



TRUST DEED
AS AT 2 AUGUST 2002

Dated 1 August 1994

**BAY OF PLENTY ELECTRICITY
LIMITED**

EASTERN BAY ENERGY TRUST

DEED OF TRUST

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BAY OF PLENTY ELECTRICITY CONSUMER TRUST

DEED OF TRUST

DEED dated the first day of August 1994

BETWEEN BAY OF PLENTY ELECTRICITY LIMITED at Whakatane (the Company)

AND **JAMES DESMOND BUTLER**
 MALCOLM EDWARD LAW
 JAMES HENRY PARKINSON
 BRIAN EDWIN PONTING
 JAMES DAVID STEELE

(together with their successors in office 'Trustees')

RECITALS:

- A. Pursuant to the Act the Minister of Energy has approved the establishment plan prepared and submitted in respect of the Company which establishment plan provides for the allocation of shares in the Company to the Trustees upon the terms set out in this Deed.
- B. In order to give effect to the establishment plan the Company wishes to establish a consumer trust for energy related purposes or objects within the District.
- C. It is contemplated that further donations and grants may be made to the Trust.
- D. The Company records its direction to the Trustees the Company's wish that the Trust Fund be applied for purposes which are energy related having regard to the general intention of the establishment plan.

OPERATIVE PART:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed unless the context otherwise requires:

'**Act**' means the Energy Companies Act 1992:

'**Balance Date**' means 31 March or any other date adopted from time to time by the Company as the end of its Financial Year;

'**Chairperson**' means the Trustee elected as chairperson pursuant to rule 4 of Schedule I;

'**Company**' means Bay of Plenty Electricity Limited and includes:

- (a) any successor company or any company arising out of any reconstruction, amalgamation, merger or takeover of the Company; and
- (b) any successor company or any company arising out of any reconstruction, amalgamation, merger or takeover of the Company referred to in paragraph (a).

'Consumers' means the persons who, at any appropriate date or dates designated by the Trustees from time to time as persons whose premises are directly connected to the Electricity Distribution Network and who are either:

- (a) liable (whether alone or jointly with any other person) for the payment of any amount payable for electricity conveyed to such person over the Electricity Distribution Network or for services in relation to the Electricity Distribution Network; or
- (b) persons who are end customers of any Electricity Supply Business that is liable for payments for services in relation to the Electricity Distribution Network,

provided that no person who qualifies as a "Consumer" under the preceding paragraphs shall be a "Consumer" if that person irrevocably advises the Trustees in writing that such person does not wish to be a "Consumer" for the purposes of this Deed. It is acknowledged that an Electricity Supply Business shall not be deemed to be a "Consumer" except to the extent that it is itself a consumer of such electricity as opposed to a seller of such electricity.

'Deed' means this deed and includes the Schedules and any amendments;

'Deputy Chairperson' means the Trustee elected as deputy chairperson pursuant to rule 4 of Schedule I.

'District' shall have the meaning ascribed to that term in clause 6;

'Electricity Act' means the Electricity Act 1992 including any subsequent amendments to this act;

'Electricity Distribution Network' means the electricity distribution network vested in Bay of Plenty Electricity Limited (now called Horizon Energy Distribution Limited) by the Energy Companies (Bay of Plenty Electricity Limited) Vesting Order 1994, as that electricity distribution network is varied from time to time, provided that the electricity distribution network shall not include any part of it not situated in the District.

'Electricity Supply Business' has the same meaning set out in the Electricity Industry Reform Act 1998.

'Energy Related Purposes' means Purposes which relate to some aspect of the beneficial use, application or enjoyment in the District of New Zealand's energy resources including:

- (a) Improvements to the safety of the general public by removing road and overhead hazards caused by above ground electricity supply support systems in the District;

- (b) Improvements to the supply of electricity to the general public in rural or remote areas in the District by replacing, inadequate or unreliable supply systems.
- (c) Avoiding, remedying or mitigating any adverse effects of energy related activities in the District on the Environment;
- (d) Promoting research into more efficient ways of producing and distributing electrical energy for the benefit of the general public in the District including the awarding of research scholarships or prizes and the funding of research and development projects;
- (e) The provision of financial assistance to persons in the District to enable them to make better use of energy resources available to them or to subsidise the cost to such persons of existing supplies of energy;
- (f) Acquiring equity in the Company up to a maximum of 25% of the Issued Capital of the Company.

Environment shall have the meaning ascribed to that term in the Resource Management Act 1991;

Financial Year means any year or other accounting period ending on a Balance Date;

Month means a calendar month;

persons includes any individual, corporation, partnership, joint venture, association, trust, organisation, government department or local authorities;

Secretary means the person appointed pursuant to rule 18 of Schedule I;

Shares means shares in the capital of the Company held by the Trustees as part of the Trust Fund;

Special Resolution means a resolution of Trustees passed by not less than seventy five per cent (75%) of the Trustees in New Zealand and its territories at the time the Special Resolution is passed;

Subsidiary means a subsidiary of the Company as defined by section 158 of the Companies Act 1955, and any other company in which the Company holds shares;

Treasurer means the person appointed pursuant to rule 18 of Schedule I;

the Trust means the Bay of Plenty Electricity Consumer Trust established by this Deed;

Trustees means the trustees for the time being of the Trust;

Trust Fund means all the finds of the Trust and includes all capital and income for the time being held by the trustees of the Trust;

Vesting Date means the date appointed by the Governor-General pursuant to section 47 of the Act in relation to the Bay of Plenty Electric Power Board.

1.2 **Construction:**

In this Deed, unless the context otherwise requires:

- references to one gender include the other gender;
- references to the singular include the plural and vice versa;
- the headings and the index shall not affect the construction of the Deed;
- references to clauses are references to clauses of the Deed and references to schedules are references to Schedules to this Deed;
- 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;
- 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.

2. **NAME OF THE TRUST**

The trust shall be known as the **BAY OF PLENTY ELECTRICITY CONSUMER TRUST** or by such other name as the Trustees may determine from time to time.

3. **DECLARATION OF TRUST**

The Company hereby declares that the Trustees shall stand possessed of the sum of \$100 settled by the Company upon the Trust contemporaneously with the execution of this Deed and all other monies or property or whatever kind hereafter paid, given, or transferred to, vested in, or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees to be held upon the trusts hereby declared and any accumulations of income therefrom and all monies, investments and property of whatever kind from time to time representing the same upon the trusts and for the purposes and with the power, authorities and discretions set out in this Deed.

4. **PURPOSE OF THE TRUST**

The Company has established the Trust to enable the Trustees to apply the Trust Fund for or towards energy related purposes for consumers.

5. **APPLICATION OF INCOME AND CAPITAL**

5.1 The Trustees shall stand possessed of the capital and income of the Trust Fund **UPON TRUST** to apply the same at such time or times as they may in their absolute discretion think fit for all or any one or more of the Energy Related Purposes and without limitation to the generality of this Clause it is hereby declared that the trustees may;

- (a) Pay from and out of the income or capital of the Trust Fund all fees, costs and disbursements of and incidental to the administration of the Trust Fund

(b) In arriving at the nett income of the Trust Fund or deciding what income is available for distribution to or among the Energy Related Purposes to deduct or set aside or make such other provision as the Trustees may think necessary for the purposes or repaying or reducing any mortgage or other indebtedness liability or encumbrance incurred or owing or that may in future be incurred or become owing in respect of the Trust Fund or any part thereof or any property comprised therein or by the Trustees hereof and any such amount so set aside deducted or otherwise provided shall if the Trustees shall so decide cease to be regarded as income and shall be deemed to be added to the capital of the Trust Fund. In the like manner the Trustees may set aside and deduct such sum as they may think fit to allow for depreciation of any building other erections or any plant machinery or other assets comprised in the Trust Fund and further in the like manner the Trustees may set aside such sums or make such other provision as the Trustees may think fit for a reserve against losses and contingencies and may write off losses from time to time or resort to the reserve fund in mitigation of losses or for any Energy Related Purpose. Any deduction setting aside or other provision made by the Trustees under this sub-clause may be made in such manner and on such terms and conditions in all respects as the Trustees may in their absolute discretion think fit and may be applied to the purposes aforesaid at such times and in such manner as they think fit or if not so applied may be treated as income available for distribution at such times as they may think fit.

6. DISTRICT

For the purposes of this Deed 'District' means the territory over which the Bay of Plenty Electric Power Board was authorised to supply electricity pursuant to the Bay of Plenty Electric Power Board Electricity Supply Licence 1989.

7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES

The rules set forth in Schedule I hereto (with such amendments, deletions and additions thereto as may be permitted by this Deed or at law) shall govern the appointment, retirement and proceedings of the Trustees and associated matters.

8. TRUSTEES' POWERS

- 8.1 Subject to the express terms of this Deed (and without limiting the generality of the foregoing) the Trustees shall have in relation to the Trust Fund and the income arising from the Trust Fund all the same powers as a natural person acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.
- 8.2 Without limiting the generality of the preceding paragraph and merely by way of example the Trustees shall have the powers set out in Schedule II to this Deed which may be exercised either alone or jointly with any other person.
- 8.3 Notwithstanding clause 8.1, the Trustees shall not dispose (whether legally or beneficially) of any interest in the Shares unless the disposal has been approved by a Special Resolution of the Trustees.
- 8.4 Notwithstanding the provisions of section 13C of the Trustee Act 1956 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, the care diligence and skill to be exercised by the Trustees in

exercising any power or investment shall not be that required of such persons by section 13C of the Trustees Act 1956 but, subject always to clause 14, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund are not diversified.

- 8.5 Subject to clause 14 but notwithstanding anything else 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 of 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.

9. DUTIES OF THE TRUSTEES

The Trustees shall:

- (a) ensure that full and correct records and accounts of all the financial transactions of the Trust and its assets, liabilities and funds are kept;
- (b) ensure that the preparation of financial statements complies with section 158A of the Electricity Act and make audited financial statements available to the public in accordance with section 158B of the Electricity Act;
- (c) ensure that an auditor is appointed in accordance with sections 158C and 158E of the electricity Act;
- (d) ensure that the financial statements are audited
- (e) comply with the Electricity Industry Reform Act 1998.

10. REMUNERATION AND EXPENSES OF TRUSTEES

- 10.1 (a) Subject to the proviso below and to clause 11 below any Trustee hereof who shall be employed in connection with the trusts hereof may be paid all such remuneration for their services as may be normal as if they had been employed in that behalf and had not been a Trustee hereof.
- (b) Subject to the proviso below the Trustees (other than Trustee remunerated pursuant to clause 10.1(a) to the extent that such remuneration covers services to which this clause 10.1(b) applies) shall be entitled in each Financial Year to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees. Such remuneration is not to exceed the maximum remuneration payable from time to time in accordance with Part IVc of the Local Government Act 1974 to members of community boards with the community population exceeding 50,000 and otherwise to be subject to the same conditions that are imposed pursuant to Part IVc of the Local Government Act 1974 in respect of the payment of meeting allowances to such members of community boards.

PROVIDED THAT no Trustee shall in any way (whether directly or indirectly) materially influence the determination of any income, benefit or advantage that he or she may receive from the business operations of the trust.

- 10.2 The Trustees shall be entitled to be indemnified against, and reimbursed for, any expense incurred by them in the exercise of their powers and duties under this Deed.
- 10.3 The payments of remuneration and expenses to the Trustees pursuant to rule 10.1 or rule 10.2 shall be paid out of the Trust Fund or any other fund available for that purpose.

11. VARIATION OF THE TRUST

- 11.1 The Trustees shall have the power by Special Resolution of which shall have been given in the notice convening the meeting to:
- (a) rescind amend or add to the rules set forth in Schedule I provided that no rescission amendment or addition shall conflict with any of the provisions of the operative Part of this Deed or Schedule II; and provided further that such rescission amendment or addition shall have first been approved by the Company.
 - (b) amalgamate and merge the Trust with any other trust created to give effect to an establishment plan under the Act and agree to any changes to the provisions of this Deed necessary or desirable to enable to facilitate such amalgamation and merger. The Trustees may transfer all the property of the Trust to such amalgamated and merged trust and upon such transfer the Trustees shall be released and discharged from any further obligation as Trustees in respect of the property of the Trust so transferred.

12. TERMINATION OF TRUST

- 12.1 Subject to Clause 13.2 below the termination date of the Trust will be 1 October 2074 or an earlier date if at any time the Trust holds less than 5% of the issued capital of the Company.
- 12.2 Within five years of the commencement of this trust the Trustees shall meet with the directors of the Company to discuss the continuing need for this Trust.

13. WINDING UP

- 13.1 The Trust may be wound up on a unanimous resolution of all the Trustees at a meeting of the Trustees called for that purpose on not less than thirty days prior written notice.
- 13.2 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 Energy Related Purposes.

14. LIABILITY

- 14.1 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 that Trustee's own dishonesty or to the wilful commission by the Trustee of an act not known by that Trustee to be a breach of trust. 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.

14.2 Each Trustee shall be chargeable only for such moneys as shall have actually been received by that Trustee although that Trustee may have joined in any receipt for money received by any other Trustee. No Trustee shall 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 deficiency of any security upon which any trust money or any part thereof may be invested or for any loss in the execution of any trust unless the same shall happen through his or her neglect or default.

15. **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 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 also in respect of any expenses incurred by the Trustee in the management and administration of the Trust Fund unless such loss or liability is attributable to such Trustee's dishonesty or to the wilful commission by such Trustee of an act known by the Trustee to be a breach of trust or to the wilful omission by such Trustee of any act when that omission is known by such Trustee to be a breach of trust.

16. **NOTICES**

16.1 Notices or documents to be given to the Trustees pursuant to this Deed shall be in writing signed by the person giving the notice and served at the office of the Trust.

16.2 Any notice or document given pursuant to clause 16.1 shall be deemed to be duly given or made:

- (i) if delivered by hand, when so delivered;
- (ii) if sent by facsimile, when receipt is confirmed;
- (iii) if sent by post, on the third working day after posting.

EXECUTED AS A DEED

THE COMMON SEAL of
BAY OF PLENTY ELECTRICITY
LIMITED was affixed in the
presence of:

Signature of Authorised Person

Signature of Authorised Person

Name of Authorised Person

Name of Authorised Person

Office Held

Office Held

SIGNED by [M.E. Law] in
the presence of:

Signature of Witness

Signature of [M.E. Law]

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by [J.D. Butler] in
the presence of:

Signature of Witness

Signature of [J.D. Butler]

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by [J.H. Parkinson] in
the presence of:

Signature of Witness

Signature of [J.H. Parkinson]

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by [B.E. Ponting] in
the presence of:

Signature of Witness

Signature of [B.E. Ponting]

Name of Witness

Occupation of Witness

Town of Residence

SIGNED by [J D Steele] in
the presence of:

Signature of Witness

Signature of [J D Steele]

Name of Witness

Occupation of Witness

Town of Residence

**SCHEDULE I - RULES GOVERNING THE APPOINTMENT, RETIREMENT AND
PROCEEDINGS OF THE TRUSTEES**

DATE: 25 JULY 2002

OPERATIVE DATE: These rules shall take effect from 2 August 2002 and shall supersede any previous rules

1. NUMBER OF TRUSTEES

- 1.1 The number of Trustees shall be not less than four (4) nor more than six (6) and shall consist of four (4) Elected Trustees and two (2) Appointed Trustees. **PROVIDED THAT** if at any time there are less than four (4) Trustees in office the remaining Trustees shall be entitled to act until the number of Trustees is restored to the minimum number and no act or decision of the Trustees shall be in question on such account.
- 1.2 One Elected Trustee shall reside within the boundaries of the Kawerau District Council, one Elected Trustee shall reside within the boundaries of the Opotiki District Council, and two Elected Trustees shall reside within the boundaries of the Whakatane District Council or in Kaingaroa Village.
- 1.3 The Elected Trustees as at the date of these rules are Toni Catherine Owen, Henry James Towersey, Brian Edwin Ponting & Malcolm Edward Law (*"First Elected Trustees"*). The First Elected Trustees, shall appoint the first Appointed Trustees in the manner specified in rule 5.

2. ELIGIBILITY

- 2.1 The following persons shall not be eligible for election or appointment as a Trustee and 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, or to any order under section 111 of the Insolvency Act 1967;
 - (b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;
 - (c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
 - (d) a person who is prohibited from being a director or promoter of, or in any way directly or indirectly being concerned or take part in the management of, a company under section 382 of the Companies Act 1993 ;
 - (e) a person who is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
 - (f) a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988;

- (g) a person who is a director or an Employee of an Electricity Company; and
- (h) a person who is employed in a senior management position, or is an elected member, of any Territorial authority or Regional council within the District. For the purposes of Rule 2.1(h) a person who is employed in a senior management position of any Territorial authority or Regional council is defined as an employee who reports directly to a Territorial authority or Regional council or to the chief executive of the Territorial authority or Regional council.

2.2 A person shall not be disqualified from appointment as a Trustee and may continue to hold that office:

- (a) in any case to which rule 2.1(b) applies, until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;
- (b) in any case to which rule 2.1(c) applies, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined.

2.3 During any appeal period with respect to clause 2.2 above, the Trustee shall be deemed to have taken leave of absence and shall not be capable of acting as a Trustee. If the conviction or sentence of imprisonment (as the case may be) is not upheld the Trustee shall be immediately reinstated. If the conviction or sentence (as the case may be) is upheld the disqualification as Trustee shall take immediate effect.

3. **TERM OF OFFICE**

3.1 A Trustee shall cease to hold office if:

- (a) the Trustee resigns by written notice to the Trustees; or
- (b) the Trustee becomes ineligible for election or appointment as a Trustee pursuant to rule 1.2 or rule 2.1; or
- (c) the Trustee dies while holding office as a Trustee; or
- (d) the Trustee is an Elected Trustee and not re-elected by Consumers pursuant to rule 4; or
- (e) the Trustee is an Appointed Trustee and has completed their two year term as provided for in rule 5.2, and has not been re-appointed by the Trustees.

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

4. **ELECTIONS OF TRUSTEES**

4.1 Other than the First Elected Trustees as set out in rule 1.3, the Consumers shall elect the Elected Trustees in accordance with rules 4.4 and 4.5 at an election.

4.2 The first election shall take place on 1 October 2003. Subsequent elections shall occur biennially thereafter on the nearest working day to the 1st day of October ("*Election Date*").

- 4.3 If an Elected Trustee is retiring from office at an election, that Elected Trustee shall continue in office until the declaration of the result of the election.
- 4.4 In accordance with rule 4.5, at each election two of the Elected Trustees for the time being shall retire from office.
- 4.5 At the election in 2003 the two Elected Trustees representing the Kawerau District Council and Opotiki District Council areas shall retire from office. At the election in 2005 the two Elected Trustees representing the Whakatane District Council area and Kaingaroa shall retire from office. Future Elected Trustees shall retire in the same order so that at any one election the Elected Trustees appointed from the Kawerau District Council and Opotiki District Council areas shall retire from office at the same time and the Elected Trustees appointed from the Whakatane District Council and Kaingaroa areas shall retire from office at the subsequent election.
- 4.6 A retiring Elected Trustee is eligible for re-election.
- 4.7 The election procedure shall be by a postal ballot of all Consumers entitled to vote in accordance with this rule 4. The Trustees shall determine how the postal ballot is to be carried out.
- 4.8 The following provisions shall govern eligibility to vote in an election of Trustees:
- (a) each Consumer shall be entitled to one vote for each premise of the Consumer that is connected to the Electricity Distribution Network provided that no Consumer shall be entitled to more than five votes;
 - (b) Consumers which are not natural persons shall be entitled to exercise their vote through an authorised representative (who may also be a Consumer who is entitled to exercise a personal vote); and
 - (c) Consumers whose premise connection to the Electricity Distribution Network is in a particular geographical area as defined in rule 1.2 shall only be entitled to vote for the Trustee or Trustees representing that area.
- 4.9 An election shall not be invalidated by virtue of any irregularity having occurred prior to the voting, or by reason of any failure to comply with these rules as to the conduct of the election or as to the counting of the votes, if it appears to the Trustees upon investigation that the election was conducted generally in accordance with the principles laid down in these rules and that the irregularity, failure, or mistake, did not affect the result of the election.
- 4.10 Any casual vacancy in the number of Elected Trustees must be filled by Special Resolution of the continuing Trustees within three months of the vacancy occurring, but the new appointee shall hold office only for the residue of the term of office of the Trustee whose place is being taken.
- 5. APPOINTMENT OF TRUSTEES**
- 5.1 The Trustees shall, by Special Resolution, appoint two Appointed Trustees, except that no Appointed Trustee shall take part in an appointment procedure in which they are available for appointment.
- 5.2 Appointed Trustees shall be appointed for a two-year term and shall be eligible for reappointment, but subject to rule 3.1 the first Appointed Trustee shall hold office until

1 May 2004 and the next Appointed Trustee shall hold office until 1 May 2005. Appointed Trustees shall thereafter be subject to retirement by rotation in accordance with rule 5.3 below.

- 5.3 One Appointed Trustee shall retire from office on 1 May each year commencing on 1 May 2004 and shall be eligible for reappointment for a further two year term. The Appointed Trustee to retire each year shall be the Appointed Trustee who has been longest in office since his or her last appointment. In the case of a Trustee appointed in terms of rule 5.6, for the purposes of this rule only, his or her appointment date shall be deemed to be the date of appointment of the Appointed Trustee whose cessation of appointment created the casual vacancy.
- 5.4 In selecting a Trustee for appointment as an Appointed Trustee, Trustees will attempt to achieve a balance of experience and skills on the Trust. Trustees shall take reasonable steps to ensure that the Appointed Trustees shall be:
- (a) capable of representing the interests of the District as a whole; and
 - (b) persons who are likely to ensure that the purposes of the Trust are attained; and
 - (c) persons who have recognised business and/or commercial ability; and
 - (d) persons who are not Associated Persons of any Trustee as defined under the Securities Act 1978 .
- 5.5 Subject to the express requirements of these rules the procedure for selection and appointment of the Appointed Trustees shall be as determined by the Trustees.
- 5.6 Any casual vacancy in the number of Appointed Trustees shall be filled by Special resolution of the continuing Trustees within three months of the vacancy occurring, but the new appointee shall hold office only for the residue of the term of office of the Trustee whose place is taken.

6. **CHAIRPERSON AND DEPUTY CHAIRPERSON**

The Trustees shall elect a Chairperson and Deputy Chairperson who shall also be Trustees at the first Trustees' meeting after the Annual Meeting, and at any other time when either position becomes vacant.

7. **QUORUM**

Subject to the provisions of rule 1.1, a quorum at meetings of the Trustees shall comprise four (4) Trustees of whom at least one shall be an Appointed Trustee.

8. **VALIDITY OF PROCEEDINGS**

All acts 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.

9. **RESCISSION OR VARIATION OF RESOLUTIONS**

Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at any subsequent meeting by the same majority as was necessary to pass the resolution being rescinded or varied.

10. **MEETINGS**

10.1 **Annual Meeting of Trustees**

- (a) Within six (6) months of the end of each Financial Year the Trustees shall hold an annual meeting.
- (b) The Secretary shall give no less than thirty (30) days notice in writing of the annual meeting to the Trustees and such notice shall specify the date, time and place of the annual meeting.
- (c) The business to be transacted at the annual meeting shall be the receipt of the annual report, financial statements and the presentation of a Business Plan for the following year and of a draft Business Plan for the next subsequent year. Any other business shall be deemed special business and shall be dealt with in accordance with rule 10.1(d).
- (d) Notice in writing of any special business shall be given to the Secretary no less than twenty-one (21) days prior to the annual meeting. The Secretary shall circulate an agenda, including all special business, to the Trustees no later than fourteen (14) days prior to the annual meeting.
- (e) The Trustees shall give Consumers not less than fourteen (14) days prior notice of the time, place, date and agenda of the annual meeting by an advertisement placed in the news section of two (2) separate editions of each newspaper that is widely read by consumers in the District.
- (f) Consumers shall be entitled to attend and speak at the annual meeting but shall not be entitled to vote at such meetings.

10.2 **Annual Meeting of Beneficiaries**

- (a) The Trustees shall in accordance with section 158C of the Electricity Act 1992 hold an annual meeting of beneficiaries at which the beneficiaries shall appoint an auditor of the Trust.
- (b) The annual meeting of beneficiaries shall be conducted in accordance with section 158D of the Electricity Act 1992 and shall be held immediately following the annual meeting of Trustees.
- (c) Any proceedings prescribed in regulations promulgated pursuant to section 172C Electricity Act 1992 shall apply to the annual meeting of beneficiaries.

10.3 **Other Meetings of Trustees**

- (a) The Chairperson or in his or her absence the Deputy Chairperson, or any three (3) or more Trustees may at any time summon a meeting of Trustees.

- (b) The Trustees shall otherwise meet at such times and places as they may agree, to dispatch the business of the Trust. The Trustees shall be entitled to develop standing orders for the conduct of such meetings.

11. NOTICE OF MEETINGS

Subject to rule 12, notice in writing of every meeting shall be delivered or sent by post, facsimile or email to each Trustee by the Secretary or other person acting under the direction of the Trustees. At least seven (7) working days notice of any meeting summoned by any three (3) or more Trustees pursuant to rule 10.3(a) shall be given to each Trustee. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

12. CONTENT OF NOTICE

Every notice of meeting shall state the place, day and hour of the meeting and every notice of a meeting summoned by three (3) or more Trustees pursuant to rule 10.3(a) shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgment or waiver.

13. COMMITTEES

- 13.1 The Trustees may from time to time appoint any one or more Trustees to be a committee for:
- (a) making any inquiry;
 - (b) considering, supervising or transacting any business of the Trust;
 - (c) the investment and management of the Trust Funds or any part thereof, or
 - (d) the performance of any duty or function which in the opinion of the Trustees will further the purposes and objects of the Trust.
- 13.2 Subject to these rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

14. VOTING

- 14.1 Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present and eligible to vote.
- 14.2 In the event of an equality of votes the Chairperson of the meeting shall have a casting vote in addition to his or her deliberative vote.

15. INTERESTED PARTIES

- 15.1 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.
- 15.2 A Trustee required to disclose an interest by rule 15.1 may be counted in a quorum present at a meeting only for the purposes of enabling the meeting to proceed but

shall not vote in respect of the matter in which the Trustee is interested 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.

- 15.3 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 the Chairperson's ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interest of the Trustee concerned has not been fairly disclosed.

16. **MINUTES**

- 16.1 A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book.
- 16.2 Minutes signed by the Chairperson of the meeting at which the proceedings of the meeting at which the minutes were taken, or by the Chairperson of the next succeeding meeting, shall be evidence of the proceedings.
- 16.3 Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting will be deemed to have been duly conducted.

17. **RESOLUTIONS IN WRITING**

A resolution in writing, signed by a majority of the Trustees is as valid and effective as if passed at a meeting of Trustees provided that the Trustees signing or assenting to the resolution would constitute a quorum and would have power to pass the resolution at a meeting of Trustees. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed by one or more Trustees. A copy of any such resolution shall be entered in the minute book. The Secretary shall, within seven (7) days after any resolution is passed in accordance with this rule, send a copy of the resolution to each Trustee who has not signed or assented to the resolution.

18. **MEETINGS BY TELEPHONE**

- 18.1 Notwithstanding any other provision in the Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") being not less than a quorum, together with the Secretary or a person acting as a secretary, 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:
- (a) 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;
 - (b) each of the participants taking part in the meeting by telephone, and the Secretary or person acting as a secretary, must be able to hear each of the others taking part at the commencement of the meeting;

- (c) 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;
- (d) a participant may 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.

18.2 Minutes of the proceedings of 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 or by the Secretary or person acting as a secretary.

19. 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 (2) Trustees or any other person approved by the Trustees for the purpose.

20. SECRETARY AND TREASURER

20.1 The Trustees shall appoint from time to time a Secretary and a Treasurer who may be the same person but who shall not be a Trustee.

20.2 It shall be the duty of the Secretary to keep usual records of the business of the Trust and to notify Trustees of intended meetings and the business to be transacted at such meetings.

20.3 It shall be the duty of the Treasurer to keep usual and proper books of account and other financial records of the business of the Trust, to report to the Trustees from time to time on the finances of the Trust and to present annual financial statements for audit and for consideration by the Trustees.

21. DEFINITIONS

The following definitions are specific to these rules:

- (a) "*Elected Trustee*" shall mean a Trustee who meets the eligibility criteria set out in Rule 2 and is elected by Consumers in accordance with Rule 4;
- (b) "*Appointed Trustee*" shall mean a Trustee appointed by Special Resolution by the other Trustees in accordance with Rule 5;
- (c) "*Employee*" shall mean a person who:
 - (i) is a full time employee or a part time employee for at least 20 hours a week of an Electricity Company or of an independent contractor as defined in (ii) below; or
 - (ii) is an independent contractor having formal contracts to provide electrical, consulting or management services to one or more Electricity Companies and includes associated persons of that independent

contractor within the meaning of section GC14C(2) of the Income Tax Act 1994;

- (d) "*Electricity Company*" shall have the meaning ascribed to that term in the Electricity Industry Reform Act 1998;
- (e) "*Territorial authority*" shall mean a city council or a district council as defined in the Local Government Act 1974;
- (f) "*Regional council*" shall mean a regional council specified in Part 1 of First Schedule to the Local Government Act 1974;

SCHEDULE II - TRUSTEES' SPECIFIC POWERS

Subject to any express terms in this Deed limiting or restricting such powers, the Trustees shall have the power to:

- (a) Invest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability, in any property whether in New Zealand or overseas.
- (b) Sell all or any part of the property comprising the Trust Fund at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain owing as a debt to the Trust.
- (c) Retain property forming part of the Trust Fund.
- (d) Borrow moneys on such terms and subject to such conditions as the Trustees think fit.
- (e) Lease or take on lease or licence any property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.
- (f) Lend moneys on such terms and subject to such conditions as the Trustees think fit.

PROVIDED THAT the trustees shall not exercise the powers in sub-clauses (e) or (f) to lend money nor lease property or assets at less than current commercial rates, having regard to the nature and term of the loan or lease, to any person (as detailed in the Income Tax Act 1976):

- (i) who is a Company or Trustee of the trust; or
 - (ii) who is a shareholder or director of any company by which any business of the trust is carried on; or
 - (iii) who is a settlor or trustee of a trust that is a shareholder or any company by which any business of the trust is carried on; or
 - (iv) if that person or that company and the settlor or trustee or shareholder or director referred to in any of the foregoing paragraphs of this proviso are associated persons (as that term is defined in the Income Tax Act 1976).
- (g) Maintain manage repair improve and develop any property which or an interest in which for the time being forms part of the Trust Fund in such manner as the Trustees shall think fit.
 - (h) Employ and pay any person (including any Trustee) to do any act of whatever nature relating to the Trust including the receipt and payment of money **PROVIDED THAT ANY** Trustee hereof who shall be employed in connection with the trusts hereof may be paid all such remuneration for his services as may be normal as if he had been employed in that behalf and had not been a trustee hereof **PROVIDED THAT** no trustee shall in any way (whether directly or indirectly) materially influence or determine any income, benefit or advantage that he may receive from the business operations of the trust.
 - (i) Open an account or accounts at any time or times in any name or names and either on their own behalf or jointly with another at any bank and to overdraw any such

account with or without giving security and in addition to the powers conferred by section 81 of the Trustee Act 1956 to make arrangements with any Bank or any one or more of the following, namely, the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate upon any account at that Bank. 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.

- (j) Insure against loss or damage by any cause whatsoever any insurable property to any amount not exceeding the full insurable value thereof or the full replacement value thereof as the Trustees may in their absolute discretion from time to time think fit.
- (k) Enter into contracts of any nature whatsoever for the purposes of protecting maintaining or enhancing the value of all or any assets acquired or held by the Trustees or which the Trustees have the right to acquire or hold.
- (l) Delegate any of the powers and duties to any committee or committee consisting of such of the Trustees (or such other persons) as they may appoint for such purpose.
- (m) Subject to the provisions of this Deed, to exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any Shares forming part of the Trust Fund including to consider any recommendations made by the directors of the Company on any proposal relating to any reconstruction or amalgamation or merger of the Company or any Subsidiary or any modification of the rights of shareholders or any increase or reduction of capital or other dealing with the 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 in their absolute discretion will be for the benefit of or in the interests of the Trust Fund.
- (n) Make appointments to the Board of Directors of the Company in accordance with the powers conferred upon the Trustees by the Articles of the Company.
- (o) Invest the Trust Fund or any portion thereof in acquiring further shares of the Company, provided that more than 50% of the Consumers responding to a postal questionnaire shall give prior approval to any such acquisition.
- (p) Do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the general purposes of the Trust.