



WRONGFUL DISCONNECTION PAYMENT DISPUTE

AGL AND THE COMPLAINANT

STATEMENT OF REASONS

MAY 2006

Introduction

Section 48A of the *Gas Industry Act 2001* places a licence condition on retailers that requires them to compensate a customer if the retailer disconnects a customer's supply and does not comply with the terms and conditions of a customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate a customer \$250 for each whole day that a customer's supply is disconnected or a pro rata amount for any part of a day that supply is disconnected.

Clause 6.5 of the Commission's Interim Operating Procedure – Compensation for Wrongful Disconnection (IOP) requires that where the Energy and Water Ombudsman Victoria (EWOV) is unable to resolve a claim for the wrongful disconnection compensation payment with the agreement of the retailer and the complainant, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the IOP.

Background

EWOV has requested the Commission to make a formal decision as to whether AGL complied with its licence in relation to a dispute with the complainant regarding a wrongful disconnection compensation payment for him.

The complainant is a customer of AGL who had previously been on the retailer's Staying Connected hardship program. The complainant did not maintain the payments under the program and did not make contact when requested to do so by AGL. Consequently, on 23 May 2005, his account was withdrawn from the Staying Connected program and put into AGL's normal collection processes.

AGL subsequently sent the complainant five reminder notices, attempted to ring him on 6 June (but was advised it was wrong number) and sent a disconnection warning on 27 June. On 28 June, the complainant called AGL in response to a disconnection notice and agreed to a \$50 payment arrangement.

As AGL did not receive any payment, it sent four letters requesting contact and two disconnection notices. However, due to no contact and no payments, the complainant's gas supply was disconnected on 6 September (at 1.30pm).

On 13 September, The complainant negotiated a new payment arrangement with AGL. On 14 September AGL raised a reconnection order and received a complaint from EWOV. However, as the distributor had voided the request in error the complainant was not reconnected until 15 September (at 3.00pm).

Issues

For the disconnection to be wrongful the retailer must have breached the terms and conditions of the contract that set out the circumstances under which a customer's supply may be disconnected.

Terms and Conditions Relating to Disconnection

The terms and conditions of the contract between the complainant and AGL are set out in the Energy Retail Code (ERC). The ERC requires that a retailer cannot disconnect a customer for non-payment of a bill until the retailer has sent all relevant notices, assessed and assisted a customer experiencing payment difficulties and used its best endeavours to contact a customer with insufficient income.

Instalment Plans and Appropriate Notices

Clause 13.1 of the ERC requires a retailer to send a reminder notice and a disconnection warning prior to disconnecting a customer for non-payment of a bill.

AGL sent all relevant reminder and disconnection notices to the complainant prior to his disconnection. Therefore, it is considered that AGL complied with the requirements of clause 13.1 of the ERC.

Assessment and Assistance to Customers in Financial Difficulty

The ERC requires that where a retailer and a customer do not agree on an alternative payment arrangement, the retailer must assess in a timely way whatever information the customer provides or the retailer otherwise has concerning a customer's capacity to pay (clause 11.2(1)). In addition, the retailer must offer a customer at least two instalment plans (that take into account a customer's ongoing consumption, capacity to pay and arrears) and provide advice on concessions, energy efficiency and the availability of financial counsellors (clauses 11.2(3) and 11.2(4)).

1. Capacity to pay

Given the complainant's history of being on AGL's hardship program, it is clear that he is a customer who was experiencing repeated payment difficulty. When the complainant's account was removed from the hardship program on 23 May 2005, his debt was \$2,916. He last made a payment of \$60 towards his account on 21 October 2004. On 28 June 2005, he contacted AGL and offered to pay \$50.00 per fortnight. AGL accepted this on the basis that the complainant was a pensioner and although he was willing to pay, it was unlikely that he would be able to afford more than \$50 per fortnight. Therefore, it is considered that AGL and the complainant agreed an alternative payment arrangement and the requirements of clause 11.2(1) of the ERC were met by AGL.

2. Instalment plans

The complainant was offered two payment arrangements. The first arrangement was for \$30 per fortnight and was arranged while the complainant was on AGL's hardship program, where his capacity to pay would have been assessed. The second payment arrangement was agreed with AGL after the complainant offered to pay \$50 per fortnight. On this basis, it is considered that AGL met the requirements of clause 11.2(3) of the ERC.

3. Advice on independent financial counselling, URGs and energy efficiency

AGL advised that the complainant had been granted a Utility Relief Grant (URG) on 2 November 2001 and applied for an URG on 18 September 2002, but it was refused by the Department of Human Services. AGL is unable to advise whether an URG was offered more recently to the complainant, but notes that the Utility Relief Grant scheme is offered as part of the hardship program.

AGL's customer contact notes do not indicate that advice was provided to the complainant regarding energy efficiency and the availability of financial counsellors. It is noted that as part of AGL's Staying Connected hardship program, customers are provided advice about energy efficiency and financial counselling services. Therefore, it is considered that AGL complied with the requirements of clause 11.2(4) of the ERC.

Best Endeavours to Contact a Customer with Insufficient Income

Clause 13.2 of the ERC requires that, prior to disconnecting a customer, the retailer must use its best endeavours to contact a customer where the failure to pay a bill occurs through lack of sufficient income. The IOP that was in place at the time of the complainant's disconnection provides guidance as what constitutes best endeavours for the purposes of clause 13.2. The IOP states that where a message cannot be left within business hours, at least two attempts to call a customer should be made. Where a telephone number is not known or disconnected, the IOP indicates that the retailer should attempt to visit the property, where a customer lives in the urban area, or send a letter by registered post, where a customer lives outside the urban area.

AGL's contact notes show that the last attempted contact with the complainant was on 6 June 2005, when AGL was advised that it had rung the wrong number. On 28 June, following the receipt of a disconnection notice, the complainant rang AGL and agreed on a new payment arrangement. Subsequent to his call, AGL sent letters and a disconnection warning to him, but did not telephone him again. AGL was aware that the complainant was a pensioner who was experiencing financial difficulty. Given the requirements of clause 13.2 and the guidance provided in the IOP, it is expected that AGL would have attempted to contact the complainant personally before disconnecting him. Therefore, it is considered that AGL did not use its best endeavours to contact the complainant prior to his disconnection and thus did not comply with clause 13.2 of the ERC.

Decision

In accordance with clause 7 of the IOP, 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 did not comply with its licence and the contract terms and conditions relating to the disconnection of the complainant. Therefore, the disconnection was wrongful and a compensation payment is required. As the complainant was disconnected from 1.30pm on 6 September to 3.00pm on 15 September he is entitled to a compensation payment of \$2,265.63¹.

R H SCOTT
Delegated Commissioner

May 2006

¹ 6/9/05 10.5 hours off supply = \$109.38, 7/9/05 to 14/9/05 inclusive 8 days off supply = \$2,000, 15/9/05 15 hours off supply = \$156.25. Total \$2,265.63.