

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

Background

Customer A contacted the Energy and Water Ombudsman (Victoria) (EWOV) with regard to the disconnection of the supply of electricity to his premises by Simply Energy (Simply) on 25 August 2015. EWOV investigated the matter, but was not able to assist the parties to reach a resolution. On 17 March 2016 EWOV referred the matter to the Essential Services Commission (the Commission) to decide whether the disconnection of electricity supply to Customer A's premises was wrongful under section 40B of the *Electricity Industry Act 2000* (the Act) and, if so, the amount of any payment Simply is required to make to Customer A.

Summary of Facts

Customer A established an electricity account with Simply Energy in January 2014. The first bill was issued in May 2014 for \$1,643. Customer A did not pay the bill.

In July 2014 Simply Energy established a fixed instalment plan (FIP) for Customer A at \$382 per fortnight. On 30 July 2014, Simply Energy sent out an Electricity Account/Tax Invoice (Invoice). The Invoice showed new charges of \$1,973 and total charges of \$2,353 and contained a schedule of payments made under the FIP, but did not contain a pay-by date. Customer A made three payments under his payment plan, but it was cancelled on 17 September 2014 for non-payment.

Customer A agreed to three more payment plans between September 2014 and July 2015, which were cancelled due to non-payment.

Simply Energy sent out quarterly invoices on 24 October 2014, 23 January 2015, and 23 April 2015 which showed new charges based on metered consumption, the total balance of the account and a schedule of payments made under the FIP. None of these invoices had a pay-by date.

On 15 July Simply Energy sent a reminder notice for \$4,130. (the same balance as the Electricity Account/Tax Invoice sent on 23 April 2015). On 27 July 2015 Simply Energy sent a disconnection warning notice and a registered letter on 5 August 2015. The supply of electricity to Customer A's premises was disconnected for non-payment on 25 August 2015.

Relevant Obligations

Clause 111(1)(b) of the Code states a retailer may, provided it gives the customer the required notices, disconnect supply to the premises of a residential customer for non-payment if the customer:

- has not paid a bill by the pay-by date; **and**
- has not agreed to an offer to pay the bill by instalments or, having agreed to the offer, has failed to adhere to an instalment arrangement.

Clause 109(2)(b) requires a reminder notice to state the date the reminder notice period ends. Clause 108 defines the reminder notice period as the period that starts on the date of issue of a *reminder notice* under clause 109, which must be no earlier than the next *business day* after the *pay-by date*, and ends no earlier than 6 *business days* from the date of issue of the *reminder notice*.

Clause 8.1 of the terms and conditions of Simply's Standard Retail Contract (the contract) state that Simply may only de-energise a customer's premises if it has complied with all the requirements of the Law. Law is defined as any law or regulatory or administrative document.

Submissions

EWOV submit that the disconnection was wrongful as they could not identify a bill that Customer A had failed to pay by the pay-by date. EWOV submit that the disconnection could not have been for non-payment of the bill issued on 20 May 2014, as Customer A had made payments exceeding the amount outstanding on that bill some time before the disconnection process was underway. Subsequent invoices received by Customer A did not contain a pay-by date.

EWOV submit that in the absence of a bill containing a pay-by date, the retailer:

- was in breach of Clause 25(1)(e) of the Code, which requires bills to contain a pay-by date;
- could not establish that the customer “has not paid the bill by the pay-by date and, in this instance, has failed to adhere to an instalment arrangement” [cl.111(1)(b)]; and
- could not issue a reminder notice “no earlier than the next business day after the pay by date” [cl.109(1)]

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:

- Customer A failed to pay the May 2014 bill and was placed on several successive FIPs in relation to that bill which he failed.
- Each of the subsequent invoices sent to Customer A related to the payment schedule of the particular FIP he was on at the time he received the invoice. Simply has since changed the invoice template to include a schedule of payments stating the pay-by date and amount of each installment.

Chronology

Date	Billed	Paid	Balance	Notes
Jan-14	\$0.00	\$0.00	\$0.00	Customer A Established an electricity account with Simply Energy
20-May-14	\$1,643.66		\$1,643.66	
2-Jul-14			\$1,643.66	Established Payment plan for \$382 per f/n
3-Jul-14		\$500.00	\$1,143.66	
16-Jul-14		\$382.00	\$761.66	
30-Jul-14	\$1,973.88	\$382.00	\$2,353.54	
13-Aug-14		\$382.00	\$1,971.54	
17-Sep-14			\$1,971.54	Plan cancelled for non-payment
18-Sep-14			\$1,971.54	Established Payment plan for \$360 per f/n
24-Oct-14	\$1,741.45		\$3,712.99	
25-Oct-14			\$3,712.99	Plan cancelled for non-payment
6-Dec-14		\$500.00	\$3,212.99	
10-Dec-14			\$3,212.99	Established Payment plan for \$420 per f/n
11-Dec-14		\$500.00	\$2,712.99	
16-Dec-14		\$1,000.00	\$1,712.99	
23-Jan-15	\$1,558.91		\$3,271.90	
28-Feb-15			\$3,271.90	Plan cancelled for non-payment
1-Apr-15			\$3,271.90	Established Payment plan for \$300 per f/n
2-Apr-15		\$500.00	\$2,771.90	
23-Apr-15	\$1,538.26		\$4,310.16	
9-Jul-15			\$4,310.16	Plan cancelled for non-payment
15-Jul-15			\$4,310.16	reminder notice issued for \$4310.15
23-Jul-15	\$1,581.45		\$5,891.61	
27-Jul-15			\$5,891.61	disconnection warning notice issued for \$4310.15
5-Aug-15			\$5,891.61	registered letter sent to customer
25-Aug-15			\$5,891.61	Supply disconnected
Total	\$10,037.61	\$4,146.00		

Decision

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

1. In disconnecting the supply of electricity to Customer A's premises, Simply failed 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, Simply is required to pay Customer A a wrongful disconnection payment of \$82. The supply of electricity to Customer A's premises was disconnected for 7 hours and 53 minutes.

Reasons

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

1. Customer A had made payments in excess of the amount owing on the bill issued to him by Simply on 20 May 2014 and therefore the bill was extant. The disconnection process initiated by Simply in 2015, with respect to Customer A's electricity supply, therefore, could not have been initiated in respect of a failure to pay this bill.
2. Subsequent invoices issued by Simply did not contain a pay-by date.
3. Accordingly Simply failed to demonstrate that Customer A failed to pay a bill by the pay-by date, as required under clause 111(1)(b)(ii) of the Code.
4. Further, the reminder notice issued by Simply (in the absence of a bill that Customer A failed to pay by the pay-by date) was not compliant with the requirements of clause 109 of the Code.

Dr Ron Ben-David

Chairperson

Date: 2016