



WRONGFUL DISCONNECTION PAYMENT DISPUTE
TRUENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

DECEMBER 2007

Introduction

Section 40B of the *Electricity Industry Act 2001* places a license 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 TRUenergy complied with its retail license in relation to a dispute between The Complainant and TRUenergy regarding a wrongful disconnection compensation payment for The Complainant.

From information provided from EWOV, it is understood that The Complainant's electricity supply was disconnected at 1.57 pm on 23 May 2007 and reconnected at 11.45 pm on the same day. The Complainant had initially requested to be an Origin Energy customer in February 2006; however, upon disconnection of their electricity supply, they eventually found that TRUenergy was the responsible retailer for their property, by virtue of its contract with the previous tenant. They contacted TRUenergy and were advised that the electricity had been disconnected as a prior occupant of the premises had not paid outstanding arrears.

TRUenergy stated that it was unaware that the prior occupant had vacated the premises and billed the prior occupant of the premises from 6 June 2006. Due to accruing arrears, TRUenergy commenced the normal collection processes against the prior occupant and subsequently disconnected the property for the non-payment of the account in the name of the prior occupant. TRUenergy sent correspondence for the prior occupant to the property. It received returned mail that had been addressed to the previous tenant for the billing period 6 June 2006 to 5 September 2006. On 8 November 2006, TRUenergy found an alternate address for the prior occupant based on their recently created gas account with TRUenergy. TRUenergy amended its records to add this as the mailing address on his electricity account and sent all further bills and notices relating to the electricity account at the property to this mailing address.

Issues

Deemed contracts

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

Section 39 (1) of the *Electricity Industry Act 2000* (the Act) stipulates that a deemed contract exists between a retailer and customer under the following circumstances:

If a relevant customer commences to take supply of electricity at premises from the relevant licensee without having entered into a supply and sale contract with that licensee, it is deemed, on the commencement of that supply, to be a contract between that licensee and that customer for the supply and sale of electricity.

The Complainant moved into the premises in February 2006 and entered into a market contract for electricity with Origin Energy. The Complainant has advised EWOV that they subsequently received and paid Origin Energy accounts that were sent to them.

However, after delays with processing the previous tenant's request to transfer both fuels, TRUenergy finally established an electricity account in the previous tenant's name at the property, with an effective date of 6 June 2006. TRUenergy therefore became responsible for the NMI at the property, having 'won' it from Origin Energy.

One consequence of TRUenergy's creation of this account was that The Complainant's market contract with Origin Energy inadvertently ceased to be in force. Commission staff consider that The Complainant, by virtue of continuing to take supply at the property, arguably would then have been bound by a deemed contract with TRUenergy, as provided for under section 39 (1) the Act, from the date that TRUenergy became responsible for the NMI.

TRUenergy maintains that there was no deemed contractual arrangement as per section 39 (1) of the Act, as it was never made aware that the person it believed to be its customer, (the previous tenant), no longer resided at the property.

TRUenergy customer account notes indicate that the previous tenant contacted it on 29 November 2006 as part of a normal billing enquiry for their recently created gas account at their new address. It should be noted that this contact occurred approximately 21 days after TRUenergy had located an alternate address and made the decision to redirect all electricity account related mail for the property to this alternate address.

TRUenergy subsequently recalculated and re-billed the previous tenant to resolve this gas billing enquiry, but there is no record in The Complainant's account notes to indicate whether the outstanding electricity arrears were discussed at the same time.

Whilst it is acknowledged that neither party contacted TRUenergy to arrange disconnection or connection of the electricity supply, the contractual arrangements as they related to the gas account with the previous tenant would lead to a reasonable assumption that the previous tenant was no longer resident at the property. It should also be noted that The Complainant, by virtue of entering a market contract with Origin Energy in February 2006, could not reasonably be expected to know that they was required to contact TRUenergy.

Therefore, having considered all of the information provided by EWOV, TRUenergy and The Complainant, and having regard to section 39(1) of the Act, Commission staff consider that despite The Complainant's original intention to enter a market contract with Origin Energy, a deemed contract between TRUenergy and The Complainant inadvertently came into force when TRUenergy became responsible for the property on 6 June 2006 and The Complainant continued taking supply after this date.

Deemed contracts and acceptable information

Having established that a deemed contract existed between The Complainant and TRUenergy, at least from 6 June 2006, Commission staff have considered what obligations TRUenergy had to The Complainant in terms of notifying their of the existence of this deemed contract, the applicable tariffs and associated terms and conditions.

Clause 9.3 of TRUenergy's retail license requires it to inform the customer, "on or as soon as practicable after becoming aware of the deemed contract", of the existence of a deemed contract and provide advice about the relevant tariffs and other terms and conditions of that contract.

As previously mentioned, TRUenergy maintains that it was not aware of the potential existence of the deemed contract as the previous tenant had not notified it of their intention to vacate the property. However, Commission staff note that TRUenergy received two pieces of returned mail that had been addressed to the previous tenant at the property, and on 8 November 2006, located an alternate address for the previous tenant (based on the previous tenant's current TRUenergy gas account). TRUenergy account notes indicate that it subsequently amended its records and decided to send all further bills and letters relating to electricity consumption and arrears at the property, to the previous customer's new address.

As there was electricity still being consumed at the premises and TRUenergy had noted that the previous tenant was no longer living there (through its other interactions with the previous tenant in November 2006), Commission staff consider that it would be reasonable for TRUenergy to have been aware of the possibility that another new customer was taking supply at the property. Accordingly, TRUenergy should then have taken steps to comply with Clause 9.3 of its retail license, as the onus is on the retailer to find out who the new occupier is and to provide the relevant information to them.

Compliance with Part 4 of the ERC – provision of accounts, reminder notices and disconnection warnings

Part 4 of the ERC sets out the circumstances under which a retailer is permitted to disconnect a customer for non-payment of an energy account. In brief, a retailer, prior to disconnecting a customer's energy supply for non-payment, must send a number of reminder notices and disconnection warnings prior to actually arranging the disconnection of supply.

TRUenergy account notes indicate that after 8 November 2006, TRUenergy decided to send all electricity bills, reminder notices, disconnection warnings that related to the property to the previous tenant at their new address.

The Complainant and their partner have verbally advised Commission staff that at no time did they receive any correspondence from TRUenergy addressed to 'The Occupier' or to them, that specifically related to the electricity account or outstanding arrears. They note that they continued to receive and pay TRUenergy gas bills for the property during the period up to the disconnection of the electricity supply.

Decision

Section 39(1) of the Act states that if a relevant customer commences to take supply at a relevant licensee's premises without having entered into a contract with that licensee, there is deemed to be a contract between the customer and the licensee. TRUenergy became the responsible retailer for the property on 6 June 2006 and The Complainant, despite being on a market contract with Origin Energy since February 2006, became party to the deemed contract when they continued to take supply after this date.

Clause 9.3 of TRUenergy's retail license requires it to inform the customer, "on or as soon as practicable after becoming aware of the deemed contract", of the existence of a deemed contract and provide advice about the relevant tariffs and other terms and conditions of that contract. Part 4 of the ERC places obligations on TRUenergy to provide accounts, reminder notices and disconnection warnings to customers who have failed to pay their accounts, prior to initiating disconnection of their energy supplies. The Complainant and their partner have indicated that they received no such notifications from TRUenergy.

In addition, TRUenergy account notes indicate that from 8 November 2006, all correspondence related to electricity usage at the property was redirected to the previous tenant's new address.

It is concluded that TRUenergy has not complied with the provisions of Part 4 of the Energy Retail Code nor with clause 9.3 of its retail license insofar as The Complainant received no advice regarding the deemed contract and received no reminder or disconnection warning notices prior to the disconnection of their electricity supply.

Accordingly, the disconnection of The Complainant's electricity supply was wrongful and compensation is required. The compensation payment is to apply from 1.57 pm on 23 May 2007 until 11.45 pm on 23 May 2007. The amount due is \$101.05.

A W DARVALL
Delegated Commissioner
December 2007

