ESSENTIAL SERVICES COMMISSION
WRONGFUL DISCONNECTION DECISION
UNDER SECTION 48A OF THE *GAS INDUSTRY ACT 2001*
SIMPLY ENERGY & CUSTOMER D
DECISION AND REASONS

Background

Customer D contacted the Energy and Water Ombudsman (Victoria) (EWOV) with regard to the disconnection of the supply of gas to his premises by Simply Energy (Simply) on 7 October 2015. EWOV investigated the matter, but was not able to assist the parties to reach a resolution. On 10 December 2015 EWOV referred the matter to the Essential Services Commission (the Commission) to decide whether the disconnection of gas supply to Customer D's premises was wrongful under section 48A of the *Gas Industry Act 2001* (the Act) and, if so, the amount of any payment Simply is required to make to Customer D.

Summary of Facts

On 13 July 2015 a customer of Simply Energy vacated their premises. Simply raised a service order with the distributor to disconnect supply of gas to the premises. The address linked to the meter's gas Meter Identification Registration Number (MIRN)[1] was [DETAILS REDACTED] (the MIRN address). The actual postal address of the premises at which the meter was located is [DETAILS REDACTED] (the postal address).

Simply established an occupier account for the MIRN address on 14 July 2015, noting that supply was still connected. On 14 August 2015, Simply issued a notice of intention to disconnect the gas supply to the MIRN address. On 21 August 2015, Simply issued a disconnection warning notice to the MIRN address. Customer D moved into the premises at the postal address on 3 September 2015. On 17 September 2015, Simply had not received a response from the occupant and therefore requested that the distributor disconnect the supply of gas to the meter associated with the MIRN. The gas supply to Customer D's premises was disconnected.

Relevant Obligations

Under section 46 of the Act if a customer commences to take supply of gas at premises from a 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.

Clause 115(2) of the Code states a retailer may not disconnect move-in or carry-over customers for non-payment unless the retailer has given the customer a notice of its intention to do so, followed by a disconnection warning notice after the required length of time has passed.

Clause 14.1 of the terms and conditions of Simply's Standard Retail Contract (the contract) state that Simply may disconnect supply subject to its compliance with the Rules. Rules is defined to include the Energy Retail Code in Victoria. Clause 14.2 of the contract states that Simply must comply with the relevant warning notice requirements and other provisions in the Rules (with the exception of certain circumstances, such as illegal or fraudulent use of energy at the premises).

Retailer Submission

EWOV offered Simply an opportunity to make a submission in relation to the disconnection dispute. In its submission Simply argued that the disconnection was not wrongful because:

- the previous occupant of the premises associated with the MIRN was a customer of Simply Energy for approximately 2 years and did not report any discrepancy with the MIRN site address.

[1] available to all Market Participants via the MIRN database

- clause 113 of the code (which deals with disconnection under different circumstances than those of the case at hand) contains an explicitly expressed obligation to use best endeavours to contact customers prior to disconnection. There is no such obligation expressed in clause 115 (which deals with "move-in" customers like Customer D). Simply submits that the omission indicates the Code deliberately sets a lower obligation with respect to a retailer's attempts to contact move-in customers.
- the *Operating Procedure Compensation for Wrongful Disconnection* does not make any reference to rule 115 of the Code, nor does it provide any interpretative guidance as to what a retailer is required to do to discharge its obligation to 'give notice' to the customer in this type of circumstance.

Chronology

Date	***Event***
13 July 2015	Previous Simply customer moved out. Simply raised service order for disconnection with distributor
14 July 2015	As supply is still connected, Simply established "occupier account"
12 August 2015	Simply issued a notice of intention to disconnect
21 August 2015	Simply issued a disconnection warning notice
3 September 2015	Customer D moved into the premises
14 September 2015	Having received no response, Simply requested a de-energisation of the premises
17 September 2015	Supply was disconnected
7 October 2015	Customer D contacted EWOV. EWOV contacted Simply and requested a reconnection
8 October 2015	Simply arranges for a reconnection of supply to Customer D's premises

Decision

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

1. In disconnecting the supply of gas to Customer D's premises, Simply did not fail 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. As a result, under s48A of the Act, Simply is not required to pay Customer D a wrongful disconnection payment.

Reasons

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

1. Simply sent the notices it was required to give the customer, under clause 115(2) of the Code, to the address associated with the MIRN of the gas meter at the customer's premises in the distributor-maintained database.
2. The facts presented in EWOV's request for a decision and Simply's submission do not indicate that Simply had received any indication that would have alerted a reasonable retailer that the MIRN address might be incorrect.
3. The terms and Conditions of Simply's deemed contract with the customer did not contain an obligation on simply to take additional steps to verify that the MIRN address was correct
4. Requiring retailers to verify the MIRN address of every customer would be an overly burdensome obligation on retailers in the absence of any contractual obligations to do so

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Dr Ron Ben-David

Chairperson

Date: 2016