



WRONGFUL DISCONNECTION PAYMENT DISPUTE
AUSTRALIAN POWER AND GAS AND THE COMPLAINANT

FEBRUARY 2010

STATEMENT OF REASONS

Introduction

The Compliance Policy Statement for Victorian Energy Businesses (Compliance Policy Statement) provides for the Energy and Water Ombudsman Victoria (EWOV) or a retailer to seek advice from the Commission regarding the interpretation of the terms and conditions of a retailer's contract for supply. In addition, EWOV can refer an unresolved dispute for a wrongful disconnection payment to the Commission for a formal decision.

Therefore, in accordance with clause 3.3.1 of the Compliance Policy Statement, EWOV has referred this case of alleged wrongful disconnection to the Commission for a formal decision.

Background

The Complainant's electricity supply was disconnected at 11.00 am on 22 September 2009 and reconnected at 5.24 pm the same day.

According to The Complainant's statement they applied for a transfer to Australian Power & Gas (APG) in December 2008 and the account was activated on 2 February 2009. However, experiencing financial difficulties, they were unable to make any payments against the account.

Commencing 15 April 2009, APG despatched the first batch of reminder and disconnection notices. The 'disconnection imminent' notice was issued on 1 June 2009. On this day APG also attempted to call The Complainant but was unable to make contact or leave a message.

On 13 July 2009 APG commenced issuing the second batch of reminder and disconnection notices with the disconnection notice sent out on 4 August 2009

The Complainant advised that after receiving the disconnection warning notice of 4 August 2009, they contacted APG on 11 August to arrange a payment plan. APG confirmed it received the call and that The Complainant was transferred to its credit team to establish a plan. According to EWOV, in its statement APG claim that at the time of this phone call it had reason to believe that The Complainant was experiencing financial difficulties and it assessed The Complainant's capacity to pay during this conversation.

A fortnightly payment of \$50 was agreed between The Complainant and APG, the first instalment due on 24 August 2009. APG did not receive the first payment and despatched a payment plan reminder letter on 27 August 2009. In their statement The Complainant said that the failure to maintain the payment plan was due to their financial difficulties.

APG attempted to contact The Complainant by telephone on 14 September 2009 but found that the number was disconnected.

The Complainant did not contact APG again and did not make a payment towards their plan, resulting in APG issuing a payment plan cancellation letter on 21 September 2009. APG heard nothing further from The Complainant and subsequently disconnected their supply on 22 September 2009.

Regulatory Compliance Issues

Clause 13. Grounds for Disconnection

Clause 13.1 of the ERC states that a retailer may only disconnect the supply address of a customer, being a customer who fails to pay the retailer by the relevant pay by date for an amount billed in respect of that supply address if:

(a) the failure does not relate to an instalment under the customer's first instalment plan with the retailer; and...

APG does not believe it wrongfully disconnected The Complainant. In its statement APG maintains that when it initiated the disconnection as a consequence of not receiving any instalment payments, it provided The Complainant with an offer of a second instalment plan by way of the letter cancelling the first plan. In making the offer of another plan in the cancellation letter despatched prior to the disconnection, APG considers it fulfilled the requirements of clause 13.1(a) of the *Energy Retail Code* (ERC).

It is noted that APG made reference to another payment plan in the cancellation letter to The Complainant. Nevertheless, the fact remains that The Complainant was disconnected in

relation to failing their first instalment plan. It is therefore concluded that APG did not comply with the requirements of clause 13.1(a) of the ERC.

Clause 11.2 Assessment and Assistance to Domestic Customers

Clause 11.2 of the ERC requires a retailer to assess in a timely way whatever information the customer provides, or the retailer otherwise has, concerning the customer's capacity to pay (clause 11.2(1)). In addition, the clause requires a retailer to offer the customer an instalment plan (clause 11.2(3)) and provide advice on the Utility Relief Grant Scheme (URGS), energy efficiency and the availability of financial counsellors (clause 11.2(4)).

Assessment of capacity to pay

In its statement to EWOV APG advised that that it initially had reason to believe that The Complainant was experiencing payment difficulties and it assessed The Complainant's capacity to pay during the conversation of 11 August 2009. In this conversation a \$50 fortnightly payment plan was established and APG argue that since The Complainant did not voice any concerns regarding the payments, it had correctly assessed their capacity to pay.

However, there are no screen notes to demonstrate how The Complainant's capacity to pay was assessed [clause 11.2(1)], nor to document that they were advised on the Utility Relief Grant Scheme (URGS), energy efficiency and the availability of financial counsellors [clause 11.2(4)]. Therefore, it cannot be assumed that this transpired. Hence, without the documentary proof, the Commission can only conclude that APG did not comply with the requirements of clauses 11.2(1) and 11.2(4) of the ERC.

Conclusion

It is acknowledged that The Complainant appeared to agree with the \$50 fortnightly payment. Nevertheless, APG cannot demonstrate that it complied with the relevant terms and conditions of their contract in relation to assessing capacity to pay and providing information on payment assistance, including URGS. Also, though APG made the offer of a second payment plan in the cancellation letter for the first plan, it remains that The Complainant was disconnected in relation to failing their first payment plan.

Therefore, it is concluded that the disconnection of The Complainant was wrongful and a compensation payment required.

Mr A W Darvall
Delegated Commissioner
March 2010