

28 April 2006

Ms Wendy Heath
Regulatory Program Manager
Essential Services Commission of Victoria
2nd Floor, 35 Spring Street
MELBOURNE VIC 3000

By email (wendy.heath@esc.vic.gov.au)

Dear Ms Heath

TRUenergy Response to the ESC Draft Decision, Review of Interim Operating Procedure – Compensation from Wrongful Disconnection

Thank you for the opportunity to provide comment to the Essential Services Commission of Victoria (ESC) Draft Decision, Review of Interim Operating Procedure – Compensation from Wrongful Disconnection.

TRUenergy continues to support the intent of the Operating Procedure on Wrongful Disconnections. We support many of the specific changes made to the Draft Operating Procedure from feedback the ESC received from stakeholders on the Interim Operating Procedures. The Draft Operating Procedure, however, does not have our support where it goes beyond the purpose and legislative intent for regulating wrongful disconnections.

The evidence on retailers' practices on wrongful disconnection does not support a broader or more interventionist regulatory approach to wrongful disconnections. The ESC's 2002/03 compliance audits found that the Victorian retailers have 'appropriate policies and procedures to comply with the requirements of the Energy Retail Code (ERC) in respect of their obligations to assist customers with payment difficulties and to avoid disconnecting these customers'¹. This result was further supported by the ESC's follow up compliance audit specifically targeted at retailers' wrongful disconnection practices:

The audit findings are that the retailers' policies and procedures in relation to providing assistance to and disconnecting customers with financial difficulty are compliant. Further, the outcomes reflect that, for the majority of customers in financial difficulties, this assistance has been provided over a long period of time. ...

¹ [Essential Services Commission \(ESC\), Regulatory Audit of Electricity and Gas Retailers 2003/04: Review of Energy and Water Ombudsman, Victorian Cases – July – December 2004, Summary Report, March 2006, page i.](#)

The review of the EWOV cases shows that there was a high degree of compliance by retailers in sending appropriate disconnection notices, offering payment arrangements and only considering disconnection action in accordance with the minimum amount allowed under the ERC.²

The Energy and Water Ombudsman of Victoria (EWOV) reports in the period July to December 2005 that there was a total of 158 wrongful disconnections cases out of a total of 8,589 cases that EWOV received for the period. Wrongful disconnection cases represented 1.8% of total claims to EWOV between July and December 2005.³

This supports our view that Victorian retailers are managing wrongful disconnections in an appropriate and compassionate manner. We offer the following comments as a means of better defining the scope of the Draft Operating Procedure for the ESC's consideration.

Legislative intent and context

TRUenergy supports the ESC's legislative intent and context statement in the Draft Operating Procedure that:

The Energy Retail Code is essentially procedural, so it protects customers by seeking to ensure that a proper process is followed for proposed disconnections and that claims of financial incapacity and other hardship are taken into account by retailers. The Commission is particularly concerned that this procedure assists in discerning instances of wrongful disconnections causing material disruption, damage or hardship.

The scope of compensation and eligible customers for compensation in the Draft Operating Procedure goes beyond causes for and customers facing "material disruption, damage or hardship" from wrongful disconnections. Under the Draft Operating Procedure customers with financial capacity to pay but for whatever reason do not pay their bill on time may be eligible for compensation for wrongful disconnection. For example, under the Draft Operating Procedure a customer that has been on an extended holiday but fails to contact the retailer to make arrangements for payment of the utilities bills while they are away may be eligible for a wrongful disconnection payment as a consequence of a small technical breach of the Operating Procedure by the retailer.

Compensation payments, for customer with the capacity to pay do not satisfy the legislative intent of the Draft Operating Procedures as outlined above. In our view, most members of the community are unlikely to support customers with the capacity to pay receiving compensation for wrongful disconnection due to a

² [Essential Services Commission \(ESC\), Regulatory Audit of Electricity and Gas Retailers 2003/04: Review of Energy and Water Ombudsman, Victorian Cases – July – December 2004, Summary Report, March 2006, pages ii & iii.](#)

³ [Energy and Water Ombudsman \(Victoria\), Resolution, 1 July – 31 December 2005, Issues Number 21.](#)

genuine mistake by the retailer. It is a windfall gain, ultimately received from other customers.

Applying such a broad regulatory net for wrongful disconnection payments increases the regulatory costs for retailers without the additional consumer protection benefits. That is, the broader regulatory net offers opportunities for customers that have the capacity to pay to 'game' the wrongful disconnection process and gain a financial benefit without incurring any material disruption, damage or hardship from a wrongful disconnection. In our previous submission we stated that retailers understand that wrongful disconnection of customers result in poor customer experience with flow on consequences for the company image. In a competitive market, retailers endeavour to avoid such situations. This does not require further regulatory control.

Under section 2.1.2 of the Draft Decision, the ESC argues that it is unable "to limit the amount of compensation, either directly by setting a maximum compensation cap or indirectly by requiring the customer to apply for re-connection within a specified timeframe".

This may be the case, however we ask the ESC to acknowledge that the legislative intent of the Operating Procedure is to provide guidance on the ESC's interpretation of circumstances in which a customer is materially disrupted, damaged or in hardship and therefore is eligible for compensation for being wrongfully disconnected. These strict criteria of disruption, damage or hardship must be adhered to.

The Minister for Energy's advice for the purpose of the review does not limit the ESC's role in appropriately interpreting that wrongful disconnections must cause "material disruption, damage or hardship" for compensation to be paid. For instance, the Minister states "that the risk of large WDPs arising from extended disconnections serves to increase incentives for retailers to monitor and, and where relevant, review compliance of those disconnections with licence requirements. Hence, the Minister concludes that he does not "propose to establish a statutory cap on the WDP amount". The Minister does not suggest that a wrongful disconnection, regardless of the timeframe a customer is disconnected for, should not be assessed against the criteria of "material disruption, damage or hardship".

In the advice to the ESC, the Minister goes on to state:

*"Whilst I referred to the specific instance of consumers who may be wrongfully disconnected on account of incapacity to pay, the **disruption may be no less significant [emphasis added]** for consumers who are disconnected wrongfully but who are not experiencing hardship".*

We recommend that the ESC clearly state in the Final Operating Procedure that the Procedure does not apply to customers that have the capacity to pay but are disconnected because of their own inaction(s) to meet billing requests from retailers and/or they are not materially disrupted or damaged as a consequence of the disconnection. That is, the ESC must re-affirm and provide interpretative

guidance on “material disruption, damage or hardship” as outlined in the legislative intent and content section of the Operating Procedures.

Please do not hesitate to contact me on telephone number (03) 8628 1185 or e-mail con.hristodoulidis@truenergy.com.au if you have any questions or queries on TRUenergy’s comments.

Your Sincerely,

(signed for e-mail)

Con Hristodoulidis
Regulatory Manager