



Wrongful Disconnection Payment Dispute

Simply Energy and The Complainant

October 2010

Statement of Reasons

Introduction

The Compliance Policy Statement for Victorian Energy Businesses (Compliance Policy Statement) provides for the Energy and Water Ombudsman Victoria (EWOV) or a retailer to seek advice from the Essential Services Commission (the Commission) regarding the interpretation of the terms and conditions of a retailer's contract for supply. In addition, EWOV can refer an unresolved dispute for a wrongful disconnection payment to the Commission for a formal decision.

In accordance with clause 3.3.1 of the Compliance Policy Statement, EWOV has referred this case of alleged wrongful disconnection to the Commission for a formal decision. Both The Complainant and Simply Energy were offered the opportunity to provide information directly to the Commission, but did not do so.

Background

The Complainant's electricity supply was disconnected at 12.31 pm on 13 August 2009 and reconnected at 10.08 pm on 14 August 2009. The electricity account was originally established with Simply Energy on 7 February 2007 and The Complainant made regular payments until 24 August 2007, when her account balance was zero.

On 11 October, Simply Energy issued an account for \$1,360.62, which was much higher than previously. After investigation, it was found that the bill was based on an actual meter read and reconciled against previous accounts, which had been based on estimated reads.

The Complainant made irregular payments from October 2007. A payment plan of \$350.00 per fortnight was established in late February 2008, and was cancelled in mid March 2008 due to non payment. At that time, Simply Energy established a new payment plan of \$150 per fortnight. Simply Energy stated that The Complainant agreed to the plan, which took into account capacity to pay and account arrears.

One \$150 payment was received in late April 2008, but because of inconsistent payments, the plan was cancelled. The Complainant contacted Simply Energy in late September and agreed to make a payment of \$300 within 3 days. This did not occur, but The Complainant contacted Simply Energy on 7 October 2008, and a third payment plan of \$235 per fortnight was established. According to Simply Energy, this plan was based on arrears and not on capacity to pay.

On 2 July 2009, Simply Energy sent a disconnection notice by registered mail, but it was returned unclaimed. On 24 July, 2009 Simply Energy made a field visit and left a further letter. The Complainant made a payment on 27 July 2009 (amount undisclosed), prior to the disconnection.

According to Simply Energy, The Complainant did not contact them and the supply was disconnected on 13 August 2009 because of an outstanding debt of \$2,983.47.

Regulatory Compliance Issues

The case was referred to the Commission for a decision based on Simply Energy's alleged non-compliance with the following Energy Retail Code requirements.

- Clause 11.2(1) and clause 12.2(a) – lack of adequately assessing capacity to pay, together with arrears and future consumption, in determining the amount and frequency of instalment plans
- Clause 11.2(3) and clause 12.2 - not meeting the obligations to offer a further instalment plan prior to disconnection and providing details of that instalment plan.

The Commission's deliberations on these matters are set out below.

Assessing capacity to pay

It is noted that Simply Energy contacted The Complainant on a number of occasions from October 2007 to August 2009 when her electricity supply was disconnected. From February to October 2007, The Complainant's electricity accounts were estimated and each account

was paid in full. A meter read in October 2007 increased the account to \$1360.62. From then until February 2008, irregular payments were made. Between February and October 2008, three payment plans were established for \$350, \$150 and \$235 per fortnight. Either partial or no payment was received and according to Simply Energy, each plan was cancelled due to non-payment.

According to The Complainant, Simply Energy was advised on 19 March 2008 that \$150 per fortnight "was too much for her to pay"; however this payment plan was established. The record of the telephone call supports this account.

Simply Energy agreed that the final payment plan established on 7 October 2008 for \$235 per fortnight was based on arrears and did not take into account her capacity to pay. However, it stated that it was not able to assess The Complainant's capacity to pay prior to disconnection as there was no response to their contacts after October 2008.

Based on the information provided, and confirmed by Simply Energy, Simply Energy did not take into account The Complainant's capacity to pay, together with arrears and future consumption needs, in determining the amount and frequency of the instalment plan in October 2008. There is also doubt as to whether the instalment plan in March 2008 took proper account of capacity to pay.

Therefore, it is concluded that Simply Energy did not comply with the relevant ERC provisions in setting these instalment plans.

Offer of a further instalment plan

Clause 11.2(3) requires that a retailer must offer a customer experiencing financial difficulties an instalment plan unless that customer has not complied with two instalment plans in the previous 12 months and does not provide reasonable assurance that they will meet their on-going payment commitments. Clause 12.2 requires Simply Energy, in offering an instalment plan, to specify the period and amount of the plan taking into account a number of factors.

Simply Energy acknowledged that it had only offered one instalment plan in the previous 12 months prior to disconnection (in October 2008), but that it offered a further plan in its registered disconnection letter sent on 2 July 2009 (which was returned unclaimed). Therefore, it believed that it met its obligations under the ERC to offer a further instalment plan.

The letter sent on 2 July 2009 states:

"Welcome to Simply Energy.

Unfortunately, we have been unsuccessful in making contact with you via telephone, to discuss your account which is overdue.

If you are experiencing payment difficulties, please contact us where we can discuss:

- *Affordable payment plans*
- *Energy efficiency advice (please refer to enclosed brochure)*
- *Etc....."*

The Complainant apparently advised Simply Energy in March 2008 that the \$150 per fortnight payment was not affordable. The instalment plan amount of \$235 per fortnight set in October 2008 was, by Simply Energy's admission, based on arrears and future consumption. There was no detail provided in the letter of 2 July 2009 which sets out how the instalment plan was calculated, the period of the plan, and how the plan will be monitored.

Therefore, it is concluded that Simply Energy did not comply with the relevant ERC provisions.

Conclusion

Having regard to the advice and information provided to the Commission, it is found that Simply Energy did not comply with clause 11.2 and clause 12.2 of the Energy Retail Code in

disconnecting The Complainant. Therefore, Simply Energy has not complied with the relevant terms and conditions of its contract with The Complainant.

Therefore, it is concluded that the disconnection of The Complainant is wrongful and a compensation payment of \$286.80 is required (compensation for 21.37 hours).

Mr A W Darvall
Delegated Commissioner
October 2010