

**ESSENTIAL SERVICES COMMISSION**  
**WRONGFUL DISCONNECTION DECISION**  
**UNDER SECTION 48A OF THE GAS INDUSTRY ACT 2001**  
**AUSTRALIAN POWER AND GAS & CUSTOMER P**  
**DECISION AND REASONS**

***Background***

Customer P had been a customer of Australian Power & Gas (APG)<sup>1</sup> since 28 May 2007. On 2 June 2011, APG issued Customer P a bill for \$195.75. As the outstanding amount remained unpaid, on 25 July 2011 APG issued Customer P a reminder notice for \$195.75, followed by a disconnection warning notice on 16 August 2011. The Energy and Water Ombudsman Victoria (EWOV) submitted that this notice did not comply with the requirements of clauses 13.1(c) of the Energy Retail Code (the Code). The supply of gas to Customer P's property was disconnected at APG's request, for non-payment of \$195.75, on 30 August 2011.

APG 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 disconnection was not wrongful as the customer suffered no detriment. APG's position is that a non-compliant disconnection warning (stating a shorter than required disconnection warning period) does not render a disconnection wrongful, as long as the actual disconnection of supply occurs after the required number of days.

Clause 13.1(c) of the Code states a retailer may not disconnect customers for non-payment unless the retailer has given the customer a disconnection warning notice containing a statement that the retailer may disconnect the customer's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning. This obligation is replicated in the terms and conditions of APG's contract with the customer (the T&Cs). The T&Cs also state that the disconnection warning from APG will contain the information required by the Energy Laws.

On the disconnection warning notice APG sent to Customer P, the balance due date was five business days after the issue date, and the stated disconnection date was six business days after the issue date. Both of these periods are shorter than the seven business days required under the Code and the T&Cs as a minimum disconnection warning period.

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

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

***Chronology***

<b><i>Date</i></b>	<b><i>Event</i></b>
28 May 2007	APG established a gas account for Customer P
2 June 2011	APG issued a bill for \$195.75
25 July 2011	APG issued a reminder notice for \$195.75
16 August 2011	APG issued a disconnection warning notice for \$195.75
30 August 2011	Customer P's gas supply was disconnected for non-payment of \$195.75
4 June 2012	Investigated complaint raised at EWOV and gas supply reconnected

<sup>1</sup>AGL Sales Pty Ltd (AGL) acquired APG in September 2013 through a full share acquisition (AGL Annual Report 2013, 14 and 87; AGL Annual Report 2014, 33 and 49)

## **Decision**

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

1. In disconnecting the supply of gas to Customer P's premises, APG failed 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. As a result, under s48A of the Act, as a statutory condition of its licence, APG has an obligation to pay Customer P a wrongful disconnection payment.
2. The wrongful disconnection payment amount is for the whole of the period during which the gas supply to Customer P's premises was disconnected – 279 days, 7 hours, and 34 mins, between 30 August 2011 and 4 June 2012.
3. In accordance with s48A(5)(b) of the Act, APG is required to pay Customer P a wrongful disconnection payment of \$69,829.

## **Reasons**

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

1. 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.
2. The terms and conditions of the contract between APG and Customer P specifying the circumstances in which the supply of gas to Customer P's premises may be disconnected included:
  - A requirement (replicating clause 13.1(c) of the Code) that APG include in any disconnection warning notice it sent to Customer P a statement that APG may disconnect Customer P's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning; and
3. In disconnecting gas supply to Customer P's premises, APG did not include in the disconnection warning notice it sent to Customer P a statement that APG may disconnect Customer P's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning.
4. As a result, APG failed to comply with the terms and conditions of its contract with Customer P and APG is therefore required to pay Customer P a wrongful disconnection payment under s48A of the Act.
5. As the disconnection occurred prior to 1 January 2012 (the commencement date of the amendment to the Act that introduced capping of wrongful disconnection payments), the amount payable is the prescribed amount under s48A(5) of the Act.

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Dr Ron Ben-David

Chairperson

Date:

2015