



WRONGFUL DISCONNECTION PAYMENT DISPUTE

TRUENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

FEBRUARY 2007

Introduction

Section 48A of the *Gas Industry Act 2001* places a licence 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 (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 customer, 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 TRUenergy complied with its retail licence in relation to a dispute between the complainant and TRUenergy regarding a wrongful disconnection compensation payment.

The complainant, a concession card holder, became a TRUenergy (gas) customer on 25 January 2005. The March and May accounts were paid in full, but the July account remained unpaid. On 23 August 2005 a reminder letter was despatched to the complainant, followed by a disconnection warning on 2 September for the unpaid July account. According to TRUenergy, the complainant was notified on 29 September that they were to be placed on a shortened collection cycle.

The complainant received numerous disconnection communications between October 2005 and April 2006, to which they did not respond. In May 2006, TRUenergy attempted to contact the complainant on their mobile phone, but on identifying themselves, were disconnected. Subsequent attempts were unsuccessful. TRUenergy finally left a return phone number in the form of a text message, but again there was no response.

Following further disconnection notices, TRUenergy managed to contact the complainant on 31 July 2006 on their mobile phone and an instalment plan of \$45 per fortnight was arranged. TRUenergy screen notes state that during the conversation the complainant's capacity to pay was 'confirmed'.

No payments were made against the plan and following a further unsuccessful attempt to contact the complainant on 11 August, TRUenergy sent a contact number in the form of a text message to the mobile phone. The complainant still did not contact TRUenergy and on 15 August a final disconnection notice was sent.

TRUenergy's screen notes state that an assessment of the complainant's capacity to pay was also noted on their account around this time.

There was no further contact between the complainant and TRUenergy prior to disconnection of their gas supply on 21 August 2006.

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 TRUenergy and the complainant are set out in the Energy Retail Code (ERC). Clause 13.2 states that a retailer must not disconnect a domestic customer if the failure to pay the retailer's bill occurs through lack of sufficient income of the customer until the retailer has complied with clause 11.2 of the ERC.

Capacity to pay

The complainant's financial history shows that prior to the disconnection in August 2006, they paid only two bills in full. At the time of disconnection, no payments had been made towards the account since June 2005. The complainant is a concession card holder and has received numerous disconnection warnings in relation to the arrears on their account. The Commission considers that these are indications of a customer experiencing payment difficulties, which may be linked to the lack of sufficient income.

On 31 July 2006, an instalment plan of \$45 per fortnight was arranged by TRUenergy. At the time, TRUenergy calculated that this fortnightly payment would cancel the complainant's arrears of \$590 in twelve months and cover their ongoing consumption of \$23 per fortnight.

The screen notes indicate that capacity to pay was 'confirmed', but do not provide any detail as to how this was assessed. Given that there apparently is no information about the complainant's financial situation recorded on the screen notes and taking into account their apparent payment difficulties, it is considered that TRUenergy has not presented sufficient evidence that the \$45 per fortnight instalment payment represented a reasonable balance between the arrears, estimated consumption and capacity to pay.

It is therefore concluded that TRUenergy did not adequately assess the complainant's capacity to pay in accordance with 11.2 of ERC.

Offer the customer a second instalment plan

The complainant's instalment plan established on 31 July 2006 and requiring \$45 per fortnight was not adhered to by them. As TRUenergy had had no communication with the complainant, a final disconnection notice was sent on 11 August. TRUenergy stated that this notice included the offer of another instalment plan. However, it is noted that this offer of another instalment plan is in fact advice to customers to contact TRUenergy if they are experiencing payment difficulties and is visible on the back of the final disconnection notice under 'Payment Arrangements'. In the Commission's view, this does not constitute a firm and clear offer to an individual customer of a further instalment plan.

Therefore, it is concluded that TRUenergy did not comply with clause 11.2.3 in offering the complainant a second instalment plan prior to taking disconnection action.

Advice on URGS, Energy Efficiency and Financial Counsellors

In spite of the complainant's poor payment history and the fact that TRUenergy staff spoke with them three weeks prior to disconnection on 31 July 2006, there is no documentation in the screen notes that TRUenergy provided the complainant with any advice on financial assistance, financial counselling or energy efficiency.

However, TRUenergy advised that the credit officer's personal notes indicate that URGS was discussed and that the complainant confirmed they could make their instalment payments without difficulties. The personal notes also indicate that the complainant refused Centrepay (this is a direct debit facility offered by Centrelink) when it was offered. A financial counsellor was not suggested as the complainant assured them that they were not having financial difficulties.

These personal notes cannot be verified as being consistent with the advice that the complainant may or may not have received at the time stated. EWOV has advised Commission staff that there is no record that this issue was discussed with them by EWOV staff. On this basis, it is considered that the Commission can make no finding as to whether or not this code obligation has been complied with.

Nevertheless, it is considered that TRUenergy must ensure that all details of conversations with a customer, particularly those related to credit matters, are always entered in the relevant customer's screen notes.

Contacting a customer on a shortened collection cycle

Prior to disconnecting the complainant on 21 August 2006, TRUenergy made one attempt to contact them on their mobile phone. As this was unsuccessful, a text message was left on the mobile phone asking them to contact TRUenergy.

The OP interpretive guidance for ERC clause 13.1(f) states that contact in person or by telephone could require:-

- at least one telephone call during business hours attempting to reach the customer
- if a message was not left in business hours with a reliable adult or an automated telephone service, at least two telephone calls outside business hours

Based on the fact that a message was left on an automated telephone service, it is considered that TRUenergy did comply with clause 13.1(f).

Decision

In accordance with clause 7 of the OP, the Commission has investigated the alleged breach by TRUenergy of its retail licence in relation to the disconnection of the complainant. The Commission has decided that TRUenergy did not comply with all the relevant terms and conditions of the complainant's contract in relation to their disconnection.

Therefore, the disconnection of the complainant was wrongful and a compensation payment is required. The compensation payment is to apply from 10.30 am on 21 August 2006 to 6.15 pm on 22 August 2006. The amount due is \$341.25.

R H SCOTT
Delegated Commissioner

February 2006