



WRONGFUL DISCONNECTION PAYMENT DISPUTE

ORIGIN ENERGY AND THE COMPLAINANT

JUNE 2009

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 the case of The Complainant's alleged wrongful disconnection to the Commission for a formal decision.

Background

From information provided by EWOV it is understood that The Complainant's gas supply was disconnected at 10.20 am on 5 February 2009 and reconnected at 3.00 pm on 6 February 2009.

In their statement The Complainant says that they set up an account with Origin Energy in February 2008 when they moved into the property. However, in September 2008 they received a letter from Origin Energy addressed "To The Occupier" advising that an account needed to be organized.

In its statement Origin Energy advised that on 11 September 2008 an Unauthorised Usage letter was issued to the property addressed "To The Occupier". Origin Energy also advised that it has no record of The Complainant making any contact until 24 September 2008, at which time an account was established. According to discussions with Origin Energy, it was agreed with The Complainant that the account would be back - billed to 21 February 2008.

On 22 October 2008 Origin Energy issued The Complainant with a bill which cited a usage period of 21 December 2007 to 21 October 2008. The Complainant contacted Origin Energy on 29 October 2008 to query the bill. Origin Energy acknowledged that it was incorrect and issued a new bill (The Complainant was advised how the amount of the bill was derived).

The Complainant again contacted Origin Energy on 10 November 2008 seeking a revised repayment option. According to Origin Energy's screen notes (the screen notes) a payment plan per fortnight for a period of three months was agreed between The Complainant and the Origin Energy Credit Department, commencing 27 November 2008. After this period the Credit Officer was to contact The Complainant to organize another arrangement. The plan was established by The Complainant making a payment that day.

From the screen notes it would appear that on 10 November 2008, The Complainant also advised Origin Energy that the size of their bill was in dispute and that they were following this up with a Customer Service Advisor. However, there is no record in the screen notes that this follow-up by The Complainant occurred. The Customer Service Advisor in receipt of this call also recorded that The Complainant was advised at the time that high usage of the heating would contribute to the high bills.

After 10 November 2008, no further payments were received and Origin Energy cancelled the payment plan on 8 December 2008, issuing a reminder notice for the outstanding arrears. On 23 December 2008 a disconnection warning notice was issued for the outstanding arrears and a bill which covered the usage period of 2 October 2008 to 19 December 2008.

In their statement to EWOV, The Complainant said that they contacted Origin Energy several times after receiving the disconnection warning and was on each occasion advised that a manager would contact them to discuss the matter further, but they did not receive any return calls. However, Origin Energy stated that there is no record of any contacts by The Complainant between 10 November 2008 and 6 February 2009 when their supply was disconnected.

The screen notes for 9 January 2009 list an attempt by Origin Energy to contact The Complainant by mobile phone. This was unsuccessful as the phone was not connected. Consequently a No Contact letter was issued that same day. According to Origin Energy the No Contact letter warning of possible disconnection and offering the option of a suitable

payment plan was despatched by registered mail and there is no indication that it was not collected.

By 30 January 2009 The Complainant had not contacted Origin Energy or made a payment and on 4 February 2009 Origin Energy issued a notice to the distributor on to disconnect The Complainant's gas supply. The supply was subsequently disconnected at 10.30am on 5 February 2009.

The Complainant contacted Origin Energy on 6 February 2009 and was advised that they were required to pay an amount before the supply would be reconnected. The Complainant paid the amount immediately and according to the screen notes, agreed to a fortnightly instalment plan commencing 20 February 2009. The screen notes for that call show that The Complainant underwent a capacity to pay assessment by the Origin Energy Credit Department at the time and confirmed that they could afford the fortnightly payment. The Complainant's gas supply was reconnected at 3pm on 6 February 2009.

Issues

The terms and conditions of the contract between Origin Energy and The Complainant are detailed in the *Energy Retail Code* (ERC). Under the ERC a retailer must fulfil certain obligations before disconnecting a customer for non-payment of a bill.

EWOV considers that Origin Energy has breached a number of the obligations applying to The Complainant and that this is a wrongful disconnection for the following reasons:

1. Clause 11.2(b)(1) - Origin Energy does not appear to have adequately assessed capacity to pay prior to the disconnection, as required;
2. Clause 11.2(b)(4) - Origin Energy does not appear to have provided telephone advice regarding the availability of a financial counsellor or the Utility Relief Grant, and energy efficiency advice;
3. Clause 11.2(b)(3) - Origin Energy does not appear to have met its obligation to offer a further instalment plan;
4. Clause 12.2 - Origin Energy's 'no contact' letter does not provide details of a payment plan offer; and
5. Clause 13.1(a) – Origin Energy disconnected The Complainant when their failure to pay a bill related to an instalment under their first instalment plan.

Discussion

The following outlines the Commission consideration of this referral.

1. *Clause 11.2 - Assessment and Assistance to Customers in Financial Difficulty*
 - *11.2(b)(1) a retailer must assess, in a timely manner whatever information the customer provides or the retailer has concerning the customer's capacity to pay.*

The Complainant's financial history shows that they had accumulated arrears from not only their current address but also carry-over arrears from a previous residence. From the time Origin Energy maintain that The Complainant's account was formerly established on 24 September 2008, to the disconnection on 6 February 2009, The Complainant made only one payment. This payment was to establish a payment plan in November 2008.

The payment plan was instigated at the request of The Complainant and was subsequently cancelled when no instalment payments were made.

At the time of disconnection in February 2009, no further payments had been made towards the account. In the intervening months The Complainant had received a number of written communications from Origin Energy requesting payment and warning of possible disconnection in relation to the arrears on their account.

The screen notes recorded at the time the payment plan was established indicate that The Complainant agreed to the payment amount per fortnight, but do not provide any additional detail as to how this was assessed or whether The Complainant's financial circumstances were considered. In the EWOV report Origin Energy has advised that it believed that it correctly assessed the payment arrangement as it was made in agreement with The Complainant. It is noted that, according to Origin Energy, the approximate fortnightly instalment for the arrears and fortnightly usage of would be much higher.

While there does not appear to be documentary evidence to support this assessment, the Commission is of the view that the amount of the fortnightly repayment demonstrates that capacity to pay was taken into account

11.2(b)(3) offer of a second instalment plan

Clause 11.2(b) (3) requires retailers to offer a customer a second instalment plan unless the customer has, in the previous 12 months, failed to comply with two instalment plans and does not provide a reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan.

Origin Energy stated in its account that The Complainant's failed to respond to any written communications and was unable to be contacted by phone. However, an offer of a second instalment plan was made in the No Contact letter issued on 9 January 2009.

Therefore, it is concluded that Origin Energy did comply with the requirements of clause 11.2(3).

- *11.2(b)(4) advice on the Utility Relief Grant Scheme (URGS), energy efficiency and the availability of financial counsellors.*

Clause 11.2(b)(4) of the ERC requires a retailer to provide a customer with details on the Utility Relief Grant Scheme (URGS), energy efficiency information and the availability of independent financial counsellors.

There is no documented evidence in the screen notes of Origin Energy providing The Complainant with any advice on financial assistance or financial counselling. Whilst there is passing reference to high energy bills, there is no evidence that Origin Energy staff assisted with energy efficiency information.

It is acknowledged that The Complainant did not respond to Origin Energy's communications. The No Contact letter sent on 9 January 2009 is well written and provides a phone number that The Complainant could contact if they were experiencing payment difficulties (The Complainant did not do so). However, there is also no evidence that Origin Energy ensured that The Complainant was provided with information on the Utility Relief Grant Scheme, energy efficiency assistance and the availability of independent financial counsellors in writing (independently of reminder and disconnection notices).

On the basis of this it is considered that Origin Energy did not comply with the requirements of clause 11.2(4) of the ERC.

- *Clause 13.1 - Grounds for Disconnection: Non-payment of a bill*

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 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....

before disconnection the customer

13.1(1) does not provide reasonable assurance to the retailer the customer is willing to pay the retailer's bills;

Origin Energy acknowledged to EWOV that The Complainant was disconnected after failing to make a payment on their first instalment plan but maintains that this was necessary as The Complainant did not contact Origin Energy to make any other arrangements. The Complainant failed to respond to any communications, including the No Contact letter, and under these circumstances Origin Energy stated that The Complainant did not provide reasonable assurance that they were willing to pay the bills.

The Commission acknowledges the difficulties Origin Energy experienced in attempting to make contact with The Complainant to make other arrangements and that The Complainant did not provide reasonable assurance that they were willing to pay the bills. However, The Complainant was disconnected after failing to make a payment on their first instalment plan. It is therefore considered that Origin Energy was not in breach of 13.1(1) but did breach the requirements of clause 13.1(a).

- *Clause 12.2 – Requirements for an Instalment Plan*

EWOV considers that Origin Energy did not comply with clause 12.2 as it did not provide details of payment plans in its letter of 9 January 2009 to The Complainant. The Commission acknowledges Origin Energy's difficulties in contacting The Complainant. However, the brief reference to the offer of a payment plan made in the No Contact letter does not satisfy the requirements of clause 12.2.

Conclusion

The Commission notes that Origin Energy made many attempts to assist The Complainant, but these attempts were hampered by The Complainant's lack of contact. Nevertheless, it does not appear that Origin Energy complied with clause 11.2(b)(4) of the *Energy Retail Code* and provided information on the Utility Relief Grant Scheme, energy efficiency assistance and the availability of independent financial counsellors. Origin Energy has also not complied with clause 13.1(a) *the failure does not relate to an instalment under the customer's first instalment plan with the retailer* and clause 12.2 *Requirements for an instalment plan*. Therefore the disconnection of The Complainant is considered wrongful.

Decision

Having regard to the advice and information provided by EWOV, Origin Energy and The Complainant it is considered that the disconnection of The Complainant's gas supply on 5 February 2009 was wrongful and that compensation is required.

A W DARVALL
Delegated Commissioner
June 2009