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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “PBA”);

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to Consent, under section 62.1(5) of the PBA, to a payment out of the pension fund for The Pension Plan for Employees of EastGen, Registration Number 1042969 (the “Plan”).

TO:

EastGen Incorporated
7660 Mill Road, RR4
Guelph ON N1H 6J1

Attention:

Nellie Endeman
Finance Manager

Diane Green
Human Resources Manager

Applicant and Employer

AND TO:

Ayse Kavas
Mercer (Canada) Limited
120 Bremner Blvd., Suite 800
Toronto ON M5J 0A8

NOTICE OF INTENDED DECISION

I INTEND TO CONSENT, under section 62.1(5) of the PBA, to the payment from the pension fund for the Plan to EastGen Incorporated in the amount of \$91,639.76 as at April 30, 2018, plus investment earnings thereon to the date of payment.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the PBA. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within thirty (30) days after this Notice of**

Intended Decision is served on you¹ Additional copies of the enclosed Form 1 can be obtained by visiting the Tribunal's website at www.fstontario.ca.

If a Request for Hearing (Form 1) is submitted to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the PBA provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the "Superintendent") to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the PBA and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within thirty (30) days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the CONSENT pursuant to section 89(7) of the PBA.

A completed Request for Hearing form must be received by the Tribunal within 30 days of this Notice is served on you. The Request for Hearing form may be mailed, faxed or delivered to:

Financial Services Tribunal (change as appropriate)
5160 Yonge Street, 14th Floor
Toronto ON M2N 6L9

Attention: The Registrar
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedures for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. Those Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

REASONS FOR DECISION:

1. EastGen Incorporated is the employer and administrator as defined in the Plan (the "Employer").
2. The Plan was wound up effective March 31, 2016.
3. The Plan had a liability under section 75 of the PBA as per the wind up report as at March 31, 2016, filed by the Plan's actuary.
4. The Employer made the following payments totalling \$2,597,650 to fund the liability:
 - November 24, 2016: \$420,452
 - April 26, 2017: \$414,298
 - July 19, 2017: \$1,762,900
5. Information provided by the Plan's actuary on June 19, 2018, as part of the Employer's application under section 62.1 of the PBA showed that there were assets in the amount of \$91,639.76 as at April 30, 2018, remaining in the Plan's pension fund after all benefits have been settled.
6. In these circumstances, section 32(4) of Regulation 909 states that the money remaining in the pension fund may be paid to the employer in accordance with section 62.1 of the

PBA, as if the money was an overpayment into the pension fund by the employer within the meaning of section 62.1(1)(b) of the PBA.

7. Section 62.1(4) of the PBA states that if an employer makes an overpayment into the pension fund, the application to the Superintendent for reimbursement for the payment must be made before the later of: (a) 24 months after the date on which the employer made the overpayment; and (b) six months after the date on which the administrator, acting reasonably, becomes aware of the overpayment.

8. The Employer's application for reimbursement of the overpayment was made on June 20, 2018. This date is within 24 months after the date on which the Employer made the overpayments. Accordingly, the application has been filed within the time limits set out in section 62.1(4) of the PBA.

9. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, this 18th day of December, 2018.

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

1 *NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.*

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