

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

Background

Customer R contacted the Energy and Water Ombudsman (Victoria) (EWOV) with regard to the disconnection of the supply of electricity to Customer R's premises by Origin Energy (Origin) in August 2014. EWOV investigated the matter, but was not able to assist the parties to reach a resolution. On 26 September 2014 EWOV referred the matter to the Essential Services Commission (the Commission) to decide whether the disconnection of electricity supply to Customer R's premises was wrongful under section 40B of the *Electricity Industry Act 2000* (the Act) and, if so, the amount of any payment Origin is required to make to Customer R.

Summary of Facts

Customer R called Origin to establish an electricity account on 29 November 2013 electing to receive notices by email, and providing an email address. The account was established on 12 December 2013. A bill was issued by email, to the address provided, in January, and Customer R made a part-payment in March 2014.

On 25 April 2014 Origin issued a bill by email. The bill was not paid. Origin issued reminder and disconnection warning notices to the same email address on 21 May 2014 and 10 June 2014 respectively. On 4 August 2014 Origin disconnected supply to Customer R's premises for non-payment of the outstanding amount of \$659.77. After Customer R was disconnected in August 2014, s/he stated to EWOV that s/he had not received any invoices or notices from Origin since March, and that Origin were sending notices to the wrong email address.

Relevant Obligations

Clause 13.1 (b) of the Version 10a of the Energy Retail Code (the Code) provided that a Licensee could only disconnect the supply address of a customer who failed to pay by the relevant pay by date an amount billed in respect of that supply address, if "...the retailer has given the customer a reminder notice and a disconnection warning". Clause 32 of the Code includes email, by hand, by post and by fax as acceptable methods for giving notices.

Clause 28 of Origin's standard form contract provides that:

- "Unless the Regulatory Requirements require notice to be given in a different way, we'll give you notice in writing by e-mail if you've chosen email as your preferred contact method, except that we may still send you some important communications by post."

Retailer Submission

The Commission offered Origin an opportunity to make a submission in relation to the disconnection dispute. In its submission Origin included:

- Copies of the notices that were attached to emails and sent to Customer R.
- A screenshot from Origin's customer management system showing the dates these notices were sent to Customer R; and
- A copy of Customer R's welcome pack showing the email address that was assigned to Customer R's account in Origin's SAP system;
- a statement that the SAP system that populated the email address field in the welcome pack was the same one used to populate the "To" address field when sending the notices.

Origin contends that the records they provided indicated that the required notices were sent to the email address Customer R provided as his/her preferred contact address; and that by sending the relevant notices to the email address Customer R provided at the required time, Origin complied with its obligation under clause 13(1)(b) of the Code to give the notices to Customer R.

Chronology

Date	Event
29 November 2013	Customer R requested a new account with Origin by telephone, giving the email address [redacted]
12 December 2013	Origin established an electricity account for Customer R
13-31 March 2013	Multiple attempts to contact Customer R were undertaken, including a field visit.
25 April 2014	Origin issued a bill to Customer R for \$659.77
21 May 2014	Origin issued a reminder notice to Customer R
10 June 2014	Origin issued a disconnection warning notice to Customer R
25 July 2014	Origin issued a bill to Customer R
13 June- 29 July 2014	Multiple attempts to contact Customer R were undertaken, including a field visit in June.
4 August 2014	Customer R's electricity supply was disconnected for non-payment

Decision

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

1. In disconnecting the supply of electricity to Customer R's premises, Origin 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 Origin, does not have any obligation to pay Customer R a wrongful disconnection payment under s40B of the Act.

Reasons

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

1. According to s40B of the Act, the conditions to which a licence to sell electricity 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 electricity 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 electricity to those premises may be disconnected.
2. Clause 13.1 (b) of the Version 10a of the Energy Retail Code (the Code) provided that a Licensee could only disconnect the supply address of a customer who failed to pay by the relevant pay by date an amount billed in respect of that supply address, if "...the retailer has given the customer a reminder notice and a disconnection warning". Email is included, with post, fax and by hand as an acceptable method to give notices under Clause 32 of the Code.
3. Clause 28 of Origin's standard form contract provides that: "Unless the Regulatory Requirements require notice to be given in a different way, we'll give you notice in writing by e-mail if you've chosen email as your preferred contact method, except that we may still send you some important communications by post.
4. Customer R chose email as his/her preferred method of contact and provided the email address: [redacted]
5. When Customer R failed to pay his/her energy bill, Origin sent reminder and disconnection warning notices to [redacted]. These notices were sent within required timelines and with the required content.
6. In sending the required notices to the email address provided by Customer R, prior to disconnecting the supply of electricity to Customer R's premises, Origin complied with its obligations under clause 13.1(b) of the code.

Dr Ron Ben-David

Chairperson

Date 17 September 2015