

**GIC RULINGS PANEL
BREACH NOTICES 2010-104 and 2010-152**

IN THE MATTER of breaches of the Gas (Downstream Reconciliation)
Rules 2008

BETWEEN Gas Industry Company Limited
Reporting Entity

AND E- Gas Limited and E-Gas 2000 Limited (E-Gas)
Participants to alleged breach

Before the Rulings Panel: The Honourable Sir John Hansen KNZM

Decision: **15 October 2010**

DECISION OF RULINGS PANEL

[1] The alleged breach arises from an audit initiated by GIC relating to discrepancies of gas allocation and unallocated gas. The alleged breach is said to be the failure of E-Gas to pay the audit fees pursuant to rule 75. E-Gas agreed to the matter being heard on the papers.

[2] E-Gas says that it is implied in the Rules that any costs should be reasonable and that the auditor has failed to take all reasonable steps to identify all material issues. They also submit that the audit costs should await the outcome of the penalty hearing on the substantive issues.

[3] The investigator maintains the rule is couched in mandatory terms but accepts the quantum of the audit fee should be reasonable. In her written submissions she sets out at length the reasons why the fees are reasonable. These include the fact that one of the auditors was nominated by E-Gas and also the fact that E-Gas congratulated GIC on the terms of

reference. She further submits that the real materiality here is E-Gas's under reporting and not its contribution to UFG per se.

[4] Rule 75, where relevant, reads:

75.2 In relation to an audit under rule 66, the following provisions apply:

75.2.1 If the auditor concludes that a material issue has been raised in relation to compliance with these **rules**, the **allocation agent** or the **allocation participant** to which the material issue relates must pay the costs of the auditor, and if the material issue relates to more than one person, then each person must pay the costs of the auditor in such portions that reflect their contribution to that material issue as determined by the auditor; and

75.2.2 If the auditor concludes that no material issue has been raised in relation to compliance with these **rules**, the costs of the auditor must be apportioned between such of the **allocation agent** and the **allocation participants**, as the case may be, as the **industry body** determines in its sole discretion.

75.3 For the purposes of this rule, the costs of the auditor are those costs that have been agreed between the **industry body** and the auditor.

[5] The rule is clear. The allocation participant (E-Gas) must pay the audit fee if the auditor concludes that the audit raises a material issue. In this case the auditors so concluded, in my view inevitably. I am satisfied the auditors were correct to conclude a material issue had been raised by the audits in relation to E-Gas for the reasons set out in Ms Kean's extensive written submissions.

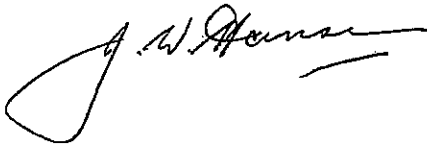
[6] There is nothing in the Rules to suggest the payment of audit costs should await the outcome of any related breach hearing. Indeed, the Rule is clear as to the mandatory nature of the need to pay the audit costs.

[7] I also adopt Ms Kean's analysis of the reasonableness of the costs. The audit was in fact occasioned by E-Gas deciding to manually alter data. That is now conceded in the

substantive hearing as to breach. The only issue in that hearing will be the reasons for such actions and the extent of any penalty. I am satisfied the charge out rates of the two auditors, compared to the market, and GIC charges, is reasonable. The amount of time spent, considering the complexity of the issues, is also clearly reasonable.

[8] Accordingly I order E-Gas and E-Gas 2000 to pay to the GIC the auditor's fees of \$125,112.67 forthwith. The obligation to pay is joint and several.

[9] The investigator seeks interest at 7.5%. I am satisfied that I have power to order interest. Given the mandatory nature of the Rule I consider it proper that E-Gas and E-Gas 2000 should pay interest on the same joint and several basis. This will be at commercial overdraft rate on \$120,424.34 from 22 March 2010 and on \$4688.33 from 20 May 2010.

A handwritten signature in black ink, appearing to read 'John Hansen', with a large, stylized initial 'J'.

The Honourable Sir John Hansen KNZM

Rulings Panel