



WRONGFUL DISCONNECTION PAYMENT DISPUTE

TRUENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

Introduction

Section 40B of the *Electricity Industry Act 2001* places a license condition on retailers that requires them to compensate a customer if the retailer disconnects the customer's supply and does not comply with the terms and conditions of the customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate the customer for each day that the customer's supply is disconnected.

Clause 6.5 of the Commission's Operating Procedure – Compensation for Wrongful Disconnection (Operating Procedure) requires that where the Energy and Water Ombudsman Victoria (EWOV) is unable to resolve a claim for the wrongful disconnection compensation payment with the agreement of the retailer and the customer, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the Operating Procedure.

Background

EWOV has requested that the Commission make a formal decision as to whether TRUenergy has complied with its retail license in relation to a dispute between The Complainant and it regarding a wrongful disconnection compensation payment.

From information provided from EWOV, it is understood that The Complainant's electricity supply was disconnected at 9.30 am on 19 November 2007 and reconnected at 8 am on 20 November 2007. The Complainant built a new property and moved in around June 2007. They initially requested that AGL activate an account but subsequently did not receive any bills. They called AGL twice in October 2007 to enquire about their bills and were advised that AGL would look into it.

On 19 November 2007 their electricity supply was disconnected. They called Powercor and were advised that the de-energisation took place at TRUenergy's request as TRUenergy was the financially responsible market provider (FRMP). They called AGL who confirmed that they did not have an account with AGL. AGL explained that it was unable to establish an account for The Complainant as there was some uncertainty in regards to the supply address.

The Complainant then called TRUenergy who stated that it had a previous account with the builder which had been finalised in June 2007 at the end of the house construction. As TRUenergy did not receive a transfer request from another retailer or a transfer request from a new customer, it remained the FRMP for the property. As TRUenergy received read data from the Distribution company indicating that the property was occupied, it attempted to contact the occupier. TRUenergy has sent two letters addressed to the occupier at the property. The first letter was issued on 2 October 2007 and the second letter was issued on 18 October 2007. However, TRUenergy has no record of a response to these letters. As a result, it arranged for the disconnection of the property on 19 November 2007.

TRUenergy confirmed that The Complainant called it on 19 November 2007 and accepted a quote for electricity. TRUenergy raised a service order for reconnection for 20 November 2007.

Issues

Deemed contract

For the disconnection to be wrongful the retailer must have a contract with a customer and must have breached the terms and conditions of that contract that set out the circumstances under which a customer's supply may be disconnected.

According to section 39 (1) of the *Electricity Industry Act 2000*, a deemed contract exists between a retailer and customer if a relevant customer commences to take supply of electricity at premises from the relevant licensee without having entered into a supply and sale contract with that licensee. In this case, The Complainant was bound by a deemed contract with TRUenergy as they were taking supply from the premises of which TRUenergy was the FRMP.

License obligations

Clause 9.3 of TRUenergy's retail license requires that it takes steps to contact the owner of the property and to provide advice about the relevant tariffs and other terms and conditions of the deemed contract as soon as it becomes aware that energy is being consumed.

Energy Retail Code (ERC) obligations-clause 13.4

In the event that TRUenergy did not receive a response from The Complainant, is required to comply with clause 13.4 of the ERC which outlines the circumstances in which a retailer is permitted to disconnect a customer's energy supply. Clause 13.4 allows for a retailer to disconnect a customer's energy supply if a customer continuously fails to provide acceptable information to enable a contract to be formed and the retailer has given the customer a disconnection warning. The disconnection warning must include a statement that the customer may be disconnected on a day no sooner than 10 business days after receipt of the warning notice.

TRUenergy's customer account records indicate that it had sent two letters to the property. The first letter was sent on 2 October 2007 which requested the customer to make contact with TRUenergy so that it could identify the new customer and the second letter was sent on 18 October 2007 warning the customer of an impending disconnection if the customer did not make contact in the near future.

The Complainant denies receiving the letters sent to the property, stating that following their acceptance of TRUenergy's quote for electricity on 19 November 2007, TRUenergy sent its customer charter and the electricity bill to their previous address. TRUenergy has acknowledged that it sent the Complainant's electricity quote to their previous address as this address was also the mailing address for their gas quote in May 2007.

The Commission notes that the electricity quote and the customer charter were sent to their previous address after the disconnection date and this has no bearing on the procedures that needs to be undertaken by TRUenergy prior to the disconnection. The Commission also notes that TRUenergy records indicate that the letters were sent to the correct address once the unauthorised usage was identified.

Decision

Having considered all the facts of this case, the Commission considers that TRUenergy has complied with clause 9.3 of its retail license by attempting to contact The Complainant to enter into a contract with him and provide him with the relevant information.

TRUenergy has also complied with clause 13.4 of the ERC by disconnecting the Complainant's electricity supply in accordance with the terms and conditions of the customer's contract.

As the disconnection was not wrongful, compensation is not payable.

A W DARVALL
Delegated Commissioner
April 2008