

**JADE SOFTWARE CORPORATION (NZ) LIMITED**

**Reporting entity**

**THE AUCKLAND GAS COMPANY LIMITED**

**Participant allegedly in breach**

**Breach notice 2009-73 (S-AKLD-05003 and 05004, 05014 to 05016, 05018, 05021  
to 05023, and 05026)**

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**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**

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

### **Breach notice:**

2009-73 (S-AKLD-05003 and 05004, 05014 to 05016, 05018, 05021 to 05023, and 05026)

### **Between:**

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

Participant allegedly in breach: The Auckland Gas Company Limited  
("Akld Gas")

### **Background:**

- A. On 1 June 2009, Jade notified the Market Administrator of alleged breaches (2009-73) of Rules 69.1, 69.2 and 78.1 of the Gas (Switching Arrangements) Rules 2008 (the "Switching Rules") by Akld Gas, namely that Akld Gas had not met the timeframes within the Switching Rules on various occasions.
- B. The Market Administrator referred 2009-73 (S-AKLD-05003 and 05004, 05014 to 05016, 05018, 05021 to 05023, and 05026) to an investigator, Jacquie Kean, for investigation, on 6 July 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. In almost all of the switches that are the subject of breach notice 2009-73, the switch histories revealed a prior breach (or breaches) and/or subsequent breaches by the other retailer involved in the switch. Akld Gas has acknowledged that it is not acceptable to respond to a breach with another breach.
- e. In one case, Akld Gas did not take any step within 23 business days as required by Rule 69.2, and the switch was not resolved for a further 54 business days.

- f. Evidence emerged that in one case, the other retailer involved in the switch appears to have filed GNWs without having the consumer's authority to do so.
  - g. Akld Gas no longer files more than one GNW per switch. Its practice is to file a GTN, and then to reverse the switch later if required (which is what the Switching Rules require). This should help to eliminate the practice of GNW/GAW "ping-pongs".
- D. The parties have agreed to resolve 2009-73 as set out in this record of settlement.

**Settlement:**


- 1) It has been agreed that 2009-73 should not be referred to the Rulings Panel for determination, for the following reasons:
  - a) Akld Gas 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) Akld Gas accepts that, even if the other retailer files more than one GNW, apparently in breach of Rule 78.1, Akld Gas 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 all but one of the 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 2009-73, 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.
- Akld Gas 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

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**From:** Alison Hitchcock [ahitchcock@jadeworld.com]  
**Sent:** Friday, 9 October 2009 11:10 a.m.  
**To:** Jacquie Kean; Gas Registry Administrator  
**Subject:** Re: Breach notice 2009-73

Jacquie  
no objections from Jade.  
Alison Hitchcock

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

**From:** Jacquie Kean  
**To:** Gas Registry Administrator  
**Cc:** 'Alison Hitchcock'  
**Sent:** Friday, October 09, 2009 10:43 AM  
**Subject:** Breach notice 2009-73

Dear Greg,

I am attaching a record of settlement in respect of breach notice 2009-73, against The Auckland Gas Company Ltd. Does Jade have any objection to the terms of the proposed settlement?

I am copying to Alison in case you are away.

Regards  
Jacquie

**Jacquie Kean**  
Investigator  
Gas Industry Company Limited

[www.gasindustry.co.nz](http://www.gasindustry.co.nz)



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**Jacquie Kean**

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**From:** Charles Teichert [cteichert@novaenergy.co.nz]  
**Sent:** Monday, 12 October 2009 10:30 a.m.  
**To:** Jacquie Kean  
**Cc:** John Palmer  
**Subject:** RE: Breach notice 2009-73 - Akld Gas

Jacquie – AGCL accepts the terms of the settlement.

Regards

Charles

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**From:** Jacquie Kean [mailto:Jacquie.Kean@gasindustry.co.nz]  
**Sent:** Friday, 9 October 2009 10:40 a.m.  
**To:** Charles Teichert  
**Cc:** John Palmer  
**Subject:** Breach notice 2009-73 - Akld Gas

Charles,

I am attaching a draft settlement agreement in respect of 2009-73 (this needs to be settled today).

Could you please confirm that Akld Gas accepts the terms of settlement? (Please copy your response to my gmail address as I will be working from that later today.)

Regards  
Jacquie

Jacquie Kean  
Investigator  
Gas Industry Company Limited

[www.gasindustry.co.nz](http://www.gasindustry.co.nz)



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12/10/2009