



WRONGFUL DISCONNECTION PAYMENT DISPUTE
ENERGYAUSTRALIA AND THE COMPLAINANT

STATEMENT OF REASONS

JUNE 2006

Introduction

Section 40B of the *Electricity Industry Act 2000* places a licence condition on retailers that requires them compensate a customer if the retailer disconnects a customer's supply and does not comply with the terms and conditions of a customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate a customer for each day that a customer's supply is disconnected.

Clause 6.5 of the Commission's Interim Operating Procedure – Compensation for Wrongful Disconnection (IOP) 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 complainant, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the IOP.

Background

EWOV requested the Commission to make a formal decision as to whether EnergyAustralia complied with its retail licence in relation to a dispute between the Complainant and EnergyAustralia regarding a wrongful disconnection compensation payment for the Complainant.

The Complainant moved into a property and requested Origin Energy to be his retailer. Origin Energy requested the transfer of an incorrect National Meter Identifier and, as a result, another property was transferred to the retailer instead of the Complainant's property. Consequently, EnergyAustralia remained the Financially Responsible Market Participant (FRMP) for the Complainant's property, but was not aware of the identity of the new consumer.

The Complainant received bills from Origin Energy. In addition he received 'to the Occupier' letters from EnergyAustralia and contacted the retailer twice in relation to this. EnergyAustralia advised him that it was the FRMP for his property and requested information from him so it could set up an account. The Complainant believed that Origin Energy was his retailer and refused to provide the information requested.

EnergyAustralia sent three reminder notices and three disconnection notices to the Complainant's property. Following no payment and no contact from him, EnergyAustralia disconnected his property on 7 November. The Complainant contacted Origin Energy and was advised that according to its records his supply address had not been disconnected. He was referred to the relevant distributor.

Issues

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

Terms and Conditions Relating to Disconnection

The terms and conditions of the contract between the Complainant and EnergyAustralia are set out in the Energy Retail Code (ERC). The ERC requires that a retailer cannot disconnect a customer for non-payment of a bill until the retailer has sent all relevant notices, assessed and assisted a customer having payment difficulties and used its best endeavours contact a customer with insufficient income.

Sending Relevant Notices

Clause 13.4 permits a retailer to disconnect a customer who has not provided acceptable identification, if the retailer has given a customer a disconnection warning and a customer continues not to provide acceptable identification. As EnergyAustralia did not know the identity of the consumer, it sent three letters to 'the Occupier'. During two telephone discussions initiated by the Complainant, EnergyAustralia requested information to set up an account, but he refused to provide this information because he believed that Origin Energy was his retailer. EnergyAustralia sent three reminder notices and three disconnection warnings.

Therefore, it is considered that EnergyAustralia attempted to identify the Complainant through 'the Occupier' letters and telephone discussions with him and it issued three disconnection notices, thereby meeting the requirements of clause 13.4 of the ERC.

Best Endeavours to Contact a Customer with Insufficient Income

Clause 13.2 of the ERC requires that prior to disconnecting a customer the retailer must use its best endeavours to contact a customer where the failure to pay a bill occurs through lack of sufficient income.

The information provided by EnergyAustralia and the Complainant, contains no evidence that his failure to pay was due to insufficient income. EnergyAustralia's customer contact notes show that he refused to pay EnergyAustralia's bills because he believed he was contracted with Origin Energy. Therefore, EnergyAustralia was not required to comply with clause 13.2 of the ERC. In any event, it is noted that EnergyAustralia made reasonable efforts to contact the Complainant by sending all relevant notices to his property.

Assessment and Assistance to Customers in Financial Difficulty

Clause 11.2 of the ERC requires a retailer to assess in a timely way whatever information a customer provides or the retailer otherwise has concerning the customer's capacity to pay. In addition, the clause requires a retailer to offer a customer at least two instalment plans prior to initiating disconnection action (that take into account ongoing consumption, capacity to pay and arrears) and provide advice on concessions, energy efficiency and the availability of financial counsellors.

As there was no indication that the failure to pay bills was due to payment difficulties, these obligations do not apply.

Decision

In accordance with clause 7 of the IOP, the Commission has investigated the alleged breach by EnergyAustralia of its retail licence in relation to the disconnection of the Complainant. The Commission has decided that EnergyAustralia complied with the relevant terms and conditions of the Complainant's contract in relation to his disconnection. Therefore, the disconnection of the Complainant is not wrongful and no compensation payment is required

R H SCOTT
Delegated Commissioner

7 June 2006