

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

Background

Customer S had been a customer of Australian Power & Gas (APG) ¹ since 11 May 2011. On 29 November 2011, APG issued a bill for \$82.19. Another bill was issued on 29 February 2012 for \$183.09. As the outstanding amount remained unpaid, on 4 April 2012 APG issued Customer S a reminder notice for \$183.09, followed by a disconnection warning notice on 11 May 2012. The Energy and Water Ombudsman Victoria (EWOV) submitted that this notice did not comply with the requirements of clause 13.1(c) of the Energy Retail Code (the Code). The supply of electricity to Customer S's property was disconnected at APG's request, for non-payment of \$183.09, on 31 May 2012.

APG argued that as long as at least seven business days pass between the warning and the actual disconnection of supply, the disconnection is not wrongful as the customer suffered no detriment notwithstanding the fact that the disconnection period quoted on the disconnection warning notice was shorter than the minimum allowed. APG asserted that a non-compliant disconnection warning notice (stating a shorter than required disconnection warning period) did not render the disconnection wrongful, as long as the actual disconnection of supply occurred after the required number of days.

Clause 13.1(c) of the Code states a retailer may not disconnect customers for non-payment unless the retailer has given the customer a disconnection warning notice containing a statement that the retailer may disconnect the customer's electricity on a day *no sooner than seven business days after the date of receipt of the disconnection warning*. This obligation is replicated in the terms and conditions of APG's contract with the customer (the T&Cs).

On the disconnection warning notice APG sent to Customer S, the balance due date is five business days after the issue date, and the stated disconnection date is six business days after the issue date. Both of these periods are shorter than the seven business days (after the date of receipt) required under the Code and the T&Cs as a minimum disconnection warning period.

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 2000* (the Act) and, if so, the amount of any payment APG is required to make to Customer S.

APG was offered an opportunity, by the Commission, to respond to EWOV's claim, but did not do so.

Chronology

<i>Date</i>	<i>Event</i>
11 May 2011	APG established an electricity account for Customer S
29 November 2011	APG issued a bill for \$82.19
29 February 2012	APG issued a second bill for the total amount of \$183.09 with a due date of 20 March 2012
4 April 2012	APG issued a reminder notice for \$183.09
11 May 2012	APG issued a disconnection warning notice for \$183.09
31 May 2012	Customer S's electricity supply was disconnected for non-payment of \$183.09

¹ AGL Sales Pty Ltd (AGL) acquired APG in September 2013 through a full share acquisition (AGL Annual Report 2013, 14 and 87; AGL Annual Report 2014, 33 and 49)

Decision

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

1. In disconnecting the supply of electricity to Customer S's premises, APG failed to comply with the terms and conditions of the customer contract specifying the circumstances in which the supply of electricity to those premises may be disconnected. As a result, under s 40B of the Act, as a statutory condition of its licence, APG has an obligation to pay Customer S a wrongful disconnection payment.
2. The wrongful disconnection payment amount is the prescribed capped amount for the period during which the electricity supply to Customer S's premises was disconnected.
3. In accordance with s40B(5) of the Act, APG is required to pay Customer S a wrongful disconnection payment of \$3,500.

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. The terms and conditions of the contract between APG and Customer S required APG to comply with the Code. Therefore clause 13.1(c) of the Code is a term or condition of the contract specifying the circumstances in which the supply of electricity to those premises may be disconnected.
3. In disconnecting electricity supply to Customer S's premises, APG did not comply with clause 13.1(c) of the Code as APG did not include in the disconnection warning notice it sent to Customer S a statement that APG may disconnect Customer S's electricity on a day no sooner than seven business days after the date of receipt of the disconnection warning.
4. As a result, APG failed to comply with the terms and conditions of its contract with Customer S. Therefore APG is required to pay Customer S a wrongful disconnection payment under s40B of the Act.
5. Although supply to Customer S's premises was disconnected for more than 113 days, as Customer S did not notify APG of the disconnection within 14 days of disconnection, the maximum payment is the prescribed capped amount, in accordance with s 40B(1A) of the Act.

Dr Ron Ben-David

Chairperson

Date:

2015