 (the **2015 Assessment Period**), WELL will ensure that its notional revenue is less than the allowable notional revenue under the DPP Determination 2012 ('notional revenue' and 'allowable notional revenue' having the same meaning as in the DPP Determination 2012) by at least the amount of \$148,214.
5. WELL will, by 18 January 2014, demonstrate to the Commission that WELL has factored the amount specified at clause 4 into its pricing for the 2015 Assessment Period.
6. WELL will be deemed to have met the obligation set out in clause 5 when the Commission confirms this in writing to WELL, such confirmation not to be unreasonably withheld.
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.

**Termination of the agreement**

8. Subject to clause 9, the Commission may give WELL written notification that this agreement is terminated if WELL fails to comply with either of its obligations in clauses 4 and 5.
9. Before giving notice under clause 8, the Commission:
  - 9.1 must notify WELL in writing that it considers that clause 8 applies and that it is contemplating terminating the agreement; and
  - 9.2 will give WELL a reasonable opportunity to respond to the grounds for the Commission's view that clause 8 applies, and will have regard to that response before making a decision to give notice under clause 8.

10. If, having had regard to any response made by WELL under clause 9.2, the Commission decides to give notice under clause 8, the Commission will notify WELL of that decision in writing.
11. If this agreement is terminated, the Commission may thereafter initiate Court proceedings against WELL 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**

12. If the Commission commences proceedings in accordance with clause 11 within three months of notice of termination of this agreement, WELL agrees that it will not raise by way of defence to those proceedings the expiry of any applicable limitation period under the Act.

**Publicity**

13. 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.
14. In the case of any press release immediately following the execution of this agreement, the Commission will provide WELL with an indication of the key elements of any proposed press release at least 24 hours before release.

**Miscellaneous**

15. For the avoidance of doubt, all obligations of WELL under this agreement are in addition to any obligations of WELL under any enactment, regulation, determination or similar.
16. This agreement will be governed by, and construed in accordance with, the laws of New Zealand.
17. This agreement constitutes the entire agreement between the Commission and WELL in relation to the Breach. It supersedes all prior communications, understandings or representations whether oral or written between the Commission and WELL.
18. No amendment to this agreement will be effective unless it is in writing and signed by both of the parties.
19. 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.

20. 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**

21. 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

Fax: [REDACTED]

For Wellington Electricity Lines Limited:

75 The Esplanade, Petone,  
PO Box 31049, Lower Hutt 5040  
New Zealand

For: Greg Skelton, Chief Executive Officer

E-mail: [REDACTED]

Fax: [REDACTED]

**Execution**

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

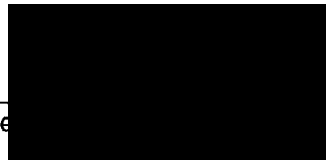


Susan Begg

Name

*In the presence of:*  
Witness Name:  
Witness Address:  
Witness Occupation:

**Signed by and on behalf of Wellington  
Electricity Lines Limited**



Direct

GREG SKELTON

Name

*In the presence of:*  
Witness Name:  
Witness Address:  
Witness Occupation: