

ESSENTIAL SERVICES COMMISSION
WRONGFUL DISCONNECTION DECISION
UNDER SECTION 40B OF THE *ELECTRICITY INDUSTRY ACT 2000*
CLICK ENERGY & CUSTOMER S
DECISION AND REASONS

Background

On 6 March 2015, Click Energy (Click) established an account for Customer S. Customer S agreed to receive bills and notices by email. Click issued Customer S with a bill for \$832.60. Customer S did not pay this bill.

On 5 August 2015, Click issued Customer S a reminder notice for the outstanding amount by email. On 17 August 2015, Click issued Customer S a disconnection warning notice for the outstanding amount, by email.

As Customer S had not paid the outstanding amount, Click disconnected the supply of electricity to his premises on 23 September 2015.

Under clause 111 of the Code, Click may only disconnect a customer, such as Customer S, if amongst other requirements, it has:

- Given the customer a reminder notice; and
- Given the customer a disconnection warning notice

Under clauses 109(2)(a) and 110(2)(a), the reminder notice and disconnection warning notice respectively, must each state the date of issue of the notice.

Both the reminder and disconnection warning notices were sent to Customer S by email. in the form of an embedded html message, and there was no attachment that could be downloaded without opening the email. The body text of the email did not contain a date of issue. Customer S confirmed that they received the notices by email.

EWOV asked the Commission to determine whether the disconnection of Electricity supply to Customer S's premises was wrongful under section 40B of the *Electricity Industry Act 2001* (the Act) and, if so, the amount of any payment Click is required to make to Customer S.

Click Energy was offered an opportunity to make a submission to the Commission in response to EWOV's claim and did so. Click's argument was that the totality of the email correspondence should be considered in determining the compliance of its notices, including the email header, which contained the time and date of issue. Click emphasised that the notices were sent as embedded html ensuring the notice could only be viewed together with the information in the header (including the date). Had, for example, the notice been sent as a PDF attachment, missing the date of issue, the PDF could be printed or downloaded and thereby become separated from the header information.

Chronology

<i>Date</i>	<i>Event</i>
6 March 2015	Click Energy established an account for Customer S
13 July 2015	Click issued Customer S a bill via email for the amount of \$832.60
5 August 2015	Click issued Customer S a reminder notice via email for the amount of \$832.60
17 August 2015	Click issued Customer S a disconnection warning notice via email for the amount of \$832.60
23 September 2015	Click Energy disconnected the supply of electricity to Customer S's premises for non-payment. The outstanding balance was \$1,522.80
19 November 2015	Investigated complaint raised at EWOV and electricity supply reconnected

Decision

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

1. In disconnecting the supply of electricity to Customer S's premises, Click did not fail to comply with the terms and conditions of the contract specifying the circumstances in which the supply of electricity to those premises may be disconnected. As a result, under s40B of the Act, Click is not required to pay Customer S a wrongful disconnection payment

Reasons

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

1. The subject of an email containing a reminder or disconnection warning notice must be immediately clear to a customer receiving the email, in order for the notice to be given in accordance with Clause 111 of the Code.
2. Customer S confirmed that they received the emailed notice.
3. A reasonable person in Customer S's circumstances would have understood that they had been given the reminder and disconnection warning notices. Therefore prior to disconnecting the supply of electricity to Customer S's premises, Click gave Customer S a reminder notice and a disconnection warning notice as required under clause 111 of the Code.
4. The date of an email can be considered to be the issue date of a reminder or disconnection warning notice for the purposes of clauses 109 and 110 of the Code, provided the content of the notice is not likely to become separated from the email header (for example it is not sent as a remote link or pdf attachment).
5. As the Notices were sent by email in the form of an embedded html message delivery of the notices was instantaneous, and was marked with a date and time.
6. The exact date and time of issue of the email messages to Customer S were clear and the content of the notice could only be read together with the email. Therefore the reminder and disconnection warning notices sent to Customer S, stated the date of issue, as required under clause 109(2)(a) and 110(2)(a) respectively.

Dr Ron Ben-David

Chairperson

Date: 2016