



WRONGFUL DISCONNECTION PAYMENT DISPUTE

RED ENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

FEBRUARY 2007

Introduction

Section 40B of the *Electricity Industry Act 2000* places a licence condition on retailers that requires them to compensate a customer if the retailer disconnects the customer's supply and does not comply with the terms and conditions of the customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate the customer for each day that the customer's supply is disconnected.

Clause 6.5 of the Commission's Operating Procedure – Compensation for Wrongful Disconnection (Operating Procedure) 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 customer, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the Operating Procedure.

Background

EWOV requested the Commission to make a formal decision as to whether Red Energy complied with its retail licence in relation to a dispute between the complainant and Red Energy, regarding a wrongful disconnection compensation payment for the complainant. The complainant was disconnected 7 August 2006 and reconnected later that day.

The complainant joined Red Energy in June 2005 and in the twelve months prior to disconnection, made only three sporadic, partial payments towards their account. In that period there were also three broken instalment plans and a dishonoured payment extension. Due to the continuing arrears, the complainant has received several reminder notices and disconnection warnings and no payments have been made against the account since 28 March 2006.

On receipt of the first reminder letter in October 2005, the complainant made a payment of \$100 and advised Red Energy that the balance would be paid on 10 November 2005. Payment was not received and in response to a disconnection notice, the complainant rang Red Energy explaining that she was experiencing financial difficulties and would pay the account by 23 November. Again, payment was not received and in answer to a further disconnection notice, the complainant advised Red Energy that there were financial difficulties but the account would be paid by 5 December 2005.

Once more payment was not received and a reminder notice was sent on 20 January 2006, followed by a disconnection notice 8 February 2006. The customer requested a payment extension 9 February 2006, for which an extra five days was arranged. Following non-payment of this arrangement, an instalment plan comprising a \$50 payment followed by two fortnightly payments of \$100 was agreed between Red Energy and the complainant. No payments were forthcoming.

Another instalment plan was arranged on 27 March 2006, requiring the complainant to immediately pay \$100, followed by \$50 per week until the account was paid. The only payment received was for \$100 on 28 March 2006. Red Energy contacted the complainant about not meeting their instalment plan commitments. The complainant advised that a cheque for \$150 had been sent on 2 May 2006. The complainant further

advised that she would pay another \$100 by 5 May 2006, with a further \$100 fortnightly until the account was cleared.

No payments were received and a disconnection notice was sent to the complainant on 24 May 2006, followed by a second disconnection advice on 5 June 2006. The complainant contacted Red Energy on 7 June 2006 advising, by way of a voicemail, that she had paid \$480 at the Post Office that day. The money was not received by Red Energy and on 13 June 2006, Red Energy contacted the complainant to make further payment arrangements.

When no further payments were received, Red Energy contacted the complainant on 30 June 2006 and was told that the full payment would be made by 3 July 2006. On 5 July 2006 the complainant spoke with Red Energy informing them that the overdue amount on the account had been paid. The complainant also advised Red Energy that she had experienced further financial difficulties but the new account would be paid in full. At this time Red Energy offered the complainant the option of another payment plan which was refused.

The complainant's account on 11 July 2006 showed no payment had been made. In speaking with the complainant, Red Energy was advised that she had rung earlier to let them know the cheque had bounced and that another payment would be made at the Post Office on Friday 14 July 2006. The complainant then rang Red Energy on 14 July, stating that a payment of \$450 had been made and providing a receipt number.

When no payment was received, Red Energy contacted the complainant 20 July 2006, who advised that she would check with the Post Office. There was no further contact between the complainant and Red Energy prior to disconnection on 7 August 2006.

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 of Customers without Sufficient Income

The terms and conditions of the contract between the complainant and Red Energy are set out in Energy Retail Code (ERC). In summary, a retailer must not disconnect a customer if failure to pay the bill occurs through lack of sufficient funds, until the retailer has complied with clause 11.2 of the ERC and using its best endeavours to contact the customer, has sent all relevant notices and assessed and assisted the customer with financial and energy efficiency counselling and advice.

Capacity to Pay

On at least four occasions, over a period of eight months, the complainant indicated to Red Energy that she was experiencing financial difficulties. The circumstances ranged from problems with Workcover payments to those of a personal nature. The last reference to their financial difficulties was made approximately one month prior to disconnection.

It is considered that these circumstances, coupled with the complainant's very poor payment history which included failed payment plans, an unfulfilled payment extension and numerous broken promises to pay, should have alerted Red Energy to the fact that the complainant was experiencing repeated payment difficulties. It is also considered that these apparent payment difficulties may have been due to lack of sufficient funds and required further investigation by Red Energy.

There were numerous conversations between The complainant and Red Energy in the weeks preceding the disconnection, but neither the screen notes nor voice recordings of conversations between the parties show any apparent effort by Red Energy to fully and correctly assess the complainant's capacity to pay. The complainant was not consulted on the instalment amounts, nor were the frequent references to payment difficulties acted upon, in spite of their continual inability to meet their commitments.

It is therefore concluded that Red Energy did not adequately assess the complainant's capacity to pay.

Advice on URGS, Energy Efficiency and Financial Counsellors

Red Energy advised EWOV that, even though it had not believed clause 11.2 applied in this case, clause 11.2(4) was nevertheless complied with because '*all this information is located on all Red Energy bills*'. The Commission does not regard placing information on bills as an adequate means of ensuring customers are aware of details on concessions, energy efficiency and the availability of independent financial counselling for customers experiencing financial hardship. This information should be provided to the customer in such a way that the retailer is confident that the customer is aware of the assistance available: for example, in direct conversation. If this is not possible, the information can then be provided in the form of a specific written communication.

Despite numerous conversations with the complainant within two weeks of their disconnection, there is no evidence that Red Energy provided the complainant with any advice on concessions, information about energy efficiency and advice on the availability of an independent financial counsellor during these conversations.

On the basis of this it is considered that Red Energy did not comply with the requirements of clause 11.2(4) of the ERC.

Instalment Plan Amount

The complainant's most recent plan with Red Energy was in May 2006 for a \$150 payment, followed by \$100 per fortnight. At this time, taking into account The complainant's estimated consumption and arrears, the calculated minimum necessary fortnightly amount was \$50 to \$55. Given that the complainant agreed to pay \$100 per fortnight, it is considered that this did not represent a reasonable balance between their arrears, ongoing consumption and capacity to pay.

It is therefore concluded that Red Energy did not adequately assess the complainant's capacity to pay in setting the instalment amount.

Decision

In accordance with clause 7 of the IOP, the Commission has investigated the alleged breach by Red Energy of its retail licence in relation to the disconnection of the complainant. The Commission has decided that Red Energy did not comply with its licence and the contract terms and conditions relating to the disconnection of the complainant.

Therefore, the disconnection of the complainant was wrongful and a compensation payment is required. The compensation payment is to apply from 9.56 am 7 August 2006 to 4.37 pm 7 August 2006. The amount is \$69.00.

R H SCOTT
Delegated Commissioner
February 2007