



WRONGFUL DISCONNECTION PAYMENT DISPUTE

TRUENERGY 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 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 for each day that a customer's 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 requested the Commission to make a formal decision as to whether TRUenergy complied with its retail licence in relation to a dispute between the complainant and TRUenergy regarding a wrongful disconnection compensation payment for the complainant.

The complainant was a customer of TRUenergy. In February 2005, she advised TRUenergy that she was going overseas, closed her dual fuel account and paid her final bill. During the complainant's absence, meter readings showed consumption at her property. TRUenergy issued three Unidentified Consumer Usage letters to her property and sent a field officer to visit the property. A disconnection warning was left in the complainant's letter box.

Prior to her return, the complainant contacted another retailer to arrange connection. On her return she found a letter from TRUenergy regarding unauthorised usage. She rang TRUenergy on her mobile but the line dropped out. On 29 September, the complainant's gas was disconnected.

The complainant rang her chosen retailer and was advised that TRUenergy had objected to the transfer of her gas account and she should contact TRUenergy regarding the disconnection. TRUenergy advised the complainant that gas had been consumed at the property in her absence. She was concerned how there could have been usage while she was away and was advised by TRUenergy that as the gas was not turned off, the pilot light for heating and hot water would register usage.

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 TRUenergy 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 having payment difficulties and used its best endeavours contact a customer with insufficient income.

Sending Relevant Notices

Clause 13.4 permits a retailer to disconnect a customer who has not provided acceptable identification, if the retailer has given a customer a disconnection warning and a customer continues not to provide acceptable identification. As TRUenergy did not know the identity of the consumer of the gas, it sent three Unidentified Consumer Usage letters. These letters advised the 'unidentified consumer' to contact the retailer to provide details to set up an account and warned that the gas supply would be disconnected if the customer did not contact the retailer to provide identification details. TRUenergy also visited the property and left a disconnection warning at the property for the unidentified consumer.

Therefore, it is considered that TRUenergy attempted to identify the consumer through the Unidentified Consumer Usage letters and it provided a disconnection notice, thereby meeting the requirements of clause 13.4 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.

TRUenergy advised EWOV that it did not believe that it was dealing with a customer whose failure to pay bills was due to insufficient income. Based on the information provided by TRUenergy and the complainant, there is no evidence to indicate that the failure to pay the bill was due to insufficient income.

Assessment and Assistance to Customers in Financial Difficulty

Clause 11.2 of the ERC requires a retailer to assess in a timely way whatever information a customer provides or the retailer otherwise has concerning a customer's capacity to pay. In addition the clause requires a retailer to offer a customer at least two instalment plans prior to initiating disconnection action (that take into account ongoing consumption, capacity to pay and arrears) and provide advice on concessions, energy efficiency and the availability of financial counsellors.

As there was no indication that the failure to pay bills was due to payment difficulties, these obligations do not apply.

Decision

In accordance with clause 7 of the IOP, the Commission has investigated the alleged breach by TRUenergy of its retail licence in relation to the disconnection of the complainant. The Commission has decided that TRUenergy complied with the relevant terms and conditions of the complainant's contract in relation to her disconnection. Therefore, the disconnection of the complainant is not wrongful and no compensation payment is required

R H SCOTT

Delegated Commissioner

May 2006