

ESSENTIAL SERVICES COMMISSION

WRONGFUL DISCONNECTION DECISION UNDER SECTION 48A OF THE *GAS INDUSTRY ACT 2001*

CUSTOMER K & AGL SALES

DECISION AND REASONS

Key Issue

Customer K was an AGL customer who had an outstanding balance when his gas account was transferred to EnergyAustralia. Before the transfer occurred, AGL had raised a disconnection service order for Customer K for non-payment of his gas account. The disconnection occurred as scheduled on 27 September 2012, by which time, Customer K had become an EnergyAustralia customer.

AGL claims that as soon as it was aware that Customer K was transferred to another retailer, it sent a disconnection cancellation request to the distributor, SP AusNet, which was rejected because AGL is not the current financially responsible organisation for the supply address. AGL's view is that SP AusNet disconnected Customer K's gas supply in spite of AGL's best attempts to stop the disconnection.

AGL also asserts that under section 48A of the *Gas Industry Act 2001* (GI Act) it does not have to pay wrongful disconnection compensation because at that time of the disconnection, AGL no longer had a contract with Customer K.

Background

Date	Event
3 June 2011	Customer K establishes a dual fuel account with AGL
October 2011 to July 2012	Customer K experiences difficulty paying the gas account in spite of AGL establishing a bill smoothing plan for him
2 August 2012	AGL received a change of retailer transfer request from EnergyAustralia for Customer K's gas supply
10 August 2012	Change of retailer transfer request has a 'pending' status This is the last date on which AGL could object to Customer K's transfer but it took no step to object
4 September 2012	Customer K's gas account is transferred to EnergyAustralia
12 September 2012	AGL raised a disconnection service order for non-payment – disconnection scheduled for 27 September
13 September 2012	The Australian Energy Market Operator retrospectively transferred Customer K's gas account to EnergyAustralia effective from 4 September 2012

Date	Event
20 September 2012	<p>AGL attempts to cancel the disconnection service order but received on the same day a rejection from the distributor (SP AusNet) of its cancellation request.</p> <p>Reason for rejection of the cancellation request is that 'Requesting participant is NOT the current FRO of RECORD'.</p> <p>There is no evidence of AGL taking any step to clarify with SP AusNet its intentions regarding disconnection in light of the rejection.</p>
27 September 2012	Customer K's gas supply was disconnected
3 October 2012	AGL reconnects Customer K's gas supply

Decision

Having considered the advice and information provided by EWOV and AGL, the Commission finds:

- The gas disconnection was wrongful as AGL failed to use reasonable endeavours to cancel the disconnection service order which was raised on 12 September 2012 when AGL knew or should have known that Customer K was no longer its customer.
- The wrongful disconnection compensation is payable to Customer K for the entire disconnection period from 27 September 2012 to 3 October 2012.
- AGL is required to pay Customer K \$1,515 wrongful disconnection compensation under section 48A of the GI Act (6 days, 1 hour and 29 minutes).

Reasons

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

1. At the time AGL requested disconnection of Customer K's gas supply, on 12 September, for non-payment of an outstanding balance, AGL was still considered by AEMO in its system to be the retailer responsible for Customer K's supply address. AEMO's delay in effecting transfer to the new retailer by that date is not relevant.
2. AGL was already aware of Customer K's intention to transfer to another retailer as it received a change of retailer transfer request on 2 August, which was six weeks prior to raising the disconnection service order. Rather than requesting a disconnection of Customer K's supply, AGL had sufficient time to stop the transfer by raising an objection to the transfer but it did not do so.
3. AGL failed to comply with clause 24.5(b) of the ERC in that AGL did not give effect to the termination of its contract with Customer K, because it failed to use reasonable endeavours to cancel a disconnection for a consumer who was no longer its customer and because it failed to give effect to the termination of its contract with Customer K.
4. AGL should have followed up with SP Ausnet, but failed to do so, when it received a rejection of the cancellation request. As the Commission is aware from previous wrongful disconnection decisions, even if AGL is no longer the FRO, it could still have the disconnection service order cancelled by calling or emailing SP AusNet.

Dr. Ron Ben-David
Chairperson

Date: 2013