



WRONGFUL DISCONNECTION PAYMENT DISPUTE
ORIGIN ENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

DECEMBER 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 Origin Energy (Origin) complied with its retail licence in relation to a dispute between the Complainant and Origin, regarding a wrongful disconnection compensation payment for the Complainant.

The Complainant is a customer of Origin Energy Gas with an erratic payment history, including nine broken instalment plans since 2003, all of which were cancelled due to non-payment. Due to the continuing arrears, the Complainant has received several reminder notices and disconnection warnings and no payments have been made against the account since 8 July 2005.

On receipt of a no contact letter, the Complainant rang Origin Energy on 10 July 2006 and spoke with a credit officer who arranged a new plan for \$50 per fortnight, commencing on 20 July 2006. The Complainant's usage at this time was \$24 per fortnight, with arrears of over \$800.

The Complainant later stated that the agreed amount of \$50 was more than they could afford, but that they found it difficult to negotiate a lesser amount. However, details of this discussion are not recorded in the screen notes.

The Complainant also requested a Utility Relief Grant Scheme (URGS) application, which was mailed out 10 July 2006. According to the Complainant, they were advised that the account would be placed on hold in the meantime. This is not recorded in the screen notes. The Complainant later advised EWOV that the URGS application had never arrived.

Origin Energy did not receive any payments and an overdue notice was sent to the Complainant on 17 July 2006. Origin made the one, unsuccessful attempt to contact the Complainant, by phone, on 24 July 2006, but did not try again, by either phone or in writing. A disconnection warning was issued 31 July 2006, but the Complainant did not contact Origin Energy until following their disconnection on 15 August 2006.

The Complainant contacted Origin Energy, after 1630 hrs, on 15 August 2006 and was advised that they would need to pay \$610.00 in order to be reconnected. The

Complainant advised Origin they could not afford \$610.00 and offered to pay \$500 in seven days time, but without immediate payment, Origin refused to reconnect them.

According to Origin Energy screen notes, due to the time of day, reconnection was not possible until the next day and only after the required payment was made. Origin Energy also advised The Complainant that a member of the Customer Advocacy team would contact them the following day.

The Complainant rang EWOV on 16 August 2006, who arranged for Origin to reconnect the gas supply that day

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 Customers without Sufficient Income

The terms and conditions of the contract between The Complainant and Origin are set out in the Energy Retail Code (ERC). In summary, a retailer must not disconnect a customer if failure to pay the bill occurs through lack of sufficient funds, until the retailer has complied with clause 11.2 of the ERC and using its best endeavours to contact the customer, has sent all relevant notices and assessed and assisted the customer with financial and energy efficiency counselling and advice.

Best Endeavours to Contact a Customer with Insufficient Income

On 4 July 2006 Origin Energy sent the Complainant a no contact letter to which they responded on 10 July 2006. However, in the month prior to the disconnection on 15 August 2006, Origin Energy made just one attempt to contact the Complainant, this being via a landline which was known to be previously disconnected. Though unsuccessful, Origin Energy made no further attempts, either by phone or in person, to contact the Complainant.

On this basis it is considered that Origin Energy did not use its best endeavours to contact the Complainant.

Capacity to Pay

On 10 July 2006 the Complainant spoke with an Origin Energy specialist credit officer stating that 'they were getting on their feet' and would pay \$50 per fortnight, commencing on 20 July 2006. Later, when speaking with EWOV, the Complainant commented that they could not afford the \$50 per fortnight but found it difficult to negotiate a lesser amount with Origin Energy.

Origin Energy states that given the Complainant's statement that they could pay \$50 per fortnight, the credit officer took this as reasonable assurance of willingness to pay by the Complainant. It should also be noted that there is no record, in the Origin Energy screen notes, of any discussion over the instalment plan amount.

However, given the Complainant's very poor payment history in having failed to maintain all nine of their previous payment plans, it is considered that Origin Energy

should have referred the Complainant to their Community Liaison Team for further financial counselling and advice, before agreeing to the \$50 per fortnight instalment plan and not after they had been disconnected

It is therefore concluded that Origin Energy did not adequately assess the Complainant's capacity to pay in setting the instalment amount.

Advice on URGS, Energy Efficiency and Financial Counsellors

Origin Energy advised that the Complainant was provided with energy efficiency advice, by phone, in conjunction with their two earlier URGS applications, but cannot substantiate this claim with documented evidence. It should also be noted that the previous URGS applications were in 2004, nearly two years prior to the disconnection.

While the Complainant was obviously aware of the Utility Relief Grant Scheme, there is no documented evidence of Origin Energy advising the Complainant on energy efficiency or financial counselling, either when they had requested the earlier URGS applications, or before disconnecting them on 15 August 2006.

It is noted, that Origin Energy was unable to contact the Complainant in the one month period preceding the disconnection, but there was the opportunity to provide the information and advice when the Complainant rang Origin on 10 July 2006, or in the form of written advice.

Origin Energy informed EWOV that providing this information and advice to the customer was standard operating procedure before any disconnection request is booked, but cannot verify that this actually occurred.

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.

Decision

In accordance with clause 7 of the IOP, 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 decided that Origin 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 1.55 pm on 15 August 2006 to 5.10 pm on 16 August 2006. The amount due is \$284.00.

R H SCOTT
Delegated Commissioner
November 2006