

ESSENTIAL SERVICES COMMISSION
APPLICATION OF SECTION 48A OF THE *GAS INDUSTRY ACT 2001*
COMPENSATION FOR WRONGFUL DISCONNECTION
CUSTOMER J & AGL SALES
DECISION AND REASONS

The Complaint

In the matter of a request for a decision from the Energy and Water Ombudsman (Victoria) (EWOV) with regard to a disconnection dispute between Customer J and AGL Sales (AGL).

Customer J (represented by their partner C) raised a complaint with EWOV about the disconnection of the supply of gas to their premises at [ADDRESS REDACTED] (the premises) by AGL.

The issue for decision on the complaint is whether AGL was entitled to disconnect the supply of gas to Customer J at the premises at 08.45 am on 3 August 2015; and if not, whether AGL is obliged to pay Customer J compensation in respect of the disconnection. A secondary issue raised by AGL's submission is whether AGL was or would have been entitled to disconnect the supply of gas on 3 August 2015 to its customer and previous occupant of the premises (the previous customer).

Relevant Facts

At all relevant times, AGL was the licensee responsible for supply and sale of gas to the premises.

Some time prior to February 2015, the previous customer entered into a contract with AGL for the supply of gas to the premises.

The previous customer moved out of the premises at some time prior to 27 May 2015. AGL claims that prior to moving out of the premises, the previous customer did not give notice of their intention to move out of the premises to AGL.

On or about 18 May 2015, Customer J (through the agency of their partner C) requested Energy Australia (EA) to supply gas to them at the premises; and EA made a move-in transfer request with effect from 1 June 2015. On or prior to 30 May 2015 Customer J notified EA that she would move in to the premises on 27 May 2015 or had done so on that date.

On 30 May 2015 EA made a correction to its move-in transfer request to alter the effective date from 1 June 2015 to 27 May 2015; and AGL raised a transfer out objection, objecting to EA's amended move-in transfer request.

On 2 June 2015 AGL recorded in its sales contact notes that the reason for raising an objection to the transfer request by EA was that there was an outstanding balance of more than \$100. In the "Reasons" column it made the entry "Transfers – Objection for Debt".

On or about 3 June 2015 AGL was informed by EA that the customer name for the transfer request for the future supply of gas to the premises was that of C. AGL declined EA's request to remove its objection noting in its sales contact notes that "AGL does not have any pending change request in the market for this MIRN". Records show that EA's "retro/correction" request was still pending in the system as at 3 June 2015, and was only cancelled on 29 June 2015.

On 9 June 2015 AGL issued a gas bill to the previous customer for the period 27 March 2015 to 27 May 2015 requiring payment of new charges of \$222.46 payable on 26 June 2015 and an overdue amount of \$125.42 payable immediately.

On 23 June 2015, AGL was again requested by EA to withdraw its objection to the transfer but declined to do so. AGL's sales contact notes state that "EA is trying to transfer the below site, however we had an EXPTN in our CR". On 29 June 2015 EA cancelled its move-in transfer request.

On 1 July 2015, AGL issued an overdue notice (being a reminder notice for the purposes of the Energy Retail Code, version 11 ('the Code')) to the previous customer requiring payment of \$222.46 by 10 July 2015. On 14 July 2015 AGL issued a disconnection warning notice to the previous customer requiring payment of \$347.88 by 24 July 2015. On 25 July 2015 AGL booked in the disconnection of supply of gas to the premises with an appointment date of 3 August 2015.

On 29 July 2015, AGL issued a gas bill to the previous customer for the period 28 May 2015 to 27 July 2015 requiring payment of new charges of \$415.61 payable by 17 August 2015 and an overdue amount of \$347.88 payable immediately.

C mailed back all correspondence received at the premises addressed to the former occupant marked "return to sender".

On 3 August 2015 the supply of gas to the premises was disconnected at 8.45 am. At 3:31 pm AGL sent a request for the disconnection to be cancelled.

On 5 August 2015 the supply of gas to the premises was reconnected at 11.15 am.

On 10 August 2015 EA made another transfer request with an effective date of 13 August 2015. Responsibility for the supply of gas to the premises was transferred from AGL to EA with effect from 13 August 2015.

AGL Submission

The Commission provided AGL an opportunity to make a submission in response to EWOV's referral and AGL did so. In its submission AGL suggests that as it did not know whether Customer J or the previous customer resided at the supply premises, the relevant obligations should be treated as being owed not to a specific person residing at the premises, but to an abstract "deemed customer" represented by the consumption being undertaken at the supply address. As such, AGL claims that it was entitled to disconnect the supply of gas to the premises as it had taken all necessary steps to disconnect the previous customer under the terms and conditions of their contract with the previous customer.

With respect to the previous customer's circumstances we note that:

- On or about 27 February 2015 the previous customer informed AGL that they were unemployed, on a pension, had no other source of income and because of unexpected expenses they wished to apply for assistance from the Utility Relief Grant Scheme ("URGS"). AGL sent the previous customer a URGS form for gas and in its "Sales' contact notes" recorded the transaction type as "Hardship".
- On or about 6 April 2015 AGL issued a bill to the previous customer with a total amount due of \$347.88 and a due date of 26 June 2015, which was not paid.

Relevant Obligations

Under s48A of the Gas Industry Act 2001 (the Act), the conditions to which a licence to sell gas by retail is subject include a condition requiring the licensee to make a payment of a prescribed amount to a relevant customer in accordance with this section if the licensee:

- disconnects the supply of gas to the premises of that customer; and

- fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.

Under s 46(1) of the Act, if a relevant customer commences to take supply of gas at premises from a relevant licensee without having entered into a supply and sale contract with that licensee, there is deemed, on the commencement of that supply to be a contract between that licensee and that person for the supply and sale of gas at the tariffs and on the terms and conditions published by that licensee under s 42 (the standing offer tariff and terms and conditions).

Clause 6.1 of AGL's retail licence requires that AGL not enter into a contract for the sale of gas with a relevant customer unless the terms and conditions of the contract expressly deal with each matter which is the subject of a term or condition of the Code.

Clause 6.3 of AGL's retail licence requires that each term or condition of the Gas Retail Code (since superseded by the Energy Retail Code) be a term or condition with which a contract for the sale of gas to a relevant customer must not be inconsistent.

Clause 14.1 of AGL's standing offer terms and conditions stipulate the circumstances in which AGL may arrange for disconnection, and are subject to AGL satisfying the Code. Clause 14.2 of AGL's standing offer terms and conditions state that before disconnecting a customer's premises AGL must comply with relevant warning notice requirements and other provisions in the Code.

Clause 115(1) of the Code allows a financially responsible retailer for a move-in customer's or carry-over customer's premises to arrange for the de-energisation of the premises if the customer refuses or fails to take appropriate steps to enter into a customer retail contract as soon as practicable.

Clause 115(2) of the Code states that the financially responsible retailer must not arrange for the de-energisation unless it has given the customer a notice of its intention to do so and a disconnection warning notice after the expiry of the period referred to in the notice of intention (not less than 5 days after the notice of intention was given).

Decision

1. We find AGL to be in breach of a condition of its gas retail licence, deemed under s 48A of the Gas Industry Act 2001 ('the deemed licence condition').
2. The deemed licence condition requires AGL to make a prescribed payment to a customer as soon as practicable after the supply of gas to the customer's premises is reconnected where it:
 - a. disconnects the supply of gas to the premises of that customer; and
 - b. fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.
3. We find that AGL disconnected the supply of gas to Customer J's premises on 3 August 2015 (the disconnection).
4. The disconnection was not in accordance with terms and conditions of the contract for the sale and supply of gas between AGL and Customer J specifying the circumstances in which the supply of gas to Customer J's premises may be disconnected..
5. The supply of gas to Customer J's premises was reconnected on 5 August 2015.
6. The supply of gas to Customer J's premises was wrongfully disconnected for a period of 2 days, 2 hours and 30 minutes.
7. Therefore, under the deemed licence condition, AGL is required to pay the prescribed amount of \$526.

8. No payment has been made by AGL.

Reasons

1. When Customer J commenced to take supply of gas at the premises a contract between AGL and Customer J for the supply and sale of gas at the tariffs and on the terms and conditions provided for by s 46 of the Act (the deemed contract) commenced.
2. Clause 14.1 of AGL's standing offer terms and conditions (which constitute the terms and conditions of the deemed contract), stipulate the circumstances in which AGL may arrange for disconnection, and are subject to AGL satisfying the requirements in the Rules, being the Code. Clause 14.2 of AGL's standing offer terms and conditions state that before disconnecting a customer's premises AGL must comply with relevant notice requirements and other provisions in the Code.
3. AGL was not entitled to disconnect Customer J on the ground of non-payment of a bill under clause 111 of the Code (as it did not bill them, invite them to establish an account, or provide them any notice of the imminent disconnection).
4. AGL was not entitled to disconnect Customer J on any of the grounds for disconnection under clauses 112, 113 or 114 of the Code because none of those clauses was enlivened.
5. Customer J was a move-in customer for the purposes of clause 115(1) of the Code and AGL did not comply with clause 115(2) of the Code with respect to Customer J.
6. As a matter of fact, at the time of disconnection Customer J was taking supply of gas at the premises and the relevant contract governing the relationship between Customer J and AGL is the deemed contract.
7. However, even if the contract between the previous customer and AGL had not been terminated:
 - a. AGL could disconnect the supply of gas to the previous customer at the premises only if it complied with the requirements of the Code.
 - b. By virtue of the information the previous customer provided to AGL about their financial circumstances, the previous customer was a person to whom ERC clause 111(2) applied.
 - c. Under clause 10.1 of the terms and conditions of the contract between AGL and the previous customer, AGL could disconnect the supply of gas to the previous customer at the premises only if it complied with the "regulatory requirements". "Regulatory Requirements" in the terms and conditions is defined to include the Code.
 - d. Under clause 10.3(c) of the terms and conditions of the contract between AGL and the previous customer, AGL was not entitled to disconnect the supply of gas to the previous customer for a failure to pay a bill by the due date unless the previous customer did not agree to an offer by AGL to pay their bills by instalments; or where having agreed to pay their bills by instalments, they failed to adhere to the terms of the instalment arrangement.
 - e. AGL did not comply with its obligations under ERC clause 111(2) and clause 10.3 of its contract with the previous customer in that it had not offered the previous customer any payment plans in the previous 12 months and none of the conditions in ERC clause 111(2) paragraphs (a)-(c) was satisfied.
 - f. Because of the findings of the Commission that AGL did not comply with its obligations under clause 111(2) of the Code, AGL would not have been

entitled to disconnect the supply of gas to the previous customer at the premises on 3 August 2015, had its contract with the previous customer for the supply and sale of gas at the premises still been on foot.

- g. AGL's failure to comply with its obligations under clause 111(2) of the Code would constitute a breach of a term or condition of the contract between AGL and the previous customer specifying the circumstances in which AGL could disconnect the supply of gas to the previous customer's premises.

8. Because :

- a. with respect to Customer J, none of clauses 111 to 115 of the Code were enlivened; and
- b. AGL would not have been entitled to disconnect the supply of gas to the previous customer at the premises on 3 August 2015, had the contract between the previous customer and AGL for the supply and sale of gas at the premises still been on foot at the time of disconnection,

AGL was not entitled to disconnect the supply of gas to Customer J at the premises on 3 August 2015.

Enforcement

1. AGL has breached its licence by failing to make a payment of \$526 as soon as practicable after the reconnection of the supply of gas to Customer J's premises on 5 August 2015.
2. AGL is required to rectify the contravention by making the payment.
3. AGL should advise the Commission in writing when the payment has been made.
4. If AGL is unable to make payment it should inform the Commission in writing within five business days.
5. If the payment is not made within five business days, the Commission may take enforcement action against AGL under Part 7 of the Essential Services Commission Act 2001.

Dr Ron Ben-David

Chairperson

Date: 2018