Electricity Industry Participation Code 2010

Part 16
Special provisions relating to Rio Tinto agreements

Contents

Compliance with Code

16.1 Extent of Rio Tinto parties' obligations to comply with Code

Publication of summary of Rio Tinto agreements

16.2 Authority must continue to publish summary of Rio Tinto agreements
16.3 Parties must supply copy of variation of Rio Tinto agreement to Authority
16.4 Authority must publish summary of certain variations of Rio Tinto agreements
16.5 Summaries not to include certain commercially confidential matters

Obligation to notify acts or omissions

16.6 Notifications of acts and omissions to Authority
16.7 Annual wash-up notification
16.8 Assessment and publication of notification

Appeals in respect of Rio Tinto agreements

16.9 Full right of appeal against Authority's or Rulings Panel's decisions

Relief from costs and charges

16.10 Relief from costs and charges

Schedule 16.1
Rio Tinto Agreements

Compliance with Code

16.1 Extent of Rio Tinto parties' obligations to comply with Code

(1) Each **Rio Tinto party** who is a **participant** must comply with this Code, except that clauses 7.2 and 7.11, and Parts 8, 12, and 13 do not apply to an act or omission of a **Rio Tinto party** to the extent that the act or omission is necessary to perform an obligation, or to exercise a right or power, under a **disclosed** provision of a **Rio Tinto agreement** that is in force at the time of that act or omission.

(2) The **Authority** must continue to **publish** a summary of the cumulative effect of the **Rio Tinto agreements** that, in the **Authority's** opinion, sufficiently describes how those agreements may affect each **Rio Tinto party's** ability to comply with Part 12 of this Code in certain circumstances, but for this part, as was required to be published by the Electricity Commission under regulation 199(1A) of the Electricity Governance Regulations 2003 immediately before this Code came into force.

(3) However, the exception from clauses 7.2 and 7.11, and Parts 8, 12, and 13 does not apply to an obligation, or a right or a power, that arises because of a variation of a **Rio Tinto agreement** that is made after 20 May 2003 and that—

(a) extends the term of that agreement beyond 31 December 2022; or

(b) provides for the performance of an obligation, or the exercise of a right or a power, that would be a breach of this Code (except Parts 6 and 9) or Part 2 or Subpart 1 of Part 4 of the **Act**; or

(c) provides for an increase of, or the exercise of any right to increase, the total maximum quantity of **electricity** to which New Zealand Aluminium Smelters Limited and RTA Power (NZ) Limited is entitled under all of the **Rio Tinto agreements** to more than 610 MW of instantaneous and continuous supply and fluctuations above that quantity of up to 27.5 kilowatt hours in any 10 second period.

(4) In this Part, an act or omission is necessary to perform an obligation, or to exercise a right or power, under a **disclosed** provision of a **Rio Tinto agreement**, if—

(a) the **Rio Tinto party** reasonably believes, at the time of the act or omission, that the act or omission was necessary for that purpose; or

(b) the act or omission was, in fact, necessary for that purpose.

Compare: SR 2003/374 r 199

16.2 Authority must continue to publish summary of Rio Tinto agreements

(1) The **Authority** must continue to **publish** a summary of the cumulative effect of the **Rio Tinto agreements** that in the **Authority's** opinion, sufficiently describes how those agreements may affect each **Rio Tinto party's** ability to comply with clause 7.2 or 7.11, or Parts 8, 12 or 13 of this Code in certain circumstances, but for this Part, as was required to be published by the Electricity Commission under regulation 201(1) and (1A) of the Electricity Governance Regulations 2003 immediately before this Code came into force.

(2) If a **Rio Tinto party** supplies the **Authority** with a summary of the effect of those agreements that, in the **Authority's** opinion, meets that requirement, the **Authority** must **publish** that summary.

(3) Otherwise, the **Authority** must **publish** a summary that has been prepared by the **Authority** after—

(a) the **Authority** has consulted, to the extent reasonably practicable, with the parties to the **Rio Tinto agreements**; and

(b) the **Authority** has supplied a copy of the summary to those parties at least 10 **working days** before **publishing** the summary.

Compare: SR 2003/374 r 201

16.3 Parties must supply copy of variation of Rio Tinto agreement to Authority

(1) This clause applies if a **Rio Tinto agreement** is varied.

(2) Each party to the **Rio Tinto agreement** must, no later than 5 **working days** after the date on which the variation is made, supply to the **Authority**, or ensure that the **Authority** is supplied with, a copy of the variation.

(3) The copy of a variation that is supplied under subclause (2) must be—

(a) a copy of the complete variation; and

(b) certified by 1 director of the **Rio Tinto party** to be, to the best of the director's knowledge and belief, after due enquiry by the director of the board and management of the **Rio Tinto party**,—

(i) a true and complete copy of the variation; and

(ii) a variation to which clause 16.1(3) either does or does not apply, as the case may be.

Compare: SR 2003/374 r 202

16.4 Authority must publish summary of certain variations of Rio

Tinto agreements

(1) This clause applies if the **Authority** is supplied with a copy of a variation under clause 16.3 that the **Authority** considers may affect a **Rio Tinto party**'s ability to comply with clause 7.2 or 7.11, or Parts 8, 12, or 13 in certain circumstances, but for this Part.

(2) The **Authority** must **publish**, within 20 **working days** of receiving the copy, a summary of the effect of the variation that, in the **Authority's** opinion, sufficiently describes how the variation may affect each **Rio Tinto party**'s ability to comply with clause 7.2 or 7.11, or Parts 8, 12, or 13 in certain circumstances, but for this Part.

(3) The summary must be a restatement of the summary that was published by the Electricity Commission under regulation 201 of the Electricity Governance Regulations 2003 but updated to take account of the variation.

(4) If a **Rio Tinto party** supplies the **Authority** with a summary of the effect of the variation that, in the opinion of the **Authority**, meets those requirements, the **Authority** must **publish** that summary.

(5) Otherwise, the **Authority** must **publish** a summary that has been prepared by the **Authority** after—

(a) the **Authority** has consulted, to the extent reasonably practicable, with the parties to the **Rio Tinto agreement** that is varied; and

(b) the **Authority** has supplied a copy of the summary to those parties at least 10 **working days** before **publishing** the summary.

Compare: SR 2003/374 r 203

16.5 Summaries not to include certain commercially confidential matters

The **Authority** must not include in a summary that it **publishes** under this Part any information that, in its opinion, is commercially confidential unless, in the circumstances of the particular case, the **Authority** considers that the withholding of that information is outweighed by the public interest of enabling the public to understand how the **Rio Tinto agreements** or variations may affect each **Rio Tinto party**'s ability to comply with clause 7.2 or 7.11, or Parts 8, 12, or 13 in certain circumstances, but for this Part.

Compare: SR 2003/374 r 204

Obligation to notify acts or omissions

16.6 Notifications of acts and omissions to Authority

(1) Each **Rio Tinto party** must advise the **Authority** of an act or

omission that may be, or have been, a breach of clause 7.2 or 7.11, or Parts 8, 12, or 13, but for this Part.

(2) The **Rio Tinto party** must give that advice either—

(a) as soon as practicable after the party became aware, or should reasonably have become aware, that an act or omission may be, or have been, such a breach; or

(b) if the **Authority** so consents in a situation where the breach is likely to occur frequently, in advance of the breach occurring and in accordance with the terms of that consent.

(3) The advice must state—

(a) the details of the act or omission; and

(b) the relevant clause of clause 7.2 or 7.11, or Parts 8, 12 or 13 involved; and

(c) the reasons why the **Rio Tinto party** believes that clause 16.1 applies or does not apply (as the case may be).

(4) The **Authority** may request in writing, and the **Rio Tinto party** must supply in writing, any further information about the act or omission that the **Authority** reasonably requests.

(5) The **Authority** must **publish** the fact that it has received the advice, as soon as practicable after receiving it.

Compare: SR 2003/374 r 205

16.7 Annual wash-up notification

Each **Rio Tinto party** must, within 90 days of the end of each **financial year**, advise the **Authority**,—

(a) whether any acts or omissions have occurred in the **financial year** that may have been a breach of clause 7.2 or 7.11, or Parts 8, 12, or 13 but for this Part in addition to the ones advised under clause 16.6; and

(b) whether any anticipated frequent breaches advised under clause 16.6(2)(b) are still occurring.

Compare: SR 2003/374 r 206

16.8 Assessment and publication of notification

(1) If the **Authority** considers that an act or omission may have been a breach of clauses 7.2 or 7.11, or Parts 8, 12, or 13 (for example, because clause 16.1 was thought to apply but does not), the act or omission must be dealt with under the regulations made under section 112 of the **Act** in the same way as an alleged breach of clause 7.2 or 7.11, or Parts 8, 12, or 13, except that—

(a) the investigator then must consider both whether the act or omission is a breach of clause 7.2 or 7.11, or Parts 8, 12, or 13 of this Code and whether clause 16.1 applies; and

(b) any **Rio Tinto party** may notify the investigator that it considers it is affected by the matter being investigated and wishes to become a party to the investigation, in

which case, it is then joined as a party to the investigation as if it were a **participant**.

(2) The **Authority** may request in writing, and the **Rio Tinto party** must supply in writing, any further information that is reasonably necessary to enable the **Authority** to consider the matter under subclause (1).

Compare: SR 2003/374 r 207

Appeals in respect of Rio Tinto agreements

16.9 Full right of appeal against Authority's or Rulings Panel's decisions

(1) Any **Rio Tinto party** may appeal to the High Court against a decision of the **Authority** or the **Rulings Panel** in respect of clause 16.1.

(2) The appeal must be made by giving notice of appeal within 20 **working days** after the date of the decision appealed against or within any further time that the Court allows.

(3) The right of appeal in this clause does not limit the rights of appeal in sections 63-71 of the **Act**.

(4) Sections 67-71 of the **Act** apply to an appeal under this clause with necessary modifications.

Compare: SR 2003/374 r 208

Relief from costs and charges

16.10 Relief from costs and charges

(1) New Zealand Aluminium Smelters Limited is not liable to the **system operator** under this Code (except Parts 6 and 9) or Part 2 or Subpart 1 of Part 4 of the **Act** for any costs or charges which, but for this subclause, New Zealand Aluminium Smelters Limited would be liable as a **participant** under Part 8 of this Code in relation to services that RTA Power (NZ) Limited pays for under the **Rio Tinto agreements** to which Meridian Energy Limited and RTA Power (NZ) Limited are parties for so long as it is a **participant** and a **Rio Tinto party**.

(2) Meridian Energy Limited is liable for the costs for which New Zealand Aluminium Smelters Limited would have been liable but for subclause (1).

(3) In all other respects, this Part does not affect the liability of a **Rio Tinto party** that is a **participant** for any costs or charges under this Code (except Parts 6 and 9) or Part 2 or Subpart 1 of Part 4 of the **Act**.

Compare: SR 2003/374 r 209

Schedule 16.1 cl 1.1
Rio Tinto Agreements

"Power" agreements

1 Agreement dated 15 August 1963 between the Crown and Consolidated Zinc Proprietary Limited, as amended by agreements dated 15 November 1966 and 5 September 1969.

2 Agreement amending the Manapouri Power Agreement 1963 dated 9 July 1980 between the Crown and Comalco Power (N.Z.) Limited.

3 Agreement to supply electricity dated 30 April 1981 between the Crown and Comalco Power (N.Z.) Limited.

4 Deed of Review of 1963 Agreement dated 20 August 1993 between Electricity Corporation of New Zealand Limited and Comalco Power (N.Z.) Limited.

5 Deed of Review of 1981 Agreement dated 20 August 1993 between Electricity Corporation of New Zealand Limited and Comalco Power (N.Z.) Limited.

6 Electricity Supply Agreement dated 20 August 1993 between Electricity Corporation of New Zealand Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

7 Comalco Deed dated 16 January 1996 between Electricity Corporation of New Zealand Limited and Contact Energy Limited.

8 First Supplementary Agreement dated 5 September 1996 between Electricity Corporation of New Zealand Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

9 Second Supplementary Agreement dated 9 May 1997 between Electricity Corporation of New Zealand Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

10 Contact Deed dated 30 October 1997 between Electricity Corporation of New Zealand Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

11 Third Supplementary Agreement dated 22 December 1998 between Electricity Corporation of New Zealand Limited,

Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

12 Deed relating to the Power Agreements and the Connection Contract in the context of the establishment of Hydro Energy Limited dated 22 December 1998 between Electricity Corporation of New Zealand Limited, Hydro Energy Limited (now) Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

13 Fourth Supplementary Agreement dated 31 August 1999 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

14 Fifth Supplementary Agreement dated 31 March 2000 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

15 Sixth Supplementary Agreement dated 13 March 2001 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

16 Seventh Supplementary Agreement dated 31 March 2003 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited, as varied by agreement dated 28 October 2003.

17 Eighth Supplementary Agreement dated 13 February 2004 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

18 Withdrawal Compensation Deed dated 13 February 2004 between Meridian Energy Limited and Comalco Power (N.Z.) Limited.

19 Ninth Supplementary Agreement dated 28 January 2005 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

20 Tenth Supplementary Agreement dated 29 March 2006 between Meridian Energy Limited, Comalco Power (N.Z.) Limited, and New Zealand Aluminium Smelters Limited.

21 Eleventh Supplementary Agreement dated 30 March 2007 between Meridian Energy Limited, RTA Power (NZ) Limited, and New Zealand Aluminium Smelters Limited.

22 Twelfth Supplementary Agreement dated 31 March 2008 between Meridian Energy Limited, RTA Power (NZ) Limited,

and New Zealand Aluminium Smelters Limited.

"Connection" agreements

23 Tiwai Point Connection Contract dated 9 November 1993 between Transpower New Zealand Limited and Electricity Corporation of New Zealand Limited.

24 Supplementary Contract dated 5 May 1995 between Transpower New Zealand Limited and Electricity Corporation of New Zealand Limited.

25 Second Supplementary Contract dated 30 August 1996 between Transpower New Zealand Limited and Electricity Corporation of New Zealand Limited.

26 Third Supplementary Contract dated 24 November 1998 between Transpower New Zealand Limited and Electricity Corporation of New Zealand Limited.

27 Deed of Novation in relation to the Tiwai Point Connection Contract dated 1 April 1999 between Electricity Corporation of New Zealand Limited, Transpower Limited, and Meridian Energy Limited.

28 Fourth Supplementary Contract dated 25 June 1999 between Transpower New Zealand Limited and Meridian Energy Limited.

29 Sixth Supplementary Contract dated 31 March 2000 between Transpower New Zealand Limited and Meridian Energy Limited (and annexing certain correspondence described as the "Fifth Supplementary Contract").

30 Seventh Supplementary Contract dated 30 March 2001 between Transpower New Zealand Limited and Meridian Energy Limited.

31 Eighth Supplementary Contract dated 25 March 2002 between Transpower New Zealand Limited and Meridian Energy Limited, as amended by letter executed as deed dated 29 April 2002.

32 Ninth Supplementary Contract dated 31 March 2003 between Transpower New Zealand Limited and Meridian Energy Limited.

33 Tenth Supplementary Contract dated 13 February 2004 between Transpower New Zealand Limited and Meridian Energy

Limited.

34 Eleventh Supplementary Contract dated 17 and 25 January 2005 between Transpower New Zealand Limited and Meridian Energy Limited.

35 Twelfth Supplementary Contract dated 27 and 29 March 2006 between Transpower New Zealand Limited and Meridian Energy Limited.

"Comalco-NZAS" agreements

36 Power Contract dated 12 June 1969 between Comalco Power (N.Z.) Limited and New Zealand Aluminium Smelters Limited.

37 Amendment to Power Contract dated 6 November 1970 between Comalco Power (N.Z.) Limited and New Zealand Aluminium Smelters Limited.

38 Deed of Amendment of Power Contract dated 20 June 1994 between Comalco Power (N.Z.) Limited and New Zealand Aluminium Smelters Limited.

39 Power Contract dated 12 June 1969, as amended and restated as of 20 June 1994 between Comalco Power (N.Z.) Limited and New Zealand Aluminium Smelters Limited.