

ESSENTIAL SERVICES COMMISSION
WRONGFUL DISCONNECTION DECISION
UNDER SECTION 48A OF THE GAS INDUSTRY ACT 2001
AGL SALES & CUSTOMER Q
DECISION AND REASONS

Background

Customer Q had been a customer of AGL Sales (AGL) since 21 September 2012. On 7 March 2013, AGL issued Customer Q a gas bill for \$335.82. When the outstanding amount remained unpaid, a reminder notice for the same amount was issued on 9 April 2013, and was followed by a disconnection warning notice on 9 May 2013. The Energy and Water Ombudsman Victoria (EWOV) submitted that this notice did not comply with the requirements of clause 13.1(c) of version 10a of the *Energy Retail Code* (the Code). The supply of gas to Customer Q's property was disconnected at AGL's request, for non-payment of \$335.82, on 5 June 2013.

Although AGL was not able to provide a copy of the notice sent to Customer Q, the Commission was able to refer to the following relevant material:

1. The screenshot from AGL's billing system submitted to EWOV, which indicated that Customer Q was sent a disconnection warning notice with an issue date of 9 May 2013, and a pay-by date of 16 May 2013.
2. AGL's breach report, submitted to the Commission on 3 September 2013, that stated:

"35,190 disconnection warning notices were sent to customers which appear to not have been compliant with clause 13.1(c) of the *Energy Retail Code*. It appears the notices stated that the disconnection warning period ends on a date which was less than 7 business days after the date of receipt of the disconnection warning notice".

These notices were sent between 20 December 2012 and 18 July 2013.

3. Three actual disconnection warning notices issued to other customers during the relevant time, giving disconnection warning periods that end within 1-3 days of the pay-by date. The Commission understands that AGL used the same system to populate disconnection warning notices for both gas and electricity accounts.

AGL argued that as long as at least seven business days pass between the warning and the actual disconnection of supply – notwithstanding the fact that the disconnection period quoted on the disconnection warning notice was shorter than the minimum allowed – the customer suffers no detriment. AGL asserted that a non-compliant disconnection warning notice (stating a shorter than required disconnection warning period) did not render the disconnection wrongful, as the actual disconnection of supply occurred after the required number of days.

EWOV asked the Commission to determine whether the disconnection of gas supply to Customer Q's premises was wrongful under section 48A of the Gas Industry Act 2001 (the Act) and, if so, the amount of any payment AGL is required to make to Customer Q.

AGL was offered the opportunity, by the Commission, to respond to EWOV's claim, but did not do so.

Chronology

<i>Date</i>	<i>Event</i>
21 September 2012	AGL established a gas account for Customer Q
7 March 2013	AGL issued a bill for \$335.82
9 April 2013	AGL issued a reminder notice for \$335.82
9 May 2013	AGL issued a disconnection warning notice for \$335.82
5 June 2013	Customer Q's gas supply was disconnected for non-payment of \$335.82
11 June 2013	Supply reconnected at EWOV's request

Decision

Having considered the advice and information provided by AGL and EWOV, the Commission finds:

1. In disconnecting the supply of gas to Customer Q's premises, AGL failed to comply with the terms and conditions of the customer contract specifying the circumstances in which the supply of gas to those premises may be disconnected. As a result, under s48A of the Act, as a statutory condition of its licence, AGL has an obligation to pay Customer Q a wrongful disconnection payment.
2. The wrongful disconnection payment amount is for the whole of the period during which the gas supply to Customer Q's premises was disconnected – 5 days and 22 hours, between 5 June 2013 and 11 June 2013.
3. In accordance with s48A(5)(b) of the Act AGL is required to pay Customer Q a wrongful disconnection payment of \$1,479.

Reasons

The reasons for the Commission's decision are as follows:

1. On the basis of the material available, and having given AGL an opportunity to provide any evidence to the contrary, the Commission finds that, on the balance of probabilities, the disconnection warning notice that was sent to Customer Q stated that the AGL may disconnect Customer Q sooner than seven business days after the date of receipt of the disconnection warning notice.
2. According to s48A of the Act, the conditions to which a licence to sell gas by retail is subject include a condition requiring the licensee to make a payment of a prescribed amount to a relevant customer in accordance with this section if the licensee –
 - disconnects the supply of gas to the premises of that customer; and
 - fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.
3. The terms and conditions of the contract between AGL and Customer Q required AGL to comply with the Code. Therefore clause 13.1(c) of the Code is a term or condition of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.
4. In disconnecting gas supply to Customer Q's premises AGL did not comply with clause 13.1(c) of the Code, as AGL did not include in the disconnection warning notice it sent to Customer Q a statement that AGL may disconnect Customer Q's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning.
5. As a result, AGL failed to comply with the terms and conditions of its contract with Customer Q and is therefore required to pay Customer Q a wrongful disconnection payment under s48A of the Act.

Dr Ron Ben-David

Chairperson

Date:

2015