



**WRONGFUL DISCONNECTION PAYMENT DISPUTE**

**RED ENERGY AND THE COMPLAINANT**

**STATEMENT OF REASONS**

**OCTOBER 2006**

## **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 Red Energy complied with its retail licence in relation to a dispute between the complainant and Red Energy regarding a wrongful disconnection compensation payment for the complainant.

The complainant has been a Red Energy customer since September 2005. Regular payments were not made on their bills and they were disconnected on 27 April 2006 after the arrears had accumulated to approximately \$700. The complainant stated that they could not recall receiving reminder or disconnection notices.

Red Energy commenced billing the complainant's address on 7 September, but did not issue them a bill until 7 February 2006 for the amount of \$369.29 (for the period 7 September-1 December 2005). The complainant was provided with 2 weeks to pay this bill. No payment was received and a reminder notice was issued on 28 February 2006.<sup>1</sup>

A disconnection notice was issued on 17 March for the previously outstanding amount of \$369.29. Red Energy advised that attempts were made to contact the complainant by telephone on 20 March at their home during business hours. It appears that the call was answered, but the complainant was not available.

A disconnection notice was subsequently sent registered mail by Red Energy to 'The Occupier' on 30 March (this correspondence was returned to Red Energy on 18 April). In any event, Red Energy contacted the complainant on 31 March who apparently advised that they wished to make a suitable payment arrangement.

However Red Energy advised that they could not assist as it was after-hours (and a Friday evening), but that the complainant would be referred to Red Energy's specialist hardship team for assessment. Further, the call centre staff advised that the complainant would be called on the following Monday to offer a payment plan and to assess them for placement on the Customer Care program.

From the information provided, it appears that Red Energy attempted to contact the complainant on 3 April and 20 April. Failing this contact, the premises were disconnected on 27 April for non-payment of \$369.29.

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<sup>1</sup> A further bill was issued on 14 March 2006 for \$673.03, but this Formal Decision addresses only the amount of \$369.29.

The premises were reconnected on 1 May after the complainant made contact with EWOV.

### **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.

#### *Terms and Conditions relating to disconnection of supply*

The terms and conditions of the contract between Red Energy and the complainant are set out in the Electricity Retail Code (ERC). In summary, the ERC requires that a retailer cannot disconnect a customer for non-payment of a bill until the retailer has sent all relevant notices, assessed and assisted a customer having difficulty paying bills and used its best endeavours to contact a customer with insufficient income.

The ERC also requires that, if a retailer has undercharged a customer, the undercharged amount can be recovered subject to certain conditions being met.

#### *Recovery of undercharged amount*

Clause 6.2 of the ERC addresses the requirements that apply if a customer has been undercharged on their bill or has not been charged at all. These include the requirement that the retailer must offer the customer time to pay the amount undercharged in a payment arrangement covering a period at least equal to the period over which the recoverable undercharging occurred.

Red Energy advised that, although the complainant was a customer from 7 September 2005, the first bill was issued on 7 February 2006 for the period 7 September - 1 December 2005. Therefore the complainant was not charged for the first three months of his electricity consumption until five months after they commenced as a customer with Red Energy. the complainant was given until 23 February to pay this bill (12 business days).

There is no evidence that the complainant was offered a payment arrangement over the equivalent period of time to pay this account. Therefore it is concluded that Red Energy did not comply with clause 6.2(d) prior to disconnecting the complainant.

#### *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)).

It is noted that Red Energy's first personal contact with the complainant was on 31 March 2006 and that this was after hours on a Friday evening. At the time, it appears that the complainant was advised that they would be referred to the specialist hardship team and that they would be telephoned again on 3 April to offer a payment plan and assess them for placement on the Customer Care program.

The Commission notes the following:

- Red Energy appears to have advised the complainant on 31 March that it intended to escalate this case beyond the call centre contact to its specialist hardship team.
- Other than the sporadic call centre contacts (on 3 and 20 April) there appear to have been no efforts made by Red Energy to systematically follow up on this intention and to ensure that the complainant was fully informed of further assistance prior to reminder and disconnection notices issued. It is noted that the call centre notes of 13 April state “*customer entered stage 5 of current debt cycle. Will be assessed for possible disconnection*”. These notes do not indicate that the complainant would or should be assessed for payment assistance or referred for hardship assistance.
- The disconnection notice sent to the premises on 30 March was addressed to ‘The Occupier’. It is unclear why Red Energy did not send notices addressed directly to the complainant.

Whilst it appears that the call centre staff indicated that the complainant would be referred to the specialist hardship team, there is no evidence that Red Energy systematically put that plan into effect and ensured compliance with clause 11.2. It is acknowledged that Red Energy made a number of telephone calls to the complainant, but there is no evidence that efforts were made to properly assess his capacity to pay, offer him a further instalment plan, refer to independent financial counselling or provide him with details on the Utility Relief Grant Scheme.

Therefore, it is concluded that Red Energy did not comply with clause 11.2 of the ERC.

#### *Domestic customers with insufficient income*

Clause 13.2 of the ERC requires that a retailer must not disconnect a domestic customer if the failure to pay the bill occurs through lack of sufficient income until certain conditions have been met. This includes complying with clause 11.2 of the ERC and using best endeavours to contact a customer where the failure to pay a bill occurs through lack of sufficient income.

Red Energy advised EWOV that it

*“agreed that clause 11.2 applies in respect to this instance, because The complainant had advised it of his payment difficulties and had not made a payment towards his account. However, Red Energy considers that despite using best endeavours to contact the customer, it had no opportunity to comply with the requirements of clause 11.2(1)-(4).”*

The Commission has observed above that Red Energy appears to have acknowledged in its telephone conversation on 31 March that the complainant was experiencing financial difficulties and that steps would be taken to refer him to the Red Energy hardship team. However, it appears that this intention was not followed through prior to the complainant being disconnected. Therefore it is concluded that Red Energy did not comply with this obligation.

Red Energy considers that it did use its best endeavours to contact the complainant as, after the telephone contact on 31 March, unsuccessful attempts were made to contact him by telephone again on 3 and 20 April. No further contact was made prior to disconnection occurring on 27 April, which was initiated after the disconnection

notice sent by registered mail on 30 March. The Commission notes that this registered mail was addressed to 'The Occupant'.

The Operating Procedure provides guidance as to what constitutes best endeavours in these circumstances. That is, if customers with a supply address in the urban area cannot be contacted by telephone within a 2-3 day period and not more than one month prior to the disconnection, a registered letter should be sent advising of the pending disconnection process.

It is noted that Red Energy did make 2 telephone calls and sent a registered letter. However, the letter was addressed to 'The Occupant' although it is assumed that Red Energy was aware of the customer's personal details. Further, the letter was sent prior to the telephone contact on 31 March when it apparently was concluded by Red Energy that the complainant was experiencing financial difficulties. No further attempts were made to contact him personally in writing to offer the assistance required under clause 11.2 of the ERC. Therefore it is concluded that Red Energy did not comply with clause 13.2 of the ERC.

### **Decision**

In accordance with clause 7 of the IOP, the Commission has investigated the alleged breach by Red Energy of its retail licence in relation to the disconnection of the complainant. The Commission has decided that Red Energy did not comply with its licence and the contract terms and conditions relating to the disconnection of the complainant.

Therefore, the disconnection of the complainant was wrongful and a compensation payment is required. The compensation payment is to apply from 12.30pm on 27 April to 5.00pm on 1 May 2006 and amounts to \$922.

R H SCOTT

**Delegated Commissioner**

October 2006