



WRONGFUL DISCONNECTION PAYMENT DISPUTE

AGL SALES AND THE COMPLAINANT

JANUARY 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 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.

Therefore, in accordance with clause 3.3.1 of the Compliance Policy Statement, EWOV has referred the case of alleged wrongful disconnection to the Commission for a formal decision.

Background

The Complainant's electricity supply was disconnected at 1.45 pm mid March 2009 and reconnected at 4.30 pm the next day.

According to The Complainant's statement they believed that the electricity account for the premises was with TRUenergy. Following the receipt of a price variation letter from AGL, The Complainant contacted AGL in mid February 2009 to clarify that the account was with TRUenergy and to establish why AGL had sent them the letter.

The Complainant claimed that following the conversation of mid February, while they believed there was a balance owing on the account, AGL had not advised them of any amount they needed to pay to prevent disconnection. They were also still of the belief that the account was with TRUenergy and not AGL.

In its response, AGL advised that it held the billing rights for the premises from end October 2007 to mid March 2009 but lost the rights for the site a week later through a retrospective transfer initiated by TRUenergy.

According to the account history, AGL despatched an invoice mid November 2008 for the supply period April 2008 to August 2008. A reminder notice for this amount was sent early December 2008, followed by a disconnection warning late December 2008. A 24 HR disconnection warning was sent in early January 2009.

Early in February 2009 an automatically generated 'Price Variation' letter was sent to The Complainant.

Mid February 2009, AGL issued an invoice for the total outstanding balance addressed to 'Dear Occupier'. This invoice comprised the previous carryover balance and current charges for the period August 2008 to February 2009.

AGL confirmed that later in February 2009 it received a call from a customer residing at the premises, claiming that they believed their electricity account was with TRUenergy and not AGL. The customer contact notes for that date show that during the conversation the 'Dear Occupier' letter was explained and that the caller was advised that they needed to sort out the billing issue with TRUenergy.

From the contact notes it appears that the AGL customer service officer thought The Complainant was being billed by both AGL and TRUenergy. Hence the advice to The Complainant to seek a reimbursement from TRUenergy but to keep AGL advised of what was happening as the AGL bill was outstanding and non-payment of the outstanding amount could compromise their electricity supply.

There was no further contact from the customer after the February 2009 call, nor were any payments made against the account.

According to The Complainant's statement they did not receive any notifications from AGL other than the 'Price Variation letter', until mid March 2009. At this time The Complainant said they received a letter from AGL addressed to 'Dear Customer' in which it requested immediate payment for electricity usage by mid March 2009.

In its statement AGL listed the various notifications it had despatched to the premises prior to the disconnection.

The Complainant's electricity supply was disconnected mid March 2009. According to the AGL report the disconnection was in relation to the earlier unpaid arrears for the supply period April 2008 to August 2008.

Reasons for referral

In their statement The Complainant maintains that they believed their retailer to be TRUenergy and that prior to the disconnection on March 2009, they did not receive any notifications from AGL advising them of the account arrears or impending disconnection. The Complainant claims that they only received a 'Price Variation' letter despatched in February 2009 which prompted them to call AGL and question their status as an AGL customer.

According to the AGL customer screen notes, during that call The Complainant was advised that they were a customer of AGL and that they needed to pay their AGL account. They were also advised to urgently speak to TRUenergy to establish their supply status with them and following this, urgently recontact AGL as under the current conditions their supply could not be guaranteed. The Complainant failed to recontact AGL or pay anything towards their account. In their statement The Complainant confirmed that though they were not aware of the exact outstanding amount owing on the account at the time of the phone conversation, they were aware there was an arrears.

Given The Complainant's claim that they did not receive any disconnection notifications from AGL, EWOV is questioning whether AGL fulfilled the requirements of clause 13.4(a) of the Energy Retail Code (ERC) and is able to verify that in doing so, was compliant as prescribed under section 4.2.3 of the Compliance Policy Statement (CPS).

Clause 13.4 of the ERC outlines the retailer's responsibility to inform a customer who fails to provide acceptable identification, of impending disconnection via a disconnection notice.

13.4 Refusal to provide acceptable identification or refundable advance

A **retailer** may **disconnect** a **customer** if the **customer** refuses when required to provide **acceptable identification** (if the **customer** is a new **customer** of the **retailer**) or a **refundable advance** but only if:

- (a) **the retailer has given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than 10 business days after the date of receipt of the notice; and**
- (b) **the customer has continued not to provide the acceptable identification or the refundable advance.**

Under section 4.2.3 of the CPS the retailer must be able to substantiate the claim that all documents were despatched as required.

4.2.3 Proof of despatch of Notices, (phone contacts and visits)

(This case is relevant only to the proof of despatch of Notices)

For a retailer to satisfy the Energy Retail Code requirements about despatch of documents, contact by telephone and contact in person, the retailer must be able to demonstrate the following.

The retailer needs to be able to prove the relevant matter on the balance of probabilities.

Despatch of Notices

AGL does not believe that it wrongfully disconnected The Complainant. In its response to EWOV's enquiries AGL stated that all notifications were posted to The Complainant within the required timeframes to the correct postal address, in accordance with clause 13.4 of the ERC. AGL is also of the belief that it complied with clause 4.2.5 of the CPS. In support of these claims AGL has provided screen shots of its electronic records.

Both The Complainant and AGL were invited to make further submissions to the Commission. Only AGL took advantage of this offer, forwarding a written submission to the Commission.

The AGL Submission

The Complainant was disconnected in relation to the previous arrears for the supply period of April 2008 to August 2008. Prior to the disconnection in March 2008 AGL's computer records show the list of notices issued to the premises:

In its report EWOV are questioning AGL's substantiation pursuant to section 4.2.3 of the CPS, that it did despatch the correct notices to The Complainant prior to disconnection. Therefore, in EWOV's view, this calls into question whether or not The Complainant was actually issued with a disconnection notice at all.

In support of the issuing of the correct notices and compliance with clause 4.2.3 of the CPS, AGL provided several screen shots which show electronic records of the billing screens, notifications created and issued, collection notices issued and documents sent to the print house.

The Issues

EWOV has concerns with the screen shots provided by AGL. According to EWOV the activity screen and the 'notifications' issued screen show

- *"the issue date for invoices but do not contain the invoice number to confirm which invoice was issued on which date";*

Also, the batch issue screen, the billing screen and the print document screen show

- *"the print date with invoice numbers but cannot marry this information with the issue date".*

With regard to the above EWOV has requested the Commission to comment on the following:

1. Section 4.2.3 of the CPS. Has AGL adequately demonstrated it despatched the required notifications to The Complainant?
2. Clause 13.4 of the ERC. Did AGL in fact notify The Complainant of the pending disconnection?

In reviewing the screen shots to which EWOV is referring it became apparent that a number of the screen shots were either a partial view and not a full view of the screen, or were not the main summary screen pertaining to the particular function. In order to adequately assess the electronic records it is necessary to view the main summary screens which show all the information pertinent firstly to the account and secondly to the function.

The Commission reviewed further screen shots from AGL and found the following:

- Common to all screens is a permanent reference number which also appears on the bill.
- The main screens of each function such as notification, billing, collections etc also show a Partner number and either an account number or contract number or both.
- The account number appears on all bills.
- AGL do not show individual invoice numbers for each bill issued. The invoices are individualised by the amount due, the service address and the due date or 'payment target date'.
- The service address is linked to the account number and permanent reference number which both appear on all bills.
- Where necessary the screens show the print date and issue date

From studying the screen shots the Commission was able track the development and despatch of the required notifications.

Therefore, the Commission is of the opinion that AGL has adequately demonstrated that it despatched the required notifications to The Complainant, hence did notify The Complainant of the pending disconnection.

Conclusion

In accordance with the Compliance *Policy Statement for Victorian Energy Businesses January 2009*, the Commission has investigated the alleged breach by AGL of its retail licence in relation to the disconnection of The Complainant. The Commission has decided that AGL complied with its Retail Licence and the contract terms and conditions relating to the disconnection of The Complainant.

Therefore, the disconnection of The Complainant was not wrongful and a compensation payment is not required.

Mr A W Darvall
Delegated Commissioner
February 2010