

JADE SOFTWARE CORPORATION (NZ) LIMITED

Reporting entity

NOVA GAS LIMITED

Participant allegedly in breach

**Breach notice 2009-96 (S-GNVG-06239, 06242, 06243, 06260, 06265, 06270, and
06271)**

**Record of settlement of alleged breaches of Rule 78.1 of the Gas (Switching
Arrangements) Rules 2008**

12 October 2009

Record of settlement of alleged breaches of Rule 78.1 of the Gas (Switching Arrangements) Rules 2008

Breach notice:

2009-96 (S-GNVG-06239, 06242, 06243, 06260, 06265, 06270, and 06271)

Between:

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

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

Background:

- A. On 1 July 2009, Jade notified the Market Administrator of alleged breaches (2009-96) of Rule 78.1 of the Gas (Switching Arrangements) Rules 2008 (the "Switching Rules") by Nova, namely that Nova had not filed a GAW within 5 business days on seven occasions.
- B. The Market Administrator referred 2009-96 (S-GNVG-06239, 06242, 06243, 06260, 06265, 06270, and 06271) to an investigator, Jacquie Kean, for investigation, on 3 August 2009.
- C. As a result of the investigation, the following emerged (in summary):
 - a. Nova admits that it breached Rule 78.1 of the Switching Rules.
 - b. One of the breaches was caused by various factors such as manual processing carried out by temporary staff who may not (then) have had adequate training, and diminished numbers of staff due to flu.
 - c. In the case of two of the breaches, Nova initially incorrectly alleged that its breaches were consequential on breaches by the other retailer, however the switch histories did not reveal any prior breach by the other retailer. This was accepted by Nova.
 - d. In one case, where the switch history did reveal a prior breach by the other retailer, Nova alleged that its breach was consequential on a breach by the other retailer, but Nova also accepted that it is not acceptable to respond to a breach with another breach.
 - e. In the case of the remaining three breaches, the allegation was that Nova had failed to respond to the second GNW in each switch within 5 business days. Nova initially said that it could not be in breach of Rule 78.1 because the second GNWs were invalid (because Rule 78.5 prohibits more than one GNW per switch). Nova subsequently accepted the view of Gas Industry Co Ltd, which is: even if the other retailer should not have filed a second GNW, Nova still needed to respond to it within 5 business days because otherwise resolution of the switch would be delayed even further (the way the Gas Registry is configured means that Nova's failure to file a GAW would prevent the other retailer from being able to file a GTN and complete the switch).
- D. The parties have agreed to resolve 2009-96 as set out in this record of settlement.

Settlement:


- 1) It has been agreed that 2009-96 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 each of the switches that are the subject of this breach notice also appears to have breached the Switching Rules in relation to five of the seven switches and 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 2009-96, 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 12 October 2009.
- Nova notified its acceptance of the terms of settlement in writing to the investigator on 7 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.

Jacque Kean

From: Alison Hitchcock [ahitchcock@jadeworld.com]
Sent: Monday, 12 October 2009 2:18 p.m.
To: Jacque Kean; Gas Registry
Subject: Re: Breach notice 2009-96 - record of settlement
Importance: High

Jacque
Jade has no objection to the terms of Breach 2009 -96

Kind Regards
Alison Hitchcock

Jacquie Kean

From: Charles Teichert [cteichert@novaenergy.co.nz]
Sent: Wednesday, 7 October 2009 12:45 p.m.
To: Jacquie Kean
Cc: John Palmer
Subject: RE: Breach notice 2009-96

Jacquie, Nova accepts the terms of the settlement.

Regards

Charles

From: Jacquie Kean [mailto:Jacquie.Kean@gasindustry.co.nz]
Sent: Tuesday, 6 October 2009 1:27 p.m.
To: Charles Teichert
Cc: John Palmer
Subject: Breach notice 2009-96

Charles,

Does Nova Gas Ltd accept the terms of the attached record of settlement for breach notice 2009-96?

Regards
Jacquie

Jacquie Kean
Investigator
Gas Industry Company Limited

www.gasindustry.co.nz

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12/10/2009