



WRONGFUL DISCONNECTION PAYMENT DISPUTE

AGL AND THE COMPLAINANT

STATEMENT OF REASONS

FEBRUARY 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 Interim Operating Procedure – Compensation for Wrongful Disconnection (IOP) 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 complainant, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the IOP.

Background

EWOV has requested the Commission to make a formal decision as to whether AGL complied with its licence in relation to a dispute between the complainant and AGL regarding a wrongful disconnection compensation payment for the complainant.

The complainant moved into her premises in May 2002 and requested the local retailer to supply electricity. In March 2005, the local retailer became aware that the complainant's property had been transferred to AGL in February 2002. The complainant was advised by the local retailer that she was not contractually its customer. The local retailer refunded the complainant's payments for electricity accounts and advised her to contact AGL, the Financially Responsible Market Participant for the property.

The complainant contacted AGL and requested an account be established in her name. AGL established an account for the complainant, but did not link the complainant's account to the premises as it was already linked to another customer's account. The other customer requested disconnection and in complying with this request, AGL disconnected the complainant.

The complainant believes the disconnection was wrongful because she did not receive any notification of the impending disconnection. AGL maintains that the disconnection of the complainant was erroneous, but not wrongful, because it was complying with the request of the other customer to disconnect the premises.

Issues

For the disconnection to be wrongful there must be a contract between a customer and the retailer and 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.

Contract

In law a contract is a legal relationship between two persons. The basis of the contract is an offer and an acceptance and an intention to commit to legal relations. The complainant made an offer by requesting an account be opened for her. AGL accepted the offer by opening up an account in her name. The fact that AGL did not

properly link the premises to the complainant, as it already had another customer on the account, is not relevant to the issue of offer and acceptance. Therefore, it is considered that there was a contract between the complainant and AGL.

Breach of Contract Terms Relating to Disconnection

The terms and conditions of the contract between the complainant and AGL are set out in the Energy Retail Code (ERC). Clause 13 of the ERC requires a retailer to provide a disconnection warning to a customer prior to disconnecting a customer. A retailer is not required to send a disconnection warning when a customer requests the disconnection from the retailer. In this case, AGL did not provide the complainant any warning of the disconnection because it was acting on the request of the other customer to disconnect the premises.

Decision

It is noted that the IOP requires the Commission to make a decision on an alleged breach of the retail licence condition imposed by clause 40B of the *Electricity Industry Act 2000*. The Commission does not have the discretion to differentiate cases where the disconnection occurred due to an error by the retailer who has a contract with the complainant.

In accordance with clause 7 of the IOP, the Commission has investigated the alleged breach by AGL of its retail licence in relation to the disconnection of the complainant. The Commission has decided that AGL did not comply with the terms and conditions of its contract with the complainant and the conditions of its licence and the wrongful disconnection compensation is payable in accordance with section 40B of the *Electricity Industry Act 2000*.

BOB SCOTT
Delegated Commissioner

February 2006