



Wrongful Disconnection Payment Dispute

TRUenergy and The Complainant

October 2010

Statement of Reasons

Introduction

The Compliance Policy Statement for Victorian Energy Businesses (Compliance Policy Statement) provides for the Energy and Water Ombudsman Victoria (EWOV) or a retailer to seek advice from the Essential Services Commission (the Commission) regarding the interpretation of the terms and conditions of a retailer's contract for supply. In addition, EWOV can refer an unresolved dispute for a wrongful disconnection payment to the Commission for a formal decision.

In accordance with clause 3.3.1 of the Compliance Policy Statement, EWOV has referred this case of alleged wrongful disconnection to the Commission for a formal decision. Both The Complainant and TRUenergy were offered the opportunity to provide information directly to the Commission, but did not do so.

Background

The Complainant was represented in the EWOV complaint-handling process by a social worker. The Complainant was in hospital at the time of disconnection and the social worker organised reconnection to supply approximately 3 weeks' later, in August 2009.

At the time of disconnection, The Complainant owed \$2,404.24 and had not made a payment on the account since September 2008. The social worker stated that The Complainant felt overwhelmed because of severe financial difficulties and other personal circumstances.

TRUenergy advised that The Complainant established the electricity account in June 2007 and by February 2008 had accumulated arrears of \$1,530.24. TRUenergy's call centre notes show that The Complainant contacted them in February 2009 and advised that only a payment of \$50 per fortnight was affordable. On transfer to the credit department, a payment plan commencing late February was agreed.

In early May 2008, the social worker rang TRUenergy to advise that the payment plan was too high (it was more than half the fortnightly income). The plan was cancelled on 9 May 2008. The call was transferred to the credit team where a payment plan of \$25 per fortnight was discussed. The Complainant's case was referred to the hardship team, and advice was provided of URGs, concessions and energy efficiency assistance and the availability of a financial counsellor, through the social worker.

In mid-May 2008, a TRUenergy Customer Welfare representative contacted The Complainant and established a payment plan of \$10 per fortnight for three months. The plan was cancelled in early August 2008 due to non-payment and according to TRUenergy, The Complainant was not contactable for these three months.

In January 2009, TRUenergy attempted unsuccessfully to contact The Complainant by telephone. A letter was sent on 28 January 2009 requiring The Complainant to contact TRUenergy to remain on the hardship program. No response was received.

A number of contacts were made prior to the disconnection action being taken and no response was received.

Regulatory Compliance Issues

The case to the Commission for a decision based on TRUenergy's non-compliance with the following Energy Retail Code requirements.

- Clause 11.2 (4) – the obligations to provide customers experiencing financial difficulties with information on concessions, energy efficiency and other assistance
- Clause 11.2(3) and 12.2 – the obligations to offer a further instalment plan and to specify the period and amount of instalment plans and to monitor and review the plan if the customer demonstrated payment difficulties during the plan
- Clause 13.1(a) – no disconnection of supply if customer failed to meet their obligations under their first instalment plan.

TRUenergy considered that it undertook best endeavours to offer The Complainant a further instalment plan over a nine month period and therefore it met its obligations under the Energy Retail Code (ERC).

Assessment and assistance to customers in financial difficulties

Clause 11.2(4) of the ERC requires the retailer to provide the customer with information on concessions, Utility Relief Grants, energy efficiency and advice on the availability of an independent financial counsellor.

TRUenergy considered that it met this obligation by:

stating on its registered letter that The Complainant should ring their customer service advisor *“to find out more about*

- *Flexible payment arrangements and instalment plans*
 - *State government concessions and other assistance programs*
 - *Local welfare and advisory service referrals*
 - *Energy efficiency advice to help you better manage your energy costs”*
- referring The Complainant to the Welfare Team representative on 7 May 2008 where this information was provided.

The EWOV referral is that providing this information generally on the bill has not previously considered to be acceptable and that there was no documentary evidence in the call centre notes that this information was provided to The Complainant verbally on 7 May 2008.

The Commission has found that the information was provided in a registered letter sent specifically to The Complainant. It was not the general information on a bill, reminder notice or disconnection warning. Further, The Complainant was referred to the hardship program and a customer welfare worker on 7 May 2008. The call centre notes detailed the representation by a social worker, the concession card details were included in the account and the winter energy concession was applied at the time. The call centre notes also indicated what the yearly consumption was and that TRUenergy organised for the meter to be checked. On this basis, it is concluded that a conversation was held with the social worker outlining the key assistance available and issues arising to manage the account.

On this basis, it is concluded that TRUenergy did comply with the requirements of clause 11.2(4) of the ERC.

Offer of a further instalment plan

Clause 11.2(3) requires that a retailer must offer a customer experiencing financial difficulties an instalment plan unless that customer has not complied with two instalment plans in the previous 12 months and does not provide reasonable assurance that they will meet their on-going payment commitments. Clause 12.2 requires TRUenergy, in offering an instalment plan, to specify the period and amount of the plan taking into account a number of factors.

The Complainant's initial payment plan of \$10 per fortnight was established on 19 May 2008 for a three month period. The plan was cancelled on 8 August 2008 as no payments were received.

TRUenergy made sporadic contact until January 2009 when it sent a registered letter asking The Complainant to contact it so that *“Our Customer Service advisors can help you find out more about...Flexible payment arrangements and instalment plans...”*. In TRUenergy's view, this constituted an offer of a second instalment plan. Further, TRUenergy stated that it made numerous efforts to contact The Complainant by phone prior to disconnection. Its records confirm that three telephone calls and three SMS messages were sent, together with written notices, in the month prior to the disconnection.

It is acknowledged that TRUenergy was in a difficult situation because the debt was accumulating and The Complainant did not meet the commitment to pay \$10 per fortnight between May and August 2008. Nevertheless, the Commission has found that TRUenergy made minimal and sporadic contact between August 2008 and January 2009, after one effort to assist The Complainant in its hardship program. TRUenergy then sent a relatively general registered letter with no specific details about the debt or instalment plan options.

Therefore, it is concluded that TRUenergy did not comply with the relevant ERC provision to offer The Complainant a further detailed instalment plan prior to disconnection action being implemented.

No disconnection under the first instalment plan

Clause 13.1(a) states that a retailer may only disconnect a customer for failure to pay an account if “the failure does not relate to an instalment under the customer’s first instalment plan with the retailer”.

According to the EWOV referral, TRUenergy acknowledged that The Complainant’s electricity supply was disconnected while on the first instalment plan. However, TRUenergy stated that, as it offered The Complainant a second instalment plan, it has met its regulatory obligations.

TRUenergy did not establish a second instalment plan nor did it comply with the regulatory obligations in offering a second instalment plan. Therefore, it is concluded that it did not comply with the relevant ERC provision, which clearly states that a disconnection cannot occur if the failure to pay the outstanding amount is based on the first instalment plan.

Conclusion

Having regard to the advice and information to the Commission, it is found that TRUenergy did not comply with clause 11.2(3), clause 12.2 and clause 13.1(a) of the Energy Retail Code. Therefore, TRUenergy has not complied with the relevant terms and conditions of its contract with The Complainant.

It is concluded that the disconnection of The Complainant is wrongful and a compensation payment of \$4545.80 is required (compensation for 18 days and 4.40 hours).

Mr A W Darvall
Delegated Commissioner
October 2010