



WRONGFUL DISCONNECTION PAYMENT DISPUTE

ORIGIN ENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

OCTOBER 2007

Introduction

Section 48A of the *Gas Industry Act 2001* 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 (OP) 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 OP.

Background

EWOV requested the Commission to make a formal decision as to whether Origin Energy complied with its retail licence in relation to a dispute between The Complainant and Origin Energy regarding a wrongful disconnection compensation payment.

The Complainant moved into the 'CURRENT ADDRESS', in July 2006 and at the time requested that TRUenergy become their energy retailer. For unrelated reasons beyond the scope of this decision, the requested transfer to TRUenergy was never completed.

The Complainant's gas supply was disconnected at 11.25am on 20 December 2006. After investigation by EWOV it was established that Origin Energy had requested the disconnection of the gas supply as it was the Financially Responsible Operator (FRO) for the property. Further the request made to the distribution company for disconnection provided a supply address of the 'PREVIOUS ADDRESS'.

Further investigations indicated that due to the completion of a local council approved subdivision, the address had been amended in 2006 to the 'CURRENT ADDRESS'. EWOV's investigation indicated that neither the retail or distribution companies had any record of the 'CURRENT ADDRESS' in their systems, and that neither party could confirm the receipt of any notice from the local council advising them of the amended address.

Origin Energy confirmed that it had requested the disconnection of The Complainant's supply, as unauthorised usage was recorded at the property subsequent to the last tenant vacating on 26 June 2006. Origin Energy advised that it sent four *Unauthorised Natural Gas Usage* letters addressed to: The Occupier, 'PREVIOUS ADDRESS' during the period 3 July 2006 to 1 December 2006.

The Complainant has advised EWOV that they had no recollection of viewing these letters, while Origin Energy advises that none of the letters were returned to it. As it received no response to its letters, Origin Energy requested the disconnection of the gas supply at the 'PREVIOUS ADDRESS', which was completed at 11.25 am on 20 December 2006. The gas supply was reconnected at 6.08pm on 5 January 2007.

Issues

Deemed Contracts

According to sub-section 46(1) of the *Gas Industry Act (GIA) 2001*, a deemed contract for the supply and sale of gas, exists between a retailer and a customer if the customer takes supply of gas from the licensee without having entered into a supply and sale contract with that licensee. Under the operation of a deemed contract, Origin Energy is obliged to comply with the terms and conditions of the *Energy Retail Code (ERC)* in disconnection of the gas supply.

The terms of Origin Energy's deemed contract were published in Government Gazette 30 (28/07/2005) pursuant to section 46 of the *Gas Industry Act 2001*. The terms provide that Origin Energy may disconnect a customer on a deemed contract if the *Energy Retail Code* (the ERC) allows and the procedures followed in clause 11 of the deemed contract allow.

The relevant terms of the deemed contract are clauses 11.1 and 11.4, which allow for disconnection of the energy supply if the customer has refused to provide acceptable identification and the retailer has provided all notices as required under the ERC.

It is considered that by taking supply at the premises while Origin Energy remained the FRO, a deemed contract did exist between The Complainant and Origin Energy.

Energy Retail Code (ERC) provisions

Part 4 of the ERC outlines the circumstances in which a retailer is permitted to disconnect a customer's energy supply. Clause 13.1 deals with disconnection when the customer has not paid the bill, while Clause 13.2 and 13.3 relate to insufficient income and the customer's denial of access to the meter. Commission staff consider that the requirements of these three clauses are not relevant to The Complainant's case.

Clause 13.4 of the ERC is applicable and requires that a retailer cannot disconnect a customer for failure to provide acceptable information unless the retailer has given the customer a disconnection warning. The disconnection warning must include a statement that the customer may be disconnected on a day no sooner than 10 business days after receipt of the warning notice if the customer has continued not to provide the acceptable information required by the retailer.

Address inconsistencies

After investigation, Commission staff have formed the view that there is insufficient evidence to conclude whether the address discrepancy is the fault of the local council, Alinta or Origin Energy. Additionally, after having regard to the independent legal advice from Landers & Rogers (Lawyers), consideration of the issues surrounding the address inconsistency may not be relevant when the more significant issue concerns whether Origin Energy has complied with the terms of its deemed contract and the specific disconnection provisions of the ERC.

Origin Energy's 'Unauthorised Natural Gas Usage' letter

Origin Energy has confirmed that the *Unauthorised Natural Gas Usage* letters were sent to 'The Occupier' at the 'PREVIOUS ADDRESS' on four separate occasions, with the first letter being sent 3 July 2006 and the final letter being sent 1 December 2006.

The Complainant has not acknowledged ever receiving any of the letters addressed to 'The Occupier'. However, Origin Energy has confirmed that none of these letters were returned to it as a result of address inconsistencies or similar, prior to the disconnection of the supply.

Commission staff have examined the letters sent by Origin Energy to 'The Occupier' at the 'PREVIOUS ADDRESS'. The letters do not expressly ask 'The Occupier' to provide acceptable information (or otherwise meet the requirements of clauses 13.4 or 13.1 of the ERC), but impliedly do as establishing an account would require identification.

Commission staff therefore consider that the letters are broadly compliant with the provisions of Clause 13.4 of the ERC as outlined above.

Delivery of 'Unauthorised Natural Gas Usage' letters

There remains the issue of the delivery requirements under clause 13.4 of the ERC and under clause 11 of Origin Energy's deemed contract. Commission staff sought legal advice to establish whether Origin Energy's notifications to The Complainant were compliant with the terms of the deemed contract and the provisions of the ERC.

The legal advice states that notwithstanding the content of the letters, Origin Energy may not have complied with Clause 13.4 of the ERC or clause 11.4 of the deemed contract because the letters were not posted to the 'CURRENT ADDRESS', the actual supply address.

The legal advice notes that the Commission or Origin Energy cannot confirm that the letters arrived at the 'CURRENT ADDRESS' or if they did whether The Complainant threw out the letters due to them not recognising the 'PREVIOUS ADDRESS'.

As it is not clear whether the delivery of the letters to the actual supply address occurred, it cannot be said that Origin Energy complied with clause 11.4 of the deemed contract and clause 13.4 of the ERC.

Decision

In accordance with clause 7 of the OP, 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 the provisions of its retail licence, the Energy Retail Code or the terms and conditions of the deemed contract that relate to the disconnection of The Complainant .

Section 48A (1) of the *Gas Industry Act* requires that a retailer must compensate a customer if it disconnects the energy supply and fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply can be disconnected. Section 48A (1) does not permit the Commission to exercise any discretion when coming to a decision as to whether the disconnection is wrongful.

Further, principles of statutory interpretation require individual provisions of legislation which provide compensation or protect consumers to be construed liberally in favour of the consumer or the compensated person where there is ambiguity.

Therefore, the disconnection of The Complainant was wrongful and a compensation payment is required. The compensation payment is to apply from 11.25am on 20 December 2006 to 6.08pm 5 January 2007. The amount is \$4,062.50.

A W DARVALL
Delegated Commissioner
October 2007