

**JADE SOFTWARE CORPORATION (NZ) LIMITED (as registry operator under the  
Gas (Switching Arrangements) Rules 2008)**  
Notifying participant

**MIGHTY RIVER POWER LIMITED trading as Mercury Energy**  
Participant allegedly in breach

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**Record of settlement of alleged breach of rule 72.2  
Gas (Switching Arrangements) Rules 2008**

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## Record of settlement of alleged breach of rule 72.2 Gas (Switching Arrangements) Rules 2008

**Breach notices:**                               **2013-163**  
   **2013-175**

### **Between**

Notifying participant:                           Jade Software Corporation (NZ) Limited (as registry operator under the Gas (Switching Arrangements) Rules 2008)

Participant allegedly in breach:             Mighty River Power Limited trading as Mercury Energy (“Mercury Energy”)

### **Background**

1. On 26 November 2013, pursuant to regulations 18(3) and 23 of the Gas Governance (Compliance) Regulations 2008, the market administrator referred alleged breaches by Mercury Energy of rule 72.2 of the Gas (Switching Arrangements) Rules 2008 (“Switching Rules”) to an investigator, Jason McHerron, for investigation.
2. The alleged breaches referred for investigation involve Mercury Energy’s failure to include switch dates in gas transfer notices that comply with rule 72.2.
3. A gas transfer notice must contain the switch date (defined in rule 5.2 as “the date on and from which a new retailer supplies gas to a consumer installation”). Rule 72.2 provides that, subject to rules 72.3 and 72.4, if the gas switching notice (given under rule 66) included a requested switch date that complied with rule 67.3 or 67.3A, the responsible retailer must use the requested switch date as the switch date and provide switch readings applicable to that date. Each of the alleged breaches involved a standard switch in which Mercury Energy was the responsible retailer.
4. A switch date was included in each of the gas switching notices. In the gas acceptance notices that Mercury Energy gave under rules 69.1 and 70 in response to the gas switching notices, it used the same expected switch dates as in the gas switching notices. Mercury Energy included the acceptance code “AA” in the gas acceptance notices. The “AA” code means: “Switch is accepted, there are no relevant issues and GTN [gas transfer notice] will follow to complete switch on the GAN [gas acceptance notice] Expected Switch Date.”<sup>1</sup>
5. However, in each of the switches under investigation, Mercury Energy manually overrode its automated system to include an earlier date in the gas transfer notice as the switch date, following a request for an earlier switch by each consumer.

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<sup>1</sup> Determinations by the Industry Body (Gas Industry Co) under the Gas (Switching Arrangements) Rules 2008, version 1.2, 20 February 2009 at 16.3, p 16.

6. In each case, the requested switch date in the gas switching notice complied with rule 67.3 in that it did not pre-date the date the gas switching notice was given to the registry and was not more than 23 business days after that date. Thus, according to rule 72.2, Mercury Energy was required to use the requested switch date as the switch date (neither rule 72.3 nor rule 72.4 applied).
7. Mercury Energy admits each of the breaches of rule 72.2. Its explanation is that, in each case, it was giving effect to a request by the consumer for an earlier switch date than that set out in the gas switching notice, to align billing dates for gas with those for electricity, where the consumer had a dual account.
8. Mercury Energy agreed to change its systems to remove the ability to manually override the requested switch date in circumstances where the Switching Rules do not require or permit the date to be amended, as occurred in each of these alleged breaches.
9. No other parties were adversely affected by the breaches. On Gas Limited was initially joined as a party to these breaches, but advised the investigator on 12 December 2013 that it had not intended to become a party.
10. Mercury Energy indicated that it intends to raise its concerns about the Switching Rules with Gas Industry Co, and will seek a rule change to permit more flexible switch timing, to accommodate consumers' wishes.

#### **The agreed settlement**

11. By way of settlement of the alleged breaches, Mercury Energy agrees to the following:
  - 11.1. Mercury Energy admits each of the alleged breaches of rule 72.2.
  - 11.2. Mercury Energy undertakes that, pending any relevant change to the Switching Rules, it will ensure that it complies with the existing rules on switch timing, including rule 72.2.
  - 11.3. Mercury Energy will make appropriate amendments to its computer systems to remove the ability for staff to manually override requested switch dates in circumstances where the Switching Rules do not require or permit the switch date to be amended.
  - 11.4. Mercury Energy will ensure that all relevant staff receive one-on-one refresher training on regulatory requirements relating to the switching process.
12. In agreeing to the above settlement, Mercury Energy understands that in the event of further alleged breaches of rule 72, there may be more serious repercussions for it, involving referral to the Rulings Panel. In that event, the Rulings Panel would have power to make orders under section 43X of the Gas Act 1992, including for the payment of civil pecuniary penalties.

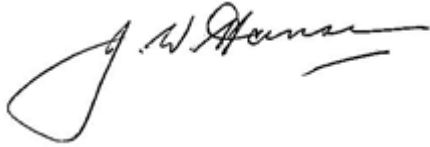
13. This settlement is subject to the approval of the Rulings Panel pursuant to regulation 34 of the Gas Governance (Compliance) Regulations 2008. If the Rulings Panel approves this settlement, it will be final and binding on the parties, all other participants, and the Rulings Panel, and no further action can be taken in respect of the alleged breaches.

#### **Acceptance of parties to settlement**

14. Jade Software Corporation (NZ) Limited (as registry operator under the Gas (Switching Arrangements) Rules 2008) notified its acceptance of the terms of settlement in writing to the investigator on 6 January 2014.
15. Mighty River Power Limited trading as Mercury Energy notified its acceptance of the terms of settlement in writing to the investigator on 23 December 2013.

#### **Rulings Panel**

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

A handwritten signature in black ink, appearing to read 'J. W. Hansen', written over a horizontal line.

Hon Sir John Hansen KNZM

Date: 13 January 2014