

ESSENTIAL SERVICES COMMISSION

WRONGFUL DISCONNECTION DECISION UNDER SECTION 40B OF THE ELECTRICITY INDUSTRY ACT 2000 AND SECTION 48A OF THE GAS INDUSTRY ACT 2001

CUSTOMER H & TRUENERGY

DECISION AND REASONS

Key Issue

A retailer must offer customers in financial hardship at least two instalment plans before disconnection. TRUenergy disconnected customer H's electricity and gas supplies before offering her a second instalment plan.

The retailer placed customer H on a hardship program twice due to payment difficulties, but only established one instalment plan during this time. The Commission has found that customer H was entitled to be offered a second plan. The disconnection of electricity and gas was wrongful because this was not done.

Background

On 29 May 2007, TRUenergy established a gas account for customer H, and on 30 May 2007 it established an electricity account.

On 2 July 2008, TRUenergy issued a reminder notice for \$1,672.84 for the electricity account.

On 15 July 2008, TRUenergy issued a disconnection notice for \$1,672.84 for the electricity account.

On 1 December 2008, customer H received a Utility Relief Grant (URG) of \$500.00 for the electricity account and \$415.01 for the gas account.

On 15 December 2008, customer H was placed onto TRUenergy's hardship program and the retailer established a \$50.00 fortnightly instalment plan for the electricity account and \$30.00 fortnightly instalment plan for the gas account.

Customer H made six \$50.00 payments to the electricity account, and also made six \$30.00 payments to the gas account, from 7 January 2009 to 12 May 2009.

On 12 May 2009, customer H contacted TRUenergy. After discussing her usage with her, TRUenergy increased the fortnightly instalments to \$60.00 for the electricity account and \$35.00 for the gas account.

Customer H made eleven \$60.00 payments to the electricity account, and also made eleven \$35.00 payments to the gas account, from 28 May 2009 to April 2010.

On 21 April 2010, TRUenergy removed customer H from its hardship program due to non-participation.

On 23 June 2010, customer H contacted TRUenergy and authorised Mr M on the accounts.

The retailer states that Mr M advised TRUenergy:

- Due to medical reasons customer H had been unable to work for the last three months and was in a situation where she could not afford to feed herself; and
- Customer H could afford to pay \$120.00 per month for the gas account and \$180.00 per month for the electricity account, with payments to commence on 8 July 2010. The retailer accepted this offer.

On 16 July 2010, customer H contacted TRUenergy and advised that she could not meet the agreed payment arrangement. During this call TRUenergy updated customer H's concession card details.

On 20 July 2010, customer H was placed on the hardship program for the second time and advised to see a financial counsellor. At the time customer H was asked by TRUenergy to pay what she could towards the accounts. TRUenergy sent customer H a hardship acceptance letter along with information on the running costs of appliances.

On 3 November 2010, TRUenergy contacted customer H regarding an appointment with a financial counsellor. Customer H advised TRUenergy that "she spoke to 'someone' at TRUenergy and they suggested the only thing to do is go bankrupt." Customer H further advised that "there is just no money left due to rent." TRUenergy advised customer H that she should see a financial counsellor again and then contact TRUenergy.

On 23 November 2010, TRUenergy contacted customer H to discuss whether she had arranged an appointment with a financial counsellor. During this call:

- Customer H advised TRUenergy that she had tried to get an appointment with a financial counsellor.
- TRUenergy said that it would send her an URGS application form for the electricity and gas accounts.

On 1 December 2010, TRUenergy posted customer H an URGS application form.

On 24 January 2011, customer H contacted TRUenergy and the retailer established a \$150.00 monthly instalment plan for the electricity account and a \$150.00 monthly instalment plan for the gas account, which covered customer H's monthly usage.

On 10 February 2011, customer H contacted TRUenergy and the following was discussed:

- Customer H advised TRUenergy that she had not realised that the \$150.00 monthly instalment plans were for each fuel, totalling \$300.00 per month.
- Customer H had not received the URGS application form and she had tried to get an appointment with a financial counsellor.
- TRUenergy advised that it could not accept a \$150.00 monthly instalment plan for both fuels. After advising customer H that the telephone call was being recorded customer H terminated the call.

On 10 February 2011, TRUenergy removed customer H from the hardship program.

Customer H made \$150.00 payments to the electricity account on 11 February 2011, 16 March 2011 and 20 April 2011. She paid \$50.00 on the gas account on 8 July 2010.

On 10 June 2011, TRUenergy cancelled the \$150.00 monthly instalment plans for the electricity and gas accounts.

On 13 July 2011, TRUenergy issued a reminder notice for the electricity account.

On 26 July 2011, TRUenergy issued a disconnection warning notice for the electricity account.

On 26 August 2011, TRUenergy issued a reminder notice for the gas account.

On 8 September 2011, TRUenergy issued a disconnection warning notice for the gas account.

On 5 October 2011, TRUenergy says it contacted customer H in relation to non-payment of the accounts and the following was discussed:

- Customer H said that she could only afford \$50.00 per fortnight.
- TRUenergy advised customer H that she was no longer eligible for the hardship program and she would need to get in contact with a financial counsellor and contact TRUenergy within five business days.
- Mr M on behalf of customer H had contacted TRUenergy and requested an instalment plan. TRUenergy advised him that no arrangement could be given.

EWOV advises that Mr M has a different understanding of customer H's telephone call with the retailer on 5 October 2011. He says:

- It was customer H who contacted TRUenergy (prompted by receiving a disconnection warning notice for electricity).
- The retailer advised her it required \$300.00 per month.
- Customer H replied that she could not afford this.

TRUenergy's contact notes do not suggest customer H was asked for \$300.00 per month.

Mr M has informed EWOV that:

- Customer H did not contact TRUenergy again when she received a disconnection warning notice for gas, as she had been unable to arrange an installment plan for electricity.
- She was concerned that the retailer would advise her to file for bankruptcy, as it had done regarding her electricity account in November 2010.

On 6 and 13 October 2011, TRUenergy attempted to contact customer H.

On 20 October 2011, the electricity supply was disconnected.

On 2 November 2011, the gas supply was disconnected.

On 21 May 2012 the Commission wrote to TRUenergy and customer H.

Decision

Having regard to the advice and information provided by EWOV, TRUenergy and by customer H and her authorised representative Mr M, the Commission finds:

1. Electricity was disconnected on 20 October 2011 at 9.30 a.m. and reconnected on 21 October 2011 at 3.45 p.m.
2. Gas was disconnected on 2 November 2011 at 2.00 p.m. and reconnected on 4 November 2011 at 12.45 p.m.
3. The electricity and gas disconnections were wrongful as TRUenergy failed to comply with the terms and conditions of customer H's contracts in that TRUenergy failed to comply with clause 11.2(3) of the ERC which is incorporated into the contracts by the ERC which requires
a retailer to offer a customer an instalment plan unless that customer has failed to comply with two instalment plans in the previous 12 months and does not provide a reasonable assurance to the retailer of willingness to meet future payment obligations.
4. The wrongful disconnection compensation is payable for the entire disconnection periods.
5. TRUenergy is required to pay customer H \$802.00 wrongful disconnection compensation, comprising:
 - \$315.00 under section 40B of the Electricity Industry Act 2000; and
 - \$487.00 under section 48A of the Gas Industry Act 2001.

Reasons

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

1. TRUenergy confirmed that it disconnected customer H electricity supply on 20 October 2011 and her gas supply on 2 November 2011.
2. Customer H failed one instalment plan on 10 June 2011 by non-payment of the agreed sums.
3. The obligations under clause 11.2 (a) and (b) were triggered in that customer H exhibited the following indicators of hardship:
 - a) Self identification of payment difficulties
 - b) No or sporadic payments
 - c) Multiple payment plans
 - d) Issuing of multiple reminder and disconnection notices
 - e) Concession card holder
 - f) Previously on hardship program
4. TRUenergy failed to abide by clause 11.2(3) of the ERC in that it did not offer a second instalment plan when the clause required this.

Dr. Ron Ben-David
Chairperson

Date: 30 July 2012