

E-GAS LIMITED

Reporting entity

NOVA GAS LIMITED

Participant allegedly in breach

GAS INDUSTRY COMPANY LIMITED

Party to the alleged breaches

Breach notices 2009-136, 148 and 163

**Record of settlement of alleged breaches of Rules 65.2 and 78.2 of the Gas
(Switching Arrangements) Rules 2008**

11 March 2010

Record of settlement of alleged breaches of Rules 65.2 and 78.2 of the Gas (Switching Arrangements) Rules 2008

Breach notices:

2009-136, 148 and 163

Between:

Reporting entity:	E-Gas Limited ("E-Gas")
Participant allegedly in breach:	Nova Gas Limited ("Nova")
Party to alleged breaches:	Gas Industry Company Limited ("Gas Industry Co")

Background:

- A. On 11 December 2009, the Market Administrator referred alleged breaches by Nova of Rules 65.2 and 78.2 of the Gas (Switching Arrangements) Rules 2008 (the "Switching Rules") to an investigator, Jacquie Kean, for investigation.
- B. The alleged breaches referred to investigation were:
 - a. 2009-136 O, R, S, U, and W to ZA, relating to three ICPs;
 - b. 2009-148 A to E, G to I, K, M to O, R to T, V to Z, ZB, ZD and ZF, relating to nine ICPs (two of which are also the subject of breaches in 2009-136); and
 - c. 2009-163 C, F, G, J, L, M and O, relating to six ICPs (three of which are also the subject of breaches in 2009-148).
- C. As a result of the investigation, the following emerged (in summary):
 - a. All of the alleged breaches involve allegations that Nova did not have authority from the consumer to take the actions it took (whether that be initiating a switch or rejecting a GNW);
 - b. Nova has provided evidence that it was not in breach of the Switching Rules as alleged in:
 - i. 2009-136 S, U, W and ZA;
 - ii. 2009-148 A to C, G, K, M to O, S, V to X, ZD and ZF;
 - iii. 2009-163 C and J;
 - c. The switch history did not disclose a breach as alleged in 2009-163L;
 - d. Nova has admitted it was in breach as alleged in:
 - i. 2009-136 H, I, O, and X to Z;
 - ii. 2009-148 D, E, R, Z and ZB;
 - iii. 2009-163 F, G and O;
 - e. Although not admitted by Nova, the evidence suggests it is likely Nova was in breach as alleged in 2009-148 Y;
 - f. Due to a conflict in evidence provided by Nova and E-Gas, it was not able to be established whether there was a breach as alleged in 2009-163 M;
 - g. Nova's explanations for the breaches are as follows:

- i. In the case of one ICP, Nova's account manager spoke to an assistant of the owner of a business whose English was poor, and, although he was unable to get a definitive answer from the assistant, he filed a GAW(R) anyway;
 - ii. In the case of each of two ICPs, two businesses had the same street addresses because their premises were in the same building. Nova had instructions from its own consumers in each case but was using the wrong ICPs;
 - iii. In the case of one ICP, Nova's account manager filed numerous GAW(R)s without checking with the consumer that the consumer still wanted to switch. Nova accepts that these are serious breaches and says that the account manager's actions do not meet Nova's internal standards. Nova has taken action to prevent future similar occurrences, such as further training of its account managers;
 - iv. In the case of one ICP, Nova filed a GAW(R) because it assumed there had been a mistake, however it accepts it should have filed a GAW(A) if it had not been able to contact the consumer within five business days;
 - v. In the case of one ICP, Nova filed a GAW(R) in anticipation of a meeting it had arranged with the consumer, rather than obtaining the consumer's instructions before filing the GAW.
- D. The parties have agreed to resolve 2009-136, 148 and 163 as set out in this record of settlement.

Settlement:

- 1) It has been agreed that 2009-136, 148 and 163 should be settled on the following basis:
 - a) Nova will pay E-Gas the sum of \$2,500 plus GST (if applicable) within seven days of the date of this settlement. That payment is made in recognition of costs incurred and losses suffered by E-Gas in connection with 2009-136, 148 and 163;
 - b) Gas Industry Co's current policy is not to seek costs if a matter is settled prior to it being referred to the Rulings Panel for determination; accordingly it will not be seeking costs in this case;
 - c) The settlement is not intended to act as a precedent for any similar issues that may arise as between Nova and E-Gas.
- 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 2009-136, 148 and 163, on all participants, and on the Rulings Panel.

Acceptance of parties to settlement:

- Nova notified its acceptance of the terms of settlement in writing to the investigator on 10 March 2010.

- E-Gas notified its acceptance of the terms of settlement in writing to the investigator on 11 March 2010.
- Gas Industry Co notified its acceptance of the terms of settlement in writing to the investigator on 10 March 2010.

Rulings Panel:

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



Name: Hon Sir John Hansen KNZM

Date: 11.3.2010.