



Wrongful Disconnection Payment Dispute

TRUenergy and The Complainant

October 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 Essential Services Commission (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.

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. Both The Complainant and TRUenergy were offered the opportunity to provide information directly to the Commission, but did not do so.

Background

The Complainant's gas supply was disconnected at 8.40am on 16 November 2009 and reconnected at 1.05pm on 17 November 2009. The Complainant moved into the property in February 2009 and contacted the TRUenergy credit department on 4 August 2009 to arrange a dual fuel payment plan.

The Complainant stated that TRUenergy required a settlement of the outstanding account in full to avoid disconnection. A two week extension for payment of \$530.88 was negotiated.

TRUenergy contacted The Complainant in September 2009 and requested immediate payment of \$900 on the gas account. According to The Complainant, TRUenergy was advised that financial difficulties were being experienced. A payment plan of \$100 per fortnight to commence on 24 September 2009 was offered. The Complainant stated this amount was agreed to avoid disconnection of the gas supply, although this amount was not affordable.

No payments were made and the gas was disconnected on 16 November.

Regulatory Compliance Issues

The case has been referred to the Commission for a decision based on TRUenergy's alleged non-compliance with the following Energy Retail Code requirements.

- Clause 11.2 – the obligations to assess, for customer's experiencing financial difficulties, their capacity to pay and to provide them with information on concessions and other assistance
- Clause 12.2 – the obligations to specify the period and amount of instalment plans and to monitor and review the plan if the customer demonstrated payment difficulties during the plan
- Clause 13.1(a) – no disconnection of supply if customer failed to meet their obligations under their first instalment plan

Assessment and assistance to customers in financial difficulties

The relevant steps, and TRUenergy's actions in relation to The Complainant, were:

- 1 *Assess capacity to pay, including taking into account an independent financial counsellor's advice if the retailer cannot adequately make that assessment.*

On 4 August 2009, TRUenergy call centre staff updated The Complainant's concession card details. This could have signalled potential financial difficulties. However, the call centre file referenced only that the energy concessions were applied to the total gas and electricity bills.

On 9 September, the call centre staff *"discussed customer's capacity to pay...customer confirmed can pay \$150 on 17 September for electricity per fortnight and \$100 gas on 24 September per fortnight."* The Complainant stated that the gas

\$100 per fortnight repayment was agreed to avoid disconnection and that TRUenergy was advised that financial difficulties were being experienced.

TRUenergy believed that The Complainant agreed to the payments and did not indicate financial difficulties. There was no information on TRUenergy's call centre notes as to how these assessments of capacity to pay were arrived at and there was no reference that The Complainant was advised of or offered financial counselling assistance.

- 2 *Offer a further instalment plan unless the customer has failed to comply with two instalment plans in the previous 12 months and does not provide reasonable assurance that they will meet their obligations*

The Complainant was offered one instalment plan. The only reference to a further instalment plan was made generally in a registered letter sent on 22 October 2009, advising of pending disconnection.

- 3 *Provide the customer with information on concessions, Utility Relief Grants, energy efficiency and advice on the availability of an independent financial counsellor*

TRUenergy considered that this obligation was met by providing The Complainant with general information on its reminder notices and disconnection warnings.

It is noted that TRUenergy call centre notes showed that three calls were made to The Complainant's telephone in early October, but contact was not made. TRUenergy stated that they could not provide additional assistance due to this lack of contact. However, it is also noted that the letter sent on 22 October appeared to have been a general letter because it simply stated for The Complainant to contact TRUenergy "...to discuss any assistance programs". There is no reference to specific assistance.

Offer of a further instalment plan

Clause 11.2(3) requires that a retailer must offer a customer experiencing financial difficulties an instalment plan unless that customer has not complied with two instalment plans in the previous 12 months and does not provide reasonable assurance that they will meet their on-going payment commitments. Clause 12.2 requires TRUenergy, in offering an instalment plan, to specify the period and amount of the plan taking into account a number of factors.

TRUenergy believed that its registered letter of 22 October 2009, which was sent prior to disconnection in November, met the requirements of clause 12.2. This letter requested the customer to contact TRUenergy if they were experiencing payment difficulties to "*discuss how we can work with you to establish a payment arrangement*".

It is noted that TRUenergy unsuccessfully attempted to contact The Complainant by phone. However, a brief reference in the disconnection warning letter does not meet the requirements of clause 12.2 as The Complainant was not offered a tailored instalment plan which took into account capacity to pay, arrears and future consumption.

No disconnection under the first instalment plan

Clause 13.1(a) states that a retailer may only disconnect a customer for failure to pay an account if "the failure does not relate to an instalment under the customer's first instalment plan with the retailer". According to the EWOV referral, TRUenergy acknowledged that The Complainant's gas supply was disconnected while was on the first instalment plan.

Again, TRUenergy relied on the registered letter sent on 22 October 2009, prior to disconnection in November, offering a second instalment plan. This letter requested the customer to contact TRUenergy if they were experiencing payment difficulties to "*discuss how we can work with you to establish a payment arrangement*".

Further the letter states:

"Unfortunately, if full payment or contact to arrange payment is not made before... we will arrange for the immediate disconnection of the energy supply in the belief that you have the capacity to pay and have chosen not to pay."

Consequently, TRUenergy believed this satisfied its obligations under clause 13.1(a) as it employed its best efforts to offer a second instalment plan to The Complainant.

TRUenergy did not establish a second instalment plan nor did it comply with the requirements in offering a second instalment plan.

Conclusion

Having regard to the advice and information provided to the Commission, it is found that TRUenergy did not comply with clause 11.2, clause 12.2 and clause 13.1(a) of the Energy Retail Code. Therefore, TRUenergy has not complied with the relevant terms and conditions of its contract with The Complainant.

It is concluded that the disconnection of The Complainant is wrongful and a compensation payment of \$295.85 is required (compensation for 28.25 hours).

Mr A W Darvall
Delegated Commissioner
October 2010