ESSENTIAL SERVICES COMMISSION

WRONGFUL DISCONNECTION PAYMENT DISPUTE

ORIGIN ENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

NOVEMBER 2007

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 the customer's supply and does not comply with the terms and conditions of the customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate the customer for each day that the customer's supply is disconnected.

Clause 6.5 of the Commission's Operating Procedure – Compensation for Wrongful Disconnection (Operating Procedure) 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 customer, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the Operating Procedure.

Background

EWOV requested the Commission to make a formal decision as to whether Origin Energy complied with its retail licence in relation to a dispute between THE COMPLAINANT and Origin Energy (Origin) regarding a wrongful disconnection compensation payment for THE COMPLAINANT.

In particular, EWOV notes that Origin does not appear to have complied with the following obligations under the Energy Retail Code (ERC):

1. Best endeavours to contact THE COMPLAINANT in person or by telephone, as required under clause 13.2.
2. Adequate assessment of THE COMPLAINANT's capacity to pay, as required by clause 11.2(1).
3. Provided the requisite advice regarding the availability of an independent financial counsellor, as required by clause 11.2(4).

THE COMPLAINANT transferred to Origin from 9 March 2005. The gas supply was disconnected at 2 pm on 4 September 2006 and reconnected at 11.37 am on 15 February 2007.

From information provided by EWOV the Commission understands that THE COMPLAINANT contacted Origin on 12 September 2006 and was asked to pay a lump sum of $793.00 in order to be reconnected. They advised they could not afford this amount, but stated that they were unable to negotiate an alternative payment arrangement. THE COMPLAINANT was contacted by Origin in late January 2007 and was again asked to pay a lump sum amount that they could not afford. THE COMPLAINANT contacted EWOV on 14 February 2007 and was reconnected at EWOV's request.

Origin confirmed that THE COMPLAINANT established an account for the property at 21 Phillip Street, Dandenong on 9 March 2005. According to the information provided by Origin, THE COMPLAINANT entered into several payment arrangements between March 2005 and September 2006, all of which were cancelled due to missed payments. THE COMPLAINANT consequently received several reminder notices and disconnection warnings in relation to the arrears on the account.

THE COMPLAINANT also had several discussions with Origin's Credit Department regarding the arrears on the account.

THE COMPLAINANT has made two payments since March 2005 – one payment for $30 in July 2006 and one payment for $20 in August 2006.

Origin also advised the following:

- On 7 April 2006 THE COMPLAINANT contacted Origin with their financial counsellor and, through this counsellor, advised that they were applying for a concession card. They stated that they could only afford to pay $20 on this account. No date for a payment was set, but THE COMPLAINANT was to call back with a receipt number when they made the payment. No payment was received in April.
- During April, THE COMPLAINANT advised Origin of their health care card status, which meant that they became eligible for the Winter Energy Concession. However, Origin advised that this status was subsequently cancelled in September 2006 as the information provided by THE COMPLAINANT was unable to be matched by Centrelink during a routine verification process. THE COMPLAINANT did not provide Origin with further valid concession card details
- On 1 May 2006 an application form for a Utility Relief Grant (URGs) was sent to THE COMPLAINANT, together with a brochure on Origin Energy's hardship policy (the Power on Program). According to Origin, neither THE COMPLAINANT nor their financial counsellor sought assistance through this program.
- On 6 June 2006, THE COMPLAINANT received an URGs for the amount of $205.00.
- In July and August, further negotiations occurred between THE COMPLAINANT and Origin on payment arrangements, ranging from $20 - $35 per fortnight. The debt increased to approximately $450, and $50 was received in two payments from THE COMPLAINANT over the two months.
- On 30 August, as no further payments were received, Origin initiated disconnection action.
- On 12 September 2006 THE COMPLAINANT contacted Origin seeking reconnection of their gas supply. They stated that they did not receive an account prior to disconnection. Origin advised THE COMPLAINANT that they would have to pay the whole amount to be reconnected. On 24 November, 2006, a letter was sent to THE COMPLAINANT, setting out a further payment plan for $40 per fortnight, commencing 6 December 2006. No payment was received by 15 December and THE COMPLAINANT was debt listed by Baycorp.
- On 9 January 2007, further communication occurred between THE COMPLAINANT and Origin, in which they again stated that they did not receive the letter sent in October 2006 (THE COMPLAINANT confirmed that the address was accurate). Discussions on payment arrangements occurred, but further payments were not received. The matter became a formal EWOV case on 15 February 2007.

Origin advised that THE COMPLAINANT transferred to another retailer in September 2007.

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. Clauses 11.2 and 13 of the ERC set out the requirements which have to be followed by a retailer prior to disconnecting a customer.

1. Best endeavours to contact the customer prior to disconnection

Clause 13.2 of the ERC states that a retailer must not disconnect a domestic customer if the failure to pay the retailer's bill occurs through a lack of sufficient income of the customer until the retailer has also complied with clause 11.2, using its best endeavours to contact the customer in person or by telephone prior to disconnection.

The Operating Procedure provides guidance on what 'best endeavours' to contact a customer in these circumstances could entail, that is, at least one month prior to disconnection, attempting to contact the customer by telephone over a two to three day period and, if no telephone contact is able to be made, then sending a registered letter warning of the pending disconnection.

The guidance provided in the Operating Procedure is useful in assisting retailers to assess whether best endeavours as required under the ERC have been made. However, the regulatory obligation is 'best endeavours' and the Operating Procedure does not place further mandatory obligations on the retailers. That is, the Operating Procedure assists where the regulatory obligation is ambiguous, taking all circumstances into account.

In the twelve months prior to the disconnection, Origin communicated with THE COMPLAINANT on numerous occasions through telephone conversations and letters, including sending a brochure on the hardship program. Responses by THE COMPLAINANT were sporadic and their commitments to make payments against the account did not come to fruition.

Direct telephone contact was made on 7 August, after which THE COMPLAINANT made a payment of $20 and gave a commitment to make further payments on the account. No further payments were received prior to the disconnection on 4 September. Origin's call centre notes indicate that telephone contact was attempted unsuccessfully on 30 August 2006.

Based on all the contacts made by Origin by telephone and by mail, and taking all circumstances of THE COMPLAINANT's previous contacts with Origin into account, the Commission concludes that Origin Energy did comply with clause 13.2 of the ERC.

2. Assessment of capacity to pay

Clause 11.2(1) of the ERC provides for the retailer to assess capacity to pay, based on whatever information the customer provides or the retailer otherwise has, taking into account advice from an independent financial counsellor if the retailer is unable to adequately make that assessment.

Appendix A clause 2(e) of the Operating Procedure provides guidance to the effect that, in order to adequately assess the capacity to pay of a customer without advice

from an independent financial counsellor, a retailer must have the assessment made by its specialist credit assessors or hardship team.

THE COMPLAINANT became an Origin customer in March 2005. Origin's contact centre notes show that between March and November 2005, there was confusion between the previous retailer and Origin with respect to accounts. It appears that Origin only sent its first account to THE COMPLAINANT in December 2005. Between January and March 2006, Origin made unsuccessful attempts to contact THE COMPLAINANT.

On 7 April 2006, a financial counsellor contacted Origin to negotiate an amount that THE COMPLAINANT would reasonably be able to afford. The amount negotiated was $20.

The payment amount of $20 was negotiated on 7 April in consultation with their financial counsellor. THE COMPLAINANT renegotiated this amount on 21 June, but payments were not received by Origin. On 7 July, Origin sought $40 from THE COMPLAINANT, with agreement that the $20 payment per fortnight would continue after that payment was received. No payments were received.

On 13 July, Origin sought $35 per fortnight from THE COMPLAINANT, as no payments against the previous payment plan had been received and the debt was continuing to increase.

EWOV submits that, in these circumstances, Origin did not adequately assess THE COMPLAINANT's capacity to pay as required by clause 11.2(1) of the ERC as screen notes do not appear to demonstrate that THE COMPLAINANT was referred to Origin's community liaison team for any additional monitoring or assistance.

In previous decisions by the Commission, where the assessment of capacity to pay does not appear to have been undertaken systematically by the retailer, the Commission has considered the payment arrangement as a proportion of the outstanding debt and on-going consumption to determine whether it appears fair and reasonable. In THE COMPLAINANT's circumstances, the following is noted:

- In April 2006, the outstanding debt in April 2006 was approximately $550. Origin agreed to a payment arrangement of $20 per fortnight, amounting to 4% of the outstanding debt.
- In July 2006, when $35 per fortnight was requested by Origin, the payment arrangement accounted for approximately 10% of the outstanding debt. This had decreased to 8% of the outstanding debt by the date that disconnection action was taken.

Neither payment arrangement accounted for on-going consumption.

Origin took account of the financial counsellor's advice in setting the initial payment arrangement. Given that no payments were received and the debt was increasing, Origin negotiated further payments ranged 4-10% of the outstanding debt. Therefore, taking into account all the information available, the Commission concludes that Origin Energy did take THE COMPLAINANT's capacity to pay into account in agreeing their payment arrangements and has met its obligations under clause 11.2(1) of the ERC.

3. **Failure to advice regarding the services of a financial counsellor**

Clause 11.2(4) of the ERC requires that retailers must provide advice to customers on the availability of an independent financial counsellor.

Origin stated in its submissions that all customers are provided with advice regarding the services of a financial counsellor. When THE COMPLAINANT failed to keep the agreed repayments, Origin stated that it posted an application form for the URGS to THE COMPLAINANT in May 2006 and included a brochure on Origin Energy's Power on Program which explains its hardship policy. The brochure advises customers who are experiencing financial difficulties to contact Origin and ask about the Power on Program to receive advice on:

- Energy efficiency to reduce bills;
- Affordable payments plans so customers can get back on track;
- Entitlements and grants by assessing eligibility for support;
- Financial counsellors and energy efficiency and guidance regarding appropriate support organisations for customers.

This information was sent to THE COMPLAINANT after their financial counsellor initially contacted Origin in April 2006. THE COMPLAINANT also received assistance from the Southern Ethnic Advisory Council in late April 2006 on the URGs application.

The Commission has previously made formal decisions that the retailer has breached its contract with a customer where it has not provided any advice on financial counsellors or other assistance, other than on the reminder or disconnection notices to customers. The Commission did not consider this an appropriate mechanism to provide this advice to customers.

However, on reviewing the brochure sent by Origin to THE COMPLAINANT, the Commission considers that it does provide THE COMPLAINANT with information "on the availability of an independent financial counsellor". Therefore the Commission concludes that Origin Energy met its obligations under clause 11.2(4) of the ERC.

Decision

In accordance with clause 7 of the Operating Procedure, the Commission has investigated the alleged breach by Origin Energy of its retail licence in relation to the disconnection of THE COMPLAINANT.

The Commission has concluded:

- Based on all the contacts made by Origin Energy by telephone and by mail, and taking all circumstances of THE COMPLAINANT's previous contacts with Origin into account, Origin Energy did comply with clause 13.2 of the ERC.
- Origin Energy took account of the financial counsellor's advice in setting the initial payment arrangement. Given that no payments were received and the debt was increasing, Origin Energy negotiated further payments ranged 4-10% of the outstanding debt (without taking account of future consumption). Therefore, Origin Energy did take THE COMPLAINANT's capacity to pay into account in agreeing their payment arrangements and has met its obligations under clause 11.2(1) of the ERC.

- The written information sent by Origin Energy to THE COMPLAINANT did provide THE COMPLAINANT with information "on the availability of an independent financial counsellor". Therefore Origin Energy met its obligations under clause 11.2(4) of the ERC.

Accordingly, Origin Energy has not breached the terms and conditions of its contract with THE COMPLAINANT and compensation is not payable.

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A W DARVALL
Delegated Commissioner
November 2007