

JADE SOFTWARE CORPORATION (NZ) LIMITED

Reporting entity

NOVA GAS LIMITED

Participant allegedly in breach

**Breach notice 2009-67 (S-GNVG-05010, 05011, 05015, 05017, 05021 to 05024,
05029 to 05034, and 05037 to 05041)**

**Record of settlement of alleged breaches of Rules 69.1, 69.2 and 78.1 of the
Gas (Switching Arrangements) Rules 2008**

12 October 2009

Record of settlement of alleged breaches of Rules 69.1, 69.2, and 78.1 of the Gas (Switching Arrangements) Rules 2008

Breach notice:

2009-67 (S-GNVG-05010, 05011, 05015, 05017, 05021 to 05024, 05029 to 05034, and 05037 to 05041)

Between:

Reporting entity: Jade Software Corporation (NZ) Limited
("Jade")

Participant allegedly in breach: Nova Gas Limited ("Nova")

Background:

- A. On 1 June 2009, Jade notified the Market Administrator of alleged breaches (2009-67) of Rules 69.1, 69.2, and 78.1 of the Gas (Switching Arrangements) Rules 2008 (the "Switching Rules") by Nova, namely that Nova had not complied with the Switching Rules on 19 occasions.
- B. The Market Administrator referred 2009-67 (S-GNVG-05010, 05011, 05015, 05017, 05021 to 05024, 05029 to 05034, and 05037 to 05041) to an investigator, Jacque Kean, for investigation, on 19 June 2009.
- C. As a result of the investigation, the following emerged (in summary):

Rule 69.1

- a. A retailer will be in breach of Rule 69.1 if, after a GNW is rejected, the retailer does not take one of the steps provided for in Rule 69 within 2 business days. Unless the retailer has not previously filed a GAN, the only option available to it at this point will be to file a GTN (as Rule 78.5 prohibits more than one GNW per GNT).
- b. This issue was not fully understood by all industry participants until Gas Industry Company Ltd held an industry forum on 22 July 2009 at which the issue was discussed.
- c. Notwithstanding the terms of Rule 78.5, if a retailer does not take a step under Rule 69 within 2 business days of rejection of a GNW, Jade will report a breach in respect of each step the retailer has not taken, including a failure to file a (further) GNW. However, in future, that is unlikely to be considered a material breach by the Market Administrator.

Rules 69.2 and 78.1

- d. One breach was caused by various factors such as manual processing carried out by temporary staff who may not (then) have had adequate training, diminished numbers of staff due to flu, and "teething" issues with the (then) new Switching Rules.
- e. One breach was caused by an internal conflict between the consumer's NZ and Australian management.
- f. It appears that on occasion the other retailer to a switch would file a notice such as a GNW without actually having the consumer's authority to do so.
- g. On occasion, Akld Gas delayed filing a notice while it obtained the consumer's instructions.

D. The parties have agreed to resolve 2009-67 as set out in this record of settlement.

Settlement:


- 1) It has been agreed that 2009-67 should not be referred to the Rulings Panel for determination, for the following reasons:
 - a) Nova accepts that “two wrongs do not make a right”, and its policy is now not to respond to other retailers’ breaches of the timeframes in the Switching Rules by breaching the Switching Rules itself. Instead, it tries to ensure that it complies with the timeframes but takes action against the other retailer under the Switching Rules (by alleging breaches) where appropriate.
 - b) Nova accepts that, even if the other retailer files more than one GNW, apparently in breach of Rule 78.1, Nova still needs to reply to the GNW within 5 business days.
 - c) The other retailer involved in most of the switches that are the subject of this breach notice also appears to have breached the Switching Rules its breaches contributed to the delays.
 - d) No other participant has indicated that there has been any material market impact as a result of the breaches.
- 2) This settlement 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 2009-67, 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 9 October 2009.
- Nova notified its acceptance of the terms of settlement in writing to the investigator on 12 October 2009.

Rulings Panel:

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


Name: Hon Sir John Hansen KNZM
Date: 17 OCTOBER 2009.

Jacquie Kean

From: Alison Hitchcock [ahitchcock@jadeworld.com]
Sent: Friday, 9 October 2009 11:16 a.m.
To: Jacquie Kean; Gas Registry
Subject: Re: Breach notice 2009-67

Jacquie
no objection from Jade.
Alison

----- Original Message -----

From: Jacquie Kean
To: Gas Registry
Cc: 'Alison Hitchcock'
Sent: Friday, October 09, 2009 11:13 AM
Subject: Breach notice 2009-67

Dear Alison and Shirley,

I am attaching a record of settlement in respect of breach notice 2009-67, against Nova Gas Ltd. Does Jade have any objection to the terms of the proposed settlement?

Regards
Jacquie

Jacquie Kean
Investigator
Gas Industry Company Limited

www.gasindustry.co.nz



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Jacquie Kean

From: Charles Teichert [cteichert@novaenergy.co.nz]
Sent: Monday, 12 October 2009 10:31 a.m.
To: Jacquie Kean
Cc: jacquie.kean@gmail.com; John Palmer
Subject: RE: Breach notice 2009-67

Jacquie,

Nova accepts the terms of the settlement.

Regards

Charles

From: Jacquie Kean [mailto:Jacquie.Kean@gasindustry.co.nz]
Sent: Friday, 9 October 2009 11:15 a.m.
To: Charles Teichert
Cc: jacquie.kean@gmail.com; John Palmer
Subject: Breach notice 2009-67

Charles,

I am attaching a draft record of settlement in respect of 2009-67. Does Nova accept the terms of settlement? I need to hear back from you on this today. Please copy to my gmail address.

Regards
Jacquie

Jacquie Kean
Investigator
Gas Industry Company Limited

www.gasindustry.co.nz



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12/10/2009