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GAS CORPORATION ACT 1994

**GAS REFEREE REGULATIONS
1995**

WESTERN AUSTRALIA

GAS REFEREE REGULATIONS 1995

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GAS CORPORATION ACT 1994
GAS REFEREE REGULATIONS 1995

Made by His Excellency the Governor in Executive Council.

PART 1 — PRELIMINARY

Citation

1. These regulations may be cited as the *Gas Referee Regulations 1995*.

Commencement

2. These regulations come into operation on the day on which they are published in the *Government Gazette*.

Definitions

3. In these regulations, unless the contrary intention appears —

“**Act**” means the *Gas Corporation Act 1994*;

“**acting referee**” means a person appointed under regulation 10 to act in the office of gas referee;

“**Coordinator**” means the Coordinator of Energy under the *Energy Coordination Act 1994*;

“**corporation**” means the Gas Corporation established under the Act;

“**Court**” means the Supreme Court of Western Australia;

“**determination**” means a determination of the referee, whether interim or final, and includes award, order and direction;

“**dispute**” means any dispute or difference and includes any prescribed dispute;

“**dispute notice**” means any notice given by one party to a dispute to the other party or parties which describes the nature of the dispute between them and is stated to be a dispute notice for the purposes of regulation 30 or 31, as the case may be;

“**exclusive jurisdiction**” means the jurisdiction granted to the referee by regulation 16;

“**Gas Transmission Regulations**” means the *Gas Transmission Regulations 1994*;

“**Judge**” means a single judge of the Court;

“**misconduct**” includes corruption, fraud, partiality, bias or lack of independence from a party to a dispute;

“**party**” means a party to any dispute or proceedings, and includes any person claiming through or under a party, and also includes any permitted representative of that party;

“**prescribed dispute**” means any dispute between the corporation and any shipper or prospective shipper dealing with —

- (a) whether or not the corporation —

- (i) has complied with the obligations imposed on it; and

- (ii) has properly exercised any power granted to it,

by Schedule 5 to the Act, the *Gas Transmission Regulations* (but not any term of a transmission contract, including the *Gas Transmission Regulations* to the extent that they have effect as a term of a transmission contract) or any other written law which relates to access to or the granting of capacity in the gas transmission system or the prices payable for such access or grant;

- (b) whether the price to be paid by any shipper or prospective shipper has been determined or redetermined in accordance with the provisions of Part 6 of the *Gas Transmission Regulations* and in accordance with any pricing methods adopted by the corporation;

- (c) whether any enhancement to or expansion of the gas transmission system is commercially viable (within the meaning given to that term in the *Gas Transmission Regulations*); and
- (d) whether the deeming provisions of regulation 151 (4) (b) of the *Gas Transmission Regulations* are to apply in respect of an opinion or recommendation, contained in an expert's report published under regulation 36 of the *Gas Transmission Regulations*;

"proceedings" means any proceedings before the referee whether final or interlocutory, and includes any application to the referee in connection with or at any stage of proceedings, and also includes the making of a determination;

"prospective shipper" has the meaning given to that term in the *Gas Transmission Regulations*;

"reasonable and prudent person" means a person acting in good faith with the intention of performing his or her obligations under the Act, these regulations, the *Gas Transmission Regulations* and any transmission contract and who in so doing and in the general conduct of his or her undertaking exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with recognised standards and applicable law engaged in the same type of undertaking under the same or similar circumstances and conditions;

"referee" means the person appointed by the Minister under regulation 5 (1) to the office of gas referee, and includes an acting referee;

"shipper" means a shipper under the *Gas Transmission Regulations 1994*;

"summons" means a summons issued under regulation 34;

"transmission contract" has the meaning given to that term in the *Gas Transmission Regulations*.

PART 2 — APPOINTMENT OF REFEREE AND ADMINISTRATION

Office of gas referee created

4. An office of gas referee is created.

Appointment of referee

5. (1) The Minister is to appoint to the office of gas referee a person who in his or her opinion has qualifications (whether academic or otherwise) and expertise relevant to the hearing and determination of disputes in the field of energy transportation.

(2) The Minister may delay the appointment of a person to the office of gas referee until he or she receives notification of a dispute under regulation 31.

(3) Subject to this Part the referee —

(a) holds office for a period, not exceeding 5 years, fixed by the instrument of appointment; and

(b) is eligible for one or more further appointments.

(4) The referee is not required to devote the whole of his or her time to the duties of the office.

(5) Subject to this Part, the Minister may determine other terms and conditions of service (if any) that apply to the office of gas referee.

Remuneration

6. The referee is entitled to be paid such remuneration and allowances as are determined by the Minister.

Resignation

7. The referee may resign from office by a signed notice of resignation addressed to the Minister and the resignation takes effect on the day on which the notice is received by the Minister or on such later day as is specified in the notice.

Suspension and removal of referee

8. (1) If the Minister is satisfied that the referee —

- (a) is physically or mentally incapable of performing the duties of the office of gas referee;
- (b) has shown incompetence or neglect in performing those duties; or
- (c) has been guilty of misbehaviour,

the Minister may suspend the referee from office.

(2) In subregulation (1) (c), “**misbehaviour**” includes conduct that renders the referee unfit to hold office as referee whether or not the conduct relates to any function of the office.

(3) After being suspended from office under subregulation (1) the referee is entitled to be restored to office unless —

- (a) a statement of the grounds of suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and
- (b) each House of Parliament, during the session in which the statement is so laid, and within 30 days of it being so laid, passes an address praying for the removal of the referee from office.

(4) If the referee is suspended from office under subregulation (1) and is not restored to office under subregulation (3), the office of gas referee becomes vacant.

Completion of matters commenced

9. Despite the fact that the term of office of the referee has expired, or that he or she has resigned, the referee may continue in office for the purpose of completing the determination of any dispute that has been commenced before that expiry or resignation, unless the Minister otherwise directs.

Acting referee

10. (1) The Minister may appoint a person to act in the office of gas referee whenever the office of gas referee is vacant or a referee is suspended or disqualified or otherwise is unable to act in the office.

(2) These regulations, other than regulation 5 (3) (a), apply to an acting referee as though he or she were a referee.

(3) An acting referee holds office —

- (a) in the case of a vacancy in the office of gas referee, until the appointment of a new referee; or
- (b) in the case of appointment on the suspension, disqualification or inability to act of the referee, for the duration of that suspension, disqualification or inability.

(4) A person may be appointed as an acting referee despite the fact that the person has held that position in the past.

Administration

11. The Coordinator is to do all things necessary to support or facilitate the performance by the referee of his or her duties, including the provision of such services, staff and facilities as may be required.

Liability of referee

12. (1) Subject only to subregulation (2), the referee is not liable and is immune from all claims for, in respect of, or arising out of anything he or she does or omits to do in the capacity of referee.

(2) Nothing in this regulation affects the referee's liability for fraud.

PART 3 — JURISDICTION AND POWERS OF REFEREE**Referee bound by the Act and the regulations**

13. The referee may not make a determination which is inconsistent with the Act, these regulations or the *Gas Transmission Regulations*.

Referee is not an arbitrator

14. The referee is not an arbitrator within the meaning of the *Commercial Arbitration Act 1985*, and the dispute resolution process is not an arbitration within the meaning of that Act.

General jurisdiction

15. The referee may hear and determine any dispute between the corporation and any shipper or prospective shipper with respect to or arising out of the Act, these regulations, the *Gas Transmission Regulations* or one or more transmission contracts, including any dispute about —

- (a) the meaning, effect or operation of; or
- (b) the rights or duties of any person in connection with,

the Act and any of the other instruments referred to in this regulation.

Exclusive jurisdiction with respect to prescribed disputes

16. Subject to regulation 17, the referee has jurisdiction exclusive of the jurisdiction of courts and other tribunals to hear and determine disputes which are prescribed disputes.

Exceptions to referee's exclusive jurisdiction with respect to prescribed disputes

17. A grant of exclusive jurisdiction to the referee under regulation 16 does not affect the rights of appeal, of judicial review, and to refer questions of law to a Judge under Part 6.

Referee may disqualify himself or herself

18. If at any time the referee believes that —

- (a) his or her hearing or determination of a dispute would or might result in misconduct by the referee;
- (b) there is a real danger of undue influence being exercised in relation to the referee; or
- (c) the referee is unsuitable to deal with the particular dispute,

the referee may, by his or her own motion or on the application of a party, disqualify himself or herself from hearing or determining that dispute.

Referee may extend ambit of proceedings regarding prescribed disputes

19. Where —

- (a) a prescribed dispute between any two or more parties is referred to the referee; and
- (b) there is some other prescribed dispute between some or all of those parties,

the referee may, upon application to the referee by any one or more of the parties at any time before a final determination is made in relation to the first-mentioned dispute, make an order (on such terms and conditions, if any, as the referee thinks fit) directing that the proceedings be extended so as to include the other prescribed dispute.

Referee may extend ambit of consent proceedings

20. Without limiting the referee's jurisdiction under regulation 19 in respect of prescribed disputes, the referee may with the consent of the parties determine any additional dispute that may be raised by any party by way of further claim, set-off, defence or counterclaim, subject to any conditions as to costs or otherwise that the referee may impose, provided that the additional dispute is within the referee's jurisdiction, whether or not a dispute notice has been given in respect of that additional dispute.

Referral of prescribed disputes by the Court

21. (1) Where, on the application of any party to proceedings before a court, the court is satisfied that a prescribed dispute between any of the parties to those proceedings is before the court, the court is to order that the prescribed dispute be transferred to and determined by the referee.

(2) Where the Court makes an order under subregulation (1), proceedings before the referee are by force of this regulation to be taken to have been commenced at the date of that order.

Jurisdictional disputes to be heard by referee

22. Any dispute which arises in proceedings before a referee as to the jurisdiction of the referee is to be heard and determined by the referee, and the referee's determination on the matter is subject to appeal in accordance with Part 6.

Authority of referee

23. (1) Subject to the Act and these regulations and to subregulation (2), the authority of the referee to hear and determine a dispute referred to him or her is irrevocable.

(2) The parties to a dispute which is not a prescribed dispute may agree unanimously in writing to revoke the referee's authority.

Rules of natural justice

24. The rules of natural justice apply at and in connection with all proceedings.

Referee may give practice directions

25. (1) The referee may from time to time give practice directions, whether general or in respect of particular proceedings, regarding all matters relating to the procedure and conduct of proceedings, including without limitation the following —

- (a) for regulating and prescribing the procedure (including the method of pleading or otherwise defining the issues in a dispute) and the practice to be followed in proceedings before the referee and any matters incidental to or relating to any such procedure or practice;
- (b) for regulating the sittings of the referee, including the commencement, adjournment and resumption of proceedings;
- (c) for prescribing matters relating to evidence, including directions that depart from the law of evidence, and directions regulating the means by which particular facts may be proved, the mode in which evidence thereof may be given, the examination, cross-examination and re-examination of witnesses, and the disclosure of the nature and substance of evidence to be given;
- (d) for the discovery, inspection and production of documents;
- (e) for the serving and deemed serving of notices or other documents;
- (f) regarding the manner, timing and costs of publication of determinations;
- (g) for the setting and determination of time, time limits and extension of time; and
- (h) for the assessment and taxation of costs, and for the setting of appropriate costs scales.

(2) The power to give practice directions in subregulation (1) may be exercised at any time and from time to time, and includes the power to alter, annul, or add directions, and to prescribe, alter, annul, or add forms.

Miscellaneous powers of the referee

26. (1) The referee may of his or her own motion, but only to the extent reasonably necessary to facilitate the determination of a dispute presently before him or her —

- (a) retain the services of any person suitably qualified in any field of expertise to advise the referee in relation to matters within that field of expertise;
- (b) retain an accountant, and submit to the accountant's examination such accounts connected with the dispute as the referee thinks fit;
- (c) retain one or more duly qualified legal practitioners as counsel assisting the referee;
- (d) consult in the absence of the parties with any person whom the referee thinks proper to consult;
- (e) undertake his or her own investigations and inquiries;
- (f) cause any maps, plans, models, reports and measurements to be made, written or taken that he or she considers necessary or expedient; and
- (g) call witnesses.

(2) A person retained under subregulation (1) (a) may sit with the referee during the hearing of all evidence relating to the person's field of expertise and may take part in the proceedings.

(3) The referee, in making a determination, may adopt the opinion of any person retained or consulted under subregulation (1) (a), (b), (c) or (d), after first disclosing the opinion to the parties and receiving the parties' submissions thereon.

(4) The costs and expenses of —

- (a) any person retained or consulted;
- (b) any investigations or inquiries undertaken; and
- (c) any maps, plans, models, reports and measurements made, written or taken,

by or on behalf of the referee under subregulation (1) are to be reasonable and are to be in the referee's discretion and, without limiting that discretion, may be dealt with as part of the costs of the proceedings.

(5) The term of retainer of any person retained or consulted under this regulation must end no later than the day on which the referee publishes his or her final determination in the proceedings in question.

(6) Any witness called by the referee under subregulation (1) (g) may be cross-examined by any party, to the same extent (if any) that the party would be entitled to cross-examine that witness if the witness had been called by an opposing party.

(7) Nothing in this regulation affects the referee's obligation to comply with the rules of natural justice.

(8) In this regulation, a reference to the referee retaining or consulting any person or causing any maps, plans, models, reports and measurements to be made, written or taken, is to be read as a reference to the Coordinator doing the same at the request of the referee, and until the referee makes an order in the proceedings dealing with the costs and expenses of such persons, maps, plans, models, reports or measurements, the Coordinator is to meet such costs and expenses and keep detailed accounts of such costs and expenses.

Referee may dismiss matters before him or her

27. The referee may dismiss any matter before him or her on the grounds that a party's position is wholly without merit, or is vexatious or amounts to an abuse of process of the referee, and that dismissal is for the purposes of the Act, these regulations, the *Gas Transmission Regulations* and a transmission contract a determination.

Referee may consolidate matters

28. (1) Where in relation to two or more proceedings before the referee it appears to the referee upon the application of any one or more of the parties to those proceedings —

- (a) that some common question of law or fact arises in both or all of them;
- (b) that the rights to relief claimed in both or all of them are in respect of or arise out of the same transaction or series of transactions; or
- (c) that for some other reason it is desirable to make an order under this regulation,

the referee may order those proceedings to be consolidated on such terms as he or she thinks just, or may order them to be heard at the same time, or one immediately after another, or may order any of them to be stayed until after the determination of any other of them.

(2) Nothing in this regulation is to be construed as preventing the parties to two or more proceedings before the referee, from agreeing to consolidate those proceedings and taking such steps as are necessary to effect that consolidation.

PART 4 — COMMENCEMENT AND CONDUCT OF PROCEEDINGS**Time bar**

29. (1) Subject to subregulation (3), proceedings in respect of any prescribed dispute may only be commenced within 2 years after the occurrence of the act or decision of the corporation which is the subject of the dispute.

(2) Proceedings in respect of any dispute within the referee's jurisdiction which is not a prescribed dispute may be commenced during any time in which, according to the nature of the dispute in question, proceedings are not time barred under any other written law.

(3) If at the time that a prescribed dispute arises the Minister has not appointed a referee under regulation 5 (1), proceedings may commence outside the time limit in subregulation (1), provided that a party to the prescribed dispute has notified the Minister under regulation 31 within 2 years after the occurrence of the act or decision of the corporation which is the subject of the dispute.

Referral of prescribed disputes

30. A party to any prescribed dispute may at any time give to the other party or parties to the dispute a dispute notice, and must at the same time lodge with the referee a copy of such notice, and if after 7 days of the lodging of the notice with the referee the dispute is not settled by agreement in writing between the parties then it is hereby referred for hearing and determination by the referee and proceedings before the referee have by force of this regulation commenced.

Referral of disputes before referee appointed

31. If at the time that a prescribed dispute arises the Minister has not appointed a referee under regulation 5 (1), a party to the prescribed dispute may notify the Minister of the nature and details of the prescribed dispute and the Minister is to appoint a referee under regulation 5 (1) as soon as it is practicable to do so, and if after 7 days after the appointment of the referee the prescribed dispute is not settled by agreement in writing between the parties, then it is hereby referred for hearing and determination by the referee and proceedings before the referee have by force of this regulation commenced.

Referral of non-prescribed disputes

32. The parties to any dispute which is not a prescribed dispute may, if the dispute is within the referee's jurisdiction, agree in writing to refer the dispute for the hearing and determination by the referee, and if so must lodge with the referee a copy of the agreement, and that dispute is thereby referred for hearing and determination by the referee and proceedings before the referee have by force of this regulation commenced.

Informality and expedition

33. (1) Subject to these regulations, proceedings must be conducted with as little formality and technicality, and with as much expedition, as the requirements of these regulations, and a proper hearing and determination of a dispute, permits.

(2) The referee may from time to time make orders regulating the conduct of, and regulating parties' conduct in relation to, proceedings which are, and the parties to a dispute must at all times conduct themselves in a manner which is, directed towards achieving the objectives of subregulation (1).

(3) An order under subregulation (2) is not a determination, and must be consistent with these regulations, the *Gas Transmission Regulations* and any practice directions given by the referee under regulation 25.

Referee may issue summons

34. (1) The referee may, of his or her own motion or on the application of any party, issue a written summons requiring a person —

- (a) to appear before the referee to give evidence, or to produce specified documents, or to do both; and
- (b) to attend proceedings from day to day unless excused, or released from further attendance, by the referee.

(2) A summons may be issued to a person under subregulation (1) whether or not the person is a party to the dispute.

(3) A summons issued under subregulation (1) has the same force and effect as a subpoena issued by the Court, and may be enforced by the referee in the same manner.

(4) If a party to a dispute —

- (a) refuses or fails to attend before the referee for examination when required under a summons by the referee to do so; or
- (b) fails within the time specified by the referee or, if no time is so specified, within a reasonable time to comply with the requirement of the referee,

the referee may continue with the proceeding in default of appearance or of any other act by the party.

Protection and liabilities of witnesses

35. A witness summoned to attend or appearing before the referee has the same protection and is subject to the same liabilities as a witness in any case tried in the Court in any civil or criminal proceedings.

Evidence before referee

36. (1) Evidence before the referee —

- (a) may be given orally or in writing; and
- (b) must, if the referee so requires, be given on oath or affirmation or by affidavit.

(2) The referee may administer an oath or affirmation or take an affidavit for the purposes of proceedings.

(3) The referee in conducting proceedings is not bound by rules of evidence but may inform himself or herself in relation to any matter in such manner as he or she thinks fit.

(4) The referee may make orders as he or she thinks fit for the remuneration of witnesses in accordance with the rules set out in Item 30 of Schedule 4 of the *Rules of the Supreme Court 1971* as if the proceedings conducted before him or her had been conducted before the Court.

Representation

37. (1) A party to a dispute may, in any proceedings, be represented by a duly qualified legal practitioner or other representative.

(2) The referee may require the parties to a dispute to attend a conference in the absence of their legal representatives or other representatives.

(3) To the extent that a provision of a transmission contract or other agreement purports to limit or exclude any party's right to legal representation in any proceedings, that provision is of no effect.

Effect of appointment of new referee on evidence previously given and awards and determinations previously made

38. (1) Where a new referee is appointed in place of a previous referee who has begun but not completed the hearing and determination of a dispute —

- (a) the new referee may order the proceedings to be re-heard —
 - (i) in full, in which case all evidence heard by the previous referee is to be disregarded by the new referee; or
 - (ii) in part, in which case any evidence heard by the previous referee during the parts of the proceedings which are re-heard is to be disregarded by the new referee;
- (b) if no order is made under paragraph (a), then the proceedings are to continue as though the new referee had been present from the commencement of the proceedings;
- (c) if an order is made under paragraph (a) (ii), then —
 - (i) the proceedings are to continue as though the new referee had been present during the earlier proceedings; and
 - (ii) the new referee is to treat any evidence given, document produced or thing done in the course of the earlier proceedings in the same manner in all respects as if it had been given, produced or done in the course of the proceedings conducted by the new referee;
- (d) any interim determination made in the course of the earlier proceedings is by force of this regulation to be taken to have been made by the new referee; and
- (e) the new referee may adopt and act on any determination of a matter made in the course of the earlier proceedings without applying his or her own judgment to the matter.

(2) This regulation has effect subject to regulation 9.

(3) In subregulation (1), “**earlier proceedings**” means the proceedings or parts of the proceedings which the new referee does not order to be re-heard under subregulation (1) (a) (ii).

Determination to be made according to law

39. (1) Any question that arises for determination in the course of proceedings is to be determined according to law.

(2) The referee, in making a determination which involves ascertaining the meaning of any provision of the Act, these regulations or the *Gas Transmission Regulations* —

- (a) must have due regard to any relevant prior determination of the referee; and
 - (b) is bound by any relevant prior judgment of the Court,
- as to the meaning of the provision in question.

Confidentiality

40. (1) All proceedings are to be conducted in private.

(2) Information which is identified by a party as confidential before being disclosed by that party in the course of any proceedings relating to a dispute which is not a prescribed dispute, is to be kept confidential by the other parties and their advisers and by the referee and any person retained or consulted by the referee, for such period as may be reasonably required by the party disclosing the confidential information.

(3) Information which is identified by a party as confidential before being disclosed by any party in the course of proceedings relating to a prescribed dispute, is to be kept confidential by the other parties and their advisers and by any person retained or consulted by the referee, except as otherwise agreed between the parties or directed by the referee, and, subject to subregulation (4), by the referee for such period as may be reasonably required by the party disclosing the confidential information.

(4) The referee in publishing his or her reasons under regulation 45 is to —

- (a) determine whether information identified as confidential under subregulation (3) has been reasonably so identified; and
- (b) if it is practicable to do so and so far as is consistent with such publication, endeavour to protect any information reasonably identified as confidential and disclosed by any party in the course of proceedings,

but the referee or any person retained or consulted by the referee is not liable in respect of any loss or damage suffered by any person by reason of the referee's failure to protect such information.

(5) An action for damages lies against any person (other than the referee) in respect of any breach by that person of the provisions of subregulation (2) or (3).

Death of a party

41. Where a party to a dispute dies, any proceedings before the referee are not to be discharged (either as respects the deceased or any other party) and the proceedings are to continue by or against the personal representative of the deceased.

Duties of parties

42. (1) The parties to proceedings before the referee must at all times do all things which the referee requires to enable a just determination to be made and no party may wilfully do or cause to be done any act to delay or prevent a determination being made.

(2) An action for damages lies against any party in respect of any breach by that party of the provisions of subregulation (1).

PART 5 — DETERMINATIONS, INTEREST AND COSTS

Determinations which may be made

43. (1) The referee may, subject to the Act and these regulations, and in particular but without limitation regulation 13, make any determination which the referee considers expedient to justly dispose of any proceedings before him or her.

(2) Without limiting the generality of subregulation (1), the referee may —

- (a) award damages (except in the case of a prescribed dispute);
- (b) order any party to a dispute to do any thing or to refrain from doing any thing, whether permanently or for a specified time;
- (c) interpret the provisions of any written law or any contract;
- (d) make a determination ordering specific performance of any contract if a Judge would have power to order specific performance of that contract;
- (e) determine whether a transmission contract or other agreement has been frustrated and the consequences of that frustration;
- (f) order rectification of a transmission contract or any other agreement; and
- (g) make any order which a Judge may make under sections 76, 77, 78 and 79 of the *Fair Trading Act 1987* in relation to any dispute or prescribed dispute.

Form of determination

44. The referee must —

- (a) make any determination in writing;

- (b) sign the determination; and
- (c) provide a statement of the reasons for making the determination.

Publication of determinations

45. (1) The referee must, as soon as possible after making a determination, give copies of that determination to all parties.

(2) The corporation must give a copy of every final determination to the Minister.

(3) The referee must, within a reasonable time after making a final determination in respect of a prescribed dispute, cause the statement of reasons for the determination to be given to each member of the Gas Transmission Consultation Committee established under the *Gas Transmission Regulations*, and the statement of reasons may be made public.

Time limits for making and default in making

46. (1) The referee must make a determination within a reasonable time, and in any event but subject to subregulation (2) must do so within 3 months, after the conclusion of the hearing of the proceedings.

(2) The referee may, with the agreement in writing of all parties to a dispute, make a determination later than 3 months after the conclusion of the hearing of the proceedings.

(3) Failure by the referee to make a determination within the time limit specified in subregulation (1), in the absence of an agreement referred to in subregulation (2) is a ground for suspension of the referee under regulation 8 (1) (b).

Interim determinations

47. The referee may make an interim determination.

Consent determinations

48. (1) The parties to any dispute may lodge with the referee written consent to the making of a determination in any proceedings before the referee.

(2) Upon receipt of written consent, the referee may settle and sign the consent determination in accordance with the terms of the consent.

(3) A party may by notice in writing to the referee withdraw his or her consent at any time before the referee signs the consent determination.

(4) The consent determination must state that it is made by consent and is to be of the same force and validity as if it had been made after a hearing by the referee.

(5) If the referee is not satisfied by the written consent that the consent determination should be made, the parties to the dispute are to be notified to appear before the referee to make submissions in support of the written consent.

(6) The referee may not make any determination by consent that he or she could not have made after hearing the dispute.

(7) If the consent determination is in respect of a prescribed dispute, the referee must cause the terms of the consent determination to be given to each member of the Gas Transmission Consultation Committee established under the *Gas Transmission Regulations*, and the terms of the consent determination may be made public.

Power to correct determination

49. Where a determination contains —

- (a) a clerical mistake;
- (b) an error arising from an accidental slip or omission;
- (c) a miscalculation of figures or a mistake in the description of any person, thing or matter referred to in the determination; or
- (d) a defect of form,

the referee may correct the determination.

Determination binding on all parties

50. Subject to regulations 51 and 52, a determination is binding on all parties to the dispute in respect of which it is made.

Certain determinations to be of no effect

51. If a determination requires the corporation to do or refrain from doing any thing which the corporation, in its discretion as a reasonable and prudent person, certifies in writing to the referee and all other parties to the dispute would jeopardise the continued safe operation and integrity of the gas transmission system or the safety of any person, then the whole of the determination is of no effect.

Determinations are subject to the Act

52. If a determination requires the corporation to do any thing which under the Act is subject to any approval and in respect of which such approval is not granted, or which the Minister under the Act has directed or directs the corporation not to do, and the corporation certifies in writing to the referee and all other parties to the dispute that such approval is not granted or that the Minister has made such a direction, then the whole of the determination is of no effect.

Enforcement of determination

53. (1) A determination must be entered as a judgment of the Court, upon presentation to the Registrar of the Court of a copy of the determination signed by the referee, and on entry judgment of the Court is deemed to have been given in terms of the determination.

(2) A determination may, once entered as a judgment of the Court, be enforced by a Judge in the same manner as a judgment or order of the Court to the same effect.

Interest up to making of determination

54. (1) Subject to subregulation (4), in proceedings relating to a dispute which is not a prescribed dispute, where the referee makes a determination for the payment of money (whether on a claim for a liquidated or an unliquidated amount), the referee may include in the sum for which the determination is made interest at such rate as the referee may direct (being a rate not exceeding the rate at which interest is payable on a judgment debt of the Court) on the whole or any part of the money for the whole or any part of the period between the date of the occurrence of the act or decision of the corporation which is the subject of the dispute and the date on which the determination is made.

(2) Subject to subregulation (4), where —

- (a) proceedings before the referee have been commenced for the recovery of a debt or liquidated damages; and
- (b) payment of the whole or a part of the debt or damages is made during the currency of the proceedings and prior to or without a determination being made in respect of the debt or damages,

the referee may order that interest be paid at such rate as the referee may direct (being a rate not exceeding the rate at which interest is prescribed for the purposes of section 142 of the *Supreme Court Act 1935*) on the whole or any part of the money paid for the whole or any part of the period between the date of the occurrence of the act or decision of the corporation which is the subject of the dispute and the date of the payment.

(3) Without limiting subregulation (2), proceedings before the referee are, for the purposes of that subregulation, by force of this regulation to be taken to have been commenced if a dispute capable of reference to the referee has arisen, and proceedings are deemed to have been commenced by regulations 30 or 31.

(4) This section does not —

- (a) authorise the payment of interest upon interest; or
- (b) apply in relation to any amount upon which interest is payable as of right whether by virtue of a transmission contract or other agreement or otherwise.

Interest on debt under determination

55. Where the referee makes a determination for the payment of money, the referee may direct that interest at the same rate as that at which interest is payable on a judgment debt of the Court, is to be payable on and from the date of the making of the determination or such later date as the referee may specify on so much of the money as is from time to time unpaid and any interest that so accrues is by force of this regulation to be taken to form part of the determination.

Costs at discretion of referee

56. The costs of proceedings before the referee are to be in the discretion of the referee, who may —

- (a) direct to and by whom and in what manner the whole or any part of those costs is to be paid; and
- (b) tax or settle the amount of costs to be so paid, or any part of those costs, in accordance with regulation 57.

Taxation

57. (1) Any costs of the proceedings (other than the fees or expenses of persons retained or consulted by the referee under regulation 26 (1) which are payable in accordance with an order of the referee and are not taxable) that are directed to be paid by a determination are to be taxed or settled by the referee.

(2) Costs are to be taxed or settled under subregulation (1) by reference to —

- (a) the scale of costs to be established by the referee; or
- (b) failing establishment of such scale, by reference to the costs scale applicable to matters brought in the Court and —
 - (i) if such scale does not specially provide for matters in respect of which costs are claimed, the referee may allow costs by way of analogy according to the item in the scale which is most nearly applicable thereto; or
 - (ii) if in the opinion of the referee there is no such item, the costs are to be fixed at such sum as in the opinion of the referee is adequate in the circumstances.

No prospective agreement that parties bear their own costs

58. A provision in a transmission contract or other agreement to the effect that the parties or a particular party to future proceedings before the referee are in any event to pay their own or any party's costs of any future proceedings, or any part of those costs, is of no effect.

When no provision in a determination for costs

59. If no provision is made by a determination with respect to the costs of the proceedings, a party to the dispute may, within 14 days of the determination being given to that party pursuant to regulation 45 (1), apply to the referee for directions as to the payment of those costs, and the referee must, after hearing any party who wishes to be heard, amend the determination by adding to it such directions as the referee may think proper with respect to the costs of the proceedings.

Conduct of parties is relevant

60. The referee, in exercising the discretion as to costs conferred on the referee by regulation 56 —

- (a) must take into account any refusal or failure by a party to the dispute to comply with regulation 42; and
- (b) may take into account any other conduct by a party to the dispute.

PART 6 — APPEALS, JUDICIAL REVIEW AND THE COURT**No appeal generally**

61. Other than in accordance with this Part, no appeal lies from a determination.

Appeal on questions of law

62. An appeal is to lie to a Judge on any question of law arising out of a final determination, and that appeal may be brought by any of the parties to a dispute within 21 days after the final determination is made, or within such further time as the Judge may allow.

Effect of variation

63. Where the determination of a referee is varied on an appeal under regulation 62, the determination as varied has effect (except for the purposes of this Part) as if it were the determination of the referee.

Stay of execution of determination pending appeal

64. (1) Prior to the determination of an appeal, a Judge may make any order that he or she thinks fit relating to the stay or continuation in effect of any final determination or order made by the referee.

(2) A Judge may by further order revoke, substitute or amend an order under subregulation (1).

Referee may state case for a Judge

65. (1) The referee may of his or her own motion at any time prior to making a final determination refer any question of law raised by the dispute in question to a Judge, and a Judge has jurisdiction to determine that question of law.

(2) A Judge, on any question of law referred to him or her under this regulation, may make whatever order (if any) as to costs that he or she thinks fit.

No exclusion of appeals and references

66. The rights —

- (a) of appeal under regulation 62; and
- (b) to refer questions of law to a Judge under regulation 65,

cannot be excluded or limited by any agreement, and to the extent that a provision of a transmission contract or other agreement purports to limit or exclude any or all of those rights, that provision is of no effect.

By His Excellency's Command,

J. PRITCHARD, Clerk of the Council.



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