



WRONGFUL DISCONNECTION PAYMENT DISPUTE

AGL AND THE COMPLAINANT

STATEMENT OF REASONS

JUNE 2007

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 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 (OP) 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 OP.

Background

EWOV requested the Commission to make a formal decision as to whether AGL complied with its retail licence in relation to a dispute between The Complainant and AGL regarding a wrongful disconnection compensation payment.

On 19 January 2006, The Complainant contacted AGL to advise that The Complainant was experiencing financial difficulties. The Complainant agreed to make a payment of \$100.00 towards the arrears, which was received by AGL on 30 January 2006.

On 31 January 2006, The Complainant contacted AGL with the assistance of a Uniting Care financial counsellor. AGL assessed The Complainant's capacity to pay and a payment arrangement of \$35.00 per fortnight was established. The Complainant was placed on AGL's hardship program, Staying Connected, until 28 August 2006 when The Complainant received a letter stating that The Complainant's membership of the Staying Connected program had been revoked after The Complainant had allegedly breached two payment arrangements.

On 6 September 2006, The Complainant contacted AGL after receiving a reminder notice to ask if The Complainant could re-enter the Staying Connected program. AGL requested an upfront 'good faith' payment of \$50.00 prior to The Complainant's reinstatement on the program. AGL noted that its request that The Complainant make an upfront payment of \$50.00 was a means for The Complainant to demonstrate a willingness to pay.

AGL issued a disconnection warning notice on 13 September 2006 and an additional 24 hour disconnection notice via registered mail on 26 September 2006. The Complainant allegedly did not respond to either of these letters.

The Complainant's gas supply was disconnected on 4 October 2006. AGL advised that at the time of disconnection, no payment had been received on the account since 25 February 2006.

On 4 January 2007, The Complainant contacted EWOV after a referral from a financial counsellor. The Complainant's gas supply was reconnected on 5 January 2007.

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.

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. It is the Commission's opinion that AGL has been able to demonstrate compliance with Clause 13.2 of the Energy Retail Code, as it had made the required number of attempts to contact The Complainant to discuss the outstanding arrears.

AGL has also adhered to the requirements for notifying non-urban customers of imminent disconnection as outlined in the Commission's *Operating Procedure Compensation for Wrongful Disconnection* by sending a registered letter to The Complainant on 26 September 2006.

Capacity to pay

Clause 11.2(1) of the ERC provides for the retailer to assess capacity to pay, based on whatever information the customer provides or the retailer otherwise has.

The Complainant was accepted onto AGL's 'Staying Connected' hardship program on 31 January 2006, at which time The Complainant's capacity to pay was assessed and an instalment plan of \$35.00 per fortnight was established. AGL customer care notes specifically refer to The Complainant's capacity to pay being assessed on this date.

Under this arrangement, The Complainant made one payment of \$100.00 on 3 February 2006 and a second payment of \$35.00 on the 25 February 2006. AGL advises that as no further payments were received, The Complainant was removed from the Staying Connected program on 29 July 2006. AGL did not have a further opportunity to assess The Complainant's capacity to pay until The Complainant contacted AGL on 28 August 2006 and 6 September 2006.

On 6 September 2006, AGL requested a 'good faith' payment of \$50.00 from The Complainant as a pre-condition for re-entry to its Staying Connected program. AGL advised that the amount of \$50.00 equated to approximately two instalments of The Complainant's fortnightly gas consumption (2 x \$26.00). AGL further advised that this amount was requested to enable The Complainant to demonstrate a willingness to pay. AGL records indicate that this payment was not received.

While the customer cares notes support AGL's assertion that it did initially assess The Complainant's capacity to pay in January 2006 and subsequently negotiated an agreed payment arrangement, there is no further evidence of an assessment of The Complainant's capacity to pay being undertaken or completed after the initial payment arrangement was broken. The request for a \$50.00 upfront 'good faith' payment does not appear to have been made in conjunction with an assessment as to whether The Complainant could afford this amount.

Offer of an Instalment Plan

Clause 11.2 (3) requires retailers to offer a customer an instalment plan unless the customer has in the previous 12 months failed to comply with two instalment plans and does not provide a reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan.

The EWOV report states that AGL is of the opinion that two instalment plans were breached within the 12 months preceding the disconnection of supply. Commission staff note that the AGL customer care records indicate that only one payment arrangement was agreed to on 31 January 2006 in the 12 months preceding the disconnection of the gas supply.

On 6 September 2006, The Complainant contacted AGL to discuss being placed back on the hardship program. The Complainant was advised that an upfront payment of \$50.00 would be required before an instalment plan under the Staying Connected program could be established. AGL has advised EWOV that this interaction reflects the second instalment plan that The Complainant had failed to adhere to. Commission staff note that there are no records to indicate that a formal payment arrangement was agreed to, only that an amount of \$50.00 was requested as an upfront 'good faith' payment.

It is considered therefore that AGL was required to offer The Complainant a further instalment plan prior to the disconnection of the service.

Decision

In accordance with clause 7 of the OP, the Commission has investigated the alleged breach by AGL of its retail licence in relation to the disconnection of The Complainant.

Based on its assessment of the reported facts, the Commission must conclude that AGL has not complied with all the relevant terms and conditions of The Complainant's contract in relation to the disconnection.

The Commission notes that submissions have been made in the past that the maximum amount of compensation payable under the WDP process should be limited to a capped amount, or that the time frame in which a customer can apply for consideration should be restricted.

The Commission, in its *Final Decision – Operating Procedure – Compensation for Wrongful Disconnection* noted the Minister's letter in which he stated that it was not proposed to establish a statutory cap on the WDP compensatory amount¹. The legislation therefore provides for the payment of \$250 per day or part thereof and does not allow the Commission to exercise discretion in this regard.

Therefore, the disconnection of The Complainant was wrongful and a compensation payment is required. The compensation payment is to apply from 12 pm on 4 October 2006 to 12 pm on 5 January 2007. The amount due is \$23,250.00.

R H SCOTT
Delegated Commissioner

June 2007

¹ See submission from the Minister for Energy Industries and Resources at <http://www.esc.vic.gov.au/electricity1123.html>