

**JADE SOFTWARE CORPORATION (NZ) LIMITED**

**Reporting entity**

**E-GAS 2000 LIMITED AND E-GAS LIMITED**

**Participants allegedly in breach**

**THE AUCKLAND GAS COMPANY LIMITED**

**Party to some of the alleged breaches**

**NOVA GAS LIMITED**

**Party to some of the alleged breaches**

**MIGHTY RIVER POWER LIMITED**

**Party to alleged breach S-EGLT-04528**

**Breach notice 2009-49 (S-EGAS-04047, 04051 to 04064 and 04097, S-EGLT-04003 to 04076, 04079 to 04121, 04525 and 04528)**

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**Record of partial settlement of alleged breaches of Rules 69.2 and 78.1 of the Gas (Switching Arrangements) Rules 2008**

**14 August 2009**

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## **Record of partial settlement of alleged breaches of Rules 69.2 and 78.1 of the Gas (Switching Arrangements) Rules 2008**

### **Breach notice:**

2009-49 (S-EGAS-04047, 04051 to 04064 and 04097, S-EGLT-04003 to 04076, 04079 to 04121, 04525 and 04528)

### **Between:**

Reporting entity:	Jade Software Corporation (NZ) Limited ("Jade")
Participants allegedly in breach:	E-Gas 2000 Limited and E-Gas Limited (together, "E-Gas")
Party to some of the alleged breaches:	The Auckland Gas Company Limited ("Akld Gas")
Party to some of the alleged breaches:	Nova Gas Limited ("Nova")
Party to alleged breach S-EGLT-04528:	Mighty River Power Limited ("MRP")

### **Background:**

- A. On 1 May 2009, Jade notified the Market Administrator of alleged breaches (contained in breach notice 2009-49) of Rules 69.2 and 78.1 of the Gas (Switching Arrangements) Rules 2008 (the "Switching Rules") by E-Gas, namely that E-Gas was not complying with various timeframes prescribed by the Switching Rules.
- B. The Market Administrator referred 2009-49 (S-EGAS-04047, 04051 to 04064 and 04097, S-EGLT-04003 to 04076, 04079 to 04121, 04525 and 04528) to an investigator, Jacque Kean, for investigation, on 19 June 2009. The investigator extended the time for investigation to 7 August 2009.
- C. As a result of the investigation, the following emerged (in summary):
  - a. E-Gas admits that it breached Rules 69.2 and 78.1 of the Switching Rules;
  - b. E-Gas has been aggressively competing for customers with Akld Gas and Nova (in particular). Those retailers have been filing numerous GNWs (gas switching withdrawal notices) and GAWs (gas switching withdrawal responses) in relation to individual switches (a practice that appears to be a breach of Rule 78.5, although this is not alleged in this case). The result of this practice (until intervention by the Market Administrator and the investigator) was that switches were not being completed within 23 business days as is required by the Switching Rules;
  - c. Additionally, on some occasions E-Gas failed to complete switches by failing to file GTNs (gas transfer notices), having filed GANs (gas acceptance notices);
  - d. Initially, E-Gas's response to the breach notice was (essentially) that it was unable to comply with the timeframes in the Switching Rules as those timeframes did not provide it with sufficient time to clarify customers' instructions;
  - e. However, E-Gas subsequently decided to change its approach and comply (as it is obliged to by law) with the timeframes in the Switching Rules.

- D. The parties have agreed to resolve the following breaches as set out in this record of settlement:
- a. Breaches of Rule 78.1: S-EGLT-04003 to 04067, 04069, 04071 to 04076, 04525, and S-EGAS-04047;
  - b. Breaches of Rule 69.2: S-EGLT-04080 to 04081, 04085 to 04091, 04099 to 04101, 04103, 04105, 04108 to 04113, 04115, 04119 to 04121, and S-EGAS-04052 to 04053, and 04055 to 04064;
  - c. A breach of Rule 69.2 to which MRP is a party: S-EGLT-04528;
  - d. Breaches of Rule 78.1 to which Akld Gas is a party: S-EGLT-04068 and 04070;
  - e. Breaches of Rule 69.2 to which Nova is a party: S-EGAS-04051 and 04097.
- E. The following alleged breaches have not been settled and are not part of this partial settlement:
- a. A breach of Rule 69.2 to which Akld Gas is a party, namely S-EGAS-04054;
  - b. Breaches of Rule 69.2 to which Nova is a party, namely: S-EGLT 04079, 04082 to 04084, 04092 to 04098, 04102, 04104, 04106 to 04107, 04114, 04116 to 04118

**Settlement:**

- 1) It has been agreed that the breaches outlined in paragraph D above should not be referred to the Rulings Panel for determination, for the following reasons:
  - a) E-Gas has taken steps to minimise non-compliance with the timeframes in the Switching Rules from now on, namely a Chief Executive-driven undertaking to comply with those timeframes, and the provision of one-on-one training for its staff on the regulatory requirements;
  - b) E-Gas has now resolved all the outstanding switches in breach notice 2009-49. There is currently no outstanding issue in relation to any of the breaches contained in 2009-49 (although it is acknowledged that in some cases customers may have decided not to proceed with the switch due to frustration with the delays);
  - c) E-Gas has not had the benefit of familiarity with electricity regulation as many of the other retailers have, and thus the gas compliance regime has been a steep learning curve for E-Gas, which is a small organisation and does not have the benefit of internal legal resource as many other retailers do. However, E-Gas recognises that this is not an explanation that could be used in mitigation more than once.
- 2) This partial settlement of breach notice 2009-49 is subject to the approval of the Rulings Panel pursuant to regulation 34 of the Gas Governance (Compliance) Regulations 2008. If the Rulings Panel approves this settlement, this settlement will be final and binding on the parties to the breaches outlined above in paragraph D and contained in 2009-49, on all participants, and on the Rulings Panel.

**Acceptance of parties to settlement:**

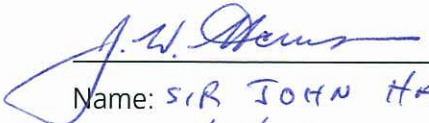
- Jade notified its acceptance of the terms of settlement in writing to the investigator on 14 August 2009.



- The E-Gas companies notified their acceptance of the terms of settlement in writing to the investigator on 14 August 2009.
- Akld Gas and Nova notified their acceptance of the terms of settlement in writing to the investigator on 5 August 2009 (although their acceptance refers to 78 breaches, in fact they were party to only four that they agreed to settle).
- MRP notified its acceptance of the terms of settlement in writing to the investigator on 31 July 2009.

**Rulings Panel:**

I approve this partial settlement pursuant to regulation 34 of the Gas Governance (Compliance) Regulations 2008.

  
Name: SIR JOHN HANSEN KNZM  
Date: 1/9/09.

## Jacquie Kean

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**From:** Gas Registry Administrator [gas.registry@jadeworld.com]  
**Sent:** Friday, 14 August 2009 2:45 p.m.  
**To:** Jacquie Kean  
**Cc:** 'Alison Hitchcock'; 'Gas Registry Administrator'  
**Subject:** FW: Partial settlement  
**Attachments:** E-Gas - 2009-49 - record of partial settlement.doc

Hi Jacquie

I can confirm that Jade has no objection to the terms of the proposed settlement.

If you have any future settlement questions can you please forward to me at [gas.registry@jadeworld.com](mailto:gas.registry@jadeworld.com).

Regards,

Greg Hay  
Gas Registry Administrator  
JADE Software Corporation Limited

***We Deliver, We Empower***

Gas Registry Helpline 0800 652266

**Jacquie Kean**

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**From:** Rodney Moore [rodneym@e-gas.co.nz]  
**Sent:** Friday, 14 August 2009 11:35 a.m.  
**To:** Jacquie Kean  
**Cc:** Ron Rosenberg; Syd Hunt  
**Subject:** RE: Draft report and record of settlement - breach notice 2009-49 (E-Gas)

Hi Jacquie

E-Gas accepts the terms of the settlement for Breach Notice 2009-49; E-Gas has to date resolved all ICP's contained within this breach notice.

Regards

**Rodney Moore**  
Sales Support Manager

**DDI: (04) 477 7389**  
**Mob: 027 221 3432**  
**Fax: (04) 499 4965**  
**Freephone: 0800 432 876**

**Jacquie Kean**

**From:** Charles Teichert [cteichert@novaenergy.co.nz]  
**Sent:** Tuesday, 4 August 2009 4:39 p.m.  
**To:** Jacquie Kean; John Palmer  
**Cc:** jacquie.kean@gmail.com; Hamish Tweedie; Mike Mitchell; Colin Leslie  
**Subject:** RE: Breach notice 2009-49 - E-Gas  
**Attachments:** Egas Breach settlement proposal.xls

Dear Jacqui,

With respect to the proposed settlement, Nova only wishes to pursue further certain breaches by Egas where AGCL or Nova is the affected party.

In summary we are happy to settle 78 of the 133 breaches by Egas where Nova/AGCL is the affected party. There are 55 breaches that we do not agree to settle without compensation for losses incurred by Nova Gas/AGCL as a result.

Attached is a spreadsheet indicating which items we are happy to settle as proposed and those that we are not.

**Breaches that can be settled as proposed**

The delay by Egas in responding to Switch Withdrawal Notices issued any Nova and AGCL have not caused any loss although we note that the failure to respond has been a part of a deliberate and calculated switching strategy initiated by Egas. We accept the settlement with respect to those cases.

Regards

Charles Teichert

## Jacquie Kean

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**From:** Mark Wilderspin [Mark.Wilderspin@mercury.co.nz]  
**Sent:** Friday, 31 July 2009 4:48 p.m.  
**To:** Jacquie Kean  
**Cc:** Gas Inbox  
**Subject:** RE: Breach notice 2009-49 (S-EGLT-04528) - E-Gas

Hi Jacquie,

Mercury Energy supports your proposal for E-Gas to undertake to adhere to the timeframes in the Switching Rules from now on, and that it provide its personnel with one-on-one training on the regulatory timeframes.

Regards

**Mark Wilderspin**

Compliance and Process Improvement Manager

**Mercury Energy**

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