



INFRINGEMENT NOTICE

Section 12GX of the *Australian Securities and Investments Commission Act 2001*

Date of giving this notice: 20 December 2022

Unique identification code: B00725795

TO: Black Mountain Energy Ltd
ACN 652 281 868

1. ASIC gives this infringement notice under section 12GX of the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**).
2. ASIC has reasonable grounds to believe that Black Mountain Energy Ltd (**BME**) has contravened an infringement notice provision as follows:
 - (a) On 27 May 2022, BME contravened section 12DB(1)(a) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services or in connection with the promotion by any means of the supply or use of financial services, making false or misleading representations with respect to the standard, quality, value or grade of services.
 - (b) BME published to the Australian Securities Exchange a presentation titled Investor Update concerning the business operations of BME on 27 May 2022 (**Investor Update**).
 - (c) The Investor Update includes the following statements (emphasis in original):
 - (i) on page 4:

‘Black Mountain Energy is creating a natural gas development project (**Project Valhalla**) with an **industry-leading ESG scorecard** and **net-zero carbon emissions**.’
 - (ii) on page 13:

‘Black Mountain is focused on a ‘**zero carbon emission natural gas**’ as transition fuel to a net-zero power future for Australia.’

‘Valhalla will be designed to **minimize carbon emissions** on site.’

‘Valhalla will leverage high integrity **Carbon Credits** to eliminate Scope 1 and Scope 2 emissions.’
 - (iii) on page 6:

‘BME is developing an unconventional drilling approach for low-impact, low-risk, carbon neutral natural gas.’

- (d) By publishing the Investor Update BME represented that:
- i) at the time of publishing the Investor Update BME was creating a natural gas development project with ‘net-zero carbon emissions’; and
 - ii) the greenhouse gas emissions associated with Project Valhalla would be net zero;

(the **Representations**).

- (e) The Representations are individually and collectively representations about the standard, quality, value or grade of services (BME’s securities) namely that the services were an investment in a company whose project (Project Valhalla) was being developed to, and would, produce natural gas with net zero carbon emissions.
- (f) The Representations were false or misleading because at the time the Investor Update was published:
- (i) BME had not progressed any substantive works related to its net zero aim and had not allocated funding for such works;
 - (ii) BME had not progressed any substantive or meaningful works regarding how it would design Project Valhalla to minimise or eliminate carbon dioxide emissions or attain net zero carbon emissions and had not developed a detailed plan for how it would achieve its aim;
 - (iii) BME had not undertaken any specific modelling of carbon dioxide emissions that were likely to be generated by, or might be expected to arise from, the production of gas from Project Valhalla, which would be required to be offset in order to achieve carbon neutrality;
 - (iv) BME had not undertaken any substantive modelling of the likely cost involved in offsetting any carbon dioxide emissions from Project Valhalla;
 - (v) BME’s net zero emissions target would only apply if BME was able to progress to production and was not intended to apply in relation to any exploratory or development activities;
 - (vi) BME did not have a credible or feasible plan for an ‘unconventional drilling’ approach or any other approach that would produce carbon neutral natural gas;
 - (vii) BME had no credible basis for asserting that the natural gas it produced would be carbon neutral; and
 - (viii) further and accordingly, BME had no reasonable grounds for making the Representations regarding net-zero carbon emissions from Project Valhalla.

Amount payable under this notice

3. The amount payable under this notice in relation to the alleged contravention is \$13,320. This amount can be paid using the method detailed in the covering letter accompanying this notice.
4. The payment period for the notice will be 28 days, beginning after the day on which the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn.

Consequences of complying with this notice

5. If BME pays the penalty stated in this notice within the time for payment mentioned above then (unless this notice is subsequently withdrawn and any penalty paid refunded):
 - (a) no proceedings (whether criminal or civil) will be brought against BME by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
 - (b) BME will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.
6. BME may, in writing, apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments.
7. Payment of the amount payable under this notice is not an admission of guilt or liability.

Consequences of failing to comply with this notice

8. If BME does not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against BME for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
9. The maximum pecuniary penalty that a court may impose on BME for the alleged contravention, if the provision is contravened, is the greatest of:
 - (a) \$11,100,000; and
 - (b) if the Court can determine the benefit derived and detriment avoided because of the contravention – that amount multiplied by 3; and
 - (c) either:
 - (i) 10% of annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision;

- (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to \$555 million - \$555 million.

Applying for more time to pay the penalty under this notice

- 10. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
- 11. If you wish to apply for an extension of time to pay the penalty specified in this notice, or to pay the amount payable in instalments, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 18).

Applying to have this notice withdrawn

- 12. Within 28 days after the day on which this notice is issued, BME may apply to ASIC in writing to have this notice withdrawn.
- 13. Evidence or information that BME or BME's representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against BME or BME's representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

Withdrawal of this notice

- 14. ASIC may, by written notice given to BME, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not BME has applied to have this notice withdrawn.
- 15. If the withdrawal notice is given after BME has paid the penalty specified in this infringement notice, ASIC will refund to BME the amount paid under the infringement notice.
- 16. If this notice is withdrawn, ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against BME for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.

Requirements for applications

- 17. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
 - a) must be in writing; and
 - b) must include the unique identification code set out at the top of this notice; and
 - c) must include your reasons for making the application; and
 - d) may be made by forwarding your application to ASIC at the address in paragraph 18.
- 18. You may contact ASIC in relation to this notice by contacting

Claire LaBouchardiere
Australian Securities and Investments Commission
GPO Box 9827
BRISBANE QLD 4000
or by email: ACLInfringementNotices@asic.gov.au



Claire LaBouchardiere
as a delegate of the Australian Securities and Investments Commission