

ESSENTIAL SERVICES COMMISSION

WRONGFUL DISCONNECTION DECISION UNDER SECTION 48A OF THE *GAS INDUSTRY ACT 2001*

CUSTOMER C & AGL SALES

DECISION AND REASONS

Key Issue

Soon after moving into the property, Customer C lost gas supply through a scheduled disconnection for non-payment, requested by AGL for another customer (D), who was the previous resident.

Before the scheduled disconnection occurred, AGL received a move-in transfer request from EnergyAustralia (Customer C's retailer of choice). Approximately two weeks after receiving the move-in transfer request, AGL attempted to cancel its disconnection service order, which was rejected by SP AusNet on the basis that AGL was no longer the financially responsible participant for that supply address.

AGL asserts that it did not have to pay wrongful disconnection compensation to Customer C because a contract did not exist between them at the time of the disconnection, which is supported by SP AusNet's rejection of its attempt to cancel the disconnection service order.

The Commission accepts that at the time of the disconnection, AGL continued to have contractual obligations to Customer C arising from its supply of gas to Customer C under a deemed contract. AGL continued to have contractual responsibility to ensure that the cancellation of the disconnection was effected properly. AGL did not take steps to ensure that the cancellation of the disconnection order was managed appropriately and thus it remained responsible for the disconnection which occurred solely as a result of the acts and omissions of AGL.

Background

| Date | Event |
|---------------------------------|---|
| September 2010 – September 2011 | AGL had a gas account for the property in the name of D, who moved out of the property with a debt and did not advise AGL. |
| 17 October 2011 | AGL raised a service order for the disconnection of D for non-payment – scheduled disconnection to take place on 8 November 2011. |
| 18 October 2011 | AGL received a move-in transfer request for the property with a start date of 25 October 2011. The request was updated to 'pending' |
| 19 October 2011 | Customer C moved into the property and arranged to open a gas account with EnergyAustralia. Customer C began receiving letters from AGL addressed to the previous tenant, which Customer C sent back to AGL with the label 'return to sender – not known at address' |
| 25 October 2011 | Customer C's gas account transferred to EnergyAustralia |

| Date | Event |
|------------------|--|
| 2 November 2011 | AGL cancelled its disconnection service order, but received on the same day a rejection from the distributor (SP AusNet) of its cancellation request. Reason for rejection of the cancellation request is that 'Requesting participant is NOT the current FRO of RECORD' There is no evidence of AGL taking any step to clarify with SP AusNet its intentions regarding disconnection in light of the rejection. |
| 8 November 2011 | Customer C's gas supply was disconnected |
| 9 November 2011 | Customer C's gas supply was reconnected |
| 11 November 2011 | Customer C contacted AGL to enquire why the gas supply to the premise was disconnected. AGL advised it was an error |

Decision

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

1. The gas disconnection was wrongful as AGL failed to comply with the terms and conditions of its deemed contract with Customer C in that AGL failed to comply with clauses 13.1 to 13.4 of the Energy Retail Code (ERC), forming part of the deemed contract.
2. The wrongful disconnection compensation is payable for the disconnection period from 8 November 2011 to 9 November 2011.
3. AGL is required to pay Customer C \$280 wrongful disconnection compensation under section 48A of the *Gas Industry Act 2001* (GIA).

Reasons

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

1. For the disconnection to be lawful, the retailer must have a contract with a customer and must not have breached the terms and conditions of that contract relating to the circumstances under which a customer's supply may be disconnected.
2. Section 46(1) of the GIA 2001 recognises that a customer does not need to communicate with the retailer for a contract to come into existence.
3. A deemed contract came into effect in accordance with section 46(1) of the GIA 2001 after Customer C moved into the property and started taking gas supply at the property where AGL was still the Financially Responsible Organisation.
4. AGL's contract to supply gas to D at that property, the previous tenant who was AGL's customer, ended in accordance with clause 7.6(c) of the ERC when Customer C entered into a deemed contract at the same address
5. Therefore, AGL's contract with D terminated before the scheduled date of disconnection, when D moved out and Customer C moved in. AGL was aware of this from the move-in transfer request and Customer C returning AGL's letter to D with 'return to sender – not known at address' written on these letters
6. AGL had ample opportunity to cancel the disconnection service order before losing its right to cancel the disconnection
7. As a practical measure, AGL should have cancelled the disconnection service order it had raised for D when it received the move-in transfer request the following day to prevent the disconnection of gas supply to the wrong customer.

8. Further, nothing has been provided to show that, when SP AusNet rejected the cancellation of AGL's earlier disconnection service order, AGL responded by telephone, email message or other reasonable means to prevent the disconnection from proceeding.
9. The circumstances that might have permitted AGL to disconnect D were not relevant once D was no longer the customer at the property. After AGL had received notice on 18 October 2011 that another customer was moving in, the issue is not the retailer's good faith but its compliance with the deemed contract when disconnecting Customer C instead of D.
10. Under the deemed contract, AGL was obliged to comply with the terms and conditions of the ERC in disconnecting Customer C from the gas supply.
11. Clause 13 of the ERC sets out the only grounds on which a retailer may disconnect a customer; however:
 - clause 13.1 and 13.2 do not allow AGL to disconnect Customer C for non-payment (whether or not insufficient income is relevant), since AGL had not billed Customer C at the time of the disconnection
 - clause 13.3 does not allow AGL to disconnect Customer C for denying access to the meter since this has not been asserted or established
 - clause 13.4 does not allow AGL to disconnect Customer C for refusing to provide acceptable identification or payment of a refundable advance, since AGL had not sought either.
12. AGL breached the ERC by causing Customer C to be disconnected at the property and thus, the disconnection was wrongful.
13. AGL is required to pay Customer C wrongful disconnection compensation of \$280 (gas was disconnected for 1 day, 2 hours and 55 minutes).

Dr. Ron Ben-David

Chairperson

Date: 2013