

DATED 29th March 1993

NORTHPOWER ELECTRIC POWER TRUST

(as amended as at 20 March 2000 and by deed dated 24 October 1995)

NORTHPOWER ELECTRIC POWER TRUST

THIS DEED is made on the 29th day of March 1993

BETWEEN NORTHPOWER LIMITED a duly incorporated company having its registered office at Whangarei (hereinafter called "the Company")

AND JOHN AITCHISON BECK and WILLIAM DAVID MILNER (hereinafter called "the Trustees")

WHEREAS

- A.** The North Auckland Electric Power Board ("the Board") has formed a private company limited by shares, Northpower Limited ("the Company"), in which the sole subscribers are Mr R T V Linnell and Mr J Shephead;
- B** Pursuant to section 28 of the Energy Companies Act 1992 the Minister responsible for the administration of the Act has approved the establishment plan prepared and submitted in respect of the Company which establishment plan provides for the re-registration of the Company as a public company and the allocation of all of the Shares in the Company to the Trustees;
- C.** The Company wishes to establish the Northpower Electric Power Trust to enable the Trustees to acquire the Shares in the Company to be vested in the Trustees in accordance with the establishment plan;
- D.** The object of the Trust is to hold the Shares in the Company on behalf of the Consumers and distribute to the Consumers in their capacity as owners, the benefits of ownership of the shares in the Company and to carry out future ownership reviews involving public consultation in accordance with the terms of this Deed.

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions: In this Deed, unless the context otherwise requires:

- (a) "Act" means the Energy Companies Act 1992;
- (b) "**Balance Date**" means the 31st day of March or any other date adopted as at the end of the Financial Year from time to time by the Company;
- (c) "**Bank**" means the ANZ Banking Group (New Zealand) Limited, Bank of New Zealand, National Australia Bank (NZ) Limited, The National Bank of New Zealand Limited, Westpac Banking Corporation, any member of Trust Bank Group or any other bank listed in the register of registered banks referred to in section 69 of the Reserve Bank of New Zealand Act 1989;

- (d) "**Board**" means the North Auckland Electric Power Board constituted by section 10 of the Electric Power Boards Act 1925;
- (e) "**Company**" means and includes any successor company;
- (f) "**Consumers**" means persons who, at any appropriate date designated by the Trustees from time to time, are named in the records of the Company as persons whose premises are directly connected to the Company's lines network within the District, and who are either:
 - (i) end customers who are liable (whether alone or jointly or with any other person) for the payment of electricity conveyed to them over those lines or for services in relation to those lines; or
 - (ii) end customers of any Electricity Supply Business that is liable for payments for services in relation to those lines;

unless any such person who qualifies as a Consumer in accordance with this definition advises the Company or the Trustees irrevocably in writing that he, she or it does not wish to be a Consumer for the purposes of this Deed.

- (g) "**this Deed**" means this deed and includes the schedule and any amendments;
- (h) "**Distribution Plan**" means a plan for the distribution of the Shares in the capital of the Company prepared by the Trustees in accordance with Clause 4;
- (i) "**District**" means the extent of the area over which the Board was authorised to supply electricity pursuant to the licence granted to the Board under section 20 of the Electricity Act 1968;
- (j) "**Dividends**" means, in relation to the Company, any distributions paid in cash by the Company to the Trustees as holders under this Deed of Shares in the Company;
- (k) "**Electors**" means at the first anniversary of the Termination Date and at any earlier appropriate date designated from time to time by the Trustees, any person:
 - (i) whose name appears on a roll of the electors of a Local Authority the whole or any part of whose district is situated within the District; and
 - (ii) whose electoral address is within the District;
- (k)(A) "**Electricity Supply Business**" has the meaning set out in the Electricity Industry Reform Act 1998;

- (l) "**Financial Year**" means any year or other accounting period ending on a Balance Date;
- (m) "**Local Authority**" means a territorial authority within the meaning of the Local Government Act 1974 and in the event that at any time such territorial authority does not exist then any such body whether incorporated or not which has assumed the responsibilities or obligations formerly undertaken to a territorial authority;
- (m)(A) "**Other Shares**" means shares in any company other than the Company;
- (n) "**Public Consultative Procedure**" means the procedure for consultation set out in Schedule 2;
- (n)(A) "**Shares**" means the shares of the Company;
- (o) "**State-Owned Enterprise**" means an organisation listed in either the First or Second Schedule to the State-Owned Enterprise Act 1986;
- (p) "**Termination Date**" means the earlier of 1 January 2072 and the date upon which the trust is wound up in accordance with Clause 15;
- (q) "**the Trust**" means the electric power trust established by this Deed;
- (r) "**the Trustees**" means the trustees for the time being of the Trust and the "First Trustees" shall be the persons signing the Deed as Trustees;
- (s) "**Trust Fund**" means all the funds of the Trust described as "the Trust Fund" in Clause 6 and includes all capital and income for the time being held by the Trustees of the Trust;
- (t) "**Trustee Act**" means the Trustee Act 1956;
- (u) "**Vesting Date**" means the date upon which the Governor-General by Order in Council under section 47 of the Act vests the undertaking of the Board in the Company and the Shares in the Company in the Trustees.

1.2 Construction: In this Deed, unless the context otherwise requires:

- (a) references to one gender include each other gender;
- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of the Deed;
- (d) references to Clauses are references to Clauses of the Deed and references to Schedules are references to schedules to this Deed;

- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulation, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to;
- (f) words, terms or expressions which are defined in the Act but are not defined in this Deed shall have the meaning attributed to them in the Act.

1.3 Perpetuity Period: For the purposes of the Perpetuity Act 1964 the perpetuity period applicable to this Deed shall be the period from the date of execution hereof until the first anniversary of the Termination Date.

2. DECLARATION OF TRUST

The Company hereby declares and directs and the Trustees declare and acknowledge as follows:

- 2.1** The trust established by this Deed as an electric power trust shall be known as the Northpower Electric Power Trust. The name of the Trust may be changed from time to time by resolution of the Trustees that has received the affirmative vote of not less than 75% in number of the Trustees.
- 2.2** The sum of \$100.00 paid by the Company contemporaneously with execution of this Deed and all other monies or property of whatever kind hereafter paid, given, or transferred to or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees shall be held upon the Trust hereby declared and any accumulations of income therefrom and all monies, investments and property of whatever kind from time to time representing the same shall be held upon the Trust and for the purposes and with the powers, authorities and discretions hereinafter appearing.

3. OBJECTS

This Trust has been established to enable the Trustees:

- 3.1** On Vesting Date, to receive Shares in the Company vested in the Trustees by Order in Council made in accordance with section 47 of the Act.
- 3.2** To subscribe for, purchase or otherwise acquire additional Shares in the capital of the Company.
- 3.3** To retain and hold such shares until such time as the Shares or a portion of them are sold, transferred or disposed of following the ownership reviews held in accordance with Clause 4, or otherwise in accordance with Clause 9.9.

- 3.4 In the event of any sale, transfer or other disposition of such Shares, to hold the proceeds of any such sale, transfer or other disposition upon the trust for capital in accordance with Clause 6. 1.
- 3.5 To receive the Dividends and to distribute, pay, apply or appropriate the Dividends to or for the benefit of the Consumers and/or the Company in the manner provided in Clause 5 of this Deed.
- 3.6 Following the Termination Date to pay, apply or appropriate the capital of the Trust in the manner provided in Clause 6.2.
- 3.7 To encourage and facilitate the Company in meeting its objective of being a successful business by optimising the Company's return on its assets, and to distribute to Consumers in their capacity as owners, the benefits of ownership of the Shares in the Company.
- 3.8 To subscribe for, purchase and hold Other Shares, only for the purpose of any merger or reconstruction of the Company, until such time as the Other Shares or a portion of them are sold, transferred or disposed of and to hold the proceeds upon the trust for capital in accordance with clause 6.1.

4. REVIEW

- 4.1 Within 4 years of the date of this Deed the Trustees shall require the directors of the Company to prepare a report considering proposals and options for future ownership of the Shares in the Company. Such report shall contain the following detail:
 - (a) an analysis of the performance of the Company to the date of the report together with a discussion of the advantages and disadvantages of trust ownership;
 - (b) an analysis of the various ownership options considered including without limitation, a share distribution to Consumers or Electors, a sale of Shares to the public, a sale of Shares to institutional investors and retention by the Trust;
 - (c) a comparison of the performance of the Company with the performance of other similar companies;
 - (d) the conclusions of the directors as to the most appropriate form of ownership together with an indication as to whether the conclusions are unanimous and if the decision is not unanimous, a summary of the views of the dissenting directors shall be included;
 - (e) the matters contained in Clause 4.6 if a distribution of Shares is recommended;
 - (f) a summary of the professional advice (if any) obtained in respect of the preparation of the report; and

- (g) a statement as to whether or not the directors have had regard to any views expressed by the public with respect to ownership.
- 4.2** The Trustees shall comment on the report to the directors of the Company and upon completion of their review, the Trustees shall make the report available to the public in accordance with Clause 13 together with a summary of their comments.
- 4.3** The Trustees and the directors of the Company shall in respect of the report and no later than 1 month after the date of the report, implement the Public Consultative Procedure.
- 4.4** Following completion of the Public Consultative Procedure and in any event no later than 6 months after the report required by Clause 4.1 is completed, the Trustees and the directors shall meet and, after taking due account of the views expressed by the public and the directors the Trustees shall decide whether to:
- (a) retain the Shares in the Trust; or
 - (b) dispose of a portion of the Shares and retain the remainder in the Trust or;
 - (c) dispose of all of the Shares.
- 4.5** If the Shares are to be retained by the Trust the Trustees shall notify the public in accordance with Clause 13.
- 4.6** If the Shares or a portion of them are to be distributed the Trustees shall request the directors of the Company to prepare a Distribution Plan and if the directors fail to prepare a plan the Trustees shall prepare the Distribution Plan. The Distribution Plan shall contain the following details:
- (a) to whom the Shares are to be distributed;
 - (b) the time and manner in which the Shares are to be distributed;
 - (c) whether the shares are to be distributed without consideration, at a concessionary consideration or for proper consideration.
- The Trustees shall consider any plan prepared and make such amendments to it as they consider shall be necessary after consultation with the directors of the Company.
- 4.7** The Distribution Plan shall be notified to the public in accordance with Clause 13 and following notification the Trustees shall be obliged to comply with the requirements of and ensure that the Distribution is implemented unless the Trustees are unable to do so as a result of matters beyond the reasonable control of the Trustees.
- 4.8** If the directors of the Company have failed to produce a report within 6 months of being requested to do so by the Trustees, the Trustees shall prepare the report required by Clause 4.1.

- 4.9** The Company shall be entitled to be paid out of the Trust Fund all reasonable costs incurred in connection with the ownership review carried out pursuant to this Clause 4.
- 4.10** If following the initial review provided for in this Clause 4 any or all of the Shares of the Company are retained by the Trustees, the Trustees shall thereafter procure that a review in accordance with Clauses 4 is held at no more than five yearly intervals until the Termination Date so that the first such review commences no later than five years after the completion of the first review.

5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE

The Trustees shall stand possessed of the income arising from the Trust Fund until the Termination Date upon the following trusts and with and subject to the following powers:

- 5.1** The Trustees shall from the net annual income derived by the Trust Fund first pay the cost of administering the Trust including remuneration and allowances payable to Trustees as hereinafter provided and costs incurred in pursuance of their duties.
- 5.2** The Trustees shall, subject to Clause 5.3 and Clause 5.4, pay apply or appropriate the whole or substantially all of the current net annual income in one of the following ways in such manner and in such proportions as the Trustees in their absolute and unfettered discretion shall think proper:
- (a) for the benefit of the Consumers or such one or more of them to the exclusion of others or other of them in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall think proper; or
 - (b) to the Company for the purposes of reinvestment in the form of debt or equity securities of the Company.
- 5.3** The Trustees shall in respect of any Dividend received be entitled to pay, apply or appropriate that income to Consumers in accordance with Clause 5.2 at any time during the Financial Year to which that Dividend relates or the following Financial Year provided however that the Trustees may defer payment, application or appropriation of any sum or benefit to any Consumer until the Trustees are satisfied that all liability for taxation in respect thereof has been discharged.
- 5.4** The Trustees shall request the directors to produce a report in respect of each Dividend received by the Trustees which report recommends an appropriate allocation of the Dividend amongst the classes of Consumer based on the contribution made by each class of Consumer to the earning of that Dividend and in such report the directors may classify Consumers in any manner they see fit and in exercising their discretion in accordance with Clause 5.2 the Trustees shall have regard to those recommendations.

- 5.5 Any of the persons or purposes to whom or in respect of which income is paid, applied or appropriated by the Trustees pursuant to Clause 5.2, shall as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income and as from such date the Trustees shall have no further obligation with respect to the application of such income.
- 5.6 The foregoing provisions as to vesting of income shall not operate to vest any part of the corpus of the Trust Fund in any of the Consumers or the Company.
- 5.7 Subject to the foregoing, so far as any part or parts of the income derived by or credited to or to be derived by or credited to the Trust Fund in any Financial Year is not paid, applied or appropriated in accordance with Clause 5.2, the same shall be accumulated by investing the same so that all such accumulations shall be held by the Trustees upon the same trusts and with the powers herein declared in respect of the income from the Trust Fund and so that the Trustees may at any time or times resort thereto and pay, apply or appropriate the whole or any part thereof as if it were income of the Trust Fund in accordance with Clause 5.2.
- 5.8 Each Trustee in its capacity as a Consumer or Elector shall notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Consumer or Elector which may be distributed to Consumers or Electors in accordance with this Deed.
- 5.9 All payments made to Consumers unclaimed for one year after having been sent to any Consumer may be invested or otherwise made use of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any such unclaimed payments with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund.

6. TRUSTS OF CAPITAL

- 6.1 **Trusts prior to Termination Date:** The Shares in the Company and Other Shares or the proceeds of such shares (including the repurchase of Shares by the Company), and any other part of the Trust Fund, shall be held by the Trustees upon trust to pay, apply or allocate the same on or before the Termination Date for the benefit of the Consumers or the Electors or to the extent that the shares are sold in order to raise funds for the Company, for the benefit of the Company in such a manner and in such shares as the Trustees in their absolute and unfettered discretion consider fair and equitable.
- 6.2 **Trusts from and after Termination Date:** From and after the Termination Date the Trustees shall stand possessed of the corpus of the Trust Funds and the income thereof and any income previously derived by the Trustees that has not been paid, applied or appropriated in accordance with Clause 6.1 of this Deed, upon trust to pay, apply or appropriate the same to or for or otherwise howsoever for the benefit of the Consumers or the Electors in such manner and in such shares as the Trustees shall in their absolute and unfettered discretion consider fair and equitable provided however that if the Trustees have not so paid, applied or appropriated any or all of

such Trust Fund and income on the day before the first anniversary of the Termination Date the amount so remaining shall be paid in equal shares to Electors as at the first anniversary of the Termination Date.

7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES

The Rules set forth in the Schedule hereto (with such amendments, deletions and additions thereto as may lawfully be made in manner therein appearing) shall upon the execution of this Deed govern the appointment, retirement and proceedings of the Trustees and associated matters.

8. GENERAL POWERS

8.1 The Trustees may exercise the powers, authorities, and discretions conferred by this Deed in addition to and not by way of limitation of the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act (except where otherwise specified in this Deed). For the avoidance of doubt, the Trustees shall have no power, authority or discretion to participate in the management or operation of the Company and in exercising the powers conferred by this Clause and Clause 9 the Trustees shall be restricted to exercising their rights as a shareholder subject always to the provisions of this Deed and in particular Clause 4.

8.2 In the exercise of any power, authority or discretion under this Deed the Trustees shall have no obligation to deal with persons other than those who qualify as Consumers or Electors (as the case may be) as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer or Elector.

9. SPECIFIC POWERS

Subject to Clause 19, the Trustees shall have and may exercise either alone or together with any other person or persons the following powers, authorities and discretions:

9.1 To Appoint Directors: To appoint directors of the Company in the manner provided by the Constitution of the Company provided however that prior to appointing any directors the Trustees shall make it known generally that prospective candidates as director are being sought and shall procure an independent evaluation by a professionally qualified consultant engaged by the Trustees of the prospective candidates and in exercising any right of appointment the Trustees shall have regard to the recommendations of the consultant so engaged.

9.2 To Appoint Secretary: To appoint and pay any person, who is not a Trustee, as secretary of the Trust and to remove such person and appoint replacement secretaries as they think fit.

9.3 To Employ: To employ and pay any person, firm, company or corporation to do any act of whatever nature relating to the Trust including the receipt and payment of money without being liable for loss incurred thereby.

- 9.4 To Appoint Custodian Trustee:** To exercise the powers conferred by section 50 of the Trustee Act to appoint any corporation to be a custodian trustee of the Trust Fund.
- 9.5 To Invest:** To invest or reinvest, in any form of investment authorised by this Deed or by law, all or any part of the Trust Fund, whether income or capital, not immediately required for the purposes of the Trust.
- 9.6 Bank Accounts:** To open an account or accounts at any time or times in the name of the Trust at any Bank (and to overdraw any such account with or without giving any security) and in addition to the powers conferred by section 81 of the Trustee Act to make arrangements with any Bank for the Trustees or any two or more of the Trustees named in writing by all of the Trustees to operate upon any account from time to time opened or subsisting at that Bank.
- 9.7 Capital Income and Blended Funds:** To determine whether any money for the purpose of this Deed is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion payments and every such determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund and income thereof.
- 9.8 Shareholders powers:** To exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any Shares in the Company and Other Shares forming part of the Trust Fund.
- 9.9 Reorganisation, reconstruction, merger etc:** To consider any recommendations made by the Directors on any proposal relating to any reconstruction or amalgamation or merger of the Company or any modification of the rights of shareholders or any increase or reduction of capital or other dealing with such Shares and after giving due consideration to the recommendations of the Directors to make a decision in respect of any such proposal as the Trustees may consider shall be for the benefit of or in the interests of the Trust Fund provided however that:
- (a) prior to making any decision with respect to an increase in capital which would have the effect of reducing the Trust's shareholding in the Company to less than 51 per cent, the Trustees shall in respect of that proposal implement the Public Consultative Procedure and take due account of the views expressed before any decision; and
 - (b) the Trustees shall not agree to any proposal relating to the sale or other disposition of any shares held by the Trust which would result in the Trust's shareholding in the Company reducing to below 51 per cent unless the Trustees have complied with Clause 4.
- 9.10 Determining Questions:** To determine all questions and matters of doubt which may arise in the course of the Trusteeship of this Trust.

9.11 General: To do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the objects of the Trust set out in clause 3.

10. POWERS OF INVESTMENT

10.1 The power to invest conferred by trustees by section 13A(1) of the Trustee Act is hereby excluded.

10.2 The Trustees may invest all or any of the Trust Fund held by them under this Deed, either alone or in common with any other person or persons, in all or any of the following investments:

- (a) shares or other equity securities or debt securities of the Company;
- (b) the stock, funds or other securities of the New Zealand Government;
- (c) interest bearing deposit accounts with any Bank; or
- (d) debenture or stock of Local Authorities; or
- (e) equity bonds of any State-Owned Enterprise.

10.3 The Trustees may hold all or any part of the Trust Fund uninvested in accordance with Clause 10.2 for any period or periods for the purpose of:

- (a) accumulating sufficient funds for the purposes of investment; or
- (b) holding sufficient funds to meet payments as they fall due.

10.4 Notwithstanding the provisions of section 13C of the Trustee Act and the likelihood that the Trustees will from time to time include persons whose profession, employment, or business is or includes acting as a trustee or investing money on behalf of others, it is hereby declared that the care, diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by the said section 13C but shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

10.5 Notwithstanding anything in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund are not diversified.

11. ADVICE OF COUNSEL

Without derogating from the generality of the foregoing powers, the Trustees are hereby further empowered to take and act upon the opinion of any barrister of the High Court of New Zealand of not less than seven years' standing whether in relation to the interpretation of this Deed or any other document or any statute, as to the administration of the trust declared and authorised by this Deed or by any other document without being liable to any person who may claim to be in any way beneficially interested in respect of any act done in accordance with such opinion provided that nothing in this Clause shall prohibit the Trustees from applying to the Court should the Trustees think fit.

12. DUTIES OF TRUSTEES

Subject to Clause 19, the Trustees shall:

- 12.1** subject to Clause 8, act as a diligent shareholder, and in particular monitor the performance of the directors of the Company with respect to the Company's statement of corporate intent and exercise the rights of shareholders in the Company for the benefit of the Trust Fund and with due regard to the objective of the Company to be a successful business.
- 12.2** ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.
- 12.3** after the end of each Financial Year cause to be prepared financial statements including a balance sheet and income and expenditure account and notes to those documents giving a true and fair view of the financial affairs of the Trust for that Financial Year. The financial statements shall show separately the names of persons or organisations to whom distributions of income have been made by the Trust in that Financial Year and the amounts distributed.
- 12.4** appoint from time to time on such terms as they think fit as auditor of the Trust a person (not being the auditor of the Company) who is either:
 - (a) a member of the Institute of Chartered Accountants of New Zealand;
 - (b) a member, fellow, or associate of an Association of Accountants constituted in some part of the Commonwealth outside New Zealand and for the time being approved for the purpose of the audit of the company accounts under section 199(1) of the Companies Act 1993.
- 12.5** ensure that the financial statements are audited.
- 12.6** immediately upon completion of the audit of the financial statements insert advertisements in a principal newspaper or newspapers circulating in the District, notice that the statements are available for public inspection at the office of the Trustees.
- 12.7** make the financial statements available to the public in accordance with Clause 13.

- 12.8** within four months after the end of each Financial Year of the Trust, hold a public meeting in the District and at that meeting report on the operation of the Trust during the preceding Financial Year and on the financial statements of Trust for that Financial Year. The Trustees shall give not less than 14 days' notice in a principal newspaper or newspapers circulating in that District of the holding of such a public meeting.
- 12.9** in respect of any statement of corporate intent delivered to the Trustees by the Company make comments thereon to the Directors of the Company within one month from the date of delivery of such statement by the Company to the Trustees.
- 12.10** make any completed statement of corporate intent available to the public in accordance with Clause 13.
- 12.11** at the meeting to be held in accordance with Clause 12.8 and while the Trustees are the majority shareholders of the Company comment on the Company's compliance with its then current statement of corporate intent.
- 12.12** exercise where appropriate its right to require modifications to the statement of corporate intent in accordance with section 40(2) of the Act subject always to the requirements of section 40(3) of the Act;
- 12.13** make a copy of this Deed available to the public in accordance with Clause 13.
- 12.14** subject to any applicable rule of law to the contrary, ensure that all information it receives from the Company with respect to Consumers shall be kept strictly confidential.
- 12.15** comply with the Electricity Industry Reform Act 1998.

13. INFORMATION TO THE PUBLIC

- 13.1** For the purpose of complying with any requirement under this Deed to make any document or information available to the public, it shall be sufficient for the Trustees to make such document or information available for inspection at any office of the Trust or any office of the Company or at any other place in the District during normal business hours on any business day.
- 13.2** The Trustees shall give not less than 3 days' notice of the place at which and the times when such documents or information may be inspected by the public in a principal newspaper or newspapers circulating in the District.

14. VARIATION TO TRUST DEED

- 14.1** This Deed may be altered or amended only by resolution of the Trustees that has received the affirmative vote of not less than six in number of the Trustees provided however no alteration or amendment shall be effective unless it has been approved in

writing by the directors of the Company and the Trustees have implemented the Public Consultative Procedure in respect of such amendment.

14.2 Notwithstanding Clause 14.1 no alteration or amendment may be made to this Deed that has the effect of limiting or restricting the obligations or powers of the Trustees under this Deed to:

- (a) review proposals and available options for the ownership of the Shares held by the Trust in the Company in accordance with clause 4; or
- (b) sell, transfer or dispose of the Shares following an ownership review held in accordance with clause 4.

15. WINDING UP OF TRUST

15.1 If the Trust holds less than 5 per cent of the total share capital of the Company (which for these purposes shall include any shares held by the Trust in any company with which the Company has merged) and no longer holds any debt security issued by the Company or a resolution to wind up the Trust has not been passed by 1 January 2072, the Trustees shall pass the resolutions requiring the trust to be wound up. If the resolutions have not been passed by 1 July 2072 or six months following the date upon which the Trust ceased to hold any debt securities and at least 5 per cent of the equity securities of the Company (whichever is the earlier), the provisions of Clause 15.2 shall apply as if the resolution had been passed.

15.2 On the winding up of the Trust, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever for the benefit of the Consumers or the Electors in accordance with Clause 6.2.

16. INTERESTED TRUSTEES

16.1 The Trustees shall not be employed in the service of or hold any office in or become a director of the Company.

16.2 A Trustee who in any way, whether directly or indirectly has a material interest in any contract or proposed contract or arrangement or dealing with the Trust (other than as a Consumer or as a member, officer, or employee of any firm, company or organisation that is a Consumer) shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting.

16.3 A Trustee required to disclose an interest by Clause 16.2 may be counted in a quorum present at a meeting but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so the vote shall not be counted) provided that the Trustee may be expressly permitted to vote by a unanimous vote of the other Trustees present given after the disclosure of the interest.

16.4 If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to

the Chairperson of the meeting and his or her ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interests of the Trustee concerned have not been fairly disclosed.

17. LIABILITY

17.1 No trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss not attributable to his or her own dishonesty or to the wilful commission or omission by him or her of an act where such commission or omission is known by him or her to be a breach of trust and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

17.2 Every Trustee shall be chargeable only for such moneys as he or she shall actually have received although he or she may have joined in any receipt for money received by any other of them and shall not be answerable for the acts of any other Trustee nor for any loss which may arise by reason of any trust funds being lawfully deposited in the hands of any banker, solicitor or agent or for the sufficiency or insufficiency or deficiency of any security upon which any trust money or any part thereof may be invested for any loss in the execution of any trust unless the same shall happen through his or her neglect or default.

18. INDEMNITY

Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust for and in respect of any loss or liability which such Trustee officer or employee may sustain or incur by reason of the carrying out or omission of any function, duty or power of the Trustees under this Deed and in respect of any expenses incurred by the Trustee officer or employee in the management and administration of the Trust Fund unless such loss or liability is attributable to the dishonesty of such Trustee, officer or employee or to the wilful commission by such Trustee officer or employee of an act known to the Trustee officer or employee to be a breach of trust or to the wilful omission by such Trustee officer or employee of any act when that omission is known by such Trustee officer or employee to be a breach of trust.

19. FIRST TRUSTEES

It is acknowledged that the First Trustees will hold office only until an election of Trustees can be held in accordance with Rule 2 of the Schedule which shall be no later than 31 July 1993. The First Trustees shall be entitled to exercise only those powers of Trustees specified in Clause 8 as shall be necessary to enable the First Trustees to hold the election and shall not be required to comply with the duties of Trustees specified in Clause 12. The Company hereby agrees to provide any funds necessary to enable the First Trustees to hold such election.

IN WITNESS WHEREOF THIS Deed has been executed the day and year first hereinbefore written.

SIGNED by **WILLIAM DAVID
MILNER AND JOHN AITCHISON
BECK** as Trustees in the presence of:

etc. seq.

THE COMMON SEAL of)
NORTHPOWER LIMITED)
as Settlor was hereunto affixed)
in the presence of:)

Director

Director/Secretary

NORTHPOWER ELECTRIC POWER TRUST

SCHEDULE 1

**RULES GOVERNING THE APPOINTMENT, RETIREMENT
AND PROCEEDINGS OF THE TRUSTEES**

1. INTERPRETATION

These Rules are those referred to in Clause 7 of the Deed and accordingly:

- 1.1 Terms in these Rules to which are ascribed special meanings in the Deed have the meanings so ascribed to them, unless otherwise provided or the context otherwise requires.
- 1.2 These Rules shall be construed subject to the provisions of the Deed, and in the case of conflict between the provisions of these Rules and those of the Deed the provisions of the Deed shall prevail.

PART 1 - CONSTITUTION OF THE TRUSTEES

2. APPOINTMENT OF TRUSTEES

- 2.1 The First Trustees shall retire from office no later than 31 July 1993.
- 2.2 Immediately upon receipt of the approval by the Minister to the establishment plan of the Company, the First Trustees shall arrange an election of Trustees. The roll to be used for the purposes of this election shall be that used at the Local Authority election to be held on 10 October 1992 and such election shall be held by a postal vote. The Trustees so elected shall hold office until the date of the next election of Trustees and the second and all subsequent elections are to be held within two calendar months of and held in a similar manner as the triennial general election of the members of Local Authorities determined generally in accordance with the provisions of the Local Elections and Polls Act 1976.
- 2.3 The election to be held in accordance with Rule 2.2 and all subsequent elections shall be carried out on the following basis:
 - (a) nominations for appointment as a Trustee shall be invited from the public immediately upon receipt of the ministerial approval in the case of the first election, and no later than three months prior to each subsequent election in the case of the second and following elections; and
 - (b) voting shall be carried out in accordance with existing local authority boundaries so that the Electors in the Kaipara district vote for two Trustees and the Electors in the Whangarei district vote for 5 Trustees.

2.4 Notwithstanding the manner of election of any of the Trustees, each Trustee shall represent the interests and act in the interests of all of the beneficiaries of the Trust Fund.

2.5 If at any time the local authority boundaries shall be altered, the Trustees shall make such changes to the manner of electing Trustees as shall be necessary to ensure that the objective of providing all Electors with a fair representation with respect both as to population and to the extent of the area covered is maintained.

2.6 The following persons may not hold office as a Trustee:

- (a) a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled;
- (b) a person who has been convicted of any offence punishable by a term of imprisonment of 2 or more years;
- (c) a person who has been convicted of any offence punishable by imprisonment for a term of not less than two years and has been sentenced to imprisonment for that offence;
- (d) a person to whom an order made under section 189 of the Companies Act 1955 applies;
- (e) a person who is mentally disordered within the meaning of the Mental Health Act 1969;
- (f) a person who is not a parliamentary elector for the purposes of the Electoral Act 1956;
- (g) a person who is holding office as a director of or is employed by the Company;
- (h) a person who does not reside in the District;
- (i) a person who is not a Consumer or an Elector.

2.7 The number of Trustees shall be seven.

2.8 Where by reason of any vacancy, the number of Trustees is reduced below seven the remaining Trustees may appoint some other eligible person to be a Trustee for the balance of the term of office.

3. TERM OF OFFICE

Trustees (including the First Trustees) shall (subject to the provisions of Rule 8) hold office for a term from the date of their appointment or election until the date of the next election which shall be within two calendar months of the triennial general election of members of local

authorities determined in accordance with the provisions of the Local Elections and Polls Act 1976.

4. REMUNERATION AND EXPENSES OF TRUSTEES

4.1 Remuneration: The Trustees shall be entitled in each Financial Year to such remuneration for their services as Trustees as may be reasonable having regard to their duties and responsibilities.

4.2 Expenses: The Trustees shall be entitled to be indemnified by and reimbursed for any expenses incurred by them in the exercise of their powers and duties under this Deed.

4.3 Payments to be made from Trust Funds: The payments of remuneration and expenses to the Trustees pursuant to Rule 4.1 or Rule 4.2 shall be paid out of the Trust Fund provided however that pending receipt of any income by the Trust the directors of the Company may advance sums to the Trust which sums shall be repaid immediately upon receipt by the Trust of any income.

5. DELEGATION BY TRUSTEES

Any Trustee may, in any of the circumstances permitted by section 31 of the Trustee Act, exercise the powers under that section of delegating to any person, who has been approved by the other Trustees, during any period for which that Trustee may be absent from New Zealand or incapable of performing his or her duties as a Trustee, all or any trusts powers authorities and discretions vested in him or her as a Trustee of the Trust.

6. CHAIRPERSON

The Trustees may elect a chairperson at their meetings and determine the period for which the chairperson is to hold office. The chairperson (or in the absence of the chairperson, a Trustee elected by the meeting) shall take the chair at all meetings of the Trustees and shall have a casting as well as a deliberative vote.

7. QUORUM

A quorum at meetings of the Trustees shall be that whole number which is equal to or is next above 60% of the number of Trustees holding office.

8. CESSATION OF TRUSTEESHIP

A Trustee shall cease to hold office if such Trustee:

8.1 by notice in writing to the secretary of the Trust or if there is no secretary to the then chairman, resigns his or her office;

8.2 refuses to act;

- 8.3 becomes of unsound mind or becomes a protected person under any statute for the time being in force;
- 8.4 becomes bankrupt or enters into a composition or assignment for the benefit of his or her creditors;
- 8.5 is absent without leave from three consecutive ordinary meetings of the Trustees.
- 8.6 is convicted of any indictable offence.

9. RECORDING OF CHANGE OF TRUSTEES

Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be entered in the minute book of the Trust.

10. VALIDITY OF PROCEEDINGS

All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall (notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified) be as valid as if such person had been duly appointed and was qualified to be a Trustee.

11. RESCISSION OR VARIATION OF RESOLUTIONS

Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at any ordinary or special meeting.

PART II - ADMINISTRATIVE PROVISIONS

12. ORDINARY MEETINGS

The Trustees shall meet at such intervals as they deem appropriate to the conduct of the affairs of the Trust.

13. SPECIAL MEETINGS

Three Trustees may at any time summon a special meeting for any reason deemed by them to justify the same.

14. NOTICE OF MEETINGS

Notice in writing of every meeting whether ordinary or special shall be delivered or sent by post to each Trustee by the secretary (or other person acting under the direction of the Trustees) or (in the case of a special meeting) by or under the direction of the persons summoning it at least 7 days before the date of the next meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

15. CONTENT OF NOTICE

Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a special meeting shall state the matters to be discussed at that meeting. Notice of any general or special meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgement or waiver.

16. ADJOURNMENT

If a quorum is not present within thirty minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. Any meeting may be adjourned by the chairperson upon the adoption of a resolution for its adjournment.

17. COMMITTEES

The Trustees may from time to time appoint any one or more members of their body to be a committee for making any inquiry, for superintending or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function which in the opinion of the Trustee will further the purposes and objects of the Trust. Subject to these Rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure so that a quorum at any meeting of the committee shall comprise a majority of its members for the time being.

18. MINUTES

18.1 A Minute Book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the Minute Book.

18.2 Any such minute if purporting to be signed by the chairperson of the meeting at which the proceedings were had or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.

18.3 Where minutes have been made in accordance with the provisions of this Rule of the proceedings at any meeting of Trustees then until the contrary is proved the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly convened.

19. RESOLUTIONS IN WRITING

A resolution in writing signed by all the Trustees or by all the members of a committee shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee as the case may be duly convened, held and constituted. Such resolution may consist of several documents in the form, each signed by one or more of the Trustees or members of the committee, as the case may be.

20. MEETINGS BY TELEPHONE

For the purposes of these Rules the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") not less than a quorum together with the secretary or a person acting secretarially shall be deemed to constitute a meeting and all

the provisions in these Rules as to meetings shall apply to such meetings by telephone so long as the following conditions are met:

- 20.1** All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of such meeting may be given by telephone;
- 20.2** Each of the participants taking part in the meeting by telephone, and the secretary or person acting secretarilly, must be able to hear each of the others taking part at the commencement of the meeting;
- 20.3** At the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;
- 20.4** A participant not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the chairperson to leave the meeting as aforesaid;
- 20.5** A minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting and by the secretary or person acting secretarially.

21. BANK ACCOUNTS

Bank accounts in the name of the Trust shall be opened and kept with a bank or banks to be from time to time selected by the Trustees. All sums of money received on account of the Trust shall be forthwith paid into the credit of such account or accounts unless otherwise expressly ordered by the Trustees. All negotiable instruments and all receipts for money paid to the Trust shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Trustees from time to time determine.

22. EXECUTION OF DOCUMENTS

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two Trustees and countersigned by the secretary or by another Trustee or any other person approved by the Trustees for the purpose.

23. GENERAL POWERS

Subject to the provisions of the Deed and of the preceding Rules the Trustees shall have the power to do all acts and things which they may consider proper or advantageous for accomplishing the purposes and objects of the Trust.

PART III - AMENDMENT TO RULES

24. AMENDMENTS

- 24.1** The Rules set forth in Part I of the Schedule being rules relating to the constitution of the Trustees shall not be rescinded amended or added to otherwise than by resolution of the Trustees passed by the affirmative vote of not less than six of the Trustees.
- 24.2** The Rules set forth in Part II of the Schedule being administrative provisions may be rescinded, amended or added to by resolution of the Trustees.
- 24.3** No such resolution shall be effective unless notice thereof shall have been given in the notice convening the meeting and no such rescission, amendment or addition shall conflict with any of the provisions of the Deed or the Act.

NORTHPOWER ELECTRIC POWER TRUST

SCHEDULE 2

PUBLIC CONSULTATIVE PROCEDURE

In respect of any provision of this Deed which requires the Trustees to implement a Public Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to the public in accordance with Clause 13 of the Deed;
- (c) In every notice given under paragraph (b) of this Schedule, specify a period within which persons interested in the proposal may make submissions on the proposal to the Trustees and to the directors of the Company;
- (d) Ensure that any person who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this Schedule is given a reasonable opportunity to be heard by the Trustees;
- (e) Ensure that every meeting at which submissions are heard or at which the Trustees deliberate on the proposal are open to the public;
- (f) Make all written submissions on the proposal available to the public; and
- (g) Ensure that the final decision in relation to the proposal is made at a meeting of the Trustees which is open to the public.

The period specified pursuant to paragraph (c) above shall be not less than one month and no more than three months.