



WRONGFUL DISCONNECTION PAYMENT DISPUTE

AGL AND THE COMPLAINANT

STATEMENT OF REASONS

MAY 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 a customer's supply and does not comply with the terms and conditions of a customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate a customer \$250 for each whole day that a customer's supply is disconnected or a pro rata amount for any part of a day that 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 with the complainant regarding a wrongful disconnection compensation payment for her.

The complainant is a customer of AGL who previously had difficulty paying her bills and entered into payment arrangements with AGL.

AGL offered the complainant payment arrangements on 30 August 2004, 11 October 2004, 8 November 2004, 21 January 2005, 15 June 2005 and 5 August 2005, however she did not maintain the payment arrangements and they were cancelled.

AGL issued reminder letters and disconnection warnings and made attempts to contact the complainant over the period 1 January 2005 and 1 September 2005. However, as AGL received no contact from the complainant in response to the disconnection letters, her electricity was disconnected on 12 September at approximately 8.00am. She was reconnected on 12 September at around 5.00pm.

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

The terms and conditions of the contract between the complainant and AGL are set out in the Energy Retail Code (ERC). The ERC requires that a retailer cannot disconnect a customer for non-payment of a bill until the retailer has offered two instalment plans, sent all relevant notices, assessed and assisted a customer experiencing payment difficulties and used its best endeavours to contact a customer with insufficient income.

Instalment Plans and Appropriate Notices

Clause 13.1 of the ERC requires a retailer to offer two instalment plans to a customer and send a reminder notice and a disconnection warning prior to disconnecting a customer for non-payment of a bill.

AGL sent the complainant many reminder notices and three disconnection warnings on 16 August, 23 August and 1 September 2005. AGL offered the complainant six instalment plans over the period 31 August 2004 and 5 August 2005. Therefore, it is considered that AGL complied with the requirements of clause 13.1 of the ERC.

Assessment and Assistance to Customers in Financial Difficulty

The ERC requires that where a retailer and a customer do not agree on a payment arrangement in accordance with clause 11.2(a), the retailer must assess in a timely way whatever information a customer provides or the retailer otherwise has concerning a customer's capacity to pay (clause 11.2(1)). In addition, the retailer must offer a customer at least two instalment plans (that take into account a customer's ongoing consumption, capacity to pay and arrears) and provide advice on concessions, energy efficiency and the availability of financial counsellors (clauses 11.2(3) and 11.2(4)).

1. Instalment amounts

AGL advised that, as the instalment amounts were suggested by the complainant, they believed the payment plans reflected her capacity to pay. The customer contact notes provided by AGL do not contain enough information to determine how the payment amounts were established. In the absence of a documented assessment of capacity to pay, the amounts of the payment arrangements offered and whether these take into account ongoing consumption, any arrears and capacity to pay is considered.

An analysis of the complainant's payment arrangements shows that the payments agreed with AGL varied from \$20 to \$212.74. The amounts represented a proportion of between 5% and 100% of the debt outstanding at the time the arrangement was made.

Over a period of approximately 12 months the complainant made 11 payments towards her account ranging from \$40 to \$158 totalling \$792. On average, therefore, the complainant was able to pay \$66 a month. It is noted that, except on two occasions, the payment plan arrangements amounted to less than 36% of the total debt. Therefore, it is considered that AGL did take into account the complainant's capacity to pay.

Nevertheless, it does appear that these payment arrangements were not consistently or systematically applied by AGL. In addition, there is no evidence that AGL provided the complainant with an application for a Utility Relief Grant (URG), despite her payment history suggesting that she should consider making this application (see below).

2. Advice on independent financial counselling, URGs and energy efficiency

Clause 11.2(4) requires a retailer to provide a customer with details on URGs, energy efficiency and the availability of independent financial counsellors. AGL advised EWOV that information regarding URGs was contained in reminder and disconnection notices. Given the complainant's obvious difficulty in paying her bills and the ERC requirement to provide assistance to a customer by providing details on URGs, it is considered inadequate to only provide advice about URGs on reminder and disconnection notices. Although the complainant advised EWOV that she was seeing a financial counsellor, there is nothing in AGL's customer contact notes to indicate that AGL was aware of this.

AGL advised that it accepted that the complainant was experiencing repeated difficulties in paying her bills. However, AGL's customer contact notes do not indicate that the complainant was provided with advice about URGs, energy efficiency or the availability of independent financial counsellors during the 12 month period that she was experiencing the financial difficulty prior to her disconnection. Therefore, it is considered that AGL did not comply with the requirements of clause 11.2(4) of the ERC to provide assistance to the complainant.

Best Endeavours to Contact a Customer with Insufficient Income

Clause 13.2 of the ERC requires that, prior to disconnecting a customer, the retailer must use its best endeavours to contact a customer where the failure to pay a bill occurs through lack of sufficient income.

AGL's customer contact notes show that the retailer rang the complainant prior to her disconnection and left a message for her to contact the retailer. This is considered to be best endeavours to the contact the complainant.

Decision

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 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 amount payable is \$93.75, reflecting the 9 hours off supply experienced by the complainant.

R H SCOTT
Delegated Commissioner

May 2006