

Rulings Panel summary of procedures

Draft Amendment for Consultation 16 March 2010

Introduction

1. This summary of procedures is published pursuant to regulation 40(2) of the Gas Governance (Compliance) Regulations 2008 ("Regulations").
2. This document is a summary only of the indicative procedures of the Rulings Panel ("Panel") in the event that an alleged breach of any of the following (together, the "Rules") is referred to the Panel:
 - (a) Gas Governance (Critical Contingency Management) Regulations 2008;
 - (b) Gas (Downstream Reconciliation) Rules 2008;
 - (c) Gas (Processing Facilities Information Disclosure) Rules 2008; and
 - (d) Gas (Switching Arrangements) Rules 2008.
3. It is not intended that this document shall in any way fetter the discretion of the Panel. The Panel has the power to amend its procedures at any time, and on a case by case basis, with or without any written amendment to this document.
4. If there is any conflict between the Gas Act 1992 ("Act") or the Rules or the Regulations, and these procedures, the Act or the Rules or the Regulations (as applicable) shall prevail.
5. Terms that are defined in the Act or the Rules or the Regulations but not in this document have the same meaning as in the Act or the Rules or Regulations (as applicable).

Act and Regulations

6. The following, in particular, govern the Panel's procedures:
 - (a) Sections 43V, 43X to 43Y, and 43ZA to 43ZJ of the Act; and
 - (b) Regulations 34 to 58 and 74 to 76 of the Regulations.

Consideration of an alleged breach

7. Once the Rulings Panel has decided to determine an alleged breach under Regulation 36(c) or the Investigator refers an alleged breach to the Rulings Panel under Regulation 37, the procedures listed below apply in determining the alleged breach. If exceptional circumstances arise in relation to an alleged breach that suggest a hearing should not go ahead or should be deferred, such circumstances must be brought to the attention of the

Rulings Panel with full details of the circumstances. The Rulings Panel may then, in its sole discretion as permitted by legislation, amend its processes in respect of that alleged breach.

~~7.8.~~ For the avoidance of doubt, in addition to the rights granted to the persons listed in regulation 39(2) ("Parties") by the Regulations, at any hearing the Panel shall be entitled to question all witnesses and to call witnesses of its own volition. The Parties shall have the right to cross examine any witnesses called by the Panel.

~~8.9.~~ In the event a matter is dealt with on the papers, the Panel shall have the right to ask for submissions and/or evidence other than from the Parties.

~~9.10.~~ Prior to setting a date for consideration of an alleged breach, the Panel shall first hold a directions conference ("Initial Directions Conference").

~~10.11.~~ The Panel will use best endeavours to hold the Initial Directions Conference within five business days of:

- (a) receipt of the investigator's report pursuant to regulation 38(4). The investigator shall use best endeavours to provide the report to the other Parties at the same time as it is provided to the Panel; or
- (b) the Panel's decision under regulation 36(c) to determine an alleged breach itself having rejected a settlement, as applicable.

~~11.12.~~ A directions conference may be held in person, by telephone conference, or by video link. The Panel will endeavour to adopt the method most convenient to the Parties and to the Panel.

~~12.13.~~ The Parties shall each file a memorandum no later than 1 business day before the Initial Directions Conference addressing the issues set out below in paragraph 14 and any other issues they deem relevant. Regulations 16 and 17 shall apply to the filing of any such memoranda.

~~13.14.~~ The Panel may address issues including the following at an Initial Directions Conference:

- (a) the date on which, and the place and time at which, the Panel will consider the alleged breach (see regulation 39(1));
- (b) whether the Panel will hold a hearing (see regulation 41);
- (c) whether a statement of issues of fact and law is required;
- (d) if there is not to be a hearing, matters such as the following:
 - (i) the date by which written submissions and evidence are to be provided (see regulation 39(2));

- (ii) whether further information is required from the investigator (see regulation 47); and
 - (iii) engagement of industry experts by the Panel, if applicable (see regulation 48);
- (e) if there is to be a hearing, matters such as the following:
- (i) whether there are any matters to rebut the presumption of a public hearing (see regulations 41(2) and 43);
 - (ii) whether any confidentiality issues arise;
 - (iii) whether the subject matter of the hearing is such that an urgent hearing is justified (see regulation 44);
 - (iv) number of witnesses;
 - (v) mode of giving evidence, including whether written submissions and evidence are to be provided in advance and, if so, a timetable for that, and whether such evidence is to be on oath, by way of brief or by affidavit;
 - (vi) mode of recording evidence;
 - (vii) whether further information is required from the investigator (see regulation 47);
 - (viii) engagement of industry experts by the Panel, if applicable (see regulation 48);
 - (ix) whether documents additional to those included in the investigator's report are required, and, if so, who is to be responsible for the preparation of the bundle (High Court Rule 441O will apply to documents attached to the investigator's report and to any bundle, unless the Panel directs otherwise); and
 - (x) any further matters the Panel deems relevant.

14.15. The Panel may convene a further directions conference at any time, either at the request of any of the Parties or of its own initiative.

15.16. The Parties shall attend any directions conference, unless their attendance is excused by the Panel.

16.17. The Panel may fix and amend time limits within which various steps must be completed.

17.18. The Panel may direct any of the Parties to do any such things as may reasonably be needed to enable it to consider an alleged breach promptly, and for a decision to be made properly and efficiently.

| 18.19 The Panel may at any time adjourn a hearing or consideration of a matter on giving reasonable notice.