



WRONGFUL DISCONNECTION PAYMENT DISPUTE

AGL AND THE COMPLAINANT

STATEMENT OF REASONS

MAY 2006

Introduction

Section 40B of the *Electricity Industry Act 2000* places a licence condition on retailers that requires them to 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 \$250 for each whole day that a customer's supply is disconnected or a pro rata amount for any part of a day that 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 has requested the Commission to make a formal decision as to whether AGL complied with its licence in relation to a dispute with the complainant regarding a wrongful disconnection compensation payment for him.

The complainant is a customer of AGL. Over the period 4 January 2005 to 25 August 2005, the complainant was sent four bills. AGL sent him a reminder notice in respect of each bill issued. AGL did not receive any payment for these bills.

On April, 13 the complainant was sent a warning letter-gram requesting him to contact AGL immediately and arrange payment for the outstanding balance. On 19 July, AGL's collections department attempted to contact the complainant, but his telephone was disconnected and an alternative contact number could not be found.

AGL sent more reminder and disconnection notices to the complainant, but received no response from him. On 15 October, AGL issued a 24-hour disconnection notice. Following no contact and no payments from the complainant, AGL disconnected his electricity supply on 26 October. The complainant was reconnected on 28 October. The total amount outstanding at the time of his disconnection was \$722.

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 AGL and the complainant are set out in the Energy Retail Code (ERC). In summary, 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 difficulty paying bills and used its best endeavours contact a customer with insufficient income.

Appropriate Notices

Clause 13.1 of the ERC requires a retailer to send a reminder notice and a disconnection warning prior to disconnecting a customer for non-payment of a bill. AGL sent all relevant notices to the complainant prior to disconnecting him. Therefore, it is considered that AGL complied with the requirements of clause 13.1.

Assessment and Assistance to Customers in Financial Difficulty

The ERC requires that where a retailer and a customer do not agree on an alternative payment arrangement, the retailer must assess in a timely way whatever information a customer provides or the retailer otherwise has concerning a customer's capacity to pay (clause 11.2(1)). In addition, the retailer must offer a customer at least two instalment plans (that take into account a customer's ongoing consumption, capacity to pay and arrears) and provide advice on concessions, energy efficiency and the availability of financial counsellors (clauses 11.2(3) and 11.2(4)).

AGL attempted to initiate communication with the complainant by sending many reminder notices and disconnection warnings. In addition, AGL sent a letter-gram to the complainant requesting him to contact AGL. AGL also attempted to ring the complainant prior to his disconnection. Despite these attempts, AGL did not have any contact with the complainant prior to his disconnection, and consequently was unable to assess his capacity to pay or offer him the assistance that is required by clause 11.2 of the ERC. Therefore, it is considered that AGL used all reasonable endeavours to comply with clause 11.2.

Best Endeavours to Contact a Customer with Insufficient Income

Clause 13.2 of the ERC requires that, prior to disconnecting a customer, where the failure to pay a bill occurs through lack of sufficient income, the retailer must comply with the requirements of clause 11.2 of the ERC and use its best endeavours to contact a customer.

The complainant was disconnected in October 2005 when the IOP had been in place for four months. The IOP provides guidance as to what constitutes best endeavours for the purposes of clause 13.2. The IOP states that where a message cannot be left within business hours, at least two attempts to call the customer should be made. Where a telephone number is not known or disconnected, the IOP indicates that the retailer should attempt to visit the property, where the customer lives in the urban area, or send a letter by registered post, where a customer lives outside the urban area. In addition, the IOP provides guidance on the circumstances that indicate that a customer is experiencing payment difficulties and should be assessed and assisted under clause 11.2 of the ERC. These circumstances include a number of missed bill payments and the issuing of a number of reminder and/or disconnection notices.

AGL argues that, since it did not have contact with the complainant, there was no indication of the complainant's financial situation and, therefore, it was not required to comply with clause 13.2 of the ERC. It is noted, however, that the complainant did not make any payments towards his account prior to his disconnection, despite receiving many reminder and disconnection notices. These are the factors that are identified in the IOP guidance in relation to clause 11.2, as indicating a customer might be experiencing financial difficulties. In addition, AGL was aware that the complainant's telephone was disconnected, which might be an indicator that financial difficulties were being experienced. Taking all these circumstances into account, it is considered reasonable that AGL should have assumed that the complainant was experiencing financial difficulties.

AGL's contact notes show that it attempted to contact the complainant on 19 July. However, the number was disconnected and a search by AGL of listings in the telephone directory could not locate an alternative number for him. AGL did not make any further attempts to contact the complainant. Given the circumstances

described above, it is considered reasonable that AGL would have made an attempt to visit him before disconnecting him. Therefore, it is considered that AGL did not use its best endeavours to contact the complainant prior to his disconnection and did not comply with clause 13.2 of the ERC.

Decision

In accordance with clause 7 of the IOP, the Commission has investigated the alleged breach by AGL of its retail licence in relation to the disconnection of the complainant. The Commission has decided that AGL did not comply with its licence and the contract terms and conditions relating to the disconnection of the complainant. Therefore, the disconnection was wrongful and a compensation payment is required. As the times for the complainant's disconnection and reconnection have not been specified, he should be paid \$500 compensation for his two days off supply.

R H SCOTT
Delegated Commissioner

May 2006